

FUNDRAISING INSTITUTE AUSTRALIA
SUBMISSION IN RESPONSE TO
NSW OFFICE OF LIQUOR GAMING AND RACING
REVIEW OF CHARITABLE FUNDRAISING REGULATIONS
SUBMISSION COVER SHEET

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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.

FIA is the only professional association to exclusively serve the needs and interests of Australia's fundraising professionals. FIA continues to take a lead role in the direction and development of fundraising in Australia and has achieved significant outcomes for the sector and for fundraisers individually.

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 critical to how the fundraising profession is viewed by donors, government, the community and fundraisers. They have been adopted in Korea, Poland and New Zealand.

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

- Promotes and enhances education, training and professional development of fundraisers
- Provides a resource of fundraising information.
- Advocates for fundraising practice to Government, industry and the community.
- Supports and promotes certification of fundraisers
- Develops standards and codes of practice.
- Promotes and enhances fundraising as a profession.
- Promotes and encourages research into fundraising and philanthropic giving.

EXECUTIVE SUMMARY

FIA expresses concern at the very short period the RIS was made available to the not for profit sector for comment. As NSW has the greatest number of resident charities, this legislation is so important to NSW charities that a longer period to consult with members and stakeholders would not only have been appreciated, but generated more responses. We understand that NSW OLGR did not explore the option of deferring the submissions for a longer period to allow for wider consultation with interested stakeholders. The Commonwealth government in particular has an intense interest in the not for profit sector,

as shown by its creation of the Australian Charities and Not for Profit Commission, and introduction of the Charities Act 2013. The not for profit sector is under the government spotlight as never before. Given such developments, FIA is of the view that NSW OLGR would gain more meaningful responses if it had deferred the response time for the RIS. At the very least, NSW OLGR should have advised the not for profit sector when the decision to review the legislation was first postponed in 2014.

FIA has had the opportunity to review the submissions made by our colleagues at the newly formed PFRA and expresses our support for them in relation to face to face fundraisers. As PFRA has dealt comprehensively with the detail of the regulations, FIA's submissions will cover broader issues of policy which directly impinge on the legislation, in particular the compliance and governance aspects.

FIA, as the peak body for fundraisers, has formulated the Principles and Standards of Fundraising Practice as a guide for its members, and these have been well accepted at all levels of government, within the profession, and internationally. The FIA Standard of Face to Face Fundraising was the first such professional standard devised in Australia. The Standards cover both ethical considerations of fundraising practice and guidelines as to how to conduct particular fundraising practices. FIA considers that it is crucial for fundraisers to not only know how to use a particular fundraising technique, but also to understand the ethical basis underlying the technique. FIA is the only peak organisation in Australia which has developed such an extensive body of Standards covering all aspects of fundraising practice. They were developed with the assistance of FIA senior members with current expertise in the area of each Standard.

Rather than comment on the details of the regulation, FIA takes this opportunity to comment on certain areas of fundraising practice where government support can facilitate best practice while making compliance easier for charities, in particular small to medium charities.

These are:

- **Fundraising ratios.** FIA is of the view that prescribed fundraising ratios, such as the 50% requirement in NSW, are not relevant to modern fundraising and accounting practices, as they do not adequately reflect the true value of return on investment to charities.
- **Self regulation.** FIA supports self regulation as a valuable adjunct to government regulation and is a leader in self regulation with its development of its Principles and Standards of Fundraising Practice.

- **Government reporting.** FIA supports streamlining and harmonisation of State and Commonwealth legislation, in particular adoption by NSW of ACNC reporting requirements to ease the cost of compliance for small to medium charities.
- **Promotional materials** FIA supports the status quo for the requirement on promotional materials of identification of charities and considers extending these requirements to other promotional materials eg banners is unnecessary and costly.

FIA discusses each of these in more detail below.

FUNDRAISING RATIOS

The ACNC has stated that it believes that administration costs alone are an unreliable indicator of the extent to which donations make a difference. Some charities which make a real difference may have relatively high administration costs, whereas others are less effective and have low administration costs. Misconceptions about administration costs can lead to unfair assessments of a charity's effectiveness. It is important that charities are measured on their impact and effectiveness, not simply on their administration costs. (ACNC *Commissioner's Column* 24 June 2015).

ACNC has prepared with QUT a factsheet on the costs of administration of charities, to which we draw your attention. http://www.acnc.gov.au/ACNC/FTS/Fact_administration.aspx

Some of the points made in this factsheet are:

- In Australia, there are no standards or clear definitions to guide which of the charity's costs should be classified as 'service related' and which should be classified as 'administration'. In the absence of any such standards or guidelines, information about administrative costs is not comparable and often misleading.
- In the absence of any such standards or guidelines, charities commonly implement 'cost centre accounting' procedures to provide internal management information, but these arrangements vary greatly between charities. For example, a charity may employ a receptionist who answers calls from donors and will therefore need to decide how to classify such wage costs. Information about administrative costs generated by such procedures may not be comparable
- It is better to pay attention to other factors of nonprofit performance: transparency, governance, leadership, and impact as well as costs.

