



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI



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## Discussion Document

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# Information Disclosure Regulations for Third-party Fundraisers Making Requests for Charitable Purposes

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## Executive summary

Philanthropy makes an important contribution to the economic and social well-being of New Zealanders. Personal donations and bequests are a very important source of this philanthropy; it has been estimated that more than one million New Zealanders make personal donations and bequests to charitable and community causes annually. Charities are significant recipients of this generosity.

An important precondition for this giving is that members of the donating public can feel confident that their financial support will be substantially utilised to further the causes that the receiving charities are constituted to advance.

Various regulatory bodies are currently tasked to promote public trust and confidence in the charitable sector and to encourage the effective use of charitable resources. Charities Services (part of the Department of Internal Affairs) is responsible for registering and monitoring (currently just over 27,000) charities under governing legislation. Self-regulation – in the form of the Fundraising Institute of New Zealand and the Public Fundraising Regulatory Association – also plays an important function in prescribing and enforcing ethical and conduct standards for charitable fundraising activities, and in encouraging development of sustainable philanthropy in New Zealand.

The purpose of this discussion document is to consult on a further regulatory option aimed at facilitating public trust and confidence. This is section 28A of the Fair Trading Act 1986. Section 28A provides that the Minister of Commerce and Consumer Affairs may recommend, after conducting a consultation process, that regulations be made for the purpose of prescribing information disclosure requirements in relation to third-party fundraisers seeking to procure funding for charitable purposes. No information disclosure regulations have been made under this provision to date.

Third-party fundraisers are commercial enterprises used by many charities to raise funds. They fall into two broad categories: professional fundraisers and commercial participators. Professional fundraisers are in the business of supplying expert fundraising capability to charities for payment or remuneration. They provide an alternative to a charity doing the fundraising in-house, and may be the most effective and efficient way for a charity to fundraise, either wholly or partially. The other group of third-party fundraisers – commercial participators – are not in the business of fundraising but are commercial organisations that trade in goods or services and promote their business or display ‘corporate social responsibility’ by advertising that a portion of their profits from the sale of goods or services are donated to one or more charities.

Section 28A was enacted because of a concern that third-party fundraisers were retaining a disproportionate percentage of donated money, and that the donating public is not aware of this. Prescribing an information disclosure regime was seen as a way of increasing the transparency and public accountability of third-party fundraisers and, in turn, making the public more confident about donating to charitable causes.

This discussion document presents the broad nature of possible information disclosure requirements for third-party fundraisers under section 28A regulations. The requirements are modelled on the approach employed for third-party fundraisers in England and Wales, which is the most comprehensive disclosure regime for charitable fundraising that we are aware of.

You are invited to make a written submission on the issues raised in this discussion document. The closing date for submissions is **5.00 p.m., Thursday 24 March 2016.**

Specific questions are listed at the end of relevant sections, and the full set of questions is listed at the end of this document. We would welcome comment on some or all of the questions, as well as broader comment on the issues raised.

# Chapter 1: Introduction

## Background

1. Section 28A of the Fair Trading Act 1986<sup>1</sup> was inserted, on 30 June 2012, by section 4 of the Fair Trading (Soliciting on Behalf of Charities) Amendment Act 2012. Section 28A is reproduced in **Appendix A** of this discussion document.
2. Section 28A permits the Minister of Commerce and Consumer Affairs to recommend that regulations be made for the purpose of prescribing information disclosure requirements in relation to “fund-raisers” making requests for charitable purposes.<sup>2</sup>
3. No information disclosure regulations have been made under section 28A to date.

## Scope of section 28A<sup>3</sup>

4. A “fund-raiser” (hereafter also referred to as “third-party fundraiser”) is a person who, in business<sup>4</sup>, makes requests for charitable purposes, and includes that person’s employer or principal, but does not include the charitable organisation concerned, an employee of that organisation or a volunteer (being a person who does not expect to, and does not, receive any financial benefit for their fundraising activities).<sup>5</sup>
5. “Requests” includes:<sup>6</sup>
  - soliciting for donations for a charitable purpose; and
  - canvassing for subscriptions for a charitable purpose; and
  - requests, by suppliers of goods or services, for donations that are included as part of the price of goods or services.
6. “Charitable purpose” includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.<sup>7</sup>
7. “Charitable organisation” (hereafter also referred to as “charity”):<sup>8</sup>
  - means a charitable entity<sup>9</sup> or any other person or organisation whose purpose, or predominant purpose, is a charitable purpose; and

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<sup>1</sup> All references in this discussion document to sections are, unless otherwise indicated, references to sections of the Fair Trading Act 1986.

<sup>2</sup> Section 28A(1).

<sup>3</sup> Terms used in this discussion document that are defined in section 28A have the same meaning as that given to them in section 28A.

<sup>4</sup> Section 2(1) defines the term “business” as including any undertaking: that is carried on whether for gain or reward or not; or in the course of which goods or services are acquired or supplied.

<sup>5</sup> Section 28A(5).

<sup>6</sup> Section 28A(5).

<sup>7</sup> Section 28A(5). This definition mirrors the meaning of “charitable purpose” in section 5 of the Charities Act 2005.

<sup>8</sup> Section 28(5).

<sup>9</sup> “Charitable entity” has the same meaning given to it in section 4(1) of the Charities Act 2005 (section 28(5)): “a society, an institution, or the trustees of a trust that is or are registered as a charitable entity under [the Charities Act 2005]” (hereafter “registered charity”). It is not mandatory for a charity to be a registered charity.

- includes a person or organisation that holds itself out as being a charitable organisation, whether or not that person or organisation would otherwise be a charitable organisation as above.
8. Section 28A is clearly intended to focus on prescribing disclosure requirements concerning financial benefits received by third-party fundraisers as a result of making requests for charitable purposes. It provides that regulations may be made for all or any of the following purposes:<sup>10</sup>
- prescribing requirements for the disclosure of information about –
    - the third-party fundraiser, the charitable organisation, and the relationship between those parties
    - the financial benefits that the third-party fundraiser or any person other than the charitable organisation has received, or will or may receive, (whether directly or indirectly) as a result of making requests
    - the amount of any donation included in the price of goods or services;
  - prescribing the manner of disclosure, including –
    - by whom, and to whom, disclosure must be made
    - when and how disclosure must be made, including any particular words required;
  - prescribing how the financial benefit must be calculated and expressed;
  - specifying any financial benefit that the third-party fundraiser is not required to disclose.

