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

No. , 2012

(Treasury)

**A Bill for an Act to establish the Australian
Charities and Not-for-profits Commission and a
national regulatory framework for the
not-for-profit sector, and for related purposes**

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1 **A Bill for an Act to establish the Australian**
2 **Charities and Not-for-profits Commission and a**
3 **national regulatory framework for the**
4 **not-for-profit sector, and for related purposes**

5 **Preamble**

6 The Parliament of Australia recognises the unique nature and
7 diversity of not-for-profit entities and the distinctive role that they
8 play in Australia.

9 Not-for-profit entities promote a broad range of community,
10 altruistic and philanthropic purposes. The not-for-profit sector
11 delivers vital services and benefits to communities throughout
12 Australia.

Chapter 1 Introduction

Part 1-1 Preliminary

Division 5 Preliminary

Section 5-5

1 The not-for-profit sector receives a range of funding, including
2 donations from members of the public and tax concessions, grants
3 and other support from Australian governments.

4 It is important that a national regulatory system that promotes good
5 governance, accountability and transparency for not-for-profit
6 entities be introduced to maintain, protect and enhance public trust
7 and confidence in the not-for-profit sector.

8 It is therefore necessary to establish a Commissioner of the
9 Australian Charities and Not-for-profits Commission who will
10 focus on the not-for-profit sector and will recognise and respond to
11 the diversity and uniqueness of the sector.

12 The Parliament of Australia enacts:

13 **Chapter 1—Introduction**

14 **Part 1-1—Preliminary**

15 **Division 5—Preliminary**

16 **5-5 Short title**

17 This Act may be cited as the *Australian Charities and*
18 *Not-for-profits Commission Act 2012*.

19 **5-10 Commencement**

20 (1) Each provision of this Act specified in column 1 of the table
21 commences, or is taken to have commenced, in accordance with
22 column 2 of the table. Any other statement in column 2 has effect
23 according to its terms.
24

Section 5-15

Commencement information

| Column 1 | Column 2 | Column 3 |
|---|---|---------------------|
| Provision(s) | Commencement | Date/Details |
| 1. Sections 5-5 and 5-10 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | |
| 2. Sections 5-15 to 300-5 | The later of: (a) 1 October 2012; and (b) the day the <i>Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012</i> receives the Royal Assent. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. | |

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **5-15 Crown to be bound**

8 (1) This Act binds the Crown in each of its capacities.

9 (2) This Act does not make the Crown liable to a pecuniary penalty or
10 to be prosecuted for an offence.

11 **5-20 Extension to external Territories**

12 This Act extends to every external Territory.
13

Section 10-5

1 **Division 10—Guide to this Act**

2 **10-5 Guide to this Act**

3 The following is a guide to this Act:

4 This Act establishes a regulatory system for not-for-profit entities.

5 This Act establishes a national regulator for not-for-profit entities.
6 The regulator is the Commissioner of the Australian Charities and
7 Not-for-profits Commission (the ACNC).

8 The Commissioner is responsible for registering entities as
9 not-for-profit entities according to their type and subtypes.
10 Registration with the ACNC is a necessary precondition for access
11 to certain Commonwealth taxation concessions. Registration under
12 this Act may also be a prerequisite for other exemptions, benefits
13 and concessions provided under other Australian laws.

14 The Commissioner of the ACNC will cooperate with other
15 government agencies to oversee a simplified and streamlined
16 regulatory framework for not-for-profit entities.

17 The Commissioner of the ACNC will provide information to help
18 the public understand the work of the not-for-profit sector and to
19 support the transparency and accountability of the sector.

20

1 **Part 1-2—Objects of this Act**

2 **Division 15—Objects of this Act**

3 **15-5 Objects of this Act**

- 4 (1) The objects of this Act are:
- 5 (a) to maintain, protect and enhance public trust and confidence
6 in the Australian not-for-profit sector; and
- 7 (b) to support and sustain a robust, vibrant, independent and
8 innovative Australian not-for-profit sector; and
- 9 (c) to promote the reduction of unnecessary regulatory
10 obligations on the Australian not-for-profit sector.
- 11 (2) This Act achieves those objects by:
- 12 (a) establishing a national regulatory framework for
13 not-for-profit entities that reflects the unique structures,
14 funding arrangements and goals of such entities; and
- 15 (b) establishing the Commissioner of the Australian Charities
16 and Not-for-profits Commission, who will:
- 17 (i) be responsible for registering entities as not-for-profit
18 entities according to their type and subtypes; and
- 19 (ii) administer the national regulatory framework; and
- 20 (iii) assist registered entities in complying with and
21 understanding this Act, by providing them with
22 guidance and education.
- 23 (3) Registration is a prerequisite for an entity to access certain
24 Commonwealth tax concessions.
- 25 (4) Registration under this Act may also be a prerequisite for other
26 exemptions, benefits and concessions provided under other
27 Australian laws.

28 **15-10 Commissioner to have regard to certain matters in exercising**
29 **powers and functions**

30 In performing his or her functions and exercising his or her powers,
31 the Commissioner must have regard to the following:

Chapter 1 Introduction

Part 1-2 Objects of this Act

Division 15 Objects of this Act

Section 15-10

- 1 (a) the maintenance, protection and enhancement of public trust
2 and confidence in the not-for-profit sector;
- 3 (b) the need for transparency and accountability of the
4 not-for-profit sector to the public (including donors, members
5 and volunteers of registered entities) by ensuring the public
6 has access to information about not-for-profit entities;
- 7 (c) the benefits gained from providing information to the public
8 about not-for-profit entities;
- 9 (d) the maintenance and promotion of the effectiveness and
10 sustainability of the not-for-profit sector;
- 11 (e) the following principles:
12 (i) the principle of regulatory necessity;
13 (ii) the principle of reflecting risk;
14 (iii) the principle of proportionate regulation;
- 15 (f) the need for the Commissioner:
16 (i) to cooperate with other Australian government agencies;
17 and
18 (ii) to administer effectively the laws that confer functions
19 and powers on the Commissioner;
20 (including in order to minimise procedural requirements and
21 procedural duplication);
- 22 (g) the benefits gained from assisting registered entities in
23 complying with and understanding this Act, by providing
24 them with guidance and education;
- 25 (h) the unique nature and diversity of not-for-profit entities and
26 the distinctive role that they play in Australia.
27

