

Ms. Mary Lawlor  
United Nations Special Rapporteur on the Situation of Human Rights Defenders  
Via email: [defenders@ohchr.org](mailto:defenders@ohchr.org)

Ms. Irene Khan  
United Nations Special Rapporteur on the Right to Freedom of Expression  
Via email: [freedex@ohchr.org](mailto:freedex@ohchr.org)

Mr. Clement Nyaletsossi Voule  
United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association  
Via email: [freeassembly@ohchr.org](mailto:freeassembly@ohchr.org)

*Copied to:*

[urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

Hon Michael Sukkar MP  
Assistant Treasurer  
Via email: [michael.sukkar.mp@aph.gov.au](mailto:michael.sukkar.mp@aph.gov.au)

22 July 2021

**Re: Request for intervention in relation to proposed regulations to restrict charities' advocacy in Australia**

We write to respectfully request your urgent intervention in relation to new regulations<sup>1</sup> proposed by the Australian Government. The regulations could stop charities and the communities they support from participating in, or otherwise supporting, peaceful assemblies in breach of the rights to freedom of expression and assembly, which are protected under international human rights law. The regulations continue a pattern of punitive regulatory overreach targeting charities on the part of the Australian Government.

If made, the regulations:

- could see charities deregistered for organising, promoting or having a presence at common peaceful assemblies involving a minor offence, such as blocking a footpath;
- could see charities deregistered if community groups use the charities' resources to plan a peaceful assembly involving a minor offence, even if the charity had no knowledge of it;

---

<sup>1</sup> The proposed *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021* (Cth) can be found here: <https://www.legislation.gov.au/Details/F2021L00863/Html/Text>.

- could see charities deregistered on a preemptive basis, for what the regulator believes the charity is “likely” to do in the future; and
- would introduce burdensome red tape and paperwork for virtually every one of Australia’s 59,000 charities and, again, threaten them with deregistration if they fail to comply.

For charities in Australia, deregistration means the loss of access to funding needed to deliver their vital services and advocacy. Collectively, the effect of these regulations would be to stifle legitimate policy advocacy by civil society in Australia and restrict the ability of grassroots movements to organise peaceful assemblies. As 78 charities said in an open letter to the Australian Prime Minister recently, the regulations threaten to “shut [them] down for speaking out”.<sup>2</sup>

The Australian Government has sought to justify these regulations by claiming that political activists are “masquerading as charities” and breaking the law through “illegal blockades”.<sup>3</sup> However, the head of the Australian Charities and Not-for-profits Commission (ACNC) Dr Gary Johns has admitted that the issue of charities breaking the law in an “activist context” was not a widespread problem, and has led to only two charities being deregistered in his almost four years as ACNC Commissioner.<sup>4</sup>

These measures come at a time when charities are stretched to capacity in supporting Australia’s communities through unprecedented crises, from catastrophic bushfires and floods, to helping people through the pandemic and economic recession. These regulations will stifle important advocacy by civil society when the country needs it most.

We anticipate that the regulations will come before the Federal Parliament in early August. Once introduced, they automatically become law after 15 parliamentary sitting days unless disallowed by a majority of the Upper House of Australia’s Federal Parliament.

### **Context – a pattern of silencing charities**

In his 2018 report on the situation of human rights defenders on his mission to Australia, former Special Rapporteur on the Situation of Human Rights Defenders Mr Michel Forst said he was “astonished to observe mounting evidence of a range of accumulative and persistent

---

<sup>2</sup> Open letter to the Prime Minister: Don’t shut our charities down for speaking out, published in *The Australian* 24 June 2021, available at <https://hooc.org.au/wp-content/uploads/2021/06/HOOC-full-page-ad-Letter-to-the-PM-June-2021.pdf>.

<sup>3</sup> M Sukkar MP, “Protecting Workers from Illegal Activity”, *Media Release*, 9 March 2021.

<sup>4</sup> G Johns, Senate Economics Legislation Committee, 2 June 2021, at 43.

measures that have levied enormous pressure on Australian civil society”.<sup>5</sup> The Special Rapporteur highlighted the drastic defunding of peak bodies, the targeting of organisations that litigated on sensitive issues such as land rights protection for First Nations people and immigration; and amendments to electoral laws which would have silenced an enormous number of charities from doing advocacy in the lead up to elections.

