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(submitted by email: policy@customerservice.nsw.gov.au)

Review of Part 3A of the Charitable Fundraising Act 1991

Justice Connect welcomes the opportunity to respond to the Discussion Paper Review of Part 3A of the Charitable Fundraising Act 1991 (**the Act**).

For the reasons set out below, **Justice Connect believes that Part 3A of the Act should be repealed** as it is unnecessary to ensure public confidence in the charitable fundraising system.

About Justice Connect

In the face of huge unmet legal need, Justice Connect designs and delivers high-impact interventions to increase access to legal support and achieve social justice. We help those who would otherwise miss out on assistance, focusing on people disproportionately impacted by the law and the organisations that make our communities thrive.

We have been serving the community for more than 25 years. We are a registered charity, operating nationally.

Our expertise – our Not-for-profit Law service

This submission draws on the experience of our specialist Not-for-profit Law program which provides free and low-cost legal assistance to not-for-profit community organisations and social enterprises, many of whom are registered charities.

In the 2019-2020 financial year, we assisted more than 1,600 not-for-profit groups, 45% of which were based in New South Wales.

Part 3A is unnecessary

Part 3A of the Act overlaps with the investigative powers of other regulatory bodies and police agencies. It is unnecessary.

The Australian Charities and Not-for-Profits Commission (**ACNC**),¹ the Australian Securities and Investments Commission (**ASIC**),² the Australian Competition and Consumer Commission (**ACCC**), and state and federal police all have well-established and broad powers to gather information and investigate compliance with civil and criminal laws under Commonwealth and New South Wales legislation. We note that the Bergin Inquiry referred several people to the ACNC, ASIC and the police for investigation.³

We understand a benefit of Part 3A of the Act is the public nature of the inquiry. However, the ACNC release public reports of their investigations and compliance work, including their report into fundraising activities following the 2019-2020 bushfires.⁴

There is also a current consultation on easing the ACNC's secrecy requirements. At the least, the result of this consultation, and a decision on it by the Commonwealth government, should be considered before any decision to retain Part 3A is made. It is likely the ACNC will have greater powers to disclose the conduct and findings of their inquiries publicly as this was a recommendation of the independent panel review of the ACNC Act.

National Harmonisation

Retaining Part 3A works against moves toward national harmonisation.

One of the key, overarching recommendations from the Bergin Inquiry was support for the introduction of a single, unified Australian statutory regime for the regulation of charitable fundraising.⁵ Part 3A retains a regime that does not exist in the fundraising laws of other jurisdictions and therefore works against national harmonisation.

We would be happy to discuss further. We consent to this submission being publicly available (with signatures redacted).

¹ see Part 4-1 *Australian Charities and Not-for-profit Commission Act 2012* (Cth) (ACNC Act).

² See Part 3 *Australian Securities and Investments Commission Act 2001* (Cth).

³ *Report of the Inquiry under the Charitable Fundraising Act 1991*, Recommendations, 14.4 (page 543).

⁴ *Bushfire response 2019-20 - Reviews of three Australian charities*, ACNC, October 2020.

⁵ *Report of the Inquiry under the Charitable Fundraising Act 1991*, Recommendation 14.8 (page 544).

Yours sincerely,



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