

TREASURY'S NOT-FOR-PROFIT REFORM FACTSHEET

THE ACNC EXPOSURE DRAFT CONSEQUENTIAL AMENDMENTS

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 Government's 2011-12 Budget announcement to establish the ACNC, provided that the ACNC would register NFPs (including charities) for all Commonwealth purposes.

In order to facilitate this and to ensure that the ACNC acts as a 'one-stop shop' to simplify regulatory interactions, there will need to be a large number of consequential amendments to Commonwealth legislation relating to NFPs.

The ACNC exposure draft does not yet include all provisions which will be incorporated in the final Bill. In particular the exposure draft does not yet address the consequential amendments that will need to be made to simplify regulation of NFPs. Consequential amendments will be covered in the final legislation.

WHAT ARE CONSEQUENTIAL AMENDMENTS?

Consequential amendments are modifications to existing legislation. As with many major reforms, the establishment of the ACNC as a 'one-stop shop' for the NFP sector will require consequential changes to legislation which currently applies to the NFPs (including charities).

The primary reason for these consequential amendments is to ensure that registration with the ACNC is required for accessing all Commonwealth exemptions, concessions and benefits.

The second type of consequential amendments will be amendments which remove regulatory duplication.

These will be necessary as, in the absence of centralised regulation, there are a number of Commonwealth agencies which are currently involved in the regulation of the NFP sector. For example, the Australian Taxation Office (ATO) currently acts as a default regulator of NFPs (including

charities) at the Commonwealth level through its role of endorsing tax exempt charities, and administering NFP tax concessions. In addition, the Australian Securities and Investments Commission (ASIC) currently regulates and registers those NFP entities that are constituted as companies limited by guarantee and some incorporated associations that operate in more than one state or territory.

WHAT ISSUES WILL THE CONSEQUENTIAL AMENDMENTS COVER?

The consequential amendments will cover a range of issues, to ensure that other legislation is updated to reflect the changes that the ACNC legislation proposes for the regulation of NFPs. The process to identify regulatory duplication at the Commonwealth level is already underway.

These changes will be technical in nature and will amend other Acts such as the taxation laws and other Commonwealth laws that relate to the NFP sector.

Some examples of areas where consequential amendments will be required are outlined below:

- the ATO will retain responsibility for the determination of an NFP's tax concessions, but they will take the ACNC's registration as given.
- in relation to companies limited by guarantee, these will still be incorporated by ASIC but ongoing regulatory functions relating to their status as a registered entity will shift to the ACNC:
 - governance: 1 July 2012;
 - reporting: 1 July 2013.
 - reporting and governance arrangements will be streamlined for all NFPs. This will require consequential amendments to legislation which currently mandates reporting and governance for NFPs.
- other Commonwealth legislation that refers to the term 'charity'.

FREQUENTLY ASKED QUESTIONS

Will the consequential amendments be released for public consultation before it is introduced into Parliament?

The exposure draft does not yet include consequential amendments. The consequential amendments tend to be very technical in nature and as such will not be the subject of a separate public consultation process. However, they may be the subject of a further targeted consultation on technical issues with specialist advisers.

Will the consequential amendments address areas that are currently covered by State and Territory laws?

Currently, Commonwealth, State, Territory and local governments regulate different parts of the NFP sector for both different and overlapping purposes. For example, these laws provide tax concessions, exemptions from registration and permit requirements and limitations on legal liability, and impose fundraising and lottery regulations.

The Government will be making consequential amendments to reduce reporting and red tape for NFPs at the Commonwealth level ready for the ACNC's commencement on 1 July 2012.

In order to further reduce duplication and regulatory burden the Commonwealth will work with the States and Territories on national regulation for the NFP sector.

My entity is endorsed as a charity by the ATO. What will happen once the ACNC begins operations?

The ACNC will be responsible for the determination of charitable status for entities which receive government exemptions, concessions or benefits and the regulation of charities at the Commonwealth level, this role is intended to include other parts of the NFP sector over time.

The ATO will continue to administer the tax system, including access to tax concessions, as the ATO is the Government's principal revenue collection agency. The ATO will accept the ACNC's determination of charitable status.

The consequential amendments will make the changes necessary to establish a framework whereby the ATO must accept the ACNC's determination of charitable status, and will only assess any further conditions that must be met for an entity to be eligible for certain tax concessions, such as the 'in Australia' special conditions.

I am a NFP other than a charity. What will be the consequential changes for my entity?

Initially the ACNC will register charities (including public benevolent institutions) and the ATO will accept the ACNC's determination of that status. However, it is intended that, over time, other NFPs which access government exemptions, concessions and benefits (including tax concessions) may also be registered by the ACNC. Transitional provisions will turn off relevant registration sections until the scope of the ACNC is broadened.

My entity is required to meet certain governance standards by another regulator? What governance obligations will I be required to follow?

The Government announced in the 2011-12 Budget a number of further reviews of aspects of the regulation of the NFP sector, including a review of the governance obligations appropriate for NFP entities.

The Government has released the consultation paper on the governance arrangements of NFPs to give the opportunity for the NFP sector and the wider public to engage on this issue. The outcomes of the governance review will help form the governance requirements for registered entities in the ACNC legislation, starting from 1 July 2012.

In order to have the ACNC in place and up and running by 1 July 2012, legislation for the ACNC needs to be ready to be introduced into Parliament in the first quarter of 2012.

Following consideration of the outcomes of the governance review, the Government will undertake targeted confidential consultation on the governance draft law, including consequential amendments before implementation.

What if a registered entity currently has to report to ASIC or another Commonwealth entity?

It is envisaged that the ACNC legislation requirements will replace many existing Commonwealth requirements. For example, this means that the ACNC will take over reporting arrangements of NFP companies limited by guarantee from ASIC from 1 July 2013.

The process to identify regulatory duplication at the Commonwealth level is already underway. In order to move towards the long-term objective of having the ACNC as a national 'one-stop shop' for NFP regulation, the Commonwealth will work with the States and Territories on a national regulatory framework.

The consequential amendments will make certain that the information statement and financial report (where required) registered entities will submit to the ACNC will be used by the entity to fulfill the totality of their general reporting obligations, across all Commonwealth agencies.