



***Report of the
National Competition Policy Review of
the Charitable Fundraising Act***

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National Competition Policy Review of the Charitable Fundraising Act (1991)

1 INTRODUCTION

1.1 Competition Principles Agreement

Under the Competition Principles Agreement (CPA) signed by the Council of Australian Governments in 1995, the New South Wales Government is committed to reviewing legislation that potentially restricts competition.

Clause 5(1) of the CPA states:

The guiding principle is that legislation...should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Clause 1(3) of the CPA specifies the matters that should, where relevant, be taken into account when assessing the costs and benefits of the restriction. These matters include:

- government legislation and policies relating to ecologically sustainable development
- social welfare and equity considerations, including community services obligations
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity
- economic and regional development, including employment and investment growth
- the interests of consumers generally or of a class of consumers
- the competitiveness of Australian businesses
- the efficient allocation of resources.

This list is not exhaustive and other matters may be considered in addition to those specified in clause 1(3).

Clause 5(9) of the CPA specifies those matters that should (at a minimum) be included in any review. The review should:

- clarify the objectives of the legislation, and their continuing appropriateness
- identify the nature of the restrictive effects on competition
- analyse the likely effect of any identified restriction on competition on the economy generally
- assess and balance the costs and benefits of the restrictions identified and
- consider alternative means for achieving the same result, including the use of non legislative approaches.

As part of NSW Government's commitments under the CPA, a National Competition Policy (NCP) review of the Charitable Fundraising Act ("the Act") has been undertaken to determine if the arrangements under these Acts restrict competition and, if so, whether the benefits of the restrictions outweigh the costs and whether there are other less restrictive ways of achieving the objectives of the legislation.

1.2 Conduct of the Review

The review has been oversighted by a NSW Government steering committee comprising the Department of Gaming and Racing and The Cabinet Office. The approved terms of reference for the review are attached as Annexure A.

The Department released an issues paper to key stakeholders on 1 December 2000 inviting comment and submissions. No submissions were received from persons or organisations.

1.3 Context of Review

Several other policy and inquiry processes into charitable fundraising are relevant to the review including:

- The Productivity Commission Inquiry into Charitable Organisations (June 1995). In its Report the Commission recommended uniform fundraising legislation between the States and Territories. The Report recommended in part, that consideration should be given to achieving greater efficiency and effectiveness of fundraising regulation among the States and Territories. It suggests a uniform legislative approach, or a mutual recognition of legislation.
- An Inter-jurisdictional Working Party, which comprises representatives from the various States and Territories, was formed in February 2000 to investigate, amongst other matters the feasibility of developing a uniform national system of regulation for charities. At this stage, the working party has not resolved its position.

1.4 NCP Reviews of Comparable Legislation in Other States

Only some other Australian jurisdictions have legislation comparable with the NSW Charitable Fundraising Act. Western Australia, Victoria and Queensland have not listed their legislation for review under the Competition Principles Agreement. South Australia has reviewed the Collections for Charitable Purposes Act 1939. The review found that controls were justified on net public benefit grounds.

2 OBJECTIVES OF THE CHARITABLE FUNDRAISING ACT

The stated objects of the Act [section 3] are:

- to promote proper and efficient management and administration of fundraising appeals for charitable purposes
- to ensure proper keeping and auditing of accounts in connection with such appeals
- to prevent deception of members of the public who desire to support worthy causes.

The intention of the Act is to:

- **improve integrity** of persons or organisations that conduct charitable fundraising activities — a probity regime with responsible, responsive and accountable persons or organisations
- **assist the ongoing viability** of persons or organisations that conduct charitable fundraising activities, which contribute positively to the community and develop and operate in the public interest
- **ensure fairness** concerning the conduct of charitable fundraising activities as it impacts on members of the community (including beneficiaries, participants, promoters, organisers)
- **ensure the application of profits/proceeds** to the particular purpose or organisation represented during the conduct of the charitable fundraising activity.

Legislation is often developed as a response to problems experienced by consumers or the community. Such problems may be the result of what economists term *market failure*. A market may fail, or become distorted, when charities and fundraising organisations do not operate in the best interest of economic efficiency, or where environmental or social detriment occurs.

The standards described in the Act have been developed to address community concerns about charitable fundraising and the impact of these concerns on the ongoing viability of the charitable sector. If the community loses faith in the fundraising activities of charities and in the way in which those funds are applied or managed, the sector could face reduced funds as a result of a loss of public confidence.

