



**Lutheran Church
of Australia**

5 April 2012

Charitable Fundraising Regulation Reform Discussion Paper
Infrastructure, Competition and Consumer Division
Treasury
Langton Crescent
PARKES ACT 2600

**Federal Government Discussion Paper February 2012 -
'Charitable fundraising regulation reform'**

Submission of the Lutheran Church of Australia Incorporated

1. LUTHERAN CHURCH OF AUSTRALIA INCORPORATED

The Lutheran Church of Australia Incorporated (LCA) is involved in a diverse range of altruistic charitable activities throughout Australia. This work is spread across various forms of legal structure and jurisdictions. Motivated unashamedly by the gospel of the Lord Jesus Christ, the LCA embraces all of the following:

- Promotion of faith development and spiritual well-being.
- Development of the local church and God's wider Church.
- Various ecumenical faith endeavours.
- The relief of hardship, poverty and societal injustice.
- Caring for the aged and infirmed.
- Provision of international aid and relief.
- Provision of assistance to overseas students to study in Australia for the benefit of their local communities
- Provision of faith based primary and secondary school education.
- Theological and vocational education and training.

The activities of the LCA find their form in a range of faith based organisations and this includes:

- Local churches and communities.
- National and State church ministry organisations.
- National college for theological training and accreditation.
- Schools and colleges.
- Welfare organisations.
- Residential aged care organisations.
- Overseas aid assistance
- Organisations devoted to finance, fundraising, administration and governance.



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Notwithstanding the diversity of activity and structure, this submission represents the views of the Lutheran Church of Australia Incorporated encapsulating its role in all of the above-mentioned activities and across a diversity of legal forms.

The most common forms of fund-raising activities across the LCA are as follows:

- General and earmarked donations from Lutheran constituents. This includes traditional local church offerings for local work and gifts to the work of the Church on a wider scale.
- Donations for welfare purposes from both constituents and the public. These are made in a diversity of forms but generally occur through general deductible gift recipient status (DGR), through special appeals and through direct contact or solicitation with the public.
- The LCA at all levels utilises the significant input and resources of volunteers. This reliance is in the form of donated resources which includes financial giving, volunteer time and significant skill and acumen.

2. GENERAL REMARKS ON THE CONSULTATION PAPER

The LCA appreciates and honours the various forms of fundraising activities of charities both within its constituency and in the broader sector around Australia. The general premise of ensuring all such activity gravitates to a nationally consistent platform and approach to regulation is commendable and supported by the LCA.

Notwithstanding this observation, there is currently significant uncertainty in the industry due to a number of initiatives by the Federal Government that are running concurrently. In this regard, there appear to be a number of reforms that are derived from the pending creation of the Australian Charities and Not-for-profits Commission (ACNC).

We note that a critical aspect of the ACNC will embrace a redefinition of charitable purpose and will potentially create an on-line national information portal for centralising key and public information in relation to the sector. Given that neither the role of the ACNC nor the definition of charity are yet clearly articulated, the LCA has some caution in relation to the impact of government reform on the activity of the Church.

Given the diversity of the topics broached in the discussion paper, the LCA has elected to keep this submission broad and to concentrate on the major areas relevant to its activity.



The general thrust of the paper, in seeking to create a nationally consistent approach to regulation of charitable fundraising, is difficult to take issue with and generally has the support of the LCA. In this regard, the most notable reasons for creating a national framework, and that we support, are:

- To protect the public against fraud, deception and nuisance.
- To avoid inefficiency in the sector and to maximise the proportion of fundraising proceeds applied to charitable purposes.
- Empower donors through overcoming information asymmetry. That is, to ensure that the information is available to donors about the use of their donated money in order to make an informed choice about altruistic purpose and allocation.

To the above extent, the LCA believes that specific regulation of fundraising activity is appropriate and indeed necessary.

2.1 Jurisdictional matters

The discussion paper itself observes that the current approach to regulation in Australia is disparate across States and Territory Governments via separate legislation and policy. This certainly has implications for a national entity such as the LCA in some instances as all activity, policy and action requires some localisation and compliance awareness.

While we note the intention of homogenising the approach to fundraising legislation throughout the states and territories, we also note the following:

- In our understanding, this approach will require each State and Territory to relinquish their jurisdictional power in this area and adopt an approach that enables a uniformly Federal approach.
- The paper does not canvas in any way the likelihood of the States agreeing to relinquish or homogenise their own approach to regulation to a national standard. Notwithstanding the paper recognises the need for this to occur.
- The mechanisms for bringing all States and Territories into line as articulated in Chapter 2 of the paper, being through a 'application of laws' approach or a 'mirror' legislation approach, are both potentially cumbersome.

In light of these observations, it is plausible that the creation of a national body empowering Federal approaches to regulation, without complete 'buy-in' from all States and Territories, may actually lead to a counter-productive outcome. That is, the ACNC may not liberate charities from 'red-tape' and compliance burdens but may actually contribute to it.



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The LCA believes that the Federal Government should ensure that all States and Territories map out a unilateral formal agreement that crystallises commitment from all stakeholders prior to implementing its intended uniform approach to regulation.

3. SPECIFIC REMARKS

In relation to specific areas within the discussion paper, the key areas important and relevant to the LCA are as follows.

