



**Australian Government**

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**The Treasury**

House of Representatives Standing Committee  
on Economics

**Inquiry into the Australian Charities and  
Not-for-profits Commission (ACNC) draft  
legislation**

**Submission by the Australian Treasury Portfolio**

*The ACNC Implementation Taskforce, the Australian Taxation Office, the Australian Securities and Investments Commission, the Australian Accounting Standards Board and the Auditing and Assurance Standards Board have been consulted in the preparation of this submission*

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## EXECUTIVE SUMMARY

1. The key points in our submission are summarised below.
2. The current regulatory framework applying to not-for-profit (NFP) entities is duplicative and imposes a considerable compliance burden on NFP entities, which can unnecessarily divert resources away from their important activities.
3. There have been six reviews into the regulation and taxation of the NFP sector in Australia over the last 17 years. A consistent theme that has emerged from these reviews is that the regulation of the NFP sector would be significantly improved by establishing a national regulator and harmonising and simplifying the regulatory and taxation arrangements.
4. The draft legislation establishes a national 'one-stop shop' regulator, the Australian Charities and Not-for-profits Commission (ACNC). The ACNC will commence operations from 1 October 2012. Initially, only tax endorsed charities will be regulated by the ACNC; however, the draft legislation establishes a regulatory framework that can be extended to all NFP entities in the future.
5. The establishment of the ACNC will:
  - streamline regulatory processes and minimise duplication;
  - reduce compliance burden over time by introducing a proportional regulatory system commensurate to the size of the NFP entity;
  - improve public engagement with the NFP sector through a public information portal, and provide information to help the public understand the work of the sector and the regulatory framework in which it operates;
  - provide greater transparency and accountability, which will, in turn, maintain, protect and enhance trust and confidence in the sector; and
  - provide information and guidance to the sector to assist entities registered with the ACNC to comply with their regulatory obligations and to fulfil their diverse and important goals.
6. The ACNC will be established as an independent statutory office which will be structurally separate from the Australian Taxation Office (ATO). The draft legislation ensures the independence of the ACNC, for example, by requiring the ACNC Commissioner to report directly to Parliament. The draft legislation also expressly provides that ACNC officers act independently of the ATO, for example, when making registration decisions. This structural separation will help to address any perceived conflicts of interest that currently exist with the ATO's revenue collection role and its current role as the default NFP regulator. At the same time, it ensures that the ACNC benefits from the economies of scale that come from having its administrative support provided by the ATO.
7. The establishment of the ACNC will bring Australia into line with a number of other international jurisdictions that have established a regulator specifically for the NFP sector, in recognition of the uniqueness and importance of the sector. The approach of structural separation from the relevant tax authority is also consistent with other jurisdictions, such as Canada and the United States.

8. The Government has undertaken extensive consultation on the draft legislation, including:
  - public and targeted consultation processes commencing in December 2011 and May 2012 respectively;
  - ACNC Implementation Taskforce community consultation sessions held in all Australian capital cities and Townsville concluding in February 2012 which was attended by around 1,600 people; and
  - face-to-face meetings with numerous stakeholders.
9. A wide range of stakeholders participated in the consultation process, including NFP entities, academics, accounting and legal experts, and representatives of the States and Territories. The Government also consulted with peak advisory bodies, such as the NFP Sector Reform Council, the Charities Consultative Committee, and the Clubs Consultative Forum. A full list of public submissions made in response to the public consultation process is available on the Treasury website.
10. To facilitate further consultation with the sector, the Government delayed commencement of the ACNC from 1 July 2012 to 1 October 2012. On 17 May 2012, the Government also announced that governance standards, external conduct standards and the financial reporting requirements will apply from 1 July 2013, which will enable further consultation on these issues. These requirements will be implemented through regulations, and are expected to be released for public consultation in the coming months.
11. The draft legislation has been developed in close consultation with stakeholders, and the Government has been responsive to issues raised as part of the consultation processes. For example, following the consultation processes, refinements were made to:
  - the objects clause to recognise the educational role that will be performed by the ACNC, to further explain how the ACNC will cooperate with other regulators and agencies to reduce red-tape and to recognise the Government's aim to support and sustain a robust, vibrant, independent and innovative Australian NFP sector;
  - the process for registration and deregistration;
  - the information that will be placed on the public register;
  - the reporting requirements;
  - the duty to notify the ACNC of certain matters;
  - the ACNC's information gathering, monitoring and enforcement powers;
  - the secrecy framework;
  - the review and appeals framework;
  - how the draft legislation applies to certain entities responsible for managing entities that are registered with the ACNC; and
  - reduce the level of several penalty provisions contained in the draft legislation.

12. Further detail about the refinements made to the draft legislation is included in this submission.
13. The draft legislation provides the ACNC Commissioner with the necessary regulatory powers to fulfil the Commissioner's responsibilities. These powers are based on the powers of existing regulators, including the ATO and the Australian Securities and Investments Commission (ASIC). In the first instance, the ACNC will rely on education, rather than its enforcement powers, to encourage compliance with the new provisions. This approach was outlined recently in the *ACNC Implementation Report*.<sup>1</sup>
14. The draft legislation adopts a tailored and proportionate approach to regulation, by establishing a reporting framework proportional to the size, measured by revenue thresholds, of the registered entity. Based on data provided by the ATO, the majority of entities registered with the ACNC will fall within the small tier. In practical terms, this means that the majority of entities registered with the ACNC will benefit from reporting and auditing exemptions, simplified annual information statements, as well as longer timeframes to notify the ACNC of various matters. Many medium and large entities will also benefit from a reduction in reporting burden, as explained in greater detail in our submission.
15. To achieve a truly national regulatory system, and to minimise duplication, the Commonwealth Government is working with the States and Territories. This work is being progressed by a working group established under the Council of Australian Governments (COAG). One of the core deliverables of the working group is to review regulatory duplication for governance and reporting in the NFP sector, and recommend to COAG options to reduce or minimise regulatory duplication. A fundamental part of this work is considering the role that the ACNC will play in the regulation of the NFP sector and the scope to reduce regulatory duplication at a Commonwealth and State/Territory level.
16. Under the new regime, the ACNC will be largely responsible for regulating registered entities. However, the ATO and ASIC will continue to play a role under the new regime, together with other Government agencies such as the Australian Accounting Standards Board (AASB) and the Auditing and Assurance Standards Board (AUASB). For example, the ATO will still be responsible for assessing an entity's eligibility for tax concessions and assessing the entity's compliance with tax laws. Similarly, ASIC will continue to register companies, including companies limited by guarantee. Importantly, in performing these roles, regulators and agencies will work in partnership with the ACNC, providing a coordinated approach to regulation, which will streamline interactions between the Government and the NFP sector. Further detail on these roles is provided in our submission. A number of other agencies outside of the Treasury portfolio will also continue to have a role to play under the new regime.
17. The ACNC legislation forms part of the Government's broader NFP agenda, which will implement the most significant reforms the sector has experienced over the last century. This agenda comprises of a number of elements, including introducing a statutory definition of a 'charity', better targeting NFP tax concessions, and a number of other initiatives. Further information on these initiatives is provided in our submission.

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<sup>1</sup> The report can be accessed at:  
<http://acnctaskforce.treasury.gov.au/content/Content.aspx?doc=publications/implementationreport/html/index.htm>.

## INTRODUCTION

18. A sound regulatory system for the NFP sector plays a key part in sustaining and supporting the sector, and the valuable contribution the sector provides to the community. While the Government provides significant support to the sector through tax concessions, exemptions and other entitlements, appropriate regulation of the sector will help to ensure that valuable resources are best used in furtherance of the NFP objectives, rather than unnecessary regulatory and compliance costs. At the same time, there needs to be an appropriate level of transparency and accountability, to protect the public and maintain confidence in the sector, which in turn, will promote further contributions to the sector.
19. Australia's current regulatory regime imposes regulatory requirements on NFP entities for different and overlapping purposes. The Productivity Commission, in its 2010 report, noted that the 'current regulatory framework for NFPs is characterised by uncoordinated regimes at the Commonwealth and State/Territory levels. Disparate reporting and other requirements add complexity and cost, especially for organisations operating in more than one jurisdiction'.<sup>2</sup> In response to these concerns, a number of reviews have recommended the establishment of a national regulator for the NFP sector (see below 'Past reviews and inquiries'), and these recommendations have been supported by representatives of the sector.
20. This submission provides information on the draft legislation that will establish the ACNC as the new national regulator for the NFP sector.
21. Part one of this submission provides background information on the sector, including past reviews and inquiries, and the need for a national 'one-stop shop' regulator for the NFP sector.
22. Part two provides an overview of the proposed reforms, including timing and next steps. It also provides a detailed description of the key measures contained in the draft legislation.
23. Part three outlines the consultation processes that have occurred in developing the draft legislation, and the outcomes from these processes, including key changes made to the draft legislation following consultation.
24. Part four briefly outlines the role of other regulators and agencies within the Treasury portfolio under the new regime.
25. Part five deals with the interaction with State and Territory regimes, and the current work the Commonwealth is progressing with the States and Territories to ensure that the ACNC is a truly national regulator.
26. Part six provides a short overview of a number of the other initiatives that form part of the Government's broader NFP reform agenda, including introducing a statutory definition of charity and better targeting NFP tax concessions.

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<sup>2</sup> Productivity Commission, *Contribution of the Not-For-Profit Sector Research Report*, January 2010, p 113.  
[http://www.pc.gov.au/\\_data/assets/pdf\\_file/0003/94548/not-for-profit-report.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0003/94548/not-for-profit-report.pdf).

## PART ONE: BACKGROUND

### The NFP sector

27. The NFP sector consists of entities which seek to achieve a community, altruistic or philanthropic purpose, and provide goods and services to those in the community who may not otherwise be able to afford them. The NFP sector can also be defined in broad terms, as encompassing all those in the economy who are not households, government or businesses that operate for profit.
28. The NFP sector is characterised by its diversity, with entities ranging from micro-sized sporting and recreational clubs to large national and multinational charitable organisations. The sector consists of approximately 600,000 entities, and contributes around \$43 billion to GDP per annum.
29. NFPs have a long history of delivering services to their members, their clients or to the wider community such as through the provision of welfare, education, sports, arts, worship, culture and community services.
30. The table below summarises the type and number of various legal structures adopted by NFP entities.

