

Senate Select Inquiry into Charitable Fundraising in the 21st Century



6 August 2018



Acknowledgements

We acknowledge the pro bono legal advice provided to Justice Connect in relation to both the operation of the Australian Consumer Law and legal advice as set out in this submission by:

- Herbert Smith Freehills
- Norman O’Bryan AM SC

We acknowledge the contributions of our *#fixfundraising* partners (see below under endorsements) in the development of Part 1 of this submission.

Contacts

Sue Woodward
Director
Not-for-profit Law, Justice Connect
sue.woodward@justiceconnect.org.au

Nadine Clode
Manager Education and Advocacy
Not-for-profit Law, Justice Connect
nadine.clode@justiceconnect.org.au

Our expertise on this issue

Not-for-profit Law – a specialist service of Justice Connect

Not-for-profit Law is an Australia-wide program of the registered charity Justice Connect.

Not-for-profit Law provides free and low cost legal assistance to not-for-profit community organisations and social enterprises. Not-for-profit Law provides services directly – legal information, advice and training – and brokers referrals for pro bono assistance from its member law firms and barristers. By helping those involved in running not-for-profit groups to navigate the full range of legal issues that arise during the lifecycle of their organisation, Not-for-profit Law saves them time and resources. This allows them to focus on achieving their mission, whether that is helping vulnerable people, environmental conservation, or working towards social cohesion.

Not-for-profit Law advocates for an improved legal and regulatory framework for the not-for-profit and social enterprise sector, and to ensure law reform considers the impacts of regulation especially on small to medium-sized organisations. Effective and appropriate regulation supports efficient and well-run not-for-profits and social enterprises. A thriving sector benefits all Australians.

Not-for-profit Law was instrumental in conceiving and has since led a major campaign to reform Australia's broken fundraising laws under the banner of #fixfundraising. Since 2016 #fixfundraising has been backed by a powerful coalition of sector and peak professional bodies, with support from hundreds of charities large and small formally signing on (see Attachment A).

At Not-for-profit Law we also have hands on experience of providing information and advice to groups about their regulatory obligations when fundraising. Specifically, over the last five years we have:

- taken more than 7,170 legal enquiries from not-for-profits and charities with hundreds in relation to fundraising (in which we have responded with the provision of specific legal advice)
- developed more than 10 legal resources that explain fundraising laws: overview Guide to Fundraising Laws in Australia (31 pages, downloaded nearly 5,000 times), Applications to Fundraise (16 pages) fact sheet and a separate detailed Guide for each jurisdiction (each about 24 pages). All of these resources are available freely on our national Information Hub, www.nfplaw.org.au (alongside more than 330 free legal resources) with a reach of more than 462,372-page views on an annual basis.

Work under the #fixfundraising banner has involved:

- [Submissions](#) to the Review of the Australian Consumer Law, leading to confirmation of the application of the Australian Consumer Law to many of the activities of not-for-profits, including fundraising and subsequent guidance by Consumer Affairs Australia and New Zealand.
- [Submissions](#) to the Review of the Australian Charities and Not-for-profit Commission legislation on the role of the Australian Charities and Not-for-profits Commission (**ACNC**) in relation to red tape and fundraising.
- An [open letter](#) to the Prime Minister and each Premier and Chief Minister, signed by more than 190 charities.
- Video of [Prominent Australians](#) including Simon McKeon AO (MS Research Australia), George Savvides (recently retired Chairman, World Vision Australia) stating it is time to fix fundraising (it's been 20 years, its costly and complex, business would not tolerate such laws and enough is enough).
- A [Statement on Fundraising Reform](#) by significant prominent bodies (see Endorsement below) [supported](#) by more than 235 organisations and individuals representing more than 570 charities, more than 85 legal centres and more than 3,750,000 individuals (numbers continue to increase as they hear of the campaign, see Attachment A).
- Expert [legal advice](#) from Norman O'Bryan AM SC on Australian Consumer Law.

- Meetings with numerous Government ministers to explain the issue and provide the solution (the Hon Michael Sukkar MP, the Hon Michael McCormack MP) along with representatives from the Australian Labor Party (the Hon Dr Andrew Leigh MP) and the Australian Greens (the Hon Senator Rachel Siewert).
- Considerable national [media coverage](#) on the need for one national fundraising law.

Endorsements

The proposal for reform of the fundraising regulatory regime (Part 1) is endorsed in principle by our *#fixfundraising* partners:

- Australian Council of Social Services
- Australian Institute of Company Directors
- Chartered Accountants of Australian and New Zealand
- Community Council of Australia
- Governance Institute of Australia
- Philanthropy Australia
- Public Fundraising Regulatory Association

This submission is explicitly supported by:

- Health Justice Australia
- Australian Council of Social Service
- Community Council of Australia
- Public Interest Advocacy Centre Ltd
- Good Shepherd Australia New Zealand
- Governance Institute of Australia
- Arts Law Centre of Australia

We note the Law Council of Australia (Legal Practice Section) has requested the Senate Select Committee fully consider this submission and that the Law Council is a supporter of the *#fixfundraising* campaign.

The *#fixfundraising* campaign has more than 235 organisations and individuals representing more than 570 charities, more than 85 legal centres and more than 3,750,000 individuals signed on supporters – the number continues to grow as more hear of the campaign. Attachment A is a copy of those who have signed the supporter page hosted by Justice Connect as at 6 August 2018. See <http://www.nfplaw.org.au/supporters-stories>

1. Executive summary and recommendations

Multiple independent inquiries over decades support what people on the ground know – current fundraising regulation is a significant source of unnecessary regulatory burden for charities. There can be protection for donors and regulatory support for ethical behaviour without this burden.

We are pleased to provide this submission to the Senate Select Committee Inquiry into Charity Fundraising in the 21st Century and would welcome the opportunity to appear before the Committee.

Since its inception 10 years ago, Justice Connect’s specialist Not-for-profit Law service, has seen the confusion and time wasted as a result of the current fundraising law regime. Because of this we have always argued for a nationally-consistent, contemporary and fit-for-purpose fundraising regime.

In this submission we recommend an implementable, no-cost solution that leverages the work of existing State, Territory and Federal regulators under the Australian Consumer Law, in conjunction with registration and reporting to the Australian Charities and Not-for-profits Commission (ACNC). **This solution provides for a stronger, smarter and simpler regime that is expressly supported by hundreds of charities, their professional advisers, and some of those involved in regulating the sector.**

The Australian Consumer Law is a vehicle well suited to being part of the solution. It regulates ethical behaviour, is national in its application and it already applies to activities of charities, including fundraising activities. It is well understood by the public (donors). The same State and Territory regulators responsible for fundraising laws, are also responsible (along with the Australian Competition & Consumer Commission for its enforcement.

There is no need for concern that reliance on this generalist, principles-based consumer law, *in conjunction with* reporting to the ACNC and a core mandatory code of conduct *but without* existing fundraising laws, will mean less protection or transparency for donors. This statement is supported by our detailed analysis of the existing New South Wales fundraising legislation and licensing requirements (as one example, Attachment B).

All Australian governments need to work together to make a fundraising regime fit for the 21st century and beyond. Governments must take action now. They must work together to provide charities and the donating public with a principles-based, nationally-consistent regime. The Federal Government can take a lead under the Australian Consumer Law. It is simply not good enough to do nothing. This Inquiry is an opportunity to shine a light on the urgency of the problem and the path to a solution.

It’s time to #fixfundraising

Recommendation:

That the Senate Select Committee on Charitable Fundraising in the 21st Century recommends the Federal Government actively support and assist with **the development of a nationally-consistent, contemporary and fit-for-purpose charitable fundraising regime for implementation no later than mid-2019 by:**

- **initiating (or at least supporting) amendments to the Australian Consumer Law to ensure its application to fundraising activities for and on behalf of charities (and other not-for-profit organisations) is clear and broad;**
- **urging the repeal of existing fragmented State and ACT fundraising laws; and**
- **working with other Australian Consumer Law regulators, the Australian Charities and Not-for-profits Commission, self-regulatory bodies and sector intermediaries to draft and consult publically on a core mandatory code to be enforced under the Australian Consumer Law multi-regulatory framework**

Our Submission

Our submission is set out in three Parts:

- **Part 1: is short series of slides to provide an overview of the #fixfundraising proposal** which can deliver a nationally-consistent, contemporary and fit-for-purpose fundraising regime fit for the 21st Century.
- **Part 2: our formal response to each of the Inquiry's Terms of Reference** and three additional points that we ask be considered.
- **Part 3:** provides two Attachments to assist the Committee in its work
 - **Attachment A** – a list of those who have signed the #fixfundraising supporter page hosted by Justice Connect as at 6 August 2018. See <http://www.nfplaw.org.au/supporters-stories>
 - **Attachment B** – detailed analysis of one current fundraising regime (New South Wales) that demonstrates how the matters set out in that law (*Charitable Fundraising Act 1991* (NSW)) are already generally covered by the *Australian Consumer Law and the Australian Charities and Not-for-profits Commission Act 2012* (Cth) and (existing and proposed) codes of conduct.

Part 1 – #fixfundraising proposal

Senate Select Committee on Charity Fundraising in the 21st Century

This submission sets out the **fundraising problem** and
the **solution**

A solution that delivers: **Stronger, Smarter, Simpler**

laws to support **charities, fundraisers, and the donating
public across the whole of Australia**

The Context

55,000

charities operating in Australia



over **\$140 billion** contributed to the economy



employ over 1 million people



support from 6.1 million volunteers; a wage equivalent of **\$15 billion annually**

23

years ago, need for fundraising reform first reported



charities and other not-for-profits deliver important community services

Fundraising: The Problem

- **Fundraising laws should support ethical fundraising conduct** – protect donors and assist charities
- The current laws are not focused on conduct but on **registration and reporting**: 7 different permissions can be needed to collect funds (e.g. via a website) all with differing conditions & different reporting requirements
- Since the fundraising laws were introduced (decades ago), **charities now register with and report to the Australian Charities and Not-for-profits Commission (ACNC)**
- Reports indicate overwhelming fundraising regulation is the greatest **regulatory burden** for charities. **Wastes more than \$15m** annually for charities, and millions more when other not-for-profits are included
- Fundraising laws are **outdated**: they do not effectively support fundraising across borders or digital platforms
- Fundraising laws are **patchwork and inconsistent**: e.g. multiple, significant and differing exemptions
- The key policy objectives of fundraising laws are **covered by other general laws** (including criminal laws prohibiting fraud or obtaining financial advantage by deception, and the Australian Consumer Law)
- **The complexity of the laws result in both accidental and deliberate non-compliance.** Minimal resources directed to ensuring compliance (i.e. checking filed reports) with an overall **lack of enforcement**

Inconsistent Application of current fundraising laws

State and Territory (ACT) fundraising regimes have varying, confusing and inconsistent application

Definitions relevant to fundraising laws

Purpose

Charitable Purpose	<ul style="list-style-type: none"> ACT NSW SA 	<ul style="list-style-type: none"> TAS WA
--------------------	--	---

*Note what 'charitable purpose' means is different in each jurisdiction and not the same as Commonwealth definition

Charitable or Community Purpose	<ul style="list-style-type: none"> QLD
---------------------------------	---

Non-profit or non-commercial purpose	<ul style="list-style-type: none"> VIC
--------------------------------------	---

No definition or requirement	<ul style="list-style-type: none"> NT (no specific fundraising law)
------------------------------	--

Activity

Fundraising Appeal	<ul style="list-style-type: none"> NSW VIC
--------------------	--

Collectors	<ul style="list-style-type: none"> SA
------------	--

Appeal for support	<ul style="list-style-type: none"> QLD
--------------------	---

Soliciting	<ul style="list-style-type: none"> TAS
------------	---

Intention to collect	<ul style="list-style-type: none"> WA
----------------------	--

NT has no fundraising laws. For other jurisdictions numerous exemptions exist. There are also different definitions in each State and Territory (ACT).

