

17 September 2020

The Charitable Fundraising National Working Group  
C/o Charitable Fundraising, Better Regulation Division  
Department of Customer Service  
Level 23, 4 Parramatta Square  
Darcy Street and Macquarie Street  
Parramatta NSW 2150

By email: [charitablereforms@customerservice.nsw.gov.au](mailto:charitablereforms@customerservice.nsw.gov.au)

Dear Sir/Madam

## **Charitable fundraising in Australia – proposed cross-border recognition model for charitable fundraisers – Discussion Paper**

Governance Institute of Australia (Governance Institute) is the only independent professional association with a sole focus on whole-of-organisation governance. Our education, support and networking opportunities for directors, company secretaries, governance advisers and risk managers are unrivalled.

Our members are involved in governance, corporate administration and compliance with the *Corporations Act 2001* (Corporations Act). Many of our members serve as officers of charities, or work for, or are involved with charities and are therefore involved in compliance with the requirements of the Australian Charities and Not-for-profits Commission (ACNC).

Governance Institute is itself a charity operating in the legal form of a company limited by guarantee, established to promote and advance the efficient governance, management and administration of commerce, industry and public affairs and the development of secretaryship of organisations through education and the dissemination of information.

### **General comments**

We welcome the opportunity to provide feedback on the discussion paper on proposed cross-border recognition model for charitable fundraisers (Discussion Paper).

Charities and other not-for-profits deliver important community services. This includes health, welfare, education, the arts and culture, environmental protection and in a myriad of other areas that together form an essential part of Australia's social and economic infrastructure.

Charities (which represent only 10 percent of the broader not-for-profit sector) employ more people than the mining and manufacturing sectors combined and are key players in Australia's economy contributing the equivalent of 8.5% of direct and indirect value to GDP<sup>1</sup>.

The COVID -19 pandemic has had an enormous impact on the operations of charities and not-for-profits, including an increase in demand for services, a loss of volunteers and a restraint on the use of elderly volunteers and an increase in costs of operations. The COVID-19 restrictions have also impacted the ability of charities to fundraise. Until recently, most face to face

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<sup>1</sup> *Taken for granted? Charities' role in our economic recovery*, Social Ventures Australia and the Centre for Social Impact, 2020.

fundraising has been shut down and such fundraising is still not permitted anywhere within Greater Melbourne or Mitchell Shire. Fundraising events that typically formed part of the calendar of fundraising for charities such as fun-runs, morning teas, cycling tours, trivia nights and fundraising dinners are unable to be held and charities have had to pivot, where they are able, to internet based fundraising.

COVID – 19 has exposed many of the shortcomings of the current regulatory environment, particularly the inconsistent regulatory regimes across jurisdictions that create complexity and uncertainty for charities and are a significant source of regulatory burden and costs.

The potential benefits that could flow from unified and harmonised fundraising regulation have never been more urgent.

Governance Institute has been calling on Government since 2016 to reform the fundraising regulatory regime. Despite our public campaign which has received widespread community support, many charities and not-for-profits are forced to continue to waste significant amounts of time and money in meeting outdated fundraising laws that differ considerably across Australia.

### **The proposed model**

Governance Institute welcomes the formation of the Charitable Fundraising National Working Group and its work aimed at reducing unnecessary burdens on charities arising from the regulation of charitable fundraising across multiple jurisdictions. We consider that this is an important and long overdue step in the process of fundraising reform. We are pleased that the ACNC is taking a leading role in facilitating this initial valuable collaboration as part of its objective of promoting the reduction of unnecessary regulatory obligations on the charitable sector.

We note the proposed model will deem each ACNC charity to hold a local fundraising authority in each participating jurisdiction thereby overcoming the need for ACNC registered fundraisers to complete an individual application process in each state and territory.

While we acknowledge the advantages of a single licensing system as a way of creating a one step-process (rather than requiring charities to apply for up to seven different fundraising licences), we query whether the proposed model will provide any real practical improvement for charities.

The proposed model contains the following flaws:

- 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.
- Obligations under local regulatory regimes could still apply to fundraisers operating in those jurisdictions.
- Local regulators would not be restricted from establishing their process and procedures for dealing with deemed authority holders.
- An ACNC registered charity 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 apply with any relevant local regulatory requirements concerning notification.
- While an online notification process is considered optimal, jurisdictions could establish their own processes.
- Each jurisdiction would have the option of requiring registered charities to comply with local auditing requirements.
- The position with online and postal fundraising which uses Commonwealth powers and service remains vague.

Unless there is harmonisation and consistency in state and territory regulations, charities will continue to be subject to regulatory burden. The proposal as it is currently drafted appears to allow for inconsistent requirements from one jurisdiction to another. Applying for an authority to fundraise is an occasional process. The bulk of the regulatory burden lies with compliance with notification, auditing, reporting and other rules. By only dealing with the registration process, the model provides only a fraction of the benefits that are needed.

Additionally, the model does not deal with not-for-profit entities but is limited to charities registered with the ACNC.

### **A model to fix fundraising**

Since 2016, Governance Institute as part of the [#Fixfundraising](#) coalition, has been advocating for reform of the fundraising regulatory regime which can be achieved through three simple steps:

1. minor amendments to the Australian Consumer Law (ACL) to ensure application to fundraising activities is clear and broad
2. repeal of state-based fundraising laws, and
3. working with other regulators (for example, state-based regulators and self-regulatory bodies) to improve fundraiser conduct (for example, door-knocking, telemarketing, excessive spending of funds on third party services)

which would create a nationally-consistent regulatory system.

We encourage the Charitable Fundraising National Working Group to develop a road map to a nationally consistent framework on fundraiser conduct and a repeal of state-based laws. Importantly, we recommend that the working group continue to work with the sector to fix fundraising reform in time for the Christmas giving period.

If you have any questions concerning our submission please do not hesitate to contact our policy advisor, Michelle Huckel. We agree to this submission being made public (with signature redacted).

Yours sincerely



Megan Motto  
CEO