**Table 1: Type and number of NFP entities**

| Type of entity                      | Number NFPs<br>(2008-09) | Number Charities |
|-------------------------------------|--------------------------|------------------|
| Unincorporated association          | 440,000                  | 20,305           |
| Incorporated association            | 136,000                  | 22,023           |
| Cooperative                         | 1,850                    | 442              |
| Charitable trust                    | 9,000                    | 6,156            |
| Indigenous Corporation <sup>3</sup> | 1,855 (estimate)         | 550              |
| Companies limited by guarantee      | 12,000 (approx.)         | 4,894            |
| Other (private companies)           |                          | 2,030            |
| <b>Total NFP Sector</b>             | <b>600,705</b>           | <b>56,400</b>    |

Source: ATO data, Productivity Commission<sup>4</sup>, Treasury<sup>5</sup>, ORIC<sup>6</sup>.

### The need for a national 'one-stop shop' regulator

31. Currently, Commonwealth, State, Territory and local governments regulate different parts of the NFP sector for both different and overlapping purposes. For example, laws under each jurisdiction provide tax concessions, exemptions from registration and permit requirements and exemptions or limitations on legal liability, and impose fundraising and lottery regulations.

<sup>3</sup> In addition, there are approximately 2,500 Indigenous Organisations registered under other incorporation regimes (Commonwealth or state/territory). It is not known what percentage of these are NFPs.

<sup>4</sup> Productivity Commission. *Contribution of the Not-For-Profit Sector Research Report*. February 2010. [http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0003/94548/not-for-profit-report.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0003/94548/not-for-profit-report.pdf)

<sup>5</sup> Treasury, *Financial Reporting by Unlisted Public Companies Discussion Paper*: June 2007. [http://www.treasury.gov.au/documents/1269/PDF/Discussion\\_paper\\_Financial\\_Reporting\\_by\\_Unlisted\\_Public\\_Companies.pdf](http://www.treasury.gov.au/documents/1269/PDF/Discussion_paper_Financial_Reporting_by_Unlisted_Public_Companies.pdf)

<sup>6</sup> ORIC CATSI FAQ <http://www.orac.gov.au/Content.aspx?content=CATSI-Act/catsiFAQ.htm#1A>.

32. A single national regulator for the NFP sector would reduce duplication and compliance costs faced by the sector, increase transparency and accountability for the public and participants in the sector, and maintain, protect and enhance trust and confidence in the sector.
33. In 2010, the Productivity Commission (PC) *Report on the Contribution of the Not for profit Sector* (PC Report) examined the levels of regulation faced by the NFP sector and the compliance costs associated with those obligations.
34. In response to these issues, the report provided recommendations to the Government to establish a single national regulator for the NFP sector. In particular, the report recommended the establishment of a 'one-stop shop' regulator by consolidating various regulatory functions into a new national regulator unique to the NFP sector. This recommendation was supported by sector representatives.
35. Responding to the PC's recommendations, the Australian Government undertook a scoping study for a national NFP regulator.
36. In 2011, the *Final Report on the Scoping Study for a National Not-for-profit Regulator* presented the findings of the scoping study and recommended that a single regulator be established.
37. Prior to this, a number of other reviews and inquiries also recommended the establishment of a national regulator for the NFP sector. Further information on these reviews and inquiries is set out below.

## Past reviews and inquiries

38. There have been several reviews into the regulation and taxation of the NFP sector in Australia over the last 17 years, starting with the 1995 Industry Commission Inquiry Report, *Charitable Organisations in Australia*. The sector has largely supported the recommendations made by these reviews and has called for prompt government action and implementation of a reform agenda.
39. A consistent theme has emerged from these reviews that the regulation of the NFP sector would be improved by establishing a national regulator and harmonising and simplifying regulatory and taxation arrangements.
40. The 2001 *Report of the Inquiry into the Definition of Charities and Related Organisations* recommended consideration of the establishment of a comprehensive national administrative framework for the charitable and related sector and an independent administrative body for charities and related entities.
41. The 2008 Senate Economics Committee *Inquiry into Disclosure Regimes for Charities and NFP Organisations* recommended the establishment of a single independent national regulator for NFP organisations.
42. The 2008 Senate Inquiry further recommended that the national regulator should have similar functions to regulators overseas. The Committee proposed a broad role for the NFP regulator, including:
  - registering NFP entities;
  - educating the sector and encouraging compliance;
  - educating the public about the role of NFP organisations; and



- developing and maintaining an accessible, searchable public information portal.
43. The 2010 *Australia's Future Tax System (AFTS) Report* recommended that a national charities commission should also be established to monitor, regulate and provide advice to all NFP organisations.
44. The PC Report recommended the establishment of a 'one-stop shop' for Commonwealth regulation by consolidating various regulatory functions into a new national registrar. The Commission further recommended that while ultimately the registrar could be an independent statutory body, it should initially be established as a statutory body corporate within ASIC.
45. The PC Report recommended that the regulator undertake a variety of functions, including:
- assessing the eligibility of NFP organisations for Commonwealth tax concession status,
  - endorsing and maintaining a register of endorsed organisations,
  - registering and regulating NFP companies limited by guarantee,
  - providing a single reporting portal for corporate and financial information, and
  - investigating compliance with regulatory requirements.
46. The 2010 Senate Economic Legislation Committee *Inquiry into the Tax Laws Amendment (Public Benefit Test) Bill 2010* recommended the establishment of a single independent national commission for NFP organisations.
47. The Committee recommended that the regulator undertake a broad range of activities including:
- promoting public trust and confidence in the charitable sector;
  - encouraging and promoting the effective use of charitable resources;
  - developing and maintaining an accessible, searchable public interface;
  - processing annual returns submitted by charitable entities;
  - monitoring charitable entities and their activities to ensure that registered entities continue to be qualified; and
  - monitoring and promoting compliance with relevant legislation.
48. In April 2011, Treasury released the *Final Report on the Scoping Study for a National NFP Regulator*. This report provided the blueprint to implement a national regulator, and forms the basis of the model proposed in the draft legislation.

## PART TWO: OVERVIEW OF PROPOSED REFORMS

49. The ACNC legislation establishes a national regulator, the ACNC, and a national regulatory framework for the NFP sector. The draft legislation:
- charges the ACNC with registering NFP entities and maintaining a register,
  - introduces a new national regulatory framework designed for NFPs,
  - provides for the powers of the Commissioner in relation to the regulation of registered entities, and
  - sets out the obligations and responsibilities of registered entities.
50. Initially, only tax endorsed charities will be regulated by the ACNC. However, the draft legislation establishes a regulatory framework that can be extended to all NFP entities in the future.
51. A national regulatory system that promotes good governance, accountability and transparency for NFP entities will help to maintain, protect and enhance the public trust and confidence that underpins the sector.
52. The ACNC will administer a new system of more effective and smarter regulation. The regulation will be proportional to the size of the NFP entity to minimise compliance costs, and to allow registered entities to focus on achieving their mission.
53. The Commissioner of the ACNC will cooperate with other government agencies to oversee a simplified and streamlined regulatory framework for NFP entities.
54. The Commissioner of the ACNC will also provide information to help the public understand the work of the NFP sector and the regulatory framework in which it operates and to improve the transparency and accountability of the sector. The educational role of the ACNC will help to improve public understanding of, and engagement with, the important work of the sector.
55. The establishment of a national regulatory system for NFP entities will provide significant benefits to the NFP sector over time by:
- reducing red tape and duplication by streamlining processes;
  - reducing compliance burden by introducing a proportional regulatory system commensurate to the size of the NFP entity;
  - improving public engagement with the NFP sector through a public information portal, and providing information to help the public understand the work of the sector;
  - providing greater accountability and transparency, which will, in turn, maintain, protect and enhance trust and confidence in the sector; and
  - providing information and guidance to the sector to assist registered entities to comply with their regulatory obligations and to fulfil their diverse and important goals.
56. The establishment of the ACNC will bring Australia into line with a number of other international jurisdictions that have established a regulator specifically for the NFP

sector, in recognition of the uniqueness of the sector. Further detail and analysis of international regulatory models is available in Treasury's *Final Report on the Scoping Study for a National Not-for-profit Regulator*.<sup>7</sup>

57. The ACNC will be established as an independent statutory office structurally separate from the ATO. The draft legislation ensures the independence of the ACNC, for example, by requiring the ACNC to report directly to Parliament. The draft legislation also expressly provides that ACNC officers act independently of the ATO, such as when carrying out their duties under the ACNC legislation. The approach of structural separation within the relevant tax authority is also consistent with other federated jurisdictions, such as Canada and the United States.
58. The structural separation will help to address any perceived conflicts of interest that currently exist with the ATO's revenue collection role and its current role as the default NFP regulator. This, in turn, will ensure that the public has confidence in the ACNC Commissioner's decision making processes.
59. More detailed information about the ACNC legislation is included below under 'Detailed description of ACNC legislation'.

### **Timing and next steps**

60. Following the Committee's review, the Government will consider any recommendations made by the Committee, prior to progressing the legislation in the 2012 Spring sittings, ahead of the ACNC's commencement date of 1 October 2012.
61. On 17 May 2012, the Government announced that governance standards, external conduct standards and the financial reporting requirements will apply from 1 July 2013, which will enable further consultation on these issues. These requirements will be implemented through regulations, and are expected to be released for public consultation in the coming months.
62. The delayed start dates will provide further time for consultation, give charities more time to transition to the new regulatory framework, and enable the ACNC to work with the sector to provide guidance and information to facilitate the transition to the new regime.

### **Detailed description of the ACNC legislation**

63. The ACNC Commissioner will have the general administration of the ACNC legislation. In undertaking his or her role, the ACNC Commissioner will have regard to:
  - the maintenance, protection and enhancement of public trust and confidence in the NFP sector;
  - the need for transparency and accountability of the NFP sector to the public (including donors, members and beneficiaries) by ensuring the public has access to information about NFP entities;
  - the benefits of providing information to the public about NFP entities;

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<sup>7</sup> See Appendix A of the report, which can be accessed at:  
<http://archive.treasury.gov.au/contentitem.asp?NavId=&ContentID=2054>.

