

19 August 2022

The Treasury
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Dear Sir / Madam,

Australian Charities and Not-for-profits Commission Regulations 2022

Who we are

Governance Institute of Australia is a national membership association, advocating for our network of 43,000 governance and risk management professionals from the listed, unlisted, public, not-for-profit and charity sectors. As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study and professional qualifications. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

Our members have primary responsibility for developing and implementing governance frameworks in listed, unlisted and private companies, as well as not-for-profit organisations including charities and the public sector. We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC, the ATO and other government and industry stakeholders.

Many of our members serve as officers of charities, or work for, or are involved with charities and are therefore involved in compliance with the requirements of the Australian Charities and Not-for-profits Commission (ACNC). Governance Institute is itself a charity operating in the legal form of a company limited by guarantee, established to promote and advance the efficient governance, management and administration of commerce, industry and public affairs and the development of secretaryship of organisations through education and the dissemination of information.

Our response

As we noted in our October 2021 [submission](#) on *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021* we continue to fully support the continued implementation of the recommendations of *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review 2018* (the Review). Our members consider it is in the interests of the wider not-for-profit and charitable sector that the Government and Parliament continue to build on and refine charity regulation by giving effect to these necessary reforms. Governance Institute looks forward to continuing to work with all stakeholders to progress the remaining recommendations of the Review at the earliest opportunity.

Our members have also long been supporters of the ACNC. We advocated strongly in favour of its establishment. We remain willing to assist the regulator as it fulfils its important role. The establishment of the ACNC and the 2018 Review are two important milestones in a continued reform effort to enhance the regulatory frameworks of the not-for-profit and charitable sector. There are still areas where regulations are inconsistent and inefficient across multiple agencies and multiple levels of government – most notably the overlapping state and territory laws

governing charitable fundraising. It is pleasing to note that the harmonisation of charitable fundraising laws is now on the national agenda. As a founding member of the #FixFundraising advocacy campaign we will continue to advocate for reform in this area.

Our members did not support the 2021 expansion of the scope of ACNC Governance Standard 3. While we welcomed the amendments the then Government made in response to widespread concerns from the sector. Notwithstanding those changes, our members continue to have serious reservations about the Governance Standard, where it is contrary to the recommendations of the 2018 Review. As noted in our March 2021 [submission](#), our concerns extend to practical implementation issues as well as underlying principles. Political advocacy can be a legitimate activity of charities and not-for-profits. The Administrative Appeals Tribunal (AAT) recognised this when it overturned the decision of the ACNC Commissioner to disallow Global Citizen's application for registration as a Public Benevolent Institution (PBI). Our members do not wish to see constraints on the ability of civil society to participate in political communication and dissent.

Our members also note the Standard is potentially inconsistent with the Charities Act because under that Act, charities 'should not be deregistered for committing an offence unless that offence demonstrates the charity's purpose is unlawful'. Our members continue to support repeal of Governance Standard 3 as recommended by the Review.

If you wish to discuss any of the issues raised in this letter, please contact me or Catherine Maxwell.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Megan Motto', with a stylized, cursive script.

Megan Motto
CEO