

# FUNDRAISING SERVICES RESPONSIBILITY STANDARDS STATEMENT

As part of its Fundraising Supply Chain Governance Strategy, Médecins Sans Frontières Australia (MSF) has prepared this Fundraising Services Responsibility Standards Statement (Statement) for the information of its Suppliers of Fundraising Services (Fundraising Suppliers).<sup>1</sup>

## In preparing this Statement, MSF:

- i.** publicly accepts responsibility for monitoring and taking all reasonable steps to compliance with Commonwealth Workplace Laws<sup>2</sup> within its labour supply chain for Fundraising Services;
- ii.** reiterates its commitment to conducting its business in accordance with its Supply Chain Code of Conduct, which emphasises that compliance with Commonwealth Workplace Laws by all Fundraising Suppliers in its supply chain is a fundamental and non-negotiable matter for MSF; and
- iii.** confirms it has initiated and will continue to implement robust supply chain governance practices to its fundraising supply chain, to meet its own Supply Chain Code of Conduct requirements as advised by the Labour Standards Centre of Excellence.

1 Fundraising Services means: the undertaking of organised, professional donor acquisition activities intended to secure charitable donations for MSF and which may be undertaken through channels including, but not limited to, face to face, telemarketing and direct mail.

2 Commonwealth Workplace Laws means: the *Fair Work Act 2009* (Cth); the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth); the *Fair Work Regulations 2009* (Cth); the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* (Cth); the *Superannuation Act 1976* (Cth) and laws covering discrimination and bullying in employment or occupation including the *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth) and *Australian Human Rights Commission Act 1986* (Cth).

## 1 ACKNOWLEDGEMENT

- 1.1 MSF:
  - (a) acknowledges that it is responsible for compliance with all aspects of the law across its fundraising operations and is committed to ongoing compliance with Commonwealth Workplace Laws in respect of its Fundraising Suppliers and their workers who conduct such services for and on behalf of MSF; and
  - (b) acknowledges that it has a responsibility to require and ensure standards of conduct from all entities and individuals directly involved in the conduct of its fundraising operations that comply with the law and meet Australian community and social expectations to provide lawful and safe work opportunities for workers engaged within its supply chain.
- 1.2 MSF acknowledges the importance of developing, implementing and maintaining adequate governance systems to monitor Fundraising Supplier behaviour, and that failure to do so may affect its ability to drive compliance through its labour supply chain and provided greater scope to its Fundraising Suppliers and their sub-contractors to exploit and underpay vulnerable workers.
- 1.3 MSF is committed to continue taking steps to help ensure the worker engagement practices of Fundraising Suppliers comply with Commonwealth Workplace Laws by implementing changes to its management and operational model, including the introduction of additional governance measures as described in this Statement.
- 1.4 MSF believes that ensuring robust supply chain governance is an important step in preventing the exploitation of workers in the fundraising sector and is committed to further developing and implementing sustainable self-monitoring and compliance arrangements.

## 2.0 COMPLIANCE WITH COMMONWEALTH WORKPLACE LAWS

### 2.1 MSF will:

- (a) in the case of employed workers, require Fundraising Suppliers to make and keep accurate employment records required under the *Fair Work Act 2009* (Cth) and the *Fair Work Regulations 2009* (Cth) so that employees, MSF, its Fundraising Suppliers and the Fair Work Ombudsman are able to verify whether Employees are receiving their full employee entitlements;
- (b) ensure MSF has proper governance structures in place to monitor and regulate the employment practices and arrangements of its Fundraising Suppliers, through its engagement of the Labour Standards Centre of Excellence, which has designed a framework for doing so; and
- (c) require Fundraising Suppliers to ensure that the workers engaged in providing Fundraising Services on behalf of MSF receive the full entitlements due to them under Commonwealth Workplace Laws.

