



# **CHARITABLE FUNDRAISING IN AUSTRALIA**

## **Proposed cross-border recognition model for charitable fundraisers**

**DISCUSSION PAPER**

**CHARITABLE FUNDRAISING NATIONAL WORKING GROUP  
AUGUST 2020**

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## Overview

### Introduction

The charitable fundraising sector plays a vital role in the economic landscape of Australia. The industry creates employment and volunteering opportunities while in pursuit of charitable and community development goals.

The nature of fundraising in Australia has transformed significantly in recent years. Charities have expanded in size and operation, are conducting activities across a number of states and territories, are using social media and online platforms, in addition to the commercial sector integrating social initiatives into their business models.

Inconsistent regulations across jurisdictions are creating a degree of complexity and uncertainty for charities and as a result contributing to a significant source of regulatory burden.

### Background

At the November 2018 meeting of Consumer Affairs Australia and New Zealand (CAANZ) officials, the New South Wales Government agreed to lead an inter-jurisdictional working group to consider ways to move towards further harmonisation of charitable fundraising arrangements by the States and Territories.

Subsequently, the Charitable Fundraising National Working Group ('Working Group') was established. The Working Group consists of officials with responsibility for the regulation of charitable fundraising in each jurisdiction in Australia, as well as the Australian Charities and Not-for-profits Commission (ACNC).

Since March 2019, the Working Group has been examining possible approaches to reduce unnecessary burdens arising from the regulation of charitable fundraising across multiple jurisdictions by providing a model for mutual recognition of registration.

### Scope of Discussion Paper

This discussion paper seeks to promote discussion of a proposed cross-border recognition model for charitable fundraising regulatory frameworks as identified by the Working Group. Some jurisdictions are already implementing schemes of this type, for others adoption of this initiative will require amendment of primary legislation.

Working Group discussions and related proposals, including the model outlined in this paper, do not represent Government policy in any jurisdiction. This discussion paper does not analyse individual state, territory or Commonwealth regulatory frameworks.

Have your say

We invite you to read this paper and provide comments on the proposed cross-border recognition model.

Please submit your comments via:

Email to: [charitablereforms@customerservice.nsw.gov.au](mailto:charitablereforms@customerservice.nsw.gov.au).

Post to: Charitable Fundraising, Better Regulation Division  
Department of Customer Service  
Level 23, 4 Parramatta Square  
Darcy St and Macquarie St  
Parramatta NSW 2150

Deadline for comments: 11:59pm on 18 September 2020.

**Important note: release of responses**

Responses may be made publicly available. If you do not want your personal details or any part of your response published, please indicate this clearly in your response together with reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009 (NSW)*).

## Context for review

### Inconsistent Regulatory Regimes

Charitable fundraising is a national policy issue that would benefit from greater collaboration from the Commonwealth, State and Territory governments<sup>1</sup>. Inconsistent regulatory regimes across jurisdictions create complexity and uncertainty for charities and are a significant source of regulatory burden and costs.

The ACNC 2016 report by Deloitte Access Economics<sup>2</sup> found that:

*“Overwhelmingly, fundraising is the source of the greatest amount of regulatory burden for charitable organisations. Fundraising legislation differs significantly between jurisdictions, which very quickly escalates the administrative costs a charity incurs. Consequently, the annual regulatory burden associated with fundraising regulations is estimated at approximately \$13.3 million per year across the sector.*

*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 websites.”*

Charitable Fundraisers may need to comply with a range of fundraising laws if they intend to fundraise in more than one state or territory. For example, an online appeal accessible in every state and territory may of itself equate to fundraising in each jurisdiction and require multiple registrations. This places a significant regulatory burden on the sector, including in key areas such as

- the need to hold an authority to fundraise
- ongoing eligibility to fundraise
- compliance measures
- reporting requirements

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<sup>1</sup> As at 30 June 2020, approximately 17,000 charities had notified the ACNC that they fundraise in a jurisdiction or via online channels.

<sup>2</sup> Cutting Red Tape: Options to Align State, Territory and Commonwealth Charity Regulation. Deloitte Access Economics (2016)

## Support for National Harmonisation

Between 2008 and 2019 there have been multiple reports on the regulation of charitable fundraising. While these reports presented quite different approaches to better regulation of charitable fundraising, the common theme was support for increased national regulatory harmonisation.

