Charitable Fundraising Reform Discussion Paper
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INTRODUCTION

For the Fundraising Institute Australia (FIA) Charitable Fundraising Regulation Reform is the most important part of the NFP reform process as a whole. Harmonising, updating and reducing the burden of fundraising regulation has been a long standing policy objective.

Therefore FIA does not want to take any action or advocate a course of action which would delay the process and risk slowing the momentum for change which has taken so long to reach the current stage. On the other hand due to the complexity of State and Federal Government relationships there is a real danger that fundraisers will be subject to a new national regulatory regime with no change to the existing state and territory laws. This would be a significantly worse outcome with an additional layer of compliance added for no compensating benefit.

In addition there are two matters from the 2010 Productivity Commission's Contribution of the Not-for-Profit report which are relevant to the current situation but given insufficient weight in the Discussion Paper in FIA's view.

The Government has moved more quickly than the Productivity Commission recommended in establishing a regulator. The PC recommended (R6.5, page 152):

"The Australian Government should establish a one-stop-shop for commonwealth regulation by consolidating various regulatory functions into a national Registrar for Community and Charitable Purpose Organisations. While ultimately the Registrar could be an independent statutory body, initially it should be established as a statutory body corporate or organ in the ASIC".

FIA strongly recommends that an integral part of the consultation process on fundraising regulation cover the implementation process to specifically avoid duplication of regulation.

Secondly, there is more focus on self-regulation in the PC report than in the Discussion Paper.

On page 113 under Key Points for Chapter 6 it is stated:

"NFPs should be encouraged to develop and implement codes of conduct and other self-regulatory regimes where these would enhance public trust and confidence in their activities"

On page 147 in a box the codes of the Australian Council for International Development and FIA are summarised as 'examples of sector experience of self-regulation'.

The report details the role it sees for self-regulation on page146:

"As in the for-profit sector, self-regulation rather than government regulation can often be a more flexible and less burdensome way to deliver quality assurance to stakeholders. Appropriately designed self-regulation can promote confidence in the sector and improve relations between donors and NFPs."

FIA raises this point specifically in relation to the consultation questions on possible exemptions (Q2.5) and a small charities monetary threshold (Q2.8).

Firstly FIA supports such a threshold for the reasons outlined in the Discussion Paper but asserts that the nominated threshold of $50,000 is far too low to have any effect.

Secondly, if the States and Territories do agree to transfer powers, what regulation will apply to the exempt activities and/or entities below the threshold?

As with the need to avoid double regulation, FIA recommends that the twin issues of the quantum of the threshold and regulation of those below it be subject to further consultation and discussion before any decisions are made on fundraising regulation.

A basis for this consultation and discussion could be the extent to which the FIA's Principles and Standards of Fundraising Practice could be adopted initially as part of a co-regulatory approach covering exempt activities and below-threshold entities. This could be followed up by a process of developing a Model Fundraising Code for which there is precedent.

In relation to Chapter 3 of the Discussion Paper, FIA's detailed responses state that there is need for clarification on the application of some aspects of the new Australian Consumer Law.

FIA believes there is need for a clear statement on the interpretation of the law as the existing uncertainty is hampering some fundraising. It is suggested that an option could be to seek a legal opinion from the Solicitor-General which could be released as a Ministerial statement.

I look forward to further dialogue on the matters raised above and in our submission herewith.

Yours sincerely

Rob Edwards
Chief Executive Officer
5th April 2012

FUNDRAISING INSTITUTE AUSTRALIA

CHARITABLE FUNDRAISING REGULATION REFORM DISCUSSION PAPER

THE TREASURY

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FUNDRAISING INSTITUTE AUSTRALIA

SUBMISSIONS IN RESPONSE

CHARITIES FUNDRAISING REGULATION REFORM CONSULTATION PAPER

About Fundraising Institute Australia (FIA)

Established in 1968, FIA's purpose is to make the world a better place by advancing professional fundraising through promotion of standards, professional development pathways and measurable credentials so that our members achieve best practice.

The FIA has developed the Principles & Standards of Fundraising Practice as the professional fundraiser's guide to ethical, accountable and transparent fundraising. The Principles & Standards are vital to how the fundraising profession is viewed by donors, government, the community and fundraisers.

In order to achieve its mission, FIA conducts the following activities:

- Promote and enhance education, training and professional development of fundraisers.
- Provide a resource of fundraising information.
- Advocate for fundraising practice to Government, industry and the community.
- Support and promote certification of fundraisers.
- Develop standards and codes of practice.
- Promote and enhance fundraising as a profession.
- Promote and encourage research into fundraising and philanthropic giving.

