



14 May 2021
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Mr Jason Lange
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet
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Dear Mr Lange

Regulation Impact Statement – Unlawful activity – changes to the governance standards for registered charities – Second Pass Final Assessment

I am writing in relation to the attached Regulation Impact Statement (RIS) prepared for unlawful activity – changes to the Australian Charities and Not-for-profit Commission (ACNC) governance standards for registered charities.

The RIS explores a policy problem concerning existing governance standard three which empowers the ACNC Commissioner to take enforcement action with respect to indictable offences under Australian law. The intent of the standard is to allow the ACNC to investigate serious breaches of the law and take enforcement action if required. However, the framing of the governance standard means the ACNC is unable to investigate some serious breaches of the law by a charity (such as trespass, vandalism, theft, assault, threatening harm to persons, and directing or encouraging a criminal offence), because the unlawful conduct is prescribed in the law as a summary offence in some jurisdictions. This outcome is contrary to the policy intent of governance standard three, particularly where action is warranted to protect the charity's assets, the people it serves, and more broadly, public trust and confidence in the charity sector. In addition, the current framing of governance standard three and the varying laws across jurisdictions means the scope of prohibited unlawful activities is not clear, creating uncertainty and complexity for the ACNC, the sector and the community more broadly.

While Treasury has been unable to access evidence or data from the ACNC due to the strict secrecy rules preventing the ACNC from commenting on compliance activities, public consultations with stakeholders has assisted in understanding this policy problem. Therefore, I am of the opinion that the RIS sufficiently demonstrates a problem exists.

The RIS addresses the other concerns raised in your letter of 3 May 2021. Specifically, the RIS provides:

- further clarification around how the proposed options, particularly options 2 and 3, would operate in effect;
- further clarification and description of the regulatory impacts, including nil impacts, upon charities under each option, as well as monetisation of costs consistent with the Regulatory Burden Measurement Framework where possible;

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- attribution of feedback to particular stakeholder groups where their feedback has been incorporated into the analysis of the RIS;
- further explanation of the policy problem and the impact of each of the proposed options to demonstrate how ***option 3 would represent the most comprehensive option for addressing the stated problem; and***
- explanation of the status of the RIS throughout the policy development process.

Under option 3, assuming that all 9,500 large registered charities undertake a one-off two-hour review of their internal control procedures, it is estimated that this would impose a total one-off regulatory cost of \$1.4 million for large charities, particularly those operating in multiple Australian jurisdictions. These charities have sophisticated internal control procedures which may need to be reviewed in light of the amendments to governance standard three. This regulatory cost will be offset by reductions in the existing administrative burden and expense for registered charities in discerning the scope of unlawful activities prohibited under governance standard three in the long term.

I note that the expected benefits under each option have been described in the RIS and supported by information provided by stakeholders where possible. However, monetisation of these benefits has not been possible due to insufficient information and data to reliably quantify the benefits in dollar-terms.

A regulatory offset has not been identified. However, the Government is implementing other recommendations of the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review 2018* (ACNC Review) which will reduce regulatory burden for the charity sector. For example, Treasury is working with state and territory counterparts on reforms to lift ACNC financial reporting thresholds for registered charities and a cross-border recognition model for charitable fundraising registration. This work is being progressed through the Council on Federal Financial Relations.

Accordingly, I am satisfied that the RIS is consistent with the six principles for Australian Government policy makers as specified in the Australian Government Guide to Regulatory Impact Analysis.

I submit the RIS to the Office of Best Practice Regulation for formal final assessment.

Yours sincerely



Maryanne Mrakovcic
Deputy Secretary
Revenue Group
The Treasury