16 September 2022

Treasury Briefing Paper – MasterCard Recurring Payment/Subscription Changes

Overview

The charity sector is significant, both in its size (1.38m people employed – 10.5% of the entire Australian workforce, 3.4m volunteers, and revenue of $176b), but also in terms of its impact. Charities provide vital services to millions of beneficiaries every year, often in partnership with government. Charities rely on charitable donations to provide those services to some of the country's most vulnerable citizens, and in 2020, Australians generously gave $12.7b in donations. As such, charities take their responsibilities to gather and spend funds in an ethical and responsible way.

As the four peak bodies representing the charity sector on this issue we have set out below why the changes being proposed by MasterCard are unnecessary and damaging to both charity donors, and beneficiaries. We have also provided background information on our organisations, along with our collective role in setting and enforcing high standards in charitable giving in section 4.

1. MasterCard's Standard Should Not be Applied to Charitable Donations

MasterCard states that: *'These Standards apply to acquirers of merchants conducting recurring payment transactions for subscription billing, where the cardholder has agreed for the merchant to provide ongoing and/or periodic delivery of a service, membership, physical products and/or digital goods. These requirements do not apply to payments for utilities (e.g., gas, electric, sanitation, heating oil, water), telecommunications, insurance policies, or existing debt (for example, vehicle loan or mortgage payments).'*

Under their own definition, charitable donations should not fall within the purview of this standard. Donors are neither paying for a good, nor service such as a membership. MasterCard has already provided a number of exemptions to other types of transaction, such as utility payments. It states in its own documentation that this decision relates to the level of regulation within that sector. We set out in the next section, the level of regulation to which charitable donations are already subject.

MasterCard also states that: *"These requirements will mitigate negative practices associated with the utilization of a subscription/recurring billing model, [and] were created after numerous engagements with the merchant and acquiring communities on how to effectively address this issue. Mastercard continued these conversations after the Standards were announced in September 2021."*

Following extensive discussions with colleagues globally, we can confirm that until August 2022, the charity sector had received no communication with MasterCard on this issue. While we welcome their extension of the implementation until March 2023, it is surely a recognition that no engagement was conducted with the charity sector. In our view, this further strengthens are argument that they have not conducted any proper research or modelling on either the impact of these changes on the charity sector, nor whether the 'negative practices' they reference are even present in the charity sector.

We believe that MasterCard should be required to demonstrate through the publication of its data and modelling, that there is a serious problem with charitable donations being taken under a recurring payment system. Donors are already able to cancel their regular donations with considerable ease, and the donor stewardship model adopted by charities makes this a key aspect of they seek to reconnect and re-engage with past supporters.

2. Charity Donors in Australia are Already Highly Protected

Charity donors in Australia are already protected by an extensive legal regulatory framework, which fundamentally negates the requirement for any further action from MasterCard. At the federal level, the Australian Consumer Law (ACL) already covers all charitable donations, as set out by the Australian Competition and Consumer Commission in its December 2017 Guidance. As stated by the ACCC:

"If your fundraising activities are in trade or commerce then you have several obligations that you must meet. Broadly, you must not engage in misleading or deceptive conduct or unconscionable conduct."

As per the legal framework that underpins the ACL, Australians can take further comfort from the fact that the states are also able to investigate and punish any conduct deemed to be in breach. This is further supported by the fact that every jurisdiction (bar the Northern Territory) has in place specific laws governing charity fundraising. These laws set out extensive registration, reporting, and regulatory requirements, which also cover the individual fundraisers' behaviour. A full list is set out at Annex A.

Charities operating in Australia are also required to register with the Australian Charities and Not-for-profits Commission. This means they are subject to the ACNC's Governance Standards and External Conduct Standards. Governance Standard 5, for example, states that the responsible persons of a charity must '*act honestly and fairly in the best interests of the charity and for its charitable purpose*'. While Governance Standard 3 means charities must act lawfully to help protect a charity's assets, reputation and the people with which it works. Taken together, this provides an explicit requirement on boards and senior management to ensure their fundraising is of the highest standard.

In 2020, PFRA conducted an analysis of the cost of adhering to all of the various regulatory requirements covering fundraising. *Below is the summary of our data.* In total, and this includes only our members, the cost was over $5.4m. Given that the majority (66%) of all charities have revenue of less than $1m, this means that the existing regulatory burden disproportionally affects small charities. 51% of charities for example have no paid staff and are run entirely by volunteers. The additional burden presented by MasterCard will harm those charities more than any others.

