



Charitable Fundraising, Better Regulation Division
Department of Customer Service
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Subject: Response to the discussion paper: *Proposed cross-border Recognition model for charitable fundraisers*

Introduction – the Charities Crisis Cabinet

We write to you on behalf of the Charities Crisis Cabinet (CCC), a group of charity leaders and peak bodies from across the breadth of the charities sector in Australia. The CCC was formed to inform and develop responses to the impact of COVID-19 on charities in Australia. The CCC has both received submissions from charities about their issues and made submissions to governments and others. The primary focus of the CCC is to ensure as many charities as possible are able to not only survive and continue to serve communities through the COVID-19 pandemic, but emerge even more effective and able to respond to changing needs across Australian communities. A full listing of CCC members is attached.

Introduction – the current situation with charitable fundraising

The current situation with COVID-19 impacting heavily on charities across Australia has made the issue of fundraising critically important to the future of many charities. The Australian Taxation Office have stated that over 320,000 employees of charities are currently receiving JobKeeper payments. Many charities have had to pivot their normal face to face fundraising events and activities to on-line fundraising. Consequently, many are now facing the challenge of satisfying all the different regulations imposed by every jurisdiction (except for the Northern Territory where there are no fundraising registration requirements).

Complying with every fundraising regulation across most jurisdictions in Australia - even if the charity is a relatively small organisation based in regional Australia - seems onerous at best, and yet, if a small charity chooses to put a 'donate here' link on their website, they will have to provide extensive documentation to satisfy the individual requirements of most States and Territories.

Of course, many charities simply do not comply – it is too difficult. For those that do, it will require weeks of filing separate documents and meeting diverse requirements before they can officially launch any fundraising through their website.

This kind of tick the box form filing and proof of document administration for separate regulators makes no sense and is not supported by anyone. Multiple levels of administration requirements do not make fundraising safer for consumers (the Australian Consumer Law already does that) or enable active enforcement (the ACNC governance principles do that). There is no evidence of widespread fundraising problems that can only be controlled through State or Territory regulations and enforcement. There is evidence that the whole fundraising registration process consumes millions of dollars of charitable staff time each year and produces no net positive benefit.

And yet, this universally denounced unacceptable situation continues.

Support for the discussion paper

It is important to acknowledge that the CCC is supportive of the key idea represented in the discussion paper of cross border recognition of charities registered with the Australian Charities and Not-for-profit Commission (ACNC). Many charities assumed that once the ACNC was established it would provide a kind of passport for charities, a validation of the bona fides of every registered charity, a clear and comparable up to date data source about every registered charity, and a streamlined way to ensure charities were fulfilling their legal and governance requirements.

It makes sense that charities registered with the ACNC should be deemed to have satisfied the requirements to undertake fundraising in all Australian jurisdictions. The Charities Crisis Cabinet support this approach.

Concerns with the discussion paper

Unfortunately, the fundamental idea of using registration with the ACNC to establish a deemed authority for fundraising is completely undermined within the discussion paper by qualifying statements such as:

“While deemed authorisation based on ACNC registration is the primary goal, individual jurisdictions may retain some flexibility to manage who is authorised to fundraise in the jurisdiction, such as applying additional conditions for deemed authorisation. ... Regardless of whether a fundraiser holds a deemed authority or a local authority, the obligations under local regulatory regimes could still apply ...Furthermore, local regulators would not be restricted from establishing their process and procedures for dealing with deemed authority holders.”

The only reading of these statements is that States and Territories reserve the right to impose whatever conditions they like on charities seeking to fundraise on-line regardless of where they are based.

Given the history of so many jurisdictions feeling the need to have their own particular set of fundraising registration requirements, it is not at all clear that an ‘in principle’ commitment to deemed authority translates into anything more than a nice set of words jurisdictions can all agree to without changing any current practices.

And as if to support this reading of the discussion paper, there is not one reference throughout the entire discussion paper to any conditions or requirements that are currently imposed by jurisdictions that will no longer be imposed once ACNC registration is accepted as a deemed authority to fundraise.

The CCC are concerned that in the unfortunate circumstance where a particular charity behaves badly in one jurisdiction, this discussion paper allows that jurisdiction to develop a whole new additional set of requirements and impose them on every fundraising charity in the country.

In practice, the discussion paper offers nothing more than a set of words enabling all jurisdictions to perpetuate the current practice of imposing whatever regulations or requirements they feel are necessary on charities in Australia seeking to fundraise.

The discussion paper fails to advance a positive solution, but it does reinforce the view that States and Territories will not adopt a common approach to fundraising regulation. This means charities will continue to waste millions of dollars in pointless administration and struggle to pivot their fundraising on-line at a time when many communities most need the support of their local charities.

A possible solution

Charities are registered and regulated by the ACNC. Fundraising is also regulated under Australian Consumer Law which prohibits misleading and deceptive conduct. There are also privacy laws, the Telecommunications Code and local by-laws about collections. In practice, no other authority is needed. History tells us that these regulations are quite sufficient to pursue the tiny minority of charities engaged in inappropriate fundraising activities, the scammers, those who mislead, engage in deceptive conduct or misuse publicly raised money. And that is without the various voluntary codes many charities comply with.

CCC understand that there are some regulators who argue these provisions are not enough and separate regulations are needed. CCC does not agree, but for the purpose of providing one option for streamlining regulatory requirements, the CCC has developed a draft set of Australian Fundraising Principles and prepared a set of answers to possible questions about these principles and how they might operate (see attached). These fundraising principles would replace all the current regulatory requirements imposed by State and Territory governments.

If every jurisdiction adopted these principles and dispensed with all their existing regulations, it would free up millions of dollars of administrative time in charities across Australia that could be much better directed to serving their communities. It would also increase compliance because obtaining a national fundraising license would become a seamless process with much less red tape, provide better assurances for the public - especially those vulnerable to exploitation, and promote the opportunity to fundraise without fearing regulatory breaches from over-zealous state regulators concerned about font sizes, document provenance, proof of ID, street addresses, police checks, length of handles on collection boxes, etc. etc..

Conclusion

There is a pressing and urgent need to enable charities facing many challenges from COVID-19 to pivot to on-line fundraising without having to wade through different sets of fundraising regulatory requirements across most of the jurisdictions in Australia.

The discussion paper offers the option of providing a deemed fundraising authority to all ACNC registered charities, but it also insists that that authority may be completely over-ridden by any jurisdiction wishing to impose whatever conditions it feels are appropriate. This is not a solution to the regulatory mess that is fundraising regulation in Australia.

In this submission, the CCC has proposed a compromise solution that offers much stronger protections and a much more streamlined national process. Thank you for considering this submission.

Yours sincerely



Rev Tim Costello AO
Co- Chair, Charities Crisis Cabinet
18th of September 2020



Adjunct Prof Susan Pascoe AM
Co- Chair, Charities Crisis Cabinet
18th of September 2020