

Sloop

CUSTOMER SERVICE LEGISLATION AMENDMENT BILL 2023
STATEMENT OF PUBLIC INTEREST

Chair of the Parliaments
29 / 11 / 2023

1. CHARITABLE FUNDRAISING REFORM

Need: Why is the policy needed based on factual evidence and stakeholder input?

The nature of charities and fundraising in Australia has changed significantly in recent years. Charities have expanded in size, are conducting activities nationally, and fundraise using traditional and online means. Charities face significant regulatory burden having to comply with complex, time consuming and inconsistent obligations across jurisdictions.

NSW Fair Trading regulates charitable fundraising at the state level and the Australian Charities and Not-for-profits Commission (**ACNC**) does so at the Commonwealth level. This dual regulatory model means that entities registered under both the NSW and Commonwealth regimes must comply with duplicative requirements. This imposes unnecessary regulatory burden on charities.

In November 2018, a national working group was established to consider ways to move towards greater harmonisation of charitable fundraising regulation. As a direct result of that work, a deemed recognition model (**the model**) was developed.

The model aims to eliminate duplication, reduce administrative burden and enhance national harmonisation. Key elements of the model include deemed charitable fundraising authority and deemed compliance with reporting requirements for fundraisers and associations registered with the ACNC. Introducing the model in NSW would mean that an entity could rely on its registration with the ACNC to undertake charitable fundraising in NSW and to meet its reporting requirements.

The model is an important step towards aligning the NSW Government's regulatory framework for charities with the ongoing national harmonisation efforts for charitable fundraising.

During consultation on the model, stakeholders considered that the ACNC's registration and reporting requirements were appropriate and sufficient to ensure accountability and transparency.

Stakeholders have previously noted that every time their operations are expanded into a jurisdiction, the time needed annually to undertake compliance activities increased by 50%. According to stakeholder feedback, the model is estimated to remove at least 40 hours of management time spent annually on registration and reporting. The feedback also highlighted that savings in fees for state-specific audits would be around \$3000 which would translate to annual cost savings of around \$15.1 million across the sectors.

Based on the ACNC data, it is estimated that over 68% of all NSW charitable fundraising authority holders, which is approximately 3,500 entities, stand to benefit from the model.

Objectives: What is the policy's objective couched in terms of the public interest?

The objective of the proposed model is to reduce the administrative burden and make it easier for ACNC registered entities who fundraise in NSW. The reforms seek to streamline the NSW registration process for ACNC registered entities by harmonising certain NSW requirements with the ACNC. Closer alignment between the states and the Commonwealth would minimise the regulatory burden for charities operating in multiple states.

The proposed model in the Bill will allow ACNC registered entities to be deemed to hold a NSW charitable fundraising authority. They will also be deemed to be compliant with the financial reporting requirements under the NSW charitable fundraising laws.

By reducing duplicative reporting requirements imposed on charitable entities, resources can be redirected to valuable fundraising work and ultimately to the beneficiaries of that charity. The reforms still maintain governance and oversight necessary to ensure public confidence when donating to worthy causes.

Options: What alternative policies and mechanisms were considered in advance of the bill?

If the model provided in the Bill is not progressed, then charities must continue to comply with duplicative registration, compliance and reporting requirements.

The NSW Government considered the following options:

1. Option 1 – Take no action and maintain the status quo.
2. Option 2 – Introduce a limited model. For example, introduce a model which only provides deemed recognition but not deemed compliance with reporting requirements.
3. Option 3 – The proposed Bill which amends the *Charitable Fundraising Act 1991 (CF Act)* and the *Associations Incorporation Act 2009 (AI Act)* to introduce the automatic deemed recognition model in NSW. This means implementing:
 - *Automatic registration (i.e., 'deemed authority')* – an ACNC registered entity that gives notice of an intention to conduct fundraising in NSW to the ACNC will be deemed to hold a NSW authority under the CF Act.
 - *Fundraisers - deemed compliance with financial reporting requirements* – fundraisers who are a deemed authority holder will only be required to comply with the ACNC's financial reporting requirements.
 - *Associations - deemed compliance with financial reporting requirements* – associations that are ACNC registered entities will not be required to submit an annual summary, financial statements and the auditor's report to NSW Fair Trading if they comply with the ACNC's financial reporting requirements, and that information is available on the ACNC Register. All existing reporting obligations to an association's members will still apply.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The options listed above have been evaluated according to the extent to which they reduce unnecessary regulatory and administrative burden for ACNC registered entities operating in NSW.