In order to identify market failures, it is helpful to think of what might occur if the current legislation was not in place. This could include:

- potential donors to charity organisations not being protected from unscrupulous operators, thereby threatening revenue for legitimate charities; or
- community or charitable organisations not being able to offer a ‘competitive product’ against commercial operators, thereby losing much needed revenue.

The legislative arrangements address these potential market failures and protecting the public interest by regulating or restricting:

- who may conduct or participate in charitable fundraising activities
- in what manner charitable fundraising activities are carried out (eg. what activities can be undertaken, how activities are to occur, the advertising and disclosure of certain information)
- how funds received from the community through charitable fundraising / solicitation activities are accounted for and applied including restricting expenses.

3 RESTRICTIONS ON COMPETITION

3.1 Introduction

The Act regulates the charitable fundraising market. This market is made up of donors and potential donors among the community, both individuals and corporations, charitable organisations (charities) that undertake fundraising activities and provide charitable services to the community, and commercial fundraisers (traders) that undertake fundraising activities on behalf of charities, and persons or causes in beneficial receipt of charitable services (beneficiaries).

The Act imposes a general prohibition on fundraising for charitable purposes unless the person who or an organisation which conducts the fundraising appeal is the holder of an authority authorising the person to conduct the appeal, or is authorised to conduct fundraising appeals without an authority.

The penalties under the Act include:

- conducting an unlawful fundraising appeal (section 9)
- participating in an unlawful fundraising appeal (section 10)
- traders conducting appeals contrary to the Act (section 11)
- printing or publishing any advertisement, information, or notice relating to an unlawful fundraising appeal (section 12).

The maximum penalty for each offence is \$5,500.

3.2 Outline of the Legislative Framework

Under the Act a person or organisation wishing to raise money for charitable purposes — a fundraising appeal — must hold an authority to fundraise. By possessing an authority to fundraise, an organisation is entitled to appeal to the public for funds, but in return that organisation incurs a number of obligations that are set out in the Act, the Regulations and in greater detail in the conditions attached to the authority to fundraise.

The Act requires that before an organisation may conduct charitable fundraising activities it is required to hold an authority to fundraise. This authority may be granted for an indefinite period for an indefinite number of appeals. In practice authorities will be issued for a specific period such as five years. Conditions are attached to authorities.

An organisation established by an Act and subject to the control and direction of a Minister is not required to obtain an authority to fundraise. Nevertheless, this type of organisation must still comply with all other requirements of the Act and Regulations including maintaining proper records and having their accounts audited.

Religious organisations that are recognised under the Marriage Act 1961 are exempt from all the requirements of the Act. This exemption may also be passed onto organisations and bodies associated with the religious organisation if the religious organisation's principal or executive officer gives approval in writing.

The authority conditions imposed are of two types, standard and special. Standard conditions apply to all authorities issued. Special conditions will be imposed on certain authority holders, or a class of authority holders, in response to special or exceptional circumstances. In some instances an authority condition may be modified or replaced with another condition. The conditions are based on prudent and fair practices.

3.3 Restrictions

The table at Annexure B gives a description of the types of restrictions that govern charitable fundraising activities.

There are isolated aspects of the Act that may have the effect of restricting competition, or give discretionary powers, which may in turn be used in a way that restricts competition. Those aspects are:

- entry restrictions [3.4]
- restrictions on conduct [3.5]
- all eligible organisations are not placed on equal terms [3.5].

These potential restrictions on competition and their effects are discussed below.

3.4 Entry Restrictions

3.4.1 Nature of the restriction

Under the Act a person or organisation wishing to raise money for charitable purposes — a fundraising appeal — must hold an authority to fundraise. By possessing an authority to fundraise, an organisation is entitled to appeal to the public for funds. However, there are exceptions to this restriction.

An organisation established by an Act and subject to the control and direction of a Minister is not required to obtain an authority to fundraise. Nevertheless, this type of organisation must still comply with all other requirements of the Act and Regulations including maintaining proper records and having their accounts audited.

Religious organisations that are recognised under the Marriage Act 1961 are exempt from all the requirements of the Act. This exemption may also be passed onto organisations and bodies associated with the religious organisation if the religious organisation's principal or executive officer gives approval in writing.