- the maintenance and promotion of the effectiveness and sustainability of the sector;
- the upholding of principles relating to regulatory necessity, risk and proportionality;
- the need for cooperation with other regulators, with the aim of also minimising procedural requirements and duplication;
- the effective administration of the laws that confer functions and powers on the ACNC Commissioner and the imposition of a minimum of procedural requirements;
- the benefits derived from assisting NFP entities with their obligations under the draft legislation, including through the provision of education and guidance to NFP entities; and
- the diversity of the NFP sector.

64. Below is a summary of the key elements of the draft legislation.

### **Registration and deregistration**

65. The draft legislation provides the ACNC Commissioner with the power to register NFP entities under their specific charitable type or subtype. In the first instance, registration with the ACNC is limited to charities. However, the ACNC's role is expected to expand over time to include all NFPs.
66. Registration is voluntary. However, entities will need to be registered to access government support in the form of concessions, exemptions and other benefits. There are also other benefits to being registered, including having a web presence, and the ability for the public to more easily find out information about the entity.
67. Transitional rules apply in relation to charities that are endorsed by the ATO, ensuring a smooth transition to the ACNC.
68. The draft legislation sets out the processes and grounds for the revocation of registration by the Commissioner (for example, where the entity's application for registration was false and misleading, where a liquidator has been appointed, or where the entity has, or is likely to, contravene the Act, or a governance standard).

### **Register**

69. The ACNC Commissioner will maintain a public register, containing key details about registered entities including contact details, the type of registration, information statements and financial reports. The register will also include details of any warnings, directions, undertakings, injunctions, and any suspension or removal of responsible entities, including a summary of why the matter arose and details of any resolution or response to the matter.
70. The Commissioner may remove or withhold information from the register in specified circumstances, for example, where the information is commercially sensitive, inaccurate, or likely to confuse or mislead the public.

71. The public information portal has been modelled on similar portals established in England and Wales, New Zealand, Scotland, the United States and Canada.

### **Governance standards and external conduct standards**

72. Registered entities will need to comply with a set of minimum principles-based governance standards covering the content of the entity's governing rules, the conduct of entity, and the processes that entities have in place. Compliance with the governance standards is a condition of registration. Registered entities will also need to comply with external conduct standards.
73. The purpose of the governance standards is to establish a set of minimum governance standards for a NFP entity, with the aim of removing the existing uncoordinated, duplicative and ad hoc governance requirements that currently apply to the NFP sector.
74. The purpose of the external conduct standards is to promote transparency and provide confidence across the sector and the general public that charitable funds and services are applied for legitimate purposes, and are not contributing to terrorist or other criminal activities.
75. The external conduct standards are expected to be based on the requirements of the Financial Action Task Force's (FATF) Special Recommendation VIII (SR VIII). The FATF is an inter-governmental body established in 1989 to promote measures for combatting money laundering, terrorist financing and related threats to the integrity of the international financial system.
76. As a member of the FATF, Australia has agreed to comply with the FATF recommendations. FATF SR VIII requires FATF members to 'combat the misuse of NPOs (non-profit organisations, that is, NFP entities) for the purpose of terrorism financing'. In FATF's last review of Australia's progress in 2005, it found that Australia was only partially compliant with SR VIII.
77. Protecting the NFP sector from misuse by terrorist organisations is both a critical component of the global fight against terrorism and a necessary step to preserving the integrity of Australia's NFP sector.
78. In May 2012, the Government announced that the governance standards and external conduct standards would be set out in regulations, which would be subject to further consultation. This consultation process is expected to commence in the coming months. The governance and external conduct standards will commence from 1 July 2013.

### **Reporting thresholds and reporting requirements**

79. The draft legislation establishes a single reporting framework, which is proportional to the size of the registered entity, based on revenue thresholds. The differential reporting framework will minimise compliance costs, whilst ensuring appropriate levels of accountability and transparency.

80. The thresholds for reporting purposes are as follows:
- small entities – revenue of less than \$250,000;
  - medium entities – revenue of between \$250,000 and less than \$1 million; and
  - large entities – revenue of \$1 million or more.
81. The legislation includes a regulation making power which allows for the thresholds to be changed over time.

### **Financial reports**

82. Small entities will not have to provide financial reports. Medium entities will have to provide financial reports which can be reviewed rather than subject to a full audit. Large entities will have to provide audited financial reports.
83. In May 2012, the Government announced that the detailed content requirements of the financial report would be set out in regulations, which would be subject to further consultation, which as noted above, is expected to commence in the coming months. Charities will be required to prepare their first reports for the 2013-14 financial year. As a result, the first financial report will need to be lodged with the ACNC by 31 December 2014, or six months after the end of a substituted accounting period that commences after 1 July 2013.
84. Registered entities that notify the ACNC Commissioner, within six months of the commencement date, that they currently report under an Australian law using a substituted accounting period, will be taken to have been approved by the ACNC Commissioner (on an ongoing basis) to lodge their financial report to the ACNC on the basis of that other period. That is, existing substituted accounting periods will be grandfathered for such entities, and the ACNC Commissioner's approval to adopt the alternate accounting period will not be required in these cases.

### **Annual information statements**

85. All registered entities will be required to provide an annual information statement in the approved form. This could include information relating to governance, finances, activities, purposes and or beneficiaries. The information statement will be proportional, with the Commissioner able to approve different forms for small, medium and large registered entities.
86. The first annual information statement will relate to the 2012-13 financial year. As a result, the first information statement will need to be lodged with the ACNC by 31 December 2013, or six months after the end of a substituted accounting period that commences after 1 July 2012.
87. Further detail about the annual information statement is provided in the ACNC Implementation Report.<sup>8</sup>

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<sup>8</sup> The report can be accessed at:  
<http://acnctaskforce.treasury.gov.au/content/Content.aspx?doc=publications/implementationreport/html/index.htm>.

### Practical impact of reporting tiers

88. Based on ATO data, the majority of registered entities will fall into the small tier (see table below).

**Table 2: Size of Australian charities within various tier thresholds (as at 24 June 2012)**

| Tier   | Charity population % | Cumulative total % |
|--|----------------------|--------------------|
| <b>Small registered entity</b><br>Revenue up to \$250,000                  | 78                   | 78                 |
| <b>Medium registered entity</b><br>Revenue between \$250,000 & \$1 million | 11                   | 89                 |
| <b>Large registered entity</b><br>Revenue greater than \$1 million         | 11                   | 100                |

Source: Based on ATO data

89. In practical terms, as the majority of entities will fall within the small tier, they will benefit from reporting and auditing exemptions, simplified annual information statements, as well as longer timeframes to notify the ACNC of various matters.
90. Medium entities will also benefit from simplified auditing requirements and simplified annual information statements. Many medium and large entities, particularly companies limited by guarantee, will benefit from a further reduction in reporting burden, as they will no longer need to prepare a directors' report as currently required by the *Corporations Act 2001* (Corporations Act).
91. Some stakeholders commented on the level of the tiers, and expressed the view that they should be increased. However, increasing the thresholds would create inconsistencies at the Commonwealth level, as well as at the State and Territory level (see the table at Appendix A, which compares reporting requirements and auditing requirements applicable in other Commonwealth, State and Territory regimes).
92. The revenue thresholds adopted in the ACNC legislation are based on the same revenue thresholds contained in the Corporations Act for companies limited by guarantee. These thresholds were developed following extensive consultation, including consultation undertaken as part of a Treasury discussion paper entitled 'Financial Reporting by Unlisted Public Companies' released in June 2007.

### Duty to notify

93. Registered entities will be required to notify the Commissioner of certain matters, for example, changes to its contact details, any significant contraventions of the Act or governance standards that would mean the entity is no longer entitled to registration.
94. This will ensure that the public register remains up-to-date and can be relied upon by the public. The duty to notify is based on similar provisions contained in the *Taxation Administration Act 1953* (TAA) for endorsed charities, but with less severe penalties for any breaches of the duty.

## Regulatory powers of the ACNC

95. The draft legislation provides the ACNC Commissioner with the regulatory powers it requires to fulfil its responsibilities. These powers are based on the powers of existing regulators, including the ATO and ASIC.
96. There are a range of powers and sanctions available to the ACNC Commissioner, to enable the Commissioner to respond appropriately to the facts of each case. These powers are intended to be used to allow the ACNC Commissioner to conduct regulatory oversight in an effective manner, and to actively monitor on-going eligibility for registration.
97. In the first instance, the ACNC will rely on education, rather than its enforcement powers, to encourage compliance with the new provisions. This approach was outlined recently in the ACNC Implementation Report.<sup>9</sup> The ACNC's educative role will include providing assistance and support to the sector on technical matters, and assisting the sector during the transition to the new regulatory environment.
98. In more serious cases of non-compliance, the type of enforcement power used by the Commissioner will be determined by the kinds of actions which are required to address the contravention or non-compliance.
99. In some cases, all that will be required is the issuance of a warning notice to encourage self-correction, in other cases where an entity has persistently failed to meet regulatory obligations, or committed a very serious contravention such as fraud; the Commissioner may need to remove a responsible entity.
100. The legislation provides the Commissioner, or their delegate, with the following powers to use at their discretion following the meeting of a number of preconditions:
  - gathering information, monitoring activities and inquiring about matters relating to general compliance with, or potential breaches, of the provisions of the new laws. An ACNC officer may enter premises for the purpose of monitoring, with the occupier's consent or under a monitoring warrant;
  - giving a registered entity a warning notice or a direction if the Commissioner reasonably believes the entity has, or is likely to, contravene the Act, governance standards, or external conduct standards;
  - accepting enforceable undertakings from registered entities to comply with the Act, governance standards or external conduct standards;
  - applying for injunctions to restrain registered entities from contravening the Act, or to compel compliance with the Act; and
  - suspending or removing a responsible entity of a registered entity, if the Commissioner reasonably believes that the registered entity has, or is likely to, contravene the Act, governance or external conduct standards. The Commissioner may appoint acting responsible entities, subject to certain limitations, to enable the registered entity to continue to function.

