

# Treasury and the Australian Charities and Not-for-profits Commission Protocol

Treasury and the Australian Charities and Not-for-profits Commission (ACNC) are joint stewards, delivering advice to government on policy issues affecting the regulation of Australia's not-for-profit sector and the administration of that policy. Treasury and the ACNC are committed to working collaboratively and continuously to provide the best possible advice to Government in order to maintain, protect and enhance public trust and confidence in the not-for-profit sector.

Treasury is a central policy agency and expected to anticipate and analyse policy issues with a whole-of-economy perspective, understand government and stakeholder circumstances and respond to changing events and directions.

The ACNC is the Government's national regulator for not-for-profit entities seeking access to Commonwealth exemptions, benefits and concessions. The ACNC administers the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act).

## Purpose of the protocol

This protocol provides a framework for the working arrangements between Treasury and the ACNC in designing new policies and laws that form the not-for-profit regulatory system, and administering those laws once enacted. This protocol covers all laws administered by the ACNC.

Treasury is accountable for providing advice to government on policy and law design issues affecting the regulation of the Australian not-for-profit sector. The ACNC is accountable for the administration of the ACNC Act, and in doing so, for maintaining, protecting and enhancing public trust and confidence in the Australian not-for-profit sector; supporting and sustaining a robust vibrant and independent and innovative sector; and promoting the reduction of unnecessary regulatory obligations on the sector.

## Institutional accountabilities

Treasury will develop the policy and the resulting legislation to regulate the Australian not-for-profit sector in close continuous collaboration with the ACNC. Wherever possible each party will allow the other appropriate time to adequately consider and comment on proposals.

To assist the ACNC participate as fully as possible in the development of that policy, Treasury and the ACNC will seek to reach agreement on policy issues before Treasury briefs Ministers. If agreement cannot be reached, Treasury will ensure that the ACNC's views are provided to Ministers.

The ACNC will also be closely involved in developing the drafting instructions for resulting legislation before those instructions are sent to the Office of Parliamentary Counsel. The ACNC will be provided with an opportunity to contribute to and review the draft legislation and extrinsic materials before they are introduced into Parliament.

A designated senior Treasury officer will formally assure that a piece of draft legislation has passed internal quality assurance processes and that, as far as practicable, the Bill and extrinsic materials clearly articulate the Government's intended policy. Those processes involve testing the policy through appropriate consultation, including with external not-for-profit sector experts (as envisaged by external engagement and consultation); critical internal assessment (from Treasury's specialists networks); and other knowledge sources within Treasury and the ACNC, as appropriate.

The authorised ACNC senior officer will formally assure as far as practicable that a piece of draft legislation can and will be administered consistently with the Government's stated policy intention as articulated in the drafting instructions, relevant objects and other clauses of the draft legislation and the extrinsic materials, or formally advise the Treasury as soon as practicable if the ACNC considers the words used in the drafting instructions, draft legislation or extrinsic materials depart from the understood policy intent.

Where the ACNC is asked to brief Ministers directly on issues related to the administration of the regulation of the not-for-profit sector, the ACNC will consult with Treasury and provide copies of any written briefings at the same time as it provides that material to the Ministers' offices.

Principles of Australian Government best practice will underpin all work carried out within Treasury and the ACNC. To support these purposes, the protocol outlines the following arrangements that form part of the overall Treasury-ACNC relationship:

- the integrated law design process; and
- the law and its administration.

## **Designing new policies and laws – the integrated law design process**

The policy, legislative and administrative aspects of the regulatory system for not-for-profit entities are integrally related and interdependent. Treasury's approach to policy and legislative design will seek to ensure the administrative experience of the ACNC is fully factored into those policy and legislation processes and there is a high level of integration across the policy, legislative and administrative aspects of not-for-profit sector regulation.

This approach supports the primary objectives of providing the best possible advice to Government, and administering new policy and law in a manner which meets Government and user needs.

## **Enacted law - the law in administration**

The ACNC administers enacted law to regulate not-for-profit entities. ACNC decisions can be reviewed by the courts, which are the final arbiters of the laws made by the Parliament.

In forming its view on the administration of law, the ACNC will routinely consult senior officials of the Treasury, its Advisory Board and the professions, undertake community consultation and release draft views for public comment. The ACNC will engage the Treasury on policy and law design issues identified in its administration of the law at the earliest possible juncture. In particular, where the ACNC identifies that it is unable to administer enacted law consistently with what is understood to be the policy intent of that law, the ACNC will provide advice to Treasury recommending law change to ensure the policy intent is met. The ACNC will also provide advice to Treasury in circumstances where the enacted law is operating consistently with what is understood to be the policy intent of the law, but there have been unforeseen impacts for the community, administration or revenue.

## **Communication between Treasury and the ACNC**

Subject to government and legal prohibitions, the Treasury and the ACNC will share information to meet the objectives outlined in this protocol. Communications between the Treasury and the ACNC will usually be in-confidence.

## **Review of the Protocol**

The protocol will be reviewed as required, to ensure its consistency with the Government's objectives. The protocol may also be amended at any time for the benefit of effective working relationships.

## **Resolving differences of view**

At all times the Treasury and the ACNC will seek to resolve any differences of view in a professional and collegiate manner. At the earliest opportunity, relevant officials will meet to clarify any differences of view. If differences of view cannot be resolved adequately to the satisfaction of those officials, they will be escalated to the Executive Director, Revenue Group and the ACNC Commissioner, and, failing resolution at that level, further escalated to the relevant Minister's office.

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Treasury

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