

TREASURY'S NOT-FOR-PROFIT REFORM FACTSHEET

THE ACNC EXPOSURE DRAFT THE ACNC AND ADVISORY BOARD

9 December 2011

AT A GLANCE

The Assistant Treasurer, the Hon Bill Shorten MP, today released exposure draft legislation for the establishment of the Australian Charities and Not-for-profits Commission (ACNC). The exposure draft and explanatory materials can be found at www.treasury.gov.au.

Submissions on the exposure draft materials are due on 20 January 2012. Queries and submissions should be sent to NFPReform@treasury.gov.au.

KEY FACTS

The exposure draft establishes the ACNC, the role of the Commissioner of the ACNC, and the Advisory Board to the ACNC.

In the 2011-12 Budget, the Assistant Treasurer and the Minister for Social Inclusion announced that the Government would provide \$53.6 million over four years to establish a one-stop shop for the support and regulation of the NFP sector and related structural changes required to the ATO.

This reform follows a number of reviews into this issue, most recently, the Treasury's *Final Report on the Scoping Study for a National Not-for-profit (NFP) Regulator*. The reform has also been strongly endorsed by the NFP sector.

THE ACNC

The ACNC will commence operations from 1 July 2012.

The ACNC will consist of a Commissioner, and staff made available to the Commissioner of the ACNC by the Commissioner of Taxation. Although staff will be provided by the Commissioner of Taxation, they will be officers of the ACNC and report to the Commissioner of the ACNC. A recruitment process is currently underway to employ staff for the ACNC. Details can be found on the ACNC Implementation Taskforce website.

The Commission's main function will be to assist the Commissioner in administering the ACNC legislation. Funding for the ACNC will be provided through a statutory account. This will ensure that the Commissioner's budgetary matters are independent from those of the Commissioner of Taxation.

THE COMMISSIONER

A Commissioner of the ACNC will be appointed to oversee the functions of the ACNC. The Commissioner will be a fully independent statutory office holder, and will provide reports directly to Parliament via the Assistant Treasurer.

The Commissioner's annual report to the Assistant Treasurer will include an evaluation of the ACNC's overall performance during the year.

The Commissioner will be appointed by the Governor-General, on a full-time basis, for a period of 5 years or less. Once this appointment period has expired, the Governor-General may reappoint the Commissioner for a further period.

The Governor-General may also terminate the Commissioner's appointment in certain limited circumstances.

THE ADVISORY BOARD

An ACNC Advisory Board of legal, accounting and NFP experts will be established which will advise the Commissioner in carrying out the functions of the ACNC.

The Advisory Board will consist of between two and eight members, with one of these members being the Chair of the Advisory Board. The Government announced on 27 May 2011 that the new chair of the Advisory Board will be Mr Robert Fitzgerald AM.

The Advisory Board may also contain ex-officio members chosen by the Government to ensure a whole of government perspective is taken on ACNC decisions.

TAX CONCESSIONS

The Commissioner of Taxation will retain responsibility for administering tax concessions for the NFP sector. This seeks to address sector concerns regarding a perceived conflict of interest between determining charitable status and the role of administering tax concessions.

However, there will be a seamless application process, so that applications for both charity and tax concessions will be applied for on the one form.

FREQUENTLY ASKED QUESTIONS

Which body is currently responsible for the regulation of the NFP sector?

Currently, there is no single authority responsible for the regulation of the NFP sector. In the absence of a single regulator, the ATO has become the de facto regulator for the NFP sector.

The ATO currently acts as a default regulator of charities at the Commonwealth level through its role of endorsing tax exempt charities, and administering NFP tax concessions. The current law requires charities to be endorsed by the ATO as a charity to access tax concessions ear-marked for charities.

ASIC has a smaller role and currently regulates and registers those NFP entities that are constituted as companies limited by guarantee.

Other regulation of the NFP sector is carried out by the various states and territories, which each have their own regulatory and reporting requirements.

The states and territories regulate incorporated associations and charitable trusts (although public and private ancillary funds are regulated at the Commonwealth level) as well as fundraising activities and impose reporting and governance requirements on entities which receive state government funding.

Has there been any previous support for a single regulator of the NFP sector?

Yes, there have been six reviews into the regulation and taxation of the NFP sector in Australia over the last 16 years. The sector has largely supported the recommendations made by these reviews.

A consistent theme has emerged from these reviews that the regulation of the NFP sector should be significantly improved by establishing a national regulator and harmonising and simplifying regulatory and taxation arrangements.

Who will the Commissioner be?

The Commissioner will be appointed following a merits-based selection process.

The Commissioner will be formally appointed by the Governor-General and will have extensive experience in the NFP sector and regulatory issues.

What is the Advisory Board?

The Advisory Board of the ACNC will be responsible for providing advice and making recommendations to the Commissioner in relation to the Commissioner's functions.

The Advisory Board will have specific expertise in the NFP sector, and other appropriate experience (that is, taxation, law, and/or accounting).

The Advisory Board will be made up of between two and eight members, with one of these being the Chair, and they will meet at least 4 times a year.

The Assistant Treasurer announced on 27 May 2011 that the new chair of the Advisory Board assisting the ACNC will be Mr Robert Fitzgerald AM. Mr Fitzgerald has extensive experience in the NFP sector, having chaired the 2001 review, *Report of the Inquiry into the Definition of Charities and Related Organisations*. He was also a Commissioner on the 2010 Productivity Commission Inquiry.

What will the ACNC mean for me?

If you are a responsible individual of an NFP entity seeking charitable, public benevolent institution, or other Commonwealth benefits for charities, the ACNC will be responsible for registering and regulating your entity from 1 July 2012.

The ATO will retain responsibility for the determination of your tax concessions, but they will take the ACNC's registration as given, and not inquire further in that regard.

If you are part of a company limited by guarantee, you will still be incorporated by ASIC but ongoing regulatory functions relating to your status as a registered entity will shift to the ACNC from 1 July 2012 with respect to governance, and 1 July 2013 with respect to reporting.

How will members of the Advisory Board be appointed?

Members of the Advisory Board will be appointed by the Assistant Treasurer following a merits-based selection process.

The members must have expertise relating to charities and NFP entities, and experience and appropriate qualifications in relation to law, taxation and/or accounting.

The Remuneration Tribunal will determine the remuneration entitlements of the Advisory Board.

The Advisory Board will advise the Commissioner, but will not be a decision making body.

Will the ACNC be independent?

Yes, the ACNC will be an independent statutory office.

If the ATO is providing corporate and IT support, will the ACNC be independent?

Yes, the ACNC will be independent from the ATO. The ACNC will make its own decisions and will have its own budget through a special account established by the legislation.

The ATO will retain responsibility for the determination of your tax concessions, but they will take the ACNC's registration as given, and not inquire further in that regard.