



Fundraising Institute Australia's submission to the Senate Inquiry into disclosure regimes for charities and nonprofit organisations

August 2008



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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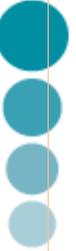


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29 August 2008

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
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Submitted by email : economics.sen@aph.gov.au

Fundraising Institute Australia is the peak body for professional fundraising. Our members are both individual – some 1,700 individual members working in around one thousand charities and nonprofit organisations – and organisational – more than 80 organisational members with a combined turnover in excess of \$1.1 billion and thousands of staff.

FIA membership is contingent upon mandatory compliance with FIA's Principles and Standards of Fundraising Practice ([Appendix 1](#)). Review of FIA's codes is a major project undertaken over the past three years and due for conclusion at the end of 2008. The project was initiated in response to FIA's perception of an urgent need to establish standards for professional fundraising in order to improve public trust and confidence in accountability for and transparency in the use of publicly donated funds. The project has been largely funded by FIA with support from philanthropic trusts and individuals.

FIA conducted both face to face and web forums to canvass views of its members in responding to this inquiry. More than 70 people attended these forums ([Appendix 2](#)) and their views are summarised in [Appendix 7](#). What concerned most was their lack of understanding of some of the proposed 'solutions', such as a 'single, national regulator' and 'single, specialist, legal structure' as little information is provided as to the forms either would take.

FIA welcomes the opportunity to provide comment to the Senate Standing Committee on Economics. The nonprofit sector is too important to Australia's well-being and the well-being of Australians to allow it to languish any longer under myriads of contradictory, conflicting and complicated legislation which purports to regulate the sector but because of exemptions and other legislation fails in both its regulatory and public duties.

In 2003, 86% of adult Australians put their confidence in the nonprofit sector. Their confidence deserves government attention. Indeed, the nonprofit sector itself has been calling for reform. We welcome the Senate's interest and prioritisation of our work and urge you to act on the body of evidence put to this inquiry and not to allow it, like previous inquiries, to be ignored.

To this end, Fundraising Institute Australia recommends a **commission of inquiry** be established to further develop the initiatives explored in this Senate Inquiry, in particular 'model' fundraising legislation, the shape of a national regulator and the elements of a compact to underpin the values and funding of this sector.

Yours sincerely,

A handwritten signature in black ink that reads "Sue-Anne Wallace". The signature is written in a cursive, flowing style.

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Background on Fundraising Institute Australia

Founded in 1968, FIA is a company limited by guarantee. As a nonprofit body, FIA is recognised as a charitable institution. FIA's Library Trust Fund (founded 1993), run wholly within FIA, is a Deductible Gift Recipient established to develop a research centre in order to advance research into and training for professional fundraising.

FIA's purpose is to advance professional fundraising through advocacy of standards, professional development pathways and measurable credentials so that our members achieve best practice. FIA offers training through face to face activities in every state and ACT, online program, distance learning (Diploma of Fundraising Management, currently the only qualification available in fundraising) and residential programs (Adelaide and Melbourne). FIA is in the process of negotiating recognition for its Diploma as an entry point for professional fundraisers to undertake graduate study (currently under discussion with Queensland University of Technology, Centre for Social Impact, UNSW and Swinburne University of Technology). In 2008, more than 6,000 people will attend our courses and programs. [For FIA's Professional Development Pathway see [Appendix 3](#)].





EXECUTIVE SUMMARY: RECOMMENDATIONS

a) **the relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations**

A new single regulator for the entire nonprofit sector should:

- regulate proportional to risk and not in accordance with exemptions
- reduce multiple reporting requirements reducing the regulatory burden
- develop an appropriate accounting standards and reporting mechanisms that measures effectiveness (outcomes) not efficiency (ratios).

b) **models of regulation and legal forms that would improve governance and management of charities and not-for-profit organisations and cater for emerging social enterprises**

A new single regulator should:

- be based on principles similar to the Charity Commission (England and Wales)
- enable the work of the sector (light touch regulation proportional to risk)
- close the gap between statutory and non-statutory regulation (national industry self-regulation)

c) **Other measures that can be taken by government and the not-for-profit sector to assist the sector to improve governance, standards, accountability and transparency in its use of public and government funds.**

A new single regulator should:

- cut red tape
- allow for diversity (light touch regulation proportional to risk)
- support development of a national toolkit
- focus on effectiveness (outputs, public benefit) not efficiency (financial ratios)
- adopt a standardised disclosure regime
- encourage benchmarking
- assist nonprofit organisations in annual reporting
- provide meaningful information for the public
- promote the public interest in charity and nonprofit activities

The Senate Inquiry has sought further comment on the recommendations from the inquiry into the definition of charities and related organisations (2001).

