

25 August 2023

Department of Justice
Office of the Secretary
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(Submitted by email: haveyoursay@justice.tas.gov.au)

Community consultation on reforms to associations and fundraising law

Justice Connect welcomes the opportunity to comment on the the *Charities and Associations Law (Miscellaneous) Amendment Bill 2023 (the Bill)* and accompanying factsheet.

About Justice Connect

In the face of huge unmet legal need, Justice Connect designs and delivers high-impact interventions to increase access to legal support and progress social justice. We help those who would otherwise miss out on assistance, focusing on people disproportionately impacted by the law and the organisations that make our communities thrive.

We have been serving the community for more than 25 years. We are registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**).

Our expertise – our Not-for-profit Law program

This submission draws on the experience of our specialist, national Not-for-profit Law program which provides free and low-cost legal assistance to not-for-profit organisations and social enterprises, many of which are registered charities or entitled to be registered charities. We handle more than 1,800 enquiries annually from a diverse range of organisations which are primarily small-to-medium sized and mostly volunteer run. In the last financial year, we gave free legal help to 171 not-for-profits that deliver services in Tasmania.



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In 2022, our website pages housing information and downloadable resources relating to fundraising received over 27,837 views from more than 17,000 users. In the same year, our service handled 55 requests for legal help relating to compliance with fundraising laws, and we provided an additional 65 instances of fundraising advice as part of our free Governance Health Check project.

Since 2016 Justice Connect and a coalition of eight other sector and peak professional bodies have advocated for reform under the #FixFundraising banner: www.nfplaw.org.au/fundraisingreform. The [stories of our supporters](#) demonstrate the urgent and longstanding need for reform in this area.

Our submission

Executive summary

Justice Connect welcomes the Tasmanian government's commitment to harmonising fundraising laws for charities registered with the ACNC (registered charities). However, we are concerned that the Bill in its current form could compromise national harmonisation efforts.

We encourage Tasmania to demonstrate full commitment to the following three pillars of fundraising reform that the #FixFundraising campaign has advocated for, and which underpin agreed national harmonisation efforts:

1. **A single point for registration** – a registered charity should automatically have deemed authority to fundraise across Australia.
2. **Single reporting to the ACNC** – a registered charity's annual reports to the ACNC should satisfy all state and territory-based fundraising reporting requirements.
3. **A single set of fundraising rules** – a registered charity should only need to comply with one set of National Fundraising Principles, to the exclusion of any other state or territory specific rules.

As the first jurisdiction in Australia to implement the National Fundraising Principles, this is an opportunity for the Tasmanian government to set a strong example and do its part to truly harmonise fundraising laws in Australia.

As such, we make the following recommendations:

1. **In relation to Priority 1:** The requirement for a registered charity to notify Consumer, Building and Occupational Services (**CBOS**) of an intention to fundraise should be removed. Instead, CBOS should enter into an information sharing arrangement with the ACNC to enable the ACNC to notify CBOS of an organisation's registration as a charity, or alternatively a registered charity's intention to fundraise in Tasmania.
2. **In relation to Priority 2:**
 - a) The Bill should be amended to ensure that the National Fundraising Principles represent the **only** conduct rules for registered charities that fundraise in Tasmania, either by repealing existing conduct rules in the *Collection for Charities Act 2001* (Tas) (**the Act**) or 'switching them off' for registered charities. It is crucial that Tasmania, along with every other state and territory, adopts this approach otherwise we will not achieve national harmonisation.
 - b) The National Fundraising Principles should be included in the Code of Practice in the same form as agreed and announced by the state and territory Treasurers in February 2023, and **only** be amended with the uniform agreement of all other states and territories.
3. **In relation to Priority 4:** Any new enforcement provisions introduced by the Bill should be used in a proportionate manner consistent with CBOS' existing compliance policy.
4. The Tasmanian government should amend the Bill to adopt the definition of charitable purpose set out in the *Charities Act 2013* (Cth) (**the Commonwealth Charities Act**).

Priority 1 – Implement the agreed cross-border recognition model for charitable fundraisers

Justice Connect welcomes the proposal by the Tasmanian government to implement the cross-border recognition scheme (**the Scheme**), first announced by the Federal government in [December 2020](#). Under this Scheme (and subject to other states and territories adopting it), registration with the ACNC constitutes deemed authority to fundraise, providing a streamlined path for registered charities wishing to obtain a fundraising licence. This replaces the requirement for a charity to separately apply for

up to seven different state and territory licences and significantly reduces the costs and administrative burden for charities that fundraise nationally and online.

With various versions of the Scheme already in place in the Australian Capital Territory (**ACT**), New South Wales (**NSW**), Queensland (**QLD**), South Australia (**SA**) and Victoria (**VIC**), this Bill brings us one step closer to national implementation.

