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

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Law and Bills Digest Section

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

Date introduced: 23 August 2012
House: House of Representatives
Portfolio: Treasury

Commencement: Various dates as set out in the table in section 2.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The purpose of the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012 (the Bill) is to:

- amend a number of Commonwealth statutes to alter references to ‘charity’, ‘charities’, ‘charitable entities’ and like terms so that concessions, exemptions and benefits are available only to charities registered with the Australian Charities and Not-for-profits Commission (ACNC) and
- create transitional arrangements to allow entities time to transition effectively to the national regulatory framework for the not-for-profit sector.

This Bill is one of three in a suite of Bills which are being considered together. The other Bills are:

- Australian Charities and Not-for-profits Commission Bill 2012 (the principal Bill) and
- Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012.

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Background

The background to the broad community consultation preceding the principal Bill, and information on the operation of that Bill, is set out in the relevant Bills Digest.  

Committee consideration

The suite of Bills was referred to the Parliamentary Joint Committee (PJC) on Corporations and Financial Services for inquiry and report by 10 September 2012.  

In addition, the suite of Bills was referred to the Senate Standing Committee on Community Affairs for inquiry and report by 12 September 2012.  

Discussion about the views of submitters to the inquiries is included in the Bills Digest for the principal Bill.  

In addition, the Parliamentary Joint Committee on Human Rights (Parliamentary Human Rights Committee) noted that the Human Rights (Parliamentary Scrutiny) Act 2011 requires each Bill to be accompanied by a statement of compatibility. Proposed legislation that is not considered to raise any human rights issues is not exempt from the statement requirement. The Parliamentary Human Rights Committee has sought an explanation from the Treasurer for the absence of a statement of compatibility for this Bill.  

Financial implications

The establishment of the ACNC and the resulting structural change to the Australian Taxation Office will incur some start up costs. As a part of the 2011–12 Budget, the Government allocated
$53.6 million over four years for the establishment of the ACNC.\(^8\) In addition, it is expected that there will be ‘minor transitional compliance costs for the registered charities that will come within the scope of the ACNC’. However, these should be reduced ‘over the medium to long term’.\(^9\)

**Key provisions**

**Schedule 1—application and transitional provisions**

The amendments in Schedule 1 to the Bill commence at the same time as Chapter 2 of the principal Bill. When enacted, the principal Bill will be the ACNC Act. The following discussion refers to the ACNC Act as if it had been enacted, as the operative provisions of the Bill will not commence unless the ACNC Act commences.

**Registration**

**Subitems 2(1) and (2)** operate so that an entity that is already endorsed under the *Income Tax Assessment Act 1997* (ITAA) as a charitable institution, a fund established for charitable purposes by will before 1 July 1997, a trust under paragraph 50–80(1)(c) of that Act, or a fund established in Australian for public charitable purposes by will or instrument of trust on the day before the commencement day\(^10\), is treated as having been registered as a charity under the ACNC Act.

Where an entity notifies the ACNC Commissioner within 12 months of the commencement day that it was, on the day before the commencement day, a charity with a purpose that was the advancement of religion, the Commissioner is treated as having registered the entity on the commencement day: **subitems 2(3)-(5)**.

**Item 6** applies in a similar way for religious institutions.

**Items 3 and 4** operate to treat as registered under subsection 25–5 of the ACNC Act:

- health promotion charities endorsed as such before the commencement day under section 123D of the *Fringe Benefits Tax Assessment Act 1986* (FBT Assessment Act) or endorsed as a deductible gift recipient under subdivision 30-BA of the ITAA and
- public benevolent institutions endorsed as such under section 123C of the FBT Assessment Act or endorsed as a deductible gift recipient under subdivision 30-BA of the ITAA.

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10. According to section 5–10 of the ACNC Act, the commencement day will be the later of 1 October 2012 and the day that this Bill receives Royal Assent.

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Item 5 provides for an entity to notify the Commissioner within six months of the commencement day that it wants to ‘opt out’ so that these provisions do not apply.

