

Australian Capital Territory

Charitable Collections (National Fundraising Principles) Determination 2024

Disallowable Instrument DI2024-220

made under the

Charitable Collections Act 2003, s62A (Minister may determine fundraising principles)

EXPLANATORY STATEMENT

In February 2023, the Council on Federal Financial Relations (**CFFR**) agreed to a set of fundraising conduct requirements called the National Fundraising Principles (**the Principles**). The Principles are to be implemented by each state and territory.

The Principles include rules about the conduct of fundraising activities. For example, rules about when a fundraiser can solicit donations, what disclosures must be made to potential donors, and what identification a fundraiser must display.

At present, charities that operate in more than one jurisdiction must ensure they comply with applicable local laws, which may differ. The realities of modern fundraising are that much of it occurs across jurisdictional boundaries (particularly online). The purpose of the Principles is to harmonise fundraising conduct requirements nationally and provide charities with a clearer understanding of how they can achieve compliance. Nationally consistent fundraising regulation has been recommended by several reviews over the past decade, including the 2020 Royal Commission into National Natural Disaster Arrangements. Reducing red-tape for the charitable sector is anticipated to minimise compliance burdens for the sector, which, in turn, should allow a greater proportion of donations to be directed to those in need.

To implement the Principles in the ACT, the *Housing and Consumer Affairs Legislation Amendment Act 2024* (**the HCA Amendment Act**) amended the *Charitable Collections Act 2003* (**the Act**) to insert new section 62A.

New section 62A empowers the Minister to determine principles in relation to conducting, or taking part in, a charitable collection. This enables the implementation of the Principles in the ACT.

In addition, the Bill makes compliance with the Principles an automatic condition on a licence to conduct collections in the ACT. However, immediately prior to the commencement of the HCA Amendment Act, charities who were registered with the Australian Charities and Not-for-Profits Commission (**ACNC**) were exempt from the licensing requirements by virtue of changes which were made in 2017 to reduce red tape for charities. To ensure the Principles apply to all charities conducting collections

in the ACT, the HCA Amendment Act creates a deemed licence regime for ACNC registered charities. Charities registered with the ACNC will be deemed to hold a licence in the ACT to conduct collections from the date they became an ACNC registered charity. They are therefore also subject to the condition that they comply with the Principles.

A breach of a condition on a licence (deemed or actual) may result in the amendment, suspension or cancellation of a licence where the director-general is satisfied on reasonable grounds that a breach has occurred.

Human Rights Implications

The disallowable instrument (**DI**) engages and may limit the right to fair trial.

The preamble to the *Human Rights Act 2004* (**HRA**) notes that few rights are absolute and that they may be subject to reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

1. Nature of the right and the limitation (section 28 (a) and (c))

Section 21 (1) of the HRA provides that everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The right to a fair trial includes the right to a fair hearing and procedural fairness. The DI may limit this right for individuals as it expands the existing ability for the director-general to make administrative decisions by creating a new ground upon which a licence may be amended, suspended or cancelled. This new ground is where the director-general is satisfied, on reasonable grounds, that a breach of the Principles has occurred.

2. Legitimate purpose (section 28 (b))

The legitimate objective of the amendments is to make the charitable sector more efficient, ultimately benefiting the communities and causes for which members of the public make donations. It proposes to do this by implementing the National Fundraising Principles. The Principles also contain rules that are designed to ensure that charitable fundraising is conducted without exploitation, fraud or undue pressure or interference with potential donors.

3. Rational connection between the limitation and the purpose (section 28 (d))

There is a rational connection between limiting the right to a fair trial (by creating a new ground to amend, suspend or cancel a licence) and the purpose of implementing the Principles. The connection is that there will be a regulatory lever for the director-general to take enforcement action if a breach of the Principles occurs, which is necessary to ensure their effectiveness. Expanding the grounds on which the director-general can take enforcement action will act as an incentive to licence holders

to understand and comply with their obligations under the Principles. It will also provide assurance to the community that a breach of the Principles will be taken seriously.

4. *Proportionality (section 28 (e))*

The DI will only have human rights implications for those individuals who hold a licence to conduct collections. This is expected to be a small number of ACT-licence holders, as most charities are legal entities (non-natural persons) to which human rights do not apply. Charities registered with the ACNC cannot be individuals.

To the extent to which creating a new ground to amend, suspend or cancel a licence limits the right to a fair trial, it is proportionate because of the safeguards which already exist in the CC Act. These safeguards include a requirement to notify the individual that enforcement action is proposed, providing the individual with an opportunity to respond to the allegation, and review rights of decisions in ACAT. This approach strikes the right balance between needing an enforcement mechanism to ensure compliance with the Principles and ensuring they are not being enforced arbitrarily without proper oversight.

Individuals subject to the requirements of the Principles (i.e. natural persons holding ACT licences) will be made aware of their obligations through public communications materials including information on the Access Canberra website in relation to charitable collections (<https://www.accesscanberra.act.gov.au/business-and-work/associations-co-ops-and-charities/charitable-collection-licences>).