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Disclaimer: this submission is not intended to be legal advice

Dear Committee

Submission: Inquiry into Charity Fundraising in the 21st Century

Thank you for the opportunity to provide a written submission in relation to the inquiry into charity fundraising in the 21st century.

1. Professional background

I head up the Sydney Charity and Not-for-profit team at Mills Oakley, an Australian national law firm offering legal services across a range of key commercial practice areas.

I have over 20 years' experience in acting for numerous charities, religious and not-for-profit organisations. I sit on a number of boards and committees including the ACNC Professional User Group, Eric Dare Foundation, NSW Cemeteries & Crematoria NSW, and the Community and Consumer Consultative Group.

I have written several academic works, including a chapter within 'Charity Law' (2012, 2016 and 2018), published by Thompson Reuters, I edit the Clubs & Societies title in the Australian Encyclopaedia of Forms and Precedents, and the Community Care and Service modules in the LexisNexis Regulatory Compliance online register, both of which have a strong governance focus.

I often present seminars to executives and directors of not-for-profits and charities, including:

- the Better Boards Conference;
- Associations Forum CEO & Chair Symposium;
- Associations Forum National Conference; and
- Australasian Society of Association Executives Conference & Exhibition.

My team at Mills Oakley regularly assists clients on governance issues, and frequently advises organisations on ATO and ACNC endorsements, constitutions, mergers, structural issues and social enterprises. A significant part of our practice is advising on fundraising issues. Some of our key clients include the Australian Catholic University, Australian College of Nursing, Metcash Trading Limited, LexisNexis Australia, Providential Homes Inc. and Omnicare Alliance.

Additionally, my team organises board workshops and breakfast seminars, aimed at both new and more experienced directors. At these sessions, directors are taught skills in good governance and risk protection at board level, and are given a 'board guide', which is a comprehensive resource for boards and committees in order to comply with their governance requirements.

2. Summary

2.1 Terms of reference

In relation to the terms of reference provided by the Committee, this submission will particularly address the following:

- whether the current framework of fundraising regulation creates unnecessary problems for charities and organisations which rely on donations from Australian supporters;
- the loss in productivity for the thousands of charities which try to meet the requirements of the seven different fundraising regimes;
- how Federal, State and Territory Governments could work together to provide charities with a nationally-consistent, contemporary and fit-for-purpose fundraising regime;
- how the Australian Consumer Law (**ACL**) should apply to not-for-profit fundraising activities; and
- the cost to the charity and not-for-profit sector, and the communities they serve, of postponing fundraising reform.

2.2 Overview

In summary, this submission aims to emphasise the following points:

- The practice of fundraising in Australia has drastically shifted, and the current legislative framework is fundamentally out of step with what it is attempting to regulate. Extensive reform is needed to both improve this space going forward and to reduce the considerable challenges charities face in attempting to align their fundraising operations and practices with legislative requirements.
- I strongly recommend that a consolidated national fundraising model be implemented in Australia. This would particularly address the unnecessary expenditure of costs and resources, as well as wasted productivity, charities face in overcoming inconsistent legislative requirements across the states and territories. Notably, some of these difficulties include fundraising licensing, online fundraising platforms, expanding operations into additional states/territories and third party commercial fundraising. I especially recommend each of the following (to be applied simultaneously) in order to reduce uncertainty and duplication:
 - introducing national licences (or maintaining single state/territory licences but simplifying the process for expansion in other states/territories), assessed under a single set of consolidated guidelines that each state and territory must follow – better yet, the requirement for fundraising licensing could be removed altogether once a charity is registered under the ACNC;
 - expanding the role of the ACNC to include overseeing the assessment of fundraising licenses across all states and territories;
 - introducing consolidated national definitions in relation to online fundraising, ‘commercial fundraiser’/‘trader’ and ‘charity’ in the context of fundraising (including clear, unified guidelines to inform interpretation and application to contemporary settings) – to particularly assist with the operation of third party fundraising; and
 - the ACNC should oversee reporting and auditing, if not the complete processing and regulation of charitable fundraising in Australia.
- While only briefly examined in this submission, consistent with extensive sector commentary, the role of the ACL in fundraising regulation should be broadened and clarified. I also recommend that, ‘misleading and deceptive conduct’ provisions be removed from fundraising legislation and transitioned to be dealt with under the ACL (an already established and purpose-built body of legislation).

- Additionally, while not explored in great detail in this submission, I wish to emphasise the following challenges impacting the sector and our clients:
 - confusion and operational difficulties borne from the mismatch between the definition of 'charity' in the federal Act versus the definition of 'charity' in the state and territory legislation;
 - inconsistencies and inefficiencies as a result of duplicate state and territory legislation in relation to:
 - monitoring and compliance;
 - auditing and reporting;
 - how fundraising appeals are conducted; and
 - how exemptions from fundraising licences are applied.

3. Submission

3.1 Overview

For the purpose of this submission, I will focus primarily on the experience of our clients in the fundraising space, but will also include some additional commentary on what I perceive to be key issues facing the current fundraising framework. This submission will address the following:

- Background of the current fundraising environment.
- Our recommendation for a consolidated national fundraising model, including:
 - possible options to achieve this;
 - a short analysis of the current issues and complexities tied to fundraising licences;
 - a short examination of the problems tied to online fundraising platforms, including an illustrative scenario; and
 - a short analysis of the inconsistent treatment of 'traders' or 'commercial fundraisers' across the different state and territory legislation.
- Brief comments on the following issues:
 - transitioning, broadening and clarifying the application of fundraising regulation under the ACL;
 - the mismatch between the definition of 'charity' in the federal legislation versus the definition of 'charity' in the state and territory legislation;
 - current challenges in the monitoring and compliance space;
 - current challenges in the auditing and reporting space;
 - inconsistencies in how fundraising appeals are conducted; and
 - inconsistencies in exemptions from fundraising licences across the states and territories.

3.2 Background

The nature of fundraising in Australia has transformed significantly in recent years. This has been driven primarily by the rise of:

- charities expanding in size and operation across a number of states/territories;

3. Submission (continued)

- social media and online fundraising platforms;
- celebrity and popular media endorsements; and
- the commercial and retail sector increasingly integrating social initiatives into their business models.