Reporting

All registered entities will be required to provide an annual information statement. The first annual information statement will be in respect of the 2012–13 financial year, and will need to be lodged with the ACNC by 31 December 2013, unless a substituted accounting period applies.\(^\text{11}\) Subdivision 60-F of the ACNC Act allows an entity to adopt a different accounting period—for example, calendar year rather than financial year. In that case, subitem 8(2) of the Bill operates so that references in the ACNC Act to ‘financial year’ will be a reference to the period of the substituted accounting period.

Subdivision 60-C of the ACNC Act (about annual financial reports) applies to the 2013–14 financial year and subsequent financial years. Subitem 9(2) operates so that a registered entity may give the Commissioner, voluntarily, a financial report for the financial year 2012–13. In addition, subitem 9(4) operates so that the voluntary financial report may be in respect of a substituted accounting period.

Item 10 provides that the Commissioner may treat a statement, report or other document given under an Australian law to an ‘Australian government agency’\(^\text{12}\) as being an information statement for a financial year or an annual financial report for the purposes of the ACNC Act for the financial years 2012–13, 2013–14, 2014–15 and any later financial year prescribed by the regulations for this purpose. In the event that the Commissioner does treat a statement, report or other item as a report for the purposes of the ACNC Act, the Commissioner must notify the registered entity of that acceptance.

Protected information

The Explanatory Memorandum states that:

In order to facilitate a smooth transition for the ACNC, transitional secrecy provisions in the Consequential and Transitional Bill enable a taxation officer to make a record or disclose to the ACNC Commissioner protected taxation information for the purpose of the ACNC Commissioner performing powers and functions or exercising powers in relation to the ACN Register.\(^\text{13}\)

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11. Item 11 provides that the registered entity must give the Commissioner a notice in the approved form within six months of the commencement day that it intends to adopt a substituted accounting period.
12. Defined in section 300–5 of the ACNC Act as the Commonwealth, a state or a territory; or an authority of the Commonwealth, or of a state or a territory.
The relevant provisions are in item 14. Importantly they operate so that the disclosure must occur during the six months commencing on the commencement day—that is, they are not open ended: paragraph 14(d).

Review of operation of the ACNC Act

Item 16 of the Bill requires the Minister to review the operation of the ACNC Act and the Consequential and Transitional Act once those statutes have been operating for five years. The report of the review, which must be given to the Minister within six months of its commissioning, must be laid before each House of the Parliament within 15 sitting days of that House after it has been received by the Minister.

Schedule 2—references to charities

Part 1—deductible gift recipients

Part 1 of Schedule 2 to the Bill amends the *Income Tax Assessment Act 1936* (ITAA 1936) and the *Income Tax Assessment Act 1997* (ITAA 1997) to update various provisions relating to deductible gift recipients. The amendments in Part 1 of Schedule 2 to the Bill commence at the same time as Chapter 2 of the ACNC Act. Existing section 30–15 of the ITAA 1997 contains a table setting out the gifts and contributions which are tax deductible. The table sets out:

- who the recipient of the gift or contribution can be
- the type of gift or contribution that a person can make
- how much can be deducted for the gift or contribution and
- any special conditions that apply.

In particular column 1 of the first item in the table identifies the recipient of a gift or contribution which is deductible as a fund, authority or institution covered by an item in any of the tables in Subdivision 30-B of the ITAA 1997. The amendments in items 4–5, 8–11, 13 and 15 repeal existing tables in Subdivision 30-B of the ITAA 1997 and substitute new tables which make reference to the ACNC Act. In addition, the amendments insert the common terms of ‘Australian government agency’, ‘registered charity’\(^\text{14}\) and ‘ACNC type of entity’\(^\text{15}\) throughout the tables.

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\(^{14}\) That is, an entity that is registered under the ACNC Act as the type of entity mentioned in column 1 of item 1 of the table in subsection 25–5(5) of the ACNC Act – see item 20 of Schedule 2 to the Bill, which inserts a definition of ‘registered charity’ into subsection 995-1(1) of the ITAA 1997.

\(^{15}\) That is, an entity that meets the description of a type of entity in column 1 of the table in subsection 25-5(5) of the ACNC Act – that is, a charity. See item 19 of Schedule 2 to the Bill, which inserts a definition of ‘ACNC type of entity’ into subsection 995-1(1) of the ITAA 1997.

