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Dear Senior Advisor

Thank you for the opportunity to respond to the Federal Government's intention to expand the Australian Charities and Not-For-Profits Commission's (ACNC) power to include discretionary Decisions to revoke charity registrations.

I write on behalf of Farm Animal Rescue (FAR), which was established in 2012 to rescue, rehabilitate and rehome farmed animals. Registered with the ACNC in 2014, FAR is both nationally and internationally renowned for the provision of world class animal care, best practice animal sanctuary standards, community education, and farmed animal adoption program. Our charity is actively supported by approximately 30,000 people including more than 80 financial members, who provide annual financial sponsorship for farm animal residents.

FAR **strongly contests** the proposal to expand the Charities Commissioner's discretionary decisions to revoke charity registrations for the reasons substantiated below, and in summary advocates for the following recommendations:

Recommendation 1: That the ACNC must uphold its objective responsibility to support and sustain an *independent* not-for-profit sector, without prejudice, political rhetoric, government interference, or corporate pressure.

Recommendation 2: That the Australian Government must not expect the ACNC to circumvent the existing principles of justice, fairness and procedural transparency under Australian law with an approach that aims to silence charities whose work may represent what the government of the day considers "minority" groups or issues.

Key issues with proposed discretionary powers

Lack of support for an independent Not-For-Profit (NFP) sector

As the national regulator of charities, the ACNC was established to:

- maintain, protect and enhance public trust and confidence in the Australian NFP sector
- support and sustain a robust, vibrant, independent and innovative not-for-profit sector
- promote the reduction of unnecessary regulatory obligations on the sector¹

FAR advocates that any discretionary powers provided to the Charities Commissioner from the government to revoke charity status will destroy independence and innovation within the NFP sector by inadvertently shaping the nature of the sector. The NFP sector is recognised as the "third sector" because it emerges to specifically fulfill community needs and expectations that neither the public, nor the private sector provide for².



Therefore, any influence or positive/negative prejudice from key stakeholders such as government, media or corporate Australia is inappropriate and damaging. It would thwart the independence of the NFP sector and shape charities into indirect agencies of the public and private sectors. Removing independence would result in unmet community needs and expectations and increased inequities. It would destroy sector innovation because charities would be required to comply with a subjective and unpredictable perspective without recourse, instead of enabling charities to meet the grassroots needs of the community. Such changes will be to the detriment of those who are vulnerable and marginalised.

Recommendation 1: That the ACNC must uphold its objective responsibility to support and sustain an *independent* not-for-profit sector, without prejudice, political rhetoric, government interference, or corporate pressure.

Erosion of public trust, legitimacy, justice and procedural fairness

FAR strongly advocates that the vital principles of justice, fairness and procedural transparency under Australian law must be upheld. Discretionary powers for the ACNC will undermine public trust in the NFP sector and any confidence in the ACNC as a regulator, by generating a regulatory approach that silences charities whose work may represent what the government of the day considers “minority” or “fringe”, but which exist for under-represented populations, groups and causes. Without the burden of proof and the due procedural fairness and transparency required in law, the government’s proposal will perpetuate inequality and mitigate justice.

To demonstrate this point, I would like to share a lived experience and an alarming example of where FAR has been erroneously incriminated by government, politicians and media as insinuating and conducting criminal activity. While FAR has not conducted any illegal activity, this very insinuation would have seen our charitable registration unfairly and unduly revoked under the government’s proposed draconian changes.

On 8 April 2019, FAR was contacted by police to collect three lambs from a slaughterhouse in Warwick, where a large protest was in motion against a number of violations of animal cruelty which breached the slaughter code that had allegedly been recorded at that facility.

On arrival to the entrance of the slaughterhouse, FAR’s representative was approached by media with questions about the code violations and how the animals were suffering as a result while the Queensland Police Service (QPS) was inside the slaughterhouse negotiating with protesters and the slaughterhouse management. FAR’s representative was shortly contacted by the senior QPS officer at the scene and was advised to lawfully enter the facility to pick-up the three lambs who were being surrendered by the slaughterhouse. The FAR representative complied with police instructions and entered the loading area.

