

# **EXPLANATORY STATEMENT**

## **Select Legislative Instrument 2013 No. 22**

### **Issued by authority of the Assistant Treasurer**

Subject - *Australian Charities and Not-for-profits Commission Act 2012*

*Australian Charities and Not-for-profits Commission Regulation 2013*

The *Australian Charities and Not-for-profits Commission Act 2012* (the Act) establishes a new independent statutory office, the Australian Charities and Not-for-profits Commission (ACNC) as the Commonwealth level regulator for the not-for-profit (NFP) sector. The Act also establishes a new regulatory framework for the NFP sector.

Section 200-5 of the Act provides that the Governor-General may make regulations, prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Paragraph 40-5(1)(g) of the Act provides that regulations may specify certain information that the ACNC Commissioner (the Commissioner) must include on the ACNC Register (the Register) where the Commissioner is authorised to collect the information under a provision of this Act.

The purpose of the Regulation is to specify certain information that the Commissioner must include on the Register. The Register is maintained electronically by the Commissioner of the ACNC and includes specified information about each registered, and each formerly registered, entity. The purpose of the Register is to provide a single source of easily accessible public information on the NFP sector covered by the Act.

The Regulation builds on the information that is currently permitted to be included on the Register by including the requirement to include information such as the countries (other than Australia) in which the registered entity operates, and other names by which the registered entity may be publicly known, in an effort to provide information to the public about registered entities and promote public confidence, informed choices and philanthropy.

Details of the Regulation are set out in Attachment A.

A Statement of Compatibility with Human Rights has been completed for the Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment is that the measures in the Regulation are compatible with human rights. A copy of the Statement is at Attachment B.

## Description of Consultation

In the May 2011-12 Budget, the Government announced a number of measures as part of its commitment to drive major reforms in the not-for-profit sector and to deliver smarter regulation, reduce red tape and improve transparency and accountability for the sector. This Regulation is made as part of the broader NFP Reform Agenda and complements the information that is already required to be included on the Register under the Act.

Over the last 18 years, there have been six separate reviews of the charitable and NFP sector. These reports include:

- the 2001 *Report of the Inquiry into the Definition of Charities and Related Organisations*;
- the 2009 review into Australia's future tax system;
- the 2010 Productivity Commission's report, *Contribution of the not-for-profit sector*; and
- the 2011 *Final Report on the Scoping Study for a National Not-for-profit (NFP) Regulator*.

These reports involved public consultation and recommended reforms to the NFP sector.

In addition, following the May 2011-12 Budget announcement, the Government has undertaken considerable public consultation and targeted consultation on the proposed reforms, including public consultation on an Exposure Draft of the Australian Charities and Not-for-profits Commission Bill.

Throughout the reform process, targeted consultation has been undertaken with the NFP Sector Reform Council, relevant government agencies, including the Australian Charities and Not-for-profits Commission Implementation Taskforce (the Taskforce), the ACNC, and the Australian Taxation Office, and affected entities from the sector.

The Taskforce has also carried out consultation on matters related to the administration of the NFP reforms, and conducted public road-shows around the country to inform interested parties about the reforms.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commenced on the day after it was registered.

## **ATTACHMENT A**

### **Details of the Australian Charities and Not-for-profits Commission Regulation 2013**

#### **Part 1 - Preliminaries**

##### **Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Australian Charities and Not-for-profits Commission Regulation 2013* (the Regulation).

##### **Section 2 – Commencement**

This section provides that the Regulation commences on the day after it is registered.

##### **Section 3 – Authority**

This section provides that the Regulation is made under the *Australian Charities and Not-for-profits Commission Act 2012* (the Act).

##### **Section 4 – Definitions**

This section sets out a number of defined terms that are used throughout the Regulation.

These terms defined in the Regulation cross reference to the definitions in the *Australian Charities and Not-for-profits Commission Act 2012* (the Act) to improve readability and visibility.

#### **Part 2-2 - Australian Charities and Not-for-profits Register**

Consistent with the approach adopted in the *Income Tax Assessment Regulations 1997* the numbering of the Regulation reflects the equivalent numbering within the Act. For that reason, this Regulation begins at Division 40 because it relates to the ACNC Register which is also located in Division 40 of the Act.

##### **Section 40.1**

Under subsection 40-5(1) of the Act there is already a number of different types of information that the Commissioner is required to publish on the Register.

The table below provides an overview of the information that the Commissioner is already required to put on the Register under section 40-5 of the Act.

