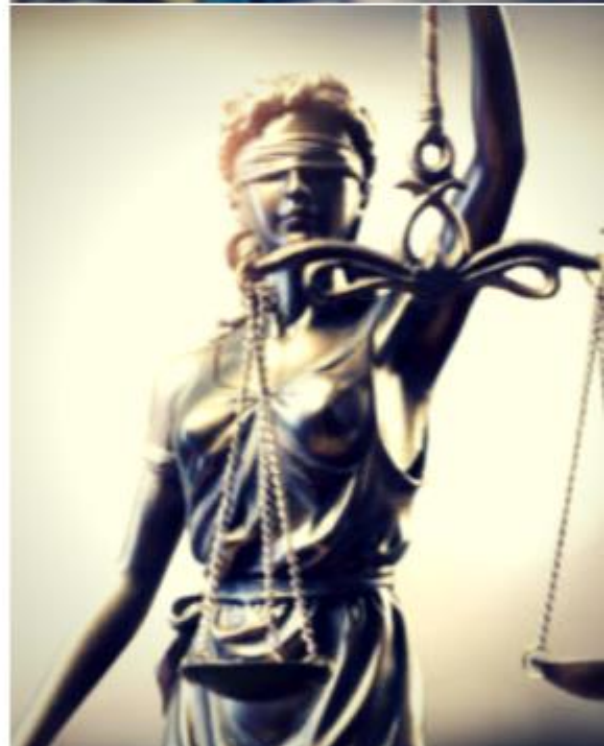


THE AUSTRALIAN CENTRE
FOR PHILANTHROPY AND
NONPROFIT STUDIES

**SUBMISSION TO SENATE
SELECT COMMITTEE**

CHARITY FUNDRAISING IN THE 21ST CENTURY

AUGUST 2018



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About The Australian Centre for Philanthropy and Nonprofit Studies

The Australian Centre for Philanthropy and Nonprofit Studies is a specialist research and teaching unit within QUT's Business School in Brisbane, Australia.

It seeks to promote the understanding of philanthropy and nonprofit issues by drawing upon academics from many disciplines and working closely with nonprofit practitioners, intermediaries and government departments. The mission of the Centre is 'to bring to the community the benefits of teaching, research, technology and service relevant to the philanthropic and nonprofit communities', with a theme of 'for the common good'.

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1. Introduction

We believe the best starting point is to outline the important general principles in reforming fundraising regulation. This base then underpins answers to the specific Terms of Reference questions.

Schedule 1 lists the relevant research findings and resources produced by ACPNS and its collaborators on these questions. These findings represent 25 years' work and thousands of dollars of philanthropic, academic and government investment. We hope they may serve the Select Committee and general public alike.

2. General principles for reforming fundraising regulation

a) 'Fundraising': a term without a clear definition

To meaningfully answer the questions posed, or institute common standards for fundraising throughout Australia, we need to be clear about what we are trying to regulate and reform.

Currently, no single shared understanding exists about what 'fundraising' involves in the laws of the Australian states and territories. For example, Queensland's *Collections Act 1966* seeks to regulate an 'appeal for support', being 'any invitation...to the public, which is designed to obtain money or articles for [the relevant purpose]'.¹ Tasmania prohibits seeking 'donation[s]' for a charitable purpose unless exempted or authorised,² while Western Australia uses 'collect or attempt to collect'.³ 'Charitable' is also defined differently everywhere, and differently to the federal definition in the *Charities Act 2013* (Cth), being based on the common law of the relevant jurisdiction⁴ with varying add-ons such as 'philanthropic'⁵ and 'the protection of the environment or the welfare of animals'.⁶ Each jurisdiction also has different activities and purposes chosen to be excluded or exempted from their respective regimes.⁷

This is not unusual or surprising. Our research shows that 'fundraising' encompasses so many ideas and issues that it is very difficult to regulate as a unified concept or set of behaviours.⁸ Internationally and in Australia, there is no agreed definition of what 'fundraising' is: in the law, amongst academics, and even amongst people who are professional fundraisers.⁹ 'Fundraising' often refers to an ever-changing mix of particular activities and transaction types. This makes it difficult to regulate and difficult to classify it accurately for accounting and reporting purposes.

¹ *Collections Act 1966* (Qld), s 5.

² *Collections for Charities Act 2001* (Tas) ss 3, 5.

³ *Charitable Collections Act 1946* (WA) s 6.

⁴ For example, *Collections Act 1966* (Qld), s 5 'exclusively charitable according to the law (other than statute law) of Queensland'.

⁵ *Charitable Fundraising Act 1991* (NSW) s 4.

⁶ *Collections for Charities Act 2001* (Tas), s 3.

⁷ For examples, see ACPNS (2012) Exclusions and Exemptions from Fundraising Regulation. ACPNS Issues Sheet (Unpublished), available at <https://wiki.qut.edu.au/display/nmlp/Issues+sheets+and+conference+papers>.

⁸ McGregor-Lowndes, Myles, Flack, Ted, Poole, Glenn, & Marsden, Stephen (2014) *The Australian Centre for Philanthropy and Nonprofit Studies*, QUT, Brisbane. Available at <https://eprints.qut.edu.au/73420/>; see chapter 2.

⁹ Ibid.

b) Purposes of fundraising regulation

We also need clarity about the outcomes that fundraising regulation is meant to bring about, or, the purpose of regulating fundraising. Historically, the goals of state and territory fundraising laws have been confused.

Some broad objects do recur over the past 100 years: preventing misuse of funds raised for charitable purposes and preventing excessive intrusion into citizens' private lives, while maintaining support for charities and charity fundraising.¹⁰ Hence, legislation that micromanages doorknock appeals and appeals in central business districts.¹¹ More recently, preventing misuse of funds has expanded to include the idea of 'efficiency' in fundraising and charitable activity.¹²

However, fundraising regulation was usually first generated as a reaction to a particular scandal or problem, rather than designed as a proportionate policy response aligned with existing laws. Most jurisdictions have amended their laws piecemeal over the years. The essential structure of the original legislation remains intact: Western Australia's law still refers to World War II as the 'present war'.¹³ The most recent full scale repeal and rewrite happened in the Australian Capital Territory – 15 years ago. Unsurprisingly, our research shows that 'there is no pattern or inherent logic to the regulatory regimes, which have largely resulted from political compromise or to address specific mischief at a particular moment in time, despite the fact that 'the lack of consensus...appears not to be driven by any substantive differences of an ideological nature'.¹⁴

c) Our view on a solution

We have argued for some time now that fundraising itself does not need to be specially regulated. Only the 'mischiefs' associated with fundraising need to be regulated, and they can and should be managed under existing general laws.

¹⁰ For example, the Tasmanian legislation was said to be introduced to 'establis[h] standards of honesty and integrity in the collection of donations for charity' for the ultimate benefit of 'charities who rely on the generosity of the Tasmanian public to raise the funds that are needed for their important work': Minister for Justice and Industrial Relations, *Collections for Charities Bill 2000 (No. 86)* (Tas) Second Reading Speech, Tuesday 13 March 2001. New South Wales seeks to protect the public from 'deception': *Charitable Fundraising Act 1992* (NSW) s 3(c); cf *Fundraising Act 1998* (VIC) s 2A. Despite the advent of cost recovery in many government agencies, all Australian jurisdictions still do not charge for fundraising registration and annual return lodgement. Fee free licensing is enshrined in the Western Australian Act: *Charitable Collections Act 1946* (WA) s 14.

¹¹ Street collections in the Perth metropolitan area are only permitted on Fridays: *Street Collections (Regulation) Act 1940* (WA) s 3; Department of Mines, Industry Regulation and Safety 'Street Collections' (as modified 15 May 2018) <https://www.commerce.wa.gov.au/consumer-protection/street-collections>. Most jurisdictions set limits on acceptable times of day to call or visit homes: eg *Collections for Charities 2001* (Tas) s 9; *Charitable Collections Act 1966* (Qld) Part 4.

¹² '[P]roper management and administration' *Charitable Collections Act 2003* (ACT) s 6(a); 'proper and efficient' management and administration of fundraising campaigns *Charitable Fundraising Act 1992* (NSW) s 3(a); licensing committee must consider whether 'any other...body...being the holder of or an application for a licence' could 'more effectively or economically' carry out the purpose *Charitable Collections Act 1946* (WA) s 11(2).

¹³ *Charitable Collections Act 1946* (WA) s 5.

