



Anglican Church Diocese of Sydney

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Submission to the Treasury regarding *Charitable Fundraising Reform: Discussion Paper and Draft Regulatory Impact Statement*

By the Standing Committee of the Synod of the Anglican Church Diocese of Sydney

1 Summary of Submission

- (a) We appreciate the opportunity to comment on the matters raised in Treasury's Discussion Paper.
- (b) Although the focus of the submission is the scope of the exemption from fundraising regulation that should be granted to religious organisations under any national fundraising framework, we strongly encourage the Government to deliver on its promised reduction of red-tape and simplification of regulation in the area of charitable fundraising generally. To that end we also strongly encourage the Government to adopt a non-prescriptive and even minimalist approach in any national framework it establishes. We believe such an approach is both appropriate and achievable in view of the role of the ACNC.
- (c) We submit that if the goal of the review of fundraising regulation is to reduce red-tape, streamline reporting, reduce compliance burdens and bring about consistency, Treasury should, at the least, not propose regulation for religious organisations under any national framework that is more onerous than that which commonly applies across Australia at present.
- (d) We submit that if no significant difficulties have arisen in the charitable fundraising activities of religious organisations at the State and Territory level, religious organisations should be afforded a broad exemption under any national framework.
- (e) We submit that any exemption for religious organisations should not be dependent on a formal membership criteria.
- (f) We note that religious organisations tend to fundraise within their own religious community and submit that it is appropriate to take this feature of fundraising by

religious organisations into account when framing any exemption for religious organisations.

- (g) In the absence of any compelling reason to take an alternative approach, we submit that an exemption for religious organisations similar to the one used in section 7(1) of the *Charitable Fundraising Act 1991* (NSW) should be adopted in any national fundraising framework.
- (h) We submit that it would be appropriate to qualify such an exemption in two and, possibly, three ways, namely –
 - (i) there should be a provision equivalent to that contained in section 7(2) of the NSW legislation,
 - (ii) each charity which is or forms part of a religious organisation must be registered with the ACNC, regardless of whether the charity is otherwise eligible to engage in fundraising on an exempt basis, and
 - (iii) any solicitation of donations which are directed outside the relevant religious community to the broader public should comply with basic “point of collection” requirements.
- (i) We submit that any legislation for a national charitable fundraising scheme should expressly exclude any activity that is regulated by ASIC or APRA or which has been declared exempt from regulation, in whole or part, by those bodies.

2 Introduction

2.1 Who we are

- (a) The name of our organisation is the Anglican Church Diocese of Sydney (**Diocese**).
- (b) This submission is made by the Standing Committee of the Synod of the Diocese. The Standing Committee is the executive of the Synod which is in turn the principal governing body of the Diocese constituted under the *Anglican Church of Australia Constitutions Act 1902* (NSW).
- (c) The Diocese is an unincorporated voluntary association comprising various bodies constituted or incorporated under the *Anglican Church of Australia Trust Property Act 1917* (NSW) and the *Anglican Church of Australia (Bodies Corporate) Act 1938* (NSW).

These bodies, together with the diocesan network of 269 parishes, are accountable to the members of the Church through the Synod of the Diocese¹.

- (d) More broadly, the Diocese, through its various component bodies and through its congregational life is a provider of a wide range of programs including in social welfare, education, health and age care, youth work and for the homeless. In addition to the congregational life of the Diocese, the bodies which provide services to the community across the Diocese include large social welfare institutions such as Anglicare² and Anglican Retirement Villages³, as well as other charitable institutions including Anglican Youthworks⁴, and 40 Diocesan schools⁵.
- (e) Our contact details are –

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3 Charitable fundraising – comments on general approach

- (a) We appreciate the opportunity to comment on the matters raised in Treasury's discussion paper on *Charitable fundraising regulation reform* (the Discussion Paper).
- (b) This submission focuses on the scope of the exemption from fundraising regulation that should be granted to religious organisations under any national framework. However before turning to this matter, we make some general comments about the approach we consider the Government should take in establishing a national fundraising framework.