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<sup>9</sup> The report can be accessed at:  
<http://acnctaskforce.treasury.gov.au/content/Content.aspx?doc=publications/implementationreport/html/index.htm>.



101. In order to ensure to accuracy of information provided to the ACNC, and to provide a remedy where entities provide misleading information or fail to provide information to the ACNC, the draft legislation provides an administrative penalty regime, consistent with the TAA. This regime is based on the level of culpability of the entity, as well as their subsequent actions. For example, an entity that makes an innocent mistake is likely to be relieved of any penalty, but an entity that intentionally disregards the law and then attempts to prevent the ACNC from finding out is likely to be more harshly penalised.

### **The Advisory Board**

102. The draft legislation establishes the Advisory Board, to provide advice and make recommendations to the Commissioner in relation to the Commissioner's functions under the Act. The Advisory Board will consist of two to eight general members, appointed by the Minister. Collectively, the general Advisory Board members must have expertise relating to charities and NFP entities, or experience and appropriate qualifications in law, taxation or accounting.

### **Secrecy**

103. The draft legislation establishes a secrecy framework to ensure that where the Commissioner and ACNC officers have access to personal or confidential information in the ordinary course of performing their duties, they are subject to a general prohibition on the use and disclosure of that information.
104. However, to ensure the ACNC is able to fulfil its functions under the draft legislation, including promoting good governance, transparency and accountability, disclosure of the protected information is permitted in specified circumstances.
105. In administering the secrecy framework, the ACNC will adopt a coordinated and cooperative approach with other relevant authorities, consistent with the ACNC's function as a 'one-stop shop' regulator.

### **Review and appeals**

106. The draft legislation sets out the process for an entity to challenge all core decisions of the ACNC Commissioner if they are dissatisfied with the Commissioner's decision. An entity that is directly affected by the decision will be able to utilise full merits based review and appeal rights in respect to the decision of the Commissioner.
107. The remaining non-core decisions made by the ACNC Commissioner will not be subject to a merits based review, but will be subject to review under the *Administrative Decisions (Judicial Review) Act 1977*.
108. The draft legislation provides for the combination of multiple reviews and appeals to minimise compliance costs.

### **Obligations of responsible entities**

109. The revised draft legislation imposes certain obligations, liabilities or offences on specific entities, referred to as 'covered entities' that are responsible for managing the

primary entity. This will ensure that covered entities are accountable for complying with the new law. This is particularly important in the case of entities that do not have legal personality, such as unincorporated associations and trusts, as they cannot themselves be sued or penalised.

110. In respect of unincorporated associations and trusts, the framework contained in the ACNC legislation is based on the existing framework in the TAA.
111. In a much narrower set of situations, these obligations, liabilities or offences can also be imposed on the directors of a body corporate which has separate legal personality. This will only occur in limited cases, where certain wrong doing has been established, and no defences are available to the director.

### **Transitional provisions**

112. The draft legislation will be accompanied by transitional provisions to provide a smooth transition to the new framework. For example, transitional provisions will:
  - provide for the automatic registration of charities that are endorsed by the ATO unless the entity opts out within six months;
  - grandfather existing substituted accounting periods applying to entities in certain cases; and
  - allow the Tax Commissioner to pass on certain information to the ACNC Commissioner to populate the Register, and allow this information to be made public.

### **Consequential amendments**

113. Consequential amendments will also be required to various other Commonwealth Acts. These are expected to be technical machinery amendments, and are currently being finalised. Relevant approvals for these amendments, including approval from the States and Territories through the Legislative and Governance Forum for Corporations (previously known as the Ministerial Council for Corporations), will be sought prior to introduction.
114. In order to move towards the long-term objective of a truly national regulatory system, the Commonwealth will also work with the States and Territories on a national regulatory framework. This work is being progressed by the NFP Reform Working Group (NRWG) of COAG. Further information about the NRWG's work is included under 'Interaction with State and Territory regimes' below.

## **PART THREE: CONSULTATION PROCESSES AND OUTCOMES**

### **Consultation process on the ACNC legislation**

115. The Government has undertaken extensive consultation on the ACNC legislation and the establishment of the ACNC. These consultation processes build upon the findings of past reviews and inquiries, which were discussed in part one of this submission.
116. The Government received 108 submissions in response to the public consultation process on the draft ACNC legislation, which closed in January 2012.
117. A wide range of stakeholders participated in the consultation process, including NFP entities, academics, accounting and legal experts, and representatives of States and Territories. The public submissions are available on Treasury website at: <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2011/Australian-Charities-and-Not-for-profits-Commission-Bill/Submissions>.
118. The Government also consulted with peak advisory bodies, such as the NFP Sector Reform Council, the Charities Consultative Committee, and the Clubs Consultative Forum.
119. The Government has taken these comments into consideration in developing the draft legislation. A more detailed analysis of the way in which the Government has responded to key issues identified in this consultation process is set out below.
120. In addition, the Government undertook targeted consultation on the draft legislation in May 2012 with a wide range of NFP representatives including the Charities Consultative Committee, the Clubs Consultative Forum, the Not-for-profit Sector Reform Council, not-for-profit sector experts and representatives of the States and Territories.
121. A series of ACNC Implementation Taskforce community consultation sessions were held in all Australian capital cities and Townsville, and concluded in February 2012. These sessions were attended by around 1,600 people, and provided an opportunity for stakeholders to provide comments and seek clarity over various aspects of the reform.
122. As noted above, prior to the Government's commitment to establish the ACNC, a number of reviews identified the need for, and possible functions of, a regulator for the NFP sector. The NFP sector widely contributed to these reviews and generally supported the proposal of a regulator.
123. The Government consulted as part of the Scoping Study for a National Not-for-profit Regulator on the scope, goals, form and function of a regulator. Over 160 submissions were received during the consultation process and were taken into consideration in the Final Report, which was released on 4 July 2011 and set out the way forward for the Government to implement a NFP Regulator.
124. Since the announcement to establish the ACNC in the 2011-12 Budget the Government has continued to consult on the scope, form and function of the ACNC, including with the Not-for-profit Sector Reform Council and the Charities Consultative Committee.

## Outcomes of public consultation process

125. The draft legislation has been developed in close consultation with stakeholders, and has been the subject to extensive public and targeted consultation. As outlined above, the consultation on draft ACNC legislation was conducted in December 2011 and May 2012, and a wide range of stakeholders provided important input throughout this process.
126. Generally, the submissions broadly supported the amendments and recognised the need for reform in this area. Most stakeholder comments focussed on various drafting refinements to the draft legislation. The Government has been responsive to these issues, and made a number of improvements and refinements to the draft legislation.
127. A summary of key changes made in response to the comments received as part of the consultation process is set out below. In addition to the changes identified below, a number of other minor and technical improvements were made to the draft ACNC legislation.

| Part of legislation   | Summary of key changes in response to the consultation processes  |
|-----------------------|---|
| <b>Objects clause</b> | <p>Refinements have been made to:</p> <ul style="list-style-type: none"> <li>• further explain how the ACNC will cooperate with other regulators and government agencies to reduce red-tape;</li> <li>• insert a separate object relating to education, and the benefits or providing registered entities with guidance and education. Related to this, new parts have been added to the legislation to recognise the educational role of the ACNC and to clarify the way the Commissioner will undertake proportionate regulation; and</li> <li>• set out the benefits of providing information to the public on the not-for-profit sector.</li> </ul> <p>A preamble has also been added to recognise that the ACNC will be a regulator that reflects the unique nature of the NFP sector.</p> |
| <b>Registration</b>   | <p>The circumstances under which entities are entitled to registration have been clarified. The categories of types and sub-types have also been clarified, so that they only apply in respect of charities. These categories may be expanded later to include other not-for-profit entities.</p> <p>The provisions governing entitlement to registration have been clarified, including by noting that the determination of 'charitable purpose' is to be undertaken in accordance with the existing traditional common law meaning of the term.</p>   |
| <b>Deregistration</b> | <p>The legislation has been revised to provide that the ACNC Commissioner will only be able to revoke registration if the ACNC Commissioner is satisfied that certain circumstances are present, having considered a number of factors.</p> <p>These factors require the ACNC Commissioner to balance different</p>   |

| Part of legislation         | Summary of key changes in response to the consultation processes   |
|-----------------------------|--|
|                             | <p>considerations to ensure that any decision to revoke an entity's registration is proportional and appropriate in all circumstances. The factors include consideration, wherever possible, of other options to help promote compliance, such as education, before an entity's registration is revoked.</p> <p>Some stakeholders also raised concerns that, due to the variable nature of their funding arrangements, there may be doubt at any given particular time as to an entity's solvency (for example, while they are waiting to receive a large grant). In response to these concerns, the circumstances in which the Commissioner may revoke registration have been narrowed to cases where a liquidator or trustee in bankruptcy has been appointed, rather than upon insolvency.</p>  |
| <b>Register</b>             | <p>The information that will be placed on the public register has been clarified and expanded. For example, the Commissioner must now publish the details of any enforcement action taken under the legislation, a summary of why such action was taken, and a summary of the details of any resolution or response to the matter.</p>   |
| <b>Governance standards</b> | <p>In May 2012, the Government announced that it would consult further on the governance standards and progress these standards through regulations. As part of this process, the standards are expected to be revised to minimise duplication. The governance standards will apply from 1 July 2013.</p>  |
| <b>Reporting</b>            | <p>In May 2012, the Government announced that it would consult further on the financial reporting requirements applying to registered entities, and progress these requirements through regulations.</p> <p>The first financial report will relate to the 2013-14 financial year, and will need to be lodged by 31 December 2014.</p> <p>The first annual information statement will relate to the 2012-13 financial year, and will need to be lodged by 31 December 2013.</p> <p>The thresholds for reporting have been revised, so that they are based solely on revenue and exclude consideration of deductible gift recipient (DGR) status. This will further minimise compliance burden for those entities with DGR status.</p> <p>Registered entities may apply to the ACNC Commissioner to report on the basis of a substituted accounting period (SAP), and certain entities that currently report under an Australian law on the basis of an existing SAP will have their SAP grandfathered upon notifying the ACNC.</p> <p>The Commissioner may approve new types of reporting, referred to as 'joint' and 'collective' reporting, which will enable entities to report along certain lines of activity, rather than on an entity-by-entity basis. There are a number of factors the Commissioner must consider before deciding whether to allow a particular group of entities to report in this way.</p> <p>The category of auditors that can undertake an audit or review has been expanded from registered company auditors, to also include audit firms</p> |