Option 1, to take no action, is not a preferred option. Pursuing this option would mean that the duplicative and burdensome regulatory requirements that are currently in place would continue to be imposed on ACNC registered entities. Option 1 would avoid initial costs to Government of updating systems and educating the industry of proposed changes. However, charities and associations would not achieve cost and time savings that could lead to more resources being put towards charitable efforts.

Option 2, to enforce only the 'deemed recognition' element of the proposed model, is also not a preferred option. While this limited model is an important step in simplifying registration requirements, the major burden of the duplicative reporting requirements would remain in place.

Option 3, to introduce the proposed model, is the preferred option. The model responds to the needs of stakeholders as it reduces regulatory burden on the sector. It will provide cost and time savings for government, charities and not-for-profits.

Eliminating the need to comply with multiple regimes will allow savings of an estimated \$15.1 million across the sector, which can be redirected to achieve charitable purposes. However, the option will maintain measures to reduce the risk of fraudulent activity in charitable fundraising and public confidence in the sector.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

NSW Fair Trading within the Department of Customer Service regulates charitable fundraising and associations incorporation laws in NSW.

At the Commonwealth level, the ACNC regulates fundraising activity under the following laws:

- *Australian Charities and Not-for-profits Commission Act 2012*,
- Australian Charities and Not-for-profits Commission Regulation 2013,
- *Charities Act 2013*,
- Charities (Definition of Government Entity) Instrument 2013.

The model in the Bill will commence on proclamation. The proclamation date will be determined after supporting amendments to the Charitable Fundraising Regulation 2021 and Associations Incorporation Regulation 2022 have been made. This process will include any transitional considerations for the industry and development of supporting administrative measures.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

During 2020, there was extensive public and targeted stakeholder consultation on the deemed recognition model for ACNC registered entities. Key stakeholders including Justice Connect, the Fundraising Institute of Australia, St Vincent de Paul Society, the Public Fundraising Regulatory Association, The Smith Family, The Royal Flying Doctors Service, the Australian Institute of Company Directors and the Community Council for Australia supported the proposed model. This included support for streamlined registration and reporting requirements. Stakeholders agreed that the model would reduce red tape for operational teams and enable organisations to be more agile in the fundraising space.

Recent additional stakeholder engagement on introducing the model indicated strong ongoing support, which aligns with stakeholders' calls for reduced regulatory burden on charitable fundraisers.

2. ASSISTANT AGENTS REFORM

Need: Why is the policy needed based on factual evidence and stakeholder input?

Substantial reforms to *the Property and Stock Agents Act 2002 (PSA Act)*, the then Property and Stock Agents Regulation 2014 and the Property and Stock Agents (Qualifications) Order 2019 commenced on 23 March 2020, with the principal goal of lifting minimum qualifications standards among licensed property agents. The reforms transitioned 22,500 existing assistant agents to a certificate of registration with a fixed four-year term, expiring on 22 March 2024 unless surrendered or cancelled sooner (**the March 2020 cohort**).

Assistant agents who do not complete their qualifications and obtain the required agent licence before their certificate expires are unable to re-apply for a new certificate of registration for 12 months. NSW Fair Trading estimates that up to 10,000 assistant agents from the March 2020 cohort are still working in the industry and have not yet obtained a class 2 licence and are at risk of being excluded from the industry when their certificate of registration expires.

Many assistant agents are employed as residential property managers and real estate agencies are already having difficulty attracting and retaining quality staff.

Industry stakeholders are especially concerned about a likely staffing and compliance crisis if thousands of assistant agents are unable to legally perform their duties when their certificates have expired on 23 March 2024 because they have not obtained a class 2 licence by that time.

All stakeholders support an ongoing option for assistant agents to apply for an extension based on exceptional circumstances.

Objectives: What is the policy's objective couched in terms of the public interest?

The property services industry and NSW Fair Trading are concerned about a likely staffing and compliance crisis if thousands of assistant agents are unable to legally perform their duties when their certificates expire. This would likely lead to deteriorating service for people seeking a home to rent, existing residential tenants and landlords, given most of the March 2020 cohort are likely to be working in residential property management. Complaints to NSW Fair Trading would also be likely to increase.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The NSW Government considered the following options:

1. Option 1 – Maintain the status quo. This would involve continuing with communications and engagement initiatives to remind assistant agents and their employers of the approaching deadline. Over 14,000 certificates of registration would automatically expire on 23 March 2024.
2. Option 2 – Amend the PSA Act to allow a one-off extension of the duration of all certificates of registration in the March 2020 cohort for 12 or 18 months to allow further time for qualifications and licensing requirements to be completed, with no renewals and no further extensions.
3. Option 3 – Amend the PSA Act to allow a one-off 12 or 18 months extension combined with imposing a condition on certificates restricting the holder to residential property management functions only, with no renewals and no further extensions.

