

Australian Consumer Law Review

Submission prepared by:

Public Fundraising Regulatory Association
Suite 19, Level 7, 320 Adelaide Street
Brisbane Qld 4001

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Contact

Mr. Paul Tavatgis
Chief Executive Officer, PFRA
T. +61 (0)499 006 767
E. paul.tavatgis@pfra.org.au



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Who is the PFRA?

The Public Fundraising Regulatory Association (PFRA) is the self-regulatory body for face to face fundraising in Australia. Face to face fundraising is one of a number of methods used by charities across Australia to generate funding. It provides significant funding that allows charities to provide vital services for local communities and to help solve some of the greatest global issues.

Established in February 2015, the role of the PFRA is to make sure that the right balance is maintained between the duty of charities to ask for donations and the right of the public to experience high standards of behaviour from our members' fundraisers. The PFRA is unique in the fundraising sector in that it is the only organisation that has been established specifically to regulate one type of fundraising and ensure compliance with a Standard (Appendix A).

The PFRA has a role in the self-regulation of face to face fundraising only, and does not have a role in the self-regulation of other forms of fundraising such as cash collections, lotteries, raffles, commercial sales of charitable products or telephone fundraising. In addition to setting standards for face to face fundraisers, the PFRA checks that fundraisers comply with its Standard through a quality assurance program, as well as enforcing the Standard through a penalty, sanctions and remediation regime. The PFRA self-regulates face to face fundraising in Australia and is *proactively* checking that fundraisers are complying with the standards they have agreed to abide by. This results in an effective system of self-regulation, which the PFRA regards as more effective *in practice* than any compliance assessment or enforcement initiatives undertaken by state and territory governments under existing fundraising laws.

The PFRA is a charity-led, membership-based association. Members include those charities that benefit from face to face fundraising and the professional fundraising suppliers that support charities in this work. A list of PFRA members is provided at Appendix B. The PFRA is governed by a Board of Directors nominated by PFRA members. The current members of

the PFRA Board include individuals from Bush Heritage Australia, Plan International Australia, The Fred Hollows Foundation, Cancer Council NSW, Taronga Zoo, Public Outreach Fundraising and WAYS Fundraising.

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1. Executive summary

The PFRA welcomes the opportunity to respond to the Interim Report of the Australian Consumer Law (ACL) Review (the Review) as published in October 2016. In its submission of May 2016 in response to the Review’s Issues Paper, the PFRA recommended preserving the ACL in its current form subject to minor proposed amendments intended to support the simplification of the consumer law regime.

Since this time, the PFRA has engaged with a number of stakeholders and wishes to reiterate that while a number of the ACL’s provisions currently apply to face to face fundraising, there is an important role for self-regulation of face to face fundraising at an operational level where the ACL’s coverage does not presently extend. This is most notable in respect of the current exemption of charitable donations under the Unsolicited Consumer Agreement (UCA) provisions of the ACL, noting the solicitation of a donation does not constitute an UCA because it is not “for the supply, in trade or commerce, of goods or services to a consumer” (s.69(1)(a)). The PFRA notes the #fixfundraising campaign proposal is not suggesting any change to these provisions, which the PFRA endorses.

The PFRA and its members are grateful to the Australian Competition and Consumer Commission (ACCC) for upholding this distinction in its dealings with the sector and education of members of the public. This includes the ACCC’s online publications, which have been updated to reflect that ‘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’.¹

A key requirement in ensuring the ongoing sustainability of the face to face fundraising sector is recognising and preserving the unique role of the donor. This is

¹ Australian Competition and Consumer Commission, *Unsolicited Consumer Agreements* <https://www.accc.gov.au/consumers/sales-delivery/telemarketing-door-to-door-sales/unsolicited-consumer-agreements#unsolicited-consumer-agreements> (accessed 27 April 2016)

an important distinction that has not been reflected in the Review’s Interim Report. A donor is not a ‘consumer’; not of goods, nor services, irrespective of whether “in trade or commerce”. A donor freely gives of their own volition and their gift involves the transfer of money where they receive no material benefit or advantage in return. The distinction between a consumer and donor is an important one, particularly in the policy context of assessing the appropriateness of protections available to both classes of individual.

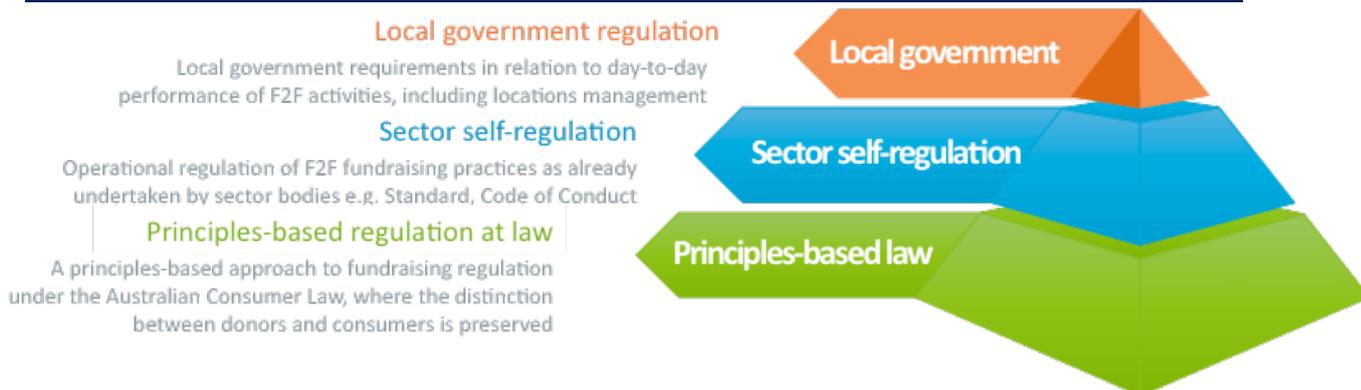
The PFRA is keen to emphasise that differential treatment of donors and consumers under the consumer guarantee and unsolicited consumer agreement provisions of the ACL continues to be appropriate. These provisions of the ACL should not be expanded in scope to also regulate fundraiser engagement with donors. The PFRA reiterates its endorsement of the #fixfundraising campaign which supports the preservation of the consumer/donor distinction and does not advocate for any change in the unsolicited consumer agreement provisions so as to include donors. In this submission, the PFRA argues that owing to the operational nuances and complexities of face to face fundraising, regulation of donor-charity relations (including where facilitated by a third party) is best addressed through effective sector self-regulation such as is currently undertaken by the PFRA, and underpinned by the broad, principles-based protections of the ACL.

“Regulation of donor-charity relations (including where facilitated by a third party) is best addressed through effective sector self-regulation such as is currently undertaken by the PFRA, and underpinned by the broad, principles-based protections of the ACL.”

This represents an important shift in thinking, as since the Review last called for submissions in May 2016, the NSW Fair Trading Charitable Fundraising Review was announced, which sought to determine whether the existing *Charitable Fundraising Act 1991 (NSW)* should be retained or repealed. In this environment, it has been suggested by a number of organisations that the ACL is an appropriate vehicle for fundraising reform, most notably because certain provisions of the ACL already apply to fundraising activity. We agree with this sentiment, subject to donor protections being maintained to their current standard, which the PFRA believes can be done in the context of expanded sector self-regulation and with an appropriate compliance regime in place. The PFRA does not wish for donors to be worse off as a result of any deregulation initiative, and considers self-regulation an important risk mitigation strategy.

In a hypothetical alternative regulatory environment where duplication of requirements is not a factor² the PFRA believes there is a role for industry self-regulation at an operational level. The PFRA provides a self-regulatory and compliance framework through its Standard that upholds principles-based regulation at law (under both the ACL and state and territory fundraising laws). The PFRA welcomes the opportunity to work with other stakeholders to explore options for the design and implementation of an expanded self-regulation and compliance regime, which should take into account the relevant existing protections conferred upon donors through state-based laws but not necessarily reflected in detail under the ACL. A diagram setting out the PFRA’s ‘ideal regulatory environment’ for face to face fundraising is provided below, and notably omits existing fundraising laws:

² This is an important assumption, as the PFRA maintains that overlaying an additional regulatory regime on top of existing state-based laws, sector self-regulation and local government requirements is unnecessary and likely to be harmful.



In principle, the PFRA supports the national harmonisation of fundraising laws under the ACL if the remit of the consumer law regime was expanded to include donors (where appropriate), and preserves their distinction in relation to consumers (namely, that the existing Unsolicited Consumer Agreement provisions are not made to apply to the solicitation of donations). The PFRA maintains it is in the public interest for charities to be able to solicit donations to support their charitable objectives and that face to face fundraising is respectful and affirming. We are pleased this view is shared by our colleagues at the Fundraising Institute of Australia and signatories to the #fixfundraising campaign.

On balance, the PFRA is of view that:

- There is a need for deregulation of fundraising laws in Australia, owing to inconsistent jurisdictional requirements and their resulting complexity³.
- Principles-based regulation under the ACL, supported by sector self-regulation as undertaken by the PFRA is the most effective way to ensure the sustainability of the face to face fundraising sector.
- Many of the ACL's provisions already apply to fundraising activities but that no change be made to the way that the Unsolicited Consumer Agreement provisions

³ Notable examples include inconsistent and time consuming registration, licensing and reporting requirements across each jurisdiction, when the majority of face to face fundraising campaign will involve two or more jurisdictions; inconsistent calling hours for face to face fundraisers across each jurisdiction; differing requirements in relation to identification badges and fundraising collateral; competing contractual requirements between charities and third party commercial fundraisers (requiring approval in some jurisdictions) and out-dated, anti-competitive requirements, particularly in Queensland, where 'State Wide Appeals' (SWA) continue to be enforced, effectively excluding all other charities from fundraising in the state for up to 14 days per SWA to a single charity.

of the ACL operate (as those provisions do not currently apply to NFP donations at all).

- Therefore, the ACL may be an effective national 'vehicle' for the regulation of some elements of fundraising practice, supplemented by a potentially expanded face to face fundraising standard and compliance regime as administered by the PFRA.

The PFRA looks forward to its continued policy work in this important area, together with its members, the FIA, other sector bodies and experts in charity and consumer law.

2. Background and structure of this submission

The PFRA wishes to remind readers of the importance of face to face fundraising, without which many charities would be unable to provide absolutely critical services to communities across Australia and the world. In 2015, more than 340,000 Australians chose to start a regular donation to PFRA members through face to face fundraising. The gifts they make contribute about AUD \$120 million per year in new donations, which members use to deliver vital services.

Most independent academic studies have shown that around 90% of people donate because they are asked by a friend, family member or fundraiser. The ability for charities to ask for donations is vital. Face to face fundraising gives charities one of the most effective means in which to ‘make that ask’. The vast majority of these conversations between fundraisers and members of the public are professional, polite and positive and result in people choosing to initiate a long-term giving relationship with the charity.

The people of Australia are incredibly generous supporters of Australian charities, and many thousands of them every year start regular donations to charities after being asked to do so by a face to face fundraiser in a way they would describe as unsolicited. ‘Unsolicited’ is not synonymous with ‘unwanted’ in this context (though naturally people can decline to engage with a fundraiser should they choose to). A good example of this is where members of the public who have not actively solicited a face to face fundraiser to make an approach are nevertheless drawn to the work undertaken by a charity and feel compelled to offer a donation. Many donors will acknowledge they would never have learnt about the cause(s) they have chosen to support were it not for their encounter with a fundraiser.

