

# Chapter 3

## Current legislative and regulatory frameworks governing charitable fundraising

### Introduction

3.1 This chapter describes the current legislative and regulatory frameworks governing charity fundraising at the Commonwealth, state and territory levels. The chapter also outlines the definition of a 'charity' in the Commonwealth *Charities Act 2013*, and briefly discusses industry self-regulatory codes.

### Commonwealth legislation

3.2 Fundraising activities for charities are primarily subject to state and territory government regulation, although Commonwealth and local government regulations are also relevant.<sup>1</sup> Fundraising regulation, at both the Commonwealth and state and territory levels, is concerned with accountability, governance and transparency, and includes requirements for registration and reporting.<sup>2</sup>

3.3 As outlined by the Australian Centre for Philanthropy and Nonprofit Studies (ACPNS, QUT), a charity's purpose must align with the law on charities:

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.<sup>3</sup>

3.4 At the Commonwealth level, there are two key pieces of legislation that govern charitable fundraising: the *Charities Act 2013* (Charities Act) and the Australian Consumer Law.

### *The Charities Act*

3.5 The Charities Act aims to 'provide clarity and certainty as to the meaning' of 'charity' and 'charitable purpose'.<sup>4</sup> At present, its definitions only apply to where the terms 'charity' and 'charitable' are used in federal legislation, although there was some hope that the definitions it outlined could be used uniformly across Australia.<sup>5</sup>

3.6 The Charities Act defines a charity as follows:

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- 1 Mr Nicholas Berger-Thomson, Senior Adviser, Individuals and Indirect Tax Division, Revenue Group, Department of the Treasury, *Committee Hansard*, 7 November 2018, p. 47.
  - 2 Ms Alice Macdougall, Deputy Chair, Charities and Not For Profits Committee, Law Council of Australia, *Committee Hansard*, 29 October 2018, p. 9.
  - 3 Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. 16.
  - 4 *Charities Act 2013* (Cth), Preamble.
  - 5 G.E. Dal Pont, *Law of Charity*, 2<sup>nd</sup> edition, LexisNexis Butterworths, Chatswood, New South Wales, 2017, p. 33.

'Charity' means an entity:

- (a) that is a not-for-profit entity; and
- (b) all of the purposes of which are:
  - (i) charitable purposes that are for the public benefit; or
  - (ii) purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes of the entity covered by subparagraph (i); and...
- (c) that is not an individual, a political party or a government entity.<sup>6</sup>

3.7 'Charitable purposes' as outlined in paragraph (b)(i) means any of the following:

- (a) the purpose of advancing health
- (b) the purpose of advancing education;
- (c) the purpose of advancing social or public welfare;
- (d) the purpose of advancing religion;
- (e) the purpose of advancing culture;
- (f) the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;
- (g) the purpose of promoting or protecting human rights;
- (h) the purpose of advancing the security or safety of Australia or the Australian public;
- (i) the purpose of preventing or relieving the suffering of animals;
- (j) the purpose of advancing the natural environment;
- (k) any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j);
- (l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:
  - (i) in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or
  - (ii) in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.<sup>7</sup>

3.8 The Commissioner of the Australian Charities and Not-for-profits Commission (ACNC), Dr Gary Johns, emphasised that despite the definition outlined in the Charities Act, there is no 'single definition' of what a charity is across the

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6 *Charities Act 2013* (Cth), s 5.

7 *Charities Act 2013* (Cth), s 12.

various jurisdictions in Australia 'and we'll be a long time waiting for that, I suspect'.<sup>8</sup> This was echoed by Mr Alex Milner from the Law Institute of Victoria, who noted that the states and territories are not bound to the definition of a charity contained in the Charities Act.<sup>9</sup>

### ***Australian Consumer Law (ACL)***

3.9 The Australian Consumer Law (ACL) is the national law for fair trading and consumer protection.<sup>10</sup> Its provisions prohibit misleading conduct, false representation and unconscionable conduct. Enforcement responsibilities for the ACL are shared between the Australian Competition and Consumer Commission (ACCC) and state and territory fair trading agencies.<sup>11</sup> The Public Fundraising Regulatory Association explained that the 'ACL effectively creates a macro-structure for the regulation of fundraising, whilst not removing ultimate state control over how the ACL is enforced in their respective jurisdiction[s]'.<sup>12</sup>

3.10 Mr Scott Gregson from the ACCC described the functions of the ACL:

The consumer law contains general provisions prohibiting misleading conduct, false representations and unconscionable conduct. It also contains more specific prohibitions, such as those dealing with debt collection, unsolicited consumer agreements and unfair contract terms.<sup>13</sup>

3.11 Dr Lisa O'Brien from The Smith Family explained that the ACL's provisions apply 'to certain activities of charities, notably, fundraising in specific circumstances'. She also noted that the ACL is 'a regulatory framework enforced jointly by all Australian governments', and therefore applicable across jurisdictions.<sup>14</sup> Responsibility for administering the details beneath the framework outlined in the ACL rests with state and territory governments.<sup>15</sup>

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8 Dr Gary Johns, Commissioner, Australian Charities and Not-for-profits Commission, *Committee Hansard*, 30 October 2018, p. 18.

9 Mr Alex Milner, Member, Not for Profit and Charities Law Committee, Law Institute of Victoria, *Committee Hansard*, 29 October 2018, p. 43.

10 The ACL is located in schedule 2 of the *Competition and Consumer Act 2010*. See also Commonwealth of Australia, *A Guide to the Australian Consumer Law for Fundraising and Other Activities of Charities, Not-for-profits and Fundraisers*, December 2017, p. 2.

11 Mr Scott Gregson, Executive General Manager, Mergers and Authorisation Review Division, Australian Competition and Consumer Commission, *Committee Hansard*, 7 November 2018, p. 23.

12 Public Fundraising Regulatory Association, *Submission 25*, p. 6.

13 Mr Scott Gregson, Executive General Manager, Mergers and Authorisation Review Division, Australian Competition and Consumer Commission, *Committee Hansard*, 7 November 2018, p. 23.

14 Dr Lisa O'Brien, Chief Executive Officer, The Smith Family, *Committee Hansard*, 30 October 2018, p. 28.

15 Dr Gary Johns, Commissioner, Australian Charities and Not-for-profits Commission, *Committee Hansard*, 30 October 2018, p. 15.

