



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

By e-mail: charitiesconsultation@treasury.gov.au

Unlawful Activity – changes to the governance standards for registered charities

Dear Senior Advisor,

The Salvation Army thanks the Treasury for the opportunity to provide a submission to the consultation on the draft legislative instrument and explanatory materials for changes to governance standard three in the *Australian Charities and Not-for-profits Commission Regulation 2013*.

It is our understanding that the changes will expand the scope of impermissible activities that registered charities must not engage in, or promote others to engage in. We have concerns that the proposed changes will have an unintended impact on our operations and will add complexity and duplication to the compliance regime for charities.

At the core of The Salvation Army's mission is a commitment to social justice. We demonstrate this commitment through the delivery of religious and pastoral services, social services such as homelessness and family violence services and through social policy and advocacy activities.

The Salvation Army does not condone, nor would we ever endorse anyone working or associated with us engaging in illegal activities. It is clear from public statements of senior government officials, and the examples given in the explanatory materials, that The Salvation Army's operations are not intended to be caught by the proposed changes. Nonetheless, we are concerned that the specific changes proposed could, in fact, impact on activities of The Salvation Army and similar charities. Importantly, we see that charities have a role to play in helping the community engage in a meaningful way with social justice issues that affect them. It is our concern that the current drafted changes will have a dampening effect on a charity's ability to fulfil this function.

The Salvation Army is supportive of any change that increases the protection of members of the community, and the reputational status of the charity sector as a whole. We have reservations and concerns about whether this proposed amendment would do that.

1. Impact on social service provision

We endorse the principle that charities that promote unlawful activities should be subject to ACNC action. That said, we are concerned that the current drafting may catch inadvertent unlawful activity that is already adequately dealt with through the legal system. To be clear, we steadfastly believe that any unlawful act should be appropriately dealt with. The issue is that these changes would create an additional mechanism and in practice, additional confusion for practitioners delivering services in fields that are already complex.

2. Duplication and complexity of compliance

Transparency and the proper regulation of the charitable sector is critical to our ability to carry out our mission. Australians are extremely generous in assisting those who are less fortunate, and it is critical to us that community members can trust and have faith in us and our fellow charities. There needs to be a balance however between ensuring compliance and compliance costs for charities.

The wording of the amendment could be interpreted so as to allow the ACNC Commissioner to act in anticipation of a breach of a summary offence, rather than in response to an alleged offence. It is unclear what steps would be required to be implemented by a charity to ensure compliance in the context of an 'anticipated' breach, especially in relation to service provision. We foresee that any such compliance would potentially require extensive resources of funds and time. Our charitable purpose is to alleviate poverty in the community, and our strong desire is to direct our resources to achieving our mission.

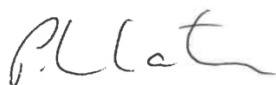
3. Potential curtailing of the Implied Right to Political Communication

The Salvation Army's vision is that wherever there is hardship or injustice, we will live, love and fight to transform Australia, one life at a time, with the love of Jesus. We work to assist individuals who are experiencing hardship and also to seek out and address the drivers of that disadvantage. The people we serve and the general community anticipates and supports such action and appears to consider this a key function of a large not-for-profit. The Salvation Army seeks to meaningfully engage with the community on social justice issues. The Salvation Army will always pursue this function within the confines of the law, however it is not impossible that community members with whom we engage but over whom we have no control, could act in a way caught by the proposed amendments. It would be a disproportionate response if a tweet of support from The Salvation Army in support of a public event where there was no intention of unlawful activity led to the risk of deregulation of the charitable status of The Salvation Army.

The lack of clarity around the scope of the amendment, its broad application to advocacy and general work, the width of discretion granted to the ACNC to deregulate a charity, and the limited capacity to challenge any deregulation is a cause for concern for The Salvation Army. We ask that the wording of the amendment be adapted so as to reflect a proportionate response to summary offences that may occur in the course of advocacy activities.

Thank you again for the opportunity to share our insights and for your consideration. Please contact me on 0413 830 201 or at government.relations@salvationarmy.org.au if we can provide any further clarification on the evidence we have presented.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Hateley'.

Paul Hateley, Major
Head of Government Relations
The Salvation Army Australia

14 March 2021