

TREASURY'S NOT-FOR-PROFIT REFORM FACTSHEET

THE ACNC EXPOSURE DRAFT TRANSITIONAL ISSUES

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 would be responsible for determining the legal status of entities seeking charitable, public benevolent institution and not-for-profit (NFP) benefits on behalf of all Commonwealth agencies, and would be a 'one-stop shop' regulator for the sector at the Commonwealth level.

The *Final Report of the Scoping Study for a National NFP Regulator* (the Final Report) recommended that a single regulator should be established for all NFPs. However, noting that the Australian Government does not have the constitutional power to fully regulate the NFP sector, the Final Report recommended that the Australian Government should improve Commonwealth regulation for the sector in the interim, ensuring that the Government regulatory overlap at a Commonwealth level is removed.

A SMOOTH TRANSITION

From 1 July 2012, the ACNC will only be responsible for regulating charities. While the Government is committed to improving the governance, accountability and transparency for the NFP sector in its election commitment, the first tranche of reforms focus on the charitable sector.

The ACNC's scope will expand to cover other NFP entities over time. Those timeframes are still to be determined, but are not expected to start before 1 July 2014.

Existing charities, endorsed by the Australian Taxation Office (ATO) as exempt from income tax, will be transitioned into the new regime and will not need to re-register to be a charity.

The ATO will accept the ACNC's registration of charitable status, but will retain responsibility for determining eligibility to access Commonwealth tax concessions which are subject to special conditions.

Should entities be required to make changes as a result of the introduction of the new regulatory framework,

appropriate transitional arrangements will be in place to allow entities plenty of time to adjust where it is necessary for an entity to make changes. This will allow for a smooth transition to the ACNC.

The ACNC exposure draft has been developed with a view to establishing a legislative framework that meets the long-term objectives of the single national regulator. In order to meet this long-term objective, the ACNC legislation will be drafted in order to be applicable to all entities, with qualifications for areas that are subject to State and Territory agreement in the long term.

TIMING

1 July 2012: The ACNC commences. The ACNC will begin its operations by registering new charities, including public benevolent institutions. Existing charities, endorsed by the ATO as exempt from income tax, will be transitioned into the new regime and will not need to re-register.

The ACNC will also be responsible for regulating governance requirements of registered entities. This means that the ACNC will take over governance arrangements of NFP companies limited by guarantee from Australian Securities and Investments Commission (ASIC), and other charities regulated at a Commonwealth level, and arrangements will not be in addition to existing requirements. Arrangements will be in place for entities that are required to make changes as a result of the new law and for the transfer of information between the ACNC and ASIC and the ATO.

1 July 2013: The statutory definition of charity is proposed to come into effect and the ACNC will register based on the statutory definition. Charities will remain responsible for self-assessing their eligibility on an ongoing basis. The ACNC will review existing registrations over time.

Charities will commence reporting, based on information from the previous year. The information statement and financial report (where required) that registered entities submit to the ACNC will be used by the entity to fulfil the totality of their general reporting obligations, initially across all Commonwealth agencies.

This means that the ACNC will take over reporting arrangements of NFP companies limited by guarantee from ASIC.

Future: The Government hopes that in the future the ACNC's role will expand to cover registration and regulation of all NFPs receiving government concessions and benefits.

FREQUENTLY ASKED QUESTIONS

I am currently endorsed (by the ATO) as a charity. Will I have to meet the ACNC requirements immediately?

Appropriate arrangements will be put in place to allow a smooth transition for existing entities.

Existing charities, endorsed by the ATO as exempt from income tax, will be transitioned into the new regime and will not need to re-register to be a charity.

The ATO will accept the ACNC's registration of charitable status, but will retain responsibility for determining eligibility to access Commonwealth tax concessions which are subject to special conditions.

I am a charity that is incorporated as a company limited by guarantee. Will I have to meet the reporting and governance requirements under both the Corporations Act and the ACNC exposure draft?

From 1 July 2012, ACNC will be responsible for regulating governance requirements of charities that are companies limited by guarantee.

The Government is currently consulting on what the core organisational governance principles applying to registered NFPs should be. However, the governance arrangements are likely to be similar, and not pose an additional burden on NFPs.

From 1 July 2013, the ACNC will also be responsible for collecting annual reports and information statements from charities that are companies limited by guarantee. The ACNC will share the annual report with ASIC. ASIC will continue to keep the Companies Register up-to-date for all companies limited by guarantee.

I am a NFP entity that currently self-assesses for tax purposes? Will the ACNC be registering and regulating me from 1 July 2012?

No. The ACNC will only be responsible for regulating charities from 1 July 2012. While the Government committed to improving the governance, accountability and transparency for the NFP sector in its election commitment, the first tranche of reforms focus on the charitable sector.

The ACNC's scope will expand to cover other NFP entities over time. Those timeframes and still to be determined but is unlikely to be before 1 July 2014.

I am a small charity that is a company limited by guarantee, and as such do not have to report to ASIC currently, will I have to report under the changes?

Yes. All registered NFP entities will be required to provide the ACNC with an annual information statement. Medium

and large entities will also need to provide a financial report.

As NFPs are in receipt of benefits, such as tax concessions, there is placed upon them high community expectations, making a base level of reporting and accountability important.

Reporting requirements will be proportional to the size of registered entity. The Government does not intend the required information to create onerous requirements for small NFP entities.

I am a charity that is an incorporated association, charitable trust or other entity governed by states law. Will I have to meet the reporting and governance requirements under both the state legislation and the ACNC exposure draft?

The Australian Government announced it was taking the lead in getting its own house in order and working with the states towards a national regulator and regulation. From 1 July 2012, the ACNC will begin the process of creating a 'one-stop shop' in order to reduce the regulatory duplication and red tape and minimise compliance costs imposed on NFP entities.

Currently, Commonwealth, State, Territory and local governments regulate different parts of the NFP sector for both different and overlapping purposes. In order to move towards the long-term objective of having the ACNC as a national 'one-stop shop' for NFP regulation, the Commonwealth will work with the States and Territories on a national regulatory framework in the hope that in the long-term the ACNC's role will expand to cover registration and regulation of all NFPs receiving government concessions and benefits.

Where charities in receipt of public monies through tax concessions or donations, the Government is seeking to ensure appropriate governance, accountability and transparency procedures are in place. The governance requirements will be similar to the states. To further reduce regulatory duplication the Commonwealth will work with the states on achieving a truly national regulator.

I'm a company limited by guarantee. Will I also need to report to ASIC?

The information statement and financial report (where required) that registered entities submit to the ACNC will be used by the entity to fulfil the totality of their general reporting obligations, initially across all Commonwealth agencies. The information will be transferred to ASIC automatically for inclusion on the companies register.