

14 July 2016

Ms Regina Haertsch  
C/- The Department of Finance, Services and Innovation  
Level 9, McKell Building  
Rawson Place, Sydney NSW 2000

*via email to [policy@finance.nsw.gov.au](mailto:policy@finance.nsw.gov.au)*

Dear Ms Haertsch

## **Charitable Fundraising Review**

The Australian Institute of Company Directors (AICD) is pleased to provide a submission on the Department of Finance, Services and Innovation's discussion paper on the retention or repeal of the *Charitable Fundraising Act 1991* (NSW) (**the Act**).

The AICD is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director education, director development and advocacy. Our membership of more than 38,000 includes directors and senior leaders from business, government and the not-for-profit (NFP) sectors.

The AICD supports the repeal of the Act and congratulates the New South Wales (NSW) Government on its leadership in reducing regulatory burden for NFPs.

## **Alignment with the Australian Consumer Law**

The AICD is working with leading sector bodies, including Chartered Accountants Australia and New Zealand, CPA Australia, JusticeConnect's Not-for-profit Law and the Governance Institute of Australia, on the urgent need for fundraising reform.

To this end, the AICD made a submission to Consumer Affairs Australia and New Zealand's review of the Australian Consumer Law (ACL), proposing that the law be clarified to ensure its application to fundraising activities. It is the AICD's view that minor amendments to the ACL would enable the repeal of state and territory fundraising regimes, thereby effectively creating a nationally-consistent regulatory regime. The AICD's submission is attached for information.

In our submission, the AICD proposed that fundraising reform could be achieved through three simple steps:

1. minor amendments to the ACL to ensure application to fundraising activities is clear and broad;
2. repeal of state-based fundraising laws; and
3. working with other regulators (for example, the Australian Charities and Not-for-profits Commission, state-based regulators and self-regulatory bodies) to improve fundraiser conduct (including door-knocking, telemarketing and excessive spending of funds on third party services).

The AICD supports the repeal of the Act and encourages the NSW Government to take additional action (as above) in order to achieve substantive fundraising reform for the benefit of all Australians and the not-for-profit sector.

**Operating without fundraising regulations without prior clarification to the ACL**

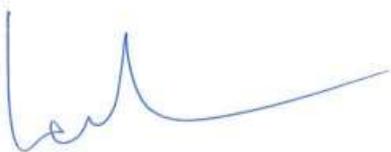
The AICD notes that if the Act is repealed without prior amendment to clarify the role of the ACL in regulating fundraising, the use of the *Crimes Act 1900* (NSW) (**criminal law**) as an a regulatory instrument may be problematic as:

1. while certain egregious misbehaviours would fall under criminal law, it is likely that smaller ones would not, meaning that there would not be an effective regulatory instrument to address minor matters;
2. addressing misbehaviours under the criminal law requires the state to commit justice resources to the investigation and prosecution of alleged breaches, making it a more expensive recourse and thus less likely to be used; and
3. enforcement actions available to the courts (such as pecuniary penalties and, suspended and custodial sentences) are not as suited as those available under the ACL (such as enforceable undertakings and directions to participate in education) to address misbehaviours associated with fundraising.

We recognise that the NSW Government does not currently undertake enforcement activity under the Act owing to insufficient evidence of misbehaviour. As a result, any adverse consequence from the repeal of the Act is unlikely. The Northern Territory already operates without fundraising legislation and the AICD is not aware of any issues associated with this.

We hope our comments will be of assistance to you. Should you wish to discuss any aspect of this submission, please contact our NFP Policy Adviser, Lucas Ryan via [lryan@aicd.com.au](mailto:lryan@aicd.com.au) or (02) 8248 6671.

Yours sincerely



**LOUISE PETSCHLER**  
General Manager, Advocacy