3.12 In December 2017, the ACCC published *The guide to the Australian Consumer Law for fundraising and other activities of charities, not-for-profits and fundraisers* (the Guide), which was developed with the state and territory offices of fair trading and consumer protection and the Australian Securities and Investments Commission.<sup>16</sup> The Guide is intended to help the charities, not-for-profit and fundraising sectors to 'better understand their obligations under the ACL, particularly in relation to fundraising'.<sup>17</sup>

3.13 The Guide specified the circumstances in which fundraising is subject to the provisions of the ACL:

Whether the ACL applies to a particular fundraising activity generally depends on whether that activity occurs in 'trade or commerce'. If it does, then you should expect the ACL to apply to that activity...

[F]undraising activities are also likely to be captured by other State, Territory and Commonwealth laws that govern charities, not-for-profit entities and fundraisers, including laws tailored to those sectors.<sup>18</sup>

3.14 The Guide explained that in general, fundraising activities are classed as being in trade or commerce, and therefore are required to meet certain obligations under the ACL, if they:

- involve the supply of goods or services;
- involve fundraising in an organised, continuous and repetitive way; or
- if the body for which the activities are carried out is a for-profit professional fundraiser.<sup>19</sup>

3.15 Ms Kate Lynch from the Department of the Treasury outlined what this means for charitable fundraising activities that are classed as being in trade or commerce:

This means that you cannot mislead, deceive or engage in unconscionable conduct, whether it's in relation to a pure donation of money or in selling a good where the purchase provides funds for the charity to use.<sup>20</sup>

3.16 Ms Lynch stated that the ACL does not 'provide for sector-specific regulation, such as requiring a person to be licensed before they can conduct fundraising activities

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16 Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury, *Committee Hansard*, 7 November 2018, p. 47.

17 Commonwealth of Australia, *A Guide to the Australian Consumer Law for Fundraising and Other Activities of Charities, Not-for-Profits and Fundraisers*, December 2017, p. 2.

18 Commonwealth of Australia, *A Guide to the Australian Consumer Law for Fundraising and Other Activities of Charities, Not-for-Profits and Fundraisers*, December 2017, p. 3.

19 Commonwealth of Australia, *A Guide to the Australian Consumer Law for Fundraising and Other Activities of Charities, Not-for-Profits and Fundraisers*, December 2017, p. 3.

20 Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury, *Committee Hansard*, 7 November 2018, p. 48.

...<sup>21</sup> Fundraising licensing requirements and specific conduct obligations are covered in the laws of the states and Australian Capital Territory, with the Northern Territory having no laws specifically regulating the charitable sector (see below).

3.17 Mr Gregson from the ACCC explained some of the limitations of the ACL in relation to the regulation of charities. For example, because of the ACL's focus on trade and commerce, its application may not cover certain aspects of charitable activities and fundraising that do not occur in these areas. Further, the ACL's penalty provisions do not apply to many situations that do not involve the supply of a good or service, including, potentially, some donations.<sup>22</sup>

3.18 While the ACL is a single law, it has multiple regulators, including the ACCC and state and territory fair-trading organisations.<sup>23</sup> These are discussed below.

### **Commonwealth regulatory bodies**

3.19 The three major Commonwealth bodies responsible for regulating charitable fundraising are the ACNC, the Australian Taxation Office (ATO) and the ACCC. The ATO administers the main tax benefit for charitable donations, Deductible Gift Recipients status, while the ACCC administers the Australian Consumer Law, and the ACNC is responsible for administering charity registration, including the requirement that registered charities submit audited accounts and annual reports to the ACNC and adhere to a set of principles on good governance.<sup>24</sup>

#### ***Australian Charities and Not-for-profits Commission (ACNC)***

3.20 The ACNC was established in December 2012 by the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). The ACNC:

- registers organisations as charities;
- helps charities understand and meet their obligations through information, guidance, advice and other support;
- helps the public understand the work of the not-for profit sector through information, guidance, advice and other support;
- maintains a free and searchable public register so that anyone can look up information about registered charities;

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21 Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury, *Committee Hansard*, 7 November 2018, p. 48.

22 Mr Scott Gregson, Executive General Manager, Mergers and Authorisation Review Division, Australian Competition and Consumer Commission, *Committee Hansard*, 7 November 2018, p. 24. See also Mr Alex Milner, Member, Not for Profit and Charities Law Committee, Law Institute of Victoria, *Committee Hansard*, 29 October 2018, p. 44.

23 Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury, *Committee Hansard*, 7 November 2018, p. 51.

24 Public Fundraising Regulatory Association, *Submission 25*, p. 3; Mr Nicholas Berger-Thomson, Senior Adviser, Individuals and Indirect Tax Division, Revenue Group, Department of the Treasury, *Committee Hansard*, 7 November 2018, p. 49.

- maintains the Charity Passport online system (which charities can update through the Charity Portal) that government agencies can use to access information about charities;<sup>25</sup> and
- works with state and territory governments (as well as federal, state and territory government agencies) to develop a 'report-once, use-often' reporting framework for charities.<sup>26</sup>

3.21 The ACNC only regulates charities that have chosen to register with it—around 56 190 registered charities as at 3 July 2018.<sup>27</sup> It noted in its submission that 'many organisations undertaking fundraising in the community are not registered charities'.<sup>28</sup> While it is able to revoke a charity's registration, an action which, the ACNC Commissioner noted, is very rare, the ACNC is unable to retrieve money that the charity raised 'because that's a matter for state attorneys-general'.<sup>29</sup>

3.22 Mr Nicholas Berger-Thomson from the Department of the Treasury explained the regulatory functions of the ACNC in more detail:

At the Commonwealth level, the ACNC does not regulate the fundraising activities of charities; rather, registered charities have reporting obligations to the ACNC and must comply with a set of principles-based governance standards. There may be cases where a charity's fundraising practices raise questions about the adequacy of its broader governance arrangements, in which case the ACNC may decide to commence a compliance investigation. It's important to note that the ACNC has no jurisdiction to investigate or take action against not-for-profits that are not registered charities, and many organisations undertaking fundraising in the community are not registered charities.<sup>30</sup>

3.23 The ACNC also stated that it 'does not have a general jurisdiction to investigate concerns about fundraising activities and practices', and would usually refer concerns about fundraising practices to state and territory consumer affairs agencies.<sup>31</sup> However,

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25 Australian Charities and Not-for-profits Commission, *Report Once, Use Often: Charity Passport Guide for Government Agencies*, V1.3, September 2017, pp. 7 and 9.

26 Australian Charities and Not-for-profits Commission, *About us*, <https://www.acnc.gov.au/about> (accessed 7 December 2018); Justice Connect, *Submission 49*, p. 13.