1 **Chapter 2—Registration of not-for-profit**
2 **entities**

3 **Part 2-1—Registration**

4 **Division 20—Object of this Part**

5 **20-5 Object of this Part**

6 *Tax concessions*

7 (1) This Part provides for the Commissioner to register entities as
8 particular types and subtypes of not-for-profit entities. It also
9 provides for the Commissioner to revoke the registration of
10 registered entities.

11 (2) Such registration is a prerequisite for an entity to access certain
12 Commonwealth tax concessions. The object of this Part is to
13 ensure that these tax concessions are available only to entities that
14 are governed and regulated in accordance with this Act.

15 *Other concessions*

16 (3) Registration under this Act may also be a prerequisite for other
17 exemptions, benefits and concessions provided under other
18 Australian laws.
19

1 **Division 25—Entitlement to registration**

2 **25-1 Simplified outline**

3 The following is a simplified outline of this Division:

4 A not-for-profit entity is entitled to registration under this Act as a
5 type of entity if certain conditions are satisfied.

6 A not-for-profit entity is entitled to registration under this Act as a
7 subtype of entity if certain conditions are satisfied (including that
8 the entity is registered as a type of entity).

9 **25-5 Entitlement to registration**

- 10 (1) An entity is entitled to registration as a type of entity if:
- 11 (a) it meets the conditions in subsection (3); and
- 12 (b) it meets the description of that type of entity in column 1 of
13 the table in subsection (5); and
- 14 (c) if the entity has previously been a registered entity, but its
15 registration as a type of entity has been revoked—the
16 Commissioner is satisfied that the matters which led to the
17 revocation have been dealt with such that the registration of
18 the entity would not conflict with the objects of this Act.

19 Note: Registration of an entity mentioned in paragraph (c) has effect
20 from the time of registration (see section 30-30). It does not
21 rescind the revocation of the previous registration.

- 22 (2) An entity is entitled to registration as a subtype of entity if:
- 23 (a) it meets the conditions in subsection (3); and
- 24 (b) it meets the description of that subtype of entity in column 2
25 of the table in subsection (5); and
- 26 (c) it is entitled to registration as the type of entity that
27 corresponds to that subtype of entity (as set out in that table);
28 and
- 29 (d) it is registered as that type of entity.

- 30 (3) The conditions are as follows:
-

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- 1 (a) the entity is a not-for-profit entity;
 2 (b) the entity is in compliance with the governance standards and
 3 external conduct standards (see Part 3-1);
 4 (c) the entity has an ABN;
 5 (d) the entity is not covered by a decision in writing made by an
 6 Australian government agency (including a judicial officer)
 7 under an Australian law that provides for entities to be
 8 characterised on the basis of them engaging in, or supporting,
 9 terrorist or other criminal activities.

- 10 (4) To avoid doubt, an entity may be entitled to registration as more
 11 than one subtype of entity.

12 Note: An entity could be registered as an entity with a purpose that is the
 13 relief of poverty, sickness or the needs of the aged, and also be
 14 registered as a public benevolent institution.

- 15 (5) The table is as follows:
 16

Entitlement to registration

| Item | Column 1 Type of entity | Column 2 Corresponding subtype of entity |
|-------------|------------------------------------|---|
| 1 | Charity | Entity with a purpose that is the relief of poverty, sickness or the needs of the aged |
| 2 | | Entity with a purpose that is the advancement of education |
| 3 | | Entity with a purpose that is the advancement of religion |
| 4 | | Entity with another purpose that is beneficial to the community |
| 5 | | Institution whose principal activity is to promote the prevention or the control of diseases in human beings |
| 6 | | Public benevolent institution |
| 7 | | Entity with a charitable purpose described in section 4 of the <i>Extension of Charitable Purpose Act 2004</i> (provision of child care services) |

17 Note: An entity commonly known as a health promotion charity could be an
 18 entity described in column 2 of item 5 of the table (Institution whose

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Division 25 Entitlement to registration

Section 25-5

1
2

principal activity is to promote the prevention or the control of
diseases in human beings).

3
4
5
6

(6) The object of column 2 of items 1, 2, 3 and 4 of the table in
subsection (5) is to describe entities that are covered by the 4 heads
of charity traditionally recognised by the courts.

1 **Division 30—Process of registration**

2 **30-1 Simplified outline**

3 The following is a simplified outline of this Division:

4 This Division outlines the process for the registration of entities as
5 a type and subtypes.

6 The Commissioner must register an entity if the entity applies in
7 the approved form, is entitled to registration and has given the
8 Commissioner all necessary information and documents.

9 **30-5 Application of this Division to various kinds of registration**

10 This Division applies separately in relation to each of the following
11 kinds of registration:

- 12 (a) registration as a type of entity;
13 (b) registration as a subtype of entity.

14 **30-10 Applying for registration**

15 (1) An entity may apply to the Commissioner for registration.

16 (2) The application must be in the approved form.

17 **30-15 Dealing with an application for registration**

18 *Requiring further information or documents*

19 (1) The Commissioner may require an applicant to give the
20 Commissioner specified information, or a specified document, that
21 the Commissioner needs in order to decide whether the applicant is
22 entitled to registration.

