



**TELECOMMUNICATIONS LEGISLATION (UNSOLICITED COMMUNICATIONS) BILL 2019  
SENATE STANDING COMMITTEE ON ENVIRONMENT AND COMMUNICATIONS  
LEGISLATION COMMITTEE INQUIRY  
SUBMISSION BY  
FUNDRAISING INSTITUTE AUSTRALIA  
FEBRUARY 2020**

## **Executive Summary**

### **The importance of fundraising**

Donations remain a significant source of income for charities, with approximately one in four charities (26%) in 2015 depending on donations and bequests for 50 per cent or more of their total annual income.

### **Impact of loss of DNC exemption**

FIA estimates (conservatively) the loss of the Do Not Call Register (DNCR) exemption would put at risk \$600 million in income to charities.

### **Telephone plays a critical role in supporting regular giving**

Planned giving delivers six times more donations than spontaneous giving. Taking away the telephone would have a significant knock-on effect across all fundraising channels.

### **The policy argument for a DNCR exemption for charities remains valid**

Evidence suggests that telemarketing provides charities with an important source of revenue. The exemption is aimed at ensuring that charities are appropriately able to continue to raise funds to support their work.

### **Senator Griff's proposal is unworkable**

By creating a second-tier Do Not Call Register for charity calls, the bill would:

- create yet another tier of bureaucracy, especially burdensome for smaller charities,
- draw many thousands of previously exempt charities into the DNCR regime with all the cost and administrative burden that entails,
- be the first step (we believe) towards an outright ban on charitable tele-fundraising,
- create the conditions for the rapid expansion of the DNC/charity category
- eliminate the possibility of ever re-activating thousands of past donors, costing the sector many millions in lost donations annually.



**Cost of DNCR subscription prohibitive for smaller charities**

The cost of the DNCR subscription is prohibitive for most medium to smaller charities – with fees up to \$127,700 – rendering the telephone non-viable as a fundraising tool.

**Complaints against fundraising are small in number and in decline**

Charity complaints to the ACMA represent a very small (and declining) percentage of the total. In 2017-18, 1.2 percent of complaints to the Do Not Call Register were about charity calls. In 2018-19, 0.8 percent of complaints to the Do Not Call Register were about charity calls.

**Charities do not prey on the vulnerable**

Senator Griff has said that “Older Australians are the prey that some charities cherish.” On the contrary, it is this very segment of the population that fundraising is intended to help through its support of the many charities whose purpose is to aid the vulnerable.

**FIA’s Code prevents fundraisers from targeting vulnerable donors**

In 2016, FIA introduced donor care provisions to its Code to protect vulnerable people along with training for members, and compliance monitoring and reporting through an independent Code Authority.

**Charities and their agencies have effective tools to manage preferences**

Charities and their agencies agree how to manage calling preferences as part of their contract. Most agencies have their own in-house preference list, so anyone informing them that they do not wish to receive calls is flagged ‘do not call’.

**FIA recommends that** in view of the significant reduction in complaints about charity calling due to effective fundraising self-regulation, the continuing validity of the public interest exemption, the risk of additional compliance costs and administrative burden particularly for smaller charities, and loss of income to charities due to inability to contact donors by telephone, that the Senate Committee **reject** the proposed amendments to the DNCR charity exemption.

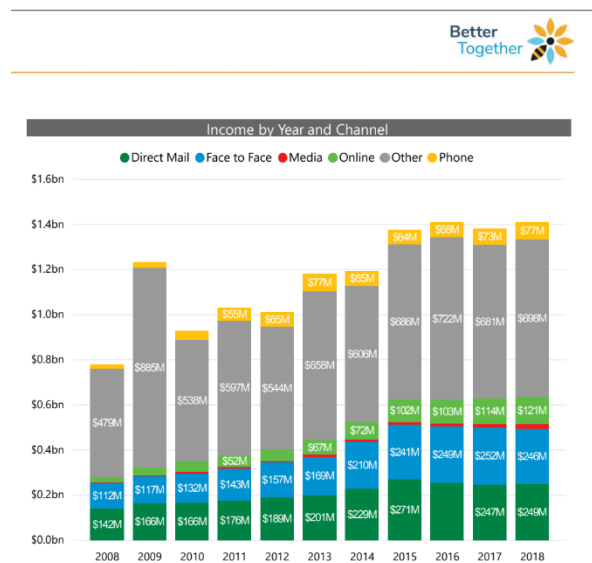
**FIA would welcome the opportunity to appear before a Senate Committee hearing on this matter.**

## About FIA

FIA is Australia's national association for professional fundraising. It has over 1200 members who are charities, NFPs, suppliers of fundraising services and individual fundraising professionals. Most major registered charities are FIA members, accounting for more than 80 per cent of the nearly \$9.9<sup>1</sup> billion donated by Australians each year.

## Understanding the importance of fundraising

Donations remain a significant source of income for charities, with approximately one in four charities (26%) in 2015 depending on donations and bequests for 50 per cent or more of their total annual income. While there are more individual donors than ever in Australia, their proportion in the total population has declined significantly over the last decade or so (from 87% in 2005 to 81% in 2016).<sup>2</sup>



Based on a contribution rate of six per cent<sup>3</sup> FIA estimates the loss of the Do Not Call Register (DNCR) exemption would put at risk \$600 million in income to charities. (This is a conservative estimate because it looks at telephone in isolation, whereas in reality, as will be demonstrated later in this submission, telephone supports other fundraising channels which would be compromised if its effectiveness were to be diminished by loss of the DNCR exemption.) This money would have to be found from another source, programs cut, or else governments would need to increase their public services spending to fill the gap.

Donations come from a wide range of sources. The 2018 JBWere report on fundraising noted: "Many casual observers of Australia's for-purpose and charity sector view donations as a dominant source of their income and think of the donors as broad, homogenous and a large section of the community. The public face of donations are often the large annual appeals, events and telethons. The reality is that donations come from a wide range of

<sup>1</sup> <https://www.acnc.gov.au/tools/reports/australian-charities-report-2017>

<sup>2</sup> Giving Australia 2016, Australian Centre for Philanthropy and Nonprofit Studies, QUT

<sup>3</sup> This contribution rate is calculated based on recent Pareto benchmarking of a pool of charities that raised a total of \$1.4 billion from 3.4 million unique donors, 6% of whom donated by telephone. The contribution rate of 6% is applied to the total annual donation figure of \$9.9 billion to arrive at an estimate of \$600 million.



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sources each driven by different motivations, growing at varying rates and supporting a range of very separate causes.<sup>4</sup>

### **Finding new donors is becoming harder**

Over the last 60 years, the number of not-for-profit organisations/charities operating in Australia has doubled every 20 years.<sup>5</sup> “In 2016, Australia had one charity for every 478 people. This increases the competition for individual donor dollars and compels charities to develop more professional, sophisticated, impactful and sustainable fundraising strategies.”<sup>6</sup>

“The good news is that the annual amounts claimed for donations per donor has grown well in excess of inflation. Except for the jump in 2008 which reflected a pre global financial crisis (GFC) increase in donations, particularly into private ancillary funds (PAFs), there has been a strong and consistent growth in support from donors. The bad news is that those donors haven’t yet inspired others to join. The proportion of taxpayers claiming tax deductible donations has been gradually slipping over the past decade albeit increasing in years of natural disaster (eg 2004 Boxing Day tsunami in Southeast Asia, 2009 Victorian bushfires and 2011 Queensland floods). In fact, this measure of participation peaked in 1983 highlighting a worrying trend in mass market support.”<sup>7</sup>

### **Understanding the need to ‘ask’ for donations**

The simple fact is that the vast majority of donors would not give if they were never asked.