| <b>Part of legislation</b>                         | <b>Summary of key changes in response to the consultation processes</b>  |
|--|--|
|  | <p>and authorised audit companies.</p> <p>In addition, as part of consequential amendments to the Corporations Act, the category of individuals that can conduct a review may be significantly expanded to allow any member of a professional accounting body with the relevant designation of that body to conduct a review. This would significantly increase the supply of individuals able to undertake a review, and is expected to reduce review fees.</p>   |
| <b>Duty to notify</b>                              | <p>The timeframe for lodging certain notifications with the ACNC has been extended for small registered entities from 28 days to 60 days.</p>  |
| <b>Information Gathering and monitoring powers</b> | <p>The scope of, and use of, information collected under the ACNC's information gathering and monitoring powers have been clarified.</p> <p>The scope of information that the ACNC can gather includes information relevant to determining whether a registered entity is complying with regulatory responsibilities, and whether information a registered entity has given the ACNC is accurate and correct.</p> <p>The ACNC's powers have also been altered to ensure that any self-incriminating information gathered cannot be used to prosecute the individual that provided the information.</p>   |
| <b>Enforcement powers</b>                          | <p>In response to stakeholder comments, the application and use of the ACNC's enforcement powers have been clarified. In particular, the statutory thresholds have been made clearer, more objective and consistent across the powers.</p> <p>The ACNC will be able to use enforcement powers where 'Federally Regulated Entities' have contravened a provision of the legislation, or have not complied with a governance standard. The ACNC would be able to use enforcement powers where any registered entity has failed to comply with an external conduct standard.</p> <p>Federally regulated entities are entities that the Commonwealth has power to regulate and include constitutional corporations and a body corporate that is incorporated in a Territory.</p> <p>The range of powers the Commissioner is able to exercise has also been constrained to outcomes that directly address the issue the Commissioner was seeking to address. The provisions also require the Commissioner to consider a standard range of policy matters to ensure that broader considerations are taken into account when deciding whether to use, and the content of, enforcement powers.</p> |
| <b>Secrecy framework</b>                           | <p>In response to stakeholder feedback, the disclosure provisions in the secrecy framework have been clarified and limited in circumstances where there was potential for disclosure of personal information. In particular, the 'disclosure to increase public transparency and accountability of the sector' has been limited, so that it now only applies for the purpose of disclosing information onto the public register. The secrecy framework was also restructured to align more closely with</p>  |

| <b>Part of legislation</b>                            | <b>Summary of key changes in response to the consultation processes</b>   |
|---|---|
|   | secrecy regimes in other Commonwealth legislation.  |
| <b>Review and appeals</b>                             | The review and appeals framework was not part of the Exposure Draft Bill in December 2011. However, as foreshadowed in the fact sheet that was released with the exposure draft materials, the review and appeals framework in the draft legislation was largely modelled on the existing review and appeal provisions in Part IVC of the TAA. Also, as noted in the fact sheet, and supported by feedback from the targeted consultation process, the review and appeals framework was drafted to allow entities to make a joint application where they seek to have a decision of the ACNC Commissioner reviewed at the same time as a related decision of another government agency or department.   |
| <b>Application of legislation to certain entities</b> | <p>The framework dealing with the application of the legislation to certain entities was not part of the Exposure Draft Bill in December 2011, although the Exposure Draft foreshadowed the inclusion of this framework, based on similar provisions contained in the TAA.</p> <p>The revised legislation imposes certain obligations, liabilities or offences on specific entities, referred to as ‘covered entities’ that are responsible for managing the primary entity. This will ensure that covered entities are accountable for complying with the new law.</p> <p>In respect of unincorporated entities and trusts, this framework is based on the equivalent framework contained in the TAA. However, in response to stakeholder feedback, the framework contained in the draft legislation has been narrowed and streamlined in respect of imposing personal liability on directors of bodies corporate.</p> |
| <b>Penalties</b>                                      | Several stakeholders expressed the view that the penalty provisions contained in the draft legislation were onerous. Treasury reviewed the penalty provisions to ensure that they are set an appropriate level and are consistent with similar offences in other Acts and jurisdictions (see <a href="#">Appendix B</a> ). As a result of this process, several penalties contained in the draft legislation have been reduced.   |
| <b>Other</b>  | <p>Following the consultation process, the Government introduced a targeted exemption from the governance standards, financial reporting requirements, and the requirements relating to removal and suspension of responsible entities for ‘Basic Religious Charities’ (BRC). A BRC is defined as an entity that meets all of the following requirements:</p> <ul style="list-style-type: none"> <li>• it is a registered entity;</li> <li>• the type of registration is that of a charity, and the subtype is an entity with a purpose that is the advancement of religion; and</li> <li>• it is not entitled to be registered as any other subtype.</li> </ul> <p>However, an entity is not a BRC if:</p> <ul style="list-style-type: none"> <li>• it is a body corporate that is registered under the Corporations Act;</li> </ul>   |

| Part of legislation | Summary of key changes in response to the consultation processes  |
|---------------------|---|
|                     | <ul style="list-style-type: none"><li>• it is a corporation registered under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>;</li><li>• the entity is incorporated under a State or Territory Incorporated Associations Act;</li><li>• it is registered under the <i>Associations Incorporation Act 2005</i> of Norfolk Island; or</li><li>• it is registered under the <i>Companies Act 1985</i> of Norfolk Island.</li></ul> |



## PART FOUR: ROLE OF OTHER REGULATORS AND AGENCIES

128. In the absence of a national registration regime, the role of de facto regulator for the NFP sector at the Commonwealth level has generally been shared between the ATO and ASIC.
129. Under the new regime, the ACNC will be largely responsible for regulating registered entities. However, the ATO and ASIC will continue to play a more targeted role under the new regime, together with other Government agencies such as the AASB and the AUASB. These roles are summarised below.
130. In addition to the regulators and agencies identified below, there are numerous other agencies outside of the Treasury portfolio that may continue to have a role to play under the new regime, for example, with respect to quality assurance of services in the aged care sector, or oversight of the personal bankruptcy process.

### Australian Taxation Office

131. The ATO is an independent agency of the Australian Government. The Commissioner of Taxation is responsible for the general administration of a wide range of taxation and superannuation legislation.
132. Under the new regime, the ACNC Commissioner will be responsible for determining the type and subtype of charity. The Tax Commissioner must accept the ACNC Commissioner's determination of charitable status, and will then assess the entity's eligibility for tax concessions and assess that entity's compliance with taxation laws.
133. Under the Australian Business Number (ABN) legislation, the Tax Commissioner is also the registrar of the Australian Business Register, and this will continue to be the case under the new regime.

### Australian Securities and Investments Commission

134. ASIC is an independent agency of the Australian Government that is responsible for administering a wide range of Corporations, Superannuation and Insurance legislation, including the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (ASIC Act).
135. Currently, ASIC is responsible for regulating companies limited by guarantee that are registered under the Corporations Act. These companies predominantly have an NFP purpose. Around 12,444 companies limited by guarantee were registered with ASIC as at 30 June 2011.
136. In addition, a small number of NFP entities may be incorporated as proprietary companies or public companies other than those limited by guarantee (for example, companies limited only by shares, companies limited by shares and guarantee and a small number of 'no liability' companies). These companies are also currently subject to ASIC's regulatory oversight.
137. The Government is currently drafting consequential amendments to clarify the delineation of responsibilities between ASIC and ACNC under the new regime. ASIC will continue to register companies, including companies limited by guarantee, but will have limited oversight of the financial reporting and governance arrangements of those companies that choose to register with the ACNC, as oversight of these arrangements will now be performed by the ACNC.

138. Currently, ASIC conducts surveillance of financial reports prepared by companies, registered schemes and disclosing entities, and their compliance with Part 2M.3 of the Corporations Act. ASIC will not continue to be responsible for financial reporting surveillance in respect of entities registered with the ACNC from 1 July 2013, as this function will instead be performed by the ACNC.
139. ASIC is currently responsible for registering authorised audit companies and registered company auditors, and is expected to continue to do so under the new regime.
140. ASIC is also expected continue its current oversight role with respect to liquidations and administrations undertaken under the Corporations Act. Similarly, Insolvency and Trustee Service Australia (ITSA) is expected continue to perform its current oversight role with respect to the bankruptcy process.

### **Australian Accounting Standards Board**

141. The AASB is an independent agency of the Australian Government that is responsible for making accounting standards under section 334 of the Corporations Act, formulating accounting standards for entities other than those covered by the Corporations Act (including NFP entities that prepare general purpose financial reports), participating in and contributing to the development of a single set of accounting standards for world-wide use, and advancing and promoting the main objects of Part 12 of the ASIC Act.
142. Under the new regime, medium and large registered entities will need to prepare a financial report, in accordance with the requirements set out in the regulations accompanying the ACNC legislation.
143. In May 2012, the Government announced that the regulations will be the subject of further public consultation. While it is expected that the regulations may, in most cases, require the financial report to be prepared in accordance with accounting standards issued by the AASB, certain types of reporting, such as joint and collective reporting, may not require the application of particular accounting standards.
144. The AASB has developed reduced disclosure requirements (RDR) – referred to as Tier two requirements – which, subject to ACNC requirements, would be able to be adopted by NFP entities that are required to prepare general purpose financial reports. Tier two disclosure requirements are significantly less onerous than Tier one disclosure requirements (which include the full disclosure requirements of International Financial Reporting Standards).
145. The AASB is also currently reviewing the application of the ‘reporting entity’ concept, which determines whether an entity should prepare general purpose financial reports. Treasury will work closely with the AASB and the ACNC Implementation Taskforce to provide guidance material on reporting requirements, including when special purpose financial reports rather than general purpose financial statements are permitted. Those agencies will continue to work closely in finalising an approach that will allow registered entities to continue to use special purpose reports as appropriate.

