

11 March 2021

Senior Advisor
Not-For-Profit Unit, Not-for-profits and Tax Administration Branch
Treasury Melbourne
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Dear Senior Advisor

Thank you for including FIA in your public consultation of the Unlawful activity – changes to the governance standards for registered charities.

Fundraising Institute Australia (FIA) is Australia's national peak body representing professional fundraising in Australia. It has over 1200 members who are charities, NFPs, suppliers of fundraising services and individual fundraising professionals.

Most major registered charities in Australia are FIA members, accounting for more than 80 per cent of the nearly \$10.5 billion donated by Australians each year. As the peak body for professional fundraising, FIA champions and facilitates best practice, with our Code for ethical conduct in fundraising and through training, professional development, networking and advocacy for all our members.

Having now had an opportunity to consider the impact of the draft legislative instruments, I am writing to provide additional comments.

FIA welcomes a consolidation and streamlining of current rules scattered across different documents and move them into one singular regulatory document. However, the draft legislative instruments will place administrative burden on already stretched charities; in the midst of a pandemic and an uncertain economic climate, and the regulations will undermine charities' ability to advocate on important issues.

FIA's key concerns

1. Charities could face deregistration even if they haven't committed an offence.

The proposed draft legislative instruments will undermine the Morrison governments stance on red tape reduction.

As part of the proposed regulations set out in the legislative instruments charities would need to take all "reasonable steps" to ensure, not only that they and their staff will not commit minor offences, but that their resources will not be used to "promote or support" the committing of a minor offence by someone else.

The proposed regulations are wide-ranging and ambiguous. Charities would have to seek legal advice on what constitutes "reasonable", and develop policies and implement processes to pre-empt possible breaches by staff, donors, supporters and beneficiaries. The instruments fail to define what "reasonable steps" are and are subject to determination by the ACNC Commissioner. This creates further regulatory burden on charities which can already be handled under existing laws. Therefore, these proposed changes are unnecessary.

Under the proposed, charities could face deregistration for failing to take steps to stop their resources from being used in protest. Charities could face deregistration each time they support, promote and attend a protest relating to a charitable purpose.

For example, Under the *Inclosed Lands Protection Act 1901 (sections 4, 4A, 4AAA and 4B)* Police Officers can immediately ask and remove trespassers and charge persons who have unlawfully protested on properties. There are already various penalties for unlawful entry and offensive conduct in each jurisdiction.

2. Charities could be deregistered for very minor offences.

FIA believes the ACNC Commissioner should focus on the governance of charities and not investigating possible minor or future crimes by charity employees. The Commissioner should regulate charity law. The Government should refer unlawful or criminal activity to state and territory police who can investigate.

The proposed regulations are an unfounded overreach premised on a policy that is not backed by evidence. They are profoundly inconsistent at a range of levels and should be abandoned.

3. Charities could be deregistered for failing to keep adequate record about their compliance with governance standard 3.

The proposed governance standard 3 creates a significant risk that a charity could be penalised for failing to document steps taken to ensure compliance with this standard 3. A failure to keep such records can be a basis for deregistration.

FIA members will need to develop policies and procedures (including a document trail) which can be relied upon to prove it has taken reasonable steps to ensure it does not promote or support relevant acts. This work has to be done in the face of the extremely vague and uncertain terms of the proposed amendments. This would be additional red tape added to an already heavily regulated sector which would increase the cost of fundraising, meaning less money will go to charities' beneficiaries.

4. Charities could be penalised for not notifying the ACNC Commissioner of non-compliance with governance standard 3.

Charities are required to notify the ACNC Commissioner of "significant" noncompliance with a governance standard under s. 65-5 of the Act. It will be very difficult for charities to assess whether non-compliance with such a broad standard is sufficiently "significant" to be brought to the ACNC Commissioner's attention. There are thousands of summary offence provisions in legislation across Australia.

These regulations could also be weaponised against charities that the Government or Commissioner does not like. The breadth of the ACNC Commissioner's discretion raises significant concerns that decisions to effectively shut down charities will be perceived to be about silencing political opponents.

While FIA does not condone illegal activity on the part of its members or the broader sector, charities have an important role in advocacy including peaceful protest, for their cause and on behalf of their beneficiaries. The 2018 ACNC review recommended removing the governance standard relating to advocacy; FIA does not agree with the current proposal to expand it in this way.

In conclusion, the proposed changes directly contradict the Government's findings from the 2018 ACNC review by Patrick McClure AO. The review stated that governance standard 3 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".

FIA will not support this plan by the Morrison government to strip a charity of their status because they 'might' commit a crime. Australian states and territories already have existing laws in place to handle unlawful protest and trespassing laws.

The proposed changes will create further administrative burden for charities. The following changes are poorly timed and are being made when charities are lacking financial resources due to their ongoing response to the pandemic and difficult economic climate. The impact of these poorly conceived changes will penalise more than 56,000 charities who are acting lawfully.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Katherine Raskob'.

Katherine Raskob
Chief Executive
Fundraising Institute Australia