

Chapter 4

Issues raised in evidence

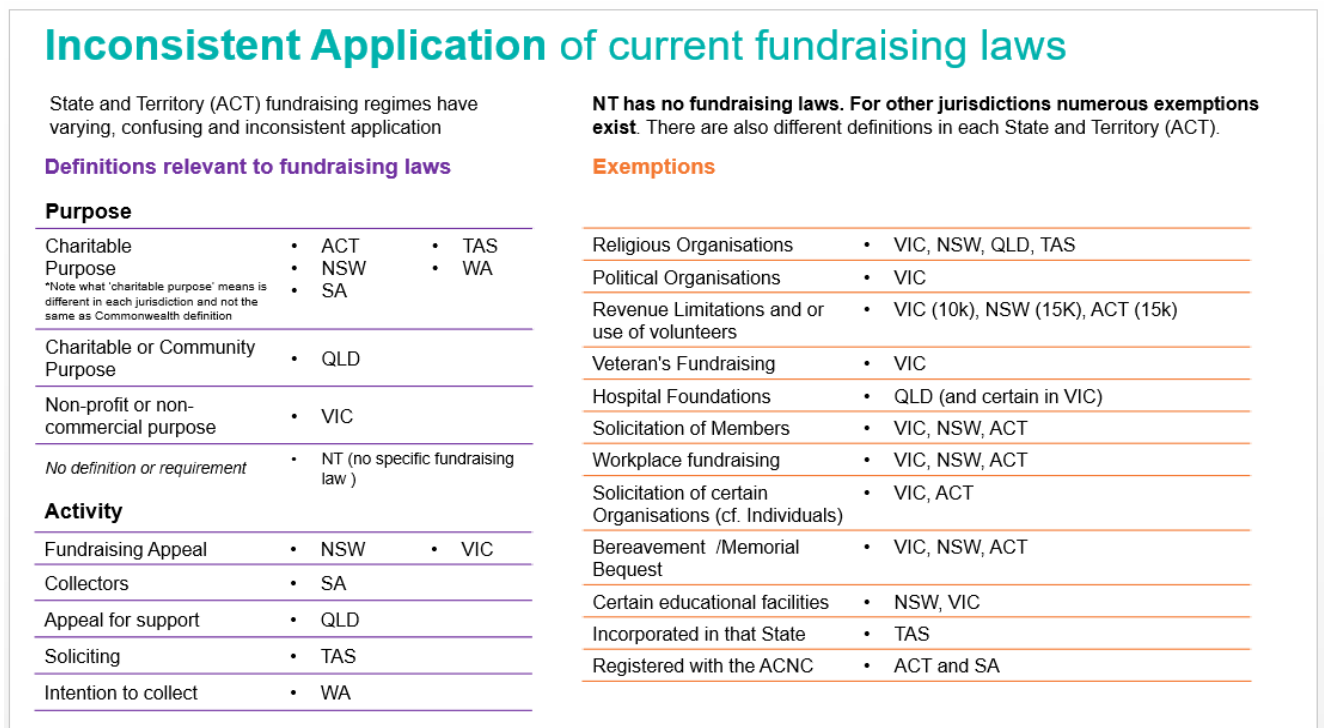
Introduction

4.1 This chapter examines the issues raised in evidence urging reform of Australia's fragmented regulatory regimes for charity fundraising. Evidence before the committee examined long-standing issues encountered by stakeholders engaged in fundraising.

Complexity

4.2 A significant number of submitters and witnesses commented on the complex and fragmented regulatory environment within which charities and not-for-profits have to operate. The complexity was attributed to the inconsistent application of current fundraising laws arising from duplication, different definitions for common terms, and laws not being fit-for-purpose or failing to meet current needs (see Figure 4.1).

Figure 4.1: Inconsistent application of current fundraising laws¹



Source: Justice Connect, *Submission 49*, p. 8.

4.3 The committee was informed that the law on charities has become increasingly complex. For example, Ms Vera Visevic, Partner at Mills Oakley, stated that the 'law is confusing and complex' even for experienced lawyers with specialist

¹ Justice Connect, *Submission 49*, p. 8.

knowledge in the charity and not-for-profit sector. She reported that in recent times the advice she has encountered has increased in complexity because 'people are trying different ways and different methods to fundraise'.²

4.4 Many witnesses and submitters expressed confusion about the law. For example, Ms Alice Macdougall, Deputy Chair of Charities and Not for Profits Committee, Law Council of Australia, viewed the current regulatory regime as creating unnecessary confusion. She called for urgent reform to 'reduce the confusion and the regulatory burden on charities arising from the current situation of detailed, inconsistent, out of date and onerous fundraising laws'.³

4.5 Ms Visevic explained that, apart from information that is available in acts and regulations, the lack of publicly available information or guidance from various departments and regulators regarding their expectations makes it difficult for lawyers to advise clients. There is also limited judicial interpretation available for reference in this area of law.⁴

Different definitions

4.6 As previously outlined in Chapter 3, the committee heard from witnesses and submitters the challenges caused by various definitions for common terms in different jurisdictions.⁵

4.7 Mr Alex Milner from the Law Institute of Victoria stated that much of the complexity and inconsistencies in fundraising laws can be traced to the inconsistent definition of charity across Australian jurisdictions.⁶ Mr Milner highlighted NSW as one of the most detailed fundraising regimes with a very broad definition of fundraising appeal, as discussed in Chapter 3.⁷

4.8 Ms Katherine Raskob, Chief Executive Officer for Fundraising Institute Australia, told the committee that:

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

3 Ms Alice Macdougall, Deputy Chair of Charities and Not for Profits Committee, Law Council of Australia, *Committee Hansard*, 29 October 2018, p. 9.

4 Ms Vera Visevic, Partner at Mills Oakley, *Committee Hansard*, 30 October 2018, p. 33; Mills Oakley, *Submission 64*, p. 4.

5 See, for example, the table in Mills Oakley's submission outlining the different treatment between states and territories of like-elements such as ACNC licensing, charitable purpose definition, conducting an appeal, and exemptions. One basic 'mismatch' between the Commonwealth and state and territory legislation is the various interpretations for charity, with the result that an organisation could be considered a charity by the Australian Charities and Not-for-profits Commission but still require state and territory licences. Mills Oakley, *Submission 64*, pp. 6–13, 16–17.

6 Mr Alex Milner, Member, Not for Profit and Charities Law Committee, Law Institute of Victoria, *Committee Hansard*, 29 October 2018, p. 43. For example, the states are not bound by the definition in the Commonwealth's *Charities Act 2013*.