FIA concurs with the ACNC view, which is supported by FIA's own research. In 2004, FIA commissioned research on the cost of fundraising. This research has not been

superseded, as no further research on the cost of fundraising has been conducted by FIA or any other bodies. Details of FIA's research can be found at this link:

<http://www.fia.org.au//AM/Template.cfm?Section=Home&WebsiteKey=474ae2cd-28ab-4912-a438-7db70a862d6a>

In 2010, the Coalition of Australian Governments agreed to adopt the Charter of Accounts for Not for Profits developed by Queensland University of Technology as the government standard, a measure supported by FIA and CPA. While this measure means that there is now a recognised standard for accounting for not for profits, it does not deal with harmonising State government requirements concerning the cost of fundraising. NSW legislation limits the cost of fundraising for a charitable event to 50% of the gross proceeds of the event. In contrast, Victorian legislation refers only to "reasonable" costs without specifying any measurable amount. Most other states do not address the cost of fundraising in legislation.

FIA's long held view is that it accepts that the Cost of Fundraising Ratio is one of several indicators that not-for-profit organisations may wish to use for reasons relating to managing their internal systems and costs or for sector specific benchmarking exercises that may be conducted occasionally by fundraising practitioners FIA remains opposed to any specific percentage or cost of fundraising ratio being included in legislation that applies across all organisations, as it is inequitable and even misleading to do so.

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 and Marshall 2004). It has now been accepted under the *Australian Charities and Not for Profit Commission Act* as satisfactory reporting to the ACNC.

FIA is of the view that the ACNC reporting model should be satisfactory for NSW reporting requirements.

SELF REGULATION

To facilitate risk management and best practice by charities, FIA has long advocated self regulation, in particular:

FIA SUBMISSIONS TO NSW OFFICE OF LIQUOR, GAMING AND RACING
REVIEW OF CHARITABLE FUNDRAISING REGULATIONS

- harmonisation of fundraising legislation,
- adoption of standardised accounting practices, and
- development and adoption of professional self regulation.

There is an urgent need to reduce the regulatory burden for fundraisers, who suffer from the present lack of harmonisation, making national campaigns more expensive and less efficient, as there are different reporting and legislative requirements in every State and Territory. In NSW, regulation is not proportional to risk. Charities are over regulated compared to the risk of non compliance.

There have been few examples of charitable fraud in NSW, and in the rare cases where they occur, they are the result of non compliance and poor Board supervision; for example, where a Board does not enforce the requirement that bank accounts be operated at all times by two signatories, which dramatically reduces the risk of fraud or embezzlement. Furthermore, the risk is being reduced by the ACNC, which has deregistered 3,000 non compliant charities, and is about to deregister a further 2,000 non compliant charities.

FIA submits that an educational focus is more appropriate than an enforcement focus, as the most recent research shows that smaller NFPs pay less attention to formal risk management policy and practices because of budgetary constraints, rather than ignorance of compliance issues.

The Standard of Risk Management AU NZ ISO 31000:2009 provides authoritative guidance on risk management practice for organisations, In 2010, FIA and National Roundtable of Nonprofit Organisations sponsored the PPB Not for Profit Risk Survey 2010 (Standards Australia, HB 266:2010 *Guide for managing risk in not-for-profit organizations*) PPB surveyed the risk management practices of not for profit organisations and compared them to the key components of the recently introduced standard, as there were several significant differences between the 2009 standard and its predecessor. The survey is the most recent survey of risk management practice available. 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.

FIA is the only peak organisation in Australia which has developed an extensive body of Standards covering all aspects of fundraising practice. The ACFID Code of Conduct applies only to charities operating overseas. FIA's Principles and Standards of Fundraising Practice apply to all FIA members within Australia.

Under FIA's Complaint Process, members of the public may complain to FIA about the conduct of FIA members, including any financial complaints. FIA is not aware of any complaints from the public or its members about the financial management of charities.

Industry regulation establishes reporting standards and monitors accountability and transparency of fundraising practices, enhancing ethical practice and professional standards alongside a legislative framework. FIA has taken the lead on a national level by developing the FIA Principles and Standards of Fundraising Practice which cover both ethical and practical requirements in all areas of modern fundraising practice. FIA members must comply with the FIA Principles and Standards of Fundraising Practice as a condition of their membership of FIA. Compliance is monitored and when required, enforced, by FIA's Ethics Committee, which is drawn from senior members of FIA, and reports to FIA's Board.