Exemptions

Religious Organisations	<ul style="list-style-type: none"> VIC, NSW, QLD, TAS
-------------------------	--

Political Organisations	<ul style="list-style-type: none"> VIC
-------------------------	---

Revenue Limitations and or use of volunteers	<ul style="list-style-type: none"> VIC (10k), NSW (15K), ACT (15k)
--	---

Veteran's Fundraising	<ul style="list-style-type: none"> VIC
-----------------------	---

Hospital Foundations	<ul style="list-style-type: none"> QLD (and certain in VIC)
----------------------	--

Solicitation of Members	<ul style="list-style-type: none"> VIC, NSW, ACT
-------------------------	---

Workplace fundraising	<ul style="list-style-type: none"> VIC, NSW, ACT
-----------------------	---

Solicitation of certain Organisations (cf. Individuals)	<ul style="list-style-type: none"> VIC, ACT
---	--

Bereavement /Memorial Bequest	<ul style="list-style-type: none"> VIC, NSW, ACT
-------------------------------	---

Certain educational facilities	<ul style="list-style-type: none"> NSW, VIC
--------------------------------	--

Incorporated in that State	<ul style="list-style-type: none"> TAS
----------------------------	---

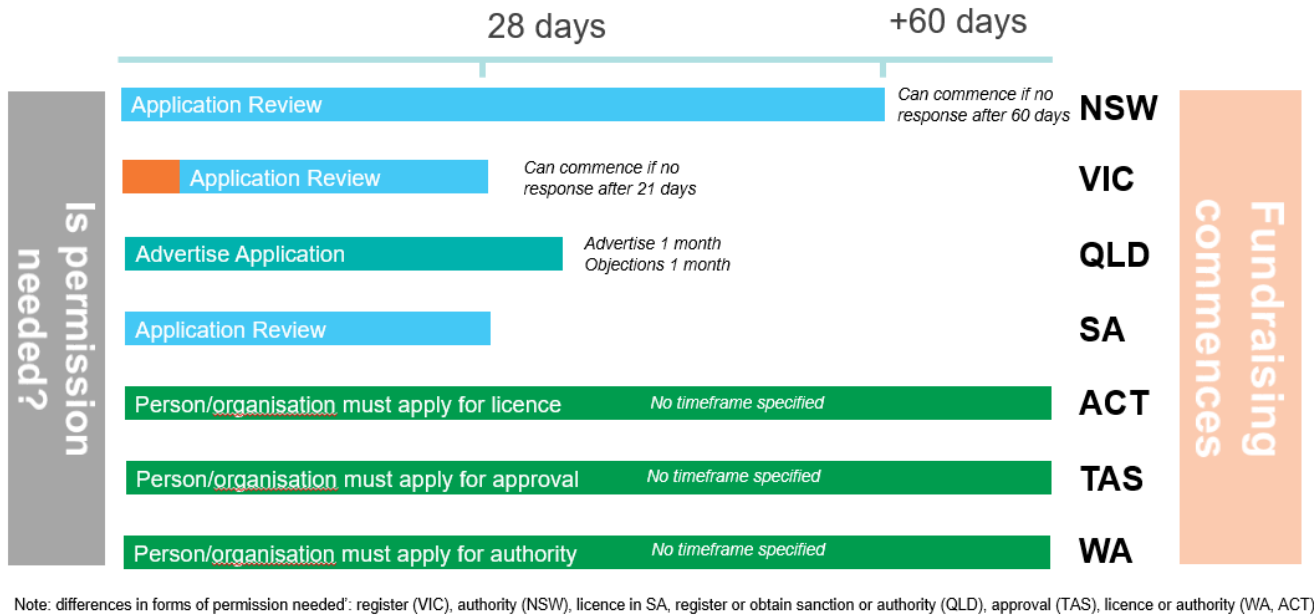
Registered with the ACNC	<ul style="list-style-type: none"> ACT and SA
--------------------------	--

Current Legislation affecting fundraisers

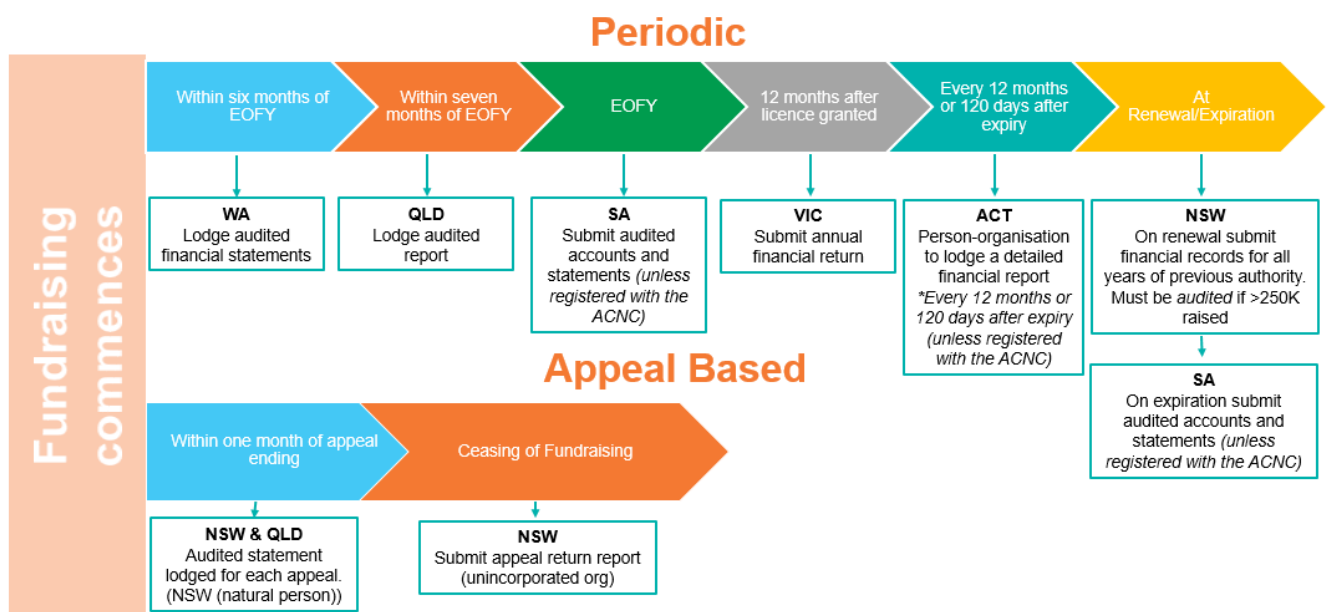
	Fundraising Legislation	Codes of Conduct	Other Legislation
Location	State Based Regulations		
ACT*	Charitable Collections Act 2003* Charitable Collections Regulations 2003 Licence Conditions		<ul style="list-style-type: none"> Australian Consumer Law - same provisions applicable across all States and Territories Competition and Consumer Act 2010 (Cth) Australian Charities and Not-for-profits Commission Act 2012 (Cth) Telecommunications (Telemarketing and Research Calls) Industry Standard 2017 Criminal law (i.e. fraud and financial advantage by deception) Local government regulations (i.e. where and how some fundraising (mostly face-to-face fundraising) occurs in public places) Incorporated association Acts and Regulations in every State and Territory that impose governance duties on committee/board members, require annual reporting (in South Australia, Tasmania and Australian Capital Territory, Victoria reporting to ACNC is accepted in place of separate report to the regulator), and give regulators powers to obtain information, impose penalties and to deregistered
NSW	Charitable Fundraising Act 1991* Charitable Fundraising Regulation 2015 Authority Conditions	NSW issued Best Practice Guidelines (non compulsory)	
NT	[No specific law]		
QLD	Collections Act 1966 Collections Regulations 2008 Registration Conditions		
SA*	Collections for Charitable Purposes Act 1939* Licence Conditions	Code of Practice – <u>Compulsory</u> under Collections for Charitable Purposes Act 1939	
TAS**	Collections for Charities Act 2001** Collections for Charities Regulations 2011 Approval Conditions		
VIC	Fundraising Act 1988 Fundraising Regulations 2009 Registration Conditions		
WA	Charitable Collections Act 1946 Charitable Collections Regulations 1947 Licence Conditions Street Collections (Regulation) Act 1940	Code of Practice – <u>Voluntary</u> under Charitable Collections Act 1946	
CTH		Public Fundraising Regulatory Association - Standard – Voluntary Fundraising Institute of Australia – Code – Voluntary Australian Council for International Development –Code- Voluntary	

*South Australia and the ACT have removed the requirement to obtain permission to fundraise (obtain a licence) for organisations which are ACNC registered charities.
** Tasmania exempts Tasmanian incorporated organisations from fundraising approval requirements

Registration of fundraising activity by State and the ACT



Reporting of fundraising activity by State and the ACT



Conduct: Low levels of enforcement of fundraising activity

How does all of this work which is focused on registration and reporting (wasting a charity's precious time and resources) reduce mischief, if any, and risks, if any, for donors?

Compliance by fundraisers

- Reports of unethical fundraising conduct are rare, but there is a lack of compliance with registration requirements, especially when multiple registrations are required (e.g. when the donation is requested via the charity's website). For example, 13,964 fundraising licences in place across Australia (2011 data) compared to more than 56,000 charities (number currently registered with ACNC)

Enforcement by regulators

- "We do not undertake any specific compliance and enforcement under the *Charitable Fundraising Act 1991* because ... such an **allocation of resources appears unjustified** because there is **no evidence** of a particular problem in the sector. NSW has few complaints from persons donating to these appeals." *NSW Government 2016*
- Analysis of the annual reports of regulators rarely indicates compliance activity specifically directed at fundraisers. While Scamwatch data shows 1,146 reports of fake charities with a public loss of + \$300K in 2017
- Equivalent of 16.95 full time staff administering about 13,964 licences (authorities, permissions, sanctions etc.), with 204 complaints from which there were 10 prosecutions across Australia (2011 data)

Conduct: Enforcement of fundraising activity

Conduct

- "Between 2003-2007 less than 5% of all licensees were meeting the requirements of the Act in regard to reporting to the Director General." *ACT Charitable Collections Practice Manual (Access Canberra)*
- "The majority of breaches are **found to be minor** and **unintentional mistakes** and where non-compliance has occurred it has been the **result of complexity** and different requirements of the Acts. Further, of complaints made, over a certain period, none were found to have caused public detriment." *NSW Government 2016*
- Where there has been egregious misconduct, regulators have taken action under laws with larger civil and also criminal penalties (most recently in NSW, QLD and Victoria)

Remedies

- "There is **no evidence** to suggest the Act (*Charitable Fundraising Act 1991* (NSW)) is **any more beneficial** than general laws appear to be in protecting donors in cases of deception." *NSW Government 2016*
- General laws: this includes the criminal laws, State/Territory based incorporated association laws, *Corporations Act 2011*, Australian Consumer Law, *Australian Charities and Not-for-profits Commission Act 2012*, and proceedings against charitable trusts by State Attorney-Generals

Current Fundraising laws: A Case Study of their application

Riding 4 Resources (R4R) is a not-for-profit that has tax concession charity (TCC) and deductible gift recipient (DGR) status. R4R aims to improve the school resources that are provided to disadvantaged students. For example, R4R provides textbooks and school uniforms, as well as funding guest speakers, excursions and improvements to school property that are all aimed at improving access to education and enriching the educational experience of disadvantaged students. R4R has two staff members.

