

**Joint FIA-PFRA Submission
NSW Draft Condition on Disaster Appeals
18 June 2022**

Introduction

Fundraising Institute Australia (FIA) and the Public Fundraising Regulatory Association (PFRA) welcome the opportunity to make a submission on the proposed Draft Condition on Disaster Appeals and, most importantly, its potential impact on the local communities served by charities.

FIA and the PFRA do not support the proposal put forward by the NSW Government, which we believe will have the opposite impact desired, and harm the communities it rightly wishes to help.

Executive Summary

The most significant issues are:

1. Charities Already Support Local Communities Quickly

The disbursement of appeal funds by Australian charities is already timely, while also meeting their legal and governance requirements.

2. Charities Protect Local Communities from Fraudsters

Charities have established proper and thorough procedures for the disbursement of funds, to avoid fraud and ensure money goes to the right people.

3. Charities Need Flexibility to Best Support Local Communities

Charities raising money for natural disasters often do not have specific financial targets as the needs continue and change, and there are not typically formal close dates due to the length of a natural disaster being unknown. To apply a single target across different appeals would be illogical and unjustified.

4. Donors are Already Protected by the Australian Consumer Law (ACL)

Charities are already subject to the Australian Consumer Law, which prohibits deceptive or misleading conduct. They also adhere to a stringent self-regulatory system.

1. Charities Already Support Local Communities Quickly

The nature of fundraising for natural disasters is varied, which follows given all disasters are different. The impact of a bushfire will be different to that of a flood or drought. And most importantly, the communities will be different and therefore have different needs, which will change as times goes by. Recovery from natural disasters can take anywhere from 2 years to 11 years. For example, full recovery from the 2009 Victorian bushfires in has taken 11 years; the Australian Red Cross and St Vincent DePaul Society are still working to apply funds to those in affected communities who still need them.

In 2020, the Australian Charities and Not-for-Profits Commission (ACNC) did their own investigation of charities that fundraised for the 2020 east coast bushfire emergency. It stated: *“ACNC reviewed the actual and planned expenditure of the charities and found that they have allocated the donations in-line with their legal obligations, and that all funded programs relate to the bushfire response.”*

While immediate relief activities such as direct cash payments are essential, the government’s proposal would harm local communities by forcing charities to over commit resources at the start of a disaster before its full impact is known, and leave charities unable to help people whose needs emerge later in the recovery process. This position is supported by the findings of the Royal Commission into Natural Disaster Arrangements, which stated:

We heard from major charities that the distribution of donated funds must be balanced between the provision of immediate assistance, while ensuring that sufficient funding is available to support people across their longer-term recovery. They noted that it was common for individuals to only seek support weeks or months after a disaster, rather than immediately after the disaster. Distributing all funding as quickly as possible would mean that individuals could miss out on needed recovery assistance or that there is insufficient funding to meet the needs of a broader community as it rebuilds.

Case Study 1 from the ACNC Report

The Australian Red Cross has allocated all donations it received for the bushfires to bushfire-related activities, including the administration costs required to deliver the activities. It disbursed the great majority of its funds by December 2020 and it will continue to spend funds on a range of programs, from response to recovery, over three years.

Between July 2019 and July 2020, Red Cross received \$232 million in donations to the Disaster Relief Recovery Fund. As at 31 July 2020, the Red Cross had spent or disbursed \$167 million (72%).