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

The current laws are very inconsistent, even as to what is regulated and what is exempted. Even the definition of charitable fundraising, for example, differs across various state and territory legislation. So they will increasingly have to staff and pay for the additional costs of the various compliance regimes across the country.⁸

4.9 Professor Myles McGregor-Lowndes from the Australian Centre for Philanthropy and Nonprofit Studies (ACPNS), Queensland University of Technology (QUT), and Dr Ted Flack made similar observations in relation to the lack of an agreed definition for fundraising.⁹

Donations across jurisdictions

4.10 The committee also heard differing opinions on whether a breach has occurred if a donation was received interstate without authority from the donor's state. For example, while there was one opinion that a local charity receiving a one-off donation in another state was unlikely to attract the regulatory interest of that state unless the charity was seeking donations from said state or was engaged in a fundraising appeal, this was not a widely shared view.¹⁰ However, Mr David Thomas, a Member of Chartered Accountants Australia and New Zealand, thought in a similar situation he would be breaking the law if someone donated from Queensland and the Sydney based Lifeline Australia in NSW did not have a fundraising licence in Queensland.¹¹

Duplication

4.11 Ms Macdougall from the Law Council of Australia argued that since the establishment of the Australian Charities and Not-for-profits Commission (ACNC), there has been no need for separate state and territory regulations, which duplicate ACNC requirements and provisions already covered in the Australian Consumer Law (ACL).¹²

4.12 Ms Raskob agreed with this view, foreseeing a more challenging environment for her members to comply with the various state and Commonwealth regulations that govern their online fundraising activities.¹³

8 Ms Katherine Raskob, Chief Executive Officer for Fundraising Institute Australia, *Committee Hansard*, 30 October 2018, p. 2.

9 Dr Edmund (Ted) Flack, Private capacity, *Proof Committee Hansard*, 31 January 2019, pp. 12 and 26. Dr Ted Flack referred to fundraising as a 'cultural term' without a definition.

10 Mr Derek Mortimer, Principal, DF Mortimer & Associates, *Committee Hansard*, 29 October 2018, p. 24.

11 Mr David Thomas, Member, Chartered Accountants Australia and New Zealand, *Committee Hansard*, 30 October 2018, p. 9. Mr Thomas, who is also the CEO of Lifeline Northern Beaches, explained that his locally-based organisation is a separate entity to Lifeline Australia.

12 Ms Alice Macdougall, Deputy Chair, Charities and Not for Profits Committee, Law Council of Australia, *Committee Hansard*, 29 October 2018, p. 9.

13 Ms Katherine Raskob, Chief Executive Officer, Fundraising Institute Australia, *Committee Hansard*, 30 October 2018, p. 2.

Fragmentation and inconsistencies across jurisdictions

4.13 Mr Milner from the Law Institute of Victoria provided an example of a national fundraising campaign that encountered blockage in Queensland, due to the requirement for commercial fundraising agreements. Mr Milner explained that:

These are, essentially, any agreements with a party who is participating in the appeal and who is receiving commissions or reward as part of that appeal. That agreement needs to be approved by the Queensland minister, and, more than that, any public materials that are distributed as part of a campaign that involves a commercial fundraiser need to be approved by the Queensland Office of Fair Trading. So, 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.¹⁴

4.14 This fragmentation of fundraising laws at the State and Commonwealth levels is also replicated at the local government level. Mr Paul Tavatgis, Director for Whipbird Consulting, noted the 'many different forms of rules' that applied to face-to-face fundraising. The lack of consistency across local authorities:

...means that charities or third-party fundraising businesses need to maintain significant teams of people, to essentially, liaise with local authorities on a week-to-week basis to ensure that their fundraisers have the correct permits in order to fundraise in each local authority area.¹⁵

4.15 Mr Milner argued that these fragmented laws are not based on good policy and do not have a sound commercial basis:

The thing I always say when I'm talking to lawyers about fundraising regulation is: you have to read it and suspend disbelief, because you can't read it and assume that it has a good policy or commercial underpinning. Often it doesn't, and often you have to read it on its own terms and then try and apply it... The level of ridiculousness in some of these pieces of legislation is just incredible.¹⁶

4.16 The committee heard that another source of confusion is the lack of centralisation of the portfolio under one responsible minister. The committee was informed responsibilities governing the relevant Commonwealth portfolio are

14 Mr Alex Milner, Member, Law Institute of Victoria, *Committee Hansard*, 29 October 2018, p. 42.

15 Mr Paul Tavatgis, Director, Whipbird Consulting, *Committee Hansard*, 31 January 2019, p. 2.

16 Mr Alex Milner, Member, Law Institute of Victoria, *Committee Hansard*, 29 October 2018, p. 43.

distributed across four departments under the remit of several ministers.¹⁷ The current division of responsibilities are as follows:

- Three Treasury ministers:
 1. Assistant Minister for Treasury and Finance, the Hon Zed Seselja—ACNC
 2. Treasurer, the Hon Josh Frydenberg—Australian Competition and Consumer Commission (ACCC), Australian Taxation Office (ATO)
 3. Assistant Treasurer, the Hon Stuart Robert MP—competition and consumer policy, taxation legislation and administration.
- Minister for Social Services—since 2013 responsibility for charity/not-for-profit (NFP) issues has been split between Treasury and the Department of Social Services (DSS) with the former responsible for the ACNC Act and DSS for the Charities Act.
- Minister for Communications—Australian Communications and Media Authority (telephone and online solicitation for donations), Do Not Call Register (charity exemption).
- Attorney General—under the *Privacy Act 1988* (charities and NFPs are specifically covered as 'entities' under the Australian Privacy Principles).¹⁸

Outdated for current needs

4.17 Evidence before the committee commonly touched on the rapid adoption of new technologies in the sector and how current fundraising legislation has not reflected the changed landscape. Some witnesses pointed out the anachronistic laws that still exist.¹⁹ For example, Mr Derek Mortimer, Principal, DF Mortimer & Associates, and Professor Myles McGregor-Lowndes, ACPNS, QUT, referred to the *Street Collections (Regulation) Act 1940* in Western Australia which makes it illegal to collect money on the end of a long pole inherited from London's 1903 Metropolitan Streets Act.²⁰

17 Fundraising Institute Australia, Answer to question on notice, 30 October 2018. See also *Committee Hansard*, 30 October 2018, pp. 5–6.

18 Assistant Minister Seselja took over responsibility for charities from the former Minister, the Hon Michael Sukkar, Fundraising Institute Australia, answer to question on notice, 30 October 2018. See also Department of the Prime Minister and Cabinet, *Ministry List*, 25 January 2019, available at <https://www.pmc.gov.au/resource-centre/government/ministry-list> (accessed 6 February 2019).

19 Mills Oakley, *Submission 64*, p. 4; Chartered Accountants Australia and New Zealand, *Submission 40*, p. 1; Mr Norman O'Bryan, AM SC, Private capacity, *Proof Committee Hansard*, 31 January 2019, p. 19.

20 Mr Derek Mortimer, Principal, DF Mortimer & Associates, *Committee Hansard*, 29 October 2018, p. 21; Professor Myles McGregor-Lowndes, Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Proof Committee Hansard*, 31 January 2019, p. 11.

4.18 The committee heard that despite the shift towards online fundraising, only two fundraising laws 'explicitly address email or the internet and none of them address online giving or the matter of jurisdiction'.²¹ This issue is addressed further later in this chapter.

Non-compliance

4.19 The committee heard that many charities failed to comply with the relevant regulations and that non-compliance with the various Commonwealth and state regulations could be attributed to both accidental and deliberate conduct.

