

5 May 2023

Submitted by email.

To the Productivity Commission,

Re: Submission to the Productivity Commission's Philanthropy Inquiry

Getting the settings right for philanthropy will make Australia a more generous, connected, and supportive country. This submission puts forward ideas to make the act of seeking philanthropic funding easier for a wider range of charities and looks at additional consumer protections needed.

The Consumer Policy Research Centre (CPRC) is an independent, not-for-profit consumer research organisation. We exist to champion new thinking to create systemic change that improves consumer wellbeing. CPRC has an interest in this inquiry both as an organisation that could potentially seek philanthropic funding for its work and as an organisation that represents consumer interests in public debates.

Limits of the current Deductible Gift Recipient Framework

CPRC is currently funded through a grant agreement with the Victorian Government but has considered philanthropic funding options. One of the challenges we see with philanthropic funding is the Deductible Gift Recipient (DGR) framework. DGR status provides tax benefits to eligible organisations that receive donations from the public and is also typically a requirement for organisations to apply for and access funding grants.

DGR status is generally based around having one main purpose or activity that fits neatly within defined categories: health, education, research, welfare & rights, defence, environment, the family, international affairs, sports and recreation, cultural organisations, fire & emergency services, ancillary funds. We acknowledge that there is an option available for "specific listing" of charities that do not neatly fit within these categories, however this process can take significant time and resources to engage decision makers.

Broadly, work to improve consumer affairs or to represent consumer interests does not fit neatly within any of the current DGR categories. Some consumer organisations do focus on helping people from a specific class of Australians, such as people on low incomes, and can fit within the "welfare & rights" category. However, many of the organisations in Australia that represent or assist consumers do so in a way that considers the interests of a very broad group of Australians such as consumers using telecommunications services or consumers of superannuation.

The DGR categories should be adjusted to better capture organisations that may have multiple worthy purposes and organisations that deliver public good but are not captured in current definitions.

Need for stronger consumer protections to stop harm to donors

As the Commission notes, the Australia Consumer Law (ACL) applies to public fundraising activities. The misleading conduct and unconscionable conduct provisions are the most relevant protections for fundraising. Although, specific protections in relation to the supply of a good or service such as the consumer guarantees are also relevant if fundraising activities involve the sale of goods or provision of services.¹

¹ See ACCC, (2017), *A guide to the Australian Consumer Law for fundraising and other activities of charities, not-for-profits and fundraisers* https://www.accc.gov.au/system/files/guide_acl_fundraising-1.pdf

The protections provided by the ACL are incredibly important for people making donations. They provide a way for regulators to effectively act against organisations and individuals that abuse the trust that people have in not-for-profits.²

However, there are gaps in the consumer law that allow businesses of all kinds, including charities, to harm consumers. The most relevant gap for this inquiry is the lack of an unfair trading prohibition.³ There is currently no legal protection against business practices where companies manipulate or take advantage of their customers.

CPRC has identified an example of an unfair practice which is used in fundraising: subscription traps. This is where companies make it very easy to subscribe for a service (or make a recurring donation) but very difficult to alter or cancel the payment. This practice causes people to lose money as they continue paying for something longer than they wish and lose an unreasonable amount of time navigating cancellation systems that are intentionally designed to frustrate and confuse. CPRC takes the position that all companies, including not-for-profits, should make it as easy to stop a subscription as it is to begin one.

CPRC's research has found that:

- 76% of Australians have had difficulty cancelling an online subscription.
- Young Australians are more likely to be harmed by deceptive design tactics like subscription traps.
- Australia doesn't have the legal protections in place to tackle this problem.⁴

CPRC has identified an instance where an Australian charity is using design techniques that we consider to be subscription traps. We have chosen this example as it emerged in a sweep CPRC conducted as part of wider research into subscription traps. It does not mean it is the only example of a not-for-profit using these techniques in Australia. We have outlined this example in the attached appendix to this submission.

The European Union, United Kingdom, Singapore and the United States of America all have versions of an unfair trading ban. Regulators in these jurisdictions are using these laws to stop subscription traps as well as other practices where a business uses its power against its customers. Australian consumers need similar protections.

Yours Sincerely



Erin Turner
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Consumer Policy Research Centre

² For example, see the case that Consumer Affairs Victoria successfully pursued against Annabelle (Belle) Gibson and Inkerman Road Nominees Pty Ltd for unconscionable conduct <https://www.consumer.vic.gov.au/latest-news/annabelle-gibson-and-inkerman-road-nominees-pty-ltd-court-action>

³ CPRC (2022), *How Australia can stop unfair business practices*, https://cprc.org.au/wp-content/uploads/2022/09/Unfair-Business-Practices_Report_FINAL.pdf

⁴ CPRC (2022), *Duped by design* <https://cprc.org.au/dupedbydesign/>