

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 124

Issued by authority of the Assistant Treasurer

Australian Charities and Not-for-profits Commission Act 2012
Australian Charities and Not-for-profits Commission Amendment
Regulation 2013 (No. 3)

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.

Section 60-10 of the Act requires medium and large entities registered with the ACNC to provide the Commissioner with annual financial reports. Section 60-15 of the Act provides that those financial reports must comply with the requirements set out in regulations. However, subsection 60-15(2) of the Act specifies that information that those regulations specifies that those requirements must relate to, or have the purpose of, enabling recognised assessment activities to be carried out in relation to registered entities¹.

Recognised assessment activities is a term defined in section 55-10 of the Act and includes activities carried out by the Commissioner involving an assessment of the entity's compliance with the Act or entitlement to be registered under the Act. It also includes activities carried out by the Commissioner of Taxation involving an assessment of the entity's compliance with any taxation law.

The purpose of the Regulation is to amend the *Australian Charities and Not-for-profits Commission Regulation 2013* (the Principal Regulation) to specify the requirements for annual financial reports for the 2013-14 financial year and later years.

The requirements set out in the Regulation for the annual financial report consist of the following three elements:

- the financial statements for the year;
- the notes to the financial statements; and
- the declaration made by the responsible entities about the financial statements and the notes.

The financial statements and notes, in most cases, need to comply with some or all of the accounting standards issued by the Australian Accounting Standards Board (AASB).

To account for additional reports and joint and collective reporting that are authorised under the Act, the Regulation provides special rules in respect to the requirements for those annual financial reports where compliance with the accounting standards may be inappropriate or impractical for the registered entity.

Furthermore, to assist those registered entities that are not currently required to comply with accounting standards, the Regulation also provides transitional arrangements so that instead of applying the accounting standards for the 2013-14 financial year, entities eligible for these transitional arrangements generally only need to include in their financial report, the financial information proposed to be included in the 2014 annual information statement (which all registered entities will be required to lodge for the 2013-14 financial year under section 60-5 of the Act).

This will effectively provide those affected entities with an extra year until they need to comply with accounting standards under the Regulation. This will help those entities adjust to the new requirements and ensure that they are provided adequate time to put in place further systems (if needed).

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 Regulation is 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 NFP 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 requirements already included in the Principal Regulation and policy statements outlined in the Revised Explanatory Memorandum to the Australian Charities and Not-for-profits Commission Bill 2012.

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.

Public consultation was undertaken on an exposure draft of the Regulation between December 2012 and February 2013. In total, 50 submissions were received from various representatives of the NFP sector and accounting and auditing experts.

The Minister is satisfied that the conditions in subsection 60-15(2) of the Act have been met and that information that the Regulation requires to be provided to the Commissioner is information that relates to, or has the purpose of, enabling recognised assessment activities to be carried out in relation to registered entities

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

The Regulation commences on the day after it is registered.

ATTACHMENT A**Details of the *Australian Charities and Not-for-profits Commission Amendment Regulation 2013 (No. 3)*****Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Australian Charities and Not-for-profits Commission Amendment Regulation 2013 (No. 3)*.

Section 2 – Commencement

This section provides for the Regulation to commence on the day after it is registered on the Federal Register of Legislative Instruments.

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 – Schedule

This section provides that the amendments in Schedule 1 amend the *Australian Charities and Not-for-profits Commission Regulation 2013* (the Principal Regulation).

Schedule 1 – Amendments to the *Australian Charities and Not-for-profits Commission Regulation 2013***Overview of the requirements for the annual financial report**

This Schedule of the Regulation sets out the requirements for annual financial reports from the 2013-14 financial year and later years in accordance with section 60-15 of the Act.

Obligation to provide the Commissioner with an annual financial report

Under the Act, only medium and large registered entities are required to provide annual financial reports to the ACNC, although small registered entities may choose to do so. Further, the requirement to prepare a financial report is also not mandatory for a basic religious charity (a special category of charities as defined in 205-35 of the Act) regardless of its size.

Large registered entities will be required to have their financial reports audited, and medium registered entities can generally choose to either have their financial reports reviewed or audited. Under the Act, determining the reporting threshold (small, medium or large) is determined at the single entity level, rather than being based on a joint or consolidated group level (where applicable).