4.20 Ms Lavanya Kala, Policy Manager, Volunteering Australia, told the committee that given the complexity of the regulatory regime, it would not be surprising if some non-compliance was deliberate, even if it was not committed out of any 'ill intent'.²²

4.21 At the Senate Economics Legislation Committee's 2017 additional estimates, Mr David Locke, then Assistant Commissioner, Charity Services at the ACNC, suggested that there was a high level of noncompliance among charities operating in Australia. This suggestion was based on a comparison of data from Queensland with data from the ACNC, which showed only 2500 charities from a total of 10 500 registered charities in Queensland held a fundraising licence. Mr Locke assumed the discrepancy was due to 'a number of those 8,000 [charities]... operating without a licence'.²³

4.22 This assumption, however, was questioned by Mr Mortimer, who cautioned against assuming that all charities should hold a fundraising licence by noting that it was not mandatory for all ACNC-registered charities to have a fundraising licence if their fundraising did not involve soliciting funds from the public.²⁴

4.23 A large majority of witnesses and submitters believed that most charities wanted to do the right thing and comply with the laws, and breaches of fundraising laws occurred not because charities intend to circumvent them but due to ignorance arising from the laws' complexity.²⁵

21 Ms Geraldine Magarey, Leader Research and Thought Leadership, Chartered Accountants Australia and New Zealand, *Committee Hansard*, 30 October 2018, p. 9.

22 Ms Lavanya Kala, Policy Manager, Volunteering Australia, *Committee Hansard*, 7 November 2018, pp. 7 and 9.

23 Mr David Locke, then Assistant Commissioner, Charity Services, Australian Charities and Not-for-profits Commission, Senate Economics Legislation Committee (Additional Estimates 2016–17), *Committee Hansard*, 1 March 2017, p. 112.

24 Mr Derek Mortimer, Principal, DF Mortimer & Associates, *Submission 6.1: Supplementary to submission to 6*, p. 4.

25 Justice Connect, *Submission 49*, pp. 19–20; Ms Alice Macdougall, Deputy Chair, Charities and Not for Profits Committee, Law Council of Australia, and Mr Alex Milner, Member of Not for Profit and Charities Law Committee, Law Institute of Victoria, *Committee Hansard*, 29 October 2018, pp. 11 and 42; Dr Matthew Turnour, Chairman, Neumann and Turnour Lawyers, *Proof Committee Hansard*, 31 January 2019, p. 13.

4.24 Submitters commented on considerable confusion caused by the 'legal intricacy' of the current legal framework, particularly for small organisations. Consequently, reported non-compliance can often be attributed to 'genuine misunderstanding'.²⁶ The practical impact means that small organisations may risk breaking the law by turning a 'blind eye' to non-compliance.²⁷

4.25 Ms Visevic suggested that based on her firm's experience, 'most organisations that are fundraising are probably in breach of some law somewhere in the country'.²⁸ This belief was based on Mills Oakley's experiences with clients. According to Ms Visevic, clients seek the firm's advice twice in their lifetimes. The first is when they first set up to fundraise and the second is when they only have one licence but continue to fundraise in another jurisdiction until they are found to be non-compliant. Ms Visevic suggested this would indicate many more organisations that engage in fundraising are likely to inadvertently breach fundraising laws.²⁹

Cost of compliance

4.26 Overwhelmingly, the evidence presented before the committee was that the costs of compliance with each state and territory's fundraising laws place a significant burden on charities, both large and small. Differences between jurisdictions mainly exist across three key areas:

- applying for fundraising registration or a licence, and retaining eligibility to fundraise;
- maintaining ongoing compliance; and
- reporting.³⁰

Applying and retaining fundraising registration or a licence

4.27 As discussed in Chapter 3, the application of fundraising registration and licensing is inconsistent across state, territory and Commonwealth jurisdictions. As each state and territory has its own requirements for fundraising licences, the regulatory burden associated with fundraising is estimated to cost the charity sector \$15.1 million each year³¹, and millions more when other not-for-profits are included.³²

26 Mills Oakley, *Submission 64*, p. 4; Justice Connect, *Submission 49*, pp. 19–20.

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

28 Ms Vera Visevic, Partner, Mills Oakley, *Committee Hansard*, 30 October 2018, p. 36.

29 Ms Vera Visevic, Partner, Mills Oakley, *Committee Hansard*, 30 October 2018, p. 36.

30 Deloitte Access Economics, *Australian Charities and Not-for-profits Commission, Cutting Red Tape: Options to Align State, Territory and Commonwealth Charity Regulation*, Final Report, 23 February 2016, p. 17.

31 Deloitte Access Economics, *Australian Charities and Not-for-profits Commission, Cutting Red Tape: Options to Align State, Territory and Commonwealth Charity Regulation*, Final Report, 23 February 2016, p. 39.

32 Ms Sue Woodward, Head of Not-for-profit Law, Justice Connect, *Committee Hansard*, 29 October 2018, pp. 2 and 5, Justice Connect, *Submission 49*, p. 7.

The Smith Family observed that the 'requirement to register in each state and territory plus the different definitions and compliance regimes which apply across them create an undue administrative burden for all charities'.³³

4.28 Mr Norman O'Bryan, SC, stated that he considers the \$15 million figure estimated by Deloitte Access Economics to be 'a gross underestimate' and does not account for the time and effort expended by people who would otherwise be engaged in charitable activities. Mr Peter Hills-Jones, Chief Executive Officer, Public Fundraising Regulatory Association, also noted that Deloitte's estimated figure left out the costs associated with complying with local council regulations.³⁴

4.29 For example, Mr John Scott, Company Secretary and Accountant for the Brandenburg Orchestra, reported that the organisation had spent between \$5,000 and \$10,000 on legal advice to ensure the organisation complied with its fundraising obligations.³⁵

4.30 Mycause reported it had a compliance regime for four licences and three entities and spent in excess of eight hours each month on compliance.³⁶ In addition to the 14 sets of regulation covering its two charities, the My Cause Gift Fund (a Public Ancillary Fund) and Helping a Friend in Need (a Public Benevolent Institution), the platform complies with the ACNC as well as with the regulatory regime the company established with Consumer Affairs Victoria for its personal cause fundraising activities.³⁷

4.31 Ms Tania Burstin from mycause told the committee:

We advise our charity partners... that they must be registered in the state in which they are fundraising. We define fundraising as a solicitation of donations both online and offline. We do not regard a 'donate now' button as solicitation. If Tania Burstin of Victoria wants to fundraise for Bruny Island art society in Tasmania, that organisation must be registered in Victoria. As a charity, you may not know where your fundraisers are located, so therefore you must be registered in each state.³⁸

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

34 Mr Norman O'Bryan, AM SC, Private capacity, *Proof Committee Hansard*, 31 January 2019, p. 19; Mr Peter Hills-Jones, CEO, Public Fundraising Regulatory Association, *Proof Committee Hansard*, 31 January 2019, p. 34. See also Justice Connect, *Submission 49*, p. 19.