Executive Summary

FIA sets out its detailed answers to each consultation question below and attaches an appendix summarising its responses.

FIA supports the implementation of the ACNC and the introduction of national regulation for charities and NFPs, as it has long campaigned for these. There is ample research that shows well realised and supportive regulatory regimes can provide valuable support to the work of charities. However, FIA would not support the introduction of national regulation of charitable fundraising before the States have agreed to cede their powers in this area to the Commonwealth. FIA cautions that regulation should be carried out with a light hand, perhaps in co-regulatory model so that charities can conduct their activities without needing excessive administration or compliance costs. In particular, FIA also cautions against applying legislation that was never intended to apply to charities and not-for-profits, such as the Australian Consumer Law.

Consultation Questions

2.1 Is it necessary to have specific regulation that deals with charitable fundraising?

Yes.

Please outline your views.

The regulatory environment that governs the establishment and operations of not-for-profit organisations plays a critical role in sustaining and encouraging those very organisations.

(Salamon, L.M (1997) *The International Guide to Nonprofit Law*, New York: John Wiley and Son; Lyons, M (2003) '*The legal and regulatory environment of the Third sector'*, The Asian Journal of Public Administration, 25(1), pp.87-106)

The regulatory environment and specific laws can either support the development of a healthy and vibrant Third Sector or stunt its growth and vitality. The relationship between the legal environment and the Third Sector was one of the areas examined in The Johns Hopkins Comparative Nonprofit Sector project, one of the most comprehensive comparative not-for-profit data sets developed. Studies based on that data show that the relative favourability of a country's laws and legal framework is positively related to the development and size of the not-for-profit sector in that country (Salamon, L.M and Toepler, S (2000)

In other words, countries with supportive regulatory systems for not-for-profit organisations have healthier and stronger not-for-profit sectors.

In an analysis of 13 countries, 4 countries scored highly in terms of having highly favourable legal frameworks for not-for-profits:

- Israel
- Netherlands
- USA
- Mexico

These countries also had the relatively largest not-for-profit sectors in terms of share of total employment. Australia and most European countries ranked in the middle (i.e. had medium scores with respect to their legal framework and clustered around the middle in terms of not-for-profit share of employment) with Brazil and Japan scoring poorly in terms of their legal environment for not-for-profits and share of not-for-profit employment (Salamon, L.M and Toepler, S (2000) 'The influence of the legal environment on the development
of the nonprofit sector' Working Paper No.17, Centre for Civil Society Studies, The Johns Hopkins University Institute for Policy Studies.

FIA's Principles and Standards of Fundraising Practice will complement any proposed regulation. The Principles are the overarching ethical codes that apply to all fundraisers and the Standards focus on specific disciplines of fundraising practice. The Principles & Standards have an educative role, and exist to guide fundraising professionals on best practice. Both the Principles and Standards were developed with wide consultation and set the benchmark for the sector and are also recognised by ACFID

FIA encourages discussion on the range of regulatory options available, self-regulation, co-regulation and direct regulation.

2.2. Is there evidence about the financial or other impact of existing fundraising regulation on the costs faced by charities, particularly charities that operate in more than one State or Territory? Please provide examples.

Yes.

2.3 What evidence, if any, is available to demonstrate the impact of existing fundraising regulation on public confidence and participation by the community in fundraising activities?

Little if any research is available. FIA suggests that such research could be taken up as part of the educational and informative function of the ACNC.

2.4 Should the activities mentioned above [in the consultation paper] be exempted from fundraising regulation?

These activities are:	**FIA's position**
• Soliciting for government grants	Yes
• Corporate donations or donations from private and public ancillary funds	No for corporate, yes for PAF
• Workplace appeals for assistance for colleagues and their families	Yes provided these are not charitable donations
• Donations to religious organisations from their own members	Yes depending on definition of 'religious organisation'

2.5 Are there additional fundraising activities that should be exempt from fundraising regulation? If so, please provide an explanation of why the relevant activities should be exempt.

Yes.

Minor fundraising activities to a defined value should be exempted, because the cost of regulation would be onerous compared to the small returns**.**

2.6 Is the financial or other effect of existing fundraising regulation on smaller charities disproportionate? Please provide quantitative evidence of this if it is readily available.

Yes. Cost of fundraising compliance (licensing etc) can be disproportionately high and compliance requirements unnecessarily complex for smaller charities.

There has been very little research done in relation to compliance costs for charities. However, the Australian Centre for Philanthropy at Queensland University of Technology has carried out research into tax compliance for not-for-profits, and has come up with useful recommendations.

