

Thursday, 18 March 2021

[By email: CharitiesConsultation@treasury.gov.au]

Treasury
Langton Cres
Parkes ACT 2600

Dear Madam/Sir,

Re: Unlawful activity – changes to the governance standards for registered charities

We write to express our concerns about the proposed changes to the governance standards for registered charities.

We consider the proposed changes are at odds with the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review 2018* (the **2018 Review**), which recommended the repeal of Governance Standard 3 because it “is not appropriate as a governance standard”. Instead, the proposed amendments would significantly expand this governance standard by:

- adding acts or omissions that ‘may be dealt with’ as a summary offence relating to real property, personal property or causing personal injury or harm to an individual; and
- adding a new requirement for charities to “take reasonable steps to ensure that its resources are neither used, nor continued to be used, to promote or support acts or omissions by any entity that may be dealt with as an indictable offence, a relevant summary offence or a civil penalty of 60 penalty units or more”. “Resources” include funds, employees, websites, social media accounts and other publications.

We are concerned that these additions would create significant legal uncertainty, and unduly restrict the legitimate activities of charities—to the detriment of those who seek assistance from charities and civil society more broadly.

The changes would provide the ACNC Commissioner far reaching grounds to deregister a charity, even if no criminal offences have been committed or promoted. The insertions to the governance standard noted above add a vast number of potential situations where a charity might inadvertently fall foul of the new governance standards, and put their registration at risk. This risk is particularly acute due to s. 35-10 of the *Australian Charities and Not-for-profit Commission Act 2012 (Act)*, which empowers the ACNC Commissioner to deregister a charity if they reasonably believe:

- a charity has not complied with a governance standard; or



- it is *more likely than not* that the charity will not comply with a governance standard.

All charities should, and are obliged to, abide by the law. However, the proposed changes to the governance standard would reach far beyond this. We recommend that the *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulation 2021* not proceed in any form.

Please contact me on 03 9670 5088 or at katherine@consumeraction.org.au if you have any questions in relation to this submission.

Yours faithfully,

CONSUMER ACTION LAW CENTRE



Katherine Temple
Director Policy & Campaigns

