

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

Australian Charities and Not-for-profits Commission Act 2012

*Australian Charities and Not-for-profits Commission Amendment (2021 Measures
No. 3) Regulations 2021*

The *Australian Charities and Not-for-profits Commission Act 2012* (the Act) provides for the registration and regulation of charities by the Australian Charities and Not-for-profits Commission (ACNC). 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.

The *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021* (the Regulations) implement several elements of the Government response to the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review (2018)* (the Review). Firstly, the Regulations increase the annual revenue thresholds used for determining whether a registered entity is a small registered entity, a medium registered entity or a large registered entity. The size of a registered entity can affect how various obligations under the Act can apply to the entity, for example reporting obligations are scaled to the size of a registered entity. This gives effect to the Government's response to Recommendation 12 of the Review and was agreed to by the Council on Federal Financial Relations in June 2021.

The increase in the revenue thresholds results in approximately 2,500 registered entities no longer being required to produce annual financial reports saving those registered entities approximately \$2,400 each year. Further, over 2,700 registered entities are permitted to have their financial statements reviewed rather than audited, saving around \$3,000 in accounting expenses annually.

The Regulations also require medium and large registered entities that prepare special purpose financial reports to disclose certain related party transactions in those reports. Medium and large entities preparing general purpose annual financial reports are already required to make the necessary disclosures of those related party transactions in their reports. This new requirement for related party disclosures to be included in special purpose financial reports gives effect to the Government's response to Recommendations 14 and 15 of the Review. This provides greater transparency and accountability for transactions of registered entities, and specifically transactions that pose a higher risk to charitable assets being used for private benefit. The changes also mean increased public confidence in the accountability of registered entities. The regulatory impacts were considered as part of the Government response to the Review and expected to impose an average annual regulatory cost of \$623,000 across the whole sector.

The Regulations also clarify the potential scope of the recent changes to ACNC governance standard 3. Governance standard 3 requires registered entities not to engage in or actively promote certain kinds of unlawful activity. A failure to comply with a governance standard may affect an entity's entitlement to registration under the Act.

Governance standard 3 provides that registered entities must not engage in conduct that may be dealt with as an indictable offence under an Australian law or by way of a civil penalty of 60 penalty units or more. The Government recently made regulations which extended the standard to also cover: engaging in conduct that may be dealt with as a specified kind of summary offence under an Australian law; or where a registered entity fails to maintain reasonable internal control procedures to ensure its resources are not used to actively promote another entity's acts or omissions that may be dealt with as an indictable offence, a specified kind of summary offence, or a civil penalty of 60 penalty units or more. The extension gave effect to the Government's response to Recommendation 20 of the Review.

The Regulations clarify that the specified kind of summary offences relating to causing personal injury to an individual, or any other kind of impairment of an individual's health, was only intended to cover offences relating to causing physical harm to an individual.

A full regulation impact statement (RIS) was prepared for the changes to governance standard 3 and described in the explanatory memorandum to the *Australian Charities and Not for profits Commission Amendment (2021 Measures No.2) Regulations 2021*.

In addition, the Regulations would give effect to an agreement by the previous Minister to the ACNC Commissioner (the Commissioner) that charities be allowed to make real time updates to their program information published on the Charity Register. This supports the publicly announced Charity Marketplace project, aimed at driving transparency in the charity sector.

The Regulations also encourage greater transparency and accountability in the charity sector by assisting the public to make better informed decisions when considering whether to support a charity or charities. This is achieved by enabling charities to make voluntary near real time updates to their program information on the publicly available Australian Charities and Not-for-profits Register (ACNC Register).

Public consultation was undertaken on changes to annual revenue thresholds and financial reporting requirements between 20 September 2021 and 15 October 2021. Eleven submissions were received broadly supporting the proposed changes. The ACNC was also consulted on all elements of the instrument.

Other than as outlined above, the Office of Best Practice Regulation advised that the preparation of a Regulation Impact Statement is not required.

Details of the Regulations are set out in [Attachment A](#).

A Statement of Compatibility with Human Rights is included in [Attachment B](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on day after they were registered on the Federal Register of Legislation.

ATTACHMENT A

Details of the *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021*

Section 1 – Name of the Regulations

This section provides that the title of the Regulations is the *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021* (the Regulations).

