

Coalition for fundraising reform



20 October 2023

The Honourable Michael Ferguson
Deputy Premier and Treasurer

By email: michael.ferguson@parliament.tas.gov.au

Dear Treasurer,

We are a coalition of sector and peak professional bodies.

We congratulate you on taking steps to adopt the National Fundraising Principles in the *Charities and Associations Law (Miscellaneous) Amendment Bill 2023* (the Bill). Tasmania is the first jurisdiction to implement these Principles, which were agreed to by all Treasurers at the February 2023 Council on Federal Financial Relations meeting.

For decades, charities have been held back by complex fundraising laws which are different in every state and territory. This means that a small, volunteer run charity that wishes to fundraise nationally or even place a 'donate' button on its website must spend its limited resources working out how to comply with seven sets of outdated and inconsistent laws instead of working on the ground to deliver crucial support services to people in vulnerable circumstances. Countless government inquiries have recommended reforms to harmonise fundraising laws across all states and territories.

The National Fundraising Principles offer a simple solution: a single set of modern, fit-for-purpose rules for all Australian Charities and Not-for-Profit Commission (ACNC) registered charities to comply with wherever they fundraise in Australia.

However, if harmonisation is to be achieved, all states and territories must:

(a) implement the National Fundraising Principles without amendment, and

(b) repeal or 'switch off' all local fundraising rules so that a charity, no matter where it fundraises, will only need to comply with the Principles.

As the first jurisdiction to implement the National Fundraising Principles, Tasmania plays a pivotal role leading the way to uphold the spirit and intent of the reforms.

It is for this reason that we raise the following important issues regarding the Bill. We note that these issues were raised by Justice Connect in its submission to the recent consultation on the draft Bill.

1. Repeal or switch off additional fundraising rules to safeguard national harmonisation

It is crucial that a charity is not required to comply with state or territory fundraising rules in addition to the National Fundraising Principles. We are pleased that Tasmania has listened to submissions from the sector and that the Bill proposes to repeal or 'switch off' a range of conduct rules in the

Collections for Charities Act 2001 (Tas) (the Act).¹ However, there are three remaining sections which we consider are unnecessary and should be repealed or switched off for registered charities. All three provisions carry a penalty for breach.

[Section 8: Adult supervision of minors](#)

Section 8 requires young people to be under the supervision or control of an adult whilst fundraising. While we support the substance of this section, in our view it is not necessary to include it in the Act.

Charities operating in Tasmania already have a range of duties to children under negligence laws, work health and safety laws, laws requiring working with children checks, the new Child and Youth Safe Standards and the new Reportable Conduct Scheme.² These laws are the most appropriate mechanism for protecting youth volunteers involved in fundraising activities.

If the purpose of this section is also to ensure that charities uphold proper fundraising practices, we note that the National Fundraising Principles already hold charities responsible for the conduct of their volunteers and charities will need to put in place appropriate safeguards to manage these risks (such as supervision arrangements).

[Section 11: Duty of organisations](#)

Under section 11, an organisation must not permit any of its officers, agents or employees to engage in any activity which contravenes a provision of the Act. This section is unnecessary and duplicates other mechanisms in the Act.

Under new section 17(3) proposed by the Bill, both individuals and organisations will be required to comply with the National Fundraising Principles via the Code of Practice. Additionally, the National Fundraising Principles themselves require charities to ensure that their employees, volunteers, contractors and anyone else who they engage or arrange to raise funds on their behalf comply with relevant principles.

[Section 14: Application of donations for inappropriate purpose](#)

Section 14 states that an organisation must not permit any donation given for a charitable purpose to be used for any purpose other than the purpose for which it was obtained, except for certain reasonable expenses and payments incurred in the administration of the organisation.

This section is unnecessary as registered charities are already required to comply with a number of other laws which prevent the use of donations for an inappropriate purpose.

National Fundraising Principles 1 and 6 already require charities to explain the purpose to which donations will be used, and to never mislead, deceive or knowingly use false or inaccurate information when fundraising.