Charities readily acknowledge that, for many Australians, being asked to donate can be uncomfortable, especially if the prospective donor has never previously supported that charity. This is why telephone fundraising tends not to be used for ‘cold calling’ but to reactivate past donors or to contact so-called “warm” donors: people who have given some indication by their behaviour or actions that they would be willing to consider donating to the charitable cause. “Over three quarters of individuals approached by telephone for donations said that they disliked it. However, 24.2% still made a donation when approached this way.”<sup>8</sup>

### **The importance of regular giving**

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<sup>4</sup> <https://www.jbwere.com.au/content/dam/jbwere/documents/JBWere-Support-Report-2018.pdf> p.7

<sup>5</sup> The Cause Report, J B Were, April 2016

<sup>6</sup> <https://www.accc.gov.au/system/files/Research%20into%20the%20Commission-based%20Charity%20Fundraising%20Industry%20in%20Australia.pdf> p.13

<sup>7</sup> <https://www.jbwere.com.au/content/dam/jbwere/documents/JBWere-Support-Report-2018.pdf> p.9

<sup>8</sup> Giving Australia Report 2016; (data from donations to charities and other non-profit organisations)

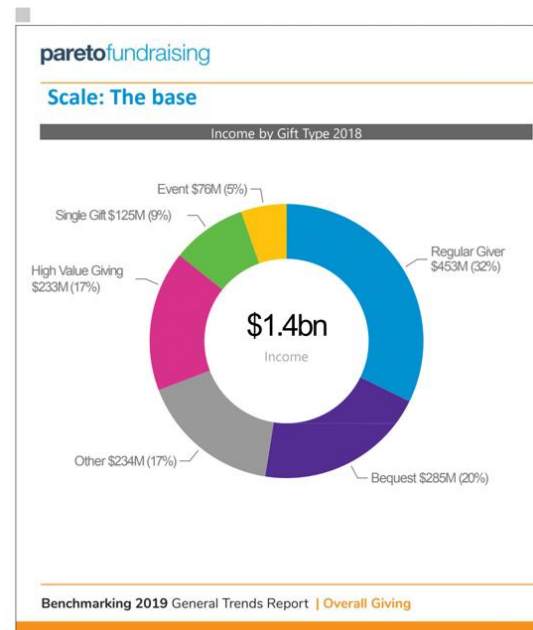


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The [Giving Australia](#) 2016 Report showed that planned giving delivers six times more donations than spontaneous giving<sup>9</sup>. As a result, charities depend on regular giving far more than one-off donations, although the latter are also important as leads.

Single-gift donations (illustrated in green in the slide to the right) represent only about 9 per cent of funds received by charities, according to Pareto fundraising's 2019 benchmarking research.

*"Telemarketing has become a vital part of many charities regular giving acquisition with the decline in face to face. For many charities, we are their only source of new regular givers. Last year we generated almost 30,000 new regular givers for Australian charities. Across our top 5 charities, telemarketing is the primary source for securing new regular givers."*<sup>10</sup>

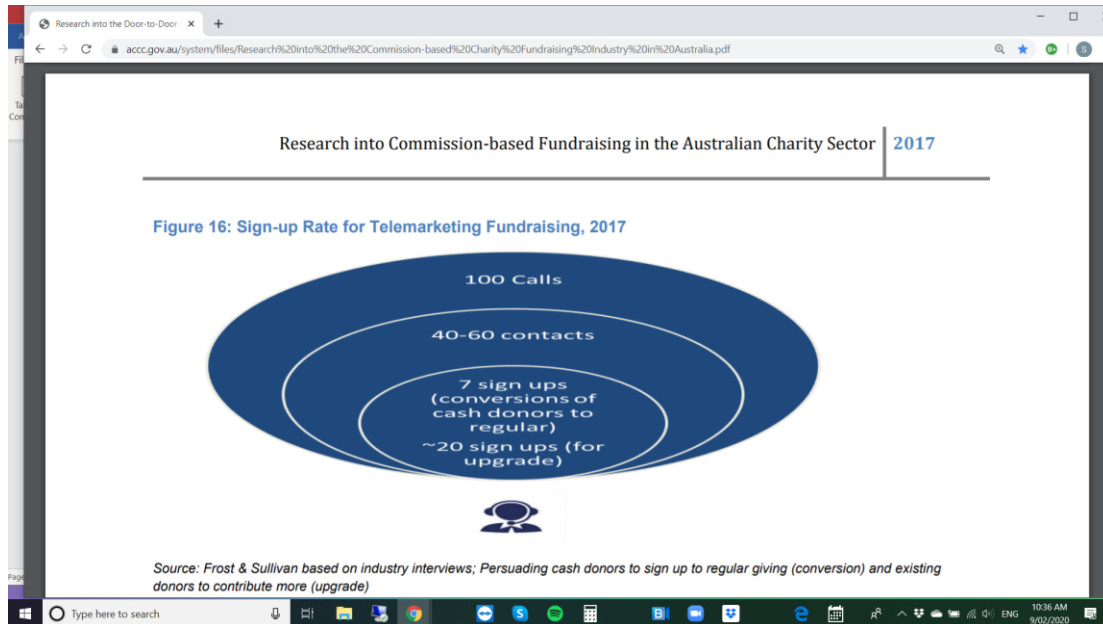


Research by Frost & Sullivan<sup>11</sup>, conducted for the ACCC, demonstrates the effectiveness of the telephone in getting one-off donors to become regular givers, and persuading existing donors to increase their gift. For every 100 calls, fundraisers were able to make between 40-60 contacts and achieve 7 conversions from cash donors to regular giving and about 20 upgrades.

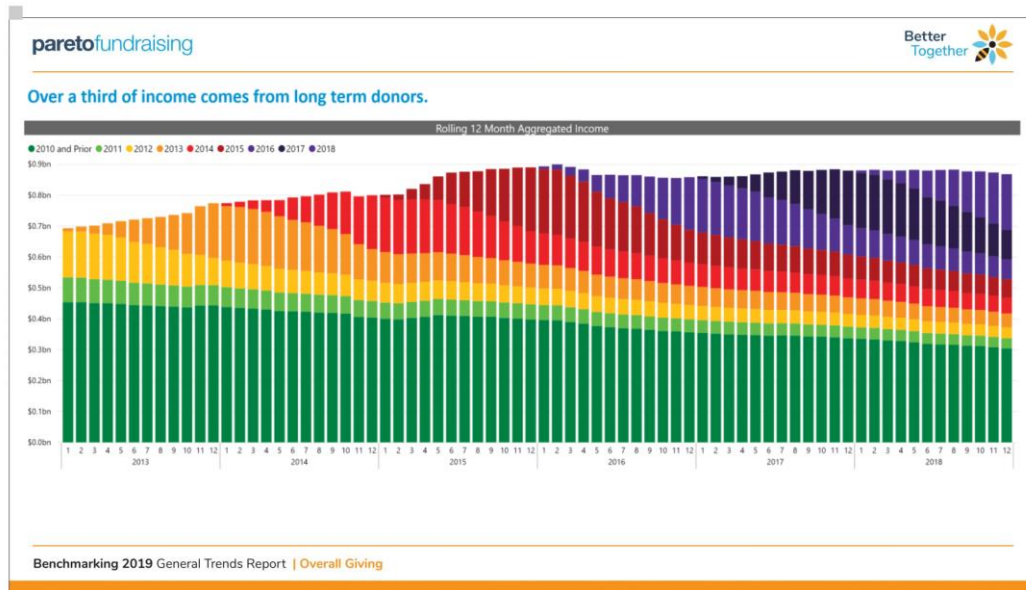
<sup>9</sup> <https://www.communitybusinesspartnership.gov.au/about/research-projects/giving-australia-2016/>

