

6 April 2012

**Infrastructure, Competition and Consumer Division
Federal Treasury
Langton Crescent
PARKES ACT 2600**

By email: nfpreform@treasury.gov.au

Response to the Charitable Fundraising Regulation Reform Discussion Paper

FRSA welcomes the opportunity to respond to the 'Charitable Fundraising Regulation Reform Discussion Paper'

Family & Relationship Services Australia (FRSA) is a national peak body. Our purpose is to provide national leadership and representation for services that work to strengthen the wellbeing, safety and resilience of families, children and communities. FRSA member organisations deliver services in more than 650 locations across Australia and consist primarily of non-profit organisations embedded in local communities. FRSA provides support to members and draws on their expertise to understand the changing needs of families accessing services and to inform public policy. FRSA also works collaboratively with the Australian Government and its agencies.

The family and relationship support sector is vibrant, diverse, innovative and resourceful. It is characterised by organisations that are focused on a mission to achieve social change through the provision of a broad range of family and relationship support services to the Australian community. Some of these organisations have been part of the Australian landscape since before Federation; others have formed more recently in response to emerging community needs or a newly defined cause.

All FRSA members are Not for Profit (NFPs) organisations that are predominately companies limited by guarantee, Incorporated Associations or unincorporated religious organisations. There are in excess of 170 FRSA member organisations that support a broad range of children, families and individuals across Australia. These member organisations range in size from small NFP's with less than 10 paid staff operating in a single geographic location and on a budget of around \$250,000 to large NFPs with over 500 paid staff operating in multiple locations and on a budget exceeding \$25m per annum. Across this spectrum, many receive a mix of Federal, State & Territory and Local Government funds as well as monies from philanthropic institutions, fundraising, public donations, member or client fees and/or from income generating programs.

FRSA has made submissions to earlier Discussion & Consultation Papers in the Not-for-Profit reform area and supports the need for national reform of fundraising regulation.

This letter is written in support of the detailed submission by PhilchConnect, an independent, specialist community legal service that provides not-for-profit organisations with access to free or low cost legal advice and assistance. FRSA commends the work of PhilchConnect to Treasury and supports the overall intent of their submission to this Discussion Paper.

Specifically, FRSA highlights the overarching comments & principles below from the PhilchConnect submission that form the basis of our support for the Fundraising Regulation Reform process in conjunction with the establishment of the ACNC:

PilchConnect welcomes the Treasury's interest in reforming the regulatory approach to fundraising activities in Australia. The need for a consistent, coherent fundraising regime is well documented, most explicitly by the 2008 Senate Report on the Disclosure Regimes for Charities and Not-for-Profit Organisations which recommended the implementation of a National Fundraising Act through the referral of State powers.

More recently, the Productivity Commission's 2010 Research Report into the Contribution of the Not-for-Profit Sector (Productivity Commission Report) recommended that mutual recognition and harmonised fundraising regulation be implemented across Australia, through the establishment of model fundraising legislation, as well as the creation of a fundraising register for cross-jurisdictional fundraising organisations.

There is much confusion around the application of current regulatory approach to fundraising (particularly in relation to cross-border activities) and there are noticeably low numbers of registered fundraisers across jurisdictions. The current regime is ineffective, out dated, and creates an undue administrative burden on a sector that is often time and resource poor.

While we agree that the regulation of fundraising activities ought to have its policy basis in protecting public confidence and trust in fundraising, we are particularly concerned with the extent to which regulation creates excessive administrative burdens that adversely impact on a NFP's ability to further its mission.

Achieving the correct balance between these priorities ought to be a key goal for any reform to fundraising policy.

It is clear that current regulatory regimes at state and territory level create inconsistencies, complexity and inefficiencies that fail to achieve the desired policy outcomes of transparency, accountability and increased public trust and confidence in fundraising activities. We question whether specific fundraising regulation is necessary to achieve these policy objectives, given the proposed role of the ACNC as the 'one-stop-shop' for registration and

reporting of charities (and ultimately other NFPs), and the potential for the Australian Consumer Law (ACL) to regulate behavioural aspects of fundraising and provide consumer-based protections to the donating public.

Given the current level of inconsistent state and territory regulation, it is imperative that reforms to achieve national consistency are integrated with (and ideally, replace) existing state and territory regimes. Without this, national reform of charitable fundraising will simply add an extra layer of regulation, particularly for charities registered with the Australian Charities and Not-for-Profits Commission (ACNC). This result is undesirable and contrary to the Government's commitment to reducing red tape and streamlining reporting requirements for charities and NFPs.

We support the following approach to national reform:

- Charities that are registered with and report to the ACNC should be automatically authorised to fundraise nationally, and should be exempt from all state and territory fundraising regulation. In our view it is unnecessary to impose additional registration or reporting requirements on registered charities that conduct fundraising activities – the proposed ACNC legislative framework is sufficient to achieve the policy objectives of accountability, transparency and public trust and confidence in charities' activities, including fundraising.*
- The ultimate goal should be for other not-for-profit organisations to be able to register with and report to the ACNC, in line with the concept of the ACNC as a 'one-stop-shop' national regulator for charities and not-for-profits. Once registered with the ACNC, NFPs should be authorised to fundraise nationally and exempt from state/territory fundraising regulation.*
- We appreciate that there may be an interim period where the ACNC will only be able to register, and regulate the activities of, charities (as opposed to NFP organisations more broadly). In this transition period, it may be appropriate for some state-based regulation of fundraising activities to continue (for non-ACNC registered organisations). However we submit that federal and state/territory governments should work to 'fast track' NFPs that are registered fundraisers under state and territory regimes into the ACNC national regulatory framework.*

Where existing laws apply (or could easily be amended to apply) to the fundraising context, this is preferable to specific regulation. Such an approach will avoid duplication and inconsistencies among regimes.

Notably, the ACL and other consumer-focused laws could regulate 'on the ground' aspects of fundraising activities (eg, misleading and deceptive conduct, information disclosure, privacy and nuisance).

Charitable fundraising via the internet should not be limited to ACNC-registered charities. It is not clear in the Discussion Paper why the 'higher risks' posed by internet and electronic fundraising cannot be adequately dealt with by existing legislative regimes, in particular laws addressing spam, electronic transactions, misleading and deceptive conduct, and fraud.

FRSA shares the view that regulation of fundraising activities should have its policy basis in protecting public confidence and trust in fundraising. However, FRSA is also concerned that the principle of reducing red tape is maintained so that new regulations do not create excessive administrative burdens that adversely impact on our member's ability to further their mission. Achieving the correct balance between these priorities ought to be a key goal for any reform to fundraising policy.

FRSA looks forward to the efficiencies to be achieved out of fundraising reform including the harmonisation of regulation requirements and potential monitoring through the ACNC. For further information about FRSA's support for this position, please contact me at any time.

Yours sincerely,

A handwritten signature in black ink that reads "Steve Hackett". The signature is written in a cursive style and is underlined with a simple horizontal line.

Steve Hackett

Deputy Director

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