

FUNDRAISING INSTITUTE AUSTRALIA

CONSUMER AFFAIRS VICTORIA FUNDRAISING REGULATIONS 2009 REMAKE

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The Professional Body for Australian Fundraising

SUMMARY

1. Significant regulatory developments have occurred at the state level, which fundamentally alter the landscape for fundraising reform.
2. FIA notes that Victoria, NSW, SA and the ACT have initiated reforms that, once finalised, promise to substantially reduce red tape for fundraising. These measures, if adopted in substantially the same form by all states, would resolve the lion's share of issues relating to misalignment of fundraising licensing and application processes, the largest source of red tape.
3. Greater cooperation and sharing of technology platforms between state fair trading departments and the ACNC is also moving us closer towards a one-stop solution for nation-wide campaign registration and reporting.
4. Through their own reforms, the states are demonstrating their determination to retain their jurisdiction in respect of charitable fundraising regulation. Instead of withdrawing from the space, the states are asserting their powers.
5. FIA urges CAV to work with other state and territory fair trading departments to achieve consistency in fundraising regulation.

INTRODUCTION

Fundraising Institute Australia welcomes the opportunity to make a submission concerning the Remake of Victoria's Fundraising Regulations 2009. FIA speaks for the largest fundraisers in Australia by revenue¹ as well as their suppliers. Between them, Victoria and NSW account for more than three-quarters of FIA membership so it is good to see the two states taking the lead in regulatory reform, even though their approach is different; Victoria has started at the bottom with the Conditions of Registration then the Regulations whereas NSW started with the Act and is now moving to the Regulations, etc.

While we understand the timing of the remaking of regulations is dictated by their imminent expiry, this action is evidence that states including Victoria intend to retain their regulatory powers rather than devolve responsibility to other levels of government. That being the case, FIA looks forward to further consultation concerning reform of the legislation to which these regulations apply. In particular, FIA would welcome clarification as to whether this is part of a broader plan to reform the Fundraising Act and/or to consolidate the regulations with the 'conditions of registration' to reduce the red tape burden in Victoria. FIA is also interested in the extent to which Victoria intends to work with other states and the Commonwealth (particularly the ACNC) to harmonise regulatory requirements and reduce duplication.

¹ The latest data from the ACNC shows that there are about 23,000 charities with DGR status, but many are very small and do not engage in professional fundraising. The largest five percent of charities receive 80 percent of the sector's income. There are only 1929 registered charities with fundraising income of over \$.5 million. FIA members account for 1480 or nearly 80 percent of them.

FIA acknowledges that Victoria has done much to achieve regulatory reform in fundraising, but what appears to be lacking is a sense of what its ultimate goal is and the extent to which it actually intends to align with other jurisdictions.

In the recent past Victoria has:

- initiated and implemented annual financial reporting requirement with the ACNC for Victorian incorporated associations (this is under the Incorporated Associations Act not the fundraising laws)
- carried out but made no announcement or decision about the KPMG review into the "Conditions of Registration" particularly the 50% expenses ratio rule.
- Initiated a review into the Fundraising Regulations 2009 which has to be completed by June 2019
- Taken legal action, including in the Belle Gibson case, to stamp out fraudulent activity in the fundraising sector.

FIA encourages Victoria to move on to review its Act next, removing the detailed individual appeal/campaign approval and reporting provisions either in the manner NSW has (through the introduction of a five-year licence) or the ACT (exemption for ACNC registered entities).

With that in mind, FIA would like to see the current Regulations remain much as they are at present (to avoid any regulatory gaps) with the addition of those parts of the Conditions of Registration which emerge from the recent KPMG exercise. If KPMG recommends (and Consumer Affairs Victoria accepts) changes to the licensing conditions for charities, we are suggesting that these form part of the regulations so that in future, instead of three layers (the Act, the regulations, and the conditions) there will only be two, with conditions forming part of the regs.

In this way Victoria, together with NSW and the ACT, will have similar fundraising regulation regimes consisting of a principal Act supported by Regulations.

If Victoria proceeds in this direction, three Australian jurisdictions including the two largest ones will be substantially aligned. FIA encourages Victoria to proceed in this direction and make a clear public statement of its intention to do so.

FIA also encourages Victoria to engage with the Senate Committee currently examining "Fundraising in the 21st Century" whose reporting deadline has been extended to February 2019. By doing so, Victoria can help ensure its report reflects the viability of harmonization approach.

