



**FUNDRAISING**  
*Institute - Australia Ltd.*

*Leading and empowering fundraisers  
to best serve their organisations and communities  
through integrity and professionalism*

**SUBMISSION TO  
THE AUSTRALIAN LAW REFORM COMMISSION (ALRC)**

**REVIEW OF PRIVACY ISSUES PAPER 31**

**JANUARY 2007**

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The Executive Director  
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Fundraising Institute – Australia Ltd (FIA) thanks you for the opportunity to provide comment on the *Review of privacy Issues Paper 31*.

**FIA believes that any moves towards national harmonisation of Privacy law are positive and should be encouraged.** FIA notes that consistency of legislation has relevancy for all fundraisers, whether working within or across State borders. The majority of fundraisers have argued that harmonisation of regulation would have a direct impact upon their capacity to fundraise.

For this reason **FIA strongly supports one uniform set of Privacy Principles under a nationally consistent privacy framework.**

Fundraising Institute Australia Ltd, the national peak body for professional fundraisers, has a code of professional practice, including principles and standards of practice, which are mandatory for members of FIA. This code ensures compliance with industry best practice in addition to compliance with federal and state legislation governing aspects of fundraising, including privacy issues.

Yours sincerely



Dr Sue-Anne Wallace BPHARM BA HONS MFIA  
**CHIEF EXECUTIVE OFFICER**

## **CHAPTER 1 – INTRODUCTION TO THE INQUIRY**

**Question 1-2** Should a cause of action for breach of privacy be recognised by the courts or the legislature in Australia? If so, and if legislation is preferred, what should be the recognised elements of the cause of action, and the defences? Where should the cause of action be located? For example, should the cause of action be located in state and territory legislation or federal legislation? If it should be located in federal legislation, should it be in the *Privacy Act* or elsewhere?

Professional fundraisers who are members of the Fundraising Institute of Australia, the peak body of professional fundraisers (see [Appendix 1](#)) agree to abide by a mandatory Code of Ethics and Professional Conduct. FIA's codes are currently under review (see [Appendix 2](#)). FIA's provisions for professional practice are drawn from the recently promulgated International Statement of Ethical Principles in Fundraising (see [Appendix 3](#)). FIA has a series of provisions for breaches of the Code which, if offence is warranted, include expulsion from FIA.

FIA views its mandatory code of conduct as an important step in self-regulation of charitable fundraising, and an industry adjunct to the legislative environment in which fundraising works.

Apart from commenting that it is important the legislation is not unduly complex, FIA is not equipped to comment further on this question.

## **CHAPTER 2 – OVERVIEW OF PRIVACY REGULATION IN AUSTRALIA**

**Question 2-1** Is national consistency in the regulation of personal information important? If so, what are the most effective methods of achieving nationally consistent and comprehensive laws for the regulation of personal information in Australia?

FIA strongly supports the finding of both the Senate Committee and the OPC Review that national consistency is a highly desirable goal.

FIA notes that consistency of legislation has relevance for all fundraisers. A survey of FIA members indicated that approximately 50 per cent of those surveyed worked predominantly or exclusively in their 'home state' while 50 per cent worked across state borders and are currently required to meet different regulations in each state they fundraise. Interestingly, more than two thirds responded that they favoured harmonisation of regulation as a means to improve their capacity to fundraise. Accordingly harmonisation is seen as being relevant to industry practice, even for those fundraisers that work in only one state.

**FIA believes that any moves towards national harmonisation and national regulation are positive and should be encouraged.**

Research has shown that 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.

The relative weaknesses of the regulatory environment for the Third Sector in Australia are well known to scholars and practitioners. In a review of the legal and regulatory environment for not-for-profit organisations in Australia, Professor Mark Lyons (2003) drew particular attention to at least five failings of the law:

- Laws are not informed with a clear knowledge of the Third Sector and its operating logic
- Insufficient attention is paid by legislators to the changing character of Third Sector organisations and changes in the economic and social environment of the sector
- Laws are allowed to grow in a piecemeal fashion, inevitably leading to anachronisms and contradictions
- Laws are not enforced, or are enforced haphazardly, even vindictively, usually because governments fail to budget sufficiently for their proper regulation; and
- Laws are enforced over-rigorously, by a bureaucracy that ignores the intent of a law and effectively ensures that no organisation can benefit (Lyons 2003).

### **CHAPTER 3 – THE PRIVACY ACT 1988 (Cth)**

**Question 3-1** Is the structure of the *Privacy Act* logical? Does the Privacy Act need to be redrafted to achieve a greater degree of simplicity and clarity?

FIA members have not expressed an opinion on the structure of the Privacy Act with the exception of the two tiers of Privacy Principles. FIA members believe that **it is essential to have one set of Privacy Principles** to enhance clarity of the legislation.

