

Chief Minister  
Treasury and Economic Development Directorate  
ACT Government  
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20 April 2017

Dear Chief Minister

## Submission in response to Red Tape Reduction Legislation Amendment Bill 2017

We are pleased to take up the opportunity to provide a response to the Red Tape Reduction Legislation Amendment Bill 2017 (**the Bill**).

### About Not-for-profit Law

Not-for-profit Law is an Australia-wide program of Justice Connect, providing free and low cost legal assistance to not-for-profit community organisations. Justice Connect is a registered charity and an accredited community legal centre.

Not-for-profit Law 'helps the helpers' by providing practical legal information, advice and training to not-for-profit community organisations. By helping those involved in running not-for-profits to navigate the full range of legal issues that arise during the lifecycle of their organisation, we save their time and resources. This allows them to focus on achieving their mission, whether that is helping vulnerable people, environmental conservation, or working towards social cohesion.

Not-for-profit Law also advocates for an improved legal and regulatory framework for the not-for-profit sector and for law reform that takes into account the impacts of regulation on not-for-profits. Effective and appropriate regulation of not-for-profits supports efficient and well run not-for-profits and a thriving sector that benefits all Australians.

### Proposed changes - Associations Incorporation Act 1991

Not-for-profit Law provides advice, legal information and training to many incorporated associations that are registered charities with the Australian Charities and Not-for-profits Commission (**ACNC**). These organisations seek help with trying to navigate the various reporting requirements with which they must comply.

**We commend the ACT government for addressing the issue of double-reporting for charities registered with ACNC and welcome the reform.**

The removal of fees associated with lodgment of annual statements and change of public office or committee details will also relieve some of the financial burden on many small to medium not-for-profit organisations, and we support this step.

## Proposed changes - Charitable Collections Act 2003

Exempting registered charities from the requirement to be licensed under the Charitable Collections Act 2003 and to report to the ACT, is another welcome (but interim) reform.

The legislation should align with the intended consequence of the reform. The provisions in Bill should clearly spell out that ACNC registered charities are exempt and not just individuals fundraising on their behalf (see below).

The Bill currently states:

### Part 4 – s 18

*(2) This sections does not apply if the person is authorized to conduct the collection by –*

- a) *the licensee for the licence authorising the conduct of the collection, or*
- b) *an ACNC registered entity.*

**We propose changes along the following lines to remove any ambiguity about the need for ACNC registered entities to obtain a fundraising licence – that is, to remove any doubt that the charity itself, rather than people raising money on its behalf, must obtain a licence to conduct the collection if the charity (as a separate entity) is registered with the ACNC.**

### Part 4 – s 18

***(2) This sections does not apply to:***

- a) ***an ACNC registered entity, or***
- b) ***a person authorised to conduct the collection by:***
  - I. ***the licensee for the licence authorising the conduct of the collection; or***
  - II. ***an ACNC registered entity.***

## Stage 2 Reform Opportunities

As the ACT Government has identified, there are further opportunities for streamlining regulation of incorporated associations and charitable collections. **We agree there are other regulatory issues that require careful consideration and urge the ACT Government to pursue this critical reform as a matter of priority.**

### *Comprehensive review of Associations Incorporation Act 1991*

In the ACT Government's second stage of reforms, we encourage a comprehensive review of the Associations Incorporation Act 1991. In this review, the follow items should be considered (this is not an exhaustive list):

- clear articulation of committee member duties in the legislation, including fiduciary duties
- provisions in relation to holding meetings via technology
- electronic ballot provisions
- a simple dispute resolution procedures
- provisions to navigate privacy concerns and the members' register
- updated, aligned and plain English model rules
- removing or clarifying the barrier to trade

- removing or reducing other fees associated with lodgment of documents and details.

### *Repeal the Charitable Collections Act 2003*

The ACT Government Stage 1 reforms are an important interim step in the removal of red tape for registered charities (numbering about 1,100). **However, registered ACT charities and the thousands of other ACT not-for-profit organisations must still comply with fundraising requirements in six other jurisdictions.** There is no consistent definition of fundraising – in some States it is not just charitable collections that are covered. Even if these reforms mean an ACT charity will not have to obtain a licence under ACT legislation, they may still need to comply with six other disparate and out-of-date fundraising regimes if they do something as simple as call for donations via their website. **This is a major red tape burden and the ACT Government could play a further role in improving this situation via its response to the current review of the Australia Consumer Law and by repealing its Charitable Collections Act.**

Justice Connect is a member of a coalition of peak sector bodies (under the banner of ‘#fixfundraising’) and more than 160 charities (big and small) who are advocating for a better regulatory framework for fundraising. So the red tape burden that the ACT Government has recognised as part of its current reforms can be truly effective for ACT charities and other ACT not-for-profit organisations, we urge the ACT Government to:

1. work with all other Australian Governments to clarify and extend the Australia Australian Consumer Law to ensure application to fundraising activities is clear and broad, and
2. repeal its Charitable Collections Act 2003.

In its recent review of the NSW Charitable Fundraising Act (**the Act**), the NSW Government confirmed that it does not undertake any specific compliance and enforcement under the Act, given there is no evidence of any particular problem in the sector. It also found no evidence to suggest the Act is any more beneficial than existing general laws appear to be in protecting donors in cases of deception (see the NSW Fair Trading Charitable Fundraising Review Discussion Paper of July 2016 attached).

Like NSW, even with the repeal of fundraising legislation, a range of enforcement avenues are open to the ACT Government, including pursuing criminal penalties. By its own admission, the ACT Government has reported that between 2003 and 2007, less than 5% of all licensees were meeting the requirements of the Charitable Collections Act in regard to reporting to the Director General (see the ACT Charitable Collections Practice Manual).

Any potential risks associated with repeal of the ACT Charitable Collections Act could be further mitigated by amending the ACL (as we have proposed) to ensure its application to fundraising activities. We note that a key provision of the Charitable Collections Act (misleading and deceptive conduct) also appears in the ALC, which has the advantage of a broader enforcement tool kit, enabling a focus on changing behaviour (eg. direction to participate in education) in addition to pecuniary penalties (see Justice Connect’s response to the NSW Discussion Paper for further discussion).

Attached are the following background documents and submissions:

1. NSW Fair Trading Charitable Fundraising Review Discussion Paper, July 2016
2. Justice Connect response to NSW Discussion Paper, 15 July 2016
3. Submission to the ACL Interim Report, 9 December 2016
4. Statement of Fundraising Reform (coalition)
5. Letter to the Hon Andrew Barr MLA, 21 December 2016

6. Fix Fundraising Open Letter to the Prime Minister, 4 April 2017

We are calling on all the ACT Government, along with all Australian Governments, to work together to provide charities, not-for-profits and the donors who support them, with a nationally-consistent and fit-for-purpose regulatory regime.

**In conclusion**

We appreciate the opportunity to respond to the Bill and would welcome any further discussions in respect of our submission.

Yours sincerely



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