The new regulations currently being proposed by the Australian Government are a continuation of this noted trend towards silencing advocacy by Australian civil society, instead of welcoming it as part of a healthy democracy.

### **About the proposed regulations**

There are approximately 59,000 charities in Australia registered with the charities regulator, the ACNC.<sup>6</sup> Registration under the *Australian Charities and Not-for-Profits Commission Act 2012 (Cth) (Act)* is a necessary precondition for access to funding, without which many charities would be unable to continue important service delivery and advocacy on behalf of their communities.

In order to remain registered with the ACNC, charities must comply with the ACNC’s governance standards contained in the *Australian Charities and Not-for-Profits Commission Regulation 2013 (regulations)*, including governance standard 3 which deals with compliance with Australian laws.

The Australian Government has proposed changes to governance standard 3 to significantly broaden the basis upon which the ACNC Commissioner could deregister a charity by:

- (i) expanding the offences for which a charity may be deregistered to include minor (summary) offences; and
- (ii) stipulating that charities will face deregistration for not only engaging in such conduct, but for failing to maintain “reasonable internal control measures” to ensure its resources are not used by others to actively promote such conduct.

---

<sup>5</sup> M Forst, *Report of the Special Rapporteur on the Situation of Human Rights Defenders on his mission to Australia: note by the Secretariat*, 28 February 2018, A/HRC/37/51/Add.3, at [19].

<sup>6</sup> Australian Government, ‘Are there too many charities in Australia?’ *Australian Charities and Not-for-profits Commission*, available at <https://www.acnc.gov.au/for-public/understanding-charities/are-there-too-many-charities-australia#:~:text=Many%20members%20of%20the%20public,resources%2C%20wish%20there%20were%20fewer.>

Further, a charity could be deregistered under these proposed regulations even if *no offence has been committed by anyone*, because:

- (a) the ACNC Commissioner may deregister a charity on the basis that they think the charity is likely to do an act at some point in the future<sup>7</sup> ;
- (b) the regulation would not require the ACNC Commissioner to conclude that the charity, its staff or another entity have actually committed an offence, only that they have done acts that *may* be dealt with as an offence;<sup>8</sup> and
- (c) the ACNC Commissioner may deregister a charity if they consider that the charity does not have “reasonable internal control procedures” in place, or its documentation of them is insufficient.

### **The regulations would impose an unnecessary and unreasonable limitation on the rights to freedom of assembly and expression**

We believe that the proposed regulations breach articles 19 and 21 of the *International Covenant on Civil and Political Rights*. The proposed regulations would unnecessarily and unreasonably limit the rights to freedom of expression and of assembly by giving excessively broad powers to the ACNC Commissioner to deregister charities that organise, promote or attend peaceful assemblies or support grassroots community movements to do so.

Under international law, freedom to organise and participate in public assemblies must be guaranteed to individuals, groups and legal entities.<sup>9</sup> Further, the exercise of the right of peaceful assembly should not be subject to prior authorisation by authorities.<sup>10</sup>

The proposed regulations would empower the ACNC Commissioner to deregister charities for planning, organising, promoting, attending or advertising peaceful assemblies where people are likely to breach minor laws associated with being on, or remaining on, property. In Australia, there are a great many minor offences, such as blocking a footpath or an entry to a business, that are easily committed during a peaceful assembly. To avoid such an outcome, a charity could effectively only support, promote or attend a peaceful assembly that has had prior authorisation by police. The regulations therefore serve as a restriction on the freedom of expression and peaceful assembly.

---

<sup>7</sup> Section 35-10 *Australian Charities and Not-for-profit Commission Act 2021* (Cth).

<sup>8</sup> A note in the proposed regulations states that the ACNC Commissioner “may” consult with a law enforcement agency, but they are not required to. It is entirely possible under this proposal, that the ACNC Commissioner deregisters a charity, but afterwards police drop an investigation into that charity for lack of evidence, or because a defence is substantiated.

<sup>9</sup> Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE), *Guidelines on Freedom of Peaceful Assembly* (2010), at [2.5].

<sup>10</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, A/HRC/31/66, at [21].

The regulations are unnecessary and not in pursuit of any legitimate end. The ACNC Commissioner already has the power to deregister charities it deems to have committed a serious (indictable) criminal offence. As noted above, the ACNC Commissioner has stated this is not a widespread problem.

