FUNDRAISING INSTITUTE AUSTRALIA

AUSTRALIAN CONSUMER LAW REVIEW

SUBMISSION COVER SHEET

Organisation:	**Fundraising Institute Australia (FIA)**		
Street address:	**Level 2, 60 Archer Street**		
Suburb/City:	**CHATSWOOD**	**State & Code:**	**NSW 2067**
Postal address:	**PO Box 642**		
Suburb/City:	**CHATSWOOD**	**State & Postcode:**	**NSW 2057**
Principal contact:	**Mr Rob Edwards**		
Position:	**Chief Executive Officer**		
Phone:	**02 9411 6644**		
Fax:	**02 9411 6655**		
Email address:	**redwards@fia.org.au**		

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ABOUT FUNDRAISING INSTITUTE AUSTRALIA (FIA)

Established in 1968, FIA's purpose is to advance professional fundraising through promotion of standards, professional development and measurable credentials so that members achieve best practice.
The FIA's Principles & Standards of Fundraising Practice are the professional fundraiser's guide to ethical, accountable and transparent fundraising. The Principles & Standards are vital to how the fundraising profession is viewed by donors, government, the community and fundraisers and act as tool for sector self-regulation
In order to achieve its mission, through its 1700 members comprising both individuals and organisations, FIA conducts the following activities;

- Promotes and enhances education, training and professional development of fundraisers.
- Advocates on fundraising practice and regulation to Government, industry and the community.
- Develop standards and codes of practice.
- Promotes and encourages research into fundraising and philanthropic giving.

THIS SUBMISSION

The Fundraising Institute of Australia (FIA) is making this submission in response to the following two questions raised in the Issues Paper:

2.1.2 – The meaning of 'consumer'

Whether ACL should apply to charities and not-for-profit organisations

2.3.5 - Unsolicited consumer agreements

Whether the provisions should apply to commercial companies collecting donations on behalf of charities (currently donations to charity where no sales are involved are not unsolicited consumer agreements)

The two questions above provide a timely opportunity to settle the unresolved issue of the application or possible application of the ACL to fundraising and charitable donations. Questions of both the application of the ACL to the fundraising activities of charities and the application of the unsolicited selling provisions to charitable entities were specifically raised in the 2012 ‘Charitable Fundraising Regulation Reform’ discussion paper.

Although part of the Council of Australian Governments NFP Reform process, neither the discussion paper nor the issues it raised to which the sector responded in many submissions have ever been addressed by government.

There have, however, been two subsequent developments which relate directly to the issues raised and have had a considerable influence on FIA’s attitude to expansion of the ACL.

First, the establishment of the Australian Charities and NFP Commission (ACNC) in 2012 has provided a national focus for the sector. Prior to the advent of the ACNC some in the sector believed the Australian Competition and Consumer Commission (ACCC) could fulfill that role under an expanded ACL.

Second, the ACCC has clarified the uncertainty around the application of the unsolicited consumer agreements provisions of the ACL by making the following determination which is published on its website:

“Donations to charity where no sales are involved are NOT unsolicited consumer agreements, even when received by a third party or contractor on the charity’s behalf”

FIA’s position is that a charitable donation is not a good or service supplied or acquired in the course of trade or commerce. There is therefore a clear distinction between a person acting as a donor as opposed to a person acting as a consumer.

In the period before the establishment of the ACNC there were a number of inquiries including by the Productivity Commission on governance and regulation of the NFP sector. The outcome was the establishment of the ACNC but responsibility for fundraising remained with the States and Territories.

Although the ACNC is not a fundraising regulator it can and is taking action in areas such as red tape reduction and research which impact on the trust and confidence in charities.

FIA believes that the debate about expanding the ACL to cover charities and fundraising has been overtaken by events. Application of the ACL to charities and NFP organisations is not necessary and would in fact be harmful to the sector as a whole and fundraising in particular;

1. There is now a well-established and respected national regulator for charities and in relation to fundraising consumers continue to be protected by State and Territory law.

2. For fundraisers the creation of another regulator would be both unnecessary and unwelcome. A February 2016 Report by Deloitte commissioned by the ACNC concluded: *Overwhelmingly, fundraising is the source of the greatest amount of regulatory burden for charitable organisations. Fundraising legislation differs significantly between jurisdictions which very quickly escalates the administrative costs a charity incurs.*

3. The cost to the taxpayer of resourcing the ACCC to regulate this multi-billion dollar sector would be considerable and hard to justify at a time of budgetary restraint.

In relation to the issue of applying the unsolicited consumer agreements to third parties or contractor acting on a charities behalf, this is also unnecessary because it has recently been addressed by the ACNC

In its **FAQs: Charities and fundraising** document published earlier this year, ACNC stated that outsourcing fundraising did not remove responsibility from charity board members because the ultimate responsibility lies with a charity's governing body:

Who is responsible for a charity's fundraising

Ultimately, a charity's board, committee or management or trustees (its 'governing body') has responsibility for fundraising activity, whether it is outsourced or not. The board has the overall responsibility for the charity's actions. Board members ***must*** *have a clear understanding of how money is raised, including any fundraising operations, and they must ensure there are appropriate and lawful processes in place to manage any money raised.*

FIA recommendations:

1. ACL should not apply to charities and NFP organisations

2. Unsolicited consumer agreements should not apply to commercial companies collecting donations on behalf of charities.