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Dear Ms Bounds

Charitable Fundraising Regulation Reform

The National Heart Foundation of Australia (Heart Foundation) welcomes the opportunity to comment on the Australian Government's review of charitable fundraising regulation and is pleased to have the opportunity to make this submission regarding the Charitable Fundraising Regulation Reform Discussion Paper (the Discussion Paper).

The Heart Foundation is a charity dedicated to reducing death and suffering from the leading killer of Australians, cardiovascular disease (CVD).¹

Not-for-profit (NFP) organisations provide resources and assistance to the community in general and especially those who are vulnerable and marginalised, who live in rural and remote areas and Aboriginal and Torres Strait Island peoples especially when there are not adequate government services. Because of this, and the focus on the Heart Foundation's activities, the Heart Foundation provides information and services for the benefit of disadvantaged sections of the Australian community. These activities are heavily relied upon and the information distributed free of charge to the community is aimed at saving lives and reducing disability from CVD. Overall, this helps to reduce the reliance on government provided services and helps to reduce the burden on the healthcare system.

As a NFP, we would like to see that there is minimal cost to charities as a result of the introduction of the new compliance regime as the majority of funding comes from the community to carry out the mission of the organisation, not to spend more on administrative costs.

At the same time, the Heart Foundation recognises NFPs currently have to work in a complex legislative environment governed by over 15 Commonwealth Acts and 162 state and territory Acts spanning across 19 Commonwealth, state and territory department, including the Australian Tax Office, Australian Securities and Investments Commission, Office of the Registrar of Indigenous Corporations and state Attorneys-General.²

As a federated charity, the Heart Foundation has eight state and territory divisions, and a national body with a binding Memorandum of Understanding that provides framework for operations. The complexity of the legislative environment is a huge burden on these

¹ Australian Institute of Health and Welfare, *Cardiovascular Disease Australian Facts 2011*, 2011

² National roundtable of Nonprofit Organisations, 2011.

organisational arrangements with various structures and reporting requirements across the states, territories and nationally.

The Heart Foundation is a public company limited by guarantee, as are five of the Divisions (Queensland, New South Wales, Victoria, Tasmania, Australian Capital Territory). The other three Divisions (South Australia, Western Australia, and the Northern Territory) are incorporated associations. The Heart Foundation and each state and territory Division, has been separately endorsed by the Australian Tax Office as an income tax exempt charity and as a deductible gift recipient.

A recent survey by Thomson Reuters Accelus found “that 84 percent of compliance professionals expect to handle more regulatory information in 2012, with more than a third of respondents spending an entire working day each week staying up-to-date with regulatory changes.”³

The Heart Foundation supports the government’s review of charitable fundraising regulation especially as it aims to simplify and centralise regulatory provisions with a view to reducing the compliance costs faced by charities. Streamlining regulation will also assist in increasing public confidence in the integrity and transparency of charities in Australia.

Whilst we applaud the basic premise of the reform agenda (reducing the compliance burden for charities and increasing public confidence through clarity and greater transparency) we do have a number of concerns about the reform process to date. In broad terms these concerns are as follows:

- The Discussion Paper makes reference to potential rules and requirements, we would be concerned if a highly prescriptive regime was introduced. Instead we encourage the implementation of a framework that reduces the compliance burden, using a principle-based approach and offering guidance and resources for NFPs rather than utilising a rules-based approach.
- The NFP reform agenda seems to be operating within a highly truncated timeline, one far shorter than that faced by the private sector when it underwent substantive reform with the introduction of the *Corporations Act 2001* (C’t). We appreciate that the government has been addressing the concerns of the sector and has extended consultation and implementation timeframes where feasible
- The reform process seems to have multiple areas of overlap if you consider the scope of the various discussion papers to date. There is also a lack of clarity regarding the roles of various regulators e.g. ACNC, ASIC, ATO. The issue of overlap may become even more complex if any state regulation of charitable fundraising activities is retained.
- Unless all states agree to refer their powers to the Commonwealth in order to facilitate national regulation the compliance burden will remain. In fact, the burden would be increased as the new regulatory provisions will sit alongside existing provisions instead of replacing them for any charity that operates across state borders. Consider the recent “harmonisation” of Work Health & Safety laws with the introduction of model legislation. Not all jurisdictions have adopted the model laws and those that have done so have generally made their own “tweaks”.
- We note the charitable fundraising regulation reform process is proceeding before we have settled on a definition of the term “charity”.