### **CHAPTER 4 – EXAMINATION OF THE PRIVACY PRINCIPLES**

**Question 4-8** Are the criteria in NPP 2.1(a) for using personal sensitive and non-sensitive information for a secondary purpose adequate and appropriate? For example, is it necessary or desirable that there also be a 'direct' relationship between the secondary and primary purpose of collection before non-sensitive personal information can be used or disclosed for a secondary purpose?

**Question 4-9** Is the scope of IPP 10(e) (which allows agencies to use personal information for a purpose other than the particular purpose of collection, if the purpose for which the information is used is directly related to the purpose of collection) adequate and appropriate? For example, should there be an additional requirement that the individual concerned would reasonably expect an agency to use information for that purpose?

**Question 4-11** Are there particular issues or concerns arising from the practice of organisations seeking bundle consent to a number of uses and disclosures of personal information? If so, how are these concerns best addressed?

**Question 4-12** Is it appropriate that NPP2 allows for personal non-sensitive information to be used for the secondary purpose of direct marketing? If so, are the criteria that an organisation needs to satisfy in order to use personal information for direct marketing purposes adequate and appropriate?

Direct marketing is one of the six most common fundraising methods. In the recently released Australian Government report *Giving Australia*<sup>1</sup> it is estimated that **charitable fundraising raises \$11billion per annum**. The report further states that solicitation by way of addressed form or letter through direct mail is both fairly effective and the most preferred approach by donors.

<sup>1</sup> *Giving Australia: Research on Philanthropy in Australia – Summary of Findings*, Australian Government – Department of Family and Community Services, October 2005

FIA members note that there are distinctions between direct marketing by post or telecommunications. Concerning the latter with regard to privacy as queried above, FIA is currently working with the Federal Government on the draft standard for the making of telemarketing calls which does include the application of opt out provisions.

FIA members regard it preferable to retain opt out, rather than opt in provisions. Re 4-8, 4-9, 4-11, 4-12: FIA members believe the current provisions adequate.

4.96 Legislative attempts to curtail specific types of direct marketing, namely telemarketing and spam, are discussed in Chapter 10. The *Do Not Call register Act 2006* (Cth) – directed to telemarketing – adopts an ‘opt out’ model, while the *Spam Act* – directed to email marketing – adopts an ‘opt in’ model. This raises the issue of whether it is appropriate for privacy principles in the *Privacy Act* to attempt to prescribe a ‘one size fits all’ model for all types of direct marketing. It also raises the broader issue of whether the regulation of direct marketing should be dealt with by the privacy principles or by specific legislative provisions tailored to particular types of direct marketing. One option may be for the *Privacy Act* to adopt an ‘opt –out’ model except where other legislation specifically allows for an ‘opt in’ model. In other words, the privacy principles could aim to set a minimum standard only. The ALRC is interested in views on this issue.

FIA members support an opt-out provision as provided by the NPPs and IPPs, but do not object to specific legislative provisions tailored to particular types of direct marketing.

**Question 4-34** Should the *Privacy Act* provide a uniform set of privacy principles that are to apply to both the public (currently covered by the IPPS) and private (currently covered by the NPPs) sectors? If so, what model should be used? Are there any particular principles or exceptions to principles that should apply only to either the public or private sector?

We have noted above the importance of having **one set of Privacy Principles**.

**Question 4-35** Apart from the principles contained in the IPPs and NPPs are there any other principles to which agencies and organisations should be subject? For example, should the IPPs and NPPS include expressly: an ‘accountability’ principle; a ‘prevention of harm’ principle; a ‘consent’ principle; or a requirement that agencies and organisations notify persons whose personal information has been, or is reasonably believed to have been, accessed without authorisation? If so, what should be the content of these principles?

FIA has a code of professional practice, including principles and standards of practice, which are mandatory for members of FIA. (See attachments). This code ensures compliance with industry best practice in addition to compliance with federal and state legislation governing aspects of fundraising, including privacy issues. It is not necessary for the legislation to develop further principles.

**Question 4-36** Should federal privacy principles be prescriptive or should they provide high level guidance only? Should they aim for a minimum or maximum level of protection of personal information or aim to adopt a best practice approach?

The federal privacy principles should provide high level guidance and should support the development of best practice through industry consultation. It is important that any legislative measure is developed alongside self-regulatory measures that can be tailored for a specific industry and/or sectors needs.

In other submissions, FIA has noted there is a danger in over-regulation of privacy legislation, such as the proposal to be more prescriptive in the legislation.

#### **CHAPTER 5 – EXAMINATION OF THE PRIVACY ACT 1988 (Cth)**

**Question 5-6** Should the small business exemption remain? If so: (a) what should be its extent; and (b) should an opt-in procedure continue to be available?

**Question 5-7** Should registered political parties be exempt from the operation of the privacy principles in the *Privacy Act*?

**Question 5-8** Should political acts and practices be exempt from the operations of the *Privacy Act*? If so, does the current exemption under s 7C of the *Privacy Act* strike an appropriate balance between the protection of personal information and the implied freedom of political communication?

