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Charitable Fundraising Regulation Reform Discussion Paper
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Dear Sir/Madam

**Discussion paper and draft regulation impact statement
Charitable fundraising regulation reform**

Thank you for the opportunity to provide the Not-for-Profit (NFP) industry's views on the charitable fundraising regulation reform in the Treasury Discussion Paper released in February 2012.

About Moore Stephens

We are writing on behalf of the Moore Stephens Australia network of eight independent firms of business advisors and chartered accountants. Moore Stephens have a real understanding of the environment in which our clients operate. We currently service a diverse range of entities within the Sector and specialise in providing assurance, accounting, tax and advisory services to our NFP clients. We provide a national service offering to a number of key clients operating in the Not-for-Profit Sector, including the following:

- Religious organisations
- Large charities
- Football clubs and sporting associations; and
- Schools, Colleges, Universities and many TAFE colleges in Australia.

We have had a long standing commitment and involvement for the past 50 years in this Sector. We have been active in recent years in providing submissions to the Government's various committees and consultations to support the Sector through this reform phase.

Summary and General Comments

Generally we support the introduction of the regulation of fundraising at a national level.

We are of the view that national fundraising regulation through the ACNC should provide the Sector with a consistent approach to fundraising within Australia as well as providing the public and stakeholders with an increase level of confidence that moneys raised through fundraising are managed and dealt with in a consistent and transparent manner.

The diversity of regulations at state level have resulted in unnecessary compliance costs for those organisations with a multi-state focus as outlined in various reports on the Sector over the past few years.

The removal of duplication in this space will allow donor funds to be more readily directed towards mission as opposed to compliance and should provide the Sector with a well defined framework in which to conduct these activities.

The implementation of a national fundraising regime is also a logical contribution to two of the main objectives of the ACNC; promotion of the Sector and promotion of sound governance to maintain the public's confidence in Not-for-Profits.

However, it is our view, that there are a number of considerations to be incorporated in the design of these arrangements to ensure the ultimate objectives are achieved in a sustainable and practical manner.

One of the key considerations is transparency and clarity. It is proposed that in the initial stages the fundraising legislation is limited to Charities registered with ACNC. Our concern in this preliminary stage is the uncertainty for potential donors as to whether an organisation is covered under these regulations. We recommend that the Government give consideration as to how this may impact on the fundraising activities of Not-for-Profits to whom these arrangements will not apply until the ACNC's scope is expanded to other Not-for-Profit organisations.

Following on from this point, in the interim period where only Charities are registered, other Not-for-Profits may be considered to be placed in an advantageous position with regard to competing for funds as their level of regulation may be less restrictive resulting in a potential inequity which is not present in the current state fundraising regulations.

Another consideration is that of the use of volunteers in fundraising activities. Consideration should be given to providing practical and effective solutions which assist Charities in seeking volunteer and corporate support without the distraction of onerous regulation.

We note that due to the evolution of the Sector in Australia, the public awareness of the diversity of Not-for-Profits in Australia is relatively limited. Given the level of proposed reform to the Sector, we recommend as part of the introduction of any form of national fundraising regulation that education and/or awareness campaigns be undertaken for the public. It is our view that the ACNC needs to provide adequate support to the Sector in this transition both in education of the Charities and the public at large.

The overwhelming majority of Charities and other Not-for-Profits conduct their activities with a view to maximising the resources available to it to undertake its mission within a strong values framework. There is no history within Australia of widespread or significant abuse of the existing fundraising activities. We note however, that fundraising and the application of these funds is attractive to media where misuse, abuse or inefficient use of funds may have occurred. Consideration should be given specifically to promote the Sector with the media and provide the necessary support and liaison in relation to events when they do occur to manage the impact on the wider Sector.

We are aware of a number of organisation who engage third party providers and "for profit" organisations to assist in the collection of donations and other fundraising activities. The Sector is diverse and in many circumstances use of these organisations results in significant increases in the funds which would have otherwise been received. We recommend that the ACNC provide the necessary support for Charities to continue to utilise these methods of fundraising, where appropriate, and provide the public with a greater understanding of the complexity and variety of fundraising formats required in the Australian context.