- decide the name of the sector!
- promote responsibility for this sector to ministerial level

The Senate Inquiry opens discussion on a number of initiatives that must be further explored.

Establish a Commission of Inquiry to:

- develop 'model' fundraising legislation
- determine the 'shape' of a national regulator
- determine a national accounting standard and reporting mechanism
- review the elements of a compact to underpin partnerships with the sector.





SENATE STANDING COMMITTEE ON ECONOMICS INQUIRY INTO THE DISCLOSURE REGIMES FOR CHARITIES AND NOT-FOR-PROFIT ORGANISATIONS

AM - Tuesday, 19 August, 2008 08:15:00 ... But the Sports Minister, Kate Ellis, is warning that extra Australian funding may not be that easy to come by.

LYNDAL CURTIS: Britain funds its Olympics teams partially through a lottery, has any consideration been given to creative ways of raising money in Australia?

KATE ELLIS: They do have a very different system in Britain, and I know that right back in 1999, the previous government had an inquiry into sports and the ways forward, and one of the recommendations that was put to the government at the time was to set up a lottery like the one in the UK for Australia.

Of course, with the different State and Federal jurisdictions, that would have been not possible by the government at the time, but one thing I am very keen to do, and we've announced a process, to look at ways we can broaden the funding base for Australian sport, and I doubt very much that that will come up with a lottery being a viable option for us, but I do hope that there's ways that we can restructure the current system, so that we can get as many dollars going towards our athletes as possible.

FIA's comment

Our contradictory, conflicting and complicated legislation inhibits fundraising across every aspect of community life and social inclusion¹.

¹ In fundraising alone, the main state government departments are the ACT Office of Regulatory Services, ACT Gambling and Racing Commission, NSW Office of Liquor, Gaming and Racing, NT Treasury Racing, Gaming and Licensing Division, SA Office of Liquor and Gambling Commissioner, QLD Office of Fair Trading, QLD Office of Gaming Regulation, Tasmanian Office of Consumer Affairs and Fair Trading, Tasmanian Liquor, Gaming Branch (representing the Tasmanian Gaming Commission), Consumer Affairs Victoria, Victorian Commission for Gambling Regulation, WA Department of Racing, Gaming and Liquor and WA Department of Consumer and Employment Protection.





Fundraising Institute Australia will address the terms of reference with a particular focus on fundraising.

a) The relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations

There was general agreement among FIA members that the current disclosure regimes are neither relevant nor appropriate.

The key issues to address are:

- multiple reporting requirements and disclosure regimes (commonwealth, state, territory, local)²
- significant regulatory burden³
- exemptions which mean that NFPs are differently regulated⁴
- lack of recognition for diversity across the sector (regulation is not proportional to risk)
- current disclosure regimes attempt to measure efficiency (despite the lack of a national accounting standard) rather than effectiveness of charitable and nonprofit activities⁵

Disclosure regimes should **enable the sector** by meeting the following principles:

- Improve service delivery outcomes and standards;
- Promote high standards of integrity and conduct;
- Strengthen professionalism and encourage innovation;
- Promote high standards of governance, accountability and performance;⁶
- Recognise the diversity of the sector so SMEs are not disadvantaged;⁷ and
- Advance non-statutory regulation by working with the sector.⁸

FIA members **unanimously** agree that the current commonwealth, state and territory disclosure regimes **do not adequately serve these principles to enable the sector** as the primary focus is on financial reporting and ratios which are not based on a national accounting standard and are therefore meaningless as tools of performance or comparison.