### 2.2 MSF will publish its Fundraising Services Responsibility Standards Statement by the following means:

- (a) making the Statement available on MSF's website at [www.MSF.org.au](http://www.MSF.org.au); and
- (b) providing it to all Fundraising Suppliers engaged by MSF for the performance of Fundraising Services from 1 July 2018.

## 3.0 SUPPLIER ENGAGEMENT

### 3.1 MSF will take all reasonable steps to ensure that each Fundraising Supplier engaged by MSF under a Fundraising Services Agreement from 1 July 2018:

- (a) signs a compliance commitment document in which the Fundraising Supplier certifies that its directors, officers and managers understand their obligations to comply with Commonwealth Workplace Laws;
- (b) registers with the Fair Work Ombudsman 'My Account' Portal;
- (c) undertakes an Annual Self-Audit as described at clauses 4.1 through 4.5;
- (d) prepares an Annual Compliance Statement including:
  - i. a description of the worker engagement operating model/s used by the Fundraising Supplier and any sub-contracted service providers it has engaged to provide Fundraising Services in connection with a MSF campaign;

- ii. a statement signed by the Director/s of the Fundraising Supplier warranting the accuracy of the description supplied under clause 3.1(d)(i) and explaining why the Fundraising Supplier believes the worker engagement operating model/s it has adopted facilitates compliance with Commonwealth Workplace Laws and what systems and processes it has implemented to this end;

- (e) enters into a written contract with MSF regarding the provision of Fundraising Services which substantively reflects the terms set out in clause 3.3 below; and
- (f) receives and delivers the compliance training specified at clauses 6.1 through 6.6.

### 3.2 In reviewing the contract price proposed by a Fundraising Supplier for the provision of Fundraising Services, MSF will take into account, where applicable:

- (a) the number of hours and days on which MSF requires Fundraising Services to be provided under the Fundraising Services Agreement;
- (b) the average age profile of workers engaged by a Fundraising Supplier to undertake fundraising;
- (c) the duties to be performed by workers;
- (d) the number of labour hours that the Fundraising Supplier has specified will be required to be performed to meet any site coverage requirements;
- (e) the Fair Work Instrument<sup>1</sup> that will apply to workers that perform the Fundraising Services; and
- (f) whether the Fundraising Supplier intends to further subcontract the Fundraising Services,

in order to assess whether, based on the factors listed in clauses (a) to (f) above, the amount proposed to be paid to the Supplier as the contract price is reasonably likely to be sufficient to enable each worker who is engaged to perform the Fundraising Services to be paid at least their minimum entitlements under any applicable Fair Work Instrument and Commonwealth Workplace Laws.

### 3.3 MSF requires each Fundraising Supplier to undertake and acknowledge:

- (a) the Fundraising Supplier is responsible for ensuring compliance with Commonwealth Workplace Laws and Fair Work Instruments in respect of all workers engaged by or through that Fundraising Supplier providing services to Charity Name, including workers engaged through any sub-contractors or labour Fundraising Suppliers;
- (b) MSF has the right to terminate any Fundraising Services Agreement if the Fundraising Supplier or a sub-contractor of the Fundraising Supplier has failed or is failing to comply with its obligations under Commonwealth Workplace Laws; and

<sup>1</sup> Fair Work Instrument means: a modern award, an enterprise agreement, a workplace determination or a Fair Work Commission order.