Professor Miles McGregor- Lowndes has long pointed out that governments have assumed, without supporting research that the compliance costs faced by not-for-profits would be no different to the compliance costs faced by businesses or government departments. He has attacked the assumption that nonprofit compliance costs are similar to government and business costs as flawed and recommends that more appropriate assessments of the impact of legislation on not-for-profits should be implemented.

A study of New Zealand GST compliance costs revealed that small not-for-profit organisations may voluntarily register for GST without considering the full implications of such an act. The study suggested that the administration costs of the taxation authority was greater than the tax collected. The not-for-profit organisations registered in the belief that they will be disadvantaged by not being able to get a refund of previous GST inputs or be pressured by those that buy their services who will be unable to claim an input unless they are registered.

In Australia, the same behaviour appears to have occurred, with nearly 60% of the not-for-profit registrations being under the threshold and 10% of those organisations being visited by the ATO advisors deregistering. There is some anecdotal evidence that state government funding agencies are insisting on GST registration as a condition of funding. The distorted behaviour has impacted directly on small not-for-profit organisations who are the least able to absorb increased compliance costs.

The taxation compliance costs of not-for-profit organisations have not been specifically studied in the Australian or international literature and only a few oblique references have been made to the compliance and/or administration costs of such organisations. The major Australian tax compliance study supported by the ATO specifically excluded not-for-profit organisations from the research sample. Although there have been a number of international studies of value added taxes, none has adequately addressed the issue of costs for not-for-profit organisations. These cited studies do establish some significant characteristics of a GST in relation to compliance costs and in general they are:

1) gross compliance costs are regressive falling heavily on small enterprise;

2) benefits identified from compliance activities (for example, better record keeping) are even more regressive;

3) a single rate GST has lesser compliance costs than a multi-rate GST;

4) compliance costs diminish over time from their initial introduction; and

5) taxpayers who have mixed GST, exempt and GST-free transactions have higher average compliance costs.

(McGregor-Lowndes, Myles; Conroy, Denise --- "*The GST Regulation Impact Statement and Nonprofit Organisations"* [2002] JlATax 13; (2002) 5(3) Journal of Australian Taxation 413)

2.7 Should national fundraising legislation be limited to fundraising of large amounts?

Yes.

If so, what is an appropriate threshold level and why?

There is little or no research evidence that smaller charities fail to comply and meeting costs of compliance is disproportionate to the funds raised. FIA supports the principle of proportionality of risk management. The most recent research shows that the majority of NFPs are aware of risk management practices and actively implement them**.** Where lack of compliance occurs, it is because of budgetary constraints i.e. smaller NFPs may not be able to afford the level of administration necessary for compliance.

In 2010, FIA and the National Roundtable of Nonprofit Organisations sponsored the PPB not for profit risk survey 2010 http://www.appichar.com.au/pages/risksurvey.html. The survey is the most recent survey of risk management practice available. PPB surveyed the risk management practices of not for profit organisations and compared them to the key components of the recently introduced authoritative Standard of Risk Management AU NZ ISO 31000:2009, as there were several significant differences between the 2009 standard and its predecessor.

The outcome was encouraging; over 70% of respondents indicated they placed a high level of importance on risk management practices and understood the link between risk management and the organisation's ability to achieve its outcomes. Larger NFPs had a more corporate structure with more sophisticated and mature systems in place to identify and manage risk, which is to be expected, especially in view of the survey finding that implementation of risk management practices had a significant relationship to a NFP's budget; smaller organisations did not have sufficient capacity to devote resources to risk management policy and practice.

Less than half the survey participants have had risk management identification and training. This fact indicates an area where the ACNC has the opportunity to provide practical guidance and assistance, in particular to smaller, under-resourced NFPs, who would benefit from risk

management guidance being included in the ACNC information portal and possibly other education programs as well. An educational focus is more appropriate than an enforcement focus, as smaller NFPs pay less attention to formal risk management policy and practices because of budgetary constraints, rather than ignorance of compliance issues.

There are other remedies available for fraud or misappropriation such as criminal sanctions. However, implementation of preventive steps is proven to effectively reduce the incidence of fraud or misappropriation. Since the inception of the BDO Not-for-Profit Fraud Survey in 2006, there has been a steady decline in the number of respondents who have suffered have a fraud. Organisations are increasingly identifying systemic failures such as poor internal controls, poor segregation of duties and no mechanisms for reporting fraud as key fraud risk factors. Reliance on internal controls has been steadily decreasing since 2008 with greater reliance placed on trustworthy staff, external audit and having a good organisational culture (BDO, *Not-for-profit Fraud Survey 2012*). The ACNC has an educational role to play in encouraging organisations to implement such measures to reduce the risk of fraud or misappropriation.

