



6 May 2021

The Honourable Scott Morrison, MP  
Prime Minister of Australia  
Parliament House  
Canberra, ACT

Dear Prime Minister,

We are writing on behalf of the Hands Off Our Charities Alliance (the alliance) in relation to the *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021*.

The alliance is a grouping of over 50 charities which formed in 2017 in response to a number of proposed laws which would have silenced charities on issues of national importance. Together we represent millions of Australians concerned with a wide range of issues including education, social welfare, human rights, animal welfare, the environment, health, climate change, disability rights, inequality and poverty and philanthropy. Our organisations, the issues we work on, and the communities we represent are diverse, but we all share a fundamental commitment: to serve the public interest.

Before we outline our concerns with the regulations, we would like to acknowledge and thank the Australian Government for its support to charities throughout the past year, including through JobKeeper. This support provided certainty for the sector in a turbulent period and allowed us to continue our work serving our communities during a significant time of need.

We believe the proposed changes to governance standard 3 have not been justified by evidence and will have dramatic consequences for the charity sector. Therefore, we believe the regulations should be withdrawn and the government should undertake genuine consultation with the sector on any proposed governance changes in the future.

The prospective changes significantly broaden the scope of activities for which charities can be deregistered. This broadening would have ramifications for the administrative burden placed on charities and the ability of charities to carry out lawful and fundamental advocacy activities. The changes single out charities for arbitrary treatment.

We support the role of the Australian Charities and Not-for-profits Commission (ACNC) in ensuring that public confidence in the charity sector is maintained. Yet the proposed regulations unreasonably focus on charities with disproportionate penalties in the event of minor, inadvertent breaches. Such penalties are unparalleled for any other group, including political parties and businesses and lack a sound policy basis.

### **Administrative burden**

If the changes are introduced, they would result in a significant administrative burden being imposed on charities. These regulations would require charities to take all “reasonable steps” to ensure, not only that they and their staff do not unintentionally commit a minor offence, but that their resources will not be used to “promote or support” the commission of a minor offence by someone else. The proposed regulations are so broad and so vague that charities would have to seek legal advice to clearly understand what steps are “reasonable.” This would then require new policies to be developed and processes implemented in preemption of a possible breach by staff of many thousands of laws. “Reasonable steps” is not defined anywhere in the regulations, but rather left as a subjective determination by the ACNC Commissioner, making compliance even more difficult and potentially capturing those undertaking lawful advocacy.

This additional, significant administrative burden would force charities to divert precious and limited resources away from service delivery to address these new layers of red tape. The impact of this will be felt hardest by small charities with constrained resources.

### **Lawful advocacy**

Sometimes, charities support public actions to draw attention to pressing societal issues, be it marching against the death of Aboriginal and Torres Strait Islander people in custody, or assembling to demand the end of gender-based violence.

Overwhelmingly these public actions are conducted lawfully. However, given the volume of minor offences that can be unwittingly committed at a protest, the proposed governance standard will make every appearance at, or statement in support of, a protest action a risk to a charity’s registration.

Our ability to advocate on issues we work on and understand well, including when it relates to protest, is protected under the Act<sup>1</sup> and by the Australian Constitution. The proposed regulations undermine freedom of expression and would be, in our opinion, unlawful.

### **Double punishment**

The proposed changes would create an unprecedented regulatory system that singles out charities for punitive treatment. Neither for-profit corporations nor political parties can be

---

<sup>1</sup> Section 45-10(6) *Australian Charities and Not-for-profit Commission Act 2012* (Cth).

deregistered for committing — or being deemed “likely” to commit — minor offences. Neither businesses nor political parties would accept such a threat of unfair, arbitrary treatment.

Like everyone else, charities and our staff already face penalties for breaking the law. We also face additional sanctions under existing charities law. Charities want to be accountable to their communities and their supporters, but these new rules could see our organisations punished, including for lawful things done in pursuit of our charitable purpose.

### **Unjustifiable broadening of the ACNC Commissioner’s power**

Currently, the ACNC Commissioner can revoke registration if he reasonably believes a charity “is more likely than not” to breach a governance standard at some future time.<sup>2</sup>

This breadth of discretion is inappropriate — the current laws render the ACNC Commissioner a de facto enforcement and judicial agency for thousands of offences on the statute book. The proposed regulations will worsen this situation by broadening the basis upon which the ACNC Commissioner may exercise this discretion to include summary offences. This runs contrary to the ACNC’s own current stated policy that it will “not investigate breaches of law or issues that other regulators or the police are better placed to handle”.<sup>3</sup>

The extensive powers that would be granted to the ACNC Commissioner by the proposed regulations are entirely at odds with Parliament’s mandate for the regulator. They represent a concerning departure from Parliament’s intent of disqualifying a charity by reference to its purpose, towards disqualifying a charity for the discrete actions of individual employees.

