

From: Robert Goodliffe <Robert.Goodliffe@chc.com.au>
Sent: Saturday, 13 March 2021 12:26
To: Charities Consultation
Subject: Proposed Changes to the ACNC's Governance Standard 3_Submission by Robert Goodliffe

Senior Advisor
Not-For-Profit Unit, Not-for-profits and Tax Administration Branch
Treasury Melbourne
Level 16, 530 Collins Street
Melbourne VIC 3000

To whom it may concern,

I am the Managing Partner of ClarkeHopkinsClarke Architects, which a diverse Architectural and Urban Design practice founded in 1960 and employing over 140 professionals.

We are a registered BCorporation, in fact the largest Architectural BCorp in the world both fiscally and numerically.

Our commitment under the BCorp Declaration of Interdependence is to actively support our staff, our society and our environment to ensure that 'Business is a Force for Good'.

This commitment includes partnering with Registered Charities advocating for, and actively working toward achieving shared values.

My primary concern is the likely impact of these proposed amendments on our Charity Partners.

Beyond this concern, if the proposed changes to the ACNC's Governance Standard 3 proceed, they will have a chilling effect on freedom of speech in Australia.

In a free and open society, people will have different points of view, but it is alien to the values we hold as a society that the very existence of an organisation could be threatened simply because the government of the day disagreed with them.

Charities play an essential role in our democracy.

They educate the community about the impact of the government's policies and they promote educated debate on issues of public interest.

The proposed amendments would give the ACNC Commissioner the ultimate discretion to deregister a charity for minor infractions and summary offences.

Charities could be deregistered for simply tweeting in support of a human rights protest on private land.

The infractions which could spark deregistration are so minor in nature that they could easily be used in retaliation against charities who raise genuine concerns about government policies in order to silence dissent.

Worse still, the new amendments will allow the ACNC Commissioner to deregister a charity even if they have not been charged or found guilty of an offence.

Charities could be deregistered simply because the ACNC Commissioner formed the subjective view that the charity might commit a minor offence in the future.

This kind of unchecked power completely lacks justice, fairness and procedural transparency.

No justification has been given for why existing regulation is insufficient, and the proposed remedy of deregistration is extreme.

In the corporate sector for instance it would be unthinkable that an entire company could be deregistered and have its revenue fundamentally impaired simply for a minor infraction.

Australian charities are already subject to the law and they work hard to create a culture of compliance.

In the long term, these changes will create uncertainty and reduce confidence within the sector.

In addition, people will be far less likely to raise concerns of charitable non-compliance or misconduct if they do not trust that the regulator will deal with their concerns fairly and proportionately.

I submit that:-

- These regulations will place an enormous administrative burden on already stretched charities - in the midst of a pandemic and economic recession.
- These regulations undermine the ability of charities to advocate on issues, they undermine freedom of expression and, ultimately, Australian democracy.
- These regulations unfairly target charities and impose regulations that would be unthinkable for businesses.
- Charities should not be deregistered for committing any offence - unless that offence demonstrates the charity's *purpose* is unlawful.
Otherwise, the laws are disproportionate and out of step with the Act.
- These changes directly contradict the findings of the government-commissioned review of the ACNC legislation undertaken by Patrick 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; police should investigate criminal laws.
- These regulations could be weaponised against charities the Government does not like.
The breadth of the ACNC Commissioner’s discretion raises significant concerns that decisions to effectively shut down charities will be - or will be perceived to be - about silencing political opponents.

These proposed changes to the ACNC's Governance Standard 3 are poor law reform and should not proceed in any form.

The proposed changes are an unnecessary overreach and cannot be improved by amendment.

I urge the committee to consider this submission urging the Government to withdraw these amendments.

Kind Regards,

Robert Goodliffe FRAIA

Partner

[0409 010 308](tel:0409010308)

**Clarke
Hopkins
Clarke**

Impact Tomorrow

Melbourne

[115 Sackville Street](#)

[Collingwood VIC 3066](#)

[03 9419 4340](tel:0394194340)

Sydney

[3/78 Campbell Street](#)

[Surry Hills NSW 2010](#)

[02 9221 9200](tel:0292219200)

www.chc.com.au



I acknowledge the Wurundjeri people of the Kulin Nation as the traditional custodians of the land I work on and pay my respects to their Elders past, present and emerging.

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