27 Dr Gary Johns, Commissioner, Australian Charities and Not-for-profits Commission, *Committee Hansard*, 30 October 2018, p. 13; Australian Charities and Not-for-profits Commission, *Submission 8*, p. 2.

28 Australian Charities and Not-for-profits Commission, *Submission 8*, p. 3.

29 Dr Gary Johns, Commissioner, Australian Charities and Not-for-profits Commission, *Committee Hansard*, 30 October 2018, p. 18.

30 Mr Nicholas Berger-Thomson, Senior Adviser, Individuals and Indirect Tax Division, Revenue Group, Department of the Treasury, *Committee Hansard*, 7 November 2018, p. 47.

31 Australian Charities and Not-for-profits Commission, *Submission 8*, p. 3.

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...there may be cases where a charity's fundraising practices raises questions about the adequacy of its broader governance arrangements, in which case the ACNC may decide to commence a compliance investigation.<sup>32</sup>

3.24 The ACNC described other areas raised with the ACNC that are usually outside of its jurisdiction, including:

- concerns about aggressive fundraising;
- improper sharing of donor details;
- perceptions that charity fundraising practices are taking advantage of vulnerable donors;
- charities using false advertising; and
- complaints that charities are wasting money or using donated funds inefficiently.<sup>33</sup>

3.25 Witnesses expressed broad support for the ACNC. For example, Dr Lisa O'Brien, the Chief Executive Officer of The Smith Family, argued that the 'ACNC has been an effective regulator since its establishment'.<sup>34</sup> Ms Tania Burstin from mycause stated that:

Having the ACNC has really helped us a lot. Having a single source of truth, a single place to refer and a single point of trust has been really good for us.<sup>35</sup>

3.26 This sentiment was echoed by Ms Lavanya Kala from Volunteering Australia, who stated:

The establishment of the ACNC, and the ACNC legislation, has been fantastic. It has been a really useful body as a charity regulator. In terms of reporting, it has been really great as well because you can access the ACNC website and all your information is there—all the reporting is in one place...<sup>36</sup>

3.27 However, Ms Vera Visevic, a Partner at Mills Oakley, noted the limitations of the ACNC's regulatory role, as the ACNC only regulates around 56 000 charities while there are about 600 000 not-for-profits in Australia.<sup>37</sup>

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32 Australian Charities and Not-for-profits Commission, *Submission 8*, p. 2.

33 Australian Charities and Not-for-profits Commission, *Submission 8*, p. 3.

34 Dr Lisa O'Brien, Chief Executive Officer, The Smith Family, *Committee Hansard*, 30 October 2018, p. 28.

35 Ms Tania Burstin, Managing Director, mycause, *Committee Hansard*, 29 October 2018, p. 30. See also mycause.com.au website.

36 Ms Lavanya Kala, Policy Manager, Volunteering Australia, *Committee Hansard*, 7 November 2018, p. 9.

37 Ms Vera Visevic, Partner, Mills Oakley, *Committee Hansard*, 30 October 2018, p. 33.

3.28 Dr Gary Johns, the Commissioner of the ACNC, explained to the committee that registering charities with the ACNC is not compulsory:

It's voluntary to register as a charity in Australia, but it's the only way you can get to the tax office. So it's a nice incentive there. We know we are the key people here. People register with us. It's a very powerful standing you have as a registered charity, but really it's to get the tax benefits. If a charity wants to stand outside the system then it can.<sup>38</sup>

3.29 Mr David Crosby, the Chief Executive Officer of the Community Council for Australia, explained that the organisation no longer accepted members that were not registered with the ACNC:

We've reached the position within our organisation where if you're not registered with the ACNC you cannot be a member of our organisation. Unless you are a registered charity with the Australian Charities and Not-for-profits Commission, you cannot be a member of the Community Council for Australia. Increasingly, I think that is the standard that some philanthropic funders and others are adopting.<sup>39</sup>

3.30 Mr Crosby outlined the differences in the regulatory functions of the ACNC and the ACCC, which is the main regulator for the ACL (see below), suggesting that if people had concerns about who was on the board of a charity or where the money was going, they should complain to the ACNC because these are governance issues.<sup>40</sup>

#### *Australian Taxation Office (ATO)*

3.31 Charitable giving in Australia, according to the Fundraising Institute of Australia (FIA), 'is underpinned by tax deductibility'.<sup>41</sup> To this extent, the ATO is involved in a regulatory role in managing the tax deductibility status of charities. Mr Michael Hardy, the Assistant Commissioner of Aggressive Tax Planning from the ATO, explained that:

...the Australian Taxation Office has no particular role in regulating fundraising for charities. We do have a role, of course, in the tax administration interface of charities with the tax system.<sup>42</sup>

3.32 Most not-for-profits with deductible gift recipient (DGR) status must be registered with the ACNC. However, Mr Hardy noted that not all charities have gift deductible status:

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38 Dr Gary Johns, Commissioner, Australian Charities and Not-for-profits Commission, *Committee Hansard*, 30 October 2018, p. 18.

39 Mr David Crosby, Chief Executive Officer, Community Council for Australia, *Committee Hansard*, 7 November 2018, p. 41.

40 Mr David Crosbie, Chief Executive Officer, Community Council for Australia, *Committee Hansard*, 7 November 2018, pp. 44–45.

41 Fundraising Institute Australia, *Submission 28.1: Supplementary to submission 28*, p. 6.

42 Mr Michael Hardy, Assistant Commissioner, Aggressive Tax Planning, Australian Taxation Office, *Committee Hansard*, 7 November 2018, p. 48.



One of the things that we observe with the public generally, and which perhaps is good to have on the record for the committee, is that many people conflate things—they assume that all charities are deductible gift recipients. Or, conversely, they assume that all deductible gift recipients are charities. Neither is true!<sup>43</sup>

3.33 Mr Nicholas Berger-Thomson from the Department of the Treasury stated that government reforms announced in December 2017 require non-government DGRs:

...to be registered as charities with the ACNC, which will mean that, in effect, you will need to be a registered charity with the ACNC to be eligible for DGR status...<sup>44</sup>

3.34 However, Mr Hardy outlined that some categories of DGR do not require an entity listed as a DGR to be a charity, which are:

...typically public funds for particular good purposes—for funding of hospitals or other such things. In that situation you could have an organisation that is not a charity endorsed by the ACNC but does have DGR status... But for those types of organisations that have DGR status because of, I guess, a precursor obligation to be a charity, if they were to lose charity status it would be unlikely they could retain DGR status.<sup>45</sup>

### ***Australian Competition and Consumer Commission (ACCC)***

3.35 The ACCC is responsible for enforcing the ACL at a federal level, while state and territory fair trading agencies are responsible for enforcing the ACL in their own jurisdictions (see below).<sup>46</sup> A list of state and territory fair trading agencies is outlined in Table 3.1.

