



# Proposed cross-border recognition model for charitable fundraisers

A submission to the:  
**Charitable Fundraising National Working  
Group**

Prepared by:  
**yourtown, September 2020**

Authorised by:  
**Tracy Adams, CEO, yourtown**



## **yourtown services**

**yourtown** is a national organisation and registered charity that aims to tackle the issues affecting the lives of children and young people. Established in 1961, **yourtown's** mission is to enable young people, especially those who are marginalised and without voice, to improve their life outcomes.

**yourtown** provides a range of face-to-face and virtual services to children, young people and families seeking support. These services include:

- Kids Helpline, a national 24/7 telephone and on-line counselling and support service for 5 to 25 year olds with special capacity for young people with mental health issues
- Social enterprises, training programs and employment services that aim to tackle youth unemployment and disadvantage.
- Education engagement programmes supporting young people at risk of disengaging from formal education early.
- Accommodation responses to young parents with children who are at risk and to women and children seeking refuge from family and domestic violence
- Young Parent Programmes offering case work, individual and group work support and child development programs for young parents and their children
- Parentline, a telephone and online counselling and support service for parents and carers
- Mental health service/s for children aged 0-11 years old, and their families, with moderate mental health needs

**yourtown** is constituted as a Public Company Limited by Guarantee. Our organisation is currently one of the largest charitable youth services throughout Australia, employing over 700 staff across four states. We currently have 50 services in 36 locations across Queensland, New South Wales, South Australia and Tasmania in areas of high socio-economic disadvantage.

**yourtown** has a significant fundraising program. In calendar year 2019, we received an income of \$66.7 million derived from community support of **yourtown** art unions, donations and corporate giving. This places **yourtown** within the top 2,000 charities which collectively gather 79% of all charity income.

Fundraising covers 60% of our costs of delivering services, with 40% derived from government fee for service contracts and grants. Consequently, our charitable fundraising program enables us to deliver quality and effective services in areas where government funding has been traditionally limited and either supplements government funding and/or funds new innovative services. Our self-funded programs include our domestic violence refuge, accommodation for young parents at risk and, predominately, Kids Helpline.

## Introduction

**yourtown** strongly welcomes the work being undertaken by the Charitable Fundraising National Working Group. As the Discussion Paper notes, there have been numerous reviews on this issue over many years and we are hopeful that progress looks finally set to be made to reduce fundraising regulation.

Charities play a key role in Australian society. Charities funded by civil society are responding to the gaps in government funded service provision. In an age where governments respond to community concerns regarding unmet social need by arguing that their income is finite, it is charities that are increasingly providing a safety net, including to society's most vulnerable - children and young people who experience disadvantage.

Despite this important role, charities are confronted by a significant regulatory burden in order to raise funds to meet service gaps, which seems to stem from a position of mistrust rather than support for our work. Fundraising regulations national charities must meet are complex, duplicative and overly bureaucratic, and given the importance of online fundraising for charities today rings true even for organisations operating in one jurisdiction. National harmonisation coupled with red tape reduction is long overdue.

With differing national, state and territory fundraising legislation, **yourtown** invests a significant amount of resources into ensuring that we meet requirements that could be better invested into work directly supporting our mission. We have estimated our total costs in meeting all fundraising regulation at \$240,500 per annum. As has been widely reported, the annual regulatory burden associated with fundraising regulations has been estimated at approximately \$13.3 million per year across the sector.<sup>1</sup> This is a significant diversion of funds donated by the public in good faith to support charitable causes, for which the public are generally unaware.

Furthermore, the complexity of the regulatory system also makes it harder for charities to be transparently held to account and compared by those who donate, and by all other stakeholders. Those who give to charitable causes in Australia should be able to easily access information relating to charities and be assured that, no matter where they give their funds in the country, the same standards are met nationally. It is our view, therefore, that the Australian, state and territory governments partner to reduce the regulatory burden on charities through the harmonisation of legislation and regulation between jurisdictions and the development of a national regulatory framework.

With the Australian Charities and Not-for-Profits (ACNC) now established as a key part of regulatory framework, **yourtown** considers that the time is right to move further towards a national the one-stop shop regulator of charities and not-for-profits, and we therefore support the proposal to remove the need for ACNC-registered charities to apply to individual jurisdictions for a fundraising licence. Indeed, the bureaucratic burden of meeting the fundraising regulations covered in the Discussion Paper has already been noticeably reduced as some states have moved to a model similar to that proposed. However, we caution against the recognition model supporting flexibility for individual jurisdictions to apply additional conditions for deemed

---

<sup>1</sup> Deloitte - file:///C:/Users/lclarke/Downloads/deloitte-au-economics-cutting-red-tape-align-charity-regulation-230216.pdf

authorisation as this is likely to defeat the purpose of harmonisation and recreate the existing system. A move to placing more trust in ACNC registration should be supported by appropriate resourcing so the ACNC can ensure that it is equipped to provide national, state and territory governments and the wider community with the information and transparency they need.

