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The Treasury
Langton Crescent
PARKES ACT 2600

By email: charitiesconsultation@treasury.gov.au

Dear Sir / Madam,

Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021

Who we are

Governance Institute of Australia is a national membership association, advocating for our network of 40,000 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 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

Governance Institute fully supports 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 support the proposed higher reporting thresholds to reduce regulatory compliance burden. In a submission earlier in the year, our members suggested even higher reporting thresholds in line with those recommended by the Review. We acknowledge the Government has chosen to pursue a more cautious approach that will, nevertheless, reduce compliance burden. We endorse the new proposed reporting thresholds, while making the following comments:

- the increase to reporting thresholds should be seen in the context of the wider reforms to charitable fundraising laws. It would be a lost opportunity if the harmonisation agenda were to be delayed because of misaligned reporting thresholds
- it will be important that the new higher reporting thresholds apply equally to all ACNC registered charities including not just the many companies limited by guarantee but also the few proprietary limited companies that are registered charities. All types of registered charities should be able to access the benefits of this reform
- any efforts that can be made to align reporting obligations under the various associations incorporations acts under which many charities are incorporated would also be a benefit, and
- we note the higher reporting thresholds appear only to be directed to ACNC registered companies and not other companies limited by guarantee in the not-for-profit sector that are not registered with ACNC. We encourage the broadening of the higher thresholds to include all not-for-profit companies.

Our members also endorse the proposed changes to related party transactions. As noted above, they support the role of the ACNC in promoting enhanced standards of governance and accountability and consider the change will help achieve this outcome.

Finally, our members note the Government's intention to proceed with expanding the scope of ACNC Governance Standard 3. We welcome the amendments the Government has made to the relevant legislative instrument in response to widespread concerns from the sector. Notwithstanding those changes, our members continue to have serious reservations about the proposed expansion of the Governance Standard, which is contrary to the recommendations of the 2018 Review. As noted in our earlier submission, our concerns extend to practical implementation issues as well as underlying principles. We note the Senate Standing Committee for the Scrutiny of Delegated Legislation has formally recommended that the instrument be disallowed due to concerns with the conferral of broad discretionary powers under the Regulations and potential impacts on implied freedom of political communication. Our members share these concerns and will continue to closely monitor these developments. Political advocacy can be a legitimate activity of charities and not-for-profits. The Administrative Appeals Tribunal (AAT) recognised this when it recently 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.

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

Yours faithfully,



Megan Motto
CEO