It is evident that fundraising is no longer largely confined to the traditional face-to-face encounter with an organisation's representative in a shopping mall, busy side walk, via a door knock or telephone call, although most fundraising legislation was drafted before this had changed. The current legislative framework is struggling to respond to the changing face of fundraising. A 2011 study showed that for every 500 fundraising licences in Australia, there are only 0.6 full-time staff employed nationally to administer the legislation.¹ This demonstrates that the practical utility of fundraising regulation is miniscule, as with so few government resources in place, it is unlikely that there is adequate practical supervision of collections.²

Our experience is that the current regulation is creating unnecessary complexity and uncertainty for charities and not-for-profits. The legal advice we provide on fundraising is often lengthy and costly given the various jurisdictions and subtle differences across the law that needs to be investigated and communicated to our clients. Further, the lack of guidance from regulators, and the lack of judicial interpretation of the various statutes, means that our clients often need to take an overly cautious approach. The legal intricacy of the current regime has created considerable confusion among charities, and non-compliance is often borne from genuine misunderstanding among charities. In a climate where charities rely heavily on sponsorships and donations, it is particularly concerning that charities might abandon efforts to expand their fundraising programs as a result of administrative complexities and the risk of non-compliance.

Limited budgets and resources can also make it especially burdensome for charities to seek exhaustive legal advice on issues requiring extensive research to account for jurisdictional inconsistencies. Justice Connect is just one example of a registered charity that overwhelmingly cites fundraising to be "...a significant source of regulatory burden" for its organisation.³ Alarmingly, it has been noted that the "...fundraising regime wastes over \$15 million every year for charities alone".⁴

3.3 Consolidated national fundraising model

Australia would benefit significantly from a consolidated national fundraising model. A nationally-consistent, contemporary and fit-for-purpose fundraising regime would create greater certainty for charities operating across multiple states and territories.

This accords with substantial sector support, with a coalition of peak bodies calling on all Australian governments to provide charities with a nationally-consistent and fit-for-purpose fundraising regime.⁵ These bodies include the Australian Institute of Company Directors, Justice Connect (Not-for-profit Law), Governance Institute of Australia, Australian Council of Social Service (ACOSS), Chartered Accounts Australia New Zealand, Community Council of Australia (CCA), CPA Australia and Philanthropy Australia.

¹ John Vaughan-Williams, 'The future of charity regulation in Australia: complexities of change' (2016) 37 *Adelaide Law Review* 219, 236 citing, Myles McGregor-Lowndes, 'Are We There Yet?' in Matthew Harding, Ann O'Connell and Miranda Stewart (eds), *Not-for-Profit Law: Theoretical and Comparative Perspectives* (Cambridge University Press, 2014) 370.

² Vaughan-Williams, above n 1, 236.

³ Justice Connect, *Submissions to Senate Inquiry on Fundraising* (17 July 2018) <<http://www.nfplaw.org.au/submissions-senate-inquiry-fundraising/>>.

⁴ Australian Institute of Company Directors, Justice Connect (Not-for-profit Law), Governance Institute of Australia, Australian Council of Social Service (ACOSS), Chartered Accounts Australia New Zealand, Community Council of Australia (CCA), CPA Australia and Philanthropy Australia, *Statement on Fundraising Reform* (2016) <http://aicd.companydirectors.com.au/-/media/cd2/resources/advocacy/policy/pdf/2016/05610-pol-fundraising-reform-document-guidelines-joint-a4_v15.ashx> 3.

⁵ Governance Institute of Australia, *Powerful coalition calls for major reform of not-for-profit fundraising rules* (19 September 2016) <<https://www.governanceinstitute.com.au/newsmedia/news/2016/sep/powerful-coalition-calls-for-major-reform-of-not-for-profit-fundraising-rules/>>.

3. Submission (continued)

These organisations have all signed a joint statement highlighting significant issues in the fundraising space and suggesting key recommendations for reform (**Statement on Fundraising Reform**).⁶

Some options for achieving consolidation could include:

- reducing the uncertainty and duplication of fundraising licensing through:
 - introducing national licences, assessed under a single set of consolidated guidelines (that each state and territory must follow);
 - maintaining single state/territory licences but simplifying the process for expansion into other states/territories and mandating a single set of assessment guidelines;
 - expanding the role of the ACNC to include overseeing the assessment of fundraising licences across all states and territories (like the role it currently plays in overseeing the registration of charities nationally). Under the current framework, in the Australian Capital Territory and South Australia, charities do not require fundraising licences if they are already registered under ACNC – this could be applied to all states and territories, therefore removing the duplication of licensing; and
 - introducing specific definitions in relation to online fundraising (including clear guidelines to inform interpretation and application to contemporary settings);
- the ACNC could oversee reporting and auditing of charitable fundraising in Australia, with the Australian Competition and Consumer Commission (ACCC) having a regulatory role;
- a consolidated national definition for 'commercial fundraiser' or 'trader' and clear, unified guidelines as to how these terms should be interpreted and applied, including for online fundraising;
- a consolidated national definition for 'charity' in the context of fundraising; and
- the role of the ACL in fundraising regulation should be broadened and clarified. This should include the removal of 'misleading and deceptive conduct' provisions under the current state and territory fundraising legislation, and transitioning these related fundraising issues to be dealt with under the ACL (an already established and purpose-built body of legislation).

3.3.1 Fundraising licences

Under the current framework, charities require individual fundraising licences in order to operate across the individual states and territories. Each state and territory has its own unique specifications. This has particularly created complexity for charities and for-profit entities (which fundraise on behalf of charities) in the following circumstances:

- The organisation is physically based in and holds a fundraising licence in a certain state/territory, but receives donations from donors in other states/territories;
- As above and engages with online social media, its own official website or third party funding websites (such as 'Go Fund Me' or 'Everyday Hero'):
 - which are technically accessed Australia wide (if not globally); and
 - the organisation subsequently receives donations from donors Australia wide through or as a result of these platforms; and

⁶ Australian Institute of Company Directors, Justice Connect (Not-for-profit Law), Governance Institute of Australia, Australian Council of Social Service (ACOSS), Chartered Accounts Australia New Zealand, Community Council of Australia (CCA), CPA Australia and Philanthropy Australia, above n 4.

3. Submission (continued)

- Organisations with multiple state/territory branches or otherwise seeking to expand (physically or online) and are then required to replicate processes to obtain licences for individual states/territories which have different specifications.