### **Auditing and Assurance Standards Board**

146. The AUASB is an independent agency of the Australian Government that is responsible for making auditing standards under section 336 of the Corporations Act, formulating auditing and assurance standards for other purposes, formulating

guidance on auditing and assurance matters, participating in and contributing to the development of a single set of auditing standards for world-wide use, and advancing and promoting the main objects of Part 12 of the ASIC Act.

147. Under the new regime, large registered entities will need to have their financial report audited, and medium entities can generally choose to have their financial report reviewed or audited. These audits and reviews will need to be conducted in accordance with standards issued by the AUASB.

## PART FIVE: INTERACTION WITH STATE AND TERRITORY REGIMES

148. As noted above, to achieve a truly national regulatory system, and to minimise duplication, the Commonwealth Government is working with the States and Territories. This work is being progressed by the NRWG of COAG.
149. As part of the Government's NFP reform agenda, the Prime Minister sought agreement from the States and Territories for the formation of the NRWG. The NRWG was created in November 2011 and its terms of reference and 2011-12 work plan were endorsed by COAG at its meeting on 13 April 2012. COAG tasked the NRWG with reviewing, developing and recommending NFP regulatory reform options to COAG, through the Standing Council on Federal Financial Relations (SCFFR).
150. The objective of the NRWG is for all Australian jurisdictions to work together to develop an effective approach to the regulation of the NFP sector which will reduce the regulatory burden on the sector where possible.
151. One of the core deliverables of the NRWG is to review regulatory duplication for governance and reporting in the NFP sector, and recommend to COAG options to reduce or minimise regulatory duplication to achieve the most effective regulatory outcome for the NFP sector.
152. A fundamental part of this deliverable is considering the role that the ACNC will play in the regulation of the NFP sector and whether there is potential for reducing regulatory duplication at a Commonwealth and State/Territory level.
153. In order to complete this deliverable, the NRWG has agreed to a process and involves four primary aspects:
- determine a baseline concept of what duplication exists and where it is located;
  - examine existing governance and reporting duplication as well as duplication that may arise from the introduction of a general reporting framework and general governance framework under the draft ACNC legislation;
  - consider all existing and proposed governance standards and reporting frameworks for charities, and conduct a detailed jurisdiction and sector-specific regulatory impact assessment, with a view to facilitating a consistent national regulatory approach; and
  - consider the costs and benefits of all possible options and advise COAG of those options that will reduce or minimise the regulatory duplication and achieve the most effective regulatory outcome.
154. The ACNC legislation has been designed to be flexible enough to enable implementation of the most effective regulatory frameworks and systems (including transitional arrangements) that may arise out of the options provided to COAG with a view to establishing a national regulatory system for the NFP sector.
155. The NRWG will continue to work towards reducing regulatory duplication for the NFP sector and seek to identify initiatives at the Commonwealth, State and Territory levels that will help to achieve the task set out by COAG.

## **PART SIX: THE BROADER NFP REFORM AGENDA**

156. The ACNC legislation forms part of the Government's broader NFP agenda, which will implement the most significant reforms the sector has experienced over the last century. This agenda comprises of a number of elements, including introducing a statutory definition of a 'charity', and better targeting NFP tax concessions. Further information on these initiatives is set out below.

### **Statutory definition of a 'charity'**

157. Australia does not currently have a statutory definition of charity. The current common law definition of charitable status is based on 400 years of common law. Under the draft legislation, entitlement to registration is based on this existing common law meaning.
158. The Government announced in the 2011-12 Budget that it would introduce a statutory definition of 'charity' from 1 July 2013. The definition will be used for all Commonwealth laws and will be based on the 2001 *Report of the Inquiry into the Definition of Charities and Related Organisations*, taking into account recent judicial decisions including the Aid/Watch decision.
159. This reform follows the recommendations of a number of reviews and inquiries over the years that the common law meaning of charity be restated in legislation, including recommendations by the PC and the AFTS Report.
160. The definition will provide a clear framework for both the public and regulatory agencies for recognising entities as charitable, and greater clarity and certainty to the sector. The definition will be administered by the ACNC, once it has been developed and comes into effect.
161. A discussion paper on this issue was released last year, with consultation concluding on 9 December 2011. An exposure draft of a proposed definition is expected to be released for public consultation later in 2012.

### **Better targeting NFP tax concessions**

162. As part of the 2011-12 Budget, the Government announced that it would reform the tax law to better target tax concessions in the NFP sector. This measure commenced on 1 July 2012 for new unrelated activities.
163. The aim of the measure is to protect the integrity of the NFP sector and the revenue base by ensuring that valuable tax concessions are utilised in direct furtherance of the purposes for which they were provided, rather than to support unrelated businesses operated for the purpose of raising money.
164. However, where the income from the unrelated commercial activities is genuinely applied to the NFP's mission related activities, then the income so applied will be exempt from income tax.
165. On 30 March 2012, the Government announced its decision to extend the start date for the measure from 1 July 2011 to 1 July 2012, to enable further consultation to occur on the implementation details of the measure.
166. The extended start date of 1 July 2012 applies to new unrelated commercial activities that commenced after 7:30 pm (AEST) on 10 May 2011. Existing unrelated

commercial activities that commenced prior to this time will continue to be covered by transitional arrangements. Existing Government service delivery contracts, and the 50,000 allocations of the National Rental Affordability Scheme (NRAS), will also benefit from transitional relief.

167. Further detail about the measure is expected to be provided shortly. The Government will consult on the exposure draft legislation giving effect to this measure, which is expected to occur in the coming months.

## **Review of charitable fundraising regulation**

168. The Government announced in the 2011-12 Budget that it will undertake negotiations with the States and Territories on national regulation with the aim of minimising reporting and other regulatory requirements through coordinated national arrangements. This includes reform of charitable fundraising regulation.
169. This follows the PC's report in 2010 entitled '*Report on the Contribution of the Not-for-profit sector*', which found that differences in state and territory charitable fundraising laws impose an avoidable compliance burden on the sector.
170. Treasury, in consultation with the Charitable fundraising working group, developed a discussion paper canvassing options for a new national approach to fundraising regulation. A new national approach to fundraising regulation would seek to address duplication of requirements for cross-jurisdictional fundraising. The charitable fundraising discussion paper was released by the then Parliamentary Secretary to the Treasurer on 12 February 2012.
171. Submissions on the discussion paper closed on 5 April 2012 and 95 submissions were received from a broad cross-section of the sector, including from small and large charities, academics, peak bodies and the New South Wales and Victorian Governments.
172. It is expected that a decision about a model for reform will be made in the coming months. Such a decision would form a platform upon which the reform process could be built.

## **Review of company by limited guarantee legal framework**

173. While, anecdotally, it appears that the legislative framework works well and represents limited issues of concern for its users, the recent Senate Economics Committee, Productivity Committee and Treasury Scoping Study reviews have identified that a perception remains that the use of the company limited by guarantee form presents difficulties for NFPs.
174. The Government announced in the 2011-12 Budget a number of reviews of aspects of the regulation of the NFP sector, including a review of the company limited by guarantee structure and its continuing appropriateness for NFP entities.
175. Treasury is drafting the discussion paper which will seek comment on, and evidence of, the need for amendment to the current statutory framework for guarantee companies to provide an appropriate vehicle for NFP entities. The discussion paper is expected to be released for public consultation later in 2012.

## Regulatory framework for public ancillary funds

176. Public ancillary funds are a long standing feature of the income tax law and are one of two types of ancillary trust fund that can qualify for DGR status and income tax exempt status under the *Income Tax Assessment Act 1997* (ITAA 1997).
177. A public ancillary fund collects tax deductible donations from the public which they on-distribute to 'doing' DGRs that they consider to be worthwhile causes.
178. The Government announced in the 2010-11 Budget that it will introduce a new regulatory framework for public ancillary funds, effective from 1 July 2011, similar to that introduced on 1 October 2009 for private ancillary funds. The reforms took effect from 1 January 2012.

## Restating and standardising the special conditions for tax concession entities

179. The Government announced in the 2009-10 Budget that it would amend the 'in Australia' special conditions in Division 50 of the ITAA 1997 to ensure that Parliament retains the ability to fully scrutinise those organisations seeking to pass money to overseas charities and other entities.
180. The announcement was prompted by the Word Investments High Court decision which held that charities may be pursuing their objectives principally 'in Australia' where they merely pass funds within Australia to another charitable institution that conducts its activities overseas.
181. The Government released for public consultation an exposure draft and explanatory materials relating to restating and standardising the special conditions for tax concession entities. The exposure draft:
- re-stated the 'in Australia' special conditions for income tax exempt entities, ensuring that they generally must be operated principally in Australia and for the broad benefit of the Australian community (with some exceptions);
  - standardised the other special conditions entities must meet to be income tax exempt, such as complying with all the substantive requirements in their governing rules and being a 'not-for-profit' entity (with some exceptions);
  - standardised the term 'not-for-profit', replacing the defined and undefined uses of 'non-profit' throughout the tax laws; and
  - codified the 'in Australia' special conditions for DGRs ensuring that they must generally operate solely in Australia, and pursue their purposes solely in Australia (with some exceptions).
182. Consultation closed on 12 August 2011. Treasury received 111 formal submissions.
183. Following public consultation, changes were made to the exposure draft and explanatory materials, which was recently released for a further round of public consultation.
184. The Government is finalising the reforms in response to further stakeholder feedback and will introduce the reforms into the Parliament shortly.

## **Triennial Review into the four DGR registers**

185. In the 2009-10 Budget, the Government announced that it would conduct triennial reviews of the four DGR registers, to ensure their continued relevance and benefit to the community and the taxpayer.
186. These four registers are the Register of Cultural Organisations, the Register of Environmental Organisations, the Overseas Aid Gift Deduction Scheme, and the Register of Harm Prevention Charities.
187. The Triennial Review of the DGR registers is being undertaken by Treasury and other agencies to assess the administration, policy scope and compliance aspects of the four registers.
188. The Mitchell Review into Private Sector Support for the Arts, chaired by Mr Harold Mitchell AC, made related recommendations to administrative aspects to the Register of Cultural Organisations. The Government released the Mitchell report on 7 March 2012.

