

TREASURY'S NOT-FOR-PROFIT REFORM FACTSHEET SUMMARY OF THE ACNC BILLS

July 2012

On 6 July 2012, the Australian Charities and Not-for-profits Commission (ACNC) Bills were referred to the House of Representatives Standing Committee on Economics for an inquiry. For further information about the inquiry, including deadlines for submissions, see www.aph.gov.au

Following the Committee's inquiry, the Government will consider any recommendations and will finalise the Bills before introducing the legislation in August, ahead of the ACNC's 1 October 2012 start date.

Background on the ACNC

There have been six reviews into the regulation and taxation of the not-for-profit (NFP) sector in Australia over the last 16 years. A consistent theme 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.

Overview

The Bill establishes a national regulator, and a national regulatory framework for the NFP sector. The Bill:

- establishes the ACNC;
- charges the ACNC with registering NFP entities and maintaining a register;
- provides for the powers of the Commissioner in relation to the regulation of registered entities; and
- sets out the obligations and duties of registered entities.

Initially, only tax endorsed charities will be regulated by the ACNC. However, the Bill establishes a regulatory framework that can be extended to all NFP entities in the future.

The Commissioner of the ACNC will cooperate with other government agencies to oversee a simplified and streamlined regulatory framework for not-for-profit entities.

The Commissioner of the ACNC will also provide information to help the public understand the work of

the not-for-profit sector and to improve the transparency and accountability of the sector.

Registration and deregistration

The Bill provides the Commissioner of the ACNC with the power to register NFP entities under their specific type and subtypes. In the first instance, registration with the ACNC is limited to charities. However, the ACNC's role is expected to expand over time to include all NFPs in receipt of Government benefits.

Registration is voluntary. However, entities will need to be registered to access government support in the form of concessions, exemptions and other benefits.

The Bill sets out the processes and grounds for the revocation of registration by the Commissioner, for example, where a liquidator has been appointed.

Register

The ACNC Commissioner will maintain a public register, containing key details about registered entities including contact details, the type of registration, information statements and financial reports. The register will also include details of any warnings, directions, undertakings, injunctions, and any suspension or removal of responsible entities, including a summary of why the matter arose and details of any resolution or response to the matter.

The Commissioner may remove or withhold information from the register in specified circumstances, for example, where the information is commercially sensitive, inaccurate, or likely to confuse or mislead the public.

Duties of registered entities

Governance standards and external conduct standards

Registered entities will need to comply with a set of minimum governance standards covering the content of the entity's governing rules, the conduct of entity, and the processes that entities have in place.

Compliance with the governance standards is a condition of registration. Registered entities will also need to comply with external conduct standards.

In May 2012, the Government announced that the governance standards and external conduct standards would be set out in regulations, which would be

subject to further consultation. This consultation process will commence shortly. The governance and external conduct standards will commence from 1 July 2013.

Record keeping and reporting

The Bill establishes a single reporting framework proportional to the size of the registered entity. The differential reporting framework will minimise compliance costs, whilst ensuring appropriate levels of accountability and transparency.

All registered entities will be required to provide an annual information statement in the approved form. The information statement will be proportional, with the Commissioner able to approve different forms for small, medium and large registered entities.

Small entities, with revenue less than \$250,000, will not have to provide financial reports. Medium entities, with revenue between \$250,000 and \$1 million, will have to provide financial reports which can be reviewed rather than subject to a full audit. Large entities, with revenue \$1 million or more, will have to provide audited financial reports.

In May 2012, the Government announced that the detailed content requirements of the financial reports would be set out in regulations, which would be subject to further consultation. This consultation process will commence shortly. Charities will be required to prepare their first financial report for the 2013-14 financial year, with the first report due to the ACNC by 31 December 2014, unless a substituted accounting period applies.

Duty to notify

Registered entities will be required to notify the Commissioner of certain matters. For example, changes to its contact details, any significant contraventions of the Act or governance standards that would disentitle the entity to registration.

Regulatory powers of the ACNC

The Bill provides the Commissioner with the necessary regulatory powers it requires to fulfil its responsibilities. These powers are based on the powers of existing regulators, including the Australian Taxation Office (ATO) and the Australian Securities and Investments Commission.

These powers are intended to be used to allow the Commissioner to conduct regulatory oversight in an effective manner, and to actively monitor on-going eligibility for registration.

There are a range of powers and sanctions available to the Commissioner, to enable the Commissioner to respond appropriately to the facts of each case.

In the first instance, the ACNC will rely on education, rather than its enforcement powers, to encourage compliance with the new provisions. This approach was outlined in the ACNC Implementation Report.

In more serious cases of non-compliance, the type of enforcement power used by the Commissioner will be determined by the kinds of actions which are required to address the contravention or non-compliance.

The Commissioner will have the following powers:

- gathering information, monitoring activities and inquiring about matters relating to general compliance with, or potential breaches, of the provisions of the new laws;
- giving a registered entity a warning notice or a direction;
- accepting enforceable undertakings from registered entities to comply with the Act, governance standards or external conduct standards;
- applying for injunctions to restrain registered entities from contravening the Act, or to compel compliance with the Act;
- suspending or removing a responsible entity of a registered entity.

To ensure the accuracy of information provided to the ACNC, the Bill provides a proportional administrative penalty regime, consistent with the *Taxation Administration Act 1953*.

The Advisory Board

The Bill establishes the Advisory Board, to provide advice and make recommendations to the Commissioner in relation to the Commissioner's functions under the Act. Members of the Advisory Board will be appointed by the Minister over the coming months, following completion of a merits based selection process.

Secrecy

The Bill establishes a secrecy framework to ensure that where the Commissioner and ACNC officers have access to personal or confidential information in the ordinary course of performing their duties, they are subject to a general prohibition on the use and disclosure of that information.

However, to ensure the ACNC is able to fulfil its functions under the Bill, including functioning as a one-stop-shop, promoting good governance, transparency and accountability, disclosure of the protected information is permitted in specified circumstances.

Review and appeals

The Bill sets out the process for an entity to challenge certain decisions of the ACNC Commissioner if they are dissatisfied with the Commissioner's decision. An entity that is directly affected by the decision will be able to utilise full review and appeal rights in respect to the decision of the Commissioner.

Transitional provisions

The Bill will be accompanied by transitional provisions to provide a smooth transition to the new framework. For example, transitional provisions will:

- provide for the automatic registration of charities that are endorsed by the ATO unless the entity opts out within six months;
- grandfather existing substituted accounting periods applying to entities in certain cases; and
- allow the Commissioner of Taxation to pass on certain information to the Commissioner of the ACNC to populate the new Register, and allow this information to be made public.

Consequential amendments

Consequential amendments will also be required to other Acts. These are expected to be technical machinery amendments, and will be drafted prior to introduction of the ACNC Bills.