35 Mr John Scott, Company Secretary and Accountant for the Brandenburg Orchestra, *Committee Hansard*, 30 October 2018, p. 24. See also Ms Tracy Adams, CEO, yourtown, *Proof Committee Hansard*, 31 January 2019, p. 9 and yourtown, *Submission 79*, pp. 7 and 11.

36 mycause, *Submission 11*, p. [4].

37 Ms Tania Burstin, Managing Director, mycause, *Committee Hansard*, 29 October 2018, pp. 27–28; mycause, *Submission 11*, p. [4].

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

Maintaining ongoing compliance

4.32 Deloitte Access Economics' report outlined the different types of requirements with which charitable organisations are expected to comply on a continuous basis to retain their fundraising registration or licence. These can vary according to the type and method of fundraising, including:

- the authority for street collectors to act on a charity's behalf;³⁹
- receipting requirements; and
- the requirement to have a physical address in the state in which the relevant organisation fundraises.⁴⁰

4.33 The committee heard that for Musica Viva, which operates in all eight states and territories, the impost of maintaining current fundraising authorities across the entire country is significant in terms of administrative, financial and reporting burdens. Mrs Sarah Falzarano, Director of Finance, Sydney Symphony Orchestra, highlighted this burden with an example of a national campaign:

[W]e would run a competition in our subscription campaign incentivising people to subscribe. Because we run subscriptions nationally, then we have to take out those competition authorities in all eight jurisdictions, so the flow-on impact of that is it diverts already-scarce resources away from the purpose of the organisation. Similarly, the regulatory framework around fundraising activities is often complex and sometimes open to misinterpretation. A national approach with simple guidelines in plain English would greatly reduce time lost in ensuring that compliance is all in place on a national scale.⁴¹

4.34 To underscore the amount of regulation the company mycause has had to comply with, Ms Burstin, Managing Director of the online fundraising platform, reported the company is 'really up to our eyeballs in compliance'.⁴² Ms Burstin explained that to comply with the 14 sets of regulations, one part-time staff member is employed to keep up to date with the organisation's compliance obligations. In addition to the regular regulatory compliance work, there are other requirements:

Not only does each state have a different burden of registration—for example in Queensland having to advertise in the newspaper, or in New South Wales having to have a postal address in New South Wales—but each state has a different burden of compliance. For example, Victoria

39 For example, Western Australia's *Street Collections (Regulation) Act 1940* (WA) regulates fundraising via street collections differently by requiring a separate licence from that granted by the main fundraising legislation. See Mills Oakley, *Submission 64*, p. 17.

40 Deloitte Access Economics, *Australian Charities and Not-for-profits Commission, Cutting Red Tape: Options to Align State, Territory and Commonwealth Charity Regulation*, Final Report, 23 February 2016, p. 22. For a list of location requirements refer to the Deloitte report.

41 Mrs Sarah Falzarano, Director of Finance, Sydney Symphony Orchestra, *Committee Hansard*, 30 October 2018, p. 23.

42 Ms Tania Burstin, Managing Director, mycause, *Committee Hansard*, 29 October 2018, p. 28.

wants our data in May, just before the end of the financial year, rather than waiting for our books to be complete at the end of June. The New South Wales regulator recently knocked back our audit as it did not reference their act; it only referenced the ACNC. This causes us additional cost and burden with our expensive auditors.⁴³

4.35 Mr John Scott from the Brandenburg Orchestra recounted a similar example of regulatory burden experienced by the Australian Brandenburg Orchestra:

[W]e opened up in Melbourne when the Melbourne Recital Centre came on board 10 years ago, and we decided that we wanted to fundraise there. Even though we were registered for fundraising in New South Wales, and it's a requirement for that to be reported in our annual report, we had to go and register in Victoria as well. The issue we had there was that our office is based in Sydney and is very small. They required an office in Melbourne in order for us to register.⁴⁴

4.36 In addition to ensuring each of the compliance requirements for each state and territory is covered, Mr Bruce Moore, General Counsel, Australian Red Cross Society, noted that compliance dealings with individual state and territory regulators can delay fundraising campaigns:

It's more the detailed dealings with the individual regulators that gives rise to specific obligations—for example, provision of copies of contracts to the Queensland regulator for fundraising with the entities who we are contracting with in order to raise funds. [...] So it's that kind of detail that means sometimes there may be a time interval between wanting to run a campaign and being able to commence it.⁴⁵

4.37 Other issues identified included the difficulty of obtaining criminal record checks for all board members who may be scattered across the country and the requirement for an audit report if the ticket price for an event is over a certain threshold. This was despite accounts already being audited by one of the major accounting firms.⁴⁶

4.38 Adding to the complication of fulfilling a 'significant number of operational compliance requirements', Deloitte's research found that compliance information can be difficult to access. Deloitte stated in its report:

As fundraising registration is typically an ancillary component of the state or territory's responsibilities, some jurisdictions do not have this information readily available on their website to use as a quick reference guide. Consequently, time is spent searching for the different requirements

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

44 Mr John Scott, Company Secretary and Accountant for the Brandenburg Orchestra, *Committee Hansard*, 30 October 2018, p. 23.

45 Mr Bruce Moore, General Counsel, Australian Red Cross Society, *Committee Hansard*, 29 October 2018, p. 35.

46 Mr John Scott, Company Secretary and Accountant for the Australian Brandenburg Orchestra, *Committee Hansard*, 30 October 2018, p. 23.

in each of the jurisdictions to ensure that requirements are being maintained.⁴⁷

4.39 Mr Moore from Australian Red Cross Society outlined that even for a large organisation with a dedicated team to oversee fundraising, the work required to comply with the range of regulatory requirements remains substantial and is a continuous process. He outlined some of the internal processes undertaken before his charity could fundraise nationally:

Maintaining fundraising licences—they need to be renewed every so often. There are certificates around what is permitted fundraising activity and for what types of purposes. That can vary. So, in our case, that has to be expressed, and is expressed, in general terms because of the diversity of charitable activities the organisation undertakes. It is making sure all those things are in place on a continuous basis that provides some of the challenges.⁴⁸

Reporting

4.40 The committee received evidence that in addition to compliance with federal reporting requirements, charities which fundraise also have reporting obligations to the relevant state and territory regulators on amounts they collect. As noted by Deloitte, these reporting obligations can vary between jurisdictions, as do the timeframes for submission and the need for audited accounts.⁴⁹

4.41 Mills Oakley's submission echoed Deloitte's findings, reporting that the effort and work involved to meet the different, and sometimes conflicting, audit and reporting requirements puts pressure on an organisation's resources (both financial and human capital).⁵⁰

4.42 For example, Mrs Falzarano from Sydney Symphony Orchestra drew attention to the large number of regulatory authorities that Australian Major Performing Arts Group (AMPAG) members reported to over the course of a 12 month period. She noted:

[t]hose multilayered reporting requirements provide a high administrative burden and can lead to complexity, and we find that many of them are often asking for similar data, perhaps in slightly different presentation formats.⁵¹

47 Deloitte Access Economics, *Australian Charities and Not-for-profits Commission, Cutting Red Tape: Options to Align State, Territory and Commonwealth charity Regulation*, Final Report, 23 February 2016, pp. 22–23.

