



Submission to the Office of Liquor,  
Gaming and Racing on the  
Proposed Lotteries and Art Unions  
Regulation 2007



*We exist to make the world a better place by advancing professional fundraising through:*

- *advocacy of standards*
- *professional development pathway*
- *measurable credentials*

*So that our members achieve best practice*

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1 August 2007

The Hon Mr Graham West,  
Minister for Gaming and Racing, Minister for Sport and Recreation  
The Lotteries and Art Unions Regulation Project  
NSW Office of Liquor, Gaming and Racing  
Department of the Arts, Sport and Recreation  
GPO Box 7060  
SYDNEY, NSW 2001

Dear Minister

**Re: Submission on the Proposed Lotteries and Art Unions Regulation 2007**

Thank you for the opportunity to present the opinions of Fundraising Institute Australia on the Proposed Lotteries and Art Unions Regulation 2007.

The Fundraising Institute Australia (FIA), the peak industry body for professional fundraising welcomes the opportunity to provide comment on the issues raised in your regulatory impact statement.

FIA welcomes dialogue with OLGR on behalf of our members in the charitable and nonprofit sector in New South Wales. We trust that the efforts the New South Wales Government has put into reviewing the nonprofit regulation will result in tangible outcomes to the benefit of the both the government and the sector, but more importantly to benefit our communities that we both serve.

Yours sincerely



**SUE-ANNE WALLACE** BPHARM BA HONS PHD MFIA  
CHIEF EXECUTIVE OFFICER





## Introduction

Fundraising Institute Australia (FIA) the peak industry body for professional fundraisers welcomes the opportunity to comment on the proposed Lotteries and Art Unions Regulation 2007

Charitable fundraising is an important fundraising and communication channel for many charitable organisations, a majority of which are associated with FIA. We represent, therefore, their opinion on the proposed Lotteries and Art Unions Regulation 2007

FIA will restrict its comment to four aspects of the review of the proposed regulation, namely:

- Consultation
- Inconsistencies between state legislation
- Costs of fundraising
- Self regulation

## 1 Consultation

We note that FIA was to be notified of this review. However, we only heard of the review by chance through a FIA member. Please note our contact details are as follows.

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## 2 Inconsistencies in state legislation

Inconsistencies between state legislation mean that national organisations, a number of which are located in NSW, may find it more propitious to operate lotteries and art unions from other states.

It is our understanding that NSW legislation favours art unions originating from other states which comply with their home legislation rather than NSW's legislation even though the art union is sold to NSW residents. This disadvantages NSW based organisations which must comply with NSW legislation, resulting in inequities for NSW based organisations.

## 3 Costs of Fundraising

FIA is against the introduction of any prescribed percentage or limit to the costs of raising funds being enacted in legislation. Any regulation of 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 the support of the UK Charities Commission inquiry, and experts researching in the not-for-profit sector in Australia (Susan Woodward and Shelley Marshall, Melbourne University 2004; Ted Flack Queensland University of Technology 2004).

Independent research commissioned by FIA in 2004 shows the use of the cost of fundraising (CoFR) is a poor indicator of the efficiency of an organisation. Imposing a prescribed percentage particularly disadvantages small organisations.

The measure which OLGR proposes to retain (60:40) is not a tool to manage accountability and transparency in the use of funds. Other measures, such as industry self-regulation, have been shown to be more effective in managing reputation.

Fundraising costs are dependent on a number of variable factors. The key issues are as follows:

- i) Legitimate variability in fundraising costs*
- ii) There are no national accounting standards applying to the nonprofit sector*
- iii) Inconsistencies in legislation relating to nonprofit charitable lotteries and forprofit commercial lotteries and prizes*
- iv) Legitimate variability in fundraising costs*

The issue of the suitability and merit of using CoFR was examined by the Industry Commission report into charities in the mid 1990s (IC 1995). A key problem with CoFR that the Commission highlighted was that fundraising costs could legitimately vary across organisations due to several factors that had little to do with efficiency or accountability or transparency. These include:

- An organisation's costs associated with developing a reputation and longer-term supporters
- The start-up costs associated with particular fundraising programs
- The fact that some programs or causes are more popular with the giving public than others
- The fact that some fundraising programs also comprise educational and awareness components
- The age of the organisation – costs of fundraising are less for longer established organisations
- The type of activity or field that the organisation operates in – costs are higher for organisations involved in advocacy, disease and public safety



- The particular fundraising strategy used (e.g. telemarketing, face-to-face, mail etc).

