

# Financial INSIGHT

July 2011

## New Launch to a National Not-for-Profit Regulator

### 1. Introduction

The establishment of a new National Not-For-Profit (“NFP”) Regulator was announced in the Federal Budget 2011-12 which will aim to simplify regulatory requirements and improve accountability and transparency in the NFP sector. The Government will be providing \$53.6 million over four years to support this new arrangement.

The Government will therefore establish a new statutory agency - The Australian Charities and Not-for-profits Commission (“ACNC”) which will commence operations from **1 July 2012**. It will initially be responsible for determining the legal status of groups seeking recognition as charitable, public benevolent institutions, and other NFP benefits, on behalf of all Commonwealth agencies. The ACNC will also implement a ‘report-once use-often’ reporting framework for charities, provide education and support to the sector on technical matters, and establish a public information portal by **1 July 2013**. This will provide easy access to information. The introduction of the Standard Business Reporting (“SBR”) technology for reporting information ‘once’ to various stakeholders is also expected to enhance efficiencies.

A Commissioner will be appointed to drive all the changes and will be fully independent, reporting directly to the Parliament via the Assistant Treasurer.

The Australian Taxation Office will provide corporate support for the ACNC, including human resources and IT support to utilise scale efficiencies. The Commissioner of Taxation will retain responsibility for administering tax concessions for the NFP sector.

In preparation for the launch of the new statutory agency, the Government has set up an Implementation Taskforce, in operation from 1 July 2011. Susan Pascoe, who is the former Commissioner with the Victorian State Services Authority and former Chief Executive Officer of the Catholic Education Commission of Victoria, has been appointed as the Chair of the Implementation Taskforce for the ACNC. The Taskforce will be responsible for ensuring the ACNC is ready for operation by 1 July 2012, and will also consult with the public, the NFP sector and government agencies on a new general reporting framework and public information portal. The head of the Taskforce is expected to become the Australian Charities and Not-for-profits Commissioner on its commencement.

This publication provides an overview framework of the new national NFP regulator and will also provide you with guidance on how this new statutory agency might affect your entity.

## 2. The current NFP regulatory environment

There are currently 600,000 NFP organisations in Australia. NFP organisations are characterised by their diversity, with entities ranging from micro-sized sporting and recreational clubs to large national and multinational charitable organisations. The NFP sector is growing in size and importance in the Australian economy. The current regulatory framework for these NFP organisations is complex and imposes a significant regulatory burden on the NFP sector without providing appropriate levels of governance, transparency and accountability. As a result, there is a need to improve the current regulatory arrangement. The new national regulator will be streamlining reporting requirements in an attempt to reduce compliance costs and provide certainty to NFPs about their rights and responsibilities.

## 3. Overview of the NFP regulator

### Objective

The final report released by the Treasury, entitled '*Scoping study for a national not-for-profit regulator*' ("scoping paper") describes the objectives of the regulation of the NFP sector as follows:

- Place minimal costs on NFPs;
- Remove current regulatory duplications;
- Streamline requirements, including reporting, so as to provide consistency and minimise compliance costs;
- Provide a 'one-stop shop' for NFP entities, to assist all NFP entities to more easily access information that will help them to understand and comply with their regulatory obligations;
- Be simple, transparent and flexible;
- Provide NFP entities with certainty as to their rights and responsibilities; and
- Be proportional to the size and complexity of NFP entities, and to the public monies and risks associated with NFP entities.

### Scope

NFP entities are constituted through a variety of legal forms, including corporations, incorporated associations, unincorporated associations, charitable trusts and entities. Some of these entities are regulated by Commonwealth laws, some by State and Territory regimes, whereas others fall outside these.

As a result, a single regulator is being established for the purposes of governance, accountability and transparency of NFPs. A principle-based regulatory framework is to be established, where the principles of regulation apply broadly across the NFP sector, regardless of entity type or industry. In the scoping paper, it suggests that regulatory duplications should be removed by exempting entities from overlapping regulation, such as removing reporting to the Australian Securities and Investment Commission ("ASIC") for entities regulated by the NFP regulator. The scope of regulation of a NFP regulator will therefore consider both the treatment of different legal forms of NFP entities and the role of existing regulators.

### Definition of 'charity'

In the 2011-12 budget, the Federal Government announced the intention to introduce a statutory definition of 'charity', applicable across all Commonwealth agencies from **1 July 2013**, setting aside \$2.9 million over four years to the ACNC for developing new guidance for the sector, implement system changes, and re-assess the charitable status of entities on the basis of the new statutory definition.

### Reporting

NFP entities within the scope of the NFP regulator could be required to lodge annual information statements. NFP entities would only be required to 'report-once' for standard reporting, and would not be required to report to the ASIC or other Commonwealth agencies requiring the same information.

The introduction of the public information portal would also provide a single, easily accessible source of detailed information about NFP entities in Australia.

## **Governance, disclosure and compliance**

There are various minimum governance standards that currently apply to the NFP sector. A best practice regulatory framework would ensure that appropriate governance arrangements are in place for the NFP sector, and that entities are accountable and transparent. Organisational rules should be proportional to the size and risk factors of the entities. One of the roles of the new national regulator would be providing governance and regulatory oversight.

## **Funding of the national NFP regulator**

In the scoping paper, there are two main options for the funding of the regulator. Firstly, it could be entirely funded by the Australian Government or alternatively, a contribution towards the costs of regulation could be collected from regulated NFP entities. This could be a small contribution collected along with the lodgement of annual reports by regulated NFP entities.

## **Other**

Other roles of the NFP regulator will include education and developing national approaches to NFP fundraising legislation in the context of broader regulatory reform for the NFP sector.

## **4. Actions**

The establishment of a national regulator by the Federal Government is an attempt to provide an oversight of financial reporting, audit and governance of the NFP sector. By introducing a single regulator for the entire NFP sector, the public should ultimately benefit from a transparent and effective system governed by consistent national legislation. This will reduce overly burdensome procedures and regulatory duplications. The regulator will also be able to convert information into public education materials.

Given the new national NFP regulator is soon to be in place, NFP entities will need to be aware of any new arrangements that are proposed and how they may be affected.

**If you wish to discuss any of the issues raised in this publication contact your local RSM Bird Cameron advisor.**



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