<sup>10</sup> Keith Elliott, CEO, Ive Group

<sup>11</sup> <https://www.accc.gov.au/system/files/Research%20into%20the%20Commission-based%20Charity%20Fundraising%20Industry%20in%20Australia.pdf> p.28

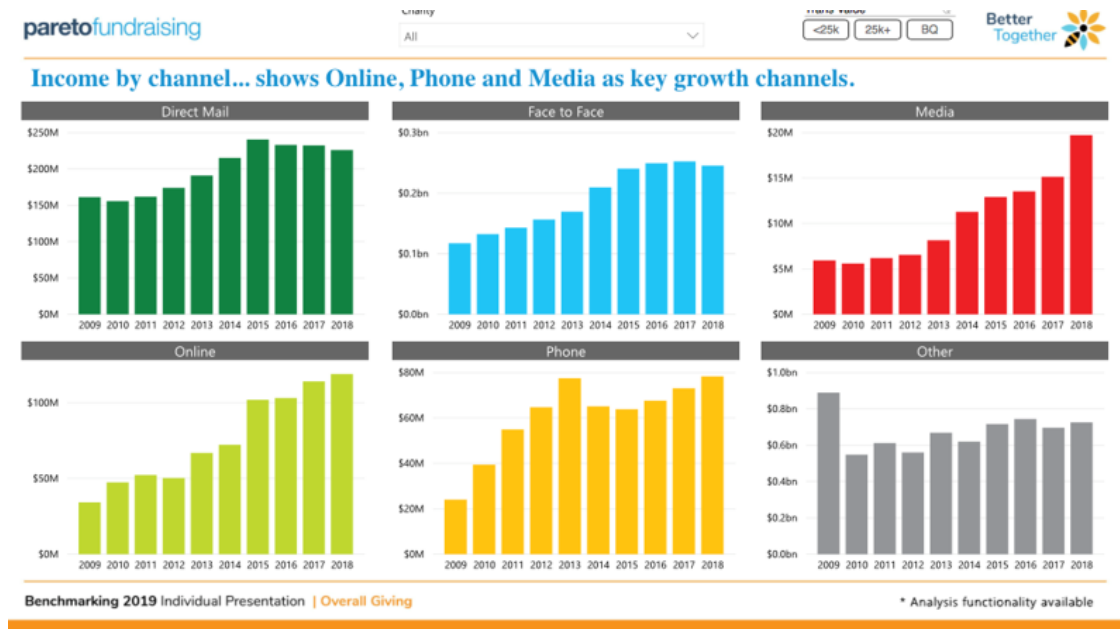


The following slide illustrates the importance of long term regular givers.



## How the telephone supports regular giving

In this difficult environment, Pareto benchmarking reveals the effectiveness of the telephone as a means of recruiting donors to regular giving. While far behind face-to-face fundraising in terms of absolute numbers, telephone is at least growing whereas face-to-face appears to be in decline. Meanwhile, traditional means such as direct mail are losing ground.



FIA members report there has been an increase in two-step digital conversion whereby charities are securing supporters via social channels and then converting them to regular giving via the telephone if the supporter ticks an opt-in box to agree to be contacted and includes their number online. This illustrates how, in the fundraising ecosystem, one channel supports and reinforces another. Taking away the telephone would have a knock-on effect across all fundraising channels.

### ‘Cold calling’ in decline

The explanatory memorandum to the bill cites a decade-old report stating: “A statutory review of the Register undertaken in 2010 stated one-third of the 100 million telemarketing calls made by charities each year are cold calls.”

In preparing this submission, FIA contacted several members to query their ‘cold calling’ activity. Typical responses included:

*“[charity name] now only does a very small amount of true ‘cold calling’ as part of our raffles program. All other telemarketing is to either*

- 1) current or previous supporters for whom we have ‘inferred’ consent as defined by ACMA as they have previously shared their contact details with us and supported us, or*
- 2) leads generated via social media campaigns where people have requested information from us and shared their contact details.*

*We exclude anyone who has opted out of receiving communications from telemarketing campaigns as defined by ACMA. The [charity name] has only been doing large-scale telemarketing for around three years, mostly reactivation or calling leads generated by a 3<sup>rd</sup> party. We have mostly stopped doing cold calling as it performed poorly in terms of ROI and breakeven.”*

.....





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*"The telemarketing agencies we use do not wash calling lists against the DNC register. However both our supporter care teams and the telemarketing agencies have processes put in place to ensure donors' wishes are followed in regards to not being contacted via phone if that is their instruction to our staff or the telephone fundraising team.*

*Certainly in the last 5-6 years we've increased telemarketing activity for conversion, reactivation, declines management and regular giving upgrades. As far as I know, we've never really done cold-calling."*

.....  
*"[charity name] uses telemarketing as an important fundraising channel, primarily to engage with warm contacts as part of our regular giving program. We do not engage in cold calling. This said, [charity name] is incredibly concerned about any move that proposes adding more complexity and a greater administrative burden on an already challenging fundraising environment. Fundraising has never been more challenging, with cost pressure continuing to increase especially when it comes to acquiring new donors. Charities play an integral role in the lives of Australians, delivering important services to the community. Lowering the administrative burden, not increasing it, will enable charities to spend more resources on delivering community impact. Impact that matters."*

.....  
*"We used to do cold TM acquisition calling but no longer do this and utilise more cost efficient acquisition channels. We have an online lead generation program from which we send leads for TM calling. Our reactivation campaign data is split by recency, lapsed, long lapsed and deeply lapsed to optimise our data selection and monitor response via segment. We have also utilised warm up TM for tax and Christmas appeals for core donors for 2 years now which is seen to have a positive impact on response rate and average gift."*

The Explanatory Memorandum cites research by Choice from 2016 which found charities to be the largest source of unwanted calls. This finding was unsurprising given that other (commercial) types of telemarketing calls had been banned for the past decade. The Choice research also failed to explain that market research calls (many of which have a commercial purpose) also constitute a significant source of unwelcome telemarketing. According to one study of the market research sector, the 'hang-up' rate for market research calls is over 90%. "As far as the telephone is concerned response rates have been in a gradual decline the last decade... Among cold-calling surveys, telephone response rates are typically below 10%, for a range of topics and survey types."<sup>12</sup>

Nevertheless, as has been demonstrated above cold calling, by charities at least, has vastly diminished, and the ACMA has shifted its focus to other sources of unsolicited calls.

"In 2018–19, our focus has been on solar telemarketing, financial services marketing and spam SMS. In 2019–20, our focus will be on solar telemarketing and lead generation (cold calling to get sales leads)."<sup>13</sup>

### **The rationale for a DNCR exemption for charities**

The rationale for the charities exemption was clearly set out in the explanatory memorandum to the legislation that set up the Do Not Call Register in 2006. FIA argues that

<sup>12</sup> <http://dro.deakin.edu.au/view/DU:30065463>

<sup>13</sup> <https://www.acma.gov.au/publications/2019-09/report/action-spam-and-telemarketing-apr-jun-2019>



the principles underlying this rationale remain as valid today as they were when the legislation was drafted.