23 *Treating application as being refused*

24 (2) After the time worked out under subsection (3), the applicant may
25 give the Commissioner, in the approved form, written notice that

Chapter 2 Registration of not-for-profit entities

Part 2-1 Registration

Division 30 Process of registration

Section 30-20

1 the applicant wishes to treat the application as having been refused,
2 if the Commissioner has not given the applicant before that time
3 written notice that the Commissioner has registered or has refused
4 to register the applicant.

5 Note: Section 30-25 requires the Commissioner to give the applicant written
6 notice if the Commissioner has registered or has refused to register the
7 applicant.

8 (3) The time is the end of the 60th day after the application was made.
9 However, if before that time the Commissioner requires the
10 applicant under subsection (1) to give information or a document,
11 the time is the later of the following (or either of them if they are
12 the same):

13 (a) the end of the 28th day after the last day on which the
14 applicant gives the Commissioner information or a document
15 that the Commissioner has required under subsection (1);

16 (b) the end of the 60th day after the application was made.

17 (4) If the applicant gives notice under subsection (2), section 30-35
18 operates as if the Commissioner refuses the application on the day
19 on which the notice is given.

20 Note: Section 30-35 lets the applicant object against refusal of an application
21 in the manner set out in Part 7-2.

22 **30-20 Registration of entity**

23 The Commissioner must register the applicant if:

24 (a) the application is in the approved form; and

25 (b) if the Commissioner has required the applicant under
26 subsection 30-15(1) to give information or a document—the
27 applicant has given the Commissioner that information or
28 document; and

29 (c) the applicant is entitled to registration under Division 25.

30 **30-25 Notifying outcome of application for registration**

31 The Commissioner must give the applicant written notice if:

32 (a) the Commissioner registers the applicant; or

33 (b) the Commissioner refuses to register the applicant.

1 **30-30 Date of effect of registration**

2 The registration has effect from a date specified by the
3 Commissioner.

4 **30-35 Review of refusal of registration**

5 If the applicant is dissatisfied with the Commissioner's refusal to
6 register the applicant in accordance with the application, the
7 applicant may object against the refusal in the manner set out in
8 Part 7-2.
9

1 **Division 35—Revoking registration**

2 **35-1 Simplified outline**

3 The following is a simplified outline of this Division:

4 The Commissioner may revoke an entity's registration under this Act
5 if the Commissioner reasonably believes that any of certain
6 conditions exist. These conditions include the following:

- 7 (a) the entity not being entitled to registration;
- 8 (b) the entity contravening this Act or not complying
9 with a governance standard or external conduct
10 standard;
- 11 (c) the entity providing information that was false or
12 misleading in a material particular in its
13 application for registration;
- 14 (d) the entity requesting that the Commissioner revoke
15 the registration.

16 The Commissioner must consider a range of factors before revoking a
17 registered entity's registration under this Act.

18 If the Commissioner believes on reasonable grounds that a registered
19 entity is not entitled to be registered, the Commissioner may give a
20 show cause notice to the entity.

21 **35-5 Application of this Division to various kinds of registration**

22 (1) This Division applies separately in relation to each of the following
23 kinds of registration:

- 24 (a) registration as a type of entity;
- 25 (b) registration as a subtype of entity.

26 (2) However, the Commissioner must revoke a registered entity's
27 registration as a subtype of entity if the Commissioner revokes the

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1 entity's registration as the type of entity that corresponds to that
2 subtype (as set out in the table in subsection 25-5(5)).

35-10 Revoking registration

- 4 (1) The Commissioner may revoke the registration of a registered
5 entity if the Commissioner reasonably believes that any of the
6 following conditions are met:
- 7 (a) at any time after the date of effect of the registration, the
8 entity is or was not entitled to registration;
 - 9 (b) the registered entity provided, in connection with its
10 application for registration, information that was false or
11 misleading in a material particular;
 - 12 (c) at any time after the date of effect of the registration:
 - 13 (i) the registered entity has contravened a provision of this
14 Act, or it is more likely than not that the registered
15 entity will contravene a provision of this Act; or
 - 16 (ii) the registered entity has not complied with a governance
17 standard or external conduct standard, or it is more
18 likely than not that the registered entity will not comply
19 with such a standard;
 - 20 (d) the registered entity has:
 - 21 (i) a trustee in bankruptcy; or
 - 22 (ii) a liquidator; or
 - 23 (iii) a person appointed, or authorised, under an Australian
24 law to manage the affairs of the entity because it is
25 unable to pay all its debts as and when they become due
26 and payable;
 - 27 (e) the registered entity has made a request to the Commissioner,
28 in the approved form, that the Commissioner revoke the
29 registration.
- 30 (2) In deciding whether to revoke the registration of an entity the
31 Commissioner must take account of the following matters:
- 32 (a) the nature, significance and persistence of any contravention
33 of this Act or non-compliance with a governance standard or
34 external conduct standard (or any such contravention or

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Division 35 Revoking registration

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- 1 non-compliance that is more likely than not) by the registered
2 entity;
- 3 (b) what action the Commissioner, the registered entity, or any of
4 the responsible entities of the registered entity, could take or
5 have taken:
- 6 (i) to address any such contravention or non-compliance
7 (or prevent any such contravention or non-compliance
8 that is more likely than not); or
9 (ii) to prevent any similar contravention or non-compliance;
- 10 (c) the desirability of ensuring that contributions (see
11 section 205-40) to the registered entity are applied
12 consistently with the not-for-profit nature, and the purpose,
13 of the registered entity;
- 14 (d) the objects of any Commonwealth laws that refer to
15 registration under this Act;
- 16 (e) the extent (if any) to which the registered entity is conducting
17 its affairs in a way that may cause harm to, or jeopardise, the
18 public trust and confidence in the not-for-profit sector
19 mentioned in subsection 15-5(1) (Objects of this Act);
- 20 (f) the welfare of members of the community (if any) that
21 receive direct benefits from the registered entity;
- 22 (g) any other matter that the Commissioner considers relevant.
- 23 (3) The revocation must specify the day on which the entity's
24 registration is taken to be revoked. The specified day must be:
- 25 (a) if the reason for the revocation is that the entity is not entitled
26 to registration:
- 27 (i) the day on which the entity first ceased to be entitled; or
28 (ii) a later day; or
- 29 (b) if the reason for the revocation is that the entity provided, in
30 connection with its application for registration, information
31 that was false or misleading in a material particular:
- 32 (i) the day on which the registration took effect; or
33 (ii) a later day; or
- 34 (c) otherwise:
- 35 (i) the day on which the revocation is made; or
36 (ii) a later day.

