



A submission to the:

Senate Select Committee on Charity Fundraising in the 21st Century

Prepared by:
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About **yourtown**

yourtown is a national organisation and registered charity that aims to tackle the issues affecting the lives of young people. Established in 1961, **yourtown**'s mission is 'to enable young people, especially those who are marginalised and without voice, to improve their quality of life'.

yourtown provides a range of face-to-face and virtual services to young people and families seeking support. These services include:

1. Kids Helpline, a national 24/7 telephone and on-line counselling and support service for 5 to 25 year olds with special capacity for young people with mental health issues;
2. intervention programs for young people at risk of early disengagement from formal education;
3. training programs, social enterprises and employment services which assist young people to secure employment;
4. training, mentoring and employment services for young Aboriginal and Torres Strait Islander people;
5. accommodation responses to young parents with children who experience homelessness and women and children seeking refuge from domestic and family violence;
6. young parent programs offering case work, individual and group work support and child development programs for young parents and their children;
7. Parentline, a telephone counselling service for parents and carers; and
8. therapeutic interventions for young children and infants who have experienced trauma and abuse or been exposed to violence.

yourtown is constituted as a Public Company Limited by Guarantee. Our organisation is currently one of the largest providers of charitable youth services in Australia, employing over 700 staff across four states. We currently have 50 service centres in 36 locations across Queensland, New South Wales, South Australia and Tasmania. Our service locations are prioritised to areas of high socio-economic disadvantage.

yourtown has a significant fundraising program. In calendar year 2017 **yourtown** received an income of \$63,725,819 derived from community support of **yourtown** Art Unions, donations and corporate giving. This places **yourtown** within the top 2,000 charities which collectively gather 79% of all charity income.

The costs of delivering our services are 60% covered by our own fundraising efforts and 40% through government fee for service contracts and grants. Consequently, our charitable fundraising program enables **yourtown** to deliver quality and effective services in areas where government funding has been traditionally limited either through supplementing government funding and/or the self-funding of innovative services. Self-funded programs include our Domestic Violence support service, homeless refuge supporting young parents and their children, parenting initiatives and predominantly funding Kids Helpline, Australia's only national tele-web counselling service to children and young people aged 5 to 25.

We are pleased to have the opportunity to share the insights we have gained from operating our extensive fundraising program over a number of decades to inform the future development of sensible reform in the legislation and regulation of charitable fundraising in Australia.

Introduction

It is our position that charities are massively undervalued by Australian governments. Charities funded by civil society are responding to the gaps in government funded service provision. In an age when governments' respond to community concerns regarding unmet social need by arguing that their income is finite, it is charities that are increasingly providing a safety net for citizens including children who are 'doing it tough'. This has been the case for almost 200 years of Australian history.

However the regulation of charities appears to start from a premise of mistrust being that the public must be safeguarded, rather than from a position of genuine regard for the impact made to society and enabling that impact to continue and flourish. This is evident in the amount of scrutiny applied to charities through an inordinate level of legislation and regulation designed and implemented by the nine Commonwealth, State and Territory jurisdictions. The legislation is inconsistent and variably implemented. The need to ensure compliance with this red tape is a significant overhead for national charities reducing their return from fundraising activities and subsequently the available income for service delivery. The over-regulation of charities disrespects the generosity of Australian people that give.

Furthermore, there has been very little change made as a result of the Charitable Fundraising Regulation reform review undertaken by the Australian Government in 2012. Despite a great many submissions, little real change was made.

It is our view that Commonwealth, State and Territory governments need to partner and co-design with charities a new legislative framework for the 21st Century. The current level of duplicious and inconsistent legislation needs to be reduced either through the harmonisation of legislation and regulation between jurisdictions or the transfer of powers and responsibilities regarding fundraising from the States to the Commonwealth Government.

Specific responses to individual clauses of the Select Committees Terms of Reference (TOR) will be provided

Recommendations:

I (a) That the Commonwealth Government lead discussions with COAG on the need to harmonise legislation or to require jurisdictions to recognise approvals provided by another and/or;

I, (b) That the Commonwealth Government initiate action to assume the primary legislator role with respect to national fundraising for the purpose of rationalising the current segmented and inconsistent state and territory legislation.

2. That the ACNC assumes the role of regulator in administering the proposed new consolidated national legislation framework.

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

National charities that operate across nine separate jurisdictions have a mountain of red tape to administer.

