

6th August 2018

Committee Secretary
Department of the Senate
PO Box 6100
Parliament House
Canberra, ACT 2600

By online submission upload

Dear Secretary

Submission to the Select Committee on Charity Fundraising in the 21st Century

Thank you for the opportunity to present submissions to the inquiry into Charity Fundraising in the 21st Century.

In summary, our submission will respond to those Terms of Reference which have application to the practice and regulation of face to face fundraising. In broad terms, the submission is in support of the aims of the “Fix Fundraising” coalition coordinated by Justice Connect and in support of the advantages of sector self-regulation previously advocated by the Public Fundraising Regulatory Association (**PFRA**) and Fundraising Institute Australia (**FIA**).

Whipbird Consulting background

Whipbird Consulting is a specialist consultancy offering support to charities that undertake face to face fundraising. This consultancy is based on twenty years’ experience in fundraising and the not-for-profit sector covering charity, fundraising agency and self-regulatory roles.

Paul Tavatgis is the Director of Whipbird Consulting and supported the foundation of the PFRA, which is the self-regulatory body for face to face fundraising and was between 2015 and 2017 the first CEO of the PFRA. Whipbird Consulting is also currently engaged in supporting the establishment of a self-regulatory body for face to face fundraising in the USA: The Professional Face to Face Fundraising Association (**PFFA**).

If it is of assistance to the Committee, the author is available to discuss this submission at the Committee’s convenience.

Yours faithfully

Paul Tavatgis
Director

Summary

- 1) For the purposes of this submission we have taken “face to face fundraising” to mean the in-person solicitation of an ongoing direct debit donation by a charity from a member of the public, either in a public street, at a place of residence, at a commercial or retail site or at a place of work;
- 2) Charitable fundraising should be conducted ethically, and this should be the aim of charitable fundraising laws, sector self-regulatory codes and fundraising by not-for-profit organisations and any commercial organisations engaged to carry out fundraising on their behalf;
- 3) Fundraising relies upon the ability of charities to ask for funds, and most donations are made because someone has been asked, and are not spontaneous gifts;
- 4) The day to day management of face to face fundraising is best undertaken by the sector itself, using resources developed by the sector which put into operation the Australian Consumer Law and the community’s expectations of high standards from their charities;
- 5) Face to face fundraising has a unique contribution to make, but also creates a unique regulatory challenge, given its scope and direct and visible impact upon public spaces. There should be a consistent approach to regulation, based upon the knowledge and flexibility of the sector and incorporating a cooperative and responsive approach to working with local government;
- 6) It would be better for donors, charities and their beneficiaries to implement a harmonised approach to fundraising regulation as proposed by Justice Connect and the organisations in the Fix Fundraising coalition;
- 7) Sector self-regulation, if established within a suitable regulatory framework, has proven to be effective and can be more responsive to changes in fundraising practice and can better manage day to day issues, than the current state based regulatory regime;
- 8) The potential harm that can result from poor fundraising behaviour can be minimised, and where necessary, properly penalised by the proposed approach to harmonised regulation;

Response to terms of reference

a) *Whether the current framework of fundraising regulation creates unnecessary problems for charities and organisations who rely on donations from Australian supporters;*

- 9) The current framework of fundraising regulations as it applies to an organisation face to face fundraising on a national basis, requires compliance with seven state and territory regulatory regimes and over five hundred different sets of local authority local and by-laws. Each of these is sufficiently different to create a unique compliance task for each jurisdiction;
- 10) This framework as it stands creates significant workload, cost and obstacles to fundraising for not for profit organisations and commercial fundraising organisation. For each of the approximately ninety not for profit and forty commercial fundraising organisations undertaking face to face fundraising, there will be at least one staff member tasked with managing compliance;
- 11) The current framework also imposes practical obstacles to national fundraising programs. There are many examples, but by way of illustration, one of the most significant is the requirement of the Queensland Office of Fair Trading (Qld OFT), by which all agreements between not for profit organisations and commercial fundraising providers must be approved by Qld OFT before fundraising can commence. This process is lengthy, subject to frequent change in interpretation and often causes delays of many months before fundraising can commence. An organisation may be fundraising across Australia under the same commercial terms, but is unable to fundraise in Queensland;
- 12) As to whether this complex set of fundraising regulations creates unnecessary problems, our response to Term of Reference (b) seeks to describe where regulations have a useful purpose and where these can be described as “unnecessary”;
- 13) The experience of face to face fundraising since its adoption as a fundraising method by Australian charities in the late 1990s, has been one where currently more than 400,000 people per year are inspired to commence a donation, yet there are occasions where the practice and behaviour of organisations and individual fundraisers fails to meet community standards. There is a need for oversight of fundraising, whether through formal regulation, industry self-regulation or a combination of these, to deter poor practice that might otherwise put at risk the reputation of the not for profit sector;

b) *whether current fundraising laws meet the objectives that guided the decision to regulate donations;*