### **Inconsistency with 2018 review of the Australian Charities and Not-for-profits Commission legislation**

The proposed regulations’ Explanatory Memorandum states that the changes to the regulations address uncertainty and implement the government’s response to recommendation 20 of the 2018 review of the Australian Charities and Not-for-profits Commission legislation. However, recommendation 20 suggested that funding be provided to the ACNC to litigate in order to clarify the law around the limits of advocacy by charities. It had absolutely nothing to do with governance standard 3 and/or charities committing summary offences.<sup>4</sup>

It is erroneous to suggest the proposed changes to governance standard 3 are responsive to recommendation 20, particularly when recommendation 9 recommended removing governance standard 3 entirely.<sup>5</sup> The 2018 review stated the following:

---

<sup>2</sup> Subsection 35-10(1)(c)(ii) Australian Charities and Not-for-profits Commission Act 2012 (Cth).

<sup>3</sup> Governance Standard 3: Compliance with Australian Laws, available at <https://www.acnc.gov.au/not-for-charities/manage-your-charity/governance-hub/governance-standards/3-compliance-australian-laws> (accessed 20 April 2021).

<sup>4</sup> P McClure, G Hammond, S McCluskey and M Turnour, *Strengthening For Purpose: Australian Charities and Not-For-Profits Commission Legislation Review 2018* (22 August 2018), 47.

<sup>5</sup> P McClure, G Hammond, S McCluskey and M Turnour, *Strengthening For Purpose: Australian Charities and Not-*

**Governance standard 3 is not appropriate as a governance standard.** Registered entities must comply with all applicable laws. 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. (emphasis added)

Governance standard 3 in its current form has also been criticised by respected charity law experts.<sup>6</sup> The proposed changes add to, rather than address such concerns.

The charities sector is united in its view these proposed regulations are an unnecessary over-reach and their flawed/apparent purpose unsubstantiated.

We do not consider the fundamental problems with the proposal can be rectified by amendment. We therefore strongly urge the government not to proceed with the proposed regulations.

We look forward to your response.

Emma Campbell, CEO, ACT Council of Social Services

Brayden Howie, CEO, Action on Poverty

Michelle Higelin, Executive Director, ActionAid Australia

Madeline Vaughan, CEO, Adara Development

Annette Foley, President, Adult Learning Australia

Denison Grellmann, CEO, Adventist Development and Relief Agency Australia and New Zealand

---

*For-Profits Commission Legislation Review 2018* (22 August 2018), 47.

<sup>6</sup> Aroney, Nicholas and Turnour, Matthew, Charities are the New Constitutional Law Frontier (June 15, 2017). *Melbourne University Law Review*, Vol. 41, 2017 p458–460.



Patricia Sparrow, CEO, Aged & Community Services Australia



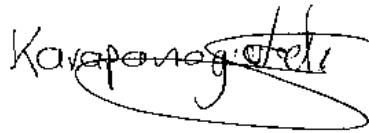
Sarah Davies AM, CEO, Alannah & Madeline Foundation



Rev'd John Deane, Executive Director, Anglican Board of Mission



Kasy Chambers, Executive Director, Anglicare Australia



Kon Karapanagiotidis, CEO, Asylum Seeker Resource Centre



Brynn O'Brien, Executive Director, Australasian Centre for Corporate Responsibility



Rawan Arraf, Executive Director, Australian Centre for International Justice



Kelly O'Shanassy, CEO, Australian Conservation Foundation



Cassandra Goldie, CEO, Australian Council of Social Services



Meredith Stanton, Secretary, Australian Forests and Climate Alliance



Darren Kindleysides, CEO, Australian Marine Conservation Society



Gabriela Christian-Hare, CEO, Australian Pro Bono Centre



Kirsty Albion, Executive Director, Australian Progress



Thea Ormerod, President, Australian Religious Response to Climate Change

Alex Fuller, National Director,  
Australian Youth Climate Coalition

Nicole Hornsby, Executive  
Director, Baptist Care Australia

Heidi Lee, CEO, Beyond Zero  
Emissions

Amanda Sully, Philanthropy  
Director, Bob Brown Foundation

Wendy Tisdell OAM, Founding  
Director, BridgIT Water  
Foundation

Dr Lucia Boxelaar, Executive  
Director, Brotherhood of St  
Laurence

Gawaine Powell Davies, Chair,  
Buddhist Council of NSW

Karen James, CEO, Business for  
Development

Kirsty Robertson, CEO, Caritas  
Australia

Ursula Stephens, CEO, Catholic  
Social Services Australia

Margaret Bell, President and  
CEO, Chain Reaction Foundation

David Crosbie, CEO, Community  
Council for Australia

Helen Oakey, Executive Director,  
Conservation Council

Estelle Blair, Administrator,  
Coolum and North Shore Coast  
Care

Paul Mergard, CEO, Destiny  
Rescue Australia



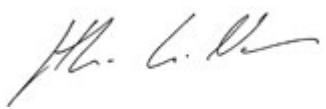
Denise Cauchi, Executive Director, Doctors for the Environment



Eleanor Loudon, CEO, Engineers Without Borders Australia



Jill Redwood, Coordinator, Environment East Gippsland



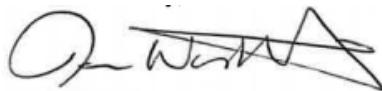
Jono La Nauze, CEO, Environment Victoria



