

EXPOSURE DRAFT

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

Australian Charities and Not-for-profits Commission Act 2012

*Exposure Draft: Australian Charities and Not-for-profits Commission Amendment
(2021 Measures No. 3) Regulations 2021*

The *Australian Charities and Not-for-profits Commission Act 2012* (the Act) provides for the registration and regulation of charities by the Australian Charities and Not-for-profits Commission (ACNC).

Section 200-5 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Exposure Draft: Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021* (the ED Regulations) is to reduce the regulatory burden for registered entities imposed by the current reporting requirements in the Act and at the same time to increase public confidence in the accountability of registered entities.

The ED Regulations implement a number of Government responses to the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review (2018)* (the Review). Firstly, the changes increase the annual revenue thresholds used for determining whether a registered entity is a small registered entity, a medium registered entity or a large registered entity. The size of a registered entity can affect how various obligations under the Act can apply to a registered entity, for example reporting obligations are scaled to the size of a registered entity. This gives effect to the Government's Response to Recommendation 12 of the Review and was agreed to by the Council on Federal Financial Relations in June 2021.

The ED Regulations also require medium and large registered entities with the ACNC to include certain related party disclosures in their special purpose annual financial reports. Medium and large entities preparing general purpose annual financial reports are already making the necessary disclosures of related party transactions. This new requirement for related party disclosures in special purpose financial reports gives effect to Recommendations 14 and 15 of the Review. The Commissioner of the Australian Charities and Not-for-profits Commission is separately proposing that small registered entities disclose a number of related party transactions as part of their annual information statements. The purpose of this change is to provide greater transparency and accountability for transactions of registered entities, and specifically transactions that pose a higher risk to charitable assets being used for private benefit.

The increase in the annual revenue thresholds will result in approximately 2,500 registered entities no longer being required to produce annual financial reports saving

EXPOSURE DRAFT

those registered entities approximately \$2,400 each in annual accounting expenses. Further, over 2,700 registered entities will be permitted to have their financial statements reviewed rather than audited, saving around \$3,000 in accounting expenses annually.

At the same time, the changes will also mean increased public confidence in the accountability of registered entities brought about by the increased disclosure requirements for related party transactions.

Details of the ED Regulations are set out at Attachment A.

The ED Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and commence on the day after the ED Regulations are registered on the Federal Register of Legislation.

Details of the Exposure Draft: Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021

Section 1 – Name of the ED Regulations

This section provides that the name of the Regulations is the *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021* (the ED Regulations).

Section 2 – Commencement

Schedule 1 to the ED Regulations commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The ED Regulations are made under the *Australian Charities and Not-for-profits Commission Act 2012* (the Act).

Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to this instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule has effect according to its terms.

Schedule 1 – Amendments

Items, 1, 2 and 3 of Schedule 1 to the ED Regulations propose to amend section 60.30 of the *Australian Charities and Not-for-profits Commission Regulation 2013* (the ACNC Regulations) to prescribe AASB 124 *Related Party Disclosures* as an additional Australian Accounting Standard that must be followed when preparing special purpose financial reports under the Act.

Australian Accounting Standards can be obtained at no cost from the Australian Accounting Standards Board website www.aasb.gov.au or the Federal Register of Legislation.

Australian accounting standards are disallowable legislative instruments made by the Australian Accounting Standards Board under section 334 of the *Corporations Act 2001*.

Under section 60-10 of the Act, medium and large registered entities, other than basic religious charities, are required to prepare financial reports annually in accordance with the ACNC Regulations. If a basic religious charity voluntarily chooses to prepare financial statements, it must also follow the requirements of Division 60. The ACNC Regulations cover the two different types of reports specified in the accounting standards – general purpose financial statements and special purpose financial statements. The accounting standards specify when a general purpose financial report must be prepared, otherwise reporting entities may choose to prepare either a general purpose financial statement or a special purpose financial statement.

EXPOSURE DRAFT

A general-purpose financial statement is prepared having regard to the requirements that apply in all the accounting standards. A special purpose financial statement is prepared in accordance with only certain prescribed accounting standards set out in section 60.30 of the ACNC Regulations

A special purpose statement requires compliance with only specified accounting standards, potentially lessening the compliance burden. The prescribed standards prior to this ED Regulation were:

- AASB 101, *Presentation of Financial Statements*;
- AASB 107, *Statement of Cash Flows*;
- AASB 108, *Accounting Policies, Changes in Accounting Estimates and Errors*;
- AASB 1048, *Interpretation of Standards*;
- AASB 1054, *Australian Additional Disclosures*; and
- AASB 2019-4, *Disclosure in Special Purpose Financial Statements of Not-for-Profit Private Sector Entities on Compliance with Recognition and Measurement Requirements*.

The ACNC Regulations will now prescribe an additional standard, namely AASB 124, *Related Party Disclosures* as in force from time-to-time.

The effect of the ED Regulations is to require all medium and large registered entities preparing annual financial reports (not only those preparing general purpose financial reports) to now disclose related party transactions. Small charities are not required to prepare annual financial reports.

One of the related party disclosures covered by AASB 124, *Related Party Disclosures* relates to remuneration paid to key management personnel.

Item 3 of Schedule 1 to the Regulations further amends section 60.30 of the ACNC Regulations to disapply AASB 124 to the extent it relates to the remuneration paid to key management personnel in certain circumstances. In its response to the ACNC Review, the Government agreed that only large registered entities with two or more key management personnel should be required to report remuneration. The amendments give effect to the limitations on disclosure of remuneration of key management personnel.

Item 4 of Schedule 1 will amends the ACNC Regulations to prescribe higher annual revenue thresholds for determining whether a registered entity is a small, medium, or large registered entity.

Type of registered entity	Old threshold limit in the Act	New threshold in the Regulations
Small registered entity	less than \$250,000	Less than \$500,000
Medium registered entity	\$250,000 to less than \$1m	\$500,000 to less than \$3m
Large registered entity	\$1m or more	\$3m or more

EXPOSURE DRAFT

Section 205-25 of the Act sets out the definition of small, medium, and large registered entities, including the current applicable revenue thresholds for assessing a registered entity's size. Section 205-25 allows for a different revenue threshold to be prescribed.

Application provisions

The ED Regulations increasing the annual revenue thresholds apply to the 2021-22 financial year and later financial years (or the period substituted for the 2021-22 financial year for those entities with an approved substituted accounting period).

The changes to related party disclosures apply to the 2022-23 financial year and later financial years (or the period substituted for the 2022-23 financial year for those entities with an approved substituted accounting period). However, to the extent that an entity is required to disclose the remuneration of key management personnel in the preparation of a special purpose financial report under the ACNC Regulations (as amended), the amendments contained in the ED Regulations apply to the 2021-22 financial year and later financial years (or the period substituted for the 2022-23 financial year for those entities with an approved substituted accounting period).