¹⁴ McGregor-Lowndes, Myles, Flack, Ted, Poole, Glenn, & Marsden, Stephen (2014) *The Australian Centre for Philanthropy and Nonprofit Studies*, QUT, Brisbane, pp 101, 120. Available at <https://eprints.qut.edu.au/73420/>

Modern governments understand that specialist legislation can create more compliance problems than it solves if general laws already exist to address the problem. Policy logic has also moved on, typically taking a risk-based approach to regulation and using broader bases of evidence. The New South Wales government began a review of its fundraising legislation in July 2016 on the assumption that the laws should be repealed unless compelling reasons could be found not to.¹⁵ While the review did not progress, likely due to the Inquiry under the *Charitable Fundraising Act 1991* into three RSL entities,¹⁶ that Inquiry eventually also said the current regime was not fit for purpose.¹⁷ It recommended (among other things) that ‘consideration be given to the introduction of a single, unified Australian statutory regime for the regulation of charitable fundraising’.¹⁸

In our view, there are three core types of fundraising mischief: public nuisance, fraud or misuse of funds, and accountability to donors and stakeholders. Public nuisance is already regulated by state and local laws.¹⁹ Community norms about nuisance vary from place to place and should be dealt with by local laws that take these variations into account.

Fraud is an offence under state and federal criminal laws.²⁰ The Australian Consumer Law (ACL) already largely applies to fundraising and addresses misleading and deceptive conduct.²¹ So far as populist notions of ‘overhead’ and commercial fundraisers are concerned, evidence shows that these are not useful or appropriate subjects of specific regulation, and can in fact produce perverse incentives for nonprofits to manipulate financial information or under-invest in appropriate administrative capacity.²²

¹⁵ Note that the *Charitable Fundraising Review, Discussion Paper* of July 2016 published by the New South Wales Department of Finance, Services and Innovation is no longer available online from government sources, but can be read as part of the Justice Connect submission on the paper, at https://www.nfplaw.org.au/sites/default/files/media/Justice_Connect_NFP_Law_response_and_Charitable_Fundraising_Act_Discussion_Paper.pdf. See especially pp 11-12 of the Discussion Paper.

¹⁶ State of New South Wales Department of Finance, Services and Innovation through the Inquiry under the *Charitable Fundraising Act 1991* (2018) *Report of the Inquiry under the Charitable Fundraising Act 1991 into The Returned and Services League of Australia (New South Wales Branch), RSL Welfare and Benevolent Institution and RSL LifeCare Limited*, available at https://www.finance.nsw.gov.au/sites/default/files/inquiry_report_cfa.pdf.

¹⁷ Ibid, chapter 13.2.

¹⁸ Ibid, p 544, Recommendation 14.8.

¹⁹ E.g. *Summary Offences Act 2005* (Qld) s 6(2)(b): ‘A person commits a public nuisance offence if...the person’s behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public’, incurring a maximum of 10 penalty units or six months’ imprisonment. Western Australia’s street fundraising legislation has only ever regulated the Perth metropolitan area; responsibility for preventing nuisance in areas outside Perth lies with local authorities: *Street Collections (Regulation) Act 1940* (WA) ss 2-3, Department of Mines, Industry Regulation and Safety ‘Street Collections’ (as modified 15 May 2018) <https://www.commerce.wa.gov.au/consumer-protection/street-collections>.

²⁰ E.g. *Crimes Act 1958* (VIC) s 81, incurring a maximum penalty of 10 years’ imprisonment; *Criminal Code Act 1995* (Cth) ss 134.2(1), 135.1(1), incurring a maximum of 10 and five years’ imprisonment respectively for fraud committed against Commonwealth agencies (like the ACNC).

²¹ See Commonwealth of Australia (2017) *A guide to the Australian Consumer Law: For fundraising and other activities of charities, not-for-profits and fundraisers*, available at https://www.accc.gov.au/system/files/guide_acl_fundraising-1.pdf. “Generally, if you: engage in a fundraising activity involving a supply of goods or services or are a for-profit professional fundraiser 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.” (p 3)

²² McGregor-Lowndes, Myles, Flack, Ted, Poole, Glenn, & Marsden, Stephen (2014) *Defining and Accounting for Fundraising Income and Expenses*, The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Brisbane, pp 43–44, 50–53, available at <https://eprints.qut.edu.au/73420/>.

The majority of charities will already be reporting their financial and operational information to the state incorporated association regulator, the Australian Charities and Not-for-profits Commission (ACNC), or both. South Australia and the Australian Capital Territory have amended their laws to do away with double reporting for fundraising charities registered with the ACNC.²³ Tasmania's *Collections for Charities Act 2001* has never required regular fundraising reports from charities.²⁴

Those organisations that do not report financially to the ACNC (whether because not registered,²⁵ or due to basic religious charity (BRC) status²⁶) or any company or incorporated association regulator would not typically engage in large-scale fundraising from strangers.²⁷ Minor amendments to the ACL and ACNC Act could address loopholes (if any concerns remain).

We submit that fundraising from members, affiliates, associates, attendees and other people who have a close relationship either with the organisation itself or a person involved in the organisation does not present the same transparency issues as fundraising from strangers. People close to an organisation have the ability to access accountability through their personal connections, usually expressed in formal and informal meetings. This is why a variety of exemptions and exclusions reflecting this distinction already exist in state and territory fundraising regulation (though different in each jurisdiction).²⁸ This distinction should be preserved in any adjustments to fundraising reporting obligations.

²³ *Red Tape Reduction Legislation Amendment Act 2017* (ACT), Part 4; *Statutes Amendment (Commonwealth Registered Entities) Act 2016* (SA), Part 3.

²⁴ The Minister has the power to request reports, but does not require annual reporting. This was a deliberate design feature, in order to maintain simplicity: Minister for Justice and Industrial Relations, *Collections for Charities Bill 2000 (No. 86)* (Tas) Second Reading Speech, Tuesday 13 March 2001.

²⁵ As state fundraising laws use a common law definition of 'charity', it is possible for an organisation with charitable purposes to choose not to be registered federally with the ACNC (or be ineligible for registration due to expanded definitions of charity in state legislation) but to be eligible for state or territory registration as a fundraising charity.

²⁶ BRC is a category of typically small, solely religious entity exempt from financial reporting and governance standards under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), due to a lack of government appetite for intervening in the governance of small religious bodies receiving little government assistance: ss 60-60, 45-10(5), 100-5, 205-35. The ACNC estimates that about 10% of registered charities are BRCs: McGregor-Lowndes, Myles & Crittall, Marie (2015) Basic Religious Charities. ACPNS Current Issues Information Sheet 2015/2, p 2, available at <https://eprints.qut.edu.au/83790/>. As at 6 August 2018, the ACNC's website ticker stated that its charity register sits at 56,319 charities; this would equate to about 5,632 BRCs.

²⁷ BRCS typically have revenue <\$250,000, and nearly 90% employ five or fewer paid staff: McGregor-Lowndes, Myles & Crittall, Marie (2015) Basic Religious Charities. ACPNS Current Issues Information Sheet 2015/2, p 4, 6, available at <https://eprints.qut.edu.au/83790/>. In our experience as practitioners, most charities will choose to register with the ACNC to access federal tax concessions, but some will consider not registering, due to concerns about privacy and the burden of reporting. Most DGR categories are linked to ACNC registration (the alignment will only increase with the proposed abolition of several separately administered Registers such as the Harm Prevention Charity register). Charities which are not incorporated under company or associations legislation, and are neither ACNC registered, income tax exempt nor endorsed as DGRs are likely to struggle with large scale fundraising due to the lack of recognised legitimising factors.

²⁸ Currently exempt: fundraising from family or close associates (South Australia); appeals within a workplace or within the membership of a nonprofit organisation (New South Wales and the Australian Capital Territory; Tasmania also exempts appeals to the membership); donations in lieu of funeral flowers (Victoria); religious organisations (Tasmania; Queensland, New South Wales and Victoria use authority to conduct marriages under the *Marriage Act 1961* (Cth) as a proxy to identify religions recognised by the community as mainstream and legitimate; South Australia and Western Australia define 'charitable purposes' for their legislation without including religious purposes so arguably exempt). Compare: *Charitable Collections Act 2003* (ACT) ss 7(3)(d)-

The next best option would be to use a single national regulatory scheme administered by one agency. This could involve constitutional issues regarding an appropriate head of Commonwealth power.²⁹

Our research suggests that there is not yet an international ‘best practice’ fundraising regulation model. It does not exist, as such. We are not aware of any OECD or common law country that considers itself to have adequately addressed fundraising regulation.

We specifically do not recommend adopting the United Kingdom’s approach of establishing an independent regulator to administer fundraising law. The new regulator is segmented from other nonprofit and commercial regulation and cost £1,824,613.³⁰ Its impact on giving is not yet determined but there has not been an increase in giving since the regulator’s establishment.³¹ If a new form of regulator were desired, the ACNC would be an appropriate place to house any commonwealth regulation, with the ACNC Commissioner being the regulator. If the ultimate goal of fundraising regulation is to increase funds available for charitable activities (through increasing public trust) then evidence of likely increase in giving should be established before imposing additional costs on government or the sector.

d) Issues important to fundraising reform not addressed by the Terms of Reference

i. Charitable gaming

We note at the outset that forms of charitable gaming like raffles and other games of chance are a key part of the fundraising picture for many charities and nonprofits. At present, charitable gaming is defined and regulated separately from charitable ‘fundraising’ by Australia’s states and territories.³² Any truly holistic attempt to deal with the compliance burden on charities and nonprofits will need to address charitable gaming at some point. However, given the Terms of Reference for this Select Committee, and in the practical interests of achieving meaningful improvements to the current fundraising regulatory framework, we will not address the issue of charitable gaming further in this submission.