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?

No.

The ACNC should manage all charities to avoid a complex and unnecessary two-tier compliance system.

2.9 Should a transition period apply to give charities that will be covered by a nationally consistent approach time to transition to a new national law?

Yes.

If so, for how long should the transition period apply?

Charities should be allowed a twelve month transition for compliance purposes after
the ACNC to has all necessary regulations and systems in place to cover all Australian charities

2.10 What should be the role of the ACNC in relation to fundraising?

The regulatory environment governing the establishment and operation of NFPs plays a critical role in sustaining and encouraging them. The regulatory environment and specific laws can either support the development of a healthy NFP sector or stunt its growth. The largest study of its kind, The Johns Hopkins Comparative Nonprofit Sector project, examined the relationship between the regulatory environment and the NFP sector. The data showed that a country's laws and legal framework favouring the NFP sector is a positive factor in developing the NFP sector in that country; the countries with the largest NFP sectors had the most supportive regulation.

Donors use very different, personal measures of trust in a charity compare to the economic, financial or legal measures which tend to be used by regulators. Donors prefer to assess charities by intangible, social measures such as familiarity, word-of-mouth, or the prominence of the charity in their community. Regulators, on the other hand, tend to require charities to disclose information on fund use (e.g. ratios between overheads and funds available for the charity's purpose). To meet the needs of donors, regulators should concentrate on distributing information to donors which informs donors about the effectiveness of the charity, rather than its fund allocation. (Szper,R and Prakash,A: *Charity Watchdogs and the Limits of Information-based Regulation* Voluntas (2011) 22: 112 – 141)

Current State government regulation manages financial risk (although not for the significant number of organisations that are exempt from State regulation). FIA expects that the ACNC will provide an overarching national compliance regime to protect reputational risk among not-for-profit organisations by:

- establishing reporting standards;
- monitoring accountability and transparency of fundraising practice; and
- enhancing ethical practice and professional standards alongside a legislative framework.

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

Yes. Provided that any fundraising activity is conducted in accordance to a prescribed Code

2.12 Are there any additional conditions that should be satisfied before a charity registered with the ACNC is also authorised for fundraising activities?

No.(other than the above)

2.13 What types of conduct should result in a charity being banned from fundraising? How long should such bans last?

Bans should be a last resort after all other remedial actions have failed or in the event of insolvency.

3.1 Should the aforementioned provisions of the ACL [i.e. ss 18, 20, 21, 22, 29, 50] apply to the fundraising activities of charities?

No.

Charities, because they are not engaged in commercial activities, do not fall within the jurisdiction of the Australian Consumer Law (ACL). Donations, because they are gifts, are already exempt under the ACL and should remain so. Gaming and sales of tickets to events are already regulated in most States**.**

3.2 Should the fundraising activities of charities be regulated in relation to calling hours?

FIA acknowledges that the time periods for making telemarketing calls in the ACL and the *ACMA Telecommunications (Do Not Call Register) Industry Standard 2007* are now accepted best practice in the fundraising profession for charitable telemarketing. However, hours for making charitable collections should not be as restricted as charitable telemarketing, which is distinguishable from charitable collections.

Charitable collections are conducted in person, rather than by telecommunications or media. Charitable collections cover many types of fundraising, including bucket collections, door to door and face to face. All of these involve direct contact between the collector and the donor, and such contact facilitates the collection of donations or pledges to donate, as it gives the charity a chance to inform the donor about the charity and the reason for the collection. For collections to be effective, it is necessary for collectors to be able to contact donors at times when they are available to talk to collectors, which is generally outside the usual business hours of 9am – 5pm. Most collections now take place in public spaces, such as streets or shopping malls, where collectors are able to interact with passers-by and longer collection hours are needed to facilitate this.

If so, what calling hours should be permitted?

There would be little risk of inconveniencing the public if hours for collection, particularly in public places such as streets or shopping malls, were extended to 8pm on weekdays and 6pm on weekends.

3.3 Should unsolicited selling provisions of the ACL be explicitly applied to charities?

No**.** These provisions were designed to apply to commercial activities and are not appropriate for charitable activities.

Alternatively, should charitable entities be exempt from the unsolicited selling provisions of the ACL?

Yes.

The 10 day cooling off period applies to contracts for supply of goods or services under the ACL. This requirement should not be applied to charities because:

- charities do not have enforceable agreements with donors because the donation is voluntary and does not constitute consideration, which is an essential requirement for an enforceable contract;
- charities, being non profit organisations, are not suppliers within the meaning of the ACL; and
- charitable donations are voluntary payments made without expectation of receiving a return and are not goods or services within the meaning of the ACL.

