



**Charitable Fundraising, Better Regulation Division**

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**RE: PROPOSED CROSS-BORDER RECOGNITION MODEL FOR CHARITABLE FUNDRAISERS**

*Inconsistent Regulatory Regimes*

The scale of the recent national bushfire, that crossed jurisdictional boundaries over a relatively short time period, is a good example of the need for a streamlined, consistent and efficient approach to fundraising regulation in Australia. However, the capacity to generate donations quickly when disasters unfold is significantly hampered by an outdated regulatory framework that is no longer fit for purpose.

The current regulatory framework is complex, arcane, inconsistent and incompatible with a fundraising environment that is conducted largely on-line, in effect, with no jurisdictional borders. Under the current regulatory framework, any state or territory based charity that solicits donations from any other state or territory must meet the regulatory fundraising and reporting requirements of those jurisdictions. These requirements increase the costs and administrative burden for both charities and regulators. In short, charities much hold an authority to fundraise, maintain ongoing eligibility to fundraise and meet compliance measures and reporting requirements (in all relevant jurisdictions).

*Support for National Harmonisation*

The Society considers that the need for increased national regulatory harmonisation is long overdue and the matter is now urgent given the number of key reports recommending change, with some dating back to 2008.

The end result should be a system that provides assurances to the public, donors and government that charities are transparent and accountable in their fundraising activities. However, the right balance must be struck, with appropriate checks and balances in place commensurate with the size of the organisation and its fundraising activities. The proposed cross-border recognition model is a step in the right direction to achieving these outcomes but is not there yet.

*Deemed Authorisation*

The Society agrees that ACNC-registered charities should be deemed to hold local fundraising authority in each participating jurisdiction. We consider that the ACNC's registration, reporting and auditing requirements are sufficient for accountability purposes and they are appropriately tailored to the size and activities of charities.

However, enabling states and territories to impose 'additional conditions' for deemed authorisation and retain disparate reporting requirements, in addition to the ACNC reporting requirements, is contrary to adopting a streamlined approach to fundraising administration. This option leaves the door open to states and territories to re-introduce inconsistencies and it is not clear how these inconsistencies deliver harmonisation or provide assurances to the community.

We agree that if a charity's ACNC registration is revoked, then the deemed authority to fundraise in participating jurisdictions should also be revoked. We note that charity may still be able to apply for authority to fundraise from an individual regulator. However, we question this approach where the ACNC revocation is involuntary because presumably this action has been deemed necessary by the ACNC.

We consider that the ACNC's registration, reporting and auditing requirements alone should satisfy state and territory regulators. If they do not, then the ACNC's requirements should be reviewed, in consultation with state and territory regulators.

### *Notification Requirements*

The Society notes the proposal that an ACNC registered charity that is deemed to hold local fundraising authority in each participating jurisdiction will be required to complete a notification process advising the regulator that they will undertake a charitable fundraising appeal in that location. Again, if the appeal is online, this will require notification to all states and territories.

If notification is required, it is essential that this process is as easy as possible and preferably done through a national portal (such as the Charity Portal) that has been designed to satisfy all requirements imposed by regulators. Enabling states and territories to establish their own processes is no different to what is already in place – it does not simplify or streamline the process and is time-consuming. It is currently difficult to locate information, forms and application processes through the various state government department websites.

### *Auditing Requirements*

We are aware of the different auditing requirements currently in place between jurisdictions and the ACNC and are concerned about the significant outlays that these reporting requirements incur.

We consider that compliance with the ACNC reporting and auditing requirement should satisfy all state and territory regulatory requirements. Again, an online portal would enable this information to be shared between the respective agencies. Charities should only report once, but the information used often, as cited by the ACNC under its Charity Passport Guide for Government Agencies.

At the very minimum, regulators should align their auditing requirements with those of the ACNC and at best, ACNC-registered charities should be exempt from local audit and reporting requirements where these are in place.