Once inside the facility FAR was provided with a waybill, issued by the slaughterhouse, endorsing the transportation of three lambs from the facility to FAR’s sanctuary in Dayboro. Once the lambs were loaded the FAR representative exited the loading area and left the facility. Once outside the facility site, the FAR representative arranged with the police to take the vehicle and lambs across the road so that they could be suitably accommodated in the vehicle. Without prior knowledge of the protest or what would transpire, FAR had not been prepared to transport the animals and therefore, intended to ensure the best possible safety of the lambs before setting off to the sanctuary.

The animals were then transported to FAR’s sanctuary without incident. Within 45 minutes of arriving at sanctuary, officers of Queensland’s Department of Agriculture and Fisheries arrived to conduct a detailed investigation of FAR and the charity’s involvement in the rescue. The Department found that FAR’s rescue, transportation and subsequent quarantine of the lambs was legal and biosecure, and that the charity was not in breach of any departmental regulations, codes or laws.

Later that morning numerous media services misrepresented FAR's involvement in the event, suggesting it had organised the protest, and that the three sheep had been illegally removed. Throughout the day FAR worked with news organisations to correct their reporting and correct the facts. Most media organisations corrected the information reported, however there were some outliers. Specifically, FAR contacted NewsCorp on numerous occasions to correct erroneous reports, yet the organisation did not respond nor return communications.

For weeks after the event FAR's sanctuary received threats of violence, resulting in the charity investing its limited resources into a security system to mitigate the risk of threatened harm to the resident farmed animals and onsite volunteers. After a period, the news went quiet. Many months later, in the lead-up to the Queensland election, the story re-appeared in NewsCorp publications including criticisms of the Queensland Labor Government's support of FAR in 2018, as one of the recipients of the State's charity fund grant. FAR again attempted to correct the misinformation and requested retractions, with no response. In 2020, the misrepresentation was repeated in NewsCorp articles urging charity registration be stripped from certain organisations, including FAR. While the journalist contacted FAR for comment and quoted FAR's insistence that the charity had no place in organising the protest, FAR was incriminated regardless.

Despite FAR complying with ACNC regulations, following police instructions, applying appropriate biosecurity measures, receiving legal surrender of the three lambs, ensuring the highest quality of care of the lambs, investing significant time and effort in setting the public record straight, the response from Federal Government officials over the event was fierce. Today, politically motivated articles continue to appear in some media, demanding reviews of FAR's charitable status which are publicly supported by Queensland's Liberal National Party and some members of the Federal Government.

This example demonstrates how a lack of procedural fairness can damage a charity and derail public sentiment. Given the limited resources of the NFP sector it is neither fair nor just to expect charities to allocate resources to defending and protecting registration, reputation and name based on hear-say and conjecture. It is not appropriate for the ACNC to take on decision-making powers that exist in Australia's judicial system. Enabling such subjectivity and lack of transparency could result in the demise of once-registered charities whose work fulfilled community needs and reflect community expectations. It also demonstrates how erroneous suppositions supported by government and media can damage public trust in the NFP sector without recourse. Australia's judicial system is responsible for upholding the law and maintaining civic societal standards. The ACNC is neither part of the judicial system, nor should it be laden with the burden of responsibility to arbitrarily decide whether a charity is, may be or could be insightful or supporting summary offences. This is the role of the Courts and their Magistrates, not the Charities Commissioner. The ACNC stands to mitigate its existing pragmatic legitimacy as the national regulator of the NFP sector should it adopt such discretionary powers.

One of the most concerning issues about this example is the lack of protection of resource-poor charities against the ability of powerful stakeholders to influence public sentiment, rally media alliances to silence a charity. Furthermore, it demonstrates a miscarriage of democracy by silencing those concerned Australians who protested against the institutionalised and illegal cruelty of animals alleged to have occurred within the Warwick slaughterhouse, without legal review or recourse.

Recommendation 2: That the Australian Government must not expect the ACNC to circumvent the existing principles of justice, fairness and procedural transparency under Australian law with an approach that aims to silence charities whose work may represent what the government of the day considers "minority" groups or issues.

Yours sincerely

Brad King
FAR President and Founder

References

¹ <https://www.acnc.gov.au/about> - sourced 11 March 2021

² Kallman, M. E. (2016). *The Third Sector Community Organizations, NGOs, and Nonprofits*. University of Illinois Press.