This exemption is broadly aimed at ensuring that calls which have a ‘public interest’ perspective, such as promoting charities or enhancing community knowledge, rather than those that are **commercially** driven, are not limited. Charities and religious organisations exist to benefit the Australian community and provide valuable support and community services. Evidence suggests that telemarketing provides such organisations with an important source of revenue. This exemption is aimed at ensuring that such organisations are appropriately able to continue to raise funds to support their work. It also aims to ensure that there is no unintended restriction on government to citizen communication.<sup>14</sup>

- The organisation must have activities that further, or be in aid of, its charitable purposes<sup>15</sup>.
- To be for the ‘public benefit’ a purpose must be aimed at achieving a universal or common good, have practical utility and be directed at the benefit of the general community or a sufficient section of the community.
- If a charity contracted a third party to make calls on its behalf to solicit donations for the charity then these calls would also be covered by the exemption. The relevant test is if the relevant body authorised the making of the call.
- Not all calls made by charities will be exempt. The exclusion is limited, in the case of the sale of goods or services, to cases where the relevant body is the supplier of goods or services concerned. For example, it would apply where an anti-cancer charity was promoting their own range of anti-cancer products. However, it would not cover the situation where a charity is simply onselling goods or services for a non-exempt organisation for a commission. For example, if a charity is approached by a company to sell their goods or services in return for the charity receiving a commission then this would not be covered by the exemption as the charity would not be the supplier of the goods or services.
- Measures have been included to ensure that the exemption is not abused. It is designed to enable charities to undertake their normal fundraising work. It does not enable them to simply provide telemarketing services for non-exempt organisations. This is an important limitation to ensure that the exemption could not be abused by unscrupulous operators setting themselves under the auspices of a charity and taking advantage of the exemption to tele-market on behalf of non-exempt organisations.
- A specific regulation making power has been included which could be used to specify that a call does not fall within the exemption. This has been included to ensure that the Government can act swiftly if it becomes evident that this exemption is being abused.<sup>16</sup>

### Potential impact of compulsory use of the DNCR by charities

At 30 June 2019, 11.84 million numbers were registered. This comprised 5.77 million fixed-line numbers, 5.65 million mobile numbers and 416,000 fax numbers. In 2018-19, 389,000 fixed-line, mobile and fax numbers were added to the register.<sup>17</sup> The following graphic illustrates the growth of the register in the past decade.

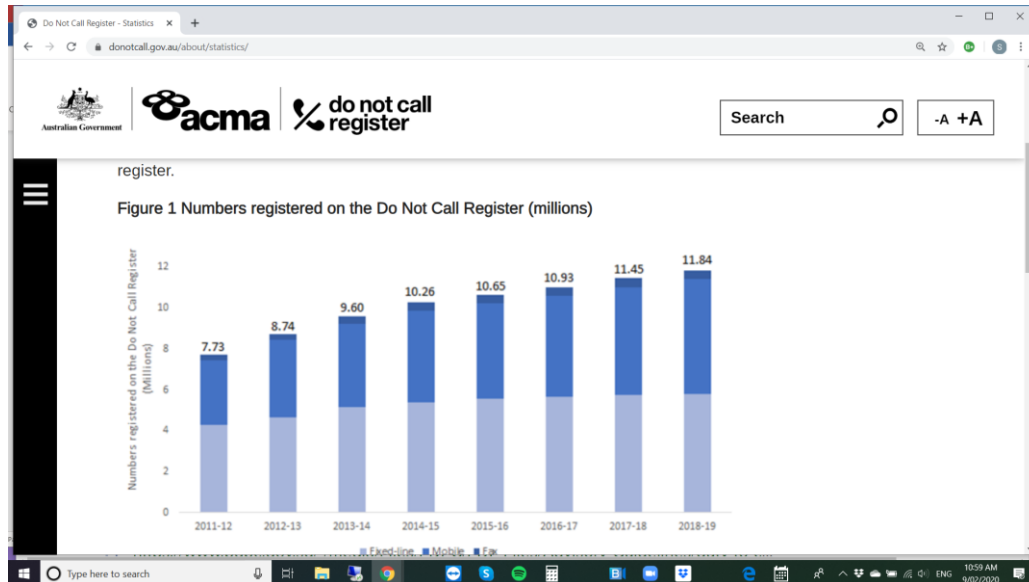
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<sup>14</sup> <https://www.legislation.gov.au/Details/C2006B00073/Explanatory%20Memorandum/Text>

<sup>15</sup> ‘Charitable purposes’ covers purposes relating to the advancement of health, education, social and community welfare, religion, culture or the natural environment or other purposes beneficial to the community. ‘Advancement’ includes protection, maintenance, support, research, improvement or enhancement.

<sup>16</sup> <https://www.legislation.gov.au/Details/C2006B00073/Explanatory%20Memorandum/Text>

<sup>17</sup> <https://www.donotcall.gov.au/about/statistics/>



At FIA's request a member – one of Australia's largest charities – looked at the crossover of its phone lists against the DNCR and found a match of nearly 50%, effectively meaning that it would lose half its donor prospects if it had to apply the DNCR file.

### **Senator Griff's proposal is unworkable**

Senator Griff's proposal will make it easy for people to use but difficult for fundraisers – particular small charities – to comply with. They would have to fully participate in the DNCR scheme and wash their lists against the register to ensure they do not call those who have indicated they wish to be exempted from the charity exemption in line with the provisions of the Amendment Bill.

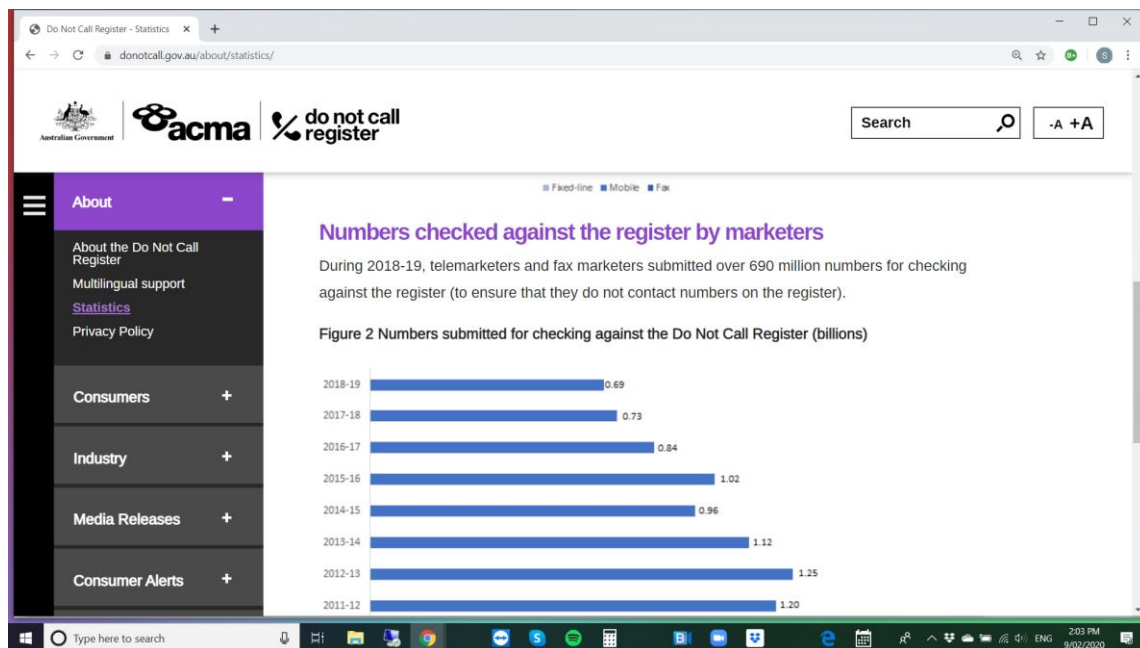
By creating a second-tier Do Not Call Register for charity calls, the bill would create yet more administrative bureaucracy, the cost of which will be passed on to users through higher subscription fees.

One effect of the bill would be that a person who was a former donor to a charity could never again be approached by that charity, even if they had not expressed a preference to no longer support that charity. This would eliminate the possibility of ever re-activating thousands of past donors, costing the sector many millions in lost donations annually. Since 2015, all numbers registered on the DNCR have become permanently non-contactable<sup>18</sup>.