3.3.2 Charitable purposes and exemptions

The following table highlights some of the differences regarding when a fundraising licence is required, across the different states and territories. This emphasises the subtle, and sometimes relatively different manner in which like-elements are treated across the states and territories and the complexity charities must navigate (note that the Northern Territory has been excluded from the table below as only gaming is regulated in the Northern Territory):

Specification	State/Territory Legislative Requirements
ACNC licensing	<p><u>Australian Capital Territory: Charitable Collections Act 2003 (ACT)</u></p> <ul style="list-style-type: none"> A licence is not needed if the charity is already registered under the ACNC (section 14(2)). <p><u>New South Wales: Charitable Fundraising Act 1991 (NSW)</u></p> <ul style="list-style-type: none"> A licence is still needed if the charity is registered under the ACNC. <p><u>Queensland: Collections Act 1966 (Qld)</u></p> <ul style="list-style-type: none"> A licence is still needed if the charity is registered under the ACNC. <p><u>South Australia: Collections for Charitable Purposes Act 1939 (SA)</u></p> <ul style="list-style-type: none"> A licence is not needed if the charity is already registered under the ACNC (section 6(3)). <p><u>Tasmania: Collections for Charities Act 2001 (Tas)</u></p> <ul style="list-style-type: none"> A licence is still needed if the charity is registered under the ACNC. <p><u>Victoria: Fundraising Act 1998 (Vic)</u></p> <ul style="list-style-type: none"> A licence is still needed if the charity is registered under the ACNC. <p><u>Western Australia: Charitable Collections Act 1946 (WA)</u></p> <ul style="list-style-type: none"> A licence is still needed if the charity is registered under the ACNC.
Charitable purpose definition	<p><u>Australian Capital Territory: Charitable Collections Act 2003 (ACT)</u></p> <ul style="list-style-type: none"> A person soliciting or receiving money or a benefit for a charitable purpose must hold a licence (section 14(1)). Charitable purpose is not defined in the Act, so it could broadly include, under the common law: <ul style="list-style-type: none"> the relief of poverty or sickness or the needs of the aged; the advancement of education; the advancement of religion; or purposes beneficial to the community (benevolent, philanthropic and patriotic). Additionally, for a purpose to be charitable it must also be for the public benefit and: <ul style="list-style-type: none"> not confer a private advantage; not be harmful to the public; and also may be extended to include social, mental and spiritual benefits.

Specification	State/Territory Legislative Requirements
	<p data-bbox="501 275 1066 297"><u>New South Wales: <i>Charitable Fundraising Act 1991</i> (NSW)</u></p> <ul data-bbox="501 327 1437 607" style="list-style-type: none"> <li data-bbox="501 327 1406 349">• Charitable purpose includes any benevolent, philanthropic or patriotic purpose (section 4). <li data-bbox="501 378 1437 607">• The soliciting or receiving by any person of any money, property or other benefit constitutes a fundraising appeal if, before or in the course of any such soliciting or receiving, the person represents: <ul data-bbox="549 479 1426 607" style="list-style-type: none"> <li data-bbox="549 479 1054 501">- that the purpose of that soliciting or receiving, or <li data-bbox="549 530 1426 607">- that the purpose of an activity or enterprise of which that soliciting or receiving is a part, is or includes a charitable purpose (section 5). <p data-bbox="501 636 879 658"><u>Queensland: <i>Collections Act 1966</i> (Qld)</u></p> <ul data-bbox="501 687 1461 1290" style="list-style-type: none"> <li data-bbox="501 687 1461 1137">• Charitable purpose means any one or more of the following purposes: <ul data-bbox="549 736 1461 1137" style="list-style-type: none"> <li data-bbox="549 736 1433 786">- a purpose which is exclusively charitable according to the law (other than statute law) of Queensland; <li data-bbox="549 815 1410 887">- the supplying of help, aid, relief, or support to, or the education or instruction (whether spiritual, mental, physical, technical, social, or otherwise) of, or the care, housing, or assistance otherwise of, any persons in distress; <li data-bbox="549 916 1461 965">- the aiding in any manner howsoever, of any hospital or ambulance or nursing service in the State, whether established or proposed to be established; <li data-bbox="549 994 708 1016">- any charity; <li data-bbox="549 1046 1442 1095">- any purpose which, pursuant to subsection (2), the Minister determines to be a charitable purpose; <li data-bbox="549 1124 1433 1146">- a purpose declared under a regulation to be a charitable purpose for this Act (section 5). <li data-bbox="501 1167 1461 1290">• Charity means any association established for any charitable purpose, and includes any association which the Minister determines to be a charity, as well as associations declared to be charities under a regulation, but does not include any association established for any charitable purpose as well as some other purpose, nor any association established for the purpose of making one appeal for support only (section 5). <p data-bbox="501 1319 1134 1341"><u>South Australia: <i>Collections for Charitable Purposes Act 1939</i> (SA)</u></p> <ul data-bbox="501 1370 1453 1796" style="list-style-type: none"> <li data-bbox="501 1370 1453 1796">• Charitable purpose means: <ul data-bbox="549 1420 1453 1796" style="list-style-type: none"> <li data-bbox="549 1420 1418 1491">- the provision of, or assistance or support to the provision of, health services (within the meaning of the <i>Health Care Act 2008</i>) or research in the field of health or such health services; <li data-bbox="549 1520 1433 1592">- the affording of relief, assistance or support to diseased, disabled, sick, infirm, incurable, poor, destitute, helpless, or unemployed persons, or to the dependents of any such persons; <li data-bbox="549 1621 1366 1671">- the relief of distress occasioned by war, whether occasioned in South Australia or elsewhere; <li data-bbox="549 1700 1453 1749">- the affording of relief, assistance, or support to persons who are or have been members of the armed forces of Australia or to the dependents of any such persons; and <li data-bbox="549 1778 1123 1800">- the provision of welfare services for animals (section 4). <p data-bbox="501 1825 979 1848"><u>Tasmania: <i>Collections for Charities Act 2001</i> (Tas)</u></p> <ul data-bbox="501 1877 1458 2045" style="list-style-type: none"> <li data-bbox="501 1877 1458 1926">• Charitable purpose includes a benevolent, philanthropic or patriotic purpose and any purpose for the protection of the environment or the welfare of animals (section 3). <li data-bbox="501 1955 1458 2045">• Where an organisation is an incorporated association in a State or Territory other than Tasmania, or is a corporation whose principal office is located in a State or Territory other than Tasmania, that organisation must not solicit for any charitable purpose unless the organisation is first approved by the Commissioner (section 6).

