



PHILANTHROPY
Australia

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Manager
Consumer Policy Unit
Infrastructure Competition and Consumer Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: NFPReform@treasury.gov.au

Philanthropy Australia Inc

Level 2, 55 Collins Street
Melbourne VIC 3000
Australia

Tel (61 3) 9662 9299
Fax (61 3) 9662 2655

info@philanthropy.org.au
www.philanthropy.org.au

Assn. No. A0014980 T
ABN 79 578 875 531

Patrons
Sir Gustav Nossal AC CBE
Lady Southey AC

Re: Charitable fundraising regulation reform discussion paper and draft regulation impact statement

Thank you for the opportunity to comment on the above discussion paper.

Philanthropy Australia strongly supports a nationally consistent approach to regulation of fundraising. A national approach would be hugely beneficial and would greatly assist in reduction of administrative burden on the sector.

In order for any national approach to work from a practical perspective and to be embraced by the not-for-profit sector, the reduction in red tape must be genuine, prompt and extensive. Philanthropy Australia recognises that this will be difficult given the number of current regulatory frameworks and the different statutory authorities involved, but believes it is imperative that fundraising regulation be linked into the ACNC's role.

Paragraph 17 of the Discussion Paper defines a fundraising activity as "any activity that involves the soliciting or receipt of money (whether or not in return for a good or service) or other property primarily for a charitable purpose." Philanthropy Australia believes that this definition should be revised to remove the reference to "receipt", leaving it as "the soliciting of money (whether or not in return for a good or service) or other property primarily for a charitable purpose."

Philanthropy Australia notes that the possible examples of exemptions from fundraising regulation which are listed in paragraph 18 of the Discussion Paper all have one common element, namely that while they involve receipt of funds, they do not involve solicitation from the general public. Instead they involve either situations where appeals are conducted within a small collegiate group, or where the donor is institutional rather than an individual member of the public and therefore better placed to conduct due diligence. These situations are not characterised by the information asymmetry which is described in paragraphs 10 and 11 of the Discussion Paper, where the charity solicits donations from the public but retains most of the information about how the donation is used. Instead, these are situations where the donor is making an informed decision about where to place their donation, rather than responding ad hoc to solicitation from a charity.

As stated in the Discussion Paper, it is "generally accepted that the aim of charitable fundraising regulation is to ensure public confidence and trust in fundraising and, in doing so, increase the public's willingness to participate in funding activities." (p.5) The paper also states that regulation operates "to



prevent fundraising activities resulting in public nuisance or inappropriate invasion of privacy” and to “support trust and confidence in fundraising by increasing transparency and accountability regarding the outcome of fundraising campaigns and the use of publicly donated funds”.

The principles underlying the reform process, and specifically the regulation of fundraising, can be summarised as follows:

1. Reinforce general confidence in the NFP sector, and reinforce specific confidence in NFP sector organisations
2. Reduce red tape for charities
3. Ensure that taxation exemptions are used appropriately
4. Grow the pool of public donations to the sector

Activities that might be exempt from fundraising regulations

Philanthropy Australia agrees that the activities listed in paragraph 18 of the Discussion Paper should be exempt from fundraising regulations.

2.5 Are there additional fundraising activities that should be exempted from fundraising regulation?

Yes, there are other activities which should be exempted, for similar reasons to those which characterise the activities listed as possible exemptions.

Philanthropy Australia believes that in addition to those activities listed, bequests should be exempt from fundraising regulation. Bequests are received by charities after the donor dies and are not generally in response to general solicitation. Furthermore, donations to private ancillary funds should also be exempt from fundraising regulation. Private ancillary funds, while they are deductible gift recipients, do not engage in solicitation of public funds and in fact are prohibited from doing so under item 45 of the *Private Ancillary Fund Guidelines 2009*. The donors to private ancillary funds are generally closely associated to the PAF and are also involved in the distribution of funds from the PAF to direct service DGRs. Like the examples given of donations to religious organisations from their own members, the recipient PAF is well known to its donors and the funds are not sourced through a public appeal or fundraising campaign.

Philanthropy Australia believes that exempting donations to PAFs from fundraising regulation is consistent with good application of the wider principles underlying the regulation reform agenda, which are to “support trust and confidence in fundraising by increasing transparency and accountability regarding the outcome of **fundraising campaigns** and the use of **publicly donated funds**”.