### **Cost of DNC subscription prohibitive for smaller charities**

ACMA data reveals a steady decline in numbers checked against the register since 2011-12. Current subscriptions are about half the level they were then.

<sup>18</sup> <https://www.donotcall.gov.au/search-results/?page=2&keywords=charit>



The decline in subscriptions has put pressure on fees. The cost of the DNCR subscription<sup>19</sup> is prohibitive for most medium to smaller charities – with fees up to \$127,700 – rendering the telephone non-viable as a fundraising tool if the exemption were removed and charities forced to subscribe to the DNCR.

### Impact of Senator Griff's bill on smaller charities

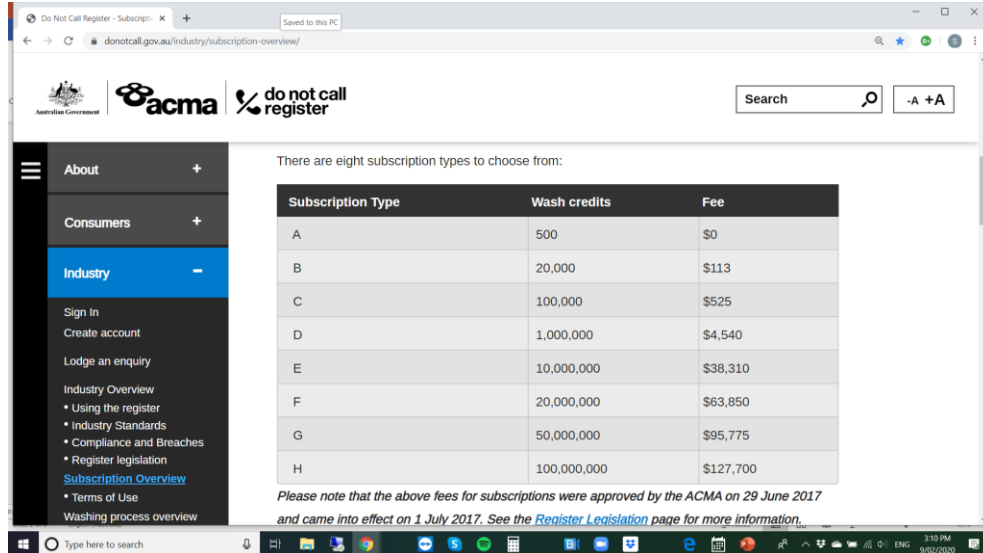
Senator Griff's amendment would have the greatest impact on smaller fundraisers which make up the overwhelming majority of the 57,666 ACNC registered charities. Many small charities rely on low-cost telephone solicitation made possible by the DNCR charity exemption. Being part of the DNCR scheme is not an option for small charities.

Although the range of fundraising activities has increased since the DNCR came into existence a decade and a half ago, telephone solicitation remains an important channel for fundraisers both large and small. A requirement to be part of the expensive DNCR scheme would be especially damaging for smaller charities who rely on telephone solicitation and could not easily move to another fundraising channel.

The added cost and red tape burden of complying with the DNCR scheme could impact adversely on the ability of small charities 'to service the community'. Some small charities would not be able to continue operating or would have to curtail their services because they

<sup>19</sup> <https://www.donotcall.gov.au/industry/subscription-overview/>

could not meet the additional costs of DNCR scheme compliance or the costs of transferring to other platforms such as face-to-face fundraising which has high startup costs.



The screenshot shows the 'do not call register' website. A sidebar on the left contains links: About, Consumers, Industry (selected), Sign In, Create account, Lodge an enquiry, Industry Overview, Using the register, Industry Standards, Compliance and Breaches, Register legislation, Subscription Overview, Terms of Use, and Washing process overview. The main content area is titled 'There are eight subscription types to choose from:' and contains a table with the following data:

Subscription Type	Wash credits	Fee
A	500	\$0
B	20,000	\$113
C	100,000	\$525
D	1,000,000	\$4,540
E	10,000,000	\$38,310
F	20,000,000	\$63,850
G	50,000,000	\$95,775
H	100,000,000	\$127,700

Below the table, a note states: 'Please note that the above fees for subscriptions were approved by the ACMA on 29 June 2017 and came into effect on 1 July 2017. See the [Register Legislation](#) page for more information.'

### In summary:

By creating a second-tier Do Not Call Register for charity calls, the bill would:

- create yet another tier of bureaucracy especially burdensome for smaller charities,
- draw many thousands of previously exempt charities into the DNCR regime with all the cost and administrative burden that entails,
- be the first step towards an outright ban on charitable tele-fundraising,
- create the conditions for the rapid expansion of the DNC/charity category, and
- eliminate the possibility of ever re-activating thousands of past donors, costing the sector many millions in lost donations annually.

### Complaints against fundraising in decline

The latest statistics from the ACMA on telemarketing complaints show that charities constitute a very small (and decreasing) fraction of complaints to the regulator. In 2017-18, 1.2 percent of complaints to the Do Not Call Register were about charity calls. In 2018-19, 0.8 percent of complaints to the Do Not Call Register were about charity calls.

The reduction in complaints has already been explained, in large part, by the sector's strong commitment to ethical fundraising under the FIA Code; however, charities have also invested in their complaints handling and donor care systems.



### **ACMA monitoring of the sector 2017-19**

The ACMA's ongoing unsolicited communication activity prioritised charitable fundraising from 2017 to 2019. Concurrently, reviews were conducted into the Do Not Call Register, including ACMA's administration of the scheme.

As a result of actions taken by the fundraising sector and regulators, ACMA's complaint statistics in 2019 recorded a significant decrease in charity calling complaints although the level of telephone solicitations for donations remained the same.

Not only do charities attract few complaints, these numbers are actually in sharp decline, having reduced by more than two-thirds since 2016-17 and ACMA have confirmed that, from a compliance perspective, there was no special attention being focused on the sector.

Frost & Sullivan found that: "Most industry stakeholders agree that there can be some negative perceptions of members of the public towards being pressured by individual fundraisers.... However, the actual incidence of complaints from members of the public to charities or agencies appears to be relatively low, based on Frost & Sullivan's interviews and donor survey."<sup>20</sup>

### **Charities do not prey on the vulnerable**

FIA strongly rejects the claim by Senator Griff that "Older Australians are the prey that some charities cherish."<sup>21</sup> On the contrary, it is this very segment of the population that fundraising is intended to help through its support of the many charities whose purpose is to aid the vulnerable.

While it is true that Australia's ageing population includes an increasing number of people in vulnerable circumstances, the charitable fundraising sector has worked very hard in recent years to avoid contacting individuals who lack capacity to make an informed decision to donate. To deliberately target such people would be a breach of the FIA Code, which contains provisions specifically designed to protect the vulnerable.

### **How Charities and their agencies manage preferences**

In the explanatory memorandum to the bill, it is asserted that "Currently, Australian numbers registered on the Do Not Call Register may receive telemarketing calls from registered charities, among others, and consumers have little recourse should they wish to "opt out" of these." FIA disputes this assertion.

Over the past three years the charitable fundraising sector has implemented effective preference mechanisms that enable consumers to manage the number of solicitations they

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<sup>20</sup> Ibid p.65

<sup>21</sup> <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2Fa6430f1f-e5d7-47fa-be23-6ffcad000d22%2F0016%22>



receive. This has resulted in a significant drop in complaints against charitable fundraising in the past three years (currently just 0.8 percent of complaints to the Do Not Call register). FIA believes this reduction is attributable, in large part, to the efforts the sector has made to reform the instruments of self-regulation. This includes:

- 1) Revising the FIA Code (which covers over 80 percent of the sector)
- 2) Introducing a 'donor care' principle in the Code that obliges members to assist donors who wish to reduce the number of charitable solicitations they receive
- 3) Introducing a ban on accepting donations from people in vulnerable circumstances
- 4) Proactively monitoring member compliance with the Code through mystery shopping
- 5) Introducing 'own-motion' inquiries by the Code Authority in circumstances where monitoring has uncovered evidence of a Code breach
- 6) Making Code training compulsory for members (3476 enrolled/2,856 complete to 15/2/2020)
- 7) Introducing a requirement for CEO/Board level sign off on Code adherence
- 8) Introducing supply chain accountability measures in the Code.