Chapter 2 – Defining the scope of regulated activities

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

2.1.1 It is our view that it is necessary to have specific regulation that deals with charitable fundraising in order to promote accountability in the Sector and reduce compliance costs. These regulations should also promote transparency in the Sector. Furthermore the National Regulator should replace all state level regulation therefore removing the current levels of duplication and cost. We refer to our earlier submissions where it was recommended that the investigative aspects be retained at state level in relation to certain activities undertaken by Not-for-Profits, Charities and Commercial organisations so as to utilise existing skills and resources.

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.

2.2.1 We are only able to provide anecdotal evidence in response to this question. In our experience there is an increase in compliance costs where more than one regulatory body is involved across different states and territories.

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?

2.3.1 We are only able to provide anecdotal evidence in response to this question and we refer you to previously published research such as the recently released 'QUT Foundations for Giving Report' and 'Giving Australia: Research on Philanthropy in Australia Summary of Findings October 2005'.

2.4 Should the activities mentioned above (*below*) be exempted from fundraising regulation?

Soliciting for government grants – on the basis that governments can require information and regular reporting on the outcomes from funding provided to charities.

Corporate donations or donations from public and private ancillary funds – on the basis that these entities are likely to be better placed than an individual member of the public to conduct due diligence before donating to a potential recipient.

Workplace appeals for assistance for colleagues and their families – on the basis that the recipients of such funds are usually personally known to at least a significant proportion of donors.

Donations to religious organisations from their own members – also on the basis that the recipients of such funds are usually personally known to at least a significant proportion of donors.

2.4.1 We strongly support these activities being exempted from fundraising regulation. The nature of these organisations and the fundraising activities themselves provide the donor with the ability to access information or obtain direct knowledge of the application of these funds. In the first three instances there would be an ability of the donors to conduct due diligence on the organisations in the donation process.

2.4.2 With regard to religious organisations we concur with the reasoning provided. However, we more strongly support their exemption on the basis that most religious organisations have well developed internal laws and governance structures designed around the appropriate use of funds raised by these organisations.

2.4.3 It is our view that certain activities such as the conduct of raffles, lotteries and other games of chance with prize money of less than \$25,000 should be exempted to allow small activities to be undertaken in a cost effective manner. Where these types of activities are undertaken by religious organisations or other organisations exempted from fundraising regulation, then a permit or similar approval from the ACNC should be required. This provides consistency with the existing state based regulations regarding games of chance.

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.

2.5.1 At the community level where funds are scarce, yet vital for the sustainability of the organisation involved, the activities should be exempt. This would cover local schools and associated entities (i.e. Parents' Club, Fete Committee) and local sporting clubs and other member type organisations (i.e. arts groups, Library groups). These organisations are critical to the success and make up of any local community and should be encouraged to fundraise without a high compliance burden or cost. This exemption should be limited to a notional threshold to allow for accountability. Furthermore, we recommend that the ACNC be provided with powers to review these arrangements should irregularities be brought to their attention.

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.

2.6.1 We suspect that there is a disproportionate effect on smaller charities from existing fundraising regulation. Costs such as audit costs and other charges, we estimate, cost smaller charities about 5% to 10% of funds raised. This can make a big difference to a small organisation, especially at the community level.

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

2.7.1 In general terms we are of the view that for the regulation to be effective exemptions should be limited to the nature of the activities rather than the level of moneys collected, however we recognise from a practical and efficiency perspective that a monetary threshold is an efficient instrument to allow small fundraising to continue without significant compliance costs.

2.7.2 We note in the commentary the statement made regarding the *"use of volunteer labour are less likely to raise concerns"*. We are not aware of any research findings which indicate that the use of volunteers in the fundraising process has an impact on the risk of fraud or loss in Australia. In the absence of empirical evidence we would consider that the use of volunteer or paid staff should not be a consideration in determining whether regulation should be applied.