### **Enforcement of section 28A**

9. Regulations made under section 28A would require third-party fundraisers to disclose the prescribed information, and the fundraisers would have to comply with the regulations.<sup>11</sup>
10. A failure by a person to comply with any section 28A regulations would be an offence under the Fair Trading Act and the person would be liable on conviction:<sup>12</sup>
- in the case of an individual, to a fine not exceeding \$10,000; and
  - in the case of a body corporate, to a fine not exceeding \$30,000.
11. The Commerce Commission, an independent Crown entity, is responsible for enforcement of the Fair Trading Act.

### **Problem definition and objectives**

12. Section 28A resulted from a concern that third-party fundraisers collecting charitable funds were retaining a disproportionate percentage of donated money, and that the donating public was not aware of this. Prescribing an information disclosure regime was seen as a way of increasing the transparency and public accountability of third-party

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<sup>10</sup> Section 28A(1).

<sup>11</sup> Section 28(4).

<sup>12</sup> Section 40(1B).

fundraisers and, in turn, making the public more confident about donating to charitable causes.<sup>13</sup>

13. In short, a disclosure regime should seek to better inform a potential donor about a third-party fundraiser *before* the donor makes a decision on whether to financially support a charitable organisation on whose behalf the third-party fundraiser is making a request.

## Purpose of this discussion document

14. The Minister of Commerce and Consumer Affairs cannot recommend that information disclosure regulations be made under section 28A unless:<sup>14</sup>
  - the Minister has consulted with such persons, or their representatives, that the Minister considers will be substantially affected by any regulations;
  - those persons have had the opportunity to comment to the Minister; and
  - the Minister has considered any such comments.
15. This discussion document facilitates the Minister's obligation to consult. In particular, we are seeking submissions on any aspect of this discussion document, including on the specific questions raised at the end of relevant sections, by no later than **5.00 p.m., Thursday 24 March 2016**. The questions are listed at the end of this document in **Appendix F**.

## Structure of this discussion document

16. The remainder of this discussion document is organised as follows:
  - **Chapter 2** provides a contextual account of the charitable sector in New Zealand, focusing on how charities raise funds through third-party fundraisers.
  - **Chapter 3** presents an overview of the current regulatory framework applicable to the charitable sector in New Zealand, largely focusing on regulated information disclosure requirements.
  - **Chapter 4** is a short case study of the information disclosure regime existing for charitable fundraising in England and Wales, which is the most comprehensive regime that we are aware of and could be instructive in our consideration of section 28A.
  - **Chapter 5** outlines a possible information disclosure regime for third-party fundraisers under section 28A, modelled on the England and Wales approach, and poses several issues for consideration.
  - **Chapter 6** invites you to make a submission on this discussion document and explains the process for doing so.

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<sup>13</sup> See the Fair Trading (Soliciting on Behalf of Charities) Amendment Bill, *Explanatory note*, (2009 102–1) and the Fair Trading (Soliciting on Behalf of Charities) Amendment Bill, *Commentary*, (2011 102–2). Available at: <http://www.legislation.govt.nz/bill/member/2009/0102/3.0/versions.aspx>

<sup>14</sup> Section 28A(2).



## Chapter 2: Charitable sector in New Zealand

17. To provide context for any potential regulations under section 28A, this chapter briefly describes our understanding of the charitable sector in New Zealand. It covers:
- the nature of the charitable sector; and
  - methods used by charitable organisations to raise funds from donations.

### The nature of the charitable sector

18. Philanthropy makes an important contribution to the economic and social well-being of New Zealanders. A study commissioned by Philanthropy New Zealand found that total giving to charitable and community causes in New Zealand amounted to an estimated \$2.67 billion in 2011.<sup>15</sup> Personal donations and bequests was the largest source, comprising 58 percent (\$1.55 billion) of total estimated giving, with slightly more than an estimated one million individual New Zealanders donating.<sup>16</sup> Charitable organisations are significant recipients of this generosity.
19. There are thousands of charitable organisations in New Zealand, although we do not know the exact number. However, a good indication of the immense size of the sector is the number of registered charities (that is, charities that are registered under the Charities Act 2005<sup>17</sup>). According to the Department of Internal Affairs’s website, currently there are just over 27,000 registered charities, contributing to a vast range of charitable purposes and with an annual income of \$16.4 billion.<sup>18</sup>
20. The legal structures of charitable organisations can take different forms for both registered and unregistered charities. This includes incorporated and unincorporated structures. Most incorporated charities are either trusts under the Charitable Trusts Act 1957 or incorporated societies under the Incorporated Societies Act 1908. A smaller number are companies incorporated under the Companies Act 1993.
21. Table 1 on the next page provides information about the number of registered charities that include “Trust”, “Incorporated” or “Limited” in their names.<sup>19</sup>

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<sup>15</sup> Business and Economic Research Limited *Giving New Zealand: Philanthropic Funding 2011*, Wellington, January 2012. Available at: <http://berl.co.nz/in-focus/giving-new-zealand-2011/>. The study focused on non-government sources of philanthropic funding, that is, financial giving by trusts and foundations, individuals and businesses. By focusing on the source of philanthropic funding, the study accounted for giving to a broader category of recipients than non-profit sector organisations.

<sup>16</sup> Other sources were trusts and foundations (36 percent) and business (six percent).

<sup>17</sup> The main reasons that charities choose to register are to obtain tax benefits and to be able to use the term ‘registered charity’ and other similar terms. In addition, persons making donations can claim tax credits if they make a donation to a charitable organisation that has ‘donee status’. Donee status is administered by Inland Revenue. Most registered charities are eligible for donee status.

<sup>18</sup> See: <https://www.charities.govt.nz/>. This income is raised from donations, trading activities, investment income and government contracts.

<sup>19</sup> Search of the Charities Register carried out on 7 October 2015.

**Table 1: Registered charities by class**

Name	Number	Percent
Registered charity has “Trust” in name	15,036	56%
Registered charity has “Incorporated” in name	8,216	30%
Registered charity has “Limited” in name	1,166	4%
Does not have “Trust”, “Incorporated” or “Limited” in name	2,628	10%
<b>Total</b>	<b>27,046</b>	<b>100%</b>

## How charities raise funds

22. We next discuss two aspects relating to how charities raise funds:

- use of third-party fundraisers; and
- different methods of raising funds.

### Third-party fundraisers

23. Charities can choose to undertake fundraising activities in-house by investing in the necessary fundraising infrastructure and recruiting employees and/or volunteers to raise funds. Alternatively, or in combination with raising funds in-house, charities may rely on third-party fundraisers as the mechanism for raising funds.

24. Third-party fundraisers pursue commercial profit. They can be categorised broadly under two groups:

- professional fundraisers; and
- commercial participators.