Charities and their call centre (suppliers) typically agree on how to manage calling preferences as part of their contract. Most call centres have their own in-house preference list, so anyone informing them that they do not wish to receive calls will be flagged 'do not call' by the call centre for all charity clients of that call centre. The information is also passed back to the charity client so that the number can be flagged 'do not call' in the charity's database for any future campaigns.

Human error and oversight is a constant risk factor in the management of these systems. FIA has been working with members to improve the data hygiene practices that enable effective preference management. This involves having reliable processes in place to flag numbers as 'do not call'. Future Code compliance monitoring, under the direction of the Code Authority, is expected to further improve these mechanisms and continue the trend towards fewer consumer complaints.

### **About the FIA Code<sup>22</sup>**

The FIA Code aims to raise standards of ethical conduct across the sector by going beyond the requirements of government regulation. Its content is informed by the International Statement of Ethical Principles in Fundraising.

The Code applies to all FIA members and adherence to it is a requirement of FIA membership. In its current form, it was launched in 2018<sup>22</sup> following a comprehensive review of sector sustainability. The review resulted in important reforms to protect

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<sup>22</sup> See Appendix 1 for a copy of the Code





vulnerable donors, to reduce the risk of over-communicating with donors and to improve governance and supply chain accountability, among other changes.

An important innovation in the new Code was the introduction of the Donor Care Principle. Clause 4.3b states: *Members will, if asked, assist donors to stop receiving solicitations.* This commits fundraisers, particularly agencies who might be working for more than one charity, to respecting the preference of some donors not to receive solicitations.

Training in Code compliance by all fundraisers became mandatory for members in 2017. To date 3476 fundraisers have enrolled and 2,856 successfully completed training. Monitoring of compliance is conducted through complaints handling and mystery shopping. An independent Code Authority oversees all aspects of Code administration. It is independently chaired by the Hon Ursula Stephens. Members<sup>23</sup> of the Code Authority are chosen by the FIA Board of Directors for their stature in the community and their ability to adjudicate independently in the interest of upholding the values embodied in the Code.

### **How the Code is administered**

The Code Authority proactively monitors fundraising activities of FIA members, ensures that Code complaints and appeals are handled in a prompt, fair and equitable manner, promotes Code awareness through training, and makes recommendations to the FIA Board for improvements to sector self-regulation from time to time.

The Code Authority has a variety of options available in cases where a member has been found in breach, ranging from requiring the member to undertake further Code training, make an apology, or conduct other remedial action to ensure the breach does not recur. In extreme cases, the Authority can make a recommendation to the FIA Board that the member be suspended or expelled from membership.

### **Code compliance monitoring**

As part of its role in administering the Code, the Code Authority commissions third-party monitoring of member compliance. Techniques include mystery shopping in which monitors pose as donors.

In 2019, monitoring focused on fundraiser data management and donor care, including treatment of people in vulnerable circumstances. Donations were made to a random sample of FIA member charities by mail, website and telephone in the name of a mystery shopper with unique contact details, allowing for all subsequent contacts to be linked to the initial transaction. All contacts and information sent on behalf of the charity were tracked against this initial transaction. Transcripts of telephone conversations, print materials

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<sup>23</sup> Members include: Jennifer Doubell, Executive Director Peter MacCallum Cancer Foundation; Ben Cox, CEO, Gold Coast Hospital Foundation; donor/consumer representative Christopher Zinn; Ashley Rose, CEO of Mondial Fundraising Communications, and Roewen Wishart of Xponential, a services provider.





received, electronic messages, and any other communication were noted. The main aim of monitoring is to alert members to non-compliance before it becomes a serious or systemic issue leading to real harm. Members found in breach are given the opportunity to correct the behaviour before sanctions are considered. A secondary aim of monitoring is to inform FIA's training and professional development program requirements.

### **Monitoring activity**

During the past year, the Code monitor completed five rounds of mystery shopping involving 150 members and focusing on how members respond to requests from donors to opt out from fundraising communications as well as how they treated people in vulnerable circumstances. Areas for improvement were identified and included:

- A small number of charities not able to respond to opt-out requests.
- A lag between submission of an opt-out request and some charities' ability to process this before planned communications are sent, particularly in the case of email where lead times are shorter than for traditional direct mail.
- The size, positioning and prominence of opt-out options for mail and email communications being easier to find or prominent as recommended by the relevant Practice Note.
- Some opt-out processes offered only a partial solution for a donor wishing to remove themselves from all fundraising communications – examples being where an 'unsubscribe' button on an email only removes the donor from a specific communication list – for example a newsletter, while retaining them on a range of other lists each requiring individual opt outs which is challenging for charities who do not have preference centre options.
- Charities whose staff accepted a donation from the mystery shopper posing as a person in vulnerable circumstances were provided guidance for their fundraising staff on how to identify such donors and reminded of their obligation under the Code not to accept donations in circumstances where the person lacks capacity to make an informed decision to donate.

In communicating these findings to members, it was noted that all charities gave assurances that they are striving for best-practice donor care, including respecting donor requests to opt out from future appeals. The Code Authority and the FIA Board noted the positive response from all members, including strong support for the work of the Code Authority and mystery shopping in continually lifting standards in the fundraising sector.

### **Guidance for dealing with people in vulnerable circumstances**

As part of its initiative to help members identify and deal appropriately with people in vulnerable circumstances, FIA developed a Practice Note<sup>24</sup> and additional tools to assist members. The guidance provides practical advice on how to identify a person who may lack

capacity to donate and how the fundraiser should conduct themselves in these potentially complex and delicate situations. Below is an example of this guidance: a postcard designed to be taped to a fundraiser's work station as a reminder of how to recognise and deal with a person in vulnerable circumstances.

**Donors in Vulnerable Circumstances**  
**Tips from Fundraising Institute Australia**

<p>How to <b>spot</b> a donor in potentially vulnerable circumstances:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Struggles to understand your ask or continually asks for information to be repeated.</li> <li><input type="checkbox"/> Repeats questions such as 'who are you?' or 'what do you want?'</li> <li><input type="checkbox"/> Wanders off topic or gives irrational, confused or erratic responses.</li> <li><input type="checkbox"/> Displays signs of forgetfulness or takes a long time to answer.</li> <li><input type="checkbox"/> Says 'yes' or 'no' at times when it is clear they have not understood.</li> <li><input type="checkbox"/> Indicates they feel they shouldn't be donating.</li> <li><input type="checkbox"/> Suggests they do not manage their finances/that someone else manages their affairs.</li> </ul>	<p>How to <b>respond to</b> a donor in potentially vulnerable circumstances:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Use clear language, avoiding words and phrases that may be hard to understand (but avoid shouting).</li> <li><input checked="" type="checkbox"/> Repeat information if necessary. Be patient, do not rush or pressure the person.</li> <li><input checked="" type="checkbox"/> Provide alternative formats of fundraising materials (different language, accessible formats).</li> <li><input checked="" type="checkbox"/> Check their understanding at relevant parts of your interaction to ask if anything needs further explanation.</li> <li><input checked="" type="checkbox"/> Be willing to provide extra time for the person to consider their options.</li> <li><input checked="" type="checkbox"/> If you think the donor lacks capacity to consent to donate, do not ask for, or accept, the donation.</li> </ul>
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**For more information go to [fia.org.au](http://fia.org.au)**

## Conclusion and recommendation

FIA welcomes this Senate Committee Inquiry into the Do Not Call Register Act charity exemption. It provides the charitable fundraising sector with the opportunity to detail to the national Parliament how the sector and Commonwealth regulators have successfully addressed this matter.