The ACNC [Governance Standard 1](#) requires a charity's responsible people (board or committee members) to ensure the charity works towards its charitable purpose, including putting processes in place that protect what happens to a charity's donations so that they are only used for its charitable

¹ Section 7 of the *Collections for Charities Act 2001* will be 'switched off' for charities registered with the ACNC, and sections 9, 10, 12 and 13 repealed.

² The Child and Youth Safe Standards and Reportable Conduct Scheme will be effective from 2024. See Schedules 2 and 3 of *Child and Youth Safe Organisations Act 2023 (Tas)*.

purpose. The ACNC also provides guidance on the appropriate use of charitable funds on administrative expenses.³

Finally, there is a risk of duplication and inconsistency between section 14 and the Australian Consumer Law. The Australian Competition and Consumer Commission (ACCC) [guide](#) to charitable fundraising confirms that making representations about what proportion of funds will be used to achieve a purpose may be misleading if they are not true, accurate and able to be substantiated. The guide provides an example of a charity whose website says that ‘100% of your donation goes to children in need of a feed’ but 20% of every donation is applied to the charity’s operational costs. The ACCC says this type of representation is likely to be misleading or deceptive. However, even though such conduct may breach the Australian Consumer Law, it may be permissible under section 14 of the Tasmanian Act which ostensibly permits expenditure on reasonable administrative costs regardless of what the charity has told the donor about how it will be spent.

2. Ensure the code of practice implements the National Fundraising Principles as already agreed to by State and Territory Treasurers

If the Bill is passed, we understand that regulations will be made to prescribe a code of practice which will be used to implement the National Fundraising Principles.

To ensure national harmonisation of fundraising laws across all states and territories, the National Fundraising Principles must be included in the new code of practice in the same form as agreed and announced by the state and territory Treasurers in February 2023, and only amended with the uniform agreement of all other states and territories.

3. The Bill misses the opportunity to harmonise the definition of ‘charitable purpose’

The Bill proposes to narrow the definition of ‘charitable purpose’ contained in the Act. No accompanying explanation has been provided regarding this proposed change.

We note that the Law Council of Australia has provided feedback as part of the consultation process on the negative implications of this proposed change.

Instead of creating confusion by narrowing the definition, this is an opportunity to bring clarity to the charity sector by adopting the definition of charitable purpose set out in the *Charities Act 2013* (Cth).

The ongoing inconsistencies between state and federal definitions of ‘charity’ and ‘charitable purpose’ create unnecessary red tape for charities. This is why the ACNC has recommended harmonisation of these definitions.⁴

Concluding remarks

We have outlined the amendments that are necessary to support this ongoing harmonisation project to fix fundraising laws. We sincerely hope that the Bill will be amended to support and build on the historic agreement of the states and territories in February 2023, and deliver long awaited red-tape relief to registered charities.

We request a meeting to discuss these important reforms with you before the Bill progresses through parliament.

³ <https://www.acnc.gov.au/for-public/understanding-charities/charities-and-administration-costs>

⁴ Australian Charities and Not-for-Profits Commission, *A Common Charity Definition* (Conference paper, Tax Institute State Taxation Conference, 27 July 2016), pages 57 - 60.

Signatories:

Australian Council of Social Service (ACOSS)
Australian Institute of Company Directors (AICD)
Chartered Accountants Australia and New Zealand (CAANZ)
Community Council for Australia (CCA)
CPA Australia
Governance Institute of Australia
Justice Connect
Philanthropy Australia
Public Fundraising Regulatory Association (PFRA)
Tasmanian Council of Social Service (TasCOSS)

Contacts:

Geraldine Menere
Head - Not-for-Profit Law, Justice Connect
Email: Geraldine.Menere@justiceconnect.org.au

Alice Husband
Lawyer - Not-for-Profit Law, Justice Connect
Email: Geraldine.Menere@justiceconnect.org.au

CC: Bruce Paterson
Director Strategic Legislation and Policy
Department of Justice, Tasmanian Government

The Honourable Andrew Leigh MP
Assistant Minister for Competition, Charities and Treasury