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Charitable Fundraising National Working Group
Better Regulation Division
NSW Department of Customer Service
4 Parramatta Square
Darcy St and Macquarie St
Parramatta NSW 2150

Submitted Online

Dear Sir/Madam,

Proposed Cross-border Recognition Model for Charitable Fundraisers

Philanthropy Australia welcomes the opportunity to make this submission to the NSW Government and the Charitable Fundraising National Working Group, in relation to the proposed cross-border recognition model currently under consideration.

About Philanthropy Australia

As the peak body, Philanthropy Australia's purpose is to serve the philanthropic community to achieve more and better philanthropy.

The community we serve consists of funders, grant-makers, social investors and social change agents working to achieve positive social, cultural and environmental change by leveraging their financial assets and influence.

Informed, independent and with reach and credibility, Philanthropy Australia gives its Members a collective voice and ability to influence and shape the future of the sector and advance philanthropy.

We also serve the community to achieve more and better philanthropy through advocacy and leadership; networks and collaboration; professional learning and resources; and information and data-sharing.

Our membership consists of approximately 800 trusts, foundations, organisations, families, individual donors, professional advisers, intermediaries and not-for-profit organisations.

Fixing Australia's complex and outdated fundraising laws

Philanthropy Australia welcomes the efforts of the Charitable Fundraising National Working Group towards delivering national harmonisation of fundraising laws.

As noted in the discussion paper, multiple independent inquiries over the decades have confirmed that the current fundraising regulation is a significant source of regulatory burden for charities that creates unnecessary costs and serves as a barrier to growing giving in Australia by stifling fundraising innovation.

Philanthropy Australia has a strong interest in promoting a well-designed and effective regulatory framework which supports giving and the work of charities across Australia.

For this reason, Philanthropy Australia has been an advocate for harmonisation of Australia's complex fundraising laws for several years.

As the peak body for the Australian philanthropic sector, we have partnered with other organisations through the #FixFundraising alliance in order to draw attention to the need for concrete and tangible action on this issue.

Fundraising reform was also listed as a policy priority in our [2019 Federal Election policy platform](#) and is one we have continued to advocate for as part of our [policy priorities for a post-COVID-19 Australia](#).

As acknowledged by Deloitte Access Economics in their 2016 report 'Cutting Red Tape: Options to Align State, Territory and Commonwealth Charity Regulation', *"fundraising is the source of the greatest amount of regulatory burden for charitable organisations... the annual regulatory burden associated with fundraising regulations is estimated at approximately \$13.3 million per year across the sector"*.

The complex fundraising framework is a regulatory burden for various philanthropic organisations and businesses that are working to grow Australia's culture of giving. Community foundations, which use public ancillary funds to raise funds and distribute them to areas of community need, must comply with the current burdensome regulations. They also engage with donors who may wish to create 'sub funds' (a form of giving account that can sit within a public ancillary fund) in order to structure their philanthropy and make a positive contribution to the community.

Certain businesses, such as trustee companies and wealth management firms, are also required to comply with these complex regulations if they use public ancillary fund structures as a vehicle for their clients to create 'sub funds'.

Philanthropy Australia believes that the resources currently dedicated to complying with complex and inconsistent fundraising regulations could be redirected towards growing giving in Australia and ensuring that philanthropy is effective and impactful in the communities it supports.

Feedback on the proposed charitable fundraising cross-border recognition model

Philanthropy Australia believes that any changes to Australia's regulatory framework for fundraising regulation must be based around principles of simplicity and clarity, and that they ought to resolve all red tape burdens and sources of confusion for the sector.

Whilst we welcome the proposals contained in the Charitable Fundraising National Working Group's discussion paper as a positive step in the right direction, we also believe that they are insufficient and continue to perpetuate a piecemeal approach to fundraising regulation Australia.

Therefore, we believe that the proposals must be enhanced to ensure that they represent good public policy, which is designed to support giving and reduce red tape, whilst ensuring adequate protections are retained for donors.

Our specific feedback sets to achieve this objective is set out below.

The role of the ACNC as the single point for charitable fundraising registration

We welcome the use of ACNC registration and data sharing with jurisdictions as the mechanism to achieve a single national fundraising licencing framework for charities and we recommend that this be implemented immediately. This is particularly pressing considering the upcoming Christmas appeal season and the higher service demand over that period, especially for welfare service organisations, and in communities that are currently struggling with challenges presented by bushfires, flood and the economic and health impacts of COVID-19.