A key aim of the Privacy Act is to provide public trust and confidence that the legislation will protect their personal information. Exemptions for commercial entities such as small business do not enhance this perception.

#### **CHAPTER 6 – POWERS OF THE OFFICE OF THE PRIVACY COMMISSIONER**

**Question 6-9** What powers should the Privacy Commissioner have to audit agencies and organisations?

**Question 6-10** Should organisations and agencies be required to self-audit periodically to ensure and to demonstrate compliance with the Privacy Act?

A requirement to self-audit privacy compliance is welcomed by FIA, as it will serve to strengthen the role of the Privacy Principles, as well as guide both business and consumers in their choices of business and transactional interactions.

We do however note the difficulty of self-audit in the current legislative climate, as it is both complex and multilayered. For this reason we strongly urge that one uniform set of privacy principles be implemented prior to any undertaking of a legislative requirement for self-audit and that the guidelines for self-audit be clear and not overly burdensome.

A further comment relates to the costs of any self-audit, which would add to the costs of fundraising, a measure which is otherwise tightly regulated by state governments.

**Question 6-11** Should all the Privacy Commissioner's functions be consolidated in the *Privacy Act*?

It would seem to FIA members that this proposal would clarify the Privacy Commissioner's role.

**Question 6-12** Are the procedures under the Privacy Act for making and pursuing a complaint, including the representative complaint, appropriate? Are the Privacy Commissioner's powers to make preliminary inquiries and investigate complaints appropriate and effective?

**Question 6-13** Is the obligation of the Privacy Commissioner to investigate a complaint about an act or practice that may interfere with the privacy of an individual appropriate, and is it administered effectively?

**Question 6-14** Is the power of the Privacy Commissioner to investigate an act or practice that may interfere with the privacy of an individual appropriate and is it used effectively?

**Question 6-17** Are the Privacy Act provisions for enforcing determinations adequate and administered effectively?

It is important that all complaints are handled uniformly under documented guidelines and procedures that are transparent and accountable. FIA urges that a uniform set of practices be developed from the handling of a complaint, to the Privacy Commissioner's investigation protocol.

FIA notes the ALRC has referred to consumer confusion with regard to regulators and handling of complaints.

FIA has a complaints handling process to ensure that consumers/ donors understand their rights to make a complaint and have it dealt with expeditiously.

**Question 6-20** Are the *Privacy Act* provisions for approving privacy codes appropriate and effective? Are privacy codes an appropriate method of regulating and complying with the Act? Why have privacy codes been so little used? Should the Privacy Commissioner have the power, on his or her initiative to develop and impose a binding code on organisations or agencies?

As previously stated FIA supports a regulatory environment augmented by industry self-regulation. Self-regulation must be an industry initiative supported by government.

FIA's Codes allow for self-regulation of fundraising (vertical regulation) and promote industry best practice through standards (horizontal regulation).

**Question 6-22** Does the range of remedies available to enforce rights and obligations created by the *Privacy Act* require expansion? For example, should the available remedies include any or all of the following for particular breaches of the Act?

- (a) administrative penalties;
- (b) enforceable undertakings or other coercive orders;
- (c) remedies in the nature of damages;
- (d) infringement notices;
- (e) civil penalties;
- (f) criminal sanctions?

For the nonprofit sector, accountability of donors' funds and transparency in their use is one of the overarching principles guiding the conduct of fundraisers. Any additional

expense, whether administrative or monetary, needs to be gauged in the context of public expectations for the use of their donations.

For the Privacy Commissioner to administer the range of penalties listed above would seem to require significant additional resources, if such range were appropriate to her function.

## **CHAPTER 7 – INTERACTION, FRAGMENTATION AND INCONCISTENCY IN PRIVACY REGULATION**

**Question 7-1** Does the multi-layers regulation of personal information create any difficulties? For example, does the multi-layers regulation of personal information:

- (a) Cause an unjustified compliance burden?
- (b) Create problems for organisations that operate in more than one Australian state or territory?
- (c) Complicate the implementations or programs and services at a national level?
- (d) Raise any issues in relation to the existence of multiple privacy regulators in particular industry sectors and across state and territories; and
- (e) Act as a barrier to the sharing of information between public sector agencies and private sector organisations?

The multi-layers of regulation- both federal and state - provide for confusion in the mind of the consumer wishing to protect their privacy, and complexity for business in its compliance of the legislation.

The lack of consistency in legislative frameworks add to costs, which in the case of fundraising are otherwise regulated.

**Question 7-4** Does the inconsistent use of terms and definitions under federal legislation that regulates the handling of personal information create any difficulties? If so, what are some examples of the difficulties created?

National harmonisation of terminology and legislation is important and FIA urges the Privacy Commission to move in this direction. Inconsistency in terminology leads to additional time and resources being spent on administrative compliance, apart from issues which may arise due to lack of clarity in legislation.

