

# EXPOSURE-DRAFT

2010-2011-2012-2013

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT
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## **Charities (Consequential Amendments and Transitional Provisions) Bill 2013**

**No.     , 2013**

*(Treasury)*

**A Bill for an Act to deal with consequential and  
transitional matters arising from the enactment of  
the *Charities Act 2013*, and for other purposes**



# EXPOSURE-DRAFT

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## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	3
<b>Schedule 1—Consequential amendments</b>		<b>4</b>
Part 1—Main amendments		4
<i>A New Tax System (Goods and Services Tax) Act 1999</i>		4
<i>Australian Charities and Not-for-profits Commission Act 2012</i>		4
<i>Fringe Benefits Tax Assessment Act 1986</i>		6
<i>Income Tax Assessment Act 1936</i>		7
<i>Income Tax Assessment Act 1997</i>		7
Part 2—Extension of Charitable Purpose Act 2004		9
Part 3—Charities Act 2013		10
Part 4—Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013		11
<b>Schedule 2—Transitional provisions</b>		<b>12</b>
Part 1—Dictionary		12
Part 2—Registration		13
Division 1—Registered entities		13
Division 2—Funds contributing to other funds		16
<b>Schedule 3—Other amendments</b>		<b>18</b>
<i>Income Tax Assessment Act 1997</i>		18
<i>Income Tax (Transitional Provisions) Act 1997</i>		18



# EXPOSURE-DRAFT

1     **A Bill for an Act to deal with consequential and**  
2     **transitional matters arising from the enactment of**  
3     **the *Charities Act 2013*, and for other purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act may be cited as the *Charities (Consequential*  
7                     *Amendments and Transitional Provisions) Act 2013*.

8     **2 Commencement**

9                     (1) Each provision of this Act specified in column 1 of the table  
10                     commences, or is taken to have commenced, in accordance with  
11                     column 2 of the table. Any other statement in column 2 has effect  
12                     according to its terms.

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*Charities (Consequential Amendments and Transitional Provisions) Bill 2013*    No.    , 2013

1

EXPOSURE-DRAFT

# EXPOSURE-DRAFT

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Parts 1 and 2	At the same time as the <i>Charities Act 2013</i> commences.	
3. Schedule 1, Part 3	The later of: (a) immediately after the commencement of the <i>Charities Act 2013</i> ; and (b) the time item 44 of Schedule 1 to the <i>Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013</i> commences.  However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	
4. Schedule 1, Part 4	Immediately after the time specified in the <i>Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013</i> for the commencement of item 33 of Schedule 1 to that Act.  However, the provision(s) do not commence at all if that item commences before the time the <i>Charities Act 2013</i> commences.	
5. Schedule 2	At the same time as the <i>Charities Act 2013</i> commences.	
6. Schedule 3	Immediately after the commencement of the <i>Australian Charities and Not-for-profits Commission Act 2012</i> .	3 December 2012

1 Note: This table relates only to the provisions of this Act as originally  
2 enacted. It will not be amended to deal with any later amendments of  
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.  
5 Information may be inserted in this column, or information in it  
6 may be edited, in any published version of this Act.

# EXPOSURE-DRAFT

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1 **3 Schedule(s)**

2 Each Act that is specified in a Schedule to this Act is amended or  
3 repealed as set out in the applicable items in the Schedule  
4 concerned, and any other item in a Schedule to this Act has effect  
5 according to its terms.

# EXPOSURE-DRAFT

Schedule 1 Consequential amendments

Part 1 Main amendments

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1 **Schedule 1—Consequential amendments**

2 **Part 1—Main amendments**

3 *A New Tax System (Goods and Services Tax) Act 1999*

4 **1 Section 195-1 (paragraph (b) of the definition of**  
5 **ACNC-registered religious institution)**

6 Omit “item 3”, substitute “item 4”.

7 *Australian Charities and Not-for-profits Commission Act*  
8 *2012*

9 **2 Subsection 25-5(4) (note)**

10 Omit “that is the relief of poverty, sickness or the needs of the aged”,  
11 substitute “of advancing social or public welfare”.

