

ACFID Submission on Australian Charities and Not-for-profits Commission Regulations (2022)

The Australian Council for International Development (ACFID) appreciates the opportunity to make a submission to Treasury regarding the review of the Australian Charities and Not-for-Profits Commission regulations (2022). We would be pleased to provide further information on any of the matters raised in this submission.

ACFID understands that the proposed draft regulations largely replicate the existing *Australian Charities and Not-for-profits Commission Regulations 2013*, which expire in April 2023. ACFID also understands Treasury's preference is to consider substantive changes outside of this current remake of the regulations. Yet, the purpose of the sunset provisions is that the regulations are periodically reviewed to ensure they are fit-for-purpose. ACFID does not believe the regulations in their current form meet this test.

ACFID's members, and the wider charity sector are straining under the burden of compliance and regulatory measures that cause unnecessary confusion and stress.



What I want to do with the charities portfolio, to treat it a bit like a community building portfolio and see the big challenges, but also the great opportunities from creating a more connected Australia...We need to rebuild trust with that important sector.

Assistant Minister Dr. Andrew Leigh (Canberra Times, 20 June 2022)

Governance Standard 3 is an example of this issue. It requires charities to follow all applicable laws, yet charities are already subject to all applicable laws. Its existence means that charities could face sanctions including deregistration, at the discretion of the ACNC Commissioner.

This expansive standard is inconsistent with the application of commensurate laws in the corporate sector, and an inappropriate use of the Commissioner's powers, causing confusion and stress surrounding its application in the sector. This reasoning led the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review* to conclude 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.

Recommendation

ACFID recommends the repeal of ***Governance Standard 3***.

An Australian government committed to red-tape reduction can use this opportunity of remaking the ACNC regulations to commence an impactful agenda of reviving a stifled charity sector.

Charities provide a vital means for ordinary Australians to be heard in national public policy debates. Every year, millions of Australians choose to make their voices heard on issues they care about by joining, donating to, or

otherwise supporting, charities. In addition, charities that work on the frontlines, for example, of climate change, domestic violence and homelessness, offer a wealth of expertise in public debate and policy development. Charities, through articulating the views of their supporters and beneficiaries, make a critical contribution to effective democratic government in Australia.

Governance Standard 3 has had a chilling effect on vital advocacy by the charity sector

The remake of the ACNC Regulations provides an opportunity to address the impact of this Standard on charitable advocacy by adopting the recommendation from the 2018 ACNC Legislation Review and repealing Governance Standard 3. There is no need for any further delay in removing a provision that unreasonably fetters public policy debate in our democracy.