Noting the value face to face fundraising contributes to Australian charities, and the process by which this form of fundraising is undertaken, it is important that charities be permitted to continue ‘making the ask’ of prospective donors. Presently, the ACL

permits requests for charitable donations to be made in a manner that is accessible to the organisations (both charities and third-party commercial fundraisers) making those requests. Together with existing State and Territory charitable fundraising legislation and regulations, and industry self-regulation, the PFRA submits face to face fundraising is undertaken in a manner that meets public expectations about what constitutes fair, transparent and professional engagement. However, the PFRA acknowledges the complexity of the current regime and that simplification under a principles-based approach would be beneficial to the face to face fundraising sector.

Thereby, effective mechanisms already exist for the appropriate protection of donors, outside the consumer law regime, due to the existence of the PFRA Standard and the fact compliance is actively monitored and enforced in practice⁴. In an alternative regulatory environment where states no longer regulate fundraising, the PFRA considers it imperative for self-regulation to ‘step up’ and ensure existing donor protections are maintained in the areas where the existing Standard may not include specific provisions contained in state and territory laws (which at the time of drafting were omitted, to avoid duplication, noting the laws already apply) (see **Appendix C** for detailed analysis).

“...effective mechanisms already exist for the appropriate protection of donors...due to the existence of the PFRA Standard and the fact compliance is actively monitored and enforced in practice.”

At no point should the national harmonisation of fundraising laws under the ACL compromise or diminish the existing protections available to donors under State and Territory charitable fundraising legislation and regulations, except where there is no evidence that harm would result from their repeal. The PFRA accepts there should be a balance between the extent and consequences of the harm the existing legislation seeks to capture and the need for regulation to deliver a sustainable face to face fundraising sector. The PFRA regards the education and engagement of

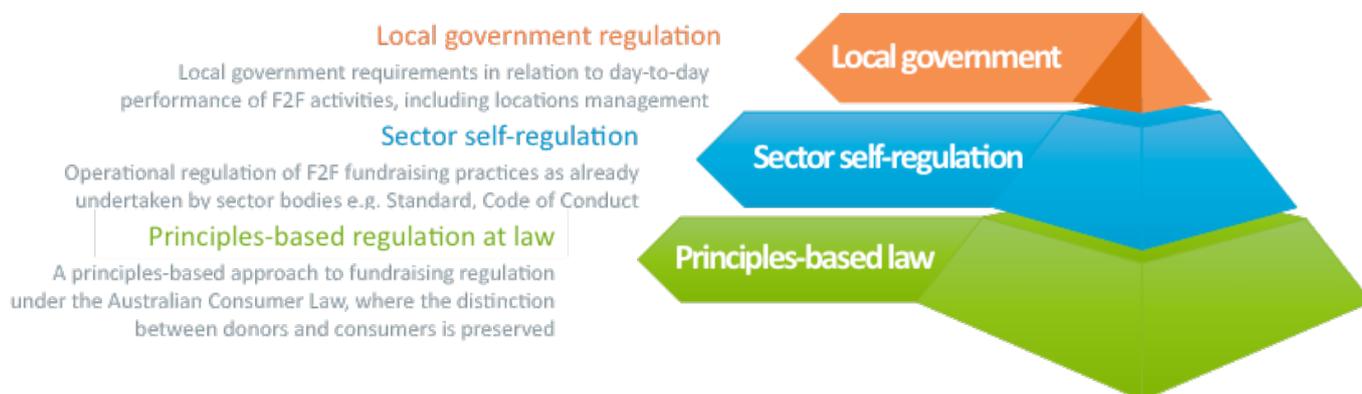
⁴ These functions are not presently performed by the majority of state and territory governments in their administration of fundraising laws, thereby raising questions about the practical effectiveness of their powers.

donors and prospective donors as critical to the viability of the sector, and wishes to ensure donor protections are maintained to an appropriate standard. The PFRA believes this can be successfully achieved through sector self-regulation.

Any amendment to the ACL to include donors (where appropriate) needs to take this into account, acknowledging that meaningful supplementation can be provided in a self-regulatory context. The PFRA has undertaken a gap analysis of a representative sample of existing state charitable fundraising laws and regulations to identify which donor protections may be compromised if these laws were repealed, and how to ensure equivalent protections are captured either under the ACL or through self-regulation. The gap analysis is included for reference at **Appendix C**. While some of these requirements are prescriptive and lengthy, the underlying principles are worth upholding in a manner that is clear, concise and favours implementation by organisations engaged in face to face fundraising. The PFRA's analysis shows that with some minor amendments, its Standard would address important donor protections currently prescribed by state and territory law, and that practical enforcement of fundraisers' compliance in these areas would be ongoing.

In terms of practical compliance, the PFRA reminds the Review taskforce that expanding the coverage of the ACL to regulate fundraising operations without the repeal of existing charitable fundraising legislation and regulations may represent an additional level of (possibly inconsistent) regulation. This is because charities and third-party commercial fundraisers are already regulated within State and Territory jurisdictions, and by local governments, in a manner an extension of the ACL provisions could duplicate. If the UCA provisions were extended to include face to face fundraising involving the solicitation of donations, this would particularly be the case in respect of permitted calling hours (s.73), disclosing purpose and identity (s.74), ceasing to negotiate on request (s.75), and provision of documentation requirements (s.78).

Therefore, any expansion of the ACL would need to be contingent upon the repeal of relevant State and Territory fundraising laws⁵, as well as on the thoughtful design of appropriate operational codes of practice⁶ to support the principles-based legislation (in respect of face to face fundraising, this would effectively take the form of a revised PFRA Standard). An indicative regulatory regime might look something like the pyramid introduced in the Executive Summary (duplicated below), with the ACL offering broad principles-based general protections underpinning sector self-regulation (specific protections) and local government authority conditions.



This submission responds to the Interim Report and is structured similarly with an emphasis on identifying benefits and costs, and whether there are consequences, risks and challenges to be considered in light of the proposed reform agenda. It provides detailed responses against sections 1.2.3 and 2.5 of the Interim Report titled ‘Fundraising activities and the ACL’ and ‘Unsolicited Consumer Agreements’ respectively.

⁵ The PFRA does not assume the ease of accomplishing this, particularly in jurisdictions where work is underway to modernise the application of fundraising laws. It is a significant task and, if unsuccessful, may result in the creation of an additional level of regulation, to the detriment of the face to face fundraising sector.

⁶ For example, the PFRA’s existing Standard for face to face fundraising could be expanded to include donor protection provisions currently captured under State and Territory laws.

3. Response to ACL Review Interim Report questions

This section is divided into two parts, allowing the PFRA to respond to specific issues against the following topics:

1. Scope and coverage of the ACL (Section 1.2, Interim Report pp. 12-33)
 - Fundraising activities and the ACL (Section 1.2.3)

2. Unsolicited consumer agreements (Section 2.5, Interim Report pp. 133-152)
 - Concerns about the level of regulation (Section 2.5.4)

The PFRA respectfully submits a nil response against the Interim Report's remaining topics, noting their content is outside the PFRA's remit (limited to the solicitation of donations in a face to face fundraising context) and regulatory engagement experience.

3.1 Scope and coverage of the ACL: fundraising activities

The PFRA notes the stakeholders responding to the Issues Paper had a range of views regarding the nature and extent of the ACL's scope and coverage, particularly in relation to what conduct is covered by, and who is protected, under the provisions and the appropriateness of the various exemptions within the ACL. CAANZ has specifically sought views on the following overarching questions:

- Do any issues require legislative intervention, or is the status quo or a non-legislative approach appropriate?
- Would the options be a proportionate response to the issues? How should they be designed? Are there better alternatives?
- What are the associated benefits and costs, including compliance costs? Would it require any transitional arrangements? Are there any unintended consequences?

Applying ACL provisions to fundraising and repealing state fundraising laws

The PFRA notes CAANZ has referred to the desire of some stakeholders to specifically apply ACL provisions to fundraising and repeal state fundraising laws.

CAANZ writes:

In this regard, evidence is sought as to the extent of any regulatory gap that would warrant intervention, as well as further information on whether extending consumer protection is necessary or desirable to facilitate potential fundraising reforms in the states and territories. (Interim Report, p. 13)

The PFRA submits that in the context of face to face fundraising there is presently no regulatory gap warranting intervention, as a number of the ACL’s provisions are already reflected in the majority of state-based fundraising laws and/or under self-regulatory codes and standards. There is no ‘donor protection’ problem per se (the PFRA’s primary concern), precisely because these laws, together with effective self – regulation, exist. There is however a problem on account of cross-jurisdictional inconsistencies, exemptions, differing definitions and the absence of compliance and enforcement against existing fundraising laws, which the #fixfundraising campaign has previously detailed.

It is from this perspective that other stakeholders are seeking the repeal of state-based fundraising laws, which is to deliver a nationally consistent set of rules governing fundraising through deregulation⁷. The PFRA considers this to be a desirable outcome, but that harmonisation should not be undertaken for its own sake: it should deliver the same, or substantially similar donor protections as under current arrangements. The PFRA believes this can be successfully achieved through self-regulation.

⁷ The PFRA understands that the rationale for harmonisation includes a number of factors, including the administrative burden of undertaking face to face fundraising across multiple jurisdictions with inconsistent or contradictory requirements. However, the PFRA is limiting its response to the ACL Review Interim Report to address the question of the ACL’s application to face to face fundraising activity, not to highlight real or perceived dysfunctions of the current state and territory regimes.

Furthermore, if existing state and territory fundraising laws were repealed, there would be no “extension” of donor protection by applying the ACL’s provisions to fundraising: with the exception of the UCA provisions (where a specific exemption exists) to the extent that the ACL’s provisions already apply. Nevertheless, the PFRA does not consider this to be a material problem if the ACL applies in conjunction with sector self-regulation.

Ideally participation in the sector’s existing self-regulatory regime (as administered by the PFRA) would be mandated for all organisations undertaking face to face fundraising. This would ensure ‘universal’ compliance, rather than relying upon the voluntary compliance of PFRA members (compliance being a mandatory requirement of voluntary membership).

The PFRA is concerned that should state and territory fundraising laws be repealed, having the ACL as a sole form of fundraising legislation could result in *decreased* donor protections if the law was to stand alone *without* the support of a self-regulatory regime. For this reason, the PFRA has undertaken the gap analysis set out at **Appendix C**, which identifies the existing donor protections under a selection of state and territory laws (New South Wales, Victoria and Queensland), many of which are not reflected under the ACL in its current form. The gap analysis also identifies where sector self-regulation could ‘step up’ (through an expanded face to face fundraising Standard) to ‘bridge the gap’. Therefore, the PFRA advocates for increased sector self-regulation in ensuring appropriate donor protections are maintained should existing fundraising laws be repealed in the states and territories.

This is reflected in the diagram introduced in the Executive Summary, which sees broad principles-based regulation (e.g. general protections under the ACL) underpinning sector self-regulation and local government regulation, both of which

take into account the operational realities of face to face fundraising activity in a way the ACL, in its present form, does not (and was not intended to).

Question 1: Would further regulator guidance on the ACL's application to the activities of charities, not-for-profits and fundraisers help raise consumer awareness and provide greater clarity to the sector? If so, what should be included in this guidance?