*Table of information to be published on the Register under section 40-5 of the Act*

<b>Type of information</b>	<b>Reference in Act</b>
The entity's name	40-5(1)(a)(i) 40-5(1)(b)(i)
The entity's contact details (including its address for service)	40-5(1)(a)(ii)
The entity's ABN	40-5(1)(a)(iii) 40-5(1)(b)(ii)
Type	40-5(1)(a)(iv)

Type of information	Reference in Act
	40-5(1)(b)(iii)
Subtype	40-5(1)(a)(v) 40-5(1)(b)(iv)
Date of effect of each type/subtype registration	40-5(1)(a)(vi) 40-5(1)(b)(v)
Governing rules	40-5(1)(a)(vii) 40-5(1)(b)(vi)
Name of each responsible entity	40-5(1)(c)(i)
Position held by each responsible entity	40-5(1)(c)(ii)
Annual information statements (except information that is “not for publication”)	40-5(1)(d)
Financial reports, and any audit or review reports	40-5(1)(e)
Warnings (and any resolution or response)	40-5(1)(f)(i)
Directions (and any resolution or response)	40-5(1)(f)(ii)
Undertakings (and any resolution or response)	40-5(1)(f)(iii)
Injunctions (and any resolution or response)	40-5(1)(f)(iv)
Suspension or removal (and any resolution or response)	40-5(1)(f)(v)

Section 40.1 of the Regulation prescribes a number of additional types of information that the Commissioner will be required to publish on the Register.

The additional information types complement the existing information that is required to be published on the Register under the Act.

These additional information types are included on the Register in an effort to provide information to the public about registered entities and promote public confidence, informed choices and philanthropy.

Subsection 40.1(1) sets out the table which identifies the additional types of information that must be included on the Register and the conditions that apply as a prerequisite to that information being published.

#### *Registered entity*

Item 1 of the table in subsection 40.1(1) of the Regulation specifies that information pertaining to whether the entity was a small, medium or large registered entity, or a basic religious charity, in a particular financial year (or substituted accounting period (SAP)) must be included on the Register where:

- a) an annual information statement (AIS) or annual financial report (AFR) of the registered entity has been lodged with the ACNC; or
- b) where the Commissioner has otherwise become aware of the information because the information was not provided as described in paragraph (a), or because the information provided as described in paragraph (a) was incorrect.

Note 1 at the end of subsection 40.1(1) of the Regulation provides an example of where the Commissioner may become aware of information in relation to Item 1.

The Commissioner will commonly receive this information each year through the AIS or AFR in order to determine the reporting and governance requirements for the registered entity or the basic religious charity. The definition of small, medium and large registered entities is at section 205-25 of the Act, and the definition of basic religious charity is at section 205-35 of the Act.

This information will be a useful indicator for the public to roughly determine the size of the entity and also understand the level of regulation that the entity is subject to under the Act, and also whether the entity meets the conditions and requirements to be a basic religious charity under the Act.

*Countries in which the registered entity operates*

Item 2 of the table in subsection 40.1(1) of the Regulation specifies that information about what countries the entity operates within be included on the Register.

This information must be included where the Commissioner has received the information from the registered entity or where the Commissioner has otherwise become aware of the information because the information was not received from the registered entity, or where the information provided by the registered entity was incorrect.

This information will be useful to the public to understand the countries in which the entity operates and undertakes its purpose.

*States and Territories in which the registered entity operates*

Item 3 of the table in subsection 40.1(1) of the Regulation specifies that information about what States and Territories the entity operates within be included on the Register where that information is made available to the Commissioner voluntarily by the entity for the purpose of being included on the Register.

This information will be useful to the public to identify if a registered entity operates in their particular State or Territory.

The relevant States and Territories to be identified are:

- States
  - New South Wales
  - Queensland
  - South Australia
  - Tasmania
  - Victoria
  - Western Australia
- Mainland Territories
  - Australian Capital Territory
  - Jervis Bay Territory
  - Northern Territory
- External Territories
  - the Territory of Ashmore and Cartier Islands
  - the Australian Antarctic Territory
  - the Territory of Christmas Island
  - the Territory of Cocos (Keeling) Islands
  - the Coral Sea Islands Territory
  - the Territory of Heard Island and McDonald Islands
  - the Territory of Norfolk Island

*Other names that the registered entity is known by*

Item 4 of the table in subsection 40.1(1) of the Regulation specifies that information about the names that the registered entity may be publicly known by (other than their legal name) must be included on the register where that information is made

available to the Commissioner and the use of the name is not contrary to an Australian law.

As reflected in Note 2 at the end of subsection 40.1(1) of the Regulation, this would commonly include the registered entity's business name under the *Business Names Registration Act 2011* (the BNR Act) where applicable. It may also include the registered entity's business name on a notified State or Territory register as determined under the BNR Act.

The use of a business or trading name that is not authorised by the BNR Act would be contrary to an Australian law and would therefore not be able to be displayed on the Register.

This information will be useful to the public and any entities that are dealing with the registered entity to identify the registered entity, where the entity trades or has business dealings under a name other than its legal name.