- 1 (4) The Commissioner must give the entity written notice within 14
2 days if the Commissioner revokes its registration.

3 **35-15 Notice to registered entity to show cause**

- 4 (1) Before revoking the registration, the Commissioner must give a
5 written notice (a *show cause notice*) to the registered entity.
- 6 (2) The show cause notice must:
- 7 (a) state the grounds on which the Commissioner proposes to
8 revoke the registration; and
- 9 (b) invite the registered entity to give the Commissioner, within
10 28 days after the day the notice is given, a written statement
11 showing cause why the Commissioner should not revoke the
12 registration.
- 13 (3) This section does not apply if the Commissioner believes, on
14 reasonable grounds and taking into account the matters mentioned
15 in subsection 35-10(2), that it would be appropriate for the
16 Commissioner to revoke the registration without giving a show
17 cause notice to the registered entity.

18 **35-20 Review of revocation of registration**

19 If the entity is dissatisfied with the revocation of its registration or
20 a decision by the Commissioner to not revoke the entity's
21 registration, the entity may object against the revocation or
22 decision in the manner set out in Part 7-2.
23

1 **Part 2-2—Australian Charities and Not-for-profits**
2 **Register**

3 **Division 40—Australian Charities and Not-for-profits**
4 **Register**

5 **40-1 Simplified outline**

6 The following is a simplified outline of this Division:

7 This Division provides for the Australian Charities and
8 Not-for-profits Register. The Register contains information about
9 each registered entity and each former registered entity.

10 The Commissioner must publish the Register on the internet, but
11 may, subject to the public interest, withhold certain information
12 from such publication.

13 **40-5 Commissioner to maintain Australian Charities and**
14 **Not-for-profits Register**

15 *Information*

- 16 (1) The Commissioner is to maintain a register (known as the
17 Australian Charities and Not-for-profits Register) in which the
18 Commissioner includes the following information:
- 19 (a) the following information in respect of each registered entity:
- 20 (i) the entity's name;
- 21 (ii) the entity's contact details (including its address for
22 service);
- 23 (iii) the entity's ABN;
- 24 (iv) the type of entity as which it is registered or has been
25 registered;
- 26 (v) each subtype of entity (if any) as which it is registered
27 or has been registered;
- 28 (vi) the date of effect of each such registration;

- 1 (vii) the entity's governing rules;
- 2 (b) the following information in respect of each former
- 3 registered entity:
- 4 (i) the entity's name;
- 5 (ii) the entity's ABN;
- 6 (iii) the type of entity as which it was registered;
- 7 (iv) each subtype of entity (if any) as which it was
- 8 registered;
- 9 (v) the date of effect of each such registration;
- 10 (vi) the entity's governing rules;
- 11 (c) the following details in respect of each responsible entity of
- 12 each registered entity:
- 13 (i) the name of each responsible entity;
- 14 (ii) the position held by the responsible entity in relation to
- 15 the registered entity;
- 16 (d) information statements given by registered entities under
- 17 Division 60 (except to the extent (if any) that information in
- 18 an information statement is classified, in the approved form
- 19 mentioned in section 60-5, as "not for publication");
- 20 (e) financial reports, and any audit or review reports, given by
- 21 registered entities under Division 60;
- 22 (f) the details of the following matters (including a summary of
- 23 why the matter arose, details regarding any response by the
- 24 relevant registered entity and the resolution (if any) of the
- 25 matter):
- 26 (i) each warning issued to a registered entity by the
- 27 Commissioner under Division 80;
- 28 (ii) each direction issued to a registered entity by the
- 29 Commissioner under Division 85;
- 30 (iii) each undertaking given by a registered entity and
- 31 accepted by the Commissioner under Division 90;
- 32 (iv) each injunction (including interim injunctions) made
- 33 under Division 95;
- 34 (v) each suspension or removal made under Division 100;
- 35 (g) any other information:
-

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- 1 (i) that the Commissioner is authorised to collect under a
2 provision of this Act; and
3 (ii) that is specified in the regulations.

4 Note: Regulations made for the purposes of subsection 40-10(1) may
5 provide that the Commissioner must not include information on the
6 Register in certain circumstances.

- 7 (2) The Commissioner must not include the information mentioned in
8 paragraph (1)(f) before the end of 14 days after the day the warning
9 or direction is issued, the undertaking is given, the injunction is
10 made or the suspension or removal occurs, unless the
11 Commissioner considers that the public interest requires the
12 information to be included earlier.

13 *Register to be maintained by electronic means*

- 14 (3) The Register is to be maintained by electronic means.
15 (4) The Register is to be made available for public inspection on the
16 internet.