48 Mr Bruce Moore, General Counsel, Australian Red Cross Society, *Committee Hansard*, 29 October 2018, pp. 35–36.

49 Deloitte Access Economics, *Australian Charities and Not-for-Profits Commission, Cutting Red Tape: Options to Align State, Territory and Commonwealth Charity Regulation*, Final Report, 23 February 2016, p. 23.

50 Mills Oakley, *Submission 64*, p. 17.

51 Mrs Sarah Falzarano, Director of Finance, Sydney Symphony Orchestra, *Committee Hansard*, 30 October 2018, p. 23.

Disadvantages small and medium charities

4.43 The committee heard that the regulatory burden was particularly difficult for smaller charities to manage. Mr Moore from Australian Red Cross indicated his sympathy for the regulatory burden experienced by smaller charities operating on limited resources.⁵² Ms Lavanya Kala from Volunteering Australia added that the vast majority of charities were small organisations heavily dependent on giving and philanthropy and work under severe funding constraints.⁵³

4.44 Mills Oakley's submission supported this view, and pointed out that the limited budgets and resources of smaller organisations made it especially difficult for charities to obtain 'exhaustive legal advice on issues requiring extensive research to account for jurisdictional inconsistencies'.⁵⁴

4.45 Small charity organisations like the Australasian Leukaemia and Lymphoma Group (ALLG), which recently moved into the fundraising space as a way to diversify its revenue, advised the committee that when they looked at setting up a fundraising plan they were surprised to learn there was not a nationally consistent approach to fundraising regulations. Ms Delaine Smith, Chief Executive Officer for ALLG, was also surprised that the standards and codes were not set by the ACNC but by organisations that require additional annual memberships, such as the Fundraising Institute Australia and the Public Fundraising Regulatory Association.⁵⁵ Ms Smith reported that of the \$41,000 ALLG received in donations, about a quarter (less than \$10,000) was spent on compliance. This did not include the human resource time. She explained that once the initial application process with the states was taken, the ongoing reporting was less onerous to maintain.⁵⁶

4.46 Mr David Thomas, Member of Chartered Accountants Australia and New Zealand, described his workload as a member and Chief Executive Officer of a small local not-for-profit branch of Lifeline Australia and observed that '[t]o make this a lot simpler would free us up so much'.⁵⁷

Volunteer-based organisations

4.47 The impact of regulatory compliance was emphasised by Ms Kala for Volunteering Australia in her evidence before the committee. The committee heard

52 Mr Bruce Moore, General Counsel, Australian Red Cross Society, *Committee Hansard*, 29 October 2018, pp. 35–36.

53 Ms Lavanya Kala, Policy Manager, Volunteering Australia, *Committee Hansard*, 7 November 2018, pp. 7–8.

54 Mills Oakley, *Submission 64*, p. 4. See also Dr Lisa O'Brien, Chief Executive Officer, The Smith Family, *Committee Hansard*, 30 October 2018, p. 29.

55 Ms Delaine Smith, CEO, Australasian Leukaemia and Lymphoma Group (ALLG), *Committee Hansard*, 29 October 2018, pp. 33 and 35.

56 Ms Delaine Smith, CEO, ALLG, *Committee Hansard*, 29 October 2018, p. 35.

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

the volunteering sector, which contributes \$290 billion annually to Australia socially and economically, plays a critical role in the delivery of government priorities and support for the charity sector. For organisations which rely heavily on the efforts of volunteers, the regulatory burden places them under enormous pressures. Ms Kala suggested that the formal decline in volunteering numbers could be due to people being deterred by red-tape.⁵⁸ She told the committee:

...the reporting requirements are complex and confusing and result in onerous administrative requirements for charities that don't have the resources or human capital [such as in-house counsel] to navigate them.⁵⁹

4.48 To underscore the vital role of volunteers in the charity sector, Ms Kala told the committee that volunteers make up 2.97 million members of the sector's workforce compared to one million paid staff members.⁶⁰ The 2015 Giving Australia report on non-profits and volunteering found that 62.3 per cent of organisations in the not-for-profit sector recruited volunteers.⁶¹

4.49 The committee heard there are additional costs involved for volunteer-involving organisations in the charity sector compared to charities run by paid staff. This is due to the high costs associated with the management of volunteers, who might be considered 'free labour' but require resources for training, equipment, management and compliance.⁶²

4.50 Mr John Mikelsons, Senior Policy and Advocacy Officer for the Australian Council of Social Service (ACOSS), highlighted the impost placed upon small charities that rely heavily on volunteers. He told the committee that a national charity involved in fundraising for HIV prevention that relies solely on volunteers to run, of which he is a board member, has had to relinquish its fundraising licence in several states because it did not have the resources to 'keep it up'.⁶³

4.51 Ms Nicole Stanmore, Director of Business Development, Engagement and Operations for Australian Council of Social Service, stated that, in relation to reporting and registration, in a voluntary organisation:

...if there's no administrative support, it would be absolutely impossible to coordinate different board directors to do police checks, to sign different

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

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

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

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

62 Ms Lavanya Kala, Policy Manager, Volunteering Australia, *Committee Hansard*, 7 November 2018, p. 8.

63 Mr John Mikelsons, Senior Policy and Advocacy Officer, Australian Council of Social Service, *Committee Hansard*, 7 November 2018, p. 3.

forms and to have everything done on time. That process can actually take weeks.⁶⁴

Inefficient allocation of resources

4.52 The committee heard from witnesses that charity resources have often been diverted from core business in order to comply with current regulatory obligations.

4.53 For example, the committee heard that in addition to the costs involved, the time ALLG staff spent on compliance was not productive and could be better directed towards ALLG's primary research objectives, with its Chief Executive Officer saying that 'This is due to the repetition, the inconsistencies, the various fees and the additional costs that one has to acquire, such as print media, in various states'.⁶⁵

4.54 Similarly, Ms Katherine Raskob, the Chief Executive Officer of the Fundraising Institute Australia, described the resources member organisations have had to divert towards regulatory compliance that could have been more productively employed on their charitable cause:

[O]ur members [are] all across Australia, and many of them say that they have additional resources that cost them quite significant funds to be able to adhere to the various legislation and regulatory regimes. Those funds could more effectively be used for the ultimate cause of their fundraising activity rather than for red tape. One of our members is an NGO and works to eradicate poverty worldwide, and it has one full-time equivalent just doing the work of red tape, working within the red tape burden. For example, if that were a salary of over \$100,000, you can imagine how far that would go in a fundraising environment.⁶⁶

4.55 Several witnesses concurred and drew attention to the inefficient use of their (member or client) organisations' resources.⁶⁷ Dr Lisa O'Brien, Chief Executive Officer for The Smith Family, told the committee that a 'lack of harmonisation currently limits efficiency in The Smith Family's efforts to fundraise, expand services and increase its positive impact for Australian communities'.⁶⁸

Lost opportunities

4.56 For small organisations, the regulatory burden of compliance with fundraising requirements often means they have had to make a cost-benefit analysis of whether a

64 Ms Nicole Stanmore, Director of Business Development, Engagement and Operations, Australian Council of Social Service, *Committee Hansard*, 7 November 2018, p. 4.

