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Treasury Melbourne
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Submission on ACNC Governance Standards

To whom it may concern,

I am writing regarding the proposed changes to Governance Standard 3 of the *ACNC Regulation 2013*. I would like to voice my concern with these changes and object to their proceeding in any form. Charities are a critical pillar of society and essential for the proper functioning of Australia's democracy. The proposed changes would unreasonably impact on the way that charities are able to carry out their work.

Introduction

My name is Hannah Browne. I am a technology leader and entrepreneur, now building my fifth business, Midnyte City. For 15 years I have worked on strategic transformation initiatives with start ups, scale ups and innovative enterprises, helping to build high-performance teams and progressive, digital first, human-centric organisations.

Midnyte City is a progressive, ethical, people-centric technology consulting company. We specialise in empirical DevOps, specifically helping our customers adopt and integrate modern technology practices and approaches that significantly impact agility, reliability and security across their organisations.

A selection of the organisations I've worked with on modernisation and transformation initiatives over the past 15 years include IOOF, MYOB, Realestate.com, ThoughtWorks, Seek, Sportsbet, Tabcorp, Australia Post, Slater & Gordon, World Vision, Coles, Myer, VicRoads, IAG, Latitude Financial Services, ME Bank, Alinta Energy, Aconex, Factor5, Sidekicker, BlueChain, Billy Care, Curio, Cohesion Group, ReeceTech, Middy's, Roy Morgan Research, TAL, Whispir, Parks Victoria, ACMI, Equiem, Environmental Protection Authority, Amazon Web Services, Catch Group, iSelect, Monash University, Tyro Payments, Urbanise, Vicinity Centres, Greenpeace and many more startups, scale ups and progressive enterprises.

I am a regular guest, panelist or speaker at Executive team offsites, Technology conferences, meetups, women in technology groups and Executive and Director networking and professional development events. At these events I speak about

modern organisational leadership and digital transformation in organisations. I am deeply connected to the agile and devops software development movements around the world. My reputation is closely aligned with progressive, human-centric management, leadership and governance practices.

Broader social context

There is a revolution brewing across our social landscape. From the organisational culture challenges highlighted in the Financial Services Royal Commission, to the swift, leaderless power of the #metoo and #blacklivesmatter movements and the rapidly accelerating popular support for action on climate change. Our society is poised for fresh thinking, inspirational leadership, modern governance, progressive policy and creative solutions to emerge.

This evolution will be orchestrated by a new wave of modern leaders. Elected officials, Executives and Board Directors who embrace agility, set clear, progressive strategic direction, prioritise and effectively measure value and maintain robust standards and accountability. There is significant opportunity for progressive policy to support this human-centric shift in attitudes to work, society and governance. With broad ramifications for our liberal democracy.

The 4th industrial revolution and radical adoption of technology that now underpins almost every aspect of our lives, has dramatically changed the way that work works and society functions. COVID-19 has made distributed, asynchronous working a permanent fixture of our future. The result is a knowledge economy demanding we shift from the authoritarian, cubicle-farm, people-as-resources, optimisation mindsets of yesterday, to progressive thinking, leadership, governance.

This means embracing continuous improvement, having the humility to learn from our mistakes and investing in human centered leadership. It means fostering cultures of empowerment and engagement. This thinking is already thriving at a grassroots level in most organisations. It must now be recognised and validated by government and organisational leadership, then harnessed to create dynamic, agile, productive organisations fueled by engaged employees, directed by clear strategy and maintained with effective metrics and cultures of accountability and respect.

This mission is my life's work.

Purpose of this submission

The changes proposed to Standard 3 are a saddening regression for a modern liberal democracy. Civil disobedience has been a crucial tool for driving progressive social

change. Without the right to peaceful protest, Australia may not have voting rights for women, or first nations people, workers rights, or awareness of discrimination against gay, lesbian or trans people, or the defence of natural places that are now today's national parks.

It is rare that people participate in civil disobedience with selfish or malicious motives – it is generally done in the interests of the greater good. The changes proposed to Standard 3 looks deliberately designed to threaten the ability of community groups to form, organise and peacefully protest social issues. This is a malicious proposed change to the existing legislation and a direct attack on our liberal democracy and liberal democratic values.

The unlawful activity - changes to the governance standards for registered charities is wholly unnecessary, reaches much further than required, and would heavily limit a charity's ability to contribute to freedom of expression and achieve its mission. By linking deregistration to a vast array of minor summary offences, the proposal would restrict legitimate and lawful policy advocacy.

To also propose that charities could be deregistered based on the chance of a future act occurring, or inadvertently as a result of a member of staff being involved in a summary offence, is truly disproportionate and unfairly targets charities in a way unparalleled in the private sector. Like every other member of society, charities and their staff already face penalties for breaking the law, as well as the additional sanctions already existing under charities law.

It strikes me that the changes proposed to Standard 3 are specifically designed to readily allow a hostile government to unfairly threaten and target organisations holding opposing political views. This is a blatant threat to the core of the modern liberal democratic values, and could serve to deeply undermine the democratic principles so central to the harmony of our society.

Furthermore, the proposed changes directly contradict the findings of Patrick McClure's 2018 government-commissioned review of the ACNC legislation which found the existing governance standard 3 is not appropriate, already overreaching, and should be repealed in its entirety. The Commissioner's role should be to regulate charity law and its focus should be on ensuring charitable purpose does not fall into unlawful realms, while police investigate criminal laws. This proposal represents a further step towards the government judging charities on the individual actions of their employees rather than their charitable purpose.

The proposed changes to standard 3 would also add a further administrative burden, reducing charities' abilities to deliver their work and redirecting donations from charitable purpose to compliance. Charities are already covered by burdensome regulation, as recognised by multiple government inquiries, and in many instances have reporting requirements to multiple government agencies. Such regulation is important to protect the interests of donors and the public interest, but overly burdensome regulation distracts charities from their core mission resulting in the inefficient allocation of donor money, as well as creating a barrier to entry for smaller charities who do not have sufficient capacity to comply with the already complex minimum legal requirements.

These proposed changes are overwhelmingly draconian, inappropriate and not fit for purpose. They would also provide the government with the ability to eliminate its opponents, breaching our democratic societal values. If an organisation can be deregistered merely because one of its staff members voiced support for a peaceful protest on social media at which a minor summary offence was breached (including where the social media content was not authorised), it would have a chilling effect across society as a whole, with poorer outcomes for the ability of the public to participate, either as individuals or in combination with others.

No justification has been given as to why currently existing penalties are inappropriate, and why the complete deregistration of the charity is preferable to other responses. To paraphrase Voltaire - for society to function properly some turbulence must be tolerated, even in situations where others may disagree with your views.

This proposal is yet another situation where charities have felt they needed to divert resources in order to defend their very existence. Due to the myriad of reasons noted above, the proposed changes should be withdrawn in all forms. I trust that my concerns will attract genuine consideration and thank Treasury for the opportunity to put them forward.

Regards,

Hannah Browne
Managing Director
Midnyte City