



*everyone's family*

# Charitable Fundraising in the 21<sup>st</sup> Century

## Submission to the Senate Select Committee on Charity Fundraising in the 21<sup>st</sup> Century

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## Submission to the Senate Select Committee



### Overview of The Smith Family

The Smith Family is a national charity founded in 1922 to improve the lives of disadvantaged children in Australia. Almost a century on from its founding, it is now the nation's largest children's education charity.

Our vision is a better future for young Australians in need. Our mission is to create opportunities for young Australians in need by providing long-term support for their participation in education. This mission is founded on the belief that every child deserves a chance.

Our mission guides every element of our work, including program development and delivery, research, advocacy and fundraising. The Smith Family delivers programs in each state and territory in Australia, in over 90 communities, including many regional and rural communities.

In 2016-17, The Smith Family supported more than 151,000 children, young people, parents, carers and community professionals through its programs. Over 120,000 children and young people participated in programs run by The Smith Family. This includes almost 39,000 children and young people participating in our largest program, *Learning for Life*.

In 2016-17, The Smith Family's total income was approximately \$100 million. Around 70 percent of this funding comes from private donations from individual supporters, corporate partners, universities, trusts and foundations, and bequests. There are over 230 partnerships helping to sustain our programs. Only a quarter of The Smith Family's income is sourced from different levels of government.

As part of our leadership and collaborative work in the sector, The Smith Family is a member of a number of organisations and represented on a number of advisory groups and boards. This includes being a member of the Community Council for Australia (CCA), with our Chief Executive Officer, Dr Lisa O'Brien, sitting on their board.

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### 1. Introduction

The Smith Family welcomes this inquiry and thanks the Committee for the opportunity to provide a submission. Charities play a pivotal role in supporting vulnerable and disadvantaged Australians, and help amplify the voices of those they serve in important national public policy debates. Improving the fundraising regime for charities will help ensure they can focus even more on their core activities, in turn maximising their contribution to Australia's social and economic wellbeing.

It is time that we had a national regulatory regime that is fit-for-purpose in an era driven by digital fundraising. This regime should be easy to use for small, medium and large charities and help them as much as possible to focus their resources on their core mission. It should also be transparent, accountable and predictable for all donors. Presently charities are subject to different fundraising regimes in each of Australia's states and territories. This creates an unnecessary administrative burden on all charities which is particularly problematic for smaller charities that operate in one or two jurisdictions with limited resources and small workforces.

In line with the Inquiry's Terms of Reference, The Smith Family makes the following points in its submission:

- the current regime creates regulatory problems for charities because of the fragmented registration and compliance system.
- the end point for reform must be complete harmonisation of regulatory regimes across Australia. The Commonwealth can provide leadership and coordination with the states and territories in working to achieve harmonisation.
- The Smith Family believes that the Committee should look to broaden and strengthen the applicability of Australian Consumer Law (ACL) to the charities sector, as the main regulatory framework. This involves repealing fragmented state and territory laws.
- the Australian Charities and Not-for-Profits Commission (ACNC) remains the best body to regulate the sector and should be the one-stop-shop for all charitable regulation. The ACNC already performs a valuable role in regulating the advocacy of charities.

These points are outlined further below.

### 2. Problems with the current regulatory framework

The main problem with the present regulatory matrix is fragmentation. As a national organisation, The Smith Family must comply with charitable registration and compliance regimes in each individual state and territory. We are required to separately register in each jurisdiction<sup>1</sup>, and each jurisdiction has locally tailored laws. For instance, jurisdictions even have different definitions for what constitutes 'fundraising'. They also require different financial information to be provided to regulators for compliance purposes. This creates an undue administrative burden for all charities, but even more so in an era where fundraising is often done online through digital platforms. Digital-based fundraising erodes state and territory borders and makes the case for a national

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<sup>1</sup> Except the Northern Territory.

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regulatory system even more compelling. This ongoing fragmentation means present laws are not fully meeting their intended objectives.

Because of The Smith Family's scale and size, we have the capabilities to deal with this administrative burden, which is relatively more difficult for small and medium sized charities. However, we remain continuously subjected to a multitude of different regulatory requirements for fundraising, and must be alert to any relevant legislative change in one or more jurisdictions and the potential impact it may bring. It also draws valuable resources away from our core mission.