Outlined below are the current Acts, regulations and industry standards by which **yourtown** as a national entity must align. This includes those that apply to the registration and operation of a charitable art union. **yourtown's** primary income source for its services such as Kids Helpline is derived from the conduct of ten house charitable art unions and five car charitable art unions operated annually.

Queensland Legislation

- Charitable and Non-Profit Gaming Act 1999
 - Charitable and Non-Profit Gaming Regulation 1999
 - Charitable and Non-Profit Gaming Rule 2010
- Collections Act 1966
 - Collections Regulation 2008
 - Charitable Funds Act 1958

Victoria Legislation

- Gambling Regulation Act 2003
 - Gambling Regulations 2015
- Fundraising Act 1998
 - Fundraising Regulations 2009

New South Wales Legislation

- Lotteries and Art Unions Act 1901
 - Lotteries and Art Unions Regulation 2014
- Charitable Fundraising Act 1991
 - Charitable Fundraising Regulation 2015

Western Australia Legislation

- Charitable Collections Act 1946
 - Charitable Collections Regulations 1947
- Gaming and Wagering Commission Act 1987
 - Gaming and Wagering Commission Regulations 1988

South Australia Legislation

- Collections for Charitable Purposes Act 1939
- Lottery and Gaming Act 1936
 - Lottery and Gaming Regulations 2008

Australian Capital Territory Legislation

- Lotteries Act 1964

Tasmania Legislation

- Gaming Control Act 1993
 - Gaming Control Regulations 2014

Northern Territory Legislation

- Gaming Control Act
 - Gaming Control (Community Gaming) Regulations

Commonwealth Legislation

- Interactive Gambling Act 2001
 - Interactive Gambling Regulations 2001
- Competition and Consumer Act 2010
 - SPAM Act 2003
 - Privacy Act 1988

Australian Fundraising Codes of Practice

- FIA Code 2017 (Fundraising Institute of Australia)
- ADMA Code of Practice 2018 (Association for Data-driven Marketing and Advertising)
- AANA Code of Ethics (Australian Association of National Advertisers)

Furthermore the administration of this framework varies across jurisdictions. For example, what detail needs to be on an art union ticket, who can participate in an art union draw, how reportable net return is calculated i.e. either on the total return from the art union or the return from a particular state jurisdiction, highlights just a few of the current inconsistencies and contradictions in the legislation and regulation framework.

The preparation of duplicative permits consistent with inconsistent legislation and regulations across state and territory jurisdictions increases operational costs. Appendix I details the costs associated with the need to ensure compliance with the current legislative framework across the Commonwealth jurisdiction and the eight state and territory jurisdictions. It is our view that this cost totalling approximately \$240,000 per annum though necessary to ensure compliance with the current overdeveloped and segmented legislative framework is excessive and reduces the financial return from fundraising and the positive social impact from giving behaviour. For example, these monies could be better spent in supporting marginalised children and young people. \$240,000 could enable Kids Helpline counsellors to respond to an additional 2,963 telephone contacts from children and young people with 1,363 of these contacts most likely involving counsellors therapeutically supporting and responding to the concerns of children about mental health, suicide or self-harm.

The only way to streamline this legislative framework is to seek political agreement between the states and commonwealth to harmonise existing legislation and regulation between the nine separate jurisdictions or to transfer powers underpinning the regulation of fundraising to the Commonwealth Government. Efforts to harmonise legislation between Commonwealth and State Governments have a fraught history in Australia. Past attempts to do so on other issues highlights that harmonisation takes significant time with no guarantee of a successful outcome. The attempt to harmonise work place health and safety legislation in recent times is a case study in the difficulties of this process. Furthermore, the growing prominence of online gift giving such as 'crowd sourced funding' which transcends state boundaries calls for this issue to be dealt with

on a national basis. Consequently it is our view that the Commonwealth Government needs to become the sole legislator of national fundraising activities.

To avoid duplication an existing commonwealth statutory body with responsibilities for charitable organisations such as the Australian Charities and Not for Profits Commission (ACNC) needs to take responsibility for the oversight and regulatory administration of national fundraising activity.

Recommendation:

1 (a) That the Commonwealth Government lead discussions with COAG on the need to harmonise legislation or to require jurisdictions to recognise approvals provided by another and/or;

1, (b) That the Commonwealth Government initiate action to assume the primary legislator role with respect to national fundraising for the purpose of rationalising the current segmented and inconsistent state and territory legislation.

