



Resthaven
Incorporated

Eldercare
I N C O R P O R A T E D

RESPONSE TO

AUSTRALIAN GOVERNMENT

CHARITABLE FUNDRAISING REGULATION REFORM

DISCUSSION PAPER AND DRAFT REGULATION IMPACT STATEMENT

April 2012

Introduction

ECH Inc., Eldercare Inc. and Resthaven Inc. are three of South Australia's largest and most experienced charitable providers of residential and community aged care and housing options for older people.

Our combined operations offer a comprehensive range of services and support to frail, older South Australians, including independent retirement living, Home and Community Care (HACC) services, community aged care packages, Transition Care, health and well-being services, respite and residential aged care. In all, we employ close to 4,000 staff and provide assistance to many thousands of residents and clients each year.

We broadly support the government's reform agenda for the not-for-profit (NFP) sector and our views are largely reflected in the submissions to Treasury by Aged and Community Services Australia (ACSA), which is the peak national body representing the NFP aged care sector; and in our own joint submission on NFP tax concessions. In particular, we strongly support the government's stated objectives of reducing red tape and streamlining reporting, while improving transparency and accountability in the sector and public access to information. We recognise that maintaining public confidence in our activities, including fundraising, is vital to our ongoing ability to deliver services for the public good.

To that end, the establishment of the Australian Charities and Not-for-profits Commission (ACNC) should act to harmonise, if not replace, currently duplicated or avoidable regulation and reporting requirements across Australia. While we only operate in South Australia and are not large fundraisers, we are members of Aged and Community Services (SA & NT), which in turn is a member of ACSA, and therefore share an interest in improving the regulation of the aged care and housing sectors at a national level.

We strongly favour the establishment of the ACNC as a single, national regulator of the NFP sector, with the principle of 'report once, use often' at its core. A fundamental feature of the principle must be no duplication of regulation or reporting. This view underpins our comments on the discussion paper's questions but also the broader matter of NFP sector reform.

We acknowledge that the government has, in recent months, extended the start date to aspects of the proposed regulation of charities. We wish to further advocate for an appropriate period before new fundraising regulations commence. An overall weakness in the consultation process, of all related matters, is the finalisation of a statutory definition of charity and of the review of *Better targeting of tax concessions*.

We remain opposed to aspects of possible changes to tax concessions on the basis of the potentially costly impact on charities. This response should therefore be read in conjunction with our submission to the tax concessions review and other industry submissions on related reform matters: the definition of charity; governance arrangements; the establishment of the ACNC; and the Draft ACNC Bill. We believe these matters will potentially influence the outcome of consultations and other processes associated with fundraising regulation.

Defining the scope of regulated activities

Firstly, we agree that fundraising regulation is necessary to ensure public confidence and trust and to protect charities and potential donors against unscrupulous operators. We also note the intention that the ACNC will act to correct any ‘information asymmetry’ between charities and donors through the proposed public information portal. However, we firmly believe that little will be achieved until and unless the Australian Government addresses the inseparable matter of different State and Territory legislation applying to charities. The discussion paper acknowledges the significant cost that this can impose on charities.

In our own case, it is noteworthy that the April 2010 meeting of COAG agreed to additional reforms for the not-for-profit sector, including an implementation plan and governance structure to develop a nationally consistent approach to fundraising regulation. Despite that agreement, the South Australian Government has proceeded with its own review of *Collections for Charitable Purposes - Improving Regulation*, resulting in a final report that includes draft legislative amendments and a draft Code of Practice. We understand that the SA government is still considering submissions to the review, but several charities have expressed concerns about various aspects of the Draft Code of Practice.

We are therefore concerned by the SA Government’s apparent departure from the 2010 COAG agreement and its potential to complicate attempts by the ACNC to achieve legislative consistency across Australia, if not a single legislative framework for all charities. We would strongly encourage the Australian Government to vigorously pursue an objective of a single, nationally consistent approach to regulation of the charitable sector.