² National Roundtable of Nonprofit Organisations (2007) *The Assessment of Charitable Status in Australia: Current Practice and Recommendations for Improvement*.

³ See [Appendix 4](#): Fundraising Institute Australia submission to the Treasurer of Victoria (2006) *Reducing Regulatory Burden, The Victorian Government's Plan to Cut Red Tape*.

⁴ For example FIA estimates that only 20% of fundraising in Victoria is regulated under the Fundraising Appeals Act 1998 because of the exemptions to the legislation. This creates a false sense of the role of the regulator and pushes the regulatory burden unfairly onto smaller NFPs, often serving challenging causes and public needs. See [Appendix 5](#): FIA's submission to Consumer Affairs Victoria's review of the Fundraising Appeals Act 1998 pg 23

⁵ FIA independent research (2004) showed that measuring costs of fundraising was flawed in a number of ways, see [Appendix 6](#) at page 10.

⁶ The State Services Authority Victoria noted that 'regulation is a tool used by government to help to build [public] trust and confidence in the sector and facilitate its important work'.

⁷ Some FIA members suggested that the GST threshold may provide an appropriate point below which organisations are exempt in some or all measures from reporting requirements. See [Appendix 7](#): FIA's Senate Inquiry member and stakeholder consultation summary – August 2008.

⁸ FIA's Principles and Standards of Fundraising Practice. See [Appendix 8](#)





b) Models of regulation and legal forms that would improve governance and management of charities and not-for-profit organisations and cater for emerging social enterprises

Harmonising Legislation or a New Single Regulator?

A majority of FIA members propose this is the time for the Australian government to **take a leadership role in advancing nonprofit Australia** and they support the proposal to adopt a single regulator, such as a nonprofit commission like the Charity Commission (England and Wales), which regulates proportional to risk.⁹

However FIA members are not unanimous on this question. On the one hand, FIA members commented there is insufficient detail in the inquiry documents as to what form a single regulator would take, and on the other hand, they doubt the government's commitment, both legislative and financial,¹⁰ to address fully the issues of discordant legislation. Accordingly they propose harmonisation of fundraising legislation as a second-best solution to enhance the work of nonprofit organisations.

FIA urges the Senate Inquiry not to squander this opportunity and to commence the process to establish a new single regulator.

Other countries have already gone down this route. The *Choice* article raised a number of issues discussed over a considerable period of time by those working in the sector. FIA's views were sought by the author of the article who noted:

The Fundraising Institute Australia supports the establishment of a single regulator. "This initiative would greatly reduce compliance and administrative costs and should enhance regulation and consistency making aspects of fundraising such as fundraising costs clearer and comparable."

Choice Magazine, *Charities* March 2008

<http://www.choice.com.au/viewArticle.aspx?id=106240&catId=100268&tid=100008&p=1&title=Charities>

Recognising that the establishment of a single regulator might not immediately occur, FIA urges continuing effort to reduce the regulatory burden of conflicting regimes, in particular through the COAG agenda 'cutting red tape' and bringing state legislation into harmony as an interim.

There was unanimous agreement among FIA members that the regulatory model and legal forms of the nonprofit sector must address the following issues:

- I. enabling the work of the sector (light touch regulation)
- II. closing the gap between statutory and non-statutory regulation (non-statutory regulation of fundraising by the nonprofit sector)

⁹ The Charity Commission (England and Wales) was established to 'help [charities] achieve what they do in the most effective way possible'. It does this by

- Registering charities
- Ensuring compliance with legal obligations
- Encouraging innovation and effectiveness
- Promoting the public interest in charity

¹⁰ It is not clear what resources would be required to run a nonprofit commission in Australia. However an estimate could be based on expenditure of the Charity Commission (England/Wales) (2007/8) £33.5 million and NZ's Charities Commission NZ\$5.9 million (approximately AUD\$15 million).





I. Enabling the work of the sector

Enabling the sector to be effective in its work for public benefit should be at the heart of government regulation of and legal forms for charities and other nonprofit organisations.