25. The core business of professional fundraisers is to supply external fundraising capability and services to charities. That is, a professional fundraiser is a business carried on for gain and wholly or primarily engaged in soliciting money or property for charity. For some charities, the advantages of contracting a professional fundraiser include that the professional fundraiser can provide the expertise and infrastructure needed to undertake fundraising campaigns for which the charity either does not have the capacity to undertake itself or cannot do so as effectively and/or efficiently. For instance:

- A less mature charity, or one with a lesser known or less popular cause, may benefit from the expert marketing or organisational skills of a professional fundraiser, at least in its initial years, while it seeks to attract a sizeable donor base.
- It would be a financially sound business decision for a small charity to engage a professional fundraiser because of gains from economies of scale and specialisation available to the professional fundraiser. For example, a professional fundraiser that provides a call centre and donation-processing facility service to multiple customers will be able to do so more efficiently than a single small charity that sets up its own call centre and donation-processing capability.

26. In principle, this is no different from a charity (or any other business) deciding to engage a professional provider of, say, external legal and accountancy services. Each charity may choose for itself the business model it considers best benefits its circumstances.

27. Regardless of whether a charity raises its funds in-house or by engaging a professional fundraiser (or relies on a combination of the two), there are unavoidable costs associated with fundraising.<sup>20</sup> Those costs need to be recouped through donated funds if the charity is to be sustainable over time.
28. The other group of third-party fundraisers – commercial participators – are not fundraising businesses but commercial organisations that trade in goods or services and promote their business or display ‘corporate social responsibility’ by advertising that a portion of their profits from the sale of goods or services is donated to one or more charities. The advantages to charities from associating with commercial participators can include free marketing and a greater public profile for their causes.

### Methods of raising funds

29. In addition to procuring funds by entering into relationships with commercial participators, charities may raise funds using a multitude of methods, each of which can involve professional fundraisers. They include:
  - *Face-to-face (or direct dialogue) fundraising*: procuring pledges for regular donations in places or venues open to members of the public, including public streets, door-to-door in residential areas, business-to-business, and private venues (e.g. shopping centres). It also includes charity street trading.<sup>21</sup>
  - *Street appeal fundraising*: seeking cash donations from members of the public passing by in the street; typically done by volunteers with ‘buckets’ or ‘tins’ in hand.
  - *Charitable telemarketing fundraising*: telephone-based soliciting of prospective or existing donors.
  - *Electronic fundraising*: carried out by internet communications, electronic mail (‘email’), mobile telephone communications including text messaging (‘SMS’), television, and radio.
  - *Newspaper advertisements*: seeking donations through print advertising.
  - *Direct mail fundraising*: seeking donations through mail where donors are invited to respond.
  - *Grants fundraising*: making applications for grants (e.g. to grant-making trusts).
  - *Charitable gambling fundraising*: gambling activities such as raffles, lotteries, bingo, lucky dips, and purchase of event tickets that qualify buyers for prizes.
  - *Payroll giving fundraising*: giving arranged to be paid by the donor’s employer as a regular deduction from the donor’s salary/wages.
  - *School fundraising*: activities undertaken for the purpose of raising funds for a school or other entity.
  - *Events fundraising*: holding of functions with the purpose of raising charitable funds.

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<sup>20</sup> The only way a charity’s fundraising could be cost-free would be if the charity is able to rely exclusively on the goodwill of volunteers with respect to its fundraising activities.

<sup>21</sup> This is the sale and/or promotion of products or services in public places either to raise funds for charitable organisations or to raise their profiles. Charity street trading does not include commercial participators where a business uses a charity’s name and logo to promote its own products or services.

### Arrangements between charities and third-party fundraisers

30. Examples of possible arrangements for fundraising activities between charities and professional fundraisers and commercial participators are included in **Appendix B**.

#### Questions

- 1 Have we identified all the different forms of fundraising?
- 2 Do or can all the above forms of fundraising involve professional fundraisers?

## Chapter 3: Current regulation of the charitable sector

31. In this chapter, we describe the nature of the current regulatory arrangements in the charitable sector with a focus on information disclosure requirements. As noted earlier in relation to section 28A, an objective of providing information about charitable activities is to increase the public's confidence in the charitable sector so as to encourage ongoing generous giving by the public.
32. There are two kinds of current information disclosure regulation for charities to consider: government regulation through legislation and self-regulation within the charitable sector.

### Government information disclosure regulation for charities

33. The Charities Act 2005 requires each registered charity to prepare an Annual Return, attaching the charity's financial statements. Registered charities are required to file their Annual Returns and financial statements with Charities Services (see below), which are then made publicly available on the Charities Register administered by Charities Services. People interested in a registered charity's financial statements can read them to make informed decisions about the charity.<sup>22</sup> These people include donors and potential donors, who may wish to know about a charity's operations and performance, including in relation to its fundraising activities.
34. A charity that is registered under the Incorporated Societies Act 1908 but is not registered under the Charities Act 2005 must lodge its annual financial statements to the Registrar of Incorporated Societies. Financial statements lodged with the Registrar may be inspected by any member of the public.
35. There are no statutory financial reporting obligations on a charity that is an unincorporated society or a charitable trust incorporated under the Charitable Trusts Act 1957, unless it is also a registered charity.

### Charities Services

36. Charities Services is part of the Department of Internal Affairs. Under the Charities Act, its role is to promote public trust and confidence in the charitable sector and to encourage the effective use of charitable resources. Charities Services does this by registering and monitoring charities and processing their Annual Returns and financial statements. It also encourages good governance and management practices by providing educational support, advice and materials, and reports, and makes recommendations to Government about charitable sector matters.

### Self-regulation

37. Two private organisations exist for the purpose of regulating the charitable sector in New Zealand:
  - Public Fundraising Regulatory Association (PFRA); and

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<sup>22</sup> For financial years commencing on or after 1 April 2015, the financial statements will need to be prepared in accordance with accounting standards issued by the External Reporting Board (XRB), an independent Crown Entity.

- Fundraising Institute of New Zealand (FINZ).
38. Membership of both organisations is voluntary and comprises entities and individuals that are involved in the charitable sector. Hence, PFRA and FINZ provide for self-regulation of the charitable sector with respect to their memberships only.