Application for an authority to fundraise is obtained by lodging an application form (there are no application charges or fees). There is no restriction on who may apply for an authority; the restriction is on whether the applicant is able to satisfy legislative and policy guidelines relating to the grant of authorities.

Under the Act (section 16) an application for an authority may be refused if it is satisfied that any one or more of the following matters applies:

- that the proposed appeal will be conducted in good faith for charitable purposes
- that all of the persons proposing to conduct the appeal, and all persons associated with the proposed appeal, are fit and proper persons to administer, or to be associated with, a fundraising appeal for charitable purposes
- that the proposed appeal will be administered in a proper manner
- that the grant of an authority would not facilitate the contravention of any Act
- that the applicant can and will ensure that persons conducting or participating in the proposed appeal will comply with the provisions of this Act and the regulations and the conditions of the authority
- that the applicant has furnished all the information required to be furnished in relation to the proposed appeal
- that, having regard to the purposes and activities, or likely activities, of the applicant, names, designations or titles proposed to be used in connection with the proposed appeal are appropriate and not misleading
- that it is in the public interest to grant the authority.

These reasons for refusing an application are fundamental and support the objectives of the Act, which is designed to maintain public confidence in charitable organisations.

Section 11 of the Act restricts commercial fundraisers (traders) from holding an authority to fundraise. A trader is a person or organisation that obtains reward for conducting fundraising appeals, either directly or indirectly. The Act requires a trader to conduct a fundraising appeal in conjunction with an authority holder.

Part 4 of the Act provides that if an applicant for an authority is dissatisfied with a decision to refuse the application, that person or organisation may apply to the Administrative Decisions Tribunal for a review of the decision.

3.4.2 Costs and benefits of the restriction

The restriction is on who may hold themselves out to be fundraising for a charity or a charitable purpose. Section 9 generally restricts access to persons or organisations that hold an authority to fundraise issued under the Act or are otherwise exempt from the Act or the need for an authority to fundraise. There is no restriction on who may apply for an authority.

The maintenance of accessibility standards is core to the maintenance of public confidence in charitable organisations and therefore central to the fundraising capacity of the charity sector.

There is nothing in the Act that restricts fundraising appeals by social or sporting clubs, and similar community-based self-interest organisations. The legislation impacts on fundraising appeals for charitable purposes.

The major argument for continuing the regulation of fundraising activities of charitable organisations is that governments have a responsibility to regulate and supervise the collection of money by appeals to the public through historic and legal precedent. The Attorney General, as “*parens patriae*”, has a duty to act as the guardian of charity and as the constitutional trustee of money given to charity.

The government has a responsibility to protect the public — beneficiaries and donors.

Under the Act people are encouraged to give to charitable purposes. If these purposes fail, then the government has a responsibility to protect the victims of this failure — the potential beneficiaries.

On the other hand, if person or organisations make appeals for other than charitable purposes then the victims are the gullible public who donate money. The government does not have the same responsibility to protect these people, although they may be protected to some extent through the operation of other laws — e.g. fair trading laws, Crimes Act.

The size and social impact of the charity sector also makes it desirable that it is accountable to the public and that as much information as possible is known about its activities.

The Act provides some measure of supervision of this important sector in the community. Because of the size and nature of the charity sector, the government’s role cannot be totally proactive. To achieve this would require a massive increase in resources and unwarranted and an unwelcome intrusion into organisations that are being properly run.

The legislation is designed to give overall regulation of charitable fundraising appeals and, at the same time, structured so that there is a prompt reaction to problems as they emerge.

The maintenance of entry requirements is of central importance to the ongoing operations of the sector.

The public cannot, in the absence of regulation, be expected to differentiate between legitimate charitable causes and persons representing themselves as collecting for charitable purposes for purely personal gain. In this instance the market is clearly not reliable because of the lack of information regarding the activities of groups and individuals soliciting for charitable donations.

The government has a clear and appropriate role to play in establishing safeguards to protect the public from unscrupulous practices, mismanagement, fraud and misapplication of the funds through a regulatory framework.

Although technically the Act could be seen as a barrier to entry, it is not used to restrict entry of legitimate persons and organisations to the market but, merely prevents others from using the name of charity. Once a charity is licensed it is restricted to the same extent as other participants.

