Summary of the submission

This submission responds to those parts of the Draft Report that refer to the regulation of not-for-profit organisations (NFPs) in Australia. In particular it responds to those recommendations that are directed to the **regulation of public fundraising NFPs** and to interstate **fundraising using the Internet**.

It is argued that the recommended strategy of "harmonisation" of state fundraising regulation and the outcomes of the standard business reporting reform, or "SRB" initiatives, will not, on their own deliver the level of reform necessary. It argues that these worthwhile reforms will need to be supplemented by a new national approach to fundraising regulation that reduces regulation in areas where there is adequate provisions in generic legislation and which responds appropriately to issues that arise from the growing use by NFPs of telecommunications technologies for fundraising.

This submission concludes that if reform is to achieve improved levels of transparency and a reduction in the overall burden and complexity of the present regulatory environment, the only practical solution is to adopt model regulation in each of the states.

Response to the Commission's draft recommendations

This submission supports the proposed national Register for Community and Charitable Purpose Organisations (RCCPO). However it argues that, unless as a part of the harmonisation process, the current approach taken by state-based fundraising regulations is radically reformed and broadened to include provisions that respond to the full range of modern fundraising practices, the proposals contained in the report will not accomplish the objectives identified by the Commission.

The "harmonised" fundraising legislation will need to be reformed to remove provisions in the current state-based legislation that apply specifically to the activities of public fundraising NFPs, but that are also regulated by existing Commonwealth, State and local government legislation.

The "harmonised" fundraising regulation will also need to respond appropriately to modern fundraising practices not already covered by existing state-based regulation.

At the heart of the recommendations regarding regulatory reform is the proposal to establish a "one-stop-shop for Commonwealth regulation by consolidating various regulatory functions into a new national Register for Community and Charitable Purpose Organisations" (DR 6.4) with the rationale that such a Registry would provide a single, "record once – use often" (p.XLVIII) "source of truth" for use by both the interested public and by governments.

RCCPO would have responsibility for maintaining a record of the following classes of not-for-profit organisations (NFPs):

a. those with tax endorsements (p.6.37);

b. those incorporated as companies limited by guarantee (DR6.1);

c. those incorporated as incorporated associations using the proposed Commonwealth form of incorporated association, and

d. those engaged in cross-jurisdictional fundraising.

The information that will be included in the proposed portal will be "corporate and financial information proportionate to the size and scope of functions of not-for-profit organisations". The Commission's recommendation is that the "lodgement of corporate and financial data... would be mandatory for some NFPs but optional for all" (p.6.1). The Commission's recommendations also rely on progress being made on a national Standard Chart of Accounts (SCOA) and on the reforms promised by the SBR initiatives.

It is not clear from the draft report which NFPs will be required to lodge additional information with the proposed new RCCPO, but, for the purpose of this submission, it assumed that mandatory lodgement of a minimum set of information will extend to those listed at (b), (c) and (d) above which would include a majority of public fundraising NFPs.

In order to fully appreciate the practical effect of the proposed reforms, it is important to consider three issues that are not analysed in any detail in the report but rather left to a "harmonisation" process on the grounds that "the issue is already being investigated and progressed by the Council of Australian Governments" (p.6.28). It is argued that these issues will need to be resolved by harmonisation and the SRB reform processes if they are not to pose a real threat to the practicality of the proposed national register, since they bear directly on the quality of the information about public fundraising NFPs that is the focus of the public's information needs.

The issues that must be dealt with in the "harmonisation" process are, first, the widely varying use of state-based exemptions, second, the differences in the fundraising activities regulated by the different jurisdictions and third, the issues raised be the references in the report to "NFPs operating [fundraising] across jurisdictions" (p.6.25).