The PFRA accepts that it is in the public interest to clarify how existing ACL obligations are likely to apply to the activities of charities and not-for-profits, for avoidance of doubt. However, in its opinion, many of the broad principles-based protections already clearly apply to fundraising activities and it would be helpful to produce guidance material raising consumer and donor awareness of this. The PFRA is aware of several examples where State-based regulators have commenced proceedings against a not-for-profit organisation or fundraising agency under the ACL, for misleading or deceptive conduct in the course of their fundraising activities. One prominent Victorian example is the Belle Gibson/The Whole Pantry case, brought by Consumer Affairs Victoria in relation to unlawful fundraising appeals (deceptive conduct).

Where there is demonstrated uncertainty about how existing ACL obligations are likely to apply to the activities of charities and not-for-profits, the PFRA submits that greater clarity could be provided through the provision of educational resources and FAQ-style materials by regulators and sector bodies. There is also an opportunity to embed the obligations in a self-regulatory context, for example, by ensuring they are reflected in the codes of conduct of relevant sector bodies, including the PFRA's Face to Face Fundraising Standard and Fundraising Institute Australia's (FIA) Codes and Standards.

While the PFRA accepts the application of the ACL’s principles-based protections to fundraising activities (both solicitation of donations and fundraising involving the sale of goods or services), it wishes to emphasise that the ACL’s UCA provisions do not currently apply to face to face fundraising involving the solicitation of donations and does not believe that this should change. The PFRA is aligned with the #fixfundraising coalition in maintaining this exemption. It is imperative, in preservation of the important distinction between donors and consumers, that this exemption be maintained.⁸ Any guidance material that is produced in relation to the application of the ACL to face to face fundraising activity should include a clear explanatory statement reflecting that donations to charity where no sales are involved are not unsolicited agreements, even when received by a third party or contractor on the charity’s behalf (for example, as currently published on the ACCC’s website⁹).

⁸ The PFRA supports CAANZ’s conclusion that the current definition of “in trade or commerce” does not need be reviewed at this time, noting that the current definition is a fundamental concept that underpins the ACL and its objectives and a change to its threshold would affect not only not-for-profits, but would have economy-wide impacts. Furthermore, without the repeal of State and Territory fundraising laws, charities and third-party fundraisers are already regulated in a manner conferring greater protections on donors than the UCA provisions, in their current form, would.

⁹ Australian Competition and Consumer Commission, ‘Unsolicited Consumer Agreements’, <https://www.accc.gov.au/consumers/sales-delivery/telemarketing-door-to-door-sales/unsolicited-consumer-agreements> (accessed 16 November 2016)

Question 2: Are there currently any regulatory gaps with regard to consumer protection and fundraising activities? If so:

- *What is the extent of harmful conduct or consumer detriment that falls within these regulatory gaps or ‘grey areas’, and does it require regulatory intervention?*
- *Would generic protections, such as the ACL, provide the level of regulatory detail necessary to address identified areas of detriment?*
- *What would be the benefits and costs of this approach?*
- *Would there be any unintended consequences, risks and challenges from extending the application of the ACL to address regulatory gaps for fundraising activities? If so, how could they be addressed?*

The jurisdictions in which charitable fundraising is already regulated include the Australian Capital Territory (*Charitable Collections Act 2003* and the *Charitable Collections Regulation 2003*); New South Wales (*Charitable Fundraising Act 1991* and the *Charitable Fundraising Regulation 2015*); Queensland (*Collections Act 1966* and *Collections Regulation 2008*); South Australia (*Collections for Charitable Purposes Act 1939*); Tasmania (*Collections for Charities Act 2001*); Victoria (*Fundraising Act 1998* and *Fundraising Regulations 2009*); Western Australia (*Charitable Collections Act 1946* and *Charitable Collections Regulation 1947*); with the Northern Territory not administering any legislation specific to charitable fundraising. These laws work together with sector self-regulation through the enforcement of the PFRA’s Face to Face Fundraising Standard and local government rules to ensure face to face fundraising is undertaken in a manner that is respectful, professional and positive. Under the current regime, face to face fundraising is one of the most regulated forms of fundraising.

The PFRA does not perceive that there are any regulatory gaps with regard to donor protection and face to face fundraising activities, as the creation of the PFRA as the sector self-regulator was intended to address these gaps. Sector self-regulation plays an important role in ensuring face to face fundraising is undertaken to a required

behavioural standard, to a level of detail not reflected under any other regulatory instrument.

The PFRA wishes to emphasise that together with its self-regulation regime and State and Territory charitable fundraising laws, the sector is well aware of, and informed by, the general protections of the ACL, even where they do not specifically apply to donations.

Misleading or deceptive conduct

The ACL provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive (s.18). The PFRA upholds this requirement in a self-regulation capacity through its Standard, which is based upon the following principles:

- (i) **To Serve Beneficiaries:** We fundraise in order to meet the needs of the individuals, communities and causes that our members serve. The money we raise is providing vital support for communities across Australia and the world.
- (ii) **Integrity and Honesty:** Our fundraising will be based on honesty and our actions will be consistent with our stated principles.
- (iii) **Transparency:** We will explain our fundraising clearly and openly to all those who are involved in our work.
- (iv) **Respect:** We will respect our donors, the people we converse with, the public we interact with, the environment we work in, the authorities we work with and the fundraisers who inspire our donors to give.
- (v) **Lawfulness:** We will act in a lawful manner, ensuring that we are aware of the legal requirements that apply to our work and we will comply with all lawful instructions.

The PFRA Standard also requires that face to face fundraisers must never knowingly mislead a member of the public or use false information in a conversation in an attempt to obtain a donation (2.4.2). Furthermore, in some States and Territories charitable fundraising laws impose requirements upon fundraisers prohibiting charities and third-party commercial fundraisers from making false and misleading representations in respect of their fundraising activity, so as to protect donors from being deceived. For example, in New South Wales the Authority Conditions prescribed by Fair Trading require communication connected with a fundraising appeal to be based on fact and not be false or misleading (s.14(1)(c)), and that a person conducting or participating in a fundraising appeal must use their best endeavours to answer honestly any question in relation to the purpose of the appeal or the details of the appeal (s.14(3)). Further information has been provided at **Appendix C**.

Unconscionable conduct

The ACL provides that a person must not, in trade or commerce, engage in conduct that is unconscionable, within the meaning of the unwritten law from time to time (s.21). As set out above, the principles espoused by the PFRA and upheld by its members include integrity, honesty, transparency and respect. The PFRA believes the intention of the unconscionable conduct general protection in the ACL is aligned with the expectation and practice of the face to face fundraising sector.

Unfair contract terms

In the course of soliciting donations during a face to face fundraising campaign, a charity or not-for-profit organisation would not enter into what is defined as a ‘consumer contract’ under the ACL. That is, a contract for the supply of goods or services or a sale or grant of an interest in land (s.23(3)). This is because an ongoing donation made to a charity is not in exchange for the supply of good or services.

Additionally, when a donor makes a ‘pledge’ in this capacity, the agreement entered into is non-binding insofar as the donor can terminate it at any time without penalty. There is no duty of performance, unlike a standard commercial contract where performance is contingent upon the occurrence of a designated condition or promise. The opportunity for unfair terms to be included is therefore unlikely, as the donor has ‘nothing to lose’.

Nevertheless, the PFRA submits that on the basis of the legislative intent of this general protection, the face to face fundraising sector is required to comply with not dissimilar provisions under State and Territory charitable fundraising laws.¹⁰ This is the case in respect of the agreements entered into between a donor and a charity, insofar as certain conditions must be upheld. For example, all jurisdictions require that pledge forms disclose the purpose for which funds are being collected, and include clear reference to the amount an individual has committed to donate. The nature of an ongoing donation agreement with a charity is also ‘low risk’ to a donor, as they are able to opt out at the time of their choosing.

Notwithstanding the common donor protection attributes shared between the ACL and existing fundraising laws, the PFRA acknowledges that state and territory fundraising laws and regulations are often inconsistent and welcomes the opportunity to harmonise these. The PFRA recognises this submission is in response to a Commonwealth review process pertaining exclusively to the ACL, and therefore has not set out any recommendations in respect of the repeal of state and territory fundraising laws.

On this basis, any harmonisation agenda would need to ensure existing donor protections are maintained at their current levels (not reduced), taking into account the proportionality of the regulation in relation to the harm they are intended to

¹⁰ While the PFRA notes the intent may be similar, the requirements are not the same and managing a cross-jurisdictional face to face fundraising campaign is unnecessarily onerous for this reason.

address. The PFRA believes there is a mechanism for doing so under the ACL, together with an increased role for sector self-regulation, assuming existing state and territory fundraising laws are repealed. Transitional arrangements (if any) would need to ensure complying with regulatory requirements was no less onerous for charities than under the current regime.

Question 3: Would extending the ACL to all fundraising activities be necessary or desirable to facilitate potential reforms of state and territory fundraising regulation?

This question requires greater specificity as not all provisions of the ACL would be extended to all fundraising activities; this is notable in the context of the UCA provisions where a clear exemption for charitable fundraising involving the solicitation of donations exists (which the PFRA submits be maintained). Other provisions clearly do not apply on account of their subject matter (e.g. product safety).

If the question pertains to extending the Chapter 2 general protections to all fundraising activities (e.g. deceptive or unconscionable conduct) then the PFRA submits these either already apply or should apply, and benefits would be achieved by clarifying this application and producing resources clearly outlining the protections donors can expect to receive under the ACL. To this end, the PFRA is supportive of increased access to information by donors, and welcomes the opportunity to support this initiative in a self-regulatory context.

Facilitating potential reforms of state and territory fundraising regulation is another matter. Noting a number of the broad principles-based provisions of the ACL already apply to face to face fundraising activity and/or are reflected under the existing self-regulation regime (see **Appendix C**), it is unclear how providing donor education will influence a reform agenda at state or territory level. Of critical importance is that existing donor protections (as reflected under state and territory laws) are

maintained in an expanded sector standard or code, for example, through the PFRA's existing face to face fundraising Standard.

The PFRA's gap analysis at **Appendix C** sets out the existing provisions it considers to be vital in ensuring donor protection; in most jurisdictions this includes prescriptive disclosure requirements designed to ensure donors are aware of the nature of their donation and how much of their donation will be retained or received by the beneficiary. The gap analysis also suggests possible mechanisms for the preservation of these protections under either the ACL or sector self-regulation, should state and territory fundraising laws be repealed.

3.2 Unsolicited consumer agreements: level of regulation

Question 48: What are your views on maintaining the current unsolicited selling provisions? Is there another approach that would provide a more effective and proportionate response? If so, how?

It is inappropriate for the UCA provisions in the ACL to apply to charities and not-for-profit organisations undertaking face to face fundraising (including where they use the services of a commercial fundraiser) as they solicit donations from *donors*, not consumers.

Such organisations, many of which are PFRA members, are already required to comply with State and Territory laws governing charitable fundraising. Many regulators have also taken practical steps to ensure donors are sufficiently protected when dealing with charities and third-party fundraisers.

As a *donor* gives without expectation of receiving anything in return, it is nonsensical to conflate this class of individual with that of consumption, particularly where this pertains to personal, domestic or household use. A person who makes a donation does not 'consume' any goods or services of this nature. Existing protections are in place to ensure that donors are not exploited and that fundraising is undertaken in a

manner that is lawful and ethical, by both charities and any third-party fundraising agencies they may engage to provide services. A summary of these protections is set out at **Appendix C**.

The PFRA exclusively represents the interests of members engaged in face to face fundraising where ongoing donations are sought and wishes to emphasise that engagement with a charity is not an act of consumption unless goods or services are involved. Therefore, the UCA provisions should not be expanded to apply to the solicitation of donations. The PFRA submits that the status quo be maintained.