### Public Fundraising Regulatory Association

39. PFRA has been regulating face-to-face (or direct dialogue) fundraising in New Zealand since 2006. Face-to-face fundraising seeks to procure regular (e.g. monthly) ongoing donations from members of the public.<sup>23</sup> Charities, or more usually professional fundraisers representing them, seek to attract donors typically by standing in public streets or private venues (e.g. shopping centres) and going door-to-door in residential areas. Face-to-face fundraising also includes charity street trading.<sup>24</sup>
40. Face to-face fundraising is a very important and successful method of acquiring ongoing charitable funds in New Zealand. In 2014, 65,000 people subscribed to making regular charitable payments as a result of face-to-face fundraising. In the same year, charities received donations amounting to more than \$45 million from donors attracted to charitable causes through face-to-face fundraising. In the last five years, face-to-face fundraising was responsible for 300,000 new donors. In that period, charities received more than \$200 million from donors recruited through face-to-face fundraising. Most donors give around \$26 per month for at least four years.<sup>25</sup>
41. PFRA was established to raise the standards of face-to-face fundraising in New Zealand by setting professional and ethical standards and monitoring compliance with those standards. PFRA’s overarching objective is to ensure the long-term integrity and sustainability of face-to-face fundraising. Its membership comprises 28 charities, which are among New Zealand’s most prominent charities. In addition, nine professional fundraisers are members (“Supplier Members”).<sup>26</sup> This represents all the charities and 95 percent of professional fundraisers that undertake face-to-face fundraising in New Zealand. PFRA works closely with FINZ and Charities Services.
42. The PFRA self-regulatory regime includes two conduct codes: *PFRA Face to Face Fundraising Code of Conduct* and *PFRA Standard of Charity Street Trading Practice*.<sup>27</sup> The regime also includes a complaints process and a programme of audits, checks and mystery shopping. PFRA can impose sanctions on non-compliant members, including requiring members to stand down from fundraising for a period of time and imposing fines on members.
43. Both PFRA Codes of Conduct require the disclosure of specific information to potential donors. Information that must be disclosed under the two Codes is summarised in **Appendix C**. This includes:

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<sup>23</sup> This form of fundraising is distinguished from often-seen street appeals where immediate one-off cash donations are sought from members of the public, typically by volunteer collectors.

<sup>24</sup> See footnote 21 for the meaning of charity street trading.

<sup>25</sup> Information supplied by PFRA.

<sup>26</sup> According to PFRA, nearly three quarters of funds received by charities through face-to-face fundraising is raised using professional fundraisers.

<sup>27</sup> Available at: <http://pfra.org.nz/>

- Disclosing to potential donors in writing whether the fundraiser/street trader is a professional fundraiser/street trader or a paid employee of the charity, and not a volunteer;
  - in the case of face-to-face fundraising, a disclosure statement on all pledge forms that the PFRA has calculated that on average its members' cost per acquisition is approximately 25 percent of the average contribution.
44. The Code of Conduct for face-to-face fundraising also imposes an obligation on fundraisers, on request, to inform donors that they are a paid fundraiser, and not a volunteer.
45. PFRA supports FINZ's ethics code, which prohibits, on the grounds that it is unethical, the use of percentage- or performance-based remuneration for professional fundraisers undertaking face-to-face fundraising (see paragraph 52 below). However, the charity is permitted to remunerate a professional fundraiser using performance-based measures if the level of remuneration that the fundraiser may receive can be ascertained by the fundraiser prior to undertaking a face-to-face fundraising activity, and the remuneration is not calculated as a percentage of a donation.<sup>28</sup>
46. Similarly, a charity may remunerate a fundraiser undertaking street trading using performance-based measures if the level of remuneration the fundraiser may receive can be ascertained prior to the street trading activity, and the level of remuneration is calculated on a 'fee-per-product' basis.<sup>29</sup>

### Fundraising Institute of New Zealand

47. FINZ is the professional body for charities and those employed in or involved with fundraising, sponsorship and events in the not-for-profit sector. It has been in existence since 1 January 1991.<sup>30</sup> FINZ's aim is to promote and uphold professional and ethical fundraising, encourage the development of philanthropy in New Zealand and provide an advocacy voice for the charitable sector in New Zealand. Unlike PFRA, FINZ does not exclude from its scope any of the methods of fundraising listed in paragraph 29 above.
48. FINZ's membership includes both charities and professional fundraisers. FINZ works with members from over 800 charities and not-for-profit organisations, helping them fundraise professionally, ethically and sustainably. New Zealand's major charities are members of FINZ, but overall the number of members is a small fraction of the number of charitable organisations in New Zealand.
49. Membership is on a voluntary basis, meaning that FINZ's authority with respect to maintaining and enforcing professional and ethical standards extends to its members only.
50. Members are required to comply with FINZ's *Code of Ethics and Professional Conduct*, *Code of Fundraiser's Relationships with Donors*, and 12 published standards of fundraising practice. There is also a formal process for handling complaints, set down in

<sup>28</sup> PFRA *Face to Face Fundraising Code of Conduct*, clause 9.1.

<sup>29</sup> PFRA *Standard of Charity Street Trading Practice*, clause 7.3.

<sup>30</sup> Before then it operated as a division of The Australasian Institute of Fundraising, now the Fundraising Institute of Australia.

*FINZ Complaints Process*.<sup>31</sup> The practice standards cover all the different methods of fundraising listed in paragraph 29 above (e.g. the *FINZ Standard of Face to Face Fundraising Practice*, which is broadly identical to the PFRA Code of Conduct for face-to-face fundraising discussed in the previous section, is the practice standard for face-to-face fundraising).

51. As with the PFRA Code of Conduct for face-to-face fundraising, under FINZ's *Code of Fundraiser's Relationships with Donors*, where a donor requests, the donor has the right to be informed as to whether the fundraiser is engaged either as a volunteer, employee or professional fundraiser.
52. FINZ's *Code of Ethics and Professional Conduct* requires that members shall:<sup>32</sup>
  - not personally undertake nor be involved in any way, in a fundraising activity where remuneration is based in part or in whole on a percentage of the financial results of the solicitation;
  - not engage or remunerate any third party to solicit financial gifts on such a basis;
  - will use their best endeavours to dissuade any employing organisation from remunerating fundraising staff or third-party individuals on such a basis.

## Questions

- 3 Have we properly understood the current regulatory framework for the charitable sector in New Zealand, in particular as it provides for information disclosure?

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<sup>31</sup> These publications can be accessed at:

<http://finz.org.nz/Codes+of+Conduct+and+Standards/Codes+Of+Practice?src=nav>

<sup>32</sup> Clause 3.7.



## Chapter 4: England and Wales – a case study

53. This chapter identifies the existing information disclosure requirements for charitable fundraising, including for third-party fundraisers (professional fundraisers and commercial participators), in England and Wales. We have chosen to examine this jurisdiction because it is the most comprehensive disclosure regime that we are aware of.<sup>33</sup> The approach in England and Wales may therefore be particularly instructive with respect to the possibilities for regulating third-party fundraisers under section 28A.
54. The regulation of charitable fundraising in England and Wales is long-established and prescribed in primary legislation. The Charities Act 1992<sup>34</sup> (as amended by the Charities Act 2006<sup>35</sup>) provides for prescriptive control of fundraising for charitable institutions or charitable, benevolent or philanthropic purposes.

