

**Senior Advisor**

Not-For-Profit Unit, Not-for-profits and Tax Administration Branch  
Treasury Melbourne  
Level 16, 530 Collins Street  
Melbourne VIC 3000  
[charitiesconsultation@treasury.gov.au](mailto:charitiesconsultation@treasury.gov.au)

12 March 2021

Dear Senior Advisor,

**Re: Unlawful activity - changes to the governance standards for registered charities**

I am writing to express Health Justice Australia's opposition to the proposed changes to the governance standards for registered charities, which extend the activities for which a charity may be deregistered for not complying with Australian law.

Health Justice Australia is a national charity and centre of excellence for health justice partnership. We support health and legal assistance services to work together in health justice partnership, to improve health and justice outcomes for people who experience complex, multiple and intersecting health and legal need.

- We develop evidence and translate that evidence into knowledge that is valued by practitioners, researchers, policy-makers and funders.
- We build capability to support practitioners to work collaboratively, including through brokering, mentoring and facilitating partnerships.
- We drive systems change through policy advocacy and by connecting the experience of people coming through health justice partnerships, and their practitioners, with opportunities for lasting systems change through reforms to policy settings, service design and funding.

The benefits of our work are experienced by people who are vulnerable to health-harming legal need right across Australia, including particularly people experiencing domestic and family violence, mental ill-health, interacting with the child care and protection system and Aboriginal and Torres Strait Islander people.

As a member of the Australian Council of Social Service, we endorse their submission to you.

We further iterate our own concerns on two key points.

- i. Advocacy is a key activity to improve service and system-level responses to need

Our charitable purpose is to improve health and justice outcomes for people who are vulnerable to unmet, health-harming legal need. One way we do that is by supporting health and legal assistance services to respond to the multiple, health and legal problems in people's lives. Another key way we achieve our charitable purpose is by working at the level of systems, engaging with the policy-making, service design, funding and delivery processes through which health and legal need is responded to.

Our systems-level work requires advocacy by us; by the services we work with; and by the communities whose health and legal needs we are responding to. Advocacy as a process enables us to move beyond individual instances of need and service responses to it, to enable broader impacts at both a population and a systemic level. This advocacy goes to improving the effectiveness of services that are funded by government; supporting the objectives of governments in that funding, as well as meeting the needs and concerns of communities.

Advocacy is also a key process that gives voice to injustices that are not being addressed in other ways, for instance experiences of stigma and discrimination in our health and legal systems or people experiencing violence but unable to access the services they need.

This proposed regulation would enable findings against charities on the basis of advocacy activities that the Commissioner deems offensive. Given this extraordinarily low threshold, this regulation would have a chilling effect on the critical activity of charities working towards systems-level change for organisations like Health Justice Australia. In addition to curbing an essential mechanism for freedom of expression, this regulation could reduce the effectiveness of policy objectives and service responses that drive them, eroding the advocacy activities that are often critical to systems-level change and improvement.

- ii. Principles-based regulation

The Australian Charities and Not-for-profits Commission was established on the basis of a principles-based approach to regulation. This approach reflects the evidence about the culture, legislation and policy that create the most effective systems for regulation. The establishment of a national charity regulator was not in response to failures of regulation but rather to the lack of any coherent or consistent approach to it.

The proposal to extend the definition of activities not permitted to be performed by charities runs counter to principles-based regulation. Charities should not be deregistered for committing any offence - unless that offence demonstrates the charity's purpose is unlawful. Otherwise, the laws are disproportionate and out of step with the Act and its foundational principles.

Moreover, this proposal ignores the Government's own review of the Australian Charities and not-for-profit Commission legislation in 2018, which recommended abolishing this governance standard entirely.

The proposal provides a disproportionate level of power without regulatory need or merit to the Commissioner and will undermine important and legitimate activities by charities such as Health Justice Australia.

We urge the Government to abandon this proposal for reform.

Please do not hesitate to contact me to discuss this further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tessa Boyd-Caine', written in a cursive style.

Dr Tessa Boyd-Caine, CEO