

Background

The PFRA is a self-regulatory membership association of 50 charities and 25 fundraising agencies. We are a charity led, and majority funded, not-for-profit organisation that is committed to achieving the highest possible standards in public fundraising (sometimes called face-to-face fundraising). We enforce a standard of practice through compliance checks; issue financial penalties for non-compliance; provide guidance and training to members; and represent the views of our membership when engaging with government at federal state and local level. Our Board is elected by the membership – we have 7 charity directors, 2 agency directors and an independent director.

Feedback on the proposed cross-border recognition model for charitable fundraisers.

The PFRA welcomes the opportunity to comment in detail in the proposals being put forward, as well as the overall sentiment expressed in the paper. This is most succinctly stated as follows on page two:

“Inconsistent regulations across jurisdictions are creating a degree of complexity and uncertainty for charities and as a result contributing to a significant source of regulatory burden”.

We would add that this regulatory burden is, in many areas, unnecessary and inappropriate and is not clearly aligned to achieving a clear public benefit. The public harm however caused by unnecessary regulations is clear, in that it restricts, prevents and hampers lawful and legitimate fundraising by genuine charities, while doing nothing to impede the fake charities and scammers.

Proposed Model

Deemed Authorisation

The PFRA welcomes the proposal that once registered with the ACNC, a charity would no longer have to register for fundraising separately in individual jurisdictions. This is a good first step and signifies a model of mutual recognition that can be built upon. We note however that the majority of jurisdictions had already moved (or have agreed to move) to deemed fundraising authority. That being the case, this is still welcome progress. However, we must express our disappointment on a number of points that are provided as succinctly as possible below.

Automatic Notification

There is no universal commitment to have automatic notification after registration with ACNC, thereby potentially requiring charities to separately notify some jurisdictions. This is unnecessarily bureaucratic and serves no demonstrable public policy purpose. Those jurisdictions that already have automatic notification in place, clearly demonstrates it is an effective and achievable system.

Recommended Solution

All jurisdictions to adopt automatic notification. Jurisdictions to review after 12 months.

State Regulatory Regimes

Most disappointingly, the paper indicates that states will retain their existing regulatory regimes. The PFRA has provided a separate (more detailed) breakdown for what this will mean to our members in **Annex A** below. By our estimate, 90% of fundraising red-tape and costs will remain in place under this proposal, which given the current financial challenges faced by charities is simply unjustified and unacceptable. In total, these regulations take our members 32,000 hours and \$5.5 million to comply with each year. A full breakdown of complying with all the state regulatory regimes is provided in **Annex B**.

What is evident in the annex is that commercial fundraisers will continue to fall under many jurisdictions’ registration and reporting regimes. For many important methods of fundraising (such as street, door-to-door and telephone) a majority are delivered through a partnership between charities and commercial fundraisers. The additional time and money required to meet the different regulatory regimes leads to higher costs and these higher costs mean charities then pay more, but receive no direct benefit. The higher costs then mean there is less fundraising taking place than otherwise would be the case, thereby reducing donations and the good charities can do in our communities.

Recommended Solution

Charities registering with the ACNC must adopt the ‘*Australian Fundraising Principles*’ (AFP) as put forward by the Charities Crisis Cabinet, which covers almost all conceivable malpractice in fundraising. This would be adopted by charities as a condition of registration, and any proven breaches of it would be grounds for suspension, or removal, of their ACNC registration. We don’t believe that this would undermine support for self-regulatory standards, such as the PFRAs’.

States would repeal most of their own state-based laws, but importantly retain the full range of legal powers currently in their possession to investigate charities for alleged malpractice and also the power to remove a charities ‘deemed authorisation’ and return them to the regulatory regime and oversight in that jurisdiction. This ‘back-stop’ power would be a powerful deterrent to poor practice.

On public fundraising, the PFRA is keen to achieve a closer, more formal working arrangement with regulators in different jurisdictions. Given the extent of our quality assurance work (over 1000 fundraising checks conducted annually) we are closer to the ground on these matters and regularly receive information on individuals and companies in the sector where concerns have been raised.

By working more closely together, we would be better able to securely and confidentially provide such information for further investigation by regulators. If this strong governance and enforcement partnership were adopted, then we see no reason for states to retain their highly granular and detailed local regulations (as these would already be covered off by the AFPs).

Our members told us the following, regarding the likely effects of creating a national system:

Impact of Harmonisation	Much less likely	Somewhat less likely	Wouldn’t affect our decision	Somewhat more likely	Much more likely
Fundraise in more states than we do currently.	0%	0%	23%	12%	65%
Employ more fundraisers	0%	0%	29%	6%	65%
Use a wider range of fundraising methods	0%	0%	23%	12%	59%
Use the savings to invest in new services	0%	0%	6%	0%	94%

As shown by the table above, our members have indicated that a national system would deliver an incredible range of benefits to Australian society. A significant majority of our members would fundraise in more states, and employ more fundraisers, than they do currently. They would also be far more likely to develop new fundraising channels and most importantly, reinvest savings achieved in new services. This means more services in local communities across the country helping more people and doing more good for Australia.

