

# Repeal of the Australian Charities and Not-for-profits Commission

## Details-stage Regulation Impact Statement

This Regulation Impact Statement (RIS) has been prepared by the Commonwealth Department of Social Services (DSS). Its purpose is to accompany a first bill as part of a two-stage process to implement the Government's election commitment to repeal the Australian Charities and Not-for-profits Commission (ACNC).

The first bill proposes to repeal the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act), with the substance of replacement arrangements being dealt with in a later bill. This approach allows the Government to affirm its intention to repeal the ACNC while working through the legislative and administrative issues involved in winding down the ACNC's operations and establishing the National Centre for Excellence. A further RIS will accompany the second substantive bill.

This RIS has been prepared in accordance with the *Australian Government Best Practice Regulation Handbook*, July 2013, in conjunction with the *Interim Regulation Impact Statement Process Guidance Note*, January 2014, issued by the Office of Best Practice Regulation (OBPR) within the Department of the Prime Minister and Cabinet, and in consultation with OBPR.

### 1. Background

The ACNC commenced operation on 3 December 2012. It is governed by the following legislation for which the Treasurer is responsible:

- *Australian Charities and Not-for-profits Commission Act 2012* (Cth);
- *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth) (ACNC Consequential Act); and
- *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth).

The objects of the ACNC are to:

- maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
- support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
- promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

Registration as a charity by the ACNC is required before an organisation can receive charity tax concessions and other Commonwealth exemptions and benefits from the Australian Taxation Office (ATO).

All ACNC registered charities are currently required to submit an Annual Information Statement. In addition to this, from 1 July 2014, organisations will be required to submit financial reports, depending on the organisation's income, as follows:

Small (below \$250,000)	No financial report required
Medium (\$250,000-\$1m)	Reviewed financial report
Large (over \$1m)	Audited financial report

The ACNC Commissioner's powers are considered to be the same in relation to enforcement and removing responsible persons as the ATO, the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority but the establishment of the ACNC has introduced new powers in relation to information collection, monitoring and compliance that did not previously exist at a Commonwealth level.

## 2. Problem

The Government believes it should not be imposing unnecessary regulatory control over the civil sector; rather Government should work with and support the sector to self-manage. Vesting powers in a separate entity to oversight and regulate charities runs counter to the deregulation approach, which takes a risk-based approach to overseeing the institutions of civil society, whether they are for-profit or not-for-profit.

The repeal of the ACNC is consistent with the broader deregulation agenda to boost productivity by removing any excessive, unnecessary and overly complex red and green tape imposed on business, community organisations and individuals by at least \$1 billion per year.

In the absence of harmonisation across all jurisdictions, the ACNC has added compliance burdens on the charitable sector from additional oversight and reporting obligations. In particular, it has meant:

- The majority of the sector which are unincorporated organisations – approximately 21,000 of whom are registered charities – are now subject to this new regulatory regime, whereas they previously fell largely outside of the sector's regulatory framework. (cf para 17.16, *Chapter 17-Regulatory Impact Statement: establishing a regulator for the not-for-profit sector*, Explanatory Statement, ACNC Act and ACNC Consequential Act);
- The large number of incorporated associations (approximately 136,000, with around 6,000 of whom are charities) already regulated under relevant state and territory Acts now have duplicated reporting requirements. (cf para 17.17, *Chapter 17-Regulatory Impact Statement: establishing a regulator for the not-for-profit sector*, Explanatory Statement, ACNC Act and ACNC Consequential Act) now have duplicative reporting requirements; and
- charitable trusts, accountable to the State Attorneys-General, are now regulated at the Commonwealth level, with obligations or compliance activity they were not subject to previously (cf para 17.19, *Chapter 17-Regulatory Impact Statement: establishing a regulator for the not-for-profit sector*, Explanatory Statement, ACNC Act and ACNC Consequential Act).

Coalition Members and Senators provided a dissenting view in the Senate Community Affairs Legislation Committee Dissenting Report in August 2012<sup>1</sup>. The report did not support passage of the ACNC bills, noting the ACNC would create another regulatory body that would add to the red tape burden for charitable organisations and duplicate state and territory regulation.

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<sup>1</sup> Coalition Members and Senators, Dissenting Report, Senate Community Affairs Legislation Committee Inquiry into the Australian Charities and Not-for-profits Commission (ACNC) bills, and the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) bill 2012.

It cited concerns by a number of charitable organisations such as Uniting Care Australia, which had raised doubts about the ACNC's capacity to actually deliver any tangible red tape reduction measures outside of its own activities, despite having the promotion of red tape reduction included as one of its objects. It elaborated that the majority of the proposed red tape reduction benefits of a single national regulator are predicated on state and territory government cooperation or agreement as well as other Commonwealth agencies and regulators, which have not yet been secured and no guarantee that they would be.

The ACNC was established with the intention of it being a single reporting point for charities. This has not eventuated and the majority of charities continue to provide information to multiple jurisdictions in the course of conducting their business as a charity, mitigating one of its key purposes.