- (a) the Fundraising Supplier agrees that it will:
- i. give pay slips to all employees within one Business Day of the payment of wages in accordance with the *Fair Work Act 2009* (Cth) and the *Fair Work Regulations 2009* (Cth);
  - ii. keep and maintain accurate records of the payment of wages and hours worked by employees as required under the *Fair Work Act 2009* (Cth) and the *Fair Work Regulations 2009* (Cth), including by means of a time keeping system; and
  - iii. make payment to employees by electronic funds transfer.
- 3.4 From 1 July 2018, if a Fundraising Supplier to MSF subcontracts the Fundraising Services to a sub-contractor, the Supplier and sub-contractor will enter into a written contract that requires the sub-contractor to:
- i. sign a compliance commitment document that certifies the sub-contractor's directors, officers and managers understand their obligations to comply with Commonwealth Workplace Laws;
  - ii. register with the FWO 'My Account' Portal;
  - iii. give pay slips to all employees within one Business Day of the payment of wages in accordance with the *Fair Work Act 2009* (Cth) and the *Fair Work Regulations 2009* (Cth);
  - iv. keep and maintain accurate records of the payment of wages and hours worked by employees as required under the *Fair Work Act 2009* (Cth) and the *Fair Work Regulations 2009* (Cth), including by means of a time keeping system; and
  - v. make payment to employees by electronic funds transfer.
- 3.5 MSF requires any Fundraising Supplier entering into a subcontracting arrangement to provide MSF with copies of the written contract and evidence of compliance with the matters referred to in 3.4 within 30 days of having entered into such an arrangement.
- 3.6 MSF requires any Fundraising Supplier entering into a subcontracting arrangement to agree that, if it engages a subcontractor or subcontractors to perform the Fundraising Services, in reviewing the contract price proposed by a subcontractor, it will not accept a contract price if the Supplier has reasonable grounds to believe that the amount of the contract price is insufficient to enable each Employee who is likely to be engaged by the subcontractor to perform the Fundraising Services to be paid at least their minimum employee entitlements under any applicable Fair Work Instrument and Commonwealth Workplace Laws.
- 3.7 MSF will review, as soon as reasonably practicable after 1 July each year, its current contracting arrangements to:
- (a) ascertain whether, in the case of each Fundraising Services Agreement entered into after 1 July 2018, the contract price paid to the relevant Supplier is likely (based on the factors listed in clauses (a) to (f)) to be sufficient to enable employee entitlements under Commonwealth Workplace Laws and Fair Work Instruments to be met; and
  - (b) ensure that tender processes give preference to Fundraising Suppliers who demonstrate that Employees are paid via electronic funds transfer, and who can demonstrate their compliance with obligations to pay PAYG tax on behalf of Employees to the Australian Tax Office and superannuation payments as required by law.
- 3.8 Where a Supplier is engaged by MSF after 1 July 2018, MSF will collate the information in respect of that Fundraising Supplier by way of a Supply Chain Mapping Record, to include:
- (a) the full name and contact details of the Fundraising Supplier, including Australian Business Number and Australian Company Number, as applicable;
  - (b) the full name, contact details and a copy of the passport of each director of the Fundraising Supplier;
  - (c) copies of the compliance commitment documents referred to in clauses 3.4(i) and 3.4(iv);
  - (d) a copy of the Fundraising Services Agreement entered into between MSF and the Fundraising Supplier; and
  - (e) a list of any subcontractors engaged by the Fundraising Supplier in providing Fundraising Services to MSF, including the full name and contact details of the subcontractor and its directors.

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## 4.0 SUPPLY CHAIN AUDITING AND REPORTING

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### Auditing – Fundraising Supplier Annual Self-Audits

- 4.1 Under each Fundraising Services Agreement entered into after 1 July 2018, MSF requires each Supplier to undertake an annual Self-Audit.
- 4.2 A Self-Audit must comply with the following requirements:
- (a) the Self-Audit must include a Field Audit during which the Fundraising Supplier interviews a representative sample of fundraisers working and in attendance at the relevant MSF campaign location on the day of the Field Audit;
  - (b) the Fundraising Supplier must notify any applicable any service providers such as external accountants or payroll providers, including third-party labour hire firms, where engaged, of its Self-Audit process and invite input from these providers where they reasonably believe to have information about the Fundraising Supplier's operations or practices that may identify a compliance risk in connection with the Fundraising Supplier's compliance with Commonwealth Workplace Laws;