(e); *Collections Act 1966* (Qld) s 6(2); *Charitable Fundraising Act 1991* (NSW) ss 5(3)(b), (d); *Charitable Collections Act 1939* (SA) ss 4, 6(2)(a); *Collections for Charities Act 2001* (Tas) s 4(b),(d),(j), *Collections for Charities Regulations 2001* r 4; *Fundraising Act 1998* (Vic) ss 3 (defines public place as excluding churches, chapels and land owned or occupied by religious organisations), 16(d), *Fundraising Regulations 2009* (VIC) reg 6; *Charitable Collections Act 1946* (WA) s 6.

²⁹ Aroney, Nicholas, & Turnour, Matthew (2017) *Charities are the New Constitutional Law Frontier*. Melbourne University Law Review, 41(2), pp. 446–492. Available via SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2987585.

³⁰ Fundraising Regulator (2018) *Annual Review 2017/2018*. Available at <https://www.fundraisingregulator.org.uk/sites/default/files/2018-07/Annual-review-2017-18.pdf>.

³¹ Department for Digital, Culture, Media and Sport (UK) (2018) *Community Life Survey: 2017-18*, at [4.6]. Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729446/Community_Life_Survey_2017-18_statistical_bulletin.pdf.

³² See *Lotteries Act 1964* (ACT) and *Unlawful Gambling Act 2009* (ACT); *Lotteries and Art Unions Act 1901* (NSW); *Public Lotteries Act 1996* (NSW); *Charitable and Non-Profit Gaming Act 1999* (Qld); *Lottery and Gaming Act 1936* (SA); *Gaming Control Act 1993* (Tas); *Gambling Regulation Act 2003* (Vic); and *Gaming and Wagering Commission Act 1987* (WA). The Northern Territory does not specifically regulate charitable fundraising, but does specifically regulate charitable gaming: *Gaming Control Act 1991* (NT).

ii. Fundraising by nonprofits that are not charities

The Queensland³³ and Victorian³⁴ fundraising laws also regulate fundraising for nonprofit purposes which are not charitable at law. Nonprofit, non-charitable fundraisers exist in significant numbers and include sports clubs, and appeals for specific persons rather than a general group of beneficiaries. Again, the Terms of Reference do not include this group, but they are no less deserving of red tape relief.

3. Responses to specific questions posed by Terms of Reference

a) Whether the current framework of fundraising regulation creates unnecessary problems for charities and organisations who rely on donations from Australian supporters

The current framework creates unnecessary problems due to:

- Duplication of fundraising compliance across jurisdictional lines for charities operating in more than one state or territory. Due to slightly different accounting, reporting, exclusions, exemptions, code of conduct, advertising and definitional requirements under each law, the same reports or compliance behaviours cannot be used across all jurisdictions.³⁵
- Duplication of compliance within the jurisdiction for charities incorporated as associations (reporting obligations are typically very similar, but slightly different under fundraising and incorporated association laws).³⁶
- Duplication of compliance obligations for charities registered with the ACNC in jurisdictions other than South Australia and the Australian Capital Territory.³⁷
- Lack of clarity in state and territory fundraising laws regarding the compliance obligations for charities using internet campaigns (including social media) to promote fundraising campaigns or using websites or social media to accept donations.³⁸ This is especially the case where charities accept donations from Australian jurisdictions that were not specifically targeted in a fundraising campaign and/or where they have no physical presence.

³³ *Collections Act 1966* (Qld) ss 5, 9, 'any community purpose'.

³⁴ *Fundraising Act 1998* (Vic) s 5 'not solely for the profit or commercial benefit'.

³⁵ See comparative tables in ACPNS (2012) Fundraising Records and Annual Returns – Information Requirements. ACPNS Issues Sheet (Unpublished) and ACPNS (2012) Annual Returns 2011. ACPNS Issues Sheet (Unpublished). Available at <https://wiki.qut.edu.au/display/nmlp/Issues+sheets+and+conference+papers>.

³⁶ For example, Queensland incorporated associations registered as fundraising charities must lodge two separate sets of audited accounts and annual returns with the Office of Fair Trading, which administers both Acts: compare *Collections Act 1966* (Qld) ss 31-32, and *Associations Incorporation Act 1981* (Qld) Part 6, Division 2. The *Collections Regulation 2008* (Qld) Schedule 2 allows payments over \$100 out of a collections proceeds account to be made by electronic funds transfer, yet the *Associations Incorporation Regulation 1999* (Qld) requires all such payments from an association bank account to be made by cheque: Schedule 5. Similar duplication occurs in every other jurisdiction apart from Tasmania. It is less problematic for ACNC-registered incorporated associations in South Australia and the Australian Capital Territory.

³⁷ We note that while the Australian Capital Territory exempts ACNC-registered charities entirely from both maintaining fundraising licensing and the annual return and accounting requirements, South Australia *deems* ACNC-registered charities to be licensed to fundraise upon notice to the state regulator. This is an important difference.

³⁸ Only Tasmania and South Australia specifically include the internet as a possible mode of appeal for support: *Collections for Charities Act 2001* (Tas) s 3; *Charitable Collections Act 1939* (SA) s 3, 6(5), 12(2)(b), applying Code of Practice. However, neither specify how this should be interpreted in the context of appeals not primarily based in or targeted at their jurisdiction.

b) Whether current fundraising laws meet the objectives that guided the decision to regulate donations

Current fundraising laws, as explored earlier in our submission, have been built on a historical legislative architecture that lacks clarity about the appropriate tradeoffs between twin goals of donor interests and non-interference with charitable activity. Laws cannot meet their objectives when the objectives are confused to begin with.

To the extent that the laws seek to promote charitable activity, this is frustrated by the burden of red tape imposed by the laws themselves and the assumption of most regimes that fundraising is episodic in nature, rather than continuous. To the extent that the laws seek to moderate intrusion of public fundraising into private life, they have not kept pace with contemporary street and digital fundraising practices.³⁹ This is somewhat inevitable given the focus of most of the legislation on regulating specifically described behaviours and practices, often in detail, and the impossibility of constantly re-regulating in response to new behaviours.

Many of the records kept by fundraising regulators to monitor whether donors' funds are being 'properly' applied are not accessible to the public: records of investigations or enforcement action, annual returns, governing rules or financial statements.

It is also highly likely that many charities conducting fundraising are not registered as fundraisers as they should be, given the discrepancy between Deductible Gift Recipient, Tax Concession Charity and ACNC registrations and the comparative numbers of registered fundraisers.⁴⁰

c) Whether current fundraising compliance regimes allow charities to cultivate donor activity and make optimal use of resources donors provide

See a) above. We note that the ban on 'excessive' payments to commercial fundraisers or 'unreasonable' expense to benefit ratios imposed by every jurisdiction are probably inconsistent with contemporary thinking about fundraising ratios.⁴¹ In addition, the silence of current laws on emerging practices and developments have the potential to cause cautious over-compliance and suffocate innovation.

³⁹ McGregor-Lowndes, Myles, Flack, Ted, Poole, Glenn, & Marsden, Stephen (2014) *Defining and Accounting for Fundraising Income and Expenses*, The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Brisbane, p 119, available at <https://eprints.qut.edu.au/73420>

⁴⁰ For example, in our 2011 research, we found that there were 13,964 fundraising registrations but 27,208 DGR registrations and 53,773 tax concession charities: ACPNS (2012) Registered Fundraising Organisations. ACPNS Issues Sheet (Unpublished), available at <https://wiki.qut.edu.au/display/nmlp/Issues+sheets+and+conference+papers>. The ACNC's analysis of Annual Information Statements from 2016 found that 70.1% of 51,166 reporting charities received income from donations and bequests: Powell, Abigail, Cortis, Natasha, Ramia, Ioana & Marjolin, Axelle (2017) *Australian Charities Report 2016*. Centre for Social Impact and Social Policy Research Centre, UNSW, pp 10-11, 54.

⁴¹ Flack, Ted, McGregor-Lowndes, Myles, Marsden, Stephen J., & Poole, Glenn (2014) Go your own way: reporting of fundraising in Australian charity financial statements. *Third Sector Review*, 20(2), pp. 9-25. See also Dr Flack's Masters thesis on this topic: Flack, Ted (2004) *The Mandatory Disclosure of Cost of Fundraising Ratios: Does it achieve the regulators' purposes?* QUT. The ACNC's position is that administration cost ratios are not a suitable proxy for a charity's performance or impact: Australian Charities and Not-for-profits Commission (2013) *Understanding charity work*. https://www.acnc.gov.au/ACNC/Pblctns/Factsheets/ACNC/FTS/Fact_administration.aspx

Layering seven different understandings of ‘charity’ on top of federal definitions makes it harder for any organisation to simultaneously stay within the lines of its constitution; the ACNC’s *Charities Act 2013* (Cth) charity yardstick; and the ATO’s income tax exemption requirement to apply income and assets ‘only for the purposes for which [it] was established’.⁴² All this, while also trying to facilitate donor requests about how to apply a gift (so far as legally and practically possible).