### *Information Sharing Arrangements*

We support entering into an information sharing agreement and recommend that this function be implemented through the Charity Portal (maintained by ACNC and as flagged by the Fundraising Institute of Australia<sup>i</sup>). All notices, compliance requirements, auditing and other reporting requirements could be uploaded and shared by relevant authorities, including where ACNC registration has been revoked or disciplinary/enforcement action has been taken by a regulator in respect of a deemed local authority.

We agree that it should remain up to participating jurisdictions to decide what action, if any, to take in response to the notified action.

### *Benefits and Costs*

We note that the information contained in the Discussion Paper and Appendices A and B does not detail the extensive general and regulator requirements, forms, permissible expenses and ongoing compliance requirements that must be met to currently fund raise in Australia.

We consider that the proposed cross-border recognition model does not go far enough. If states and territories retain the ability to impose 'additional conditions' for deemed authorisation and inconsistent reporting requirements, in addition to the ACNC's requirements, then costs with meeting inconsistent regulatory requirements will continue to be incurred by charities every time a fundraising activity is undertaken. The burden of these costs is often covered by drawing on donor moneys. The practical necessity to cover these compliance-related operational costs was the subject of some public criticisms of charities during the 2019-20 Black Summer bushfires.

In 2016, Deloitte estimated that the alignment of state and territory regulatory requirements with ACNC requirements would save the charity sector \$8.5 million per year,<sup>ii</sup> noting that this amount would vary depending on the number of fundraising activities undertaken in any given year. We would prefer that these funds be directed to helping those who need charitable assistance.

We note that the Discussion Paper does not consider any of the options outlined in the Senate Select Committee's report on Charity Fundraising in the 21st Century.<sup>iii</sup> Options include amending the Australian Consumer Law (ACL) (to ensure all fundraising activities are covered), repealing state and territory fundraising legislation (and relying primarily on the ACL), introducing a national, mandatory

code of practice for charitable fundraising activities, or seeking harmonisation of state and territory fundraising laws, possibly through the development of template legislation.<sup>iv</sup>

Some submitters also considered that the ACNC's current functions, involving registration of charities and overseeing governance and reporting requirements, are sufficient to regulate charitable fundraising when combined with a strengthened ACL. The ACNC could oversee assessment of fundraising licences, including reporting and auditing requirements, while poor fundraising conduct could be regulated via the ACCC under the ALC (noting that this approach was supported by the ACCC).<sup>v</sup>

We believe that with adequate resourcing and support, the ACNC should have a greater role in the streamlining of fundraising management and administration in Australia. We note that this may have legislative implications at the Commonwealth (ACL, Charities Act) and state/territory levels (fundraising laws) but change is necessary and should not be delayed any further.

In conclusion, the Society thanks the Charitable Fundraising National Working Group for the opportunity to provide comment on the *Proposed cross-border recognition model for charitable fundraisers*. These are matters that distract many charities from fulfilling their mission and, when responding to emergency situations in local communities, raise additional compliance concerns that can distract from delivering donated funds to those in need.

Yours sincerely



Mr P Toby oConnor  
**Chief Executive Officer**

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<sup>i</sup>Commonwealth of Australia. February 2019. Select Committee on Charity Fundraising in the 21<sup>st</sup> Century. Accessed at: [https://svdpnc.sharepoint.com/sites/NationalSecretariat/Shared%20Documents/General/Social%20Policy/Policy/Grants/Bushfire%20Recovery/Charitable%20Fundraising/report%20\(1\).pdf?CT=1600143488291&OR=ItemsView](https://svdpnc.sharepoint.com/sites/NationalSecretariat/Shared%20Documents/General/Social%20Policy/Policy/Grants/Bushfire%20Recovery/Charitable%20Fundraising/report%20(1).pdf?CT=1600143488291&OR=ItemsView), p.70.

<sup>ii</sup>Deloitte Access Economics, Cutting Red Tape: Options to Align State, Territory and Commonwealth Charity Regulation, 23 February 2016, p. 35.

<sup>iii</sup>Commonwealth of Australia, op. cit.

<sup>iv</sup>ibid., pp.62-63.

<sup>v</sup>ibid., pp.69-70.