65 Ms Delaine Smith, Chief Executive Officer, Australasian Leukemia and Lymphoma Group, *Committee Hansard*, 29 October 2018, p. 33.

66 Ms Katherine Raskob, the Chief Executive Officer, Fundraising Institute Australia, *Committee Hansard*, 30 October 2018, p. 3.

67 Lifeline, The Smith Family, Volunteering Australia, and Whipbird Consulting, see *Committee Hansard*, 30 October 2018, pp. 11 and 28; *Committee Hansard*, 7 November 2018, p. 7; and *Proof Committee Hansard*, 31 January 2019, p. 2.

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

fundraising activity should be pursued or restricted in its scope. For example, Mr Peter Kempen, Chairman of ALLG, explained that despite receiving DGR status in 2009 and being able to receive donations, ALLG decided against going national with its fundraising activities because it found the process daunting. Mr Kempen added:

Whilst that didn't stop us from receiving some donations, particularly in Victoria, we didn't rush to go national even though we are a national organisation conducting trials across the country. We didn't seek to go down that path for some years...and we're still questioning the value of doing it.⁶⁹

4.57 Mr Kempen informed the committee that if the process had been less complex, ALLG's decision to engage in fundraising would have been made much easier. As it is, Ms Smith advised that after over 12 months of working through the registration process with Western Australia, ALLG decided to suspend the process following a cost-benefit analysis.⁷⁰

4.58 Dr Peter Thomas, Director of Policy and Operations, Association of Australian Medical Research Institutes (AAMRI), provided an example of lost opportunity attributed to regulatory burden. It involved a Victoria-based member being told by the NSW Fair Trading that a NSW postal address was a required part of their application if they wanted to undertake a national fundraising campaign. Dr Thomas told the committee that:

...after much arguing and discussion they [NSW Fair Trading] said, 'We'll ignore that and put your Victorian address down.' That is all well and good but the directors have to sign a declaration saying that they are compliant with the law—and they're unwilling to sign a declaration that they're complying with the law when they're knowingly disregarding it. It's taken one person in that office probably about three weeks of arguing over the last six months to get to that stage.⁷¹

4.59 Ms Alice Macdougall, the Deputy Chair of the Charities and Not for Profits Committee at the Law Council of Australia, shared a similar observation where regulatory burden has deterred the participation of otherwise interested fundraising partners:

Where I probably see the most restriction occurring is actually where corporates want to support some charitable cause. When they find out that there's this fundraising regime and that it's very detailed in what they can and can't do, they withdraw, particularly if it's something where they want to sell a good and say some of the money is going to a charitable purpose.

69 Mr Peter Kempen, Chairman, Australasian Leukemia and Lymphoma Group, *Committee Hansard*, 29 October 2018, p. 36. See also Mr Peter Tavatgis, Director, Whipbird Consulting, *Proof Committee Hansard*, 31 January 2019, p. 2.

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

71 Dr Peter Thomas, Director, Policy and Operations, Association of Australian Medical Research Institutes, *Committee Hansard*, 29 October 2018, p. 37.

With the varying provisions around labelling and advertising and all sorts of requirements, they just go, 'No, we're not going to do that.'... It's too hard.⁷²

4.60 The committee heard evidence from a number of witnesses about the stifling effect current fundraising laws have on innovation in the sector. This impacts the ability of charities of all sizes to engage in new and novel ways to fundraise beyond their own jurisdiction.⁷³

4.61 One such example of constraint placed on a potential fundraising campaign involved a client wanting to fundraise using a mobile phone app. Mr John Vaughan-Williams, Lawyer for Mills Oakley, explained that due to a delay in obtaining licences in every state for a national campaign, the commencement of the fundraising operation was delayed by six to 12 months.⁷⁴ Mills Oakley concluded that the risk of non-compliance and the current regime's complexity discourages charities from expanding their fundraising programs.⁷⁵

Lack of regulation of online platforms

4.62 A recurring issue identified by witnesses and submitters concerned the lack of regulation for online fundraising. The committee heard there was no consistent approach to online fundraising between the states and territories. The committee heard that online giving has become 'a very cost-effective way of engaging with people and a very contemporary way of giving and receiving information'.⁷⁶ Ms Geraldine Magarey, Leader Research and Thought Leadership, Chartered Accountants Australia and New Zealand, reported that 96 per cent of large organisations use websites to fundraise, 80 per cent use social media and almost 70 per cent use third party fundraising platforms and crowdfunding campaigns.⁷⁷

4.63 The lack of a national approach to regulation in the online fundraising space means that despite the digital transformation of fundraising activities, current fundraising laws have failed to deal with this new form of fundraising, resulting in a

72 Ms Alice Macdougall, Deputy Chair, Charities and Not for Profits Committee, Law Council of Australia, *Committee Hansard*, 29 October 2018, p. 10. See also Mr Norman O'Bryan's evidence regarding lost opportunities, *Proof Committee Hansard*, 31 January 2019, p. 20.

73 For examples, see Ms Sue Woodward, Head, Not-for-profit Law, Justice Connect, *Committee Hansard*, 29 October 2018, pp. 2–3, 8; Ms Alice Macdougall, Deputy Chair, Charities and Not for Profits Committee, Law Council of Australia, *Committee Hansard*, 29 October 2018, pp. 10, 13; Ms Sarah Wickham, Policy and Research Manager, Philanthropy Australia, *Committee Hansard*, 29 October 2018, pp. 14, 16–17.

74 Mr John Vaughan-Williams, Lawyer, Mills Oakley, *Committee Hansard*, 30 October 2018, pp. 34–35.

75 Mills Oakley, *Submission 64*, p. 4. See also Ms Alice Macdougall's observation (Law Council of Australia), *Committee Hansard*, 29 October 2018, p. 13.

76 Ms Tracy Adams, CEO, yourtown, *Proof Committee Hansard*, 31 January 2019, p. 7.

77 Ms Geraldine Magarey, Leader Research and Thought Leadership, Chartered Accountants Australia and New Zealand, *Committee Hansard*, 30 October 2018, p. 9.

regulatory gap as well as inconsistent treatment of different groups engaging in the same fundraising activities. The states and territories' different approaches often result in 'inconsistent, ambiguous and not clearly codified [guidelines] and require specific investigation'.⁷⁸

4.64 However, Mr Alex Milner, Member of Not for Profit and Charities Law Committee, Law Institute of Victoria, stated current legislation has been slow to reflect the diverse nature of fundraising in Australia:

There is not just online fundraising; there is also fundraising to do with donations of cryptocurrency and all sorts of weird and wonderful things that come through. It's apparent that the current legislation has a whole lot of gaps in terms of how it addresses that. It also has, in many cases, a questionable policy basis. It may have been the case that some of the legislation did have a good policy basis, but it no longer has that.⁷⁹

4.65 Mr Moore echoed this view and stated:

[a] national approach would need to recognise that fundraising these days is via a great variety of different channels, some face to face, some online, some through mail and so on. In particular, digital fundraising through online activities doesn't have any state or territory boundaries.⁸⁰

4.66 Ms Burstin likened online fundraising to the traditional method of people asking family and friends for money to help each other for a range of causes, the only difference now being the borderless nature of such online fundraising activities.⁸¹

4.67 The committee heard alongside the shift towards online fundraising there is also a trend in the direction of third-party fundraising.⁸² Generally, third-party fundraising refers to any non-charity groups, commercial businesses or private individuals who wish to fundraise on behalf of charities or a personal cause. The online platform used to host the fundraising event is considered a commercial entity.