Fundraising law compliance failures incurring 60 penalty units or more also involve a breach of the ACNC’s Governance Standard 3: Compliance with Australian Law.⁴³ The ACNC then has grounds to revoke a charity’s registration⁴⁴ (as a consequence, the ATO is likely to revoke its tax concession endorsements).⁴⁵

d) The loss in productivity for the thousands of charities who try to meet the requirements of the seven different fundraising regimes

In our long experience, compliance with multiple state and territory regimes can be most difficult at the registration stage before fundraising begins, especially for a first-time or renewing multi-state fundraiser. Each regulator requires different forms, police checks, declarations and financial paperwork.

Queensland requires applicants to advertise their intention to register in two separate newspapers within a week of applying for registration, and wait a full month after advertising in case anyone objects to their registration.⁴⁶ If a charity registered in Queensland as a fundraiser changes its constitution, the change is of no effect (at least for the purposes of Queensland law) until lodged with and approved by the Queensland fundraising regulator.⁴⁷ Registration in Western Australia can take the longest, as the relevant Charitable Collections Advisory Committee meets only monthly.⁴⁸ If the cut-off for the committee papers is missed, it can be a full five weeks before a decision maker looks at the application.

Despite the recent reduction in legislative burden for ACNC-registered charities seeking to fundraise in South Australia and the Australian Capital Territory, charities must still formally notify the South Australian regulator of their ACNC registration and intention to fundraise before their fundraising is legal.⁴⁹

Financial and annual reporting is very burdensome for those raising funds across state borders, because each jurisdiction imposes different requirements. The National Standard Chart of Accounts project literally ‘could not map the requirements...into one uniform set of management accounts

⁴² *Income Tax Assessment Act 1997* (Cth) s 50-55(2)(b).

⁴³ *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) r 45.15(2)(b).

⁴⁴ *Australian Charities and Not-for-profits Commission Act 2012* (Cth) s 25-5(1)(a), (3)(b), 35-10(1)(a).

⁴⁵ See Subdivision 30-B, ss 50-5, 50-110 of *Income Tax Assessment Act 1997* (Cth); most DGRs and income tax exempt charities must maintain registration with the ACNC to be eligible for the relevant federal tax concession.

⁴⁶ *Collections Act 1966* (Qld) s 21, *Collections Regulation 2008* (Qld) rr 4, 6.

⁴⁷ *Collections Act 1966* (Qld) s 29(2)(b).

⁴⁸ Department of Mines, Industry Regulation and Safety ‘Apply for a charity licence’ (as modified 4 July 2018), available at <https://www.commerce.wa.gov.au/consumer-protection/apply-charity-licence-0>.

⁴⁹ *Collections for Charitable Purposes Act 1939* (SA) s 6(3).

because of the differences'.⁵⁰ The burden falls disproportionately on smaller charities, that are less likely to have the sophisticated software and systems which allow for simultaneous collection of information and generation of different styles of reports for each applicable fundraising regulator. ACNC records show that small charities (annual revenue <\$250,000) make up 40% of ACNC-registered charities operating in more than one state or territory.⁵¹

e) Whether the current frameworks for investigation and enforcement are the best model for the contemporary fundraising environment

Most fundraising regulators are not equipped with the personnel or financial resources to conduct systematic investigation or enforcement. Past ACPNS research in the 2010-2011 year found that collectively, Australian fundraising regulators were overseeing 13,964 fundraising registrations.⁵² Registrations had increased in all jurisdictions over the previous four years.⁵³ Across those same four years, a total of 703 complaints and 47 prosecutions under the fundraising laws occurred across Australia.⁵⁴

Meanwhile, the total number of staff employed in fundraising regulation administration across Australia was 16.95 people, full-time equivalent (FTE).⁵⁵ Staff in Tasmania handled the highest relative caseload, with 590 registered fundraisers administered by 0.05 FTE employees.⁵⁶ Queensland did not fare much better, with 1,534 registrations per FTE staff member.⁵⁷ This means that charities are filing many thousands of annual reports that are likely never read.

f) How Federal, State and Territory Governments could work together to provide charities with a nationally-consistent, contemporary and fit-for-purpose fundraising regime

If there is to continue to be a fundraising-specific regulatory regime (which we would not consider necessary), a single, national regime is required. Given the cross-border footprints of many large and medium sized charities and the importance of the internet and social media for even micro charities in garnering support, there is little benefit to multiple regimes, which make both compliance and enforcement more difficult.

⁵⁰ McGregor-Lowndes, Myles, Flack, Ted, Poole, Glenn, & Marsden, Stephen (2014) Defining and Accounting for Fundraising Income and Expenses, The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Brisbane, p 115, available at <https://eprints.qut.edu.au/73420>

⁵¹ McGregor-Lowndes, Myles & Crittall, Marie (2015) National Charities. ACPNS Current Issues Information Sheet 2015/1.

⁵² ACPNS (2012) Registered Fundraising Organisations. ACPNS Issues Sheet (Unpublished), available at <https://wiki.qut.edu.au/display/nmlp/Issues+sheets+and+conference+papers>.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

g) The appropriate donor-focused expectations and requirements that should govern fundraising regulation in the 21st century

In some cases, endorsing and enforcing donor expectations may not necessarily be the most useful regulatory response.

Some of the most important evidence from the federally-funded *Giving Australia 2005* and *Giving Australia 2016* research is that the general public differs widely in expectations of charity fundraising. In 2016, the most commonly cited reason for not donating to charity in the past three months was personal finances, rather than anything to do with charity behaviour.⁵⁸ Accountability concerns were important for many others, however.⁵⁹ Many donors wanted information about how their donation was being applied, but some also complained about receiving professionally designed information packs about donation destination ('advertising agencies, they must make megabucks from it').⁶⁰ Some donors withdrew support from charities when not thanked for their donation.⁶¹

It is also clear that what donors *say* about their expectations and what donors actually *do* are different. There is some evidence that donors are influenced by governance information and the percentage of income applied to cause in choosing whether to donate to charities, and if donating, which charities.⁶² Research consistently shows that most donors take no action to seek out this information, and many donors do not change their mind based on the information if they do have access to it.⁶³ This is probably because giving is motivated by a complex mix of factors, including a values match with an organisation, personal connections, how easy it is to donate, when and how the person is asked, tax incentives, and the 'inner glow' obtained from giving, as well as concerns about charity effectiveness.⁶⁴

It is helpful to distinguish between 'sophisticated' donors such as institutions or major givers; and the general public. Major givers who give \$10,000 or more view their donation as a personal, active

⁵⁸ McGregor-Lowndes, Myles, Marie Crittall, Denise Conroy and Robyn Keast with Christopher Baker, Jo Barraket and Wendy Scaife (2017) *Individual giving and volunteering*. Giving Australia 2016 report series commissioned by the Australian Government Department of Social Services. Brisbane, Queensland: The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Centre for Social Impact Swinburne, Swinburne University of Technology and the Centre for Corporate Public Affairs, p 26.

⁵⁹ Ibid.

⁶⁰ Ibid, p 27.

⁶¹ Ibid, p 26.

⁶² McGregor-Lowndes, Myles, Flack, Ted, Poole, Glenn, & Marsden, Stephen (2014) *Defining and Accounting for Fundraising Income and Expenses*, The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Brisbane, p 46, available at <https://eprints.qut.edu.au/73420/>; Madden, Kym M. & Scaife, Wendy A. (2008) *Keeping giving going: charitable bequests and Australians*. QUT, Brisbane, Queensland; O'Donoghue, Philip, McGregor-Lowndes, Myles, & Lyons, Mark W. (2006) Policy lessons for strengthening nonprofits. *Australian Journal of Social Issues*, 41(4), pp. 511-524.

⁶³ McGregor-Lowndes, Myles, Flack, Ted, Poole, Glenn, & Marsden, Stephen (2014) *Defining and Accounting for Fundraising Income and Expenses*, The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Brisbane, pp 44-49, available at <https://eprints.qut.edu.au/73420/> pp 44-49. In numeric terms, 2010 research into American donors found 'only 35% ever do research...of those, 75% spend [less than] 2 hours researching...and they are looking for simple facts and figures' Hope Consulting (2010) *Money for Good: The US Market Opportunity for Impact Investments and Charitable Gifts from Individual Donor and Investors*, p 19. Available at <http://www.midot.org.il/Sites/midot/content/File/money%20for%20good.pdf>

⁶⁴ McGregor-Lowndes, Myles, Flack, Ted, Poole, Glenn, & Marsden, Stephen (2014) *Defining and Accounting for Fundraising Income and Expenses*, The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Brisbane, pp 44-48, available at <https://eprints.qut.edu.au/73420/>.

investment in the charity, which they will take steps to monitor and manage.⁶⁵ They have different expectations to general individual givers and the power to set transparency conditions. They are not the focus of fundraising regulation.