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Part 2—Tax exempt entities

The amendments in Part 2 of Schedule 2 to the Bill commence at the same time as Chapter 2 of the ACNC Act. Items 29–39 of Schedule 2 to the Bill amend Division 50 of Part 2.15 of the ITAA 1997, which provides that certain funds, authorities or institutions are exempt from income tax. In some cases, the exemption is subject to special conditions. The amendments update references within the tables to the terms ‘registered charity’, ‘ACNC type entity’ and ‘Australian government agency’. In addition, various amendments require a public fund to be registered under the ACNC Act.

Part 3—Fringe benefits tax

The amendments in Part 3 of Schedule 2 to the Bill commence at the same time as Chapter 2 of the ACNC Act. Items 42–67 amend the Fringe Benefits Tax Assessment Act 1986 (FBT Assessment Act) to insert consequential references to ‘registered health promotion charity’, ‘registered religious institution’ and ‘registered public benevolent institution’ so that the FBT Assessment Act uses terms which are consistent with the terms in the ACNC Act and the other statutes amended by this Bill.

Part 4—Goods and services tax

The amendments in Part 4 of Schedule 2 to the Bill commence at the same time as Chapter 2 of the ACNC Act. Items 69–130 amend the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) to insert consequential references to ‘charities’, ‘ACNC registered religious institution’ and ‘endorsed charity’ so that the GST Act uses terms which are consistent with the terms in the ACNC Act and the other statutes amended by this Bill.

Part 5—Corporations Act

The amendments to the Corporations Act in Part 5 of Schedule 2 to the Bill commence at the same time as Chapter 2 of the ACNC Act.

17. For example, item 1.1.1 in the table contained in subsection 30–20(1) (inserted by item 4 of Schedule 2), item 2.1.1 in the table contained in subsection 30–25(1) (inserted by item 5 of Schedule 2) and item 4.1.6 in the table contained in subsection 30–45(1) (inserted by item 9 of Schedule 2).
18. For example, item 1.1.3 in the table contained in subsection 30–20(1) (inserted by item 4 of Schedule 2), item 2.1.10 in the table contained in subsection 30–25(1) (inserted by item 5 of Schedule 2) and item 3.1.1 in the table contained in subsection 30–40(1) (inserted by item 8 of Schedule 2).
19. For example, item 1.1.5 in the table contained in subsection 30–20(1) (inserted by item 4 of Schedule 2), item 2.1.7 in the table contained in subsection 30–25(1) (inserted by item 5 of Schedule 2) and item 4.1.3 in the table contained in subsection 30–45(1) (inserted by item 9 of Schedule 2).
20. For example, item 1.1.8 in the table contained in subsection 30–20(1) (inserted by item 4 of Schedule 2), item 2.1.18 in the table contained in subsection 30–25(1) (inserted by item 5 of Schedule 2) and item 4.1.5 in the table contained in subsection 30–45(1) (inserted by item 9 of Schedule 2).

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Item 136 repeals and substitutes subsections 150(1) and (2) so that a company is not required to have the word ‘Limited’ at the end of its name if the company is registered as a charity under subsection 25–5(5) of the ACNC Act. In addition, the company’s constitution must prohibit the payment of fees to its directors and require directors to approve all other payments made by the company to the directors.

Item 137 inserts proposed subsections 150(4) and (5) so that a company which is not required to have the word ‘Limited’ at the end of its name may omit the word anywhere that the name of the company is required to be used.

Part 6—Customs Tariff Act

Item 138 of Part 6 of Schedule 2 to the Bill amends the Customs Tariff Act 1995 (Customs Tariff Act) to insert a definition of ‘registered charity’ into subsection 3(1) of that Act, being an entity that is registered under the ACNC Act as the type of entity mentioned in column 1 of item 1 of the table in subsection 25–5(5) of the ACNC Act. This amendment commences at the same time as Chapter 2 of the ACNC Act.

Part II of Schedule 4 to the Customs Tariff Act sets out concessional rates of duty for prescribed classes of goods. Item 139 repeals the description of goods in item 23A of the Schedule and substitutes a new description which allows for goods that have been donated or bequeathed to a ‘registered charity’ to be duty free. This amendment commences at the same time as Chapter 2 of the ACNC Act. However the provisions do not commence at all if item 3 of Schedule 1 to the Customs Tariff Amendment (Schedule 4) Act 2012 commences at or before that time.  