The 10 day cooling off period is not legally required or enforceable on charities and is unnecessarily onerous on charities, as it will prevent them from applying the collected funds during the cooling off period.

In accordance with best practice in the fundraising profession, FIA requires its members to ensure that donors are able to cancel ongoing donations or pledges at any time, which removes the need for any specified cooling off period. FIA's best practice should be maintained as it is of greater benefit to donors than what is offered in the ACL.

Only agreements for goods or services worth $100 or more are regulated by the ACL. The majority of raffles, bingo and lotteries and games of chance are below this threshold and therefore, charities only have to comply with the relevant State or Territory legislation concerning these activities.

Some art unions and large raffles with major prizes may have ticket prices above the $100 threshold but as they are neither goods nor services, they should not be covered by the ACL. However, this has not yet been clarified by the Federal government, so charities should exercise caution in the meantime. The inference that tickets for games of chance are not goods or services within the meaning of the ACL is supported by the current practice of the Australian Tax Office in exempting charities from paying GST on bingo and raffle tickets, provided they comply with the relevant State or Territory laws concerning gaming. It would be an absurd – and unworkable - outcome if the ACL conflicted so fundamentally with the Australian Tax Office practice.

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

Yes. For profit companies and sole traders are required to state their ABN and there is no reason why charities should not do so for ease of disclosure to the public.

Are there any exceptions that should apply?
No.

4.2 Should persons engaged in charitable fundraising activities be required to provide information about:

- **whether the collector is paid and**
- **the name of the charity?**

This is a two part question and must be answered as such as the same answer does not fit both parts**.**

"whether the collector is paid" There is no reason this should be disclosed to members of the public. Most fundraising is now conducted by paid fundraisers, whether directly employed by a charity or as third parties, and there is no reason why paid fundraisers should not be regarded simply as a business overhead of the charity. Charities relying on volunteer fundraisers are no more worthy or deserving than those who pay fundraisers and in fact tend to raise less money for their cause.

Of greater importance is how funds raised are handled by the charity ie whether charities keep funds raised separate from business expenses and how they account for them. Proper accounting and record keeping techniques ensure that funds are appropriately disbursed and reduce the risk of fraud.

"the name of the charity" This information should be required (and in fact is required under current legislation in all States) as members of the public should know who the charity is that they are dealing with.

This matter is dealt similarly by the Telemarketing and Research Calls Industry Standard Variation 2011 (No 1) that requires calling parties, if requested to identify who is making the call and if on behalf of another party, the indentify of who caused the call to be made.

4.3 Should persons engaged in charitable fundraising activities be required to wear name badges and provide contact details for the relevant charity?

Yes. This is required under most State charitable collection legislation.

FIA requires this in its Standard of Face to Face Fundraising Practice. http://www.fia.org.au/data/documents/Resources/Principles__Standards/Standard_of_Face_to_Face_Fundraising_Practice_2011.pdf

4.4 Should specific requirements apply to unattended collection points, advertisements or print materials?

Yes.

What should these requirements be?

The charity's registered name and ABN**.**

4.5 Should a charity be required to disclose:

- **whether the charity is a Deductible Gift Recipient and**
- **whether the gift is tax deductible?**

This is a two part question so each will be answered separately to make FIA's position clear.

whether the charity is a Deductible Gift Recipient

No.

Deductible Gift Recipient (DGR) status merely enables donors to claim a tax deduction for their gifts. While tax deductibility is an inducement to give, it is not the only reason donors give to charities. Many donors give for non-material reasons such as altruism, affirming identity, affiliation and reciprocity (Giving Australia, *Research on Philanthropy in Australia*, 2005, p 30). There are many not-for-profits which legitimately raise funds for such non-material reasons without qualifying for DGR status.

whether the gift is tax deductible

No

Whether a gift is tax deductible can be a complex question that can only be resolved by the Australian Taxation Office. Charities do not necessarily have the knowledge or expertise to give such advice to donors.

4.6 Are there other information disclosure requirements that should apply at the time of giving? Please provide examples.

No.

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

No.

FIA considers that the ACNC should be responsible for keeping the public informed about its activities. Corporations are not required by ASIC to have links to ASIC on their public documents. To require charities to do so could have the effect of undermining public confidence in them as it may imply that there is a negative reason for so doing.