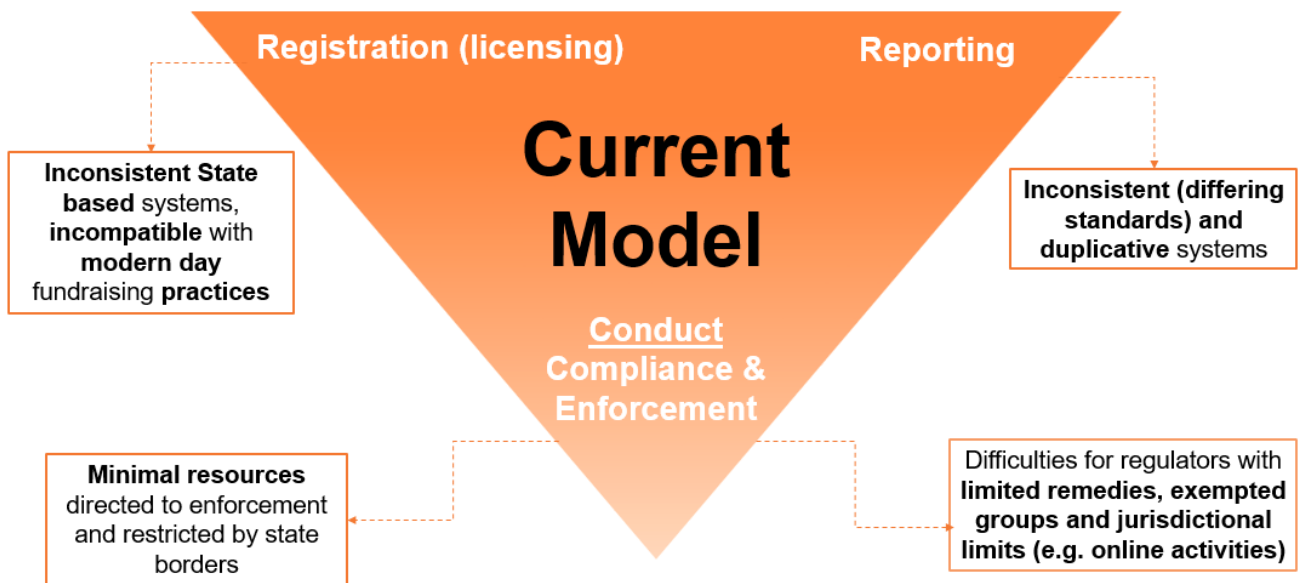
R4R conducts fundraising by organising bike-riding events and races. Participants pay to be part of an event, and are asked to contribute further funds through seeking sponsorship of their ride through family and friends. Traditionally, R4R has only hosted events and fundraised in Victoria, and only worked with Victorian schools. In 2016 they are expanding their service to assist schools in NSW and ACT as well as Victoria. To support this expansion, they plan to host their biggest event yet, a 14-day bike trail ride from Melbourne to Canberra. Riders can join the ride at various starting points in Victoria, NSW and ACT, and funds raised by riders from different states and territories will be directed to programs in the jurisdiction in which a particular rider resides.

In addition to the new cross-border fundraising event, the newly appointed marketing manager has created the website www.r4r.com.au and has recruited ambassadors in each state and territory to promote the event and attract donations. People who visit the site can find out information about R4R's purpose and activities, as well as their upcoming events. People can also make donations to R4R directly through the website.

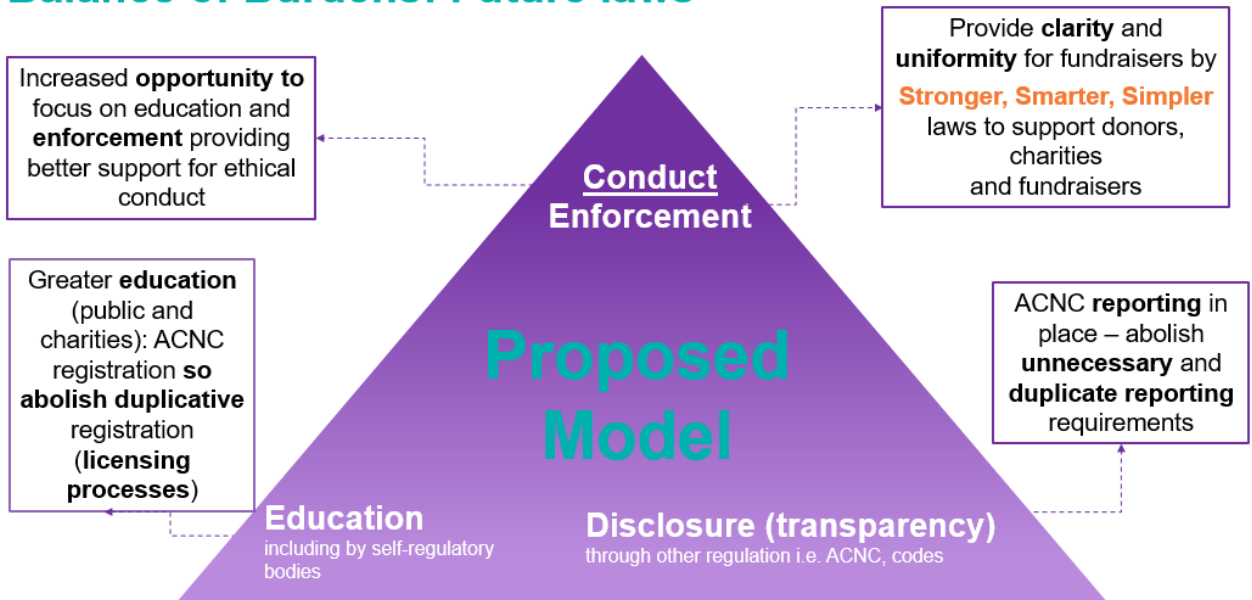
As a result of these activities, R4R is likely to be considered to be fundraising in Victoria, NSW and ACT, and may even receive funds from people in every state and territory in Australia. R4R understands that through its expanded activities, it now needs to consider fundraising laws outside of Victoria. As the funding regulation is so complex and confusing, they end up engaging a lawyer to provide them with advice about their compliance obligations.

The remainder of this page has been deliberately left blank – slides continue on the next page

Balance of Burdens: Current fundraising laws



Balance of Burdens: Future laws



Reminder: the ACNC and charitable fundraising

Parliament mandated the need to reduce the regulatory burden on charities: it is **one of only three** objects of the ACNC as set out in the *Australian Charities and Not-for-Profits Act 2012* (Cth).

Registration	Registrable if (and continues to) meet requirements in <i>Charities Act 2013 (Cth)</i> and ACNC Act 2012. Generally processed within 15 days after receiving all information. Key information publicly available on the on-line ACNC register: free and easy for donors to decide to give to legitimate and deserving charities
Reporting	Annual Reports (includes information on activities, resources and finances) Publicly available on the on-line ACNC register: free and easy for donors to decide to give to legitimate and deserving charities Note: ACT, Tasmania, Victoria and SA collect incorporation reporting via ACNC; and ACT and SA for fundraisers
The Charity Passport	Information collected by the ACNC from registered charities packaged in an electronic format for sharing with authorised government agencies and regulators (e.g. information on beneficiaries, financial reports and enforcement outcomes): easy for regulators to receive and review information

"During consultation with the sector stakeholders indicated that a move toward a 'report-once, use-often' approach **would lead to 'huge' savings in administrative and compliance costs** .. The Regulatory Impact Statement also finds that a truly national NFP regulator would provide the greatest benefits in terms of reducing regulatory overlap, red tape and compliance costs for the sector" *Explanatory Memorandum, ACNC Bill 2012 (Cth)*

A Better Approach – the Proposal

Now the ACNC register and reporting regime is fully implemented (with majority of jurisdictions deferring to it rather than collecting separate reports), and the Charity Passport is a secure mechanism for sharing information between regulators, the following 3 steps would modernise the regulation of fundraising in Australia. They would make it easier for donors to give to legitimate and deserving charities and other not-for-profits.

1. Clarification and minor amendment to the ACL	Clarification and minor amendment to the ACL to ensure its application to fundraising activities is clear and broad
2. Repeal of fragmented State & Territory laws	Repeal state and territory laws (state regulators focus on regulating conduct and can take action under ACL or other general laws)
3. Guidance (code) to improve conduct (regulators and self regulatory)	A short plain mandatory code of conduct for all fundraisers, supported by work of self regulatory bodies

"Given that charitable fundraising is now a cross-border and international phenomenon, particularly through the internet, **a single, unified Australian statutory regime would be of very significant benefit**"- Report of the Inquiry under the *Charitable Fundraising Act 1991* (NSW), Feb 2018

The Proposal

Stronger, Smarter, Simpler

A straightforward program of 3 reforms to modernise the regulation of fundraising in Australia and make it easier for donors to give to legitimate and deserving charities

Stronger

Using the Australian Consumer Law (supported by a conduct code) to put protection of all donors at the heart of all fundraising regulation across the nation, regardless of method used to fundraise

Smarter

Principles based regulation (backed by national process for reform) is more likely to capture innovation and changes to methods of fundraising, without territorial limitations

Simpler

Creating a truly national system of regulation by removing duplicate and burdensome requirements for registration (licensing) and reporting, allowing for ethical conduct to be central to all fundraisers and fundraising activity

This presentation has been jointly developed by Justice Connect and the Public Fundraising Regulation Association on behalf of, and endorsed by, the #fixfundraising coalition partners



Part 2 – Our more detailed response to each of the Terms of Reference

1. Does the current framework of fundraising regulation create unnecessary problems for charities and organisations who rely on donations from Australian supporters?

1.1 In short, Yes.

1.2 Charities and other not-for-profit organisations play a crucial and benevolent role in Australian society which involves significant financial and personal sacrifice by officeholders, members and donors alike. However, in return they are not supported with an effective and efficient regulatory fundraising regime. Rather they are hindered by patchwork, burdensome and impractical systems of differing registration obligations and duplicate reporting mechanisms. The current framework of fundraising regulation is antiquated and mostly focused on the face-to-face street collection style of fundraising; not the modern, online and borderless forms of fundraising, which occurs in the 21st century.

1.3 The charity sector has for more than two decades called upon law makers to legislate for the better: for **stronger, smarter and simpler** fundraising laws to support charities, fundraisers and donors (refer to our response to Question 6). This call has been made by us, charities small (Global Women's Project) and large (World Vision) and prominent Australians. See [here](#)¹ and [here](#).²

Existing fundraising-specific laws and regulations (see also slides in Attachment A)

1.4 Currently community organisations that fundraise have to deal with seven different sets of laws. Each of these laws is significantly different to each of the others. The Northern Territory has never had its own fundraising law.

1.5 In each of the seven existing laws there are different definitions of 'charity', 'charitable purposes' and 'fundraising'. These jurisdictional-specific laws are now (more than ever) unnecessary because for the most part³ they only apply to charities (and charitable fundraising) and, since the inception of the Australian Charity and Not-for-profits Commission (ACNC) in 2012, charities are now regulated nationally (with both a registration and annual reporting regime in place).

1.6 Each of the seven laws also have different exemptions and exclusions from registration, which are extensive in number. For example, religious organisations are exempt in Victoria, New South Wales, Queensland and Tasmania. Volunteer fundraising activities that raise less than \$15,000 in the Australian Capital Territory or \$10,000 in Victoria are exempt from registration.

1.7 Each of the seven laws differ about when a fundraising registration is needed, for how long a registration is valid and what must be provided for registration, and the reporting requirements (including audits). Even what 'registration' is called is different – depending on the State or Territory it can be a permission, an authority or a sanction.

1.8 Timeframes differ: an approval to fundraise lasts a year in South Australia (approval will be needed if you are not registered with the ACNC) compared with three years in Victoria.

¹ https://www.youtube.com/watch?v=NtcSbdTr_rk&feature=youtu.be.

² <http://www.nfplaw.org.au/supporters-stories>.

³ It is only Victoria, and to a limited extent that Queensland, that fundraising laws apply to other entities that are not charitable. For example, not-for-profits who are also held to account by their members (and the broader community).

- 1.9 The reporting requirements all differ, including the need for audited reports. For example, financial reports must be lodged seven months after the end of the financial year in Queensland compared with 12 months after receiving fundraising approval in New South Wales. Again, laws requiring registration and reporting are unnecessary when these charities are registering with and reporting to the ACNC.
- 1.10 The existing fundraising-specific laws are out-of-date and no longer not fit for purpose. They deal with archaic issues, for instance, wishing wells and the length of handles on collection boxes. **Only two of the seven laws consider cross border fundraising activity (i.e. expressly deal with the internet or email)**⁴, despite charitable fundraising being just as affected by advances in technology and globalisation as other parts of the Australian economy.

Other laws apply creating layers of duplicative regulation (see also slides in Attachment A)

1.11 It is important to note the layers of regulation:

- (i) State and ACT fundraising Acts and Regulations, plus
- (ii) Codes of conduct – some of which are mandatory and some voluntary, either regulated by the State or self-regulatory bodies, plus
- (iii) General laws – criminal laws and Australian Consumer Law and incorporated association and company laws and trust law etc. (see paragraphs 1.12 and 8.8), plus
- (iv) Certain forms of fundraising activity are also regulated by local governments (e.g. face-to-face street collections).