The first annual financial reports will not be due until 31 December 2014, or six months after the end of an approved substituted accounting period that commences after 1 July 2013.

Basic components of the requirements for annual financial reports

Section 60.5 of the Regulation specifies that the requirements of an annual financial report will consist of the following three elements:

- the registered entity's financial statements for the year;
- the notes to the financial statements; and
- the declaration made by the responsible entities about the financial statements and the notes.

The financial statements and notes will, in most cases, need to comply with some or all of the accounting standards issued by the Australian Accounting Standards Board (AASB).

The accounting standards are a number of technical pronouncements that set out the required accounting for particular types of transactions and events. The accounting requirements affect the preparation and presentation of an entity's financial statements.

There are some exceptions to the requirement to apply accounting standards, which are discussed below.

Both the financial statement and the notes to the financial statement must give a true and fair view of the financial position and performance of the registered entity.

Failure to comply with the annual financial reporting requirements under the Act, and as specified in the Regulation, may give rise to administrative penalties under the Act. In particular, section 175-35 of the Act provides for an administrative penalty for failing to give the Commissioner an annual financial report within the required time.

Special rules that apply to requirements for annual financial reports

Subdivision 60-C of the Regulation specifies special rules that apply to the requirements for annual financial reports in respect to Subdivisions 60-E and 60-G of the Act which deal with additional reports requested by the Commissioner and joint and collective reporting respectively.

There are also special rules that apply to registered entities that prepare special purpose financial statements as explained below.

Transitional arrangements that apply to requirements for annual financial reports

Subdivision 60-D of the Regulation specifies transitional rules that apply to certain registered entities that had not previously been required to comply with the accounting standards and have not previously prepared a financial report that complies with the accounting standards.

There are also transitional rules in the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Consequential and

Transitional Act) that have an impact on the requirements for annual financial reports from the 2012-13 financial year to the 2014-15 financial year.

Context for applying the accounting standards

In most cases, the reports prepared by medium and large registered entities will need to comply with accounting standards (except in certain circumstances which are explained further below). This will require the entity to complete either a general purpose financial statement (GPFS) or a special purpose financial statement (SPFS).

For the purposes of the Regulation the term GPFSR is defined in the Regulation as taking its meaning from the accounting standards and is explained in further detail below. The term SPFS is also further explained below and is defined in the Regulation as meaning a financial statement other than a GPFS (within the meaning of the accounting standards).

General purpose and special purpose financial statements

Compliance with the accounting standards does not necessarily mean that an entity will need to apply the full suite of accounting standards in preparing their report. This will depend on whether or not the entity is considered to be a 'reporting entity'.

A 'reporting entity' must prepare a GPFS, which applies the full suite of accounting standards, or they can choose to adopt the Reduced Disclosure Requirements (RDR) regime (which is further discussed below).

A 'non-reporting entity' generally prepares a SPFS to meet the needs of specific users but can choose to prepare a GPFS if it wishes.

Under section 60.30 of the Regulation, non-reporting entities registered with the ACNC preparing an SPFS are only required to apply six accounting standards rather than the full suite of accounting standards or the RDR regime (which is further discussed below).

Those accounting standards are:

1. AASB 101, *Presentation of Financial Statements*
2. AASB 107, *Statement of Cash Flows*
3. AASB 108, *Accounting Policies, Changes in Accounting Estimates and Errors*
4. AASB 1031, *Materiality*
5. AASB 1048, *Interpretation of Standards*
6. AASB 1054, *Australian Additional Disclosures*

These six standards for preparers of SPFSs are seen as necessary to give a true and fair view of an entity's financial position and performance as required by the Regulation (discussed below). The non-reporting entity may also ask for the

Commissioner's permission to not comply with part or all of the accounting standards.

However, under subsection 60.30(3) of the Regulation, non-reporting entities that prepare their SPFS in compliance with the six standards, will not be required to comply with the parts of those standards that are expressed to only apply to reporting entities.

The AASB (as standard-setter) and the ACNC (as regulator) will work together to develop guidance on financial reporting for entities registered with the ACNC, including reporting requirements of non-reporting entities registered with the ACNC.

