

# Australian Council of Social Service

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To whom it may concern,

## **Unlawful activity - changes to the governance standards for registered charities**

The Australian Council of Social Service (ACOSS) is a national voice in support of people affected by poverty, disadvantage and inequality and the peak body for the community services and civil society sector. ACOSS consists of a network of approximately 4000 organisations and individuals across Australia in metro, regional and remote areas. Our vision is an end to poverty in all its forms; economies that are fair, sustainable and resilient; and communities that are just, peaceful and inclusive.

ACOSS welcomes the opportunity to provide this written submission addressing the draft legislative instrument and explanatory materials for changes to governance standard three in the *Australian Charities and Not-for-profits Commission Regulation 2013*, to expand the scope of impermissible activities that registered charities must not engage in or promote others to engage in.

The proposed changes to the Governance Standards are an affront to democracy and legitimate protest, and will inevitably have a chilling effect on charities' policy advocacy. We consider that these proposed changes to the regulations/governance standards are completely inappropriate and should not proceed. We request these proposed changes be withdrawn.

ACOSS is a member of the Hands Off Our Charities alliance, and endorses the joint submission of the alliance.

There are a number of problems with the proposed changes that are outlined in detail in the Hands Off Our Charities alliance submission. In this submission, we

outline some specific problems with the proposed changes that affect ACOSS and our members.

First, the Governance Standards were originally designed to be simple and straightforward to comply with. The proposed changes will add a layer of complexity that will mean many organisations will need to seek legal advice that is appropriate to their context. There is a cost associated with that, and higher administrative costs divert funds and focus from front line service delivery.

Second, ACOSS works directly with and supports (including financially) a number of small, grass roots advocacy organisations focussed on issues that affect people experiencing poverty and disadvantage. These changes to the governance standards mean that not only would the charitable status of these organisations would be put at risk if they or their employees committed, or supported a summary offence, ACOSS' charitable status could also be put at risk. This could mean that ACOSS and other philanthropic and grant making bodies reconsiders their support for small, grassroots organisations in the future.

Third, these proposed regulations are out of step with the findings of the ACNC Legislation Review conducted in 2018. That review found that "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."<sup>1</sup> Noting that, it seems ill-considered to expand this governance standard, rather than repeal it.

Further, these regulations provide the ACNC Commissioner with excessive power. Not only does the expanded governance standard provide the Commissioner with the power to deregister or take other action against a charity that is charged or convicted of committing an offence, it also empowers them to take action or deregister a charity where the action taken by the charity "may be dealt with" as a summary offence without any conviction or charge having taken place. Indeed a charity can even be deregistered or have other action taken against it by the Commissioner for not taking "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"<sup>2</sup>. In addition, charities can be deregistered if the Commissioner believes that it is "more likely than not" that a prohibited act will occur in the future. These powers are extraordinary, and are not required to ensure that charities are well governed.

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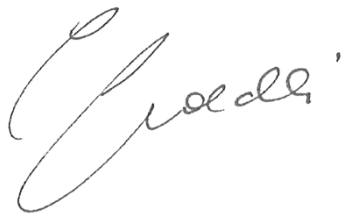
<sup>1</sup> McClure et al, 2018, *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review*, Treasury, p47 <https://treasury.gov.au/sites/default/files/2019-03/p2018-t318031.pdf>

<sup>2</sup> Australian Government, 2021, Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021, [https://treasury.gov.au/sites/default/files/2021-02/c2021-149084\\_exposure\\_draft\\_0.pdf](https://treasury.gov.au/sites/default/files/2021-02/c2021-149084_exposure_draft_0.pdf)

It is important to note that ACOSS does not condone or support illegal activity or behaviour. There are already a range of regulatory and legislative provisions in place that ensure that charities behave lawfully. These regulations however, go too far, will have a chilling effect on legitimate democratic action by charities and have a range of unintended consequences. ACOSS recommends that these regulations not proceed.

Should the Department wish to seek further information from ACOSS please contact Dr John Mikelsons, Senior Advisor (Community Services and Health) on 02 9310 6212 or [john@acoss.org.au](mailto:john@acoss.org.au)

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C Goldie'.

Dr Cassandra Goldie  
CEO, ACOSS