

AMENDMENTS TO ACNC REGULATIONS - RISKS FOR CHRISTIAN CHARITIES

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The proposed amendments to ACNC governance regulations¹ (**amendments**) will extend ACNC powers to impose serious penalties on charities (including deregistration) for activities that are summary offences under Australian law.

Christian charities are concerned that these amendments will enable ACNC to target Christian charities, schools and churches.² This memorandum outlines the potential risks to these charities and identifies types of summary offences that ACNC could use to target Christian charitable organisations.

SUMMARY

1. Christian charities, schools and churches face increased risks of ACNC sanction if the amendments come into force. ACNC could deregister Christian charities in the following circumstances:
 - 1.1. an anti-slavery charity in Victoria where a volunteer is targeted under vilification laws for speaking out against an ethnic or religious group that is involved in modern slavery;
 - 1.2. a Christian school in the ACT that is targeted by activists for “conversion therapy” for teaching students about identity and sexuality according to the Bible;
 - 1.3. *A church in Victoria could be deregistered* for publishing advertising material that indicates or could even be reasonably understood to indicate that the church, or any other person, intends to engage in a conversion practice. Because of the very broad definition of ‘conversion practice’ under the Victorian legislation this could capture advertisements for church conferences and seminars that cover the topic of Biblical sexuality.
 - 1.4. a pro-life organisation’s rally where a participant is charged with obstructing traffic.
2. The amendments will set an extremely low threshold for potential ACNC action against Christian charities.
3. This risk could be mitigated by amending proposed paragraph 45.15(2) (aa)(iv) of the ACNC regulations to only apply to summary offenses dealing with “real or threatened bodily harm to a person”. This would limit the risk to Christian charities of deregistration by raising the threshold for offenses that enliven ACNC powers.

¹ Set out in the *Australian Charities Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021* (Cth)

² <https://freedomforfaith.org.au/articles/submission-to-treasury-proposed-amendment-to-governance-standard-3/>; <https://probonoaustralia.com.au/news/2021/08/they-are-not-just-an-attack-on-charities-they-are-an-attack-on-democracy/>

LEGAL ANALYSIS

Proposed Amendments to the ACNC Governance Standards

4. Christian charities that are registered with the ACNC are subject to the governance standards, set out in detail in the *Australian Charities Not-for-profits Commission Regulations 2013 (Cth) (Regulations)*.³
5. The amendments will amend ACNC *Governance Standard No.3*⁴ which regulates compliance with Australian laws.
6. If a charity fails to keep the governance standards, the Commissioner can de-register a charity.⁵ The Commissioner may also take the following action:
 - 6.1. issue a formal warning;
 - 6.2. compel the charity to provide information;
 - 6.3. give a direction to the charity to do something to address the failure; and
 - 6.4. suspend or remove a director on the charity's board.
7. The amendments are designed to allow regulatory action against charities which organise events at which anti-social conduct is often a key feature. It will allow ACNC to sanction charities that organise protest activities that get out of control and cause damage to people and property. An example of this would be Extinction Rebellion protests where protestors glue themselves to the pavement or cover public buildings with paint and graffiti.
8. Christian organisations and charities are not the target of the amendments and so the risk is low at first instance. Christian groups do not engage in radical or violent protest or mobilise their supporters to vandalise property or abuse other people as part of their lobbying activities.
9. However, as was seen with Federal foreign interference laws in 2019⁶, the government agencies policing these types of laws will often use them to target conservative and religious organisations.
10. In particular, the amendments will insert a new paragraph 45.14(2)(aa) to allow ACNC to take action against a charity where it engages in conduct that may be dealt with as a summary offence⁷ and the offence relates to:
 - (i) *entering into or remaining on real or personal property; or*
 - (ii) *destroying or damaging real or personal property; or*
 - (iii) *appropriating personal property belonging to another entity; or*

³ *Australian Charities Not-for-profits Commission Regulation 2013 (Cth)*, Div 45.