¹ In the last ABS Census 837,917 people in the Sydney region identified as being Anglican. The regular combined attendance at churches in our 269 parishes is about 80,000 people.

² **Anglicare** helps many thousands of families and individuals each year with counselling, children and youth services, emergency relief, family relationships and aged care.

³ **Anglican Retirement Villages** operates 37 residential facilities (both Independent Living and Residential Care) and 40 community based services throughout the greater Sydney region, caring for more than 6,000 residents and clients and regularly relating to a further 12,000 people (families, staff, volunteers) in the course of its service delivery.

⁴ **Anglican Youthworks** is the co-ordinator of work amongst children and young people and provides materials to 300,000 students, supports 4,000 volunteer and employed scripture teachers, and 8,000 youth leaders attending training events. 50,000 mostly young people and children attend outdoor programs and centres.

⁵ Attended by approximately 33,000 students.

- (c) We strongly encourage the Government to deliver on its promised reduction of red-tape and simplification of regulation in the area of charitable fundraising. It will not be enough to establish a nationally consistent framework. While consistency in fundraising rules will achieve some cost savings for those charities that engage in fundraising across multiple jurisdictions, we understand that a significant majority of charities fundraise within a single jurisdiction. Accordingly, consistency of regulation will not, of itself, achieve a reduction in red-tape for a significant majority of charities.
- (d) We therefore strongly encourage the Government to adopt a non-prescriptive and even minimalist approach in any national framework it establishes. We consider that this approach is both appropriate and achievable, largely because of the establishment of the ACNC, the role the ACNC should properly take in registering and regulating charities and the transparency that will be achieved through the public information portal to be hosted on the ACNC's website.
- (e) We endorse generally the comments made by our welfare agency, ANGLICARE Sydney, in its submission in response to the Discussion Paper, but note that ANGLICARE Sydney has left as an open question the most appropriate way of framing an exemption for religious organisations contemplated in paragraph 18 of the Discussion paper.
- (f) We turn now to this question.

4 Exemption for religious organisations under a national framework

4.1 Current exemptions for religious organisations are broad

- (a) The Discussion Paper notes that significant differences exist between State and Territory fundraising laws and that it is not proposed to use these current regulatory frameworks as a basis for a national approach.⁶ While that may be appropriate so far as the overall structure of any national framework is concerned, it would be unfortunate, in our view, not to draw on commonalities across State and Territory regulation given the significant history and experience that the States and the ACT have in the regulation of charitable fundraising. Despite the stated approach in the Discussion Paper of “starting from scratch”, we note, for example, that the proposed definition of fundraising activities appears to be based on the most common definition of fundraising activities in operation across Australia. Accordingly, it would seem, entirely appropriately in our view, that some regard is in fact being given to State and Territory regulation in formulating the proposed national framework.

- (b) We raise this issue because there is significant commonality across Australia on the regulation of fundraising by religious organisations. While some States provide complete exemptions and others more specific ones, the exemptions in force across Australia for religious organisations are, with the possible exception of the ACT, very broad.
- (c) We set out in an appendix a summary of the extent to which charitable fundraising regulation applies to religious organisations in the States and the ACT.
- (d) We submit that if the goal of the review of fundraising regulation is, as the Foreword suggests, to reduce red-tape, streamline reporting, reduce compliance burdens and bring about consistency, Treasury should, at the least, not propose regulation for religious organisations under any national framework that is more onerous than that which commonly applies across Australia at present.

