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Manager
Consumer Policy Unit
Infrastructure Competition and Consumer Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: nfpreform@treasury.gov.au

Charitable fundraising regulation reform 2012

Thank you for the opportunity to comment on the Discussion paper on Charitable Fundraising Regulation Reform (**Discussion Paper**).

Introduction – Australian Diabetes Council

Australian Diabetes Council is the oldest and largest diabetes charity in Australia, with over 130,000 members. We educate, challenge and advocate on behalf of those we represent, including those with and at risk of diabetes, their carers and family members.

We rely heavily on the generosity of a caring community to continue our vital work. Our core business is the management, detection and prevention of diabetes. Diabetes is the sixth highest cause of death by a disease in Australia and is our fastest growing chronic disease. Over 3.5 million Australians have diabetes or pre-diabetes.

Australian Diabetes Council is non-political and receives a small annual grant from State Government. We are primarily self-funded and rely on the support of our members and donors. With their help, Australian Diabetes Council is able to offer programs and services that make a world of difference to all people living with diabetes in NSW.

Our members include an even representation of both males and females, and have an average age of 65. They include type 1 (14%), type2 (78%) and other categories such as health professionals, family members or carers (8%). We are also well represented in regional NSW as well as metropolitan areas.

Our credentialed Diabetes Educators, Accredited Practicing Dieticians and Exercise Physiologists provide our members with support and advice, and we run over 150 courses every year to educate all those affected by diabetes. We also run a Support Network across NSW with over 60 groups operating in local areas to engage local diabetes communities, as well as five Resource Centres across the state.

Summary

We acknowledge and support the Government's commitment to review charitable fundraising regulation in the context of the broader not-for-profit sector reforms. We support the Government's review of the national charitable fundraising framework to:

- (a) Provide transparency to donors, supporters (including members) and the general public on the work of ADC and charities in general;
- (b) Aim to reduce and remove ambiguity and duplication of legislation, reporting and the overall compliance burden from both Commonwealth and State Governments affecting charitable fundraising; and
- (c) Improve best practice in the sector by moving toward more predictable, and where appropriate, greater uniformity in compliance requirements

We believe that a nationally consistent charitable fundraising regulation and a framework which reduces the compliance burden, allows our organisation to better focus its resources on carrying out our charitable mission and objectives.

We have reviewed the Discussion Paper with a view to submitting our comments in the context of our organisation's objectives and experience.

Our comments on the Discussion Paper should be read by the Government in the context of our overall support for the Government's not-for-profit reform agenda.

Overall Comments

Objective and tone

The objective and the tone of the draft regulation impact statement, like the ACNC Bill, currently conveys an impression that the sector in general is not acting in the best interests of the Australian community and that funds raised are not being used to meet the purposes/objectives of charities.

ADC, like most other charities, relies on fundraising to generate revenue to provide our services and programs. In NSW ADC holds a Fundraising licence under the *Charitable Fundraising Act 1991 (NSW)* and abides by the Best Practice Guidelines issued by the NSW regularity authority – the NSW Office of Liquor, Gaming and Racing.

We recognise the important role of a regulator to ensure that public trust and confidence is maintained for the sector. However, in our submission, that role is secondary to the greater role of enablement and empowerment that a regulator, and indeed the Government plays, for the sector. Education offerings and Professional Codes of Conduct set out by industry bodies such as Fundraising Institute of Australia (FIA) and Australian Direct Marketing Association (ADMA) provide much needed guidance for professional fundraisers to follow. Voluntarily, ADC is a member of ADMA and Philanthropy Australia. Both bodies have ethical guidelines and requirements for increased

transparency and accountability. FIA has standards of fundraising practice that members have to uphold in order to maintain their membership.

In our submission, the greater goal is to facilitate the work of the sector, emphasising a longer-term perspective of enabling charities to carry out their objectives. This in turn promotes public trust and confidence in the public.

As a member-based charity, our organisation works to provide assistance for the relief, prevention, control and treatment of diabetes. Our activities are directed toward two groups of persons in the community:

- (a) People seeking information of a general nature, including diabetes education material; and
- (b) People seeking greater information and support to assist them in living with diabetes.

Our organisation requires a regulatory environment that allows us to carry out our activities for the benefit of those people in the broader community. Our growing membership has made us acutely aware of the need to ensure that our members' donations and other resources are directed toward our objectives with minimal administration costs and maximum efficiency.

Accordingly, our organisation benefits from a regulator which has a primary objective of promoting the broad objectives and efficiencies of charities and not-for-profit organisations: reducing the cost of administration through the facilitation and establishment of an efficient, and simple regulatory environment. Our submission is that the effectiveness of our activities in the context of an enabling environment in turn promotes public trust and confidence.