It is important to recognise that some donor expectations can be at odds with the realities that charities experience when fundraising and pursuing their activities. It is fundamentally unrealistic for all charity fundraising workers to be volunteers, but this is a common donor expectation. *Giving Australia 2016* found that the majority of the general public would prefer that charities never approached them in public or by phone.⁶⁶ If this were mandated, it is unlikely that a proportionate drop in charity income and service delivery across Australia would be an acceptable cost of enforcing the public's wish.

h) How the Australian Consumer Law should apply to not-for-profit fundraising activities

As a mechanism for removing fundraising-specific regulation, the ACL should apply to nonprofit fundraising activity. We note that the issue of the ACL's application to charitable fundraising has been a subject of confusion since it was introduced in 2010.⁶⁷ Increased and coordinated public education may be required, even if no further changes to the law are made, given the new guidance released by the ACCC following the December 2017 ACL review that the ACL applies to almost all fundraising activities done in an organised or repetitive fashion, activities using professional fundraisers, or activities involving sale of goods or services.⁶⁸

i) What are the best mechanisms to regulate third party fundraisers and to ensure the culture of third party fundraisers matches community perceptions of the clients they work with

Third party fundraisers are private commercial businesses which are already bound by the ACL, privacy laws and public nuisance laws, among others. Those laws can and should be used to address problem behaviour. Their charity clients also have the power to impose additional conditions

⁶⁵ McGregor-Lowndes, Myles, Marie Crittall, Denise Conroy and Robyn Keast with Christopher Baker, Jo Barraket and Wendy Scaife (2017) *Individual giving and volunteering*. Giving Australia 2016 report series commissioned by the Australian Government Department of Social Services. Brisbane, Queensland: The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Centre for Social Impact Swinburne, Swinburne University of Technology and the Centre for Corporate Public Affairs; Madden, Kym M. & Scaife, Wendy A. (2008) *Good times and philanthropy: giving by Australia's affluent*. QUT, Brisbane, Queensland.

⁶⁶ McGregor-Lowndes, Myles, Marie Crittall, Denise Conroy and Robyn Keast with Christopher Baker, Jo Barraket and Wendy Scaife (2017) *Individual giving and volunteering*. Giving Australia 2016 report series commissioned by the Australian Government Department of Social Services. Brisbane, Queensland: The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Centre for Social Impact Swinburne, Swinburne University of Technology and the Centre for Corporate Public Affairs. More than 75% of those people asked to donate by telephone said they disliked it; more than 64% of people did not like being approached by street fundraisers.

⁶⁷ Commonwealth of Australia (2017) *Australian Consumer Law Review: Final Report*, page 72. Available at https://cdn.tspace.gov.au/uploads/sites/86/2017/04/ACL_Review_Final_Report.pdf.

⁶⁸ See Commonwealth of Australia (2017) *A guide to the Australian Consumer Law: For fundraising and other activities of charities, not-for-profits and fundraisers*, available at https://www.accc.gov.au/system/files/guide_acl_fundraising-1.pdf.

through their contractual relationship. No additional mechanisms are required, and would merely replicate the existing issues with fundraising regulation.

j) Whether a harmonised, contemporary fundraising regime could help in addressing concerns about the potential influence of foreign money on civil society and political debate in Australia

As already canvassed in the public debate about the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform Bill 2017* (Cth), popularly known as the ‘foreign donations bill’, many Australian charities benefit from foreign donations.

Fundraising regulation is currently focused on consumer protection, public nuisance and promoting genuine charitable activity (see discussion above at 2.b)). It is not intended for and largely does not cover applications for grants from governments, foundations or political parties.

Concerns about foreign money or advocacy are not part of the current fundraising regulatory regime. Specifically monitoring those concerns would introduce an entirely new purpose to fundraising regulation in Australia.

Charities are already required by the common law to pursue activities only in pursuit of their purposes. Those purposes must be consistent with Australian charity law. Their purposes must also be for the public benefit and not against public policy, as judged in the Australian environment. Registration with the ACNC and endorsement as income tax exempt by the ATO adds to the regulatory oversight of the pursuit of only legitimately charitable purposes.

If financial and operational reporting for charity fundraising were harmonised under a national regime, preferably taking advantage of existing reporting and transparency obligations under the ACL and ACNC Act, it could provide consistent information about what money is being raised where, from whom, by whom, and what it is spent on. The cost-benefit analysis of this reporting has already been the subject of public debate.

Finally, we note that anonymity is traditionally important to many donors for legitimate personal or privacy reasons and is much more common in Australia than, for example, the United States.⁶⁹ The ACNC exempts Private Ancillary Funds from publicly reporting certain information which would identify the individuals involved.⁷⁰ The impact of any additional reporting on donations should be considered in any proposed regulatory changes.

⁶⁹ McGregor-Lowndes, Myles, Marie Crittall, Denise Conroy and Robyn Keast with Christopher Baker, Jo Barraket and Wendy Scaife (2017) *Individual giving and volunteering*. Giving Australia 2016 report series commissioned by the Australian Government Department of Social Services. Brisbane, Queensland: The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Centre for Social Impact Swinburne, Swinburne University of Technology and the Centre for Corporate Public Affairs, pp 119 -120.

⁷⁰ *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) r 4, 40.10; Australian Charities and Not-for-profits Commission, ‘Withhold information from the ACNC Charity Register’, available at http://www.acnc.gov.au/ACNC/Manage/Reporting/Withhold/ACNC/Edu/Withhold_info.aspx.

k) The cost to the charity and not-for-profit sector, and the communities they serve, of postponing fundraising reform

Our experience is that a charity can easily spend two full working days setting up fundraising compliance and at least another working day annually lodging reports that fundraising regulators may never read. There are tens of thousands of charities doing this across Australia.⁷¹

The fundraising compliance costs of tens of thousands of charities spent over the 23 years since the Industry Commission said that ‘fundraising legislation is dated and needs reform’⁷² represent an enormous lost opportunity for investment in the Australian community. That opportunity has been lost due to reform inaction. It follows that there is considerable cost to the charity and nonprofit sector, and the communities they serve, of postponing fundraising reform. Implementing effective reform is likely to release millions of dollars annually in charity resources.

l) Any other related matters

Large charities with large fundraising campaigns are well aware of the potential problems for donors and the public associated with fundraising and the need to address these in the interests of sustaining public trust.

The absence of government action has prompted several non-government regulatory efforts in Australia. The Fundraising Institute of Australia (FIA) is the peak body for people and organisations who fundraise professionally. It has existed in some form since the late 1960s.⁷³ As well as offering continuing professional education, research and advocacy for its members, FIA monitors member compliance with its Code.⁷⁴

Key provisions include promises to “be open about the work they do, including how funds are raised, managed and disbursed”, “not accept a [d]onation where...they have a reasonable belief that that [d]onor is in vulnerable circumstances,” and “ensure all relevant parties in their [s]upply [c]hain are aware of...the Code and do not act in ways that could result in the [m]ember being in breach of the Code.”⁷⁵

The Public Fundraising Regulatory Association (PFRA), a member association of fundraisers (both the charities fundraising and their contractors) active in face to face fundraising was established in 2014. It imposes standards of fundraising behaviour on its 87 member organisations, with the ultimate goal of promoting public and local authority acceptance of face to face fundraising.⁷⁶

⁷¹ See above re: numbers of registered fundraisers. World Vision, at various times one of Australia’s largest fundraisers, has stated in the past that duplicated fundraising regulation compliance costs it in excess of \$1million every year – referenced by the Productivity Commission in its 2010 report, *Contribution of the Not-for-profit Sector*, p 138.

⁷² Industry Commission (1995) *Charitable Organisations in Australia*, Report No. 45 16 June 1995, p xxxvii, available at <https://www.pc.gov.au/inquiries/completed/charity>.

⁷³ Fundraising Institute of Australia (2018) ‘History of FIA’ <https://fia.org.au/about-fia/who-we-are/history-of-fia/>

⁷⁴ Ibid.

⁷⁵ The FIA Code can be read using Dropbox, via the webpage <https://fia.org.au/fiacode>.

⁷⁶ The PRFA website can be accessed at <https://www.pfra.org.au>.

Similar voluntary industry responses to increasing fundraising activity and donor expectations are also evident in other countries, like the UK.⁷⁷

4. Contributors

[Emeritus Professor Myles McGregor-Lowndes, OAM, Founding Director, ACPNS](#)

Myles McGregor-Lowndes OAM has devoted his career to researching and reforming nonprofit tax and regulation. He is a founding member of the ATO Charities Consultative Committee and the ACNC Advisory Board. In June 2003, Myles was awarded a Medal of the Order of Australia for service to the community by providing education and support in legal, financial and administrative matters to nonprofit organisations. He is an Honorary Member of the Fundraising Institute Australia and a founding Director of Australian and New Zealand Third Sector Research Limited. Myles continues to contribute to ACPNS research as well as consulting at Paxton-Hall Lawyers in Brisbane.

