

13 August 2021

Our ref: WD: NFP

Transparency Code Working Group
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: [REDACTED]

Dear Treasury

Developing a voluntary code for charities to improve the transparency of charitable donations during natural disasters

Thank you for the opportunity to provide feedback on the Consultation Paper "Developing a Transparency Code: Developing a voluntary code to improve the transparency of charitable donations during natural disasters" (**Consultation Paper**).

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law and assist the public by advising government on improvements to laws.

This response has been compiled by the QLS Not for Profit Law Committee, whose members have substantial expertise in this area.

We have had the opportunity to consider the draft submissions of the Australian Centre for Philanthropy and Non-Profit Studies (ACPNs) (at Queensland University of Technology) and Justice Connect and we endorse those submissions.

We have not addressed every element of the Consultation Paper, as many of these issues are best addressed by charities with practical experience in natural disaster assistance.

However, we do provide the following comments based on the experience and expertise of our members.

Question 5: Should administration costs be included in the Transparency Code? Do you have suggestions for what should be included in the definition of administration costs?

The Consultation Paper proposes that the Transparency Code would require signatories to report on certain information including "spending on administration costs".

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We endorse the comments of ACPNS which highlight the limitations of administration costs as a useful measure.

The Australian Charities and Not-for-Profits Commission (**ACNC**) has also published guidance about charities and administration costs. This guidance cautions that assessing and comparing administration costs across charities is difficult and can be misleading.

The ACNC guidance also notes:

- It costs money to run a charity – large charities with complex structures and extensive programs cost more to operate than smaller charities run solely by volunteers
- Charity effectiveness and impact is important
- Because charities are so varied, there is no one-size-fits-all standard ratio or percentage to measure reasonable spending on administration
- There is no mandatory standard accounting practice for reporting on charity spending – using the ACNC's National Standard Chart of Accounts is optional.¹

Question 10: Is there anything further you think the working group should take into account in developing a proposal for the Transparency Code?

The analysis underway with the Consultation Paper will likely give rise to helpful guidance for charities involved in fundraising responses to natural disasters.

However, there are a number of underlying issues with fundraising in the context of natural disasters which will not be addressed by developing a voluntary code of the kind proposed in the paper.

Harmonisation of fundraising regulation

QLS has long supported the harmonisation of fundraising regulation across Australia. The issue of inconsistent fund-raising regulation across Australian states and territories has been an ongoing issue of concern for legal practitioners and their clients for many years. The fund-raising regulatory inconsistencies across the country are a significant imposition on their clients and the wider not-for-profit sector.

The Commonwealth, state and territory governments must work together as a matter of priority to harmonise the regulation of charitable fundraising across the various Australian jurisdictions.

There have been numerous reports highlighting the current regulatory inconsistencies and many recommendations concluding that reform is required. Some of these are:

- the Commonwealth Parliament's Select Committee on Charity Fundraising in the 21st Century- its report "*Charity Fundraising in 21st Century – Senate Committee Report*" (14 February 2019) recommended that:

¹ <https://www.acnc.gov.au/for-public/understanding-charities/charities-and-administration-costs>

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“... the Australian Government commit to working with state and territory governments and the not-for-profit sector to develop a consistent national model for regulating not-for-profit and charitable fundraising activities within a time limit of two years.”²

- The “*Deloitte Access Economics: Final Report, Cutting Red Tape: Options to align state, territory and Commonwealth charity regulation*”, issued in February 2016. This report estimates that the annual red tape cost to charities of seeking to comply with the disparate fundraising regulation on a State by State basis is \$15.1 million per annum.
- The Productivity Commission January 2010 Report recommended that all States harmonise fundraising legislation and possibly establish a register for cross-jurisdictional fundraising.

The extent of variation across jurisdictions is neatly summarised in “Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislative Review 2018”, being the final report of the panel appointed to review the Australian Charities and Not-for-profits Commission legislation (**ACNC Review Final Report**).³

There are seven different fundraising regimes across Australia, excluding the Commonwealth’s Australian Consumer Law. As noted in the ACNC Review Final Report:

“The regulatory regimes for fundraising across State and Territory jurisdictions are inconsistent, complex and inefficient for charities. Fundraising provides a major opportunity in red tape reduction for charities in Australia, particularly for charities engaging in national fundraising or fundraising online. These charities spend significant time and resources navigating the myriad of regulatory requirements imposed by the different jurisdictions.”

In response to Question 10, QLS considers that there is a wider over-arching need for regulatory reform involving cooperation between the Commonwealth and other state and territory governments.

Legislative scheme for disaster fundraising oversubscription

QLS recommends that a legislative solution is required which specifically addresses disaster fundraising needs. A legislative framework is required which is tailored to disaster fundraising management and outlines a scheme for disaster fund oversubscription.

QLS raises for consideration the option of a legislative scheme under which a disaster fund can be taken over and administered by the Government department responsible for community services to provide financial assistance and other relief to the victims of declared disasters such as bush fires, floods and earthquakes. For examples, see the *Community Welfare Act 1987* (NSW) sections 3(1), 39 and the *Collections Act 1966* (Qld) section 35B.

²https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Charity_Fundraising/CharityFundraising/Report

³ <https://treasury.gov.au/publication/p2018-t318031>

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Online fundraising challenges

The recent natural disasters in Australia highlighted the challenges of on-line fundraising and the community's understanding of how such fundraising processes work (for example, the Celeste Barber Facebook fundraiser for Rural Fire Services).⁴

On line fundraising laws are in need of reform across Australia.

QLS suggests that the model legislation recently adopted by Canada and its provinces may be a useful starting point for this analysis.

At its Annual General Meeting on 12 August 2020, the Uniform Law Conference of Canada adopted the [*Uniform Benevolent and Community Crowdfunding Act 2020*](#) (the Act) to replace the *Uniform Informal Public Appeals Act 2011*. The new Canadian framework provides for the application of trust law to all public appeals, with special guidance in relation to surpluses, and contains powers available to the fundraisers to properly administer the funds raised through the informal public appeal.

The Act allows for judicial oversight where appropriate and recognises the important role of internet based crowdfunding platforms. There is a right to halt the appeal if the appeal was initiated without the consent of a qualified donee for whose benefit the appeal was initiated. The qualified donee through an authorised representative, would be able to demand that the appeal be halted and the organiser or intermediary would have to comply with the demand. In the event the appeal organiser or intermediary fails to comply with the objection by a qualified donee, the Act would provide the right to apply to the court for injunctive relief.

A similar legislative framework in Australia could allow for mechanisms for public appeal organisers to raise and transfer funds to the relevant services efficiently and in the spirit of which the funds were donated, particularly where an online appeal initiated by an individual could raise significant sums in the name of a charity, without the knowledge or permission of the charity.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Elizabeth Shearer
President

⁴ McGregor-Lowndes, Myles & Hannah, Frances (2020) ACPNS Legal Case Notes Series: 2020-45 In the matter of the New South Wales Rural Fire Service & Brigades Donations Fund; Application of Macdonald & Or. <https://eprints.qut.edu.au/200554/>