

# Submission concerning the Code of Practice for charitable collections: South Australian Government.

14 January 2011

To the Revenue and Economics Branch of the Department of Treasury and Finance.

## Introduction

The Australian Council for International Development (ACFID) is the peak council for Australian non-government organisations working for the eradication of poverty through international development co-operation. ACFID has seventy member agencies that operate in over one hundred developing countries worldwide. We provide this submission in order to represent the interests of our sector and for those Australians who donate over \$800 million each year to support the work of our membership.

Several members of our Council will make their own submissions that will itemise concerns specific to them. We refer the Government to those submissions also. The primary thrust of our submission is that of the need for a nationally harmonised approach for the regulation of the not-for-profit sector.

We make two recommendations to the SA Government concerning the proposed changes to the *Collections for Charitable Purposes Act 1939*.

- 1) The proposed changes should be suspended pending a national discussion under the auspices of COAG. There should be a nationally consistent approach lead by the *Office of the Not-For-Profit Sector* in the Department of Prime Minister and Cabinet.  
(We will be writing to the Prime Minister with this proposal)
- 2) Should the SA Government decide to proceed with its unilateral approach; we urge postponement of the March 2011 implementation so that greater consultation with the not-for-profit sector can be conducted and the excessively prescriptive nature of the Code can be addressed and a phased in implementation can be considered.

Since 1999 ACFID has had a Code of Conduct to which our members and some fifty other agencies subscribe. It is recognised as a high standard of practice for our sector by the Commonwealth Government, the Federal Parliament and internationally. The ACFID Code covers fundraising governance, financial transparency and development effectiveness. The ACFID Code prescribes an effective standard for transparency and accountability that protects, amongst others, the interests of the public for the sake of their charitable donations. We consider the protection and respect of donors to be one of our most profound duties and the integrity of our Code helps to ensure public trust in the not-for-profit international aid and development sector.

In reviewing the Draft Code of Practice, for the sake of making amendments to the *Collections for Charitable Purposes Act 1939*, we are deeply concerned about a number the proposals in the draft and urge that it be reconsidered or withdrawn. We feel that the draft is, in some cases, flawed in its understanding of the interrelationship between the public and charitable organisations whose purpose is to benefit the community in Australia and overseas and imposes burdensome requirements on charitable agencies. Our concerns fall into three main areas: process of development, application of law and excess of regulation. We also provide two recommendations.

## Process of development

While the draft SA Code of Practice was released in November 2010, in practice interested parties only received the document in December. Due to the Christmas / New Year shutdown and the close of submissions being 14 January 2011 the Government has not allowed adequate time for submissions. This timeframe is inadequate and looks like a process that is designed to stifle awareness and limit public comment.

It is also of great concern to us that the anticipated timetable for implementation of the SA Code in March 2011 leaves charitable agencies, through no fault of their own, ill-equipped to understand, socialise throughout their organisations and comply with new legislation. The Government would not seek to introduce changes that affected the business community so rapidly, yet the inadequate timeframes penalise a not-for-profit sector whose primary purpose is to benefit the community.

## Application of law

The push for more uniform regulation of the not-for-profit sector throughout the Commonwealth has been a long held desire of many Australians and the charitable sector itself. It has also been a feature of recent COAG initiatives in conjunction with the Federal Government's compact with the *Third Sector* which vows to reduce red tape. The recently enacted Australian Consumer Law is a prime example of this and the need for harmonisation was a key finding in Productivity Commission Report *Contribution of the Not-for-Profit Sector*, January 2010. By South Australia electing to proceed down a path of unilateral resolution, its government flies in the face of the spirit of co-operation. This stymies the efficiencies that could be gained by a consistent approach between Commonwealth and States which would benefit Government, public and the not-for-profit sectors alike.

The draft Code displays a misunderstanding on the part of the Government as to the nature and spirit of the charitable sector. By imposing requirements such as a ten day cooling-off period, the Draft Code not only demonstrates a misunderstanding of the facts but belies a desire on its part to treat all transactions in the not-for-profit sector as commercial transactions.

Donors are free to cancel their "Ongoing Collection Agreements" at any time.

Charities are sophisticated and know their donor demographic very well. They know exactly what percentage will choose to cancel their agreements after one year, five years, ten years. No donor will receive any greater level of protection by this clumsy requirement of the proposed Code that they didn't already possess.

## Excessive regulation

In the first instance, the timeframe for implementation is very short. To comply with the draft, agencies will have to incur enormous expense to amend or reprint existing documentation. Every cent that our agencies are forced to spend on compliance is money taken away from the charitable purpose for which the public donates. The implementation of any new regimen must allow the time for an agency to complete its processes for implementing.

The Draft Code of Practice is highly prescriptive in many ways and some of these are either contrary to good practice or common sense:

- By the SA Government making its own stipulations specific to its jurisdiction, it is creating increased administrative costs for charities. The format for a badge needs to be nationally agreed. Similarly, some charities need their collectors to carry identification, providing them with comfort for security reasons. Having to prepare a specific badge for South Australia will increase operating costs.
- The Draft Code takes a simplistic and parochial approach to web advertising. Residents of South Australia will donate to charities all over Australia and in other parts of the world. It is not possible for the SA Government to monitor the activities of all charities. Any licence number that needs to be cited on the website should, at least, be done as part of a nationally administered system.
- We understand why disclosure concerning the cost of collection activities is of concern. The issue of administration costs is often publicly raised and donors have a legitimate right to know this kind of information. The disclosures required by the Draft Code of Practice are ill-informed. There is no difference between an agency employing staff for fund raising – which the SA Government would classify as an internal cost – and paying a collector to do the same job – which the SA Government would classify as an external cost. This does not inform or clarify anything for the sake of donors. The SA Government would be better served waiting until the Standard Chart of Accounts, as promoted by COAG, is brought about and using that to properly divulge information for the sake of the donating public.

We thank you for the opportunity to submit our comments on this draft document and hope that you will consider the burdensome nature of the proposal. We would like to discuss these matters with you in a public hearing or in a private face-to-face meeting. We will contact you about the above matters.