Charitable Fundraising Regulation Reform Discussion Paper
Infrastructure, Competition and Consumer Division
Treasury
Langton Crescent
PARKES ACT 2600
NFPReform@treasury.gov.au
March, 2012
To whom it may concern
Re: Charitable Fundraising Regulation Reform Discussion Paper
This late submission has been prepared by Dr. A. Keith Thompson, Special Counsel at Harris Freidman Lawyers, Level 10, 25 Bligh Street, Sydney, 2000. It has been prepared at the request of The Church of Jesus Christ of Latter-day Saints in Australia ("the Church") but has been delayed while approval was obtained from Church authorities absent overseas before your deadline. Dr. Thompson is willing to respond to any further questions that may be addressed to him by the regulators after they have reviewed these responses to the questions in the discussion paper. While this response answers all the questions in some measure, there are some general comments to begin with.
General
The Church does not currently need to comply with the registration or reporting requirements imposed by the charitable fundraising laws of any Australian existing state or territory. That is because the Church does not actively solicit donations from the Australian public. For example, it does not conduct an annual house to house public appeal though it has supported some other Australian charities by providing volunteer collectors as those separate institutions have conducted their own appeals. All of the Church's donations come from its Australian Church membership, affiliated charitable entities overseas, and some interested non-members who support its mission and particularly its welfare outreach programs. Some non-members choose to support the welfare outreach programs of the church in Australia and overseas because they know that the church does not have a paid clergy and relies on self-funded volunteers to do its welfare work. This reliance on church volunteers and the Church's practice of funding welfare outreach administration from its tithing receipts, means every dollar donated for welfare reaches those in need.
Church members voluntarily donate to the Church because they believe in the very old Judeo-Christian principle of 'tithing'. In the case of the LDS Church, faithful members donate 10% of their gross annual income as 'tithing' to support the various programs of the church including administration, construction and missionary outreach; and they make 'fast offering contributions' to support the poor and needy in the Australian community,

needy members of the Church first, but also the wider public particularly in cases of civil emergency. The payment of 'tithes and offerings' is regularly taught by lay teachers and speakers in LDS classrooms and congregations around Australia as a religious duty. But there is no compulsion to pay tithing. Church members are taught that spiritual and temporal blessings flow from the faithful payment of these voluntary offerings. They are taught that those who are faithful in payment of their 'tithes and offerings' will never want themselves and in any event, will be supported by their local congregation where there is temporary misfortune. Those who faithfully pay their tithes and offerings and so declare to their local lay bishop every two years, can also qualify to enter one of the five temples in Australia (Brisbane, Sydney, Melbourne, Adelaide and Perth). The Church does not believe that teaching tithing as a religious duty brings the Church within the purview of any current Australian charitable fundraising law and submits that should not change when such laws are administered by the new Australian Charity and Not-for-profit Commission.

Because the Church does not conduct house-to-house or other appeals, it has not accumulated first-hand experience with such fund raising methods. But because the Church is part of the charity and not-for-profit community, it does have an interest in the issues raised by the discussion paper since the practices of other charities reflect on that community as a whole, for better or worse. In particular, laws are needed to discourage and punish fraud, impersonation and misrepresentation. If private philanthropy is to be encouraged in Australia – and the Church believes that is very desirable – it is also appropriate that the public be well informed about the relative efficiencies of the various ways they can spend their discretionary 'for donation' dollars. When the public do not have significant information about their favoured charity or not-for-profit, the only way this objective can be achieved is for regulatory provisions to include targeted transparency requirements. However care must be exercised when framing these requirements since requiring a new charity to demonstrate an extensive track record of achievement in disclosure documentation could operate to discourage much worthwhile activity. It might also be perceived as driven by a policy to protect mainstream and established institutions. That result or perception should be avoided since it would offend Australia's commitments to international human rights norms and particularly those norms intended to protect minority religious belief and practice.

We now provide our answers to your specific consultation questions, using your numbering:

Consultation questions:

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

Yes. The Church agrees that regulation is needed for all the reasons stated in paragraphs 8, 9 & 13 of the Discussion Paper. Specifically regulation is required to improve public confidence in the sector which affects even those charities and not-for-profits that do not choose to engage in public appeals and which are accordingly not subject to fundraising regulation. Regulation is also required to prevent impersonation and other kinds of fraud and misrepresentation; to avoid inefficiencies and to empower donors with transparent and reliable information.