2. That the ACNC assumes the role of regulator in administering the proposed new consolidated national legislation framework.

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

The purpose of current fundraising legislation is to assure donors that their gift will be used for the public good they support and that overheads will not unduly devalue the gift. The legislation also seeks to promote community confidence concerning the charity sector.

As stated in the previous section the current federated structure of fundraising legislation places an unnecessary cost on community giving and needs to be reformed. The very nature of this federated legislation devalues the financial gift from donors.

Furthermore, in our experience the two current fundraising activities that undermine public confidence in charities are donors' interactions with 'guerrilla' fundraisers and the behaviour of overseas call centres. 'Guerrilla' fundraising is when citizens are stopped on the street by fundraisers seeking donations. These fundraisers are often engaged by third party fundraising companies.

Tele-marketing activities by overseas call centres are often uncompliant with Australian law and industry standards. Current legislation does not prohibit the activities of 'guerrilla' fundraisers and overseas based call centres and legislative strategies to end these practices should be a focus of deliberation for this Senate Committee's inquiry.

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

As stated, we believe that the current fundraising compliance regimes are already onerous and in this context we believe that any further regulation would be adverse to charities' abilities to engage and develop sustainable long term relationships with donors.

As a general principle, governments should not be regulating the relationship between charities and donors except to stop exploitation. Charities need to commit funds to marketing activities to acquire donors and this should not be curtailed by legislation.

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

As noted in our response to TOR (a), Appendix I outlines the additional staff and operational costs required to ensure compliance with existing legislation and regulation across the nine government and territory jurisdictions. In total **yourtown's** spends \$240,000 annually in operational fees, staff and compliance activities as a direct consequence of the current federated legislative framework governing fundraising in this country.

Only a national approach to fundraising legislation or the harmonisation of legislation and administrative processes will significantly reduce this excessive administrative cost.

A further antiquated feature of state based fundraising legislation is that permits to undertake fundraising such as an art union are event based. **yourtown** operates 15 charitable art unions annually. Current legislation requires **yourtown** to seek 15 individual permits across all of the eight different state and territory jurisdictions with the same regulating authorities to operate. It would be more efficient and cost effective for state and territory jurisdictions to accept the principle that approval from one jurisdiction would lead to automatic approvals in all other jurisdictions.

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

It is our position that current investigation and enforcement models are inadequate for the modern fundraising operational environment. These models are state based and have been designed for traditional fundraising activities such as direct marketing and 'door-knock' appeals. As previously noted, modern fundraising is increasingly linked to online forms of gift giving such as crowd sourced funding, online national campaigns such as the 'Big Freeze' events and social media appeals. These forms of charitable fundraising transgress state boundaries and subsequently would be more adequately governed at a national level.

Consequently and in the spirit of reducing unnecessary government duplication it is our view that the ACNC should be provided with the enforcement responsibility consistent with its current role of being the regulator and watchdog of nationally incorporated charities.

TOR (f) How Federal, State and Territory Governments could work together to provide charities with a nationally-consistent, contemporary and fit-for-purpose fundraising regulation in the 21 century

In summary our position is that Federal, State and Territory Governments need to collaborate to action the following to develop a fit-for-purpose regulatory framework:

- (a) All powers relating to the registration and regulation of national charitable organisations and their fundraising should be transferred to the Federal Government
- (b) All current state and territory legislation and regulation pertaining to national charities and their fundraising should be repealed and be replaced by a national framework
- (c) The ACNC should be the sole register and regulator of national charities in Australia.

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

It is our view that donors want to give to causes to which they are emotionally engaged/aligned and in doing so wants assurance that their donation ultimately makes a difference. In line with that we maintain that the core principles which should guide the development of fundraising regulations include:

- (a) Promotion of public transparency about third party commissions related to fundraising.

Third party fundraising practices can have a deleterious impact on the reputé of the charitable sector. Consequently to promote public trust and confidence in the sector we believe strongly that this activity should be regulated. Regulation should place emphasis on the sponsoring charity to take primary responsibility for the conduct of third party fundraisers and for the disclosure of any commissions paid.

- (b) The impact of the charity's work

Currently there is no obligation on charities to measure the impact of their work in achieving the cause to which they are committed. For example, the current annual returns to the ACNC are very general in nature and do not request any information on the achievements of charities or about the impact of their work. **yourtown** believes that

making it a mandatory requirement for charities to provide an evidence based measure of the impact of their services is a critical requirement that will act to strengthen the accountability of charities to donors, government and the general community.