### Key features of the England and Wales disclosure regime<sup>36</sup>

55. The England and Wales regime provides for universal coverage of fundraising activities in the sense that it applies not only to professional fundraisers and commercial participators, but also to trustees, officers and employees of charities who solicit money or other property for the benefit of charitable institutions or for charitable, benevolent or philanthropic purposes, and who receive remuneration either in their capacity as trustees, officers or employees or for acting as collectors. This is different from section 28A, which provides for information disclosure regulations for third-party fundraisers only. All methods of fundraising are covered under the England and Wales regime.
56. Professional fundraisers, commercial participators, and trustees, officers and employees of charities are required to make “solicitation statements” to donors when fundraising. The aim of solicitation statements is to ensure that potential donors to whom fundraisers make appeals and potential purchasers of commercial participators’ goods or services are given, before they make their decision about whether or not to donate or purchase, a fair indication of the extent to which charitable institutions or charitable, benevolent or philanthropic purposes will benefit from the transaction.
57. The solicitation statements for professional fundraisers must include disclosure of the method by which their remuneration in connection with the appeal is to be calculated. It must also disclose the “notifiable amount” of that remuneration.<sup>37</sup> The notifiable amount is:

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<sup>33</sup> By comparison, for example, the fundraising disclosure requirements in Australia appear much more piecemeal and are considerably less consistent, varying across the states and territories (there is no federal approach). For instance, the Northern Territory does not regulate charitable fundraising activity at all. Other jurisdictions such as Tasmania contain no specific information disclosure requirements for third-party fundraisers. However, most jurisdictions require some form of disclosure by third-party fundraisers, such as the fact that they are being paid, although there is variability across different methods of collection and circumstances.

<sup>34</sup> Available at: <http://www.legislation.gov.uk/ukpga/1992/41/contents>

<sup>35</sup> Available at: <http://www.legislation.gov.uk/ukpga/2006/50/contents>

<sup>36</sup> See, in particular, Charities Act 1992, Part II, as amended by Charities Act 2006, Chapter 2, Part 3.

<sup>37</sup> An officer, employee or trustee of a charitable institution who solicits money or other property and for which they receive remuneration is not required to disclose a notifiable amount in their solicitation statement. They only need to disclose the fact that they receive remuneration for acting as a collector.

- if it is known at the time the solicitation statement is made, the actual amount of remuneration that will be received in connection with the appeal; or
  - if the actual amount is not known at the time the solicitation statement is made, an estimated amount of that remuneration (the estimate must be calculated as accurately as is reasonably possible in the circumstances).
58. However, there is a remuneration threshold for professional fundraisers. A solicitation statement is not required if the remuneration received is:
- not more than £10 per day or £1,000 per year for acting as a collector in relation to public charitable collections conducted for the benefit of the charitable institution(s) or charitable, benevolent or philanthropic purposes; or
  - not more than £1,000 for acting as a collector in relation to a specific public charitable collection.
59. Commercial participators must disclose the notifiable amount in their solicitation statements as the sum applicable to any of the following circumstances:
- the price paid for each product or service by consumers which will be given to or applied for the benefit of the charitable institution(s) concerned
  - the amount, or an estimate of the amount, of any other proceeds from a promotional venture that will be given to or applied for the benefit of the charitable institution(s) concerned
  - the amount, or an estimate of the amount, of the donations to be given by the commercial participator to the charitable institution in connection with the sale or supply of the relevant goods or services.
60. Table 2 summarises the information disclosure requirements for professional fundraisers and commercial participators in England and Wales.

**Table 2: Third-party fundraiser disclosures in England and Wales**

Circumstance	Disclosure requirements
Professional fundraiser solicits for money or other property for the benefit of charitable institution(s)	<ul style="list-style-type: none"> <li>• Name(s) of the institution(s) for which fundraising</li> <li>• The proportions in which the institutions are to benefit (if there is more than one institution)</li> <li>• The method by which remuneration is calculated</li> <li>• The notifiable amount (paragraph 57 above)</li> </ul>
Professional fundraiser solicits for money or other property for charitable, benevolent or philanthropic purposes	<ul style="list-style-type: none"> <li>• Disclose fundraising is for a purpose and not for the benefit of particular institutions</li> <li>• The method for distributing proceeds</li> <li>• The method by which remuneration is calculated</li> <li>• The notifiable amount (paragraph 57 above)</li> </ul>
Commercial participator represents charitable contributions will be given to/applied for benefit of charitable institution(s)	<ul style="list-style-type: none"> <li>• The charitable institution(s) which will benefit from the promotional venture</li> <li>• If more than one institution, the proportions in which each will benefit</li> <li>• The notifiable amount (paragraph 59 above)</li> </ul>

## Chapter 5: A disclosure regime under section 28A

61. Chapter 5 discusses possible information disclosure requirements for third-party fundraisers (professional fundraisers and commercial participators) which could be set out in regulations made under section 28A.
62. Section 28A(1) provides for regulations to be made that may prescribe – in relation to third-party fundraisers making requests for charitable purposes – certain information disclosure requirements, including:<sup>38</sup>
  - information about the third-party fundraiser, the charity, and the relationship between them;
  - any financial benefits received (or to be received) by the third-party fundraiser as a result of making requests, and how the financial benefit must be calculated and expressed;
  - the amount of any donation included in the price of goods or services;
  - by whom, and to whom, disclosure must be made;
  - when and how disclosure must be made, including any particular words required.
63. The need for a disclosure regime under section 28A assumes that the current regulatory framework (see Chapter 3) is deficient because third-party fundraisers collecting charitable funds are able to retain a disproportionate percentage of donated money and that the donating public is unaware of this.
64. The aim of setting information disclosure requirements under section 28A regulations therefore should be to render greater transparency and public accountability of third-party fundraisers which, in turn, would make the donating public better informed and more confident about giving to charitable causes.
65. Given that section 28A was enacted because of the concern that third-party fundraisers are retaining too high a proportion of donated money and that the public should be made aware of how much is being retained,<sup>39</sup> the main focus of section 28A is on disclosures in relation to financial benefits received by third-party fundraisers to remunerate them for their fundraising activities.

### Outline of a possible disclosure regime

66. **Appendix D** and **Appendix E** outline the broad nature of possible information disclosure requirements under section 28A regulations for professional fundraisers and commercial participators, respectively. The disclosure requirements comprise non-financial benefit and financial benefit information that professional fundraisers and commercial participators would have to make to potential donors at the time of making the request (that is, *before* the potential donor has resolved to make a financial commitment to the charitable purpose(s)).

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<sup>38</sup> Refer to Appendix A.

