

Financial INSIGHT

December 2011

Not-For-Profit Reform

Introduction

As reported in our July 2011 Financial INSIGHT, 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 main concern is with inconsistencies and duplications in reporting requirements which arise from the current position where Commonwealth, State, Territory and local governments regulate different parts of the NFP sector for different and overlapping purposes. In terms of financial reporting, entities structured as companies limited by guarantee are regulated by the Australian Securities and Investments Commission ("ASIC") whilst those incorporated as associations are regulated by State and Territory-based bodies. In addition other forms of reporting are required by other government bodies for purposes such as grant acquittals.

To this end, a new statutory agency - The Australian Charities and Not-for-profits Commission ("ACNC") - is being established and will commence operations from 1 July 2012.

On Friday 9 December 2011 Treasury issued a number of papers for consultation which are intended to facilitate the establishment and operation of the ACNC, namely:

- Exposure Draft - *Australian Charities and Not-for-profits Commission Bill 2012*
- Consultation Paper - *Review of Not-for-profit Governance Arrangements*
- Discussion Paper - *Australian Charities and Not-for-profits Commission: Implementation Design*

These papers provide an overview of the intended future framework for the not-for-profit sector. This Financial INSIGHT summarises the key aspects of the proposals with a focus on financial reporting and audit issues.

Exposure Draft - *Australian Charities and Not-for-profits Commission Bill 2012*

This Exposure Draft ("ED") is the draft legislation which will establish the ACNC and provide the regulatory framework for the NFP sector. The ED provides for the objectives and functions of the ACNC, including registering NFP entities, educating the sector and maintaining a register as well as providing the monitoring, investigation and enforcement powers of ACNC with regard to registered entities.

1. Registration

The ED provides the ACNC with the power to register entities as NFP entities. Initially, and until the end of the 2014 financial year, the ACNC will only register NFP entities classified as charities. This will be considered for expanding to the whole sector in the future. Currently, there is no requirement under Commonwealth law to be registered as a NFP entity, however the ATO endorses charities as such to enable them to obtain tax concessions. Registration with the ACNC is not mandatory, however entities wishing to access government support, including tax concessions, will be required to be registered with the ACNC. Accordingly, it is expected that most charities will register. The ED outlines the requirements for an entity to be entitled to register, but it should be noted that if an entity is currently endorsed by the ATO then they will be considered to be registered and will not be required to re-register in the approved form.

2. Reporting and Audit

The objective of the ACNC is to establish a “report-once use-often” general reporting framework for registered entities. This will enable registered entities to fulfil all reporting obligations, initially across Commonwealth agencies by lodging required reports with the ACNC.

The reporting requirements proposed by the ED apply to registered entities, which initially will be charities. They will apply from 1 July 2013 in respect of information from the prior year, that is for the 30 June 2013 financial year.

The ED proposes reporting requirements proportional to size, based on revenue thresholds and deductible gift recipient (“DGR”) status. The thresholds are the same as those applied in the Corporations Act for companies limited by guarantee. Revenue is calculated in accordance with relevant accounting standards.

The tiers are:

1. Tier one / Small registered entities - entities that have annual revenue less than \$250, 000 and do not have DGR status.
2. Tier two / Medium registered entity - entities with annual revenue less than \$250, 000 and DGR status, and entities with annual revenue between \$250, 000 and \$1, 000, 000, irrespective of whether they have DGR status.
3. Tier three / Large registered entity - entities with annual revenue of \$1, 000, 000 or more.

The proposed requirements are that registered entities will lodge an information statement annually in an approved form (which is yet to be finalised and is included in the Discussion Paper - *Australian Charities and Not-for-profits Commission: Implementation Design*). The information statement will include information about, for example, governance, finances, activities, purposes, objects and beneficiaries and the information required by the approved forms will be proportional to size. The information statement will be required to be lodged with the ACNC by 31 October each year.

A financial report will also need to be prepared and lodged with the ACNC. It is proposed that the financial report will be required to be prepared in accordance with Australian Accounting Standards, which implies the expectation that it will be a general purpose financial report. In addition, the financial report will need to be audited for Tier three entities and audited or reviewed for Tier two entities, similar to the current *Corporations Act* requirements for companies limited by guarantee.

For charities currently operating as incorporated associations this will, in many jurisdictions, result in a significant change in financial reporting requirements. It is envisaged that ultimately the current state-based reporting requirements will be replaced with the ACNC reporting requirements so as to avoid duplication, however this will require co-operation from the States. A factsheet entitled *The ACNC Exposure Draft - Constitutional Issues* issued by Treasury with the ED reports that the Council of Australian Governments (“COAG”) has agreed to progress the national NFP reforms and a Commonwealth, State and Territory NFP Working Group has been set up for this purpose.

3. Governance

This part of the ED is linked to the Consultation Paper *Review of Not-for-profit Governance Arrangements* (“the CP”). The proposed legislation defines “responsible individuals” who will be directors, trustees, receivers, managers, administrators, liquidators and other decision makers of registered entities. The CP is the document which seeks views on the governance framework that will apply to these responsible individuals.

Consultation Paper - *Review of Not-for-profit Governance Arrangements*

This paper focuses on governance arrangements for NFP entities and is seeking views on a principles-based size proportional framework. The paper addresses the following areas:

- duties and minimum standards of responsible individuals, including rules for proper organisational management and running of the entity;
- disclosure requirements and managing conflicts of interest;
- risk management procedures - internal and external reviews, and auditing requirements;
- the coverage or minimum requirements of governing rules; and
- relationships with members.

Rather than proposing requirements, the aim of this paper is to seek consultation from interested parties as to what the principles should be and what the framework would look like.

Discussion Paper - *Australian Charities and Not-for-profits Commission: Implementation Design*

The final paper outlines and seeks feedback on the proposed design and implementation of the proposed reporting framework, comprised of:

- proportional reporting under the three-tiered system outlined above;
- a 'Charity Passport' that will enable the Government agencies to electronically access basic information about charities that has been validated by the ACNC; and
- a 'fixed form' for financial information, aligned with Standard Business Reporting ("SBR") and the Standard Chart of Accounts ("SCOA") taxonomies.

Consultation Period

There is an extremely short timeframe for commenting on these paper as follows:

- Exposure Draft on ACNC legislation - comments due 20 January 2012
- Consultation Paper on Governance - comments due 20 January 2012
- Discussion Paper - ACNC reporting framework - comments due 27 February 2012

It has been noted by Treasury that the tight timeframes are required to ensure that ACNC is operative from 1 July 2012.

We strongly encourage participation in the consultation process.



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