



Anglican Church of Australia

Public Affairs Commission

The Hon Josh Frydenberg MP
Treasurer
By email.

Dear Treasurer,

26 April 2021

Proposed changes to the governance standards to charities regulations

Introduction

1. This is a submission from the Public Affairs Commission (“PAC”) of the Anglican Church of Australia (“ACA”) to express concerns about news of proposed changes to the governance standards for charities.
2. The PAC is a body set up, amongst other matters, to respond to aspects of public affairs as referred by the Primate, Standing Committee or General Synod of the ACA or initiated by the PAC. The views expressed in this submission are only the views of the PAC and should not be taken to reflect the opinion of the ACA, the Primate, the Standing Committee or any of the Dioceses. The membership of the PAC is drawn from Anglicans around Australia and the PAC reports to the Standing Committee of the ACA. We also have a role of educating Anglicans around Australia on social issues.

Proposed changes of concern

3. We understand that there is a proposal¹ to expand Governance Standard 3 of the Australian Charities and Not-for-profits Commission Regulation 2013 so that an entity is not entitled to be registered or remain registered under the Act if:
 - the entity does an act (or omits to do an act) that may be dealt with as a summary offence under an Australian law relating to real property, personal property or causing personal injury or harm to an individual; or
 - the entity fails to take reasonable steps to ensure its resources are not used to promote acts (or omissions) by any entity that may be dealt with as an indictable offence, a relevant summary offence, or a civil penalty of 60 penalty units or more.
4. Governance standard 3 currently says that a charity must not engage in conduct, or omit to engage in conduct, that can be dealt with as an indictable offence. Such conduct could attract a fine. Patrick McClure AO chaired a review for the government in 2018 and concluded that existing governance standard 3 is not appropriate because

¹ Draft Exposure Draft for Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 at https://treasury.gov.au/sites/default/files/2021-02/c2021-149084_explanatory_statement_0.pdf

it is not the ACNC's role to investigate offences but rather to focus on charity governance. The review recommended that Governance Standard 3 be removed entirely.²

5. Contrary to the review recommendation about Governance Standard 3, the proposed amendments seek to expand the standard to include not only indictable offences but also summary offences. Such offences could include trespass, blocking tracking, damage to property or breach of health and safety laws.
6. Further, the amendments also add a new onerous requirement for charities to "take reasonable steps to ensure that its resources are neither used, nor continued to be used, to promote or support acts or omissions by any entity." The resources of a charity could include its premises, its stationery or social media. The uses to which material produced by charities, such as in protests of various kinds, is extensive and generally beyond the control of the charity.
7. The concern is that under the Australian Charities and Not-for-profit Commission Act ("ACNC Act"), the ACNC Commissioner is empowered to deregister a charity if they believe a charity has not complied with a governance standard; or it is "more likely than not" that the charity will not comply with a governance standard. This involves subjective judgements about whether a charity *might* engage in unlawful activity in the future. Under the proposed changes, the Commissioner need only hold suspicions to be empowered to suspend or remove directors from a charity, and appoint new directors, or deregister a charity entirely. This is exacerbated if the suspicions of future conduct include summary offences or the failure to prevent their resources being used.
8. Many charities are under-resourced and operate on trust and the goodwill, especially of volunteers. The danger is the risk that charities could be deregistered for failing to police its employees, members or volunteers who may have access to any of its resources and may commit what may be minor offences.
9. It is not necessary to include governance standard 3 as a basis for deregistering or not registering a charity. If there is unlawful activity, then the criminal and civil laws can take effect against the offenders as they would normally. There is no need to penalise charities as well.
10. The effect would be to impose conditions on charities that are not imposed on other corporations, such as in the private or commercial sector. It is highly unlikely that such sectors would accept such requirements. The proposed changes would operate unfairly on charities and require them to spend already-scarce donations on excessive policing and red-tape instead of on their charitable purposes. Many charities have minimal or no paid staff and rely entirely on a large number of volunteers to do what they can and can ill-afford the level of administration suggested such as instituting controls and audits or expecting volunteers to be schooled on legal obligations. It is

² Strengthening for purpose: Australian Charities and Not-for-profits Commission Legislation Review 2018 at pp pp 9, 47, 50, found at <https://treasury.gov.au/sites/default/files/2019-03/p2018-t318031.pdf>

the beneficiaries of the charities who will suffer from a diversion of resources to such procedures.

11. The unusual nature of proposed change raises questions as to whether the changes are designed to inhibit the role of charities in public debate and advocacy. Civil society organisations, including charities, have a pivotal role to play in informing the public of issues of concern. Charities usually deal with the most vulnerable and have moral obligations to speak up to seek to change to policies and structures that cause harm.

Conclusion

12. In summary we urge that governance standard 3 be repealed as recommended by the 2018 Review or at very least that this is not expanded on the manner outlined above.

Yours faithfully,

A handwritten signature in black ink that reads "Carolyn Tan". The signature is written in a cursive, flowing style.

Dr Carolyn Tan,
Chair of the Public Affairs Commission