Option to allow different jurisdictions to impose “additional conditions” on charities on top of the deemed fundraising licence

Philanthropy Australia is very concerned by the proposal in the discussion paper which would allow jurisdictions to add additional requirements to charities on top of the deemed licencing framework.

This is a fundamentally flawed proposal and would perpetuate the piecemeal approach to fundraising regulation Australia, which results in inconsistent requirements and uncertainty for charities.

We believe that whilst it may provide ‘flexibility’ for individual jurisdictions, it contradicts the discussion paper itself which recognises that *‘Inconsistent regulatory regimes across jurisdictions create complexity and uncertainty for charities and are a significant source of regulatory burden and costs.’*

Furthermore, no policy rationale is provided for retaining this power. We understand that South Australia and the Australian Capital Territory have not seen a need to include additional requirements for charities since introducing their streamlined fundraising licence approaches. Given those jurisdictions have not identified any issues we recommend that all remaining jurisdictions adopt the same approach.

Philanthropy Australia therefore does not support the inclusion of this power for jurisdictions to impose additional conditions.

Implementing changes that achieve red tape reduction and save regulatory resources

To implement this proposed model in a way that will achieve red tape reduction and save regulatory resources, we recommend:

- Enabling the ACNC to be the single national fundraising licence registration point and provide a ‘tick box’ confirming ‘intention to fundraise from the public’ to serve as notification for all States and the Australian Capital Territory. This will mean that charities do not need to notify each regulator separately of their intent to fundraise in that jurisdiction, and the ACNC can instead push data through to the other jurisdictions via data sharing agreements.

- Clarifying the circumstances under which a deemed fundraising licence can be revoked.
- Confirming that once a new charity registers for their deemed fundraising licence via the ACNC (for example, once checks are completed in relation to the responsible persons), this is sufficient for the purposes of other jurisdictions.

Commitment to a roadmap for a nationally consistent approach to fundraising laws

The licence registration process is only one part of fundraising red tape for charities. Only around 10% of red tape relates to the licence registration element, while the remainder relates to compliance with other parts of the fundraising regulations.

Therefore, whilst Philanthropy Australia believes discussion paper is a positive step in the right direction, we also believe that the proposals it contains are insufficient in and of themselves in terms of addressing the problem of red tape.

No policy rationale has been put forward for why inconsistent requirements between jurisdictions are necessary, and it is difficult to see why donors in Victoria would need different protections to those in Queensland and why charities should therefore be burdened by different requirements based on where they are fundraising.

We therefore believe that in tandem with implementing the *deemed fundraising licence* model proposed in the discussion paper, a concrete commitment is required from all jurisdictions towards delivering a single set of requirements in relation to other aspects of fundraising regulation.

This commitment should include a firm timeline for jurisdictions to consult with stakeholders and then agree to a consistent set of requirements and an approach for their implementation. This should be concluded by the end of 2021 at the very latest.

Philanthropy Australia believes that the Australian Consumer Law provides one way to achieve this, but we also recognise other approaches exist, such as the adoption of model legislation across all jurisdictions. In this regard, Philanthropy Australia endorses and supports the Australian Fundraising Principles proposed by the Charities Crisis Cabinet as an approach to achieving a single and consistent set of conduct standards that would apply across Australia.

Online fundraising for charities

Philanthropy Australia also believes that Australia's fundraising laws are not fit for purpose until there is clarity on the regulatory compliance requirements for charities that want to fundraise to support their charitable purpose online.

Philanthropy Australia believes that a modern and practical compliance solution is essential to support such contemporary fundraising practices, and this issue should be addressed through the process discussed in the previous section.

Other matters

Philanthropy Australia is a founding member of the [#FixFundraising alliance](#). We therefore also support the submission prepared by Sue Woodward, Director of Not-for-profit Law at Justice Connect, which outlines in further detail recommendations regarding the best way to harmonise Australia's outdated fundraising laws.

We also support the submission prepared by the Charities Crisis Cabinet. As a member of this group we endorse their engagement with the States and the ACNC towards building a genuinely national fundraising system of regulation for Australia's charitable sector.

Next Steps

Philanthropy Australia once again thanks the Charitable Fundraising National Working Group for the opportunity to provide these comments. Should the Working Group wish to discuss any of the matters raised in this submission further, please do not hesitate to contact Sarah Wickham, Policy & Research Director (swickham@philanthropy.org.au, 03 9662 9299).

Yours Sincerely

Sarah Davies

Chief Executive Officer