

Australian Consumer Law Review Issues Paper
Cancer Council Queensland Response

Cancer Council Queensland wishes to make comment on those parts of the Issues Paper that relate to charities and not-for-profits.

2.1 Structure and clarity of the Australian Consumer Law

2.1.2 The meaning of 'consumer'

Question 7. Is the ACL's treatment of 'consumer' appropriate?

The ACL currently provide protections to 'consumers' who have acquired particular goods or services that are 'ordinarily acquired for personal, domestic or household use or consumption'. One of the issues flagged in the paper is whether those parts of the ACL that apply to 'consumers' should apply to charities and NFPs. To the extent that a charity or NFP provides goods or services for personal, domestic or household use then the ACL would already apply. There is no reason to distinguish between not-for-profit and for profit organisations in this context.

However, many charities and NFPs receive their income either solely or predominantly through donations without providing any goods or services. Compliance with the underlying principles of the ACL should not be objectionable to the majority of NFPs and should be reflective of current best practice in the context of charitable donations. However, any application of the ACL to NFPs should only take place after consultation with the sector. In addition the following factors should be taken into consideration:

1. How would the ACL interact with fundraising regulation at a State/Territory and local government level? If the effect of the application of the ACL would be to create an extra compliance burden on the sector then this should be avoided. Any discussion about the application of the ACL to charities and NFPs needs to be done in conjunction with a discussion about the reform of fundraising laws and regulations.
2. Consideration (both in relation to any extension of the application of the ACL and in relation to the current application of the ACL to charities) should be given to the fact that many charities conduct their operations through large numbers of volunteers. Charities will only be able to provide training to volunteers in relation to their obligations under the ACL if they have the resources to enable them to do so. In addition, it is unfeasible to expect charities to comprehensively police all voluntary activities in the context of the ACL provisions. Consequently, it may be necessary to provide for an exception for the activities of volunteers. This exception may not be appropriate where the volunteers are officers of the NFP. It would also be necessary to consider the potential application of the "accessorial liability provisions" of the ACL to charities and the interplay with the Civil Liabilities Acts in each State and Territory.
3. The ACL was designed to protect consumers in a commercial setting and in relation to the sale of goods and services. The charitable sector exists for an entirely different purpose and is driven by a different set of motivations. The current application of the ACL and any further extension of the application of the ACL to

charities should be considered carefully to ensure that it is appropriate to the operation of the sector. It may be more appropriate therefore to have a separate section of the ACL specifically relating to not-for-profits.

2.3 The Australian Consumer Law's specific protections

2.3.5 Unsolicited selling agreements

The Issues Paper queries whether the unsolicited consumer agreement provisions should apply to commercial companies collecting donations on behalf of charities.

It is Cancer Council Queensland's view that charitable entities should be exempt from the unsolicited selling provisions of the ACL for the following reasons:

1. Most donations to charities are a result of an 'ask' by a friend, family member or fundraiser. The ability for charities to ask for donations is therefore vital. Much of the fundraising of charities occurs opportunistically when someone encounters a fundraising activity and decides to donate or participate. If the regulations around unsolicited selling were applied to collecting donations then many of the existing fundraising activities may cease.
2. It is best practice throughout the industry, even when a reoccurring commitment to make a donation is given, that all donations are voluntary and therefore can be cancelled by the donor at any time. This provides greater protection to donors than that offered by the unsolicited consumer agreement provisions.
3. If the 10 day cooling off period that applies to unsolicited commercial contracts were to apply to charities this would be unnecessarily onerous as it would prevent charities from applying funds received during that period.
4. There is already considerable regulation of fundraising by the charitable sector at a State/Territory and local government level. To impose further regulation under the ACL would create a further regulatory burden for the sector.

Cancer Council Queensland further submits that no distinction should be made between situations where the charity itself through its employees (rather than a commercial company on its behalf) is collecting donations by way of an unsolicited agreement. From the perspective of the donor there is very little, if any, difference. Applying a separate set of rules depending on whether the fundraising is conducted by an external organisation or 'in house' would impose extra and unnecessary regulatory burden on the sector.