Implementing a national approach to fundraising regulation

2.8 Should existing State or Territory fundraising legislation continue to apply to smaller entities that engage in fundraising activities that are below the proposed monetary threshold?

If smaller entities were exempted from the national fundraising law but still subject to State or Territory fundraising legislation, meaning that they must register in each State or Territory in which they operate,



this will not lessen the administrative burden, nor will it provide greater clarity. Philanthropy Australia believes that if the aim is truly to reduce the compliance burden, a national approach must be truly national.

2.11 Should charities registered on the ACNC be automatically authorised for fundraising activities under the proposed national legislation?

Philanthropy Australia supports charities registered on the ACNC being automatically authorised for fundraising, although it must be understood that reporting requirements should still be based on the level of funds raised. Some charities will not fundraise at all – charitable testamentary trusts and private ancillary funds are two examples. Those entities will register as charities and be eligible for tax concessions but do not source funds from the public. Authority to fundraise should not automatically carry an extra level of reporting, which would create an extra administrative burden for the privilege of permission to carry out activities in which they will not engage.

4.1 Should all charities be required to state their ABN on all public documents?

Yes, charities should be required to state their ABN on public documents for ease of lookup of their legal names, to avoid confusion in wills and other documents, and so that the legitimacy of charities can be checked online.

4.5 Should a charity be required to disclose whether the charity is a Deductible Gift Recipient and whether the gift is tax deductible?

Yes, DGR status should be disclosed so that taxpayers are clear about which donations they can claim as tax deductions.

4.7 Should charities be required to provide contact details of the ACNC and a link to the ACNC website on their public documents?

Philanthropy Australia advises against this requirement as it will be a burden for many entities – especially smaller ones - to pay for redesign or updating of their websites or corporate documents. In time the ACNC will naturally come to be known as the source of information on charities.

5.1 Should reporting requirements contain qualitative elements, such as a description of the beneficiaries and outcomes achieved?

Yes, reporting requirements should enable a narrative or descriptive element, as the activities of charities are difficult to measure in sheer numbers or cost/spend ratio.

5.2 Should charities be required to report on the outcomes of any fundraising activities, including specific details relating to the amount of funds raised, any costs associated with raising those funds, and their remittance to the intended charity?

Philanthropy Australia believes that requiring such reports would levy an unrealistically heavy reporting burden on charities and create unintended negative consequences for the sector.



The phrasing of this question implies that charities are remitting or passing on funds to other charities. This will in fact only be the case for public ancillary funds and others which fundraise for another organisation – fewer than 2000 total organisations. The majority of charities do not merely act as holding vessels but use the money raised to carry out work such as assessing needs of clients, counselling, educational activities, health care, research, etc. The level of public understanding of the costs associated with this work is relatively low.

Many charities, fundraising in this atmosphere of misunderstanding, inadvertently encourage it by advertising that “100% of donations go to people in need”. Philanthropy Australia’s concern is that too much focus on costs will inadvertently encourage this practice, obscuring the fact that good charitable practice includes good administration and governance, which cost money.

Furthermore, reporting of fundraising costs is imprecise and complicated. The cost of a donor relationship manager or bequests officer, for example, will be borne in the current period of reporting, but the full benefit in terms of bequests or large donations may not come for several years as relationships between charity and donor take time to nurture. Older charities are likely to have lower fundraising cost ratios than newer ones because they are more likely to receive income through bequests and non-discretionary charitable trusts, which they can use to cross-subsidise their core costs. There is danger that these intricacies will be misunderstood or ignored by media outlets in the desire to create “league tables” in a misguided attempt to publicise the “most efficient” charities. The unintended consequences of this situation could be a reduction in fundraising income and a mistrust from the general public.

Conclusion

Philanthropy Australia sees a critical difference between “soliciting funds from the public” and merely “receiving” funds, which needs to be addressed in any regulatory reform. Philanthropy Australia supports the simplification of fundraising regulations and particularly any move to remove conflicting, overlapping and duplicate regulatory requirements. We would welcome the opportunity to discuss or make further comment on any of the matters raised in this submission.

Yours sincerely,

A handwritten signature in black ink that reads "Deborah F. Seifert". The signature is written in a cursive style with a large, stylized 'D' and 'S'.

Dr Deborah F Seifert
Chief Executive Officer