3.36 Mr Scott Gregson from the ACCC outlined the differences between the ACCC and state and territory fair trading agencies:

The ACCC is more likely to pursue matters that are national, involving large companies, a greater number of consumers, interstate trade et cetera. We rarely get involved in resolving individual disputes but, rather, have a different enforcement model. States and territories obviously are more likely to pursue matters within their own states or territories and get involved in dispute resolution.<sup>47</sup>

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43 Mr Michael Hardy, Assistant Commissioner, Aggressive Tax Planning, Australian Taxation Office, *Committee Hansard*, 7 November 2018, p. 48.

44 Mr Nicholas Berger-Thomson, Senior Adviser, Individuals and Indirect Tax Division, Revenue Group, Department of the Treasury, *Committee Hansard*, 7 November 2018, p. 51.

45 Mr Michael Hardy, Assistant Commissioner, Aggressive Tax Planning, Australian Taxation Office, *Committee Hansard*, 7 November 2018, p. 51.

46 Mr Scott Gregson, Executive General Manager, Mergers and Authorisation Review Division, Australian Competition and Consumer Commission, *Committee Hansard*, 7 November 2018, p. 23.

47 Mr Scott Gregson, Executive General Manager, Mergers and Authorisation Review Division, Australian Competition and Consumer Commission, *Committee Hansard*, 7 November 2018, p. 23.

3.37 Charities do not operate in the same way that other industries involved in selling goods or services do, which then impacts the role that the ACCC can play in regulating activities under the ACL. However, Mr Gregson stated that many charities 'have developed sophisticated, organised and repetitive fundraising activity that we consider will often place their conduct within trade or commerce and therefore within reach of the Australian Consumer Law'.<sup>48</sup>

3.38 Mr Gregson told the committee that the ACCC does not 'receive a large number of contacts in relation to charities', though it is unclear whether this is because of a small number of issues raised, or because consumers report issues with charitable fundraising to other agencies.<sup>49</sup>

### States and territories

3.39 Each state and territory has its own agency that performs similar functions to the ACCC at the state or territory level. All jurisdictions except the Northern Territory have laws regulating charitable fundraising. This section outlines some of the key features of the regulatory frameworks governing charitable fundraising in the states and territories.

#### *State and territory consumer protection agencies*

3.40 Each state and territory has its own consumer protection agency that is responsible for enforcing the ACL, in instances where a matter does not fall within the remit of the ACCC because it concerns the individual state or territory. These agencies are listed in Table 3.1.

**Table 3.1: List of state and territory consumer protection agencies<sup>50</sup>**

Australian Capital Territory	Access Canberra
New South Wales	NSW Fair Trading
Northern Territory	NT Consumer Affairs
Queensland	Office of Fair Trading Queensland
South Australia	SA Office of Consumer and Business Services
Tasmania	Tasmanian Consumer Affairs and Fair Trading

48 Mr Scott Gregson, Executive General Manager, Mergers and Authorisation Review Division, Australian Competition and Consumer Commission, *Committee Hansard*, 7 November 2018, p. 23.

49 Mr Scott Gregson, Executive General Manager, Mergers and Authorisation Review Division, Australian Competition and Consumer Commission, *Committee Hansard*, 7 November 2018, pp. 23–24.

50 Australian Competition & Consumer Commission, *Consumer protection agencies*, <https://www.accc.gov.au/contact-us/other-helpful-agencies/consumer-protection-agencies> (accessed 7 December 2018).

Victoria	Consumer Affairs Victoria
Western Australia	WA Consumer Protection

### *State and territory legislation*

3.41 The states and the Australian Capital Territory have their own laws regulating charitable fundraising activities, while the Northern Territory currently has no legislation on charities. Table 3.2 outlines some of the key pieces of legislation in each jurisdiction.

**Table 3.2: State and territory legislation regulating charitable fundraising<sup>51</sup>**

Australian Capital Territory	<i>Charitable Collections Act 2003</i>
New South Wales	<i>Charitable Fundraising Act 1991</i>
Northern Territory	N/A
Queensland	<i>Collections Act 1966</i>
South Australia	<i>Collections for Charitable Purposes Act 1939</i>
Tasmania	<i>Collections for Charities Act 2001</i>
Victoria	<i>Fundraising Act 1998</i>
Western Australia	<i>Charitable Collections Act 1946</i>

3.42 Mr David Thomas, a member of Chartered Accountants Australia and New Zealand, explained that licensing arrangements are 'not consistent from state to state. New South Wales will have different requirements to Queensland or Western Australia, and so on'.<sup>52</sup>

3.43 Further, terminology and definitions used in state and territory legislation vary.<sup>53</sup> Some legislation addresses particular types of fundraising activities not addressed in the legislation of other states; exemptions for particular types of charitable organisations that apply in one jurisdiction do not necessarily apply in another; and there is inconsistency in requirements for audits and reports, and how fundraising appeals must be conducted.<sup>54</sup>

51 Public Fundraising Regulatory Association, *Submission 25*, p. 2; Justice Connect, *Submission 49*, p. 8.

52 Mr David Thomas, Member, Chartered Accountants Australia and New Zealand, *Committee Hansard*, 30 October 2018, p. 10.

53 Mills Oakley, *Submission 64*, pp. 6–15; Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. 5.

54 See Justice Connect, *Submission 49*, p. 8; Mills Oakley, *Submission 64*, pp. 10–13, 17–18.

3.44 Only South Australia and Tasmania specifically refer to the internet in legislation as a possible mode of appeal for support.<sup>55</sup>

3.45 The different regulatory frameworks mean that charities receiving donations or fundraising across state and territory borders may have to submit different applications for licenses and meet different requirements. The time periods for registration of fundraising activity range from 28 days to 60 days to no specified time frame.<sup>56</sup> Some of these varying requirements are outlined in Table 3.3, as provided by the Community Council for Australia, which described 'what one charity had to do to comply with Australian fundraising regulations for a largely web based fundraising campaign'.<sup>57</sup>

3.46 As outlined below, the New South Wales Parliament has recently passed changes to its regulatory regime for its licensing requirements, while South Australia and the Australian Capital Territory now no longer require a charity to obtain a licence if it is already registered with the ACNC.

