



24 March 2021

Not-for-profit Unit
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Submitted by Email

Dear Sir/Madam,

Submission Regarding Changes to the ACNC Governance Standards for Registered Charities in Relation to Unlawful Activities

Philanthropy Australia appreciates the opportunity to make this brief submission regarding proposed changes to the Australian Charities and Not-for-profits Commission (ACNC) Governance Standards for Registered Charities in relation to unlawful activities.

As the peak body for philanthropy in Australia, our purpose is to serve the philanthropic community to achieve more and better philanthropy. Our membership consists of approximately 750 trusts, foundations, organisations, families, individual donors, professional advisers, intermediaries and not-for-profit organisations.

Although the proposed changes are unlikely to have a direct impact on philanthropic organisations, Philanthropy Australia takes a strong interest in the broader regulatory framework in which they operate, including how it impacts other registered charities. We believe that this framework needs to be well designed and provide certainty and clarity, to empower registered charities to further their purposes and benefit the community. Philanthropic organisations provide funding to such registered charities, and therefore any changes to this regulatory framework effectively have an indirect impact on philanthropy.

In this context, Philanthropy Australia wishes to express our concern about the proposed changes.

Our concerns largely reflect those conveyed by other stakeholders, and in this regard we refer the Treasury to the submissions made by the Law Council of Australia and by Associate Professor Ian Murray and Dr Murray Wesson of the University of Western Australia Law School, which address the various matters in detail.

Our main concerns are that:

- The proposed changes will increase uncertainty rather than decrease it, and in doing so it will impose additional compliance obligations on registered charities. Because of this, the proposed changes may have a 'chilling effect' on the various forms of civic engagement and activism which charities and their supporters can be engaged in, and which are recognised as a key part of our democracy.



- There is a lack of an evidence base demonstrating a need for the proposed changes. Although Recommendation 20 of the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review* is mentioned, that Recommendation and the discussion in relation to it within the Review's report does not identify a need for the changes which are being proposed. Rather, it focuses on other areas of uncertainty which would benefit from clarification. In addition, no regulatory impact assessment appears to have been prepared as part of the design of the proposed changes, which would enable a thorough consideration of the rationale for and the impact of the proposed changes.
- The power to deregister charities or undertake other compliance action is triggered by very low thresholds. The use of these powers would also involve the making of very subjective judgements by the ACNC, which places the regulator in a challenging position regarding how it administers the proposed changes.

Philanthropy Australia believes that the current form of Governance Standard 3 is appropriate, and strikes the right balance by focusing on serious breaches of the law as opposed to the minor breaches which the proposed changes would extend to.

We also do not believe that is possible to satisfactorily address the various issues with the proposed changes, summarised above.

For these reasons, we are of the view that the changes should not be proceeded with.

Instead, we would encourage prioritising the implementation of significant and necessary changes which arise from the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review*, and other existing commitments regarding the reform of the Deductible Gift Recipient framework.

Philanthropy Australia once again thanks the Treasury for the opportunity to make this submission. Should there be a desire to discuss any of the matters raised in this submission further, please do not hesitate to contact Philanthropy Australia's Acting Policy and Research Director, Krystian Seibert (kseibert@philanthropy.org.au, 1300 511 500).

Yours Sincerely,

A handwritten signature in blue ink, appearing to read "Jack Heath".

Jack Heath

CEO

Philanthropy Australia