1. RECENT REGULATORY DEVELOPMENTS AT STATE LEVEL

FIA wishes to take the opportunity of this consultation to point out that, in recent months, significant red tape reduction initiatives have occurred at the state level, which promise to fundamentally alter the landscape for fundraising reform.

NSW is moving ahead with amendments to its *Charitable Fundraising Act 1991* in response to recommendations from the Bergin Inquiry. The amendments, passed by both Houses in October, strengthen Fair Trading's compliance and enforcement regime. FIA understands officials have now commenced drafting the regulations to support the new provisions in the Act.

A second round of amendments, anticipated early in 2019, is expected to provide for renewable five-year licenses, which would be a significant red tape reduction for fundraisers. The initiative will reduce red tape by building the 'standard conditions' for fundraising into the Act, thereby eliminating the need to fill out these forms for each campaign.

Other new measures are aimed at aligning financial and reporting requirements with the ACNC. FIA appreciates the effort that appears to be going into alignment with other states (in particular Victoria) in regard to licensing conditions and enforcement provisions.

FIA also welcomes the initiative to align the Act with the Australian Consumer Law in respect of false, misleading or deceptive conduct.

The NSW Charitable Fundraising reforms will result in major reductions in terms of both costs and administration and could act as a template and a catalyst for other jurisdictions, thus creating momentum for harmonisation.

Meanwhile the Australian Capital Territory has already been a pace-setter. Its reforms of last year reduced both fundraising-specific red tape and financial reporting requirements for ACNC registered entities.

Also of note, South Australia has led the way in terms of working with the ACNC on a seamless reporting regime.

2. GREATER COOPERATION AND SHARING OF TECHNOLOGY PLATFORMS

During consultations around proposed fundraising reforms in NSW, FIA was pleased to learn of the increased levels of collaboration occurring with other states and the ACNC.

As previously mentioned, in NSW new measures are aimed at aligning financial and reporting requirements with the ACNC, and we understand efforts are being made to align with other states (in particular Victoria) in regard to licensing conditions and enforcement provisions.

FIA acknowledges that all states and territories have a legitimate interest in knowing who is fundraising in their jurisdiction and this is why registers exist. Yet technology has enabled fundraising to cross borders. This has created red tape for charities who have to register their fundraising activity in multiple jurisdictions. Logically, if the 'blockage' in the path towards harmonisation and alignment among the states is a technological one, then technology should be used to solve it.

One option is to create a platform in which all states/territories can ensure that all organisations and individuals fundraising in their jurisdictions have registered in one place so that, if they receive donations from people in other jurisdictions, the money can be properly accounted for, and the risk of any fraudulent activity reduced. Such a platform already exists: the ACNC charity portal.

3. THE STATES ARE DETERMINED TO RETAIN JURISDICTION

The states and territories are integral to fundraising reform, but FIA does not detect any intention, particularly on the part of the largest states, to repeal their fundraising laws. Such repeal would be an absolutely essential precursor to the introduction any single, national regime if any real reduction in red tape were to be achieved.

4. ACHIEVING FUNDRAISING REFORM VIA HARMONISATION

FIA believes past failures of COAG to effectively address duplicative fundraising regulation are not a reason to abandon this avenue of reform. While imperfect, the COAG process remains the most likely to achieve cooperation among state and federal players.

As was pointed out by officials from the ACCC during the 7 November Senate hearing into Fundraising in the 21st Century, there have also been several COAG successes such as the Australian Consumer Law itself, health regulation and food standards. What is needed (and what FIA now sees evidence of) is the political will to find solutions.

Answers to consultation questions

1) Effectiveness of the current regulations

FIA notes that the regulations deal with only a small number of mostly administrative matters. From a compliance perspective, the bulk of compliance resides in the Act itself and the Conditions of Registration.

2) Current problems, issues and gaps relating to the operation of the regulations

As explained above, issues arise mainly from the failure to align regulations with those of other jurisdictions. This can be remedied by ensuring that regulatory reform at the state level is done in a collaborative way among states. The current wave of reform occurring in NSW, ACT and elsewhere provides the perfect opportunity to align regulatory standards and requirements while eliminating unnecessary application forms and other paperwork.

3) Potential areas of improvement in the new regulations

In the new regulations FIA urges Victoria to combine the contents of the existing regulation with the reformed Conditions of Registration. This would improve the Victorian fundraising regulatory regime by both simplifying it and by harmonising it with that of other jurisdictions.

End of Submission