The Sector has been working closely with the Department of Communications and the Arts, the Australian Charities and Not-for-profits Commission, the Australian Consumer and Competition Commission and the Office of the Australian Information Commissioner since 2016. This collaboration will continue to mitigate the risk of harm to the community from misuse of the DNCR exemption

<sup>24</sup> See Appendix 2 for details of the Practice Note: Dealing with people in vulnerable circumstances



The Professional Body for Australian Fundraising

As a result of concerted action by the sector and government regulators over the last four years, the level of complaints about telephone solicitation for donations has fallen to less than one percent of DNCR complaints over the last three years. This submission has detailed both the reduction in complaints to the ACMA and how the turnaround was achieved.

Cold-calling, the source large numbers of complaints in decades past, is no longer a dominant feature of tele-fundraising. Instead, the phone is increasingly used to re-connect with past donors or to follow up leads generated through other channels such as online. The loss of this vital branch of the fundraising ecosystem would put at risk some \$600 million annually, money that would have to be found by governments in order to continue to deliver its social benefits.

Fundraisers are not asking for a hand-out or a hand-up from government, only that their hands not be tied by another tier of DNCR regulation that would bind all charities in new ways and eliminate the phone as an effective communications channel.

**FIA respectfully recommends that:**

In view of the significant:

- reduction in complaints about charity calling due to effective fundraising self-regulation and collaboration with government regulators,
- the risk of additional compliance costs and administrative burden, particularly for smaller charities, and
- loss of income to charities due to inability to contact donors by telephone, that

the Senate Committee **not** recommend adoption of the proposed amendments to the DNCR charity exemption.

**FIA would welcome the opportunity to appear before a Senate Committee hearing on this matter.**

- End of Submission -

## Appendix 1 FIA Code

# Fundraising Institute Australia

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## Code – 1 June 2018

### About FIA

Fundraising Institute Australia (FIA) is the largest representative body for the \$12.5 billion Fundraising sector. Members include charities and other not-for-profits operating domestically and internationally, as well as Suppliers and professionals who provide services and support to the sector. FIA advocates for the interests of the sector, administers the system of self-regulation including the Code, educates Fundraising practitioners, promotes research and creates forums for the exchange of knowledge.

### Preface

The FIA Code is a voluntary, self-regulatory code of conduct for fundraising in Australia. It aims to raise standards of conduct across the sector by going beyond the requirements of government regulation. Its content is informed by the International Statement of Ethical Principles in Fundraising.

## **1. About the Code**

- 1.1. The Code applies to FIA Members.
- 1.2. The Code commits Members to high standards of ethical conduct.
- 1.3. The Code is self-regulatory and does not replace or override any law.
- 1.4. Adherence to the Code is a requirement of FIA membership.

## **2. Compliance**

- 2.1 Members will comply with all Federal, State and Municipal laws and regulations applicable to Fundraising.
- 2.2 At least one board member, on behalf of the board of directors, or the chief executive of the Member, will sign off annually on the Member's adherence to the Code.
- 2.3 Members will ensure that those engaged in Fundraising activities have completed FIA Code training within six months of their appointment.
- 2.4 Members agree to accept the decision of the Code Authority in respect of any complaint brought against them under the Code.
- 2.5 Members agree to have their adherence to the Code monitored by FIA.

## **3. Ethical conduct**

- 3.1. Members will not engage in activities that bring Fundraising into disrepute.
- 3.2. Members will act openly, honestly and with regard to their responsibility for public trust.
- 3.3. Members will act with respect for professional Fundraising, the Cause they represent, Donors and Beneficiaries.
- 3.4. Members will not exploit relationships with Donors.
- 3.5. Members will conduct themselves in a manner that encourages others to aspire to the same high standards, valuing privacy, confidentiality, trust and integrity.
- 3.6. Members will be open about the work they do, including how funds are raised, managed and disbursed.

## **4. Conduct towards Donors**

- 4.1. Members will promptly and courteously comply with a Donor's:
  - a) refusal to make a Donation;
  - b) request to not receive any future solicitations;



- c) request to be contacted at a more convenient time or by a different method; and
  - d) request to limit the number, type or frequency of solicitations.
- 4.2. Members will, each time they contact a prospective Donor, provide information about how the prospective Donor can opt-out of receiving any further solicitations from the Member.
- 4.3. Members will, if asked:
- a) provide the contact details of the Cause on whose behalf the Member is fundraising;
  - b) assist donors to stop receiving solicitations;
  - c) provide information about how the Donor's contact details were obtained; and
  - d) provide information about how to make a complaint or the name and contact details of the person who is responsible for handling complaints.
- 4.4. Members will make readily available, on request, information about the Cause for which they are Fundraising, including:
- a) its objects and how it intends to use the Donated funds;
  - b) its capacity to use Donations effectively for their intended purposes;
  - c) its most recent annual report and/or financial statements;
  - d) its governing Board; and
  - e) whether funds are being raised by volunteers, employees or Suppliers.
- 4.5. Members will ensure that appropriate security measures are in place to protect Donor information at all times.
- 4.6. Members will have a clear policy on acceptance or refusal of Donations.
- 4.7. Members will not accept a Donation where:
- a) they have a reasonable belief that the Donor is in vulnerable circumstances or lacks capacity to make a decision to Donate; or
  - b) to do so would compromise the interests or objects of the Cause on whose behalf the Member is Fundraising.
- 4.8. Members may choose not to accept a Donation where:
- a) the activities of the Donor are incompatible with the objects of the Cause on whose behalf the Member is Fundraising;
  - b) the cost of accepting the Donation will be greater than the value of the Donation;
- or
- c) there is reason to believe that accepting the donation may give rise to litigation.
- 4.9. Members may accept a Donation for a specific activity provided that the activity is:



- a) directly related to the objects of the Cause for which the Member is Fundraising; and
  - b) practically achievable by the Cause.
- 4.10. Members will:
- a) not subject Donors to undue influence, harassment, intimidation or coercion;
  - b) maintain an appropriate professional relationship with the Donor in connection with any Donation or Bequest;
  - c) not prevent or discourage a Donor from seeking independent legal advice in relation to a Donation;
  - d) not prevent or discourage a Donor from having a family member or other trusted advisor present when considering a Donation; and
  - e) not, after obtaining a Donation, change the conditions of the Donation without first communicating with the Donor any changes and gaining their consent for the change.
- 4.11. Members will ensure their promotional materials:
- a) are not false, misleading or likely to deceive;
  - b) do not claim or imply that professional fundraising activities are carried out at no cost;
  - c) are not knowingly sent to a Child without the consent of the Child's parent or guardian;
  - d) do not contain depictions that are demeaning, discriminatory, pornographic or unduly violent towards a person or group.
  - e) do not disparage others; and
  - f) do not infringe on the intellectual property rights of others.
- 4.12. Members will ensure a Donor has given consent prior to any public recognition of their Donation.

## **5. Conduct towards Beneficiaries**

- 5.1. Members will not engage in conduct that threatens the dignity of, or disparages a Beneficiary. Such conduct may include, but is not limited to:
- a) commenting unnecessarily or negatively on the impairment, dependency or disability of a Beneficiary;
  - b) using language which suggests that the Beneficiary is to be pitied or feared;
  - c) using Children in promotional materials to raise funds for adult causes, giving the impression that the Beneficiaries are childlike
  - d) stating or implying a falsehood regarding a Beneficiary; or





- e) using a Beneficiary's image, name or other personal information without their permission.