If the UCA provisions in the ACL were to apply to donations made to charities and not-for-profit organisations, then the definition of consumer would need to be expanded to include donors. This would make little sense noting (i) a donor is not a consumer; and (ii) consumers of fundraising-related goods and services already receive the ACL's protection.

Specific UCA protections already conferred upon prospective donors

The PFRA submits that while donations are exempt from the UCA provisions, a similar level of protection is conferred on prospective donors when they receive an unsolicited approach from a face to face fundraiser. The exemption is definitively appropriate under a consumer law regime noting the distinction between a donor and consumer, however does not compromise the level of protection afforded to donors or prospective donors, noting the existing 'checks and balances' which govern unsolicited fundraising across Australia.

The PFRA maintains that the exemption should continue and that the UCA provisions *should not* apply to charities and not-for-profit organisations or third-party commercial fundraisers soliciting donations, precisely because donors already receive equivalent protections outside the consumer law regime. The PFRA has set

out a number of examples against the key requirements under the UCA provisions, below.

Aggressive or high-pressure solicitation techniques

The PFRA understands that the UCA provisions were introduced to protect consumers in circumstances where they may be subject to additional vulnerability or disadvantage due to the nature of the sales process. For example, that the consumer may be subject to aggressive or high-pressure selling techniques, and lack sufficient information to make an informed decision.

The face to face fundraising sector has appropriately managed similar risks in the context of soliciting donations. The cornerstone of the sector's value proposition to donors and prospective donors is that they have a positive and affirming engagement experience, whether on the street or at their place of residence. The PFRA's Standard sets out a number of relevant behavioural expectations of face to face fundraisers, including that all face to face fundraising should be conducted using positive, respectful and polite verbal and body language (2.4.1).

The Standard furthermore prohibits the use of aggressive, persistent or high-pressure solicitation techniques as face to face fundraisers are expected to immediately end a conversation with a member of the public as soon as they are instructed to do so (2.4.10) and not attempt to follow or comment to a member of the public once a conversation has ended (2.4.11), consistent with s.75 of the ACL (ceasing to negotiate on request). Some State and Territory regulations impose similar requirements on face to face fundraisers. For example, the *Queensland Charitable Collections Regulation 2008* provides that a collector must not by words or conduct, unreasonably annoy any person approach during a collection, or stay in, or at the door of, any place of residence or place of employment if asked to leave (Schedule 1, 7(a)-(b)).

Goods or services that exceed \$100 in total, or where the value is unknown at the time the agreement is made

The UCA provisions of the ACL apply to goods or services that exceed \$100 in total, or where the value is unknown at the time the agreement is made. Furthermore, the UCA provisions are intended to protect consumers by providing a ‘cooling-off’ or termination period of ten days that allows consumers to change their mind and cancel the contract. It is appropriate that the solicitation of donations is exempt from the UCA provisions, including ‘cooling-off’, as donors already receive an equivalent level of protection.

For example, donors receive an indefinite termination period when they commit to make an ongoing donation, as they are able to cancel any agreement entered into at any time, and without penalty. This is ordinarily disclosed to a prospective donor verbally during a face to face interaction, but is also written on the pledge form, which is either provided in hardcopy, or emailed to the donor if processed electronically (for example, on an iPad). Therefore, a ‘cooling-off’ period would not confer any additional protection to donors, as distinct from consumers, which stand to meaningfully gain from this provision.

The ACL requires suppliers to negotiate an agreement within certain calling hours

The ACL specifies permitted hours for negotiating an unsolicited agreement. Accordingly, a dealer must not call on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose at the times set out at section 73. The PFRA submits that is wholly appropriate for the solicitation of donations to be exempt from this UCA provision as restrictions are already placed on calling hours under some charitable fundraising laws as administered by State and Territory regulators. This is reiterated in a self-regulatory context, as the PFRA Standard requires at 2.4.20 that face to face fundraising be conducted within certain times, unless otherwise prescribed by law:

Street Fundraising:

- Monday to Sunday 8 am to 8 pm
- Christmas Day and Good Friday – no fundraising

Door to Door Fundraising:

- Monday to Friday 10 am to 8 pm unless by appointment
- Weekends and public holidays 10 am to 6 pm unless by appointment
- Christmas Day and Good Friday – no fundraising

Volunteers versus paid staff

The PFRA notes the possibility raised by the Interim Report of differentiating between fundraising carried out by volunteers, paid staff and third party agencies. The PFRA strongly rejects this as a concept. We note the opposition to this concept by the FIA and other fundraising organisations and submit that this proposal is neither logical nor practicable.

4. Conclusion

The PFRA is appreciative of the opportunity to provide input to the ACL Review's interim Report. The PFRA and its members strongly believe that there is a clear and important distinction between donors and consumers, and furthermore, between charitable fundraising involving the solicitation of donations, and commercial transactions involving the sale of goods and services. The ACL in its current form supports this distinction.

Charitable fundraising may benefit from the repeal of state and territory regulations where the delivery of a harmonised, nationally consistent regime is assured. The PFRA however does not support harmonisation for its own sake and seeks to ensure the preservation of donor protections, an indicative sample of which are set out at **Appendix C**. The PFRA believes this can be achieved through expanded sector self-regulation, under the existing face to face fundraising Standard, and underpinned by the broad principles-based protections of the ACL. The PFRA would be pleased to work closely with other stakeholders in developing an implementation pathway to ensure donors are appropriately protected in the context of any reform proposal. A significant mechanism towards effective implementation would be ensuring PFRA membership was a government-mandated requirement for those undertaking face to face fundraising activity, so that compliance with its face to face fundraising Standard (which seeks to confer donor protections) is mandatory.

In principle, the PFRA supports the national harmonisation of fundraising laws under the ACL if the remit of the consumer law regime was expanded to include donors (where appropriate), and preserves their distinction in relation to consumers (namely, that the existing Unsolicited Consumer Agreement provisions are not made to apply to the solicitation of donations). The PFRA maintains it is in the public interest for charities to be able to solicit donations to support their charitable objectives and that face to face fundraising is respectful and affirming.

Appendices

Appendix A: PFRA Standard

Appendix B: List of PFRA members

Appendix C: Face to face fundraising gap analysis

Appendix A – PFRA Standard

Introduction

This Standard has been implemented to ensure that all people involved in face to face fundraising are respected and enjoy an inspiring and rewarding experience. This includes: members of the public who donate, fundraisers, regulators and local authorities, business owners, and charities.

The Standard is in two main sections: *Governance* which describes the underlying principles of the Standard and *Compliance* which describes what is acceptable and what is not acceptable for PFRA members in carrying out face to face fundraising.

Purpose

The purpose of this Standard is to ensure that all face to face fundraising conducted by member organisations of the Public Fundraising Regulatory Association complies with a standard set of rules and meets a uniform standard of behaviour.

Section One - Governance

1.1 Principles

This Standard is based upon these principles:

i) *To Serve Beneficiaries:*

We fundraise in order to meet the needs of the individuals, communities and causes that our members serve. The money we raise is providing vital support for communities across Australia and the world.

ii) *Integrity and Honesty:*

Our fundraising will be based on honesty and our actions will be consistent with our stated principles.

iii) *Transparency:*

We will explain our fundraising clearly and openly to all those who are involved in our work.

iv) *Respect:*

We will respect our donors, the people we converse with, the public we interact with, the environment we work in, the authorities we work with and the fundraisers who inspire our donors to give.

v) *Lawfulness:*

We will act in a lawful manner, ensuring that we are aware of the legal requirements that apply to our work and we will comply with all lawful instructions.

1.2 Definitions

“Face to face fundraising” means the practice of approaching a member of the public either in the street, at their residence, or at commercial premises with the primary purpose of seeking an ongoing donation through a bank or credit card direct debit.

“Fundraiser” means someone representing a PFRA member who undertakes face to face fundraising

“Fundraising” means face to face fundraising

“Member” means member organisation of the PFRA

“Must” means that a PFRA member is required to comply with a clause of the Standard.

“Should” means that a PFRA member ought to take all reasonable steps to comply with a clause of the Standard.

“**Vulnerable Person**” means someone for any of these reasons would seem to a reasonable person to be incapable of making financial decisions:

- i) intoxication through drugs or alcohol
- ii) incapacity due to illness or disability
- iii) age-related confusion
- iv) learning difficulties
- v) language competence
- vi) any other circumstance where capacity is in doubt
- vii) under the age of 18

1.3 Scope

- 1.3.1 This Standard describes the basic standards of behaviour required of all face to face fundraisers representing members of the PFRA.
- 1.3.2 The Standard covers requirements for ensuring public and fundraiser safety.
- 1.3.3 This Standard applies to PFRA members. PFRA can only monitor this Standard and enforce it if necessary against a PFRA member.
- 1.3.4 This Standard does not replace nor override any law. PFRA members should note that legislation applying to face to face fundraising differs in each State and Territory. For this reason, the Standard’s provisions must be read in conjunction with the relevant State or Territory legislation. If there is any conflict between the provisions of this Standard and legislation, the legislation prevails.

1.4 Understanding

- 1.4.1 Members must ensure that all fundraisers fully understand this Standard before they commence fundraising for the first time and retain an understanding of the Standard while they continue to fundraise.
- 1.4.2 Members must keep a record including the signature of each fundraiser confirming that the fundraiser understands the requirements of the Standard and has received a copy of the Standard.
- 1.4.3 Members must ensure that charity fundraising staff involved in the management of face to face fundraising fully understand this Standard.

Section Two – Compliance

2.1 Legislation, Regulation and Other Standards

2.1.1 When conducting fundraising activities, member organisations and their fundraisers must comply with:

- i) All current fundraising legislation and regulations;
- ii) The permit requirements included in any location specific permit to conduct fundraising; and
- iii) Any rules that the PFRA may issue.

2.1.2 Members are also advised to comply with the Fundraising Institute Australia Standard of Face to Face Fundraising Practice.

2.2 Public and Fundraiser Safety

2.2.1 Fundraisers must not operate in a way that creates any risks to public safety or their own safety.

2.2.2 Members must take all reasonable steps to ensure the safety of fundraisers and the public.

2.2.3 Fundraisers must not cause members of the public to enter the road to avoid them.

2.2.4 Fundraising locations must be selected to ensure that there is maximum space between the fundraisers and the edge of the kerb.

2.2.5 Fundraisers should always work in teams of at least two people, except for door to door fundraisers who must always work in teams of at least two people.

2.2.6 Door to door fundraisers must not enter a private dwelling.

2.2.7 Members must comply with the relevant Workplace Health and Safety Laws in the applicable jurisdiction(s).

2.3 Regulations

2.3.1 Where not otherwise prescribed by law, fundraisers must provide donors with a written disclosure that fees are paid to a named commercial fundraising organisation.

2.3.2 Fundraisers must always wear the prescribed identification badge and have this clearly visible to the public on their torso while working. Unless otherwise specified by legislation or permit conditions, this badge must contain at least:

- i) A recent photo of the fundraiser
- ii) Fundraiser name
- iii) Charity name and logo
- iv) The words “Paid Collector”
- v) Charity contact information
- vi) For agency fundraisers: agency name

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- 2.3.3 All fundraisers must dress smartly and tidily and street fundraisers must be clearly identifiable as charity representatives through use of branded clothing.
 - 2.3.4 Fundraisers must immediately follow any direction given to them by officers of the relevant local or state authority, police officers or any other authority holder.
 - 2.3.5 Fundraisers must immediately follow any reasonable direction given to them by authorised representatives of the PFRA, such directions being consistent with the principles of this Standard and the purpose of the PFRA.
 - 2.3.6 Fundraisers must comply with any direction given to them by an access authority holder (i.e. state or local government officer or shopping centre management) to comply with the requirements of their permit.
 - 2.3.7 All fundraisers working in a location that requires a specific permit must have a copy of that permit with them in some form, at all times while working.