On the specific question of the scope of activities to be regulated, we agree with the exemptions proposed in the discussion paper but would add bequests to the list, on the basis that they are essentially no different to donations to religious organisations from their own members. The donor has usually had a close association with the charity involved, either through services provided directly to them or to someone very close to them. It is also usual that bequests carry specific wishes or provisions as to the use of the funds. On the other hand, we have experience of anonymous, unconditional bequests but even these can only be used in the furtherance of our objects as charities so there seems no reason to include bequests in fundraising regulation.

The discussion paper defines fundraising as ‘any activity that involved the soliciting or receipt of money or other property ...’. While it may be implied, the exemptions should specifically include unsolicited donations to differentiate them from entity-initiated fundraising activities.

The paper also suggests that certain activities, such as raffles and lotteries, could be exempted on the basis that they are already well regulated by State laws. We support the avoidance of duplication so such an exemption would need to be considered together with the concept of a fundraising threshold (see comments below).

Implementing a national approach to fundraising regulation

The discussion paper acknowledges the findings of the Productivity Commission’s 2010 research report on *Contribution of the Not for Profit Sector* in relation to the case for reform of fundraising regulation. The report regards the existing inconsistencies in State and Territory legislation as a threat to public confidence in fundraising and as representing a significant cost to the sector. These two considerations alone would seem to be sufficient to warrant a nationally consistent approach to not only fundraising but to regulation of charities generally.

We accept that there will continue to be a need for separate State and Territory legislation while the ACNC governs only charities and not all NFPs. However, the differing jurisdictional legislation could be harmonised, with an eye to the likelihood that the ACNC will eventually encompass all NFPs.

Given that our three organisations are charities (and public benevolent institutions) we believe we should not be subject to both Commonwealth and State regulation once the ACNC is established. As we will be required to be registered with the ACNC and subject to its governance and reporting requirements, we support the option of being exempted from State Government regulation for entities such as ours.

The discussion paper proposes a fundraising threshold of \$50,000, below which charities would not be subject to national fundraising laws. Even as large aged care providers, our fundraising activity is small scale and not often likely to be more than \$50,000 a year. Nevertheless, in general terms, it is worth noting that fundraising results will vary from year to year, and potentially be above and below the proposed threshold. Charities may therefore have to report in some years and not in others. Irrespective of the actual level, the threshold would need to be indexed over time to maintain its relevance.

South Australian government regulations require that we report collections for charitable purposes as part of the annual licence application process. Under separate legislation, income from lotteries and raffles need only be reported if the prize values are above certain limits.

For many South Australian charities therefore, having a threshold under national law would exempt them from an additional reporting requirement. However, it may be better longer term policy to centralise reporting with the ACNC (consistent with other proposed NFP reforms) and exempt charities from State regulation.

The question of a threshold remains a moot point. On the one hand, having a threshold allows exemptions (including for our own organisations) but it introduces an administrative imperative for the ACNC to ensure compliance, possibly through audits. On the other hand, not having a threshold presents an administratively simple, unambiguous requirement for all charities and would not add to existing reporting requirements (provided charities need only report to the ACNC). On balance, not having a threshold might be preferable in the interests of efficiency and transparency but much still depends on other decisions about NFP sector reform and the cooperation of States and Territories.

That said, we agree that all reporting should be proportionate to the risks and amount of funds involved.

We support the option of charities being able to provide qualitative information about their fundraising activities to assist public understanding of the purpose to which funds are applied. The ACNC Draft Bill contains related provisions so it is important that the two are aligned. Qualitative comments have the potential to provide important context to a charity's fundraising activities but should not be available as an opportunity for free self-promotion. The ACNC would need to exercise some editorial control over entries.

The discussion paper raises the question of whether a transition period should apply to the introduction of a national approach to fundraising regulation. In view of the scope of the government's NFP reform agenda, we support a transition period of say, one full financial year following the introduction of new regulations.