## **NFP Sector Tax Concessions Working Group**

189. On 12 February 2012 the Minister for Social Inclusion and the then Assistant Treasurer announced the membership and terms of reference of a working group to consider ideas to better deliver the support currently provided through tax concessions to the NFP sector.
190. Linda Lavarch, the chair of the NFP Sector Reform Council, is chair of the working group, which includes a diverse range of representatives from the NFP sector and technical experts.
191. The working group is a response to discussions at the 2011 Tax Forum about whether current support provided through tax concessions to the sector can be better delivered.
192. The working group is examining NFP tax concessions in terms of their fairness, simplicity and effectiveness. It is also examining previous inquiry recommendations and ideas presented at the Tax Forum.
193. The working group will release a discussion paper later in the year that will examine options for reform and offsetting savings. There will be opportunities for interested parties to provide input to the working group, and more information will be made available through the NFP newsletter as the work progresses.

## **Reducing Regulatory Duplication Working Group**

194. A review is currently being undertaken in order to minimise any duplication of regulatory responsibilities between existing regulators and the soon to be established ACNC, and the scope to improve interactions between existing regulators.
195. This review will determine the interaction between existing Commonwealth regulators and identify the scope to improve arrangements between existing regulators and ensure that the ACNC is created as a 'one-stop shop' regulator for the NFP sector.
196. The Working Group is considering:



- administrative burdens for both the NFP sector and Government, in the context of public accountability;
  - efficiency and effectiveness;
  - consistency in treatment for NFPs;
  - transparency of the sector to the public;
  - accountability of the NFP sector to the public;
  - opportunities for collaboration, including with other agencies and jurisdictions;
  - ensuring usable information for the NFP sector and the public; and
  - means of supporting other government policy objectives.
197. The Working Group will identify and report on areas of potential duplication with existing regulators and regulatory frameworks at the Commonwealth level for the NFP sector, and identify options to remove duplication, without compromising other government policy objectives.
198. This work will complement negotiations with the States and Territories on national regulation and a national regulator for the sector, through COAG, to achieve further simplification of regulation for the NFP sector.

## APPENDIX A — COMPARISON OF REPORTING AND AUDITING REQUIREMENTS ACROSS COMMONWEALTH, STATE AND TERRITORY LEGISLATION

### SUMMARY OF FINANCIAL REPORTING REQUIREMENTS FOR UNLISTED PUBLIC COMPANIES AND INCORPORATED ASSOCIATIONS

| Legislation   | Maintain financial records | Lodgement of financial information  | Presented to members   | Audit   | Accounting/Auditing Standards   |
|---|----------------------------|---|--|---|---|
| <b>Cth</b><br><i>Corporations Act 2001</i>                | Yes — Section 286          | Yes with ASIC — Section 319(1).<br>Small companies (revenue less than \$250,000 and not a DGR) are exempt from preparing reports.<br><br>Medium (revenue between \$250,000 and \$1 million, or less than \$250,000 with DGR status) and Large companies (revenue over \$1 million) must lodge a directors' report and declaration, balance sheet, profit and loss statement, cash flow statement, statement of changes in equity and the notes to the financial statements. | Yes — accounts must be distributed to members by the earlier of 21 days before the AGM or four months after the end of the financial year — section 315. | Yes — Section 301.<br>Medium companies can have their report reviewed by a member of a professional accounting body with a practising certificate, or audited by a registered company auditor, audit firm or authorised audit company.<br><br>Large companies must have their report audited by a registered company auditor, audit firm or authorised audit company. | The accounts must be prepared in accordance with applicable accounting standards — Section 296. The audit must be conducted in accordance with auditing standards — Section 307A.                                   |
| <b>ACT</b><br><i>Associations Incorporations Act 1991</i> | Yes — Section 71           | Yes with Register-General — Section 79.<br><br>Accounts must give a true and fair view of income and expenditure, assets and liabilities and any mortgages/charges on property — Section 72.  | Yes at AGM — Section 73.   | Yes, but not required to be completed by an accountant —Section 74.<br><br>Audit by a registered company auditor or a member of the ICAA, NIA or CPAA only required if assets or <b>revenue greater than \$150,000</b> or more than 1000 members or hold a liquor licence Section 74 and  | Audit opinion of an association with <b>more than \$500,000 in revenue</b> must state whether accounting standards have been complied with and, if not, whether this means they are not true and fair — Section 76. |

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|  |                     |  |   | Regulation 12.<br>If the association has <b>revenue exceeding \$500,000</b> , the audit must be conducted by a registered company auditor — Section 76 and Regulation 13.  |   |
| <b>NT</b><br><i>Associations Act 2003</i>                | Yes — Section 41    | Yes with Commissioner — Section 45.<br>Accounts must not be misleading and must give a true and fair view of income and expenditure, assets and liabilities, any mortgages/charges on property and the activities of any trusts controlled by the entity — Section 42. Must also be presented with a statement by the management committee — Section 43 and Schedule 4 of Regulations. | Yes at AGM — Section 43. Associations are also required to make members aware of the accounts at least 14 days before the AGM — Section 44. | Yes, but varies on the size of the association<br>If the association has <b>less than \$25,000 in revenue and less than \$50,000 in assets</b> , it can be audited by a non-associated lay person.<br>Associations <b>with up to \$250,000 in revenue or \$500,000 in assets</b> can be audited by an accountant or a person holding a prescribed class of qualifications and associations <b>over these amounts</b> must be audited by member of an accounting body holding a public practice certificate or a person approved by the Commissioner— Sections 46, 47 and 48. | All audit opinions must state whether Australian Accounting Standards have been complied with. Schedule 4, Regulations.<br>Audit opinion of an association with <b>more than \$250,000 in revenue or \$500,000 in assets</b> must state whether accounting standards have been complied with and, if not, whether this means they are not true and fair — Section 48.<br>Audits of associations with <b>more than \$25,000 in revenue or \$50,000 in assets</b> must be conducted in accordance with applicable auditing standards — Regulation 11. |
| <b>NSW</b><br><i>Associations Incorporation Act 2009</i> | Yes — Section 50(1) | Yes, with Director-General.<br>Tier one, with revenue greater than \$250,000 or current assets greater than \$500,000, must lodge summary of financial affairs and financial statements (s 45).  | Yes at AGM — Section 44 (tier one) and section 48 (tier two).   | Yes, for tier one (s 43).<br>Audit must be completed by a registered company auditor (s 52(1)(a)) or by a member of a professional accounting body who holds a practising certificate (Class Order 10/01 under s 53(1)).   | Tier 1 accounts must be prepared in accordance with applicable accounting standards — Section 43(2) and the audit must be conducted in accordance with auditing standards — Section 43(3).  |

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|   |                        | <p>Tier two, with revenue \$250,000 or less, or current assets \$500,000 or less, must lodge a summary of financial affairs (s 49).</p> <p>The financial statements must give a true and fair view of the association's affairs and must deal with such matters as are prescribed by the regulations — Section 47.</p> |   |  |  |
| <p><b>Qld</b><br/><i>Associated Incorporations Act 1981</i></p> | <p>Yes —<br/>Reg 9</p> | <p>Yes with Chief Executive — Section 59, 59A and 59B. Associations are required to lodge a financial statement that outlines the association's income and expenditure, assets and liability and details about mortgages, charges and securities affecting the association's property — Sections 2 and 59.</p>         | <p>Yes at AGM — Sections 59, 59A and 59B.</p> | <p>Yes, but varies on the size of the association. If the association has <b>less than \$20,000 in revenue and \$20,000 in current assets</b>, the accounts only need to be accompanied by a statement from the entity's Treasurer or President that the association's books are kept in an appropriate manner.</p> <p>Associations <b>with up to \$100,000 in revenue or \$100,000 in current assets</b> must be accompanied by a statement from a registered company auditor or a member of the ICAA, NIA or CPAA that the association has bookkeeping processes in place to adequately record the association's income and expenditure and dealings with its assets and liabilities.</p> <p>Associations <b>above these</b></p> | <p>No requirement for the accounts to be prepared in accordance with accounting standards.</p> |

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|   |                          |  |  | <b>thresholds</b> , or who are required to have their accounts audited by certain other legislation) must have their accounts audited by a registered company auditor or a member of the professional accounting bodies — Sections 59, 59A and 59B. |  |
| <b>SA</b><br><i>Associated Incorporations Act 1985</i>            | Yes — Section 35 and 39C | Yes but only if required to prepare accounts. An entity is required to prepare accounts if it has revenue greater than \$500,000 — section 35. Accounts must be lodged with the Corporate Affairs Commission. The accounts must fairly present the results of the operations of the association and its financial position — section 35. | Yes at AGM but only if required to prepare — Section 35. | Yes (if required to prepare) by a registered company auditor, a firm of registered company auditors, a member of a professional accounting body, or any other person approved by the Commissioner— Section 35.                                      | No express requirement to use accounting standards, but the auditor must attest that the accounts ‘present fairly’ the results and financial position of the association — Section 37. |
| <b>Tas</b><br><i>Associated Incorporations Act 1964</i>           | Yes — Section 23A        | Yes with the Commissioner (if not exempt by the Commissioner) — Section 24B. Accounts must be adequate to explain the financial transactions and financial position of the association — Section 24B.  | No requirement to present accounts to members.           | Yes (if not exempt by the Commissioner) — Section 24. The person must be a registered company auditor or another person approved by the Commissioner — Section 24.  | No requirement for the accounts to be prepared in accordance with accounting standards.  |
| <b>Vic</b><br><i>Associated Incorporations Amendment Act 2010</i> | Yes — Section 30A        | Yes — Section 30. Accounts must be lodged with the Registrar. Accounts must contain particulars of income and expenditure, assets and liabilities, any mortgages/charges on property and the activities of any trusts  | Yes at AGM — Section 30(C).                              | Requirements vary depending on tier.<br>Tier one associations have revenue less than \$250,000.<br>Tier two associations have revenue between \$250,000 and \$1m.   |  |

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|  |                     | controlled by the entity —<br>Section 30. |   | <p>Tier three associations have revenue greater than \$1m.</p> <p>Audit/review not required for tier one entities.</p> <p>Review required for tier two entities, by a member of the professional accounting bodies with a practising certificate or any other person appointed by the registrar.</p> <p>Audit required for tier three entities, by a registered company auditor, member of professional accounting body with a practising certificate or any other person approved by the registrar.</p> |   |
| <b>WA</b><br><i>Associated Incorporations Act 1987</i> | Yes —<br>Section 25 | No requirement to lodge accounts.         | Yes at AGM — Section 26. Must present accounts showing the financial position of the association. | No requirement for an audit.   | No requirement for the accounts to be prepared in accordance with accounting standards. |

The Treasury, Financial Reporting by Unlisted Public Companies Discussion Paper:  
June 2007. [http://www.treasury.gov.au/documents/1269/PDF/Discussion\\_paper\\_Financial\\_Reporting\\_by\\_Unlisted\\_Public\\_Companies.pdf](http://www.treasury.gov.au/documents/1269/PDF/Discussion_paper_Financial_Reporting_by_Unlisted_Public_Companies.pdf).