12 **3 Subsections 25-5(5) and (6)**

13 Repeal the subsections, substitute:

14 (5) The table is as follows:

15

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<b>Entitlement to registration</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Type of entity</b>	<b>Corresponding subtype of entity</b>
1	Charity	Entity with a purpose to which paragraph (a) of the definition of <i>charitable purpose</i> in subsection 11(1) of the <i>Charities Act 2013</i> applies (advancing health)
2		Entity with a purpose to which paragraph (b) of the definition of <i>charitable purpose</i> in subsection 11(1) of the <i>Charities Act 2013</i> applies (advancing education)
3		Entity with a purpose to which paragraph (c) of the definition of <i>charitable purpose</i> in subsection 11(1) of the <i>Charities Act 2013</i> applies (advancing social or public welfare)
4		Entity with a purpose to which paragraph (d) of the definition of <i>charitable purpose</i> in subsection 11(1) of the <i>Charities Act 2013</i> applies (advancing religion)

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4 *Charities (Consequential Amendments and Transitional Provisions) Bill 2013* No.  
1, 2013



# EXPOSURE-DRAFT

Consequential amendments **Schedule 1**  
Main amendments **Part 1**

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<b>Entitlement to registration</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Type of entity</b>	<b>Corresponding subtype of entity</b>
5		Entity with a purpose to which paragraph (e) of the definition of <i>charitable purpose</i> in subsection 11(1) of the <i>Charities Act 2013</i> applies (advancing culture)
6		Entity with a purpose to which paragraph (f) of the definition of <i>charitable purpose</i> in subsection 11(1) of the <i>Charities Act 2013</i> applies (promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia)
7		Entity with a purpose to which paragraph (g) of the definition of <i>charitable purpose</i> in subsection 11(1) of the <i>Charities Act 2013</i> applies (promoting or protecting human rights)
8		Entity with a purpose to which paragraph (h) of the definition of <i>charitable purpose</i> in subsection 11(1) of the <i>Charities Act 2013</i> applies (protecting the safety of the general public)
9		Entity with a purpose to which paragraph (i) of the definition of <i>charitable purpose</i> in subsection 11(1) of the <i>Charities Act 2013</i> applies (preventing or relieving the suffering of animals)
10		Entity with a purpose to which paragraph (j) of the definition of <i>charitable purpose</i> in subsection 11(1) of the <i>Charities Act 2013</i> applies (advancing the natural environment)
11		Entity with a purpose to which paragraph (k) of the definition of <i>charitable purpose</i> in subsection 11(1) of the <i>Charities Act 2013</i> applies (purposes beneficial to the general public and analogous to the other charitable purposes)
12		Entity with a purpose to which paragraph (l) of the definition of <i>charitable purpose</i> in subsection 11(1) of the <i>Charities Act 2013</i> applies (advancing public debate)
13		Institution whose principal activity is to promote the prevention or the control of diseases in human beings
14		Public benevolent institution

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*Charities (Consequential Amendments and Transitional Provisions) Bill 2013* No. , 2013

5

EXPOSURE-DRAFT

# EXPOSURE-DRAFT

## Schedule 1 Consequential amendments

### Part 1 Main amendments

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- 1 Note 1: For the definition of *charity*, see the *Charities Act 2013*.  
2 Note 2: An entity commonly known as a health promotion charity could be an  
3 entity described in column 2 of item 13 of the table (institution whose  
4 principal activity is to promote the prevention or the control of  
5 diseases in human beings).

#### 6 *Trusts*

- 7 (6) Section 14 of the *Charities Act 2013* (Cy pres schemes) applies:  
8 (a) for the purposes of this Act; or  
9 (b) for the purposes of determining whether an entity meets the  
10 description of a type or subtype of entity in the table in  
11 subsection (5) of this section;  
12 in the same way as that section 14 applies for the purposes of that  
13 Act.

#### 14 **4 Subsection 60-95(2) (example)**

- 15 Omit “relieve poverty”, substitute “advance social or public welfare”.

#### 16 **5 Paragraph 205-35(1)(b)**

- 17 Omit “item 3 of the table in subsection 25-5(5) (Entity with a purpose  
18 that is the advancement of”, substitute “item 4 of the table in  
19 subsection 25-5(5) (Entity with a purpose of advancing”.

#### 20 *Fringe Benefits Tax Assessment Act 1986*

#### 21 **6 Subparagraph 58(1)(a)(iii)**

- 22 Omit “item 3”, substitute “item 4”.

#### 23 **7 Subsection 136(1) (paragraph (b) of the definition of** 24 ***registered health promotion charity*)**

- 25 Omit “item 5”, substitute “item 13”.

#### 26 **8 Subsection 136(1) (paragraph (b) of the definition of** 27 ***registered public benevolent institution*)**

- 28 Omit “item 6”, substitute “item 14”.

