

## ***DRAFT SECOND READING SPEECH***

***HON Michael Ferguson MP***

### **Charities and Associations Law (Miscellaneous) Amendment Bill 2024**

Honourable Speaker, I move that the Bill now be read a second time.

This Bill will amend the *Collection for Charities Act 2001* and the *Associations Incorporation Act 1964*. The Bill will align Tasmania with national registration and harmonisation reforms, reducing the regulatory burdens on charities, particularly those operating and reporting across jurisdictions and will also strengthen enforcement powers to enhance public confidence in the charitable fundraising sector.

This Bill is substantially the same as the Bill that was before this place last year, and I would like to thank the former Ministers holding the Consumer Affairs portfolio for all their work on progressing this important reform.

Honourable Speaker, when Tasmanians donate generously to causes important to them, they need confidence that their donations are being used for its intended purpose and their generosity is not misplaced.

The nature of charities and fundraising in Australia has undergone significant transformation in recent times. Charities have expanded in size, complexity and operation and are conducting activities across multiple jurisdictions. In addition, fundraising has been progressively integrated into online platforms including third party websites. This Bill ensures that our legislation remains contemporary and in line with the changing nature of how charities operate.

Since 2001 the *Collection for Charities Act 2001* has only received consequential amendments on a handful of occasions, the most recent being in 2011. The way in which charities operate has changed over the past twelve years largely due to advancements in online access and activities.

Each Australian state and territory except the Northern Territory currently has legislation that regulates fundraising activities. As requirements vary between jurisdictions, organisations that operate across borders need to comply with the registration, reporting and ongoing compliance requirements of each jurisdiction in which they operate, which creates complexity and at times, unnecessary regulatory burden for those organisations.

Honourable Speaker, reducing red tape for charities will ultimately lead to a reduced cost for charities to operate administratively across jurisdictions meaning a greater percentage of donations will be used for the intended cause.

All jurisdictions have agreed to take steps to streamline and harmonise the broad conduct requirements of charitable fundraising and these steps will give charities and donors a clear understanding of appropriate conduct.

Our Government has been working with all jurisdictions and the Australian Charities and Not-for-profits Commission to ensure our legislative framework is contemporary and fit-for-purpose.

Honourable Speaker, I would like to thank the various groups and individuals who contributed to the development of the Bill through the consultation process that occurred during 2023. A number of key stakeholders provided submissions and engaged with the Department through briefings. The interest and support from those stakeholders clearly shows the need for these important amendments and harmonisation through the national fundraising principles with other jurisdictions. Various improvements were made to the Bill in consideration of their feedback.

Before I turn to the Bill in detail, I will note it was originally introduced into Parliament in September last year and was part debated in the House of Assembly on 16 November 2023. It later lapsed due to the calling of the 2024 Tasmanian State election. During the debate, an amendment was proposed by my colleague, the Hon Madeleine Ogilvie, to extend the time for proceedings to be brought. This amendment is now incorporated into the Bill. This will require that action be taken in a timely manner within six months from the time when the matter of complaint came to the attention of the Commissioner, but also provides that offences that may take time to detect or to be reported within the last three years can still be dealt with. This approach reflects section 20 of the *Consumer Affairs Act 1988*. Importantly, that provision now also clarifies who brings proceedings, and for body corporate liability. Where a body corporate is charged with an offence against the Act, any person who is concerned or takes part in the management of the body corporate may be charged with a like offence. If the body corporate is convicted of an offence, such a person may also be convicted of the like offence unless the person satisfies the court that the offence took place without their knowledge or consent.

### ***Revenue raised in Tasmania from donations and bequests***

Honourable Speaker, it is important to understand the number of charities operating in Tasmania and the impact those charities have. The latest reporting data from the ACNC, highlights that in 2020, there were 1,100 (one thousand one hundred) registered charities in Tasmania, noting that charities that report as part of a group were excluded from the ACNC's analysis.

The revenue raised by these Tasmanian charities through donations and bequests was \$101 million in 2020 and \$107 million in 2021.

The 2020 data showed that Tasmanian charities employed 28,728 (twenty eight thousand seven hundred and twenty eight) staff and these charities were supported by 46,665 (forty six thousand six hundred and sixty five) volunteers.

These revenue, staffing and volunteer figures are not insignificant and demonstrates the need for Tasmania's legislation to be fit for purpose and provide an appropriate framework to ensure public confidence in making charitable donations and additionally, ensure confidence in the ongoing sustainability of the charitable fundraising sector.

I will now discuss the national fundraising principles.

### ***National Fundraising Principles***

The 16 national fundraising principles will require charitable organisations to ensure that their employees, volunteers, contractors and anyone else who they engage or arrange to raise funds on their behalf adhere to the principles.

Honourable Speaker, the national fundraising principles will be implemented through a new mandatory Code of Practice to be made as regulations under the *Collection for Charities Act 2001*.

These principles in general terms cover a range of areas.

