

# Australian Charities and Not-for-profits Commission Bill 2012

## SECOND READING SPEECH

This Bill establishes the Australian Charities and Not-for-profits Commission as a national regulator for the not-for-profit (NFP) sector.

The Government believes in the importance of a strong and resilient charitable and NFP sector, and values the important contribution that the sector makes to building social capital and stronger communities right across Australia. The introduction of this Bill represents a significant milestone in delivering reforms that will strengthen and support the sector, so it can continue to grow and flourish into the future.

Over the last 17 years, there have been six separate reviews of the charitable and NFP sector.

These have included the comprehensive 2001 Report of the "Inquiry into the Definition of Charities and Related Organisations", the 2009 "Review into Australia's Future Tax System" and the Productivity Commission's 2010 report, "Contribution of the Not-for-Profit Sector".

These reviews have recommended simplifying and harmonising taxation and regulation for the sector, with a national regulator and a statutory definition of charity.

The Government is dedicated to supporting a strong, vibrant, diverse and independent NFP sector. At the last election, the Government committed to introducing the most extensive national reforms the sector has experienced in our nation's history. These reforms reflect the importance of the sector and will support the ongoing growth, strength, and sustainability of the sector into the future.

Following on from this, in the 2011-12 Budget, the Government announced a series of reforms to strengthen and support the sector.

The cornerstone of the Government's reform agenda is the Australian Charities and Not-for-profits Commission (**ACNC**).

The NFP sector is diverse, with entities ranging from micro-sized sporting and recreational clubs to large national and multinational charitable organisations.

NFP entities play an important and unique role in Australian society. In recognition of this important role, the sector receives a range of funding, including donations from members of the public, and tax concessions, grants and other support from Government.

Ensuring that the sector can consolidate its standing in the community through enhanced transparency and accountability is essential to its ongoing growth and sustainability.

A 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.

Equally important is promoting a reduction in unnecessary regulatory obligations on the sector. The sector is currently subject to overlapping, inconsistent and duplicative regulatory and reporting arrangements.

The lack of an independent national regulator within Government, with a dedicated focus on the particular needs of the sector, has hindered and held back the implementation of more streamlined regulatory arrangements across Australia.

This Bill establishes a national framework for regulation of the NFP sector. Initially the ACNC will focus on regulating charities only; however, in the future the regulatory framework will be able to be extended to all NFP entities.

The regulatory approach of the ACNC will be proportional to size and risk in order to minimise regulatory duplication and compliance costs.

The Bill also establishes a publicly available, online information Register that contains details of entities registered with the ACNC. This Register can be easily accessed by members of the public, including by donors and by volunteers. The public will be able to use the Register as a source of reliable information, giving them confidence in their decisions to donate to, or volunteer for, a registered charity.

The ACNC will work to provide education and guidance to the sector to assist in their participation in the national regulatory framework. Likewise, the ACNC will play a key role in providing information and education to the public about the sector and how it is regulated. The educational role of the ACNC will help to improve public understanding of, and engagement with, the important work of the sector.

The ACNC Bill has three objects. Its first object is to maintain, protect and enhance public trust and confidence in the NFP sector. Its second object is to support and sustain a robust, vibrant, independent and innovative NFP sector. The third object underlines the important role that the ACNC will have to promote the reduction of unnecessary regulatory obligations on the NFP sector.

The Bill establishes the statutory office of the Commissioner of the ACNC (ACNC Commissioner).

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 a number of factors, including the diversity and distinctive role of the NFP sector and the importance of providing education and guidance to NFPs.

The Bill provides the ACNC Commissioner with the power to register NFP entities under their specific charitable type or subtype. Registration is voluntary, however, entities will need to be registered to access government support in the form of concessions, exemptions and other benefits.

The Bill also sets out the processes and grounds for the revocation of registration by the ACNC Commissioner.

The ACNC Commissioner will maintain a public register, containing key details about registered entities. The Commissioner may remove or withhold information from the register in specified circumstances.

Registered entities will need to comply with a set of minimum principles-based governance standards. Compliance with the governance standards is a condition of registration. Registered entities will also need to comply with external conduct standards.

The Bill 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.