Section 2 – Commencement

This section provides for the Regulations to commence on the day after they are registered.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to the Regulations will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments: Real time reporting of activities on the public register

Item 1 amends the *Australian Charities and Not-for-profits Commission Regulation 2013* (the ACNC Regulations) to increase transparency by allowing charities to update their program information on the Australian Charities and Not-for-profits Commission (ACNC) Register in real time. This amendment will complement work that the ACNC is already undertaking to implement the Charity Marketplace project which aims to drive transparency in the charity sector and assist the public to make better informed decisions.

Item 1 of Schedule 1 amends section 40-1 of the ACNC Regulations by prescribing additional information that if provided must be included on the ACNC Register.

This item amends the ACNC Regulations to require the ACNC Commissioner to include on the ACNC Register statements about a registered entity's activities where the registered entity has voluntarily disclosed the information to the ACNC Commissioner for that purpose.

This allows registered entities to voluntarily disclose information for the purpose of updating details on the ACNC Register. Voluntary reporting could occur at any time, but registered entities are not required to do so.

Schedule 2 – Amendments: Financial reporting

Items 1, 2, and 3 of Schedule 2 makes amendments to the list of mandatory Australian Accounting Standards in section 60.30 of the ACNC Regulations that must be applied by those registered entities preparing special purpose financial reports.

Item 1 prescribes AASB 124 *Related Party Disclosures* as an additional Australian Accounting Standard that must be followed when preparing special purpose financial reports under the Act. While item 3 of the Schedule makes a minor consequential amendment to an existing provision but does not seek to alter the operation of the provision.

Item 2 gives registered entities that prepare special purpose financial reports the option of also applying accounting standard AASB 1060, *General Purpose Financial Statements – Simplified Disclosures for For Profit and Not for Profit Tier 2 Entities* in preparing their financial reports. Accounting standard AASB 1060 simplifies the disclosures that are otherwise required to be included in a financial report, reducing the compliance costs associated with preparing financial statements. AASB 1060 in some cases substitutes entirely for one of the mandatory standards, and in other cases substitutes for only part of one of the mandatory standards. The text of each mandatory standard outlines the extent to which AASB 1060 substitutes for the content of that standards.

Item 2 also ensures that despite an entity applying AASB 1060 in the preparation of their special purpose financial report, the special purpose reporting rules in AASB 1054 will remain mandatory.

Item 2 also makes clear that accounting standards AASB 124 or AASB 1060 (as applicable) are not to be applied to the extent that medium registered entities, or large registered entities with one key management person, would otherwise have to disclose the compensation of key management personnel. In the Government’s response to the *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review (2018)* (the Review), the Government agreed that only large registered entities with two or more key management personnel should be required to report remuneration paid to executive management.

Australian Accounting Standards can be obtained at no cost from the Australian Accounting Standards Board website www.aasb.gov.au or the Federal Register of Legislation.

Australian accounting standards are disallowable legislative instruments made by the Australian Accounting Standards Board under section 334 of the *Corporations Act 2001*.

Under section 60-10 of the Act, medium and large registered entities, other than basic religious charities, are required to prepare financial reports annually in accordance with the ACNC Regulations. If a basic religious charity voluntarily chooses to prepare financial statements, it must also follow the requirements of Division 60. The ACNC Regulations cover the two different types of reports specified in the accounting standards – general purpose financial statements and special purpose financial

statements. The accounting standards specify when a general purpose financial report must be prepared, otherwise reporting entities may choose to prepare either a general purpose financial statement or a special purpose financial statement.

A general-purpose financial statement is prepared having regard to the requirements that apply in all the accounting standards. A special purpose financial statement is prepared in accordance with only certain prescribed accounting standards set out in section 60.30 of the ACNC Regulations

A special purpose statement requires compliance with only specified accounting standards, potentially lessening the compliance burden. The prescribed standards prior to this Regulation were:

- AASB 101, *Presentation of Financial Statements*;
- AASB 107, *Statement of Cash Flows*;
- AASB 108, *Accounting Policies, Changes in Accounting Estimates and Errors*;
- AASB 1048, *Interpretation of Standards*; and
- AASB 1054, *Australian Additional Disclosures*.