Specification	State/Territory Legislative Requirements
	<ul style="list-style-type: none"> An organisation must not solicit for a charitable purpose if, arising from any activity in any other State or a Territory, including soliciting for charitable purposes, that organisation is required to hold a licence or other authority under one or more relevant Acts and that licence or authority is not in force (section 7). <p><u>Victoria: Fundraising Act 1998 (Vic)</u></p> <ul style="list-style-type: none"> A "fundraising appeal" is defined as follows: <ul style="list-style-type: none"> a fundraising appeal occurs if a person solicits or receives money or a benefit on the basis of a representation that the soliciting or receiving is not solely for the profit or commercial benefit of the person or any other person, cause or thing on whose behalf the person is soliciting or receiving the money or benefit (section 5). <p><u>Western Australia: Charitable Collections Act 1946 (WA)</u></p> <ul style="list-style-type: none"> Charitable purpose means: <ul style="list-style-type: none"> the affording of relief to diseased, sick, infirm, incurable, poor, destitute, helpless or unemployed persons, or to the dependants of any such persons; the relief of distress occasioned by war, whether occasioned in Western Australia or elsewhere; the supply of equipment to any of His Majesty's naval, military, or air forces, including the supply of ambulances, hospitals and hospital ships; the supply of comforts or conveniences to members of the said forces; the affording of relief, assistance or support to persons who are or have been members of the said forces or to the dependants of any such persons; the support of hospitals, infant health centres, kindergartens and other activities of a social welfare or public character; any other benevolent, philanthropic or patriotic purpose (section 5).
Conducting an appeal	<p><u>Australian Capital Territory: Charitable Collections Act 2003 (ACT)</u></p> <ul style="list-style-type: none"> a collection is the soliciting or receiving by a person of money or a benefit if, before or during the soliciting or receiving, the person represents that the purpose of the soliciting or receiving, or that the purpose of an activity or enterprise of which the soliciting or receiving is part, is or includes a charitable purpose (section 7). a person conducts a collection if the person organises or manages, or assists in organising or managing, the collection in any capacity other than as an employee or agent (section 8). a person takes part in a collection if: <ul style="list-style-type: none"> the person solicits or receives money or a benefit for the purposes of the collection; or the person organises or manages, or assists in organising or managing, the collection as an employee or agent; and a person who conducts a collection also takes part in the collection if the person solicits or receives money or a benefit for the purposes of the collection. <p><u>New South Wales: Charitable Fundraising Act 1991 (NSW)</u></p> <ul style="list-style-type: none"> Conducting a fundraising appeal means and includes the following: <ul style="list-style-type: none"> a person conducts a fundraising appeal if the person organises the appeal, whether alone or with others, whether in person or by an agent or employee and whether on the person's own behalf or as an officer or member of the governing body of an organisation (section 6). <p><u>Queensland: Collections Act 1966 (Qld)</u></p> <ul style="list-style-type: none"> Collection, used in relation to any appeal for support for any purpose, means the collecting of

Specification	State/Territory Legislative Requirements
	<p>donations by the public of money or articles for the purpose (section 5).</p> <ul style="list-style-type: none"> • Appeal for support, used in relation to any purpose, means any invitation (expressed or implied, and whether made verbally, or by writing or conduct, or by any advertisement), to the public, which is designed to obtain money or articles for that purpose, including: <ul style="list-style-type: none"> - any collection for that purpose; - any advertisement of any art union or the selling or offering for sale of any ticket or chance in any art union promoted or conducted for that purpose; - any notification to the public expressly or impliedly indicating that any proceeds of, or any moneys from, or any collections at, any dance, concert, social entertainment, bazaar, fair, fete, carnival, show, sport, game, or other diversion, activity, or function (whether of the classes previously enumerated or not) are intended or are to be appropriated for that purpose; - the holding of any dance, concert, social entertainment, bazaar, fair, fete, carnival, show, sports, game, or other diversion, activity, or function (whether of the classes previously enumerated or not) any proceeds of which, or any moneys from which, or any collections at which are appropriated or intended for that purpose; - any notification to the public expressly or impliedly indicating that any proceeds of, or any moneys from, the sale of any articles or the supplying of any service are intended or are to be appropriated for that purpose; - the sale of any articles or the supplying of any service, any proceeds of, or any moneys from which are appropriated or intended for that purpose; - any notification to the public, expressly or impliedly indicating that the whole or part of any fees for membership of any association are intended for or are to be appropriated for that purpose; and - anything prescribed to be an appeal for support (section 5). • Any person or organisation that wishes to publicly fundraise in Queensland must be either: <ul style="list-style-type: none"> - registered as a charity under section 10(1) of the Queensland Act; - fundraising for a sanctioned community purpose under section 10(2); or - authorised by a registered charity or sanctioned organisation to fundraise on its behalf. <p><u>South Australia: Collections for Charitable Purposes Act 1939 (SA)</u></p> <ul style="list-style-type: none"> • A person acts as a collector if the person (either personally or through the agency of another person): <ul style="list-style-type: none"> - collects, or attempts to collect, money or property wholly or partly for a charitable purpose; or - charges, or attempts to charge, for admission to an entertainment in relation to which it is held out that the proceeds are to be devoted wholly or partly to a charitable purpose; or - obtains, or attempts to obtain, money wholly or partly for a charitable purpose by the sale of a disc, badge, token, flower, ribbon or other device; or - obtains, or attempts to obtain, a bequest, devise or other grant of money or property wholly or partly for a charitable purpose (section 4). <p><u>Tasmania: Collections for Charities Act 2001 (Tas)</u></p> <ul style="list-style-type: none"> • Solicit means to seek a donation by a request communicated in person or – <ul style="list-style-type: none"> (a) by mail; or (b) by facsimile transmission; or (c) by telephone; or (d) by e-mail; or