- 14) Where the objectives of fundraising laws are set out, these tend to include objectives to promote:
 - i) Proper administration of fundraising (ACT and NSW);
 - ii) Access to information relating to fundraising appeals (ACT and NSW);
 - iii) Prevention of deception during fundraising (NSW and Victoria)

The remainder of jurisdictions (NT, Qld, SA, Tasmania, WA) either have no legislation on no specific objectives defined;

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- 15) Fundraising is properly administered despite the existence of these fundraising laws, rather than because of them. The proper management of fundraising, including effective administration and provision of public information is necessary for a charity to be effective, rather than to satisfy the requirements of regulators.
- 16) Fundraising, like many sectors of the economy, evolves rapidly in response to the requirements of donors and changes in society. Fundraising laws have failed to keep up with these changes, and the very fact that fundraising laws change at state borders when fundraising by most large charities is a national undertaking, is evidence that these objectives are not being met;
- c) *whether current fundraising compliance regimes allow charities to cultivate donor activity and make optimal use of resources donors provide;***
- d) *the loss in productivity for the thousands of charities who try to meet the requirements of the seven different fundraising regimes;***
- 17) Any unnecessary compliance tasks undertaken by a charity result in financial and opportunity cost, this immediately reduces the ability of the charity to use donors' funds for their intended purpose;
- 18) Current fundraising compliance regimes also hinder the effective use of charity resources for fundraising. An example given above is the restrictions placed upon engagement of commercial fundraisers in Queensland;
- 19) Queensland also provides another example of unnecessary limitations on charities' cultivation of donor activity. *The Collections Act 1966* (Qld) and associated regulations and policy, provide for "State Wide Appeals" by which a single charity can exclude any other charity from receiving permission to use public streets or to door knock for up to a two-week period. This rule creates situations where on a regular basis face to face fundraising programs must either be shut down, or entire workforces moved inter-state at great expense and inconvenience, to allow fundraising work to continue;
- 20) There are more than 500 local authorities within Australia and many have specific local laws or permit systems to manage, restrict or in some cases prevent charities from undertaking fundraising in public streets or door to door. For a charity or commercial fundraising organisation to operate on any scale, this regulatory environment requires the maintenance of a database of local laws, contacts and permit booking processes. These requirements are subject to regular and sometimes arbitrary change. Compliance creates a significant workload, cost and barrier to effective fundraising;
- e) *whether the current frameworks for investigation and enforcement are the best model for the contemporary fundraising environment;***
- 21) None of the current state and territory regulators have significant resources dedicated to checking the compliance of face to face fundraisers with fundraising laws and regulations. Compliance activity is almost entirely limited to responding to complaints;
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- 22) There is no current mechanism by which state or territory regulators collate and report on complaints relating to fundraising in a way that allows the sector to assess and respond to issues or identify trends in a way that allows a collective response;
 - 23) The PFRA is responsible for most of the active enforcement of the day to day activity of face to face fundraisers and their compliance with local, state and territory and federal laws and regulations. This self-regulatory activity includes many hundreds of checks on fundraiser behaviour and regular assessments of fundraiser training;
 - 24) The PFRA is funded entirely by the not for profit sector and within limited resources has shown the ability of self-regulation to act as an effective enforcer of a common standard. The PFRA has for example terminated the membership of four commercial fundraising agencies that have fell below these standards in a systematic and consistent way;
 - 25) Public perception of fundraising is impacted by the day to day experience *and* widely reported “scandals”. State and territory enforcement and investigation is effective in the isolated instances of these scandals, such as that involving RSL NSW. The PFRA and similar sector self-regulation is however more effective in raising the overall standard of fundraising and responding to smaller lapses from accepted standards that occur on a more regular basis;
- f) *how Federal, State and Territory Governments could work together to provide charities with a nationally-consistent, contemporary and fit-for-purpose fundraising regime;***
- 26) As far as possible fundraising regulation should be harmonised, but this harmonisation should be against an effective set of rules, harmonisation against a poor set of rules will worsen the outcomes for charities and donors;
 - 27) The approach suggested by Justice Connect and the Fix Fundraising coalition presents the best opportunity to provide this harmonisation. A framework could be structured in the way described in Table One below:
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Table One: Suggested Regulatory Framework

Level	Regulator	Role and impact
National	Australian Competition and Consumer Commission	Enforces the Australian Consumer Law (ACL) – prevention of misleading and deceptive conduct
National	Australian Charities and Not-for-profits Commission	Enforces the <i>Australian Charities and Not-for-Profits Commission Act 2012</i> (Cth) - ensures that organisations are legitimate recipients of donations are accountable to the public and properly governed
National	Fair Work Ombudsman	Enforces Commonwealth workplace laws in fundraising supply chains
National	Sector self-regulatory bodies (i.e. FIA and PFRA) in cooperation with statutory regulators	Develop mandatory codes of conduct – potentially within the Industry Code framework of the ACCC. Responsible for day to day policing of fundraising standards
State and Territory	State and territory consumer affairs departments	Enforce the Australian Consumer Law in the “multi-regulator” model
State and Territory	Police forces	Continue to respond to allegations of any criminal activity arising from fundraising
Local	Local authorities in cooperation with sector self-regulatory bodies	Develop a national approach to management of fundraising allowing for local needs, but coordinated through a consistent process
Organisational	Charities and fundraising providers	Continue to respond to the majority of concerns, complaints and issues created by fundraising

