

Bob Brown Foundation Submission to Proposed Changes to ACNC

16th March 2021

Summary

Bob Brown Foundation is deeply concerned about the negative impacts of the proposed changes to the ACNC. These changes are unnecessary and will create profound uncertainty for the charity sector which employs 1 in 10 of all Australian workers and contributes some 8.5% of Australia's GDP. These proposed changes are a thinly veiled attack on the democratic right to peacefully protest issues of national importance, like the government's continued logging of Australia's remaining native forests and wildlife, waterways and air quality during a climate emergency at a time when the United Nations has requested all countries declare a climate emergency: <https://www.reuters.com/article/uk-climate-change-un-summit-idUSKBN28M0IR>

Our Foundation acts peacefully and responsibly for our children's future. We defend our climate, advocating for the protection of Australia's remaining forests and wildlife and the need to stop any new coal mines, which are ticking carbon bombs that will affect the whole planet.

We agree with Hands Off Our Charities (HOOC) who have stated the following in their submission:

These new rules would:

- restrict legitimate and lawful policy advocacy;
- leave all charities at risk of deregistration for actions that have nothing to do with political activism;
- leave a charity at risk of deregistration if any one of its staff commits a minor offence;
- leave a charity at risk of deregistration if the ACNC Commissioner thinks they are "likely" to one day breach these rules (even if they haven't done so);
- require charities to keep records of the steps they've taken to comply with the law at large, in every State, Territory and federally.

The proposed changes:

- significantly expand the scope of a governance standard that the Government's own review recommended be abolished;
- are a further step in the move away from judging a charity's *purpose* (which under legislation must not be to promote activities that are unlawful or against public policy) and towards judging charities for discrete actions by individual employees;
- unfairly target charities in a way unparalleled in the business or private sector. Like everyone else, charities and our staff already face penalties for breaking the law. We also face additional sanctions under existing charities law. Corporations have no equivalent;
- are likely to be unlawful.

These proposed regulations are, at their heart, extremely poor law reform that cannot be fixed by amendments. They should not proceed in any form.

Key Concerns

- **This is a politically driven agenda by the Federal government to rid itself of advocacy groups like Bob Brown Foundation who are exposing wanton destruction of the natural world.**

We are factually informing the Australian people that their government is failing to protect the environment and are therefore determined to remove as much funding as possible by revoking our tax deductibility to greatly weaken our activities.

- **Charities could be deregistered even if they haven't committed an offence**

Charities don't need to have engaged in any unlawful conduct to be deregistered — they may inadvertently fail to take steps to ensure their resources are not used for that purpose, by staff or volunteers.

- **Charities could be deregistered not because of what they have done, but because of what they one day might do**
- **Charities could be deregistered for very minor offences, including for inadvertent acts**
- **The ACNC Commissioner has broad discretion in deciding whether to deregister a charity**
- **Charities could be deregistered for failing to keep adequate records about their compliance with governance standard 3**
- **Charities could be penalised for not notifying the ACNC Commissioner of “significant” noncompliance with governance standard 3**

Conclusions

No one expects a charity that, for example, supports violence to retain its charity status. And of course, the government should challenge the registration of charities that aren't behaving as they should, whether through improper use of finances, corruption or malfeasance.

However, with the inclusion of things like trespass and other minor summary offences, this isn't about targeting irresponsible charities, this is about the government trying to silence their critics.

Bob Brown Foundation openly acknowledges our well-trained and peaceful protests often include trespass on publicly owned State Forest, but these proposed regulation changes won't stop that. We will always protest peacefully, in defence of our environment, climate and children's future. No social change has ever been achieved by sitting politely on the sidelines.

These proposed changes will make it impossible to clarify what conduct is acceptable and what will see a charity deregistered. They deliberately expose charities to the threat of deregistration every time they conduct peaceful protests. They undermine our ability to advocate on important social and environmental issues, they undermine freedom of expression and, ultimately, Australian democracy.

These changes directly contradict the findings of the government-commissioned [review](#) of the ACNC legislation undertaken by Partrick McClure AO in 2018. That review concluded that existing governance standard 3 is not appropriate and should be repealed in its entirety because it is “not the function of the ACNC to force registered entities to enquire whether they may or may not have committed an offence (unrelated to the ACNC's regulatory obligations), advise the Commissioner of that offence and for the ACNC to advise the relevant authority regarding the offence”.

The ACNC Commissioner should be focused on the governance of charities, not investigating possible minor, future crimes by charities' employees. The Commissioner should regulate charity law rather than be used as a tool of the government to silence political opponents.

Bob Brown Foundation
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