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To whom it may concern:

### **Submission re proposed changes to ACNC Governance Standard Three**

Social Ventures Australia (SVA) welcomes the opportunity to provide a submission regarding the draft legislative instrument and explanatory materials for changes to governance standard three in the *Australian Charities and Not-for-profits Commission Regulation 2013*.

SVA is a not-for-profit organisation that works with partners to overcome disadvantage in Australia, which requires great education, sustainable jobs, stable housing and appropriate health, disability and community services. SVA is not a traditional service delivery organisation. We work at the intersection of government, social purpose organisations and the business sector. We seek to influence the way systems operate by providing funding; advising on strategy and evaluation; and making investments in partner organisations to significantly increase their social impact. We advocate for more effective programs and policies, and we convene unlikely coalitions to build support for system wide solutions. We are an ACNC-registered charity with Deductible Gift Recipient status, and a public company limited by guarantee.

**SVA supports the position put by the Community Council of Australia (CCA) and others in their submissions that the proposed changes to ACNC governance standard three are unnecessary, over-reaching, and will impose a large administrative burden on charities. The amendments should not proceed in any form.**

SVA fully supports the Australian Government's view that it is important that the public has "confidence that a registered charity is governed in a way that is sustainable and consistent with its purposes, and that it protects its assets, reputation and the people it works with." However, we do not agree that the amendments currently proposed will meaningfully improve public confidence. Instead, they will impose a significant regulatory compliance burden on all charities, which will divert resources away from pursuing their charitable purposes. Given that charities are critical to the economic and social fabric of Australia, this will leave us all worse off.

The draft changes have the potential to significantly increase the administrative burden faced by charities such as SVA, at a time when the pandemic and economic recession are stretching the sector's resources more than ever. The draft changes will effectively create an onus on charities to undertake significant additional administrative activity, such as detailed record-keeping to show that they have not in any way supported any actions that may involve the potential for a summary offence charge in any jurisdiction in which they operate. This arises from the uncertainty regarding what constitutes "reasonable steps to ensure" that charity resources are not used to "promote or support" a

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wide range of acts and omissions, and the extremely wide discretion granted to the Commissioner. This approach contradicts the Australian Government's stated goal of reducing red tape in the interests of improving productivity.

We are also concerned about the unintended consequences that the proposed changes may have for advocacy activity. Charities are legally permitted to advocate for public policy in the pursuit of their charitable purpose. SVA believes that this is an important role for charities. For example, SVA has provided governments with specific expertise via various advocacy channels in areas such as social impact investing, financing social and affordable housing, and efforts to improve the adoption of evidence-informed teaching practices. This information, along with advice from other organisations across the charity sector, has supported Australian governments to design and implement better public policy and service delivery systems. We are concerned that charities in future may be reluctant to engage in advocacy that is critical of government policy, in case it results in them attracting scrutiny from an ACNC Commissioner with extremely broad discretion.

We note that these proposed changes directly contradict the findings of the government-commissioned review of the ACNC legislation undertaken by an expert panel in 2018. That review concluded that existing governance standard 3 is not appropriate and should be repealed in its entirety, because it is 'not the function of the ACNC to force registered entities to enquire whether they may or may not have committed an offence (unrelated to the ACNC's regulatory obligations), advise the Commissioner of that offence and for the ACNC to advise the relevant authority regarding the offence'.

SVA is a strong supporter of the role of the ACNC. It has been recognised, both within the non-profit sector and internationally, as an effective and efficient regulator. Since its establishment, the ACNC has materially improved the regulatory environment for charities and shown a commitment to best practice regulation. To preserve these strengths, the ACNC Commissioner should focus on the governance of charities, not investigating possible minor, future crimes by charities' employees. Consistent with the remit of each enforcement body, the Commissioner should limit their scope to the regulation of charities, noting that an existing regulatory regime already exists for the regulation of offences and hence the proposed changes would result in costly duplication and have no additional probative value.

Yours sincerely

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Social Ventures Australia