Response to Specific Consultation Questions

2. Defining the Scope of regulated activities

2.1 Is it necessary to have specific regulation that deals with charitable fundraising? Please outline your views.

Our organisation strongly supports measures taken by the Government to establish clear, modern, appropriate and streamlined regulatory frameworks for the not-for-profit sector. These measures are crucial to the effectiveness and sustainability of the work carried out by organisations in the sector.

In order to reduce complexity and reporting requirements, ADC would prefer to see any charitable fundraising legislation combined with the ACNC requirements. In addition, our organisation believes that a sector that is self-regulated where a Code of Conduct is required to be followed would be preferable to setting up a Government regulator.

Our organisation also believes that an agreed definition of fundraising is important for the sector and the profession.

2.2 Is there evidence about the financial or other impact of existing fundraising regulation on the costs faced by charities, particularly charities that operate in more than one State or Territory? Please provide examples.

Although our organisation is NSW based we are also subject to Commonwealth regulation via legislation such as Privacy Act, Spam Act, Do Not Call register, as well as other local government requirements, Best Practice Guidelines, Fundraising Institute of Australia (FIA) Codes of Conduct.

As a voluntary member of the Australian Direct Marketing Association (ADMA), we comply with their Code of Practice which relates to marketing.

In our experience the cost to charities for compliance with existing fundraising regulation includes the time spent on reporting regimes, staff resources and IT systems that may not provide flexibility of reporting.

There are currently just over 5,200 Fundraising licences/Authorities that have been issued in NSW – our organisation holds one of these and abides by the Best Practice Guidelines issued by the regularity authority – the NSW Office of Liquor, Gaming and Racing.

2.3 What evidence, if any, is available to demonstrate the impact of existing fundraising regulation on public confidence and participation by the community in fundraising activities?

In our organisation's experience our Fundraising team finds that very few people are aware that there is currently Fundraising legislation in place in NSW which outlines what can be done and how funds must be accounted for.

Possibly unique to this sector, we have found that it is quite common practice for members of the general public to raise funds for a charity, for example, our organisation, without contacting the charity concerned first. These members of the general public, which include individuals and other organisations may download copies of our logo from our website and create their own campaigns, all without permission or the approval of our organisation. Often, our organisation remains unaware of these fundraising activities until a donation is made to us.

In our view, this demonstrates that extensive public education and awareness is required for the general public.

2.4 Should the activities mentioned above be exempted from fundraising regulation?

ADC recognises the merit in not requiring applications for Government Grants or grants from public and private ancillary funds to be subjected to Fundraising Legislation, due to their reporting requirements and the application processes they use in any event.

In order to maintain integrity for charitable purposes as a whole, we believe that workplace collections and donations to religious organisations should be subject to the same expectation for any organisation carrying out charitable fundraising. Transparency and accountability are important for every charity regardless of their size or the nature of their cause. The potential impact on our organisation is that a loss of confidence in other unrelated charitable organisations can have a negative impact on the fundraising of our organisation.

2.5 Are there additional fundraising activities that should be exempt from fundraising regulation? If so, please provide an explanation of why the relevant activities should be exempt.

See comment under 2.4

2.6 Is the financial or other effect of existing fundraising regulation on smaller charities disproportionate? Please provide quantitative evidence of this if it is readily available.

In our view, our organisation falls within the definition of a 'large charity'. However, we reiterate our comment that the potential impact on our organisation of a loss of confidence in other unrelated charitable organisations can have a negative impact on the fundraising of our organisation.

2.7 Should national fundraising regulation be limited to fundraising of large amounts? If so, what is an appropriate threshold level and why?

In our view, imposing a limit to compliance based on amounts raised is problematic. Whilst it may be usual for a smaller charity's fundraising income to be less than \$50,000 a year, the results of fundraising appeals and activities is often unpredictable, for example, an unexpected Bequest can arrive which may then put them well over a prescribed threshold. As an organisation cannot predict these very important types of gifts, legislation requirements would require a retrospective aspect to allow for the uncertainty which can pose compliance difficulties.

To ensure a sector that is transparent and accountable ADC believes that all entities should be required to meet the same standards.

2.8 Should existing State or Territory fundraising legislation continue to apply to smaller entities that engage in fundraising activities that are below the proposed monetary threshold?

Again ADC believes there should be consistent treatment for all entities engaging in fundraising activities and that this should extend to the not-for-profit sector as well.

By continuing the already existing State or Territory legislation for smaller entities whilst others are under the Commonwealth exacerbates the already confusing situation that exists for the sector and members of the public.