#### *Categories of benefit recipients of the registered entity*

Item 5 of the table in subsection 40.1(1) of the Regulation specifies information on the categories of benefit recipients of the registered entity must be included on the register where it is made available to the Commissioner through the AIS or the Commissioner has otherwise become aware of the information because the information was not provided as described in paragraph (a) of Item 5, or because the information provided as described in paragraph (a) was incorrect

The meaning of a benefit recipient has its ordinary meaning which is described in Note 3 at the end of subsection 40.1(1) of the Regulation and includes the entity or cause that the registered entity assists or furthers in undertaking its purpose.

For example, a benefit recipient of a youth focused public benevolent institution might be homeless and disadvantaged youths and the cause may include supporting vulnerable young people.

Note 1 at the end of subsection 40.1(1) of the Regulation provides an example of where the Commissioner may become aware of information in relation to Item 5.

This information will be a useful indicator for the public to determine the types of entities or causes that the registered entity supports and furthers in the undertaking of its purpose.

#### *Annual report of the registered entity*

Item 6 of the table in subsection 40.1(1) of the Regulation specifies that access to the registered entity's annual report (which may or may not include an AFR) for a financial year (or SAP) must be included on the Register where it is voluntarily disclosed to the Commissioner for the purpose of being included on the Register.

This would involve the Commissioner providing a copy of the annual report on the Register or providing an electronic link to the annual report on a website maintained by the registered entity.

This information will be useful for the public to provide access to the registered entity's annual report or direct them to the entity's website where there is more

detailed information about the activities of the registered entity for the relevant financial year.

*Annual report of the registered entity prior to the 2012-13 financial year*

Item 7 of the table in subsection 40.1(1) of the Regulation specifies that access to the registered entity's annual report (which may or may not include an AFR) for a financial year (or SAP) prior to the 2012-13 financial year must be included on the Register where it is voluntarily disclosed to the Commissioner by the registered entity or by an Australian government agency for the purpose of being included on the Register.

This information will be useful for the public to provide access to the registered entity's annual reports from previous financial years so that they can consider the historical context and activities of the registered entity and will allow older Government websites to be decommissioned upon transfer of existing data to the ACNC Register.

*Date of establishment in Australia*

Item 8 of the table in subsection 40.1(1) of the Regulation specifies that the date that the registered entity was established in Australia must be included on the Register where that information has been voluntarily disclosed to the Commissioner for the purpose of being included on the Register.

This information will be useful to the public to identify how long a registered entity has been in operation in Australia.

*Joint or collective reports*

Registered charities have to report annual information to the ACNC. Under the ACNC Act, two or more registered charities can apply to the ACNC to allow them to prepare and lodge one annual information statement (and one financial report, where applicable) to cover them as a group for the reporting period. This is called joint reporting. The ACNC may also allow a reporting group to prepare and lodge one or more single annual information statements (or financial reports, if applicable) on another basis (for example, according to types of activities). This is called collective reporting. The Commissioner's discretion in regard to joint and collective reporting is in Subdivision 60-G of the Act.

Item 9 of the table in subsection 40.1(1) of the Regulation specifies that the Commissioner must include whether, for a financial year (or SAP), a registered entity has been approved by the Commissioner to prepare and lodge a joint or collective report under Subdivision 60-G of the Act, and, if the registered entity has been so approved, the other registered entity or entities that are grouped with the registered entity under that Subdivision.

This information will be useful to the public because it will give an indication of which groups are affiliated with each other in relation to their reporting obligations.

*Electronic link to the website of the registered entity*

Item 10 of the table in subsection 40.1(1) of the Regulation specifies that the Commissioner must include on the Register an electronic link to a website maintained by the registered entity where that information is voluntarily disclosed to the Commissioner for the purpose of being included on the Register.

This information provides an easy link to the registered entity's website and enables the public to find out more information about the entity or interact further with the entity.

*Lodgment of reports*

Item 11 of the table in subsection 40.1(1) of the Regulation specifies that the Commissioner must include a statement on the Register that explains that a registered entity has failed to give the Commissioner a report or statement that is required by Division 60 of the Act if the entity has not given the Commissioner the report or statement within six months of the lodgment due date or after a longer period allowed by the Commissioner.

This information will be useful to the public to identify whether a registered entity has been compliant with the reporting obligations under the Act and to advise the public about the currency of the information on the Register.



**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

**Australian Charities and Not-for-profits Commission Regulation 2013**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview**

The purpose of the Legislative Instrument is to specify certain information that the Commission must include on the Register.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Whilst the Legislative Instrument provides for the publication of certain information, it does not engage with the right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR) because it does not involve the collecting, using, storing and sharing of personal information.

The Legislative Instrument prescribes the publishing of certain information about individuals but that information is not personal information.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**ASSISTANT TREASURER, HON DAVID BRADBURY**