If the restriction did not exist the possible costs could include loss of community confidence and community (donor and beneficiaries) protection measures, the possible expansion of unscrupulous practices to a point where it becomes a net loss to bona fide charities (charities would face a downturn in revenue), and difficulty in attempting to identify and prosecute those who exploit the community for personal gain.

The entry restriction provides substantial net public benefits.

3.4.3 Conclusion

The Act is performing a function with strong public benefits and only minor restrictions on the activities of organisations operating in the charitable sector. The Act protects the public from fraud, maintains public faith in the fundraising methods of organisations holding themselves out as charities and maintains the revenue base for the sector's charitable activities.

Restrictions on entry may have competition impacts but are justified on the basis of social and economic grounds. No other practical alternative exists.

Impacts on competitiveness have been minimised by consultation with the sector, and policies that attempt to balance the needs of the sector.

3.4.4 Recommendation

That the legislative restrictions on accessibility to charitable fundraising activities be retained.

3.5 Restrictions on conduct

3.5.1 Nature of the restriction

By possessing an authority to fundraise, an organisation is entitled to appeal to the public for funds, but in return that organisation incurs a number of obligations that are set out in the Act, the Regulations and in greater detail in the conditions attached to the authority to fundraise.

Once a person or organisation is granted an authority to fundraise, the authority holder is restricted to the same extent as other participants by the conditions. The restriction on activities is central to the intent of the legislation.

The authority conditions imposed are of two types, standard and special. Standard conditions apply to all authorities issued.

The standard authority conditions are based on prudent and fair practices — financial accountability, fundraising accountability and management accountability. The conditions complement the Act and the Regulations, and in some cases allow for amendment of legislative requirements.

Special conditions are imposed on certain authority holders, or a class of authority holders, in response to special or exceptional circumstances. In some instances an authority condition may be modified or replaced with another condition.

Authority conditions can also be modified to fit the special needs or exceptional circumstances of a charity. The following are circumstances in which authority conditions may be varied:

- the requirement that a separate bank, building society or credit union account must be maintained for the deposit of fundraising appeal proceeds

- the place where records may be kept - that is, at other than the registered office of the authority holder
- the ratio of expenses to gross proceeds obtained from fundraising appeals, especially where donor acquisition schemes are involved
- the need to issue receipts in respect of appeal day badges, medals, etc.
- the need to exempt certain persons from the need to wear an identification badge or card when they conduct or participate in an appeal, eg. fundraising directors and chief executive officers attending meetings (corporate sponsorship, etc.), or functions (balls, dinners, etc.)
- certain requirements relating to the participation of children in fundraising appeals. For example, children under 8 participating in an appeal (spellathons), supervision of children at special events (fun runs), or other appeals in which the requirements are inappropriate given the type of appeal being undertaken (appeals which do not require the child to eat for a period of time).

Certain requirements of the Act cannot be negated by an authority condition. These include the keeping of records of income and expenditure, and the need to have those accounts audited.

An authority holder who is dissatisfied with an authority condition or variation of the condition may within 30 days of receiving notice of the decision lodge an appeal with the Administrative Decisions Tribunal against the decision.

3.5.2 Costs and benefits of the restriction

The maintenance of these restrictions on conduct is of importance to the ongoing operations of the sector. The restrictions on how a charity accounts for funds received through fundraising appeals, how a charity conducts fundraising appeals, and how a charity manages those funds is central to the maintenance of public confidence in charitable organisations and therefore central to the revenue raising capacity of the sector.

The restrictions are prudent practices and procedures. They do not unduly restrict charities in the market but merely prevents them using inappropriate practices and procedures. They do not create significant administrative burdens.

The restrictions aim to control the quality of the participants in the sector, with the objective of maintaining public confidence. All competitors in the market face the same restrictions.

In the absence of restrictions, the public cannot be expected to be seized of reliable information to enable them to make informed decisions about giving, and whether funds are being applied to the purposes intended through the appeal process. This could result in a loss of community confidence and community protection measures, the possible expansion of unscrupulous practices to a point where it becomes a net loss to charities.

The restrictions provide substantial net public benefit.

3.5.3 Conclusion

The Act is performing a function with strong public benefits and only minor restrictions on the activities of organisations operating in the charitable sector. The act protects the public from fraud, maintains public faith in the fundraising methods of organisations holding themselves out as charities and maintains the revenue base for the sector's charitable activities.

Restrictions may have competition impacts but are justified on the basis of social and economic grounds. No other practical alternative exists.

