



Law Council
OF AUSTRALIA

Legal Practice Section

30 August 2023

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001

By email: haveyoursay@justice.tas.gov.au

Dear Colleague

LCA Charities Committee submission concerning the National Fundraising Principles

1. This submission has been prepared by the Charities and Not-for-profits Committee of the Law Council of Australia's Legal Practice Section (the **Committee**). The Committee welcomes the opportunity to make a submission to provide comments on the draft of the *Charities and Associations Law (Miscellaneous) Amendment Bill 2023* (the **draft Bill**) and to support the national registration and harmonisation reforms of fundraising as committed to by all states and territories in February 2023.
2. The Section and Committee are particularly grateful for the Law Society of Tasmania's endorsement of this submission. A letter from the Law Society to this effect is **attached**.

Agreement to harmonise fundraising laws

3. Our view is that the draft Bill must be considered in light of the measures announced in the Joint Media release in February on the agreement by the Commonwealth, State and Territory treasurers to reform of fundraising laws: [Joint Media Release on Fundraising Reform \(the Media Release\)](#). This Release noted that agreement had been reached as follows:
 - to streamline and harmonise state and territory requirements on charitable fundraiser conduct through adoption of nationally consistent fundraising principles;
 - regulatory guidance to support the principles will also be developed in collaboration with the charitable fundraising sector; and
 - each participating jurisdiction will release an implementation plan by July 2023 explaining how it will give effect to the principles through regulatory changes or legislation.

The Media Release contained a set of 16 principles that were agreed between the Commonwealth, State and Territories (the **National Fundraising Principles**).

4. The agreed measures were supported and celebrated by the Committee and by much of the charity sector.

Charities and Associations Law (Miscellaneous) Amendment Bill (Tasmania) 2023

5. We welcome the Tasmanian Government's commitment to implementing the measures, and to being the first government to release the proposed changes in the draft Bill.
6. The aims of the draft Bill, as stated in the Consultation Fact Sheet, which accompanies the Bill, are:
 - To align Tasmania with the national registration and harmonisation reforms.
 - To reduce regulatory burdens on charities, particularly those operating and reporting across jurisdictions.
 - To strengthen enforcement powers to enhance public confidence in the charitable fundraising sector.
7. In order to align Tasmania with the national registration and harmonisation reforms, and to reduce regulatory burdens on charities, particularly those operating and reporting across jurisdictions, it will be essential for Tasmania, and each participating state and territory, when implementing its agreement, to simply require all charities registered with the Australian Charities and Not-for-profits Commission (**ACNC registered charities**) to comply with the National Fundraising Principles.
8. Any differences in the legislation or regulations as between the State and Territories, will achieve neither the aims of reducing regulatory burden nor the aim of harmonisation, even if the National Fundraising Principles are adopted by each State and Territory.
9. In order to achieve these aims, in each participating State and Territory's amendments to their laws or regulations, many of the provisions (other than enforcement) must be repealed or 'turned off' for ACNC registered charities. This is because there will be:
 - no need to define charity or charitable purpose for ACNC registered charities—this will be covered by the *Charities Act (Cth) 2013* and applied when the ACNC decides to register the organisation;
 - no need for any exemptions—the National Fundraising Principles are based on best practice consumer protection principles and so there should be no reason for any charity to be exempt;
 - no need to define "soliciting" as the principles apply at all types of fundraising activities by charities through 'their employees, volunteers, contractors and anyone else who they engage or arrange to raise funds on their behalf';
 - no need for additional conditions or obligations as the National Fundraising Principles have been agreed to and developed by a Working Group comprising of all States and Territories and already informed by stakeholder consultation, to be a complete code of conduct for best practice consumer protection;

- no need to consult on the content of the National Fundraising Principles as the consultation has already occurred and the principles agreed to by each of the States and Territories—any regulatory guidelines need to be uniformly developed and adopted by all participating States and Territories in collaboration with the charitable fundraising sector as announced in the Media Release; and
- no need to duplicate, in the legislation or regulations, the requirements that are covered in the National Fundraising Principles, as consistency and harmonisation will best be achieved by cross reference to these Principles rather than attempts at duplication.