Whilst we support the direction of the proposed model, there is a glaring oversight that must be addressed if Australia is to move to more efficient and effective fundraising regulation, and that is the lack of inclusion of regulations governing fundraising conducted through charitable gaming (e.g. charitable art unions/lotteries) in the recognition model. **yourtown** fundraises 94% of all its fundraising, and 60% of its revenue through 16 art unions. As a result of this activity, we commit significant resources to meeting the regulations of 9 jurisdictions, entailing obtaining a permit in every jurisdiction for every art union we run. **yourtown** therefore urge the Working Group to consider national harmonisation of regulation relating to fundraising conducted through charitable gaming also.

In short, **yourtown** considers the Discussion Paper is a significant step in the development of a legislative framework fit for contemporary fundraising but, as we set out in our submission, there is further scope for increased national harmonisation and centralisation of regulatory responsibility coupled with significant reductions in red tape and associated costs.

## Consultation questions

### Q1. Does the proposed deemed registration model have benefits for your organisation? What are these?

National charities that operate across nine separate jurisdictions have a mountain of red tape to administer. **yourtown** supports the proposed model in terms of ACNC-registration automatically providing charities with local fundraising authorities in every participating jurisdiction. We see the following potential benefits for our organisation through this harmonisation of these diverse state and territory regulations in this way:

- **Reduced bureaucracy and resource commitment** relating to the fundraising activities covered under these regulations, such as community, corporate and sponsored events and workplace giving, donations and bequests. The tasks involved in meeting regulations include; periodic registration and renewal; annual financial reporting and recording and; understanding and remaining up-to-date on regulations and regulatory reviews and changes. These tasks involve several staff across departments. We set out in our response to Q3 the details relating to this issue.
- **Greater focus on and achievement of our mission** since we will be able to commit the resources saved through regulatory harmonisation to funding frontline services.
- **Greater understanding** of regulation and its expectations by all stakeholders, including charities, donors and the wider community.
- **Improved compliance** by the sector would be expected as a result of greater understanding of the regulatory system.
- **Improved confidence** in the sector by all stakeholders through greater understanding of the regulatory system and increased ratios of donations on the delivery of our mission. This would be helpful for residents of the Northern Territory where there is no regulation governing these activities.
- **Greater transparency** in view of the simplification of the system.

However, the proposed model only covers a small proportion of our fundraising activities (6%) and hence, as we explain in responses to questions below, we would like to see the proposed model cover fundraising conducted through charitable gaming in some way. In addition, further changes to the system and to the role of the ACNC are required to optimise the benefits we set out above, and we also detail these in subsequent question responses.

### Q2. Are there other ways that the proposed deemed registration model could be achieved more efficiently and effectively?

We support the cross-border recognition model but it has a significant regulatory gap in terms of fundraising in that it does not include fundraising conducted through charitable gaming. For **yourtown**, fundraising through charitable gaming represents 94% of all our fundraising, and 60% of all revenue, which is achieved through 10 luxury prize home art unions and 6 luxury car art unions every year. This funding stream is chiefly responsible for delivering Kids Helpline and therefore Kids Helpline counsellors' ability to respond to some 150,000 contacts from children and young people with concerns every year. In addition, these monies are used to largely support, for example, our domestic violence refuge in Queensland and accommodation in NSW for young parents at risk.

The absence of proposals to harmonise legislation covering arts unions means that additional, and indeed the most significant bureaucratic burden and costs associated with meeting fundraising regulations for us remain and significant efficiencies are left unexplored and achieved. The regulations we must currently meet to conduct charitable art unions/lotteries are:

Jurisdiction	Legislation/regulation
ACT	Lotteries Act 1964
NSW	Lotteries and Art Unions Act 1901 <ul style="list-style-type: none"> <li>• Lotteries and Art Unions Regulation 2014</li> </ul>
NT	Gaming Control Act <ul style="list-style-type: none"> <li>• Gaming Control (Community Gaming) Regulations</li> </ul>
QLD	Charitable and Non-Profit Gaming Act 1999 <ul style="list-style-type: none"> <li>• Charitable and Non-Profit Gaming Regulation 1999</li> <li>• Charitable and Non-Profit Gaming Rule 2010</li> </ul>
SA	Lottery and Gaming Act 1936 <ul style="list-style-type: none"> <li>• Lottery and Gaming Regulations 2008</li> </ul>
TAS	Gaming Control Act 1993 <ul style="list-style-type: none"> <li>• Gaming Control Regulations 2014</li> </ul>
WA	Gaming and Wagering Commission Act 1987 <ul style="list-style-type: none"> <li>• Gaming and Wagering Commission Regulations 1988</li> </ul>
VIC	Gambling Regulation Act 2003 <ul style="list-style-type: none"> <li>• Gambling Regulations 2015</li> </ul>
AUS	Interactive Gambling Act 2001 <ul style="list-style-type: none"> <li>• Interactive Gambling Regulations 2001</li> </ul>