Unfortunately, the Bill still requires a registered charity to notify CBOS of its intention to fundraise and a charity commits an offence if it does not comply with this requirement.¹ This undermines the very essence of the Scheme (namely, that registration with the ACNC constitutes deemed authority to fundraise) and adds unnecessary administrative burden on registered charities. It also adversely impacts registered charities incorporated in Tasmania or whose principal office is based in Tasmania that are currently not required to notify CBOS of an intention, or obtain approval, to fundraise.²

We recommend that section 6A of the Bill be removed and CBOS enter into an information sharing arrangement with the ACNC whereby the ACNC notifies CBOS of an organisation's registration as a charity, or alternatively a registered charity's intention to fundraise in Tasmania.

This approach is already in place in the ACT, where an organisation is automatically exempt from requiring a licence if it is an ACNC registered entity. The ACNC notifies the regulator of the organisations that are registered as charities. As noted by Access Canberra on its [website](#), *"This ensures less administrative effort and red tape for charities and more time for their charity work."*

In the event that section 6A of the Bill is retained, we recommend that, at the very least, Tasmanian registered charities be exempt from the requirement to notify CBOS of an intention to fundraise.

Priority 2 – Recognise National Fundraising Principles

We are pleased to see the Tasmanian government's commitment to national harmonisation efforts: Tasmania is the first jurisdiction to take active steps to

¹ Section 11 of the Bill.

² Section 6 of the Act does not currently require an association that is incorporated in Tasmania or a company whose principal office is in Tasmania to obtain approval to fundraise. In contrast, the notification requirement in proposed section 6A will apply to all ACNC registered entities and does not make exception for Tasmanian registered charities.

implement the National Fundraising Principles agreed to by all state and territory Treasurers in [February 2023](#).

However, we are concerned about the way in which the Bill proposes to implement the National Fundraising Principles. The purpose of the National Fundraising Principles is to simplify and harmonise fundraising laws across Australia by ensuring that a registered charity, no matter where it fundraises in Australia, need only comply with one set of fundraising rules to the exclusion of any other state or territory specific rules. **The Bill in its current form will not simplify the law for registered charities and risks compromising national harmonisation efforts.**

We highlight two key risks below.

Risk 1: the National Fundraising Principles will add to, rather than replace, Tasmania's existing fundraising rules

First, under the proposed changes in the Bill, registered charities will be required to comply with the National Fundraising Principles **in addition to** existing conduct rules in the Act.³ This contradicts the spirit and intent of the National Fundraising Principles, which were announced in February after being developed and refined over a number of months by a Working Group comprised of representatives of all jurisdictions.⁴

Many of the existing conduct rules in the Act overlap with the National Fundraising Principles. This duplication is unnecessary when the Code of Practice will be capable of being enforced by CBOS.⁵ Other conduct rules in the Act relate to behaviour that is already regulated by the existing web of laws that apply to not-for-profit organisations, such as the Australian Consumer Law, criminal laws (including those that prohibit fraud and obtaining financial advantage by deception) and a comprehensive range of laws relating to child safety.⁶

There is a significant risk here: if every state and territory imposes additional conduct rules over and above the National Fundraising Principles, or maintains existing conduct rules that overlap with the National Fundraising Principles, then we will not

³ See for example sections 7, 8, 12, 13 and 14 of the Act.

⁴ See <https://ministers.treasury.gov.au/ministers/andrew-leigh-2022/media-releases/statement-progress-harmonisation-fundraising-laws>.

⁵ See section 13 of the Bill which proposes a range of enforcement provisions.

⁶ See, for example, the ACCC's '[Guide to the ACL for charities, not-for-profits and fundraisers](#)' and Justice Connect Not-for-Profit Law's '[Engaging and working with youth volunteers guide](#)'.

achieve the promised outcome of simplification and harmonisation. Tasmanian charities will be forced to consult the National Fundraising Principles in addition to any conduct requirements contained in the Act. Charities that operate at a national or multi-state level or wish to place a 'donate now' button on their website will still need to pore over seven sets of laws to work out what their obligations are. The existence of additional and overlapping conduct rules will add complexity, inconsistency and confusion back into reforms that were intended to simplify compliance.

For these reasons, **we recommend that existing conduct rules in the Act be either repealed or 'switched off' for registered charities so that the National Fundraising Principles can operate as the single source of truth for registered charities that fundraise in Tasmania.**⁷

Risk 2: the National Fundraising Principles are vulnerable to amendment

Second, we note that the National Fundraising Principles will be introduced into regulations made under the Act via a new Code of Practice which will be subject to consultation.⁸ Neither the Bill nor the accompanying factsheet specifies whether the Code of Practice will include anything other than the National Fundraising Principles.

In our view, the National Fundraising Principles do not require further community consultation as they have already been agreed to by all states and territories.⁹ They were developed by a Working Group of all jurisdictions which has already engaged in consultation with key stakeholders. By consulting on the National Fundraising Principles, the Tasmanian government is indicating a willingness to consider amendments to them: a key risk to harmonisation.

