

15 August 2022

Director
Not-for-profit Unit
Treasury
Langton Cres
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(submitted by email: charitiesconsultation@treasury.gov.au)

Remake of ACNC Regulations

Justice Connect welcomes the opportunity to respond to the draft *Australian Charities and Not-for-profits Commission Regulations 2022* (**the draft Regulations**).

About Justice Connect

In the face of huge unmet legal need, Justice Connect designs and delivers high-impact interventions to increase access to legal support and achieve social justice. We help those who would otherwise miss out on assistance, focusing on people disproportionately impacted by the law and the organisations that make our communities thrive.

We have been serving the community for more than 25 years. We are a registered charity.

Our expertise – our Not-for-profit Law program

This submission draws on the experience of our specialist, national Not-for-profit Law program which provides free and low-cost legal assistance to not-for-profit organisations and social enterprises, many of whom are registered charities. We handle more than 1,700 enquiries annually from a diverse range of groups, primarily small-medium sized and mostly volunteer run.

Not-for-profit Law was at the forefront of the campaign for the Australian Charities and Not-for-profits Commission (**ACNC**), and supports the ACNC's mission of maintaining, protecting and enhancing public trust and confidence in the not-for-profit sector.

Our submission

We support the submission made by Hands Off Our Charities alliance.



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In our view Recommendation 9 of the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review (the Review Report)*¹ should be acted upon by the repeal of Governance Standard 3 (Compliance with Australian Laws).

We recommend the draft Regulations repeal Governance Standard 3 (Compliance with Australian Laws).

Our reasoning

We recommend the repeal of Governance Standard 3 for several reasons:

1. **Governance Standard 3 is not appropriate.** As was identified in the Review Report, '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.'²
2. **Governance Standard 3 is unnecessary.** We reiterate our 2013 submission on the Development of Governance Standards,³ that Governance Standard 3 is unnecessary as charities are already subject to all applicable Australian laws and we continue to 'query the need for a governance standard to explicitly require this'.⁴ The repeal of Governance Standard 3 would be consistent with object 3 of the ACNC Act, the reduction of unnecessary regulatory obligations on the sector.
3. **Governance Standard 3 is confusing.** Given that it is both not appropriate and unnecessary, Governance Standard 3 is confusing – especially for volunteer board members of small charities.

There are other reforms recommended by Review Report that would be desirable to implement, but we understand that the timetable for remaking regulations means there is insufficient time for a detailed review of the Regulations. Given the very small change that the repeal of Governance Standard 3 would require to the draft Regulations, we urge the Government to make at least this one change.

¹ P McLure, G Hammond, S McCluskey and M Turnour, *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review* (2018) 50.

² P McLure, G Hammond, S McCluskey and M Turnour, *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review* (2018) 47.

³ <https://justiceconnect.org.au/wp-content/uploads/2020/12/Submission-to-Treasury-on-proposed-governance-standards-for-registered-charities-February-2013.pdf>

⁴ <https://justiceconnect.org.au/wp-content/uploads/2020/12/Submission-to-Treasury-on-proposed-governance-standards-for-registered-charities-February-2013.pdf>



We would be happy to discuss or expand on any of our comments.

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