The key reports are:

- Disclosure regimes for charities and not-for-profit organisations. Senate Economics References Committee (2008)
- Contribution of the not-for-profit sector. Productivity Commission (2010)
- Report Once, Use Often: Charity Passport guide for government agencies. Australian Charities and Not-for-profits Commission (2014)
- Research into Commonwealth Regulatory and Reporting Burdens on the Charity Sector. Ernst & Young (2014)
- Cutting Red Tape: Options to Align State, Territory and Commonwealth Charity Regulation. Deloitte Access Economics (2016)

On 13 February 2019, the Senate Select Committee on Charity Fundraising in the 21st Century inquiry report<sup>3</sup> recommended that the Australian Government commit to working with States and Territories to develop a consistent national regulatory framework for charitable fundraising with a two-year deadline. The Australian Government is considering this report.

## Recent Developments

Progress is being made across all Australian jurisdictions towards a greater alignment of regulatory frameworks.

A more streamlined approach has been implemented in the ACT, South Australia, Tasmania and Western Australia for fundraisers registered with the ACNC, where the state regulator relies upon or is satisfied by compliance with ACNC reporting and auditing requirements. Victoria is on track to have equivalent arrangements in operation by 31 August 2020, and Queensland has passed legislation allowing the exemption of ACNC-registered entities from local reporting requirements, expected to be introduced during 2021-22.

In some jurisdictions, such as the ACT and South Australia, ACNC registered charities are not required to apply for a licence to fundraise.

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<sup>3</sup> Charity Fundraising in the 21st Century – Senate Select Committee Inquiry. Final Report February 2019.

## Proposed Model

### Deemed Authorities

Under the proposed model, each ACNC-registered charity could be deemed to hold a local fundraising authority in each participating jurisdiction. This would overcome the need for ACNC registered fundraisers to complete an individual application process in each jurisdiction and would greatly facilitate the conduct of online appeals across Australia.

Organisations are entitled to be registered with the ACNC if they meet the eligibility conditions set out in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). Currently, charities are the only type of not-for-profit entity eligible for registration with the ACNC.

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.

If an entity that is deemed to hold a local fundraising authority by virtue of its ACNC registration has its registration revoked by the ACNC (whether voluntarily or involuntarily), authorisation to fundraise in participating jurisdictions would also be revoked. However, the entity would still be able to apply for an authority to fundraise from individual regulators.

Regardless of whether a fundraiser holds a deemed authority or a local authority, the obligations under local regulatory regimes could still apply to fundraisers operating in those jurisdictions. Furthermore, local regulators would not be restricted from establishing their process and procedures for dealing with deemed authority holders.

### Notification Requirements

An ACNC registered charity that has a deemed local fundraising authority by virtue of that registration would still be required to complete a notification process to advise the relevant regulator that the charity intends to undertake a charitable fundraising appeal in that location. The charity would also have to comply with any relevant local regulatory requirements.

While an online notification process is considered optimal, jurisdictions could establish their own processes.

### Auditing Requirements

Current auditing requirements vary significantly between jurisdictions and the ACNC, and for some fundraisers can create significant costs (see Appendix A).

The ACNC currently requires a full audit of financial statements for charities with annual revenue over \$1 million, and charities with annual revenue between \$250,000 and \$1 million can choose to have their financial statement audited or reviewed.

Under the proposed model, each jurisdiction would have the option of requiring registered charities to comply with local auditing requirements or obtain copies of financial information from the ACNC as an alternative means of satisfying the local requirements. Clearly, the later arrangement would deliver more significant reduction of red tape and administrative costs.

However, many jurisdictions have already harmonised their audit and reporting requirements with those of the ACNC, or have moved (or are moving to) exempt ACNC-registered entities from local audit and reporting requirements.

### Information Sharing Agreements

To support this model, participating jurisdictions could enter into an information sharing agreement for the purposes of establishing a shared register of deemed authority holders and for other purposes related to authorities issued in other jurisdictions.

Through information sharing agreements, a local regulator could notify the ACNC and participating jurisdictions of any disciplinary action or enforcement action or prohibition action taken by that regulator against an organisation in respect of a deemed local authority. It would remain up to participating jurisdictions to decide what action, if any, to take in response to the notified action.

In addition, a register could be kept by a regulator of any disciplinary or enforcement action taken in another jurisdiction against an organisation if it is also operating in that regulator's jurisdiction.

### What are the benefits?

As there are no application fees for charitable fundraising authorities in any jurisdiction there would not be any loss of revenue for individual jurisdictions. Furthermore, this model should deliver administrative cost savings for both fundraisers and regulators.