Specification	State/Territory Legislative Requirements
	<p>(e) by the internet; or</p> <p>(f) by a document left on premises; or</p> <p>(g) by any appeal through the media (section 3).</p> <ul style="list-style-type: none"> A person must not solicit for a charitable purpose unless: <ul style="list-style-type: none"> that soliciting is on behalf of an organisation which complies with subsection (2) or holds an authority in writing granted by the Commissioner for a specified period; or that soliciting is by a person by virtue of an authority in writing granted by the Commissioner for a specified period (section 5). <p><u>Victoria: Fundraising Act 1998 (Vic)</u></p> <ul style="list-style-type: none"> A “fundraising appeal” is defined as follows: <ul style="list-style-type: none"> a fundraising appeal occurs if a person solicits or receives money or a benefit on the basis of a representation that the soliciting or receiving is not solely for the profit or commercial benefit of the person or any other person, cause or thing on whose behalf the person is soliciting or receiving the money or benefit (section 5). <p><u>Western Australia: Charitable Collections Act 1946 (WA)</u></p> <ul style="list-style-type: none"> No person shall – irrespective of whether the money or goods are collected or attempted to be collected solely for any charitable purpose or partly for any charitable purpose and partly for any other purpose: <ul style="list-style-type: none"> collect or attempt to collect any money or goods for any charitable purpose; or obtain or attempt to obtain money by the sale of any disc, badge, token, flower or other device for any charitable purpose; or conduct any entertainment or function to which any charge for admission is made, or sell or attempt to sell any ticket for admission to any entertainment or function in any case where it is held out that any part of the proceeds of the entertainment or function are to be devoted (either wholly or partly) for any charitable purpose; or advertise, whether by way of poster, streamer, handbill, notice in any newspaper or any other means or hold out or represent in any manner that the whole or any part of the proceeds of any sports, races, fete, bazaar or other function will be paid into or applied for any charitable purpose, <p>unless they are:</p> <ul style="list-style-type: none"> the holder of a licence under this Act; or a member of the committee or other governing body, of a society, body, or association which is the holder of a licence under this Act and who is authorised by such licensee; or authorised to do so by a person, society, body or association which holds a licence under this Act, and except in accordance with such licence and authority (section 6).
Exemptions	<p><u>Australian Capital Territory: Charitable Collections Act 2003 (ACT)</u></p> <ul style="list-style-type: none"> The following collections are exempt (under Regulation 6 of the <i>Charitable Collection Regulation 2003</i>): <ul style="list-style-type: none"> the soliciting or receiving of money or a benefit by an entity if the proceeds received from collections conducted by the entity is less than \$15 000 in a financial year (clause 6(1)(c)); soliciting or receiving money or a benefit solely or mainly from people sharing a common employer, principal or workplace by one of those people for a purpose connected directly with another of those people or with a relative or domestic partner of another of those people; and (clause 6(1)(d)); and the solicitation or receipt of sponsorship from a corporation (clause 6(1)(e)).

Specification	State/Territory Legislative Requirements
	<p data-bbox="499 264 1066 293"><u>New South Wales: <i>Charitable Fundraising Act 1991</i> (NSW)</u></p> <ul data-bbox="499 315 1465 875" style="list-style-type: none"> • Religious organisations are generally exempt from the New South Wales Act (section 7). • Under the <i>Charitable Fundraising Regulation 2015</i> (NSW), the following are exempt from the obligation to hold authority to conduct fundraising appeals: <ul style="list-style-type: none"> - local councils and certain trusts (clause 7); - universities and controlled entities (clause 8); - small fundraisers that (clause 9): <ul style="list-style-type: none"> ▪ do not receive more than \$15,000 gross in any financial year from any fundraising appeals it conducts in that financial year, and ▪ do not receive any remuneration for conducting fundraising appeals, other than payment of lawful and proper expenses, and ▪ only engage persons on a voluntary basis to participate in their fundraising appeals, and ▪ conduct their fundraising appeals in accordance with guidelines, if any, published in the Gazette by the Minister. <p data-bbox="499 898 879 927"><u>Queensland: <i>Collections Act 1966</i> (Qld)</u></p> <ul data-bbox="499 949 1465 1106" style="list-style-type: none"> • Religious institutions recognised by the <i>Marriage Act 1961</i> (Cth) as recognised denominations are exempt from all obligations created by fundraising legislation in Queensland. • While these organisations may conduct fundraising activities without obtaining registration or sanctions, keeping records or submitting financial reports as required by the State, they are still obliged to meet any applicable Commonwealth obligations. <p data-bbox="499 1128 1134 1158"><u>South Australia: <i>Collections for Charitable Purposes Act 1939</i> (SA)</u></p> <ul data-bbox="499 1180 1465 1688" style="list-style-type: none"> • Collectors must be authorised by licence, unless the person holds, or is authorised by the holder of, a licence. A licence is not needed if the person: <ul style="list-style-type: none"> - only collects or attempts to collect money or property from persons known to the person or with whom the person regularly associates; and - provides all of the money or property so collected to the holder of a section 6 licence; and - is not a paid collector; or - only collects or attempts to collect property for the purpose of affording relief to a particular person or to the dependants of a particular person; and - provides all of the property so collected to that person or to those dependants; and - is not a paid collector (section 6). • The Minister may, on application by a person, society, body or association exempt the person, society, body or association from compliance with specified provisions of the South Australia Act (section 18). <p data-bbox="499 1711 979 1740"><u>Tasmania: <i>Collections for Charities Act 2001</i> (Tas)</u></p> <ul data-bbox="499 1762 1283 2002" style="list-style-type: none"> • The Act applies to any soliciting for charitable purposes unless the soliciting is: <ul style="list-style-type: none"> - a request for the renewal of membership; or - an appeal by an organisation to its members; or - an appeal within premises that are used by a club; or - an appeal within premises that are used by a religious organisation; or