**Table 3.3: Varying registration requirements of charities by state and territory**<sup>58</sup>

Advertising requirements for a public notice	Qld
Amount intended to raise in the jurisdiction	ACT, WA
Appeal manager details	VIC
Auditor's details	ACT, NSW, SA, Qld, WA
Bank account details	NSW, VIC, Qld, WA
All directors' details (name, position, address)	SA, VIC, Qld
All directors' signatures	VIC
Certified copies of supporting documents	Qld, WA
Copies of supporting documents (not certified)	ACT, NSW, VIC
Covering letter	WA
Dates required for the licence	TAS

55 Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. 10, fn 38; Federation of Parents and Citizens Associations of New South Wales, *Submission 94*, p. 3; Justice Connect, *Submission 49*, p. 16, fn 4.

56 Justice Connect, *Submission 49*, p. 8.

57 Community Council for Australia, *Submission 43*, p. 6.

58 Community Council for Australia, *Submission 43*, p. 6. See also UN Women National Committee Australia, *Submission 26*, p. 2.

Fundraising activities to be undertaken	ACT, SA, WA
Third party fundraising provider details	SA, VIC
Police check	VIC, WA
State address if intending to fundraise in that state	NSW, VIC
Statement of purpose	SA, TAS, VIC, Qld, WA

3.47 Further, reporting requirements once an entity has obtained a licence also vary considerably between jurisdictions, in terms of both to whom organisations are required to report and what material should be provided in those reports.

3.48 However, recent reforms have moved towards harmonising the various regulatory differences across the jurisdictions. As noted above, South Australia and the Australian Capital Territory no longer require organisations registered as charities with the ACNC to obtain a licence or permission to fundraise.<sup>59</sup> New South Wales, Victoria and South Australia have recently initiated reforms that will, according to the FIA, 'substantially reduce red tape for fundraising [and]... resolve the lion's share of issues relating to misalignment of fundraising licensing and application processes...'<sup>60</sup>

3.49 The ACNC explained that it has streamlined reporting arrangements with incorporated associations in Tasmania, South Australia, the ACT and Victoria, and with charitable fundraisers in South Australia and the ACT. This means it shares information with other government agencies, enabling registered charities to be exempt from usual reporting obligations to those agencies.<sup>61</sup>

3.50 Mr Scott McClellan, the Executive Manager of Code and Regulatory Affairs at the FIA, noted that recent reforms at the state level were encouraging:

We're actually very encouraged with the momentum that seems to be occurring at the state level to achieve regulatory reform and red tape reduction... In many cases, the red tape has arisen not because of any bureaucratic failings of governments at either the state or the Commonwealth level but because of changes in technology that have made it possible for fundraisers to operate across state borders.<sup>62</sup>

3.51 The following section outlines some of the specific features of each jurisdiction, including recent changes to regulatory requirements. The committee only received evidence directly from the governments of the Australian Capital Territory and New South Wales.

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59 Justice Connect, *Submission 49*, p. 8.

60 Fundraising Institute Australia, *Submission 28.1: Supplementary to submission 28*, p. 2.

61 Australian Charities and Not-for-profits Commission, *Submission 8*, p. 5.

62 Mr Scott McClellan, Executive Manager, Code and Regulatory Affairs, Fundraising Institute Australia, *Committee Hansard*, 30 October 2018, p. 2.

### *Australian Capital Territory*

3.52 The Chief Executive Officer of the FIA described the ACT as a 'pacesetter' because of its recent reforms to the regulatory requirements for registered charities.<sup>63</sup> The FIA submitted that the ACT's 'reforms of last year reduced both fundraising-specific red tape and financial reporting requirements for ACNC registered entities'.<sup>64</sup>

3.53 The Australian Capital Territory requires collectors to wear identifying tags while soliciting or receiving money or benefits.<sup>65</sup>

3.54 The ACT does not require organisations that are ACNC registered charities to maintain a licence or meet annual return and accounting requirements from the ACT regulatory authorities.<sup>66</sup> The ACT is one of only two jurisdictions that expressly mentions online fundraising in its legislation.<sup>67</sup>

### *New South Wales*

3.55 Mr Alex Milner, a member of the Not for Profit and Charities Law Committee of the Law Institute of Victoria, told the committee that New South Wales has 'one of the most detailed fundraising regimes' in Australia. He described the regime as being quite 'particular', involving legislation and regulatory authorities.<sup>68</sup>

3.56 Mr Milner outlined how the New South Wales legislation deals with the definition of a fundraising appeal:

It applies to any receipt of moneys for any activity or purpose which includes a charitable purpose. So, when you flow that through, it doesn't just apply to donations—in fact the legislation is specific that it doesn't just apply to donations—it also applies to fee-for-service arrangements where the charity is raising money, maybe through an op shop or some other activity, to generate revenue.<sup>69</sup>

3.57 In October 2018, the New South Wales Parliament passed a bill to make changes to the state's charitable fundraising regime. The bill was introduced in order to implement recommendations arising from a public inquiry into the conduct of the

63 Ms Katherine Raskob, Chief Executive Officer, Fundraising Institute Australia, *Committee Hansard*, 30 October 2018, p. 1.

64 Fundraising Institute Australia, *Submission 28.1: Supplementary to submission 28*, p. 3.

65 Mills Oakley, *Submission 64*, p. 18; *Charitable Collections Act 2003 (ACT)*, s 16(1).

66 Justice Connect, *Submission 49*, p. 8; UN Women National Committee Australia, *Submission 26*, p. 3; Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. 8 and p. 10, fn 37.

67 Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. 10, fn 38; Federation of Parents and Citizens Associations of New South Wales, *Submission 94*, p. 3; Justice Connect, *Submission 49*, p. 16, fn 4.

68 Mr Alex Milner, Member, Not for Profit and Charities Law Committee, Law Institute of Victoria, *Committee Hansard*, 29 October 2018, p. 42.

69 Mr Alex Milner, Member, Not for Profit and Charities Law Committee, Law Institute of Victoria, *Committee Hansard*, 29 October 2018, p. 42.