2.9 Should a transition period apply to give charities that will be covered by a nationally consistent approach time to transition to a new national law? If so, for how long should the transition period apply?

Our organisation, like many other charities, is concerned at the tight time frames for reform that do not allow for sufficient time to formulate considered responses.

We would therefore support a transition phase of at least 12 months from the final release of a new national law following as it does so quickly after the creation of the ACNC.

2.10 What should be the role of the ACNC in relation to fundraising?

Whilst our organisation would like to see an industry body oversee self-regulation we agree that there is a role for the ACNC to play in regulating fundraising. This would, in our view, be consistent with the aim for the ACNC to be a 'one-stop-shop' for the sector. Accordingly, the ACNC's role should be similar to the role played by the current state regulators.

2.11 Should charities registered on the ACNC be automatically authorised for fundraising activities under the proposed national legislation?

Yes, in order to avoid duplication and increase regulatory efficiencies, our organisation agrees with the proposal to allow all charities registered with the ACNC to also be authorised to engage in fundraising activities across Australia.

2.12 Are there any additional conditions that should be satisfied before a charity registered with the ACNC is also authorised for fundraising activities?

ADC would recommend that a charity registered with the ACNC is authorised for fundraising activities at the same time. The information provided to the regulator at the time of registration, to enable registration, should suffice for an authority to be granted for fundraising activities.

2.13 What types of conduct should result in a charity being banned from fundraising? How long should any bans last?

The ACNC draft legislation includes suggestions of issues that the ACNC would be empowered to investigate. This should include fundraising issues.

In relation to a ban, reputational damage has serious consequences for a charity, similar to the name and shame provisions under the Privacy Act.

Charities should also provide evidence on how, moving forward, they will be able to adhere to these policies and guidelines, by developing or reviewing internal policies and procedures relating to Fundraising.

Our organisation recommends a uniform Code of Conduct that all charities endorse.

3. Regulating the conduct of fundraising

3.1 Should the aforementioned provisions of the ACL apply to the fundraising activities of charities?

ADC believes it would be preferable for the suggested provisions of the ACL to be developed into a Code of Conduct relevant to the not-for-profit sector.

3.2 Should the fundraising activities of charities be regulated in relation to calling hours? If so, what calling hours should be permitted?

Fundraising activities should be regulated in relation to calling hours.

In our organisation's experience, calling hours are already regulated by the Australian Communications and Media Authority under the Do Not Call Register 2006 and Telemarketing Standards; ADMA Telemarketing Code of Conduct and FIA.

3.3 Should unsolicited selling provisions of the ACL be explicitly applied to charitable entities? Alternatively, should charitable entities be exempt from the unsolicited selling provisions of the ACL?

If a charity is conducting trade or commerce then the existing legislation should apply.

However in our organisation's view, face to face fundraising used to obtain donations should not fall under the unsolicited selling provisions of the ACL. This is because a donor retains the discretion as to whether they wish to make a donation.

4. Information disclosure at the time of giving

4.1 Should all charities be required to state their ABN on all public documents? Are there any exceptions that should apply?

ADC agrees that it is appropriate that a charity should endeavour to state their ABN on all public documents. Generally, the only time our organisation does not state its ABN on public documents is where it is impracticable to do so due to space restriction or where it may confuse the intended audience.

4.2 Should persons engaged in charitable fundraising activities be required to provide information about whether the collector is paid and the name of the charity?

Yes there should be some disclosure that a collector is under a commercial arrangement to provide a service to a charity (as set out in the FIA Standard) and the name of the charity.

The specific business arrangement between a fundraising agent and a charity should remain as a private business agreement.

4.3 Should persons engaged in charitable fundraising activities be required to wear name badges and provide contact details for the relevant charity?

Yes, we are currently required to meet this requirement under the NSW Charitable Fundraising Act. FIA also have a Standard regarding Face to Face Fundraising Practice which covers the identification of collectors.

4.4 Should specific requirements apply to unattended collection points, advertisements or print materials? What should these requirements be?

In order to sufficiently identify the charity undertaking the collection, minimum requirements should apply, such as the name of the charity, ABN number, company logo, and contact details of the charity such as phone number and/or website.

4.5 Should a charity be required to disclose whether the charity is a Deductible Gift Recipient and whether the gift is tax deductible?

The receipts for donations issued by our organisation specify that “Gifts of \$2 or more may be tax deductible”. In our experience, many of our donors do not understand the purpose of our DGR status as enabling them to claim a tax deduction.