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.

The Church has been unaffected by the existing legislation because of exemption. If the Church is not exempted in the future, its administration costs will increase. But if the Church must be regulated, it would obviously be simpler and cheaper to comply with one federal law than several State or Territory laws. As a matter of practice, the Church does not meet administration or compliance costs out of funds donated for welfare purposes which sometimes include contributions received from people who are not members of the Church. Rather, the Church chooses to meet administration costs from the tithing donations it receives exclusively from church members so that 100% of funds donated for welfare purposes are expended directly on those purposes.

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?

Again, the Church has been exempt from fundraising regulation in the past and expects to remain so in the future because it does not conduct public fundraising appeals. Accordingly the Church cannot assist with direct examples from its own experience. Anecdotal experience from around the world suggests that Church members prefer to make their welfare donations through Church avenues because they know that 100% of their welfare donations are used for their intended welfare purposes.

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

Yes, these exemptions should continue and for the reasons stated in paragraph 18 of the Discussion Paper. That is, government, corporations which are financial and generous enough to make charitable donations, co-workers and church members are already sufficiently well informed or capable of performing

their own due diligence before donating to their chosen charities and not-for-profits. To remove the existing exemptions would result in unnecessary extra administrative costs with resulting inefficiency as advised by the Productivity Commission in 2010.

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.

Sometimes Church youth groups (including sponsored scout troops) seek to raise limited funds from the general public to enable attendance at conferences or to participate in camps and jamborees. Where the group as a whole is ACNC registered it is recommended that this limited and customary fundraising should not invoke reporting requirements if the individual group's fundraising does not exceed $50,000 even though the national total of such fundraising may exceed that amount. Such groups could utilize the proposed exemption by separate registration but the various costs of such registration would outweigh the fundraising benefit. It is therefore submitted that an exemption should be crafted which protects such customary local fundraising if the local branch fundraising considered separately would not exceed the exemption threshold.

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.

The Church has no experience from which to contribute anything it thinks would be useful in answer to this question.

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

The Church believes that the government's proposed $50,000 threshold is appropriate so long as the familiar existing exemptions are retained.

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?

No. This would defeat the efficiency reasoning of the Productivity Commission which has been a core justification for the proposed regulation of the Charity and Not-for-profit sector - as outlined in the Foreword to the Discussion Paper.

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?

Whether a transition period is needed depends on the form of any proposed new national law. If there are no requirements in the new law that are not already a part of familiar existing State or Territory law, it seems reasonable to expect prompt compliance without a transition period.

An alternative to providing a 6-12 month transition period if there are novelties in any new law, might be to instruct ACDC staff that no prosecutions were to be implemented other than in respect of fraud or egregious breaches of familiar law during a similar period. But warning notices could still be issued during such an 'informal transition period'.

2.10 What should be the role of the ACNC in relation to fundraising?
The Church believes that the proposed ACNC powers outlined in paragraphs 27-29 of the Discussion Paper are appropriate, again provided the exemptions outlined in paragraph 18 are retained.

2.11 Should charities registered on the ACNC be automatically authorised for fundraising activities under the proposed national legislation?
Yes. However the Church believes that this question raises a broader issue. The processes which are required before Funds established by Charities and Not-for-profits can be qualified as DGRs are notoriously opaque. This is particularly so where the proposed DGR would benefit 'the needy' outside Australia even in well recognised Third World Countries. The Church notes that almost immediately after New Zealand created its Charities Commission, it legislated to make all donations to a registered Charity tax deductible. Consideration was also given to granting tax deductions to unpaid volunteer working time, but that generous idea was deferred. The Church believes that Australia needs to become much more committed to encouraging private philanthropy. As one of the most affluent countries in the world, Australia also has a moral duty to provide for those less fortunate in the Third World. Just as Charities registered with the ACNC should be immediately authorised to conduct fundraising activities under the proposed new national legislation, so all donations made to them should be completely tax deductible and the unequal and opaque DGR scheme should be scrapped. Australian people need to be encouraged in their wish to care for the needy in their own community and internationally. Benevolent tax policy can be a great incentive to encourage philanthropic giving. Present tax policy acts as a substantial brake on the goodwill and generosity of the Australian people.