Auditing Requirements

If a charity is registered with the ACNC, then the current thresholds for a full audit (+\$1m) or optional audit or review (\$250k-\$1m) are in place and working well based on feedback from members. The PFRA believes this is an appropriate, risk-based approach to charities’ activities. The different requirements in various jurisdictions clearly imposes additional and unnecessary costs.

Recommended Solution

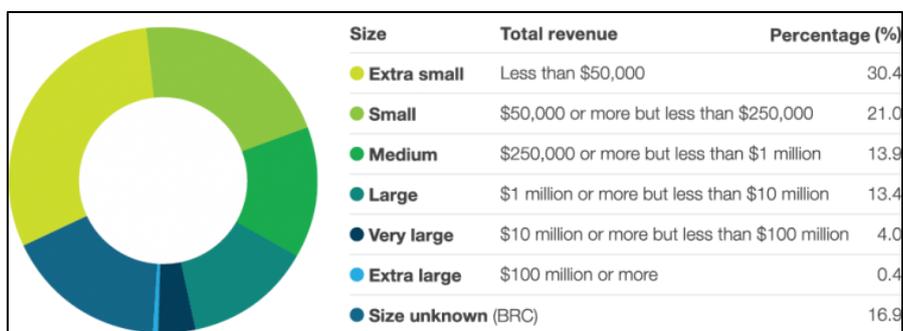
Auditing requirements *and* financial thresholds should be aligned in all jurisdictions with the ACNC standards. States should retain the power to investigate charities and require additional auditing and financial scrutiny if they believed malpractice had occurred.

Information provided to ACNC to include what fundraising appeals occurred in each state, which commercial fundraisers were used, how much money was raised in each state and how the charity took measures to meet each requirement of the AFP.

Exemptions from fundraising authority

Many charities and other not-for-profit organisations are exempt from fundraising legislation in each jurisdictions. Many jurisdictions provide a wide variety of exemptions (for example for religious organisations) or because they are so small (under \$15k in NSW and under \$20k in Victoria).

Based on the ACNC’s most recent [Charities Report](#) almost a third of Australian charities are defined as ‘extra small’, with total revenue of less than \$50,000. These charities are much less likely to register with the ACNC and therefore would fall under their state’s regulatory purview.



Recommended Solution

We would therefore strongly encourage all jurisdictions to raise their fundraising exemption thresholds simultaneously to \$50,000. The administrative burden this would lift would be considerable and deliver a huge benefit to some of Australia’s smallest charities.

Conclusion

The charity sector in Australia, as with much of the country, is facing unprecedented demands on its limited resources. Removing unnecessary red-tape, and genuinely harmonising any necessary regulations, would deliver a huge boost to our nation's charities. It requires no taxpayer money, tax concessions or public subsidies – it simply requires states to have the courage to make a change that every single independent report for the last 20 years has recommended.

The current proposal is in no-way sufficient to meet the needs of modern charities in 2020 and must be enhanced with a more ambitious reform program that deliver both meaningful change and real benefits to charities. The PFRA stands ready, on behalf of its members, to work in a spirit of genuine partnership and co-operation to maintain and strengthen standards in charitable fundraising.

Annex A – Regulatory Analysis of Remaining Redtape

Regulation	QLD	NSW	VIC	SA	WA
<p>1a. Use of Commercial Fundraisers <i>(a) Reporting and Registration</i></p> <p>Where a charity uses Commercial Fundraisers there are variants within state law regarding the registration and reporting requirements that apply.</p>	<p>Contracts between charities and commercial fundraisers must be approved by OFT before fundraising can take place.</p>	<ul style="list-style-type: none"> Commercial fundraisers do not need to be registered to fundraise Charities must notify the Office of Fair Trading of any commercial fundraiser used and provide updates when this changes. 	<ul style="list-style-type: none"> Commercial fundraisers who will raise more than \$20K p/y must be registered with CAV Commercial fundraisers must submit annual returns and renewals Charities must keep commercial fundraisers up to date in myCAV 	N/A	N/A
<p>1b. Use of Commercial Fundraisers <i>(b) Payments to Commercial Fundraisers</i></p> <p>State restrictions on how much can be paid to commercial fundraisers.</p>	<p>Cost of obtaining the donation can't be more than 100% of the 1st year's donation</p>	<p>Cost of obtaining a donation can't be more than 50% of the overall donation.</p>	<ul style="list-style-type: none"> If less than 50% will go to the beneficiary this must be disclosed to the public If less than 35% will go to the beneficiary the fundraiser must 'show cause' 	<ul style="list-style-type: none"> Registration can be refused or revoked if the cost of fundraising is deemed to be 'excessive.' There is no clarification what amount is deemed to be excessive. 	
<p>1c. Use of Commercial Fundraisers <i>(c) Trader's Agreements</i></p> <p>State specifications regarding what must be included in commercial agreements between Charity and Commercial Fundraiser.</p>	<p>General Information</p> <ul style="list-style-type: none"> Precise names of both parties Period of the agreement and how to terminate before expiry date <p>Responsibilities</p> <ul style="list-style-type: none"> Agreed upon arrangement and responsibilities of each party including which party 	<p>General Information</p> <ul style="list-style-type: none"> How variation or termination of agreement is made How alternative dispute resolution mechanisms will be applied <p>Responsibilities</p> <ul style="list-style-type: none"> Rights, duties and responsibilities of each party must be specified 			

