

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer**

*Australian Charities and Not-for-profits Commission Act 2012*

*Australian Charities and Not-for-profits Commission Regulations 2022*

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 *Australian Charities and Not-for-profits Commission Regulations 2022* (the Regulations) is to remake the *Australian Charities and Not-for-profits Commission Regulation 2013* (the former Regulations) before they sunset. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, progressively sunset according to the timetable set out in section 50 of the *Legislation Act 2003*. Sunsetting legislative instruments generally cease to have effect after ten years and further action is required to continue their operation, such as remaking the instrument.

The former Regulations were due to sunset on 1 April 2023. The Regulations remake the former Regulations with revisions to update and remove redundant provisions.

The language, format and numbering of the former Regulations have been maintained in the Regulations as they are used extensively in the ACNC's administrative guidance for the sector.

Sections 45-15 and 50-15 of the Act specify that before the power to make the Regulations may be exercised, the Minister must be satisfied that appropriate consultation has been undertaken with the following entities:

- the NFP sector (such as through entities that represent parts of the sector); and
- entities having expertise in fields relevant to the Regulations; and
- entities likely to be affected by the Regulations; and
- the ACNC Commissioner.

Sections 45-15 and 50-15 of the Act also specify that before the power to make the Regulations may be exercised, the Minister must be satisfied that relevant input received as part of that consultation has been taken into account adequately.

The Regulations and explanatory material were released for a four-week public consultation between 18 July 2022 and 15 August 2022.

Details of the Regulations are set out in Attachment A.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 April 2023.

No Regulations Impact Statement (RIS) has been prepared because under the Office of Best Practice Regulation guidelines no RIS is required if the remade Regulations do not make significant changes to the former Regulations and remain fit for purpose.

**Details of the *Australian Charities and Not-for-profits Commission Regulations 2022***

This attachment sets out further details on the *Australian Charities and Not-for-profits Commission Regulations 2022* (the Regulations). All references are to the Regulations unless otherwise stated. The Regulations make improvements to the former Regulations by reformatting and restructuring provisions to take account of current instrument drafting practice, and removing transitional provisions which are no longer required. The Regulations also simplify and update language in accordance with current drafting practices.

**Section 1.1 – Name**

This section provides that the name of the Regulations is the *Australian Charities and Not-for-profits Commission Regulations 2022*.

**Section 1.2 – Commencement**

This section provides that the Regulations commence on 1 April 2023.

**Section 1.3 – Authority**

This section provides that the Regulations are made under the *Australian Charities and Not-for-profits Commission Act 2012* (the Act).

**Section 1.4 – Schedules**

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

**Section 1.5 – Definitions**

This section remakes the interpretation section of the former Regulations with the exception of some definitions being ‘register’, ‘registered entity’ and ‘taxation law’ which have been removed as they are already defined in the Act. A ‘Note’ to section 5 has also been added to indicate a number of expressions which are included in the Regulations but are defined in the Act.

**Section 40.10 – Information withheld from Register**

This section remakes former subsection 40.10(4) to refer to private ancillary fund guidelines more generally, instead of to ‘guideline 14’. The reference to ‘guideline 14’ has been removed because it relates to a superseded 2009 version of the private ancillary fund guidelines which were in place at the time that the former Regulations were made. This change provides additional flexibility and allows the Regulations to continue to apply despite potential changes to the numbering of the private ancillary fund guidelines in the future.

Section 45.5 – Governance standard 1 – Purposes and not-for-profit nature of a registered entity

This section remakes section 45.5 as is, with the exception of the ‘Note’ to subsection 45.5(2), which has been updated to refer to the current website for viewing Australian law.

Schedule 1 – Repeals

This Schedule repeals the former Regulations.