Not only do we have to ensure that we keep up-to-date, understand and meet the requirements of every regulation in every jurisdiction in conducting art unions, but state-based legislation relating to fundraising conducted through gaming require individual event-based permits. As we operate 16 charitable art unions annually, this means we must obtain 16 individual permits from all 8 jurisdictions. In addition, we must apply for permits 10 weeks prior to an art union promotion and have ensured that we have already secured the home, agreed landscaping costs and all of its items as we must specify in our permit application the exact prize value. These undertakings require significant resourcing (as we set out in Q3) and diversion of funds to cover these costs therefore, and yet do not provide any further value to supporters or the wider community given they are duplicative.

In addition, the administration of this regulatory framework varies across jurisdictions. For example, what details needs to be on an art union ticket, who can participate in an art union draw, how reportable new return is calculated (e.g. either on the total return from the art union or the return from a particular state jurisdiction) all vary across jurisdictions.

To optimise efficiency and effectiveness, fundraising legislation covering charitable gaming must be harmonised nationally. There is also an opportunity to reduce red tape by negating the need to get a permit every time an art union activity is to be conducted, given most, if not all, organisations have at least an annual plan for fundraising activities.

### **Q3. Will the proposed deemed registration model reduce costs and red tape for charitable fundraisers? Can you identify the specific cost savings?**

In the tables below, we set out the specific costs we have identified for our organisation in meeting the many fundraising regulations.

The proposed deemed registration model will reduce some costs related to diverse regulations (\$20,000), however, as can be seen significantly greater costs would be saved through the inclusion of fundraising regulation related to charitable gaming (\$220,00) into the model also.

#### **Estimated costs associated with meeting fundraising regulations covered in the Discussion Paper**

Item	Cost
<b>Financial auditing and reporting</b>  Some jurisdictions require annual fundraising return, and some require them to be reviewed by an independent financial auditor.	\$7,500
<b>Acquittal return costs</b>  NSW requires acquittal return to be separated into NSW and national fundraising	\$6,000
<b>Administration</b>  This includes coordination tasks undertaken by our fundraising team and training/keeping up-to-date on regulations	\$1,500
<b>Banking costs</b>  Administrative cost of maintain a Victorian bank account for Victorian fundraising as per requirements	\$5,000
<b>TOTAL</b>	<b>\$20,000</b>

**Estimated costs associated with meeting regulations to undertake fundraising by art union draws**

Item	Cost
<b>Draw costs – 16 draws at \$500 per draw</b>  This covers an independent witness to be present at the draw as required by some jurisdictions	\$8,000
<b>Lottery Audit Costs</b>  Financial audits after each draw is required to meet Victorian and South Australian regulations	\$9,000
<b>Administration costs for application and acquittal of permits</b>  SA, NSW, VIC and ACT all require individual lottery permit applications while QLD requires an annual application. All applications require different content.	\$50,000
<b>Prize valuation costs</b>  States have varying requirements regarding engineer reports and independent prize valuations	\$30,000
<b>Advertising costs</b>  This include multiple versions of press/radio/TV advertising of the draw to meet terms and condition requirements of each jurisdiction	\$20,000
<b>Collateral costs</b>  Ensuring printed materials meet the requirements of each jurisdiction, including cost of proofing and regular research related to keeping up-to-date with regulation	\$30,000
<b>Permit and Collection costs</b>  As above	\$15,000
<b>Management costs</b>	\$58,500



Maintaining currency with all of the various jurisdictions	
<b>TOTAL</b>	<b>\$220,500</b>

Costs totalling \$240,500 per annum, though currently necessary to ensure compliance, is excessive and reduces the financial return from fundraising and the positive social impact from giving behaviour. If we were able to divert this current expenditure away from this activity, we could enable Kids Helpline counsellors to respond to an additional 2,963 telephone contacts from children and young people, supporting around 1,363 contacts therapeutically in responding to their concerns about mental health, suicide and self-harm.

**Q4. Do you expect there will be any limitations or unintended consequences of the deemed registration model?**

**yourtown** would like to see further detail in relation to the model's inclusion of local flexibility for jurisdictions to apply additional conditions for deemed authorisation. It is not clear why this is necessary, and we fear if local variation is accepted then over time the existing system will be recreated and run counter to the purpose of harmonising regulations. If flexibility is pursued then it should only occur under strict and explicit exceptional circumstances and there should also be guiding principles as to what additional conditions can be applied by individual states and territories must be nationally agreed.