⁴ [ACNC Governance Standard 3](#)

⁵ *Australian Charities Not-for-profit Commission Act 2012 (Cth)*, ss35-1(b) & 35-10(1)(c)(ii).

⁶ <https://www.straitstimes.com/asia/australianz/aussie-foreign-influence-scheme-under-fire>

⁷ *Australian Charities Not-for-profits Commission Regulation 2013 (Cth)*, reg 45.15.

(iv) *causing personal injury to an individual, or any other kind of impairment of an individual's health, including the risk or threat of causing such injury or impairment.* (emphasis added)

11. The highlighted words above will extend ACNC's powers in ways that are concerning to Christian charities. "Impairment of an individual's health" is a vague and nebulous term. It will include not just physical injury but also psychological harms, no matter how minor or temporary such harms might be, that might be the subject of a summary offense.
12. As States and Territories continue to create summary offenses that relate to dignitary non-physical "harms" by speech and even religious activities such as prayer (such as vilification laws and conversion therapy laws), religious charities are increasingly at risk.
13. These new offences uniquely prejudice Christians and the manifestation of Christian belief.

Examples of Potential Risks to Christian Charities

14. Below are examples of how Christian charitable organisations could be adversely affected by the amendments in ways which are unlikely to come within the intent of the Regulations.

Example 1 – Christian charity that campaigns against illegal trafficking overseas.

15. A Christian charity that advocates against unjust laws and trafficking in other countries could have a worker or volunteer who speaks out against an ethnic or religious group that is oppressing a minority. This could see the charity de-registered.
16. Victorian law contains some summary criminal offences for serious religious or racial vilification under the *Racial and Religious Tolerance Act 2001*.⁸
17. These offences make it a crime to intentionally engage in conduct the offender knows is likely to incite hatred against another person and to threaten or incite others to threaten the person with physical harm on the grounds of their race or religion.
18. The outspoken volunteer could publish a comment on the charity social media account that could breach this offence and therefore breach the governance standard by creating a risk of harm, triggering the Commissioner enforcement powers set out above and endangering the charity's registration.

Example 2 – Christian school that provides counselling to students

19. Christian schools could be deregistered for providing counsellors who pray with students.
20. All conversion therapy legislation that is passed poses a particular risk to Christian charities and schools under the proposed amendments. One example of a relevant offence from these laws is the offence of performing a conversion practice on a protected person under the ACT *Sexuality and Gender Identity Conversion Practices Act 2020*.⁹

⁸ *Racial and Religious Tolerance Act (VIC)*, ss24-25.

⁹ *Sexuality and Gender Identity Conversion Practices Act 2020 (ACT)*, s8.

21. This offence makes it a criminal act to persuade or pray for a child in order to change or suppress their sexuality.
22. Independent Christian schools often register as charities with the ACNC. These schools are usually formed by associations of Christian parents who want to educate their children in accordance with their orthodox Christian beliefs. A school would be at risk if it provided a chaplain or counsellor who prayed for a teenager who asked for prayer because of their struggle with same-sex attraction.
23. This prayer could be caught under the ACT offence, which would be a breach of the governance standard. This could trigger the Commissioner enforcement powers and de-register the school as a charity.

Example 3 – A Church that runs teaching seminars for its members on Biblical sexuality

24. The Victorian *Change or Suppression (Conversion) Practices Act 2021* includes a summary offence for publishing advertising material that indicates or could even be reasonably understood to indicate that the advertiser, or any other person intends to engage in a conversion practice.
25. Because of the very broad definition of ‘conversion practice’ under the Victorian legislation this could capture advertisements for church conferences and seminars that cover the topic of Biblical sexuality.
26. If a local church minister published any material that could be construed in this way, the amendments could cause the church to breach the governance standard for engaging in an activity that could be dealt with as a summary offence that relates to the risk of impairment or harm to others, triggering the Commissioner enforcement powers.

CONCLUSION

27. For the reasons set out above, we consider that the amendments to the governance standards present a moderate risk to Christian charities, schools and churches. These risks could be significantly addressed with some minor adjustments to the proposed amendments as set out in this memorandum.