

Australian Charities and Not-for-profit Commission
November 2012

On 31 October 2012 the Australian Charities and Not-for-profits Commission Bill 2012 passed the Senate. The Bill will now be returned to the House of Representatives for acceptance of the Senate's amendments.

The Bill establishes Australia's first national regulator for charities and not-for-profits, the Australian Charities and Not-for-profit Commission (ACNC). The ACNC will be an independent statutory office providing regulatory oversight and support to the Not-for-profit sector.

In doing so, the Bill provide a one-stop shop, reducing regulatory compliance, while increasing accountability and transparency.

The Government's press release is available [here](#).

The Government announced the creation of the ACNC in May 2011 and appointed an Implementation Taskforce to establish it.

The Commission, headed by Susan Pascoe, was set to commence operations on 1 October 2012, however due to the extended parliamentary debate the commencement date has been delayed and the final date is due to be announced shortly. The ACNC is expected to commence in early December 2012.

Charities regulated by the ACNC will be required to comply with governance standards and the financial reporting framework from 1 July 2013 with the first financial reports for medium and large registered entities due by 31 December 2014.

Background

Australia's Not-for-profit sector is estimated to consist of around 600,000 entities that provide services in education, sports, welfare, arts, religion, culture and community well-being of which 400,000 are estimated to have access to Commonwealth tax concessions, and about 56,000 are endorsed as charities by the Australian Taxation Office.

The sector plays a significant role in the Australian economy valued at \$100 billion annually. It is estimated that the Not-for-profit sector currently contributes almost five per cent of Australia's GDP and eight per cent of employment. The sector is second only to the mining industry in relative growth terms. The sector also engages heavily with volunteers, which

means that much of the sector's contribution is outside the dollar economy. The estimated value of volunteer time donated to the sector in 2006-07 was \$14.6 billion.

Over the last 16 years six reviews into the regulation and taxation of the Not-for-profit sector have been conducted in Australia, including the 2001 report of the "Inquiry into the Definition of Charities and Related Organisations", the 2009 "Review into Australia's Future Tax System", the Productivity Commission's 2010 report "Contribution of the Not-for-Profit Sector" and the Senate Economic Legislation Committee inquiry into the "Tax Laws Amendment (Public Benefit Test) Bill 2010.

A consistent theme that emerged from these reviews was that the regulation of the Not-for-profit sector would be significantly improved by establishing a national regulator and harmonising and simplifying regulatory and taxation arrangements.

Current state of the sector

Previous reports have found the current regulatory framework for the sector to be fragmented, inconsistent and uncoordinated across a range of government agencies. In the current regulatory framework a large charity limited by guarantee will likely provide reports to Australian Securities and Investment Commission and to each government agency from which it receives grants and contracts. This often involves substantial audit fees. In addition charities also provide reports to state and territory regulators in the jurisdictions in which the charity operates.

At a Commonwealth level the Australian Taxation Office is the current de facto regulator of charities, with the dual roles of determining an entity's charitable status and enforcing the taxation laws.

Changes to the Not-for-profit regulatory framework

Powers of the ACNC

The Bill provides the ACNC with the powers necessary to conduct regulatory oversight and actively monitor on-going eligibility for registration. These powers are currently split between the existing regulators, which include the Australian Taxation Office and the Australian Securities and Investment Commission.

The ACNC's powers include:

- giving a registered entity a warning notice or a direction;
- apply for injunctions to restrain registered entities from contravening the Act, or to compel compliance with the Act; and
- suspend or remove a responsible entity of a registered entity.



Initially the ACNC intends to rely on education rather than enforcement of its power, and encourage compliance with the new regulatory framework. In serious cases of non-compliance, the type of enforcement power employed by the ACNC will be determined by the kind of actions required to address the non-compliance.

Register and registration

The Bill charges ACNC the responsibility of establishing a register as well as registering Not-for-profit entities. In the first instance, registration is limited to charities, however it is expected that the role of the ACNC will expand over time to include all Not-for-profit entities receiving government benefits.

Although registration is voluntary, entities will be required to be registered in order to receive government support in form of concessions, exemptions and other benefits.

The register will be public, containing key details about the registered entities including type of registration, information statements and financial reports. In addition, the register will include details of any warnings, suspensions, or removal of responsible entities.

Registered entities will be required to comply with a set of minimum governance standards encompassing conduct of the entity and the processes the entity has in place. The governance standards will take effect from the 1 July 2013.

Differentiated reporting framework

In the future registered entities will be required to provide an annual information statement proportional to its size. Thus the ACNC Commissioner will approve different forms for small, medium and large registered entities.

Entities with revenue less than \$250,000 will not have to provide financial reports, whilst entities with revenue between \$250,000 and \$1 million, will be required to provide financial reports to be reviewed but not subject to a full audit. Large entities with revenues exceeding \$1 million will have to provide audited financial reports.

Charities will be required to prepare their first financial report for the financial year 2013-14, with the first report due by 31 December 2014.

The differentiated reporting framework will reduce compliance costs, whilst delivering appropriate levels of accountability and transparency.

Transition period

In order to ensure a smooth transition from the current system to the new framework, the Bill is accompanied by transitional provisions. The provisions are set out in the Australian Charities and Not-For-Profits Commission (Consequential and Transitional) Bill 2012.



The transitional provisions include:

- Automatic registration of charities already endorsed by the Australian Taxation Office unless the entity opts out within six months
- Grandfathering existing substituted periods applying to entities in certain cases
- Allowing the Australian Taxation Office to pass on certain information to the ACNC to populate the new register, and allow this information to be made public.