

Chapter 9

Fundraising legislation

9.1 This Chapter examines fundraising legislation and investigates how fundraising activities should sit with a revised regulatory framework.

Fundraising legislation

9.2 Currently, the Commonwealth Government has limited power to regulate the fundraising activities of Not-For-Profit Organisations.¹ In a system which the committee heard described as part of a 'colonial legacy'², each state and territory is responsible for administering its own legislation. Local governments may also have some fundraising legislation. Professor Mark Lyons describes the situation for Not-For-Profit Organisations wishing to undertake a fundraising activity:

A similar variety of laws would confront them [Not-For-Profit Organisations] if they wished to seek donations from the public. If they wanted to raise funds in several states they would need permission in each jurisdiction and confront different and contradictory reporting requirements. And if they wished to engage in fundraising raffles or bingo they might need permission from yet another authority. But they may be able to ignore all this if they qualified for one of the many exemptions provided by these laws.³

State and Territory Governments

9.3 The States and Territories have independent legislation governing fundraising activities and may have different Acts regulating different activities. There may also be more than one regulating authority within the state. Some of the laws relate solely to charities, while others deal with fundraising in a broader context. Typically, activities regulated by these laws can include lotteries, doorknock appeals, raffles and bingo.

9.4 According to the state in which an organisation wishes to fundraise, the following differences may be encountered:

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- 1 Under the Corporations Act, the Commonwealth wields some powers with relation to seeking loans from the public. The ACCC also has power under the Trade Practices Act for false and misleading fundraising. Organisations subject to regulation by the Australian Securities and Investment Commission, an independent Commonwealth Government body established under the ASIC Act, may be required to provide additional fundraising disclosure documents to ASIC.
 - 2 Mr A.D. Lang, Representative, Law Council of Australia, *Proof Committee Hansard*, 29 October 2008, p. 36.
 - 3 Professor Mark Lyons, *Submission 67*, p. 5.

- It may or may not need a license;
- It may or may not need to be incorporated;
- If it is a religious organisation, it may have to comply with different legislation than other non-religious organisations;
- It may be required to lodge accounts of the fundraising exercise or it may not.

9.5 Mr A.D. Lang, representing the Law Council, gave an example of the inefficiency of the multiple pieces of legislation:

Sue-Anne Wallace from the Fundraising Institute is not here, but she has what I am sure is her standard story about the Red Cross Tsunami Appeal. You would have thought that it was in everyone's interest to get that appeal launched promptly. There were eight different applications, eight different registrars, eight different approval processes, before the thing could get off the ground. What is the possible justification for that? Why should the requirements for fundraising in the Northern Territory be different to the requirements for charitable fundraising in Victoria?⁴

Local Governments

9.6 Not-For-Profit Organisations undertaking fundraising activities in a public place may require the approval of their local government. According to the ATO:

Requirements vary from council to council, but generally can include:

- ensuring that the proposed activity is permissible under the relevant planning policy, planning scheme or local environment plan
- providing evidence of public liability insurance cover for the event, sufficient security and adequate toilet facilities
- obtaining permits for preparing and selling food on site, operating electrical equipment, closing streets and selling alcohol, and
- providing evidence that any rides (for example, jumping castles or merry-go-rounds) comply with relevant Australian standards, especially occupational health and safety laws.⁵

National Fundraising Act

9.7 In assessing the effectiveness and efficiency of the current fundraising legislation, the committee did not receive any submissions supporting the status quo.

4 Mr A.D. Lang, Representative, Law Council of Australia, *Proof Committee Hansard*, 29 October 2008, p. 49.

5 Australian Taxation Office, Guide for non-profit organisations, *Fundraising*, <http://www.ato.gov.au/content/downloads/NPO56536.pdf> (accessed 24 October 2008).

The committee heard that congruence of fundraising legislation would reduce much of the complexity for Not-For-Profit Organisations.⁶ As with the discussion surrounding the potential for a single legal structure for the Sector, congruence could be achieved either through harmonisation of the existing state and territory legislation, or through the referral of powers from the states and territories to the Commonwealth Government, allowing for the development of a National Fundraising Act.

9.8 As with the witnesses' response to the issue of harmonisation or referral of laws relating to legal structure, opinion was divided on the preferred approach. Dr Greg Ogle of The Wilderness Society informed the committee that:

...maybe the first step is just to try to harmonise more of the existing laws. The difference in laws across states for an organisation like ours, in fundraising particularly, is a problem.⁷

9.9 However, a national regime 'achieved via a referral of powers by the States to the Commonwealth'⁸ was also heavily supported, with a National Fundraising Act seen as the most preferable option.⁹

9.10 Modern fundraising methods raise questions of jurisdiction. With a cake stall, the transaction has a clear location, but it is not so clear 'where' a donation on the internet to a charity in another state is occurring.

Committee View

9.11 The committee is aware that the complexity of current fundraising legislation is a result of historical factors. Organisations which fundraise nationally have particularly been disadvantaged in the past, with the same fundraising activity potentially regulated in different ways in each state and territory. It is the committee's opinion that a change to current fundraising legislation is required.

9.12 The committee considers that, as with the numerous legal structures available for use, Not-For-Profit Organisations would be best served by the single national piece of legislation. This would have the following advantages:

- Legislation could be drafted with contemporary fundraising methods clearly regulated (eg. internet fundraising);

6 See, for example, Ms Kelly Bruce, Business Manager, Australian Council for International Development, *Proof Committee Hansard*, 29 October 2008, p. 48.

7 Dr Greg Ogle, National Legal Coordinator, The Wilderness Society, *Proof Committee Hansard*, 28 October 2008, p. 11.

8 PilchConnect, *Submission 129*, p. 6.

9 See, for example, Mr A.D. Lang, Representative, Law Council of Australia, *Proof Committee Hansard*, 29 October 2008, p. 83.

- Multi-state fundraising campaigns would be subject to a single piece of legislation;
- Increased public confidence that donations will be used as intended through better regulation; and
- Reduced expense for Not-For-Profit Organisations seeking advice on compliance with legislation.

9.13 As the Commonwealth Government currently has no powers to legislate fundraising activities, states and territories will need to agree hand over their powers to legislate in this area. In the event that states and territories refuse to agree to a referral of powers within a reasonable timeframe, the committee believes that the development and implementation of legislation should proceed alongside the negotiation process.

Recommendation 9

9.14 **The committee recommends that a National Fundraising Act be developed following a referral of powers from states and territories to the Commonwealth.**

9.15 **This Act should include the following minimum features:**

- **It should apply nationally.**
- **It should apply to all organisations.**
- **It should require accounts or records to be submitted following the fundraising period with the level of reporting commensurate with the size of the organisation or amount raised.**
- **It should include a provision for the granting of a license.**
- **It should clearly regulate contemporary fundraising activities such as internet fundraising.**