

TREASURY'S NOT-FOR-PROFIT REFORM FACTSHEET

THE ACNC EXPOSURE DRAFT OVERVIEW

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 announced in the 2011-12 Budget that it would establish the ACNC by 1 July 2012. The ACNC will determine charitable status, including public benevolent institution status, for all Commonwealth purposes, provide education and support to the sector, and administer a regulatory and reporting framework for the sector.

The Government also announced that it will work with the States and Territories on a national regulatory framework and a national regulator for the sector, with the aim of minimising reporting and other regulatory requirements through coordinated national arrangements.

The ACNC exposure draft has been drafted with a view to establishing the legislative framework for regulating the not-for-profit (NFP) sector. However from 1 July 2012, the ACNC will only be responsible for regulating registered entities.

CONTENTS OF CONSULTATION ON THE EXPOSURE DRAFT

The ACNC exposure draft and explanatory materials seek to establish the ACNC, set out the objects and functions of the ACNC and provide a regulatory framework for charities and the NFP sector. The exposure draft does not include all provisions which are expected to be in the final Bill. Provisions which are currently not included are outlined in the following documents.

- The *Transitional Arrangements* Factsheet discusses the transitional arrangements that will be required to expand the role of the ACNC overtime.
- The *Consequential Amendments* Factsheet outlines the more significant consequential amendments that will be made to other Commonwealth Acts as a result of the establishment of the ACNC.

- The *Objections, Review and Appeal processes* Factsheet outlines the review and appeal processes relevant to reviewable decisions.
- Finally, a governance framework for the sector, other than with respect to reporting, is not included in the draft legislation as it is subject to the consultation paper *Review of NFP Governance Requirements* released on 8 December 2011.

Additional context on various reforms is also provided in the following Factsheets:

- The *Registration* Factsheet answers questions regarding Registration processes and transitional issues relating to Registration.
- The *Education, Compliance and Enforcement* Factsheet outlines the regulatory approach expected to be adopted by the ACNC. In particular, that the ACNC will focus on education for the sector.
- The *ACNC and Advisory Board* Factsheet answers additional questions regarding the ACNC and the Advisory Board.
- The *Reporting and Auditing* Factsheet provides context for the reporting and auditing requirements of registered entities.
- The '*One-stop shop*' Factsheet outlines the processes the Commonwealth is undertaking to ensure that the ACNC will be a 'one-stop shop' for the sector in relation to the registration of entity, operational governance and general purpose reporting issues.
- The *Secrecy framework* Factsheet answers questions relating to the protection and disclosure of information by the ACNC and outlines how it would operate in practice.
- The *Constitutional Issues* Factsheet provides an overview of the constitutional issues relevant to Commonwealth regulation of the NFP sector.

PROCESS FOR CONSULTATION ON THE ACNC LEGISLATION

- Submissions on the ACNC legislation are due on 20 January 2012.
- Consultation Forums are being held on 13, 14 and 15 December 2011.
- Targeted confidential consultation will be undertaken on the final version of the legislation, prior to its introduction into Parliament.
- The ACNC legislation is expected to be introduced into Parliament in the Autumn Sittings 2012 (first quarter 2012).

Summary of exposure draft and related information

The draft legislation	Related information
Exposure draft: Australian Charities and Not-for-profits Commission	
Chapter 1: Introduction The preliminaries, objects of the Act and functions, and Constitutional limits of the ACNC	<ul style="list-style-type: none">▪ The <i>Final Report of the Scoping Study for a National NFP Regulator</i>▪ The <i>Overview Factsheet</i>▪ The <i>Constitutional Issues Factsheet</i>
Chapter 2: Registration of NFP entities The registration requirements under this exposure draft	<ul style="list-style-type: none">▪ The <i>Registration Factsheet</i>▪ The consultation paper: <i>A definition of charity</i> (the definition would be used by the ACNC in determining whether an entity is a charity from 1 July 2013)
The regulatory framework, including reporting and governance requirements for registered entities	<ul style="list-style-type: none">▪ The <i>Reporting and Auditing Factsheet</i>▪ The <i>Education, Compliance and Enforcement Factsheet</i>▪ The consultation paper: <i>Review of NFP governance arrangements</i>▪ The ACNC discussion paper: Implementation design (reporting framework)▪ The <i>Reporting and Auditing Factsheet</i>▪ The <i>Education, Compliance and Enforcement Factsheet</i>▪ The ACNC discussion paper: <i>Implementation design</i> (public information portal)
Mechanisms for review and appeal of the Commissioners decisions (not yet drafted)	<ul style="list-style-type: none">▪ The <i>Objections, Review and Appeals Factsheet</i>
Chapter 3: The Commission The establishment, staffing, and reporting requirements of the ACNC	<ul style="list-style-type: none">▪ The <i>ACNC and Advisory Board Factsheet</i>
Chapter 4: The Advisory Board The establishment, appointment and remuneration of the Advisory Board	<ul style="list-style-type: none">▪ The <i>ACNC and Advisory Board Factsheet</i>
Chapter 5: Miscellaneous The approved form rules, provisions that provide consistent rules for processes, common rules about penalties, and secrecy provisions	<ul style="list-style-type: none">▪ The <i>Secrecy Framework Factsheet</i>
Chapter 6: Interpretation A dictionary of terms used in the exposure draft	
AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION (CONSEQUENTIAL AND TRANSITIONAL AMENDMENTS) BILL	
Consequential amendments to other Commonwealth statutes to implement the ACNC (not yet drafted)	<ul style="list-style-type: none">▪ The <i>Consequential Amendments Factsheet</i>
Transitional arrangements required to set up the ACNC (not yet drafted)	<ul style="list-style-type: none">▪ The <i>Transitional Arrangements Factsheet</i>