[Associate Professor Wendy Scaife, Director, ACPNS](#)

Wendy Scaife has worked in, studied and taught philanthropy and fundraising for 29 years and presents internationally on these topics. Her 16 years of work at ACPNS spans the cause/giver spectrum, including national project leadership of *Giving Australia*, book chapters on giving in Australia, and a comparison of fundraising in 26 countries. Prior to joining ACPNS, Wendy was a state CEO and national Deputy CEO of a major health nonprofit.

Wendy is a Fellow of Fundraising Institute Australia and a Fellow of the Public Relations Institute of Australia. She serves on the Editorial Boards of the International Journal of Nonprofit and Public Sector Marketing and *Generosity*. She received a QUT Vice-Chancellor's Performance Award in 2016 and a Vice-Chancellor's Excellence Award in 2017.

[Ms Rachel Sloper](#)

Rachel Sloper is a qualified lawyer with a career interest in the third sector and consumer legal education. She worked at Neumann & Turnour Lawyers from 2012 to 2016 advising charities and nonprofits on compliance and structuring issues, including fundraising regulation. She has also served as a company secretary for an aged care and disability services provider.

Rachel has volunteered as a door-to-door fundraiser and on numerous committees for small associations and religious groups. She has worked as a Research Assistant for ACPNS periodically from 2010 to 2018.

[Dr Matthew Turnour, Lecturer, ACPNS](#)

Matthew Turnour teaches ethics and governance as a sessional lecturer and researcher with ACPNS. He has been a lawyer in private practice for over 30 years and is currently the Chairman of Neumann & Turnour Lawyers, a law firm with an expertise in charity and nonprofit matters.

Matthew has contributed to the development of law for civil society not only in Australia, but also in New Zealand, England and Wales, and the People's Republic of China. In 2017, he was appointed to the panel charged with the five-year ACNC legislation review for the federal parliament. He is an ongoing member of the ACNC's Professional User Group.

He was Chair of the Queensland Law Society's Not for Profit Law Committee, Deputy Chair of the Law Council of Australia's Charities and Not-for-profits Committee and was a Director of the

⁷⁷ For example, the Commission on the Donor Experience: <https://www.donor-experience.com/Pages/Category/about-us>.

Australasian Charity Law Association before retiring from all of those positions to take up the panel appointment for the ACNC legislation review.

Matthew is a Fellow of the Australian Institute of Company Directors and a Fellow of the Institute of Leaders and Managers. In 2017 he became the First Australian inducted into the International Mu Lambda Nu Honor Society by the Nonprofit Academic Council.

Schedule 1: Research and resources produced by ACPNS and its regular collaborators

Statistics about the nonprofit and charity sector

Resources discussing the characteristics and impact of nonprofits in Australia.

McGregor-Lowndes, Myles & Crittall, Marie (2015) [National Charities](#). ACPNS Current Issues Information Sheet 2015/1.

Drawing on ACNC AIS information (up to 31 October 2014), this factsheet gives statistics on national charities that operate across state and territory borders (and therefore, fundraising regimes) and the regulatory burden they face. It finds that most charities operated only in one state or territory, but of those operating in more than one, around 40% were small and 40% were large, meaning that the burden of cross-border regulation does not fall only on larger charities with greater resources.

McGregor-Lowndes, Myles (2014) [The Not for Profit Sector in Australia: Fact Sheet](#). ACPNS Current Issues Information Sheet 2014/4.

This fact sheet outlines aspects of the nonprofit sector in Australia, under the following headings: size; economic contribution; employment; volunteering; income; expenses; and philanthropy; and provides international comparisons on aspects including size, growth, economic contribution, giving, and workforce.

Fundraising and regulation statistics

Resources discussing numbers of organisations registered to fundraise and levels of donor activity (in terms of tax deductible donations). A reasonable conclusion is that not all organisations conducting fundraising are in fact compliant with the requirement to register.

McGregor-Lowndes, Myles (2014) Are we there yet? In Harding, Matthew, O'Connell, Ann, & Stewart, Miranda (Eds.) *Not-for-Profit Law*. Cambridge University Press, Cambridge, United Kingdom, pp. 358-386. [Note: not available freely online. We have supplied a copy to the Inquiry]

This chapter examines quantitative measures of the current regulatory compliance burden facing non-profit organisations in Australia as a benchmark for measuring progress over the coming years. It includes regulatory compliance estimates for fundraising.

ACPNS (2012) [Registered Fundraising Organisations](#). ACPNS Issues Sheet (Unpublished).

This sheet looks at the total number of fundraising registrations, government fundraising staff, complaints and prosecutions, as at 2012.

McGregor-Lowndes, Myles & Crittall, Marie (2018) [Tax-deductible giving in 2015-16](#). ACPNS Current Issues Information Sheet 2018/1.

This issues sheet summarises the deductible giving behaviour of Australians in 2015-16. The series is long running and tracks changes in the quantum of giving and profile of givers over time.

McGregor-Lowndes, Myles & Crittall, Marie (2017) [Tax-deductible giving in 2014-15](#). ACPNS Current Issues Information Sheet 2017/1.

McGregor-Lowndes, Myles & Crittall, Marie (2016) *Tax Deductible Giving in 2013-14*. ACPNS Current Issues Information Sheet 2016/1.

McGregor-Lowndes, Myles & Crittall, Marie (2015) *Tax deductible giving in 2012-13*. ACPNS Current Issues Information Sheet 2015/4. (Unpublished)

McGregor-Lowndes, Myles (2014) *Tax deductible giving in 2011-12*. Tax Deductible Giving in 2011-12: Current Issues Information Sheet 2014/1. (Unpublished)

Australian Centre for Philanthropy and Nonprofit Studies (2013) *Tax Deductible Giving in 2010 - 2011: ACPNS Current Issues Information Sheet 2013/1*. The Australian Centre of Philanthropy and NonProfit Studies, Brisbane, QLD.

McGregor-Lowndes, Myles & Pelling, Emma (2012) *An examination of tax deductible donations made by individual Australian taxpayers in 2009 – 10*. QUT, Brisbane. [Working Paper]

McGregor-Lowndes, Myles & Pelling, Emma (2011) *An examination of tax-deductible donations made by individual Australian taxpayers in 2008-09, ACPNS Working Paper 54*. QUT, Brisbane, Qld. [Working Paper]

McGregor-Lowndes, Myles & Hoffmann, Kristy (2010) *An examination of tax-deductible donations made by individual Australian taxpayers in 2007-08*. The Australian Centre for Philanthropy and Nonprofit Studies, Brisbane, Queensland. [Working Paper]

McGregor-Lowndes, Myles & Newton, Cameron J. (2009) *An examination of tax deductible donations made by individual Australian taxpayers in 2006-07*. [Working Paper]

McGregor-Lowndes, Myles & Newton, Cameron J. (2008) *An Examination of Tax Deductible Donations Made By Individual Australian Taxpayers in 2005-06*.

McGregor-Lowndes, Myles & Newton, Cameron J. (2007) *An Examination of Tax–Deductible Donations made by Individual Australian Taxpayers in 2004-05(with special section on the 2004 tsunami)*.

History and rationale of fundraising regulation and reform

These resources discuss the fundraising recommendations of the various inquiries into nonprofit law reform over the last 15 years. We note that since the publication of these resources, the following further inquiries have taken place:

- State of New South Wales Department of Finance, Services and Innovation through the Inquiry under the Charitable Fundraising Act 1991 (2018) Report of the Inquiry under the Charitable Fundraising Act 1991 into The Returned and Services League of Australia (New South Wales Branch), RSL Welfare and Benevolent Institution and RSL LifeCare Limited, available at https://www.finance.nsw.gov.au/sites/default/files/inquiry_report_cfa.pdf.
- Consumer Affairs Australia and New Zealand (2017) *Australian Consumer Law Review Final Report*.
- NSW Fair Trading (2016) *Charitable Fundraising Review Discussion Paper*. [access via Justice Connect:
https://www.nfplaw.org.au/sites/default/files/media/Justice_Connect_NFP_Law_response_and_Charitable_Fundraising_Act_Discussion_Paper.pdf]

We also note that South Australia (from 1 December 2016) and the ACT (from 1 July 2017) have introduced legislation to allow ACNC-registered charities to fundraise in their jurisdiction without

applying for a separate fundraising licence. In the ACT, ACNC-registered entities may fundraise without registering for a licence. In South Australia, entities must notify the state regulator of their intention to fundraise, after which they are deemed to be licensed and obliged to comply with the conditions of licensing.

South Australia has also removed separate 'entertainment' section 7 fundraising licences, with a section 6 licence being sufficient. Collection agents also are no longer required to be registered.

