



18 March 2021

Senior Advisor

Not-For-Profit Unit, Not-for-profits and Tax Administration Branch

Treasury Melbourne

Level 16, 530 Collins Street

Melbourne VIC 3000

Dear Adviser,

**EXPOSURE DRAFT CONSULTATION ON UNLAWFUL ACTIVITY – CHANGES TO THE GOVERNANCE STANDARDS FOR REGISTERED CHARITIES**

1. This submission has been prepared by Oxfam Australia (“Oxfam”).
2. Oxfam Australia is registered as a charity with the Australian Charity and Not-for-profits Commission (ACNC). It is established to relieve and eliminate poverty. Oxfam Australia is a long-term partner of the Australian Government and is supported by thousands of Australians annually who contribute skills, time and financial support to advance our work. During 2019-2020, Oxfam Australia directly helped more than 12.7 million people in 23 countries.
3. Oxfam Australia is a member of Oxfam International, a global confederation of 20 organisations that work together in a networked approach across 80 countries around the world.
4. Oxfam Australia has had the opportunity to read the submissions in this matter of the Charities and Not For-Profits Committee of the Law Council of Australia (“LCA”) and supports that submission as reflecting the view of Oxfam Australia. Oxfam Australia has also read and supports the submission of the Hands Off Our Charities alliance.
6. It may be useful to share some examples of Oxfam’s concerns about the impact the proposed changes to ACNC governance standard 3 can have at a practical level:
  - a) Compliance costs: there would be additional administrative costs associated with managing the expanded risks. Many organisations may find they need to fund this, at the expense of funds for program work, and a more concerning risk is, if the funds are not found, existing compliance resources may be spread too thinly, drawing focus away from compliance activities aimed at preventing more serious breaches of law: a practice that is at odds with a risk-based approach.
  - b) Insurance costs: We also foresee additional costs in the form of higher insurance premiums to manage potential exposure.
  - c) Collaboration impacted: Oxfam works with people and communities and in partnerships with others. For many charities, including Oxfam, collaboration may become less sustainable and attractive, because the risks and compliance costs – as each party tries to pass through, shift and spread their risks - would be expanded. The assurance required to eliminate or minimize potential for breach could be significant. The due diligence would be extensive, considering the breadth of summary offences,

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and the potential for the Commissioner to revoke a registered entity even if a charity has not been charged, or found guilty<sup>1</sup> as part of the 'reasonable steps' taken to ensure its resources are not used – for example by other charities in a collaboration – in a way that would be impermissible under the standard. This cost and risk could deter collaboration, impacting the sustainability and innovation in the sector.

- d) Taking this further, there is a level of uncertainty, even if charities do not work together to deliver services, but provide indirect support such as templates, precedents and resource guides<sup>2</sup>. It is unclear what reasonable steps are required of a charity to ensure resources are not used by the recipient charity in a way that falls within activities that trigger proposed section 45.15 (2)(a) and what is the expected duration of any obligation and exposure under that provision?

7. For the reasons set out in the LCA submission, and referring to the examples of impact provided above, Oxfam Australia adopts the conclusion set out in the LCA submission as follows:

“The Committee submits that the proposed amendment to ACNC governance standard three is unnecessary and cumbersome, is inconsistent with the objects of the ACNC Act and the powers of the Commonwealth, creates uncertainty in the law, is inconsistent with core rule of law values, provides inappropriate and poorly supervised discretion to the ACNC Commissioner and will constitute an unreasonable and unjustifiable burden on charities.

For these reasons we urge that the Proposal does not proceed.”

8. Oxfam submits that the proposed amendment to Governance Standard 3 is not appropriate and ought not proceed.

Yours sincerely,

A handwritten signature in black ink, appearing to be the name "Lyn Morgain".

Lyn Morgain

Chief Executive

Oxfam Australia

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<sup>1</sup> *Exposure Draft Explanatory Statement to Australian Charities and Not-for-profits Commission Amendment (2021 Measures No.2) Regulations 2021* – ie. if the Commissioner forms a view that a charity might be 'more likely than not' unable to comply with the standard will be a challenge (page 6).

<sup>2</sup> For example, a charity may download a resource like an Company Secretary's Guide, Fundraising Guide or a Trade Mark template from a not for profit organisation's Info Hub: if the resource is used by the charity in the process of conducting an activity that triggers section 45.12 (2) raises the issue of liability of the charity who made the resource available through its website.

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## **About Oxfam Australia**

Oxfam Australia is a registered charity and our purpose is to relieve and eliminate poverty.

We work with, and centre, the voice and experience of the people and communities most impacted by poverty, inequality and injustice because they understand the issues and solutions. We work in partnership with others to drive the greatest possible impact in addressing poverty and inequality. We inspire and invite individuals, movements and institutions to contribute their financial support, voices, ideas and resources to advance our shared purpose. We recognise that our team, volunteers and supporters are the greatest assets of our organisation and they are vital to how we affect change.

Oxfam Australia is a long-term partner of the Australian Government and is supported by more than 550,000 Australians annually who contribute skills, time and financial support to advance our work. During 2019-2020, Oxfam Australia directly helped more than 12.7 million people in 23 countries.

Oxfam Australia is a member of Oxfam International, a global confederation of 20 organisations that work together in a networked approach across 90 countries around the world.

The Oxfam confederation delivered vital aid and transformational development programs for more than 19.4 million people in 80 countries around the world in 2019–2020. In collaboration with partners, Oxfam reached 12.3 million people affected by disaster or conflict.

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