TOR (h) How the Australian consumer law should apply to not-for-profit fundraising activities

yourtown's charitable fundraising activities are already subject to Australian Consumer Law as they are undertaken in an 'organised and continuous way' It is our view though that Australian Consumer Law provisions applicable to the charity sector should be enforced by the ACNC.

TOR (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

It is our view that an effective regulatory response would be to promote greater transparency about the relationships between third party fundraisers and the sponsoring charity.

For example there should be public disclosure of the commissions charged by third party fundraisers, the employment conditions of fundraisers and the fundraising activities undertaken.

TOR (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

Commonwealth Government's proposed policy responses to these issues have to date been indiscriminate and if enacted would have been detrimental to the civic role played by charities in Australia's democracy.

yourtown was a participant in the recent consultation concerning the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill. In that paper it was proposed that donations or other financial support from overseas sources would need to be identified and separately recorded, audited and declared. **yourtown** receives about \$30,000 of support from Australian citizens living and working abroad in each art union draw. These citizens have usually been long term supporters of **yourtown** prior to taking up overseas employment. It is our view that the enforcement of regulations proposed in the Bill particularly concerning the verification that donations originated from Australian citizens would if implemented be disproportionate, unnecessary and lead to further increases in the costs of fundraising.

That paper also proposed restrictions on charities that engaged in advocacy activities. However the definition of what would be considered as an advocacy activity was so broad that if applied it would have muzzled charities' legitimate right to advocate on issues impacting their mission. The paper proposed that a political activity would be defined as one where advocacy was undertaken on an issue that was a matter of debate in an election campaign or one where it was likely to become a concern. It was also proposed that this definition could be retrospectively applied to issues advocated for my charities that at the time had not been specifically raised in an election context but where subsequently this had become so. This paper proposed that if a charity engaged in political activity as generally defined by these proposals and expended \$100,000 or more in any financial year then various provisions would be enacted that would require the charity to register as a 'political campaigner'. This would place yet another layer of red tape and costs on charities effectively limiting future advocacy work.

It is our view that advocacy on issues impacting mission is a key responsibility of charities that strengthens the democratic fabric of our community. Charities have long been prominent advocates for vulnerable and disadvantaged groups in our society, and have called for and achieved notable changes in political directions, policies and interventions for public benefit.

Through carrying out our work and delivering services to our clients, we develop unique insights into the experiences of our service users, as well the challenges and barriers they encounter, and the facilitators and tools that can help them prosper. This evidence helps inform the design of effective public policy and interventions to best support these groups, and ultimately ensures that public funds are most efficiently used. This activity should not be subject to government restriction or oversight.

In summary we believe that past and current policy responses to the concerns about the influence from foreign funds on Australian political debate would have in fact damaged our democratic civil society by restricting community debate and increasing the cost profile of fundraising. This needs to be considered in any legislative reform of fundraising activities moving forward.

Appendix I: Estimated Compliance Costs across the Nine Jurisdictions

Draw Costs – 15 draws at \$500 Some jurisdictions require an independent witness to be present at the draw.	\$7,500
Lottery Audit Costs – for 2 jurisdictions – Victoria and South Australia Variations between jurisdictions some require financial audits after each lottery while others require annual audited returns.	\$9,000
Administration Costs for Application and Acquittal of Permits SA, NSW, VIC and ACT all require individual lottery permit applications while QLD requires an annual application. All applications require different content.	\$50,000
Collection Acts Financial Returns Some jurisdictions require annual fundraising returns excluding the art union and in some cases they are required to be reviewed by an independent financial auditor.	\$7,500
NSW Acquittal Return NSW acquittals require the return to be separated into NSW and national fundraising.	\$6,000
Legislative Requirements – Prizes States have varying requirements regarding engineer reports and independent prize valuations.	\$30,000
Legislative Requirements – Advertising Multiple versions of press / radio / TV advertising to meet terms and conditions requirements of each state jurisdiction.	\$20,000
Collateral Legislative Administration Ensuring printed material meets all of the various state based requirements – includes cost of proofing and regular researching of changes to these requirements.	\$30,000
Banking – Separate Victorian Bank Account Administrative Cost of Maintaining a Victorian Bank account for Victorian fundraising.	\$5,000
Management Cost Maintaining currency with all of the various jurisdictions	\$60,000
Permit and Collections Costs (as above)	\$15,000
TOTAL	\$240,000 per annum