4.2 Current exemptions for religious organisations have operated without significant difficulty

- (a) We note there is no suggestion in the Discussion Paper that Treasury is concerned that the current level regulation of charitable fundraising by religious organisations has given rise to significant difficulties. We suspect that is because there have been no significant difficulties.
- (b) We note also that none of the three previous inquiries into charitable fundraising referred to in the Discussion Paper have disclosed any concern about the operation of exemptions for religious organisations.⁷
- (c) In 2001, the NSW Government undertook a review of the *Charitable Fundraising Act 1991 (NSW)* and issued a report titled, *National Competition Policy Review of the Charitable Fundraising Act (1991)*. The report noted that consideration had been given to regulating all ‘eligible’ persons and organisations conducting fundraising appeals for charitable purposes”, including religious bodies. However it was concluded that, while there would be some advantage in having a complete register of charitable fundraising bodies, to expand the register –

“could involve increased costs to government and those other bodies, without any significant benefit to the community or the organisations concerned”.⁸

⁶ *Charitable Fundraising regulation reform: Discussion paper and draft regulatory impact statement*, Foreword, page 1.

⁷ Industry Commission, *Charitable Organisations in Australia*, 1995; Senate Standing Committee on Economics, Disclosure regimes for charities and not-for-profit organisations, 2008; Productivity Commission, *Contribution of the Not-for-Profit Sector*, 2010.

⁸ NSW Government, *National Competition Policy Review of the Charitable Fundraising Act (1991)*, 2001. P. 17.

- (d) We submit that if no significant difficulties have arisen in the charitable fundraising activities of religious organisations at the State and Territory level, religious organisations should be afforded a broad exemption under any national framework.

4.3 Religious organisations often do not have a formal membership

- (a) As indicated in the ANGLICARE Sydney submission⁹, there are significant difficulties in framing any exemption for religious organisations by reference to the members of the religious organisation. However we note that this is the approach contemplated in the Discussion Paper.¹⁰
- (b) Clearly we would be supportive of any organisation, religious or otherwise, fundraising from its members on an exempt basis where there is a formal and clearly defined membership. However for many mainstream religious organisations, including the Anglican Church of Australia, membership of the organisation is principally a matter of whether individuals self-identify with the organisation. It is well known that the group of persons who identify as being Anglican is much larger than the group of persons who, for example, regularly attend Anglican church services. Despite the lack of formal membership criteria, both groups of people are legitimate constituencies from which donations may appropriately be solicited.
- (c) We therefore submit that any exemption for religious organisations should not be dependent on a formal membership criteria.

4.4 Religious organisations tend to fundraise within their religious communities

- (a) For the most part, religious organisations fundraise within their own religious communities. It would be rare, for example, for a local church to seek funds from the community at large. Our own humanitarian and welfare agencies - ANGLICARE Sydney and The Archbishop of Sydney's Anglican Aid – also solicit and receive the significant majority of their donations from within the Anglican community.
- (b) The reason why religious organisations tend to fundraise within their own religious communities is because the various activities that are undertaken by such organisations are a natural expression of the shared beliefs and values of that community. It is also natural that denominational agencies and local churches would fundraise first and foremost among people who identify with the denomination and who are committed to their local church. It therefore makes little sense for religious organisations to regularly go outside their religious community to seek support.

⁹ ANGLICARE Sydney submission, paragraph 17.

¹⁰ *Charitable Fundraising regulation reform: Discussion paper and draft regulatory impact statement*, paragraph 18.

- (c) We submit that it is appropriate to take this feature of fundraising by religious organisations into account when framing any exemption for religious organisations.