**Question 7-9** Do privacy rules, privacy codes and privacy guidelines developed under federal, state or territory legislation, or by organisations and industry groups, contribute to fragmentation and inconsistency in the regulation of personal information?

Yes.

## **CHAPTER 8 - HEALTH SERVICES AND RESEARCH**

**Question 8-8** Should the *Privacy Act* be amended to ensure that all agencies and organisations that collect, hold or use health information are required to comply with the Act?

**Question 8-9** Is guidance by the Office of the Privacy Commissioners to clarify that organisations can disclose health information for the management, funding and monitoring of a health service an appropriate and effective response to concerns in this area? If not, what is an appropriate and effective response?

If this relates to exemptions, refer to FIA's answer above.

FIA has consistently put that the Privacy Commissioner has an important role to educate (guide) as well as to ensure compliance. Providing the Act is clear in all respects as to the use of information, the Privacy Commissioner has an essential role in administering it – ie. marketing, guiding, as well as enforcing.

Steps need to be taken that will ease the legislative compliance burden for agencies that collect, hold or use health information. For charitable organisations this problem was noted in [section 7.8](#) of the Issues Paper.

## **CHAPTER 10 - TELECOMMUNICATIONS PRIVACY**

**Question 10–1** Do the *Telecommunications Act 1997* (Cth) and the *Telecommunications (Interception and Access) Act 1979* (Cth) provide adequate and effective protection for the use, disclosure and storage of personal information?

**Question 10–2** What issues, if any, are raised by the interaction between the *Privacy Act* and the following Acts?

- Telecommunications Act 1997 (Cth)
- Telecommunications (Interception and Access) Act 1979
- Spam Act 2003 (Cth)
- Do Not Call Register Act 2006 (Cth)

Are there acts and practices regulated by these acts that would be dealt with better under the *Privacy Act*?

**Question 10-3**

What bodies (public or private) should be involved in the regulation of information in the telecommunications industry?

The background materials (sections 10.28 to 10.30) demonstrate that there are gaps leading to inadequate and ineffective protection of privacy issues as agencies and organisations are not universally covered by legislation. FIA encourages the Privacy Commission to work towards harmony in legislation, both federally and state-based.

Where there is 'interaction' between acts it is important that there is consistency and not a myriad of conflicting measures.

FIA has noted in previous submissions that the Office of the Privacy Commissioner has not adequately taken on the role of marketing the privacy provisions and providing education and guidance for both public and private agencies.

## APPENDIX 1

### BACKGROUND INFORMATION: FUNDRAISING INSTITUTE AUSTRALIA-LTD

Fundraising Institute Australia Ltd (FIA), established in 1968, is the peak national body for fundraising in Australia. FIA is a company limited by guarantee. As a nonprofit body, FIA is recognised as a charitable fund.

#### Membership

FIA engages with over three thousand fundraisers, representing more than two thousand nonprofit organisations, who subscribe to FIA's information services or attend FIA's professional development programs. Full membership of FIA at December 2006 comprised over one thousand four hundred fundraisers.

#### National Agenda

In 2006 FIA has continued its professional advocacy through briefings to state and federal governments on issues relating to fundraising regulation which is hampered by legislative inconsistencies that challenge efforts to fundraise nationally. FIA is pushing for greater clarity and consistency in regulation across Australia and seeking to encourage national harmonization of fundraising regulation. Governments and the sector are acutely aware of the importance of ensuring public confidence in fundraising.

Nationally, FIA worked in collaboration with the Australian Council of Social Service (ACOSS), the lead agency in a project *Giving Australia*<sup>2</sup> released in October 2005, funded by the Prime Minister's Community Business Partnership on behalf of the Australian Government Department of Family and Community Services. This project has researched philanthropy, fundraising and the development capacity of the nonprofit sector (for the report see [www.fia.org.au](http://www.fia.org.au) under Resources).

Through the Chief Executive Officer, FIA is a member of the Code of Conduct Committee of the federally-funded Australian Council for International Development (ACFID), a member of the Experts Panel advising the Victorian Government of the regulatory environment for the nonprofit sector, and the lead agency for a governance/management tool kit for the fundraising sector in Queensland.

FIA regularly makes submissions to governments on issues concerning legislation and regulation, privacy and harmonization of legislation.<sup>3</sup>

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<sup>2</sup> *Giving Australia, Research on Philanthropy in Australia*, Australian Government Department of Family and Community Services, Canberra, October 2005. This project was led by The Australian Council of Social Services, with QUT's Centre of Philanthropy and Non-profit Studies, University of Technology, Sydney's Centre for Australian Community Organisations and Management, Fundraising Institute Australia Ltd, Roy Morgan Research PL and McNair Ingenuity Research PL.