³ Thomson Reuters Accelus “Cost of Compliance Survey 2012”

Although the NFP reform consultation process is not yet complete the Heart Foundation seeks assurances that there will be a smooth and passed transition to allow simple and cost free transition to the new regulatory regime. We trust that the government will incorporate processes to ensure that any unexpected difficulties and unintended consequences are dealt with efficiently and effectively by government working closely in collaboration with affected NFPs.

Consideration should also be given to an appeals mechanism to assist any NFP that believes that it has been disadvantaged or its operation put at risk through the implementation of the new regime.

The Heart Foundation has prepared its responses to the Charitable Fundraising Regulation Reform Discussion Paper and the answers to the Consultation Questions raised follow as Appendix 1.

Please find attached answers to the consultation questions and fundraising matrix.

We wish you well with your deliberations and would be keen to assist with any inquiries you may have or provide further assistance during the consultations on the draft regulatory provisions before their implementations.

Yours sincerely

Two handwritten signatures in black ink. The first signature is on the left and the second is on the right.

Dr Lyn Roberts AM
CEO - National

Appendix 1: The Heart Foundation's response to the Charitable Fundraising Regulation Reform Discussion Paper Consultation Questions

Chapter 1 – Introduction

(no Consultation Questions in this section)

Chapter 2 – Defining the scope of regulated activities Is regulation necessary?

Consultation question:

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

We understand that the introduction of the ACNC and the review of charitable regulation reform have the dual aims of reducing “red tape” for charities and to engender trust in the sector,. The existence of sector-specific regulation at a Commonwealth level provides comfort to consumers who can see that the charities to whom they donate are accountable for their operations and the funds they have raised and this raises confidence in the sector. Moving from a state-based regime to Commonwealth oversight potentially results in a significant saving in time and money for all charities as compliance obligations will only have to be mapped back to one set of obligations.

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 existence of a state-based fundraising regime places a significant burden on charities such as the Heart Foundation where operations, in a federated structure, regularly involve either multiple jurisdictions or all Australian jurisdictions at the same time.

For example: Service Contracts – Currently there are a number of different requirements at a state level for the submission and review, by the regulator, of contracts with various service providers. In some cases this can take considerable time and due to time delays and the nuances of legislative requirements in various jurisdictions (or the regulatory interpretation of such legislation) can require an organisation working across multiple jurisdictions to have to enter into multiple contracts with the same supplier.

Lotteries and Trade Promotions – whilst not contemplated in the Charitable Fundraising Regulation Reform Discussion Paper some jurisdictions do refer to such activities as “fundraising” activity, see for example the Northern Territory. We would hope that this type of activity be included within the scope of this Discussion Paper or that it be addressed when the “de-duplication” of state legislation is considered.

This sort of activity is common within the sector and there are currently significant differences between the regulatory requirements in each jurisdiction. The compliance load required to run such a campaign on a national basis is significant (this is an issue for all sectors not just the NFP sector).

The Discussion Paper speaks to a number of broad areas of regulatory focus; it does acknowledge that there is a need to reduce the compliance burden however it is not clear on how far this concept may be taken.

By way of illustration we have **attached** a matrix compiled to give a snapshot of key fundraising provisions that the Heart Foundation must comply with. This document does not capture lotteries and trade promotions, they are dealt with in a separate document, however this document runs to over **70 pages** of obligations on its own.

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?