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

No. Again note per the response to question 2.11 that once Australia recognises a charity, it ought to be able to offer all of its donors tax deductibility for all the donations they make to it.

2.13 What types of conduct should result in a charity being banned from fundraising? How long should any bans last?
The Church believes that at least the following conduct should result in a charity being banned from fundraising:

- Intentional dishonesty in disclosure statements.
- Knowingly engaging officers, staff or contract collectors with fraud convictions.
- Persistent breach of any other fundraising laws.

The ACNC might be empowered to issue bans from 6 months through 5 years. Indefinite bans should also be available but with provision for applicants to have them lifted after 5 years upon application to the Federal Magistrates Court.

3.1 Should the aforementioned provisions of the ACL apply to the fundraising activities of charities?
Yes. However it is noted that when some persons become disaffected with charities including churches to which they previously contributed much of their time and other resources, they can become obsessed with trying to destroy the organisations they once loved. The ACNC personnel charged with identifying cases for enforcement need to be objective when they make their prosecution decisions if the ACNC is to avoid becoming a tool if the hands of would-be persecutors. These comments are made recognising that the ACL provisions which the Discussion Paper considers might be applied in the charitable fundraising area include sections 20-22 (unconscionable conduct) and section 50 (harassment and coercion).

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

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?
The Church thinks that the ACL should apply to unsolicited sales by charities. We believe this would enhance confidence in the Charities sector from which the Church would benefit.

4.1 Should all charities be required to state their ABN on all public documents? Are there any exceptions that should apply?
Yes, however there is difficulty with what constitutes a public document. For example, though it seems clear as a matter of public policy that such a law would not be intended to have retrospective effect, perhaps a formal exception should be expressed in respect of the documents of a public charity which are still in public circulation even though they were issued before the new act was passed.

Consideration also needs to be given to compliance with any such requirement in cases where donors provide their assistance electronically. How does such a recipient charity go about ensuring that the donor of an unsolicited donation has the correct ABN number whether or not the donor wants to claim a tax deduction? If the continuing exemptions anticipated by paragraph 18 of the Discussion Paper are not broad enough to exempt charities which receive unsolicited donations from the requirement to provide their ABN in each case, it seems the legislation should specifically provide that the charity adequately complies with the legislation if a receipt is issued to the donor at the last known address by the end of the relevant financial year.

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.

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

4.4 Should specific requirements apply to unattended collection points, advertisements or print materials? What should these requirements be?
Yes. The information provided at these collection points should be the same as that required of donors (minus the badge absent a person to wear it); namely ABN, whether the collection organisation is paid; a standardised disclosure statement (see para 4.6 below) and contact details for the charity.

4.5 Should a charity be required to disclose whether the charity is a Deductible Gift Recipient and whether the gift is tax deductible?
Yes, though it is noted that DGR qualified charities involved in public collections will ordinarily make their DGR qualification a sales point of difference. But this raises the deeper issue of whether the current DGR structure should remain as already mentioned above in the response to question 2.11. This is a larger topic and doubtless will be the subject of further discussion papers by

government in the future. Suffice it here to say that the existing DGR regime is unfairly discriminatory and needs to be overhauled in the interests of charity equality. Ideally, any organisation registered as a charity would be able to offer tax deductibility to donors in the future. The existing DGR qualification process presents significant barriers to entry and is essentially ungenerous in consequence. We note that the NZ Government moved to provide tax deductibility for all contributions to registered charities at almost the same time as they established their Charities Commission. The majority partner in NZ's coalition government was initially reluctant to implement this election policy of their junior coalition partner (United Futures – The Hon. Peter Dunne). There was also some delay while economic modelling and public consultation was undertaken, but ultimately the implementation experience has been completely positive. Complete tax deductibility for donations to charities has been shown to encourage altruism in society and absolves government of large portions of responsibility for the delivery of charitable services in the community. Largely because they can harness the good will of volunteers, charities are normally much more efficient in delivering social services than are government departments.

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

Since the objective of the disclosure and transparency drive explicit in the Discussion Paper is to ensure Donors have the same knowledge as Charities when they donate, the ideal would be the requirement of a standardised formula showing the percentage of donated funds actually delivered to purpose. But this would be difficult for start-up charities which would only be able to disclose good-faith projections. Such requirements would impress upon charities the need to deliver their product with efficiency.