The ACNC Regulations now prescribe an additional standard, namely AASB 124, *Related Party Disclosures* as in force from time-to-time.

The effect of the Regulations is to require all medium and large registered entities preparing annual financial reports (not only those preparing general purpose financial reports) to now disclose related party transactions. Small charities are not required to prepare annual financial reports.

One of the related party disclosures covered by AASB 124, *Related Party Disclosures* relates to remuneration paid to key management personnel.

Item 4 of Schedule 2 amends the ACNC Regulations to prescribe higher annual revenue thresholds for determining whether a registered entity is a small, medium, or large registered entity.

| Type of registered entity | Old threshold limit in the Act | New threshold in the Regulations |
|---------------------------|--------------------------------|------------------------------------|
| Small registered entity | less than \$250,000 | Less than \$500,000 |
| Medium registered entity | \$250,000 to less than \$1m | \$500,000 to less than \$3m |
| Large registered entity | \$1m or more | \$3m or more |

Section 205-25 of the Act sets out the definition of small, medium, and large registered entities, including the current applicable revenue thresholds for assessing a

registered entity's size. Section 205-25 allows for a different revenue threshold to be prescribed.

Application provisions

The Regulations increasing the annual revenue thresholds apply to the 2021-22 financial year and later financial years (or the period substituted for the 2021-22 financial year for those entities with an approved substituted accounting period).

The changes to related party disclosures apply to the 2022-23 financial year and later financial years (or the period substituted for the 2022-23 financial year for those entities with an approved substituted accounting period). However, to the extent that an entity is required to disclose the remuneration of key management personnel in the preparation of a special purpose financial report under the ACNC Regulations (as amended), the amendments contained in the Regulations apply to the 2021-22 financial year and later financial years (or the period substituted for the 2022-23 financial year for those entities with an approved substituted accounting period).

Schedule 3 – Amendments: Governance standard 3

Item 1 of Schedule 3 clarifies the amendments made by *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No.2) Regulations 2021* relating to the kinds of summary offence under an Australian law that are to be covered by the standard.

Governance standard three provides that registered entities must not engage in conduct that may be dealt with as an indictable offence under an Australian law or by way of a civil penalty of 60 penalty units or more. The Government recently made regulations which extended the standard to also cover: engaging in conduct that may be dealt with as a specified kind of summary offence under an Australian law; or where a registered entity fails to maintain reasonable internal control procedures to ensure its resources are not used to actively promote another entity's acts or omissions that may be dealt with as an indictable offence, a specified kind of summary offence, or a civil penalty of 60 penalty units or more. The extension gave effect to the Government's response to Recommendation 20 of the Review.

The Regulations clarify that the specified kind of summary offences relating to causing personal injury to an individual, or any other kind of impairment of an individual's health, was only intended to cover offences relating to causing physical harm to an individual.

Causing physical harm to an individual is intended to capture actions or omissions that result in the damage, hurt or injury to another human being, such as those that amount to assault or battery.

The alternate text for subparagraph 45.15(2)(a)(iv) instead prescribes "causing physical harm to an individual" and "a risk or threat of causing physical harm to an individual" to describe the kinds of summary offences that fall within scope of the new standard. The chosen wording is more precise and leverages off pre-existing concepts contained within the Commonwealth statute book.

The amendments aim to give the public greater confidence that a registered entity is governed in a way that is consistent with its purposes, and that it protects its assets,

reputation, and the people it works with. This is consistent with the existing objective of governance standard three and ensures the ACNC is able to take appropriate action to maintain and protect public trust and confidence in the charitable sector and to ensure the protection of charitable assets and the proper governance of charitable entities.

Items 2 and 3 provide that the changes to governance standard 3 will apply in relation to acts or omissions on or after the day on which *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No.2) Regulations 2021* commence.

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 Amendment (2021 Measures No. 3) Regulations 2021

The Regulations are 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 of the Legislative Instrument

The Regulations make amendments to the *Australian Charities and Not-for-profits Commission Regulation 2013* to increase the thresholds for working out the size of a registered entity, increase disclosure requirements for related party transactions for medium and large registered entities, and enable registered entities to make voluntary real time updates to their program information on the Australian Charities and Not-for-profits Commission Register. It also makes some minor changes to governance standard three to clarify its intended scope.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.