## **6. Conduct in Supplier relationships**

- 6.1 Members will have written contracts with all relevant parties in their Supply Chain that specify the responsibilities of all parties and meet the requirements of applicable laws and regulations.
- 6.2 Members will ensure that all relevant parties in their Supply Chain are aware of the Member's obligations under the Code and do not act in ways that could result in the Member being in breach of the Code.
- 6.3 Members will ensure that Supplier costs incurred in fundraising are proportionate to the funds raised and represent fair market value for services provided.

## **7. Administration and enforcement**

- 7.1 Compliance with the Code will be monitored and enforced by the Code Authority.
- 7.2 Alleged breaches of the Code will be referred to the Code Authority.

## **8. Definitions**

<b>Beneficiary</b>	means the recipient of a benefit as a result of fundraising for a Cause.
<b>Bequest</b>	means a gift of any asset or right given in a Donor's will and includes a legacy.
<b>CEO</b>	means the CEO of Fundraising Institute Australia
<b>Cause</b>	means a purpose such as advancing health, education, social or public welfare, religion, culture; promoting reconciliation, mutual respect and tolerance between groups of individuals; promoting or protecting human rights; advancing the security or safety of the public; preventing or relieving the suffering of animals; advancing the natural environment; promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a state, a territory or another country, and other not-for-profit purposes 'beneficial to the general public'.
<b>Code Authority</b>	means a committee established by the FIA Board pursuant to the FIA constitution for the purposes of deciding on matters related to the Code.
<b>Code</b>	means the document that commits FIA Members to high standards of ethical conduct.
<b>Children</b>	means people under the age of 18.



<b>Complaint</b>	means a notice in writing sent by any person to FIA, by way of a completed complaint form, concerning an alleged breach by an FIA Member of any part of the Code.
<b>Donation</b>	means a voluntary contribution or Bequest of money, property, goods or services to a Cause for the purpose of furthering its objects.
<b>Donor</b>	means an individual or their legal representative (in the case of a deceased person's Bequest) or other entity that makes a donation to a Cause.
<b>FIA</b>	means Fundraising Institute Australia.
<b>Fundraising</b>	means the act of seeking and obtaining Donations on behalf of a cause.
<b>Member</b>	means and includes both individual and organisational Members of FIA.
<b>Supplier</b>	means a third party supplying goods or services to a Member for payment. A supplier may also be a Member of FIA.
<b>Supply Chain</b>	means the system of organisations, people, activities, information, and resources involved in delivering a product or service from supplier to client.

Appendix 2 Practice Note – People in Vulnerable Circumstances

# People in Vulnerable Circumstances

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## Practice Note

This Practice Note is to assist FIA members in identifying and dealing with people in vulnerable circumstances when conducting fundraising. It is designed to be read in conjunction with the FIA Code.



The Professional Body for Australian Fundraising

## 1. Fundraising and people in vulnerable circumstances

1.1 It is inevitable that fundraisers will come into contact with donors in vulnerable circumstances or who need additional support to make an informed decision. There will also be times when fundraisers inadvertently approach people who may not have the capacity to make a decision to donate.

1.2 The FIA Code says:

*Members will not accept a Donation where they have a reasonable belief that the Donor is in vulnerable circumstances or lacks capacity to make a decision to Donate.*

1.3 However, it may be difficult for fundraisers to ascertain whether a donor they are speaking to on the telephone is in vulnerable circumstances. It is the purpose of this Practice Note to help fundraisers recognise those situations and to provide practical advice on what appropriate action they can take to respond to their needs.

## 2. Identifying people in vulnerable circumstances

2.1 Vulnerability can be permanent or temporary and will vary from person to person. It is the person's circumstance at the time of making a decision about whether or not to donate that is relevant. For example, a person may be in a vulnerable circumstance following the death of a family member. During their period of bereavement they may need additional support in matters relating to charitable giving. Such support could include: delaying acceptance of the gift to give the donor more time to consider their options; including a 'cooling off' period if the donor changes his or her mind; or suggesting the donor get advice from family, friends or a legal professional.

2.2 Common examples of people who **may** be in vulnerable circumstances are those:

- a) with intellectual disabilities that affect comprehension or understanding
- b) with physical or mental health issues
- c) who do not fully understand the language the fundraiser is speaking
- d) experiencing financial difficulty
- e) experiencing stress or anxiety
- f) under the influence of alcohol or drugs
- g) who are unable to care for themselves

- h) who are elderly (especially those without close support)
- i) who are young

### **3. 'Capacity' to consent**

3.1 By law, donors must 'consent' to making a donation. To provide consent, a donor must have the 'capacity' to consent. This means they are able to understand information relevant to the decision to make a donation, use that information to make a decision, and communicate their decision clearly. A person may be considered to be in vulnerable circumstances if their capacity to make a decision is reduced. The extent to which a person's capacity to make a decision about donating is reduced will depend on their particular circumstances. Some people in vulnerable circumstances may still be capable of making an informed decision if they have extra support. Nevertheless, a fundraiser should not seek donations from a person who appears to lack capacity to consent to making a donation.

3.2 It is not possible to provide an exhaustive list of characteristics to enable fundraisers to always identify the vulnerable. What follows is a list of indicators that could signal someone may be in vulnerable circumstances, lack capacity to consent, or need additional support:

- a) demonstrating difficulty in understanding that cannot be overcome by trying alternative forms of communication (e.g. a hearing-impaired person can be provided with relevant information in writing)
- b) repeating questions such as 'who are you? what charity is it? what do you want?'
- c) continually asking for information to be repeated
- d) wandering off topic or giving irrational, confused or erratic responses
- e) showing only limited responsiveness to communications
- f) displaying signs of forgetfulness
- g) saying 'yes' or 'no' at times when it is clear they have not understood
- h) taking a long time or displaying difficulty in responding to simple questions or requests for information
- i) being unable to understand the language being spoken

### **4. Ending the conversation with a person who appears to lack capacity to consent**



The Professional Body for Australian Fundraising

- 4.1 If a fundraiser believes that an individual may lack capacity to consent, they should politely end the interaction using phrases like, “I’ve taken up enough of your time today, thanks for listening”, or “Maybe you need some more time to consider whether you’d like to support us.”

## **5. Examples of how a fundraiser can respond to an individual in vulnerable circumstances:**

- 5.1 A caller, immediately after the call starts should:
- a) Use clear language, avoiding words and phrases that may be hard to understand (but avoid shouting).
  - b) Repeat information if necessary.
  - c) Be patient and do not rush or pressure the person.
  - d) Provide alternative formats of fundraising materials (different language, accessible formats).
  - e) Check their understanding at relevant parts of the interaction and ask if there is anything that needs further explanation.
  - f) Be willing to provide extra time for the person to consider their options.

## **6. Older people**

- 6.1 Fundraisers should not refrain from approaching or engaging in fundraising with people only because of their age. To deny someone the opportunity to give a donation because of their age could be taken to be discriminatory.
- 6.2 When communicating with someone who is elderly, fundraisers should take reasonable steps to ensure that the prospective donor understands the information being provided. The fundraiser should be aware of signs that may indicate that the person needs additional care and support to make an informed decision and take appropriate steps to meet that need. If they reasonably believe the individual lacks capacity to make that decision, then a donation should not be taken.

## **7. Training**

- 7.1 FIA provides training in how to identify and deal with people in vulnerable circumstances. The training can be accessed through the FIA website at [www.fia.org.au](http://www.fia.org.au)