Given existing regulators can provide similar regulatory oversight at a lesser cost, both in terms of administrative costs to Government and in terms of costs imposed on regulated entities, the introduction of a specialist regulator to monitor and enforce a codification of generally applicable laws does not represent best use of Commonwealth funding.

### **3. Objectives**

During the election campaign, a commitment was made to abolish the ACNC and return its regulatory functions to the ATO and ASIC. The abolition of the ACNC is part of the broader Government red tape reduction and deregulation agendas.

The Government seeks to take a first step to implement this election commitment to remove the regulatory impost on the sector as soon as possible, before financial reports are to be prepared and provided to the ACNC, in respect of the 2013-14 financial year.

### **4. Options that may achieve the objectives**

It is intended that regulatory functions previously transferred to the ACNC from the ATO and ASIC will return to those bodies. In place of the ACNC, broad support for the sector will be provided by a new National Centre for Excellence.

As this proposal is implementing an election commitment, there is no requirement to examine alternative options to the commitment.

#### **Option 1 – implement the election commitment**

It is proposed to abolish the ACNC through a two-stage process:

- An initial bill to be introduced to Parliament in the Autumn sittings that will repeal the ACNC, but will not take effect until a subsequent bill containing the substance of replacement arrangements is introduced and passed during the Winter sittings and receives Royal Assent.
- A second bill that will outline details for replacement arrangements.

Consistent with the election commitment, this decision indicates the Government's intention to change the status quo and consider alternative regulatory arrangements.

Implementation options for this election commitment will be canvassed as part of the RIS for the second substantive repeal bill.

## 5. Impact Analysis

Since stage one does not detail the alternative arrangements, there are no direct impacts that can be quantified as costs and benefits faced by the civil sector. As a result, no indicative costings are provided in this RIS.

The further RIS to accompany the second bill will provide an analysis of the costs and benefits of the new arrangements. This will include analysis of the impacts on different sub-groups given the broad diversity in the civil sector.

The intent of the change to be effected through the second substantive bill is to reduce regulatory and administrative burden on the sector. In the development of the second bill, consideration will be given to the impacts on all parts of the sector, with strategies to address impacts to be identified during consultation.

Relieving regulatory burdens on the sector while preserving public trust and confidence in the sector will be examined as part of the second stage. The intent is to provide a framework that has sufficient transparency to meet public expectations but removes unnecessary regulation.

## 6. Consultation

A range of stakeholder groups have been consulted on the Government's election commitment in the course of the Minister for Social Services discussions with the sector over the last four years. In addition, the Minister has commented on international experience, noting his discussions with charities in the UK have confirmed continuing red tape despite the presence of a Charity Commission; and New Zealand has abolished its charity regulator<sup>2</sup>.

The Minister continues to discuss these issues with the sector. In addition, various stakeholders have written to the Minister and the Department stating their views on the Government's commitments and a number of articles have been published, offering stakeholder views on this proposal. While stakeholders have spoken about the benefits or otherwise of the ACNC processes, views in support of the abolition of the ACNC go to the role of Government in regulating this sector and policing its governance, as well as concerns about the structure of an entity such as the ACNC.

Views on the proposal to abolish the ACNC have been mixed. For example, ProBono Australia recently featured the report by the Centre for Independent Studies (CIS) which has been highly critical of the ACNC. The CIS report noted that international experience shows charity commissions have not proven an effective way to regulate the sector. It further commented that "the only way to slash red tape for charities [is] by slashing the regulator". This same article quoted Philanthropy Australia's continued support for the ACNC and concerns about returning responsibility for the registration and regulation of charities to the ATO<sup>3</sup>.

The Governance Institute of Australia also recently issued a statement indicating its concern about regulatory functions returning to the ATO and ASIC. In addition, it expressed concerns about the decline in the data integrity of the ACNC Register over time given it will no longer be based on information collected through an annual report<sup>4</sup>.

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<sup>2</sup> National Press Club *Not-for-Profit Sector Forum*, 23 August 2013.

<sup>3</sup> *Government must slash charity regulator*, in ProBono Australia News, 6 February 2014.

<sup>4</sup> *Government confirms it intends to abolish the ACNC*, Governance Institute of Australia, 11 February 2014.

Views will be further explored during the second stage of the process and implementation options will give consideration to the impacts on different groups.

## **7. Conclusion and Recommendation**

The Government has committed to repeal the ACNC to remove unnecessary regulation and reduce the role of the Government's oversight of the charity sector. This bill reaffirms this commitment while allowing for a second bill to canvass the details of replacement arrangements with a further RIS process to accompany that proposal.

## **8. Implementation and Review**

The initial bill to repeal the ACNC will not take effect until a subsequent bill containing the substance of replacement arrangements is introduced into the Parliament (in the Winter sittings), is passed by the Parliament and receives Royal Assent.

This will allow for a two-stage process whereby the Government can affirm its intention to repeal the ACNC with the first bill and outline details for replacement arrangements in the second bill.

Given this approach, implementation and review options will be presented as part of the RIS accompanying the second bill.