4.68 Ms Sarah Wickham, Philanthropy Australia, observed the high profile Belle Gibson fraud case highlighted the need to 'really modernise, streamline and update fundraising laws in Australia':

[B]ecause online digital fundraising platforms are not regulated in Australia there were no rules around the ability of individuals to create fake

78 Mills Oakley, *Submission 64*, p. 13. Mills Oakley provided a real-life example where the legal advice it provided a client involved each state and territory jurisdiction adopting conflicting interpretations of whether an additional licence was required outside of the host jurisdiction.

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

80 Mr Bruce Moore, General Counsel, Australian Red Cross Society, *Committee Hansard*, 29 October 2018, p. 32.

81 Senate Select Committee on Charity Fundraising in the 21st Century, *Committee Hansard*, 29 October 2018, pp. 25–26.

82 Senate Select Committee on Charity Fundraising in the 21st Century, *Committee Hansard*, 30 October 2018, p. 9.

campaigns and go to the public with a compelling story to raise funds. When you find a situation where a sector or an industry is significantly developing through the pace of technological development, but regulation isn't keeping up the pace with these issues, you see situations like this happen.⁸³

4.69 The committee notes that the state regulator was successful in obtaining an order against Ms Gibson for contravention of the ACL.

Local online platforms disadvantaged

4.70 The committee heard that the current regulatory environment can result in disadvantages for local online platforms. For example, in the absence of consistent regulations governing the online fundraising space, particularly as they relate to personal cause fundraising, Ms Burstin reported that her company has had to create its own regulatory regime with Consumer Affairs Victoria (CAV) in order to operate from Victoria. This includes complying with all company regulations and notifying the regulator each month of every fundraising page that is created.⁸⁴ However, by complying with these regulations, Ms Burstin argued that her locally-based third party fundraising company is operating at a disadvantage compared to her unregulated competitors based overseas.⁸⁵

4.71 Ms Burstin attributed the lack of consistent regulation across the different jurisdictions to a confused approach to personal cause fundraising regulation. Apart from mycause's regulatory solution with CAV, New South Wales is the only state that regulates mycause's online fundraising platform as a trader. Also, while some states treat personal cause fundraising as a charitable purpose and therefore regulate it, some do not, or are confused about how to regulate it. Ms Burstin suggested that the confusion arises when regulators try to define online personal cause fundraising within the narrow legislative frameworks that cover charity and charitable purpose. When regulators fail to find a satisfactory solution, this leaves a regulatory gap that may place an unfair burden on local fundraisers and fundraising platforms, and leaves donors vulnerable to fraud.⁸⁶

83 Ms Sarah Wickham, Policy and Research Manager, Philanthropy Australia, *Committee Hansard*, 29 October 2018, p. 18.

84 Ms Tania Burstin, Managing Director of mycause, *Committee Hansard*, 29 October 2018, p. 27.

85 Ms Tania Burstin, Managing Director of mycause, *Committee Hansard*, 29 October 2018, pp. 26–28.

86 Ms Tania Burstin, Managing Director of mycause, *Committee Hansard*, 29 October 2018, p. 27.

4.72 The inconsistent treatment between locally-based and overseas-based fundraising platforms is underscored by the numerous regulations Ms Burstin's company⁸⁷ has had to comply with compared to her unregulated competitors:

When I speak to the regulators, I might say to them—in fact, I have said to them in Victoria—'Person A is fundraising on an overseas platform, and they're located in Victoria. They've raised over \$10,000, and they haven't got a licence with you, which is your requirement.' They will say to me, 'Oh, but that platform's overseas.' I will say to them, 'But the fundraiser is located in Victoria.' It probably shouldn't matter where the platform is located. It doesn't really matter anymore...⁸⁸

4.73 Ms Burstin highlighted some of the transparency and accountability measures local companies like hers undertake that overseas platforms do not:

There is no level playing field with the overseas platforms, who are non-compliant with any regulations. [...] We expose the bank account name and the name of the beneficiary, so the donor can make an informed choice. [...] Should that trust be broken, you have a remedy in consumer and fraud law.⁸⁹

Lack of accountability and transparency

4.74 Evidence before the committee emphasised the importance of trust underpinning the relationship between donors and the beneficiaries of donations in the charity and not-for-profit sector. The committee heard transparency and accountability activities, which are critical to building trust, should be streamlined and made more accessible to both charities and members of the public than is presently the case.

Third party and online fundraising platforms

4.75 In relation to online third party platforms, the committee heard that the lack of interaction with donors on these platforms was incompatible with transparency and accountability.⁹⁰

4.76 Several witnesses raised the issue of accountability and transparency concerning third party online fundraising platforms that require regulation.⁹¹

87 As third-party fundraisers are generally, if not all, for-profit entities, they would be covered by the Australian Consumer Law as they engage in trade and commerce. See *Committee Hansard*, 29 October 2018, pp. 11–12.

88 Ms Tania Burstin, Managing Director of mycause, *Committee Hansard*, 29 October 2018, p. 26.

89 Ms Tania Burstin, Managing Director of mycause, *Committee Hansard*, 29 October 2018, p. 26.

90 Ms Delaine Smith, CEO, ALLG, *Committee Hansard*, 29 October 2018, p. 39.

91 See, for example evidence from mycause, Mills Oakley, Dr Ted Flack, ACPNS, QUT, and Neumann and Turnour Lawyers, *Committee Hansard*, 29 October 2018, 30 October 2018 and 31 January 2019.

4.77 Ms Macdougall from the Law Council of Australia recommended that charity regulations should be based on transparency and public accountability for all activities. The conduct of activities should not be misleading, coercive or unconscionable, and funds raised should be applied in a manner consistent with charitable purposes.⁹²

4.78 Ms Smith from ALLG commented that it can be confusing to understand the administrative costs of organisations using third party online platforms. She explained that while the online platform might claim there is a small percentage that would be taken for administrative costs, the donor might interpret this to mean the cost to be the charity's administrative fee when this is not the case. Rather, the percentage cost refers to the amount retained by the online platform. Ms Smith was of the opinion that such fees and charges should be clarified so people are informed exactly what proportion of their donations goes toward the charitable cause of their choice.⁹³

4.79 Ms Smith also identified insufficient clarity about who has access to a donor's credit card details, the fees associated with using third party services, and any additional costs. She also raised the issue of when an online third party fundraiser withholds funds from a beneficiary because the beneficiary did not have a licence for fundraising interstate.⁹⁴

Administration and non-charity related expenses

4.80 A common complaint heard by the committee was the lack of transparency and information concerning administration and non-charity related fees and expenses. The committee heard that while donors may not like to learn their funds go towards administration costs, administration costs are necessary in order to undertake the work of charities or charitable causes. Mr Moore, General Counsel for Australian Red Cross Society, suggested that it was a matter of educating the public so they understand that some administration costs are necessary in order to direct funds towards a charity's core purpose.⁹⁵

4.81 Dr Thomas concurred and added that costs can differ depending on a particular stage of a fundraising campaign. He explained that often most of the expenses for a fundraising campaign can be in the set and up-front costs involving the

92 Ms Alice Macdougall, Deputy Chair, Charities and Not for Profits Committee, Law Council of Australia, *Committee Hansard*, 29 October 2018, p. 9.