<sup>39</sup> See the Fair Trading (Soliciting on Behalf of Charities) Amendment Bill, *Explanatory note*, (2009 102–1) and the Fair Trading (Soliciting on Behalf of Charities) Amendment Bill, *Commentary*, (2011 102–2). Available at: <http://www.legislation.govt.nz/bill/member/2009/0102/3.0/versions.aspx>

67. The disclosure requirements are modelled on the approach taken in England and Wales (see Chapter 4) and would apply to all methods of fundraising by professional fundraisers<sup>40</sup> (paragraph 29) and promotional ventures undertaken by commercial participators.<sup>41</sup>

## Discussion

68. There are several issues in relation to the possible section 28A disclosure regime discussed in this chapter, and outlined in Appendices D and E, which we would be especially grateful to receive your comments on.

### Section 28A focus is on financial benefits

69. As noted in paragraph 65, we think the main objective of section 28A is to provide for disclosures of financial benefits received by professional fundraisers and commercial participators.

## Questions

- 4 Will the disclosure of financial benefits information lead to the donating public being better informed and more confident about giving financial support to charities or charitable causes? In particular:
- Will donors be able to reasonably ascertain whether or not a third-party fundraiser has retained a disproportionate percentage of donated money to cover their costs?
  - Will donors be able to tell from disclosure of financial benefits information whether or not charities that rely on third-party fundraisers are operating effectively and efficiently, and merit donors' financial support?
- 5 What effect do you think that financial benefits information disclosure would likely have on:
- Business models preferred by charities for raising funds (e.g. whether or not to use third-party fundraisers)?
  - The ability of charities to raise funds, whether or not they engage third-party fundraisers?
  - The performance of the charitable sector generally?
- 6 Do you think that there should be a remuneration threshold(s) for professional fundraisers such that if the financial benefits received are below the threshold, a solicitation statement would not be required? If so, what should the threshold(s) be?

<sup>40</sup> In England and Wales the definition of "professional fundraiser" excludes any person who, during the course of a radio or television programme in the course of which a fundraising venture is undertaken by a charitable institution or a company connected with such an institution, makes a solicitation at the request of that institution or company (Charities Act 1992, section 58). That approach is assumed for the purposes of the disclosure regime for professional fundraisers outlined in Appendix D.

<sup>41</sup> As discussed in Chapter 4, the approach in England and Wales covers not only professional fundraisers and commercial participators, but also trustees, officers and employees of charities who receive remuneration for acting as collectors. This is different from section 28A, which provides for information disclosure regulations for third-party fundraisers only.

### Calculation of financial benefits

70. There are supposedly many different ways in which third-party fundraisers (professional fundraisers and commercial participators) and charities decide the proportion or amount of funds procured as a result of third-party fundraisers making requests that are due to fundraisers.

#### Questions

7. What are the different methods by which financial benefits received by professional fundraisers and commercial participators are determined?
8. Will it be possible for professional fundraisers to disclose the methods by which the financial benefits received by them are determined at the time they are making requests?
9. Will it be possible for professional fundraisers and commercial participators to know the financial benefits they will receive, or to estimate with reasonable accuracy in the circumstances the financial benefits they will receive, at the time they are making requests?

### Relevance of current regulatory framework to consideration of section 28A

71. In Chapter 3 we discussed the current regulation of charitable fundraising in New Zealand, in particular in relation to information disclosure requirements. This regulation includes the regulatory functions of Charities Services in respect of more than 27,000 registered charities and the self-regulation roles played by PFRA and FINZ, whose memberships include the most prominent charities in New Zealand, as well as third-party fundraisers. As we have noted, PFRA provides regulatory oversight for all face-to-face fundraising in New Zealand, with all charities, and the vast majority of third-party fundraisers, involved in this method of fundraising being members of PFRA.

#### Questions

10. In light of the current regulatory framework for charitable fundraising discussed in Chapter 3, how much difference do you think a possible information disclosure regime under section 28A, as discussed in Chapter 5, will make to providing for a better informed donating public and one that is more confident about giving to charitable causes?

### Section 28A restricted to third-party fundraisers

72. Any information disclosure requirements under section 28A regulations would be restricted to third-party fundraisers; section 28A specifically excludes charities (and their employees) and volunteers that engage in fundraising activities from having to make disclosures.<sup>42</sup>

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<sup>42</sup> As mentioned earlier, this is a key difference from the disclosure regime in England and Wales which applies to all paid or remunerated fundraisers, including professional fundraisers, commercial participators, and trustees, officers and employees of charities.

## Questions

- 11 What effects, if any, do you think there could be from limiting information disclosure obligations to third-party fundraisers (thus drawing attention to those charities that engage third-party fundraisers) with respect to:
- a. the market for services supplied by third-party fundraisers;
  - b. the market for raising charitable funds;
  - c. the business models preferred by charities to raise funds (e.g. whether or not to use third-party fundraisers); and
  - d. the performance of the charitable sector generally?

## Chapter 6: Submissions process

73. You are invited to make a written submission on this discussion document, including on the questions appearing in the document.
74. The closing date for submissions is **5.00 p.m., Thursday 24 March 2016**. Specific questions are listed at the end of relevant sections, and the full set of questions is listed in **Appendix F**. The Ministry of Business, Innovation and Employment welcomes comment on some or all of the questions raised, as well as broader comment on any aspect of the discussion document.
75. Submissions will be considered by Ministry officials. The Ministry will then provide advice to the Minister of Commerce and Consumer Affairs.

### Sending your submission

76. You can make a submission by emailing or by posting your feedback, as follows:

*Email (preferably as a PDF or Microsoft Word document):* [section28A@mbie.govt.nz](mailto:section28A@mbie.govt.nz)

*Post:*

Section 28A of the Fair Trading Act Consultation  
Competition and Consumer Policy Team  
Commerce, Consumers and Communications Branch  
Ministry of Business, Innovation and Employment  
PO Box 1473  
Wellington 6140  
New Zealand

*Delivery address:* Main reception, 15 Stout Street, Wellington 6011.

77. If you post your submission, please also send it electronically if possible (as a PDF or Microsoft Word document).

### Publication of submissions

78. Except for material that may be defamatory, the Ministry of Business, Innovation and Employment (the Ministry) will post all written submissions on the Ministry website at <http://www.mbie.govt.nz/info-services/consumer-protection/disclosure-regulations-for-third-party-fundraisers>. The Ministry will consider you to have consented to publication by making a submission, unless you clearly specify otherwise in your submission. If sensitive material in your submission cannot be published, please provide two versions of your submission – a full version (with that material clearly identified) and a publishable version with redactions.
79. Submissions are also subject to the Official Information Act 1982 (the OIA). If you have any objection to the release of any information in your submission, please set this out clearly with your submission. In particular, identify which part(s) you consider should be withheld, and explain the reason(s) why you consider the Ministry should withhold the information by reference to section 9 of the OIA. The Ministry will take such reasons into account when responding to requests under the OIA.