Impacts on competitiveness have been minimised by consultation with the sector, and policies that attempt to balance the needs of the sector.

3.5.4 Recommendation

That the restrictions on conduct on charitable fundraising activities be retained.

3.6 All eligible organisations are not placed on equal terms

3.6.1 Nature of the restriction

Under the Act a person or organisation wishing to raise money for charitable purposes must hold an authority to fundraise. However, there are exceptions to this restriction.

Religious organisations that are recognised under the Marriage Act 1961 are exempt from all the requirements of the Act (section 7). This exemption may also be passed onto organisations and bodies associated with the religious organisation if the religious organisation's principal or executive officer gives approval in writing. The main reason why religious bodies and organisations are not included in the regulatory scheme is because of historic precedent. Religious bodies and organisations were exempt under the previous charity law, the Charitable Collections Act 1934. In addition, religious bodies and organisations are exempt under similar laws in other jurisdictions.

Despite the general exemption, the current law allows the Minister to declare that the Act apply to a person, body or organisation specified in an order issued under the Act. By way of example, the power might be exercised where a religious body or organisation has failed to provide information concerning any fundraising activity that has been the subject of a complaint from the public.

Another form of exemption relates to an organisation established by an Act and subject to the control and direction of a Minister. These bodies are not required to obtain an authority to fundraise. The types of organisations include Bush Fire Brigades, State Emergency Services, Parents and Citizens Associations, and health and ambulance services. Nevertheless, these types of organisations must still comply with all other requirements of the Act and Regulations including maintaining proper records and having their accounts audited. Complaints about such bodies will be investigated and, if necessary, a report will be tendered with the relevant controlling authority [Bush Fire Services, SES, Department of Education, and the Department of Health], including the relevant Government minister [if appropriate].

It was decided to exempt such bodies because they would not exist without the consent and the supervisory activities of a controlling authority. Such a structure provides for sound management and proper accountability. These types of organisation achieve accountability through the relevant Government minister and ultimately to Parliament. If it is necessary to communicate with such organisations or to achieve other strategic actions, this can be achieved through the controlling authority.

In addition to these exceptions, the Act does not restrict the fundraising activities of social or sporting clubs, and similar community-based self-interest organisations.

The argument for regulating fundraising activities for charitable purposes is that governments have a responsibility to regulate and supervise charities through legal precedent. The Attorney General, “as the father of charities”, has a common law duty to act as the guardian of charity and as the constitutional trustee of money given to charity. If charitable purposes fail, then the government has a responsibility to protect the victims of this failure.

On the other hand, if persons or organisations make appeals for other than charitable purposes then the government does not have the same responsibility in protecting the public, although they may be protected to some extent through the operation of other laws — e.g. fair trading laws, Crimes Act.

The size and social impact of the charity sector also makes it desirable that it is accountable to the public.

3.6.2 Costs and benefits of the restriction

One aim of the Act is to minimise any duplication of work by government and to apply resources as efficiently and effectively as possible to the administrative and monitoring tasks involved. As part of that aim, a system of risk management was introduced which exempted various types of organisations and various types of fundraising appeals from the regulatory scheme. The concept of risk management is appropriate in this environment. The Act provides for powers of investigation and inquiry, and to take appropriate action in the public interest. Experience has shown that the vast majority of organisations with charitable purposes are conducted acceptably and in good faith.

3.6.3 Conclusion

The Act is performing a function with strong public benefits and only minor restrictions on the activities of organisations operating in the charitable sector. It is unlikely that the Act if expanded to include all ‘eligible’ persons and organisations would provide any better protection to the public from fraud, or provide greater public faith in fundraising activities, in respect of the non-charitable fundraising activities.

Although the current requirement may have competition impacts, it adopts the sound principle of risk management and is justified on the basis of economic grounds. The alternative of imposing the Act on all ‘eligible’ organisations would impose significant costs.

Impacts on competitiveness have been minimised by consultation with the sector, and policies that attempt to balance the needs of the sector.

3.6.4 Recommendation

That the current exemptions or exceptions under the Act be retained.

3.7 Alternative approaches

Generic regulation

An alternative approach to regulating access is to provide for generic regulation. This would involve retaining a set of regulated requirements for entry and operation of charitable fundraising, without the need for an authority or licence. Penalty provisions would apply to those who do not operate in accordance with the requirements.