- (c) the Self-Audit must include a Desktop Review in order to assess any documentation provided by sub-contractors to the Fundraising Supplier as well as its own internal records where these documents or records pertain to the engagement of fundraisers in its supply chain; and
- (d) as part of the Desktop Review, the Fundraising Supplier must examine records of the payment of wages and entitlements (Pay Records) owing to Employees in respect of the provision of Fundraising Services to MSF to assess whether or not there is a shortfall to the minimum entitlements prescribed in accordance with Commonwealth Workplace Laws or Fair Work Instruments (including underpayment or non-payment of overtime and penalty rates or any other entitlement). The Pay Records must cover the following periods:
- the current pay period as at the time of the Self-Audit; and
  - a pay period during the 12 months prior to the Audit selected by MSF,
- (each, a Sample Period).
- The Fundraising Supplier must examine the Pay Records of all Employees who worked on the relevant MSF campaign during each Sample Period. If appropriate, the Auditor may request from the Supplier and examine Pay Records for additional periods.
- 4.3 Should a Fundraising Supplier nominate to engage an independent Auditor to assist in the Self-Audit, the Fundraising Supplier must provide to the Auditor copies of any documents or records in its possession and reasonably required by the Auditor to complete the Self-Audit, including time sheets, invoices, pay slips and bank records.
- 4.4 MSF requires a Fundraising Supplier to provide a written Summary Report of the outcome of each Self-Audit to MSF within 30 days of completing the Audit. MSF requires the Fundraising Supplier to retain all materials relied on for the purposes of each Self-Audit for a period of six years following the Self-Audit.
- 4.5 The written Summary Report prepared by a Fundraising Supplier in connection with each Self-Audit must summarise the audit scope, methodology and findings, and the steps taken to rectify any identified non-conformances identified.

### Supplier Selection – Pre-qualification Due Diligence Reviews

- 4.6 MSF requires all tenderers for the provision of Fundraising Services who have not undertaken a Self-Audit within the previous 12 months (including because they have not previously provided Fundraising Services to MSF) to undergo a Pre-qualification Due Diligence Review.
- 4.7 The Pre-qualification Due Diligence Review will include completion of MSF's Fundraising Supplier Engagement and Monitoring Checklist, provision of relevant accompanying materials and at MSF's request, attendance at a Due Diligence Review meeting (which may be in person or by teleconference).
- 4.8 Subject to clause 4.9, MSF will only award a tender for the provision of Fundraising Services to a tenderer who has undergone a Pre-qualification Due Diligence Review or who has undertaken a Self-Audit within the previous 12 months.
- 4.9 If, due to confidentiality obligations owed by a tenderer to a third party, it is not reasonably practicable for MSF to conduct the Pre-qualification Due Diligence Review prior to the award of the Tender, MSF may award the Tender to the tenderer, however the award of the Tender will be subject to the tenderer undergoing a Pre-qualification Due Diligence Review within three months of entering into the Fundraising Services Agreement.
- 4.10 MSF will keep all records relating to Pre-qualification Due Diligence Review for a minimum period of six years.

### Fundraising Supply Chain Compliance Working Group

- 4.11 MSF has established an internal Fundraising Supply Chain Compliance Working Group (Compliance Working Group).
- 4.12 The Compliance Working Group conducts compliance checks to monitor Fundraising Suppliers' compliance with Commonwealth Workplace Laws.
- 4.13 MSF will establish processes for the ongoing monitoring by the Compliance Working Group of Fundraising Suppliers in relation to compliance with the requirements to be imposed under each Fundraising Services Agreement entered into after 1 July 2018.
- 4.14 In respect of any non-compliance which is identified, the Compliance Working Group will continue to manage the matter until such non-compliance has been satisfactorily addressed or the relevant Fundraising Supplier has been terminated.
- 4.15 The Compliance Working Group will table a report to the Board of MSF (or nominated Board representative) at least annually outlining its activities and findings.
- 4.16 MSF will record the actions it takes in response to any issues identified in the reports from the Compliance Working Group referred to in clause 4.15.

