

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Charities and Associations Law (Miscellaneous) Amendment Bill 2023

Mr Speaker, I move that the Bill be now read a Second time.

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

Mr Speaker, when Tasmanians make donations 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 now operate.

Between 2001 and 2023, the *Collections 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 12 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.

Mr 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 (ACNC) to ensure our legislative framework is contemporary and fit-for-purpose.

Mr Speaker, I would like to thank the various groups and individuals who contributed to the development of the Bill through the consultation process. A number of key stakeholders provided submissions and engaged with my 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.

Mr 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 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 staff and these charities were supported by 46,665 volunteers.

These revenue, staffing and volunteer figures are not insignificant and demonstrate 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.

Mr Speaker, I will now outline the key provisions of the Bill that will implement the cross-border recognition model for charitable fundraisers.

Under existing charitable fundraising legislation, an online appeal accessible across Australia may constitute fundraising in each jurisdiction, and therefore, require separate registration in each state and territory. This results in unnecessary regulatory burden on charities, 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 the model provided in the Bill, 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.

ACNC registered entities will be required to notify the Commissioner for Corporate Affairs or provide a notification to the ACNC for the purposes of the ACNC notifying

the Commissioner 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.

Mr 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 charitable fundraising sector.

Since then, the thresholds have been increased by the ACNC.

Under the *Associations Incorporation Act 1964*, a charity operating in Tasmania registered as an ACNC incorporated association must comply with the ACNC reporting thresholds.

Mr Speaker, increasing the auditing threshold from the current amount of \$250,000 to \$500,000 for small organisations that are incorporated but not registered with the ACNC, to align with the thresholds in ACNC, will reduce the regulatory burden on these organisations.

I will now briefly outline the parts of the Bill that strengthen the enforcement provisions of the *Collections for Charities Act 2001*.

Mr Speaker, the Act does not currently allow for the Commissioner for Corporate Affairs to issue infringement notices for breaches of that Act, and this has 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.

Mr Speaker, to provide clarity of the relevant statutory roles, reporting requirements must be made to the Commissioner for Corporate Affairs. The Director of Consumer Affairs and Fair Trading has powers to investigate potential offences and contraventions of the *Collections for Charities Act 2001* under the *Consumer Affairs Act 1988*.

This Bill will provide the Director the power to apply for an injunction to the Supreme Court of Tasmania 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.

Mr Speaker, I will now discuss the national fundraising principles.

The 16 national fundraising principles were developed by a working group comprising all states and territories. The principles will give charities and donors a clear understanding of appropriate conduct, while allowing for necessary flexibility as to how charities achieve compliance.

Mr Speaker, the national fundraising principles will be implemented through a new mandatory Code of Practice to be made as regulations under the *Collections for Charities Act 2001*. These principles require employees, volunteers, and contractors of a charity to always explain the purpose of the charity for whom they are fundraising, in addition to how the funds will be used.

Any charity, organisation or person soliciting for 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.

Some of the national fundraising principles overlap with existing provisions of the *Collections for Charities Act 2001*. The Bill reflects amendments to remove any inconsistencies or duplication between the Act and the principles that will be prescribed in 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 for which it was obtained, 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.

Importantly, any charity or organisation soliciting for donations in Tasmania, including online, will be required to comply with the Code of Practice.

Mr Speaker, in conclusion, this Bill ensures that our legislation governing charities is effective and contemporary.

Therefore, Mr Speaker, I commend the Bill to the House.