2.4 Behaviour

- 2.4.1 All fundraising should be conducted using positive, respectful and polite verbal and body language.
- 2.4.2 Fundraisers must never knowingly mislead a member of the public or use false information in a conversation in an attempt to obtain a donation.
- 2.4.3 Fundraisers must not bring fundraising into disrepute while working or while identifiable as charity representatives by:
 - i) Smoking and/or drinking alcohol
 - ii) Being inappropriately dressed
 - iii) Taking or being under the influence of illegal drugs
 - iv) Lewd or aggressive behaviour
 - v) Exploiting their position for personal gain (for instance soliciting a job offer, making sexual advances or seeking a discount on a good or service)
- 2.4.4 Fundraisers should not approach members of the public in groups of more than one fundraiser. Where necessary however, a trainer, coach or team leader can assist in conversation with a member of the public.
- 2.4.5 Members must not permit people other than fundraisers or other staff who have the required understanding of the PFRA Standard to approach members of the public.
- 2.4.6 Members must take reasonable steps to ensure that the number of fundraisers at a location is consistent with the available space at the location.
- 2.4.7 Fundraisers must not behave in a way that might be reasonably interpreted as forcing a member of the public to enter a conversation against their will.
- 2.4.8 Fundraisers must not initiate physical contact with a member of the public but may reciprocate appropriately.

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- 2.4.9 Fundraisers must not block the public right of way or move to obstruct a member of the public.
- 2.4.10 Fundraisers must immediately end a conversation with a member of the public as soon as they are requested to do so.
- 2.4.11 Fundraisers must not attempt to follow or comment to a member of the public once a conversation has ended.
- 2.4.12 Fundraisers must not intentionally approach a member of the public who appears to be vulnerable.
- 2.4.13 If a fundraiser becomes aware that the person they are talking to is vulnerable, they should politely terminate the conversation at the earliest possible opportunity.
- 2.4.14 Fundraisers must not approach a member of the public who has, to the fundraiser’s knowledge, recently been approach by another face to face fundraiser from their own or another organisation.
- 2.4.15 Where there is a disagreement between fundraisers relating to a fundraising location or any other matter this must be resolved politely and professionally between the fundraisers. If agreement cannot be reached the disagreement must immediately be referred to the PFRA for resolution.
- 2.4.16 In the event of a disagreement between fundraisers that is referred to the PFRA for resolution, fundraisers must immediately comply with the directions of the PFRA.
- 2.4.17 Fundraisers must not approach other fundraisers during the course of their fundraising with the intention of disrupting their work in any way; this includes seeking to recruit them to work for another fundraising organisation.
- 2.4.18 Fundraisers must notify their Team Leader or Manager of any complaint or incident alleging a breach of this Standard or otherwise likely to bring face to face fundraising in disrepute.
- 2.4.19 Members must notify the PFRA of any complaint or incident alleging a breach of this Standard or otherwise likely to bring face to face fundraising in disrepute which has been raised by a local authority, state government, business association or other body which the PFRA has responsibility for engaging with.
- 2.4.20 Unless it is elsewhere specified by legislation, regulations, permits or licences, fundraisers should not work outside of the following hours:

Street Fundraising:

- Monday to Sunday 8 am to 8 pm
- Christmas Day and Good Friday – no fundraising

Door to Door Fundraising

- Monday to Friday 10 am to 8 pm unless by appointment
- Weekends and public holidays 10 am to 6 pm unless by appointment
- Christmas Day and Good Friday – no fundraising

Appendix B – List of PFRA Members

Amnesty International	House with No Steps
Assistance Dogs Australia	Mater Foundation
Australian Conservation Foundation	McGrath Foundation
Australia for UNHCR	Médecins Sans Frontières Australia
Australian Red Cross	Mission Australia
Barnardos Australia	National Breast Cancer Foundation
Berry Street	Oxfam Australia
Breast Cancer Care WA	Peter MacCallum Cancer Foundation
Bush Heritage Australia	Plan International Australia
Camp Quality	Save the Children Australia
Cancer Council ACT	Starlight Children's Foundation
Cancer Council NSW	Taronga Conservation Society Australia
Cancer Council Queensland	The Fred Hollows Foundation
Cancer Council SA	The Heart Research Institute
Cancer Council Victoria	The Nature Conservancy
Cancer Council Western Australia	The Smith Family
CARE Australia	The Wilderness Society
Careflight Ltd	UNICEF Australia
CBM Australia	UN Women National Committee Australia
Cerebral Palsy Alliance	Victor Chang Cardiac Research Institute
ChildFund Australia	Vision Australia / Seeing Eye Dogs Australia
Children's Cancer Institute Australia	Wesley Mission
Environment Victoria	WWF Australia
FOUR PAWS Australia	
Greenpeace Australia Pacific	

APPENDIX C: Australian Consumer Law Review – F2F fundraising gap analysis

BACKGROUND

Context: The current review of the Australian Consumer Law (ACL) has raised questions for the sector about the future of fundraising regulation in Australia. Some interest groups have suggested that state and territory fundraising laws be repealed, as fundraising is already partly covered by the ACL and would only require minor amendments in order to cover all fundraising. While the PFRA agrees that some broad principles-based provisions of the ACL already apply to fundraising, it also notes that there are regulatory requirements within existing state and territory laws that are important to the operational practice of face to face fundraising, and should be preserved in some capacity.

Purpose: The PFRA has conducted a ‘gap analysis’ of a sample of state and territory fundraising regulations (NSW, Vic and Qld) against the Australian Consumer Law, set out at Schedule 2 of the [Competition and Consumer Act 2010](#) (Cth). This gap analysis is undertaken by jurisdiction and sets out which provisions should be retained and why. It also identifies where an existing provision is currently replicated (in principle) under the ACL or under the PFRA’s self-regulatory regime. This process will inform the PFRA’s response to the ACL Review’s Interim Report.

New South Wales ([Charitable Fundraising Regulation 2015](#) under [Charitable Fundraising Act 1991](#))

Existing provisions for retention <i>Which existing provisions are operationally important to the practice of face to face fundraising?</i>	Justification for retention <i>Why is the provision significant?</i>	ACL coverage <i>Does the ACL presently address the matter?</i>	Self-regulatory coverage <i>Does the existing self-regulation regime for face to face fundraising address the matter?</i>	Comment
Charitable Fundraising Regulation 2015				
Part 2, Clause 13: Identification of face to face collectors 13(1) While participating in a fundraising appeal, a face to face collector must prominently display any identification card or badge that has been issued to the person in compliance with a condition of the authority to conduct the appeal	Identification of face to face fundraisers adds legitimacy to activity, contributing to public trust and confidence; also aids identification when making a complaint	No – there is no identification requirement for face to face fundraisers under the existing ACL	Yes – the PFRA Face to Face Fundraising Standard requires at 2.3.2 that: Fundraisers must always wear the prescribed identification badge and have this clearly visible to the public on their torso while working. Unless otherwise specified by legislation or permit conditions, this badge must contain at least: i) A recent photo of the fundraiser ii) Fundraiser name iii) Charity name and logo iv) The words “Paid Collector” v) Charity contact information vi) agency name	PFRA requirement informed by legislation and permit condition requirements pertaining to identification; Standard would require minor amendment if no such requirements under state/territory law
<i>Part 3, Clause 17: Conditions of authority (see Charitable fundraising authority conditions)</i>				
Part 1: General Conditions - 1. Internal controls Proper and effective controls must be exercised by an authorised fundraiser over the conduct of all fundraising appeals, including accountability for the gross income and	Foundation principle underpinning the management of all face to face fundraising appeals	No – there is no specific requirement regarding fundraising controls	No – the PFRA Face to Face Fundraising Standard does not contain any specific requirement however General Principles (1.1) ‘Integrity and Honesty’ and ‘Transparency’ are relevant	PFRA has limited constitutional remit to regulate financial management of face to face fundraising appeals however ACNC and FIA may have roles here ; the PFRA favours general

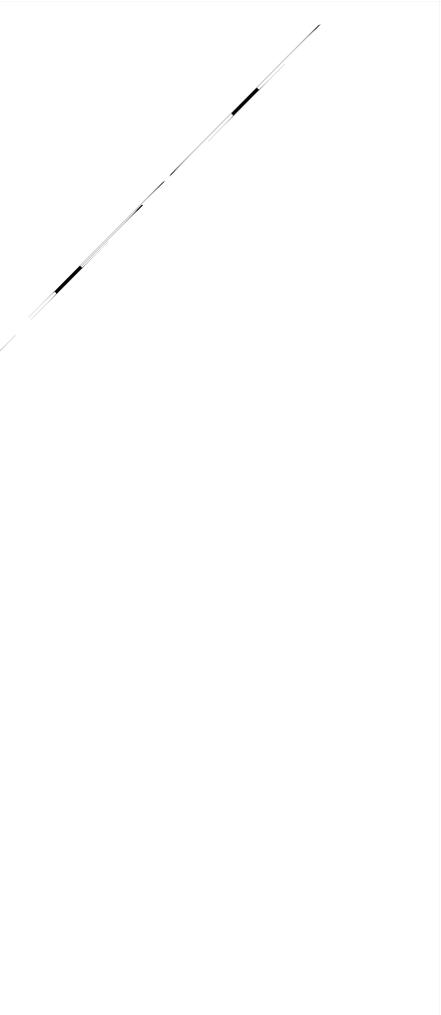
APPENDIX C: Australian Consumer Law Review – F2F fundraising gap analysis