1.12 The combined weight and usefulness of these layers of regulation must be considered in the context of both low levels of mischief along with evidence that existing fundraising laws have not been shown to be any more beneficial than general laws in protecting donors (NSW Government 2016).⁵

1.13 In summary, the current framework of fundraising regulation creates unnecessary problems for charities and organisations who rely on donations from Australian supporters. It is time for law makers to legislate for a **stronger, smarter and simpler** fundraising regime to better support charities, fundraisers and donors.

2. Do current fundraising laws meet the objectives that guided the decision to regulate donations?

2 In short, no.

2.2 Underpinning the policy objectives of fundraising regulation is the maintenance public confidence in public fundraising by, and for, charities (and possibly some other types of not-for-profits). This is supported by the Parliaments in their deliberations on these laws. For example, when introducing the Fundraising Appeals Bill in the Victorian Parliament in 1984, the then Premier John Cain highlighted its main purpose as being to provide protection to the public and respectable fundraising organisations against fraud and malpractice in fundraising appeals.⁶ Maintaining public confidence requires transparency and accountability so the public who are

⁴ The relevant states are Tasmania and the Australian Capital Territory. Queensland University of Technology, “Web-based Appeals” at <https://wiki.qut.edu.au/display/nmlp/Issues+sheets+and+conference+papers>.

⁵ NSW Government Charitable Fundraising Review, June 2016. The paper can be accessed from our submission “Response to NSW Government Charitable Fundraising Review” at <https://nfplaw.org.au/fundraising-reform-submissions,whichattachespaper>.

⁶ Victoria, Parliamentary Debates, Legislative Assembly, 3 September 1998, Mr Robert Hulls, p 170.

donating can make informed choices free of misinformation or any form of harassment or coercion.

2.3 In 2018 (the 21st century) the current State and ACT-based fundraising Acts and Regulations do not, in our view, continue to achieve this policy objective, because:

- They lack consistency and uniformity causing unnecessary confusion and complexity.
- They duplicate one another, and other laws that otherwise regulate fundraising behaviour, in turn causing unnecessary administrative cost.
- They fail to adequately deal with new forms of fundraising, including fundraising through online platforms. Today, there is an increasing number and differing types of fundraisers, and continuing innovation in the methods of fundraising. The laws do not even recognise these new methods of fundraising.
- They restrict fundraisers' ability to fundraise nationally.

"Given that charitable fundraising is now a cross-border and international phenomenon, particularly through the internet, a single, unified Australian statutory regime would be of very significant benefit" – Report of the Inquiry under the Charitable Fundraising Act 1991 (NSW), February 2018.⁷

Compliance with existing fundraising laws

2.4 We have dealt with hundreds of enquiries about fundraising over 10 years (with the number of page views of our fundraising pages over a six-month period during our #fixfundraising campaign at 7,167). We have observed that the vast majority of charities want to do the right thing, but are overwhelmed, especially when we explain that for any online activity they will need to consider the application of seven different and vastly inconsistent sets of laws. Any non-compliance we have seen has typically emanated from a lack of a knowledge or the complexity, of and inconsistency of the laws.

2.5 Our experience is consistent with the findings of the New South Wales (NSW) Government, which noted (following a review of complaints it received over an 11-month period to July 2015) that:

*"where non-compliance has occurred, it has been the result of complexity and different requirements of the Acts. Furthermore, of complaints made, over a certain period, none were found to have caused public detriment".*⁸

2.6 Where laws regulating charities are clear and supported by effective education, charities have demonstrated great willingness to comply, for example, the very high compliance rates with reporting to the ACNC.⁹

2.7 Despite a general willingness to comply, it is generally acknowledged that there are low rates of compliance with the existing fundraising laws.¹⁰

2.8 **This means that those who do comply with the existing fundraising regime suffer a significant regulatory burden and a related competitive disadvantage compared with others who are not**

⁷ Report of the Inquiry under the Charitable Fundraising Act 1991 (NSW), February 2018, at 13.2.24 at https://www.finance.nsw.gov.au/sites/default/files/inquiry_report_cfa.pdf.

⁸ NSW Government Charitable Fundraising Review, June 2016. The paper can be accessed from our submission "Response to NSW Government Charitable Fundraising Review" at <https://nfplaw.org.au/fundraising-reform-submissions-which-attaches-the-paper>.

⁹ It is reported by the ACNC Commissioner, 20 April 2018 that the number of charities that failed to report to the national charity regulator for two years, known as double defaulters, lost their charity status, was 100. This is of a total of more than 56 000 charities. In addition, it was reported that only 600 charities had errors in their Annual Information Statements. See: http://www.acnc.gov.au/ACNC/Comms/Com_Col/CC_20180420.aspx.

¹⁰ Refer to list of previous reports in fundraising (page 21) in which issues of lack of compliance are mentioned. Also see the recent Charitable Fundraising Act 1991 (NSW), February 2018 and NSW Government, Charitable Fundraising Review, June 2016. We also note that in seeking advice from us, many organisations state they may choose not to comply or fully comply (that is only obtain permission to fundraise from the State in which they are based).

complying. Those who comply are using scarce resources that could, for example, be used to deliver more services consistent with their charitable purpose. Ironically, it is also those who comply who are most likely to have effective governance procedures in place – and are those who understand and comply with their legal obligations.

- 2.9 High levels of non-compliance mean that the organisations which require the least oversight and have their own effective transparency and accountability mechanisms, face the highest compliance burden. By contrast, **those organisations, who either consciously or inadvertently act outside of their legal obligations, are rarely held accountable (because compliance activity is low and is otherwise inappropriately focused on registration and reporting, rather than conduct).**

Remedies

- 2.10 Where more serious misconduct has occurred, the use of other general laws has led to imposition of increased civil and criminal penalties (for example, in NSW and Queensland and in Victoria), than are available under the relevant State-based fundraising law.¹¹
- 2.11 However, it is only a small proportion who may be engaging in serious wrongdoing¹² and under our proposed model of reform (see Question 6) are more likely to be held accountable. Our model of reform would provide a greater opportunity to focus regulatory resources on education and enforcement, providing better support for ethical conduct than the current system.
- 2.12 Our proposed model of reform (see Part 1 and question 6 below) would assist in achieving the policy objectives *and* balancing the regulatory burden. The proposed model of reform is **stronger, smarter** and **simpler** than the existing laws and delivers one national regulatory regime for all fundraisers and all fundraising activities.

3. Do current fundraising compliance regimes allow charities to cultivate donor activity and make optimal use of resources which donors provide?

- 3.1 In short, no.
- 3.2 The current fundraising regime does not allow charities to cultivate donor activity and as such, make optimal use of donations. Precious donor dollars (and often equally precious volunteer time) are being spent on complying with laws that as above are ineffective for the reasons outlined above.
- 3.3 Our answers to Questions 1 and 2 also address this question. Our answer to Question 6 provides the mechanism for addressing this problem – our proposed model of reform would provide **stronger, smarter** and **simpler** laws to support charities in increasing donor activity and

¹¹ Belle Gibson hit with a \$410,000 fine in the Federal Court in 2017 for deceptive and misleading conduct after being exposed for lying about her health and failing to hand over thousands she had raised from her loyal following in the name of five charities. CAV (10 July 2018) now seeking the power to charge disgraced wellness author Belle Gibson with contempt of court <https://www.smh.com.au/business/consumer-affairs/government-seeks-jail-threat-for-cancer-faker-belle-gibson-20180710-p4zqli.html>.

In Brisbane, a mother allegedly starved her baby almost to death and used the girl's plight to raise more than \$15,000 through GoFundMe. The 27-year-old was charged with torture, grievous bodily harm and fraud. <https://au.news.yahoo.com/qld/a/33178277/qld-woman-leaves-baby-malnourished/#page5>.

Bergin SC recommended that all evidence relating to Mr Rowe's expenses, his resignation and its aftermath gathered in the inquiry be referred to NSW Police. She called for a much wider NSW Police investigation surrounding Mr Rowe's misuse of RSL NSW funds and the circumstances of his departure. *Report of the Inquiry under the Charitable Fundraising Act 1991* (NSW) https://www.finance.nsw.gov.au/sites/default/files/inquiry_report_cfa.pdf.

¹² NSW Government Charitable Fundraising Review, June 2016. The paper can be accessed from our submission "Response to NSW Government Charitable Fundraising Review" at <https://nfplaw.org.au/fundraising-reform-submissions,whichattachespaper>.

increasing use of donor funds toward their charitable purposes rather than the costs associated on compliance with the current fundraising regime.

4. What is the extent of loss in productivity for the thousands of charities who try to meet the requirements of the seven different fundraising regimes?

- 4.1 **The cost of regulatory burden is documented as being more than \$15 million annually for the charity sector alone.**¹³ The cost is likely to be significantly higher when the impact on other types of (non-charitable) not-for-profit organisations are added remembering organisations that fall within the legal definition of charity are only about 10% of the overall Australian not-for-profit sector. As outlined above, while most fundraising laws concern charities (and charitable fundraising) some fundraising laws (Victoria and Queensland) extend beyond charities.
- 4.2 This regulatory burden involves more than 400 pages of legislation and regulations, as well as extensive case law, policy and codes of conduct.¹⁴ **The current regime addresses matters, such as the exclusive right for certain fundraisers to distribute artificial flowers and tokens,¹⁵ through to prescribing up to six months imprisonment and \$14,000 fines for not using capital letters on handwritten identification badges, when fundraising.¹⁶**
- 4.3 Fundraising regulations for charities, while onerous of themselves (especially as seven different laws may apply), need to be viewed in conjunction with the fact that:
- there are a broad range of other laws that govern a charity and their activities (for example, legal structure, employment, health and safety, taxes, contracts, working with children checks, insurance etc.), and
 - the overwhelming majority of charities are small¹⁷ and will not have access to paid legal or other professional advisers.
- 4.4 It is the combined weight of these laws that means so many of the groups we support are overwhelmed. Removing the duplicative fundraising specific laws would make a significant difference to them and the work they do to support the Australian community.
- 4.5 With or without a lawyer, it is extremely difficult to comply with all seven different laws. As noted by the *Report of the Inquiry under the Charitable Fundraising Act 1991* (NSW), February 2018, *“each charitable fundraiser is governed by many different and overlapping provisions in the Act, the Regulations and the standard and particular conditions of their fundraising authority. There is the real prospect, as happened with each of the entities in this Inquiry, that fundraisers may lack familiarity or clear understanding of the detail of the statutory regime”*¹⁸
- 4.6 This echoes the New South Wales Government’s earlier 2016 findings that the majority of breaches of its *Fundraising Act 1991* (NSW) are:

¹³ Deloitte Access Economics, *ACNC: Cutting Red Tape: Options to align State, Territory and Commonwealth charity regulation*, Final Report, 23 February 2016).

¹⁴ Queensland University of Technology, “Fundraising Legislation – Growth and Trends, 2011, at <https://wiki.qut.edu.au/display/nmlp/Issues+sheets+and+conference+papers>.

¹⁵ *Collections Act 1966 (QLD)* s 18(7).

¹⁶ *Collections Regulations 2008 (QLD)* Reg. 18.

¹⁷ Australian Charities and Not-for-profit Commission data shows 40 per cent of charities have an annual turnover of less than \$50 000 and operate without paid staff, Australian Charities Report, 2016, at <http://australiancharities.acnc.gov.au>.

¹⁸ *Report of the Inquiry under the Charitable Fundraising Act 1991* (NSW), February 2018, at 13.2.28 at https://www.finance.nsw.gov.au/sites/default/files/inquiry_report_cfa.pdf.

*“found to be minor and unintentional mistakes and where non-compliance has occurred it has been the result of complexity and different requirements”*¹⁹

- 4.7 One example of the inconsistency between the seven regimes means that compliance requires collectors to wear name badges with different type face and font sizes for each jurisdiction.
- 4.8 The time and effort spent on compliance with outdated and ineffective laws takes away from each and every charity. This loss of productivity needs to be extrapolated across to the overall sector: a sector generating over \$100 billion in annual revenue, including more than more than \$10 billion dollars in funds raised from individuals.