80. The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure by various agencies, including the Ministry, of information relating to individuals and access by individuals to information relating to them, held by such agencies. Any personal information you supply to the Ministry in the course of making a submission will be used by the Ministry only in conjunction with consideration of matters covered by this document. Please clearly indicate in your submission if you do not wish your name to be included in any summary the Ministry may prepare for public release on submissions received.



## Appendix A: Section 28A of the Fair Trading Act 1986

### “28A Regulations relating to disclosure by fund-raisers making requests for charitable purposes

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (2), make regulations, in relation to fund-raisers making requests for charitable purposes, for all or any of the following purposes:
  - (a) prescribing requirements for the disclosure of information about—
    - (i) the fund-raiser, the charitable organisation, and the relationship between those parties:
    - (ii) the financial benefits that the fund-raiser or any person other than the charitable organisation has received, or will or may receive, (whether directly or indirectly) as a result of making requests:
    - (iii) the amount of any donation included in the price of goods or services:
  - (b) prescribing the manner of disclosure, including—
    - (i) by whom, and to whom, disclosure must be made:
    - (ii) when and how disclosure must be made, including any particular words required:
  - (c) prescribing how the financial benefit must be calculated and expressed:
  - (d) specifying any financial benefit that the fund-raiser is not required to disclose.
- (2) The Minister must not make a recommendation under this section unless—
  - (a) the Minister has consulted with such persons or representatives of such persons as the Minister considers will be substantially affected by any Order in Council made in accordance with the recommendation and those persons have had the opportunity to comment to the Minister; and
  - (b) the Minister has considered any such comments.
- (3) A failure to comply with subsection (2) does not affect the validity of any Order in Council made under this section.
- (4) If regulations made under this section require a fund-raiser to disclose information, that fund-raiser must comply with the regulations.
- (5) In this section,—

**charitable entity** has the meaning given to it in section 4(1) of the Charities Act 2005

**charitable organisation**—

  - (a) means—
    - (i) a charitable entity; or
    - (ii) any other person or organisation whose purpose, or predominant purpose, is a charitable purpose; and
  - (b) includes a person or organisation that holds itself out as being a charitable organisation, whether or not that person or organisation would otherwise be a charitable organisation within the meaning given in paragraph (a)

**charitable purpose** includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community

**fund-raiser**—

  - (a) means a person who, in business, makes requests for donations for charitable purposes; and
  - (b) includes that person's employer or principal; but
  - (c) does not include—

- (i) the charitable organisation concerned or an employee of that organisation;  
or
- (ii) a volunteer (being a person who does not expect to, and does not, receive any financial benefit for his or her fund-raising activities)

**requests** includes—

- (a) soliciting for donations for a charitable purpose; and
- (b) canvassing for subscriptions for a charitable purpose; and
- (c) requests, by suppliers of goods or services, for donations that are included as part of the price of goods or services.”

## Appendix B: Examples of third-party fundraiser arrangements with charities

Professional fundraisers	Commercial participators
<ul style="list-style-type: none"> <li>• A charity engages a professional fundraiser to recruit new donors by getting donors to sign up to monthly direct debit donations. The charity agrees to pay the fundraiser a fixed dollar amount for each new donor, regardless of the monthly amount each donor pledges to give.</li> <li>• A charity engages a professional fundraiser to make applications to grant-making trusts and appeal to corporate donors. The charity agrees to pay the fundraiser a fixed dollar amount plus a percentage of the amount raised.</li> <li>• A charity engages a consultant to develop and implement a fundraising strategy which includes asking for donations from corporate donors. The charity agrees to pay the consultant a fixed fee for the work, in the course of which the consultant forms part of the charity's team making fundraising presentations to corporate executives for the purpose of persuading them to donate to the charity.</li> <li>• A charity uses a telemarketing agency to sign-up supporters to make regular automatic deductions. The charity agrees to pay the agency a fixed dollar amount for every new supporter.</li> </ul>	<ul style="list-style-type: none"> <li>• A manufacturer uses a charity logo on its packaging to promote a particular product in exchange for a fixed dollar amount to be donated for every packet sold.</li> <li>• A retailer selling Christmas cards uses a charity logo and its name on the cards in exchange for a fixed percentage of profits on total sales of the cards.</li> <li>• A house-to-house clothing collections business agrees with a charity that, in return for permission to use the charity's name, it will pay the charity a fixed dollar amount per tonne of clothes collected.</li> <li>• An event-promoting company organises a charity event, such as a ball, with all the profits (ticket sales less expenses) from the event going to the charity in exchange for publicity material stating that all profits will be donated to the charity.</li> <li>• A bank using a charity's name and logo to promote 'affinity' credit cards. The bank includes the charity's name and logo in its marketing of the credit card and agrees to pay the charity a fixed dollar amount for every card account opened by a consumer plus a small percentage of the amount spent by the consumer using the card.</li> </ul>

## Appendix C: PFRA proactive disclosure requirements

Face-to-face donations	Charity street trading
<ul style="list-style-type: none"> <li>• A charity must require the person fundraising (either an employee or a professional fundraiser) to clearly display to a donor: an authorised pledge form (paper or electronic); and an ID badge that includes the following elements:               <ul style="list-style-type: none"> <li>○ the full name of the person</li> <li>○ the charity’s full name</li> <li>○ photograph of the person</li> <li>○ state (in a prescribed minimum font size) the words “PAID FUNDRAISER”, “PAID COLLECTOR”, “PAID CAMPAIGNER” or, if applicable, “PAID [charity name] EMPLOYEE”</li> <li>○ if relevant, the charity’s authorisation to use a professional fundraiser and the full name of the professional fundraiser.</li> </ul> </li> <li>• The charity must provide on the authorised pledge form the:               <ul style="list-style-type: none"> <li>○ full name of the charity</li> <li>○ charity registration number or Inland Revenue donee number</li> <li>○ full business address and telephone number</li> <li>○ charity logo</li> <li>○ PFRA membership logo (or details)</li> <li>○ following disclosure statement: “[charity name] is a member of the face to face fundraising body PFRA (Public Fundraising Regulatory Association). PFRA has calculated that on average its members’ cost per acquisition is approximately 25% of the average contribution. For information on our Code of Conduct go to [PFRA website]”</li> <li>○ following statement if the charity uses a professional fundraiser: “[Professional fundraiser’s name] has been authorised by [charity’s name] to conduct fundraising activities”.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The person fundraising/street trader must display a photographic ID badge that states:               <ul style="list-style-type: none"> <li>○ the person’s name</li> <li>○ the full name of the charity</li> <li>○ if relevant, the name of the professional fundraiser and that the fundraiser has been authorised by the charity to conduct street trading on its behalf.</li> </ul> </li> <li>• The street trader must be able to show a paper or electronic document or provide a letter from the charity with the following information contained:               <ul style="list-style-type: none"> <li>○ the full legal name of the charity</li> <li>○ the charity’s registration number (if a registered charity)</li> <li>○ the charity’s business and website addresses and telephone number</li> <li>○ the charity’s logo</li> <li>○ if relevant, that the street trader is not a volunteer but is being paid</li> <li>○ the following disclosure statement: “Profits from the sale of this product for [charity’s name] support [details of the cause]”</li> <li>○ a précis of the key points of the PFRA charity street trading conduct code</li> <li>○ the following disclosure statement: “[charity name] is a member of the Public Fundraising Regulatory Association (PFRA). For information on our Code of Conduct go to [PFRA website]”</li> <li>○ the following statement if the charity uses a professional fundraiser: “[Professional fundraiser’s name] has been authorised by [charity’s name] to conduct street trading activities. [Professional fundraiser’s name] is a PFRA Supplier Member”.</li> </ul> </li> </ul>