	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**

3. Impact on the Sector

We have conducted research with our collective membership, and the wider fundraising sector, to determine how this change would impact charities. 45 charities have so far submitted data, and we will continue to do so until we have as full a picture as possible. However, an early cut of the data shows the following:

Total Number of Donations Made Via MasterCard: 233,145

MasterCard Payments as a % of Total Card Payments: 31%

Total Value of Donations Made Via MasterCard: $9.8m

Average Set-up/Transition Cost per Charity: $5-$20K (dependent on CRM platform)

Ongoing Annual Costs per Charity: $30-$120,000K (dependent on no. of donors)

The type of charities that receive regular donations via card payments, broadly tend to be larger ($1m-$100m), and their share of the $12.7b donations is $11.1b (using the ACNC's published figures). If we assume that MasterCard payments are similar across all charities, then over $3.4b of payments each year could be subject to these new requirements. Therefore the potential transition and ongoing costs are also likely to be extensive, and divert charities' resources away from helping beneficiaries, to meeting administration and regulatory requirements.

4. Australia has an Existing and Effective Self-Regulatory System for Charitable Donations

The Public Fundraising Regulatory Association is the self-regulatory body for face-to-face fundraising (fundraising that takes place on the street, door-to-door, and private sites, such as shopping centres). We are charity led, and funded, and are governed by a board of un-paid, volunteer directors drawn from our charity members and fundraising agencies. Our staff enforce the PFRA Standard, which sets out a series of rules and best practice (above the legal requirements).

The PFRA issues financial penalties for breaches of the code; investigates and adjudicates on complaints of poor practice; requires mandatory training, and accreditation, for members; and manages the Fundraising Register. This Register allows us to manage every F2F fundraiser in Australia and New Zealand, and de-register any person found to have committed serious misconduct. It is the only programme of its kind in operation, anywhere in the world.

Founded in 1972, FIA is the largest representative body for the $12 billion fundraising sector. We have over 4000 members, including charities, non-profits, fundraising professionals, and suppliers that provide services to them. FIA advocates for the interests of the sector, administers a self-regulatory Code, educates fundraising practitioners, promotes research, and creates forums for the exchange of knowledge and ideas.

The FIA Code is the self-regulatory regime for the sector to which Members commit to adhere, and it is informed by the International Statement of Ethical Principles. The FIA Code and its accompanying suite of Practice Notes on various areas of charitable fundraising define high standards of conduct and provide guidelines for ethical, best-practice fundraising. An independent body, the Code Authority, measures compliance with the FIA Code using compliance tools such as complaints handling and mystery shopping. Non-compliance triggers additional training and education for fundraising organisations.

As a function of the FIA Code, FIA mystery shops different areas of charitable fundraising activities to monitor compliance with the FIA Code and our suite of Practice Notes. In over 9000 monitoring interactions including observing compliance with donor requests, our results show no concern on recurring donations. Further, donors lodge complaints against fundraising organisations with FIA, and although we receive complaints from donors about other matters, no complaints around recurring donations have been filed.

The Australian Council for International Development (ACFID) is the peak body for Australian non-government organisations involved in international development and humanitarian action.

Founded in 1965, ACFID currently has 130 full members and 21 affiliates operating in more than 90 developing countries. The total revenue raised by ACFID's membership from all sources amounts to $1.86 billion (2018-19), $701 million of which is raised from over 1.26 million Australians. ACFID's members range between large Australian multi-sectoral organisations that are linked to international federations of NGOs, to agencies with specialised thematic expertise, and smaller community-based groups, with a mix of secular and faith-based organisations.

ACFID members must comply with the ACFID Code of Conduct, a voluntary, self-regulatory sector code of good practice that aims to improve international development and humanitarian action outcomes and increase stakeholder trust by enhancing the transparency, accountability and effectiveness of signatory organisations. Covering 9 Quality Principles, 33 Commitments and 92 compliance indicators, the Code sets good standards for program effectiveness, fundraising, governance and financial reporting. Compliance includes annual reporting and checks. The Code has an independent complaint handling process.

The Community Council for Australia is an independent non-political member-based organisation dedicated to building flourishing communities by enhancing the extraordinary work undertaken by the charities and not-for-profit sector in Australia. CCA seeks to change the way governments, communities and not-for-profits relate to one another. It does so by providing a national voice and facilitation for sector leaders to act on common and shared issues affecting the contribution, performance and viability of NFPs in Australia.

CCA has 75 full financial members from across the charities sector representing many of Australia's leading charities, as well as a number of associate members. Our Chair, Rev Tim Costello leads a Board of Directors drawn from across the charity sector, including Deputy Chair and CEO, of Life Without Barriers Clare Robbs.

5. Our Requests to Treasury

That MasterCard be required to provide data and other information relating to the charitable donations made in Australia and New Zealand that support their decision to Treasury.

That MasterCard be required to conduct a full regulatory impact assessment of this change, including transition costs and ongoing costs, in consultation with the charity sector, and present this to Treasury.