Late last year there was a well syndicated national media story of a charity league table being created based on current levels of disclosed fundraising costs, this table made heroes of some charities and villains of others. The table was based on highly inconsistent pieces of information given the lack of clarity around what constitutes reportable fundraising cost, it also failed to acknowledge context, for example where organisations were investing for income growth over a longer term period. In addition, the table didn't clarify what had been achieved for the community by those organisations. If allowed to continue in this way this type of comparison could unfairly threaten the funding for organisations needed by both the government and the community.

Defining fundraising activities that are to be regulated

(no Consultation Questions in this section)

Activities that might be exempt from fundraising regulation

Consultation questions:

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

Generally, all gifts of public money should be considered part of the legislation. Workplace appeals are likely to fall under community fundraising which is covered off under chapter 7 - 3rd party fundraising.

Religious organisations vary in size – and some have large scale sponsorship programs, which the public also need to have trust and confidence in and so would benefit from being included in the legislation.

Solicitation for government grants, corporate donations, funds obtained pursuant to a contractual arrangement (such as a sponsorship agreement), trusts, foundations and private ancillary funds also differ from “normal” fundraising activities, as they are not likely to be subject to scrutiny by the public as charitable fundraising and are already subject to their own regulatory provisions. That being the case these types of activities should be exempted from fundraising regulation.

Lotteries and raffles are also seen as fundraising activities however they are subject to their own regulation and so should be exempted from charitable fundraising requirements. Note though there is a need to harmonise regulation in this area, see our earlier comments above in this regard.

Also, a financial threshold could be introduced say \$20,000 or the \$50,000 proposed at paragraph 22 of the Discussion Paper. Care should be taken to address situations where the dollar threshold will be crossed, see our comments at 2.8 in this regard.

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.

Please see our comments at 2.4 and 7.1.

Implementing a national approach to fundraising regulation

Consultation questions:

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.

We are not a small charity, so it is not appropriate to comment.

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

It is critical to minimise the cost burden on the sector wherever possible, as such some form of scaled requirements that take into account the overall size of the charity (rather than a specific appeal or fundraising activity) and greater thought about making any such compliance effort more efficient is essential.

Paragraph 22 suggests a threshold limit of \$50,000; we would suggest that \$20,000 would be appropriate.

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. One regime should cover all entities that engage in fundraising activities. Otherwise significant issues would be faced if an entity crosses the threshold and moves to regulation under the national regime. A tiered approach within the same regime would be more appropriate.

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?

Ordinarily such legislation is given a grace period of 12 months. Given charitable entities have differing reporting periods, we suggest a minimum of 2 years would be needed to set up the reporting required. The nature and extent of changes also needs to be taken into consideration.

Registering for fundraising activities

Consultation questions:

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

The ACNC should play two roles in relation to fundraising: firstly they should be a conduit and facilitator to ensure that the legislation or compliance burden is minimised on the sector to ensure publicly donated funds are put to good use efficiently; secondly the legislation should provide mechanisms and controls to ensure public confidence in the sector can be better understood, engendered and maintained. The role of the ACNC should be to maintain such confidence through the enforcement of regulatory provisions relating to charitable fundraising.

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

Yes.

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

The registration process itself should have appropriate checks and balances to ensure no further validation is required and that the public can be confident in donating their money to such an organisation.

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

A ban should be the last course of action. Remedial measures should be the first course of action. Consideration should be given to a range of sanctions or regulatory interventions that may be imposed on an organisation that may breach the legislation. Any form of ban should only be used in extreme cases where non-compliance has previously been identified and there has been a failure to rectify.

[Chapter 3 – Regulating the conduct of fundraising](#)

[Application of consumer protection laws to charitable fundraising](#)

Consultation question:

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

We support the application of provisions mirroring the following ACL provisions to fundraising activities:

- Misleading or deceptive conduct (section 18);
- Unconscionable conduct (sections 20-22);
- False or misleading representations (section 29); and
- Harassment and coercion (section 50).

