

Select Committee on Charity Fundraising in the 21st Century

ANSWERS TO QUESTIONS ON NOTICE

Inquiry into Charity Fundraising in the 21st Century

Department/Agency: Australian Competition and Consumer Commission

Topic: Inquiry into Charity Fundraising in the 21st Century – Questions on Notice

Date: 30 November 2018

Question:

1. What changes would need to be made to the Australian Consumer Law to regulate charity fundraising conduct that needs to be regulated should the states and territories repeal their laws?
2. In regards to the proposal that the states and territories harmonise their laws, what is your response to the assertions in the Community Council for Australia's evidence that:
 - o Previous attempts at harmonisation have failed; and
 - o There is no role for the states and territories because they "aren't doing anything useful other than creating roadblocks."

Answer:

1. The ACCC does not consider any changes are required to be made to the Australian Consumer Law.

The ACCC, ASIC and all state and territory Australian Consumer Law regulators have produced "*A guide to the Australian Consumer Law for fundraising and other activities of charities, not-for-profits and fundraisers*". This guidance document was released on 18 December 2017 and is available on the Australian Consumer Law website.

The ACCC notes that state and territory based charities and fundraising legislation contain specific probity and accountability measures, for example:

- financial reporting where it is represented that a portion of money received for the supply of goods or service will go to benevolent purposes, including how particular portions of funds are used and how reports are to be made
- how fundraising appeals must be conducted
- how proceeds of fundraising appeals should be held (including the required use of separate bank accounts) and distributed, and
- details that must be disclosed in fundraising phone calls and letters undertaken by commercial fundraisers (including identification details of volunteers versus contractors who are hired to solicit donations).

The ACCC notes that these are important probity and accountability measures, however they are sector specific requirements that are not covered by the Australian Consumer Law. The ACCC considers that such measures are not appropriate to be covered by the Australian Consumer Law, being legislation with economy-wide application.

2. It is up to the Community Council for Australia to put forward evidence to substantiate these assertions.

The ACCC has had no role in harmonisation of state and territory charities and fundraising legislation in the past so cannot comment on possible previous attempts at harmonisation.

The ACCC understands that the states and territories continue to examine how jurisdictions may work together to create greater consistency in their regulatory regimes to reduce the regulatory burden on charities that operate across jurisdictions.