

TREASURY'S NOT-FOR-PROFIT REFORM FACTSHEET

THE ACNC EXPOSURE DRAFT REGISTRATION

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

In the 2011-12 Budget, the Government announced that the ACNC will be responsible for determining charitable status (including public benevolent institution status) for all Commonwealth purposes, from 1 July 2012.

Registration by the ACNC would allow charities to access support the Australian Government has earmarked for their specific charitable purpose which includes access to Commonwealth exemptions, concessions and benefits (including generous tax concessions).

To obtain registration from the ACNC, charities would have to apply directly to the ACNC for registration, operate consistently with the definition of charity specified in Australian law, and comply with registration conditions and requirements which are specified in the ACNC exposure draft.

The Government has decided to link registration and access to support earmarked for charities to ensure that scarce public monies are used appropriately and for the public benefit.

CHARITABLE PURPOSES

To the end of the 2013-14 financial year, the ACNC will only register not-for-profit (NFP) entities as charities. The range of charitable purposes the ACNC will register is specified in the ACNC exposure draft and includes public benevolent institutions, charities established for the advancement of health, and charities established for the advancement of education.

In the future the Australian Government will consider expanding the range of NFP entities the ACNC will register.

BENEFITS OF REGISTRATION

Registered entities will be able to access support which the Government has earmarked for the charitable or NFP

purpose the entity is registered under. Initially, registration will be a precondition only for the support provided by the Commonwealth. In the future, this may be expanded to include support provided by State and Territory governments.

Registration would also provide charities with a tick of approval and signal to the public that the entity is complying with the regulatory requirements in the exposure draft. Governance requirements are not included in the exposure draft as the Government is currently consulting with the sector on governance arrangements.

Registered entities would have an entry in the ACNC register and information portal. Registered entities would be able to manage the content of their entry and promote their activities by providing the public with information on the entity's achievements, objectives and future plans.

ARE YOU ELIGIBLE FOR REGISTRATION?

All registered entities will be NFPs. The ACNC will use the definition of 'not-for-profit' specified in the Government's measure to restate and standardise the special conditions for tax concession entities to determine if applicants are NFPs.

The ACNC will then determine the charitable purpose of the applicant. The ACNC will use the definition of charity developed by common law to determine whether the applicant is a charity. When the Australian Government introduces a statutory definition of 'charity' on 1 July 2013, the ACNC will use the statutory definition to determine if an applicant is a charity.

The applicant would also have to meet related registration requirements such as having in place basic governance requirements, and not otherwise being ineligible for registration – for example, being a listed terrorist organisation.

To maintain ongoing registration, NFPs will have to comply with regulatory requirements such as providing the ACNC with an annual information statement and for some entities, a financial statement, meeting duty to notify requirements and assisting the Commissioner of the ACNC with information requests.

FREQUENTLY ASKED QUESTIONS

Do all charities have to be registered by the ACNC?

Registration from the ACNC will be completely voluntary. Charities would be able to continue to operate in Australia without being registered. However, only those entities that are registered by the ACNC would be able to access support which the Government has earmarked for the charitable purpose the entity is registered under.

Does registration from the ACNC ensure that charities have access to support provided by the Government to the sector?

Registration as a charity will be a necessary pre-condition to access support which the Australian Government has earmarked for the charitable purpose the entity is registered under. However, registration would not guarantee access to support as other requirements, in addition to the charitable purpose requirement, may be required to access support. For example, access to income tax concessions requires that entities meet the special conditions specified in the tax laws such as the 'In Australia' special conditions. Access to other NFP concessions, exemptions and benefits would also generally have additional requirements.

Can a charity be registered under numerous charitable purposes?

Some charities undertake a range of charitable activities. For example, it is not uncommon for a charity to provide poverty relief and health promotion services. An entity that provides these services would be able to be registered under both charitable purposes. This ensures that the entity can access support the Australian Government has earmarked for both relevant purposes (unless access to one type of concession disentitles an entity to another type).

Will an NFP conglomerate be able to have one registration for all of its subsidiaries?

No. Registration will occur at the entity level. It is not uncommon for a charity to have subsidiaries which have a related charitable purposes (in some instances subsidiaries may have a commercial purpose), or to be affiliated in some manner with another charity.

In these cases, charities would not be able to obtain one registration for all affiliated entities. Instead, each entity would need to be registered independently. This ensures that all entities receiving public monies are independently accountable to the ACNC, that the public is able to monitor all registered entities, and that all entities are independently complying with regulatory requirements.

Would there be a time limit attached to registration by the ACNC and would I need to get my registration renewed on a periodic basis?

There will be no time limits attached to registration by the ACNC. If a registered entity continues to meet the registration conditions and regulatory requirements associated with registration, the entity's registration would be maintained indefinitely. However, the ACNC will begin to review existing registrations from 1 July 2013.

Registered entities would be required to notify the ACNC of changes which could alter their registration eligibility, including changes to governing documents and responsible individuals, within a fixed timeframe. The ACNC will also monitor ongoing registration eligibility through risk-based compliance activities.

How would registered NFP entities know which regulatory requirements they have to comply with to maintain ongoing registration?

Regulatory requirements which registered NFP entities would be required to comply with will be specified in the law. It includes requirements to provide the ACNC with annual information statement and for some entities a financial statement, auditing and review requirements, and duty to notify requirements.

Once the ACNC is established it will provide the sector with educative material to complement and provide further guidance on the regulatory requirements specified in the ACNC exposure draft.

Do tax exempt charities with a current endorsement from the Australian Taxation Office have to go through a registration process when the ACNC begins its operations?

When the ACNC begins its operations on 1 July 2012, existing entities endorsed by the Australian Taxation Office and will be considered to be registered by the ACNC and will not need to re-register. This will help to minimise compliance costs the sector could face in transitioning to its new regulatory framework. The Government has announced that when the statutory definition of charity is adopted on 1 July 2013, the ACNC will re-examine registrations overtime to ensure registered entities comply with the statutory definition of charity.

Will there be a cost associated with ACNC registration?

There will be no fees on charities applying for and obtaining ACNC registration.