Specific comments on the Bill

10. In the context of our comments above, we make the following more specific comments.
11. For harmonisation to be achieved across the Commonwealth, States and Territories, the definition of ‘charitable purpose’ in State and Territory legislation should be consistent with what is set out in the *Charities Act (Cth) 2013* (**Commonwealth Charities Act**). One of the current difficulties in cross-jurisdictional fundraising is understanding whether the relevant state or territory laws apply to an entity or activity, due to the differing definitions of charitable purpose between the States and Territories. To streamline charitable fundraising, all ACNC-registered charities should simply be required to comply with the National Fundraising Principles as the definition of “charitable purpose” under the Commonwealth Charities Act already applies to them.
12. The proposed definition in clause 7 of the Bill of ‘*charitable purpose*’ is significantly narrower than both the current definition in the *Collections for Charities Act 2001* (Tas) (the **Tasmanian Act**) and the Commonwealth Charities Act. The proposed amendment in the draft Bill makes the definition no longer *inclusive* of benevolent, philanthropic or patriotic purpose but it *means* benevolent, philanthropic or patriotic purpose. The courts over the years have interpreted these words as narrower in meaning than “charitable purpose”. By adding that these purposes include welfare of animals and protection of the environment, the definition is likely to be interpreted as limiting these to philanthropic support of these purposes not undertaking activities for these purposes. Charities promoting education, religion, the arts, etc. would arguably cease to be covered by the amended Tasmanian Act. We recommend that this amendment as proposed should not be adopted.
13. The currently listed purposes in the proposed definition are covered by the Commonwealth Charities Act. Benevolent purposes and helping individuals appear to overlap, and are covered by a purpose of advancing social or public welfare (sections 12(1)(a) and 15 of the Commonwealth Charities Act—expressly including various sub-purposes in relation to individuals in section 15); philanthropic purposes are covered under most limbs of charity as evidenced by the large numbers of ancillary funds that are charitable and philanthropic; patriotic purposes overlap with purposes of advancing the security of safety of Australia or the Australian public (Commonwealth Charities Act s 12(1)(h)); animal welfare purposes are included within a purpose of preventing or relieving the suffering of animals (Commonwealth Charities Act s 12(1)(i)); and protecting the environment is covered by a purpose of advancing the natural environment (Commonwealth Charities Act s 12(1)(j)).

14. In our view, the definition of 'solicit' is not necessary and is potentially limiting and confusing. Solicit has an ordinary meaning. By further defining it, the legislation will likely be limiting as ways of communicating to seek funds continue to evolve. In the Committee's view, the States and Territories can, and should, ensure the legalisation is flexible and contemplates evolution in the fundraising space, so that it remains fit for purpose into the future.
15. We recommend that no exemptions (specified in the current section 4 of the Tasmanian Act) apply for fundraising by ACNC-registered charities, as stated in our comments above. This may require an amendment to section 4.
16. We support the amendment to section 5 of the Tasmanian Act as set out in clause 9 of the draft Bill. This has the effect of no longer requiring an ACNC-registered charity to obtain an authority from the Tasmanian Commissioner or to be approved by the Tasmanian Commissioner.
17. We recommend the proposed section 6A (in clause 11 of the draft Bill) not be included, as this will add extra regulatory burden by requiring an ACNC-registered charity to notify the Tasmanian Commissioner if it intends to solicit for a charitable purpose. If introduced, this will extend to every charity in Australia that has a "donate here" button on its website. This is unnecessary red tape. The agreement that was reached and announced in the Media Release is to harmonise fundraising through adoption of the National Fundraising Principles. Further requirements should not be introduced.
18. We recommend section 7 of the Tasmanian Act be amended as it will operate to preclude ACNC-registered charities from fundraising in Tasmania if they are required to hold licences or authorities in other states or territories. This again is unnecessary regulatory burden and an unreasonable limitation on the activities of organisations.
19. We recommend that sections 8, 12, 13 and 14 of the Tasmanian Act be amended so as not to apply to ACNC-registered charities, as these sections cover issues that are covered in the National Fundraising Principles. They are unnecessary, and it will cause confusion and duplication to have requirements in two parts of the regulatory regime if they are not identical.
20. We recommend that sections 9 and 10 of the Tasmanian Act can be repealed but there is no need to replace them with the proposed provisions (clause 12 of the draft Bill) which effectively refer to the requirements in the National Fundraising Principles. The regulations prescribing these principles into the code of practice will make these requirements binding on ACNC-registered charities fundraising in Tasmania.
21. We recommend the National Fundraising Principles be adopted into the regulations as a code of practice without further consultation and amendment. Any amendments will result in jeopardising the harmonisation agreed to by the Commonwealth, States and Territories.

22. The Committee would welcome the opportunity to discuss this submission with the Department. In the first instance, please contact Bridgid Cowling on

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Yours sincerely

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Geoff Provis
Chair, Legal Practice Section, Law Council of Australia