McGregor-Lowndes, Myles (2014) *Are we there yet?* In Harding, Matthew, O'Connell, Ann, & Stewart, Miranda (Eds.) *Not-for-Profit Law*. Cambridge University Press, Cambridge, United Kingdom, pp. 358-386. [Note: not available freely online. We have supplied a copy to the Inquiry]

This chapter examines quantitative measures of the current regulatory compliance burden facing non-profit organisations in Australia as a benchmark for measuring progress over the coming years. It includes regulatory compliance estimates for fundraising. It finds that, up to the 2011 Federal Treasury *Scoping Study for a National Not-for-Profit Regulator*, non-profit reform efforts have produced over 3,000 pages of government reports and over 4,500 written formal responses by the sector to those reports and inquiries. It also lists the history of fundraising law reform recommendations, which variously recommended nationally harmonised laws (though the preferred means for achieving this differed):

- the 1995 Industry Commission *Charitable Organisations in Australia* report;
- the 2008 Senate Standing Committee on Economics report *Disclosure Regimes for Charities and Not-for-Profit Organisations*;
- the 2010 Productivity Commission *Contribution of the Not-for-Profit Sector* report;
- the 2011 Federal Treasury *Scoping Study for a National Not-for-Profit Regulator*; and
- the 2012 Federal Treasury *Charitable Fundraising Regulation Reform: Discussion Paper and Draft Regulation Impact Statement*.

ACPNS (2012) [*Federal Inquiries and Fundraising*](#). ACPNS Issues Sheet (Unpublished).

This issues sheet examines the national nonprofit regulation inquiries that have made fundraising recommendations over the 15 years to 2012.

ACPNS (2012). [*Fundraising Legislation – Growth and Trends*](#). ACPNS Issues Sheet (Unpublished).

This issues sheet looks at the fundraising acts and regulations in each jurisdiction and their development to 2012.

McGregor-Lowndes, Myles (2010) *National proposals for reform of Australian Fundraising*, presented at the Ninth Conference of the International Society for Third Sector Research, 7-10 July 2010, Istanbul, Turkey (Revised, unpublished) [We have supplied a copy to the Committee]

This conference paper discusses the recommendations of recent state and federal inquiries in relation to fundraising regulation, paying particular attention to the underlying assumptions and theories (if any) supporting such recommendations. It also examines the relationship of these recommendations to Australia's two fundraising self-regulatory codes.

O'Donoghue, Philip, **McGregor-Lowndes, Myles, & Lyons, Mark W. (2006) [Policy lessons for strengthening nonprofits](#). *Australian Journal of Social Issues*, 41(4), pp. 511-524.**

This article discusses *Giving Australia 2005* data regarding donation behaviour by individual Australians, including reasons why donors choose to give to particular charities. Concerns about donations reaching their intended beneficiaries were cited by between 40% and 47% of respondents who chose not to give. The data also shows that donors are much more likely to give to causes or organisations they are already affiliated with. The article also explores the issue of a lack of understanding of charity operational costs.

Pages 13 – 17 of McGregor-Lowndes, Myles (2000) [Regulatory infrastructure for nonprofit organisations](#). QUT, Brisbane, QLD. [Working Paper].

This paper discusses the history of fundraising regulation and reform to 2000, including specific state based reforms in the 1990s.

What is 'fundraising'?

Chapter 2, McGregor-Lowndes, Myles, Flack, Ted, Poole, Glenn, & Marsden, Stephen (2014) [Defining and Accounting for Fundraising Income and Expenses](#). The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Brisbane. Available at <https://eprints.qut.edu.au/73420/>

This chapter examines existing sources of knowledge, both in Australia and internationally, about the meaning of 'fundraising' and how it ought to be accounted for and reported. It finds that there is no agreed definition of 'fundraising' in academic literature, the common law, or amongst fundraising professionals. 'Fundraising' often refers to an ever-changing mix of particular activities and transaction types, rather than any general uniting principles. This makes it difficult to regulate and difficult to accurately classify for accounting and reporting purposes.

Regulatory burden

McGregor-Lowndes, Myles (2014) Are we there yet? In Harding, Matthew, O'Connell, Ann, & Stewart, Miranda (Eds.) *Not-for-Profit Law*. Cambridge University Press, Cambridge, United Kingdom, pp. 358-386. [Note: not available freely online. We have supplied a copy to the Committee]

This chapter examines quantitative measures of the current regulatory compliance burden facing non-profit organisations in Australia as a benchmark for measuring progress over the coming years. It includes regulatory compliance estimates for fundraising under the laws as at 2014.

ACPNS (2012) [Annual Returns 2011](#). ACPNS Issues Sheet (Unpublished).

This issues sheet looks at the nature of annual returns in each jurisdiction as at 2012. We note that SA and the ACT have since streamlined reporting for those fundraisers registered with the ACNC, longer requiring separate financial reports or annual returns in addition to those lodged with the ACNC.

ACPNS (2012) [Fundraising Records and Annual Returns – Information Requirements](#). ACPNS Issues Sheet (Unpublished).

This issues sheet examines the legislative requirements for keeping records and information required for annual returns as at 2012. We note that SA and the ACT have since streamlined reporting for those fundraisers registered with the ACNC, longer requiring separate keeping of accounts or production of financial reports or annual returns in addition to a charity's obligations under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

Other obligations and regulator powers are maintained. For example, in SA, the Minister retains the power to require the production of records or documents connected with fundraising, and to give enforceable directions to apply fundraised money to a different, appropriate purpose if it is no longer possible to apply the money to the original purpose (section 16). The Minister also has the specific power to revoke an ACNC-registered entity's fundraising licence if donations have been 'mismanaged or misapplied'; 'excessive' commission or remuneration will be or has been paid to a fundraiser; or the proportion of fundraising proceeds actually applied towards charitable purposes is 'for any other reason inadequate'; as well as a general Ministerial discretion: see section 6(7), *Collections for Charitable Purposes Act 1939* (SA).

Exceptions and exemptions from fundraising regulation

ACPNS (2012) [Exclusions and Exemptions from Fundraising Regulation](#). ACPNS Issues Sheet (Unpublished).

This issues sheet examines the exemptions from fundraising regulation in each Australian jurisdiction as at 2012. It finds that exemptions are different and varied across each jurisdiction. For example, religious organisations proclaimed under the *Marriage Act 1961* (Cth) are exempted by NSW, VIC and QLD, and religious organisations generally in TAS; but only fundraising for specifically religious purposes in WA and SA. The ACT does not exempt religious organisations at all. Fundraising from family members and close associates is only specifically exempted by South Australia.

Exceptions also operate by way of the definition each jurisdiction gives to 'charitable'. For example, South Australia does not include educational purposes or protection of the environment in its definition of what constitutes 'charitable' fundraising (s 4 *Collections for Charitable Purposes Act 1939* (SA)). Queensland distinguishes between 'charitable' and 'community purpose' fundraising.

McGregor-Lowndes, Myles & Hannah, Frances (2011) [Fundraising Legislation in Australia: the Exemptions and Exceptions Maze](#). In *The Australian Centre for Philanthropy and Nonprofit Studies, Reforming Fundraising Regulation Conference, 19-20 April 2011, Brisbane, Australia*.

This paper discusses the points of similarity and difference between the fundraising regimes existing in the Australian states and territories as at 2011 (especially pages 20 – 31). It includes discussion of the differences between the definitions of 'charitable' (since 2011, these have not changed to adopt the 2013 federal *Charities Act* and its legislative definition). Mostly, exclusions and exemptions are triggered by specific activities rather than united principles, and seem to be the result of compromise with affected parties. Groupings of exemptions can broadly be categorised as: 'minor' or low dollar value fundraising; non-public internal fundraising within a workplace, association or school; regulation under other laws (for example, universities); religion; fundraising as a tool for promoting a for-profit business; and charitable gambling.

Particular activities and types of fundraising

ACPNS (2012) [Collection Boxes](#). ACPNS Issues Sheet (Unpublished).

This issues sheet examines the regulation of unattended and face to face fundraiser collection boxes in each jurisdiction as at 2012.

ACPNS (2012) [Clothing Bins and Bags](#). ACPNS Issues Sheet (Unpublished).

This issues sheet examines the regulation of clothing bins and bags as a part of fundraising in each jurisdiction as at 2012.

ACPNS (2012) [Participation of Children in Fundraising Appeals](#). ACPNS Issues Sheet (Unpublished).

This sheet examines the regulations relating to children being involved in appeals. New South Wales and the ACT have extensive conditions covering their involvement.

ACPNS (2012) [Web-based Appeals](#). ACPNS Issues Sheet (Unpublished).

This issues sheet considers provisions for web-based or internet fundraising in Australia as at 2012. In summary, there is very little fit-for-purpose regulation of online fundraising behaviour. Most jurisdictions indicate or imply that if an appeal may reach a person within their borders, even if based out of another Australian state or territory, a licence must be obtained (subject to the post-2012 changes for ACNC-registered charities).

ACPNS (2012) [Commercial Fundraisers and Consultants](#). ACPNS Issues Sheet (Unpublished).

This issues sheet outlines provisions for use of commercial fundraisers as at 2012. We note that South Australia has since stopped requiring separate licencing of paid collectors and commercial fundraisers. Paying street collectors is banned in metropolitan Perth unless specifically authorised in the permit.

