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Treasury Charities Commission Consultation

By email: charitiesconsultation@treasury.gov.au

Proposed law reform will have chilling effect on freedom of expression and the functioning of Australian NFPs

We, as a collective of seven leading community mental health service providers, write to express our concerns about the Government's proposed amendments to the Australian Charities and Not-for-Profit Commission Regulations 2013 (ACNC Regs).

Fundamentally, we are concerned that the proposed law reform will have a detrimental impact on freedom of expression, a tenet of our democratic society, and stifle the not for profit (NFP) sector's ability to undertake purposeful work in pursuit of our organisations' Visions and Missions.

We are particularly concerned about the potential impact of the proposed changes to the ACNC Regs whereby charities will be imputed with a different level of culpability for the actions of their staff or consumers/service users which has no parallel in the "for profit" sector. We have seen in overseas jurisdictions the way in which law reform such as this is introduced in unassuming ways but later has broad detrimental consequences for groups in society.

The NFP sector is well aware of the governance standard requirement to refrain from engaging in conduct that would amount to an indictable offence (a very serious crime). The proposed reform to add summary offences (minor offences, such as offences when there are protests) and to require NFPs to take reasonable steps to ensure its resources are not used to promote or support such activities – at risk of being deregistered – is a small but potentially dangerous change in the landscape.

The Preamble of the ACNC Act explicitly recognises the unique nature and diversity of NFPs, the distinctive role NFPs play in Australia, and the vital services and benefits that NFPs deliver to communities throughout Australia. Further, the Preamble states that the national regulatory system is to maintain, protect, and enhance public trust and confidence in the NFP sector.

Importantly, NFPs act as watchdogs in advocating for community interests and holding the state to account. This often includes making critical public statements about state action, as well as supporting on-the-ground action in the form of protests and rallies. Many of our organisations were established by groups of consumers, families and carers, and we aim to support their full participation in society and political debate. The community mental health sector is driven by the importance of advocating for, and in alignment with, consumer needs and to support consumers to exercise their rights as full citizens.

The extensive nature of the proposed changes, and the expansion of the ACNC Commissioner's discretionary powers, will potentially curtail NFPs' carrying out work for their stated purpose – to provide services and support to people and communities and to enable them to advocate directly in the public sphere. Public trust and confidence will be eroded if NFPs are forced to operate in such an environment where advocacy and action will be so extensively constrained and controlled.

We emphasise that the proposed law reform should not proceed in any form.

Please treat this as our formal submission on the consultation.


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