They require employees, volunteers and contractors of a charity to always explain the purpose of the charity they are fundraising for, in addition to how the funds will be used.

These individuals must be clearly, and individually identifiable by members of the public. This means that individuals fundraising on behalf of an organisation must display identification that details their name, whether they are a volunteer, employee, contractor or acting in some other capacity on behalf of an organisation and the organisation's name and contact details.

Written records must be kept by organisations who fundraise, detailing their activities in a clear and legible way so that those records can be inspected at any time.

Clear principles guiding the behaviour of individuals soliciting donations are clearly defined. An organisation, and its representative must acknowledge and comply with an individual's refusal to donate, or advice that they wish to limit solicitation, or do not wish to receive future solicitations. They must also respect a request for contact from the organisation to be made at a later time, or by different means.

As is the case under the Act, there are limits on times at which soliciting can be undertaken. Door to door and telephone fundraising is prohibited before 9am

and 5pm on a weekend. It is also prohibited before 9am on a weekday. The latest time allowed for soliciting on a weekday is 6pm, if by door to door, or 8pm by telephone. Fundraising activities must not be carried out on a public holiday unless that public holiday is closely connected with the organisation's charitable purpose. An example of this is the Anzac Day public holiday and fundraising activities being undertaken by an organisation such as Legacy. Anzac Day is a date of significant reverence for most Tasmanians and these principles ensure that those Tasmanians who celebrate and reflect on the sacrifice and service of our servicemen and women are not disturbed by fundraising efforts of organisations whose charitable purpose is not connected with that day.

Individuals who undertake fundraising activities must not mislead, deceive or use false or misleading information in soliciting for donations. Tasmanians must have certainty that their donations are being used for the purpose that is being represented by the individual or organisation soliciting.

An organisation or their representative may not place undue or unreasonable pressure on an individual or act unconscionably in any way in an effort to obtain a donation. It is important to note that this principle covers not only unreasonable and unconscionable actions in obtaining a donation, but also covers the conduct of those attempting to obtain a donation, whether successful or not.

Honourable Speaker, I recognise that Tasmanians willingly donate to various organisations who fundraise and it is essential that advantage is not taken of the trust, apparent need for care and support, an individual's capacity or decision making ability or an individual's vulnerability.

Our Government will take all steps necessary to protect vulnerable Tasmanians and this Bill ensures that those individuals cannot be coerced, manipulated or forced in to donating to an organisation or an individual representative. These protections are covered by the national fundraising principles.

Those who undertake fundraising activities must be clear whether a donation is a once off payment or if the donation is ongoing. In the event it is ongoing, a clear explanation must be provided on how to end the ongoing donation.

Importantly, commercial fundraisers who have been engaged to fundraise on behalf of an organisation must never accept a donation without clearly explaining to the potential donor that they are part of an organisation that receives profit from fundraising, as well as how they are paid.

The principles also place requirements on the administration of charitable organisations who undertake fundraising in Tasmania.

For instance, charitable organisations must undertake appropriate due

diligence when engaging third parties to assist, support or deliver services on their behalf.

Written records must be made and kept of the total funds raised and the purpose for which those funds are used.

At all times, charitable organisations must take reasonable measures to protect the health, safety and wellbeing of fundraisers employed or directly engaged by them, as well as members of the public, when fundraising.

They must also establish and maintain a complaints process that allows for proper investigation and redress of fundraising complaints that may be made by members of the public and encourage anyone with concerns about fundraising activity to contact the charity.

Charitable organisations are required to ensure that information collected under the *Privacy Act 1998* is collected, used and managed in accordance with the Australian Privacy Principles where required.

The national fundraising principles also require charitable organisations must, at all times ensure remuneration to commercial fundraisers engaged to fundraise on their behalf is not excessive when compared to money or goods received for the charitable purpose of the fundraising.

Some of the national fundraising principles overlap with existing provisions of the *Collection for Charities Act 2001*. The Bill reflects amendments to remove any inconsistencies or duplication between the requirements of the Act, such as offences in relation to conduct that will now be prohibited under the Code of Practice.

There are some areas of the *Collections for Charities Act 2001* that are not replicated in the national fundraising principles. To ensure the safety and protection of minors for example, the Act will continue to require that an organisation must not permit a person under the age of 16 years to solicit for a charitable purpose unless that person is under the supervision of an adult; and in the case of a person under 12 years of age, that person is also under the immediate control of an adult.

Additionally, the Act will continue to provide that an organisation must not permit any donation given for any charitable purpose to be used for any purpose other than the purpose it was obtained for, with the exception of reasonable expenses incurred in the administration of the organisation; or reasonable payments to agents, contractors, officers or employees of that organisation for expenses incurred in its administration.

As I have indicated, any charity or organisation or person soliciting donations in

Tasmania for charitable purposes, including online, will be required to comply with the Code of Practice and penalties may apply for non-compliance.