The standardised formula envisaged must be simple enough that it is transparently easy for lay people to understand. An analogy might be the requirement that actuarily 'true interest rates' be spelled out in all forms of credit contract where the total cost of credit including application fees are factored into the final true interest rate number.

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

Yes, public collection charities should be required to provide this information.

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

Yes for public collection charities. Not for those charities which receive unsolicited donation income from informed donors. Such outcome statements should be a voluntary choice for charities which do not collect donations in the market place.

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?

Yes. Public collection charities should be required to report outcomes in a way or place that will be accessible by their donors. Exceptions – disclosure should not be such that the private information of individual donors is identifiable. If unsolicited donations are made the subject of compulsory reports, they should not be the subject of public disclosure because they were not the subject of public solicitation.

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

As suggested in the response to question 4.6, a simple but standardised formula showing the percentage of donated funds actually delivered to purpose would be a useful tool which would assist donors in deciding how to make their charitable donations most effectively. However, any requirement that a fundraising charity disclose amounts collected at certain places or by certain collectors would be to require the disclosure of commercially sensitive information. Global information should be sufficient for public disclosure but with ACNC having a reserved right to privately require additional information to ensure that a true and correct picture had been provided. But again, there should be no duty to make public disclosure of information which could be commercially sensitive.

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

If a simple but standard disclosure formula can be specified, that formula will likely drive the way that information is collected, collated and reported by the Charity. The difficulty is to define a formula which is simple, useful and accurate.

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

Yes. However note that it could be very difficult for charities receiving electronic donations to ensure that all donors received mandated disclosure information. This problem suggest that charities that choose to raise funds electronically should be required to meet portal information standards before funds could be received which enabled immediate receipt disclosure in each case. Charities not involved in public or electronic fund raising should not be required to respond to each donation. But if accepting electronic donations, they should be required to obtain sufficient ID address information from donors to enable them to provide a statement of donations at the end of each year or more regularly when requested by some authorised person.

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?

Yes. However the concern about impracticality is misplaced. If the charity is technologically sophisticated enough to raise funds on the internet and chooses to do so, then that same charity is sophisticated enough to create portals which require sufficient information before donation remission to enable automatic receipt and disclosure information by return.

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

It is noteworthy that despite the passage of the *Interactive Gambling Act* in 2001 which made it illegal to offer gambling services to a player logging on from within Australia, there have been no prosecutions. That is probably because of the problems which would arise were that regulator to try and prosecute an overseas online Casino owner which has no Australian presence or assets. But it also demonstrates the difficulty of successfully regulating the internet. It is suggested that the ACNC will only be able to ensure that electronic charitable fundraisers do indeed automatically provide their key identifier information automatically when donations are made. This can clearly be sample tested.

The definition of what constitutes spam email for electronic fundraising purposes could also be tightly written with incentives for whistleblowers who report breaches resulting in successful prosecutions.

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

Yes, regulation is required. The discussion paper proposals including separate registration of third party fundraisers resonate with the Church.

7.2 Is it appropriate to limit requirements on third party fundraising to those entities that earn a financial benefit?
Yes. If the Discussion Paper's proposed limitation of regulation of third party fundraisers were not implemented, many corporate organisations and private individuals who currently raise funds for well recognised charities as volunteers without any remuneration would be discouraged from that doing so. That would not be a good result. The Church therefore supports the proposal to limit regulation of third party fundraisers, both corporate and individual, to those who derive a financial benefit from their involvement.

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?
Yes and the implications are all good. Registration will improve standards and allow closer supervision and more accountability from registrants. It will also discourage fraud and corrupt practice.

7.4 Should third party fundraisers be required to state the name and ABN of charities for which they are collecting?
Yes. It would be inconsistent to require such disclosure from all other parties involved in the public fund raising business but not from those who do so as third parties.

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?
Yes.

7.6 Should third party fundraisers (or charities) be required to inform potential donors that paid labour is being used for fundraising activities?
Yes. Such disclosure will encourage healthy competition in the charitable sector and teach donors to be selective with their donations.

7.7 Is regulation required for private participators involved in charitable fundraising? If so, what should regulation require?
Yes. Contact details, qualifications and financial history including any previous ACNC bans, bankruptcies, fraud or other criminal convictions.