17 Note: See section 150-35 for limitations on including personal information
18 on the Register.

19 **40-10 Commissioner may withhold or remove information from**
20 **Register**

- 21 (1) Regulations made for the purposes of this subsection may provide
22 that the Commissioner must not include information on the
23 Register, or must remove information from the Register, in
24 prescribed circumstances.
25 (2) The Commissioner may decline to include information on the
26 Register, or may remove information from the Register, if the
27 Commissioner considers that any of the following circumstances
28 exist:
29 (a) the information:
30 (i) is commercially sensitive; and
31 (ii) has the potential to cause detriment to the registered
32 entity (or former registered entity) to which it relates, or
33 to an individual;

- 1 (b) the information is inaccurate, is likely to cause confusion or
2 is likely to mislead the public;
3 (c) the information is likely to offend a reasonable individual;
4 (d) the information could endanger public safety;
5 (e) any circumstances prescribed by the regulations for the
6 purposes of this paragraph.
- 7 (3) However, the Commissioner may include the information on the
8 Register, or decline to remove information from the Register, if the
9 Commissioner considers that the public interest in the Register
10 including the information outweighs the likely adverse effect of the
11 relevant circumstance or circumstances set out in paragraphs (2)(a)
12 to (e).
- 13 (4) The Commissioner may remove information mentioned in
14 paragraph 40-5(1)(f) from the Register if:
15 (a) the information has been on the Register for more than 5
16 years; and
17 (b) the Commissioner considers that the public interest does not
18 require the information to be retained on the Register.
19

1 **Chapter 3—Responsibilities of registered**
2 **entities**

3 **Part 3-1—Governance standards and external**
4 **conduct standards**

5 **Division 45—Governance standards**

6 **45-1 Simplified outline**

7 The following is a simplified outline of this Division:

8 This Division sets up a system to allow the creation of minimum
9 governance standards that entities are required to meet (in order to
10 become registered, and on an ongoing basis). These governance
11 standards are to be set out in the regulations.

12 Compliance with the governance standards is a condition of
13 entitlement to registration under paragraph 25-5(3)(b).

14 The object of the system setting up the standards is to provide a
15 minimum level of confidence that registered entities will promote
16 the effective and efficient use of their resources, will meet
17 community expectations about managing their affairs and the use
18 of public money, volunteer time and donations, and will minimise
19 the risk of mismanagement and misappropriation.

20 **45-5 Object of this Division**

- 21 (1) The object of this Division is to give the public (including donors,
22 members and volunteers of registered entities) confidence that
23 registered entities:
24 (a) manage their affairs openly, accountably and transparently;
25 and
26 (b) use their resources (including contributions and donations)
27 effectively and efficiently; and

- 1 (c) minimise the risk of mismanagement and misappropriation;
2 and
3 (d) pursue their purposes.

- 4 (2) This Division achieves that object by setting up a system to allow
5 the regulations to specify standards with which a registered entity
6 must comply in order to become registered under this Act, and to
7 remain entitled to be registered under this Act.

8 Note 1: The main consequence of failure to comply with these standards is a
9 loss of the registered entity's entitlement to registration. If the entity is
10 a federally regulated entity, such a failure to comply may also result in
11 enforcement action under Chapter 4.

12 Note 2: For the consequences of registration, see section 20-5.

13 Note 3: A registered entity must notify the Commissioner of significant
14 non-compliance with these standards that results in the entity no
15 longer being entitled to be registered (see section 65-5).

16 **45-10 Regulations establishing governance standards**

- 17 (1) The regulations may specify the *governance standards*.
- 18 (2) Without limiting the scope of subsection (1), those standards may
19 require a registered entity to:
20 (a) ensure that its governing rules provide for a specified matter;
21 or
22 (b) act, or not act, in a specified manner; or
23 (c) establish and maintain processes for the purpose of ensuring
24 specified matters.
- 25 (3) Without limiting the scope of subsection (1), those standards may
26 provide that specified requirements do not apply to specified kinds
27 of registered entity.
- 28 (4) Without limiting the scope of subsection (1), those standards may
29 provide that different requirements apply to different kinds of
30 registered entity.
- 31 (5) The regulations must not require a registered entity to do, or not to
32 do, a thing (including the things mentioned in subsection (2)) if the
33 registered entity is a basic religious charity.
34

Section 50-1

1 **Division 50—External conduct standards**

2 **50-1 Simplified outline**

3 The following is a simplified outline of this Division:

4 This Division sets up a system to allow the creation of minimum
5 external conduct standards that entities are required to meet (in
6 order to become registered, and on an ongoing basis). These
7 external conduct standards are to be set out in the regulations and
8 must deal only with:

- 9 (a) matters external to Australia; or
10 (b) matters not external to Australia but that are
11 closely related to, or have or will have a significant
12 impact on, entities, things or matters external to
13 Australia.

14 Compliance with the external conduct standards is a condition of
15 entitlement to registration under paragraph 25-5(3)(b).

16 **50-5 Object of this Division**

- 17 (1) The object of this Division is to give the public (including donors,
18 members and volunteers of registered entities) confidence that:
19 (a) funds sent outside Australia by registered entities:
20 (i) are reaching legitimate beneficiaries; and
21 (ii) are being used for legitimate purposes; and
22 (iii) are not contributing to terrorist, or other criminal,
23 activities; and
24 (b) activities engaged in outside Australia by registered entities
25 are not contributing to terrorist, or other criminal, activities.
- 26 (2) This Division achieves that object by setting up a system to allow
27 the regulations to specify standards:

- 1 (a) with which a registered entity must comply in order to
2 become registered under this Act, and to remain entitled to be
3 registered under this Act; and
4 (b) regulating funds sent outside Australia by registered entities,
5 and activities engaged in outside Australia by registered
6 entities.

7 Note 1: The main consequence of failure to comply with these standards is a
8 loss of the registered entity's entitlement to registration. Such a failure
9 to comply may also result in enforcement action under Chapter 4.

10 Note 2: For the consequences of registration, see section 20-5.

11 Note 3: A registered entity must notify the Commissioner of significant
12 non-compliance with these standards that results in the entity no
13 longer being entitled to be registered (see section 65-5).