<sup>3</sup> Since Sept 2004 submissions have included:

- Victorian Government's review of the Fundraising Appeals Act 1998
- Victorian Government's review of legislation on raffles
- Federal Privacy Commissioner's review of the private sector provisions of the Privacy Act 1988
- Australian Tax Office review of the draft taxation ruling what is a gift?
- Senate Enquiry into the Privacy Act 1988
- House of Representative Inquiry on Harmonisation of Legal Systems
- Queensland Government Office of Fair Trading Review of the Associations Incorporation Act 1981
- Victorian Government Proposed Gambling (Commercial Raffle Organisers) Regulations 2005
- Australian Taxation Office Draft Taxation Rulings TR2005/D6 and TR2005/D7
- Australian Communications & Media Authority Draft Industry Standard (Integrated Phone Number Database) (August 2005)
- Victorian parliamentarian draft bill on telemarketing regulation (October 2005)
- Ministers for Fair Trading in New South Wales and Victoria, on the option for harmonization of trading laws relating to telemarketing (October 2005)
- Department of Communications, Information Technology and the Arts, discussion paper on Introduction of a Do Not Call Register (November 2005)
- Australian Competition and Consumer Commission, Draft Determination lodged by The Australian Direct Marketing Association Ltd in relation to the Direct Marketing Code of Practice (December 2005)

## **International Agenda**

Internationally, FIA has Memoranda of Understanding with the two principal US fundraising organisations, Association of Fundraising Professionals (AFP) and Association for Healthcare Philanthropy (AHP), and has adopted a code of practice with the Washington-based ePhilanthropy Foundation, with whom FIA is working towards a Memorandum of Understanding. The Chief Executive Officer is an invited member and the international delegate on AFP's Ethics Committee. FIA is working with the Institute of Fundraising (UK) and Resource Alliance (UK) to formalize memoranda of understanding to promote further international cooperation between fundraising organisations. FIA is working with Resource Alliance to develop a capacity building program in the Asia Pacific region coinciding with the regional conference in 2006.

FIA is a member of the international consortium of twenty-four professional associations for fundraisers. The summit is working towards developing an International Code of Ethics for Fundraisers. FIA's work with the summit has been of significant value to the development of the project for FIA's codes of fundraising practice.

AHP Faculty head the teaching personnel in FIA's annual intensive professional development program Madison Down Under.

### *Professional Development*

FIA has developed a comprehensive professional development pathway, from the Diploma of Fundraising Management (DFM) to the internationally-recognised Certified Fundraising Executive (CFRE), based in Washington, US. A new residential program in 2006, the Fundraising leadership Program, in partnership with Melbourne Business School, addresses the specific needs of executive fundraisers and managers in the nonprofit sector. FIA has broad reach in its professional development programs, delivering approximately 10,000 hours to members and other professional fundraisers in 2005.

Professional development seminars, held monthly by each chapter over breakfast or lunch, are an important way to network with colleagues while learning. Intensive professional development opportunities are provided with FIA's annual International Conference (February) and the four-day residential program Madison Down Under (held just out of Adelaide in August). FIA partners with other organisations where appropriate to bring keynote national and international speakers to as wide an audience of members and other fundraisers. The Diploma of Fundraising Management is a distance learning program, usually completed over two and a half years, comprising eleven modules undertaken at the students' pace. Skills Training (Skills 1, 2 and 3) offers vocational sessions to fundraisers from entry level to most experienced fundraising and is delivered by chapters in each state.

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Gambling Regulation (Commercial Raffle Organisers) Regulations 2006 Victoria (February 2006)  
Fundraising Appeals Act 1998 Proposals for Reform Victoria (February 2006)  
Australian Taxation Office Proposal to pre-populate gift labels on electronic returns for individuals, Non-Profit News Service no. 0134. (March 2006)  
South Australian Government Office of Consumer and Business Affairs, on consumer protection and telemarketing in SA. Options for regulation (April 2006)  
South Australian Department of Treasury and Finance, Collections for Charitable Purposes (Miscellaneous) Amendment Bill 2005 ("the Amendment Bill") (May 2006)  
Federal Senate Reference Committee, Inquiry into the Do-not-Call Register Bills 2006 (June 2006)  
Australian Communications and Media Authority: Industry Standards for the Making of Telephone Calls (September 2006)  
NSW Premier Department, NSW State Plan (September 2006)  
Treasury of Victoria, Reducing the Regulatory Burden (September 2006)  
Queensland Office of Gaming Regulation Proposed Amendments Charitable and Nonprofit Gaming Act 1999 (September 2006)  
Australian Law reform Commission, Review of Privacy Issues Paper 31, (January 2007)  
Queensland Office of Gaming and Racing, Consultation paper on Proposed Amendments - Gaming Legislation Amendment Bill (Authority to Introduce a Bill Stage) (January 2007)

## *Principles and Standards of Fundraising Practice*<sup>4</sup>

FIA's priority 2006 through 2008 is to develop comprehensive standards of fundraising practice<sup>5</sup> to:

- provide the Australian community with assurance of accountability for their gifts
- support the rights of donors who make gifts
- establish a code of conduct for fundraisers
- guide fundraisers in ethical and professional practice
- enhance self-regulation of the fundraising industry

### **The non-profit sector**

Australia's nonprofit sector consists of a wide spectrum of organisations addressing societal needs. Nonprofit organisations are the major providers of community services, sport and the representation of collective interests. They are significant providers of education and health services, arts and culture and hospitality services. They are the exclusive providers of religious services. This is a representation much broader than the traditional charitable organisations.

