

COLLECTIONS FOR CHARITABLE PURPOSES ACT 1939 – IMPROVING REGULATIONS ISSUES PAPER

SUBMISSION COVER SHEET

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FUNDRAISING INSTITUTE AUSTRALIA

SUBMISSION IN RESPONSE TO

COLLECTIONS FOR CHARITABLE PURPOSES ACT 1939 - IMPROVING REGULATION ISSUES PAPER FEBRUARY 2010

Fundraising Institute Australia (FIA) is the peak body for fundraising professionals within Australia. As such consultation has been undertaken with our member base in the preparation of comments provided within.

The FIA comments on the Collections for Charitable Purposes Act 1939: Improving regulation Issues Paper as follows.

1. Background Perspective

The Collections for Charitable Purposes Act 1939 has been modified and amended numerous times since its inception. These changes have reflected the feelings of the community at the time. However, the result is an Act of Parliament that is now contradictory, and one that does not cover the scope of activities in the South Australia community that it was intended to regulate.

Of the thousands of not-for-profit organisations that raise funds from the community in South Australia there is only approximately 550 that are covered by these regulations and a large number of these organisations are based outside South Australia and have limited operations within the state. If for example you were to remove the organisations at the small end of scale (those with less than \$200,000 turnover), this legislation significantly affects less than 250 organisations in South Australia.

While reforms need to be made, it may be appropriate to cast new legislation that is not aimed at collections of charitable purposes in South Australia, but is more directed to fundraising in general. Further to this, as there are steps underway to potentially harmonise the various pieces of state legislation and charitable regulation in general, FIA is of the view that it would be prudent to undertake such a review in South Australia in the context of the Federal Inquiry and other potential national changes.

2. Definition of Charitable Purpose

Currently there is a major mismatch between State and Federal legislation related to charitable purpose and operations. With regards to the definition of charitable purpose, the federal legislation is far broader and covers the areas of medical research, health promotion, religion and education. The Collections for Charitable Purposes Act does not include these areas.

As such organisations in South Australia that are collecting tax-deductible funds for medical research, health promotion education and religion, it could be said, do not need to be registered with the South Australian Government to conduct their charitable business. These organisations are registered as charitable organisations with the Australian Taxation Office. This highlights the conflict between State and Federal legislation.

FIA is of the view that state governments should adopt the interpretation of charitable purpose from the Federal Government's Australian Taxation Office. This would assist in reducing confusion between the two sets of legislation and work towards harmonisation of legislation across the fundraising sector.

If legislation was harmonised across Australia in accordance with the recommendations of the 2001 enquiry into the definition of charities and other organisations, this would naturally include religious and educational organisations. This would clarify for such organisations how they report the funds they collect from the public. It would further assist in providing the public with the knowledge that charitable organisations are all covered by the same rules and regulations.

3. Collecting from the Public

FIA supports the comment in Section 3.1 of the Issues Paper, that:

*“Public collection activities should **respect** the donor’s right to privacy and the right not to donate. Donors should also be able to readily understand which collection activities are legitimate, supporting the **integrity** of the charity sector.”*

The FIA Principles and Standards of Fundraising Practice embody this sentiment and provide a backdrop for all stakeholders to better ethical understanding of fundraising practices.

3.1 Collecting in the Private areas

FIA refers to *collecting in private areas* as being areas that are controlled or managed by an owner or manager of a business, and *collecting in public areas* as areas that have been temporarily licensed for a specific purpose. This will include shopping centres, offices and public buildings areas licensed for events and public locations where events has been approved for a period of time.

In these circumstances, there will be a nominated person overseeing the fundraising activities. The hours and days collections are permitted is negotiated and agreed by the business owner of the location.

FIA is of the belief that *collection in public areas* does need to be regulated. FIA is of the view this regulation is best managed by local government.

3.2 Hours of Collection Activities

FIA proposes the following as guidelines for collections:

- collections in public areas 8:00am to 7:00pm weekdays
- residential premises collections 10:00am to 7:00pm weekdays
- all collections on Saturdays and Sundays between 10:00am and 5pm

Further to this, provision should be made for local government to approve any variations in line with the specific nature of the collection event and the organizations requirements.