Whether an entity needs to prepare a general purpose or special purpose financial statement

The test for whether an entity is a 'reporting entity' or not is set out in the accounting standards as follows (see Appendix A of AASB 1053 *Application of Tiers of Australian Accounting Standards*):

*'an entity in respect of which it is reasonable to expect the existence of users who rely on the entity's general purpose financial statements for information that will be useful to them for making and evaluating decisions about the allocation of resources. A reporting entity can be a single entity or a group comprising a parent and all of its subsidiaries.'*¹

If a registered entity does not meet this test, it can prepare a SPFS rather than a GPFS.

The responsible entities of a registered entity are responsible for applying this test and deciding on the type of financial statement that needs to be prepared. The responsible entities' determination as to whether the registered entity should be classified as a reporting entity or a non-reporting entity is an important decision affecting the level of disclosure in the financial report. This decision needs to be made in view of the requirement for the responsible entities to make a declaration about compliance with accounting standards under section 60.15 of the Regulation (discussed further below).

The auditor or reviewer of the registered entity will also need to make a decision about the appropriateness of the classification of an entity as a non-reporting entity in forming an opinion as to whether the registered entity's financial report complies with accounting standards.

The reporting entity test is focused on whether there are users that exist that cannot directly obtain the information they require. It excludes entities that only have users that can directly obtain the information they need, such as some closely-held private businesses.

Statement of Accounting Concepts SAC 1 "*Definition of the Reporting Entity*" outlines relevant factors, which are set out below. These factors are indicative, not determinative, and the particular circumstances of an entity will need to be considered in determining whether it is a reporting entity:

¹ Reporting under the ACNC framework is at the registered entity level, unless joint or collective reporting requirements apply.

- identification of whether dependent users exist;
 - In many instances, it will be readily apparent whether, in relation to an entity, there are users that exist who are dependent on a GPFS as a basis for making and evaluating resource allocation decisions.
- separation of management from economic interest;
 - The greater the separation between ownership (including members or others with an economic interest in the entity) and management, the more likely it is that there will be users that exist that are dependent on a GPFS as a basis for making and evaluating resource allocation decisions.
- economic or political importance/influence; and
 - Economic or political importance/influence refers to the ability of an entity to make a significant impact on the welfare of external parties. The greater the economic or political importance of an entity, the more likely it is that there will be users that exist that are dependent on a GPFS as a basis for making and evaluating resource allocation decisions.
 - Reporting entities identified on the basis of this factor are likely to include organisations which enjoy dominant positions in particular sectors of the economy and those which are concerned with balancing the interests of significant groups, for example, employer/employee associations.
- financial characteristics.
 - Financial characteristics that should be considered include the size (for example, value of assets, or number of employees) or indebtedness of an entity. In the case of NFP entities in particular, the amount of resources provided or allocated by governments or other parties to the activities conducted by the entities should be considered. The greater the indebtedness or resources allocated, the more likely it is that there will be users that exist that are dependent on a GPFS as a basis for making and evaluating resource allocation decisions.

Example 1: Entity that is likely to be a reporting entity

XYZ Company is a well-known charitable public company limited by guarantee. It has an annual revenue of \$15 million, and a large membership base, comprising of 900,000 members. It has around 300 employees, 60 creditors, and 15 directors. XYZ also raises funds from the public by issuing debentures and receiving donations.

XYZ is a reporting entity because it has issued debentures, and as such, there will be potential debenture holders who require GPFSs as a basis for making decisions about the allocation of resources. There are also a number of other factors that suggest it is a reporting entity, for example, the fact that it is a well-known company, which has a significant number of members, donors, employees and creditors. This suggests that there may be users dependent on GPFSs as a basis for allocating resources.

In this scenario, there is also a significant separation between ownership (900,000 members) and control (15 directors), which again suggests that there may be users, including current and potential members, dependent on GPFs as a basis for allocating resources and making decisions.

Example 2: Entity that is not likely to be a reporting entity

PQR is a charity, which is registered as an incorporated association under State legislation. It has annual revenue of \$255,000, and a relatively small membership base, comprising of ten members, all of whom are on the association's committee of management. PQR also receives small grants and funding from the State Government although those grants and funding already require the charity to provide relevant financial information to the State Government.