Differences between the States on exemptions

If the Commission's proposals for the establishment of the RCCPO are to achieve its objectives, "harmonisation" of state-based fundraising regulation will need to resolve the problems created by the major differences in the classes of organisations covered by the various state fundraising regulations. The following are just some of the examples:

- In Queensland (QLD), religious organisations are exempt from the Collections Act 1966. However the definition of religious organisation for the purposes of the Act is limited to

  > *"a religious body or religious organisation declared by the Governor-General by proclamation pursuant to the Marriage Act 1961 (Cwlth) to be a recognised denomination" (s.5)*

- In New South Wales (NSW), the exemptions available to religious organisations include a wider range of bodies. Section 7 of the Charitable Fundraising Act 1991 states:

  > *"Religious organisations exempt from Act*
  > *(1) This Act (apart from section 48) does not apply to:*
  > *(a) a religious body or a religious organisation in respect of which a proclamation is in force under section 26 of the Marriage Act 1961 of the Commonwealth or a religious body, or an organisation or office, within a denomination in respect of which such a proclamation is in force, or*
  > *(b) a religious body or religious organisation prescribed by the regulations, or*

(c) any body or organisation that is certified in writing by the principal or executive officer of a body or organisation referred to in paragraph (a) or (b) to be affiliated with and approved by the organisation or body so referred to, or
(d) a member or employee of a body or organisation referred to in paragraph (a), (b) or (c), or any other person, who is acting with its authority."

The differences between NSW and other states in respect of the definitions of what constitutes a religious organisation for the purposes of exemptions under the state fundraising regulation create very real policy difficulties for the Council of Australian Governments' (COAG) harmonisation negotiations. But the issue of state-based exemptions goes further. The following are just some of the other exemptions granted by state legislation:

- In QLD most public hospital foundations are incorporated under the Hospital Foundations Act 1982 (Qld). The Act provides exemptions from certain parts of the Collections Act 1966; In VIC some hospital foundations are exempt under the Health Services Act 1998(Vic), in NSW they must register.
- In Victoria (VIC) all pre-school service providers are exempt from Fundraising Appeals Act 1998 by Executive Order dated 1 January 2002,
- In NSW, Universities are exempt (Reg 7) and in other States they are not specifically mentioned in the fundraising legislation;
- In VIC Patriotic Funds are exempt;
- In VIC and NSW Emergency Services are partially exempt;
- In VIC the Anti-Cancer Council of Victoria is exempt from Fundraising Appeals Act 1998 by Executive Order dated 1 January 2002;
- In NSW the Loyal Orange Institution is exempt;
- In QLD, it is an offence for a for-profit entity to advertise the sale of its goods or services by reference to some arrangement that some part of the sale will be allocated to a charity, unless an agreement is in place that has the approval of the Office of Fair Trading (s.39A Collections Act 1966 (Qld)). In NSW, s.11 of the Charitable Fundraising Act 1991, also make it an offence but allows such fundraising activities under different conditions. In VIC, different conditions are applied to this kind of activity (s.12A of the Fundraising Act 1998 (Vic)). The overall effect of these differences make it almost impossible for a NFP conducting a national marketing campaign, to comply with the letter of the regulations in all states.

These questions go to the very real policy differences between the states, which will no doubt be the subject of a vigorous debate between the States in a "harmonisation" process.

Differences in the definition of what constitutes "fundraising" activities

It is not clear from the report what the Commission regards as "fundraising", but the differences between the States in respect of the definitions of what activities constitute "fundraising" under the state fundraising regulation will also need to be resolved in the "harmonisation" process. The SRB reform processes will also need to address the definition of "fundraising" and other relevant terms in the context of NFPs.

The differences stem from the variations in the conceptual frameworks used in the various State legislation and the differences in the kind of activities that are included (or excluded) from these different definitions. In QLD the legislation regulates "appeals for support". In NSW and VIC the legislation uses the term "fundraising appeal" and in South Australia (SA) and Western Australia (WA), what might otherwise be regarded as "fundraising", depends on the definition of the term "collection for a charitable purpose".

It will be noted that a dominant theme through the state-based fundraising legislation is that regulation is targeted at the fundraising activities of NFPs that are directed to the general public (external parties), rather than private (internal publics) such as members or service users. In general, fundraising amongst members, people who share a common workplace, a school or religious community, etc, are exempt from the regulatory regimes. Although not explicit, it can be argued that the need to regulate is partly due to the lack of information about the NFP available to those who receive a solicitation but who are not closely associated with the NFP.