3.3 Identification Requirements for Collectors

FIA supports an approved template for identification of all collectors. Specifically badges or identification cards within clear plastic holders on lanyards should contain as a minimum:

- Organisation name (and logo if appropriate).
- "Given" name of the collector.
- Identification number for the collector (this should be recorded by each charity for security purposes).
- Indication if collector is a volunteer or not (could include colour code as well for ease of identification).
- DGR license number of the organisation.
- Telephone contact for the organisation.

- Expiry date of the badge that applies specifically to the event or specifies the date no longer than six months from the date of issue.

Further to this the FIA sees that a minimum size for badges should be of a business card size. However, individual organisations may create badge larger if so desired.

FIA does not support a centralised badge preparation approach as it is likely to create a further cost to organisations, extend preparation activities to include communication with an external agency to secure badges and increase timelines for preparation of collection activities. The standard minimum template approach is a much preferred option.

3.4 Ongoing Collection Agreements

The FIA is of the opinion that with regard to ongoing collection agreements that the donor should be able to terminate the regular donation activity at any time without penalty. The FIA views this is preferable to have a cooling-off period, as it would reduce red tape and administrative expense for all parties involved.

The attached section of the FIA Principles and Standards of Fundraising Practice provides background as to acceptable practice of such activities. (Refer Attachment 1)

4. Promotion, Disclosure and Record Keeping of Collection Activities

Promotion of Collection Activities

FIA's response to **Section 4.2 of the Issues Paper** is that it is appropriate for charitable organisations to have on all display and promotional materials (including website), details of the DGR licensed charity name, contact details of any interstate associated entities and website of the licensed charity.

With regards to radio and television advertising, FIA is of the belief that disclosure of the full organisation name and contact details (minimally telephone and website contact details) would provide ample contact information for the public.

Disclosure of Collection Activities

The disclosure of collection activities is one of the most controversial areas of the proposed legislation as there is a great deal of interpretation as to what should or should not be included in the financial reporting figures.

FIA's response to **Section 4.3 of the Issues Paper** is in support of adoption of a Standard Chart of Accounts (SCOA) that provides a common approach to the capture of account information by registered charitable organisations. The adoption of the SCOA as recommended by COAG does not however cover all aspects of reporting related to identification of the "cost of fundraising" and as such will, in the current format, not provide adequate information to the public to identify effective operation of charities. It should be noted that further development of the SCOA is required to allow appropriate comparative examination of the sector. Work on this subject is under consideration at a national level.

Disclosure by Collection Agents

FIA's response to **Section 4.4 of the Issues Paper (Disclosure by Collection Agents)** regards the model proposed to be of little value for public understanding of use of Agents in fundraising activities. A key point of note is that the current legislation and the proposed changes outlined purport to operate on the assumption that a collection agent collects funds from the public and then passes these, or a portion of these, onto the charity. This is often **not** the case, for example in the context of an agent utilised in face to face donor acquisition, the agency acquires donors who then donate directly to the charity, the agency then charges the charity a fee for this service.

The FIA recommends an alternative to be:

- The disclosure of the fees charged to the client by the agency for each individual pledge. This is currently required by regulations in NSW and Queensland.

It should also be noted that financial reporting that currently takes place in South Australia requires organisations to report only on those activities where they have issued a tax-deductible receipt. Activities that do not include tax-deductible receipts include events and merchandising.

It is FIA's view that a website tool as outlined here to give public access to compare charities would be a very unsound means to provide accurate information to the public.

Disclosure by Collectors

FIA's response to **Section 4.5 of the Issues Paper** agrees that it is appropriate for an individual soliciting donations from the general public to have written material that will be provided on request from the general public. This information would include the name of the organization, written authorisation for the individual to collect, the purpose that the

funds are to be used for, contact details of the organisation including telephone, address and website. In addition to this it would be desirable that information include the charities SA website and a brief outline of the purpose of the charities SA website.