It is unsurprising that a review of charities and charity law in the UK also argued against the adoption of mandatory cost of fundraising ratios for similar reasons. It is worth quoting at length from the report, *Private Action, Public Benefit*, prepared by the UK Strategy Unit on this issue:

*...the fact that fundraising costs vary widely due to factors beyond the charity's control (such as the popularity of the cause, and the proportion of income from legacies and endowments) means that simple ratios without additional explanatory information can be misleading. Moreover, fundraising ratios have the obvious flaw of communicating nothing about the charity's wider performance or outcomes (Strategy Unit 2002:61).*

**ii) There are no national accounting standards applying to the nonprofit sector**

- organisations apportion costs of fundraising in different ways
- comparisons cannot be made for this and other reasons listed above.
- there is no definition of what specifically should be ascribed as a cost to fundraising.

The 60:40 ratio should not be viewed as a regulatory measure which to serve financial accountability. FIA draws attention to a further dissenting comment on the cost of fundraising disclosures required by the NSW *Charitable Fundraising Act 1991*, reported by the Chartered Accountants of Australia who have concluded:

*Users of a NFP's reports (Annual or Financial) would be better served by measurements that are specific to the NFP's total operation (CA 2003:17).*

**iii) Inconsistencies in legislation relating to nonprofit charitable lotteries and forprofit commercial lotteries and prizes**

It is important to consider whether the legislative environment for nonprofit charitable lotteries restricts their capacity to undertake their business unreasonably in comparison with the commercial environment in which forprofit commercial operators work.

#### **4 Self Regulation**

FIA acknowledges that while government legislation regulates financial risk, we point out that industry self-regulation serves to regulate reputational risk, a critical factor in public trust and confidence in the accountability of charitable fundraising. Indeed ethical practice is a topic for government, corporate and public interest with regard to fundraising.

In the national sphere of charitable fundraising where nonprofit organisations forward Australian funds overseas, reputational risk is regulated through the mandatory



requirement that organisations receiving Ausaid funding must be signatories to the Australian Council for International Development's Code of Conduct.

FIA's priority is to ensure professional conduct and competence in fundraising and to promote ethical fundraising through principles and standards of practice that are mandatory for its members. FIA is benefiting from its work in the international context with the 24-member summit developing an international code of ethics.

This purpose of a comprehensive Code of fundraising practice<sup>1</sup> is 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

Compliance with the Codes is mandatory for members of FIA. Failure of members of FIA to comply with 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 FIA. All complaints directed to FIA are investigated in accordance with disciplinary procedures through an independent Ethics Committee. Members of this committee include FIA's organisational members, regulators and consumers (donors). Fundraising organisations are encouraged to establish internal committees to address complaints in the first instance.

**FIA is currently working with state governments, in particular the Victorian Government, to ensure that industry self-regulation is an important part of the regulatory environment.**

**We encourage you to further consider this aspect of regulation to enhance the government legislative environment of lotteries and art unions.**

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<sup>1</sup> **ELEMENTS OF THE PRINCIPLES AND STANDARDS OF FUNDRAISING PRACTICE**

Principles: Codes of Ethics, Professional Conduct, Acceptance and Refusal of Donations, the Fundraiser's Promise, Complaints Process

Standards: Bequests, Charity Challenge Events, Charitable Telemarketing, Direct Mail, Direct Marketing, e-Fundraising, Events, Face to face fundraising, Fundraising in Schools, Grant Making Trusts and Foundations, Payroll Giving and Matched Giving Schemes, Raffles, Lotteries and Games of Chance, Reciprocal Mailings, Workplace Giving Partnerships

