

EXPOSURE-DRAFT

2010-2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012

No. , 2012

(Treasury)

**A Bill for an Act to deal with consequential and
transitional matters in connection with the
*Australian Charities and Not-for-profits Commission
Act 2012*, and for related purposes**

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1 **A Bill for an Act to deal with consequential and**
2 **transitional matters in connection with the**
3 ***Australian Charities and Not-for-profits Commission***
4 ***Act 2012, and for related purposes***

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act may be cited as the *Australian Charities and*
8 *Not-for-profits Commission (Consequential and Transitional) Act*
9 2012.

10 **2 Commencement**

11 (1) Each provision of this Act specified in column 1 of the table
12 commences, or is taken to have commenced, in accordance with

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1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	At the same time as the <i>Australian Charities and Not-for-profits Commission Act 2012</i> commences.	

4 Note: This table relates only to the provisions of this Act as originally
5 enacted. It will not be amended to deal with any later amendments of
6 this Act.

7 (2) Any information in column 3 of the table is not part of this Act.
8 Information may be inserted in this column, or information in it
9 may be edited, in any published version of this Act.

3 Schedule(s)

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule
13 concerned, and any other item in a Schedule to this Act has effect
14 according to its terms.
15

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Application and transitional provisions **Schedule 1**
Dictionary **Part 1**

1 **Schedule 1—Application and transitional**
2 **provisions**

3 **Part 1—Dictionary**

4 **1 Dictionary**

5 In this Schedule:

6 *ACNC Act* means the *Australian Charities and Not-for-profits*
7 *Commission Act 2012*.

8 *commencement day* means the day on which this Schedule commences.
9

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Schedule 1 Application and transitional provisions

Part 2 Registration

1 **Part 2—Registration**

2 **2 Charities**

- 3 (1) This item applies to an entity:
- 4 (a) that, on the day before the commencement day, is endorsed
- 5 under Subdivision 50-B of the *Income Tax Assessment Act*
- 6 *1997* as exempt from income tax because the entity is
- 7 covered by item 1.1, 1.5, 1.5A or 1.5B of the table in
- 8 section 50-5 of that Act; and
- 9 (b) to which item 3 or 4 of this Schedule does not apply.
- 10 (2) The Commissioner is treated as having registered the entity on the
- 11 commencement day under Division 30 of the ACNC Act as the type of
- 12 entity mentioned in column 1 of item 1 of the table in subsection
- 13 25-5(5) of that Act (charity).

14 **3 Health promotion charities**

- 15 (1) This item applies to an entity that, on the day before the commencement
- 16 day, is:
- 17 (a) endorsed under Subdivision 50-B of the *Income Tax*
- 18 *Assessment Act 1997* as exempt from income tax because the
- 19 entity is covered by item 1.1 of the table in section 50-5 of
- 20 that Act (charitable institution); and
- 21 (b) endorsed under Subdivision 30-BA of that Act as:
- 22 (i) a deductible gift recipient because the entity is a fund,
- 23 authority or institution covered by item 1.1.6 of the
- 24 table in subsection 30-20(1) of that Act (charitable
- 25 institution whose principal activity is to promote the
- 26 prevention or the control of diseases in human beings);
- 27 or
- 28 (ii) a deductible gift recipient for the operation of such a
- 29 fund, authority or institution.
- 30 (2) This item also applies to an entity that, on the day before the
- 31 commencement day, is endorsed under section 123D of the *Fringe*
- 32 *Benefits Tax Assessment Act 1986* as a health promotion charity.
- 33 (3) The Commissioner is treated as having registered the entity on the
- 34 commencement day under Division 30 of the ACNC Act as:

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Application and transitional provisions **Schedule 1**
Registration **Part 2**

- 1 (a) the type of entity mentioned in column 1 of item 1 of the
2 table in subsection 25-5(5) of that Act (charity); and
3 (b) the subtype of entity mentioned in column 2 of item 5 of that
4 table (institution whose principal activity is to promote the
5 prevention or the control of diseases in human beings).

