



Australian Government



Australian  
**Charities** and  
Not-for-profits  
Commission

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Committee Secretary  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

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

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to provide a submission to the Senate Select Committee on Charity Fundraising in the 21<sup>st</sup> Century (**Committee**).
2. Over the last few years there has been increased focus on fundraising and the regulation of fundraising activities, as evidenced by a number of government, parliamentary and other reviews. The ACNC has provided submissions to these reviews, including the 2016 Consumer Affairs Australia and New Zealand Australian Consumer Law Review (**CAANZ ACL Review**).<sup>1</sup>
3. The ACNC commissioned Deloitte Access Economics to produce a report entitled *Cutting Red Tape: Options to align state, territory and Commonwealth charity regulation*, published in February 2016, which considered fundraising regulation, among other matters.<sup>2</sup> The ACNC has drawn on findings from this report and our previous submissions on fundraising in preparing this submission.
4. The ACNC considers that documents relating to the CAANZ ACL Review could assist the Committee in its deliberations. These include the Interim Report, the Final Report and the submissions from the ACNC and peak bodies, including the #fixfundraising coalition. As a result of the CAANZ ACL Review, CAANZ released "A guide to the Australian Consumer Law: for fundraising and other activities of charities, not-for-profits and fundraisers." The Committee may also find the CAANZ guidance a useful reference.
5. In addition, the Deloitte Access Economics report contains a succinct outline of the regulatory burden imposed by current fundraising regulations in the States and the ACT.

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<sup>1</sup> The Reports and all public submissions to the Review can be found at <http://consumerlaw.gov.au/consultations-and-reviews/review-of-the-australian-consumer-law/>

<sup>2</sup> The full report can be accessed here: <http://www.acnc.gov.au/ACNC/ACNC/Publications/Reports/CuttingRedTape.aspx>





6. The ACNC notes the Committee's Terms of Reference. This submission focuses on matters that pertain to the ACNC's remit. With respect to other matters raised by the Terms of Reference, state regulators and charities themselves will be best placed to assist the Committee.

### The ACNC's role

7. The ACNC was established on 3 December 2012 by the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth) (**ACNC Act**). The objects of the ACNC Act are to:
  - maintain protect and enhance public trust and confidence in the Australian not-for-profit (NFP) sector;
  - support and sustain a robust, vibrant, independent and innovative Australian NFP sector; and
  - promote the reduction of unnecessary regulatory obligations on the Australian NFP sector.
8. The ACNC's regulatory responsibility currently applies only to registered charities, and not to other types of not-for-profit entities. The ACNC regulates approximately 56,190<sup>3</sup> registered charities. Registered charities employed almost 1.3 million Australians in 2016, or approximately 10.6% of the Australian workforce.<sup>4</sup> Charities make an invaluable contribution to our community, providing vital services, engaging volunteer effort, and helping beneficiaries all over Australia. The revenue of Australia's registered charities in 2016 exceeded \$142.8 billion. Of this, donations and bequests amounted to \$10.5 billion, with approximately 25,000 charities receiving donations as a form of revenue. The economic scale of charities varies greatly; at one end of the scale, 160 charities each earn over \$100 million in revenue, and at the other, around 40% of charities have annual revenue less than \$50,000.<sup>5</sup>
9. Registered charities have reporting obligations to the ACNC and must comply with a set of principles-based governance standards. The ACNC does not regulate the fundraising activities of charities as such. However, there may be cases where a charity's fundraising practices raises questions about the adequacy of its broader governance arrangements, in which case the ACNC may decide to commence a compliance investigation. Because of the objects of the ACNC Act, the ACNC has an interest in improving the regulatory frameworks for the not-for-profit sector to reduce duplicative regulatory obligations and contribute to public trust and confidence in the sector. The ACNC notes that the Committee's Terms of Reference relate specifically

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<sup>3</sup> As at 3 July 2018.

<sup>4</sup> Powell, A., Cortis, N., Ramia, I. and Marjolin, A. (2017) *Australian Charities Report 2016*. Centre for Social Impact and Social Policy Research Centre, UNSW Australia.

<sup>5</sup> All figures from the *Australian Charities Report 2016*, referenced in footnote 2 above.



to charities, however the Committee may wish to include the wider not-for-profit sector in assessing the current regulatory regimes and identifying improvements.

### **ACNC and fundraising**

10. The ACNC does not have a general jurisdiction to investigate concerns about fundraising activities and practices. Generally speaking, the ACNC refers concerns raised by the public about the fundraising practices of charities to state and territory consumer affairs agencies.
11. Concerns that the ACNC receives but that are usually out of jurisdiction include:
  - concerns about aggressive fundraising, including by professional fundraisers engaged by charities;
  - improper sharing of donor details;
  - perceptions that charity fundraising practices are taking advantage of vulnerable donors;
  - charities using false advertising;
  - complaints that charities are wasting money or using donated funds inefficiently.
12. It is also important to note that the ACNC has no jurisdiction to investigate or take action against not-for-profits that are not registered charities. While many of the charities registered with the ACNC engage in fundraising activities, many organisations undertaking fundraising in the community are not registered charities.