FIA's Principles and Standards of Fundraising Practice are regularly reviewed by senior members of FIA to ensure their currency and relevance to the fundraising profession. They have been designed with both ethical practice and practicality in mind, to provide both professional and ethical guidance to fundraisers. The Principles and Standards are highly regarded at all levels of government and internationally, having been adopted in Korea, Poland and New Zealand (in each case, adapted for those countries' own needs). They are underpinned by FIA's Complaints Process, which allows both FIA members and members of the public to lodge any complaints about FIA members. These are investigated by FIA and if necessary, referred to FIA's Ethics Committee, comprised of respected members of the fundraising profession. Very few complaints are received and of those received, no charity has been found to have breached the Principles and Standards of Fundraising Practice. This indicates a high level of compliance and acceptance of the Principles and Standards among FIA members.

While FIA understands that self regulation cannot supersede government legislation, FIA is of the view that the profession can work more closely with government, both through consultation and by government showing support for FIA's drive for professionalism among fundraisers. One way this could be done is by drawing the public's attention to FIA's Principles and Standards of Fundraising Practice on its website, not necessarily as a formal endorsement, but as an information service.

FIA welcomes the opportunity to discuss self regulation, in particular ways to enhance public recognition of the Principles and Standards of Fundraising Practice, in more detail if invited to do so.

GOVERNMENT REPORTING

FIA believes that an important first step in meeting the challenge of drafting harmonising legislation is engaging with State and Commonwealth governments and other relevant stakeholders. Public sector support is a critical factor in the growth of the not-for-profit sector, particularly where governments provide funds for private charities to administer and distribute funding (Salamon and Anheir, 1999)

Realistically, the compliance and administrative burden should be reduced for small to medium charities. The majority of charities and not-for-profit organisations operating in NSW are small and their fundraising posing little risk to public confidence in accountability for their gifts. The ACNC has recognised this and provided for less complex reporting requirements for small to medium charities. FIA submits that it is appropriate for NSW to follow the lead of the ACNC on reporting requirements and accept that reports submitted to ACNC will also satisfy NSW reporting requirements.

FIA submits that the NSW government should facilitate all forms of fundraising practice by:

- streamlining regulation,
- facilitating compliance and reducing compliance costs,
- unifying the reporting and disclosure obligations for not for profit organisations across jurisdictions, and
- encouraging compliance with fundraising industry standards of fundraising practice.

It is FIA's view that the best way to achieve this is to harmonise NSW compliance requirements, in particular for incorporated associations with ACNC reporting requirements, to avoid the need for an additional layer of reporting. This would be of particular assistance to small to medium charities, for whom the cost of compliance is often a burden.

Larger charities are usually structured as companies limited by guarantee to facilitate national operation. These companies are already regulated by ASIC and ATO as well as ACNC. FIA's view is that the existing reporting requirements for such companies are sufficient and reports given by such companies to ACNC, ASIC and ATO should satisfy NSW reporting requirements.

PROMOTIONAL MATERIALS

PFRA has pointed out in its submission that the new regulations extend identification requirements to banners and similar promotional material. FIA supports PFRA's view that this is impractical, unnecessary and adds to the burden of cost compliance for charities and

FIA SUBMISSIONS TO NSW OFFICE OF LIQUOR, GAMING AND RACING
REVIEW OF CHARITABLE FUNDRAISING REGULATIONS

traders. The existing regulations concerning identification is sufficient and should be retained.

Bibliography

ACNC: Commissioner's Column 24 June 2015

. http://www.acnc.gov.au/ACNC/Comms/Com_Col/CC_20150624.aspx

ACNC and QUT factsheet on costs of fundraising

http://www.acnc.gov.au/ACNC/FTS/Fact_administration.aspx

FIA Research Paper on Cost of Fundraising

<http://www.fia.org.au//AM/Template.cfm?Section=Home&WebsiteKey=474ae2cd-28ab-4912-a438-7db70a862d6a>

PPB Not for Profit Risk Survey 2010

Salamon and Anheir, 1999, *The emerging sector revisited*, Baltimore, Centre for Civil Society Studies, Institute for Policy Studies, Johns Hopkins University)

Standards Australia, HB 266:2010 Guide for managing risk in not-for-profit organizations

Woodward and Marshall, *A better framework – reforming not-for-profit regulation*, University of Melbourne, Centre for Corporate Law and Securities Regulation, 2004

FIA SUBMISSIONS TO NSW OFFICE OF LIQUOR, GAMING AND RACING
REVIEW OF CHARITABLE FUNDRAISING REGULATIONS