

Charitable Fundraising in the 21st Century Senate Inquiry – Questions on Notice

- *How are we going to get states and territories on board now? What's the grand plan or what you see as the grand plan for getting the states and territories on board now to make the change? Really they're the stumbling blocks.*
- *Are there levers that you think the Commonwealth can be using, but aren't using, to encourage the states to come on board?*
- *What levels or encouragement outside of COAG can they be using?*
- *What are the incentives for the States to come on board? If they're feeling comfortable at the moment, what encouragement is there for the states and territories to be present and participate in a process to get this right?*

Volunteering Australia stresses that the Commonwealth has a key role in driving the solutions to #fixfundraising. This has been strongly evidenced by submissions to the Inquiry, as well as the evidence provided before the Senate Committee. The Commonwealth is responsible for laws that govern charities, with a lot of charities regulated by the *Charities Act 2013 (Cth)*. Volunteering Australia highlights that as we transition to the gig economy, a lot of fundraising is now being done over the internet, and falls squarely in the remit of the Commonwealth (under the Commonwealth's power in relation to telecommunications).

The Commonwealth has levers outside of COAG that they can use to demonstrate leadership to #fixfundraising. We emphasise that the Legislation and Governance Forum on Consumer Affairs (CAF) consists of all Commonwealth, State and Territory ministers responsible for fair trading and consumer protection legislation.ⁱ This forum has specific authority to review the operation of Australian Consumer Law (ACL).

We also emphasise the role for the States and Territories moving forward with reforms. In our view, the States and Territories will benefit vastly by using the ACL as a mechanism to address behaviours in relation to fundraising, rather than the current fragmented system that does not provide a comprehensive set of remedies. According to the submission provided by Justice Connect, "fundraising is the source of the greatest amount of regulatory burden, at a cost of more than \$15 million annually"ⁱⁱ for the charitable sector. By streamlining the fundraising regime it will reduce the regulatory burden not just for charities, but also for the States and Territories. It will also reduce the potential for mistakes and breaches, with the code of conduct providing for guidance.

- *Online is an area where we've had some fairly strong evidence about the different rules in the state. I'm interested in hearing how smaller organisations and medium-sized organisations are engaging online, and whether the red tape and the gaps in the law are affecting smaller organisations' ability to use online fundraising.*

The Giving Australia 2016 report highlights a significant shift to online fundraising with 96 per cent of large organisations engaging in fundraising activities through websites, 80 per cent use social media and almost 70 per cent use third party fundraising platforms and crowdfunding campaigns.ⁱⁱⁱ For many small to medium organisations, the shift to online engagement is fraught with complexity, with these organisations forced to compete alongside larger charities for space, engagement and funds.

These smaller organisations are working under severe funding constraints, have been required to increase their operational output, and are working with a critical lack of funding and resources. These are also the organisations who may not retain in-house counsel to be able to investigate the complex fundraising regime, or who may be entirely volunteer-run.

While adding a donate button to your online presence or social media is seemingly innocuous, it can have some serious consequences for charities who are unaware of the complex fundraising regime. Fix fundraising partners Justice Connect and ACOSS have highlighted in their submissions that the current fundraising regime acts as a barrier to many charities, with charities having to comply with seven different laws, in addition to Australian Consumer Law. These are the organisations that are also hesitant to proceed with fundraising activities if they believe there is a chance of non-compliance with the law. Any non-compliance they have seen stems from a lack of knowledge, complexity of the inconsistency within the regimes.

The administrative reporting and regulatory burdens has the propensity to force many charities to divert resources away from frontline services, advocacy, and the training and management of their volunteers. A nationally consistent fundraising regime will remove the red tape burden and support small to mid-size charities with both compliance with the fundraising regime online, as well as their day-to-day business.

- *But if I an use the term ‘the truly charitable sector’... aren’t they undermined by other organisations assering that they are charitable in their objectives and in their presentation to the public when in fact they are not so registered or recognised by the authorities?*
- *If another organisations asserts that it has ‘charitable status’ in its objectives yet its’ not so recognised by the authorities, I would have thought all other charities would be somewhat concerned that it diminishes their representation?*

Some charities meeting the definition of charity within the *Charities Act 2013 (Cth)* are registered under the ACNC Act 2012, and as such, are regulated by the ACNC. This information is publicly available via <https://www.acnc.gov.au/> and as the charity regulator, the ACNC can take action if the charity no longer meets the relevant criteria.

Some charities may meet the definition of charity within the *Charities Act 2013 (Cth)* but may not be a registered charity under the ACNC, and therefore will not be eligible for tax and other concessions. Volunteering Australia emphasises that it is important that there is a clear and nationally consistent definition of charity that is universally applied across national, State and Territory laws.

ⁱ Australian Consumer Law (2018), Consumer Affairs Forum, <http://consumerlaw.gov.au/consumer-affairs-forum/>

ⁱⁱ Justice Connect (2018), Senate Inquiry into Charitable Fundraising, https://www.nfplaw.org.au/sites/default/files/media/Justice_Connect_Senate_Inquiry_into_Charitable_Fundraising_Attachment_A_0.pdf

ⁱⁱⁱ Justice Connect (2018), Senate Inquiry into Charitable Fundraising, https://www.nfplaw.org.au/sites/default/files/media/Justice_Connect_Senate_Inquiry_into_Charitable_Fundraising_Attachment_A_0.pdf