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

Yes**.**

FIA shares the conclusion of the Institute of Chartered Accountants of Australia (ICAA) that NFPs devise and include in their annual reports process KPIs that are relevant to their mission, objectives, and activities. (ICAA, *Not-for-profit sector reporting: a research project,* 2006, para 1.4.4). However, FIA disagrees with ICAA that fundraising ratios should be included as KPIs because FIA's own research shows that such ratios do not accurately reflect the costs of fundraising or reflect the effectiveness of investment in fundraising.

See FIA's research:
http://www.fia.org.au/data/documents/Resources/Research/FIAPrincipalresearchfindings2004.pdf

Given that financial outcomes are not the best measure of a charity or NFP's effectiveness, a narrative would be appropriate. FIA is of the view that narratives outlining the outcomes achieved by a charity or NFP, rather than revenue raised, is more appropriate as it focuses on the work done by charities and NFPs in pursuance of their objects under their constitutions. Many charities already provide such a narrative in their annual reports. The Institute of Chartered Accountants in Australia (ICAA) has recognised that charities and other NFPs are good at providing information in their annual reports (ICAA, 2006, paras 1.4.6 - 1.4.7)

FIA supports the ICAA recommendation (ICAA, 2006, para 1.4.6) that NFPs of all kinds enhance the effectiveness of their annual reports by describing the following:

- what the NFP has done (its output measures)
- what it has achieved (its outcome measures)
- what difference it has made (its impact measures).

The inclusion of measures of output, outcome and impact will improve completeness of reporting by demonstrating what the funding achieves, rather than how it is spent.

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? Are there any exceptions that should apply?

No. This is a complex question that does not take into account modern fundraising practices, which measure productivity over longer periods of activity, rather than the outcomes of individual events.

FIA is opposed to any specific percentage or cost of fundraising ratio being included in legislation that applies across all organisations. This does not comply with modern fundraising measures which measure an integrated set of activities over a longer time frame such as 3 – 5 years.

A significant problem with the cost of fundraising is the fact that what is considered to be an 'acceptable' cost of fundraising among donors and the general public varies considerably (e.g. from 10% to 60%) (Flack, T (2004a) '*The mandatory disclosure of cost of fundraising ratios: does it achieve the regulators' purposes?*' Working Paper No.CPNS26, Centre of Philanthropy and Nonprofit Studies, Queensland University of Technology)

A problem with legislating fundraising cost ratios is that there are no objective criteria for determining what the percentage limit should be (IC 1995:237). The difficulty of relying on fundraising ratios to determine 'acceptable' costs is implicitly acknowledged in some legislation and governments have noted various matters that they may take into account when determining whether administrative costs are reasonable include:

• The type of fundraising appeal conducted
• The fundraiser's long term strategy
• The type of representations made to the public
• The nature of the fundraising body
• The fundraising body's financial management plans.

FIA accepts that the cost of fundraising is one of several indicators that not-for-profit organisations may wish to utilize for reasons relating to managing their internal systems and costs or for sector specific benchmarking exercises that may be conducted occasionally by fundraising practitioners (Paton, R (2003) *Managing and measuring social enterprises*, London: Sage)

5.3 Should any such requirements be complemented with fundraising specific legislated accounting, record keeping and auditing requirements?

See answer to Q 5.4

5.4 What other fundraising specific record keeping or reporting requirements should apply to charities?

QUT's Standard Chart of Accounts for NFPs resolves this by specifically formulating an accounting standard for NFPs. It provides a common approach to the capture of accounting information by community organisations across Australia. It is primarily designed for small to medium NFP organisations that may not have an accounting department or a sophisticated accounting system. For consistency purposes, larger NFPs may comply with the Standard Chart of Accounts requirements by adopting the data dictionary component.

In April 2010, the Council of Australian Governments (COAG) agreed that all jurisdictions would adopt the standard chart of accounts, where possible, by 1 July 2010. Government Department use of standardised terminology for account codes (and costs to be included in those codes) in their application/acquittals processes will significantly streamline current reporting requirements and reduce the administrative burden for non-profit service providers, particularly those receiving grants from a number of Departments.

6.1 Should internet and electronic fundraising be prohibited unless conducted by a charity registered with the ACNC?

No.

Fundraising by non charities is not prohibited. Internet and electronic fundraising is simply another means of fundraising. However, fundraisers should have authority to fundraise.

6.2 Should charities conducting internet or electronic fundraising be required to state their ABN on all communications?

Yes

Could this requirement be impractical in some circumstances?