#### 29 **9 Subsection 136(1) (paragraph (b) of the definition of** 30 ***registered religious institution*)**

- 31 Omit “item 3”, substitute “item 4”.
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# EXPOSURE-DRAFT

Consequential amendments **Schedule 1**  
Main amendments **Part 1**

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1 ***Income Tax Assessment Act 1936***

2 **10 Subsection 121F(1) (paragraph (aa) of the definition of**  
3 ***relevant exempting provision*)**

4 Omit “50-20”.

5 **11 Subsection 121F(1) (paragraph (cb) of the definition of**  
6 ***relevant exempting provision*)**

7 Omit “and” (last occurring).

8 **12 Subsection 128F(9) (paragraph (a) of the definition of**  
9 ***company*)**

10 Repeal the paragraph, substitute:

11 (a) the trust is not a charity; and

12 **13 Paragraph 272-90(7)(a) in Schedule 2F**

13 Omit “, 50-10 or 50-20”, substitute “or 50-10”.

14 ***Income Tax Assessment Act 1997***

15 **14 Section 11-5 (table item headed “funds established by will**  
16 **or trust”)**

17 Repeal the item.

18 **15 Subparagraph 43-55(1)(a)(i)**

19 Omit “50-20”.

20 **16 Section 50-5 (note 1)**

21 Omit “charitable institutions, funds and trusts”, substitute “charities”.

22 **17 Section 50-20**

23 Repeal the section.

24 **18 Section 50-52 (heading)**

25 Omit “items 1.1 and 4.1”, substitute “item 1.1”.

26 **19 Subsection 50-52(1)**

27 Omit “or 4.1”.

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# EXPOSURE-DRAFT

## Schedule 1 Consequential amendments

### Part 1 Main amendments

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1     **20 Section 50-100**

2             Omit “charitable institutions and trusts funds for charitable purposes”,  
3             substitute “charities”.

4     **21 Subsection 50-110(2)**

5             Omit “or item 4.1 of the table in section 50-20”.

6     **22 Paragraphs 50-110(5)(a), (b) and (c)**

7             Repeal the paragraphs, substitute:

- 8                     (a) the entity must meet the relevant conditions referred to in the  
9                     column headed “Special conditions” of item 1.1 of the table  
10                    in section 50-5; or  
11                    (b) both of the following conditions must be met:  
12                         (i) the entity must not have carried on any activities as a  
13                         charity;  
14                         (ii) there must be reasonable grounds for believing that the  
15                         entity will meet the relevant conditions referred to in the  
16                         column headed “Special conditions” of item 1.1 of the  
17                         table.

18     **23 Subsection 207-115(2) (heading)**

19             Omit “*charitable or other institutions*”, substitute “*charities*”.

20     **24 Paragraph 207-115(2)(a)**

21             Omit “or item 4.1 of the table in section 50-20”.

22     **25 Subsection 995-1(1) (paragraph (b) of the definition of**  
23             ***registered health promotion charity*)**

24             Omit “item 5”, substitute “item 13”.

25     **26 Subsection 995-1(1) (paragraph (b) of the definition of**  
26             ***registered public benevolent institution*)**

27             Omit “item 6”, substitute “item 14”.

# EXPOSURE-DRAFT

Consequential amendments **Schedule 1**  
Extension of Charitable Purpose Act 2004 **Part 2**

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1 **Part 2—Extension of Charitable Purpose Act 2004**

2 **27 The whole of the Act**

3 Repeal the Act.

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*Charities (Consequential Amendments and Transitional Provisions) Bill 2013* No. , 2013

9

**EXPOSURE-DRAFT**

# EXPOSURE-DRAFT

Schedule 1 Consequential amendments

Part 3 Charities Act 2013

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1 **Part 3—Charities Act 2013**

2 **28 Subsection 3(1)**

3 Insert:

4 *not-for-profit entity* has the meaning given by the *Income Tax*  
5 *Assessment Act 1997*.

# EXPOSURE-DRAFT

Consequential amendments **Schedule 1**  
Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013  
**Part 4**

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1 **Part 4—Tax Laws Amendment (Special Conditions**  
2 **for Not-for-profit Concessions) Act 2013**

3 **29 Items 33 and 40 of Schedule 1**

4 Repeal the items.

5 **30 Schedule 1 (heading relating to the *Extension of***  
6 ***Charitable Purpose Act 2004*)**

7 Repeal the heading.

8 **31 Item 67 of Schedule 1**

9 Repeal the item.

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*Charities (Consequential Amendments and Transitional Provisions) Bill 2013* No. , 2013

11

**EXPOSURE-DRAFT**

# EXPOSURE-DRAFT

Schedule 2 Transitional provisions

Part 1 Dictionary

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1 **Schedule 2—Transitional provisions**

2 **Part 1—Dictionary**

3 **1 Dictionary**

4 In this Schedule:

5 *ACNC Act* means the *Australian Charities and Not-for-profits*  
6 *Commission Act 2012*.