Organisations would still need to meet entry criteria to be able to carry out charitable fundraising activities. To some extent generic regulation already occurs, as there are legislative exemptions from the requirement to hold an authority in certain situations.

Generic regulation would result in some compliance and administrative savings for government and organisations. However, this would have to be countered by the possible difficulty of identifying those that exploit the community for personal profit, which would represent a cost. In addition, there would be a challenge in ensuring compliance with the requirements of the legislation.

Deregulation

It could be argued that the legislation is irrelevant as charitable fundraising is widespread and occurring without reference to legislative requirements.

Deregulation would result in compliance savings to government and the community, and would remove the threat of punishment for those who largely through ignorance do not comply with the law. However, the cost of deregulation is a loss of community confidence and community protection, and the possible expansion of exploitation by unscrupulous persons.

If this option were to be adopted, the economic costs imposed on charities would be confined to those necessary to comply with the basic requirements of the Act. It is likely that many charities would institute further procedures, safeguards and controls of their own volition in the interest of proper accountability. The economic benefits to charities would vary. For example, it is likely to save the time of volunteers that may be directed away from proper and prudent controls to other areas.

This option may be at a social cost to the community. It could result in some charities not applying proper procedures and controls to their fundraising operations. The lack of proper controls and procedures may result in less accountability, and greater opportunity for misappropriation. It may also contribute to inefficiency, resulting in a smaller amount of money available to spend on service delivery. This may result in a lack of public confidence and support from the public and therefore impact on all charities.

This option although providing a compliance saving to government, it may result in more complaints concerning such matters as deception, fraud and misappropriation. It is unlikely to reduce, and most probably would increase, investigative costs of government.

The benefit of the current restrictions on conduct is that charities may confidently conduct fundraising appeals in accordance with a law that intends to maximise the protection of the public from unscrupulous practices, which in turn should maximise the return to charities.

Self-regulation

Similar to the above, a self-regulation option would allow charities to get on with their business without interference. However, a self-regulation approach is likely to produce different standards of accountability due to diversity in the size, type and needs of charitable organisations, with poor standards resulting.

The current regulation promotes the observance of best practice in the operation of charities. It attempts to ensure more efficiency and accountability. The flexibility of the present scheme allows for net cost benefits for both government and the charity sector.

Negative licensing

Negative licensing is a possible alternative for the Act. Negative licensing is a regulatory model whereby persons or organisations are not required to hold a licence to operate, but can be excluded from operating if they breach certain legislative requirements.

To some extent a form of negative licensing already occurs, as religious bodies and organisations are exempt under section 7. However, the current law allows the Minister to declare that despite the general exemption provided by section 7 the Act, the regulations apply to a person, body or organisation specified in an order issued under the Act. By way of example, the power might be exercised where a religious body or organisation has failed to provide information concerning any fundraising activity that has been the subject of a complaint from the public.

Negative licensing would result in some compliance and administrative savings for government and organisations. However, this would have to be countered by the possible difficulty of identifying those that exploit the community for private gain, which would represent a cost.

The benefit of the current regulatory scheme is that persons or organisations conducting fundraising appeals for charitable purposes are registered on a database maintained for the purposes of the Act. The use of the database is essential part of an integrated compliance program consisting of the provision of education and information services and investigations as a result complaints or through proactive measures. The database is critical for the dissemination of information (especially through the Charities Bulletin) and enables persons and organisations involved charitable fundraising appeals to be invited to educational seminars. All other regulatory models would be at the expense of this valuable compliance tool. That database would not exist if not for the current licensing scheme.

Expand Act to include eligible organisations

If the Act were to be expanded to include all 'eligible' persons and organisations conducting fundraising appeals it would include the following purposes in addition to charitable purposes — for the various purposes of non-profit organisations such as sporting and recreation clubs, or for the purpose of raising funds for political parties and trade unions.

There are other laws that regulate these other activities in the public interest, and to impose another restriction would impose significant costs on both government and those bodies and organisations, with minimal public benefit.

If the Act were to be expanded to include all ‘eligible’ persons and organisations conducting fundraising appeals for charitable purposes it would include religious bodies and organisations, and bodies and organisations established under an Act and under the control of a Government minister such as parents and citizens associations.

The advantage of that approach would be that the register of charitable fundraising bodies maintained under the Act would be complete. However, this could involve increased costs to government and those other bodies, without any significant benefit to the community or the organisations concerned.