14 **50-10 External conduct standards**

- 15 (1) The regulations may specify the *external conduct standards*.
16 (2) Without limiting the scope of subsection (1), those standards may
17 require a registered entity to:
18 (a) ensure that its governing rules provide for a specified matter;
19 or
20 (b) act, or not act, in a specified manner; or
21 (c) establish and maintain processes for the purpose of ensuring
22 specified matters.
23 (3) However, the external conduct standards must deal only with:
24 (a) matters external to Australia; or
25 (b) matters not external to Australia but that are closely related to,
26 or have or will have a significant impact on, entities, things or
27 matters external to Australia.
28

1 **Part 3-2—Record keeping and reporting**

2 **Division 55—Record keeping**

3 **55-1 Simplified outline**

4 The following is a simplified outline of this Division:

5

| |
|---|
| 6 This Division sets out record keeping obligations for registered entities under this Act. |
|---|

7 **55-5 Registered entities must keep records**

8 *Registered entities must keep records*

- 9 (1) A registered entity must keep written financial records that:
- 10 (a) correctly record and explain its transactions and financial
- 11 position and performance; and
- 12 (b) enable true and fair financial statements to be prepared and to
- 13 be audited;
- 14 so as to enable any recognised assessment activity to be carried out
- 15 in relation to the entity.
- 16 (2) A registered entity must also keep written records that correctly
- 17 record its operations, so as to enable any recognised assessment
- 18 activity to be carried out in relation to the entity.
- 19 (3) The records must be:
- 20 (a) in English; or
- 21 (b) readily accessible and easily convertible into English.

22 *Registered entities must retain records*

- 23 (4) Subject to subsection (5), the registered entity must retain the
- 24 records for 7 years after the transactions, operations or acts covered
- 25 by the records are completed.
- 26 (5) The Commissioner may notify the entity in writing that it does not
- 27 need to retain certain records under subsection (4).

Section 55-10

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Offence

(6) A registered entity commits an offence if the entity does not comply with this section.

Penalty: 20 penalty units.

(7) An offence against subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

55-10 Recognised assessment activity

A *recognised assessment activity*, in relation to a registered entity, is:

- (a) an activity carried out by the Commissioner involving assessment of the entity's entitlement to registration as a type or subtype of entity; or
- (b) an activity carried out by the Commissioner involving assessment of the entity's compliance with this Act and the regulations; or
- (c) an activity carried out by the Commissioner of Taxation involving assessment of the entity's compliance with any taxation law.

1 **Division 60—Reporting**

2 **Subdivision 60-A—Overview**

3 **60-1 Simplified outline**

4 The following is a simplified outline of this Division:

5 This Division sets out the reporting obligations for registered
6 entities based upon the entity's size and determined according to
7 whether the entity is a small, medium or large registered entity.

8 All registered entities must provide the Commissioner with an
9 annual information statement.

10 Medium and large entities must also provide the Commissioner
11 with a financial report. Generally, financial reports need to be
12 reviewed for medium entities or audited for large entities.

13 Additional reporting obligations may be placed on registered
14 entities by the Commissioner in special circumstances, for
15 example, if the Commissioner is concerned about an entity's
16 compliance with this Act.

17 **Subdivision 60-B—Annual information statements**

18 **60-5 Registered entities must give annual information statements**

19 (1) A registered entity must give a statement (an *information*
20 *statement*) for a financial year to the Commissioner in the
21 approved form.

22 Note: The Commissioner may approve different approved forms for
23 different entities (see subsection 190-10(4)). For example, different
24 forms could be approved for small, medium and large registered
25 entities.

26 (2) The registered entity must give the information statement to the
27 Commissioner no later than 31 December in the following
28 financial year.

Section 60-10

1 Note 1: Section 190-15 allows the Commissioner to defer the time for giving
2 an approved form.

3 Note 2: Section 175-35 provides for an administrative penalty for failing to
4 give the Commissioner a statement required by this Act within the
5 required time.

6 (3) Any information that the approved form requires to be provided to
7 the Commissioner must be information that relates to, or has the
8 purpose of, enabling recognised assessment activities to be carried
9 out in relation to registered entities.

10 **Subdivision 60-C—Annual financial reports**

11 **60-10 Medium and large registered entities must give annual**
12 **financial reports**

13 (1) A medium registered entity or a large registered entity must give
14 the Commissioner a financial report for a financial year, together
15 with any auditor's report or reviewer's report that the entity is
16 required to obtain under section 60-20 or 60-25.

17 (2) The registered entity must give the reports to the Commissioner no
18 later than 31 December in the following financial year or such later
19 time as the Commissioner allows.

20 Note: Section 175-35 provides for an administrative penalty for failing to
21 give the Commissioner a statement required by this Act within the
22 required time.

23 **60-15 Requirements for annual financial reports**

24 (1) The financial report must comply with the requirements set out in
25 the regulations.

26 (2) Any information that the regulations require to be provided to the
27 Commissioner must be information that relates to, or has the
28 purpose of, enabling recognised assessment activities to be carried
29 out in relation to registered entities.

Section 60-20

1 **60-20 Medium registered entities must have annual financial reports**
2 **audited or reviewed**

- 3 (1) A medium registered entity must:
- 4 (a) subject to subsection (2), do both of the following:
- 5 (i) have its financial report for a financial year reviewed in
- 6 accordance with this Subdivision;
- 7 (ii) obtain a reviewer's report; or
- 8 (b) do both of the following:
- 9 (i) have its financial report for a financial year audited in
- 10 accordance with this Subdivision;
- 11 (ii) obtain an auditor's report.
- 12 (2) The Commissioner may, by written notice given to the medium
- 13 registered entity, provide that paragraph (1)(a) does not apply to
- 14 the financial report.

15 **60-25 Large registered entities must have annual financial reports**
16 **audited**

- 17 A large registered entity must:
- 18 (a) have its financial report for a financial year audited in
- 19 accordance with this Subdivision; and
- 20 (b) obtain an auditor's report.