However there are very important differences between the States on what kinds of fundraising activities are included in "appeals for support", "fundraising appeals" or "collections for a charitable purpose". The following are some of the more notable differences:

- Making a "fundraising appeal" to a corporation in VIC is exempt for the purposes of s5(3)(f)(ii) of the Fundraising Act 1998 (Vic), but is included in the regulated activities in other States;
- Material that solicits bequests is included in the definition of "fundraising" in QLD, VIC, SA and WA, but excluded in NSW;
- Trust and Foundation grants would be included in fundraising income in QLD, NSW, SA and WA, but excluded in VIC (see Fundraising Act 1998 (Vic), s. 5(3)(f)(2));
- Lottery and Raffle income would be included in fundraising income in QLD, NSW, SA and WA, but excluded in VIC; (see Fundraising Act 1998 (Vic), s. 5(3)(a)(ii));

These policy differences partly reflect the differences between policy makers of the perceived need for protection for those who are being solicited for their support. These differences between the states will need to be eliminated in the harmonisation process because they have far reaching effects on the information that will inform the new national registry, since they alter the way in which NFPs report financial information.

Accounting issues

The problems created by the differences in the definition of "fundraising" and the differences imposed by the various exemptions granted under state-based fundraising regulation, go to the heart of the issues that the Commission's proposals for a national register are intended to overcome. To illustrate this point, the following analysis considers the impact of the differences on the accounts prepared by NFPs in two States:

> NFP "A" is a registered charity in NSW. It must prepare its annual financial statements in accordance with Australian accounting standards and with the Best Practice Guidelines issued by the Office of Liquor Gaming and Racing. In calculating its total fundraising income it will exclude funds raised from membership fees, bequests, registered clubs, and local government (Charitable Fundraising Act 1991 (NSW), s5(3)(a) and (c), and Regs 5 and 7.) but include income from philanthropic trusts, corporations and "gifts in lieu of flowers".
>
> NFP"B" is a registered charity in VIC. It must also prepare its annual financial statements in accordance with Australian accounting standards and with the conditions laid down in its licence to fundraise issued by Consumer Affairs Victoria. In calculating its fundraising income it will exclude membership fees, include bequests, include funds raised from registered clubs, and exclude government grants. It will however exclude funds raised from philanthropic trusts, corporations and "gifts in lieu of flowers" (Fundraising Act 1998 (Vic),

Clearly any comparison of these two NFPs that uses information about fundraising income from their audited financial statements, informed as they should be by the conditions in their State fundraising licenses, will be compromised by any differences in the underlying framework provided by the relevant state-based fundraising regulation. The "harmonisation" process will need to achieve a very high degree of alignment if the data submitted to RCCPO by NFPs from different jurisdictions is to be comparable.

The quality of fundraising accounting data may also be compromised in those cases where the NFPs determine that they are not "reporting entities" for the purposes of Australian Accounting Standards and their form of incorporation does not mandate accounts be prepared to IFRS standards.

It will be vital for both the credibility and usefulness of the information made available through RCCPO that "harmonisation" adequately addresses these accounting issues.

NFPs operating across jurisdictions

The Commission's definition of "cross jurisdictional fundraising NFPs" (p.6.37) is not explicit in the Draft report, but the "harmonisation" process will need to address not only interstate fundraising in terms of a harmonised set of fundraising regulation based on activities regulated by current legislation, but also address interstate fundraising issues not adequately addressed at present.

If a non-technical interpretation of inter-state fundraising is used, then RCCPO would require a NFP to register if, the NFP that conducts a fundraising activity and the person or entity whose support is being sought, are in different states. The rationale for this approach would be that the person or entity being solicited should have access to good quality information about the NFP doing the soliciting from a national register, such as RCCPO.

