

5 July 2017

Our ref WD: NFP

The Hon. Yvette D'Ath  
Attorney-General and Minister for Justice  
Minister for Training and Skills  
Attorney General's Department  
GPO Box 149  
BRISBANE QLD 4001

By email: [attorney@ministerial.qld.gov.au](mailto:attorney@ministerial.qld.gov.au)

Dear Attorney

**Final Report of the Australian Consumer Law Review - Queensland Fundraising law reform**

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We lead a profession of nearly 10,000 members throughout Queensland. The QLS is comprised of several specialist committees who provide policy advice to the QLS Council on law reform and areas of concern to the profession.

This letter is written with the assistance of specialist legal practitioners who are members of the QLS Not for Profit Law Committee, who have substantial expertise in this area.

I refer to the Final Report into the Review of the Australian Consumer Law (ACL) (the **Report**). Now that the recommendations of the Report are public, I write to highlight two recommendations in Chapter 2.7 for your attention. QLS urges you to consider:

1. **Agreeing** with the recommendation that regulator guidance be developed to clarify the current application of the ACL to not-for-profit fundraising activities and that this be completed in 2017.

The Report affirms that lack of regulator guidance makes it difficult for fundraisers and charities to determine if and how the ACL applies.

2. **Agreeing in principle** with the recommendation that a project be commenced to assess the effectiveness of that guidance and any relevant regulatory actions, and whether any future reforms are needed to enable the sector to work more effectively to the benefit of the Australian community, but reject the timeframe of 2019-20 and propose it be commenced concurrently with the development of regulator guidance in 2017.

A 2-3 year delay in taking action on this important issue would be extremely disappointing for the reasons set out below. It seems to us that the changes required to the ACL to provide better donor protection are likely to be relatively minor and may be able to be implemented as part of the current review. It seems to us that, a small,

## Final Report of the Australian Consumer Law Review - Queensland Fundraising law reform

specialist working group could be established before the end of 2017 to finalise minor changes to the ACL to clarify and broaden its coverage of fundraising activities. We have members with high levels of expertise who would be willing to participate in such a group.

Members of our Not for Profit Law Committee were at a recent QUT Reforming Fundraising Regulation Forum held on 18 May 2017. During that forum the ineffectiveness of the current Queensland legislation to respond to internet based fundraising was highlighted including the difficulties the Queensland Office of Fair Trading would have in prosecuting alleged offences against those who have no other connection with Queensland other than a web site able to be viewed and responded to by a resident in Queensland. In our submission it is the ACL that is best equipped to respond in such cross-border circumstances.

Uncertain and unenforced regulation is of course not good regulation. The Deloitte Access Economics: Final Report, Cutting Red Tape: Options to align state, territory and Commonwealth charity regulation, issued in February 2016, estimates that the annual red tape cost to charities of seeking to comply with the disparate fundraising regulation on a State by State basis is \$15.1M per annum. Additionally given the low number of charities with fundraising licences in Queensland it is apparent that many charities are not complying.

The need to reform the regulation of fundraising in Queensland which reflect modern day requirements such as online fundraising has been an issue for many years. The Productivity Commission January 2010 Report recommended that all States harmonise fundraising legislation and possibly establish a register for cross-jurisdictional fundraising.

One of the purposes of the *Collections Act 1966* (Qld) is to stop undesirable conduct in relation to public appeals for support for not for profit purposes (i.e. fundraising appeals) by entities and individuals. However, in practice, uniform regulation across Australia via the ACL is more effective in responding to inappropriate fundraising activity. This is because the ACL is clearer, well understood, actively enforced and uniform across Australia. The choice by Consumer Affairs Victoria to use the ACL (not State based fundraising regulation) in the recent high profile Belle Gibson case (Director of Consumer Affairs Victoria v Gibson [2017] FCA 240) is, we suggest, a clear indication of the effectiveness of the ACL in regulating inappropriate fundraising activity.

We would be grateful for your advice about how you propose to deal with the recommendations relating to fundraising (discussed above) at the meeting of Consumer Affairs Ministers which we understand is scheduled for August this year.

If you have any queries regarding the contents of this letter or wish to discuss, please do not hesitate to contact our Policy Solicitor, Wendy Devine on (07) 3842 5896 or [w.devine@qls.com.au](mailto:w.devine@qls.com.au).

Yours faithfully



Christine Smyth  
**President**