- 28) The fundraising sector is best placed to respond to developments in fundraising practice, whether these are innovations that create new regulatory requirements, or trends in behaviour that require a broad response;
- 29) The sector should not be left to self-regulate in a vacuum and the overall framework for self-regulation can provided by the ACL and by the ACCC and state-based consumer affairs departments;
- 30) This approach is however predicated on the basis that current state and territory fundraising legislation is repealed. There should be no situation where additional codes are established in addition to current requirements;

g) *the appropriate donor-focused expectations and requirements that should govern fundraising regulation in the 21st century;*

- 31) It is likely that most donors are unaware of the current system of fundraising regulation, where regulation is only relevant where scandals arise;
- 32) Effective fundraising inspires a long-term emotional connection between the donor and the cause they wish to support. This is the goal of charities when undertaking face to face fundraising;
- 33) Standards, however they are implemented or whoever is responsible for drafting them, should reflect the expectations that donor's and the public have of charities. Charities and their sector bodies should also take responsibility for properly explaining how fundraising works and openly addressing issues such as how much money is spent on raising funds and organisational management;

h) *how the Australian consumer law should apply to not-for-profit fundraising activities;*

- 34) The ACL already covers fundraising activities and guidance to this effect has been produced by Consumer Affairs Australia and New Zealand (CAANZ)¹;
- 35) As recommended by Justice Connect and "Fix Fundraising", the ACL can be further amended to make its application more consistent across all fundraising;

i) *what are the best mechanisms to regulate third party fundraisers and to ensure the culture of third party fundraisers matches community perceptions of the clients they work with;*

- 36) Third party fundraisers should be subject to the proposed harmonised fundraising regulation regime and the already existing statutory requirements upon them should remain in place;
- 37) Sector self-regulation provides an effective additional layer of control upon third party fundraisers. This has recently been further enhanced through the introduction of the PFRA member accreditation process, which sets significant requirements upon commercial fundraising agencies;
- 38) Historically barriers to entry to the market for commercial face to face fundraising agencies have been very low. There has also been more demand for agency services than supply. This combination of circumstances has led in some cases, to businesses entering the market which have not met the standards that would be expected of a fundraising practitioner;
- 39) The nature of face to face fundraising is one in which any poor behaviour can have an immediate and sometimes very public impact upon the reputation of a charity and the sector. A few poor operators in this space can create a disproportionate level of negative sentiment;
- 40) The regulatory model suggested in this submission and by the Fix Fundraising coalition would reinforce existing measures to manage standards within third party fundraising organisations. These measures would be further strengthened through extension of self-regulatory schemes,

¹ <https://www.accc.gov.au/publications/guide-to-the-acl-for-charities-not-for-profits-fundraisers>

such as the PFRA's accreditation program, to all such providers, through application of a mandatory self-regulation scheme;

- 41) Charities carry significant responsibility themselves for their engagement of fundraising suppliers. It is essential that charities adopt good practice in their procurement processes, including effective due diligence in appointment of fundraising suppliers. This is highlighted in guidance produced by the ACNC in partnership with the PFRA and FIA²;
 - 42) The responsibility charities bear for their own supply chains in relation to compliance with Australian workplace laws, has been highlighted by the Fair Work Ombudsman (**FWO**) which will be reporting in the coming months on the Charity Collection Inquiry;
 - 43) Charities Boards and senior management should ensure that fundraising governance is properly implemented. It should be noted that fundraising is under-represented at Board and CEO level in large Australian charities and that increasing this representation should be a priority for charities and for sector bodies;
 - 44) These measures should be directed at ensuring that commercial fundraising providers are required to demonstrate their intent, ability and systems to achieve community standards. In effect creating barriers to entry to the fundraising market at the right level to permit new entrants and encourage innovation and competition, but without allowing providers to operate that fail to meet standards;
- j) whether a harmonised, contemporary fundraising regime could help in addressing concerns about the potential influence of foreign money on civil society and political debate in Australia;*
- No response on this item
- k) the cost to the charity and not-for-profit sector, and the communities they serve, of postponing fundraising reform; and*
- l) any other related matters.*
- 45) If these reforms are not implemented, fundraising will continue. It will however continue to feel the impact of the additional cost and unnecessary restriction placed upon it by the current regulatory regime.

² https://www.acnc.gov.au/ACNC/FTS/Working_with_fundraising_agencies.aspx