

TREASURY'S NOT-FOR-PROFIT REFORM FACTSHEET

THE ACNC EXPOSURE DRAFT SECRECY FRAMEWORK

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 secrecy framework in the ACNC exposure draft has been developed in order to provide a balance between the need to protect personal and confidential information provided to the ACNC, with the need to disclose information to allow the ACNC to fulfil its roles and obligations under the exposure draft.

These competing needs reflect the overarching role of the ACNC as regulator of the not-for-profit (NFP) sector and the objective of the ACNC legislation to improve the transparency and accountability of the NFP sector.

In seeking to achieve this balance, the secrecy framework in the ACNC exposure draft has been structured in a way that allows it to be flexible enough to protect personal and confidential information but also make certain information available, where it is in the public interest to disclose that information.

The secrecy framework interacts with the Commonwealth *Privacy Act 1988* and is consistent with the Information Privacy Principles that are set out in that Act and administered by the Office of the Information Commissioner. This ensures there is complete protection of the personal information of individuals.

WHAT INFORMATION IS PROTECTED?

The information that is protected under the ACNC secrecy framework includes all information that was disclosed to, or obtained by the Commissioner or an ACNC officer and identifies, or is reasonably capable of being used to identify, an entity.

This includes information that is not currently in the public domain and may have been provided to the ACNC on a registration or compliance document such as a registration

application form or as part of a registered NFP's duty to notify the ACNC of major changes.

OPERATION OF THE SECRECY FRAMEWORK

Where the Commissioner or an ACNC officer has access to protected 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 role to act as a 'one-stop shop' regulator and improve governance transparency and accountability for the NFP sector, disclosure of the protected information is permitted where the disclosure is specifically authorised in the legislation.

AUTHORISED DISCLOSURES

In the ACNC exposure draft, an authorised disclosure includes:

- disclosure to increase public transparency and accountability of the sector;
- disclosure to an authority of the Commonwealth, a State or a Territory; and
- disclosure with consent of the entity.

These authorised disclosures are explained in further detail in the explanatory materials to the ACNC exposure draft and have been developed in a way that ensures the highest level of protection for information disclosed to the ACNC.

These authorised disclosures also allow for the sharing of information with other Commonwealth, State and Territory authorities to enable the reduction and removal of regulatory duplication across Australia and more importantly minimise the compliance costs of NFP entities.

ON-DISCLOSURE OF INFORMATION

Where the Commissioner or an ACNC officer discloses information to an entity under an authorised disclosure provision, the receiving entity will also be subject to a general prohibition on the use and disclosure of that information.

However, on-disclosure will be authorised where the on-disclosure is consistent with the purpose or intent for which the information was originally disclosed or where it is allowed under another statute.

PENALTIES FOR UNAUTHORISED DISCLOSURE

Where an entity breaches their obligations under the ACNC secrecy framework, they will have committed an offence and a court may impose a criminal penalty.

FREQUENTLY ASKED QUESTIONS

What is the difference between privacy and secrecy?

Whilst the concepts of privacy and secrecy are sometimes confused or used interchangeably, there is a considerable difference between the two, and this is reflected in the way that information is treated and the requirements in the ACNC exposure draft and in the *Privacy Act 1988*.

Privacy, as it is commonly understood in the *Privacy Act 1988*, is the protection of an individual's personal information. This includes the protection and handling of personal information about an individual's name, address, date of birth, bank account details and financial status. It is important to note that privacy, as understood under the *Privacy Act 1988* only covers individuals and not corporations or other entities.

Secrecy, on the other hand, covers the protection of information obtained in the administration of a law, but is generally based on the need to preserve the secrecy of government operations in order for government to function effectively. Secrecy also covers protected information that relates to both individuals and non-individuals.

Will personal information be disclosed under the authorised disclosure provisions?

No, the ACNC will not be authorised to disclose any personal information except where consent is given by the responsible individual to whom the information relates or is otherwise specifically authorised by law.

Can the ACNC disclose to me my information, or information relating to an entity I am responsible for?

Yes, the ACNC can provide you with information relating to yourself or an entity where you are the responsible individual. You will always have access to your own information that you have provided under the ACNC secrecy framework.

Are contractors/consultants considered ACNC officers?

Yes, the definition of an 'ACNC officer' broadly covers those public servants and statutory office holders who are intrinsically involved in the work of the ACNC and employed under the *Public Service Act 1999*.

However, it also extends to those individuals whose services are made available to the Commission or engaged as a consultant under a provision of the ACNC exposure draft. This is because they would have access to protected information and, as such, will need to be subject to the secrecy framework in the same way as a public servant working for the ACNC.

Who will decide what information can be disclosed to increase public transparency and accountability of the sector and what kind of information will be disclosed?

As detailed in the ACNC exposure draft, it will be the role of the ACNC Commissioner to determine and provide guidance through a legislative instrument on what information is reasonably necessary to disclose in order to maintain public trust in the NFP nature of the registered entity.

This legislative instrument will be drafted in a manner that is clear to both the sector and the ACNC officers who will operate under it.

The kind of information to be disclosed (and listed in the legislative instrument) under this authorised disclosure provision is currently being determined by the ACNC Implementation Taskforce through the *Design Implementation* discussion paper.

The policy intent is that it is likely to include information pertaining to financial reports such as statements of financial performance and statements of financial positions as well as more qualitative information such as description of the purposes, objectives, activities and achievements of registered entities.

This information may be disclosed via the ACNC Register and the ACNC website.