



# ARTS LAW CENTRE OF AUSTRALIA

*Submission to the Senate Select  
Committee on Charity Fundraising in  
the 21st Century*

**1 August 2018**

## ABOUT THE ARTS LAW CENTRE

The Arts Law Centre of Australia (**Arts Law**) welcomes the opportunity to respond to the Charity Fundraising in the 21<sup>st</sup> Century Senate Select Committee's Terms of Reference.

Arts Law is Australia's only community legal centre for the arts sector. Our area of expertise is the provision of legal advice regarding intellectual property (**IP**) matters affecting artists and arts organisations. Arts Law provides business advice, professional development resources, education and advocates on law and policy reform for the benefit of the creative sector.

Artists in the Black (**AITB**) is a specialist program at Arts Law and facilitates legal advice and information about legal issues for Aboriginal and Torres Strait Islander artists and communities. We also advocate on issues relating to cultural appropriation. Our experience is that Indigenous Cultural Intellectual Property (**ICIP**) does not have adequate protection under copyright law and that Indigenous artists are in a sadly unique and vulnerable position in relation to enforcing IP rights in their works which are often of significant cultural and community value.

Arts Law is a non-profit organisation which derives no direct financial benefit from the trade in the works and IP rights of the artists we advise. This positions us to provide independent comment, though clearly with artists' interests foremost in our reasoning.

## Charity Fundraising in the 21<sup>st</sup> Century

**Point 1: Arts Law welcomes this inquiry into fundraising.** Fundraising presents a significant source of regulatory burden for our organisation. We hope that government will simplify the fundraising regime for us and for other organisations providing valuable community services in the charity and not-for-profit sector.

Arts Law complies with the operational and reporting obligations imposed by its registration as a charity with the ACNC and as a community law centre accredited with the National Accreditation Scheme overseen by the National Association of Community Legal Centres. Our records are publicly viewable and transparent.

As an organisation with limited core funding and with a desire to serve as many artists as we can who need legal support, we are keen to undertake fundraising activities. Fundraising enables us to enhance and amplify our services to artists and arts organisations, including extending the reach of our services to more regional and remote areas where artists have dire need of legal support but limited access to such support in their communities.

Our fundraising activities include:

- a general donations program
- online crowd-funding campaigns
- art auctions
- concerts
- raffles

We believe the current fundraising laws are outdated. They do not take into account the undeniable shift to digital platforms for fundraising (and other professional activities) and the consequent increasing irrelevance of geographic borders to organisations like Arts Law. Instead they impose legislative barriers to our fundraising activities as different fundraising laws and requirements operate in each State and Territory. To be sure we are compliant in our fundraising activity we have

to work through seven different laws involving more than 133,000 words and 480 pages of legislation and regulations, as well as extensive case law, policy and codes of conduct.

A recent experience demonstrates our problem with disparate laws in operation in Australia. We wanted to run fundraising activity in QLD. For this we needed to seek registration under the *QLD Collections Act 1966* for authorisation to fundraise. This involved seeking a resolution from our Board who are based in different states, and obtaining the necessary signatures from representatives of the Board, and building in time for the authorisation to be obtained. For a small arts organisation that relies on limited resources, this represented a real administrative burden, detracting from what staff could otherwise have been doing, and costing money for the costs of sending necessary documents to the Board for their signatures and then to the QLD government body. Then there's the reporting required for any funds we raise under the authorisation.

Most we think would agree that this is overblown bureaucracy for fairly uncontroversial activity, and for fairly modest financial return.

**Point 2: We agree with the solution put forward** by Justice Connect and #fixfundraising partners to #fixfundraising. This solution will deliver **Stronger, Smarter, Simpler** laws to support us (charities), and fundraisers and donors.

1. Clarification and minor amendment to the Australian Consumer Law: Clarification and minor amendment to the Australian Consumer Law to ensure its application to fundraising activities is clear and broad
2. Repeal of fragmented State & Territory laws: Repeal state and territory laws, and State and Territory regulators instead focus on regulating conduct using the Australian Consumer Law or other general laws to take action for misconduct
3. Guidance (code) to improve conduct (regulators and self-regulatory): A short plain English, mandatory code of conduct for all fundraisers, supported by the work of self-regulatory bodies

This solution will deliver Stronger, Smarter, Simpler laws to support us (charities), and fundraisers and donors.

- Stronger: Using the Australian Consumer Law (supported by a conduct code) to put protection of all donors at the heart of all fundraising regulation across the nation (regardless of method used to fundraise)
- Smarter: Principles based regulation (backed by national process for reform) is more likely to capture innovation and changes to methods of fundraising, without territorial limitations
- Simpler: Creating a truly national system of regulation by removing duplicate and burdensome requirements for registration (licensing) and reporting, allowing for ethical conduct to be central to all fundraisers and fundraising activity

**Point 3. The fundraising problem – and the need for a national and fit-for-purpose fundraising regulatory regime - has been well documented**

- 2008: *"The committee recommends that a National Fundraising Act be developed following a referral of powers from states and territories to the Commonwealth ... It should apply nationally ... it should clearly regulate contemporary fundraising activities such as internet fundraising"* Senate Standing Committee on Economics, Report of the Inquiry into the Definition of Charities and Related Organisations (December 2008)
- 2010: *Fundraising legislation differs significantly between jurisdictions, adding to costs incurred by the NFP sector. Harmonisation of fundraising legislation through the adoption of*

*a model act should be an early priority for governments.* Australian Productivity Commission Contribution of the Not-for-profit Sector 2010 p xxiv

- 2016: “Overwhelmingly, fundraising is the source of the greatest amount of regulatory burden for charitable organisations ... the annual regulatory burden associated with fundraising regulations is estimated at approximately \$13.3 million per year across the sector” Deloitte Access Economics, ACNC: Cutting Red Tape: Options to align State, Territory and Commonwealth charity regulation, Final Report, 23 February 2016)
- 2016: Fundraising regulation has not kept pace with new forms of fundraising, particularly as online campaigns for funds have grown through the use of third party websites. The current arrangements treat fundraising as an activity isolated to one state or territory, when, in reality, even small organisations may attract interest nationally and internationally through online channels such as crowdsourcing website Deloitte Access Economics, ACNC: Cutting Red Tape: Options to align State, Territory and Commonwealth charity regulation, Final Report, 23 February 2016)
- 2018: Given that charitable fundraising is now a cross-border and international phenomenon, particularly through the internet, a single, unified Australian statutory regime would be of very significant benefit”- Report of the Inquiry under the *Charitable Fundraising Act 1991* (NSW), Feb 2018

**Point 4. What we need** is for all Australian governments to **take action to fix the problem. They must make it a priority.** They must work together to provide us, other charities and other not-for-profits and the donating public with a national fundraising regulatory regime. The Federal Government can take a lead under the Australian Consumer Law. It is simply not good enough to do nothing. It's time to *#fixfundraising*.

## CONCLUSION

Arts Law has had the benefit of seeing the submission drafted by Justice Connect and relied on it heavily in our submission. We share Justice Connect's concerns and the proposed solution articulated by it.

We are very concerned at the very real administrative burden the current complex fundraising laws put on organisations like Arts Law which operate across borders. We exist on very slim margins and this burden diminishes our capacity to fundraise and thereby amplify our activity. We already have extensive governance requirements as a charity registered with the ACNC and as an accredited Community Legal Service. We need rationalisation and minimisation of red-tape.

For these reasons we submit to government the fundraising laws in Australia should be updated, with fundraising regulated under the Australian Competition Law as outlined in Justice Connect's submission.



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