



Response to the Proposed Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021

July 2021

VolunteeringACT Contacts:

Jean Giese
Chief Executive Officer
e: ceo@volunteeringact.org.au
p: 02 6251 4060

Sarah Wilson
Policy Manager
e: policy@volunteeringact.org.au
p: 02 6251 4060

VolunteeringACT acknowledges the Ngunnawal people as the traditional custodians of the Canberra region. VolunteeringACT pays respect to Aboriginal and Torres Strait Islander peoples and their vital ongoing contribution to our lands.

VolunteeringACT acknowledges volunteers of all genders and sexualities, with all abilities and from all cultures. Their skills, expertise, and time are critical to delivering services and programs, and in making Canberra a better place to live. We also acknowledge the contribution of the volunteer involving organisations that contribute to the health and happiness of our community.

Overview

- The Australian Charities and Not-for-profits Commission (ACNC) has made a proposal to amend governance standard three in the *Australian Charities and Not-for-profits Commission Regulation 2013*.
- The proposed amendment expands the scope of activities that registered charities must not engage in or promote others to engage in.
- The proposed amendment will impose additional burdens on charities and those associated with them and give greater discretionary power to the ACNC Commissioner.

Recommendation

VolunteeringACT, in agreement with the submission published by the Community Council for Australia, strongly opposes the proposed changes to governance standard three of the *Australian Charities and Non-profits Commission Regulation 2013*.

Issues and Implications

While the implications of the proposed changes for volunteers specifically are not yet clear, VolunteeringACT identifies *three* main concerns for the volunteering sector. The proposed changes:

1. ***Increase the administrative burden on organisations.*** The proposed changes would require an organisation to “take reasonable steps” to ensure that their resources are not used to commit, or “promote or support” the commission, of a minor legal offence.ⁱ In order to comply, volunteer involving organisations would have to develop new policies and procedures to keep record on and pre-empt any potential breach of the law. According to a recent study by Volunteering Queensland, “risk, insurance and legal issues” was identified by volunteer involving organisations as their most important external issue.ⁱⁱ This comes at a time when volunteer involving organisations are already struggling. According to Volunteering Australia’s survey conducted in December 2020, 43 percent of volunteer involving organisations reported an increase in demand for services due to the COVID-19 pandemic, and 56 percent reported they need more volunteers.ⁱⁱⁱ The increased administrative burden caused by the proposed changes to governance standard three could detract critical resourcing from volunteer involvement for many organisations.

2. ***May place undue responsibility on volunteers.*** While the actions of volunteers are exempted within the proposed changes, it is not clear how volunteers who use an organisation’s resources, including its funds, websites, and social media accounts, could be affected. Particularly in organisations which are run entirely by volunteers, communications, treasurer, and events coordination roles are likely to be impacted if legal obligations become stricter. As the Community Council for Australia points out, an infringement could be as minor as a show of support on social media for a demonstration at which an offence occurs. This could potentially place undue responsibility on volunteers, and the risk that a volunteer’s actions, even indirectly, could cause their organisation to be deregistered may discourage volunteering.
3. ***Threaten the core functions of advocacy-focussed organisations.*** Awareness-raising and advocacy on important societal issues is a core function of many not-for-profit organisations, including many of VolunteeringACT’s Members. This can include supporting or promoting public actions, such as protests or marches, at which a minor offence may occur. The right of not-for-profits to advocate on the issues they work on is indispensable to social and political life in the Canberra region. It is also protected under the *Australian Charities and Not-for-profit Commission Act 2012*, and not-for-profits must remain empowered to perform this role—without the threat of deregistration.

Additional Resources

- The Hands Off Our Charities alliance, an alliance of more than 30 of Australia’s most well-established and respected charities, made a [submission](#) to the Treasury Consultation on the exposure draft of the proposed regulations.
- The Human Rights Law Centre wrote an [explainer](#) on the proposed changes, including the potential impacts.
- The Law Council of Australia made a [submission](#) highlighting the legal implications of the proposed changes, submitting that the proposed amendment is ‘unnecessary and cumbersome,’ ‘is inconsistent with the objects of the ACNC Act and the powers of the Commonwealth,’ and will constitute an ‘unreasonable and unjustifiable burden on charities.’
- Senator the Hon Concetta Fierravanti-Wells wrote a letter to Assistant Treasurer Michael Sukkar on behalf of the Committee for the Scrutiny of Delegated Legislation noting:
 1. The amendments appear to give the Commissioner a range of discretionary powers to determine whether an entity has failed to apply with the new standard, and it is unclear what the full scope of this discretionary power is.

2. There is no guidance on the scope of the Commissioner’s discretion to consult with a law enforcement agency about suspected non-compliance.
3. The new requirement for agencies to maintain “internal control procedures” is ambiguous and there is no information on what “objective test” will be used to test internal control procedures.
4. The proposed legislative instrument may not be supported by a constitutional head of power. Specifically, the instrument may restrict the implied freedom of political communication.

About VolunteeringACT

VolunteeringACT is the peak body for volunteering and community information in the Canberra region, as well as being a service provider of programs for people experiencing disadvantage and isolation, people with disability, and people needing support for mental wellness.

VolunteeringACT has a vision of an inclusive Canberra, and a mission to foster inclusion by enabling participation and connection.

VolunteeringACT connects people to volunteering opportunities; supports volunteer involving organisations with training, advice, and volunteer recruitment; makes sure information on services and supports is easily accessible to everyone through our Community Information services; supports people experiencing disadvantage; and provides programs to help people reconnect with their community and access supported volunteering roles.

VolunteeringACT is a people driven, service-focused organisation that represents the interests of 189 members, advocates for and supports volunteers, and engages with the broader Canberra community. This submission is informed by ongoing consultations with these stakeholders.

Authorisation

This submission has been authorised by the Chief Executive Officer of VolunteeringACT.



Ms Jean Giese
Chief Executive Officer

ⁱ “Exposure Draft: Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021,” https://treasury.gov.au/sites/default/files/2021-02/c2021-149084_exposure_draft_0.pdf

ⁱⁱ “State of Volunteering in Queensland 2021,” Volunteering Queensland (May 2021), <https://volunteeringqld.org.au/docs/2021/State-of-Volunteering-in-Queensland-2021-Full-Report.pdf>

ⁱⁱⁱ “Re-engaging Volunteers and COVID-19,” Volunteering Australia (February 2021), <https://www.volunteeringaustralia.org/wp-content/uploads/2021.02.08-Re-engaging-Volunteers-and-COVID-19-Report.pdf>