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AUSTRALIA + NEW ZEALAND

6 August 2018

Committee Secretary
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
via email: charityfundraising.sen@aph.gov.au

Dear Sir/Madam,

Charity Fundraising in the 21st Century

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide a submission to the Select Committee on Charity Fundraising in the 21st Century. Appendix A provides specific responses to the terms of reference for the Senate Inquiry. Appendix B provides more information about Chartered Accountants Australia and New Zealand.

General points

- CA ANZ is supportive of the Select Committee's inquiry into fundraising. As a member of the #fixfundraising coalition we believe reform of the fundraising legislation in Australia is vital to relieve a significant source of regulatory burden on our not-for-profit sector.
- The existing fundraising laws are outdated and do not effectively support fundraising across State and Territory borders or through digital platforms.
- We recommend the Federal Government actively supports and assists with the development of a nationally-consistent, contemporary and fit-for-purpose charitable fundraising regime by initiating amendments to the Australian Consumer Law to ensure its application to fundraising activities for and on behalf of charities is clear and broad and urging the repeal of existing fragmented State and ACT fundraising laws.

Should you have any queries concerning the matters raised in this submission or wish to discuss them in further detail, please contact Geraldine Magarey on (02) 9290-5597 or via email at Geraldine.magarey@charteredaccountantsanz.com.

Yours sincerely,

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Appendix A

a. Whether the current framework of fundraising regulation creates unnecessary problems for charities and organisations who rely on donations from Australian supporters.

We believe the current framework creates numerous problems and is a massive regulatory burden for a sector that is of great importance to Australian society. The majority of charities and other not-for-profit (NFP) organisations are funded through donations. Currently these organisations have to deal with seven different laws when fundraising. Each of these laws is significantly different to each of the others.

These laws include different definitions of 'charity', 'charitable purposes' and 'fundraising'. As well as different exemptions and exclusions. There are also different requirements about when a fundraising licence is needed and the conditions associated with it. The laws are no longer fit for purpose and do not reflect the modern or cross border fundraising activities including the use of the internet or email.

b. Whether current fundraising laws meet the objectives that guided the decision to regulate donations.

The objective of fundraising laws is to maintain public confidence. We believe this objective would not be diminished; in fact it would be enhanced, by the implementation of national fundraising legislation initiating amendments to the Australian Consumer Law to ensure its application to fundraising activities.

c. Whether current fundraising compliance regimes allow charities to cultivate donor activity and make optimal use of resources donors provide.

The current fundraising compliance regimes do not allow charities to cultivate donor activity. They do not make optimal use of resources which donors provide as the regimes result in already scarce donor contributions plus volunteer time being spent on complying with red tape rather than the charities' core activities.

d. The loss in productivity for the thousands of charities who try to meet the requirements of the seven different fundraising regimes.

Deloitte Access Economics estimated that the cost of regulatory burden is more than \$15 million annually for the charity sector alone. This cost is likely to be significantly higher when the impact on other types of NFP organisations are included.

e. Whether the current frameworks for investigation and enforcement are the best model for the contemporary fundraising environment.

No comment.

f. How Federal, State and Territory Governments could work together to provide charities with a nationally-consistent, contemporary and fit-for-purpose fundraising regime.

The Federal, State and Territory Governments can best actively support and assist with the development of a nationally-consistent, contemporary and fit-for-purpose charitable fundraising regime by:

- initiating amendments to the Australian Consumer Law to ensure its application to fundraising activities for and on behalf of charities (and other not-for-profit organisations) is clear and broad;
- repealing of existing fragmented State and ACT fundraising laws; and
- working together as Australian Consumer Law regulators, and with the Australian Charities and Not-for-profits Commission, self-regulatory bodies and sector intermediaries to draft and consult publically on a core mandatory code to be enforced under the Australian Consumer Law multi-regulatory framework.

g. The appropriate donor-focused expectations and requirements that should govern fundraising regulation in the 21st century.

Fundraising in the 21st century is very different to the form it took in the past when much of our legislation was developed. Technology advances have created new platforms and ways of fundraising. The Giving Australia Report 2016 showed that 96% of large organisations undertaking fundraising use websites, with 80% utilising social media and almost 70% using third party fundraising platforms and crowdfunding campaigns. Despite this major shift to online, only two fundraising laws explicitly address email or the internet, and none of them address online giving or the matter of jurisdiction.

h. How the Australian consumer law should apply to not-for-profit fundraising activities.

It is the view of the #fixfundraising coalition that only relatively minor amendments could be made to the Australian Consumer Law to expand its application.

We ask the Senate Committee to recommend that the Commonwealth Government initiate a proposal under the Intergovernmental Agreement for the Australian Consumer Law to make the following reforms:

- that, without amending the definition of ‘trade or commerce’, ensure the following provisions apply to the fundraising activities of not-for-profits: section 18, (misleading and deceptive conduct), section 20 (unconscionable conduct) and section 29 (false or misleading representations), and
- that, in the context of fundraising activities, breaches of section 21 (unconscionable conduct), section 29 (false or misleading representations) and section 50 (harassment and coercion) not be required to be in connection with the supply of goods and services in the context of fundraising activities of not-for-profits.

These proposed amendments will strengthen and simplify the application of the Australian Consumer Law to fundraising behaviours – currently some of the Australian Consumer Law provisions only apply in respect of conduct that is in “trade or commerce”, whilst others must involve the “supply of goods and services”.

- i. What are the best mechanisms to regulate third party fundraisers and to ensure the culture of third party fundraisers matches community perceptions of the clients they work with.**

Third party professional fundraisers are covered by the Australian Consumer Law as they undertake fundraising in an 'organised, continuous and repetitive way' and they are supplying services to the charitable organisation which has engaged them (to conduct fundraising on their behalf). On this basis our proposal to amend the Australian Consumer Law provides increased opportunities to address wrongdoing by third party fundraisers. Under the Australian Consumer Law, civil penalties are in the order of more than \$1 million, which far exceeds any civil penalty provisions of State-based fundraising laws.

- j. Whether a harmonised, contemporary fundraising regime could help in addressing concerns about the potential influence of foreign money on civil society and political debate in Australia.**

No comment.

- k. The cost to the charity and not-for-profit sector, and the communities they serve, of postponing fundraising reform.**

In item (d) we quoted a Deloitte Access Economics report which estimated the cost of regulatory burden of in excess of \$15 million per annum. The cost of postponing this reform will exceed this cost.

- l. Any other related matters.**

No matters.

Appendix B

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.