Research undertaken by Professor Mark Lyons (University of Technology, Sydney) has shown there are as many as 700,000 nonprofit organisations, approximately half of which are incorporated as separate legal entities.<sup>6</sup> About 35,000 organisations employ over 600,000 paid staff and involve over 4 million volunteers. These organisations contribute about 3.3% to GDP (4.7% when the value of volunteer labour is included) and account for 6.8% of total employment.<sup>7</sup>

Fundraising is a key activity of the nonprofit sector. Australian giving as measured through the *Giving Australia* project is estimated at \$11 billion dollars per annum. The giving of money, goods and services to nonprofit organisations by individuals and business estimated by this research comprises \$7.7 billion by individuals donated by 13.4 million people, 87% of adult Australians and \$3.3 billion from 525,900 businesses, 67% of all businesses.

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<sup>4</sup> This project is assisted by the Helen Macpherson Smith Trust

<sup>5</sup> **ELEMENTS OF THE CODES OF FUNDRAISING PRACTICE**

Principles:

- Code of Ethics
- Code of Professional Conduct
- Code of Acceptance and Refusal of Donations
- The Donor's Bill of Rights
- The Enforcement Process

Standards:

- Code of Events
- Code of Personal Solicitation of Public Places (F2F)
- Code of Telephone Fundraising and Telemarketing
- Code of Payroll Giving and Matched Giving Schemes
- Code of Bequests
- Code of Raffles, Lotteries and Games of Chance
- Code of Workplace Giving Partnerships
- Code of Charity Challenge Events
- Code of Fundraising from Grant Making Trusts and Foundations
- Code of Fundraising in Schools
- Code of e-Fundraising
- Code of Reciprocal Mailings
- Code of Direct Mail
- Code of Direct Marketing

<sup>6</sup> Lyons, M (2001) *Third Sector: The contribution of nonprofit and cooperative enterprises in Australia* (Sydney: Allen and Unwin, 2001).

<sup>7</sup> Woodward, S and Marshall, S (2004) *A better framework – reforming not-for-profit regulation*, University of Melbourne: Centre for Corporate Law and Securities Regulation.

Taken together, the financial and voluntary labour contributions of Australians to the sector – Lyons estimates that approximately 65 per cent of Australians belong to at least one nonprofit organisation and about 40 per cent describe themselves as active members – provide clear indications that the nonprofit sector impacts on Australians in every walk of life.

## **APPENDIX 2**

### **OVERVIEW OF THE FIA CODES PROJECT: PRINCIPLES AND STANDARDS OF FUNDRAISING PRACTICE**

#### **INTRODUCTION**

Ethical practice has been a topic for public discussion and corporate interest with regard to fundraising and in particular during the recent unprecedented efforts with the tsunami appeals. Fundraising Institute Australia Ltd (FIA) has embarked on an advocacy program to government and the corporate sector to promote the importance of community confidence in fundraising through self-regulation of industry practice through codes of practice.

FIA's priority is to ensure professional conduct and competence in fundraising and to promote ethical fundraising through the development of standards of practice that are mandatory for members of FIA. FIA is benefiting from its work in the international context with the 24-member summit developing an international code of ethics and from its membership of the Codes Committee of the Australian Council for International Development (ACFID).

In January 2005 FIA commenced a further avenue of professional advocacy through briefings to state and federal governments on issues relating to fundraising regulation which is hampered by legislative inconsistencies that challenge efforts to fundraise nationally. FIA is pushing for greater clarity and consistency in regulation across Australia and seeking to encourage national harmonization of fundraising regulation. Political awareness of fundraising and the importance of public confidence in the sector has been heightened by the phenomenal responses to the recent tsunami appeals.

FIA has a code of professional practice and ethics to which individual and organisational members agree to adhere. However, FIA's standards in fundraising are no longer adequate for the contemporary environment in which fundraisers work, providing neither clear guidelines for fundraisers nor adequate protection for donors. FIA regards the development of standards as the most important task for the fundraising profession over the next two years.

#### **PROJECT DESCRIPTION**

This project is to develop comprehensive standards of fundraising practice to

- provide the Australian community with assurance of accountability for their gifts
- support the rights of donors who make gifts
- establish a code of conduct for fundraisers
- guide fundraisers in ethical and professional practice
- enhance self-regulation of the fundraising industry

## **CODES OF FUNDRAISING PRACTICE TASK FORCE**

Development of the Codes of Fundraising Practice will lie with FIA's Codes of Fundraising Practice Task Force. FIA's Board of Directors appoint members of the Task Force to reflect the broad interests of the fundraising profession.