Scaife, Wendy A., McDonald, Katie, & Smyllie, Susan (2011) [A Transformational Role: Donor and charity perspectives on major giving in Australia](#). The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Brisbane, Qld.

Major giving is a complex and interrelated set of cultural factors, personal interests, values and peer encounters. Major giving differs from smaller giving, being more about investment than support.

Madden, Kym M. & Scaife, Wendy A. (2008) [Keeping giving going: charitable bequests and Australians](#). QUT, Brisbane, Queensland.

This study surveyed over 1 000 charity donors (both those had included a planned gift in their Wills and those who had not), mainly in New South Wales and Queensland, to determine the specific drivers of why people choose to give charitable bequests.

Enforcement and penalties

ACPNS (2012) [Offences and Penalties under the Fundraising Legislation](#). ACPNS Issues Sheet (Unpublished).

This issues sheet examines the offences and penalties under fundraising legislation as at 2012.

Accounting and reporting

McGregor-Lowndes, Myles, Flack, Ted, Poole, Glenn, & Marsden, Stephen (2014) [Defining and Accounting for Fundraising Income and Expenses](#). The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Brisbane.

McGregor-Lowndes, Myles, Poole, Glenn, Flack, Ted, & Marsden, Stephen (2014) [Defining and Accounting for Fundraising Income and Expenses: Executive Summary: ACPNS Current issues Information Sheet 2014/2](#).

Flack, Ted, McGregor-Lowndes, Myles, Marsden, Stephen J., & Poole, Glenn (2014) [Go your own way : reporting of fundraising in Australian charity financial statements](#). *Third Sector Review*, 20(2), pp. 9-25.

ACPNS (2012) [The Use of Ratios to Regulate Expenses](#). ACPNS Issues Sheet (Unpublished).

Ryan, Christine M. & Irvine, Helen J. (2012) Accountability beyond the headlines : why not-for-profit organisations need to communicate their own expenditure stories. *Australian Accounting Review*, 22(4), pp. 353-370.

O'Connor, Matt, Ryan, Christine M. & Irvine, Helen J. (2011) [The Expenditure Efficiency of Australian International Aid Organisations](#). In *The Australian Centre for Philanthropy and Nonprofit Studies, Reforming Fundraising Regulation Conference*, 19-20 April 2011, Brisbane, Australia.

Non-profits have been criticised for a lack of accountability, with the issue of excessive fundraising and administration costs attracting ongoing media attention and government scrutiny. This paper uses the notion of accountability to examine non-profit expenditure efficiency, using a sample of 50 organisations from the international aid and development subsector. It finds a healthy allocation of expenditure to program, administration and fundraising activities.

Flack, Edmund Douglas (2007) [The role of annual reports in a system of accountability for public fundraising charities](#). PhD thesis, QUT.

Flack, Ted (2004) [The Mandatory Disclosure of Cost of Fundraising Ratios: Does it achieve the regulators' purposes?](#) QUT.

Donor expectations and behaviour

McGregor-Lowndes, Myles, Marie Crittall, Denise Conroy and Robyn Keast with Christopher Baker, Jo Barraket and Wendy Scaife (2017) [Individual giving and volunteering](#). Giving Australia 2016 report series commissioned by the Australian Government Department of Social Services. Brisbane, Queensland: The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Centre for Social Impact Swinburne, Swinburne University of Technology and the Centre for Corporate Public Affairs.

Scaife, Wendy A., McGregor-Lowndes, Myles, Barraket, Jo, & Burns, Wayne (2016) [Giving Australia 2016: Literature Review](#). Department of Social Services.

Scaife, Wendy A., McGregor-Lowndes, Myles, Barraket, Jo, & Burns, Wayne (2016) [Giving Australia: Literature Review Summary Report](#). Department of Social Services.

Silver, Natalie, McGregor-Lowndes, Myles, & Tarr, Julie-Anne (2016) Should tax incentives for charitable giving stop at Australia's borders? *The Sydney Law Review*, 38(1), pp. 85-120.

Scaife, Wendy A., McDonald, Katie, & Smyllie, Susan (2011) [A Transformational Role: Donor and charity perspectives on major giving in Australia](#). The Australian Centre for Philanthropy and Nonprofit Studies, QUT, Brisbane, Qld.

Scaife, Wendy A. (2010) Individuals in a mass market environment: Australian bequest donors seek better communication from charities. In Russell-Bennett, R & Rundle-Thiele, S (Eds.) *Connecting Thought and Action: proceedings of the 2010 International Nonprofit and Social Marketing Conference*, Faculty of Business, QUT, Brisbane, QLD, pp. 177-180.

Madden, Kym M. & Scaife, Wendy A. (2008) [Keeping giving going: charitable bequests and Australians](#). QUT, Brisbane, Queensland.

This study surveyed over 1 000 charity donors (both those had included a planned gift in their Wills and those who had not), mainly in New South Wales and Queensland. A majority of all respondents chose the charities they supported based on excellent reputation, a high proportion of income going to the cause, and being well managed. Many respondents were unsure of what they could or should expect from charities as a donor, but a majority wanted to be kept informed about how donations were used and given a choice about how charities communicated with them.

Madden, Kym M. & Scaife, Wendy A. (2008) [Good times and philanthropy : giving by Australia's affluent](#). QUT, Brisbane, Queensland.

Overview of research on giving by major givers – literature finds that driven by personal capacity (feeling financially secure) and personal moral values that lead them to look for ways to use their wealth to help the community. Like other givers, motivations mix altruistic with self-interested (tax deductions, family tradition).

Madden, Kym M. & Scaife, Wendy A. (2007) Corporate philanthropy: who gives and why? In Sargeant, Adrian & Wymer, Walter (Eds.) *The Routledge Companion to Nonprofit Marketing*. Routledge, Oxon, England, pp. 145-164.

Lyons, Mark W., McGregor-Lowndes, Myles, & O'Donoghue, Philip (2006) Researching giving and volunteering in Australia. *Australian Journal of Social Issues*, 41(4), pp. 385-397.

O'Donoghue, Philip, McGregor-Lowndes, Myles, & Lyons, Mark W. (2006) Policy lessons for strengthening nonprofits. *Australian Journal of Social Issues*, 41(4), pp. 511-524.

Fundraising behaviour by charities and NFPs

Scaife, Wendy A., McGregor-Lowndes, Myles, Barraket, Jo, & Burns, Wayne (2016) [Giving Australia 2016: Literature Review](#). Department of Social Services.

Scaife, Wendy A., McGregor-Lowndes, Myles, Barraket, Jo, & Burns, Wayne (2016) [Giving Australia: Literature Review Summary Report](#). Department of Social Services.

Silver, Natalie, McGregor-Lowndes, Myles, & Tarr, Julie-Anne (2016) Should tax incentives for charitable giving stop at Australia's borders? *The Sydney Law Review*, 38(1), pp. 85-120.

Madden, Kym M. & Scaife, Wendy A. (2007) Corporate philanthropy: who gives and why? In Sargeant, Adrian & Wymer, Walter (Eds.) *The Routledge Companion to Nonprofit Marketing*. Routledge, Oxon, England, pp. 145-164.

Overseas experience

Breeze, Beth & Scaife, Wendy A. (2014) [Encouraging Generosity: The practice & organisation of fundraising across nations](#). In *International Society for Third-Sector Research, ISTR Conference*, 22-25 July 2014, Muenster, Germany.

McGregor-Lowndes, Myles (2014) Are we there yet? In Harding, Matthew, O'Connell, Ann, & Stewart, Miranda (Eds.) *Not-for-Profit Law*. Cambridge University Press, Cambridge, United Kingdom, pp. 358-386. [Note: not available freely online. We have supplied a copy to the Committee]

Barber, Putnam (2012) ['Regulation of US Charitable Solicitations Since 1954'](#) *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 23(3), pp. 737-762.

Breen, Oonagh B. (2012) The Perks and Perils of Non-Statutory Fundraising Regulatory Regimes: An Anglo-Irish Perspective *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 23(3), pp. 763-790.

Phillips, Susan D. (2012) ['Canadian Leapfrog: From Regulating Charitable Fundraising to Co-Regulating Good Governance'](#) *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 23(3), pp. 808-829.

Earlier versions of these papers, presented in conference paper format at the 2011 Reforming Fundraising Regulation hosted by ACPNS, can be found here:

<https://wiki.qut.edu.au/display/nmlp/Issues+sheets+and+conference+papers>

Sidel, Mark (2011) [Diversifying and Strengthening Regulation of Fundraising and Charitable Solicitation in Asia: Recent Experience in India, China, Singapore, the Philippines, and Taiwan](#). In *The Australian Centre for Philanthropy and Nonprofit Studies, Reforming Fundraising Regulation Conference*, 19-20 April 2011, Brisbane, Australia.

Options for regulation

Aroney, Nicholas, & Turnour, Matthew (2017) Charities are the New Constitutional Law Frontier. *Melbourne University Law Review*, 41(2), pp. 446-492. Available via [SSRN](#).