Further, the Australian Government is seeking to significantly broaden the scope of a governance standard that its own review recommended be abolished. To justify the changes, the Government has stated that it is required to implement a recommendation of the *Strengthening For Purpose: Australian Charities and Not-For-Profits Commission Legislation Review of 2018*. However, that Review specifically recommended removing the existing governance standard 3 altogether because it “is not appropriate” to have the ACNC Commission perform a general policing function.<sup>11</sup>

In addition to being unnecessary, the proposed regulations are unreasonably and excessively broad. If these regulations were made in their current form, charities could be deregistered or sanctioned for:

- (i) lawful advocacy, such as tweeting about an assembly where people are peacefully blocking the entrance to a business;
- (ii) setting up an email group for a local community group which (without the charity’s knowledge) then uses it to plan a peaceful assembly involving a minor trespass, like a sit-in at the office of a Member of Parliament; and
- (iii) failing to implement, or document, policies and procedures that control how staff and volunteers may behave.

The regulations also subject charities to the risk of deregistration on the basis of poorly defined and highly subjective criteria. For instance, the ACNC Commissioner must determine what it means to “actively promote an act... that *may* be dealt with as an offence” and whether a charity has maintained “reasonable internal control procedures”, which are not exhaustively defined. The Commissioner must also have regard to the “nature and significance” of the breach and the extent to which the actions may have harmed “public trust”.<sup>12</sup>

Finally, the Australian Government’s conduct contradicts the Human Rights Council’s recent resolution on Civil Society Space, which Australia actively supported. That statement, having recognised that the pandemic has exacerbated “the use of legal and administrative measures to restrict civil society activity”, went on to reaffirm the importance of maintaining an enabling

---

<sup>11</sup> P McClure, G Hammond, S McCluskey, M Turnour, *Strengthening For Purpose: Australian Charities and Not-For-Profits Commission Legislation Review of 2018*, May 2018, at 47.

<sup>12</sup> See subsection 35-10(2) of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), available here: <https://www.legislation.gov.au/Details/C2021C00153>.

environment in which civil society can operate free from hindrance, and encouraged states to take every opportunity to support diversity of civil society participation.<sup>13</sup>

### **Request for action**

A broad sector of civil society strongly opposes the regulations, including First Nations groups, human rights organizations, churches, conservation groups, the legal profession and international aid organisations, fearing the breadth of the new rules and subjectivity of their enforcement will have a chilling effect on civil society advocacy across the board.

Once the regulations are introduced in Parliament by the Australian Government in early August this year, they will automatically become law within 15 parliamentary sitting days unless disallowed by a majority of the Upper House of Parliament.

The below signed organisations respectfully request that you take urgent action with a view to ensuring that the Australian Government refrains from introducing the regulations on the basis that they unnecessarily and unreasonably infringe on the rights to freedom of assembly and of expression. We believe that a communication to the Australian Government and a media statement by your mandates, calling on it to refrain from introducing the regulations, could provide an important and influential contribution to charities' advocacy efforts.

We would be pleased to provide you with any further information that might be of use.

Yours sincerely



Alice Drury

Senior Lawyer

Human Rights Law Centre



Ian Wishart

CEO

The Fred Hollows Foundation

---

<sup>13</sup> Human Rights Council, *Civil society space: COVID-19: the road to recovery and the essential role of civil society*, 47th Session, 5 July 2021, A/HRC/47/L.1.

Esme Bamblett

Chairperson

Aboriginal Executive Council

Lyn Morgain

Chief Executive

Oxfam Australia

Dr Cassandra Goldie

CEO

Australian Council of Social Service

Nicole Hornsby

Executive Director

Baptist Care Australia

Samantha Klintworth

National Director

Amnesty International Australia

Claire Victory

National President

St Vincent de Paul Society National Council

Claerwen Little

National Director

UnitingCare Australia

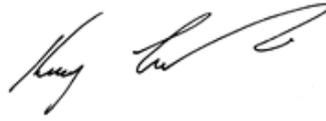
Marc Purcell

CEO

Australian Council for International Aid Development



George Selvanera  
Acting CEO  
Victorian Aboriginal Legal Service



Kasy Chambers  
Executive Director  
Anglicare Australia