5. Is the current framework for investigation and enforcement the best model for the contemporary fundraising environment?

- 5.1 In short, no.
- 5.2 It is widely acknowledged that there is scant enforcement of these laws.²⁰ This is ineffective regulation, adding negligible value in delivering transparency, accountability and protection of the public.
- 5.3 Where is the greatest potential for conduct which is contrary to the interests of Australian society, donors and beneficiaries? Aside from instances of criminal conduct (such as theft or obtaining financial advantage by deception), with nearly 70% of even small charities using websites and crowdfunding²¹ it is much more likely to be in these online forums than coins in collection tins or from the sale of tokens.²²
- 5.4 In addition, where issues with fundraising are identified, there is little enforcement activity. As noted by the NSW Government (July 2016), the NSW regulator did not:
- “undertake any specific compliance under the Charitable Fundraising Act 1991 (NSW) because such an allocation of resources seems unjustified as there is no evidence of a particular problem in the sector. NSW has few complaints from persons donating to these appeals”*²³.
- 5.5 Enforcement of the current fundraising-specific regulatory framework is focused on the registration and reporting requirements. Across Australia, the only available data shows there were 16.95 full time staff within State/Territory government administering about 13,964 licences in 2011.²⁴ These staff, if not burdened by unnecessary and duplicative registration and reporting obligations, could instead focus on education and enforcement, in turn fostering ethical fundraising conduct.
- 5.6 Our answer to Question 6 below provides the mechanism for addressing this problem – our proposed model of reform would provide **stronger, smarter** and **simpler** laws to support a better, modern and contemporary approach for compliance and enforcement of all fundraisers and all fundraising activity across Australia.

¹⁹ NSW Government Charitable Fundraising Review, June 2016. The paper can accessed from our submission “Response to NSW Government Charitable Fundraising Review” at <https://nfplaw.org.au/fundraising-reform-submissions-which-attaches-the-paper>.

²⁰ Refer to our Report of the Inquiry under the *Charitable Fundraising Act 1991* (NSW), Feb 2018.

²¹ Giving Australia Report 2016, access at <https://www.communitybusinesspartnership.gov.au/about/research-projects/giving-australia-2016/>.

²² Refer *Charitable Collections Regulations (1947)* (WA) and *Street Collections (Regulation) (1940)* (WA) and *Collections Regulation 2008* (Qld)

²³ Report of the Inquiry under the *Charitable Fundraising Act 1991* (NSW), Feb 2018.

²⁴ Australian Centre for Philanthropy and Nonprofit Studies, *Registered Fundraising Organisations*, University of Queensland, 2012.

6. How can the Federal, State and Territory Governments work together to provide charities with a nationally-consistent, contemporary and fit-for-purpose fundraising regime?

RECOMMENDATION:

That the Federal, State and Territory Governments can best actively support and assist with the development of a nationally-consistent, contemporary and fit-for-purpose charitable fundraising regime for implementation no later than mid-2019 by:

- initiating (or at least supporting) amendments to the Australian Consumer Law to ensure its application to fundraising activities for and on behalf of charities (and other not-for-profit organisations) is clear and broad;
- repealing of existing fragmented State and ACT fundraising laws; and
- working together as Australian Consumer Law regulators, and with the Australian Charities and Not-for-profits Commission, self-regulatory bodies and sector intermediaries to draft and consult publically on a core mandatory code to be enforced under the Australian Consumer Law multi-regulatory framework.

- 6.1 In relation to the self-regulation, we acknowledge the self-regulatory work by the Fundraising Institute of Australia (creation of Code Authority) and the Public Fundraising Regulatory Association (accreditation scheme).
- 6.2 **To cover any existing more detailed provisions about how fundraising activities should be conducted (for example, what days of the year collections can be held, how collectors need to be identified), we propose the development of a short, simple mandatory fundraising code for any entities conducting fundraising activities.** South Australia already has a mandatory code that is only seven pages long and fairly straightforward – this could be a good starting point.²⁵
- 6.3 This code could be adopted by the States and Territories, in the same way the Australian Consumer Law (ACL) framework works.
- 6.4 We understand that industry-specific codes (such as the Horticultural Code)²⁶ are typically implemented by enactment under the *Competition and Consumer Act 2010* (Cth) and then administered solely by the Australian Competition and Consumer Commission (ACCC). But we have had advice that there is no constitutional or other legal impediment to a fundraising-specific code of conduct being enacted under the *Competition and Consumer Act* (Cth) and by the same process²⁷ under which the ACL is enforced, it could be enforced by the States and Territories under the ACL multi-regulatory framework.
- 6.5 **If the ACL (and its well established multi-regulatory approach) is backed by a fundraising specific code, we cannot think of any meritorious policy reason for the continued existence of the State and the ACT fundraising legislation and regulations.**
- 6.6 This proposed nationally-consistent, contemporary and fit-for-purpose fundraising model is:
- **Stronger:** It uses the Australian Consumer Law supported by a mandatory code of conduct to put better protection of all donors at the heart of fundraising regulation across the nation regardless of the method used to fundraise (or the location of the fundraiser)

²⁵ https://www.cbs.sa.gov.au/assets/files/Charities_CodeofPractice_2013.pdf

²⁶ See here: <https://www.accc.gov.au/business/industry-codes/horticulture-code-of-conduct>.

²⁷ The ACL is part of the *Competition and Consumer Act 2010* (Cth) (Schedule 2) and operates through a national mandatory code implemented by each State and Territory through the *Australian Consumer Law Application Acts* that exist in each State and Territory. The code could be enacted using the same process.

- **Simpler:** It uses the Australian Consumer Law, which is principles-based regulation (backed by a process for nationally consistent reform) which will help capture innovation and changes to methods of fundraising without territorial limitations, and
- **Smarter:** It creates a truly modern, national system of regulation by removing duplicative and burdensome requirements for registration and reporting, allowing for ethical conduct to be central to all fundraisers and fundraising activity.

6.7 **Under the #fixfundraising model, enforcement would continue by the existing regulators** – those with oversight of the ACL are the same regulators concerned with fundraising laws (the consumer affairs or fair-trading bodies in each State and the Australian Capital Territory). This has the advantage of utilising the existing experience in regulating fundraising activity of charities and other not-for-profits. We note these regulators are already very experienced in the operation of the ACL. For example, in Victoria, of the civil proceedings on hand at 30 June 2015, the majority were under the ACL.²⁸

6.8 **Under the #fixfundraising model, the weight of the ACCC is also added for major and nationally significant cases.**

6.9 **The #fixfundraising model also provides for transparency of a charity’s fundraising activities, for which they are held to account by donors, their members, the broader community. It achieves this through existing reporting mechanisms** including the ACNC, the Australian Securities and Investments Commission, Office of the Registrar of Indigenous Incorporations, and State and Territory incorporated association regulators. Ongoing registration as a charity would remain subject to meeting obligations under the *Charities Act 2013* (Cth) and the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

6.10 The fundraising model is supported by Australia's leading professional and peak bodies, who have been working with us to improve fundraising regulation in Australia, under the banner of #fixfundraising; see Attachment A for the current list of supporter organisations, with more being added (see www.nfplaw.org.au/supporters-stories). The campaign (the #fixfundraising model) has been increasingly supported by both charities and not-for-profits across Australia – more than 235 organisations and individuals representing more than 570 charities, more than 85 legal centres and more than 3,750,000 individuals.²⁹

6.11 Some examples of the extent to which the current myriad of laws burden charities are set out below. You can read more at www.nfplaw.org.au/supporters-stories.

“It has been a nightmare. It was extremely time consuming to research all the different requirements state by state. And after that I then had to prepare all of the various forms for signing and co-signing by either members of our Board or our CEO because each of the states need something different to satisfy the requirements for an application. It is such burden for organisations like ours who are doing our best to help those most in need of help.”

“We registered to fundraise in each state (over 12 months ago). Still awaiting approval from 2 states Long, long process ridiculous (really!!!) Each state has a different form which asks various questions with some requiring witnesses and signatures of a JP. The inconsistency of this process across Australia is a red tape and paper trail nightmare which consumes so much time, and, in particular, for small organisations who just want to focus on their charitable work. If a national fundraising system could be established, this would eliminate the frustrations that small organisations (& large) which deflates the soul to have to go through and you begin to lose focus and passion for your initial needs to help others. That’s why NFPO are established - to help others. Why can’t the government just support what we are doing - we are actually contributing and doing ‘work’ for them in supporting the community.”

6.12 The #fixfundraising model would address these issues.

²⁸ Consumer Affairs Victoria, Report on Operations 2014-15, *Making markets fair*.

²⁹ See www.nfplaw.org.au/fundraisingreform.

7. What are the appropriate donor-focused expectations and requirements that should govern fundraising regulation in the 21st century?

- 7.1 Fundraising in the 21st century has departed significantly from the forms it took in the past, and technological and economic advances have considerably influenced the tools and platforms utilised by fundraisers. Many charities now recognise that in addition to their traditional donor base, they need to actively engage and seek donations from a new, younger generation of donors who are ‘digital natives’. This new generation wants the ability to donate online or in response to a text or social media post,
- 7.2 **The Giving Australia Report 2016 showed that 96% of large organisations undertaking fundraising do so using websites, with 80% utilising social media and almost 70% using third party fundraising platforms and crowdfunding campaigns.³⁰ Despite this major shift to online, only two fundraising laws explicitly address email or the internet, and none of them explicitly address online giving or the matter of jurisdiction.**
- 7.3 In our experience in over a decade of working with small charities and not-for-profit groups, many hesitate to proceed if they think there is a chance they are not complying with the law. In this way the fundraising laws (for those who understand how they apply) act as a barrier to these groups using simple methods that could help them – such as a “donate” button on their website.

Example 1

- 7.4 An organisation contacted us in April 2018 seeking to run an online campaign across Australia. They realised that they would need a fundraising licence in most jurisdictions so they decided to limit it by being explicit they were only accepting donations from people within the State in which they were based (where they had permission to fundraise).

Example 2

- 7.5 In late 2016 we were contacted by an in-house lawyer for a mid-size charity. They had spent more than 50 hours attempting to reconcile the laws, and ultimately they advised the Board to constrain their fundraising campaign to two states. The advice was accepted with less funds being raised as a result.
- 7.6 From a donor’s perspective the expectations are that donating will involve:
- accountability of the fundraiser regarding the funds raised;
 - convenience and ease in donating; and
 - minimisation of administration costs.³¹
- 7.7 We note that some of these expectations are a matter between the donor and the charity. The charity should be able to provide information to the donor on both how its funds are being used to achieve its charitable purpose and explain the administration costs involved in the collection of those funds. This could occur through the charity’s own general reporting (i.e. Annual Reports or other reports made publically available) and or through required annual reporting to the ACNC. The ACNC information is freely available to the public via the ACNC’s online charity register.

³⁰ Giving Australia Report 2016, Non profit organisations, at https://www.communitybusinesspartnership.gov.au/wp-content/uploads/2017/04/giving_australia_2016_fact_sheet_nonprofit_accessible.pdf

³¹ We note considerable commentary in relation to administration costs (in particular, in the context of commercial fundraisers), at times negative and somewhat misinformed. We refer to the ACNC view that administration costs are not a reliable way to measure a charities performance, and that “*There are inefficient charities with poor outcomes that report low administration costs, and there are charities that spend more on administration and have efficient programs and successful outcomes*” .http://www.acnc.gov.au/ACNC/FAQs/FAQ_Charity_administration_costs.aspx.

7.8 These expectations point to the need for a regime that is **stronger** by ensuring donors are at the heart of all fundraising regulation, **smarter** principles-based regulation that can adapt to evolutions to the forms of fundraising and a **simpler** system which removes duplicity, onerous reporting and associated administrative costs, while supporting ethical conduct to be central to all fundraisers and fundraising activity.

8. How should the Australian consumer law apply to not-for-profit fundraising activities?

8.1 Many fundraisers and their fundraising activities are already covered by the Australian Consumer Law (ACL), which imposes nationally-consistent, minimum standards of conduct (not to mislead or deceive) over individuals and organisations. The ACL (CAANZ) guidance³² states it will generally apply where:

- a person (natural or corporate) undertakes fundraising activity which involves the supply of goods or service; or
- are a for-profit professional fundraiser; or
- fundraise in a continuous and repetitive way.