No

6.3 Are there any technology specific restrictions that should be placed on internet or electronic fundraising?

No

Charities should be free to adapt to developments in technology as they arise and the principle of technology neutrality apply in any regulation

7.1 Is regulation required for third party fundraising? If so, what should regulation require?

No, with the qualification that charities should ensure that third party fundraisers comply with all relevant legislation. It is not appropriate for the ACNC to supervise commercial third party fundraisers, as this is outside the scope of the proposed legislation.

7.2 Is it appropriate to limit requirements on third party fundraising to those entities that earn a financial benefit?

No.

It is not appropriate for the ACNC to supervise commercial third party fundraisers, as this is outside the scope of the proposed legislation and other legislation such as the ACL already exists to apply to commercial activities.

7.3 Should third party fundraisers be required to register with the ACNC for fundraising purposes only? If so, what are the implications of requiring the registration of third party fundraisers?

Yes

7.4 Should third party fundraisers be required to state the name and ABN of charities for which they are collecting?

Yes

7.5 Should third party fundraisers be required to disclose that they are collecting donations on behalf of a charity and the fees that they are paid for their services.

Yes – on behalf of charity (see comments in last paragraph of 4.2)

No – disclosure of fees

Any regulation on the cost of fundraising should be limited to requiring that a range of information that may be useful and relevant to donors and other stakeholders (e.g. mission and goals, governance structures, fundraising activities, programs and program evaluations) be available and provided by not-for-profit organisations upon request. This model has also received support from the UK Charities Commission inquiry, and expert not-for-profit scholars in Australia (e.g.; Woodward, S and Marshall, S (2004) *A better framework – reforming not-for-profit regulation*, University of Melbourne: Centre for Corporate Law and Securities Regulation; Flack, T (2004) '*The mandatory disclosure of cost of fundraising ratios: does it achieve the regulators' purposes?*' Working Paper No.CPNS26, Centre of Philanthropy and Nonprofit Studies, Queensland University of Technology).

7.6 Should third party fundraisers (or charities) be required to inform potential donors that paid labour is being used for fundraising activities?

No

7.7 Is regulation required for private participators involved in charitable fundraising?

Yes

If so, what should regulation require?

No fundraising should take place without proper written authority from the charity.

APPENDIX

FUNDRAISING INSTITUTE AUSTRALIA

SUBMISSIONS IN RESPONSE

CHARITIES FUNDRAISING REGULATION REFORM - CONSULTATION PAPER (TREASURY)

SUMMARY TABLE OF ANSWERS TO CONSULATION QUESTIONS

	CONSULTATION QUESTION	**FIA RESPONSE**
2.1	Is it necessary to have specific regulation that deals with charitable fundraising? Please outline your views.	Yes FIA supports the adoption of its Principles and Standards of Fundraising Practice
2.2	Is there evidence about the financial or other impact of existing fundraising regulation on the costs faced by charities, particularly charities that operate in more than one State or Territory? Please provide examples.	Yes. Details to be supplied in substantive response.
2.3	What evidence, if any, is available to demonstrate the impact of existing fundraising regulation on public confidence and participation by the community in fundraising activities?	Little research is available. FIA suggests that such research could be taken up as part of the information function of the ACNC.
2.4	Should the activities mentioned above [in the consultation paper] be exempted from fundraising regulation? i.e • Soliciting for government grants • Corporate donations or donations from private and public ancillary funds • Workplace appeals for assistance for colleagues and their families • Donations to religious organisations from their own members	Yes No for corporate, yes for PAF Yes provided these are not charitable donations Yes depending on definition of 'religious organisation'
2.5	Are there additional fundraising activities that should be exempt from fundraising regulation? If so, please provide an explanation of why the relevant activities should be exempt.	Yes, minor fundraising activities to a defined value Cost of regulation would be onerous given small returns
2.6	Is the financial or other effect of existing fundraising regulation on smaller charities disproportionate? Please provide quantitative evidence of this if it is readily available.	Yes. Cost of fundraising compliance (licensing etc) can be disproportionately high for smaller charities.
2.7	Should national fundraising legislation be limited to fundraising of large amounts? If so, what is an appropriate threshold level and why?	Yes. Little or no evidence that smaller charities fail to comply and meeting costs of compliance