The Australian Government has already recognised the need for further consultation and more time for entities to adjust to new tax concessions provisions by extending the start date. It would therefore make sense to align proposed changes to governance, reporting and fundraising with the date of effect of changes to tax concessions.

Registering for fundraising activities

We support the streamlining of authorisation for fundraising with the process of registering as a charity with the ACNC.

Regulating the conduct of fundraising

We support the proposed adoption of a principles-based approach to regulation, with outcome-focused rules, rather than prescriptive laws for the reasons outlined in the discussion paper. We agree that the potential to create distortions in fundraising conduct and the lack of flexibility to adapt to changes in technology and society generally are arguments against prescription.

We also support the application of Australian Consumer Law (ACL) to the fundraising activities of charities, including the provisions governing:

- misleading or deceptive behaviour;
- unconscionable conduct;
- false or misleading representations; and
- harassment and coercion.

As to calling hours and unsolicited selling, the existing ACL provisions seem reasonable.

Information disclosure at the time of giving

We agree that charities should be required to meet minimum information disclosure requirements at the time of giving. As outlined in the discussion paper, those requirements should include the name of the charity, the ABN, whether the collector is a volunteer or paid, name badges, DGR status and the tax deductibility of the donation. Third party fundraisers should be required to identify themselves as such and be subject to the other aforementioned disclosure requirements.

It would be a relatively simple matter to include the ACNC's website details in any documentation given to a donor but such a requirement should be included in transition arrangements to the new regulations.

We support the idea of the ACNC maintaining a 'scams page' to protect consumers.

Information disclosure after the time of giving

In determining the disclosure requirements to apply to charities after the time of giving, it will be important to ensure that the 'report once, use often' principle is applied rigorously. The ACNC Taskforce has acknowledged already that in the medium term, charities will be required to provide additional reports to those already required by States and Territories and other Commonwealth agencies.

Record-keeping and reporting on fundraising should therefore be kept within what has already been proposed as the ACNC's broader financial reporting requirements and not add any further to them. In the medium to longer term we would want to see a reduction in red tape, consistent with the NFP reform objectives.

Information about funds collected and distributed, together with any qualitative information, should be kept at high level. Accounting and auditing requirements for fundraising should form part of the ACNC's overall financial reporting requirements. We do not see a case for separately legislated requirements for fundraising.

Internet and electronic fundraising

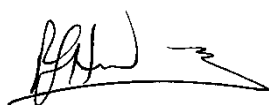
We agree that fundraising over the internet for charitable purposes should be prohibited unless an entity is registered with the ACNC.

Summary

We support the Australian Government's reform agenda for the NFP sector but much of its success depends on the cooperation of State and Territory Governments to either cede regulatory responsibility to the Commonwealth or by applying national law in each jurisdiction or by enacting 'mirror' legislation. Our strong preference is for the Commonwealth to be the single, national regulator of charities. The continuation of differing regulatory requirements across Australia does nothing to improve public confidence and trust and adds significant costs for many charities.

In response to the questions raised in the discussion paper and related issues:

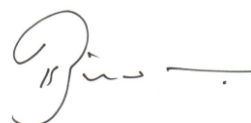
- it is proper that there be exemptions to the scope of fundraising regulation and we recommend the addition of bequests and unsolicited donations to the proposed list; however
- in relation to funds that are 'in scope', we believe a requirement for charities to report all fundraising revenue to the ACNC (and only the ACNC) would be a simpler and more transparent system than the application of a threshold;
- charities should have the option of providing qualitative information to add context to their reported fundraising activity;
- the Australian Government should allow a transition period of one financial year following the introduction of new regulations;
- we support a principles-based approach to regulation;
- we support the application of Australian Consumer Law to fundraising activities of charities;
- information disclosure at the time of giving should be sufficient enough to put the charity collector's bona fides beyond doubt;
- information disclosure requirements after the time of giving should conform to the 'report once, use often' principle and be kept at high level; and
- charities should be registered with the ACNC to engage in fundraising over the internet; and
- there will need to be legislative provisions for reviews of decisions and appeal rights.



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