



6 August 2018

Committee Secretary
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

CPA Australia Ltd
ABN 64 008 392 452
Level 20, 28 Freshwater Place
Southbank VIC 3006
Australia
GPO Box 2820
Melbourne VIC 3001
Australia
Phone 1300 737 373
Outside Aust +613 9606 9677
Website cpaaustralia.com.au

By email: charityfundraising.sen@aph.gov.au

Senate Select Committee Inquiry into Charity Fundraising in the 21st Century

CPA Australia represents the diverse interests of more than 163,000 members working in 125 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia welcomes the inquiry into charitable fundraising. It is our view that current state/ territory based fundraising regulatory frameworks are inconsistent, outdated and cause excessive regulatory burden on entities undertaking fundraising activities. This inquiry presents an ideal opportunity to explore and develop a nationally consistent, simple and well enforced fundraising regulatory framework.

CPA Australia has been part of *#fixfundraising*, a coalition of leading sector bodies advocating for fundraising reform. As part of this collaborative effort, CPA Australia made a submission (see Attachment 1) in response to the Australian Consumer Law (ACL) review, proposing that the law be clarified to ensure its application to fundraising activities. We stated in our submission that the national reform of fundraising regulation could be achieved through minor amendments to the Australian Consumer Law, repeal of state-based fundraising laws, and cooperation between Commonwealth and State/Territory based regulators on adequate oversight of fundraising activities. CPA Australia's submission is attached for your information.

We note that the ACL review has now concluded and no specific changes were made to the ACL to enable its application to fundraising activities as suggested. However, we continue to hold the view that the ACL remains a viable mechanism to legislate for fundraising activities at the Commonwealth level. Accordingly, we suggest pursuing options to make necessary amendments to the ACL as previously suggested.

CPA Australia acknowledges that in addition to legislative changes to the ACL, engagement with state/ territory lawmakers and regulators will be necessary to enable the repeal of state/ territory based fundraising laws. A nationally consistent regulatory framework also needs to be established to ensure adequate oversight of fundraising activities.

The Australian Charities and Not-for-profits Commission (ACNC) has been actively engaged in red tape reduction activities as part of its mandate to streamline charity regulation across Australia. The ACNC has achieved significant success in reducing red tape for charities through its various initiatives across a range of Commonwealth and state/territory laws and regulations. Given the ACNC's mandate, its experience and achievements in red tape reduction activities, we suggest that the ACNC should be involved in the national reform of fundraising regulation, and potentially the oversight of fundraising activities.

As the ACNC's legislative mandate does not currently extend to fundraising activities, we suggest suitable legislative changes to the ACNC legislation are explored to achieve this. The ACNC will also need to be adequately resourced if its regulatory oversight is extended to fundraising activities.

If you require further information on our views expressed in this submission, please contact Ram Subramanian, Policy Adviser – Reporting, on +61 3 9606 9755 or at ram.subramanian@cpaaustralia.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Drum', with a stylized flourish at the end.

Paul Drum FCPA
Head of Policy



31 May 2016

Garry Clements
Chair
Consumer Affairs Australia and New Zealand

CPA Australia Ltd
ABN 64 008 392 452
Level 20, 28 Freshwater Place
Southbank VIC 3006
Australia
GPO Box 2820
Melbourne VIC 3001
Australia
Phone 1300 737 373
Outside Aust +613 9606 9677
Website cpaustralia.com.au

Online submission: www.consumerlaw.gov.au

Dear Garry

Reforming Australia's fundraising laws to reduce unnecessary burdens on not for profit entities and improve consumer protection

CPA Australia represents the diverse interests of more than 155,000 members in 118 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders. We make this submission on behalf of our members and in the broader public interest. We have restricted our comments to the potential reform of Australia's fundraising laws through the Australian Consumer Law (ACL).

Over the last decade, there has been discussion on whether to abolish or harmonise fundraising laws in Australia. It is argued that the current State and Territory-based regulatory framework is fragmented, burdensome and rarely enforced; it is failing in its objective to protect donors and provide for transparency, and public trust and confidence in fundraisers. Fundraising regulation is in a similar position to the fragmentation of consumer protection law prior to the creation of the ACL.

We therefore consider that Australia's fundraising laws are in need of reform across all levels of government. Appropriately designed and implemented reforms should make fund raising for Australia's not-for-profit sector more effective, while providing better levels of consumer protection.

CPA Australia has been working with Justice Connect, the Governance Institute of Australia, Australian Institute of Company Directors and Chartered Accountants Australia and New Zealand to promote reforms to Australia's fundraising laws. As part of this collaboration, Justice Connect's Not-for-profit Law service obtained pro bono legal advice from Norman O'Bryan AM SC on the current and potential application of ACL provisions to fundraising activities. With his permission, Justice Connect has shared his advice with us.

The current application of the ACL to fundraising activities is unclear

There is significant disparity in opinion about if and how the ACL currently applies to fundraisers and, as far as we are aware, the ACL is rarely enforced against fundraisers.

As advised by Norman O'Bryan AM SC, the application of ACL provisions to fundraising activities hinges on whether the fundraising activities can be considered to be "trade or commerce" and, for some provisions, whether the fundraising activities also involve a supply of goods or services.

Based on his advice we consider **that the ACL does apply to many fundraising activities as currently drafted**. However, this application of the ACL to fundraising activities is misunderstood, as the public often does not understand the extent of its application, or how it can be used to achieve redress for fundraising misbehaviour. If the application of the ACL to the particular type of fundraising activity depends on various technicalities (for example, the degree to which the fundraising is carried out professionally), there will be continued confusion and slow uptake of its protections and remedies.

CPA Australia submits that holistic fundraising reform could be achieved through three steps:

1. minor amendments to the ACL to ensure its application to fundraising activities is clear and broad
2. repeal of state-based fundraising laws, and

3. work with other regulators (for example, the Australian Charities and Not-for-profits Commission, state-based regulators, self-regulatory bodies) to improve fundraiser conduct (for example, door-knocking, telemarketing, excessive spending of funds on third party services).

We stress that undertaking step 1 without also undertaking step 2 contemporaneously would amount to a failure of reform, and would mean that fundraisers need to continue to comply with existing fragmented regulation along with the amended ACL. We also note that a nationally coordinated process involving both federal and state/territory lawmakers would be critical to achieve holistic reform.

Recommended changes

We recommend that, at minimum, the following sections be extended to include specific application to fundraising activities:

- section 18: Misleading and deception conduct [note, limited penalties and remedies apply]
- section 20: Unconscionable conduct [note, broader penalties and remedies apply]
- section 50: Harassment.

By way of example, section 18 could be amended as follows:

“18 Misleading or deceptive conduct

- (1) A person must not, in trade or commerce **or in relation to fundraising activities**, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- (2) Nothing in Part 3-1 [unfair practices] limits by implication subsection (1).”

We also recommend that “fundraising activities” be defined in the ACL. A definition could be as follows:

“Fundraising activity” includes any activity whose purpose or effect is the donation of money, goods or services by persons, but does not include the receipt of funds as consideration only for goods and services supplied through a business or professional activity (whether or not carried on for profit). An activity can be a fundraising activity even if nothing is received by the fundraiser.

We are supportive of further consultation to refine the best approach for achieving the clear application of the ACL to fundraising activities.

For further information, please contact Ram Subramanian, CPA Australia’s Policy Adviser - Reporting on (03) 9606 9755 or ram.subramanian@cpaaustralia.com.au.

Yours sincerely



Dr Eva Tsahuridu
Manager – Accounting Policy