Specification	State/Territory Legislative Requirements
	<ul style="list-style-type: none"> - an appeal to a Commonwealth, State or local authority; or - for the sale of goods or services; or - for a raffle; or - soliciting for an activity to which the <i>Gaming Control Act 1993</i> (NSW) applies; or - for a prescribed organisation or an organisation of a prescribed class; or - soliciting of a type authorised by the regulations (section 4). <ul style="list-style-type: none"> • The organisations with legislated exemptions include: <ul style="list-style-type: none"> - The University of Tasmania; - Centacare Tasmania; - Autism Tasmania; - Hobart Legacy; and - individual schools and parishes throughout the State (<i>Charities (Approved Organisations) Order 2002</i> Schedule 1; <i>Collections for Charities (Approved Organisations) Order (No.2) 2002</i> Schedule 1). <p><u>Victoria: <i>Fundraising Act 1998</i> (Vic)</u></p> <ul style="list-style-type: none"> • The following organisations are exempt: <ul style="list-style-type: none"> - a Government school, a school council or a non-Government school within the meaning of the <i>Education and Training Reform Act 2006</i> (Vic); - a university, TAFE institute or other tertiary educational institution; - a kindergarten that employs a pre-school teacher (as defined in the <i>Pre-school Teachers and Assistants (Leave) Act 1984</i> (Vic)); - a registered funded agency within the meaning of the <i>Health Services Act 1988</i> (Vic); - a religious organisation; - a political party registered under section 50 of the <i>Electoral Act 2002</i> (Vic); - a trade union registered under the <i>Trade Unions Act 1958</i> (Vic); - an organisation registered under the <i>Fair Work (Registered Organisations) Act 2009</i> (Cth) (section 16). • An organisation or individual does not conduct a fundraising appeal when they: <ul style="list-style-type: none"> - solicit or receive donations for a patriotic fund established under the <i>Veterans Act 2005</i> (Vic); - solicit individuals to become members of an organisation or to pay a fee for membership; - solicit for donations from members and prospective members of their own organisation, and the families and friends of members and prospective member; - request that money be donated to a charity in lieu of flowers after a death has occurred; and - obtain or apply for funding from the Commonwealth or a State, Territory or Local government (section 5). <p><u>Western Australia: <i>Charitable Collections Act 1946</i> (WA)</u></p> <ul style="list-style-type: none"> • Charities may undertake any of the following activities without obtaining a charitable collections licence or authority: <ul style="list-style-type: none"> - the sale of goods where the price paid represents the reasonable value of the goods,

Specification	State/Territory Legislative Requirements
	<p>including chocolate drives;</p> <ul style="list-style-type: none"> - receiving or applying for government funds or Lotteries Commission grants; - charging a fee for membership of an organisation; and - crowd funding activities for the benefit of the individual running the campaign. <ul style="list-style-type: none"> • Raffles and other gambling activities do not meet the definition of a charitable collection. However, charities that wish to raise funds through gambling must obtain a permit from the Racing, Gaming and Liquor authority (RGL) and meet financial reporting obligations.

3.3.3 Online fundraising platforms

Online fundraising has created particular problems for our clients. In our experience, each state and territory approaches online fundraising differently, especially regarding where the fundraising is deemed to occur. Guidelines between states/territories are often inconsistent, ambiguous and not clearly codified and require specific investigation. This is timely and costly for charities. This accords with the Statement on Fundraising Reform, which also emphasises the undue burdens faced when navigating the regulation of online fundraising.⁷

To illustrate this complexity, the following is a real-life scenario of legal advice that we provided to a previous client, and the different stances each state/territory regulator took (we emphasise that in many circumstances, reasonable minds could differ as to the strict interpretation of the legislation in this regard):

Facts	<p>An organisation physically operates in, has its registered office and employees in, and performs all of its accounting and day-to-day functioning in Victoria.</p> <p>It has a website and connected social media accounts that can be accessed and donated from Australia wide. The website was created in, and the website domain is hosted in Victoria (where the organisation physically operates).</p> <p>The purpose of the organisation is to conduct fundraising on behalf of other charities.</p> <p>The organisation holds a fundraising licence in Victoria.</p>
Issues	<ol style="list-style-type: none"> 1. Are fundraising licenses required in every state/territory – given that the organisation's website and social media pages can be accessed and donated from Australia wide? 2. Would the organisation be classified as having a charitable purpose OR a business conducting fundraising on behalf of clients?
Conclusion	<ul style="list-style-type: none"> • Each state/territory had its own approach to whether licensing was needed. • Based on our analysis of relevant legislation in each jurisdiction, together with applicable statutory interpretation legislation: <ul style="list-style-type: none"> - all regulators shared our view that the organisation was a business conducting fundraising on behalf of clients; and - we did not believe online fundraising created requirements for additional licences beyond Victoria (that is, fundraising licences in each other state and territory) but the regulators took differing views. <p><u>Australian Capital Territory:</u></p> <ul style="list-style-type: none"> • Regulator said NO additional licence needed. <p><u>New South Wales:</u></p> <ul style="list-style-type: none"> • Regulator said NO additional licence needed. <p><u>Queensland:</u></p> <ul style="list-style-type: none"> • Regulator said NO additional licence needed. <p><u>South Australia:</u></p> <ul style="list-style-type: none"> • Regulator said NO additional licence needed.

⁷ Australian Institute of Company Directors, Justice Connect (Not-for-profit Law), Governance Institute of Australia, Australian Council of Social Service (ACOSS), Chartered Accounts Australia New Zealand, Community Council of Australia (CCA), CPA Australia and Philanthropy Australia, above n 4, 8.

	<p><u>Tasmania:</u></p> <ul style="list-style-type: none"> Regulator said YES to an additional licence being needed. <p><u>The Northern Territory:</u></p> <ul style="list-style-type: none"> Fundraising not regulated in the Northern Territory. <p><u>Western Australia:</u></p> <ul style="list-style-type: none"> Regulator said YES to an additional licence being needed.
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3.3.4 Definition of “trader” or “commercial fundraiser”

Further complication arises where a commercial third party organisation fundraises on behalf of a charity. Under the current framework, even where no commission fees are paid, state and territory regulators take the view that, if an entity makes representations to the public that a percentage of the sale proceeds of its product(s) will be donated to a charitable purpose, then that entity obtains a benefit through increased sales.

In order to fall within the definition of commercial fundraiser, the entity must be actively conducting the appeal. Each state and territory statute defines “conducting an appeal” slightly differently. The commonality is that “conducting an appeal” includes making representations that the fundraising is for a charitable purpose.

