



National Council of Churches in Australia

12 March 2021

Senior Advisor
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Not-for-profits and Tax Administration Branch
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By email: charitiesconsultation@treasury.gov.au

Proposed changes to ACNC Governance Standard 3, Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021

On behalf of our 18 member Churches, the National Council of Churches in Australia (NCCA) welcomes the opportunity to put forward its views on the proposed changes to the ACNC Governance Standard 3.

About NCCA

The NCCA is an ecumenical council of Australian Christian Churches with 18 formal members. The NCCA works through its Commissions, Networks and Programs to live out its mandate in areas such as Faith and Unity, Justice, Ecumenical Accompaniment, International Aid and Interfaith Dialogue. The Australian Churches Refugee Taskforce and the Safe Church Program are initiatives of the NCCA. Act for Peace is the international aid agency of the NCCA.

Key Perspective

The Australian Charities and Not-for-profits Commission Regulation 2013 already requires that charities do not engage in illegal activities. In our view, the Commissioner's current powers are sufficient and adequate for this purpose and do not need to be increased.

Summary of Concerns

The proposed amendment is in response to recommendation 20 of the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review 2018*. – which refers to developing the law in matters of public interest.¹ We note that the same review has recommended the repeal of governance standard 3 and recommends that 'a registered entity be presumed to comply with the ACNC governance standards if it already complies with other comparable governance

¹ Exposure Draft Explanatory Statement: <https://treasury.gov.au/consultation/c2021-149084>

Anglican Church

Antiochian
Orthodox Church

Armenian
Apostolic Church

Assyrian Church
of the East

Chinese Methodist
Church

Churches of Christ

Congregational
Federation

Coptic
Orthodox Church

Greek
Orthodox Church

Indian
Orthodox Church

Lutheran Church

Mar Thoma Church

Religious Society
of Friends (Quakers)

Roman Catholic Church

Romanian
Orthodox Church

Salvation Army

Syrian
Orthodox Church

Uniting Church

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requirements². (For example, as with the Corporations Act). The proposed change contravenes this and appears to increase the ACNC Commissioner's enforcement powers under Chapter 4 of the Act if they reasonably believe that it is more likely than not that an entity will not comply with a governance standard.

We are concerned that the proposed change is disproportionately levelled at charities, without a similar emphasis upheld within the business and government sectors.

We are concerned by the definition of 'resources' which includes websites, social media accounts and publications. This arguably leads to far greater ambiguity in interpretation than in the current standard.

We are concerned about the potential and unnecessary compliance burden.

We are concerned that this change could lead to an erosion of freedom of expression within Australia.

While we strongly agree that charities should never be engaged in illegal activities, the proposed provision is contrary to the principle of presumption of innocence. No person or entity should have to put the time and effort into proving its innocence before any act has been committed or is even intended. Such power seems to be against the basic principles of justice, fairness and procedural transparency, all of which are fundamental values in our democratic society.

We will be very grateful if these concerns could be considered and respectfully ask that the proposed changes be declined.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Elizabeth Stone', with a horizontal line underneath the name.

Elizabeth Stone
General Secretary

² <https://treasury.gov.au/sites/default/files/2019-03/p2018-t318031.pdf>