

Appendix 3

Changes to the Australian Charities and Not-for-profits Commission Bill 2012: Government response to the recommendations of the House of Representatives Standing Committee on Economics [table prepared by Treasury]

Section of the Bill or Explanatory Memorandum	Reference	Committee recommendation	Change
Objects	ACNC Bill — Paragraph 15-5(1)(c)	Recommendation 1	A new object of the Act has been added to make clear the important role the ACNC will have in promoting the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.
Objects and Guide	ACNC Bill — Section 10-5 Explanatory Memorandum — Paragraphs: 1.85 to 1.99	Recommendation 2	<p>The guide material has been altered so that it reflects that the Commissioner will support the transparency and accountability of the sector.</p> <p>The explanatory materials have been added to, in order to better explain the operation of elements of the objects clause.</p>
Registration provisions and Chapter four – enforcement powers	ACNC Bill — Sections 35-15, 100-10 and 100-15	Recommendation 7	Improvements have been made to ensure that registered entities have the opportunity to respond to compliance concerns, including extending the requirements to issue ‘show cause’ notices unless the ACNC Commissioner, considering a number of factors, believes that immediate enforcement action is necessary.

Section of the Bill or Explanatory Memorandum	Reference	Committee recommendation	Change
			These changes ensure greater procedural fairness for registered entities, while also providing the Commissioner with the discretion to revoke registration or suspend or remove a responsible entity without giving the entity a show cause notice in appropriate circumstances
Governance standards	Explanatory Memorandum — Paragraphs: 5.37 to 5.42	Recommendation 4	Material has been added to the explanatory materials to explain that sector-developed codes of conduct for certain entities can be endorsed as part of the governance standards.
The Register	ACNC Bill — Subsection 40-5(2)	Recommendation 8	A requirement has been introduced to provide that the ACNC Commissioner must not publish details of enforcement action on the Register for a period of at least 14 days, unless it is in the public interest to do so earlier. This provides time for a registered entity to respond before such information is made publicly available. Such information entered on the Register will be removed after five years, unless the public interest requires that it be retained.
The Register	ACNC Bill — section 40-10(1)	Recommendation 5	A new regulatory power has been included in the Bill, to provide that the ACNC Commissioner must not include certain information on the Register in prescribed circumstances. This would allow regulations to be made to protect the privacy of private donors, such as those who maintain a private ancillary fund.
Obligations, liabilities and offences	ACNC Bill — Division 180	Recommendation 6	The provisions of the Bill governing obligations, liabilities and offences of incorporated and unincorporated entities have been redrafted to give effect to the Committee's recommendations.

Section of the Bill or Explanatory Memorandum	Reference	Committee recommendation	Change
			These have been revised to remove any criminal liability for directors of incorporated charities. They now also make clear that where there is a non-criminal contravention of the Bill, a director of an incorporated charity is only liable for any amount payable by the body corporate where this arises from a deliberate act or omission of the director involving dishonesty, gross negligence or recklessness.
Administrative penalties	Explanatory Memorandum — Paragraphs 13.137 to 13.162	Recommendation 9	Additional detail has also been added to the explanatory memorandum to clarify the Commissioner's discretion regarding the issuing of administrative penalty notices.
Transitional reporting arrangements	Schedule 1, subitem 10 of the ACNC Consequential and Transitional Bill	Recommendation 3	Transitional reporting arrangements have been included to allow the Commissioner to treat a statement, report or other document provided to another Australian Government agency as meeting the financial reporting obligations of a particular registered entity under the ACNC Act. This arrangement will apply until the 2014-15 financial year and can be extended by regulation.
Statutory review	Schedule 1, subitem 16 of the Consequential and Transitional Bill	Recommendation 10	Consistent with the Committee's recommendation the legislation will be reviewed after five years.