We strongly recommend that the National Fundraising Principles be included in the Code of Practice in the same form as agreed and announced by the state and territory Treasurers in February 2023, and only be amended by agreement with all other states and territories. Any regulatory guidance issued by state or territory governments

⁷ By way of example, section 111L of the Corporations Act 2001 (Cth) switches off a number of provisions for companies that are also registered as charities with the ACNC.

⁸ See the Charities and Associations Law (Miscellaneous) Amendment Bill 2023 factsheet at <https://www.justice.tas.gov.au/community-consultation/consultations/charities-and-associations-law-miscellaneous-amendment-bill-2023>.

⁹ See footnote 4 above.

must also be uniform and developed with the co-operation and agreement of all jurisdictions. This is crucial to preserving the goal of national harmonisation.

Priority 3 – Harmonise the reporting thresholds for all charities

Justice Connect supports the proposal to increase the auditing threshold for Tasmanian incorporated associations that are not registered charities. The cost of an audit can be burdensome for small not-for-profits. It is reasonable to increase the threshold to \$500,000 to align with the ACNC threshold for small charities.

Priority 4 – Strengthen the enforcement provisions of the Charities Act

Justice Connect supports reforms that will enable CBOS to enforce compliance with the National Fundraising Principles. To maintain integrity, trust and confidence in a national, harmonised fundraising regime it is important that regulators are empowered to act swiftly and effectively to curtail misconduct.

In light of the composition of the Australian charity sector (65% of registered charities are small in size with few to no paid staff) we ask the Tasmanian government to recognise that non-compliance by registered charities is usually inadvertent rather than deliberate. To this end we are supportive of CBOS' existing regulatory approach, as set out in the 'Service Delivery Accountability and Commitment Policy' (**compliance policy**),¹⁰ which encourages voluntary compliance in the first instance via advice, education, engagement and dispute resolution.

We recommend that any new enforcement provisions introduced by the Bill be used in a proportionate manner consistent with CBOS' existing compliance policy.

Other comments – Harmonise the definition of 'charitable purpose'

The Bill proposes to change, and in fact narrow, the definition of a 'charitable purpose' in the Act. The factsheet accompanying the Bill does not explain the rationale for this amendment.

The ongoing inconsistencies between state and federal definitions of 'charity' and 'charitable purpose' create unnecessary red tape for charities. In this case, any organisation seeking to fundraise in Tasmania will need to closely consider whether they are fundraising for a 'benevolent, philanthropic or patriotic purpose' – terms

¹⁰ See <https://www.cbos.tas.gov.au/who-we-are-and-what-we-do>

which are not defined in the Act and which can only be understood by reference to court decisions.

Since the passage of the Commonwealth Charities Act, there has been a single definition of charity for the purposes of registering with the ACNC and obtaining federal tax concessions and exemptions. However, state and territory governments continue to utilise different definitions for the purposes of state and territory tax concessions and exemptions (such as payroll tax, stamp duty, land tax and local government authority rate exemptions) as well as the regulation of charitable fundraising. This can lead to a situation where an organisation is recognised as a charity in some jurisdictions but not others.

In its 2016 paper 'A common charity definition'¹¹ the ACNC observed:

"In addition to the common law definitions, the terms 'charity', 'charitable purpose' and 'charitable status' occur in 172 pieces of Commonwealth, State and Territory legislation, including in a number of Acts unrelated to state revenue purposes. Of these Acts, 45 of them define the above terms."

This inconsistency leads to inefficiency, uncertainty and increased administrative burden for organisations that must repeatedly prove their status as a charity to different regulators.

This is why multiple reports and submissions over the years have recommended harmonisation,¹⁰ and is why **we recommend that the Tasmanian government amend the Bill to adopt the definition of charitable purpose set out in the Commonwealth Charities Act.**

If there is a policy reason for a variation (for example, the intention is for a benefit to be given to 'charities except religious bodies' or to 'charities and sporting clubs'), this can still be achieved by applying the core definition of charity and charitable purpose.

Closing comments

We again commend the Tasmanian government for taking steps to implement national reforms to streamline fundraising laws for registered charities. These

¹¹ Australian Charities and Not-for-Profits Commission, *A Common Charity Definition* (Conference paper, Tax Institute State Taxation Conference, 27 July 2016).

reforms, if implemented in full by every jurisdiction, have the potential to impact thousands of registered charities, which will finally be freed from burdensome red tape and will instead be able to focus on delivering vital services to their communities.

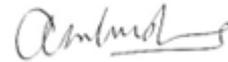
As the first jurisdiction to implement the National Fundraising Principles, we urge the Tasmanian government to set a strong example and do its part to truly harmonise fundraising in Australia.

We would be happy to discuss or expand on any of our comments. We agree to this submission being made public (with signatures redacted).

Yours sincerely,



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