6 **4 Public benevolent institutions**

- 7 (1) This item applies to an entity that, on the day before the commencement
8 day, is:
9 (a) endorsed under Subdivision 50-B of the *Income Tax*
10 *Assessment Act 1997* as exempt from income tax because the
11 entity is covered by item 1.1 of the table in section 50-5 of
12 that Act (charitable institution); and
13 (b) endorsed under Subdivision 30-BA of that Act as:
14 (i) a deductible gift recipient because the entity is a fund,
15 authority or institution covered by item 4.1.1 of the
16 table in subsection 30-45(1) of that Act (public
17 benevolent institution); or
18 (ii) a deductible gift recipient for the operation of such a
19 fund, authority or institution.
- 20 (2) This item also applies to an entity that, on the day before the
21 commencement day, is endorsed under section 123C of the *Fringe*
22 *Benefits Tax Assessment Act 1986*:
23 (a) as a public benevolent institution; or
24 (b) for the operation of a public benevolent institution.
- 25 (3) The Commissioner is treated as having registered the entity on the
26 commencement day under Division 30 of the ACNC Act as:
27 (a) the type of entity mentioned in column 1 of item 1 of the
28 table in subsection 25-5(5) of that Act (charity); and
29 (b) the subtype of entity mentioned in column 2 of item 6 of that
30 table (public benevolent institution).

31 **5 Opt-out**

- 32 (1) This item applies to an entity that, during the period of 6 months
33 starting on the commencement day, notifies the Commissioner of the
34 ACNC, in the approved form, that the entity does not want this Part to
35 apply to the entity.

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Schedule 1 Application and transitional provisions

Part 2 Registration

1 (2) Items 2, 3 and 4 do not apply, and are taken never to have applied, to
2 the entity.

3 (3) The Commissioner of Taxation is treated as having revoked, on the day
4 before the commencement day, the entity's endorsements mentioned in
5 paragraphs 426-5(a), (b), (c), (d), (e), (f), (g) and (h) in Schedule 1 to
6 the *Taxation Administration Act 1953* (whichever are applicable).

7 **6 Religious institutions**

8 (1) This item applies to an entity:

9 (a) that notifies the Commissioner of the ACNC that, on the day
10 before the commencement day, the entity was exempt from
11 income tax because the entity was covered by item 1.2 of the
12 table in section 50-5 of the *Income Tax Assessment Act 1997*;
13 and

14 (b) to which item 2, 3 or 4 of this Schedule does not apply.

15 (2) The Commissioner is treated as having registered the entity on the
16 commencement day under Division 30 of the ACNC Act as:

17 (a) the type of entity mentioned in column 1 of item 1 of the
18 table in subsection 25-5(5) of that Act (charity); and

19 (b) the subtype of entity mentioned in column 2 of item 3 of that
20 table (entity with a purpose that is the advancement of
21 religion).

22 (3) A notice given under paragraph (1)(a) must be:

23 (a) in the approved form; and

24 (b) given to the Commissioner during the period of 12 months
25 starting on the commencement day.

26 Note: Subdivision 175-B of the ACNC Act imposes an administrative penalty if the notice
27 contains a statement that is false or misleading in a material particular.
28

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Application and transitional provisions **Schedule 1**
The Register **Part 3**

1 **Part 3—The Register**

2 **7 The Register**

3 During the period of 15 months starting on the commencement day,
4 Division 40 of the ACNC Act does not apply to information or
5 documents that the Commissioner does not possess.
6

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Schedule 1 Application and transitional provisions

Part 4 Reporting

1 **Part 4—Reporting**

2 **8 Annual information statements**

- 3 (1) Subdivision 60-B of the ACNC Act applies to the 2012-13 financial
4 year and later financial years.

5 *Substituted accounting periods*

- 6 (2) If, before 30 June 2013, an entity adopts under Subdivision 60-F of the
7 ACNC Act an accounting period other than the financial year,
8 Subdivision 60-B of that Act applies, in relation to the 2012-13
9 financial year, as if:

- 10 (a) the reference in subsection 60-5(1) to the financial year were
11 a reference to the accounting period that starts during the
12 financial year; and
13 (b) the reference in subsection 60-5(2) to 31 December in the
14 following financial year were a reference to the last day of
15 the 6 month period after the end of the accounting period.

16 **9 Financial reporting**

17 *General start time*

- 18 (1) Subdivision 60-C of the ACNC Act applies to the 2013-14 financial
19 year and later financial years.