The following table highlights the current differences between how commercial fundraising and trading is defined across the different states and territories. It illustrates how the inconsistencies in this area are causing undue confusion for those navigating this space:

State/Territory and Legislation	Specifications
<p><u>Australian Capital Territory</u></p> <p><i>Charitable Collections Act 2003 (ACT)</i></p>	<ul style="list-style-type: none"> A commercial fundraiser, for a collection, is a person who is engaged on a commercial basis by a person conducting the collection to conduct all or part of the collection for the other person (section 12). A benefit includes — property (other than money); and any gain or reward (section 11). A third party fundraiser must have the authority of a licensed charity to conduct a collection on its behalf, which includes complying with any conditions attached to that licence. If a licensed charity is not registered with the ACNC and uses a commercial fundraiser, then Access Canberra may attach conditions to the licence, including requiring the charity to disclose information regarding the commercial fundraiser in all advertisements regarding the collection.
<p><u>New South Wales</u></p> <p><i>Charitable Fundraising Act 1991 (NSW)</i></p>	<ul style="list-style-type: none"> If a trader conducts an appeal, then the appeal must be conducted jointly with a fundraising licensee (section 11(2)(a)). It is the policy of the regulator for there to be a written agreement between the two entities to this effect. Any advertisement, notice or information concerning the donation must identify the trader and the licensee; and any such advertisement, notice or information must give details (to the extent required by the conditions of the licence) of the intended distribution of funds raised in the appeal or the proportion of profits, to be paid by the trader to the licensee as a result of the appeal (section 11). Written policy of the Regulator states that trader agreements should include the amount of funds which will be donated to the charity as part of the appeal. In New South Wales, a third party fundraiser must have the authority of a licensed charity to conduct a fundraising appeal on its behalf, which includes complying with any conditions attached to that licence. A licensed charity must provide NSW Fair Trading with prescribed details regarding any commercial fundraiser which it will use to conduct any part of a fundraising appeal on its behalf.

State/Territory and Legislation	Specifications
<p><u>Queensland</u></p> <p><i>Collections Regulation 2008 (Qld)</i></p>	<ul style="list-style-type: none"> • The Regulator views sales of the products as a reward. • If a charity allows a third party to make an appeal for support with an expectation of reward, then there must be a written agreement between the charity and the third party, and the agreement must be submitted to and approved by the Minister (clause 33(1)). • If a person makes a representation that a percentage of sales of a product will be donated to a charity, then it is an offence not to do so pursuant to an authority under the Queensland Act (clause 39A). • Queensland's fundraising legislation regulates activities that meet the definition of an 'appeal for support'. An organisation or individual conducts an appeal for support when they engage in a fundraising activity for a charitable or community purpose. • All arrangements between a charity and a third party fundraiser that relate to an appeal for support that will occur in Queensland must take the form of a written agreement. Charities must obtain approval from the Office of Fair Trading (OFT) before the agreement may take effect, which includes providing a copy of the agreement to the OFT. • Charities must contact the OFT to initiate the approval process. The OFT will assess the agreement to ensure that it contains sufficient provisions to guarantee compliance with Queensland's fundraising legislation.
<p><u>South Australia</u></p> <p><i>Collections for Charitable Purposes Act 1939 (SA)</i></p>	<ul style="list-style-type: none"> • In South Australia, an unlicensed third party fundraiser must have the authority of a licensed charity to conduct a collection on its behalf, which includes complying with any conditions attached to that licence.
<p><u>Tasmania</u></p> <p><i>Collections for Charities Act 2001 (Tas)</i></p>	<ul style="list-style-type: none"> • A third party fundraiser must have the authority of a licensed charity to solicit for a charitable purpose on its behalf, which includes complying with any conditions attached to that licence. • As part of the application process to obtain a fundraising licence in Tasmania, the charity must provide the details of any commercial fundraiser which it will use to assist in soliciting for a charitable purpose on its behalf.
<p><u>The Northern Territory</u></p>	<ul style="list-style-type: none"> • Not regulated in the Northern Territory.
<p><u>Victoria</u></p> <p><i>Fundraising Act 1998 (Vic)</i></p>	<ul style="list-style-type: none"> • Victoria is the only jurisdiction in Australia where commercial fundraisers are required to obtain their own fundraising licence even if they are operating under the authority of a licensed charity. • A trader must disclose, to the purchaser of goods, the dollar amount or percentage of funds that will be applied to the charity (section 12A). • The legislation requires commercial fundraisers to be licensed separately from the licensed charity for which it fundraises (section 6). • "If a person who conducts a fundraising appeal retains a commercial fundraiser to administer all or part of the appeal, a reference in this Act to the person conducting the appeal is a reference... to the commercial fundraiser in respect of any aspect of the appeal that is being administered by the commercial fundraiser irrespective of whether the commercial fundraiser is an agent of the person" (section 6). • A commercial fundraiser is defined as "a person who is retained on a commercial basis by another person to administer all or part of a fundraising appeal for the other person" (section 3). • A benefit includes any gain or reward (section 3).
<p><u>Western Australia</u></p> <p><i>Charitable Collections Act 1946 (WA)</i></p>	<ul style="list-style-type: none"> • In Western Australia, an unlicensed third party fundraiser must have the authority of a licensed charity to conduct any fundraising activities on its behalf which would otherwise necessitate a licence, which includes complying with any conditions attached to that licence.

3. Submission (continued)

3.4 Comments on further issues

The Statement on Fundraising Reform emphasises the significant amounts of wasted time and money charities spend in order to meet outdated and fragmented fundraising laws that differ considerably across Australia.⁸

3.4.1 Alignment with the Australian Consumer Law

Greater certainty as well as reduced complexity and duplication could be achieved through solidifying the application of fundraising law under the ACL. Each state/territory currently has its own legislative provisions in respect of 'misleading and deceptive conduct' in relation to furnishing information and documents about collections. This includes offence provisions.

While I have not explored this issue in detail in this submission, I emphasise that the recommendation to transition and broaden the application of fundraising regulation under the ACL, accords with the extensive sector commentary on this subject. For example, sector bodies such as Pro Bono Australia which frequently publish articles on the not-for-profit space, have suggested that state and territory fundraising legislation be repealed, and the application of related provisions under the ACL be broadened and strengthened.⁹ The Statement on Fundraising Reform also strongly advocates for clarifying and improving how fundraising law is covered by the ACL.¹⁰

Furthermore, Justice Connect in its submission to the 'Australian Consumer Law Review Issues Paper' recommended the following:

- clarifying the application of the ACL to the broad range of activities undertaken by not-for-profits by amending the definition of "trade and commerce", and
- explicitly applying certain provisions of the ACL to all fundraising activities, whether or not within trade or commerce.¹¹

Justice Connect also highlighted the need to (among other specific recommendations):

- address unacceptable uncertainty about whether the ACL regulates the activities of not-for-profits; and
- ensure reform to explicitly apply certain provision of the ACL to all fundraising activities, whether or not within trade or commerce, as a critical component of reform of regulation of fundraising in Australia.¹²

3.4.2 Mismatch between 'charity' definition in federal legislation versus state and territory legislation

State and territory fundraising legislation still defines 'charity' differently. For example the South Australian legislation has specific requirements of what constitutes a charity, whereas the Australian Capital Territory legislation only defines it broadly as including 'any benevolent, philanthropic or patriotic purpose'.¹³

⁸ Australian Institute of Company Directors, Justice Connect (Not-for-profit Law), Governance Institute of Australia, Australian Council of Social Service (ACOSS), Chartered Accounts Australia New Zealand, Community Council of Australia (CCA), CPA Australia and Philanthropy Australia, above n 4, 3.

