



ADVANCING THE PERFORMING ARTS

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**SUBMISSION BY TNA TO TREASURY'S CONSULTATION IN RELATION TO
The Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2)
Regulations 2021 (the Regulations).**

Thank you for the opportunity to provide input on the impact on the proposed Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 (the Regulations).

Theatre Network Australia (TNA) is a leading industry development organisation for the performing arts, prioritising independent artists and small to medium companies. A national organisation with a dedicated Victorian program, TNA strengthens artists and arts organisations, influences cultural policy, facilitates critical debate and networking, and advocates for a robust, interconnected, and innovative sector. We serve over 500 members and reach and represent over 5000 more performing arts workers through our communications and research.

TNA supports the position put by many other charities 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.

TNA 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.

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 That review concluded that existing governance standard 3 is not appropriate and should be repealed in its entirety, because it is "not the function of the ACNC to force registered entities to enquire whether they may or may not have committed an offence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".

The arts are multifaceted across artform, demographic and participation. The arts reflect and explore all aspects of our society. The report, *Transformative: Impacts of Culture and Creativity*, produced by independent think tank A New Approach (ANA), offers further insight¹. The report outlines in detail the deep impact of the arts across society and place; the economy; innovation; health and wellbeing; education and learning; international engagement; and, of course, culture.

Much of TNA's work is legitimate and lawful policy advocacy in pursuit of our charitable purpose. We work with our members and other Peak Bodies across three levels of Government to build awareness of the issues that need addressing to build a vibrant and self-sustaining sector, and support and inform government decision-making. 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.

Most arts organisations – large and small – are registered with the ACNC, and their operations are complex with multiple stretched income streams and multilayered stakeholders – from staff to volunteers, artists, audience members, sponsors, donors, and government funders. In this context the proposed amendments are especially concerning for both TNA, our members, and the arts more broadly.

The arts sector has been one of the hardest hit by COVID. Arts charities are focused on survival, and have fewer resources than ever to devote to an increase in their already substantial reporting burden. Many arts charities simply will not have the resources needed to develop policies and procedures (including a document trail) which can be relied upon to prove the organisation has taken reasonable steps to ensure it does not promote or support relevant acts as included in the amendment. Furthermore, this work would have to be done in the face of what appear to be extremely vague and uncertain terms of the proposed amendments, and the extremely wide discretion granted to the Commissioner. The complexity of the amendments will mean an increased reliance on legal advice, diverting critical time and funds away from core business. This approach contradicts the Australian Government's stated goal of reducing red tape in the interests of improving productivity.

A further concern for arts-related charities is that branded merchandise is an important income stream for many arts organisations who seek to be seeking financial sustainability. However, organisations have no control on when and where this merchandise may appear after it has been purchased. We are concerned that the breadth of the proposed changes mean that branding may appear in a context that could lead to deregistration, in circumstances where there is no connection between the charity and the offence.

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¹ Transformative: Impacts of Culture and Creativity, Produced by A New Approach (ANA) think tank with lead delivery partner the Australian Academy of the Humanities. 2020.