8.2 It is our view that relatively minor amendments could be made to the ACL to expand its application and to ensure the level of conduct expected in all fundraising is consistent with community expectations. For example, clarifying that it is a breach of the ACL if a fundraiser harasses or coerces a person to donate even when there is no “supply of goods or services”. These amendments will help ensure that donating funds continues to be seen as a worthwhile way for individuals to contribute to charitable purposes in Australia.

8.3 To implement our recommendation, we urge the Commonwealth Government initiate a proposal under the Intergovernmental Agreement for the ACL to make the following reforms:

- that, without amending the definition of ‘trade or commerce’, ensure the following provisions apply to the fundraising activities of not-for-profits: section 18, (misleading or deceptive conduct), section 20 (unconscionable conduct) and section 29 (false or misleading representations), and
- that, in the context of fundraising activities, breaches of section 21 (unconscionable conduct), section 29 (false or misleading representations) and section 50 (harassment and coercion) not be required to be in connection with the supply of goods and services in the context of fundraising activities of not-for-profits.

8.4 **These proposed amendments will strengthen and simplify the application of the ACL to fundraising behaviours – currently some of the ACL provisions only apply in respect of conduct that is in “trade or commerce”, whilst others must involve the “supply of goods and services”.**

8.5 We are not proposing these amendments should be facilitated through a change to the definition of trade and commerce.³³ We have specialist legal advice that these amendments could be achieved by:

- creating a separate ‘fundraising activities’ provision
- adding a carve out for ‘fundraising activities’ to the relevant provisions
- inserting a definition of ‘fundraising activities’.

8.6 The ACL is a suitable platform for reform of fundraising regulation, and should be amended as we propose, because:

³² <https://www.accc.gov.au/publications/guide-to-the-acl-for-charities-not-for-profits-fundraisers>.

³³ Although amending the definition of trade and commerce, as we previously contemplated, has some advantages, we accept that it is not agreeable to a sufficient number of the Governments required to approve ACL reforms.

- a. **The core policy objectives of the ACL are congruent with the policy objectives of fundraising regulation.** The ACL is founded on policy objectives of preventing practices that: are unfair or contrary to good faith; are unconscionable or deceptive; help people make informed decisions and protect them when have been treated unfairly; and penalise those who have acted unfairly.³⁴ Fundraising laws are similarly concerned with fairness and ensuring that people can make informed decisions.
- b. **The ACL represents a modern, principles-based approach to regulation of people and organisations:** ensuring that individuals and fundraisers are aware of their obligations without overly onerous registration and reporting requirements by the State-based legislation which essentially seeks the same outcome; transparency, accountability, and good conduct.
- c. **Through jurisdictional cooperation, the ACL can, in its current form, apply to any person (natural or corporate or resident overseas) that operates in Australia – the application of provisions of the ACL to fundraising will not encounter the same State and Territory jurisdictional barriers, or have any constitutional barriers requiring a referral of State powers.**
- d. **The ACL is a well-understood piece of law** (and the recent fundraising guidance assists this) which means it is easier to explain to fundraisers and donors and is likely to more quickly improve fundraiser behaviour. A survey in 2016 showed awareness of the ACL among all Australians at levels of 90% plus – a great base for building more specific public awareness about the role of the ACL in fundraising and other not-for-profit activities.³⁵
- e. **The ACL does not impose any additional regulatory burden on fundraisers and has been shown to be an effective method for both private enforcement and redress (not available under State- based laws) as well as regulatory pursuit of misconduct where it does occur.**

Private rights are important - they provide for individuals to hold charities accountable for unethical and unfair fundraising practices and private action effectively complements and reinforces the multi-regulatory enforcement model upon which the ACL rests. We note the comments of the Australian Securities and Investments Commissioner: “if private litigation can achieve an outcome that we might have done previously then we should let the private litigation pursue that outcome, because we can use those resources to devote to another area.”³⁶
- f. The minor amendments to the ACL that we propose (above) would be cost effective to implement and serve to **further broaden the remedies** available to all ACL regulators.
- g. **The ACL contemplates the development and enforcement of voluntary and mandatory industry codes**, which would be appropriate and helpful in the fundraising context (as outlined above this forms part of our proposed model).
- h. The reasons for changing from a fragmented approach to one national consumer law as stated by the Hon Joe Ludwig, Special Minister for the State and Cabinet Secretary on the Second Reading Speech on the ACL, apply equally to the fundraising context:

“While these laws may work well for many purposes, each of them differs—to the cost of consumers and business. Australian consumers deserve laws which make their rights clear and consistent, and which protect them equally wherever they are. At the same time, Australian businesses deserve simple, national consumer laws that make

³⁴ Australian Government, The Treasury, *The Australian Consumer Law: A framework overview* (January 2013); Productivity Commission, *Review of Australia’s Consumer Policy Framework*, Report, No. 45, 30 April 2008; Standing Committee of Officials of Consumer Affairs, *An Australian Consumer Law Fair markets – Confident consumers*, 17 February 2009.

³⁵ Australian Consumer Law Review, Interim Report, October 2016, p 9 – reference is to consumers 90% and business 98%. Donors are also consumers.

³⁶ Australian Securities Investment Commission (ASIC) Chairman, Greg Medcraft, cited in “ASIC backs private litigation” accessed at <http://www.moneymanagement.com.au/news/financial-planning/asic-backs-private-litigation> on 23 November 2016.

*compliance easier. A single national consumer law is the best means of achieving these results...*³⁷

- i. **The regulators with oversight of consumer law are the same regulators concerned with fundraising laws**, and therefore the institutions involved in regulating fundraising activity could largely remain unchanged, ensuring existing experience regulating not-for-profits can be retained.
 - j. The current regulatory approach of the ACCC and State-based regulators of the ACL is a risk-based, proportionate approach that we consider appropriate for the regulation of fundraising.
- 8.7 Clarification of the ACL, as well as the proposed extension by way of the amendments outlined above, would provide a modern, nationally-consistent regulatory approach to fundraising that would be supported by general laws, local government by-laws and a single code of conduct without the need for State-based fundraising regimes, in addition to the registration and reporting functions of the ACNC.
- 8.8 In summary, the ACL approach we have proposed is better targeted existing regulation, not more regulation. It offers a practical solution, balancing risk with the need for a regulatory framework that supports protection of a donor where mischief has occurred, whilst providing the charitable sector a means to efficiently and effectively fundraise in efforts to achieve its charitable purpose – for the benefit of all Australians.

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

- 9.1 Many charities prefer to use third party fundraisers because complex compliance issues regarding fundraising activities can be taken care of by a third-party specialising in fundraising. It is also often more cost effective to use a third party fundraiser than to manage fundraising in-house – the overheads for in-house teams and the difficulty in managing turnover can reduce the overall return on investment.³⁸ For example, many use third party fundraisers to recruit, employ, train and manage large teams, rather than doing it themselves, particularly when they are only needed for an annual or seasonal appeal.
- 9.2 It is clear that third party professional fundraisers are covered by the Australian Consumer Law (ACL) as set out in the CAANZ guidance (see paragraph 8.1). On this basis our proposal to amend the ACL provides increased opportunities to address mischief by third party fundraisers (and provides additional remedies for regulators, see below).
- 9.3 Under the ACL, civil penalties are in the order of more than \$1 million, which far exceeds any civil penalty provisions of State-based fundraising laws. In some instances, breaches of the ACL provide for criminal sanctions. This compares to: Western Australia where maximum penalties range from \$40 to \$2,000; Tasmania, where maximum penalties range from \$1,630 (e.g. non-compliant supervision of minors soliciting for a charitable purpose) to \$16,300 or imprisonment for 6 months (e.g. false or misleading statements or conduct).
- 9.4 Other regulator remedies available under the ACL include: injunctions, disqualification orders, undertakings and public warnings. Again, this is a more comprehensive toolkit for regulators than remedies available under State-based laws thus providing greater deterrence but also greater flexibility for cases where breaches are negligent rather than deliberate.

³⁷ Commonwealth, Parliamentary Debates, Senate, 24 June 2010, the Hon Senator Joe Ludwig, p 4283.

³⁸ *Research into Commission based Charity Fundraising Industry in Australia*, Report by Frost and Sullivan for the ACCC, November 2017, page 65.

- 9.5 In addition, our proposal for a single code of conduct for fundraisers could cover issues such as collections and the characteristics of ongoing fundraising agreements with traders, donors and beneficiaries which would support improved conduct.
- 9.6 We acknowledge that charities also have a role to play in the management of their contractual relations with third party fundraisers. The ACNC has made clear that good fundraising practice is a core governance responsibility of a charity's responsible persons (its board, committee, or governing body), and if the fundraising agency working on behalf of a charity fails to comply with legal requirements, it is possible the charity's responsible persons may be held liable for failing to comply. It is a matter the ACNC takes very seriously. It has issued guidance to charities on working with third party fundraisers.³⁹
- 9.7 A number of steps have been taken by the charitable fundraising sector due to past concerns about third-party fundraisers. These include increased oversight by charities of third-party fundraising conduct supported by self-regulatory bodies (e.g. Public Fundraising Regulatory Association's move to an accreditation system).⁴⁰

10. Would a harmonised, contemporary fundraising regime help in addressing concerns about the potential influence of foreign money on civil society and political debate in Australia?

- 10.1 In short, no.
- 10.2 A harmonised, contemporary fundraising regime will not help in addressing concerns about the potential influence of foreign money on civil society and political debate in Australia, and nor should it when there are other more appropriate laws in place.
- 10.3 As we submitted to the Select Committee into the Political Influence of Donations⁴¹, charities are unlikely to be the entities in which money is channelled towards for influencing civil and political debate in Australia. This is because section 11 of the *Charities Act 2013* (Cth) sets out that where a charity has a purpose of promoting or opposing a political party for public office it constitutes a 'disqualifying purpose' such that it would not be, or no longer eligible to be, registered as a charity and consequently would be unable to access Commonwealth taxation and other concessions. Similarly, if a charity does not or no longer acts within their charitable purposes they would not be, or no longer be eligible to be, registered as a charity.
- 10.4 It is for this reason, in our view the Government agreed with the Recommendation of the Parliamentary Joint Committee on Intelligence and Security into the *Foreign Influence Transparency Scheme Bill 2017* (Cth) to exempt charities from the operation of the scheme.
- 10.5 We also note that funding which is specifically directed in support of political parties or candidates in Australia is already exempted under current fundraising law because the laws in every State and the ACT apply to 'charitable purposes', and politics (political donations) are not charitable. In Victoria where fundraising laws extend beyond charities, the fundraising laws provides an exemption for political donations.

³⁹ https://www.acnc.gov.au/ACNC/FTS/Working_with_fundraising_agencies.aspx.

⁴⁰ *Research into Commission based Charity Fundraising Industry in Australia*, Report by Frost and Sullivan for the ACCC, November 2017, page 66.

⁴¹ Our submission is accessible here: <http://nfplaw.org.au/submission-electoral-amendment-electoral-funding-and-disclosure-reform-bill-2017>

11. What is the cost to the charity and not-for-profit sector, and the communities they serve, of postponing fundraising reform?