The model could utilise existing systems and processes known to the sector and could, in effect, introduce a single registration point for national operators (being the ACNC), with minimal burden in subsequently obtaining State and Territory authorisations.



Further, some jurisdictions have already recognised ACNC registration in as the basis for a local authority to fundraise and could implement the model relatively quickly. Other jurisdictions will be required to implement the model through legislative change

#### What are the costs?

There are no identifiable costs for fundraisers or regulators.

As noted above, the major impact of the deemed authorisation model will be a potentially significant reduction in costs and administrative burden for fundraisers operating across multiple jurisdictions.

## Appendix A – Financial Reporting Requirements

<b>AUSTRALIAN CAPITAL TERRITORY</b>	<p>No obligations to lodge financial reports if entity is registered with the ACNC.</p> <p>If the income from the collection exceeds more than \$50,000 within a 12-month period, the accounts must be audited and provided.</p> <p>A report about all the collections conducted under the licence must be provided.</p>
<b>NEW SOUTH WALES</b>	<p>If the amounts raised are less than \$15,000 pa, no fundraising authority is required.</p> <p>Authority holders who are a natural person must submit a return within one month of the close of an appeal including the gross and net amounts received after the deduction of expenses.</p> <p>Authority holders that are unincorporated organisations must submit a financial statement if the gross income obtained from fundraising appeals in any financial year exceeds \$100,000.</p> <p>Authority holders that are organisations must prepare an annual financial statement including a statement of income and a statement of financial position. If annual proceeds exceed \$100,000, this must include information and notes to the financial statements. If annual proceeds exceed \$250,000, this must include a declaration by a responsible member of the governing body and an auditor's report.</p>
<b>QUEENSLAND<sup>4</sup></b>	<p>Fundraisers must lodge an annual return (a statement of income and expenditure, a balance sheet and an auditor's report).</p> <p>The promoter or each appeal for support must keep and retain</p> <ul style="list-style-type: none"> <li>• purpose of appeal</li> <li>• full name and address of promoter and promoter's authority</li> <li>• accurate statement containing details of income and expenditure and money and property raised</li> <li>• audit report, if received</li> <li>• accounting requirements</li> <li>• accounts of a continuing charity, association or promoter must be audited at least once a year</li> </ul>
<b>SOUTH AUSTRALIA</b>	<p>Reporting not required if an information statement, financial report and auditor's report has been submitted to ACNC.</p> <p>If not, accounts must be audited and a copy of audited accounts and financial statement provided to the Minister at the time or times fixed in licence.</p>

<sup>4</sup> The Queensland Government has announced the intention to exempt entities from the reporting requirements if they meet ACNC reporting obligations. This anticipated to commence in 2021/22.

<b>TASMANIA</b>	<p>No requirement for financial reports to be submitted for organisations registered as a charity in the state.</p> <p>For incorporated associations that are also registered as charities with the ACNC there is no state based reporting or audit requirements.</p>
<b>VICTORIA</b>	<p>No obligations to lodge financial reports, but Consumer Affairs Victoria (CAV) may request this information</p> <p>Fundraisers are required by a general condition placed on their registration to lodge an annual statement with CAV. The annual statement includes:</p> <ul style="list-style-type: none"> <li>• gross proceeds from all fundraising activities</li> <li>• details of all beneficiaries and the amounts distributed to each</li> <li>• the amount spent on administration (not including distributions made to beneficiaries)</li> <li>• bank account details where fundraising monies are lodged</li> <li>• a copy of the most recent financial statements of the fundraiser</li> <li>• fundraising estimates for the next reporting period.</li> </ul>
<b>WESTERN AUSTRALIA</b>	<p>Licence holders in are required to provide annual financial reports.</p> <p>Licence holders who submit an annual information statement to the ACNC are not required to provide the annual financial reports</p>
<b>ACNC</b>	<p>Annual revenue over \$1 million: charities must have their financial statements audited.</p> <p>Annual revenue between \$250,000 and \$1 million: charities can choose to have their financial statements audited or reviewed</p>

## Appendix B – Authorisation Processes

ACNC registration provides automatic authorisation	ACNC registration does not provide automatic authorisation
SA*	NSW
ACT	WA
VIC**	QLD
	TAS

\*Charities can choose to notify of their intention to fundraise in SA through the registration application form or the Annual Information Statement, but do not need to apply for a license.

\*\* Under changes to commence on 31 August 2020 registered charities will be entitled to a streamlined registration process – they only need to notify Consumer Affairs Victoria that they intend to fundraise in Victoria