Existing provisions for retention <i>Which existing provisions are operationally important to the practice of face to face fundraising?</i>	Justification for retention <i>Why is the provision significant?</i>	ACL coverage <i>Does the ACL presently address the matter?</i>	Self-regulatory coverage <i>Does the existing self-regulation regime for face to face fundraising address the matter?</i>	Comment
all articles obtained from any appeal and expenditure incurred.				principles relating to good governance rather than prescriptive requirements
9. Record systems for items used in fundraising appeals A record system must be instituted and maintained for: (1) all identification cards or badges issued to participants in a fundraising appeal, by which a number assigned to and shown on each card or badge is correlated with the name of the person to whom it was issued, the date of issue and the date it was returned	This requirement assists to ensure identification badges are appropriately distributed and managed, preventing loss and mitigating against fraudulent use	No – there is no specific requirement regarding the use of record systems for identification badges	No – the PFRA Face to Face Fundraising Standard does not contain any requirement for the management of identification badges	The PFRA could incorporate such a requirement into its Standard though favours general principles
10. Persons conducting or participating in a fundraising appeal on behalf of an authorised fundraiser (2) The authorisation given by an authorised fundraiser to a member, employee or agent who participates in a fundraising appeal as a face-to-face collector must: (a) be in the form of an identification card or badge, and (b) be consecutively numbered, and (c) include the name of the authorised fundraiser and a contact telephone number, and (d) include the name of the face-to-face collector, and (e) if the face-to-face collector receives a wage, commission or fee for services, the identification card or badge must include the words “paid collector” and the name of the collector’s employer, and (f) indicate its issue and expiry dates, and (g) be signed and dated by the authorised fundraiser (or a delegate of the authorised fundraiser or its governing body, and (h) be of sufficient size to ensure that the particulars on it may be easily read by members of the public, and (i) be recovered by the authorised fundraiser from the face-to-face collector as soon as the face-to-face collector’s authorised involvement in the appeal is ended.	No fundraising activity on behalf of a charity can be undertaken without that charity’s authorisation; this is to ensure the fundraising activity is carried out lawfully (not fraudulently) and in accordance with the charity’s instructions. It is important that this authority is written and not verbal, as it can be produced upon request (ensuring transparency for donors). This commonly takes the form of an identification badge.	No – the ACL does not contain a requirement for fundraising activity to be authorised	Yes (in part) – the PFRA Face to Face Fundraising Standard requires at 2.3.2 that: Fundraisers must always wear the prescribed identification badge and have this clearly visible to the public on their torso while working. Unless otherwise specified by legislation or permit conditions, this badge must contain at least: i) A recent photo of the fundraiser ii) Fundraiser name iii) Charity name and logo iv) The words “Paid Collector” v) Charity contact information vi) agency name. Because the PFRA relies upon reference to specified legislation or permit conditions, it does not duplicate existing requirements.	The PFRA could incorporate additional requirements into its Standard pertaining to identification badges, including: <input type="checkbox"/> Consecutive numbering <input type="checkbox"/> Where fundraiser is paid, inclusion of the words “paid collector” <input type="checkbox"/> Issue and expiry dates <input type="checkbox"/> Signature of charity and/or agency <input type="checkbox"/> Return requirements
14. Advertisements, notices and information (1) Any advertisement, notice or information provided as part of a fundraising appeal must: (a) clearly and prominently disclose the name of the authorised fundraiser, and (b) not be reasonably likely to cause offence to a person, and	This is intended to ensure prospective donors are not misled or deceived nor offended; it supports transparency and truthfulness when advertising	Yes – the ACL includes a prohibition against misleading or deceptive conduct (s.18(1))	Yes – the PFRA requires at 2.4.2 that: Fundraisers must never knowingly mislead a member of the public or use false information in a conversation in an attempt to obtain a donation	The application of 2.4.2 in the PFRA Standard could be expanded so as not to be limited to ‘conversation’, as it is presently, or instead to be redrafted to include a general prohibition on misleading or deceptive conduct

APPENDIX C: Australian Consumer Law Review – F2F fundraising gap analysis

Existing provisions for retention <i>Which existing provisions are operationally important to the practice of face to face fundraising?</i>	Justification for retention <i>Why is the provision significant?</i>	ACL coverage <i>Does the ACL presently address the matter?</i>	Self-regulatory coverage <i>Does the existing self-regulation regime for face to face fundraising address the matter?</i>	Comment
(c) be based on fact and must not be false or misleading.				
14. Advertisements, notices and information (2) A person conducting or participating in a fundraising appeal must use his or her best endeavours, at all times, to answer honestly any question directed to the person in relation to the purpose of the appeal or the details of the appeal, or to arrange to find answers to questions that he or she is unable to answer. In particular, if it is requested, information is to be given as to how the gross income and any articles obtained from the appeal will be distributed and on the other matters referred to in sub-paragraphs (3)(a) and (4).	This is intended to ensure prospective donors are not misled or deceived when receiving information verbally, and that they receive access to information upon request	Yes (in part) – the ACL includes a prohibition against misleading or deceptive conduct (s.18(1)), however does not include any requirement regarding access to information	Yes (in part) – the PFRA Standard requires at 2.4.2 that: Fundraisers must never knowingly mislead a member of the public or use false information in a conversation in an attempt to obtain a donation. It is requires adherence to General Principles (1.1) including 'Integrity and Honesty' and 'Transparency'. Additionally, the PFRA Standard	The PFRA's Standard could be amended to include explicit reference to providing information about how gross fundraising income will be distributed, upon request
(3) If a fundraising appeal is jointly conducted with a trader, the following additional requirements must be complied with: (a) any written or printed advertisement, notice or information must include: (i) the full name under which the trader or person operates for purposes of the appeal, and (ii) the telephone number and the website address of the trader or person, and (iii) the benefit to be received by the authorised fundraiser must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount (the disclosure cannot be expressed as a percentage of the "net" income of the appeal or a percentage of the "wholesale" price of a product), and (iv) the benefit to be received by the trader or business from the appeal must be expressed as a percentage of the gross proceeds of the appeal or an actual dollar amount (the disclosure cannot be expressed as a percentage of the "net" income of the appeal), and (v) the date on which the appeal commenced, or will commence, and the date on which it will end, or where no end date is known, the words "this in an ongoing appeal".	This is intended to ensure prospective donors understand they are being solicited by a third-party fundraiser (agency) and have visibility of the income they receive for providing their services, as this may influence their decision to donate	No – the ACL is silent on the engagement of third-party fundraisers when soliciting donations and as such imposes no related requirements	Yes – the PFRA Standard requires at 2.3.1 that: Where not otherwise prescribed by law, fundraisers must provide donors with a written disclosure that fees are paid to a named commercial fundraising organisation (this disclosure is typically made on a charity's 'pledge form', which is provided to donors)	The PFRA's Standard could be amended to include the following disclosure information: <input type="checkbox"/> Full name of trader <input type="checkbox"/> Telephone and website address of trader <input type="checkbox"/> Whether the appeal is of limited duration (commencement and end date) or an ongoing appeal (to include the words "this is an ongoing appeal") The PFRA also recommends the inclusion of PFRA contact information should a donor or prospective donor be unable to resolve a complaint directly with the charity. Subject to consultation within the sector, the PFRA maintains providing contact information is a very effective protection for donors and those engaging in face to face fundraising; the level of detail can be varied (possibly even reduced) while still returning the benefit.
17. Agreement with trader (1) If a fundraising appeal is conducted jointly with a trader, the return to the authorised fundraiser must be governed	Ensuring a written agreement is in place between a charity and a	No – the ACL is silent on the engagement of	No – the PFRA Standard does not impose any requirements in respect of the agreements entered into between charities and agencies	The PFRA Standard could be amended to include similar requirements in relation to charity-agency agreements

APPENDIX C: Australian Consumer Law Review – F2F fundraising gap analysis

Existing provisions for retention <i>Which existing provisions are operationally important to the practice of face to face fundraising?</i>	Justification for retention <i>Why is the provision significant?</i>	ACL coverage <i>Does the ACL presently address the matter?</i>	Self-regulatory coverage <i>Does the existing self-regulation regime for face to face fundraising address the matter?</i>	Comment
<p>by a written agreement between the authorised fundraiser and the trader.</p> <p>(2) Such an agreement must include at least the following particulars:</p> <p>(a) the amount of the return to be obtained by the authorised fundraiser from the appeal, or the basis or method by which this will be calculated, (the disclosure can not be expressed as a percentage of the “net” income of the appeal or a percentage of the “wholesale” price of a product) and the manner in which payment will be effected,</p> <p>(b) details of any commission, wage or fee payable to the trader and any other persons from the gross income obtained from the appeal,</p> <p>(c) details of the type, and any limitation on the amount, of expenses to be borne by the trader and the authorised fundraiser as part of the appeal,</p> <p>(d) the basic rights, duties and responsibilities of both parties,</p> <p>(e) insurance risks to be covered by each party (for example, public liability, workers compensation for employees, personal accident insurance for volunteers, third party property insurance),</p> <p>(f) details of any records and documentation to be maintained by the trader (including those required by or under the Act) and the requirement that the trader keep these at the registered office of the authorised fundraiser, except as provided by condition 19,</p> <p>(g) details of the specific internal controls and safeguards to be employed to ensure proper accountability for the gross income obtained from the appeal,</p> <p>(h) the process to be followed in resolving disputes between the parties to the contract or agreement, complaints from the public and grievances from employees,</p> <p>(i) the reporting requirements imposed on the trader,</p> <p>(j) an undertaking by the trader to comply with the provisions of the Act, the regulations under the Act and the conditions of the authority,</p>	<p>fundraising agency is essential to ensure clear commercial terms. It also serves as evidence of authority to fundraise. The conditions are also protective, ensuring fundraising is undertaken appropriately and adequate internal controls and safeguards in place to ensure proper accountability.</p>	<p>third-party fundraisers and imposes no requirements in respect of agreements entered into by charities</p>		<p>under a broader principles based requirement relating to good governance. The ACNC and FIA may also have roles here where fundraising activity is not limited to face to face</p>

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(k) a mechanism to deal with the effect on the contract of any subsequent addition, variation or deletion of an existing condition of the authority, (l) the circumstances in which the contract is or may be terminated.				
<p>22. Complaint handling mechanism The authorised fundraiser must provide a mechanism that will properly and effectively deal with complaints made by members of the public and grievances from employees in relation to its fundraising activities.</p>	This ensures the accountability of those fundraising to effectively manage complaints when they arise. It also allows for the identification and proactive management of any complaint or incident likely to bring face to face fundraising into disrepute.	No – the ACL does not require a complaint handling mechanism (for charities, commercial third-party traders nor any other entity)	No – the PFRA Standard does not require its members to have a complaint handling mechanism in place. However, it requires notification of complaints at 2.4.18 where: Fundraisers must notify their Team Leader or Manager of any complaint or incident alleging a breach of this Standard or otherwise likely to bring face to face fundraising in disrepute. And at 2.4.19, where: Members must notify the PFRA of any complaint or incident alleging a breach of this Standard or otherwise likely to bring face to face fundraising in disrepute which has been raised by a local authority, state government, business association or other body which the PFRA has responsibility for engaging with.	The PFRA Standard could be expanded to include explicit reference to members’ complaint handling processes, and outlining a process for escalation to the PFRA for management. In practice, all charities have a complaint handling process; this could also be required of fundraising agencies.
<u>Charitable Fundraising Act 1991</u>				
<p>Meaning of “fundraising appeal” 5. (1) For the purposes of this Act, the soliciting or receiving by any person of any money, property or other benefit constitutes a fundraising appeal if, before or in the course of any such soliciting or receiving, the person represents: (a) that the purpose of that soliciting or receiving; or (b) that the purpose of an activity or enterprise of which that soliciting or receiving is a part, is or includes a charitable purpose.</p>	In the context of the current ACL Review, the PFRA considers it useful if fundraising activity is clearly defined; it specifically recommends a definition that clearly differentiates between a donor and consumer (namely, that soliciting donations where no sale of goods or services is involved is not ‘in trade or commerce’, irrespective of the fundraiser	No - the ACL does not presently provide a definition of fundraising activity	Yes – the PFRA Standard defines face to face fundraising as “the practice of approaching a member of the public either in the street, at their residence, or at commercial premises with the primary purpose of seeking an ongoing donation through a bank or credit card direct debit.”	The PFRA recommends a definition of face to face fundraising be formally recognised under a co-regulatory regime and that the distinction between a donor and consumer be preserved under the ACL (to ensure the continued exemption for donations under the Unsolicited Consumer Agreement provisions). It is imperative that any definition is flexible enough to allow for change in a fluid, dynamic environment and believes self-regulation is well positioned to deliver this.
<p>Conducting unlawful fundraising offence unless the person:</p>	The PFRA considers the concept of ‘authorisation’ to be significant. One must be	No – the ACL does not include any specific fundraising	Yes (in part) – the PFRA Standard requires at 2.1.1 that member organisations and their fundraisers must comply with: i) All current	The PFRA recommends that unlawful fundraising continue to be treated as an offence under any future regulatory