PQR has also obtained a loan from its local bank, however, the bank has the ability to obtain financial information from PQR, that is tailored specifically to meet the bank's needs.

Based on these assumed facts alone, PQR is unlikely to be a reporting entity. Under this scenario, there is no separation of ownership from control, as all of the association's members are on the committee of management. PQR also has minimal borrowings, creditors and employees, which reduces the likelihood that there will be users dependent on GPFs to make decisions about the allocation of resources. Both the State Government and PQR's lender, the local bank, are able to command the preparation of financial information tailored to its own needs relevant to the grants and the loan, and therefore, do not need to rely on GPFs.

Whether an entity will need to prepare a GPFs if the report is being made publicly available on the ACNC register

The disclosure of the report on a public register, such as the ACNC information portal, does not necessarily mean that the report needs to be a GPFs. Often, the reports on other public registers, such as ASIC's public registers, are SPFs.

Whether the reporting entity test is satisfied depends on the extent to which there are external users of the reports who are unable to command tailored information, not by whether those reports are publicly available.

Based on sample ASIC data, around 47 per cent of medium companies limited by guarantee prepare SPFs notwithstanding that the report is placed on ASIC's public register.

Reduced Disclosure Requirements (RDR) for GPFs

Those registered entities that are required to prepare GPFs have the option of applying a less onerous disclosure regime, known as the 'reduced disclosure requirements' (RDR) regime, compared to the full disclosure requirements of the accounting standards.

These requirements have been developed by the AASB, and apply to reporting periods beginning on or after 1 July 2013, but can be adopted earlier.

Entities that choose to apply RDR will be subject to the same recognition and measurement requirements as entities reporting under the full set of accounting standards, but will have considerably fewer disclosures in the notes to their financial statements.

This will reduce the disclosure burden, and the reporting and auditing/reviewing costs for registered entities that are required to prepare a GPFS.

Further information about RDR is contained in accounting standard AASB 1053 *Application of Tiers of Australian Accounting Standards*.

Requirements of the annual financial report: Financial statements and notes

Section 60.10 of the Regulation specifies that both the financial statements and notes on those financial statements that comprise the annual financial report must be prepared in accordance with the accounting standards.

Additionally, section 60.10 of the Regulation specifies that both the financial statements and notes must give a true and fair view of the financial position and performance of the registered entity.

While there is no agreement or authoritative judicial pronouncement on the meaning of the expression 'true and fair view', in nearly all cases, compliance with accounting standards is likely to produce a true and fair view. As accounting standards are continuously improved and modernised, there is less scope for the operation of the additional 'true and fair view' requirement to require anything additional than that stipulated in the accounting standards.

As a result, in nearly all cases, the 'true and fair' disclosure requirement is not expected to be triggered, and compliance with accounting standards is sufficient to give a true and fair view.

However, this does not affect the obligation under the Regulation to comply with accounting standards. If the financial statements and notes prepared in accordance with accounting standards would not give a true and fair view, the Regulation requires that additional information must be included in the notes to the financial statements as clarified in Note 2 at the end of subsection 60.10(3) of the Regulation.

Requirements of the annual financial report: Responsible entities' declaration

Section 60.15 of the Regulation requires a responsible entities' declaration to be made as part of the annual financial report. This declaration must state:

- whether, in their opinion, there are reasonable grounds to believe that the registered entity is able to pay all of its debts, as and when they become due and payable; and
- whether, in their opinion, the financial statements and notes satisfy the requirements of the Act.

The declaration must be signed by a responsible entity that is authorised to do so by the responsible entities of the registered entity.

Special rules that apply to the requirements for annual financial reports

Subdivision 60-C of the Regulation specifies special rules that apply to the requirements for annual financial reports in respect to Subdivisions 60-E and 60-G of the Act which deal with additional reports required by the Commissioner and joint and collective reporting respectively.

Additional reporting requirements where required by the Commissioner

Under Subdivision 60-E of the Act, the Commissioner has the authority to require entities to provide additional information, and to lodge additional reports. This type of additional reporting would only be used where necessary, for example, where there is reason to believe that an entity has contravened the Act.

In requiring further information under the Act, the Commissioner may specify requirements relating to the information or reports, including particular accounting standards that do not need to be complied with or need to be adhered to with certain modifications. Depending on the circumstances, the additional report of information sought by the Commissioner may diverge from particular accounting standards.

