



## Not-for-Profit Law Notes

July 2014

Dear Readers,

I am pleased to share this edition of *Not for Profit Law Notes* with you.

In this issue we discuss what the Federal Government's plans for the ACNC mean for your Not-for-Profit organisation.

Please [contact us](#) if you need any advice regarding your charity or not-for-profit organisation.

Regards,

David Ford  
Partner

### Federal Government continues to move towards winding up the ACNC

The future of the Australian Charities and Not-for-profits Commission appears to be in grave doubt. The ACNC has maintained its tenure as the main regulator of the not-for-profit sector since its implementation by the Labor Government in 2012. The abolishment of the ACNC was however one of the election promises made by the Coalition Government in 2013.

The Government introduced the *Australian Charities and Not-for-profits Commission (Repeal) (No.1) Bill 2014* into Parliament on 19 March 2014. The Bill, which has not yet passed the Lower House, would have the effect of repealing the *Australian Charities and Not-for-profits Commission Act* but does not specify what would replace the ACNC. The Bill was referred to the Senate Economics Legislation Committee on 27 March 2014 and submissions were sought from the public.

Over 80% of the submissions received were in favour of retaining the ACNC. The Senate Committee report found that abolishing the ACNC would in fact help many charities by reducing the regulatory burden on them.

The Government has now released an [Options Paper](#) which outlines a number of proposed replacement arrangements that would follow the abolition of the ACNC.

#### ***New Reporting Requirements***

The Government proposes that, in place of reporting to a separate entity, charities will be required to maintain a publicly accessible website that features the following information:

- names of responsible persons;
- details of all Government funding; and
- financial Reports.

Charities registered under the *Corporations Act* would see the reinstatement of their previous Australian Securities and Investments Commission reporting obligations that were "switched off" when the ACNC was established. These would include:

- the collection of directors' and company secretaries' details;
- the requirement to have a 'physical' registered office and place of business; and
- the reinstatement of the annual review fee.

Charities currently exempt from providing financial reports such as small organisations and basic religious charities would retain that exemption under the new arrangements.

## Federal Government continues to move towards winding up the ACNC (Cont)

### Determining Charitable Status

Responsibility for determining eligibility for charitable status will return to the Australian Tax Office. The Options Paper outlines two different options for the ATO's administration of this responsibility:

1. an independent panel would be established which is made up of external experts who would provide advice on objections raised by charities that disagree with the initial ATO assessment on the determination of charitable status; or
2. a separate area within the ATO would be formed which would be responsible for determining outcomes for applicants who objected to findings on eligibility for charitable status and related tax concessions.

### Proportionate Compliance Framework

Current regulatory powers in place for charities in relation to enforcement and removing responsible persons would be retained by the ATO and the Australian Prudential Regulation Authority. It is proposed that ASIC, ATO and State and Territory governments will rely on their current powers to provide an appropriate compliance framework. Those director duties, obligations on charities and compliance measures that existed under the *Corporations Act* and were turned off by the ACNC legislation would be reinstated.

### Moving Forward

The Government plans to introduce further legislation this year to bring into effect the arrangements for the replacement of the ACNC. While the new arrangements for regulators such as the ATO and ASIC will take effect straight away, charities will have until 1 July 2015 to update their website with the new required details. Any assessments currently being undertaken by the ACNC to determine an organisation's charitable status will be transferred to the ATO for completion.

### Consultation and submissions

The Government is holding a number of consultation sessions with charities and civil society organisations on the Options Paper and the proposed replacement arrangements for the ACNC. The details of the consultation sessions which are being held in each capital city can be found [here](#). Two consultation sessions are being held in Sydney on 23 July 2014. The Government is also seeking submissions from the public for feedback on the proposed replacement arrangements. The submissions are due by 20 August 2014.

Please [contact us](#) if you would like any assistance with preparing submissions in respect of the Options Paper or have any questions about what effect these proposed changes will have on your organisation.



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