When considered in this light, all but relatively small community based NFPs conduct activities that would constitute inter-state fundraising. This is best exemplified with a hypothetical study as follows:

> Bloggsville Community Association (BCA) Inc is a relatively small, predominately government funded community services provider (and PBI) based in Brisbane. BCA applies to Perpetual Trustees Australia Ltd (based in Sydney) for funding for one of BCA's innovative service projects from a selected philanthropic trust. Is this "operating across jurisdictions"?
>
> BCA makes a submission to the Commonwealth Bank for some sponsorship funding for three of BCAs service users with special needs so that they can attend a conference in Canberra. The Commonwealth Bank forwards BCA's submission to the bank's head office in Melbourne. Is this "operating across jurisdictions"?
>
> BCA is keen to offer on-line donation facilities on its web site but finds the cost of providing that service uneconomic if it has to have the site built especially for BCA. BCA decides to use a pro bono facility offered by ourcommunity.com.au (a Victorian based NFP) as an agent for collecting on-line donations. Will this constitute "operating across jurisdictions"?

Many small regional NFPs operate in boarder areas such as in Albury-Wodonga and in Tweed – Gold Coast where their operations, although relatively small scale, involve operations across jurisdictions. Mandatory reporting to the proposed new national regulator would impose disproportionately onerous regulatory burdens on relatively small NFPs.

In the report, the Commission noted that Fundraising Institute Australia's survey of its 1600 members found that 50% of its membership worked across state boarders (p. 6.28). It is suggested that this proportion is likely to be considerably understated if the definition of fundraising across state boarders were to be "where a NFP entity conducts a fundraising activity and the person or entity being solicited are in different states."

Interstate fundraising using direct mail marketing techniques.

Perhaps the most common fundraising practice that involves NFPs soliciting persons or entities across State boundaries is the use of mail appeal letters and charity lottery promotions using the mail. Australia Post estimates that approximately 100 million standard mail articles are posted by NFPs within Australia each year. Of that, a substantial proportion crosses State boundaries. Most articles posted by NFPs include some fundraising material, whether it is a donation coupon in a newsletter or a more personalised letter.

The Charitable Fundraising Regulation 2008 (NSW) is an example of specific fundraising regulation that directly addresses direct mail marketing (it also demonstrates how its provisions duplicate other, more generic legislation).

The following is an extract from Regulation 12:

> 12 Fundraising through direct marketing
> If a fundraising appeal involves solicitation by way of direct marketing (including by telephone, electronic device such as a facsimile machine or direct mailing), the authorised fundraiser must ensure that:

(a) the content of all direct marketing communications is not misleading or deceptive or likely to mislead or deceive, and
(b) if requested by the person being solicited, the person is informed of the source from which the authorised fundraiser obtained the person's name and other details, and
(c) if requested by the person being solicited, the person's name and other details are removed as soon as practicable from the source of names or contacts used for the purposes of the appeal (or if removal of the name and details is not practicable, the name and details are to be rendered unusable), and
(d) the name and other details of a person are not provided or sold to any other person or organisation without the express consent of the person to whom the information relates, and
(e) each contract (entered into as a result of direct marketing) for the purchase of goods or services to the value of more than $100, provides that the purchaser has the right to cancel the contract within a period of time that is not less than 5 business days (excluding weekends and public holidays), and
(f) a purchaser that enters a contract referred to in paragraph (e) is notified, at the time of entering the contract, of the purchaser's right to cancel the contract and the time within which that right must be exercised, and

(g) all direct marketing by telephone complies with the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* of the Commonwealth.

In the VIC legislation, direct mail marketing by "commercial fundraisers" (but not direct mail marketing by NFPs themselves), is regulated by s.15 of the Fundraising Act 1998 as follows:

15 Letters etc. by commercial fundraisers must disclose certain details

(1) This section applies if a commercial fundraiser seeks donations to, or offers to sell anything as part of, a fundraising appeal by any means of communication to which section 14 does not apply.

(2) In the case of any communication by means of a document, the commercial fundraiser must ensure that the document states—

(a) that the document has been sent or distributed by the commercial fundraiser; and

(b) that the commercial fundraiser has been retained on a commercial basis to send or distribute the document.

(3) In the case of any other means of communication, the commercial fundraiser must ensure that a donation is not sought, and that an offer to sell is not made, unless any person from whom the donation is sought, or to whom the offer is made, is informed of—

(a) the fact that the communication has been made by the commercial fundraiser; and

(b) the fact that the commercial fundraiser has been retained on a commercial basis to seek the donation or make the offer by that means of communication.