	<p>is responsible for complaints.</p> <p>Processing Donations</p> <ul style="list-style-type: none"> • How donations will be processed to ensure 100% goes to the charity <p>Reporting</p> <ul style="list-style-type: none"> • Provide accountability of monies. Access to accounts granted to OFT and charity. <p>Approval of Fundraising Materials</p> <ul style="list-style-type: none"> • ID badges must be approved by charity • Telemarketing scrips must be approved by charity and OFT. 	<ul style="list-style-type: none"> • Must note the trader will adhere to relevant laws • Insurance policy information to be specified <p>Processing Donations</p> <ul style="list-style-type: none"> • What controls are in place to ensure traceable donations <p>Reporting</p> <ul style="list-style-type: none"> • Trader must comply with and facilitate the charities reporting requirements <p>Fees for services</p> <ul style="list-style-type: none"> • Detail on fees and commissions to the Commercial Fundraiser 			
<p>1d. Use of Commercial Fundraisers <i>(d) Disclosure Statements</i></p> <p>State requirements for disclosing and explaining the cost of fundraising to the public.</p>	<ul style="list-style-type: none"> • Fee paid to Commercial Fundraiser can't be more than 100% of the 1st year's donation. • Fee must be expressed as a percentage of the 1st years donation. • Statement must include average life of pledge & the percentage cost over that time • Must be positioned immediately above or below where the donor signs. 	<ul style="list-style-type: none"> • Full name and contact details of the Commercial Fundraiser • Percentage of the gross proceeds to be distributed to the charity and how this is calculated. • Percentage of the gross proceeds to be obtained by the Commercial Fundraiser • Start and end date of the appeal (appeal period can't be more than 12 months) 	<ul style="list-style-type: none"> • Name of the Commercial Fundraiser and Charity • Must disclose the percentage of the donation that will go to the beneficiary (if less than 50%). • The percentage can be averaged over the 3-year registration period 	NA	NA

	<ul style="list-style-type: none"> Includes names of both parties (matching how it is set out in the agreement, i.e. full names) Must be 'short' and not buried in fine print. However, there are no specifics as to what is considered too long. 	<ul style="list-style-type: none"> Fundraisers must be able to explain the disclosure to the public 			
1e. Use of Commercial Fundraisers <i>(e) ACNC v's State law</i>	When an ACNC charity engages commercial fundraisers, the question is raised of which laws / regulation applies. Many state rules apply to the individual fundraiser (i.e. the commercial fundraiser). However, how does a charity regulate / adhere to these requirements?				
2. Fundraising Hours Variations on allowable fundraising hours specified by state.	Door to Door (D2D) and Business to Business Mon-Sun: 9:00-17:00	N/A	N/A	D2D and Street <ul style="list-style-type: none"> Mon-Fri: 9:00-18:00 Sat: 9:00-17:00 Sun & Pub Hols: 11:00-17:00 Christmas Day, Good Friday and Easter Sunday: no fundraising 	D2D <ul style="list-style-type: none"> Mon-Sat: 9:00-18:00 Sun & Pub Hols: no fundraising
3. ID Badges	Different states have varied requirements for what must be included on ID badges worn by fundraisers.				
4. Local Government Regulation	Local government laws for fundraising vary in regards to which fundraising methods are allowed (e.g. paid fundraising/volunteers, ongoing pledge programs/on-off gifts only etc), which fundraising channels are allowed (street, D2D etc), what charities are allowed (e.g. local charities only) and restrictions on where, when and how frequently fundraising can take place.				

Annex B – PFRA Member Assessment of Total Red Tape Burden

	Charity Average	Charity Total (X50 members)	Agency Average	Agency Total (X25 members)
Annual Hours Spent Complying with Fundraising Registration	35	1750	997	24,925
Annual Hours Spent Complying with Fundraising Reporting	29	1450	50	1250
Annual Hours Spent Complying with State Regulations	10	500	100	2500
Total Annual Hours	64	3250	1147	28,675
Annual Cost of Complying with Fundraising Registration	\$3908	\$195,400	\$64,833	\$1,620,825
Annual Cost of Complying with Fundraising Reporting	\$3704	\$185,200	\$35,350	\$883,750
Annual Cost of Complying with State Regulations	\$9775	\$380,600	\$87,500	\$2,187,500
Total Annual Cost	\$17,387	\$761,200	\$187,683	\$4,692,075