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<p>9. (1) A person who conducts a fundraising appeal is guilty of an offence unless the person</p> <p>(a) is the holder of an authority authorising the person to conduct the appeal; or</p> <p>(b) is a member of an organisation, or an employee or agent of a person or organisation, that holds such an authority and is authorised, by the person or organisation that holds the authority, to conduct the appeal; or</p> <p>(c) is authorised under subsection (3) to conduct the appeal without an authority.</p>	<p>authorised to undertake face to face fundraising to provide members of the public with confidence in the legitimacy of the activity. It also goes some way in achieving consistency in fundraiser behaviour, where a uniform standard is required under a system of authorization.</p>	<p>authority requirements, though sets out some relevant principles which much be upheld in the course of fundraising</p>	<p>fundraising legislation and regulations. Therefore, conducting unlawful fundraising is only an offence where provided for under current fundraising legislation and regulations.</p>	<p>regime; this will require the concept of 'authorisation' be retained (with the authoriser a registered charity).</p>
<p>False statements etc.</p> <p>13. (1) A person who:</p> <p>(a) in an application or notice made or given under this Act; or</p> <p>(b) in any record or document relating to a fundraising appeal, makes any statement that the person knows, or could reasonably be expected to know, is false or misleading in a material particular is guilty of an offence.</p>	<p>This is intended to ensure fundraising applicants do not make any false representations in the course of the regulatory engagement/administrative management of their fundraising appeal</p>	<p>Yes – the ACL includes a prohibition against misleading or deceptive conduct (s.18(1))</p>	<p>No – while the PFRA requires at 2.4.2 that: Fundraisers must never knowingly mislead a member of the public or use false information in a conversation in an attempt to obtain a donation, it does not specifically include a requirement prohibiting false or misleading disclosure in relation to the provision of membership and ongoing compliance information</p>	<p>The PFRA Standard could be expanded to include such a requirement prohibiting false statements; it may also consider a membership vetting process</p>
<p>Proceeds of appeal</p> <p>20. (1) Any money or benefit received in the course of a fundraising appeal conducted by the holder of an authority is to be applied according to the objects or purposes represented by or on behalf of the persons conducting the appeal as the purposes or objects of the appeal.</p>	<p>Members of the public have a reasonable expectation that any donation they make will be applied in a manner that is consistent with the purpose for the fundraising activity as disclosed at the time of the donor's engagement; it is therefore in support of public trust and confidence that this be an enforceable requirement</p>	<p>Yes (in part) – while the ACL does not include an equivalent provision, it prohibits misleading or deceptive conduct (s.18(1)) (which would prohibit a fundraiser making false representations about how funds would be applied)</p>	<p>No – the PFRA Standard does not currently include a requirement that money raised be applied according to the fundraiser's disclosed objects or purposes</p>	<p>The PFRA Standard could be expanded to include such a requirement, unless otherwise prescribed by ACNC or under FIA Code/s</p>
<p>Keeping of records</p> <p>22. (l) A person or organisation that conducts or has conducted a fundraising appeal must keep, in accordance</p>	<p>Members of the public have a reasonable expectation that their donations are appropriately managed,</p>	<p>No – the ACL does not provide that records should be</p>	<p>No – the PFRA Standard does not provide that records should be kept in relation to fundraising appeals</p>	<p>The PFRA Standard could be expanded to include such a requirement, unless otherwise prescribed by ACNC or under FIA Code/s</p>

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with this section, records of income and expenditure in relation to each such appeal.	including through accurate record keeping	kept in relation to fundraising appeals		

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Victoria (*Fundraising Regulations 2009* under *Fundraising Appeals Act 1998*)

Existing provisions for retention <i>Which existing provisions are operationally important to the practice of face to face fundraising?</i>	Justification for retention <i>Why is the provision significant?</i>	ACL coverage <i>Does the ACL presently address the matter?</i>	Self-regulatory coverage <i>Does the existing self-regulation regime for face to face fundraising address the matter?</i>	Comment
<i>Fundraising Appeals Act 1998</i>				
<p>Section 7 - false statements while seeking donations (1) In conducting or participating in a fundraising appeal, a person must not make or give any representation or oral or written statement in relation to the appeal to another person that misleads or deceives, or that is likely to mislead or deceive— (a) the other person; or (b) anyone else to whom the other person may make, repeat or give the representation or oral or written statement.</p>	<p>This is intended to ensure prospective donors are not misled or deceived nor likely to be misled or deceived; it supports transparency and truthfulness when fundraising</p>	<p>Yes – the ACL includes a prohibition against misleading or deceptive conduct (s.18(1))</p>	<p>Yes – the PFRA requires at 2.4.2 that: Fundraisers must never knowingly mislead a member of the public or use false information in a conversation in an attempt to obtain a donation</p>	<p>The application of 2.4.2 in the PFRA Standard could be expanded so as not to be limited to ‘conversation’, as it is presently</p>
<p>Section 9 - identification badges for collectors (1) If a person is in the course of conducting or participating in a fundraising appeal— (a) in a public place; or (b) on the premises of a person from whom money or a benefit is being solicited or received without the prior invitation of that latter person— she or he must wear an identifying badge in such a way that the entire face of the badge is at all times clearly visible. (2) A person who is conducting a fundraising appeal must issue an identifying badge to each person participating in the appeal who is required by subsection (1) to wear an identifying badge and must ensure that the badge— (a) prominently displays the words "Paid Collector" if the person to whom it is issued is entitled, or expects, to be paid for participating in the appeal (other than for out-of-pocket expenses)</p>	<p>Identification of face to face fundraisers adds legitimacy to activity, contributing to public trust and confidence; also aids identification when making a complaint; identification of third-party fundraisers is also important (using the words “paid collector”) to ensure members of the public understand they are not being solicited by a volunteer and receive income for providing their services, as they may influence their decision to donate</p>	<p>No – there is no identification requirement for face to face fundraisers under the existing ACL, including in relation to the engagement of third-party fundraisers</p>	<p>Yes – the PFRA Face to Face Fundraising Standard requires at 2.3.2 that: Fundraisers must always wear the prescribed identification badge and have this clearly visible to the public on their torso while working. Unless otherwise specified by legislation or permit conditions, this badge must contain at least: i) A recent photo of the fundraiser ii) Fundraiser name iii) Charity name and logo iv) The words “Paid Collector” v) Charity contact information vi) agency name. The PFRA Standard also requires at 2.3.1 that: Where not otherwise prescribed by law, fundraisers must provide donors with a written disclosure that fees are paid to a named commercial fundraising organisation (this disclosure is typically made on a charity’s ‘pledge form’, which is provided to donors).</p>	<p>PFRA requirement informed by legislation and permit condition requirements pertaining to identification; Standard would require minor amendment if no such requirements under state/territory law</p>
<p>Section 15A - Direct debit request form A person who conducts a fundraising appeal must ensure that any form used for the purposes of the appeal to enable donation using direct debit facilities by a person from whom money is solicited— (a) is easily legible; and</p>	<p>This is intended to ensure people enter into direct debit arrangements in a manner that is clearly communicated, i.e. in full awareness</p>	<p>No – there is no requirement under the existing ACL, in relation to direct debit request forms or fundraising</p>	<p>No – the PFRA Standard does not currently include any requirement pertaining to direct debit request forms, however refers to the principle of ‘transparency’ which includes a requirement to explain fundraising clearly and openly</p>	<p>The PFRA Standard could be expanded to include requirements pertaining to direct debit request forms, where not otherwise required under state or territory fundraising laws, or by members’ banks and financial services</p>

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(b) to the extent that it is printed or typed, uses a minimum 10 point font; and (c) is clearly expressed.		appeal forms more generally		legislation (if so, the duplication is unnecessary).
Section 17A – Fundraisers must be registered ... a person must not conduct a fundraising appeal unless she or he is registered by the Director as a fundraiser.	No fundraising activity can be undertaken without authorisation; it is important some element of ‘authority’ be imposed upon face to face fundraising activity, so as to legitimate the activity and to ensure members of the public can place their trust and confidence in fundraising activity when it occurs – this also mitigates against fraudulent fundraising activity	No – the ACL does not contain a requirement for fundraising activity to be authorised	Yes (in part) – the PFRA Face to Face Fundraising Standard requires compliance with existing state and territory fundraising laws at 2.1.1; because the PFRA relies upon reference to specified legislation or permit conditions, it does not duplicate existing requirements; further thought needs to be given to how face to face appeals are ‘authorised’ should state and territory laws be repealed; the PFRA suggests authorisation is granted in conjunction with charitable registration (through the ACNC); with registered charities given the right to authorise third-party fundraisers to conduct face to face fundraising appeals on their behalf (with no formal regulatory mechanism for doing so)	The PFRA could incorporate additional requirements into its Standard pertaining to the process by which third-party fundraisers receive authorisation by charities to undertake face to face fundraising activity. The PFRA may consider accreditation and/or licensing options in the context of its member registration process to ensure mandatory, uniform registration of fundraisers in Australia under a self-regulation regime.
Section 26 - Proceeds may only be given to beneficiaries (1) A person conducting a fundraising appeal must not give, and must not authorise or permit any other person to give, any of the net proceeds of the appeal to any person, cause or thing who is not a beneficiary of the appeal, unless otherwise permitted by the Director under subsection (2) or ordered by the Court under section 35A	Members of the public have a reasonable expectation that any donation they make will be given to the beneficiaries, reference to whom is ordinarily made in the course of conducting an appeal for support	No – the ACL does not include a specific requirement that fundraising proceeds may only be given to beneficiaries, however would prohibit misrepresentation about how proceeds are applied	No – the PFRA Standard does not currently include a requirement that money raised may only be given to beneficiaries, however prohibits misrepresentation for the purposes of securing a donation	Subject to sector consultation, if it was felt desirable the PFRA Standard could be expanded to include such a requirement, unless otherwise prescribed by ACNC or under FIA Code/s
<i>Fundraising Regulations 2009</i>				
7 Identifying badges (1) A person who issues an identifying badge under section 9(2) of the Act must ensure that the badge prominently displays— (a) the name of the person conducting the fundraising appeal; and	Identification of face to face fundraisers adds legitimacy to activity, contributing to public trust and confidence; also aids identification when making a complaint	No – there is no identification requirement for face to face fundraisers under the existing ACL	Yes – the PFRA Face to Face Fundraising Standard requires at 2.3.2 that: Fundraisers must always wear the prescribed identification badge and have this clearly visible to the public on their torso while working. Unless otherwise specified by legislation or permit conditions, this	PFRA requirement informed by legislation and permit condition requirements pertaining to identification; Standard would require minor amendment if no such requirements under state/territory law

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(b) the name of the person to whom the badge is issued			badge must contain at least: i) A recent photo of the fundraiser ii) Fundraiser name iii) Charity name and logo iv) The words "Paid Collector" v) Charity contact information vi) agency name	
7(4) If a person issues more than one identification number for the purposes of subregulation (1)(c)— (a) the identification numbers issued must be sequential; and (b) the person must— (i) make a record of each identification number issued and the person to whom it relates...	This requirement assists to ensure identification badges are appropriately distributed and managed, preventing loss and mitigating against fraudulent use	No – there is no specific requirement regarding the use of record systems for identification badges	No – the PFRA Face to Face Fundraising Standard does not contain any requirement for the management of identification badges	The PFRA could incorporate such a requirement into its Standard