2. Charities Protect Local Communities from Fraudsters

Charities who initiate appeals during a disaster have experts who on the ground of a disaster zone and who consult with the community and assess what resources and services are immediate. I.e. shelter, food, clothes and money for bills. They do this to ensure that the funds are being applied to those that need it. Again, the ACNC report is worth noting: *“Many charities have limitations on their use of funds and have legally binding constitutions or trust deeds that determine how they can use funds.”*

To protect donors’ money, charities have to have in place a secure and robust system to verify applicants. Our concern is that the imposition of arbitrary targets will lead to this system being weakened, thereby making it more susceptible to fraudsters. In particular, this can be of especial concern to small charities that receive sudden and significant increases in donations, such as the following charities reviewed by the ACNC:

Case Study 2 from the ACNC Report

The rapid growth in donations for NSW RFS Trust & WIRES required them to implement structural changes to ensure that they had the expertise to manage the funds appropriately. The NSW RFS Trust has implemented a plan to spend all donations it received for the bushfires on bushfire-related activities. NSW RFS Trust prior to 2019-2020 averaged donations of \$1.5m per year. In 2019-2020 it received \$116 million.

Case Study 3 from the ACNC Report

WIRES is allocating its funds towards bushfire-related activities, with some programs aiding animals affected by future disasters. Its initial grants supported WIRES branches and other organisations to aid injured animals. In 2018-2019 received donations of \$3.4m. In 2019-2020 received \$91m.

We would note that this proposal does nothing to address the real problem of criminals looking to defraud charities and local communities. The issue of fake charities is a significant issue, as recognised by the most recent ACC report on scams activity (*Targeting Scams*, June 2021): *“Scammers impersonate genuine charities and ask for donations. These scams are particularly prolific after public tragedies such as natural disasters and other events such as, for example, the 2020 bushfires and the COVID-19 pandemic.”*

A quick analysis of data from the last bushfire season should alert NSW Government to the real priority here: In the first four months of the bushfire season (Aug – Nov 2019), 112 reports of fake charities were reported to the ACCC. In the last four months of the season (Dec 2019 – March 2020) this jumped to 265, an increase of 136%. There is a clear correlation between disaster appeals and an increase in fraudulent activity. FIA and PFRA would therefore encourage NSW Government to prioritise the identification and prosecution of criminals, instead of further burdening genuine charities with additional and unnecessary administration tasks and costs. In 2020 for example, NSW had the highest number of reports of fake charities anywhere in the country – 440 in a single year.

3. Charities Need Flexibility to Best Support Local Communities

Charities raising funds for natural disasters don't impose financial targets for disaster appeals, and there are not necessarily formal close dates due to the length and impact of a natural disaster being unknown. The spending of appeal funds may be a combination of enhanced or accelerated spending via existing programmes, or establishment of new programmes that meet the needs of local communities. It is impossible to determine hypothetically in advance what that might be as each disaster is different and each community is different.

In their fundraising appeals charities are clear in their communications regarding the cause for which they are raising funds, but there is always a range of spending phases – short, medium and long-term. The immediate or short term phase of cash grants differs substantially from the needs of longer term infrastructure (both physical and human) which require significant planning and longer delivery phases, often many years. The ACNC report refers to this matter: *“Donors need to understand that charities may have legal and practical limitations, and they should not make assumptions about how a charity will spend funds”*. It should be noted that charities have decades-long (and in some cases, century-long) history and successful track record of raising funds and applying those funds in the most professional manner possible.

Each year charities produce an annual report and financial report detailing what expenditure has occurred and each charity produces regular updates for donors on their activities. There is simply no need for a new government mandated information request that will only add to the administrative burden of charities and provide no extra benefit. This would increase, rather than decrease red tape which is the opposite of the stated intention of the NSW Government's red tape reduction plan.

4. Donors are Already Protected by the Australian Consumer Law (ACL)

The ACL already provides extensive protection to donors via the prohibition on misleading or deceptive conduct. Any charity that was identified via complaints or investigation as failing to meet this standard can be issued with an Infringement Notice along with a fine of \$11,100 for each failure. As the ACL is implemented under the jurisdiction of each state, the NSW Office of Fair Trading has the power to investigate and fine charities it deems to be misleading donors. We are not aware of any such investigations or fines.

Charities also already adhere to a stringent self-regulatory system that requires fundraisers to provide, on request, information about the charitable cause and how donated funds are used. Charities want donors to make informed decisions about their donations at times such as natural disasters. FIA has conducted mystery shopping of its members who activated a fundraising appeal for three national disasters: Western Australia Bushfires (February 2021); East Coast floods (March 2021); and Cyclone Seroja (April 2021).