The issues surrounding NFP direct mail fundraising across state boundaries become even more complex when the extensive use by NFPs of commercial mail houses for processing large mailings is considered in detail. Typically, the NFP provides donor data to the mail house under strict privacy conditions and the mail house arranges printing, processing and lodgement with Australia Post at the best discount rates available. The widespread use of direct marketing techniques which regularly involve cross boarder fundraising, supports the case for the establishment of national regulation. It also supports the case for a National Register where interstate donors can obtain reliable information about interstate NFPs.

It is submitted that these two examples of the state-based regulation of the most common form of interstate fundraising demonstrate:

- the inadequacy of the current state-based regulations for dealing with interstate fundraising solicitations by mail, and
- the way in which the current state-based regulation often duplicates other more generic legislation;

How can the proposed mandatory registration of NFPs that operate across jurisdictions comply with the principle of proportionality espoused by the report (p.6.36)?

Obsolete aspects of State Fundraising Legislation and the way in which it duplicates other more modern regulation

The obsolete aspects of the state-based regulation include:

- regulating the advertising of "appeals for support", "fundraising appeals", and the wordings on Clothing Collection Bins, etc. when adequately covered by trade practices legislation and state consumer protection laws;
- regulating street behaviours otherwise covered by more generic state and local regulation;
- regulating "door to door" fundraising activities, otherwise covered by generic consumer protection laws and local government ordinances;
- regulation of direct mail fundraising, otherwise covered by generic consumer protection laws and Commonwealth government legislation;
- regulating telemarketing and other direct marketing techniques otherwise covered by Commonwealth telecommunications law, privacy law, Spam Act 2003 and other state consumer protection law;
- regulating collection tins, receipting and banking arrangements adequately covered by regulation of the form of incorporation, modern risk management arrangements and modern audit procedures;
- regulations designed to prevent fraud when adequately covered by the criminal codes;

- regulating the employment of children in fundraising "doorknock" campaigns when adequately covered by modern child protection legislation;
- failure to address fundraising on the Internet;
- failure to address fundraising using SMS and mobile phones;
- failure to address fundraising conducted by the media for necessitous persons;
- failure to adequately address fundraising for natural disasters;
- failure to adequately address "cause related marketing" and other forms of "corporate partnerships".

An examination of the annual reports of the state government departments responsible for fundraising legislation failed to reveal any instances of prosecutions using fundraising legislation in recent years. It appears that where prosecutions have been launched, state prosecutors have used alternative charges under more generic legislation such as the state criminal codes.

The harmonisation and reform of state fundraising regulation through the establishment of a new national model scheme of "soft touch" fundraising regulation, backed by enforceable sub-sector codes such as the Australian Council for International Development (ACFID), would do much to modernise and rationalise fundraising regulation in Australia.

Inadequate regulation of NFP fundraising using modern digital technologies

"Harmonisation" of existing state-based fundraising regulation (regulation designed for the regulation of street collections) will not in itself address the issues associated with the ubiquitous use by NFPs of the internet and the growing use by NFPs of other telecommunications technologies including email and SMS. This is because, with the possible exception of the NSW regulation (see Reg.12, Charitable Fundraising Regulation 2008. NSW), the existing state-based regulation does not directly address the use of modern telecommunications technologies for fundraising.

If the objectives of the reform of existing fundraising regulation include:

- helping to ensure public confidence and trust in fundraising, or
- protecting the NFP sector and public against persons or organisations falsely identifying themselves as an NFP, or misrepresenting the purpose of their organisation or fundraising activities;

then the inclusion in the future regulatory regime of the fast growing NFP practice of fundraising using email and the internet is fundamental. Any new model fundraising regulation will need to include a range of provisions that address fundraising in this context and be consistent with existing Commonwealth regulation of the internet and other telecommunications technologies.

To illustrate the extent of fundraising using the internet, a simple Google search using the words "make a donation" generates 312,000 hits for Australia. A similar search using the term "buy raffle tickets" generates 23,500 hits. The anecdotal evidence points to a growing number of cases of fraud characterised by the use of sham charities that solicit donations on the internet.