93 Ms Delaine Smith, CEO, Australasian Leukemia and Lymphoma Group, *Committee Hansard*, 29 October 2018, p. 40.

94 Ms Delaine Smith, CEO, Australasian Leukemia and Lymphoma Group, *Committee Hansard*, 29 October 2018, p. 37.

95 Mr Moore, General Counsel, Australian Red Cross Society, *Committee Hansard*, 29 October 2018, pp. 39–40. See also Professor Myles McGregor-Lowndes, Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Proof Committee Hansard*, 31 January 2019, pp. 15–16.

staffing of a campaign. This immediate establishment cost will decline over time as donations increase and the charity receives a steady stream of funds from donors.⁹⁶

4.82 Ms Macdougall shared a similar view, contending that it is impossible to regulate what percentage of money raised should be spent on administration:

I think there's been quite a lot of research done out of QUT where they look at this issue of fundraising ratios. Basically, they conclude every time that it's impossible to regulate, because you can account so differently for different aspects of it. [...] There are arguments that when you're just starting out you might be spending a lot more money on administration than you are in producing whatever your charitable purpose is. It could depend on the timeline. It could be very misleading in itself, the actual ratio.⁹⁷

4.83 The issue of fees was particularly relevant to online third party fundraisers. Mr Kempen was of the view that there is a transparency deficit regarding online fundraising and believed strongly that donors should be informed how much of their donations go to the charity of choice and how much is charged by third party fundraisers for their service.⁹⁸

Enforcement

4.84 The committee heard from witnesses that enforcement of fundraising regulations was a recurring issue, particularly in the context of under-resourced regulators. For example, Mr David Crosbie from the Community Council for Australia stated that:

Unfortunately this is an area of government activity that has not been well resourced. Even if the legislation was good, I think there are fewer than 20 people around Australia employed in this area, across all the jurisdictions, so they just haven't resourced it.⁹⁹

4.85 The issue of under-resourced fundraising regulators was highlighted by ACPNS, QUT's submission, which reported that the number of staff employed in fundraising regulation administration across Australia was particularly inadequate, with 16.95 full-time equivalent (FTE) staff responsible for the whole country.¹⁰⁰

96 Dr Peter Thomas, Director of Policy and Operations, Association of Australian Medical Research Institutes, *Committee Hansard*, 29 October 2018, p. 40.

97 Ms Alice Macdougall, Deputy Chair, Charities and Not for Profits Committee, Law Council of Australia, *Committee Hansard*, 29 October 2018, p. 11.

98 Mr Peter Kempen, Chairman, Australasian Leukemia and Lymphoma Group, *Committee Hansard*, 29 October 2018, p. 39. Ms Smith submitted a similar view about the substantial fees charged by some online fundraising organisations as a middleman. See *Committee Hansard*, 29 October 2018, p. 33.

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

100 Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *Submission 56*, p. [13]. See also Professor Myles McGregor-Lowndes and Mr Norman O'Bryan, AM SC, Private capacity, *Proof Committee Hansard*, 31 January 2019, pp. 17, 21–22.

4.86 Mr Vaughan-Williams, Lawyer for Mills Oakley, expressed a similar sentiment. He partly attributed the regulator's reluctance to pursue breaches of the law through the courts to the authority being 'a little bit under-resourced'.¹⁰¹ He noted that the regulators may want to 'pursue things' but they may be restricted by limited resources.¹⁰² Ms Visevic was of the view that regulators were '[not] proactive in terms of trying to ferret out that sort of behaviour [breaches of the law] or trying to review licensed organisations'.¹⁰³ Ms Visevic stated that her firm usually don't get involved until something was reported to them or they may be pressured to get involved because a case may have garnered a lot of media attention. They may act 'bolshie' at the start but would generally arrive at a solution that did not include going to court.¹⁰⁴

4.87 Ms Burstin stated that even where there is regulation requiring a license in a jurisdiction, not all states may enforce this requirement. She provided an example where in Queensland, although a person is required to have permission for a one-off charitable appeal, the regulator may not follow up due to lack of resources, especially when they believe no fraud has been committed.¹⁰⁵

4.88 Evidence received from the Public Fundraising Regulatory Association (PFRA) and the Fundraising Institute Australia indicated that these two self-regulatory groups devoted significant resources to compliance activities with members. For instance, Mr Peter Hills-Jones, Chief Executive Officer, from PFRA, informed the committee his organisation undertook checks of 400 to 500 of its members each year.¹⁰⁶

Limited role of the Australian Competition and Consumer Commission

4.89 Some evidence outlined concerns about the limited role of the ACCC in regulating the charities sector under the ACL. In particular, this evidence emphasised that because the ACL is confined to trade or commercial activities, the ACCC may overlook other types of charitable fundraising activities that do not fall within this remit, unless they involve fundraising in an organised, continuous and repetitive way.¹⁰⁷ Many witnesses and submitters supported expanding the ACL and the

101 Mr John Vaughan-Williams, Lawyer, Mills Oakley, *Committee Hansard*, 30 October 2018, p. 36.

102 Mr John Vaughan-Williams, Lawyer, Mills Oakley, *Committee Hansard*, 30 October 2018, p. 36.

103 Ms Vera Visevic, Partner, Mills Oakley, *Committee Hansard*, 30 October 2018, p. 35.

104 Ms Vera Visevic, Partner, Mills Oakley, *Committee Hansard*, 29 October 2018, pp. 35–36.

105 Ms Tania Burstin, Managing Director of mycause, *Committee Hansard*, 29 October 2018, pp. 25 and 27.

106 Fundraising Institute Australia, *Submission 28*, p. 7; Mr Peter Hills-Jones, CEO, Public Fundraising Regulatory Association, *Proof Committee Hansard*, 31 January 2019, pp. 31 and 34. The committee heard both self-regulatory bodies used mystery shopping firms to undertake these checks.

107 For example, Mr David Crosbie, Chief Executive Officer, Community Council for Australia, *Committee Hansard*, 7 November 2018, pp. 39 and 46; Dr Ted Flack, *Submission 91*, p. 9.

regulatory role of the ACCC, whether as a single or co-regulator with the ACNC or another body.

4.90 The following chapter outlines some of these proposals, as well as other options for reform that were suggested by witnesses and submitters as a means of resolving many of the issues raised about the current regulatory frameworks for fundraising.