- 11.1 We acknowledge differing priorities on the agendas of all Australian governments and that the cost of cooperation and achieving consensus on some issues of law reform are significant. However fundraising reform is one area where all Governments will find widespread agreement within the sector, interested parties and the Australian community who view this sector in a positive manner (86 % of Australians trust charities and 91% support them by volunteering or donating).⁴²
- 11.2 Fundraising reform is an issue that should cross partisan and political boundaries – in part because it has been an issue of concern for decades and across all levels of government, but also because of the significant work of charities in delivering government funded services.
- 11.3 As outlined above, fundraising is the source of the greatest amount of regulatory burden, at a cost of more than \$15 million annually for the charity sector alone. At an organisation level a recent report found that the administration costs for some fundraising activities conducted using a third party commercial fundraisers were between 20-30 per cent of the funds donated (with the rate varying depending on the period of time the person remains a donor). However, overall costs will depend on the fundraising activity (and how it is conducted, i.e. volunteers, paid internal staff or use of commercial entities).⁴³ Whilst the percentage overhead for fundraising appeals is not (at least of itself) a good measure of a charity's performance, it is clear that with less burdensome registration and reporting requirements, the costs would be reduced, allowing for a higher percentage of funds raised to be utilised for the purposes for which they were received.
- 11.4 The current regime is costly and largely ineffective – there are gaps caused by the inconsistency of the laws in their application across the nation (i.e. it will depend on definitions of 'fundraising' and the definition of 'charitable purposes'), and the numerous exemptions and exclusions (refer paragraphs 1.5-1.9). The existing laws were once fit for purpose in their local jurisdiction, but that is no longer the case. They fail to adequately deal with new forms of fundraising and the online fundraising platforms that facilitate fundraising by charities and individuals. (Only one fundraising platform entity is regulated in Australia).⁴⁴ These gaps provide opportunities for mischief which has the potential to cause serious harm to the charitable sector (as has happened in other jurisdictions,⁴⁵ who have also moved to regulate this form of fundraising)⁴⁶.
- 11.5 The costs of delay should be measured not only in terms of the cost imposed on existing fundraisers (and the broader costs to the sector annually), but also from the perspective of whether the existing regulatory framework acts to block sector growth and or creates barriers to innovation in fundraising. It is therefore difficult to come to any other conclusion than **the costs involved in postponing fundraising reform are significant, and as such should be given precedence in the legislative agendas of all Australian governments especially when there is a practical, no-cost policy solution such as #fixfundraising model we have proposed.**

⁴² ACNC Public Trust and Confidence report, 2017.

http://www.acnc.gov.au/ACNC/Pblctns/Media_centre/Med_Rel/ACNC/Comms/Med_R/MR_229.aspx.

⁴³ *Research into Commission based Charity Fundraising Industry in Australia*, Report by Frost and Sullivan for the ACCC, November 2017, page 66. Also above n 29 for discussion on administration costs. Also see "Good charities spend more on admin but it is not money wasted", The Guardian, May 2013 at <https://www.theguardian.com/voluntary-sector-network/2013/may/02/good-charities-admin-costs-research>.

⁴⁴ Time to #fixfundraising", Tania Burstin, Managing Director of MyCause at <https://probonoaustralia.com.au/news/2016/11/time-to-fixfundraising/>

⁴⁵ <https://fundraising.co.uk/2016/01/20/frsb-publishes-results-of-olive-cooke-investigation-and-related-complaints/#.WOWmANizYdU>

⁴⁶ <https://www.fundraisingregulator.org.uk/2018/06/07/fundraising-regulator-announces-new-rules-for-online-fundraising-platforms/>

Additional Comments

The current fundraising regulatory regime is not a specialist regime

We note there have been suggestions that the current fundraising regime is a ‘specialist regime’ (we refer to the Australian Competition and Consumer Commission’s submission to the Independent Review of the ACNC legislation). There may be others that hold this view.

It is untenable in the 21st century to describe the existing fundraising laws as a coherent specialist regime.

As we stated in our supplementary submission to the ACNC Review, the existing State and ACT legislation does not provide a uniform (or even close to uniform) licensing, registration or financial reporting regime. For example:

- there are only three jurisdictions (ACT, SA and NSW – but not in the ACT or SA if those fundraisers are charities) where fundraisers are licensed
- there are only four (out of seven) that separately register fundraisers
- the financial reporting requirements vary greatly, and
- increasingly, States are ‘switching off’ licensing and reporting requirements for registered charities and relying on compliance with the ACNC reporting regime (with data coming to them via the ACNC’s Charity Passport).

Other pathways to reform – harmonisation, mutual recognition, referral of powers?

Harmonisation and mutual recognition of the State and Territory laws (i.e. outside of the co-operative ACL model) have been discussed for decades. They have been put on the Council of Australian Governments agenda only to be removed without any progress.

The current laws are too disparate for either harmonisation or mutual recognition to be an achievable pathway to nationally consistent reform.

A referral of State powers could achieve the result of a nationally consistent legislative approach but only if the Commonwealth was prepared to then draft and pass completely new legislation and allocate resources to its operation and enforcement. We have not pursued this approach because of the inherent difficulty of achieving the objective, cost and the time it would take to achieve.

There is no need for any further inquiries or reviews

We do welcome this Inquiry, and in particular its focus on fundraising in the 21st Century. However, it would be a major disappointment to us and the supporters of the *#fixfundraising* campaign if this Inquiry were simply to recommend another inquiry or review of the fundraising laws.

It is beyond any doubt that there is a problem that needs to be fixed. Former reviews (some examples are set out below) confirm this. We, along with 235 organisations (charities like the RSPCA, St John Ambulance, White Ribbon Australia, giving platforms like MyCause and Good2Give to small not-for-profits like the Rotary Club of Foster) have made the Prime Minister, all Premiers and Chief Ministers aware of the problem.⁴⁷ We now need action on behalf of all Governments to address the problem, for which we have provided a solution: a solution that is **smarter, stronger and simpler**.

We look forward to action by all Governments to implement this solution. After decades of waiting, we call for it to be made a priority. All Governments must work together to provide charities (and other not-for-profits) and the donating public with a national fundraising regulatory regime. The Federal Government can take a lead under the Australian Consumer Law. It is simply not good enough to do nothing.

⁴⁷ “Letter to the Prime Minister and all Premiers and Chief Ministers, August 2017 at https://nfplaw.org.au/sites/default/files/media/Updated_letter_of_29_August_2017.pdf.

It's time to #fixfundraising.

Some of the previous inquiries that relate to the regulation of fundraising

- **1995:** “Several States introduced legislation in the period between 1930 and 1960 which has not undergone significant change despite an increase in fundraising activity and changes in techniques ... Significant inconsistencies in the regulatory requirements for fundraising across States impose considerable administrative costs...There are also inconsistent approaches between States in the focus of fundraising legislation...”
 - *Recommendation 9.1: The Council of Australian Governments should consider approaches to achieving greater efficiency and effectiveness of fundraising regulation among States/territories.*⁴⁸
- **2008:** “The committee recommends that a National Fundraising Act be developed following a referral of powers from states and territories to the Commonwealth ... It should apply nationally ... it should clearly regulate contemporary fundraising activities such as internet fundraising.”⁴⁹
- **2010:** “Fundraising legislation differs significantly between jurisdictions, adding to costs incurred by the NFP sector. Harmonisation of fundraising legislation through the adoption of a model act should be an early priority for governments⁵⁰
- **2016:** “Overwhelmingly, fundraising is the source of the greatest amount of regulatory burden for charitable organisations ... the annual regulatory burden associated with fundraising regulations is estimated at approximately \$13.3 million per year across the sector”.⁵¹
- **2016:** Fundraising regulation has not kept pace with new forms of fundraising, particularly as online campaigns for funds have grown through the use of third party websites. The current arrangements treat fundraising as an activity isolated to one state or territory, when, in reality, even small organisations may attract interest nationally and internationally through online channels such as crowdsourcing website⁵²
- **2018:** Given that charitable fundraising is now a cross-border and international phenomenon, particularly through the internet, a single, unified Australian statutory regime would be of very significant benefit.”⁵³

Part 3 – Attachments

We provide the following two attachments to support the Committee in its work.

Attachment A: a list of those who have signed the #fixfundraising supporter page

This page is hosted by Justice Connect and the names in this attachment are from the list as at 6 August, 2018. See <http://www.nfplaw.org.au/supporters-stories>

⁴⁸ Industry Commission Inquiry Report, Charitable Organisations, 6 June 1995, pages 232-235 and Recommendation 9.1, at <http://www.pc.gov.au/inquiries/completed/charity/45charit.pdf>.

⁴⁹ Senate Standing Committee on Economics, Report of the Inquiry into the Definition of Charities and Related Organisations (December 2008).

⁵⁰ Australian Productivity Commission Contribution of the Not-for-profit Sector, 2010 p xxiv.

⁵¹ Deloitte Access Economics, ACNC: Cutting Red Tape: Options to align State, Territory and Commonwealth charity regulation, Final Report, 23 February 2016.

⁵² Deloitte Access Economics, ACNC: Cutting Red Tape: Options to align State, Territory and Commonwealth charity regulation, Final Report, 23 February 2016.

⁵³ Report of the Inquiry under the *Charitable Fundraising Act 1991* (NSW), Feb 2018.

Attachment B: Gap analysis comparing Fundraising Act 1991 (NSW) to other laws and codes

The detailed analysis contained in Attachment B demonstrates that the matters set out in the *Charitable Fundraising Act 1991* (NSW) and related licence conditions are now covered by:

- existing legislation: *Australian Consumer Law* (nationally applicable via multi-regulatory framework) and the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), and
- existing codes of conduct: specifically, the Public Fundraising Regulatory Association and the Fundraising Industry of Australia and the South Australian Code of Practice,

or could be covered by our recommended core mandatory code (and/or amendment to existing codes, like the Public Fundraising Regulatory Association).

The NSW fundraising laws are widely regarded as being extremely comprehensive (in terms of the obligations imposed upon licence holders), so we expect a similar analysis of the laws applying in other jurisdictions would garner a similar conclusion.

Attachment A: a list of those who have signed the #fixfundraising supporter page

This page is hosted by Justice Connect and the names in this attachment are from the list as at 6 August, 2018. See <http://www.nfplaw.org.au/supporters-stories>

Supporters & Stories



#fixfundraising

#fixfundraising Joint Statement Signatories

Signatories of the Joint Statement on Fundraising Reform

- Justice Connect
- Australian Council of Social Service (ACOSS)
- Governance Institute of Australia
- CPA Australia
- Australian Institute of Company Directors (AICD)
- Chartered Accountants Australia and New Zealand (CAANZ)
- Philanthropy Australia
- Community Council for Australia (CCA) (see "[Regressive Fundraising Regulations - Time for Change](#)")

#fixfundraising supporters

See our list of supporters and read [fundraising stories](#)

#fixfundraising supporters from A-Z

- AEG OGDEN
- AICD NFP Chairs' Forum
- Academy of Football Australia
- Able Australia
- Add-Ministry Inc
- Alola Australia Limited
- ArtSound FM
- Artist's for Kids' Culture
- Altona Bowling Club
- Anti Fake Charities Group
- Arts Law Centre of Australia
- ausee Inc
- Australian Arts Events Foundation
- Australian Centre for Philanthropy and Nonprofit Studies
- Australian Communities Foundation
- Australian Community Philanthropy
- Australian Council for International Development (AFCID)
- Australian Multicultural Charity
- Australian Spirit Journeys
- Australian Women's Health Network
- Australian Specialist Cheesemakers' Association
- Baby in Mind
- Ballet without Borders
- BayWest Bicycle Users Group
- BBM Youth Support
- Bear Cottage Children's Hospice
- Bookwurm Events
- Bonnie Support Services Ltd
- Bonny Bayne Consulting
- Bridgid Cowling
- Bruce Christie
- Catherine Sullivan Centre, Strathfield
- CanTeen
- Casey Life Assembly of God
- CBM Australia
- Centre for Social Impact
- Chizim Care Services Incorporated
- Collective Shout
- Community Broadcasting Foundation
- Community Broadcasting Association of Australia

- Community Information & Support Victoria
- Community Resource Network (CRN) Inc
- Community Legal Centres Queensland
- Company Matters
- COTA Victoria
- Cumulus Rising
- ConnectAbility Australia
- Consumer Action Law Centre
- Concerned Tatong Citizens
- Council of Arts & Cultural Education & Development
- Cobaw Community Health
- Cystic Fibrosis Australia
- Deloitte
- Diabetes Research Foundation WA
- Diabetes Victoria
- Deeper Movement
- Domestic Violence Australia
- Drug Policy Australia
- Elizabeth Stubbs
- Elisabeth Buchan
- Engineers Without Borders Australia
- EPIC Assist
- Epworth Healthcare
- Everydayhero
- FamilyCare
- Fibro & Us - Fibromyalgia Support Group Inc
- Federation of Community Legal Centres
- Financial and Consumer Rights Council
- First Step
- Fish Farming Vision Australia
- Focus on Recovery Incorporated
- Foundation for Alcohol Research and Education (FARE)
- Foundation for Rural and Regional Renewal
- Foundation for Young Australians
- Fremantle Foundation
- Fundraising Institute of Australia (FIA)
- GAAP Consulting
- Global Recordings Network Australia
- Gloucester Arts and Cultural Council Incorporated
- Gloucester District U3A

