

6 August 2018

Committee Secretary  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Our ref: (WD - NFP)

By email: [charityfundraising.sen@aph.gov.au](mailto:charityfundraising.sen@aph.gov.au)

Dear Committee Secretary

### **Charity fundraising in the 21<sup>st</sup> century - terms of reference**

Thank you for the opportunity to provide comments on the inquiry into Charity Fundraising in the 21<sup>st</sup> Century in order to report on the current framework of fundraising regulation for charities and options for reform. Queensland Law Society (QLS) appreciates being consulted on this important issue.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and assist the public by advising government on improvements to laws affecting the community.

This response has been compiled with the assistance of the QLS Not for Profit Law Committee who have substantial expertise in this area.

Our policy committees and working groups are the engine rooms for QLS's policy and advocacy to government. QLS, in carrying out its central ethos of advocating for good law and good lawyers, endeavours to ensure that its committees and working groups comprise members across a range of professional backgrounds and expertise. This furthers our profile as an honest, independent broker delivering balanced, evidence-based comment on matters which impact not only our members, but also the broader Queensland community.

### **Key points**

- QLS supports the position of the Law Council of Australia's Not-for-profit Legal Practice and Charities Committee in relation to this inquiry.
- QLS also broadly supports the views of Justice Connect in its #fixfundraising campaign.
- To support any reform process, QLS recommends that:

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- the State, Territory and Federal governments work together to create a State and Territory advisory group consisting of officers responsible for fundraising and incorporated association regulation as well as the Attorneys-General;
- as any reform process will involve an understanding of the interaction of the Australian Charities and Not-For-Profits Commission (ACNC) legislation, Commonwealth corporations regulation and the operation of the Australian Consumer Law (ACL), we suggest that a technical panel of accounting and legal experts be charged with identifying such issues to inform any amendment to legislation in addition to the task force comprising State representatives.

### Preliminary comments

QLS has had the opportunity to consider the Law Council of Australia's Not-for-profit Legal Practice and Charities Committee views and endorses its position in relation to this inquiry.

QLS also broadly supports the approach of Justice Connect in its #fixfundraising campaign, particularly noting that:

- Fundraising is a significant source of regulatory burden for charities and not for profits;
- There is a clear need for a national, consistent, harmonised regulatory framework for fundraising across Australia;
- The fundraising problem – and the need for a national, fit-for-purpose fundraising regulatory regime - has already been well-documented by a range of studies over the past 10 years as outlined by Justice Connect. These include:
  - Australian Productivity Commission - Contribution of the Not-for-profit Sector 2010;<sup>1</sup>
  - Deloitte Access Economics report *Final Report: Cutting Red Tape: Options to align State, Territory and Commonwealth charity regulation* (23 February 2016) (commissioned by Australian Charities and Not-for-Profits Commission);<sup>2</sup>
  - Report of the Inquiry under the *Charitable Fundraising Act 1991* (NSW), Feb 2018;<sup>3</sup> and
- Given the work that has already been done in relation to the need for a national, fit-for-purpose regulatory framework, this should be a priority for Federal, State and Territory governments.

### Terms of Reference (a), (d), (f), (h) and (k) – nationally consistent and harmonised fundraising frameworks are required

QLS supports the implementation of a harmonised, contemporary fundraising regime to allow charities to fundraise in all States and Territories of Australia with consistent reporting obligations.

<sup>1</sup> <https://www.pc.gov.au/inquiries/completed/not-for-profit/report>

<sup>2</sup> <http://acnc.gov.au/ACNC/Publications/Reports/CuttingRedTape.aspx>

<sup>3</sup> [https://www.finance.nsw.gov.au/sites/default/files/inquiry\\_report\\_cfa.pdf](https://www.finance.nsw.gov.au/sites/default/files/inquiry_report_cfa.pdf)

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Fundraising and charity gaming is State-based and inconsistent, giving rise to paperwork burden and patchy enforcement and compliance. There is a great need for the harmonisation of fundraising laws.

As noted earlier, the need for a national and fit-for-purpose fundraising regulatory regime has been well documented. 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 seeking to comply with the disparate fundraising on a State by State basis is \$15.1M per annum. The difference between legislation across Australia creates confusion and accidental and/or deliberate non-compliance, particularly in relation to procedural matters.

The recent CAANZ review of the Australian Consumer Law led to publication of "A Guide to the Australian Consumer Law (ACL) for Fundraising & Other Activities of Charities, Not-for-profits and Fundraisers (Guide)". The Guide demonstrates the broad application of the ACL to fundraising. However, the ACL does not necessarily do away with some of the unique challenges of charitable fundraising.

A single regulatory body as recently suggested by the Report of the Inquiry under the *Charitable Fundraising Act 1991* (NSW) (Feb 2018) into the Returned and Services League of Australia (NSW Branch) (recommendation 14.8) may be an appropriate solution.

We recommend that a task force representative of all States be charged with responsibility for developing a working framework for a single regulatory body controlling charitable fundraising. It may be that this could be the ACCC and Offices of Fair Trading under the Australian Consumer Law (ACL), however, it is important that any amendments to the ACL do not result in unintended consequences.

To support any reform process, QLS recommends that:

- the State, Territory and Federal governments work together to create a State and Territory advisory group consisting of officers responsible for fundraising and incorporated association regulation as well as the Attorneys-General. The Attorneys-General are important as they have the *parens patriae* common law jurisdiction;
- as any reform process will involve an understanding of the interaction of the ACNC legislation, Commonwealth corporations regulation and the operation of the ACL, we suggest that a technical panel of accounting and legal experts be charged with identifying such issues to inform any amendment to legislation in addition to the task force comprising State representatives.

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

Yours faithfully



Ken Taylor  
President

THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY

REPORT OF THE  
COMMISSION ON THE  
STRUCTURE OF THE  
ATOMIC NUCLEUS  
AND THE  
PROPERTIES OF  
NUCLEAR MATTER

BY  
R. V. J. STOKES  
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CHICAGO, ILLINOIS  
1952

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