

# TREASURY'S NOT-FOR-PROFIT REFORM FACTSHEET

## THE ACNC EXPOSURE DRAFT OBJECTIONS, REVIEWS AND APPEALS

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

The objection, review and appeal provisions to be included in the ACNC legislation will set out the relevant procedures for an entity that is dissatisfied with certain decisions made by the ACNC Commissioner and wants them to be reconsidered.

These provisions are under development and have not been released for exposure, but they will be consistent with the Australian Government's broader policy concerning procedural fairness mechanisms. These procedural fairness mechanisms ensure that objections related to reviewable decisions are to be properly assessed by the ACNC, or to be independently assessed by the Administrative Appeals Tribunal (AAT) or the courts.

The proposed provisions will be modeled on, and will be similar in operation to the objections, reviews and appeals provisions in Part IVC of the *Taxation Administration Act 1953*.

The procedure for objection, review and appeal under the ACNC legislation will be as follows:

### ARE YOU ELIGIBLE?

You must be a party that is directly affected by the administrative decision you wish to have reconsidered.

For example, the responsible individual of an entity that lodged an application form, or a responsible individual of a registered entity.

### IS THE DECISION REVIEWABLE?

The decision you are dissatisfied with must be a 'reviewable decision'.

Most of the decisions of the ACNC Commissioner will be reviewable decisions.

It will clearly state in the legislation whether the decision made by the Commissioner is reviewable for the purposes of these provisions.

The ACNC Commissioner must give you written reasons for their decision.

### MAKING AN OBJECTION

In the first instance, you may lodge an objection with the ACNC, to have the Commissioner review the decision internally.

The Commissioner may seek further information from you in order to assist in reconsidering the decision.

The Commissioner will then provide an 'objection decision', which will set out whether the Commissioner has allowed the objection, either fully or in part, or disallowed the objection.

### REVIEWING A DECISION

If you remain dissatisfied with the decision, you may apply to the AAT to have the 'objection decision' reviewed.

Where you seek review of an 'objection decision', by the AAT, you will still be required to comply with the 'objection decision' until the AAT review is finalised, and the AAT amends or revokes the 'objection decision'.

When reviewing the decision, the AAT may exercise all of the powers and discretions of the Commissioner under the ACNC legislation, but only in respect to reviewing the 'objection decision'.

### APPEALING A DECISION

Finally, after exercising objection and review rights, if you are still dissatisfied with the 'objection decision' you may appeal to the courts, to have the AAT decision or original 'objection decision' considered.

The relevant court would be:

- the Federal Court where the AAT has reviewed the ACNC Commissioner's objection decision; or
- the Federal, State and Territory Courts where there has been no AAT review of the ACNC Commissioner's objection decision.

### OTHER MECHANISMS

Where you are dissatisfied with the administrative actions of the ACNC you may also seek to have the matter examined by the Commonwealth Ombudsman by lodging a written complaint.

# FREQUENTLY ASKED QUESTIONS

## ***What kind of decisions will be made reviewable?***

Where it states in the ACNC legislation that a decision of the Commissioner is a reviewable decision, then it is a decision which a responsible individual may seek to object to, have reviewed or appealed.

Some of the more common reviewable decisions include:

- registration decisions;
- decisions related to enforceable directions;
- a decision to disqualify someone from acting as a responsible individual; and
- an order made by the ACNC to suspend or remove a responsible individual from office.

## ***Do I have to lodge two separate objections if I have two reviewable decisions that I am dissatisfied with?***

No, when the ACNC issues two reviewable decisions to a responsible individual or a registered entity in the one notice, for the purposes of objections, reviews and appeals, the set of reviewable decisions will be deemed to be the one decision.

This will minimise the compliance costs for the entity making the objection and ensure greater efficiency for the ACNC.

## ***How long do I have to make an objection after receiving my reviewable decision?***

You will have 60 days after receiving your reviewable decision to develop your case for your objection and to lodge the objection with the Commissioner.

You will be able to lodge late objections without applying for a time extension if it is less than two weeks, however this would only be acceptable if there were unforeseeable and uncontrollable events such as information technology failures.

Longer extensions would need a formal application for the late lodgment of objections. The Commissioner would only grant the authority for late lodgment in special circumstances where it is required to ensure all the relevant facts are considered in coming to a view on the objection. This may include, for example, an extension to the end of relevant accounting periods to consider the latest financial statements.

## ***Will I have appeal rights if the decision is not one which is a reviewable decision?***

Yes, you will still have appeal rights for administrative decisions of the ACNC Commissioner that are not 'reviewable decisions' under the legislation. These decisions can be considered by the courts where there is a question of law and you have grounds under the *Administrative Decisions (Judicial Review) Act 1977*.

## ***If I seek to have a decision reviewed by the AAT will it be a public hearing?***

As the NFP sector is largely funded by public monies and operates for the public benefit, AAT hearings for the review of reviewable decisions should generally occur in public where interested and affected parties are able to attend.

However, in exceptional circumstances and at the discretion of the AAT, a responsible individual or registered entity may apply for private hearing.

This is consistent with one of the Government's overarching policy objectives namely strengthening the sector's transparency and accountability.

## ***What happens if I want to have both a decision of the ACNC Commissioner and a related decision of the Commissioner of Taxation reviewed?***

A joint application would be allowed where a responsible individual or a registered entity seeks to have a decision of the ACNC Commissioner reviewed at the same time as a related decision of another government agency or department.

Commonly, this would be a decision by the Commissioner of Taxation as to eligibility for particular NFP tax concessions.

In such a case, the responsible individual and the registered entity may make a joint application for review by the AAT or an appeal to the courts where:

- the decisions are directly related;
- the decisions are indirectly related; or
- it would be useful from a procedural and efficiency perspective to consider decisions jointly.

This flexibility will ensure greater efficiency for the relevant government agencies and departments and the applicable tribunals and courts. It will also minimise compliance costs for entities seeking to have multiple decisions reviewed or appealed.

However, it is important to note that objections and internal reviews will be undertaken independently by the ACNC and the relevant government department or agency.

## ***Will I be able to see the objection, review and appeals provisions before they are introduced into Parliament?***

As the provisions are still under development they will not be released for public consultation. However, they will be considered in subsequent confidential consultation rounds with the NFP sector. As they are strongly modeled on the Part IVC provisions, it is not anticipated that the sector will have issues or concerns with the provisions that are introduced.