For more information on the Task Force please see ["The Terms of Reference of Fundraising Institute – Australia's Codes of Fundraising Practice Task Force"](#).

## **ELEMENTS OF THE CODES OF FUNDRAISING PRACTICE**

Principles:

- Code of Ethics
- Code of Professional Conduct
- Code of Acceptance and Refusal of Donations
- The Donor's Bill of Rights
- The Enforcement Process

Standards:

- Code of Events
- Code of Personal Solicitation of Public Places (F2F)
- Code of Telephone Fundraising and Telemarketing
- Code of Payroll Giving and Matched Giving Schemes
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- Code of Raffles, Lotteries and Games of Chance
- Code of Workplace Giving Partnerships
- Code of Charity Challenge Events
- Code of Fundraising from Grant Making Trusts and Foundations
- Code of Fundraising in Schools
- Code of e-Fundraising
- Code of Reciprocal Mailings
- Code of Direct Mail
- Code of Direct Marketing

If you wish to provide feedback on an existing Code or would like to suggest a new Code please see ["Fundraising Institute - Australia's Codes of Fundraising Practice: Feedback and Suggestions"](#)

The Codes of Practice Task Force will provide direct advice on development of Codes 'Principles'. Specific Working Parties appointed by the Task Force will provide advice various Codes 'Standards'.

## **PROCESSES AND PROCEDURES**

Each draft document will be subject to a full consultation process at the stage of its final draft. Consultation will include FIA's organisational members, representing fundraising charities and other non-profit organisations, state-based Chapter Executive Committees, chairs of special interest groups, government departments with responsibilities for fundraising legislation and regulation, appropriate peak bodies including the Not-for-profit Roundtable and other bodies with an interest in the field covered by a new Code of Fundraising Practice. Others may include public observers.

The Codes will be kept under review and periodically updated to keep pace with the changing fundraising environment. Both draft and endorsed Codes will be available on FIA's website.

The project is planned to commence early in 2006 and is expected to conclude in 2007.

To read more about processes and procedures see ["Procedures for developing Fundraising Institute – Australia's Codes of Fundraising Practice"](#) and ["Creating a Code of Fundraising Practice: Guidelines for a Working Party"](#).

For those interested in joining a Working Party please see the ["Membership of the Codes of Fundraising Practice Working Parties: Registering an Interest"](#).

#### **COMPLIANCE**

Compliance with the Codes will be mandatory for members of FIA. Failure of members of FIA to comply to the spirit or letter of a Code will leave themselves open to both concerns and complaints from regulators and members of the public as well reprimand or even expulsion from the Fundraising Institute – Australia. All complaints directed to FIA will be investigated in accordance with our disciplinary procedures through the Ethics Committee. Members of this committee will include FIA's organisational members, regulators and consumers (donors). Fundraising organisations will be encouraged to establish internal committees to address complaints in the first instance.

#### **RESOURCES**

This project was assisted in 2006 by the Helen Macpherson Smith Trust.

## APPENDIX 3

### *International Statement of Ethical Principles in Fundraising*

#### PREFACE

Fundraisers work in many varied fields, countries and circumstances, but they share several fundamental values and practices: they work to make the difference, help others and save what is valuable, in fact to make the world a better place. It is for these reasons that fundraisers strive to identify and employ best practices.

Over thirty countries<sup>8</sup> have taken part in the development of this statement. The current draft encapsulates their common principles. It has no legal authority but its moral authority will be as strong as the number of organizations that support it.

It is the purpose of this Statement of Ethical Principles to foster the growth of a worldwide fundraising community dedicated to accountability, transparency and effectiveness. In this Statement we want to set forth what unites us in the way we practise our profession. Recognising that in many countries there already exist codes of conduct and standards of practice, the intent of this statement is to unify the global fundraising community behind a single universal declaration of fundamental principles. Organizations and individuals who endorse this Statement are not necessarily abandoning existing codes or standards, but are announcing their interest in a global understanding of these fundamental principles.

Applied in different cultural settings, this Statement can provide guidance for initiating best practices in newly developing markets. It also provides a clear alternative to local customs which may not represent best practices. Adherence to this Statement should also advance the common purpose of assuring public trust in the non-profit sector while discouraging personal gain at the expense of donors and stakeholders.

A form of words has been incorporated within the statement in paragraph 5 where use of the words "**will**" and "**must**" indicate what is a mandatory requirement and "**should**" what is regarded as best practice by all organizations endorsing the statement. The statement recognises that fundraisers operate subject to many different jurisdictions and that they must observe the law of the jurisdiction in which they work. However, it is expected that fundraisers adhering to the principles of the statement should adhere to the most rigorous interpretation of the law (and of the Code of Ethics of their own Membership Association) applicable to an activity, whichever jurisdiction that activity derives from.

