

8th January 2021

Re: Submission

Dear Sir/Madam,

Enclosed is my submission on the draft legislative instrument and explanatory materials for the introduction of a new governance standard in the Australian Charities and Not-for-profits Commission Regulation 2013 requiring registered entities to take all reasonable steps to participate in the National Redress Scheme for Child Sexual Abuse (Redress Scheme) if they may have been involved in child sexual abuse within the scope of the Redress Scheme.

While I support the objectives of the National Redress Scheme to compensate and support eligible child sexual abuse survivors, I do not support the draft legislative instrument for the following reasons:

1. Inconsistent with the Presumption of Innocence

Under the proposal, a single untested accusation would be sufficient to require a charity to join the National Redress Scheme, regardless of the validity of the accusation. I say “require” it to join the scheme due to the financial implications of an entity’s charitable status being revoked.

In the FAQ of the explanatory materials, the question: “*Do all charities have to join the Redress Scheme to meet the proposed standard?*” is answered:

“No, only entities who are, or likely to be, identified as being involved in the abuse of a person are required to take reasonable steps to join the Redress Scheme.”

The implication is that a charity (in fact any entity) not involved in the abuse of a person need not join the Redress Scheme, which is as it should be. However, there is no protection offered to a charity to test the first accusation against it of alleged involvement in the abuse of a person. Essentially, no charity is safe from unfounded accusations.

2. No Right to a Fair Hearing

Natural justice requires that both sides be heard (*audi alteram partem*). However, under the proposed legislation, the charity has no opportunity to have a hearing at all, let alone a fair hearing, prior to its being essentially forced to join the Redress Scheme.

The fact that a redress claim has been made or is likely to be made is equivalent to an accusation being made, and no more than that. Surely there should be an opportunity for the charity’s position on the matter to be heard.

3. Moral Hazard

Regrettably, some law firms seek to exploit weaknesses in individuals and in the law. Under the proposed legislation, law firms can press clients and potential clients to make a redress claim, or threaten to make a redress claim, on the basis that the burden of proof is regarded as being less in Redress Scheme matters than outside the Scheme. Under the proposed legislation, if a charity alleged to have some involvement in abuse is not already in the scheme, then it is essentially forced to join the scheme to protect its charitable status. Law firms and individuals can exploit that situation to their own financial advantage, regardless of the truth of the accusation made. Smaller

charities with otherwise excellent records in relation to sexual abuse are especially vulnerable in this respect.

Finally, I wish to make it clear that I fully support the principle that any charity, in fact any institution, should be fully accountable for its past and present conduct relating to child sexual abuse.

Nevertheless, due to the unintended consequences of the draft legislative instrument I recommend against the draft becoming law in its current form.

Yours faithfully,

Richard G Davies