Part 7—other amendments

The amendments in Part 7 of Schedule 2 to the Bill commence at the same time as Chapter 2 of the ACNC Act. Part 7 of Schedule 2 amends 23 miscellaneous Acts are amended to include new references to:

• ‘registered charity’ being an entity that is registered under the ACNC Act and
• ‘ACNC type of entity’ being an entity that meets the description of a type of entity in column 1 of the table in subsection 25–5(5) of the ACNC Act.

21. At the time of writing this Bills Digest, the Customs Tariff Amendment (Schedule 4) Bill 2012 had passed both Houses. The Bill homepage can be viewed at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4791%
22. Items 143, 147, 149, 151, 160, 169, 173, 179, 191, 194, 200, 208 and 212 of Part 7 of Schedule 2 to the Bill.
23. Items 153, 155, 158, 177, 193, 199 and 211 of Part 7 of Schedule 2 to the Bill.

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Schedule 3—amendments consequential on the establishment of the ACNC

Amendments commencing at the same time as the ACNC Act

Items 1–18 in Part 1 of Schedule 3 to the Bill commence at the same time as Chapter 2 of the ACNC Act.

Item 1 amends Schedule 1 of the Administrative Decisions (Judicial Review) Act 1977 (ADJR Act) which sets out the classes of decisions to which that Act does not apply. The amendment operates so that the following decisions under the ACNC Act are not subject to the ADJR Act:

- administrative decisions, as defined at section 155–5 of the ACNC Act
- objection decisions, as defined at section 160–15 of the ACNC Act and
- extension of time refusal decisions under subsection 160–10(4) of the ACNC Act.

Section 14ZZ of the Taxation Administration Act 1953 (TA Act) provides that a person who is dissatisfied with the Commissioner’s objection decision may apply to the AAT for review of the decision or appeal to the Federal Court against the decision. In that alternative the person may appeal to the Federal Court against the decision.

Items 3–17 of Schedule 3 to the Bill amend the TA Act. In particular item 4 inserts subsections 14ZZ(2) and (3) into the TA Act so that a reference to appealing to the Federal Court is a reference to appealing to a ‘designated court’ as defined in the ACNC Act, in cases involving decisions under that Act. The provisions are consistent with section 170–30 of the ACNC Act which allows for appeals against decisions made by the ACNC Commissioner and the Commissioner of Taxation to be heard together if they are related and it would be efficient for the court to consider the decisions together.

Item 17 inserts proposed subsections 426–65(2A) and (2B) into Schedule 1 of the TA Act so that the Australian Business Registrar may register on the Australian Business Register, in respect of an entity which is registered on the ACNC Register, a statement to that effect. In addition, the Australian Business Registrar may remove that statement in the event that registration on the ACNC register is revoked.

Amendments commencing six months later

Item 19 of Part 2 of Schedule 3 to the Bill commences at the end of six months after Chapter 2 of the ACNC Act commences. The item amends subsection 426–65(2A) of Schedule 1 of the TA Act (as above) so that the Australian Business Registrar must make the registration on the Australian Business Register.

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Corporations legislation

Items 20–24 in Part 3 of Schedule 3 to the Bill commence at the same time as Chapter 2 of the ACNC Act. Section 60–10 of the ACNC Act requires medium registered entities and large registered entities to give the Commissioner a financial report for a financial year, together with any auditor’s report that the entity may be required to obtain under another section of the ACNC Act. Items 20–23 of Schedule 3 to the Bill amend the Australian Securities and Investments Commission Act 2001 (ASIC Act) so that the term ‘Australian auditor’ includes an individual auditor, an audit firm or an audit company that conducts audits for the purpose of the ACNC Act so that auditors of registered not-for-profit entities will be regulated by the Australian Securities and Investments Commission (ASIC).