In such cases, section 60.25 of the Regulation specifies that registered entities do not have to comply with the accounting standards to the extent that they are inconsistent with the Commissioner's determination regarding the additional reporting requirements.

Joint and collective reporting

Under Subdivision 60-G of the Act, the Commissioner may approve new types of reporting, referred to as 'joint' and 'collective' reporting, which will enable entities to report as charitable groups (joint reporting) or along certain lines of activity, rather than on an entity-by-entity basis (collective reporting). There are a number of factors the Commissioner must consider before deciding whether to allow a particular group of entities to report in this way.

These factors are listed in subsection 60-95(4) of the Act. As approval for collective and joint reporting is applied prospectively, registered entities will need to plan well in advance if they wish to adopt these reporting arrangements for a future financial year.

In allowing joint and collective reporting under the Act, the Commissioner may specify conditions relating to the information or reports, including particular accounting standards that do not need to be complied with or need to be adhered to with certain modifications. Depending on the circumstances, joint and collective reporting may diverge from particular accounting standards, such as accounting standard AASB 10 *Consolidated Financial Statements*.

In such cases, section 60.25 of the Regulation specifies that registered entities do not have to comply with the accounting standards to the extent that they are inconsistent with this type of reporting or the conditions set out in the Commissioner's approval.

Transitional rules that apply to the requirements for annual financial reports

Subdivision 60-D of the Regulation specifies transitional rules that apply to registered entities that were not required, under an Australian law, to prepare a financial report that complied with the accounting standards in the 2012–13 financial year, or a substituted accounting period that commenced during the 2012–13 financial year.

There are also existing transitional arrangements, currently in force, that apply to reporting under the Act in the Consequential and Transitional Act relating to reports for the 2012-13 financial year to the 2014-15 financial year that are given to other Australian government agencies. Whilst these transitional arrangements are not directly within the Regulation, they do have an interaction with the requirements for annual financial reports and may affect the content of a financial report during the transitional period.

Transitional rules for the 2013–14 financial year, or a substituted accounting period that commences during the 2013–14 financial year

Section 60.35 of the Regulation specifies that transitional rules apply to a registered entity where the registered entity:

- was not required, under an Australian law, to prepare a financial report that complied with the accounting standards in the 2012–13 financial year, or a substituted accounting period, that commenced during the 2012–13 financial year; and
- did not prepare a financial report for that financial year, or substituted accounting period, that complied with the accounting standards or purported to comply with the accounting standards.

These transitional rules that apply to eligible entities apply for the 2013-14 financial year or substituted accounting period that commences during the 2013-14 financial year.

Under these transitional rules, the financial statement of an eligible entity for the 2013-14 financial year must either comply with the core rules in section 60.10 of the Regulation (as described above), or, depending on whether the entity is a medium registered entity or a large registered entity, must include information set out in the table in subsections 60.40(2) or 60.40(3) of the Regulation in their financial report.

The information required for medium and large registered entities under these transitional rules largely replicates the information proposed to be contained in the 2013-14 annual information statement.

For medium registered entities they must include the following information:

Information for medium registered entities

Item	Information
<i>Income statement—gross income</i>	
1	Government grants

2	Donations and bequests
3	All other revenue
4	Total revenue
5	Other income
6	Total gross income
<i>Income statement—expenses</i>	
7	Employee expenses
8	Grants and donations made by the registered entity for use in Australia
9	Grants and donations made by the registered entity for use outside Australia
10	All other expenses
11	Total expenses
<i>Income statement—net surplus/deficit</i>	
12	Net surplus/deficit
<i>Balance sheet—assets</i>	
13	Total current assets
14	Total non-current assets
15	Total assets
<i>Balance sheet—liabilities</i>	
16	Total current liabilities
17	Total non-current liabilities
18	Total liabilities
<i>Balance sheet—net assets/liabilities</i>	
19	Net assets/liabilities

For large registered entities they must include the following information:

Information for large registered entities

Item	Information
<i>Income statement—gross income</i>	
1	Government grants
2	Donations and bequests
3	All other revenue
4	Total revenue
5	Other income
6	Total gross income
<i>Income statement—expenses</i>	
7	Employee expenses
8	Interest