4.5 Scope of exemption for religious organisations in a national framework

- (a) In view of the matters raised above and in the absence of any compelling reason to take an alternative approach, we submit that an exemption for religious organisations similar to the one used in section 7(1) of the *Charitable Fundraising Act 1991 (NSW)* should be adopted in any national fundraising framework. This would have the effect of exempting from the provisions of national regulation –
 - (a) a religious body or a religious organisation in respect of which a proclamation is in force under section 26 of the *Marriage Act 1961* of the Commonwealth or a religious body, or an organisation or office, within a denomination in respect of which such a proclamation is in force, or
 - (b) a religious body or religious organisation prescribed by the regulations, or
 - (c) any body or organisation that is certified in writing by the principal or executive officer of a body or organisation referred to in paragraph (a) or (b) to be affiliated with and approved by the organisation or body so referred to, or
 - (d) a member or employee of a body or organisation referred to in paragraph (a), (b) or (c), or any other person, who is acting with its authority.
- (b) However in the national context it would be appropriate to qualify such an exemption in two and, possibly three ways.
- (c) Firstly, there should be a provision equivalent to that contained in section 7(2) of the NSW legislation, namely a power for the Minister to declare that fundraising regulations do apply to a person, body or organisation otherwise covered by the exemption. As is the case in section 7(2) of the NSW legislation, the Minister should be empowered to declare that *some or all* of the fundraising regulations apply to a religious organisation. This would enable a graduated approach to the re-regulation of particular religious organisations if necessary.
- (d) Secondly, each charity which is or which forms part of a religious organisation must be registered with the ACNC. This should be the case regardless of whether the charity is otherwise eligible to engage in fundraising on an exempt basis.
- (e) Thirdly, we would accept that any solicitation of donations which are predominantly directed outside the relevant religious community to the broader public should comply

with basic “point of collection” requirements such as disclosure of the name and ABN of the charity, and the purpose of fundraising and, if fundraising is undertaken in a “public place”, the wearing of name badges. This would mean, for example, that a mail-out to individuals where the majority of recipients cannot reasonably be regarded as identifying with the Anglican community would be subject to such requirements.

5 Charitable investment schemes

- (a) A number of religious organisations and other charities operate charitable investment schemes (for example taking money on deposit and making loans for church or related purposes) in reliance on ASIC Class Order CO 02/184 and APRA Banking Exemption No.1 of 2012.
- (b) It is arguable that these charitable investment schemes will not come within the definition of fundraising activities to be regulated since the money solicited or received is held by the charity as a debenture and not as a donation. However the paraphrased definition of “fundraising activity” in the Discussion Paper does not give a specific meaning to “solicit” or “receive”.¹¹ Potentially the solicitation or receipt of money to be held on deposit in a charitable investment scheme, and repayable by the religious organisation as a debt, could be considered to be a “fundraising activity”.
- (c) We note that the Discussion Paper provides that “to the extent certain fundraising activities are comprehensively regulated under other regulation, duplication of regulation should be avoided”.¹² Both CO 02/184 and Banking Exemption No.1 of 2012 require certain mandatory disclosures to be made in public offers and marketing documents, including the identity of the body, the terms and conditions of the offer, and that “the investment is designed for investors who wish to promote the charitable purposes of the relevant charity and for whom the considerations of profit are not of primary relevance in the investment decision”. They also limit the ways that the scheme can be advertised and what can be included in those advertisements.
- (d) We submit that any legislation should expressly exclude any activity that is regulated by ASIC or APRA or which has been declared exempt from regulation, in whole or part, by those bodies.

5 April 2012

¹¹ *Charitable Fundraising regulation reform: Discussion paper and draft regulatory impact statement*, paragraph 17.

¹² *Charitable Fundraising regulation reform: Discussion paper and draft regulatory impact statement*, paragraph 19.

Appendix: Regulation of charitable fundraising by religious organisations in the State and the ACT

New South Wales

- (a) In NSW, religious bodies or organisations in respect of which a Proclamation is in force under section 26 of in the *Marriage Act 1961 (Cth)*, or a religious body, or an organisation or office, within a denomination in respect of which such a proclamation is in force, are exempt from regulation under the *Charitable Fundraising Act 1991 (NSW)*.
- (b) Regulation 5 of the *Charitable Fundraising Regulation 2008 (NSW)* also allows other religious organisations to also be declared exempt.
- (c) However the Minister may, by publication in the gazette, declare the Act and Regulations do apply to a religious organisation.

