

## **Launch of the Australian Charities and Not-for-profits Commission**

After many months of consultations, planning and legislative back-and-forth, the Australian Charities and Not-for-profits Commission (ACNC) was officially opened on 3 December 2012. The need for a national regulator of not-for-profits was broadly supported by the sector and similar specialist regulators already operate in countries such as England and Wales, Scotland, New Zealand and Singapore

The ACNC was first announced in the 2011 Federal Budget. There have been many discussions since that time in respect of its scope and powers as the "one-stop-shop regulator" for the not-for-profit sector. So what does it mean for your school?

### **Role of the ACNC**

The ACNC has been set up to achieve the following objects:

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

The ACNC's main roles are to register organisations as charities and to maintain a public register of all Australian charities. It will also help charities understand and meet their obligations through information, guidance, advice and other support. It will be working with various governments and government agencies to develop a 'report-once, use-often' reporting framework for charities.

The ACNC will not be making decisions in respect of whether or not an organisation is eligible for Commonwealth tax concessions; this will continue to be determined by the Australian Tax Office.

### **Is your school covered by the ACNC?**

*Organisations endorsed by the Australian Tax Office*

The ACNC will initially only regulate charities rather than all not-for-profits. As a general rule, all independent schools are charities. If your school was endorsed by the Australian Taxation Office to receive charity tax concessions (such as exemption from income tax), it will be automatically registered with the ACNC. You can check if your school is endorsed as a charity by searching for it on the Government's ABN Lookup website ([abr.business.gov.au](http://abr.business.gov.au)).

If your school falls into this category, it should have received a letter from the ACNC notifying it of its registration and asking for some further information, such as details of the people on your governing body. You should contact the ACNC if you have not received this letter by the time you read this.

Your school may opt out of its registration with the ACNC if it wishes. Doing so is generally not advisable however as it will lead to it losing its existing eligibility for any charity tax concessions from 2 December 2012.

### **Special sub-categories of charities**

Different types of charities will owe different obligations to the ACNC. The main differentiating factor is size, which is determined by annual revenue:

- a small charity has an annual revenue of less than \$250,000;
- a medium charity has an annual revenue of \$250,000 or more but less than \$1 million; and
- a large charity has an annual revenue of \$1 million or more.

### **Your school's immediate obligations if it is registered with the ACNC**

If your school is registered with the ACNC, it will have ongoing obligations to maintain its registration. These include:

- *notification of changes to your school's details*; you need to inform the ACNC if your school changes its legal name, address for service of documents, members of its governing body or its governing rules.
- *record keeping*; your school will need to keep certain financial and operational records. These records must be readily accessible, although at this stage there is no requirement to keep them in a particular format, and you will not need to provide the records to the ACNC unless they specifically ask for them. You will need to retain these records for seven years however. The ACNC will provide guidelines to help your school understand what sort of financial and operational records it will need to keep.
- *reporting*; your school will have to report some information to the ACNC each year.
- *governance*; the Australian government is introducing new governance standards (applicable to all registered charities) and new external conduct standards (applicable to all registered charities which send funds or engage in activities overseas) with which charities will need to comply. These are not intended to reflect best practice governance; instead, the standards will show the minimum standard of governance that registered charities will need to meet in accordance with Australian community expectations.

The government has tabled in Parliament the governance standards intended to take effect from 1 July 2013. These new governance standards cover:

- The purposes and not-for-profit nature of charities;
- Accountability to members;
- Compliance with Australian laws;
- The suitability of those who govern charities; and
- The duties of those who govern charities.

The ACNC will be providing guidance to assist registered charities to understand these new governance standards.

The ACNC has stated that the external conduct standards are still in development, and will be the subject of public consultation prior to their introduction.

### **ACNC Reporting Requirements: What do you need to do?**

Registered charities are now required to provide the ACNC with information annually.

*Annual Information Statement*

All schools, regardless of size, will need to provide an “annual information statement” to the ACNC for the 2012-2013 reporting period. The ACNC has stated that it will require general information about:

- how your school is working towards achieving its charitable purpose (of educating young people) including both its activities over the last year and its planned actions over the next;
- the number of paid staff and volunteers at your school; and
- the type of beneficiaries who will benefit from your school’s activities.

The ACNC has now released a preview of the 2012-2013 Annual Information Statement and a corresponding step-by-step guide to give registered charities the opportunity to preview the form before the final 2012-2013 Annual Information Statement becomes available in May/June 2013. It has also opened a public consultation on the 2013-2014 Annual Information Statement.

Your first annual information statement will not need to be submitted any earlier than 31 December 2013.

If your school finds it made a substantial error in its annual reporting, it must correct the error with the ACNC within 28 days of the error becoming known.

#### *Financial Reports*

Medium and large charities will need to provide annual financial reports from the 2013-2014 reporting period onwards. The ACNC has not yet described what form or requirements will be involved in respect of this reporting.

#### *Reporting as a group*

The ACNC will allow two or more registered charities to apply for permission to lodge one annual information statement and one financial report (if required) which covers them as a group. This will be useful for groups of schools such as Catholic or independent school systems by reducing the administrative burden for individual schools.

#### *Future reporting obligations*

The reporting obligations will most likely change from the 2012-2013 reporting period to the 2013-2014 reporting period. The ACNC will provide further information about these changes when they are known.

### **The ACNC’s Timeline: What you need to do, when**

The ACNC will be growing in its scope over the next few years. These are some of the main things you need to be aware of and doing during this time.

#### *From 3 December 2012*

Check if your school has been automatically registered with the ACNC.

If your school wishes to apply for charitable tax concessions from the ATO, you will now need to register with the ACNC. Alternatively, you can choose to opt out of your registration prior to 2 June 2013 if you wish, although doing so will mean you forfeit any tax concessions to which your school is entitled.

Be aware of and comply with your ongoing ACNC obligations such as reporting and record keeping.

*From 1 July 2013*

Prepare your school's annual information statement for the 2012-2013 reporting period.

Comply with any governance and external conduct standards set by the government.

*By 31 December 2013*

Your school's 2012-2013 annual information statement must be lodged by this date.

*By 31 December 2014*

Your school's 2013-2014 annual information statement and annual financial report (if required) must be lodged by this date.

### **Does the ACNC now regulate everything in the not-for-profit sector?**

No. For the moment, the ACNC's primary role is registering organisations as charities and collecting information about their activities and finances. There are many areas which fall outside of its jurisdiction – for example, it does not have the power to regulate the conduct of fundraising or gaming activities (such as raffles) by not-for-profits. Fundraising and gaming will continue to be regulated by state and territory laws.

### **Further ACNC resources**

The ACNC website contains many useful resources for not-for-profits, including:

- Fact sheets on the types of charities regulated by the ACNC and the charity tax concessions available;
- forms used for applying to ACNC for registration and notifying ACNC of changes to your school;
- the ACNC Register which contains details of Australian charities registered with the ACNC (note that only basic information is available at this time; further information will be added in the future).

Visit [www.acnc.gov.au](http://www.acnc.gov.au) for more details. Alternatively, you can call the ACNC on 13 ACNC (13 22 62). Their phone line is open from 8.00am to 8.00pm AEDST.

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