21 **60-30 Audit or review**

- 22 (1) The audit or review must be undertaken by:
- 23 (a) a registered company auditor (within the meaning of the
- 24 *Corporations Act 2001*); or
- 25 (b) a firm:
- 26 (i) that consents to be appointed, or is appointed, as auditor
- 27 of a registered entity; and
- 28 (ii) at least one member of which is a registered company
- 29 auditor (within the meaning of that Act) who is
- 30 ordinarily resident in Australia; or
- 31 (c) an authorised audit company (within the meaning of that
- 32 Act); or
-

- 1 (d) an entity prescribed by the regulations for the purposes of
2 this paragraph.
- 3 (2) In the case of a review of the financial report of a medium
4 registered entity, an individual who is taken to be a registered
5 company auditor under subsection 324BE(1) of the *Corporations*
6 *Act 2001* is taken to be a registered company auditor for the
7 purposes of this Subdivision.
- 8 Note: Subsection 324BE(1) of the *Corporations Act 2001* allows certain
9 members of professional accounting bodies who are not registered
10 company auditors to undertake a review.
- 11 (3) In the case of an audit, the auditor must form an opinion about:
12 (a) whether the financial report satisfies the requirements of this
13 Division; and
14 (b) whether the auditor has been given all information,
15 explanation and assistance necessary for the conduct of the
16 audit; and
17 (c) whether the registered entity has kept financial records
18 sufficient to enable a financial report to be prepared and
19 audited; and
20 (d) whether the registered entity has kept other records as
21 required by this Part.
- 22 (4) In the case of a review, the reviewer must form a conclusion about:
23 (a) whether, on the basis of the review, anything has come to the
24 reviewer's attention that causes the reviewer to believe that
25 the financial report does not satisfy the requirements of this
26 Division; and
27 (b) whether the reviewer has been given all information,
28 explanation and assistance necessary for the conduct of the
29 review; and
30 (c) whether the registered entity has kept financial records
31 sufficient to enable a financial report to be prepared and
32 reviewed; and
33 (d) whether the registered entity has kept other records as
34 required by this Part.

1 **60-35 Audit or review to be conducted in accordance with auditing**
2 **standards**

3 An audit or review must be undertaken in accordance with the
4 auditing standards.

5 **60-40 Auditor's or reviewer's independence declaration**

- 6 (1) A registered entity must obtain from its auditor or reviewer:
7 (a) a written declaration that, to the best of the auditor's or
8 reviewer's knowledge and belief, there have been no
9 contraventions of any applicable code of professional
10 conduct in relation to the audit or review; or
11 (b) a written declaration that, to the best of the auditor's or
12 reviewer's knowledge and belief, the only contraventions of
13 any applicable code of professional conduct in relation to the
14 audit or review are those contraventions details of which are
15 set out in the declaration.
- 16 (2) The declaration must be signed by the auditor or reviewer (or an
17 individual authorised by the auditor or reviewer).

18 **60-45 Auditor's report on annual financial report**

- 19 (1) An auditor's report must contain a statement from the auditor as to
20 whether, in the auditor's opinion, the financial report has been
21 prepared in accordance with this Division. If the auditor is not of
22 that opinion, the auditor's report must say why.
- 23 (2) If the auditor is of the opinion that the financial report has not been
24 prepared in accordance with this Division, the auditor's report
25 must, to the extent it is practicable to do so, quantify the effect that
26 non-compliance has on the financial report. If it is not practicable
27 to quantify the effect fully, the auditor's report must say why.
- 28 (3) The auditor's report must describe:
29 (a) any material defect or irregularity in the financial report; and
30 (b) any deficiency, failure or shortcoming in respect of the
31 matters mentioned in paragraph 60-30(3)(b), (c) or (d).

- 1 (4) The auditor's report must include any statements or disclosures
2 required by the auditing standards.

3 **60-50 Reviewer's report on annual financial report**

- 4 (1) A reviewer's report must contain a statement from the reviewer as
5 to whether the reviewer has concluded that, on the basis of the
6 review, anything has come to the reviewer's attention that causes
7 the reviewer to believe that the financial report does not satisfy the
8 requirements of this Division. If the auditor has concluded that
9 anything has come to the reviewer's attention that causes the
10 reviewer to so believe, the reviewer's report must say why.
- 11 (2) If the reviewer has concluded that anything has come to the
12 reviewer's attention that causes the reviewer to believe that the
13 financial report does not satisfy the requirements of this Division,
14 the reviewer's report must, to the extent it is practicable to do so,
15 quantify the effect that non-compliance has on the financial report.
16 If it is not practicable to quantify the effect fully, the reviewer's
17 report must say why.
- 18 (3) The reviewer's report must describe:
19 (a) any material defect or irregularity in the financial report; and
20 (b) any deficiency, failure or shortcoming in respect of the
21 matters mentioned in paragraph 60-30(4)(b), (c) or (d).
- 22 (4) The reviewer's report must include any statements or disclosures
23 required by the auditing standards.

24 **60-55 Auditor or reviewer to be provided with information and**
25 **assistance**

- 26 In having its financial report audited or reviewed, a registered
27 entity must ensure that the auditor or reviewer:
28 (a) has access at all reasonable times to the books of the
29 registered entity; and
30 (b) is given all requested information, explanations or other
31 assistance for the purposes of the audit or review.
32 A request under paragraph (b) must be a reasonable one.

Section 60-60

1 **60-60 Basic religious charities**

- 2 (1) This Subdivision does not apply to a basic religious charity, or to
3 any report relating to a basic religious charity.
- 4 (2) However, this Subdivision applies to a basic religious charity in
5 relation to a financial year, and to any report for the year relating to
6 the charity, if the charity gives the Commissioner a financial report
7 for the year.