4 CONCLUSION AND RECOMMENDATION

The Review Steering Committee concluded that any anti-competition provisions in the legislation were justifiable and reasonable on the basis that the harm minimisation benefits outweigh any costs.

Although the Committee recommends no amendment to the Act, it recommends that there should be ongoing discussion between the States and Territories to explore the possibility of greater uniformity.

Annexure A

NATIONAL COMPETITION POLICY REVIEW LOTTERIES AND ART UNIONS ACT 1901 CHARITABLE FUNDRAISING ACT 1991

Terms of Reference

1. The review of the *Lotteries and Art Unions Act 1901 and Charitable Fundraising Act 1991* shall be conducted in accordance with the principles for legislation reviews set out in the competition Principles Agreement. The guiding principle of the review is that legislation should not restrict competition unless it can be demonstrated that:
 - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (b) the objectives of the legislation can only be achieved by restricting competition.
2. Without limiting the scope of the review, the review is to:
 - (a) clarify the objectives of the legislation, and their continuing appropriateness;
 - (b) identify the nature of the restrictive effects on competition;
 - (c) analyse the likely effect of any identified restriction on competition on the economy generally;
 - (d) assess and balance the costs and benefits of the restrictions identified; and
 - (e) consider alternative means for achieving the same result, including the use of non legislative approaches.
3. When considering the matters in (2), the review should also:
 - (a) identify any issues of market failure which need to be, or are being addressed by the legislation; and
 - (b) consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974 (Cth)* and the NSW Competition Code.
4. The review shall consider and take account of relevant regulatory schemes in other Australian jurisdictions and any recent reforms or reform proposals, including those relating to competition policy in those jurisdictions.
5. The review shall consult with and take submissions from persons and organisations associated with the relevant industry and other interested parties.

Annexure B

Restrictions Applying to Charitable Fundraising Activities

Restrictions under the Act

Section 7	authorises the Minister to declare that the Act applies to a religious body or organisation
Section 9	provides for the licensing of persons or organisations wanting to fundraise for charitable purposes; allows the Governor to make regulations to exempt an organisation or person from the need to be the holder of an authority
Section 11	provides that traders (commercial/professional fundraisers) must not conduct fundraising for charitable purposes unless in conjunction with an authority holder, and that such fundraising must comply with conditions
Section 12	provides an offence for publishing any advertisement, notice or information relating to an unlawful fundraising appeal
Section 16	deals with the Minister's powers to grant or refuse an application for an authority to fundraise (licence)
Section 19	deals with the Minister's powers to attach to an authority any condition
Section 20	deals with the application of funds raised
Section 21	deals with the investment of funds raised
Sections 22, 23, 24	deals with the keeping of records, periodic return and audit requirement
Section 31	deals with the Minister's power to revoke fundraising authorities
Section 33	deals with the Minister's power to appoint an administrator to administer the fundraising organisations
Section 39	allows for the Minister to remit cases to the Attorney General
Section 48	authorises the Minister to grant or refuse to grant an application for the remuneration of board members of charities

Restrictions imposed by the conditions attached to an authority to fundraise

Clause 8	expenses associated to donation only appeals cannot exceed 40% of the gross proceeds (donation only appeals include where a badge, sticker, token or other thing is given in exchange of a person's donation)
Clause 11	persons conducting or participating in a fundraising appeal on behalf of an authorised fundraiser must be authorised in writing and where an appeal is conducted face-to-face must wear an identification badge or card
Clause 12	prohibits the participation of children in fundraising appeals — under 8 years in general; under 13 years if in receipt of a wage or commission. Schedule 2 details the conditions relating to the participation of children in fundraising appeals
Clause 13	where a fundraising appeal is conducted through telephone canvassing or other direct marketing there are certain constraints including the use of database lists and when a telephone call cannot be made
Clause 16	advertisements, notices and information must provide certain information, especially when a trader is involved with an appeal
Clause 17	relates to appeals is for donated goods especially used clothing — certain information must be provided and a special sticker must be placed on clothing bins
Clause 20	an arrangement for a trader to conduct an appeal on behalf of an authority holder must be evidence by an agreement that must contain certain provisions
Clause 21	the management of an authority holder must be at least three persons
Clause 27	a fundraising appeal cannot be conducted by soliciting persons occupying motor vehicles