20 Note: If, on or before 30 June 2013, an entity adopts under Subdivision 60-F of the ACNC Act
21 an accounting period that ends on a day (the *substituted end day*) other than 30 June,
22 the effect of this subitem and Subdivision 60-F is that Subdivision 60-C of the ACNC
23 Act will not apply to the entity before the day after the substituted end day during the
24 2013-14 financial year. See also item 10.

25 *Voluntary reporting*

- 26 (2) A registered entity may give to the Commissioner a financial report for
27 the 2012-13 financial year. The ACNC Act (other than
28 Subdivisions 60-C and 175-C) applies to the report as if the entity had
29 been required to give the report to the Commissioner under
30 Subdivision 60-C.

- 31 (3) To avoid doubt, the requirements of Subdivision 60-C (including those
32 set out in regulations made for the purposes of subsection 60-15(1)) do
33 not apply to a financial report given under subitem (2) of this item.

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Application and transitional provisions **Schedule 1**
Reporting **Part 4**

1 *Voluntary reporting—substituted accounting periods*

- 2 (4) If, before 30 June 2013, the registered entity adopts under
3 Subdivision 60-F of the ACNC Act an accounting period other than the
4 financial year, subitem (2) of this item applies as if the reference in the
5 subitem to the 2012-13 financial year were a reference to the accounting
6 period that starts during the financial year.

7 **10 Substituted accounting periods**

- 8 (1) The Commissioner is treated as having allowed an entity under
9 section 60-85 of the ACNC Act on the commencement day to adopt an
10 accounting period that ends on a particular day (the *substituted end*
11 *day*) (other than 30 June) each year if:
12 (a) the entity is a registered entity on the commencement day
13 because of Part 2 of this Schedule; and
14 (b) the entity notifies the Commissioner that, under an Australian
15 law, the entity is or was required to prepare a financial report
16 for a period of 12 months that ended on the substituted end
17 day during the 2012-13 financial year.
- 18 (2) A notice given under paragraph (1)(b) must be:
19 (a) in the approved form; and
20 (b) given to the Commissioner during the period of 6 months
21 starting on the commencement day.

22 Note: Subdivision 175-B of the ACNC Act imposes an administrative penalty if the notice
23 contains a statement that is false or misleading in a material particular.
24

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Schedule 1 Application and transitional provisions

Part 5 ACNC annual report

1 **Part 5—ACNC annual report**

2 **11 Annual report**

3 (1) Section 130-5 of the ACNC Act applies to the 2012-13 financial year
4 and later financial years.

5 (2) However, for the 2012-13 financial year, treat the references in that
6 section to the financial year as being references to the period that:

7 (a) starts on the commencement day; and

8 (b) ends on 30 June 2013.
9

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Application and transitional provisions **Schedule 1**
Advisory Board **Part 6**

1 **Part 6—Advisory Board**

2 **12 Meetings of the Advisory Board**

3 (1) Section 145-5 of the ACNC Act applies to the 2013-14 financial year
4 and later financial years.

5 *Meetings before 2013-14 financial year*

6 (2) The Chair may convene meetings of the Advisory Board during the
7 period that:

8 (a) starts on the commencement day; and

9 (b) ends on 30 June 2013.

10 (3) The ACNC Act applies to a meeting convened under subitem (2) of this
11 item in the same way as that Act applies to meetings convened under
12 section 145-5 of that Act.
13

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Schedule 1 Application and transitional provisions

Part 7 Protected information

1 **Part 7—Protected information**

2 **13 Protected taxation information**

3 Section 355-25 in Schedule 1 to the *Taxation Administration Act 1953*
4 (disclosure of protected information by taxation officers) does not apply
5 to an entity that makes a record of information or discloses information
6 if:

- 7 (a) the entity is a taxation officer; and
8 (b) the record is made for or the disclosure is to the
9 Commissioner of the ACNC for the purpose of the
10 Commissioner performing any of his or her functions, or
11 exercising any of his or her powers, under Division 40 of the
12 ACNC Act (Australian Charities and Not-for-profits
13 Register); and
14 (c) the information is mentioned in subsection 40-5(1) of that
15 Act (information to be included in the Register); and
16 (d) the record or disclosure is made during the period of 6
17 months starting on the commencement day.

18 Note: Information obtained by an ACNC officer for the purposes of the ACNC Act may be
19 protected ACNC information under Part 7-1 of the ACNC Act.
20

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Consequential amendments **Schedule 2**

1 **Schedule 2—Consequential amendments**

2

3 *To be drafted*