		disproportionate to funds raised. There are other remedies for fraud or misappropriation.
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?	No. The ACNC should manage all charities to avoid a complex and unnecessary two-tier compliance system.
2.9	Should a transition period apply to give charities that will be covered by a nationally consistent approach time to transition to a new national law? If so, for how long should the transition period apply?	Yes. A sufficient period to allow the ACNC to have all necessary regulations and systems in place to cover all Australian charities.
2.10	What should be the role of the ACNC in relation to fundraising?	See substantive response for details
2.11	Should charities registered on the ACNC be automatically authorised for fundraising activities under the proposed national legislation?	Yes. Charities depend on fundraising for their income.
2.12	Are there any additional conditions that should be satisfied before a charity registered with the ACNC is also authorised for fundraising activities?	No. Registration should be sufficient as compliance will be enforceable.
2.13	What types of conduct should result in a charity being banned from fundraising? How long should such bans last?	Bans should be a last resort after all other remedial actions have failed or in the event of insolvency.
3.1	Should the aforementioned provisions of the ACL [ie ss 18, 20, 21, 22, 29, 50] apply to the fundraising activities of charities?	No. Charities do not fall within the Australian Consumer Law. Donations are already exempt. Gaming and sales of tickets to events are already regulated by other State legislation.
3.2	Should the fundraising activities of charities be regulated in relation to calling hours? If so, what calling hours should be permitted?	Yes for calling on private individuals.
3.3	Should unsolicited selling provisions of the ACL be explicitly applied to charities?	No
	Alternatively, should charitable entities be exempt from the unsolicited selling provisions of the ACL?	Yes
4.1	Should all charities be required to state their ABN on all public documents? Are there any exceptions that should apply?	Yes No
4.2	Should persons engaged in charitable fundraising activities be required to provide information about: • whether the collector is paid, and • the name of the charity?	 No Yes

4.3	Should persons engaged in charitable fundraising activities be required to: • wear name badges and • provide contact details for the relevant charity?	Yes to both. This is required under various State legislation and FIA's Standard of Face to Face Fundraising.
4.4	Should specific requirements apply to unattended collection points, advertisements or print materials? What should these requirements be?	Yes. Charity's registered name and ABN
4.5	Should a charity be required to disclose: • whether the charity is a Deductible Gift Recipient and • whether the gift is tax deductible?	No to both. DGR status and tax deductibility may be subject to changes in the Income Tax Assessment Act and ATO policy.
4.6	Are there other information disclosure requirements that should apply at the time of giving? Please provide examples.	No
4.7	Should charities be required to provide: • contact details of the ACNC and • a link to the ACNC website on their public documents?	No. It is up to the ACNC to promote its activities.
5.1	Should reporting requirements contain qualitative elements, such as a description of the beneficiaries and outcomes achieved?	Yes.
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? Are there any exceptions that should apply?	No. This does not comply with modern fundraising measures which measure an integrated set of activities over a longer time frame such as 3 – 5 years. No
5.3	Should any such requirements be complemented with fundraising specific legislated accounting, record keeping and auditing requirements?	Yes. FIA supports the implementation of the Standard Chart of Accounts developed by QUT and accepted by COAG for not for profit organisations in 2010.
5.4	What other fundraising specific record keeping or reporting requirements should apply to charities?	If the Standard Chart of Accounts is implemented, only the record keeping it requires will be necessary.
6.1	Should internet and electronic fundraising be prohibited unless conducted by a charity registered with the ACNC?	No. Fundraising by non charities is not prohibited. Internet and electronic fundraising is simply

		another means of fundraising. However, fundraisers should have authority to fundraise.
6.2	Should charities conducting internet or electronic fundraising be required to state their ABN on all communications? Could this requirement be impractical in some circumstances?	Yes No
6.3	Are there any technology specific restrictions that should be placed on internet or electronic fundraising?	No. Charities should be free to adapt to developments in technology as they arise.
7.1	Is regulation required for third party fundraising? If so, what should regulation require?	No, with the qualification that charities should ensure that third party fundraisers comply with all relevant legislation. It is not appropriate for the ACNC to supervise commercial third party fundraisers, as this is outside the scope of the proposed legislation.
7.2	Is it appropriate to limit requirements on third party fundraising to those entities that earn a financial benefit ?	No. It is not appropriate for the ACNC to supervise commercial third party fundraisers, as this is outside the scope of the proposed legislation
7.3	Should third party fundraisers be required to register with the ACNC for fundraising purposes only? If so, what are the implications of requiring the registration of third party fundraisers?	No. It is not appropriate for the ACNC to supervise commercial third party fundraisers, as this is outside the scope of the proposed legislation
7.4	Should third party fundraisers be required to state the name and ABN of charities for which they are collecting?	Yes
7.5	Should third party fundraisers be required to disclose that they are: • collecting donations on behalf of a charity, and • the fees that they are paid for their services.	Yes No
7.6	Should third party fundraisers (or charities) be required to inform potential donors that paid labour is being used for fundraising activities?	No
7.7	Is regulation required for private participators involved in charitable fundraising? If so, what should regulation require?	Yes No fundraising without proper written authority from the charity