

28 July 2021

Senator the Hon. Concetta Fierravanti-Wells
Chair, Senate Standing Committee for the Scrutiny of Delegated Legislation
Via Email: senator.fierravanti-wells@aph.gov.au

CC: Senator the Hon. Kim Carr, Deputy Chair
Senator Raff Ciccone
Senator Perin Davey
Senator Nita Green
Senator Paul Scarr

Dear Senator Fierravanti-Wells,

RE: Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021

I refer to the above mentioned regulations and your letter to the Assistant Treasurer sent on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation of 15 July 2021 re same. We write to you in your capacity as Chair.

While not holding charitable status, the New South Wales Council for Civil Liberties (NSWCCL) stands with Australian charities in opposing the regulations. We write to commend you and the Committee for taking a strong stance in calling the government to account about the sweeping powers created by the regulations. We respectfully agree with the contents of your letter and the questions that you have posed to the Assistant Treasurer.

Charities make an important contribution to the civic life of Australia. They are built by communities for communities and should be allowed to continue their work to advance beneficent aims and objectives unencumbered by unnecessary regulation and scrutiny. Charities should least of all be subject to regulation, such as those that are the subject of this letter, which could impose significant limitations on their actions and speech.

Despite any responses to your letter from the Assistant Treasurer, NSWCCL cannot see how any amendments to the Explanatory Statement of the regulations could cure the defects contained within. We cannot see how the regulations should be allowed to stand for want of justification and in such impermissibly broad form. Accordingly, we urge you and the Committee to continue to call the Executive to account by moving a disallowance motion against the regulations.

Our opposition to the regulations coalesces around three themes:

- 1) Firstly, we cannot see how the regulations are necessary. Charities engage in peaceful and law abiding work, which often reduces government's burden, or augments governmental service delivery. From time to time, officers of charities may be subject to questions regarding misconduct or criminal activity, but there are already avenues for the misconduct to be investigated and properly punished, including through the criminal law. The Australian Charities and Not-for-profits Commissioner (the Commissioner) should not be empowered to further punish charities when there are already remedies available to prevent and punish misconduct. We accept that there is a public interest in ensuring that charities are well run and organised, but we do not see the present regulations as an appropriate or necessary example of such a measure.
- 2) Secondly, the powers conferred on the Commissioner are impermissibly broad and without clear guidance to the Commissioner as to when and how discretion should be exercised the sanction charities. NSWCCCL has consistently argued before your committee and others against the expansion of government power through delegated legislation which affords broad discretion to officers of the executive branch. Particularly where measures which can be seen in no other way than punitive are concerned, such measures should be adopted through clearly expressed, and where necessary, circumscribed, powers and enacted through parliamentary processes. This would allow such measures to be properly scrutinised through the parliamentary process.
- 3) Thirdly, the regulations impose a disproportionate burden on the constitutionally implied freedom of political communication. In circumstances where avenues already exist to punish misconduct, these regulations are surplus to any regulatory requirements for punishing such conduct. Moreover, the regulations could conceivably target charities for merely attending or promoting protests where summary offences are committed of which the charities have no knowledge or involvement. This burden is significant and impermissible. The regulations serve to place real limitations on the way in which charities would engage in political communication and public assembly and contribute to our healthy and vibrant democracy.

We reiterate our thanks to you and the Committee for your important work in holding the Executive to account in relation to these regulations, and we trust that you will continue this important work by moving for their disallowance.

Yours sincerely,



Pauline Wright
President
NSW Council for Civil Liberties