Returned and Services League (RSL) NSW Branch and related entities.<sup>70</sup> This legislation includes measures seeking to:

- streamline the registration process for charities in NSW by allowing them to use proof of registration with the ACNC to apply for a fundraising authority in NSW; and
- increase the compliance and enforcement powers of the NSW regulator to conduct random inspections of charities and investigate possible breaches of the Act.<sup>71</sup>

3.58 In the second reading debates on the bill, concerns were raised by some about the regulation of online donations, and harmonisation efforts in relation to reporting and administration requirements across the states and territories.<sup>72</sup>

3.59 Ms Rose Webb, the New South Wales Fair Trading Commissioner and the Deputy Secretary of the Better Regulation Division in the New South Wales Department of Finance, Services and Innovation, told the committee that the changes:

- are an important step in harmonising regulatory requirements with Commonwealth requirements, especially regarding registration and reporting;
- provide that proof of current registration with the ACNC can be used to apply for a fundraising authority in New South Wales; and
- align financial reporting and self-disclosure reporting requirements with the ACNC requirements.<sup>73</sup>

3.60 In September 2018, the ACNC entered into a new agreement with NSW Fair Trading to reduce the administrative burden on registered charities. NSW incorporated associations will now only be required to submit their annual financial reports to the ACNC. The ACNC will then share the data with NSW Fair Trading.<sup>74</sup>

3.61 The FIA stated its support for the reforms:

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70 Mr Scot MacDonald, *Second Reading Speech, New South Wales Legislative Council Hansard, Fair Trading Legislation Amendment (Reform) Bill 2018 and Charitable Fundraising Amendment Bill 2018*, 17 October 2018, <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-77678/HANSARD-1820781676-77678> (accessed 30 November 2018).

71 Ms Yasmin Catley, *Fair Trading Legislation Amendment (Reform) Bill 2018 and Charitable Fundraising Amendment Bill 2018, Second Reading Speech, New South Wales Legislative Assembly Hansard*, 24 October 2018, <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-104321> (accessed 12 February 2019).

72 *Fair Trading Legislation Amendment (Reform) Bill 2018 and Charitable Fundraising Amendment Bill 2018, Second Reading Debate*, 24 October 2018.

73 Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Finance, Services and Innovation, *Committee Hansard*, 7 November 2018, p. 33.

74 *ACNC Annual Report 2017–18*, October 2018, pp. 58–59.

The NSW Charitable Fundraising reforms represent the most important red tape reduction program to date, from FIA's perspective, because they are actually being implemented. They will result in major reductions in terms of both costs and administration and could act as a template and a catalyst for other jurisdictions, thus creating momentum for harmonisation.<sup>75</sup>

3.62 Some aspects of New South Wales charitable fundraising legislation, Ms Webb noted, are similar to the ACL, in terms of requiring people not to mislead or deceive. She argued, however, that New South Wales legislation covers other, more specific areas, such as prudential regulation – or where funds must be kept and how they must be stored and accounted for – as well as how charities should conduct themselves.<sup>76</sup>

3.63 New South Wales does not require registration for fundraising for individuals.<sup>77</sup>

### *Queensland*

3.64 The committee heard that the Queensland legislative requirements are 'cumbersome and expensive' and 'the most stringent... of all the states'.<sup>78</sup> Mr Alex Milner from the Law Institute of Victoria stated that the Queensland Office of Fair Trading must approve any public materials distributed as part of a campaign that involves a commercial fundraiser. As a result, Mr Milner said,

I've certainly been aware of situations where national campaigns, which often have their own deadlines and pressures, will specifically exclude Queensland from fundraising exactly for that reason: that there is just no way of being compliant in the time available.<sup>79</sup>

3.65 Examples of regulations outlined in evidence include, for example, the requirement that an individual cannot carry out a fundraising appeal wearing a mask and carrying a toy firearm.<sup>80</sup> Another regulation requires entities to provide collectors involved in door-to-door fundraising or street collection to wear an identifying armlet or badge.<sup>81</sup> Dr Ted Flack told the committee that in Queensland, 'if you want to set up your own fund to send your granddaughter to China for a particular operation or

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75 Fundraising Institute Australia, *Submission 28.1: Supplementary to submission 28*, p. 3.

76 Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Finance, Services and Innovation, *Committee Hansard*, 7 November 2018, p. 37.

77 Ms Tania Burstin, Managing Director, mycause, *Committee Hansard*, 29 October 2018, p. 25.

78 ME/CFS Australia, *Submission 55*, p. 1; Mr Peter Hills-Jones, Chief Executive Officer, Public Fundraising Regulatory Association, *Proof Committee Hansard*, 31 January 2019, p. 33.

79 Mr Alex Milner, Member, Not for Profit and Charities Law Committee, Law Institute of Victoria, *Committee Hansard*, 29 October 2018, p. 42.

80 Mr Alex Milner, Member, Not for Profit and Charities Law Committee, Law Institute of Victoria, *Committee Hansard*, 29 October 2018, p. 43; *Collections Regulation 2008* (Qld), reg. 16.

81 Public Fundraising Regulatory Association, *Submission 25*, p. 9; *Collections Regulation 2008* (Qld), reg. 18(1).



whatever it happens to be, you have to get a licence now', although he reported that the legislation on this issue 'is not enforced properly'.<sup>82</sup>

3.66 Professor Myles McGregor Lowndes from the Australian Centre for Philanthropy and Nonprofit Studies at Queensland University of Technology highlighted that, as in Western Australia, it was illegal in Queensland 'to collect money on the end of a long pole outside the reach of the collector', although this provision has been repealed. He stated that the provision originated in a 1903 law in London 'to prevent collections from the tops of stagecoaches as they passed London streets, slowing the traffic'.<sup>83</sup>

3.67 Within seven days of filing an application to become a charity in Queensland, an association must give notice of the application in a newspaper published in Brisbane with state-wide circulation, and in another newspaper published at least 5 days a week that circulates 'throughout the locality in which the association's registered address is situated'. The notice must state that a person may object to the registration.<sup>84</sup>

3.68 Ms Tania Burstin from mycause stated that Queensland charities are required to have approval for one-off charitable appeals, whether fundraising for individuals or entities.<sup>85</sup>

3.69 As in Victoria, Queensland's fundraising laws also regulate fundraising for non-profit purposes that are not charitable at law, including appeals for sports clubs and for individuals.<sup>86</sup>

3.70 The FIA argued that instead of decreasing regulatory requirements for fundraising in recent reforms, instead the Queensland system had 'ended up increasing... fundraising red tape by tightening licensing requirements around face to face donor appeals and requiring the sector to undertake new disclosure and other transparency measures'.<sup>87</sup>

3.71 Mr Peter-Hills Jones from the Public Fundraising Regulatory Association was of the opinion that Queensland's regulatory requirements may mean 'that the speed at which charities can respond to, say, flooding or bushfires in Queensland is slower'. Due to the length of time needed to obtain a licence to fundraise in Queensland,

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82 Dr Edmund (Ted) Flack, Private capacity, *Proof Committee Hansard*, 31 January 2019, p. 28.

83 Professor Myles McGregor-Lowndes, Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Proof Committee Hansard*, 31 January 2019, p. 11.