2.7.3 Taking into account the various exemptions proposed by the paper and our additional proposals and consideration of the need for a threshold, we consider a level of \$25,000 per annum an appropriate threshold. We are of the view that the public's expectation of sums collected in excess of these amounts would be significant and therefore should be subject to regulation.

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?

2.8.1 It is our view that existing legislation at the State or Territory level should not apply to smaller entities. In the past, this has only added to the burden of unnecessary compliance and duplication costs. Removing this barrier will allow funds raised to be directed fully towards their original purpose.

Furthermore, we recommend that the ACNC be provided with the necessary powers to investigate these entities where their activities have raised concerns.

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?

2.9.1 If these fundraising regulations were to be introduced into a mature regulatory environment we would propose a transition period of no more than 12 months. However, given the level of reform proposed and the requirements for these organisations to address a range of diverse issues arising out of these reforms, we recommend a transitional period of minimum 12 months and ideally 2 years to enable organisations to have a considered approach to the adoption.

2.9.2 We would support the ability of organisation to “early adopt” the regulation where possible.

2.10 What should be the role of the ACNC in relation to fundraising?

2.10.1 As outlined in our summary and general comments, the role of the ACNC in relation to fundraising should be the following:

- a) Effective and efficient national regulation of fundraising activities to reduce the overall duplication at a state level
- b) Active promotion of governance within NFP Sector
- c) Assist the Sector through education and regulation to maintain the public’s confidence in Charities and eventually all Not-for-Profits.

2.11 Should charities registered on the ACNC be automatically authorised for fundraising activities under the proposed national legislation?

2.11.1 Given the proposed exemptions and the nature of a number of charities who do not conduct fundraising activities, automatic authorisation to fundraise is not appropriate as it may place additional unnecessary disclosure and compliance requirements on these Charities.

2.11.2 We recommend that fundraising be an option upon registration and can be applied for separately should the Charity determine at a later date they wish to fundraise.

2.11.3 The authority to fundraise could be included in the details for the Charities published on the public information portal.

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

2.12.1 The adoption of adequate record keeping procedures and systems similar to those provided for in some of the State’s legislation should be required. Additional reporting requirements are also appropriate to allow for the transparent reporting on the activities undertaken. We refer to our comments relating to Chapter 5 of the discussion paper.

2.13 What types of conduct should result in a Charity being banned from fundraising? How long should any bans last?

2.13.1 A clear distinction should be made in relation to conduct undertaken by individuals (eg fraudulent conduct) and breach of fundraising regulations by a Charity as an organisation.

2.13.2 Recourse in relation to conduct could be considered in light of Divisions 10 and 143 and of the Australian Charities and Not-for-Profits Commission Bill 2012 – Exposure Draft (draft ACNC legislation)

- 2.13.3 We recommend that where individuals have perpetrated fraud in the conduct of fundraising appeals that these individuals be excluded from the ability to act as responsible individuals under the draft ACNC legislation for a period of not less than 1 year to indefinitely depending on the degree and nature of the activity. We refer you to our section 4.5 of our submission on the exposure draft of the draft ACNC legislation and references made therein in relation to exclusion from ability to act as a responsible individual.
- 2.13.4 The removal of the ability to fundraise would have a significant reputational impact on a Charity. Accordingly, we consider that this would only apply under the most serious circumstances. This we would anticipate would be almost akin to deregistration of the Charity by ACNC.
- 2.13.5 Therefore we recommend that the banning of a Charity from fundraising would only apply in circumstances similar to these outlined below:
1. Systematic abuse of fundraising provisions
 2. Failure to apply funds under ACNC direction
 3. Repeated failure to undertake remedial action
 4. Significant breaches of the draft ACNC legislation

Chapter 3 – Regulating the conduct of fundraising

3.1 Should the aforementioned provisions of the ACL apply to the fundraising activities of charities?

- 3.1.1 We are supportive of the aforementioned provisions being applied to charitable entities. As outlined in paragraph 38 these do not require a positive action. Indeed their application could be considered positive steps by the Sector.