In this section the issues raised include:

- i) improving governance and management; and
- ii) catering for emerging social enterprises

i) Improving governance and management

While regulation may address governance and management, this should not be its focus which should be to enable nonprofit organisations to do what they do in **the most effective way possible**. Other measures for the regulator to enhance nonprofit performance include

- measuring and continuously improving public trust and confidence in the sector
- determining an appropriate reporting formula and making key information about individual charities and nonprofit organisations readily available to the public
- undertaking formal investigations into nonprofit organisations and clearly reporting outcomes

ii) Catering for merging social enterprises

Australian regulation does not differentiate between social enterprises and charities, failing to address the differences in their operations. FIA recommends the consideration of a model of regulation that recognises the difference between charities and social enterprises similar to the UK model. Social enterprises are regulated in the UK as Community Interest Companies (CIC) by the Regulator of Community Interest Companies¹¹.

In the US, philanthropy has been encouraged in the State of Vermont through a number of legislative structures, including the low-profit limited liability company (L3C).

¹¹ Regulator of Community Interest Companies

CIC is a limited liability company designed for social enterprises, with a statutory asset lock provision which prevents assets and profits being distributed except as permitted by legislation.

Features of a Community Interest Company:

- *CICs must pass a community interest test to ensure they are run for the benefit of the community.*
- *CICs are not accorded tax exemptions from corporations tax or VAT. CICs are not eligible for Gift Aid status (DGR equivalent).*
- *CICs limited by shares can operate more commercially than charities (i.e. CICs limited by shares can pay dividends to individual shareholders, subject to a cap).*
- *A statutory asset lock: a provision designed to ensure the assets of a CIC are subject to meeting its obligations.*
- *CICs are required to produce an annual Community Interest Report to show the CIC continues to satisfy the Community Interest Test. This must include the benefits for the community over the year, remuneration of the directors, stakeholder involvement, dividends, compliance with the capping rules and if applicable the transfer of assets to another asset locked body.*

Accessed: 19 August 2008

Link: <http://www.cicregulator.gov.uk/aboutUs.shtml>





II. Closing the gap between statutory and non-statutory regulation

In many sectors – communications, advertising, eco-labeling, financial services (banking, insurance), pharmaceuticals promotion, direct marketing, legal services, organic production, utilities - there is increasing reliance on non-statutory regulation, i.e. voluntary compliance with industry codes, continuing professional development, ensuring behavioural compliance (managing reputational risks), alongside government regulation, ensuring financial compliance (managing financial risks).

FIA sees closing this gap between statutory and non-statutory regulation as critical to maintaining public trust and confidence which would be severely challenged if the extent of exemptions to current state regulation were widely known. It is mandatory for FIA members to comply with FIA's Principles and Standards of Fundraising Practice. Compliance and complaints are dealt with by an independent Ethics Committee¹².

i) Models of non-statutory regulation in fundraising

England and Wales: non-statutory regulation of fundraising by charities

The Charity Commission (England and Wales) is supported as a regulator by industry self-regulation of non-statutory codes of fundraising practice. The Institute of Fundraising UK developed codes of ethics and professional conduct for professional fundraising and the Fundraising Standards Board¹³ monitors and enforces compliance, an important component to regulation.

Australian non-statutory regulation of fundraising by INDGOs

The practice of Australian industry self-regulation occurs only with the international development nongovernment organisations (NGDOs) (in the aid and development sector) which voluntarily complies with a code of conduct managed by Australian Council for International Development (ACFID) (see [Appendix 10](#)) as a condition of AusAID accreditation and funding.

The Department of Foreign Affairs and Trade has noted the importance of this non-statutory code as a risk management tool for government in assuring accountability and transparency in use of government funds, in addition to providing the Australian public with assurance of accountability for their gifts, covering in this way both financial and reputational risks of fundraising.

¹² FIA Ethics Committee works independently from the Board of FIA and comprises FIA members and independent persons with expertise in ethics, philanthropy, legal skills and experience in the nonprofit sector. An independent Chairman is being recruited (August 2008). The Ethics Committee oversees the complaints process and enforces compliance. All complaints are treated in confidence.