FREQUENTLY ASKED QUESTIONS

Where can I go for more information?

The Treasury has released a set of Factsheets which provide additional information on various issues relating to the exposure draft. The following list of Factsheets are available at www.treasury.gov.au:

- The ACNC and Advisory Board
- Consequential Amendments
- Constitutional Issues
- Education, Compliance and Enforcement
- 'One-stop shop'
- Overview
- Registration
- Reporting and Auditing
- Review and Appeals
- Secrecy framework
- Transitional Issues

Will the Government consult on issues not included in the exposure draft?

The exposure draft does not include transitional arrangements, consequential amendments to other legislation, objection, review and appeal processes or governance requirements of registered charities.

The Government is consulting on the appropriate governance obligations for registered entities through the Consultation paper *Review of NFP Governance Requirements* which was released on 8 December 2011.

While there will not be time to undertake a second public consultation period on the legislation including the sections not yet drafted, the Government will undertake confidential consultation with a broad cross-section of the community on the final draft of the legislation prior to its introduction into Parliament.

Can I comment on issues that are not included in the exposure draft?

Yes. You are able to provide submissions on issues outlined in the Factsheets on transitional arrangements, consequential amendments and objection, review and appeal processes. You can also comment on Governance issues through the Consultation paper *Review of NFP Governance Requirements*.

Who will be affected by the changes?

From 1 July 2012, the ACNC will begin its operations by registering charities, including public benevolent institutions. It is envisaged that in the long-term the ACNC's role will expand to cover registration and regulation of all NFPs receiving government concessions and benefits.

Can the Government extend the consultation period?

Prior to the Government's commitment to establish the ACNC, a number of reviews identified the need for, and possible functions of, a regulator for the NFP sector. The NFP sector widely contributed to these reviews and strongly supported the proposal of a regulator.

The Government consulted as part of the *Scoping Study for a National NFP Regulator* on the scope, goals, form and function of a regulator. Over 160 submissions were received during the consultation process and were taken into consideration in the Final Report, which was released on 4 July 2011. The Final Report set out the way forward for the Government to implement a NFP Regulator.

Since the announcement to establish the ACNC in the 2011-12 Budget the Government has continued to consult on the scope, form and functions of the ACNC once it starts operation on 1 July 2012, including with the Not-for-profit Sector Reform Council and the ATO's Charities Consultative Committee.

In order to have the ACNC operating by 1 July 2012, legislation for the ACNC will have to be ready to be introduced into Parliament in the first quarter of 2012. This means that the Government needs to consult on the exposure draft and explanatory materials for the ACNC in December 2011, to allow time to take account of comments from the sector, prior to introduction into Parliament. The Government may not be able to take late submissions into account. However, the Government will undertake further confidential consultation on the exposure draft.

When is the Australian Charities and Not-for-profits Commission Bill expected to commence?

The ACNC will commence operations from 1 July 2012. However, from this date, only charities will be registered and regulated by the ACNC. The Factsheet *Transitional Issues* provides further information on timing issues.

How does this relate to the ACNC Implementation Taskforce Discussion paper?

The exposure draft includes and seeks sector input on the legislative requirements for NFP entities, including that reporting is tiered and provided in the approved forms.

The ACNC paper Implementation Design (reporting framework) seeks input on administrative issues including what should be included in the approved forms and on the ACNC website, and what education the ACNC should provide. Consultation on the ACNC paper closes on 27 February 2012.