9	Grants and donations made by the registered entity for use in Australia
10	Grants and donations made by the registered entity for use outside Australia
11	All other expenses
12	Total expenses
<i>Income statement—net surplus/deficit</i>	
13	Net surplus/deficit
<i>Balance sheet—assets</i>	
14	Total current assets
15	Non-current loans
16	Other non-current assets
17	Total non-current assets
18	Total assets
<i>Balance sheet—liabilities</i>	
19	Total current liabilities
20	Non-current loans
21	Other non-current liabilities
22	Total non-current liabilities
23	Total liabilities
<i>Balance sheet—net assets/liabilities</i>	
24	Net assets/liabilities

The concepts used in these tables are derived from the accounting standards and are commonly adopted in financial statements and financial reports. However, the concept of ‘Grants and donations made by the registered entity for use in Australia’ and ‘Grants and donations made by the registered entity for use outside Australia’ are specific to the NFP sector and seek to capture information about grants and donations that the registered entity makes to other entities. In determining whether a grant or donation is for use in Australia, or outside Australia, it is the registered entity’s main intention behind the grant or donation that is the relevant factor for consideration.

As it is proposed that eligible entities will likely be required to provide the Commissioner with this information through the 2013-14 annual information statement, effectively this means that eligible entities will have an extra year until they need to comply with accounting standards under section 60.10 of the Regulation. This will help those entities adjust to the new requirements and ensure that they are provided adequate time to put in place further systems (if needed).

For those eligible entities that apply either subsection 60.40(2) or 60.40(3) of the Regulation and populate their annual financial report with the information that is likely to be required by the 2013-14 annual information statement, they may still have an obligation to have that information reviewed or audited. For those eligible entities that take advantage of the transitional arrangements, they may have regard to auditing

standard ASA 800 *Special Considerations – Audits of Financial Reports Prepared in Accordance with Special Purpose Frameworks* which provides a framework for auditing or reviewing information not prepared in accordance with the accounting standards.

Transitional arrangements under the Consequential and Transitional Act

Under item 10 of Schedule 1 to the Consequential and Transitional Act, the Commissioner may allow reports given under an Australian law to an Australian government agency (which includes both Commonwealth and State and Territory agencies) as being a financial report under the Act up and until the 2014-15 financial year (or later year prescribed by regulation).

This will enable the Commissioner to address potential reporting duplication during the process of establishing the ACNC as a ‘one-stop shop’ regulator.

The reports provided to another Australian government agency need not necessarily comply with accounting standards, but the Commissioner may allow such reports to satisfy the reporting requirements under the ACNC framework, as a transitional measure.

There are a number of factors the Commissioner must consider before deciding whether to allow these reports to satisfy ACNC reporting requirements. This includes consideration of the following matters:

- what access the Commissioner has to the statement, report or other document;
- whether the statement, report or other document contains:
 - the information required under the ACNC Act to be in the information statement or reports; or
 - other information that relates to, or has the purpose of, enabling the same recognised assessment activities to be carried out in relation to registered entities;
- the processes that have been undertaken to verify the information contained in the statement, report or other document. This may include, for example, whether the report, statement or document has been subject to an audit or review.

However, in the case of non-government schools, the Commissioner must accept reports lodged under section 24 of the *Schools Assistance Act 2008*, as meeting the ACNC’s requirements for annual financial report for a transitional period and does not need to consider the matters listed above. This transitional arrangement will apply until the 2014-15 financial year, or a later year prescribed by the regulations. This will ensure that non-government schools will not be subject to reporting duplication during the process of establishing the ACNC.

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 Regulation 2013 (No. 3)

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 of the Legislative Instrument

The purpose of the Legislative Instrument is to amend the *Australian Charities and Not-for-profits Commission Regulation 2013* to specify the requirements for annual financial reports for the 2013-14 financial year and later years.

Human rights implications

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

The Legislative Instrument only specifies the content of financial reports which includes non-personal information and data. For that reason it does not engage the right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR) even though some of the information and data provided in the financial reports will be published on the public register as it does not involve the collecting, using, storing and sharing of personal information which is the subject of the ICCPR.

Conclusion

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

ASSISTANT TREASURER, HON DAVID BRADBURY