Current membership of FIA's Ethics Committee

Chair: Nigel Harris CFRE FFIA FIA director, chair to February 2009, thereafter independent chair to be appointed
Susanne Williamson (Chapter 1) to March 2009
Vera Visevic (Makinson & d'Apice Lawyers) to March 2009
Rosemary Sainty (St James Ethics Centre) to March 2010
Naomi Steer (Australia for UNHCR) to March 2011
Laurence Joseph (Chapter 1) to March 2010
Roewen Wishart (Chapter 2) to March 2011

¹³ See [Appendix 9](#): Fundraising Standards Board UK overview





Australian non-statutory regulatory of fundraising in the nonprofit sector

FIA has taken a lead role in developing non-statutory regulation of fundraising in Australia. FIA's Principles and Standards of Fundraising Practice (see [Appendix 8](#)) have been developed over a period of three years (2005 – 2008) with intense government and public consultation in order to:

- support the rights of donors who make gifts
- establish a code of conduct for fundraisers
- guide fundraisers in ethical and professional practice

FIA's codes are mandatory for FIA members.¹⁴ Compliance is monitored by the Ethics Committee in accordance with a formal and open complaints process.

Since 2005, the Government of Victoria has endorsed FIA's work in developing and managing a voluntary code of practice¹⁵ which contains:

- mechanisms to effectively monitor compliance
- sanctions for non compliance
- an appropriate complaints mechanism

It is the recommendation of the Government of Victoria that such a code be applied nationally.

¹⁴ As at 19 August 2008, staff of more than 80 organisations and almost 1,800 individual professional fundraisers have made a voluntary commitment to comply with FIA Principles and Standards of Fundraising Practice.

¹⁵ *Government Response to Review of Fundraising Appeals Act*, August 2008, pp10 – 11. The report further notes that the issue of voluntary codes will be discussed at cross-jurisdictional level through a Working Party of the Standing Committee of Officials of Consumer Affairs to ensure that any voluntary code of practice that is ultimately developed can be applied nationally. The Victorian Government's interest in FIA's codes was first noted in their report from Consumer Affairs Victoria, 'Review of the Fundraising Appeals Act 1998: Proposals for reform' December 2005.

Link:

[http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Fundraising/\\$file/fundraising_government_response_august_2008.pdf](http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Fundraising/$file/fundraising_government_response_august_2008.pdf)

Accessed 26 August 2008





c) **Other measures that can be taken by government and the not-for-profit sector to assist the sector to improve governance, standards, accountability and transparency in its use of public and government funds.**

FIA proposes the following measure should be considered to address the three issues – governance, standards and accountability and transparency.

Improving governance

- **cutting red tape** (proceed with the COAG agenda)¹⁶
- allowing for sector **diversity** through proportional to risk regulation¹⁷
- assisting in development of a **national toolkit**¹⁸

Improving standards

- supporting the role of **non-statutory regulation**¹⁹
- developing a **compact** with the sector²⁰

Improving accountability and transparency in use of public and government funds

- focusing on **effectiveness** (outputs, public benefit) not efficiency (financial ratios)
- adopting a **standardised disclosure regime**²¹
- encouraging nonprofit **benchmarking** through appropriate reporting
- assisting nonprofit organisations to make their **annual reports** accessible and to include narrative as well as financial reports
- (thereby) providing **meaningful information** for the public and assisting them in choosing a cause or charity to support²²
- promoting the **public interest** in charity and nonprofit activities²³

¹⁶ Fundraising Institute Australia submission to the Treasurer of Victoria (2006) *Reducing Regulatory Burden, The Victorian Government's Plan to Cut Red Tape*. (See [Appendix 4](#))

¹⁷ Base exemptions on capacity (SME, GST threshold) rather than function. The compliance burden is currently unevenly carried by non-exempt organisations.

¹⁸ FIA has developed a Fundraising Toolkit for fundraisers and those overseeing fundraisers whilst serving on boards and committees in Queensland. This initiative could –and should- be expanded nationally, providing support, especially to small nonprofits and those regional and remote nonprofit organisations which are unduly hampered by virtue of their regional or remote locations. The Toolkit is the first resource manual produced solely for individual fundraisers and members of boards and committees of nonprofit organisations in Queensland. It provides advice on the areas such as corporate governance, financial management, fundraising strategies, marketing and benchmarking. **It has been downloaded over 41,392 times since its launch in October 2007.**

Link: <http://www.fia.org.au/Content/NavigationMenu/EventFlyers/FundraisingToolkitQueensland.pdf>

¹⁹ FIA's Principles and Standards of Fundraising Practice. See [Appendix 8](#)

²⁰ Compact UK. <http://www.thecomcompact.org.uk/> FIA will supply a separate submission on the proposed compact.