It is desirable that collectors at all times should carry a disclosure pamphlet which may assist in providing public information.

Recordkeeping (Section 4.6 Issues Paper)

While the FIA agrees it is best practice to provide a tax deductible receipt for donations of two dollars and over, it is impractical to mandate this practice. Many general public donations include placement of monies into collection receptacles. Issuing of receipts for such donations would be impossible to undertake, and indeed not expected by many public donors. Wide spread public campaigns do provide standard receipts, and it is up to the donor to accept or otherwise the standard receipt.

5. Integrity of Collection Activities

The FIA believes it appropriate that the Minister has authority to seek more information regarding licensed charities, individuals working within charities and fundraising activities.

Many charitable organisations fall within and report under the Associations Incorporation Acts. As such, this may be a further avenue to assist in determining matters of concern of operation of charities.

ATTACHMENT 1

Standard of Face to Face Fundraising Practice

The Standard of Face to Face Fundraising Practice provides practical guidelines to FIA members on best practice for conducting face to face fundraising activities throughout Australia.

This Standard must be read in context with FIA's Principles of Fundraising Practice, including the Code of Ethics and Professional Conduct, the Fundraiser's Promise to Donors and Code of Acceptance and Refusal of Donations.

FIA members should note that the legislation covering face to face fundraising differs in each State and Territory. For this reason, the Standard's provisions must be read in conjunction with the relevant State or Territory legislation. If there is conflict between the provisions of this Standard and legislation, the legislation prevails.

Advancing Professional Fundraising

1. To whom does this Standard apply?

1.1

This Standard applies to FIA members. FIA can only monitor this Standard and enforce it if necessary against an FIA member.

1.2 This Standard does not replace nor override any law.

2. Training

2.1 An Organisation must conduct a training program on this Standard for a Fundraiser.

2.2 A training program must:

- a) be of at least 30 minutes duration; and
- b) include at least, training in all items described in this Standard that an Organisation must require of a Fundraiser.

2.3 For the purposes of this section, a training program may be conducted by an Organisation as part of a general training program for a Face to Face Fundraiser and may include training at a public place where a Donation may be solicited from a Donor or prospective Donor.

2.4 Breach of section 2.1 or section 2.2 of this Standard constitutes Unsatisfactory Conduct by an Organisation.

3. Fundraiser Identification

3.1 An Organisation must require a Fundraiser to clearly display to a Donor:

- a) an authorised pledge form;
- b) a name tag which identifies the Fundraiser by name, and the Organisation's identity in the manner described under section 4 of this Standard; and

- c) any mandatory identification requirements for a Fundraising Activity required by State or Territory legislation.

3.2 Breach of section 3.1 of this Standard constitutes Professional Misconduct by an Organisation.

4. Organisation Identification

4.1 Wherever identification of an Organisation is required by this Standard an Organisation must provide its:

- a) full name of the Organisation;
- b) corporate registration number [for example ABN];
- c) full business address; and
- d) logo (if any).

5. Information Disclosures

5.1 An Organisation must require a Fundraiser to:

- a) explain to a Donor the terms of a direct debit agreement on an authorised pledge form; and
- b) provide clear and adequate information to the Donor about any follow-up procedure, including any telephone follow-up procedure that will be conducted by an Organisation as a consequence of receipt of the Donor's Donation.

5.2 Upon request, a Fundraiser must inform a Donor of the following information:

- a) the Objects of an Organisation for whom the Fundraiser represents;
- b) the intended use of a Donation;
- c) the capacity of an Organisation for whom the Fundraiser represents to use a Donation for its intended use;
- d) whether the Fundraiser is engaged either as a Volunteer, employee or Supplier of the Organisation;
- e) whether the Fundraiser is a member of FIA or not;
- f) the means to access an Organisation's most recent financial statements or current annual report;

- g) the means to apply to see their records held by an Organisation and challenge its accuracy;
- h) the existence of the FIA Complaints Process;
- i) the existence of this Standard; and
- (j) the existence or otherwise of an Organisation policy requiring that a Donor's contact details not be exchanged, rented, or otherwise shared by the Organisation with another person or body corporate without the express written consent of that Donor, and that a Fundraiser engaged by the Organisation will comply with that policy.