⁹ Pro Bono Australia, *Why Fundraising Laws Need Urgent Reform* (30 August 2017) <<https://probonoaustralia.com.au/news/2017/08/fundraising-laws-need-urgent-reform/>>.

¹⁰ Australian Institute of Company Directors, Justice Connect (Not-for-profit Law), Governance Institute of Australia, Australian Council of Social Service (ACOSS), Chartered Accounts Australia New Zealand, Community Council of Australia (CCA), CPA Australia and Philanthropy Australia, above n 4, 3.

¹¹ Justice Connect, *Australian Consumer Law Review Issues Paper* (27 May 2016) Commonwealth of Australia: Australian Consumer Law <https://cdn.tspace.gov.au/uploads/sites/60/2016/07/Justice_Connect_Not-for-profit_Law.pdf> 1.

¹² Ibid.

¹³ Vaughan-Williams, above n 1, 233.

3. Submission (continued)

A significant difficulty is that the ACNC uses the federal *Charities Act 2003* (Cth) in making its determinations in registering charities, but this is different from the state and territory requirements. It is conceivable, particularly under state/territory legislation that is broad, like the current Australian Capital Territory statute, that an organisation would not be found to be a charity by the ACNC, but still be subject to state/territory charitable fundraising legislation. This potential scenario could be especially problematic for smaller charities which might, by honest mistake, believe that state/territory licences are not needed once they have been registered with the ACNC - and later face legal ramifications for the mistake.¹⁴

Similarly, under state/territory legislation with more specific definitions, such as the current South Australian legislation, it is possible that organisations are wasting money and resources by needlessly applying for a state fundraising licence when no licence was required. This lack of uniformity creates a burden on organisations to conduct extensive research to understand their obligations.¹⁵

3.4.3 Monitoring and compliance challenges

In addition to the commentary provided at paragraphs 3.3.1 - 3.3.2 of this submission above, inconsistent licensing requirements across the states and territories poses particular challenges for monitoring and ensuring compliance across the fundraising activities of different branches of an organisation, subject to different laws. It is impractical and increases the risk of non-compliance.¹⁶

For example, in Western Australia, fundraising by way of street collections comes under completely different legislation, being the *Street Collections (Regulation) Act 1940* (WA), and requires a separate licence from that granted by the main fundraising legislation.

Increasing uniformity for monitoring and compliance would significantly assist charities in monitoring exactly which appeals are subject to a fundraising licence.¹⁷

3.4.4 Auditing and reporting challenges

Audits and reports are usually required for licensed charities, specifically relating to funds collected from a state/territory definition of a 'fundraising appeal'. Specific data must be kept in each state/territory jurisdiction to later prepare these reports, but the requirements of such reports vary significantly between states and territories,¹⁸ making it operationally cumbersome for charities when conducting national appeals.¹⁹

A study of not-for-profit reporting illustrated the significant difficulty organisations face to keep separate financial records for projects. In addition to this, when there are inconsistent reporting requirements increased pressure is placed on resources.²⁰ The cost of these many inconsistencies for charities is extensive. World Vision has stated that the differing state and territory fundraising requirements costs the organisation at least \$1 million per year in additional administration fees.²¹

Furthermore, some national organisations have reported they that have simply decided not to fundraise nationally, due to what they perceive to be an unworkable fundraising system.²² Arguably, regulatory complications have only increased with the rise of online fundraising. Fulfilling requirements of holding licences in each state and territory also creates hardship for charities.²³

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid 234.

¹⁸ Vaughan-Williams, above n 1, 234 citing, Gino Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 489.

¹⁹ Vaughan-Williams, above n 1, 234.

²⁰ Vaughan-Williams, above n 1, 234 citing, McGregor-Lowndes and Christine Ryan, 'Reducing the Compliance Burden of Non-profit Organisations: Cutting Red Tape' (2009) 68 *Australian Journal of Public Administration* 21, 22.

²¹ Ibid

²² Vaughan-Williams, above n 1, 234 citing, Productivity Commission, 'Contribution of the Not-for-Profit Sector' (Research Report, Productivity Commission, January 2010) 139.

²³ Vaughan-Williams, above n 1, 234.

3. Submission (continued)

3.4.5 *Inconsistencies in how fundraising appeals are conducted*

State and territory legislation is also inconsistent in terms of how appeals must be conducted.²⁷ While these matters can be relatively simple, such as the Australian Capital Territory requiring collectors to possess certain identifying tags while collecting, and Victoria requiring receptacles to be labelled in a certain way – it is the subtle differences that make them all the more problematic to manage nationally, and increases the risk of non-compliance. Increasing the risk of non-compliance in the sector creates a domino-effect of negative impacts:

- there is an increased risk that charities, many of which have limited budgets, may be subject to fines or even criminal liability;
- it works against a sound system of regulation that ensures the original policy considerations underpinning the law are upheld; and
- it reduces public confidence in the charitable sector and fundraising collections, which is particularly damaging given the sector relies heavily upon donations.³⁰

3.4.6 *Inconsistent exemptions from fundraising licences*

State and territory legislation have inconsistent exemptions for fundraising licences, resulting in the aims of protecting against fraudulent collections not being realised. For example, religious organisations are inconsistently dealt with across the legislation. Religious organisations are given specific exemptions from licensing requirements under the New South Wales, Victorian, Queensland, and Tasmanian legislation, but this is not mirrored in the legislation of the other states and territories.³¹

I urge that the commission consider the issues and recommendations raised in this submission when conducting its inquiry.

Yours sincerely

VERA VISEVIC
PARTNER

(CO-AUTHORED WITH JOHN VAUGHAN-WILLIAMS AND CLARISSA SUKKAR)

²⁷ Ibid citing, Productivity Commission, above n 21, 138.

³⁰ Vaughan-Williams, above n 1, 234.

³¹ Ibid 236.