3.1 Uniqueness of denominational giving

The LCA notes that throughout its various activities, the Lutheran Church self-funds much of its faith based work and relies on the generosity of its constituent members to a very high degree. This reliance is in the form of donated resources which includes financial giving, volunteer time and significant skill and acumen.

We note that the paper contemplates exempting from national regulation contributions described as:

'Donations to religious organisations from their own members.'

The LCA is strongly in favour of this exemption. It is fundamental and critical that government regulation not interfere with the freewill stewardship of the Church and its members. Notwithstanding the use of the term 'donation', free-will offerings and "tithes" from members are significantly different within the Church due to the understanding and theological foundations of membership and belonging.

There is currently no attempt through any State or Territory to currently regulate the activities of Church offerings from members and supporters in any Australian jurisdiction.

3.2 Other activities of the Church

There are many activities of the Church where the main thrusts of regulation do not require contemplation. In this regard, the following observations apply to many of the activities of the Church:

- There is no need for public protection as the objects of membership and altruistic purpose are heavily intertwined with the motivations of the giver.
- General donations to the Church are not tax deductible and are directed at spiritual formation and works of faith rather than public works.



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- There is no information asymmetry within the Church. That is, church members have a right to, and generally oversee, the utilisation, benefit and governance of gifted resources.
- There are natural accountability and transparency provisions within the Church and a homogenous approach throughout Australia due to the constitutional reach of the LCA. This includes a triennial Synod of the Church.

In our view it is critical that the attempts of uniform regulation of fundraising provision pay due regard to these unique aspects of organised religion and associated activities.

3.3 Giving to DGR's and charitable objects

The LCA engages with its own constituents and with members of the public in relation to various charitable and welfare work. This embraces a number of key areas consistent with the Church's objects and 'faith in action' in relation to the relief of poverty, hardship, societal injustice, caring for the aged and infirmed and various other altruistic causes.

The LCA accepts and applauds attempts to uniformly regulate fundraising initiatives in this sphere. Some observations in this regard arising from the discussion paper are as follows:

- While it is unusual for the LCA to participate in public collection activities such as door-knocking and solicitation, it is reasonable for regulation to mandate national standards of identification, demeanour, disclosure of fund-raising purpose and acceptable hours of activity.
- It appears reasonable for there to be public disclosure where a physical collector of donations and solicitation is being remunerated and applying higher levels of accountability and disclosure on the charity in this instance.
- Homogenising record-keeping and reporting protocols for fundraising activity to a national framework would be a reasonable method to improve transparency and even benchmarking productivity across the charities sector.
- Regulation over the mode of fundraising and customising requirements for each mode is highly important. In this regard, the LCA increasingly utilises innovative and centralised technology to enable constituents, supporters and the public to donate to welfare projects of the Church over the internet. The LCA uses appropriate authentication measures to convey over the internet the validity of altruistic purpose and consumer protection as to technology platform.



- LCA acknowledges the challenge of regulating fundraising using internet and electronic mechanisms. The need for deriving an Australian standard in this regard is critical while also recognising the need for disclosure mechanisms to be efficient and not preclusive to efficiency of fundraising.
- In our view it would be appropriate to consider prohibition in Australia of using internet and electronic fundraising unless a charity is duly registered and compliant under the ACNC. This would enable strong education in the public sphere in relation to reliability and also promote the need for charities to comply and remain compliant with reasonable regulation. The critical need for regulation to be reasonable and free of jurisdictional distortion is again emphasised.
- Part of the regulation standard for internet and electronic gifting might be minimum technology standards and security benchmarking. While this may overlap with other aspects of Australian law (such as consumer protection laws) it is a further way to promote positive, progressive and compliant Charities and isolate rogue or fraudulent activity.

A number of the matters raised in the discussion paper that may impact the above observations are somewhat conceptual and preliminary. It will be critical for this process to engage with key stakeholders to ensure the balance of promoting authentic fundraising for the good of altruistic purpose and not burdening the use of those funds with compliance inefficiencies.

4. SUMMARY

A summary of the LCA position in relation to the discussion paper of Charitable fundraising regulation reform is as follows:

1. **There is significant uncertainty within the Charitable sector of Australia arising from a number of concurrent initiatives, primarily due to the pending formation of ACNC and the pending definition of charity.**
2. **The LCA has concerns where States and Territories retain jurisdictional rights in respect to overlapping or conflicting regulatory requirements in relation to the formation of a national body and a Commonwealth platform of regulation.**
3. **Regulation of the fundraising activities of the Charities sector is warranted and necessary when aimed at public protection, efficiency of funding purpose and asymmetry of information.**
4. **It is critical that the government not seek to regulate religious organisations that derive free-will offerings, “tithes” and gifts from its constituent members and parishioners with respect to core objects of faith and theological disposition.**



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5. Cultivating an approach to public fundraising on a national platform is entirely supportable and justifiable and should pay due regard to the different modes of solicitation.
6. Stronger advances and uses of technology and internet based giving require careful thought as to regulation and may enhance the ability of the ACNC to authenticate and promote innovation in the sector.
7. The need for further consultation and careful review of drafted legislation and the working of the ACNC are critically important.

We appreciate the opportunity provided to make this submission.

Yours sincerely,

Lutheran Church of Australia Incorporated

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