Within the general public there will be a small portion of people who actually understand the difference between a charity with DGR status and one without. Many charities carrying out fundraising activities may not have DGR status. Of the approximate 60,000 charities in Australia we understand that only around 21,000 have DGR status.

4.6 Are there other information disclosure requirements that should apply at the time of giving? Please provide examples.

In our experience, more detailed information has the potential to cause additional burdens on charities.

4.7 Should charities be required to provide contact details of the ACNC and a link to the ACNC website, on their public documents?

In our experience, providing contact details for the ACNC on public documents may confuse the general public into thinking that the charity has a relationship with a Government Department. Another extreme is that members of the general public may be confused to think that the Government provides funding to the charity and therefore the charity does not require the public’s support. This would impede our fundraising, not enhance it.

Our organisation would be open to providing a link on our website to the ACNC website.

5. Information disclosure after the time of giving

5.1 Should reporting requirements contain qualitative elements, such as a description of the beneficiaries and outcomes achieved?

ADC believes that it is good practice to advise how funds are spent and outcomes achieved but it should not be legislated.

In our experience, many of our beneficiaries do not want to be made known publicly and this could be an unwanted intrusion on a person's right to privacy. It may also inhibit the efficacy of our programs and unnecessarily compromise public perception where our organisation makes a decision based on complex operational and strategic implications which are not always apparent to the public.

A Code of Conduct could cover best practice benchmarks for fundraising.

We note that there are will be reporting requirements under the ACNC and in our view, this should suffice in order to reduce the overall duplication of reporting.

5.2 Should charities be required to report on the outcomes of any fundraising activities, including specific details relating to the amount of funds raised, any costs associated with raising those funds, and their remittance to the intended charity? Are there any exceptions that should apply?

Our organisation's Annual Reports provide details regarding our fundraising activities. We would seek to avoid duplication in this area with the reporting requirements under the ACNC draft legislation.

We note that there is no agreed definition of a fundraising cost and no standard set of accounts exist for fundraising.

Reporting on costs associated with raising funds may cause confusion where there is an investment strategy such as a new Bequest program. Bequests, monthly giving and acquisition of new supporters are all investment strategies where the 'return on investment' is a long term strategy to maximise our resources for the public benefit.

Specific reporting such as those suggested can tend to oversimplify how charities, like our organisation, conducts its fundraising in a strategic and considered manner.

5.3 Should any such requirements be complemented with fundraising-specific legislated accounting, record keeping, and auditing requirements?

ADC believes that an agreed definition of fundraising costs will assist the sector to finally provide an easy point of comparison and increased transparency. We also believe that this is to be covered in the reporting requirements under the ACNC and the one stop shop portal that forms part of that.

In our experience, the public perception of ‘fundraising costs’ can tend to oversimplify the complex environment in which charities operate, including how charities finance their charitable activities as part of a long term strategy.

5.4 What other fundraising-specific record keeping or reporting requirements should apply to charities?

ADC supports the development of a Standard Chart of Accounts for charities and not-for-profit organisations.

ADC also notes that CPA Australia also endorses a standardised method of accounting for not-for-profit organisations, as set out in its report, *Financial reporting by not-for-profit entities*, 2000. Notwithstanding the work already done and the cross-industry support, no standard of accounting for not-for-profit organisations has been adopted.

In our view, greater uniformity of accounts is likely to have a significant effect on reducing the need to duplicate records in reporting.

6. Internet and electronic fundraising

6.1 Should internet and electronic fundraising be prohibited unless conducted by a charity registered with the ACNC?

Under the ACNC proposed legislation every charity is to be registered so this would not appear to be an onerous requirement.

Internet and electronic fundraising are the most cost effective forms of fundraising for our organisation as there is little or no processing (labour) cost incurred by the organisation, particularly if data entry in relation to the donation is being done by the donor themselves at the time of donation.

Payment gateway requirements are no different for a charity than for a corporation eg PCI compliance.

6.2 Should charities conducting internet or electronic fundraising be required to state their ABN on all communications? Could this requirement be impractical in some circumstances?

Our organisation already adheres to a requirement for email marketing to include the ABN under the Australian E-marketing Code of Practice developed by ACMA in conjunction with peak industry associations, consumer groups, message service providers, government regulatory agencies and corporate business. We also understand that under the Spam Act, providing the ABN is a mandatory requirement. Our organisation agrees that the requirement to state an ABN on all communications in internet or electronic fundraising is in the best interests of the sector.

6.3 Are there any technology-specific restrictions that should be placed on internet or electronic fundraising?

There are existing legislation and standards covering internet and mobile transactions as mentioned above. The Internet is a channel and should not be confused with being a different type of fundraising. For example, a raffle can be conducted offline through telemarketing or through direct mail pieces or transacted online – it is still a raffle.