"Established in 1998, the Compact is an agreement between Government and the voluntary and community sector in England. It recognises shared values, principles and commitments and sets out guidelines for how both parties should work together."

²¹ Such as SORP UK, adapting IFRS or creating a national accounting standard for nonprofit organisations

²² FIA's *How to Choose a Charity* (See [Appendix 11](#))

²³ FIA has put to various governments the concept of a national Charities Day/Week, based on the successful program run in partnership with the NSW government over the past 20 years. Similar programs occur in other jurisdictions such as National Philanthropy Day (USA)





RECOMMENDATIONS FROM THE REPORT OF THE INQUIRY INTO THE DEFINITION OF CHARITIES AND RELATED ORGANISATIONS – JUNE 2001

The Senate Inquiry has sought further comment on the recommendations from the inquiry into the definition of charities and related organisations (2001).

FIA notes in particular that the following recommendations should be addressed by a **Commission of Inquiry** as it considers model legislation, the structure of a regulator and other issues raised by the Senate Inquiry.

Recommendations 1 and 2:

Let's decide the name of the sector!

Currently nonprofit and not-for-profit, along with a number of other terms – NGO, INDGO, NPO, NFP, for social purpose, third sector organisations, voluntary organisations (VO)- are widely used.

The Federal Government has introduced voluntary sector and more recently third sector.

By promoting responsibility for this sector to ministerial level, it could be expected that there would be a more immediate move towards a common nomenclature.

Recommendations 6, 11, 12, 13, 15, 16, 18 20, 21, 23, 24

These recommendations address the different characteristics of the sector from which taxation benefits are determined. Recognition of public benefit would provide a clearer framework for the sector that the current cumbersome system which the ATO defines but does not regulate.

Recommendation 25

This recommendation addresses the key question of one national regulator which FIA proposes should be developed in detail by a Commission of Inquiry.



FIA's submission to the Senate Inquiry into disclosure regimes for charities and nonprofit organisations appendices

- Appendix 1:** FIA's Principles and Standards of Fundraising Practice Project Overview
- Appendix 2:** FIA's forums on the Senate Inquiry – Attendee List
- Appendix 3:** FIA's Fundraising Professional Development Pathway
- Appendix 4:** FIA's submission to the Treasurer of Victoria. *Reducing the Regulatory Burden: The Victorian Government's plan to cut red tape* - September 2006
- Appendix 5:** FIA's submission to Consumer Affairs Victoria. *Review of the Fundraising Appeals Act 1998* – September 2004
- Appendix 6:** FIA's *Research on Key Issues in Fundraising* – September 2004
- Appendix 7:** FIA's *Senate Inquiry member and stakeholder consultation summary* – August 2008
- Appendix 8:** FIA's Principles and Standards of Fundraising Practice

Principles of Fundraising Practice:

- *Code of Ethics and Professional Conduct*
- *Fundraiser's Promise to Donors*
- *Code of Acceptance and Refusal of Donations*
- *FIA Complaints Process*

Standards of Fundraising Practice:

- *Standard of Face to Face Fundraising*
 - *Standard of Charitable Telemarketing*
 - *Standard of Bequest Fundraising*
 - *Standard of Workplace Giving*
 - *Standard of Events*
 - *Standard of Electronic Fundraising*
 - *Draft Standard of Charitable Gaming*
 - *Draft Standard of Grants Fundraising*
- Other Standards to be developed by the end of 2008 (direct mail, school fundraising and diaspora fundraising).*

- Appendix 9:** Fundraising Standards Board UK overview
- Appendix 10:** Australian Council for International Development *Code of Conduct Guidance Document*
- Appendix 11:** FIA's *How to Choose a Charity*