The governance and external conduct standards, and the content of financial reports will be set out in statutory instruments. They will be developed through a consultation process that will include key stakeholders and advisory bodies, such as the NFP Sector Reform Council, and the public more broadly.

Registered entities will be required to notify the ACNC Commissioner of certain matters, for example, any changes to its contact details, or any significant contraventions of the Bill or governance standards.

There are a range of powers and sanctions available to the ACNC Commissioner, to enable him or her to respond appropriately to the facts of each case. These powers allow the ACNC Commissioner to conduct regulatory oversight in an effective manner.

These powers include information gathering and monitoring powers, the ability to give entities warning notices or directions, the ability to accept enforceable undertakings, the ability to apply for injunctions and the power to suspend or remove a responsible entity.

There are preconditions and thresholds which must be met before these powers can be exercised.

To ensure the accuracy of information provided to the ACNC, the Bill provides a proportional administrative penalty regime.

The Bill establishes an Advisory Board, to provide advice and make recommendations to the ACNC Commissioner in relation to his or her functions under the Act.

The Bill establishes a secrecy framework to ensure appropriate protections for personal or confidential information while ensuring the ACNC is able to fulfil its functions as the NFP sector's central regulatory body.

An entity that is directly affected by a decision of the ACNC Commissioner will be able to utilise full merits based review and appeal a decision to the Administrative Appeals Tribunal.

The legislation imposes certain obligations, liabilities and offences on entities that are responsible for managing the registered entity. This ensures appropriate accountability for complying with regulatory requirements.

The transitional provisions provide for a smooth transition to the new framework, including providing for the automatic registration of charities that are endorsed by the ATO unless the entity opts out within six months, and grandfathers existing substituted accounting periods.

The Government has worked in close consultation with the dedicated and passionate people and organisations that make up the sector to develop this legislation.

The Government has been responsive to issues raised during the extensive consultation process. The Government has also taken into consideration issues raised during the House of Representatives Standing Committee on Economics Inquiry into the draft Bills.

The Committee reported on 15 August 2012 and recommended the Bills be passed subject to a number of changes.

The Government has reviewed the recommendations and agreed to make various changes in accordance with the recommendations.

A new clause has been added in the Bill's objects, to make clear the important role the ACNC will have in promoting the reduction of regulatory burden. This will be achieved in part through initiatives such as the Charity Passport and the development of a "report-once, use-often" reporting framework, and through the ACNC Commissioner working and cooperating with other Government agencies.

Improvements have been made to ensure that registered entities have the opportunity to respond to compliance concerns, including the introduction of a requirement to issue 'show cause' notices unless the ACNC Commissioner, considering a number of factors, believes that immediate enforcement action is necessary.

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 time after the action is taken, 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.

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. The Government intends to use this power to make regulations to protect the privacy of private donors, such as those who maintain a private ancillary fund. The Government strongly supports the role and importance of philanthropy in the Australian community, and will ensure that the ACNC provides a supportive framework for the important contribution of philanthropists.

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.

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.

Additional detail has also been added to the explanatory memorandum to clarify the ACNC Commissioner's discretion regarding the issuing of administrative penalty notices.

Transitional reporting arrangements have been included to allow the ACNC Commissioner to treat a statement, report or other document provided to another Government agency as meeting the reporting obligations of a particular registered entity under the ACNC reporting framework. This arrangement will apply until the 2014-15 financial year and can be extended by regulation.

Consistent with the Committee's recommendation, the legislation will be reviewed after five years. The review will focus on the operation of the legislation and the ACNC, and how the objects of the ACNC Bill have been achieved, including the object relating to reducing unnecessary regulatory obligations on the Australian NFP sector.

In summary, the work of the NFP sector has a profound impact upon the lives of so many individuals and the communities that we all comprise.

The Government is committed to working collaboratively with this important sector to implement a series of important regulatory reforms to support and strengthen the sector for the future. The establishment of the ACNC is a key step in this process.

I commend the Bill to the House.

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

**SECOND READING SPEECH**

This Bill accompanies the Australian Charities and Not-for-profits Commission Bill 2012. This Bill makes changes to the Commonwealth statute book necessary to give effect to the Australian Charities and Not-for-profits Commission. It also provides transitional arrangements for entities to be transitioned smoothly to the new regulatory regime.

I commend the Bill to the House.