Mystery shopping resulted in 100% compliance rate for charities who had started an appeal. All charities were consistent with their communications and appeal objectives.

For street, door-to-door and shopping centre fundraising (public fundraising), the PFRA also conducts a significant amount of quality assurance checks on fundraisers and also has the power to impose fines on its members for any breaches of its Standard. In 2020, PFRA conducted 522 such checks (10 a week). In addition, PFRA also operates the Fundraiser Register for public fundraisers, which allows us to 'deregister' fundraiser for serious misconduct – thereby prohibiting from working for any other PFRA members in future. Combined with the FIA's activity, it is fair to say that charity fundraising has one of the most extensive and rigorous self-regulatory systems of any sector in Australia.

Conclusion

Imposing a single spending time limit across all types of charities and all types of natural disaster, is itself a recipe for disaster. It will significantly skew spending by charities, lead to local communities not receiving the support they actually need and significantly increases the risk of fraud and criminal activity. In recent years, there have been no occasions where funds from an appeal were not distributed in a timely manner. The Royal Commission into National Natural Disaster Arrangements considered this matter and concluded:

"During and after the 2019-2020 bushfires, there was intense public scrutiny of charities and non-government organisations and adverse reflections on the timeliness of the distribution of donated funds. Much of the criticism seems to have been based on an expectation that funds would be provided to affected communities in the immediate aftermath. However, recovery is a protracted process and recovery needs can continue for years after an event. As such, individuals may react differently and require support at different points in time before they are able to get 'back on their feet'."

So while the Royal Commission did not believe the issue of timeliness was a genuine issue, it did make a specific recommendation that: *Australian, state and territory governments should create a single national scheme for the regulation of charitable fundraising.* A national system would reduce red tape and save charities an estimated \$14.5m dollars every year, which could be used to assist communities doing it tough during the COVID-19 Pandemic. FIA and PFRA believes that the proposed condition be abandoned and the NSW Government consider more urgently their role in implementing a nationwide harmonisation of fundraising laws, which would potentially save charities millions of dollars and reduce red tape.

Summary Answers to Consultation Questions

1. Do fundraising appeals generally or usually have formal closing dates? No, not typically.
2. Is there a standard timeframe for the length of a fundraising appeal? Or is this determined on an individual appeal basis? There is no standard timeframe, and each appeal will have multiple phases (for example an opening telephone, television, radio or online phase, followed up by public fundraising and then rounded off with community fundraising).
3. Do fundraising appeals have financial targets that impact on their length? No.
4. Would a 3, 6, 12, 18 or 24-month timeframe to provide reports from the closing date of the appeal be most suitable? And why? No. No timeframe is suitable.
5. Is there a formal process for determining specifically how the funds raised in an appeal will be spent? Is this always possible at the beginning of an appeal? The spending of appeal funds may be a combination of enhanced or accelerated spending via existing programmes, or establishment of new programmes that meet the needs of local communities. It is impossible to determine hypothetically in advance what that might be as each disaster is different and each community is different.
6. Do you already have the means for informing donors or publicising such information? How is this achieved? Yes, every charity registered with the ACNC produces an Annual Information Statement. Every charity produces an annual report and financial report detailing what expenditure has occurred. And each charity produces regular updates for donors on their activities. There is no need for a government mandated information request that will add to charities' overheads and provide no extra benefit.
7. Is there a need to impose timeframes on the disbursement of funds following a disaster appeal? No.
8. Do you know of any occasions where funds from an appeal were not distributed in a timely manner? Is this a genuine issue for the charitable fundraising sector? No. This isn't an issue. The genuine issue is multiple regimes across states and territories for charities that add costs.
9. Of the two definitions provided for 'disaster appeal' and 'disaster', which may be more appropriate and effective? The ATO version.