84 Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. 12; *Collections Regulation 2008* (Qld), regs. 4(3)–(4).

85 Ms Tania Burstin, Managing Director, mycause, *Committee Hansard*, 29 October 2018, p. 25.

86 Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. 10.

87 Fundraising Institute Australia, *Submission 28*, p. 3.

charities may fundraise in other states for communities affected by disasters in Queensland.<sup>88</sup>

3.72 Mr Paul Tavatgis from Whiplbird Consulting noted the complexities of Queensland's legislative requirements, and gave the following example:

...in Queensland, you may find that part of the regulation is that it's possible for a charity to book out the entire state for a week or for two weeks, and that may mean that you are no longer able to carry out your fundraising in Queensland and you have to pack all your fundraisers off to another jurisdiction or you've got to stand them down for a week. So it's incredibly complex.<sup>89</sup>

3.73 However, other evidence emphasised positive aspects of Queensland's regulatory system. For example, Ms Tracy Adams from yourtown stated that 'We've always vouched that Queensland has been quite progressive, particularly for us in the context of charitable art unions and the like'.<sup>90</sup>

3.74 The committee surmised that opinions on the positive or negative aspects of Queensland regulation depend, in part, on the types of fundraising activities undertaken by charities.

#### *South Australia*

3.75 A number of submitters and witnesses described the South Australian system as simple and streamlined.<sup>91</sup> For example, Ms Lavanya Kala from Volunteering Australia highlighted that the South Australian model was 'pretty good' and 'pretty streamlined' compared to other models.<sup>92</sup> The FIA argued that 'South Australia has led the way in terms of working with the ACNC on a seamless reporting regime'.<sup>93</sup>

3.76 South Australia does not require organisations that are ACNC registered charities to obtain permission to fundraise from state regulatory authorities, so long as they provide the state regulator with notice of their ACNC registration and intention to

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88 Mr Peter Hills-Jones, Chief Executive Officer, Public Fundraising Regulatory Association, *Proof Committee Hansard*, 31 January 2019, p. 34.

89 Mr Paul Tavatgis, Director, Whiplbird Consulting, *Proof Committee Hansard*, 31 January 2019, p. 4.

90 Ms Tracy Adams, Chief Executive Officer, yourtown, *Proof Committee Hansard*, 31 January 2019, p. 10.

91 ME/CFS Australia, *Submission 55*, p. 1. See also World Education Australia Limited, *Submission 92*, p. 1.

92 Ms Nicole Stanmore, Director, Business Development, Engagement and Operations, Australian Council of Social Services, *Committee Hansard*, 7 November 2018, p. 12.

93 Fundraising Institute Australia, *Submission 28.1: Supplementary to submission 28*, p. 4; see also The Smith Family, *Submission 54*, p. 4.

fundraise.<sup>94</sup> Since December 2017, South Australia has no longer required charities already reporting to the ACNC to also report to state regulatory authorities.<sup>95</sup>

3.77 South Australia has a mandatory code of conduct for charities that operates in effect as legislation.<sup>96</sup> This code requires charities to ensure that collectors participating in unsolicited collections wear an identifying badge.<sup>97</sup> Mr Bruce Moore, General Counsel for the Australian Red Cross Society, argued that the South Australian code is:

...an example of how a code can be written in relatively simple terms which are easy for the fundraising entity to understand and apply as well as those engaged by the fundraising entity to support it—third party fundraisers.<sup>98</sup>

### *Tasmania*

3.78 The inquiry received very little evidence outlining the regulatory framework governing charity fundraising in Tasmania. However, that evidence that did mention Tasmania highlighted that the state has made recent efforts to align its regulatory requirements with the ACNC.<sup>99</sup> Tasmania is one of only two jurisdictions to expressly mention online fundraising in its legislation.<sup>100</sup>

### *Victoria*

3.79 The committee received little evidence outlining particular aspects of the regulatory framework governing charitable fundraising in Victoria. However, witnesses and submitters explained that Victoria only requires registration if the fundraising is more than \$10 000 and only volunteers are used to fundraise.<sup>101</sup>

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94 Justice Connect, *Submission 49*, p. 8; Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. 10, fn 37 and p. 12.

95 Fundraising Institute Australia, *Submission 28*, p. 10; Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. 8.

96 Mr Scott McClellan, Executive Manager, Code and Regulatory Affairs, Fundraising Institute Australia, *Committee Hansard*, 30 October 2018, p. 8; South Australian Attorney-General's Department, *Code of Practice: Collections for Charitable Purposes Act 1939*, <https://www.cbs.sa.gov.au/sites/default/files/charities-code-of-practice.pdf> (accessed 7 December 2018).

97 South Australian Attorney-General's Department, *Code of Practice: Collections for Charitable Purposes Act 1939*, <https://www.cbs.sa.gov.au/sites/default/files/charities-code-of-practice.pdf> (accessed 7 December 2018), s 7(1).

98 Mr Bruce Moore, General Counsel, Australian Red Cross Society, *Committee Hansard*, 29 October 2018, p. 34.

99 Oceania Province, *Submission 11*, p. 1; Fundraising Institute Australia, *Submission 28*, pp. 3, 10.

100 Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. 10, fn 38; Federation of Parents and Citizens Associations of New South Wales, *Submission 94*, p. 3; Justice Connect, *Submission 49*, p. 16, fn 4.

101 Ms Tania Burstin, Managing Director, mycause, *Committee Hansard*, 29 October 2018, p. 25; mycause, *Submission 11*, p. 19.

Commercial fundraisers must obtain their own fundraising licence, even if they are operating under the authority of a licensed charity, unlike in other jurisdictions.<sup>102</sup> Victorian fundraising laws also apply to non-charitable entities, such as not-for-profits that are held to account by their members.<sup>103</sup>

3.80 Submitters outlined that Victoria has recently taken steps to ensure that charities only report to the ACNC.<sup>104</sup> The ACNC stated in its annual report for 2017–18 that from 1 July 2018, 'charities incorporated in Victoria... report to the ACNC... Charities taking part in this arrangement will no longer need to report to Consumer Affairs Victoria, or pay an annual fee'.<sup>105</sup>

3.81 Consumer Affairs Victoria is currently in the process of consulting with industry stakeholders on changes to its *Fundraising Regulations 2009*, due to expire in June 2019. The regulations in their current form prescribe requirements for fundraising appeals.<sup>106</sup>

#### *Western Australia*

3.82 Ms Delaine Smith, the Chief Executive Officer of the Australasian Leukemia and Lymphoma Group, stated that 'Western Australia actually has quite a detailed process, far more detailed than any other state'.<sup>107</sup> Evidence highlighted a number of features of the fundraising regulatory regime in Western Australia. For example, Western Australia requires an audit of all income, no matter the amount.<sup>108</sup> Balance sheets and notes to accounts, income and expenditure statements and independent auditor reports must be submitted six months after the end of the financial year.<sup>109</sup> Further, fundraising through street collections requires a separate licence, and street collections in Perth must take place on a Friday unless otherwise approved.<sup>110</sup>

3.83 The committee heard that funds raised through an online organisation for a charity not registered in Western Australia would not be transferred to the charity until

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102 Mills Oakley, *Submission 64*, p. 15; *Fundraising Act 1998* (Vic), ss 16B and 17A.