5.3 An Organisation must require a Fundraiser to provide a Donor with a prompt answer to a question listed in this section 5.

5.4 A Fundraiser may inform a Donor under this section 5 verbally or by the use of printed material supplied by an Organisation for whom they represent.

5.5 Breach of section 5.1 or 5.2 of this Standard constitutes Unsatisfactory Conduct by an Organisation.

6. Professional Conduct

6.1 An Organisation must require a Fundraiser whilst undertaking a Face to Face Fundraising Activity not to:

- a) obstruct or restrict a person from going about their lawful business;
- b) impede activities of commercial organisations in public places;
- c) inconvenience members of the public in public places in the vicinity of commercial organisations;
- d) approach a person under the age of 18 with the intention of seeking a Donation;
- e) seek a Donation from a person who is frail and elderly, intellectually disabled or who is in any way vulnerable;
- f) enter a private residence under any circumstance;
- g) continue to seek a Donation where a Donor requests that they stop;
- h) work in teams of less than two Fundraisers;

- i) wear clothing supplied by an Organisation whilst not engaged in a Face to Face Fundraising Activity;
- j) in any way denigrate the Objects of an Organisation;
- k) disobey a site agreement entered into by an Organisation;
- l) accept cash, a cheque, property, or a personal gift from a Donor;
- m) mislead a Donor or allow a Donor to be misled about any matter in the Standard;
- n) state to a Donor a cost to an Organisation of conducting a Face to Face Fundraising Activity unless that cost is:
 - (i) factually accurate; and
 - (ii) approved for public release by an Organisation;
- o) seek a Donation at a time or location other than that specified by the Organisation or its representative; and
- p) use Promotional Material other than that approved by an Organisation.

6.2 FIA's Principles of Fundraising Practice prohibits the use of percentage based remuneration. To avoid doubt, an Organisation may remunerate a Fundraiser using performance based measures, providing:

- a) a level of remuneration that a Fundraiser may receive can be ascertained by the Fundraiser prior to undertaking a Face to Face Fundraising Activity; and
- b) a level of remuneration that a Face to Face Fundraiser may receive is not calculated on the basis of a percentage of a Donation.

6.3 Breach of section 6.1 of this Standard constitutes Professional Misconduct by an Organisation.

7. Compliance and Management of Complaints

7.1 Fundraisers and Organisations must comply with FIA's Principles of Fundraising Practice and this Standard and relevant Commonwealth, State and Territory laws.

- 7.2 Complaints concerning this Standard or the conduct of a FIA member will be determined by the FIA Ethics Committee in accordance with the FIA Complaints Process.
- 7.3 Where a person wishes to make a complaint about any matter that may be addressed by this Standard an Organisation must require a Fundraiser to:
- a) inform the person that they may use the FIA Complaints Process; and
 - b) provide that person with a copy of the FIA Complaints Process.
- 7.4 Breach of section 8.1 of this Standard constitutes Unsatisfactory Conduct by an Organisation.
- 7.5 An Organisation must require a Fundraiser to not engage in an activity whilst undertaking a Face to Face Fundraising Activity that reasonably appears to the Fundraiser to be a criminal offence, in breach of an Organisation's Occupational Health and Safety Policy or would constitute Professional Misconduct under this Standard.
- 7.6 An Organisation must require a Fundraiser to inform an Organisation that the Organisation may not comply with a law when:
- a) the Fundraiser works for that Organisation; and
 - b) the Fundraiser become aware that the Organisation may not comply with a law.
- 7.7 For the purposes of section 7.6, a Fundraiser may try to inform an Organisation that the Organisation may not comply with a law in a manner that the Fundraiser thinks is appropriate for the situation.