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

- 3.2.1 We are not in a position to provide a considered opinion in relation to this question. We note from anecdotal evidence that there would be situations in which a restriction in calling hours may place an unnecessary restriction. For example, to limit calling hours on religious organisations would impose significant hardship on these organisation particularly where volunteers are conducting the 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?

- 3.3.1 We are not in position to provide a firm view on this question. We would be cautious of limiting the ability of Charities to unsolicited contact as by their very nature unsolicited contact is used by a number of Charities in their fundraising activities. Further consideration of the impact of these provisions on the Sector should be undertaken prior to their adoption.

Chapter 4 – Information disclosure at the time of giving

4.1 Should all charities be required to state their ABN on all public documents? Are there any exceptions that should apply?

- 4.1.1 All Charities should be required to state their ABN on all public documents. However, transitional provisions should be implemented for a period of between six to twelve months to enable for Charities to update their marketing collateral and other documents and to comply with this requirement given the significant costs which may arise from this requirement in its introduction.
- 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?**
- 4.2.1 To avoid unnecessary compliance costs, we recommend that all persons engaged in charitable activities should be required to provide the name of the Charity they represent and only advise where the collector is paid.
- 4.3 Should persons engaged in charitable fundraising activities be required to wear name badges and provide contact details for the relevant Charity?**
- 4.3.1 We agree that persons engaged in fundraising activities should be required to wear name badges and provide contact details for relevant charities. However, we are of the view that exemptions from this requirement be available to certain charities engaged in sensitive or protective welfare situations such as women’s refuge or protection of abused children where the confidentiality of the charities’ address is paramount to the safety of its constituents.
- 4.4 Should specific requirements apply to unattended collection points, advertisements or print materials? What should these requirements be?**
- 4.4.1 Yes, there should be specific requirements for these situations. It is our view unattended collection points should clearly identify the Charity involved, how the funds will be forward to the Charity, a unique identifier that can be tracked by the Charity and relevant contact details for the Charity.
- 4.4.2 In relation to advertisements and print material it is our view that these should provide the Charity’s name, ABN and relevant contact details.
- 4.4.3 We recommend the implementation of transitional provisions for the same reasons outlined in 4.1.1
- 4.5 Should a Charity be required to disclose whether the Charity is a Deductible Gift Recipient and whether the gift is tax deductible?**
- 4.5.1 Yes, but only where they are a DGR.
- 4.6 Are there other information disclosure requirements that should apply at the time of giving? Please provide examples.**
- 4.6.1 In order to provide an efficient process and reduce the compliance burden the only other disclosure requirements we consider appropriate is notification that the donation is tax deductible (if applicable).
- 4.7 Should charities be required to provide contact details of the ACNC and a link to the ACNC website, on their public documents?**
- 4.7.1 We recommend that a website link be provided as a minimum requirement with Charities being encouraged to include additional contact details where practical.

Chapter 5 – Information disclosure after the time of giving

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

5.1.1 We refer to our comments in paragraph 3.1.2 of our submission on the ACNC Implementation Design Discussion paper.

5.1.2 We make reference to the requirements outlined in paragraph 51 of the Fundraising discussion paper with regard to record keeping. These can be addressed through the audit of the financial reports of the Charity and where elements require positive confirmation we recommend that these be included in the Responsible Individual's statement/declaration to avoid duplication of reporting.

5.1.3 At this stage, we recommend that any qualitative elements be voluntary to allow for the considered development of reporting due to the need to develop a reporting structure that provides value to the relevant stakeholders. We note that the pro forma Annual Information Statements provides limited space for commentary on these areas and we see no reason to expand this until such time as there is a recognised value for the Sector and donors.

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?