To optimise the value of the proposed changes, some additional changes to the system are required. These include the harmonisation of legislation relating to fundraising through charitable gaming as discussed in our response to Q3, as well as the issues we identify in Q5.

**Q5. Are there any issues that are not raised in the Discussion Paper that relate to the proposed deemed registration model? If so, what is the issue and how could it be addressed?**

As an established part of the regulatory system now, it would be appropriate to streamline harmonisation so that ACNC registration becomes a trusted source to which state and territory governments can look (and many increasingly are) to support their regulatory systems. As a registered member of the ACNC we must provide and update information relating to our activities, governance and annual finances. However, to optimise the accessibility, accuracy and transparency of this information, we would ask, for example, that ACNC reviews the standard drop downs it has for charitable activities so we might appropriately present the services we provide, as well as the standard drop downs in the Annual Information Statement, the latter not recognising fundraising through charitable gaming as a specific income stream, which means our art union fundraising is recorded as 'goods and services'.

In addition, and importantly, given it is a relatively easy task to set up a charity, we would ask that the Working Group considers what additional information charities might need to provide publically to the ACNC. We suggest that charitable organisations be asked to demonstrate the

impact of their work through providing evidence-based impact measures. A move to sharing this information must consider how very different charities can be compared on these measures. The aim of such additional information would be to host key information on charities in one place, help instil public confidence in charitable activities and help inform donors' decision-making about their giving. It would predominately be drawn from the existing activities charities undertake so as to not increase the regulatory burden.

Undertaken in an 'organised and continuous' way', **yourtown's** charitable fundraising activities are already subject to Australian Consumer Law. We consider that Australian Consumer Law provisions applicable to the charity sector should be enforced by the ACNC.

**yourtown** is a member of the Fundraising Institute Australia (FIA) and as such meets the FIA Code 2017, a self-regulatory regime that seeks to raise the charity sector's profile and credibility and reputation with donors, government and the community.<sup>2</sup> All members of the FIA must comply with the Code, which has been informed by the International Statement of Ethical Principles. A code authority administers the Code and is responsible for ongoing monitoring, complaints adjudication and compliance training.

The code covers:

- Transparent and ethical behaviour
- Conduct towards and communication with donors
- Conduct towards and communication with beneficiaries, including people in vulnerable circumstances
- Professional engagement with suppliers

The new national framework for charities and fundraising should consider how it uses and embeds this code. In addition, it may consider the Association for Data-driven Marketing and Advertising Code of Practice 2018 and the Australian Association of National Advertisers Code of Ethics, which we follow.

The ACNC should also have regulatory powers over third party fundraising practices. Some third party fundraisers have been unscrupulous in their practices, exploiting donors giving in good faith to good causes and damaging the reputation of the whole sector in the process. Regulation protecting the public from fraudulent fundraising undertaken by third parties is urgently needed, including face-to-face and telemarketing activities (the latter is often conducted overseas and in a way that is not compliant with Australian law and industry standards). This should include public disclosure of the commissions charged by third party fundraisers, the employment conditions of fundraisers and the fundraising activities undertaken, and measures to ensure that the sponsoring charity takes primary responsibility for the conduct of third party fundraisers.

Ultimately, we support the ACNC becoming the one-stop shop regulator for charities and in time would like to see it appropriately resourced to make this a reality. This should include investigation and enforcement responsibility consistent with its current role as regulator and watchdog of nationally incorporated charities. Current investigation and enforcement models are inadequate, state-based and have been designed for traditional fundraising activities such as direct marketing

---

<sup>2</sup> <https://fia.org.au/fiacode/>

and door knock appeals and not, for example, online fundraising which transgresses state boundaries.

In addition, we consider that given past efforts to streamline the diverse regulations of Australian governments are time-consuming and ultimately meet with limited success, the increasing importance of online fundraising which transcends the boundaries of jurisdictions and that Australians give to a range of causes nation-wide, that the Australian Government should become the sole legislator of charities and fundraising.

National regulation overseen by a national regulator with appropriate powers will help; improve the accountability, transparency and confidence in the charitable sector across Australia; reduce the costly bureaucratic burden on charities so they might better focus on their missions and; ensure the system recognises and accommodates an increasingly borderless sector and society.

### **Recommendations**

The federal, state and territory governments should collaborate to deliver the following elements required in the development of a fit-for-purpose, regulatory framework:

- All powers relating to the registration and regulation of national charitable organisations and their fundraising should be transferred to the federal government
- Regulation of charitable art unions/lotteries should be considered for national harmonisation
- All current state and territory legislation and regulation pertaining to national charities and their fundraising should be repealed and replaced by a national framework
- The ACNC should be the sole register and regulator of national charities in Australia.