We would suggest that the application of the aforementioned conduct provisions be achieved by including the relevant provisions in charitable fundraising regulatory provisions as opposed to either including the provisions in the legislation establishing the ACNC or by amending the ACL.

Charitable fundraising and calling hours

Consultation question:

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

Yes – it is beneficial for charities to be able to contact people who are normally at work during the day. Telephone calling hours are already governed by the *Telemarketing and Research Calls Industry Standard 2007* (the Standard) which already applies to charities.

We suggest that face-to-face calling hours be contained in charitable fundraising regulatory provisions and that they be referred to as face-to-face calling hours so as to avoid confusion with telemarketing and research call hours permitted under the Standard.

Charitable fundraising and unsolicited selling provisions of the ACL

Consultation question:

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 ACL does not currently apply to charitable entities undertaking fundraising activities where they are simply soliciting donations as the ACL relates to the provisions of goods and services.

The objective of the introduction of the unsolicited selling provisions of the ACL was to provide full disclosure as to contractual provisions pertaining to goods and services sold. Certain contractual provisions and cooling-off requirements are mandated to address a pattern of unsavoury behaviour that had been plaguing regulators and members of the public. These are issues that simply do not apply in the context of charitable fundraising. Even if a member of the public signs up for regular giving (e.g. a monthly donation via direct debit) that arrangement can easily be cancelled at any time.

Chapter 4 – Information disclosure at the time of giving

Consultation questions:

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

With the exception of some advertising with limited space – this should be fine. On small ads a web address or phone number can be provided with the ABN available to the donor at the next step.

Where an organisation has multiple ABN's one ABN can be contracted to perform this function on behalf of others – as per the Heart Foundation's current operations.

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. This is current practice.

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

Yes – that would quickly identify any problems, and ensure the charities reputation was protected. It could also give the general public confidence that the fundraising activity was legitimate.

4.4 Should specific requirements apply to unattended collection points, advertisements or print materials? What should these requirements be?

The information needs to clearly set out the purpose and not mislead. Organisation name, ABN, phone number and website details could be provided for further checking by a donor.

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, it is good to be upfront about this and can enhance opportunities for donations.

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

Initial disclosure requirements should not be so onerous as to create an unnecessary compliance burden, the details stipulated at 4.4 should be enough to allow members of the public to follow up on any queries or concerns they may have.

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

No, it should not be the responsibility of the charity to do this – any such change in practice will come at a cost to the sector.

However, another approach would be for the ACNC to develop an 'approved' style logos which could enhance confidence in donating, and build the ACNC as the public's 'go to' place for information.

In any event the advent of the NFP regulator and its own mandate to educate the public should facilitate the greater understanding of the new regulatory provisions and what members of the public can expect of charities.

[Chapter 5 – Information disclosure after the time of giving](#)

Consultation questions:

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

This could be useful, as long as this was at an enterprise level and concentrated on the achievements of the organisation as a whole rather than trying to introduce a campaign level reporting framework.

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?

If the ACNC feels it is necessary to report on top line campaign results that include costs of fundraising then it is critical that the ACNC provide an accounting standard for such costs to be applied across the sector. In addition, there should also be an opportunity for organisations to provide comment against the top line campaign results. Without such a table any comparison of result by the public could be misleading.

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

Yes, without a strict accounting standard noted in 5.2 above, any regulation will be immediately unreliable.

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

Records and reports can ultimately facilitate transparency and demonstrate good governance. The Heart Foundation has already addressed governance and reporting in its response to the Consultation Paper "Review for Not-For-Profit Governance Arrangements".

Chapter 6 – Internet and electronic fundraising

Consultation questions:

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

All charities that use the internet and electronic fundraising should be registered with the ACNC. However, there should be no impediment on the sector when using the internet and electronic fundraising as this is a growth opportunity for the sector.

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?

This is fine on most advertising with some exceptions such as banner ads that have limited space – however, there would usually be enough space for a link, or phone number, so the ABN could be provided at that next step. For charities with multiple ABNs – like the Heart Foundation, one ABN could be nominated. Requiring online fundraising activities to have ABN number, physical address, and phone number readily available would be a way of counteracting legitimacy concerns.