## 5.0 COMPLAINTS MANAGEMENT

- 5.1 MSF invites Fundraising Suppliers, workers and members of the public to lodge complaints or report potential non-compliance with Commonwealth Workplace Laws in relation to its Fundraising Services in relation to any MSF fundraising campaign, via email, online or via post (Written Complaints).
- 5.2 MSF will ensure one or more members of its Compliance Working Group is engaged to respond to enquiries, complaints and reports of potential non-compliance with Commonwealth Workplace Laws in relation to Fundraising Services provided on any of MSF's campaigns and report those matters to MSF.
- 5.3 MSF agrees to and requires its Fundraising Suppliers to agree to:
- investigate and, to the extent reasonably practicable, resolve any complaint (excluding any trivial, vexatious or frivolous complaint) relating to the engagement of workers providing Fundraising Services received in writing, as soon as reasonably practicable after the date of receipt of each complaint;
  - where complaints are received on an anonymous basis, investigate the payroll and record-keeping practices of the Fundraising Supplier identified and require the Fundraising Supplier to rectify any non-compliance identified; and
  - on a quarterly basis, collate a record of all complaints (excluding any trivial, vexatious or frivolous complaints) received within that quarter, and provide information describing those complaints, the investigations undertaken, the information relied on to conduct the investigation and any steps taken to rectify the conduct, to MSF.

## 6.0 COMPLIANCE TRAINING

- 6.1 MSF requires Fundraising Suppliers to provide ongoing workplace relations training for fundraising workers (irrespective of their classification), for example, in the form of an induction, onboarding or commencement module. The aim of such training is to ensure that all current and new workers engaged to provide Fundraising Services for MSF are made aware of their rights and entitlements under Commonwealth Workplace Laws and Fair Work Instruments, including the provision of industry-specific information. This training must include work, health and safety instruction.
- 6.2 MSF will deliver a Supply Chain Governance Training Presentation (Training Presentation) to its Fundraising Suppliers within six months of entering into a Fundraising Services Agreement and at least every 24 months thereafter.

- 6.3 This Training Presentation is intended to identify the mutual obligations of MSF and its Fundraising Suppliers under Commonwealth Workplace Laws and provide practical strategies for ensuring effective compliance for the information of:
- all directors of Fundraising Suppliers and employees of Fundraising Suppliers who have senior management or human resources management responsibility; and
  - all persons responsible for the procurement of Fundraising Services on behalf of MSF, being relevant members of the Fundraising Team and any other procurement personnel
- with the aim of ensuring that they are aware of their obligations under Commonwealth Workplace Laws and applicable Fair Work Instruments and the rights and entitlements owed to workers under Commonwealth Workplace Laws and applicable Fair Work Instruments.
- 6.4 At minimum, the training referred to in clauses 6.1 and 6.2 will include information in respect of:
- assistance and information available for employees and employers through the Fair Work Ombudsman;
  - the minimum entitlements of Employees under applicable Fair Work Instruments and Commonwealth Workplace Laws;
  - the general protections provisions under the *Fair Work Act 2009* (Cth);
  - employer obligations with respect to pay slips and record-keeping;
  - fundraising-specific workplace health and safety risks;
  - setting appropriate expectations of any third-party suppliers within fundraising supply chains regarding compliance with Commonwealth Workplace Laws, including strategies for effective supply chain governance;
  - accessorial liability under the *Fair Work Act 2009* (Cth); and
  - obligations of Fundraising Suppliers in relation to working rights checks (such as the Visa Entitlement Verification Online (VEVO) system) under the *Migration Act 1958* (Cth) and any associated regulations.
- 6.5 The training referred to in clauses 6.1 and 6.2 must be delivered in a manner that enables MSF and/or its Fundraising Suppliers to keep records of the material developed and/or presented, and attendance records for each training presentation.
- 6.6 In providing training to directors and senior managers of its Fundraising Suppliers, MSF will also emphasise the need, in determining and proposing tender prices, for Fundraising Suppliers to take into account the potential costs of compliance with the Supplier's contractual obligations (including, for instance, implementation of audits or compliance systems).