

Enabling greater charitable fundraising during COVID-19 crisis

Impact of COVID 19 on charitable fundraising

All face-to-face charitable fundraising, major events, door knocking, and sign ups have shut down (statement by Public Fundraising Regulatory Association, see www.pfra.org.au/). All fundraising is (or should be) happening via telecommunications: postal, phone, internet-based.

The most conservative estimate of impact across the charitable sector suggests a drop of 7% in fundraising revenue as a consequence of COVID-19 ([JB Were Report April, 2020](#)). Surveys of charities in Australia and internationally suggest more like a 20% reduction (see: [Charities Aid Foundation of America COVID-19 Report](#), March 2020).

For charities to survive, it is important to remove any unnecessary or counterproductive obstacles impeding legitimate non face-to-face fundraising activities by registered ACNC charities.

Regulatory barriers

Fundraising is the biggest red tape burden for the charities sector (ACNC Cutting Red Tape Report, 2016). There is multi-party federal agreement (Select Senate Committee Report, February, 2019), and State and Territory recognition, that regulatory reform is needed to remove barriers to fundraising in Australia.

The current jurisdiction based regime serves as a barrier to legally compliant online fundraising activities – if a charity has a donate button on its website (even if it largely raises money locally) it needs to comply with seven different regimes as well as the Australian Consumer Law (**ACL**).

With face-to-face fundraising paused, many of the regulatory issues covered at the State and Territory level – street collections, name badges etc. – do not apply, but the need to protect the public against deceptive and misleading conduct (as covered by the ACL) remains.

What needs to be done now?

Introduce core, mandatory COVID 19 charitable fundraising rules that are agreed to by Commonwealth and all States and Territories, with the enforcement of current State and Territory based regimes paused for ACNC registered charities. ACL would not be paused.

The National Code of Conduct for commercial tenancies provides a model for consideration (this is Commonwealth code adopted by each State or Territory and applies for ‘the period during which the Commonwealth JobKeeper program remains operational’).

Ideally there would be minor amendments to the ACL, but these amendments would in no way alter trade and commerce threshold. The amendments would support the new rules by ensuring penalties for any coercion or harassment of donors (currently these remedies are only available if there is a donation and a supply of a good or service).

What role would each regulator play?

The **ACNC** would continue to:

- serve as the primary triage regulator – directing concerns that are beyond its remit to State and Territory regulators (under the new rules and/or the ACL) or to the ACCC (for potential charity scams or significant/national ACL concerns).
- focus on registration and reporting, and sharing data with other regulators
- ensure the use of donations for charitable purposes and consider any broader governance concerns that might arise out of a charities fundraising activities.

The **ACCC's** role would be unchanged. The ACL remains in place and provides an overarching protection for false or misleading representations. There would be no change to how the ACL is enforced – it would continue under the multi-regulator intergovernmental agreement which involves the ACCC and all State and Territory fair trading/consumer affairs regulators.

The **States and Territories** would continue their role, but with nationally consistent COVID19 rules agreed - taking into account current health requirements:

- no face-to-face until permission is given by respective State and Territory regulators
- hours during which contact can be made seeking donations (provisions applicable under [Telecommunications \(Telemarketing and Research Calls\) Industry Standard 2017](#) and [Do Not Call Register](#) would continue to apply)
- how collectors need to identify themselves and explain who they are fundraising for
- requirements for signing people on to any ongoing donation plan
- general promotion requirements (eg, advertisements must include charity name, link to charity and ACNC website and purpose for which being collected)
- receipts
- health and safety of collectors (modified given no face-to-face) eg, can't phone or text unless over 18 years
- disclosure: information sheet provided by charity to collectors and available on request
- exemptions: eg, raise under \$10,000, fundraising from members, or early childhood/schools.

How does this approach ensure protection for the donating public?

The public has no wrong door in terms of complaints, but can most easily be directed to the ACNC (which is more logical than a fair trading regulator). The ACNC works as the central triage point which also helps with the collection of data and monitoring of trends/concerns. The ACNC already regularly handles these calls.

Registration and reporting is already in place for ACNC registered charities. There are secure data sharing arrangements in place (or close to being finalised) with all of the State and Territory regulators that would support their compliance work.

Nationally consistent rules that recognise online donation methods will drive improved compliance and donor protection, especially if backed by minor amendments to the ACL.

By supporting the financial sustainability of charities, the public will benefit from more charities being able to survive the crisis; more charities can deliver services and come out of the crisis being able to re-employ staff, re-engage volunteers and rebuild communities.

How does this approach support charities?

Reduces significant red tape and compliance barriers enabling all charities large and small to better pivot away from face-to-face fundraising. They can set up donate buttons/ campaigns via online platforms quickly without having to consider seven different disparate laws. Donations can be encouraged: people who want to donate (eg, money saved on travel, restaurants) can easily be directed to 'safe options' including smaller and more local groups using ACNC registered charities as the primary focus.

It will help reduce expected falls in donation levels, especially if combined with other measures such as:

- 150% tax deduction for donations to DGR entities, and/or
- expanding the DGR categories to cover more ACNC registered charities.

Example scenarios

1. I was rung at 10pm by a fundraiser. Who do I complain to?

No wrong door. ACNC will direct you to the regulator in the State or Territory in which you live to consider breach of the COVID-19 fundraising rules.

2. I am worried my donation is being used to pay the CEO a big salary. Who do I complain to?

No wrong door. ACNC is the key regulator in this example to consider if there has been a breach of any governance standard or a misuse of charitable funds.

3. I donated online but I can see from my credit statement that it went to a company not a charity like I thought it would. Who do I complain to?

No wrong door. ACNC can triage – likely to be to ACCC as part of their Scam Watch service.

4. I want to raise money via an online giving platform for a charity that I know is doing great work during the COVID 19 crisis. What are the rules I need to comply with?

Under the COVID-19 fundraising rules, if you are raising money for ACNC registered charity then make that clear in your ask and link to the charity's website or ACNC register entry.

If your fundraising is more sophisticated (eg, large scale, involves others/a campaign), then the Australian Consumer Law may apply (as it already does) – the key ACL (and ethical) message is don't mislead, deceive, harass or coerce anyone into making a donation.

5. We are an ACNC registered charity wanting to fundraise online. What are the rules?

Unless you are exempt under the COVID-19 fundraising rules, then comply with those rules for the specifics about what, how and when – if you do this then you do not have to comply with any other State or Territory fundraising laws. Your fundraising should also comply with the Australian Consumer Law – the key ACL (and ethical) message is don't mislead, deceive, harass or coerce anyone into making a donation. There is [ACL guidance](#) for charities to help you.

Note: Draft COVID-19 Fundraising Rules could be very quickly drafted drawing on existing rules.

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