7 *approved form* has the meaning given by the ACNC Act.

8 *commencement day* means the day on which this Schedule commences.

9 *endorsed as a contributing fund* means endorsed under  
10 Subdivision 50-B of the *Income Tax Assessment Act 1997* as exempt  
11 from income tax because of being covered by item 4.1 of the table in  
12 section 50-20 of that Act (Funds contributing to other funds).



# EXPOSURE-DRAFT

Transitional provisions **Schedule 2**  
Registration **Part 2**

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## 1 **Part 2—Registration**

### 2 **Division 1—Registered entities**

#### 3 **2 Registration—old subtypes equivalent to new subtypes**

##### 4 *Registration*

- 5 (1) The Commissioner of the ACNC is treated as having registered an  
6 entity under Division 30 of the ACNC Act on the commencement day  
7 as the subtype of entity mentioned in column 2 of an item of the table in  
8 subitem (3) if, on the day before the commencement day, the entity is  
9 registered as the subtype of entity mentioned in column 1 of that item.

##### 10 *Applications for registration*

- 11 (2) An application for registration under Division 30 of the ACNC Act as  
12 the subtype of entity mentioned in column 1 of an item of the table in  
13 subitem (3) is treated, from the commencement day, as being an  
14 application for registration as the subtype of entity mentioned in column  
15 2 of that item, if:
- 16 (a) the application was made before the commencement day; and
  - 17 (b) on the day before the commencement day, the Commissioner  
18 of the ACNC had neither registered the applicant nor refused  
19 the application.

##### 20 *Table*

- 21 (3) The table is as follows:

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<b>Corresponding subtypes</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as in force on the day before the commencement day:</b>	<b>Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as amended by this Act:</b>
1	item 2 (education)	item 2 (education)
2	item 3 (religion)	item 4 (religion)

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# EXPOSURE-DRAFT

## Schedule 2 Transitional provisions

### Part 2 Registration

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#### Corresponding subtypes

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Item	Column 1	Column 2
	Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as in force on the day before the commencement day:	Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as amended by this Act:
3	item 5 (prevention or the control of diseases in human beings)	item 13 (prevention or the control of diseases in human beings)
4	item 6 (public benevolent institution)	item 14 (public benevolent institution)
5	item 7 (child care services)	item 3 (social or public welfare)

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### 3 Registration—old subtypes possibly equivalent to new subtypes

#### *Registration*

- (1) The Commissioner of the ACNC is treated as having registered an entity under Division 30 of the ACNC Act on the commencement day as the subtype of entity mentioned in column 2 of an item of the table in subitem (3) if:
- (a) on the day before the commencement day, the entity is registered as the subtype of entity mentioned in column 1 of that item; and
  - (b) the entity notifies the Commissioner that, on the commencement day, the entity meets the description of the subtype of entity mentioned in column 2 of that item.

#### *Applications for registration*

- (2) An application for registration under Division 30 of the ACNC Act as the subtype of entity mentioned in column 1 of an item of the table in subitem (3) is treated, from the commencement day, as being an application for registration as the subtype of entity mentioned in column 2 of that item, if:
- (a) the application was made before the commencement day; and

# EXPOSURE-DRAFT

Transitional provisions **Schedule 2**  
Registration **Part 2**

- 1 (b) on the day before the commencement day, the Commissioner  
2 of the ACNC had neither registered the applicant nor refused  
3 the application; and  
4 (c) the applicant requests the Commissioner to treat the  
5 application as being an application for registration as the  
6 subtype of entity mentioned in column 2 of that item.