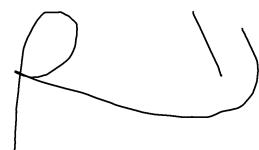
Ann Brassil, CEO, Family Planning NSW



Caterina Giorgi, CEO, Foundation for Alcohol Research and Education



Ian Wishart, CEO, The Fred Hollows Foundation



Phil Evans, Development Coordinator, Friends Of the Earth



Shane Nichols, CEO, Good Return



Isabelle Reinecke, Executive Director, Grata Fund



Kate Smolski, Program Director, Greenpeace Australia Pacific



Nicole Stanmore, CEO, Habitat for Humanity



Erica Martin, CEO, Humane Society International



David Miller OAM, Deputy Chairman, John Fawcett Foundation



Chris Povey, CEO, Justice Connect

Vanda (aka Wanda) Grabowski

Vanda Grabowski, President,  
Koala Action Inc  
Representative, Moreton Bay  
Koala Rescue Inc.  
Policy Coordinator, Queensland  
Koala Crusaders Inc.

Sarah Moles, Secretary, Lock the  
Gate Alliance

Chris Turner, Executive Officer,  
Marie Stopes International  
Australia

Sally Bradley, Executive Director,  
Mercy Works

Chris Gambian, CEO, Nature  
Conservation Council

Deborah Di Natale, CEO, Northern  
Territory Council of Social Service

Joanna Quilty, CEO, NSW Council  
of Social Service

Madeline Price, Co-Director, The  
One Woman Project

Meredith Scott, CEO, Opportunity  
International Australia

Denis Moriarty, Managing Director, Lyn Morgan, CEO, Oxfam  
Our Community Australia

Sebastian Zagarella, CEO, People  
With Disability Australia

Jonathon Hunyor, CEO, Public  
Interest Advocacy Centre

Aimee McVeigh, CEO, Queensland  
Council of Social Service

Negaya Chorley, CEO, RESULTS  
International Australia

Paul Ronalds, CEO, Save the Children

Toby O'Connor, CEO, St Vincent de Paul Society National Council of Australia

Narelle McCarthy, Liaison and Advocacy Officer, Sunshine Coast Environment Council

Adrienne Picone, CEO, Tasmanian Council of Social Service

Serena Lillywhite, CEO, Transparency International Australia

Amanda Hunt, CEO, Uniting WA

Claerwen Little, National Director, UnitingCare Australia

Sureka Goringe, National Director, UnitingWorld

Mark Pearce, CEO, Volunteering Australia

Rosie Wheen, Chief Executive, WaterAid Australia

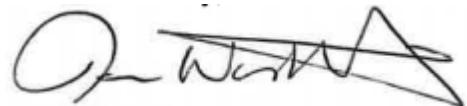
Rev Stu Cameron, CEO and Superintendent, Wesley Mission

Matt Brennan, CEO, The Wilderness Society

Dermot O'Gorman, CEO, World Wildlife Fund Australia

Kate O'Donohue, Secretary, Young Women's Christian Association

Melanie Gow, CEO AVI



Bettina Baldesch, CEO  
International Women's Development Agency



Emma Pollard, COO  
Climate Council



**act:onaid**



Aged & Community Services Australia



**ANGLICAN BOARD OF MISSION**

*Working for Love, Hope & Justice*



■ **ACCR**

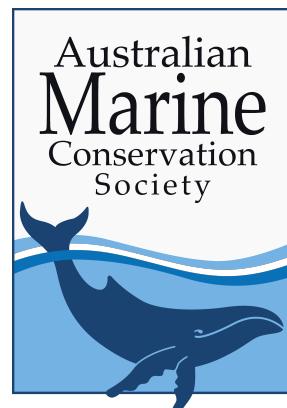


**AUSTRALIAN CONSERVATION FOUNDATION**





**AFCA**  
Australian Forests & Climate Alliance Inc.



AUSTRALIAN  
PRO BONO CENTRE



**BAPTIST CARE  
AUSTRALIA**  
A voice for hope

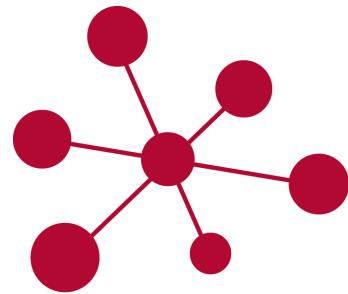








**OXFAM**  
Australia



**public interest**  
ADVOCACY CENTRE



Public Health Association  
AUSTRALIA

**qCOSS**



**results**



**SPORT**  
**MATTERS**  
FOR EVERYONE. FOR LIFE.

St Vincent de Paul Society  
NATIONAL COUNCIL OF AUSTRALIA Inc. *good works*

**TasCOSS**

**tearfund**  
Australia

**TRANSPARENCY**  
**INTERNATIONAL**  
AUSTRALIA

**Uniting**