Item 24 inserts new Part 1.6—Interaction with the Australian Charities and Not-for-profits Commission Act 2012 into the Corporations Act. Part 1.6 applies to bodies corporate that are registered under the ACNC Act, and are not Commonwealth companies (or subsidiaries of a Commonwealth company), under the Commonwealth Authorities and Companies Act 1997 and is part of the measures to cut ‘red tape’. For example, proposed section 111L contains a table which sets out those provisions of the Corporations Act which will not apply to a relevant body corporate. In addition, proposed section 111N provides that a body corporate is treated as having lodged a notice with ASIC about change of address on the day that the body corporate notified that change to the ACNC Commissioner.

Items 25–32 commence on the later of 1 July 2013 and immediately after Chapter 2 of the ACNC Act. However, these provisions do not commence at all if Chapter 2 of the ACNC Act does not commence.

Items 25–28 add additional matters to the table in proposed section 111L. The delayed commencement until 1 July 2013 will allow for regulations to be made which are tailored to the not-for-profit sector.

Schedule 4—amendments contingent on the Tax Laws Amendment Act

Part 1

The amendments in Part 1 of Schedule 4 to the Bill commence at the same time as Chapter 2 of the ACNC Act. However, the provisions do not commence at all if Schedule 1 to the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2012 commences at or before that time.

24. For example, the responsibilities of secretaries and directors for contraventions under section 188 of the Corporations Act, as set out in item 6 of the table at proposed section 111L.

25. That is, the later of 1 October 2012 and the day this Bill receives the Royal Assent. However, the provisions do not commence at all if this Bill does not receive the Royal Assent.

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Items 1–3 amend section 65J of the Fringe Benefits Tax Assessment Act 1986, which sets out the rebates for certain non-profit employers. The amendments insert references to a registered charity and omit references to a religious institution.

Items 4–5 amend section 50–50 of the ITAA 1997 to make it clear that a registered charity is not exempt from income tax unless the entity satisfies any of the special conditions in section 50–50.26 Items 6–7 repeal section 50–60 and subsection 50–75(3) of the ITAA 1997 respectively to remove references to items 1.5A and 1.5B. These amendments are consequential upon the amendment in item 31 of Schedule 2 to the Bill, which repeals items 1.5, 1.5A and 1.5B from the table in section 50–5. That table lists certain entities and any special conditions which attach to their entitlement to tax exemption.

Part 2

The amendments to the ITAA 1997 in items 8–10 in Part 2 of Schedule 4 to the Bill commence at the same time as Chapter 2 of the principal act.27 However, the provisions do not commence at all if Schedule 1 to the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2012 commences at or before that time. These items amend various sections in Part 2–5 of Chapter 2 which sets out the rules about deductibility of particular kinds of amounts to omit references to a non-profit company and substitute references to a not-for-profit entity.

The amendments in items 11–24 in Part 2 of Schedule 4 to the Bill commence immediately after Chapter 2 of the ACNC Act.28 However, the provisions do not commence at all unless Schedule 1 to the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2012 commences before Chapter 2 of the ACNC Act. Items 11–15 and 23–24 amend various Acts by qualifying references to ‘not-for-profit entity’ as having the same meaning as in the ITAA 1997.

Schedule 5—other amendments

The amendments in Schedule 5 to the Bill commence on the day after Royal Assent. Items 1–4 amend various items in the table in section 30–102 of the ITAA 1997. The table sets out the rules for deductibility of gifts to fire and emergency services. Each of the amendments omits references to ‘government entity’ and substitutes references to ‘Australian government agency’ which is consistent with the terminology of the ACNC Act.

26. Note that these amendments are consequential upon the amendments in items 29–30 in Part 2 of Schedule 2 to the Bill and items 21–22 of Part 2 of Schedule 4 to the Bill.

27. That is, the later of 1 October 2012 and the day this Bill receives Royal Assent. However, Chapter 2 of the ACNC Act does not commence at all if this Bill does not receive the Royal Assent.

28. That is, the later of 1 October 2012 and the day this Bill receives Royal Assent. However, Chapter 2 of the ACNC Act does not commence at all if this Bill does not receive the Royal Assent.

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Concluding comments

The Bill’s tiered commencement dates are designed to facilitate the establishment of the ACNC and the transition to the reporting requirements under the ACNC Act.

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