## Appendix D: Possible section 28A disclosures by professional fundraisers

Non-financial benefit disclosures	Financial benefit disclosures
<ul style="list-style-type: none"> <li>• That the collector works for a business (professional fundraiser) that solicits funds on behalf of charities or for charitable purposes and that the business is paid or remunerated (receives a financial benefit) for providing that service.</li> <li>• The name of the charity or names of the charities that the professional fundraiser represents, or, if relevant, that the fundraising is for charitable purposes and not for the benefit of a specific charity or charities.</li> <li>• The objects of the charity or charities and intended use of the donation.</li> <li>• The proportions in which the charities will benefit (if the professional fundraiser is making requests for more than one charity), or how the proceeds of the appeal will be distributed to different charities (if the fundraiser is making requests for charitable purposes).</li> </ul>	<ul style="list-style-type: none"> <li>• The method by which the financial benefit received by the professional fundraiser (or any person other than the charity) in connection with the appeal is to be determined.</li> <li>• The amount of the financial benefit, disclosed as either:               <ul style="list-style-type: none"> <li>○ if it is known at the time the request is made, the actual amount of the financial benefit that will be received in connection with the appeal; or</li> <li>○ if the actual amount of the financial benefit is not known at the time the request is made, an estimated amount of the financial benefit that will be received (the estimate must be calculated as accurately as is reasonably possible in the circumstances).</li> </ul> </li> </ul>

## Appendix E: Possible section 28A disclosures by commercial participators

Non-financial benefit disclosures	Financial benefit disclosures
<ul style="list-style-type: none"> <li>• The charity or charities that will benefit.</li> <li>• The objects of the charity or charities and intended use of the funds to be paid to the charity or charities.</li> <li>• If there is more than one charity concerned, the proportions in which the charities will benefit.</li> </ul>	<ul style="list-style-type: none"> <li>• If it is known at the time the request is made:               <ul style="list-style-type: none"> <li>○ the actual amount of the sum representing that part of the consideration given for goods or services sold or supplied that is to be given to or applied for the benefit of the charity or charities;</li> <li>○ the actual amount of the sum representing as much of any other proceeds of a promotional venture undertaken by the commercial participator which is to be given or applied for the benefit of the charity or charities; or</li> <li>○ the actual amount of the sum of the donations made by the commercial participator in connection with the sale or supply of the relevant goods or services.</li> </ul> </li> <li>• If it is not known at the time the request is made:               <ul style="list-style-type: none"> <li>○ the estimated amount of the sum representing that part of the consideration given for goods or services sold or supplied that is to be given to or applied for the benefit of the charity or charities;</li> <li>○ the estimated amount of the sum representing as much of any other proceeds of a promotional venture undertaken by the commercial participator which is to be given or applied for the benefit of the charity or charities; or</li> <li>○ the estimated amount of the sum of the donations made by the commercial participator in connection with the sale or supply of the relevant goods or services.</li> </ul> </li> <li>• Any estimated amount must be calculated as accurately as is reasonably possible in the circumstances.</li> </ul>

## Appendix F: Summary of questions

### Questions

- 1 Have we identified all the different forms of fundraising?
- 2 Do or can all the above forms of fundraising involve professional fundraisers?
- 3 Have we properly understood the current regulatory framework for the charitable sector in New Zealand, in particular as it provides for information disclosure?
- 4 Will the disclosure of financial benefits information lead to the donating public being better informed and more confident about giving financial support to charities or charitable causes? In particular:
  - a. Will donors be able to reasonably ascertain whether or not a third-party fundraiser has retained a disproportionate percentage of donated money to cover their costs?
  - b. Will donors be able to tell from disclosure of financial benefits information whether or not charities that rely on third-party fundraisers are operating effectively and efficiently, and merit donors' financial support?
- 5 What effect do you think that financial benefits information disclosure would likely have on:
  - a. Business models preferred by charities for raising funds (e.g. whether or not to use third-party fundraisers)?
  - b. The ability of charities to raise funds, whether or not they engage third-party fundraisers?
  - c. The performance of the charitable sector generally?
- 6 Do you think that there should be a remuneration threshold(s) for professional fundraisers such that if the financial benefits received are below the threshold, a solicitation statement would not be required? If so, what should the threshold(s) be?
- 7 What are the different methods by which financial benefits received by professional fundraisers and commercial participators are determined?
- 8 Will it be possible for professional fundraisers to disclose the methods by which the financial benefits received by them are determined at the time they are making requests?
- 9 Will it be possible for professional fundraisers and commercial participators to know the financial benefits they will receive, or to estimate with reasonable accuracy in the circumstances the financial benefits they will receive, at the time they are making requests?
- 10 In light of the current regulatory framework for charitable fundraising discussed in Chapter 3, how much difference do you think a possible information disclosure regime under section 28A, as discussed in Chapter 5, will make to providing for a better informed donating public and one that is more confident about giving to charitable causes?

- 11 What effects, if any, do you think there could be from limiting information disclosure obligations to third-party fundraisers (thus drawing attention to those charities that engage third-party fundraisers) with respect to:
- a. the market for services supplied by third-party fundraisers;
  - b. the market for raising charitable funds;
  - c. the business models preferred by charities to raise funds (e.g. whether or not to use third-party fundraisers); and
  - d. the performance of the charitable sector generally?