7 *Table*

8 (3) The table is as follows:  
9

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**Corresponding subtypes**

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<b>Item</b>	<b>Column 1</b> <b>Subtype of entity mentioned in</b> <b>column 2 of the following item of</b> <b>the table in subsection 25-5(5) of</b> <b>the ACNC Act, as in force on the</b> <b>day before the commencement</b> <b>day:</b>	<b>Column 2</b> <b>Subtype of entity mentioned in</b> <b>column 2 of the following item of</b> <b>the table in subsection 25-5(5) of</b> <b>the ACNC Act, as amended by</b> <b>this Act:</b>
1	item 1 (relief of poverty, sickness or the needs of the aged)	item 1 (health)
2	item 1 (relief of poverty, sickness or the needs of the aged)	item 3 (social or public welfare)
3	item 4 (another purpose that is beneficial to the community)	item 1 (health)
4	item 4 (another purpose that is beneficial to the community)	item 3 (social or public welfare)
5	item 4 (another purpose that is beneficial to the community)	item 5 (culture)
6	item 4 (another purpose that is beneficial to the community)	item 6 (reconciliation, mutual respect and tolerance between groups of individuals that are in Australia)
7	item 4 (another purpose that is beneficial to the community)	item 7 (human rights)
8	item 4 (another purpose that is beneficial to the community)	item 8 (protecting the safety of the general public)
9	item 4 (another purpose that is beneficial to the community)	item 9 (preventing or relieving the suffering of animals)

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# EXPOSURE-DRAFT

## Schedule 2 Transitional provisions

### Part 2 Registration

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#### Corresponding subtypes

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Item	Column 1	Column 2
	Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as in force on the day before the commencement day:	Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as amended by this Act:
10	item 4 (another purpose that is beneficial to the community)	item 10 (natural environment)
11	item 4 (another purpose that is beneficial to the community)	item 11 (purposes beneficial to the general public and analogous to the other charitable purposes)
12	item 4 (another purpose that is beneficial to the community)	item 12 (advancing public debate)

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1                    *Notices and requests*

- 2            (4)    A notice given under paragraph (1)(b), or a request made under  
3            paragraph (2)(c), must be:  
4                    (a) in the approved form; and  
5                    (b) given to the Commissioner during the period of 18 months  
6                    starting on the commencement day.

7            Note:    Subdivision 175-B of the ACNC Act imposes an administrative penalty if the notice or  
8            request contains a statement that is false or misleading in a material particular.

9            **Division 2—Funds contributing to other funds**

10           **4 Funds contributing to other funds**

- 11           (1)    This item applies to a fund that, on the day before the commencement  
12           day, is endorsed as a contributing fund.
- 13           (2)    The Commissioner of Taxation is treated as having endorsed the fund  
14           under Subdivision 50-B of the *Income Tax Assessment Act 1997* on the  
15           commencement day as exempt from income tax because the fund is  
16           covered by item 1.1 of the table in section 50-5 of that Act (registered  
17           charity).
- 18           (3)    The Commissioner of the ACNC is treated as having registered the fund  
19           on the commencement day under Division 30 of the ACNC Act as the

# EXPOSURE-DRAFT

Transitional provisions **Schedule 2**  
Registration **Part 2**

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1 type of entity mentioned in column 1 of item 1 of the table in  
2 subsection 25-5(5) of that Act (charity).

3 (4) The purpose the fund has, on the day before the commencement day, is  
4 treated as being a charitable purpose during the period:

5 (a) starting on the commencement day; and

6 (b) ending on the day (if any) the fund ceases to be entitled to be  
7 endorsed as a contributing fund (disregarding the  
8 amendments made by Schedule 1 to this Act).

## 9 **5 Opt-out**

10 If, during the period of 12 months starting on the commencement day, a  
11 fund notifies the Commissioner of the ACNC, in the approved form,  
12 that the fund does not want item 4 to apply to the fund:

13 (a) item 4 does not apply, and is taken never to have applied, to  
14 the fund; and

15 (b) the Commissioner of Taxation is treated as having revoked,  
16 on the day before the commencement day, the entity's  
17 endorsement mentioned in paragraph 426-5(h) in Schedule 1  
18 to the *Taxation Administration Act 1953*.

# EXPOSURE-DRAFT

## Schedule 3 Other amendments

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1 **Schedule 3—Other amendments**  
2

3 ***Income Tax Assessment Act 1997***

4 **1 After section 50-45**

5 Insert:

6 **50-47 Special condition for all items**

7 An entity that:

8 (a) is covered by any item; and

9 (b) is an \*ACNC type of entity;

10 is not exempt from income tax unless the entity is registered under  
11 the *Australian Charities and Not-for-profits Commission Act 2012*.

12 **2 At the end of subsection 50-110(5)**

13 Add:

14 The entity must also satisfy section 50-47, if the entity is an  
15 \*ACNC type of entity.

16 ***Income Tax (Transitional Provisions) Act 1997***

17 **3 Section 50-50**

18 Omit “, as amended by Schedules 1 and 2 to the *Tax Laws Amendment*  
19 *(Special Conditions for Not-for-profit Concessions) Act 2012*”.