5.2.1 We refer to the reporting requirements under the Charitable Fundraising Act NSW which requires specific disclosure including the following:

- Aggregate gross income and total expenses of fundraising appeals
- Fundraising appeals conducted during the year
- Statement of how funds were applied for charitable purposes
- Comparison of monetary figures and comparisons

5.2.2 The level of disclosure within the financial reports of the organisation appears appropriate. We would caution the publication of these figures on the public information portal without appropriate interpretative material and an education awareness program for the public at large.

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

5.3.1 We refer to our comments above.

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

5.4.1 We refer to our comments above.

Chapter 6 – Internet and electronic fundraising

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

6.1.1 We agree this type of fundraising should be prohibited unless conducted by a Charity that is registered with the ACNC.

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?

6.2.1 We are of the view that as this is the primary identifier of the Charity and its regulation status that should be required on all communication. We again refer you to our comments in 4.1.1 regarding transitional arrangements.

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

6.3.1 Technology and the internet is changing at a rapid pace. There does need to be some restrictions placed on internet or electronic fundraising in order for donors to feel confident their funds are being directed securely to the intended recipient. Therefore, we are of the view that measures should be put in place to increase the confidence of potential donors such as a requirement that the website is hosted and managed in Australia. The establishment of an accredited "Charity Website" status would also provide a level of comfort for the potential donors and increase the confidence placed in the individual charities activities.

Chapter 7 – Fundraising by third parties on behalf of charities

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

7.1.1 Third party fundraising provides a significant opportunity for funds for the Sector. These fundraising activities can be ad hoc, sporadic or regular. Whilst we recognise the importance of ensuring that moneys collected on behalf of charities are ultimately received by the organisation, it is problematic from a practical perspective to require formal registration of these bodies by a charitable regulator. Given the scope and limited resources of the ACNC at this time we do not believe that direct regulation would assist or enhance the collection of funds through these avenues.

7.1.2 We consider an accreditation or endorsement process a more appropriate approach. This would allow ad hoc third party fundraising to occur without additional compliance costs. For example, local soccer club decides to put on a one off Charity event for its local Children's Charity, to require the soccer club to go through a registration process could create an unnecessary barrier to the conduct of this event.

7.1.3 However, alternative approaches for more regular or significant support could be undertaken either by accreditation as a third party fundraising by the ACNC or endorsement by the Charity through a contractual arrangement. These would allow development by ACNC for best practice guidelines and improved systems without resulting in additional unnecessary compliance burden.

7.2 It is appropriate to limit requirements on third party fundraising to those entities that earn a financial benefit?

7.2.1 If it is determined that there is a regulatory imperative to place a requirement on third party fundraisers, we are of the view that the receipt of a financial benefit should not impact on the obligations under these regulations.

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?

7.3.1 We refer to our comments in 7.1, voluntary accreditation or endorsements by the ACNC or the Charity would provide a more effective mechanism than regulation.

7.4 Should third party fundraisers be required to state the name and ABN of charities for which they are collecting?

7.4.1 We agree with this approach in its general form

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?

7.5.1 We agree with this approach

7.6 Should third party fundraisers (or charities) be required to inform potential donors that paid labour is being used for fundraising activities?

7.6.1 We refer to our comments in 4.2.1 and agree that a consistent approach be undertaken. From a practical perspective, marketing material etc could provide a positive statement with a reference to more detail available if requested.

7.7 Is regulation required for private participators involved in charitable fundraising? If so, what should regulation require?

7.7.1 Private participators have become increasing popular over the last 5 -10 years as a source of positive branding and marketing relationships for both the Charity and the commercial organisation involved. Due to the commercial nature of the transaction, the arrangements between the parties would be subject to contractual arrangements between the parties. We recommend that rather than regulating these organisation that the ACNC develop best practice guidelines, pro forma contractual arrangements which can be used in these arrangements for accreditation or endorsement of the arrangement. This positive approach would assist a wide range of charities to be able to access these sorts of arrangements and provide the private participators with a framework to work within without the additional compliance burden.

Feedback and Comments

We thank you for the opportunity to provide our views on the questions raised.

If you have any queries please contact the contributors to this submission listed below:

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Yours faithfully



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