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

Care needs to be taken in the development of any regulatory provisions to ensure that a principle-based approach is adopted. This is crucial in this area due to the rapid changes in technology we have experienced recent times and will continue to experience in years to come.

One suggestion, to provide the community with more confidence in the online fundraising space and the ACNC with more visibility, would be for the ACNC to develop a set of "approved fundraiser" logos which are provided to approved charities for use in fundraising activities that they are authorising.

For example:

1/ Approved charity.

2/ Approved charity fundraiser.

Alternatively, the logos could be aligned with the tiered structure we propose at 7.1 below.

Chapter 7 – Fundraising by third parties on behalf of charities

Private participators

Consultation questions:

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

Firstly, third party fundraising needs a clear definition – for example face-to-face agencies, direct marketing agencies and telemarketing agencies are all third party fundraisers however large corporations, religious groups, community groups and individual members of the public are all examples of third party fundraisers too.

Paid third parties are a highly valuable part of the fundraising operation – these organisations often provide skills, and resources outside the possibilities of in-house fundraising – and sometimes at a much lower cost, with less risk, ensuring greater capacity and fundraising ability than could be achieved otherwise.

Rules should apply to third party fundraisers who obtain a fee for their work – and these organisations should apply for a fundraising licence through the ACNC.

There should be no regulation of third parties that are not paid other than basic requirements such as how much from each sale will be provided to the charity.

Also, it is difficult to place the compliance obligations outline in this section onto the charity. Often charities do not know that an individual fundraiser is raising funds until they come to return the funds. We suggest a tiered approach to regulation of fundraising activities and registration of fundraisers. We propose that the tiers be structured as follows:

1. “Registered Charities” (with those below a specified fundraising threshold being subject to a less onerous regulatory regime and a simple registration process);
2. “Commercial Fundraisers” – those who are paid to fundraise should register in their own right and obviate the need to have “traders agreements” and registered vendor contracts as is currently required in a number of jurisdictions;
3. “Community Fundraisers” divided into two categories
 - (i) Those raising over a specified dollar threshold will follow a simple registration process and have their fundraising activity listed as a Registered Charitable Event. These events could be listed on the ACNC portal providing easy reference for members of the public. Registered Charities and Commercial Fundraisers could also be listed for purposes of transparency and verification of legitimacy.
 - (ii) Those raising under a specified dollar limit need only comply with published ACNC guidelines as well as any guidelines provided by the Registered Charity that they wish to raise funds for. All Registered Charities could have a link next to their entry in the ACNC portal directing Community Fundraisers to that charity’s fundraising guidelines.

Alternatively all Community Fundraisers could register per 3(i) above if that registration process was simple enough. ACNC registration of Community Fundraisers would replace the need for charities to issue “Authorities to Fundraise” (in jurisdictions where this may currently be required) and would maximise the ability of the public to determine the legitimacy of fundraising activity.

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

Yes, subject to our comments at 7.1 above.

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, but should be limited to paid fundraising third parties. See our comments at 7.1 above.

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

Yes, all fundraisers should be required to state the name of the charity that they are fundraising for, paid fundraisers should be required to provide all information that would be required if the charity itself was fundraising.

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, third party fundraisers should disclose that they are paid fundraisers. An average rate of pay provided as a percentage of overall donations can be provided. But the specific amount paid can be difficult for charities to provide given varying individual rates of pay and possibly commissions.

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

In general terms yes they should state that they are paid. This is currently the practice for face-to-face agencies. An exception would be telemarketing agencies where callers state that they are calling on behalf of...and there appears to be a clear understanding from donors that callers are paid, so it would seem unnecessary and difficult to change this, though the information should be made available if requested.

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

Only basic regulation is required which should relate to a requirement that the public is given a clear indication of how funds are distributed to the charity as per our response at 7.1.