ADC believes that there should not be any technology-specific restrictions placed on internet or electronic fundraising.

7. Fundraising by third parties on behalf of charities

7.1 Is regulation required for third party fundraising? If so, what should regulation require?

Third party fundraising covers quite a range of outsourced services eg Direct Marketing Agencies; Fundraising Consultants; Online portals such as Everyday Hero, My Cause, Gofundraise, Artez etc.

Most are businesses that specialise in assisting charities to raise money and are paid a fee for that service. It would be prohibitive for a charity to develop these skills and infrastructure internally.

Our organisation ensures that all such service providers are under contract to provide a service that enhances our fundraising options and opportunities and meets our commitment to being transparent and accountable for our supporters and members. At the same time, these service providers are engaged by our organisation to maximise the fundraising return from our resources which allows us to apply more resources to our charitable programs.

The Online portals currently do disclose on their websites the costs to the charity involved in making a donation on their website.

It is worth noting that within the sector the term “third party fundraisers” is also used to describe private individuals supporting a charity by running fundraising “event” eg sausage sizzles, morning teas etc.

7.2 Is it appropriate to limit requirements on third party fundraising to those entities that earn a financial benefit?

Under the current NSW legislation all third party fundraisers are required to apply for approval from the Fundraising License holder prior to running a fundraising campaign or event.

ADC believes that all third party fundraisers whether individuals or organisations should be required to obtain approval or be under a contractual arrangement with the charity to ensure due diligence is carried out. In our experience, our organisation would ensure that these arrangements are in place as a matter of good practice.

7.3 Should third party fundraisers be required to register with the ACNC for fundraising purposes only? If so, what are the implications of requiring the registration of third party fundraisers?

The definition contained in the Discussion Paper appears limiting, with third party fundraisers defined as businesses that specialise in assisting charities to raise money. For example this would not include Advertising or Media Agencies that support both the private and charity sector and so is not inclusive of all agencies who work with charities presently.

As the ACNC will be responsible for registering charities and maintaining a register of charities to include third party fundraisers under the ACNC would be confusing and against what ADC believes is the intent behind creating the ACNC.

If the ACNC has capacity to monitor third party fundraisers then ADC believe all NFPs should be included under the ACNC first, and third party fundraisers would fall within the regulation of other consumer regulators.

7.4 Should third party fundraisers be required to state the name and ABN of charities for which they are collecting?

ADC believes this is good practice and provides greater transparency to the public.

7.5 Should third party fundraisers be required to disclose that they are collecting donations on behalf of a charity and the fees that they are paid for their services?

ADC believes that this is good practice and we support annual disclosure around the total value of collections by a licensed collection agent and their fees. However, we believe that the individual business arrangements between an agent and a charity should remain as private business agreements.

It is worth noting that to our knowledge, FIA members are prevented from entering agreements that are based on level of donations.

7.6 Should third party fundraisers (or charities) be required to inform potential donors that paid labour is being used for fundraising activities?

In our view, this can cause a detrimental expectation that in the absence of this information, charitable fundraising does not result in a cost to the charity.

For example, fundraising staff employed by a charity also meet the description of “paid labour used for fundraising activities”. Charities are no different than the commercial sector in that we have finite resources and expertise in house. It is not an uncommon practice for any organisation – charity or commercial – to make a decision to employ specialists to provide a resource needed for a limited time. This is consistent with maximising the fundraising return from the application of our resources which allows us to apply more resources to our charitable programs.

This section appears to be primarily aimed at face to face fundraising – a form of fundraising that provides a more settled cash flow to a charity and builds a strong relationship between the supporter and the cause.

Again FIA has Standards of Fundraising Practice providing guidelines on fair and ethical face to face fundraising – a skill very similar to that of a salesperson. Our organisation has developed Policies and Procedures which set out conduct for fundraising channels so that we consistently respond to supporters.

7.7 Is regulation required for private participators involved in charitable fundraising? If so, what should regulation require?

ADC believes that regulation is not required for private participators as defined in the Discussion Paper – corporate alignment with a charity is a partnership arrangement that is better set out in an MOU or a contract between the two entities defining the relationship. In addition there are bodies such as Australian Centre for Corporate Social Responsibility which provides assistance to organisations on their CSR policies.

We are grateful for the opportunity to participate in the ongoing Not-for-profit sector reforms. We would be pleased to discuss any aspect of our submission in more detail with Treasury.

Yours sincerely



Bronwyn Muir
Head of Fundraising
Australian Diabetes Council