

Barry Rafe  
ABN 20 303 264 087  
100 Carabella St  
Kirribilli 2061

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Senior Advisor  
Not-For-Profit Unit, Not-for-profits and Tax Administration Branch  
Treasury Melbourne  
Level 16, 530 Collins Street  
Melbourne VIC 3000

I am responding to a request for comments on an exposure draft exposure draft detailing proposed changes to Governance Standard 3 of the ACNC Regulation 2013. The changes would significantly broaden the basis upon which the ACNC Commissioner could deregister a charity.

I believe the changes are massive over-regulation by the government that would greatly impact the ability of charities to drive change in the world. Peaceful civil disobedience has long been considered a legitimate part of charitable advocacy in Australia - and these new laws would make that virtually impossible, damaging the fabric of our democracy and stifling progress on a whole range of causes.

Charities play an essential role in our democracy. Amongst other things they educate the community about the impact of the government's policies and they promote educated debate on issues of public interest. The proposed amendments would give the ACNC Commissioner the ultimate discretion to deregister a charity for minor infractions and summary offences. To illustrate charities could be deregistered for simply tweeting in support of a human rights protest on private land.

The infractions which could spark deregistration are so minor in nature that they could easily be used to silence dissent by threatening retaliation against charities who raise genuine concerns about government policies. Worse still, the new amendments will allow the ACNC Commissioner to deregister a charity even if they have not been charged or found guilty of an offence. Charities could be deregistered simply because the ACNC Commissioner formed the subjective view that the charity might commit a minor offence in the future.

This kind of unchecked power completely lacks justice, fairness and procedural transparency. No justification has been given for why existing regulation is insufficient, and the proposed remedy of deregistration is extreme: in the corporate sector for instance, it would be unthinkable that an entire company could be

deregistered and have its revenue fundamentally impaired simply for a minor infraction.

Australian charities are already subject to the law and my experience is that they work hard to create a culture of compliance. In the long term, these changes will create uncertainty and reduce confidence within the sector. People are far less likely to raise concerns of charitable non-compliance or misconduct if they do not trust that the regulator will deal with their concerns fairly and proportionately.

A handwritten signature in black ink, appearing to read 'B. Rafe', with a stylized flourish at the end.

Barry Rafe

0412094498

[rafeconsulting.com.au](http://rafeconsulting.com.au)