Australian Capital Territory

- (d) The *Charitable Collections Act 2003 (ACT)* exempts “soliciting or receiving money or a benefit by, or on behalf of, an entity on premises owned or leased by the entity from members and guests solely or mainly for the entity's purposes” from the definition of “collection” and gives the example of “a collection taken up in a church service”.¹³

Victoria

- (e) The *Fundraising Act 1998 (VIC)* exempts from the definition of “fundraising appeal” “the soliciting or receipt of any money or benefit by, or on behalf of, an organisation from a person...who is, or was, a member of the organisation...or who is in the process of becoming a member” or is a relative of or personally acquainted with such a person.¹⁴ This would include soliciting money for purposes other than the benefit of the organisation of which the person is a member.
- (f) To the extent a religious organisation may solicit or receive money from a non-member in Victoria, they are, in any case, expressly exempt from regulation relating to registration, the conduct of appeals and the keeping and auditing of accounts.¹⁵ “Religious organisation” is defined to be “...an organisation in respect of which a Proclamation is in force under section 26 of the Marriage Act 1961 of the Commonwealth”.

¹³ Section 7(3)(d), *Charitable Collections Act 2003 (ACT)*

¹⁴ Section 5(3)(c), *Fundraising Act 1998 (VIC)*

¹⁵ Section 16(d), *Fundraising Act 1998 (VIC)*

- (g) Regulation relating to identification badges, collection receptacles and so forth only apply to religious organisations in Victoria to the extent the fundraising appeal is undertaken in a “public place”.

Western Australia

- (h) The *Charitable Collections Act 1946 (WA)* only applies to organisations undertaking collections for a “charitable purpose” as defined in the Act. Notably the definition of “charitable purpose” in the Act does not include the advancement of religion. Fundraising by religious organisations is not regulated under the Act unless that fundraising is undertaken for other purposes that are within the definition such as providing relief to the poor and destitute or other benevolent, philanthropic or patriotic purposes. The *Street Collections (Regulation) Act 1940 (WA)* would require a religious organisation to obtain a permit before conducting a street collection in the Perth metropolitan area.

Tasmania

- (i) The *Collections for Charities Act 2001 (TAS)* does not apply to –
- (i) an appeal by an organisation to its members¹⁶,
 - (ii) an appeal within premises that are used by a religious organisation¹⁷, or
 - (iii) solicitation of a type authorised by the regulations.¹⁸
- (j) The regulations authorise “soliciting by a religious organisation, by way of an appeal to its adherents or any other person who has attended a religious service held by that organisation...”.¹⁹

Queensland

- (k) The *Collections Act 1966 (QLD)* does not apply to “any appeal for support solely for the advancement of religion by or on behalf of any religious denomination”. “Religious denomination” is defined by reference to those declared by proclamation under the *Marriage Act 1961 (Cth)*.
- (l) The Act also does not apply to “any appeal for support for any purpose to which part 3 applies made by or on behalf of any religious denomination”. Part 3 applies to appeals for charitable and community purposes.

¹⁶ Section 4(b), *Collections for Charities Regulations 2001*.

¹⁷ Section 4(d), *Collections for Charities Regulations 2001*.

¹⁸ Section 4(j), *Collections for Charities Regulations 2001*.

¹⁹ Regulation 4 of the *Collections for Charities Regulations 2011 (Tas)*.

- (m) There would, therefore, be few occasions on which it would apply to the fundraising activities of a religious organisation, except in the case of religious organisations that are not part of a recognised denomination under the *Marriage Act 1961 (Cth)*.
- (n) However permission is required for appeals for support from religious denominations which involve door-to-door or street collections.²⁰

South Australia

- (o) The *Collections for Charitable Purposes Act 1939 (SA)* only regulates collections that are undertaken for a “charitable purpose” (as defined in that Act). Notably the definition of “charitable purpose” in the Act does not include the advancement of religion. Fundraising by religious bodies is not regulated under the Act unless that fundraising is undertaken for other purposes that are within the definition such as providing relief to the poor and destitute and so forth. However even for these activities no licence is required if the person (the collector) “only collects or attempts to collect money or property from persons known to the person or with whom the person regularly associates”.²¹ This would have application to many collections undertaken by religious organisations within their own communities.

²⁰ *Collections Act 1966 (QLD)*, section 14A.

²¹ *Collections for Charitable Purposes Act 1939 (SA)*, section 6.