

ACOSS Submission

Senate Select Committee into Charity Fundraising in the 21st Century

2 August 2018



About ACOSS

The [Australian Council of Social Service \(ACOSS\)](#) is a national advocate for action to reduce poverty and inequality and the peak body for the community services sector in Australia. Our vision is for a fair, inclusive and sustainable Australia where all individuals and communities can participate in and benefit from social and economic life.

ACOSS is also a member of #fixfundraising, a group of people and organisations who want to #fixfundraising by moving an outdated and burdensome fundraising regime to a modern-principles based regulatory regime.

Summary

ACOSS welcomes the opportunity to contribute to this inquiry, noting the significant compliance burden placed on organisations by the current regulatory regime in place for charitable fundraising.

The charitable sector is socially and economically significant and fundraising is integral to its impact. Community sector organisations variously operate at the local, regional, national and international level. They work with some of the most disadvantaged people and communities, and deliver high quality services to address poverty, disadvantage or crisis. Charities raised more than \$16 billion from donations and bequests in 2016 – 14.8% of their total income.

The current regulatory regime for fundraising is out of date and needs reform. Community organisations who fundraise need to deal with seven different approaches to fundraising regulation across eight jurisdictions (the Northern Territory does not regulate fundraising), that lack a central conceptual underpinning and differ markedly in the scope and purpose of their regulation.

The compliance cost to charities of the current fundraising regime is estimated to be more than \$13 million – which Deloitte Access Economics reports is “...overwhelmingly the source of the greatest amount of regulatory burden for charitable organisations.” This means less funding for the vital work of our sector, preventing and addressing homelessness; working with children, youth and families, providing supports and services to older people or people with disability, assisting people who are unemployed to find paid work and providing a range of other services to some of the most disadvantaged people and communities.

There is a solution to the problem that will deliver stronger, smarter and simpler regulation. ACOSS endorses the policy recommendations of the #fixfundraising coalition as outlined in the Justice Connect submission and below.

Recommendation

That Federal and State and Territory Governments work together to:

- **Clarify and amend the Australian Consumer Law** to ensure its application to fundraising activities is clear and broad;
- **Repeal fragmented State and Territory fundraising laws**, with State and Territory regulators to instead regulate conduct using the Australian Consumer Law or other general laws authorising them to take action to address misconduct;
- **Provide guidance to support fundraisers improve conduct**, through development of a short plain English, mandatory code of conduct for all fundraisers, supported by the work of self-regulatory bodies.

The community sector is socially and economically significant, and fundraising integral to our success

The Australian Charities and Not-for-profits Commission reports that Australia's 52,817 charities generated \$110 billion in income in 2016¹. Of that amount, 14.8%, or more than \$16 billion, came from donations and bequests². The community sector subsector of the charitable sector is made up of a broad range of service delivery, community development, social justice and advocacy organisations. They are diverse in size and scale, ranging from small voluntary groups to large national organisations. Community sector organisations rely on fundraising in order to undertake their vital work across Australia and overseas, and need a fundraising regime that enhances community trust in the sector, ensures that misbehaviour is identified and addressed, while imposing the least burden possible for community sector organisations that fundraise.

The current regime is out of date and in need of reform

Community organisations who fundraise need to deal with seven different approaches to fundraising regulation across eight jurisdictions (the Northern Territory does not regulate fundraising), plus the Australian Consumer Law. These laws each have different definitions for key terms (including "charity", "fundraising" and "licence") have different exemptions and exclusions and different monetary caps on the amount that can be fundraised before registration is required.

The current regime requires charities who operate and fundraise nationally to navigate more than 133,000 words and 480 pages of legislation and regulations, as well as extensive case law, policy and codes of conduct. At the same time, some jurisdictions have put in place significant fines for minor breaches of the law.

As an example of the burden of the current regime, ACOSS, as a national charity that fundraises in every state and territory, has registered in every jurisdiction where

¹ ACNC, 2018, *Growth and Change in Australia's Charities, 2014 – 2016*, <http://australiancharities.acnc.gov.au/wp-content/uploads/2018/05/ACNC-change-over-time-FINAL-20180509.pdf>

² *ibid*

it is required. This has resulted in several weeks of staff time determining and fulfilling the initial registration requirements, police checks for board members, newspaper advertisements, and more than 100 signatures. ACOSS has also been required to seek and obtain legal advice to interpret several points of law and policy. Feedback from our members indicates that their experience is similar to ours, with organisations dedicating significant staff time and resources on complying with the law. It is a complex undertaking to navigate the ongoing requirements to maintain registration in every state and territory, with significant staff time allocated to compliance and reporting.

Most of the laws in place do not deal with new and emerging fundraising methods, including internet and email fundraising, leaving these key fundraising strategies largely unregulated. At the same time, some jurisdictions deal in detail with issues that are peripheral to ensuring misconduct does not occur in fundraising, including the length of handles on collection boxes and the font required for name badges of charity collectors.

Overall, there is no central conceptual underpinning for the regulation of charitable fundraising across jurisdictions, and significant differences in the scope of that regulation. The regime presents an excellent opportunity for reform.

The current regime has an economic impact

A Deloitte Access Economics Report for the Australian Charities and Not-for-profits Commission found that the annual regulatory burden associated with charitable fundraising is \$13.3 million per year – “...overwhelmingly ...the source of the greatest amount of regulatory burden for charitable organisations.”³

The regulatory burden is particularly borne by organisations that fundraise in multiple jurisdictions. Because of the different approaches in each jurisdiction, administrative costs escalate quickly, and increased costs mean that charities are investing less in their charitable purpose. This means less funding for the vital work of our sector, preventing and addressing homelessness; working with children, youth and families, providing supports and services to older people or people with disability, employment services and a range of other services to some of the most disadvantaged people and communities.

One example of this impact is organisations for fundraising via their website or third party websites. Organisations fundraise online in order to expose themselves to a broader, and possibly national (and international) donor pool. These organisations may need to apply for a licence or registration in multiple jurisdictions, or limit their fundraising to the jurisdiction where they are registered, missing out on a key revenue opportunity.

There is a solution to the problem

The #fixfundraising Coalition proposes that Federal, State and Territory Governments work together to:

³ Deloitte Access Economics, 2016, *Cutting Red Tape, Options to Align State, Territory and Commonwealth Charities Regulation*, <https://www2.deloitte.com/au/en/pages/economics/articles/cutting-red-tape-align-charity-regulation.html>

1. **Clarify and amend the Australian Consumer Law** to ensure its application to fundraising activities is clear and broad;
2. **Repeal fragmented State and Territory fundraising laws**, with State and Territory regulators to instead regulate conduct using the Australian Consumer Law or other general laws authorising them to take action to address misconduct;
3. **Provide guidance to support fundraisers improve conduct**, through development of a short plain English, mandatory code of conduct for all fundraisers, supported by the work of self-regulatory bodies.

This solution will deliver stronger, smarter, simpler laws to support charities, fundraisers, donors and beneficiaries.

- **Stronger:** Using the Australian Consumer Law (supported by a conduct code) to put protection of all donors at the heart of all fundraising regulation across the nation (regardless of method used to fundraise);
- **Smarter:** Principles-based regulation (backed by national process for reform) is more likely to capture innovation and changes to methods of fundraising, without territorial limitations;
- **Simpler:** Creating a truly national system of regulation by removing duplicate and burdensome requirements for registration (licensing) and reporting, allowing for ethical conduct to be central to all fundraisers and fundraising activity.