One such fraud involved an internet site that solicited donations to help victims of the Victorian Bush Fires. The site solicited donations and issued receipts for on-line credit card donations, despite there being no trace of either their incorporation in Victoria or their registration as a "fundraiser" for the purposes of the Fundraising Act 1998 (VIC). Unless brought to the attention of Consumer Affairs Victoria, it is unlikely that the fraud would ever be detected, given the lack of regulation of internet fundraising.

The potential for fraud (and the potential for damage to the reputation of other genuine on-line fundraising NFPs) is significant. The proportion of the financial transactions NFPs have with their customers, donors and supporters that use the internet is growing rapidly in Australia. About 10% of personal donations to larger well known charities are now completed on-line using credit card facilities.

The existing body of state-based fundraising regulation fails to adequately address modern fundraising techniques using the Internet and other telecommunication technologies. The total absence of references to fundraising on the World Wide Web in the present state-based fundraising legislation or to other technologies such as SMS, mobile telephones, Twitter (see for example http://twitter.com/TeamChallengeWI), etc. and other digital telecommunications (see Fundraising & Philanthropy Australasia Magazine, June/July 2009, p20-21) supports a new national response to fundraising regulation.

The increased use of "challenge fundraising" internet sites such as Everyday Hero (http://www.everydayhero.com.au/) , and bespoke "team challenge" fundraising sites such as the RSPCA's "Million Paws Walk" (http://www.millionpawswalk.com/), "Melbourne Summer Cycle" (http://www.melbournesummercycle.org.au/index.asp) and "Antipodeans Abroad" http://www.antipodeans.com.au/ pose real dilemmas for state-based fundraising regulators. It is not clear whether States have the legal jurisdiction to regulate fundraising solicitation on the internet or the capacity to regulate third party agents providing internet services to NFPs from other states. The issues are made even more complex in circumstances where the web site is hosted outside Australia. This would seem to be an opportunity to use non-state regulatory instruments such as industry codes of practice and voluntary certification.

It would seem only the Commonwealth is in a position to regulate fundraising practices that use the mail, the internet, or other digital communications, despite states continuing to have the power to regulate consumer affairs issues including fundraising.

The COAG work in harmonising consumer law across the Commonwealth will be an important part of the reform process if regulatory reform is to achieve workable regulation of those fundraising activities of NFPs that involve person to person fundraising activities such as street collections, fundraising events, fetes, fairs, bazaars, etc. which are the focus of much of the present fundraising regulation.

The case for National Fundraising regulation

This submission argues that, although the Commission's report acknowledges the difficulties inherent in getting the eight Australian jurisdictions to agree on national fundraising regulation (p.6.29), those difficulties must be overcome if the proposed "harmonisation" of State-based fundraising regulation arrangements and a reliance on SCOA and SBR (see Productivity

Commission, 2009. *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*) is to achieve the outcomes recommended in the report.

The major policy differences evidenced by the exemptions granted in one state but not another and the differences in the activities covered by the state-based regulations will not be any more easily overcome in the process of achieving effective "harmonisation" than they would be by the implementation of "soft touch" national legislation as recommended in my previous submission (sub 29, p.6) or by the adoption of "model" legislation.

The report does not look in detail at the various State legislation, but cites IC 1995, pp.234-5; SSA 2007, p.43. It does however identify the aims of this body of legislation as:

A. help ensure public confidence and trust in fundraising;

B. protect the NFP sector and public against persons or organisations falsely identifying themselves as an NFP, or misrepresenting the purpose of their organisation or fundraising activities;

C. prevent fundraising activities resulting in public nuisance or inappropriate invasion of privacy.

The report states:

> "Regulatory requirements for record-keeping and public disclosure of details regarding fundraising activities are designed to support trust and confidence in fundraising." (p.6.25)

This submission argues that those aspects of existing state-based fundraising regulation that regulate minor forms of gambling should remain a state responsibility, but that the regulation of public fundraising appeals be the focus of new national model regulation. This submission argues that there is a strong case for national reform of fundraising laws for three reasons. First, much of the existing body of general fundraising regulation addresses issues already covered in more modern, general consumer protection legislation. Second, that the proposed national registrar will make redundant many the provisions in the various state regulations that relate to record keeping and public disclosure, and third, a comprehensive national scheme is better suited to regulating NFPs using new digital economy for fundraising purposes.

