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22 December 2020

BY EMAIL

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Dear Sir/Madam

Submission: Incentivising relevant charities to join the National Redress Scheme for Child Sexual Abuse – New ACNC Governance Standard

Thank you for the opportunity to provide written feedback on the draft regulation and explanatory memorandum for the new governance standard in the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) (**Regulation**). This new governance standard requires registered entities to take all reasonable steps to participate in the National Redress Scheme for Child Sexual Abuse (**Redress Scheme**) if they have been, or are likely to be, identified as being involved in the abuse of an applicant under the Redress Scheme.

1 Professional Background

I lead the Sydney Charity and Not-for-profit team at Mills Oakley, an Australian national law firm offering legal services across a range of key commercial practice areas.

I have over 25 years' experience acting for numerous charities, religious and other not-for-profit organisations. I sit on a number of boards and committees including the ACNC Professional User Group, Eric Dare Foundation, the Cemeteries & Crematoria NSW Community and Consumer Consultative Group, and Everyday Justice.

My team at Mills Oakley regularly assists clients on governance issues, and frequently advises organisations on Australian Taxation Office (**ATO**) and ACNC endorsements, constitutions, mergers, structural issues and social enterprises. A significant part of our practice is advising on DGR endorsement. Some of our key clients include the Australian Catholic University, Australian College of Nursing, Providential Homes Ltd and Omnicare Alliance.

2 **Draft Amendment Regulation and Explanatory Memorandum**

2.1 **Introduction**

The Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) was endorsed for the purpose of inquiring into and reporting upon allegations of sexual abuse of children in institutional contexts. The Royal Commission found abuse of thousands of children in numerous institutions, over the span of fifty years. In response to the findings of the Royal Commission, the introduction of the *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 1) Regulations 2021* (**Amendment Regulation**) will act to acknowledge the wrongs committed against the survivors of institutionalised child sexual abuse, in a way that makes these institutions accountable for the conduct that occurred within their respective organisations. The introduction of the governance standard is necessary to ensure that institutions will provide the survivors with redress, because of the organisations' involvement in the institutionalised sexual abuse of children.

2.2 **Law Reform**

Enforcing the Redress Scheme has proven to be difficult, with not all of the institutions recognised in the Royal Commission signing up to the Redress Scheme. We agree that the introduction of governance standard 6 is necessary for these institutions to be made accountable by joining the Redress Scheme and compensating for any necessary redress.

However, we do suggest that additional guidance be provided to institutions by the Australian Charities and Not-for-profits Commission (**ACNC**). This additional guidance would indicate how organisations can identify whether they are likely to be named in an application under the Redress Scheme. The ACNC's role is to educate organisations on compliance with legal requirements and, therefore, we see this guidance as part of the ACNC's role as it would enable organisations to appropriately manage the risk.

(a) Penalties

The penalties for governance standard 6 are consistent with the other governance standards under the Regulation. Therefore, we submit that the penalties are appropriate.

The nature of the penalties are effective to pressure organisations into being accountable under the Redress Scheme, as their charity status could be revoked and, thus, exclude them from access to particular government funding, tax exemptions, benefits and concessions.

(b) Reasonable Steps

The governance standard requires the organisation to take reasonable steps to join the Redress Scheme, if they are likely to be named, or have been named, in an application. Compliance with this governance standard will be determined on an objective basis by the ACNC. Applying an objective test is appropriate to place the responsibility of the institution to justify that reasonable steps were taken, but also minimize as much subjective judgment and bias as possible. In the circumstances of allegations of sexual assault basing a decision on the facts is important to not give someone else's opinion more weight than it warrants.

(c) Knowledge of an Application under the Redress Scheme

We believe it will be difficult to monitor the enforcement of the standard upon an organisation that has not yet been named in an application under the Redress Scheme, as this appears to be at the discretion of the Commissioner. We suggest that there be additional guidance of what is required of an institution to determine whether they are likely to be named in an application under the Redress Scheme. Providing further guidance will appropriately manage the risk being placed on the institution.

Further, an institution that is not reasonably aware that it may be responsible for past institutional child sexual abuse is not required under the governance standard to take reasonable steps to participate in the Redress Scheme. We believe this to be appropriate so as to not disadvantage organisations that have not been involved in institutionalised child sexual abuse.

3 Conclusion

We submit that the introduction of the new governance standard will be influential in providing the necessary redress to survivors of institutionalised sexual abuse. Each organisation that is involved in the facilitation of abuse will be made accountable for its actions by being penalised for not opting into the Redress Scheme.

If you have any questions or requires further information regarding our comments, please do not hesitate to contact me.

Yours sincerely



**VERA VISEVIC
PARTNER**