## APPENDIX B — COMPARISON OF PENALTIES ACROSS COMMONWEALTH, STATE AND TERRITORY LEGISLATION

Below is a comparison of penalties contained in the draft ACNC legislation, with similar offences contained in various Commonwealth and State Acts.

Under the Commonwealth regime, one penalty unit equates to \$110. Under the various State and Territory regimes, one penalty unit (PU) equates to:

- ACT: \$110
- NSW: \$110
- NT: \$141
- Tas: \$130 (in 2011-12)
- Qld: \$100
- Vic: \$140.84
- SA: penalties noted below are quoted in dollar figures
- WA: penalties noted below are quoted in dollar figures

|   | PROVISION | OFFENCE                                      | PENALTY                 | OTHER COMMONWEALTH PENALTIES  | OTHER STATE PENALTIES   |
|---|-----------|--|-------------------------|---|---|
| 1 | 55-5      | Failure by registered entity to keep records | 20 PU, strict liability | TAA – 20 PU<br><br>Corporations Act – 25 PU or six months imprisonment or both<br><br>Various other Acts – 20-30 PU eg <i>Medical Indemnity Act 2002, Customs Act 1901, Renewable Energy (Electricity Act) 2000</i> | Vic – 5 PU (s 30A Associations Incorporation Act 1981)<br><br>NSW – 5 PU (s 50 Associations Incorporation Act 2009).<br><br>ACT – 20 PU (s 71 Associations Incorporation Act 1991)<br><br>Tas – 5 PU (s23A Associations |

|          |             |  |  |  |  |
|----------|-------------|--|--|--|--|
|          |             |  |  |  | <p>Incorporation Act 1964)</p> <p>SA - \$5,000 (s35(1) Associations Incorporation Act 1985)</p> <p>NT – 100 PU (s41 Associations Act 2012)</p>   |
| <b>2</b> | <b>65-5</b> | <p>Failure by registered entity to notify Commissioner in the approved form of certain matters, such as whether its name, address, or responsible entity has changed, as well as any significant breaches of the governance or external conduct standards.</p> | <p>The amount of the penalty varies according to the size of the entity. Small entities will be required to pay the base penalty amount only.</p> <p>The base penalty amount is one penalty unit for each period of 28 days or part of a period of 28 days.</p> <p>There is a maximum of five penalty units.</p> | <p>TAA – equivalent penalty regime</p> <p>Corporations Act – 5 PU for failure to notify a change of address, or details of new holding company</p> <p>Corporations Act – 10 PU or three months imprisonment or both for failure to notify changes to directors, or a change in the location of register</p>  | <p>Vic – 5 PU (change of address, s 13A(3) Associations Incorporation Act 1981)</p> <p>Tas – 2 PU (s 15 Associations Incorporation Act 1964)</p> <p>Qld – 5 PU s17(1) Associations Incorporation Act 1981</p> <p>ACT – 2 PU (s30(2), 33(4) and 59(1) Associations Incorporation Act 1991)</p> <p>NSW – 5 PU (s13(1) Associations Incorporations Act 2009)</p> <p>SA - \$1,250 (s56(5) and 59(2) Associations Incorporation Act 1985)</p> <p>NT – 20 PU (s28 Associations Act 2012)</p> |
| <b>3</b> | <b>70-5</b> | <p>Failure to comply with Commissioner's requirement to obtain information, evidence or documents</p>  | <p>20 PU</p>   | <p>TAA – 20 PU for failure to provide all reasonable facilities to officer who is authorised to access places, premises, books and other information</p> <p>Various other Acts – range from 20-30 PU for offences relating to giving or withholding information, eg <i>Civil Aviation Act 1988</i>, <i>Maritime Transport and Offshore Facilities Security Act</i></p> | <p>Qld – 20 PU (s 119A Associations Incorporation Act 1981)</p> <p>Vic – 60 PU (comply with requirements of an inspector)(s 37L(1) Associations Incorporation Act 1981)</p>  |



|          |               |  |  |   |  |
|----------|---------------|--|--|---|--|
|          |               |  |  | <i>2003, Aged Care Act 1997.</i>  | NSW – 60 PU (s85 Associations Incorporation Act 2009)  |
| <b>4</b> | <b>75-40</b>  | Failure to answer questions and produce documents where otherwise authorised by a monitoring warrant                               | 20 PU                                  | See above   | Vic – 60 PU (s 37L Associations Incorporation Act 1981)<br><br>ACT – 50 PU for offences relating to inspection of books (s107(1) Associations Incorporation Act 1991)<br><br>NSW – 60 PU (s85 Associations Incorporation Act 2009) |
| <b>5</b> | <b>75-80</b>  | Failure by the occupier of premises to which a monitoring warrant relates to provide ACNC officers with facilities and assistance. | 20 PU                                  | See above   | See above  |
| <b>6</b> | <b>85-30</b>  | Failure by a registered entity to comply with a direction given by the Commissioner  | 40 PU                                  | <i>Banking Act 1959</i> – 50 PU<br><br>Various Cth Acts – six months imprisonment or 30 PU for refusal or failure to comply with notice in various Cth Acts (eg <i>Social Security Act 1991</i> , <i>Proceeds of Crime Act 2002</i> ) | NSW – 5 PU (Failure to comply with a direction to audit)(s51 Associations Incorporation Act 2009)  |
| <b>7</b> | <b>100-25</b> | Failure by a registered entity to comply with an order to remove or suspend a responsible entity                                   | One year imprisonment or 50 PU or both | Corporations Act – one year imprisonment or 50 PU   |  |
| <b>8</b> | <b>100-60</b> | Failure by an acting responsible entity to   | 40 PU                                  | TAA – 100 PU  |  |

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|    |        | comply with a written direction from the Commissioner in relation to the registered entity   |   | <i>Superannuation Industry (Supervision) Act 1993</i><br>(SIS Act) – 100 PU   |  |
| 9  | 100-70 | Failure by former trustee to give the acting responsible entity all books relating to the registered entity's affairs, and identify property of the registered entity.   | Each offence has a penalty of 50 PU, and both are strict liability offences   | TAA – 50 PU, strict liability<br><br>SIS Act – 50 PU, strict liability  |  |
| 10 | 150-25 | An ACNC officer must not disclose or use protected Commission information unless that disclosure or use is authorised by the ACNC Act, or in compliance with a requirement under an Australian law or part of the performance of their duties under this Act | Two years imprisonment or 120 PU or both  | Various Cth Acts where breach of confidentiality requirement – Two years imprisonment or 120 PU<br><br><i>(eg Australian Hearing Services Act 1991, Customs Administration Act 1985, Data-matching Program (Assistance and Tax) Act 1990.</i> | ACT – 50 PU or 6 months imprisonment or both (s100(1) Associations Incorporation Act)<br><br>WA - \$20,000 (s39C Associations Incorporation Act 1987)<br><br>NT – 400 PU or 2 years imprisonment (s6(2) Associations Act 2012) |
| 11 | 175-10 | An entity is liable to an administrative penalty if the entity makes a false or misleading statement.<br><br>Entity is not liable if reasonable care was   | Varies from 20 PU to 60 PU, depending on whether there was failure to take reasonable care, recklessness or intentional disregard of the Act. | TAA – equivalent penalty regime   | Qld – 10 PU (s 121A Associations Incorporation Act 1981)<br><br>ACT – 50 PU (s107(1) Associations Incorporation Act 1991 – offence related to inspection of books)<br><br>Vic – 60 PU (s49(1) Associations                     |

|           |               |  |   |                                 |   |
|-----------|---------------|--|---|---------------------------------|---|
|           |               | taken in connection with the making of the statement.  |   |                                 | <p>Incorporation Act 1981)</p> <p>WA - \$500 (s39(5) Associations Incorporation Act 1987)</p> <p>SA - \$5,000 for a prescribed association, otherwise \$2,500 (s14(2) Associations Incorporation Act 1985)</p> <p>NT – 100 PU or 6 months imprisonment (s96(3) Associations Act 2012)</p>                   |
| <b>12</b> | <b>175-35</b> | An entity is liable to an administrative penalty if the entity fails to give a report, return, notice or other document to the Commissioner in the required time | The amount of the penalty varies according to the size of the entity. Small entities will be required to pay the base penalty amount only. The base penalty amount is one penalty unit for each period of 28 days or part of a period of 28 days. There is a maximum penalty of five penalty units. | TAA – equivalent penalty regime | <p>NSW – 5 PU (s45(1) Associations Incorporation Act 2009)</p> <p>ACT – 20 PU (s 72 Associations Incorporation Act 1991)</p> <p>QLD – 4 PU (s 59(4) Associations Incorporation Act 1981)</p> <p>SA - \$5,000 (s 36 Associations Incorporation Act 1985)</p> <p>NT – 100 PU (s 45 Associations Act 2012)</p> |