103 Justice Connect, *Submission 49*, p. 15, fn 3.

104 Four Paws Australia, *Submission 95*, p. 7; Fundraising Institute Australia, *Submission 28*, pp. 3, 10; Fundraising Institute Australia, *Submission 28.1: Supplementary to submission 28*, p. 3.

105 *ACNC Annual Report 2017–18*, October 2018, p. 58.

106 Consumer Affairs Victoria, *Fundraising Regulations 2009 remake*, <https://www.consumer.vic.gov.au/resources-and-tools/legislation/public-consultations-and-reviews/fundraising-regulations-2009-remake> (accessed 17 December 2018).

107 Ms Delaine Smith, Chief Executive Officer, Australasian Leukemia and Lymphoma Group, *Committee Hansard*, 29 October 2018, p. 36.

108 Administry Inc, *Submission 14*, p. 2.

109 Ms Nicole Stanmore, Director, Business Development, Engagement and Operations, Australian Council of Social Services, *Committee Hansard*, 7 November 2018, p. 2.

110 Mills Oakley, *Submission 64*, p. 17; *Street collections*, <https://www.commerce.wa.gov.au/consumer-protection/street-collections> (accessed 7 December 2018).

it was able to prove that it had a licence in Western Australia.<sup>111</sup> The Australian Centre for Philanthropy and Nonprofit Studies at Queensland University of Technology drew attention to the fact that the legislation governing charitable fundraising in Western Australia, the *Charitable Collections Act 1946*, refers to World War II as the 'present war'.<sup>112</sup>

### Local council requirements

3.84 The Public Fundraising Regulatory Association submitted that there are additional regulatory requirements for face-to-face fundraising at the level of local government. Many local councils, they stated, require fundraisers to obtain additional permissions to use public spaces for street fundraising and, in some instances, for door-to-door fundraising, with up to 80 per cent of local councils issuing permits for face-to-face fundraisers.<sup>113</sup> For example, Western Australia's street fundraising legislation only regulates the Perth metropolitan area, with responsibility for preventing nuisance in areas outside Perth resting with local authorities.<sup>114</sup>

3.85 Professor Myles McGregor-Lowndes from the Australian Centre for Philanthropy and Nonprofit Studies at Queensland University of Technology suggested that local authorities are best-placed to deal with issues like street fundraising.<sup>115</sup>

### Industry codes of practice

3.86 The committee heard that a number of organisations, such as the FIA, the Public Fundraising Regulatory Association and the Australian Council for International Development, have voluntary industry codes.<sup>116</sup> The Public Fundraising Regulatory Association noted that many charities 'choose to submit to self-regulation... to demonstrate their commitment to best practice and ethical

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111 Ms Delaine Smith, Chief Executive Officer, Australasian Leukemia and Lymphoma Group, *Committee Hansard*, 29 October 2018, p. 37.

112 Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. 6; *Charitable Collections Act 1946* (WA), s 6.

113 Public Fundraising Regulatory Association, *Submission 25*, p. 1; Mr Peter Hills-Jones, Chief Executive Officer, Public Fundraising Regulatory Association, *Proof Committee Hansard*, 31 January 2019, p. 33.

114 Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. 6, fn 11; Western Australian Department of Mines, Industry Regulation and Safety, *Street collections*, <https://www.commerce.wa.gov.au/consumer-protection/street-collections> (accessed 7 December 2018).

115 Professor Myles McGregor-Lowndes, Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Proof Committee Hansard*, 31 January 2019, p. 12.

116 Mr Scott McClellan, Executive Manager, Code and Regulatory Affairs, Fundraising Institute Australia, *Committee Hansard*, 30 October 2018, p. 8.

fundraising'.<sup>117</sup> It argued that most investigative and enforcement 'work currently being undertaken is by self-regulatory bodies...'<sup>118</sup>

3.87 Mr Scott McClellan, the Executive Manager of Code and Regulatory Affairs at the FIA, outlined the purpose of industry codes and how these differ from legislation:

Remember that these codes deal with ethical conduct that should become almost second nature... Those codes play a very particular role. They are about trying to raise the bar. Organisations, charities and suppliers that have signed up to these industry bodies are interested in being part of a fraternity that's trying to do the right thing, trying to lift standards.

Legislation, by contrast, is concerned with setting a minimum bar below which you must not stray or you could find yourself in trouble with the law. It's quite a different proposition. Very serious financial penalties accrue to the breach, for example, of an ACCC-registered code under the ACL... [T]hose mandated codes have been imposed on the sectors because there has been evidence of systemic failure in those sectors.<sup>119</sup>

3.88 Ms Kate Lynch from the Department of the Treasury noted that at present the ACL does not include any codes regulating fundraising, but the inclusion of such a code would 'obligate all jurisdictions, including the Northern Territory, which currently doesn't regulate fundraising, to adopt the regulation'.<sup>120</sup> She further clarified that no industry codes sit with the ACL; rather, industry codes for specific sectors exist under the *Competition and Consumer Act 2010*, which is concerned with industry and markets.<sup>121</sup>

## Conclusion

3.89 This chapter has outlined the major pieces of Commonwealth legislation, the national bodies responsible for regulation of charitable fundraising, differences between state and territory requirements, and industry codes of practice. The following chapter examines in further detail issues raised in evidence concerning current regulatory requirements.

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117 Public Fundraising Regulatory Association, *Submission 25*, p. 1.

118 Public Fundraising Regulatory Association, *Submission 25*, p. 5.

119 Mr Scott McClellan, Executive Manager, Code and Regulatory Affairs, Fundraising Institute Australia, *Committee Hansard*, 30 October 2018, p. 8.

120 Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury, *Committee Hansard*, 7 November 2018, p. 48.

121 Ms Kate Lynch, Principal Adviser, Consumer and Corporations Policy Division, Markets Group, Department of the Treasury, *Committee Hansard*, 7 November 2018, p. 53.