### 3. Harmonisation must be the objective for reform

The way to remedy the present fragmentation is to harmonise the national regulatory regime. We commend the ongoing efforts to harmonise registration and reporting requirements but it is time to go further. Current efforts to harmonise across the states and territories has been rather limited, with South Australia leading the way by streamlining its regulatory regime in collaboration with the ACNC.

Harmonisation is very important to The Smith Family, as it is for other national charities. We strongly encourage this work to continue as a major policy priority. The Federal Government can demonstrate active, strong leadership in partnering with the states and territories to find a suitable pathway to harmonisation, using the ACNC as the best-positioned entity for such efforts.

Ensuring that harmonisation is a priority will not only help national charities to continue to mature, it will help small and medium-sized charities to expand services across state and territory borders.

A lack of harmonisation currently limits efficiency in The Smith Family's efforts to fundraise, expand services and increase its positive impact for Australian communities. This problem persists the longer major reform is delayed. This is why we continue to recommend, as we have over many years, that remedying the fragmented regulatory regime be a priority pursued as soon as possible.

### 4. Proposal for reform

The Smith Family agrees with the joint solution for reform put forward by Justice Connect, the Australian Institute of Company Directors, Governance Institute of Australia, Chartered Accountants Australia and New Zealand, Philanthropy Australia, ACOSS and the Community Council for Australia.<sup>2</sup> We believe this proposal represents an effective way to achieve harmonisation of fundraising regulation across the country. This solution proposes the following:

1. clarification and minor amendment to the ACL to ensure its application to fundraising activities is clear and broad;
2. repeal of state and territory laws, allowing state and territory regulators to instead focus on regulating conduct using the ACL or other general laws to take action for misconduct; and
3. a short plain English, mandatory code of conduct for all fundraisers, supported by the work of the self-regulatory bodies.

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<sup>2</sup> Justice Connect, the Australian Institute of Company Directors, Governance Institute of Australia, Chartered Accountants Australia and New Zealand, Philanthropy Australia, ACOSS and the Community Council for Australia, [Statement on Fundraising Reform](#), September 2016.



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This solution will deliver stronger, smarter and simpler laws to support charities, and fundraisers and donors. The ACL already applies to certain activities of charities, notably fundraising in specific circumstances.<sup>3</sup> It is a regulatory framework jointly enforced by all Australian governments. Clarifications about the ACL's current application to fundraising and minor amendments would create a fit-for-purpose national regulatory regime. The ACL is well-understood by the community, provides donors with access to a range of protections against misbehaviour by fundraisers and is equipped with an effective tool-kit for proportionate enforcement. It is a fundamentally better way to regulate fundraising, is more congruent with the policy objectives of regulating fundraising, and offers improved transparency and accountability.

Further, this proposed solution is more likely to capture innovation in the sector and future changes to methods of fundraising, without being impeded by territorial limitations. Creating a truly national system of regulation by removing duplicate and burdensome requirements for registration and reporting also allows charities to focus on their core missions whilst ensuring ethical conduct remains central to all fundraisers and fundraising activity.

### 5. The ACNC as chief regulator

The ACNC remains the best positioned Commonwealth body to regulate charities, to drive reform, and to coordinate such reform with its counterparts in the states and territories. The ACNC has been an effective regulator since its establishment. It monitors charities' performance closely, and offers valuable guidance on the activities of charities during federal elections. It is also well-placed to monitor the influence of foreign civil money on the advocacy work of charities. Ensuring that the ACNC is adequately-resourced to undertake its chief functions should also be a priority when looking to strengthen the present regulatory regime.

### 6. Conclusion

This Inquiry offers an imperative to update and streamline the fundraising regulations governing charities to ensure a nationally consistent, fit-for-purpose framework that can operate ably in the present era of digital fundraising. Simpler, smarter and more sensible laws will not only help charities focus on their core mission, but will also provide all types of donors with greater confidence when considering funding the work of particular organisations. It ultimately means a better functioning and even more efficient charities sector, contributing even more in turn to Australia's social and economic wellbeing.

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<sup>3</sup> *A Guide to the Australian Consumer Law: For fundraising and other activities of charities, not-for-profits and fundraisers*, December 2017, developed by federal and state agencies dealing with competition, consumer protection and fair trading, p 2.