#### FIVE UNIVERSAL PRINCIPLES

Five important principles for acting as a fundraiser:

- Honesty:** Fundraisers shall at all times act honestly and truthfully so that the public trust is protected and donors and beneficiaries are not misled.
- Respect:** Fundraisers shall at all times act with respect for the dignity of their profession and their organisation and with respect for the dignity of donors and beneficiaries.
- Integrity:** Fundraisers will act openly and with regard to their responsibility for public trust. They shall disclose all actual or potential conflicts of

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<sup>8</sup> Argentina, Australia, Belgium, Canada, Finland, France, Germany, Hungary, Hong Kong, Indonesia, Italy, Kenya, Republic of Korea, Netherlands, New Zealand, Poland, Singapore, South Africa, Spain, Sweden, Switzerland, Ukraine, United Kingdom, United States

interest and avoid any appearance of personal or professional misconduct.

**Empathy:** Fundraisers will work in a way that promotes their purpose and encourage others to use the same professional standards and engagement. They shall value individual privacy, freedom of choice, and diversity in all forms.

**Transparency:** Fundraisers stimulate clear reports about the work they do, the way donations are managed and disbursed, and costs and expenses, in an accurate and comprehensible manner.

#### STANDARDS OF PRACTICE

*These standards are presented with the recognition that fundraisers operate subject to many different jurisdictions and that they must observe the law of the jurisdiction in which they work. However, it is expected that fundraisers adhering to these standards of practice will, first and foremost, adhere to the most rigorous interpretation of the law, and of the Code of Ethics of their own membership association, applicable to an activity, whichever jurisdiction that activity derives from.*

##### 1. Fundraisers responsibility regarding **donations**.

- Donations should be accepted if voluntary, in line with the goals of the organisation and will bring not more than reasonable costs related to the value of the donation.
- Funds will be disbursed in accordance with the donor's wishes, if expressed.
- Funds will not be raised for the personal financial gain of the fundraiser or the fundraising organisation the fundraiser works for.
- Funds will be collected carefully and with respect of donor's free choice, without the use of pressure, harassment, intimidation or coercion.

##### 2. Relationship with **stakeholders**.

- Fundraisers are strictly answerable to all stakeholders including donors, beneficiaries, and employers.
- Fundraisers will respect donor rights by providing timely information about how contributions are used, respecting donor privacy, and honouring donor wishes.
- Fundraisers will respect beneficiary rights and preserve their dignity and self-respect. They will not use fundraising materials or techniques that undermine this dignity.
- Fundraisers work with suppliers or intermediary agents at the same standards as within their own organisation. They make reasonable efforts to assure that suppliers do not gain unreasonable profit while working with their own organisation.

##### 3. Responsibility for **communications**, marketing and public information.

- Fundraisers will only use public information that is accurate, truthful and not misleading, and information that respects the dignity and self-respect of beneficiaries.
- Fundraisers will not express or suggest in public information that fundraising lacks administration and fundraising costs, thus giving the incorrect impression that fundraising activity is without costs. Fundraisers will object to their organization expressing or suggesting that fundraising activity is without costs.
- Fundraisers will provide truthful information about use of funds, without exaggeration or underestimation.
- They respect data protection rules and laws at all times.
- Fundraisers accept that all donor and prospect information developed by or on behalf of an organisation shall not be transferred or utilised except on behalf of that organisation.

- Donor wishes to be removed from request lists will be followed promptly and without obstacles for the donor.
4. Management **reporting**, finance and fundraising costs.
- Fundraisers assure that all fundraising transactions, accounting and reporting for which they are responsible are transparent and unambiguous. They are able to account anytime for their professional work.
  - They will encourage their organisation to report within the national and international standards of accounting methods.
  - They will submit accurate annual reports to all stakeholders within a reasonable time or encourage their organisation to do so.
  - Fundraisers will be open and clear to all stakeholders about fundraising costs, fees and expenses and the way these are allocated.
  - They will make any compensation arrangement transparent to an employer, donor, and beneficiary upon request.
5. **Payments** and compensation.
- Fundraisers provide their services either as a volunteer, or on a salaried basis or for pre-determined fees. Fundraisers should not accept commissions or compensation based upon a percentage of the funds raised.
  - Fundraisers will not accept any gratuity when making decisions on behalf of the organisation.
  - Fundraisers will not seek or accept any personal payments, in cash or in kind, from a supplier of goods or services in recompense for business placed with that supplier.
  - Criteria that will qualify a fundraiser for performance-based remuneration must be agreed upon beforehand and should not be based on a percentage of the funds raised.
6. Compliance with **national** laws.
- Fundraisers will object if the organisation they work for does not comply with applicable local, state, provincial and national or international civil and criminal laws.
  - Fundraisers will not engage in activities that conflict with national and international legal obligations to their organisation or to others. Moreover, they will avoid even the appearance of any criminal offence or professional misconduct.