### **Issues with current fundraising regulatory regimes**

13. From the ACNC perspective, the primary issues impacting charities in fundraising regulation are the significant duplication, and the lack of a national approach. Current state-based fundraising regulation is challenging for charities to manage, particularly if they operate in more than one state or territory, because of the differing requirements in each jurisdiction.
14. The current fundraising regulatory frameworks are largely confined within state borders and, as such, do not adequately address the increasingly borderless context within which charities operate. Through the use of technology and the internet, charities are able to easily connect with people beyond their local community, and it is expected more and more charities will capitalise on the fundraising opportunities this opens up. As the charity and NFP sector embraces new practices, regulation of fundraising activities needs to keep pace. The following case study (taken from the ACNC Submission to the CAANZ ACL Review Interim Report) illustrates the obstacles that the current regulatory frameworks present for charities.



**Case study: online fundraising**

A small charity, based in Melbourne (Victoria), is setting up a website to build awareness of its activities. As part of this website, the charity wants to include a function to collect donations from its supporters. The charity recognises that its supporters may be located outside of Victoria, and that, therefore, that it may be difficult to accurately ascertain where the donations on the internet will come from. As a result, this charity decides to apply for the fundraising licenses that would allow it to legitimately collect donations across Australia.

When researching the necessary requirements for fundraising across the different states and the ACT, the charity finds that each jurisdiction requests different information, and has different timeframes for applications and different exemptions. It spends a significant amount of time researching information and puts its website launch on hold.

After checking the requirements, the charity realises it cannot apply for a fundraising licence in NSW because it does not have an address in NSW to nominate on the form. In addition, the charity does not meet the requirements for Queensland because it does not have at least three Queensland residents carrying out the charity's activities in the state, neither does it intend to do so in the future. In the remaining jurisdictions, the charity notes that there are a range of reporting requirements and varying re-application time frames to keep track of.

The charity does not have the necessary resources to address all these administrative requirements and potential risks if it unknowingly receives donations from donors located in NSW or Queensland. After considering all these factors, the charity removes the function to collect donations on its website and decides to only solicit donations in its local area as this will be much more manageable.

15. As the case study above illustrates, the current fundraising regulatory regimes do not address the reality of online fundraising. Other popular emerging forms of giving through the internet, such as crowdfunding, also lie in a potential 'grey area'. A cohesive regulatory environment that captures online fundraising activities would ensure that donors in these situations are adequately protected and that charities can operate with confidence that they are complying with the law.
16. The ACNC is of the view that using the ACL as the vehicle for regulating fundraising would enable these grey areas to be addressed. The ACL's 'multiple regulator' framework is established by legislation in each state and territory. The framework offers an effective and efficient model for ensuring a nationally consistent baseline of fundraising protection. Its national application also positions the ACL to provide protection for donor transactions that extend beyond one state or territory. This is particularly relevant and important in the context of online fundraising and the emergence of alternate models such as crowd-sourced funding. Approximately 13% of charities already operate in more than one state or territory,<sup>6</sup> with many others soliciting donations online, including through social media.

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<sup>6</sup> Australian Charities Report 2016.



17. The CAANZ guidance referred to at para 4 states:

“Generally, if you engage in a fundraising activity involving a supply of goods or services or are fundraising in an organised, continuous and repetitive way then your fundraising activity is likely to be in trade or commerce and you are likely to have certain obligations under the ACL.”

18. It is clear from this that the ACL is likely to apply to the preponderance of fundraising activity undertaken in the not-for-profit sector. However, we consider that the ACL should be amended to provide certainty about its application in this area.

19. Harmonisation of fundraising regulation through the ACL would provide significant regulatory reduction benefits to the NFP sector. Analysis from Deloitte Access Economics estimates that charities spend around \$15.08 million a year due to fundraising regulation. Much of this is associated with the ongoing reporting and operating requirements that charities must adhere to across different jurisdictions. Substantial savings would be achieved if the state and territory regulatory regimes were replaced by a single national framework.<sup>7</sup>

#### **State and Commonwealth collaboration**

20. The ACNC notes that the Committee is interested in how Federal, State and Territory governments could work together to provide charities with a nationally consistent, contemporary and fit-for-purpose regulatory regime for fundraising. Paragraphs 17 - 20 above outlines how the ACL already functions as nationally consistent legislation and could be used to provide effective regulation of fundraising.

21. In the interim, the ACNC has streamlined reporting arrangements in place with the following state and territory regulated entities:

- (a) Tasmania: Incorporated Associations – effective 1 October 2016
- (b) South Australia: Incorporated Associations – rolling implementation from 1 January 2017
- (c) South Australia: charitable fundraisers - rolling implementation from 1 December 2016
- (d) ACT: Incorporated Associations – effective 1 July 2017
- (e) ACT: charitable fundraisers – effective 1 July 2017
- (f) Victoria: Incorporated Associations – effective 1 July 2018

22. Under these arrangements, the ACNC shares information with other government agencies and this enables registered charities to be exempted from reporting obligations to those agencies.

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<sup>7</sup> Deloitte Access Economics estimated that a saving of \$10.81 million per year could be achieved if state and territory fundraising regulation was removed and replaced with a single regulatory framework administered by the ACNC.



23. Given that state and territory governments currently regulate fundraising, it is important that all states and territories agree to the use of the ACL as a mechanism to regulate fundraising. As can be seen from paragraph 21, the ACNC has strong working relationships with the states and territories in relation to red tape reduction. The ACNC also has a productive working relationship with CAANZ and the ACCC.

**Further information**

24. The ACNC is able to provide further information on any the above, should this be useful to the Committee. Contact information is provided below.

Contact:       Natashia Allitt, Policy Manager, Legal and Policy