- Good2Give
- Grace Christian Centres of Australia
- Grata Fund
- Grace Gawler Institute for Integrated Cancer Solutions
- Grange Training Solutions
- Giuntabell Pty Ltd
- Hannahs Foundation
- Herbert Smith Freehills
- Horizon Mentoring
- Human Rights Law Centre
- Hypersomnolence Australia
- Insulin for Life
- JaMels
- Just-Us In Justice
- Karydis-Frisan & Associates
- Keilor Over 50s Recreation Club Inc
- Kindred Spirits Foundation
- Lena Glass
- Lasallian Foundation
- Launch Housing
- Law Council of Australia
- Lifeline Gippsland
- Litterology
- Lorelei Drake
- Lymphoma Australia
- Makinson d'Apice Lawyers
- MalCorp Advisory and Consulting
- MarionLIFE Community Services Inc
- Marg Leser & Associates
- Maydena Community Association Inc
- Melbourne Fringe
- Melbourne Gliding Club
- Meningitis Centre Australia Inc
- MET Designs Ltd
- Mission Australia
- Mission Aviation Fellowship Australia
- MS Australia
- MS Research Australia
- Movember Foundation
- Multicultural Council of the Illawarra

- mycause
- National Democratic Alliance of Sudan Australia & Oceania Inco
- Nepal Sagarmatha Foundation
- Newservices Pty Ltd
- Nicholson's Solicitors
- Ninti One Foundation
- Oaktree
- Oasis Affordable Housing Ltd
- OMF International
- Organic Motion
- Oxfam Australia
- OzHelp Foundation
- Parkinsons Queensland
- Partners for Purpose
- PAFC
- Playground Ideas
- Public Fundraising Regulatory Association (PFRA)
- Public Outreach Australia
- Prostate Cancer Foundation of Australia
- Queensland Law Society
- RAS of NSW Foundation
- Rare Cancers Australia
- Rationalist Society of Australia Inc
- Reiss Legal
- Ricon Pty Ltd
- Rob Lavers
- Royal Far West
- SA State Emergency Services Volunteer Assoc Inc
- SANE Australia
- Save the Children
- ShareGift Australia Limited
- Shay-Lee & Happy Hearts Inc
- Shamrock Rovers Perth
- Shine for Kids
- SIM Australia
- Social Impact Legal
- Social Traders
- Social Ventures Australia
- Somerville Community Services Inc
- So They Can

- South Gippsland Learning Differences
- Southlakes Community Services
- Sydney Pet Rescue and Adoption
- SparkLit
- Sports Central
- Sunraysia Residential Services
- Surgical Specialities
- Taskforce
- Temple Society Australia
- Therapy Focus
- The Aussie Hands Foundation Inc
- The Bushfire Foundation Inc
- The Centre for Volunteering
- The Hospital Research Foundation
- The Dax Centre Ltd
- The Global Women's Project
- The Graduate Union of The University of Melbourne Inc.
- The Good Life Farm
- The Menzies Foundation
- The Minderoo Foundation
- The Myer Family Company
- The Peshawar School for Peace Inc
- Trees for Life
- Trustees of the Christian Brothers
- Toby Verey
- Vicki Campbell
- Victorian Comprehensive Cancer Centre
- Vision International College Inc
- Volunteering SA&NT
- Volunteering Australia
- WA Council of Social Service
- Whitelion
- Willing Older Workers Inc
- Wings of Hope Incorporated
- WAYS Fundraising
- Women and Mentoring (WAM)
- Women's Art Register
- Women's Plans Foundation
- Work For The Soul
- Workplace Bullying Hero I Will Speak Up

- World Education Australia
- WorldShare
- Yarra Foundation
- YGAP
- Youth Projects Ltd
- YWCA Australia
- Xponential
- 3RPC Incorporated
- 3PVR Plenty Valley FM
- 107.3HFM(Heritage FM Incorporated)
- Name withheld (x35)

#fixfundraising stories

Share your story [here](#)

We spent over a year and countless hours to register to raise funds for the Australian Hand Difference Register. The AHDR is a joint project with the Royal Children's Hospital, Murdoch Children's Research Institute and Aussie Hands. The process was so frustrating and timeconsuming. We have such limited resources, it is not a good use of our time undertaking this overly complex activity. It takes time away from our core activities – supporting people with a Hand Difference! We want to #fixfundraising too!

Name Withheld

We recently sought to re-register for 3 years through CAV in Victoria. What a nightmare of red tape . Required all Board members to submit to crim records, required details in including addresses for all members, and they wanted financials for calendar years even tho we are audited against financial years. We we asked why they can't rely on financials we regularly submit to them (as incorporated body) and to ACNC , to no avail & was pointed out that ACNC is Federal. ACNC should be enough ! There were many delays and difficulty reaching a human to talk to.

Name Withheld

We are a new volunteer NFP mental health consumer support group, please make it uniform and simpler for "ordinary people" to carry out fund raising. We are doing our best to raise our own funds without tax payer support, hence it is only fair to stream line the laws and rules for fund raising across our wonderful country

Name Withheld

Our charity has operations based in one capital city. Our senior executive team has recently enquired whether we could put up a fundraising page on our website allowing the public to make a tax deductible donation. As an organisation we have not previously promoted our DGR status as a means of generating donations. Our organisation: has a skills-based non-executive board; is regulated by multiple government departments and bodies; is audited by one of the 'big four' audit firms; and takes its legal and regulatory compliance obligations seriously.

As we started to explore the regulatory impact of adding a donations page to our website it became clear that doing so could be seen as an invitation to the public in each Australian state and territory to make a donation. The result of which means we may need to apply for a licence or authorisation under the various fundraising regimes in each of the 6 states and the ACT. It quickly became clear that each state's requirements and processes are very different and that it would be a complex and time consuming exercise to investigate the requirements, identify the ongoing compliance obligations and set about making the various applications in each jurisdiction. To date (and without starting a single application) this has taken more than 50 hours of work.

Our senior executive team and board are still coming to terms with whether the costs associated with applying for and complying with all of the licences and authorisations are warranted. This is all the harder given our operations are limited to one state, and we anticipate that we are unlikely to generate substantial (if any) fundraising from states where we have no operations.

As a charity registered nationally with the ACNC, in the digital era it is difficult to understand why a simple web page inviting online donations triggers a labyrinth of laws, many of which seem incredibly outdated.

Name Withheld

It has been a nightmare. It was extremely time consuming to research all the different requirements state by state. And after that I then had to prepare all of the various forms for signing and co-signing by either members of our Board or our CEO because each of the states need something different to satisfy the requirements for an application. It is such burden for organisations like ours who are doing our best to help those most in need of help.

Name Withheld

I have advised large companies that fundraise by selling products with logos of charities on them. For these companies and the charities that they are supporting, fundraising laws are an absolute nightmare. Products are often sold around the country, and therefore engage every fundraising jurisdiction. It is often unclear whether the company or the charity, or both, need a licence/approval for the campaign. In my experience the legal fees associated with getting licences in place can be higher than the money raised through the campaign! Of course, lawyers often do this work pro bono - but what a waste of pro bono hours that could be spent doing really meaningful legal work for charities.

Name Withheld

What happens when people love what you do from afar? And then they send you money using your new smart phone optimised, search engine optimised website. And a receipt is issued, and accounts are audited externally, all your information with the ACNC is up to date. All good. Right? Not so. With the advent of social media platforms and news sites, all of which have no state boundaries, our work is seen across borders. We've improved how we communicate, we tell compelling stories about our impact to improve our relationship with our donors. But we have to hope they are not outside Victoria or else fill out the paperwork and reporting for all areas. Even if all we made is a very modest sum. The regulatory regime for reporting is still far from streamlined, and most NFPs continue to

face a mass of reporting to many different bodies, and for us this includes quality accreditation, risk, audit and acquittals, tax, food safety, poisons, health records, child safety, training and education. We can at least make a uniform approach to fundraising that recognises the real world in which we operate. And lighten our load when a clear solution exists.

Name Withheld

I am the EO for a small not-for-profit organisation which operates nationally as a telephone helpline. I am employed part-time as the sole employee. As our organisation is totally funded by donations we set up a donation portal on Give Now to enable individual donors to easily make donations via credit card (we do not have this facility). In addition the Give Now portal provides receipts and provides a monthly record of donors which is fantastic bonus for a small organisation. However to achieve this we had to apply to be a recognised fundraiser to every state and territory in Australia (except NT).

The requirements for each state were different, some required police checks for our office bearers (WA), others required that we have a postal address in their state (NSW) - we are based in Victoria. To say that the process was labour intensive is an understatement. We now have different reporting requirements for every state and territory - some annual, some every two or three years. In addition we have to notify these authorities whenever committee members change and also obtain police checks for WA. The other issue is that as an organisation working on a very low budget (approx

\$60,000) we now have to have our financial records audited annually and again the reporting requirements differ from state to state and so the auditor has to present more than one report. Previously we were exempt from auditing due to our low budget .

It would be ideal if fundraising approval could all be managed by the ACNC rather than on a state by state basis.

Thank you for taking this up. It is a great burden for small organisations.

Name Withheld

As an organisation we are very unclear of what the law is in this respect. We are a not for profit organisation and would benefit greatly from trying to raise some funds from other sources so it would be very beneficial if we could do this.

Name Withheld

Our organisation has two large entities based in Victoria and they carry out some fundraising in some of the other states. To simplify this it was suggested that we apply for a fundraising licence in each state so that the entities are covered if and when fundraising takes place. My experience with setting up these licences has been a nightmare! Every state requires something different eg. police checks WA, signatures and registers of all board members (who are spread across Australia and who may change from year to year). Forms going back and forth between states and gathering and collecting different groups of information as required by each separate state. This process is in need of a well awaited streamlining. There is no way of keeping on top of all the requirements of each state regarding fundraising when you have more than one entity raising money. The applications are tedious and time-consuming and many hours have been spent and wasted on sending and re-sending documents to these offices.

Please please look at merging with ACNC which already has the information required by these fundraising/licence states. It is simply repeating the same process in a different format and wasting every individual's time.

Name Withheld

We registered to fundraise in each state (over 12 months ago). Still awaiting approval from 2 states Long, long process ridiculous (really!!!) Each state has a different form which asks various questions with some requiring witnesses and signatures of a JP. The inconsistency of this process across Australia is a red tape and paper trail nightmare which consumes so much time, and, in particular, for small organisations who just want to focus on their charitable work. If a national fundraising system could be established, this would eliminate the frustrations that small organisations (& large) which deflates the soul to have to go through and you begin to lose focus and passion for your initial needs to help others.

That's why NFPO are established - to help others. Why can't the government just support what we are doing - we are actually contributing and doing 'work' for them in supporting the community.

Name Withheld

Being a national organisation that funds around 450 individual community radio stations, the burden on us for applying in each state and then complying with each state's differing regulations is both cumbersome and expensive.

I accept that regulations are necessary to ensure that the public is protected from scam fundraisers that give us all a bad reputation, however how many layers deep do we really need to go?

Name Withheld

We recently sought to re-register for 3 years through CAV in Victoria. What a nightmare of red tape . Required all Board members to submit to crim records, required details in including addresses for all members, and they wanted financials for calendar years even tho we are audited against financial years. We we asked why they can't rely on financials we regularly submit to them (as incorporated body) and to ACNC , to no avail & was pointed out that ACNC is Federal. ACNC should be enough ! There were many delays and difficulty reaching a human to talk to.

Name Withheld

We recently sought to re-register for 3 years through CAV in Victoria. What a nightmare of red tape . Required all Board members to submit to crim records, required details in including addresses for all members, and they wanted financials for calendar years even tho we are audited against financial years. We we asked why they can't rely on financials we regularly submit to them (as incorporated body) and to ACNC , to no avail & was pointed out that ACNC is Federal. ACNC should be enough ! There were many delays and difficulty reaching a human to talk to.

Name Withheld

We are a new volunteer NFP mental health consumer support grou

