

12 March 2021

Senior Advisor
Not-For-Profit Unit, Not-for-profits and Tax Administration Branch
Treasury Melbourne,
Level 16, 530 Collins Street, Melbourne VIC 300

By email: charitiesconsultation@treasury.gov.au

Dear Sir or Madam,

Unlawful activity - changes to the governance standards for registered charities

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to comment on the draft legislative instrument and explanatory materials for changes to governance standard three in the *Australian Charities and Not-for-profits Commission Regulation 2013* (governance standard three).

Overall, we support Government's response to recommendation 20 of the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review 2018* ('Government's response') to explore legislative options to address uncertainty in the law. The removal of uncertainty in legislation could further strengthen current governance frameworks applied by Australian charities and not-for-profits. However, in our view, the changes to governance standard three unintentionally create further uncertainty. For example, the extent to which a charity, and those responsible for its governance, are responsible to ensure the proper use of resources.

We note that the exposure draft was released on 16 February and the consultation period has been relatively short. If more time is available, we would be willing to seek feedback from our membership on the potential legal implications that may arise from the amendments to governance standard three.

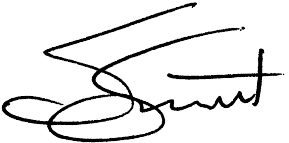
We are concerned with the ACNC Commissioner's extended remit of enforcement powers to include summary offences. We understand that the purpose of the amendments is to capture circumstances where charities may engage in other types of unlawful activities or promote others to engage in such unlawful activities. However, the power to determine if a charity or not-for-profit has committed a summary offence should first be determined by the relevant authorities and the Australian legal system. We recommend that the ACNC commissioner's enforcement powers (such as ACNC deregistration) apply once a formal decision has been made by the relevant authorities and the Australian legal system.

Further, charities and not-for-profits may have to establish additional processes and safeguards to ensure the proper use of resources, as noted earlier. In the [ACNC's Australian Charities Report 2018](#), the charity sector generated more than \$10.5 billion in donations, employed 10 percent (full-time, part-time, and casual) of the Australian workforce and had approximately 3.7 million volunteers (thirty percent volunteered for extra small, small and medium charities) in 2018. Although the charity sector represents a sizable portion of the Australian economy, the resources available to each will vary and additional compliance costs may not be viable for certain operations. Additional obligations placed on charities may also discourage participation (and volunteering) by those responsible for governance, particularly those that provide their expertise with the aim to give back to the charity and the wider community.

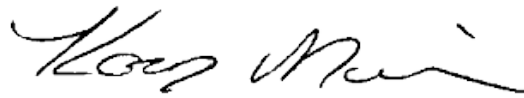
We support the intention that “the ACNC will provide guidance and education to registered entities to help them understand and comply with these new obligations”. This will be critical to assist charities and not-for-profit entities that may not have the resources or expertise to understand that day-to-day implications of the regulations themselves.

Should you have any questions about the matters discussed above or wish to discuss them further, please contact Karen McWilliams via email at karen.mcwilliams@charteredaccountantsanz.com or phone (612) 8078 5451.

Yours sincerely



Simon Grant FCA
Group Executive
Advocacy & Professional Standing



Karen McWilliams FCA
Business Reform Leader
Advocacy & Professional Standing

Appendix A

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 128,000 financial professionals, supporting them to make a difference to the businesses, organisations and communities in which they work and live. Chartered Accountants are known as Difference Makers. The depth and breadth of their expertise helps them to see the big picture and chart the best course of action.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.