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Queensland (*Collections Regulation 2008* under *Collections Act 1966*)

Existing provisions for retention <i>Which existing provisions are operationally important to the practice of face to face fundraising?</i>	Justification for retention <i>Why is the provision significant?</i>	ACL coverage <i>Does the ACL presently address the matter?</i>	Self-regulatory coverage <i>Does the existing self-regulation regime for face to face fundraising address the matter?</i>	Comment
Collections Regulation 2008				
<p>18 Appeals for support</p> <p>(1) The governing body of an association proposing to make a door-to-door appeal or street collection, or a person authorised by the governing body, must issue to each collector a distinctive armband or badge (an association armband or badge), and an authority in the approved form.</p> <p>(2) The governing body of the association must keep a record of each person to whom it issues an association armband or badge.</p> <p>(3) A person other than the person to whom an association issues an association armband or badge must not use an association armband or badge.</p>	<p>This requirement assists to ensure identification badges are appropriately distributed and managed, preventing loss and mitigating against fraudulent use</p>	<p>No – there is no specific requirement regarding the use of record systems for identification badges</p>	<p>No – the PFRA Face to Face Fundraising Standard does not contain any requirement for the management of identification badges however it does require fundraisers to wear the prescribed identified badge (2.3.2).</p>	<p>The PFRA could incorporate such a requirement into its Standard</p>
<p>18 (4) A collector to whom an association armband or badge, or authority is issued must—</p> <p>(a) sign the written authority and produce it if a police officer, inspector or other person asks to see it during the collection; and</p> <p>(b) if possible, sign the armband or badge; and</p> <p>(c) wear the armband or badge prominently when collecting; and</p> <p>(d) keep the authority and armband or badge in his or her possession and return it to the promoter— (i), (ii), (iii)</p>	<p>No fundraising activity on behalf of a charity can be undertaken without that charity's authorisation; this is to ensure the fundraising activity is carried out lawfully (not fraudulently) and in accordance with the charity's instructions. It is important that this authority is written and not verbal, as it can be produced upon request (ensuring transparency for donors). This commonly takes the form of an identification badge.</p>	<p>No – the ACL does not contain a requirement for fundraising activity to be authorised</p>	<p>Yes (in part) – the PFRA Face to Face Fundraising Standard requires at 2.3.2 that: Fundraisers must always wear the prescribed identification badge and have this clearly visible to the public on their torso while working. Unless otherwise specified by legislation or permit conditions, this badge must contain at least: i) A recent photo of the fundraiser ii) Fundraiser name iii) Charity name and logo iv) The words "Paid Collector" v) Charity contact information vi) agency name. Because the PFRA relies upon reference to specified legislation or permit conditions, it does not duplicate existing requirements.</p>	<p>The PFRA could incorporate additional requirements into its Standard pertaining to identification badges, including:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Consecutive numbering <input type="checkbox"/> Issue and expiry dates <input type="checkbox"/> Signature of charity and/or agency <input type="checkbox"/> Return requirements

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<p>35 Advertising A person must not distribute a leaflet or publish an advertisement about an appeal for support the subject of an agreement under section 33 unless—</p> <p>(a) the leaflet or advertisement contains the following—</p> <p>(i) the name and address of the promoter of the appeal and the charity or association;</p> <p>(ii) a statement showing particulars of the arrangements made under the agreement about the beneficial entitlements of the promoter and the charity or association</p>	<p>This is intended to ensure prospective donors receive necessary information about the party/parties conducting a fundraising appeal, particularly where they are being solicited by a third-party fundraiser (agency), as this may influence their decision to donate</p>	<p>No – the ACL is silent on the engagement of fundraising advertising requirements</p>	<p>No – the PFRA Standard does not include any requirements pertaining to disclosure in advertising generally, however 2.3.1 of the Standard requires that: Where not otherwise prescribed by law, fundraisers must provide donors with a written disclosure that fees are paid to a named commercial fundraising organisation (this disclosure is typically made on a charity’s ‘pledge form’, which is provided to donors)</p>	<p>The PFRA’s Standard could be amended to ensure some disclosure information was applied to all forms of advertising, even if limited to the name and address of the promoter of the appeal and the charity, and a statement summarising the arrangement in place; alternatively, to refer donors to a website providing the relevant details. The goal is to capture the necessary information in a simple, ‘universal’ disclosure statement, which is already mostly required by the PFRA Standard</p>
<p>41 False advertising (1) A person must not falsely represent in an advertisement that the person is conducting an appeal for support on behalf of a charity or association, unless the person is authorised in writing by the governing body of the charity or association to conduct the appeal.</p> <p>(2) A person must not, in an advertisement relating to an appeal for support on behalf of a charity or association, make a statement or representation that is false in a material particular.</p>	<p>This is intended to ensure prospective donors are not misled or deceived; it supports transparency and truthfulness when advertising</p>	<p>Yes – the ACL includes a prohibition against misleading or deceptive conduct (s.18(1))</p>	<p>Yes – the PFRA requires at 2.4.2 that: Fundraisers must never knowingly mislead a member of the public or use false information in a conversation in an attempt to obtain a donation</p>	<p>The application of 2.4.2 in the PFRA Standard could be expanded so as not to be limited to ‘conversation’, as it is presently</p>
<p>Schedule 1 – additional conditions for door-to-door and street collections (7) A collector must not—</p> <p>(a) by words or conduct, unreasonably annoy any person approached during a collection; or</p>	<p>Members of the public reasonably expect that face to face fundraising is undertaken in a manner that is friendly, professional and respectful; ensuring appropriate protections are</p>	<p>No – the ACL does not include any requirements in respect of the conduct of face to face fundraisers</p>	<p>Yes – the PFRA Standard includes a requirement that door to door fundraisers must not enter a private dwelling (2.2.6), must immediately end a conversation with a member of the public as soon as they are requested to do so (2.4.10) and must not attempt to follow or comment to a member of the public once a conversation has ended (2.4.11)</p>	<p>The PFRA believes its Standard appropriately reflects the intention of this provision</p>

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(b) stay in, or at the door of, any place of residence or place of employment if asked to leave by any occupant of the place.	in place to avoid annoyance are imperative			
(8) A collector must not intimidate any person so as to cause the person to make a donation or buy anything the person otherwise may not have made or bought.	As above, members of the public have an expectation that they will be not be intimidated, or coerced into making a donation	Yes - the ACL provides that a person (which includes a corporation) must not engage in conduct that is unconscionable (s.21)	Yes - the PFRA Standard requires fundraisers not behave in a way that might be reasonably interpreted as forcing a member of the public to enter a conversation against their will (2.4.7) and prohibits fundraisers intentionally approaching a member of the public who appears to be vulnerable (2.4.12)	The PFRA Standard could be amended to include express reference to "intimidation"
<u>Collections Act 1966</u>				
<p>10 Conducting of unlawful appeals for support</p> <p>(1) No person shall make or cause to be made or assist in making any appeal for support for any purpose to which this part applies unless—</p> <p>(a) where the appeal for support is made for the purpose of a charity only—that charity is then registered as such under this Act;</p> <p>(b) where the appeal for support is made for the purpose referred to in section 9(b) to (g)—that purpose is then sanctioned under this Act.</p>	No fundraising activity can be undertaken without authorisation; it is important some element of 'authority' be imposed upon face to face fundraising activity, so as to legitimate the activity and to ensure members of the public can place their trust and confidence in fundraising activity when it occurs – this also mitigates against fraudulent fundraising activity	No – the ACL does not contain a requirement for fundraising activity to be authorised	Yes (in part) – the PFRA Face to Face Fundraising Standard requires compliance with existing state and territory fundraising laws at 2.1.1; because the PFRA relies upon reference to specified legislation or permit conditions, it does not duplicate existing requirements; further thought needs to be given to how face to face appeals are 'authorised' should state and territory laws be repealed; the PFRA suggests authorisation could be granted in conjunction with charitable registration (through the ACNC); with registered charities given the right to authorise third-party fundraisers to conduct face to face fundraising appeals on their behalf (with no formal regulatory mechanism for doing so)	The PFRA could incorporate additional requirements into its Standard pertaining to the process by which third-party fundraisers receive authorisation by organisations to undertake face to face fundraising activity; the PFRA however derives some enforcement credibility by being able to refer to existing state and territory laws which makes unauthorised face to face fundraising unlawful; the PFRA could also make ACNC registration mandatory for PFRA charity members

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Existing provisions for retention <i>Which existing provisions are operationally important to the practice of face to face fundraising?</i>	Justification for retention <i>Why is the provision significant?</i>	ACL coverage <i>Does the ACL presently address the matter?</i>	Self-regulatory coverage <i>Does the existing self-regulation regime for face to face fundraising address the matter?</i>	Comment
<p>24 Information etc. may be obtained on any aspect of an appeal for support</p> <p>Where by any provision of this part, power is conferred upon any person to require the answering of any question or the supplying of any information, or the production of any record, or the lodgment of any return in relation to any appeal for support, then, without limiting the generality of the foregoing, that power shall be deemed to include power to require the answering of any question or the supplying of any information, or the production of any record, or the lodgment of any return, as the case may be, in relation to the administration and management of the association (if any) making or causing to be made the appeal for support or for whose objects or purposes the appeal is made, the receipts and expenditure associated with the appeal, and the administration management, and application of moneys and property resulting from the appeal for support.</p>	<p>This is intended to ensure prospective donors are not misled or deceived, and that they receive access to information upon request; it also encourages transparency in fundraising</p>	<p>Yes (in part) – the ACL includes a prohibition against misleading or deceptive conduct (s.18(1)), however does not include any specific requirement regarding access to information</p>	<p>Yes (in part) – the PFRA Standard requires at 2.4.2 that: Fundraisers must never knowingly mislead a member of the public or use false information in a conversation in an attempt to obtain a donation. It requires adherence to General Principles (1.1) including ‘Integrity and Honesty’ and ‘Transparency’.</p>	<p>The PFRA’s Standard could be amended to include explicit reference to providing access to information as reasonably requested by any regulator or member of the public</p>
<p>30 Records of appeals for support</p> <p>(1) ...the promoter of each appeal for support... shall keep and retain in the promoter's custody until such time as the promoter is directed or authorised by or under this Act to destroy, hand over, or otherwise dispose of that record, a record of the appeal for support in writing consisting of or showing—</p> <p>(a) the purpose for which the appeal was made;</p> <p>(b) the full name and address of the promoter and the promoter's authority for acting as promoter;</p> <p>(c) an accurate statement showing full details, of all income and expenditure associated with the appeal (in the approved form) and of the moneys and property raised by or resulting from the appeal and of the disposal of all such moneys and property;</p> <p>(d) the audit report or a copy thereof, if such a report is received by the promoter, in relation to the appeal for support;</p> <p>(e) such other matters as may be prescribed in that behalf.</p>	<p>Foundation principle underpinning the management of all face to face fundraising appeals, ensuring internal systems and processes are in place (e.g. record keeping) to ensure their appropriate management, and also an important tool for statistical and competitive analysis</p>	<p>No – there is no specific requirement regarding fundraising controls, including records of appeals for support</p>	<p>No – the PFRA Face to Face Fundraising Standard does not contain any specific requirement however General Principles (1.1) ‘Integrity and Honesty’ and ‘Transparency’ are relevant</p>	<p>The PFRA Standard could be expanded to include record keeping requirements for fundraisers (as required); the ACNC and FIA may have roles here</p>