The Bill provides for consultation on the code of practice before it is made. While the clear object of the Bill is to ensure charities are to be subject to the national fundraising principles, without unnecessary additional requirements, it is important the final regulations are available for consultation in the usual way with the sector.

### ***Other harmonisation reform initiatives***

#### ***Implement the cross-border recognition model for charitable fundraisers***

The other reform initiatives that the Bill makes includes the cross-border recognition model for charitable fundraisers. Fundraising activities conducted online and/or across state borders do not fit easily within the current regulatory framework. For example, an online appeal accessible across Australia may constitute fundraising in each jurisdiction and therefore, require separate registration in each jurisdiction, increasing the regulatory burden on charities and diverting resources away from their charitable focus.

The Council on Federal Financial Relations endorsed a cross-border recognition model for charities, developed by Consumer Affairs Australia and New Zealand officials.

Under this model, registration with the Australian Charities and Not-for-profits Commission (ACNC) automatically authorises a charity to fundraise in each participating jurisdiction. State regulators retain the ability to apply additional conditions on ACNC registered entities and can require them to comply with the local financial auditing requirements or obtain copies of financial information from the ACNC.

To support and clarify the Act in this regard, an amendment to donation clarifies the Act's reference to donations includes fundraised money.

A minor amendment to the definition of 'charitable purpose' clarifies that it applies to all benevolent, philanthropic and patriotic purposes. As the protection of animals and the environment has always been recognised under the Act, those terms are included as examples of such purposes.

However, the definition of course applies to all such purposes, and is considered consistent with the scope of the definition of charitable purposes that applies to ACNC-registered charities.

ACNC registered entities will be required to notify the Commissioner for Corporate Affairs or the ACNC of their intention to solicit in Tasmania. In

practice, the administrative requirement on charities is reduced, as the ACNC can provide data to the Commissioner on charities that solicit in Tasmania.

### ***Harmonise the reporting thresholds for all charities***

Honourable Speaker, in 2020 the Council on Federal Financial Relations agreed to harmonise reporting thresholds for ACNC registered entities and to increase annual revenue reporting thresholds to reduce the regulatory burden on the sector.

To reduce the regulatory burden on incorporated associations generally, the auditing exemption threshold in section 24 of the *Associations Incorporation Act 1964* is increased from the current \$250,000 to \$500,000. For charities, this has the benefit of alignment with the ACNC reporting thresholds. Amendments to that Act also provide for the Commissioner to set the form in which annual returns are provided.

### ***Strengthen the enforcement provisions of the Collections for Charities Act 2001***

Honourable Speaker, the Bill clarifies there are important functions for the Commissioner under the Act, including informing the public about the operation of the Act, facilitating training and education, and any other determined or prescribed function.

The Commissioner also has an improved compliance and enforcement role under the Bill. The *Collections for Charities Act 2001* does not currently allow for an authorised officer to issue infringement notices for breaches of that Act. This has severely limited the Commissioner in the past from taking meaningful compliance action for contraventions of the Act.

The proposed amendments will give effect to an infringement notice regime that will complement the investigative provisions that are available to the Director of Consumer Affairs and Fair Trading under the *Consumer Affairs Act 1988* and the proposed Code of Practice that will give effect to the National Fundraising Principles.

The Bill provides a clarified framework for the Director of Consumer Affairs and Fair Trading to exercise powers to investigate potential offences and contraventions of the *Collection for Charities Act 2001* under the *Consumer Affairs Act 1988*.

This includes a framework for Magistrates Court orders, and if necessary Supreme Court injunctions, similar to that under the *Australian Consumer Law (Tasmania) Act 2010*.

There are powers for the Commissioner to apply to a magistrate for an order in respect of an alleged contravention of the code of practice. This can ensure

bringing contraventions to a close, and rectifying the consequences.

This Bill also provides the Director the power to apply for an injunction to the Supreme Court for breaches of the Code of Practice. An injunction can be granted in the event the Court is satisfied that a contravention or an attempt to contravene an order issued by a magistrate has occurred. Additionally, the Court can issue an injunction if, for example it is satisfied that the conduct of a person constitutes aiding, abetting, inducing, conspiring, counselling or procuring a person to contravene such a provision.

These amendments will enhance public confidence in the charitable fundraising sector and the Commissioner and Director will have appropriate powers to not only accept complaints but to investigate and issue infringement notices and take appropriate action in respect to contraventions and offences.

Honourable Speaker, our Government is committed to providing a robust and contemporary framework in which charitable fundraising and solicitation can occur.

In conclusion, the Charities and Associations Law (Miscellaneous) Amendment Bill 2024 will provide confidence for Tasmanians who donate to charities operating in Tasmania whilst also giving charities the ability to fundraise across jurisdictions without additional red tape and the regulatory burden currently associated with those practices.

This Bill further strengthens and enhances Tasmania's Charities framework for the benefit of all Tasmanians.

Honourable Speaker, I commend the Bill to the House.