The arguments for national regulation and the significant winding back of state-based regulation are similar to those put by the Commission in respect of the regulation of on-line gambling services (Productivity Commission, 2009. *Gambling*). However in this submission it is argued that rather than the Australian Communications and Media Authority taking responsibility for the regulation of on-line fundraising by NFPs (having in mind the "one-stop-shop" principles underlying the Commission's recommendations for the establishment of the RCCPO), it is recommended that internet fundraising be included in the responsibilities of the RCCPO. It is submitted that the efficiency and transparency gains of this logical and efficient solution to internet fundraising regulation would be severely curtailed by the continuation of parallel state-based regulatory regimes, once the new national legislation is in force.

The Commission's own research papers refer to the urgent need to address "Domestic inter-jurisdictional overlaps and inconsistencies: between the Commonwealth and States and Territories but also between States and Territories themselves." (Productivity Commission, 2007, *Potential Benefits of the National Reform Agenda*. p.136.)

It is submitted that the proposed "harmonisation" process alone is unlikely to achieve the level of reform necessary to support the objectives identified in the report.

Conclusion

In this submission it has been argued that the Commission's strategy in respect to fundraising regulation, based on proposals to establish a new national regulator, the "harmonisation" of out-dated, state-based fundraising regulation and reliance on longer term reform of business regulation, will not achieve the necessary reform of fundraising regulation without major reform of the policy framework of the existing legislation. It is argued that rationalisation alone will fail to address current issues associated cross boarder fundraising and with fundraising using digital technologies.

It argues that because "harmonisation" alone is unlikely to deliver a modern, fit-for-purpose regulatory regime, the Commission should recommend the creation of a new model fundraising scheme based on a finding that much of the current state-based regulation is redundant and unsuitable for regulating many modern fundraising practices.

This submission argues that the great advantage of recommending the national model regulation approach is that it will facilitate the introduction of a regulatory regime that will adequately deal with:

- inter-jurisdictional differences in what constitutes "fundraising";
- inter-jurisdictional differences in those classes of NFPs that are exempt;
- differences in inter-jurisdictional requirements for reporting fundraising;
- inter-state fundraising using direct mail, and
- fundraising on the internet and the use of other digital technologies, and
- unnecessary duplication, overlaps and inconsistencies of specific fundraising regulation where generic regulation already exists.

The recommended strategy of "harmonisation" of state fundraising regulation and a reliance on SCOA and the outcomes of the SRB initiatives alone is likely in practice to result in the creation of a ninth fundraising regulator in Australia and even more regulatory confusion.

The Commission is strongly urged to reconsider its recommendations in the light of the Commission's consideration of internet fundraising and the need for a single comprehensive scheme of fundraising regulation and in preparation for its final report, examine the feasibility of "model" fundraising regulation for adoption by the States and Territories.

It is asserted that the Commission should not miss this once-in-a-generation opportunity for the effective reform of fundraising regulation.

List of Appended documents:

Appendix A1 - Example of the listing of licensed public fundraising NFPs in SA.

Appendix A2 – Example of the record of a licensed public fundraising NFPs in SA.

Appendix B1 - Example of the listing of licensed public fundraising NFPs in NSW.

Appendix B2 – Example of the record of a licensed public fundraising NFPs in NSW.

Appendix C1 - Example of the listing of licensed public fundraising NFPs in VIC.

Appendix C2 – Example 1 of the record of a licensed public fundraising NFPs in VIC.

Appendix C3 – Example 2 of the record of a licensed public fundraising NFPs in VIC.

Appendix C4 – Example 3 of the record of a licensed public fundraising NFPs in VIC.

Appendix C5 – Example 4 of the record of a licensed public fundraising NFPs in VIC.