4. Option 4 - Amend the PSA Act to grandfather the March 2020 transitional property management cohort. This would enable assistant agents who transitioned from the previous laws to continue to hold and renew their certificate of registration beyond March 2024, with a condition restricting the holder to residential property management functions only. This could be combined with a one-off extension of 12 months for all certificates from the March 2020 cohort.
5. Option 5 – Amend the PSA Act to allow assistant agents to apply to extend or restore their certificate of registration for a further 12 months as a one-off extension, subject to certain conditions.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Option 1: maintaining the status quo, does not address the problem. Over 14,000 certificates would automatically expire on 23 March 2024 and all assistant agents still needing their certificate to work would either be excluded from the industry for 12 months or risk working illegally under an expired certificate.

The status quo scenario would risk a staffing and compliance crisis in the industry, as well as deteriorating service for residential tenants and landlords given most of the March 2020 cohort is likely to be working in residential property management.

Option 2, 3 and 4 could all provide some degree of relief. However, option 5 is the preferred option as it achieves the objectives of risk mitigation, simplicity, consumer protection, and a low likelihood of undermining the objectives of the original 2020 reforms to raise professional standards in the industry.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

NSW Fair Trading will administer the policy as the licensing authority under the PSA Act.

Updates to licensing platforms are required to support the policy. A project team within the Department of Customer Service is now scoping those amendments. An online solution for certificate holders to apply for a 12 month extension will be available by March 2024.

NSW Fair Trading will contact all holders of certificates of registration with a March 2024 expiry date to inform them of the option to apply for an extension if they will not be able to obtain a class 2 licence before expiry of their certificate.

NSW Fair Trading will also publish industry guidance on its website in early 2024. This will include the enforcement approach that will be taken with assistant agents whose certificates expire in March 2024 and need to keep working as assistant agents, and their employers.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

During 2023, the Property Services Commissioner consulted senior representatives of the property and stock industry on options to address the situation. Consultation was carried out with the Property Services Expert Panel, the Real Estate Institute of NSW, and the Australian College of Professionals.

Most stakeholders supported an ongoing option for assistant agents to apply for an extension based on exceptional circumstances.

3. RETAIL LEASES REFORM

Need: Why is the policy needed based on factual evidence and stakeholder input?

The *Retail Leases Act 1994 (RLA)* establishes a legislative framework aimed at enhancing the leasing relationship between lessors and lessees in the retail sector. Part 9A of the RLA is dedicated to addressing the unique requirements of airports, particularly in terms of safety and security, international competitiveness for retailers in duty free zones, as well as the rights and responsibilities of lessors and lessees in a retail environment within international airports.

Currently, Part 9A exclusively applies to the Sydney Kingsford Smith Airport (**SKS Airport**). However, Western Sydney International (**WSI**) Airport needs the legislative framework to be uniformly applied to its retail settings.

Extending the provisions of Part 9A to the WSI Airport ensures a consistent and clear set of rules and expectations for retailers and supports a level playing field between Sydney's two major international airports. Applying the RLA's airport provisions to WSI Airport at this stage will support lease negotiations between WSI Airport and potential retailers, in preparation for scheduled operations in 2026.

Objectives: What is the policy's objective couched in terms of the public interest?

This amendment will offer lessors and lessees a transparent and consistent approach to retail leasing at Sydney's two major international airports and will support WSI Airport's negotiations with potential retail lessees.

Options: What alternative policies and mechanisms were considered in advance of the bill?

This is the only option available to ensure clarity and consistency for prospective retailers of WSI Airport.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The purpose of this amendment is to establish legislative equality between the two primary airports in NSW concerning retail leasing. Not proceeding with the amendment will result in different regulatory frameworks for retail leasing at Sydney's two international airports, without due cause.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

Application of the retail leasing arrangements at WSI Airport will fall to the Airport Authority and interested retailers. On the Bill's assent, the NSW Department of Customer Service will notify WSI Airport and key retail industry peak bodies of the commencement and effect of the amendment.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Key retail industry peak bodies were engaged in consultations and endorse the extension of the RLA's airport provisions to WSI. The consulted peak bodies include the Australian Retailers Association, Property Council of Australia (NSW), and the Real Estate Institute of NSW. All of these bodies actively contributed to the formulation of the existing provisions applicable to SKS Airport.