

# TREASURY'S NOT-FOR-PROFIT REFORM FACTSHEET

## THE ACNC EXPOSURE DRAFT EDUCATION, COMPLIANCE AND ENFORCEMENT

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](http://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](mailto:NFPReform@treasury.gov.au).

### KEY FACTS

First and foremost, the ACNC will take on an educative role for the sector, providing assistance and support to the sector on technical matters, and assisting the sector during the transition to the new regulatory environment.

As a regulator of the NFP sector, the ACNC will also have certain powers of monitoring, investigation and enforcement to ensure it is able to direct registered entities to use assets in line with their altruistic purpose.

### EDUCATION

The ACNC will have a very important educative role and will be available to answer questions and provide useful documentation to the sector.

The exposure draft has in its objects and functions that the ACNC will be responsible for the provision of educational information to the NFP sector.

The ACNC will put a great deal of time and effort into its educative role. As you can see from the compliance pyramid below, providing education and support will be the largest function of the ACNC.

The NFP sector may notice that the exposure draft contains more detail on the ACNC's enforcement powers than it does on the ACNC's education role. The reason for this is that education will be an inherent role of the regulator, whereas the ACNC will not have powers of enforcement unless specifically provided for in the legislation.

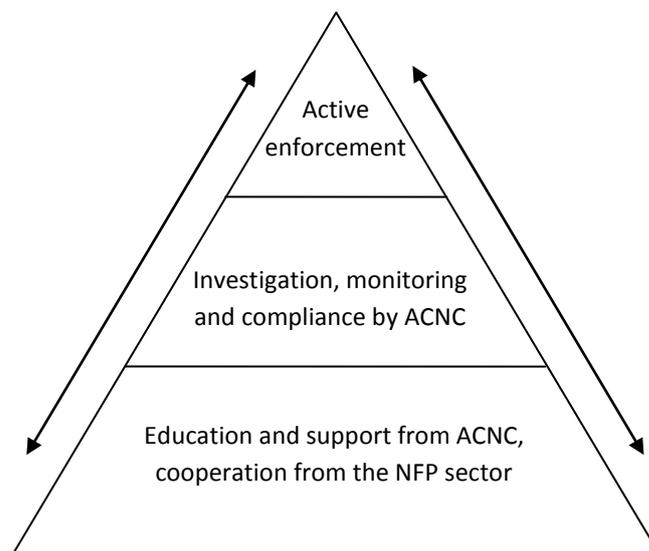
### COMPLIANCE

Monitoring compliance with the requirements in the ACNC legislation will be another important part of the ACNC's functions. These activities will include: looking at registered entities' financial reports; asking registered entities questions about how they're going about achieving their

altruistic purpose/s; and gathering information and deciding on complaints against registered entities.

These powers are intended to be used to allow the Commissioner to conduct regulatory oversight effectively, and to actively monitor ongoing eligibility for registration.

The ACNC will be aware that most instances of non-compliance will be due to an oversight or a lack of knowledge, which is why education will be the primary role of the ACNC.



### ENFORCEMENT

The exposure draft provides the ACNC with powers to protect charitable assets and deter registered entities or individuals associated with registered entities from acting in a manner which contravenes the law.

The ACNC's enforcement powers include the authority to issue enforceable directions; suspend or remove responsible individuals associated with registered entities; apply to the courts for injunctions; and enter into enforceable undertakings.

As can be seen in the compliance pyramid, these powers will only be exercised in a small number of serious cases where the circumstances require it.

Whilst the ACNC will have the power to revoke registration, this is a blunt tool and on its own does not provide the ACNC with the flexibility to deal with issues in the way best targeted to resolving the concern.

# FREQUENTLY ASKED QUESTIONS

## ***Why is the Government seeking to punish NFPs by implementing enforcement powers?***

The Government is not seeking to punish NFPs. The Government knows that most NFPs and most individuals involved in NFPs, are acting in accordance with the law, and are providing invaluable benefits to the community.

In a very small amount of cases, the ACNC may need to use its enforcement powers to prevent a registered entity from contravening the law. As can be seen from the compliance pyramid above, this is expected to occur only in a very small number of cases. The ACNC will primarily promote compliance through education and support to the sector.

In addition, the ACNC will use graduated enforcement powers, and provide opportunities for entities to correct issues themselves. However, where there is evidence of deliberate wrong-doing, the ACNC will have the ability to take strong and decisive enforcement action.

Ultimately, effective compliance with the law by the NFP sector will promote public trust and confidence in the sector, and will encourage greater philanthropic engagement.

## ***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 Australian Taxation Office (ATO) has become the de facto regulator for the NFP sector 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.

The Australian Securities and Investments Commission (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.

## ***What are the current compliance and enforcement powers in regard to the NFP sector?***

There is no single scheme of monitoring compliance and enforcement of the NFP sector at present.

At the Commonwealth level, regulators such as the Australian Prudential Regulation Authority (APRA), the ATO and the ASIC have enforcement powers, such as the authority to issue enforceable directions and the authority to apply to the courts to have injunctions issued.

## ***Will the ACNC be able to answer questions I may have?***

Yes, the ACNC will be available to answer questions from the NFP sector, and will provide useful information on its website.

Where possible, the ACNC will seek to assist registered entities to comply with the law, with enforcement being an option of last resort.

In addition, by 1 July 2013, the ACNC will establish a public information portal. This will be a useful resource for both the NFP sector and the general public.

## ***Why will the Commissioner of the ACNC have so many powers?***

The Commissioner is provided with a number of powers to move away from an 'all or nothing' approach to enforcement.

With a number of powers at his or her disposal, the Commissioner will be able to determine the most appropriate action in the circumstances, opting for the less severe options in the first instance. Without these powers the Commissioner would have to rely on its power to revoke registration as a response to all breaches.

Objection, review and appeal rights will be available to registered entities (see *Objections, Reviews and Appeals* factsheet).

## ***Will registered entities be punished severely for inadvertent non-compliance?***

The Commissioner of the ACNC will not be seeking to punish registered entities for small instances of non-compliance. In fact, many of the enforcement powers open to the Commissioner will be to prevent these issues from continuing in the future, for example, by issuing enforceable directions.

The ACNC will provide education and support, and one of its most important functions will be to assist registered entities to comply with the requirements, so that it is not necessary to use the enforcement powers.