8 **Subdivision 60-D—Errors in information statements and**
9 **financial reports**

10 **60-65 Errors in information statements and financial reports**

- 11 (1) Subsection (2) applies if:
12 (a) a registered entity gives its information statement or financial
13 report for a financial year to the Commissioner at a time; and
14 (b) after that time, the registered entity identifies a material error
15 in the statement or report.
- 16 (2) The registered entity must give a corrected statement or report to
17 the Commissioner:
18 (a) if the entity is a small registered entity—within 60 days after
19 the entity identifies the error; or
20 (b) if the entity is a medium registered entity or a large registered
21 entity—within 28 days after the entity identifies the error.

22 **Subdivision 60-E—Additional reporting requirements**

23 **60-70 Object of this Subdivision**

24 The object of this Subdivision is to ensure that the Commissioner
25 can require further information to be provided in particular cases.

26 Example: If there is reason to believe that a registered entity has contravened
27 this Act, further information could enable the Commissioner to carry
28 out a recognised assessment activity in relation to the entity.

1 **60-75 Additional reporting requirements—particular registered**
2 **entity**

3 *Additional report or additional reporting requirements*

- 4 (1) The Commissioner may:
5 (a) determine, in writing, that:
6 (i) a particular registered entity must prepare a report in
7 addition to any other statement or report the registered
8 entity is required to prepare; and
9 (ii) the entity must give that report to the Commissioner by
10 a time specified in the determination; or
11 (b) determine, in writing, that a particular registered entity must:
12 (i) include particular additional information in an
13 information statement or financial report; or
14 (ii) meet particular additional requirements in relation to the
15 manner in which an information statement or financial
16 report is to be prepared.
- 17 (2) A determination under subsection (1) is not a legislative
18 instrument.

19 *Additional reports*

- 20 (3) A determination under paragraph (1)(a) must specify:
21 (a) the information to be included in the report; and
22 (b) any other requirements to be met in relation to the manner in
23 which the report is prepared.
- 24 (4) A determination under paragraph (1)(a) may require the report to
25 be prepared:
26 (a) for a particular period or periods; or
27 (b) in relation to circumstances as they exist as at a particular
28 date or dates.
- 29 This subsection does not limit subsection (3).
- 30 (5) The determination may require the report to be prepared for all
31 periods of a particular kind that start or end on or after a date

Section 60-80

1 specified in the determination. This subsection does not limit
2 subsection (3).

3 *Determination*

4 (6) A determination under subsection (1) may be made in respect of a
5 past or future period but if it is in respect of a past period, the
6 determination must be made no later than 6 years after the end of
7 that period.

8 (7) The Commissioner must give the registered entity written notice of
9 the making of the determination.

10 (8) A determination under subsection (1) must be for the purpose of
11 enabling a recognised assessment activity to be carried out.

12 **60-80 Additional reporting requirements—classes of registered**
13 **entities**

14 *Additional reports or additional reporting requirements*

15 (1) The Commissioner may:

16 (a) make a determination in writing:

17 (i) requiring a particular class of registered entities to
18 prepare a report in addition to any information statement
19 or financial report the entities are required to prepare;
20 and

21 (ii) requiring each entity in that class to give that report to
22 the Commissioner by a time specified in the
23 determination; or

24 (b) make a determination in writing requiring a particular class
25 of registered entities to:

26 (i) include particular additional information in an
27 information statement or financial report; or

28 (ii) meet particular additional requirements in relation to the
29 manner in which an information statement or financial
30 report is prepared.

31 (2) A determination under subsection (1) is a legislative instrument.

Section 60-85

1 *Additional reports*

- 2 (3) A determination under paragraph (1)(a) must specify:
3 (a) the information to be included in the report; and
4 (b) any other requirements to be met in relation to the manner in
5 which the report is prepared.
- 6 (4) A determination under paragraph (1)(a) may require the report to
7 be prepared:
8 (a) for a particular period or periods; or
9 (b) in relation to circumstances as they exist as at a particular
10 date or dates.
- 11 This subsection does not limit subsection (3).
- 12 (5) The determination may require the report to be prepared for all
13 periods of a particular kind that start or end on or after a date
14 specified in the determination. This subsection does not limit
15 subsection (4).

16 *Determinations*

- 17 (6) A determination under subsection (1):
18 (a) may be expressed to be subject to conditions; and
19 (b) may be in respect of a past or future period but if it is in
20 respect of a past period, the determination must be made no
21 later than 6 years after the end of that period.
- 22 (7) A determination under subsection (1) must be for the purpose of
23 enabling a recognised assessment activity to be carried out.

24 **Subdivision 60-F—Substituted accounting periods**

25 **60-85 Commissioner may approve a different accounting period**

- 26 (1) The Commissioner may allow a registered entity to adopt an
27 accounting period which is a period of 12 months ending on a day
28 other than 30 June (that is, a 12-month period that does not align
29 with the financial year), if the registered entity applies to the
30 Commissioner in the approved form.

Section 60-90

- 1 (2) If the registered entity adopts such an accounting period, this
2 Division applies in relation to a financial year that starts after the
3 entity adopts the new accounting period as if:
- 4 (a) each reference in this Division (not including this section)
5 and sections 205-25 and 205-35 to the financial year were a
6 reference to the accounting period that starts during the
7 financial year; and
- 8 (b) the reference in subsections 60-5(2) and 60-10(2) to
9 31 December were a reference to the last day of the 6-month
10 period after the end of the accounting period.
- 11 (3) A registered entity seeking to adopt such an accounting period may
12 apply, in the approved form, to the Commissioner for the
13 Commissioner to make a decision under subsection (1).

14 **60-90 Commissioner may impose conditions**

- 15 (1) The Commissioner may impose conditions on a decision under
16 subsection 60-85(1) to allow the registered entity to adopt such an
17 accounting period.
- 18 (2) The conditions may be imposed at the time of making the decision
19 or at any later time.
- 20 (3) The Commissioner may revoke the decision if satisfied that a
21 condition has not been complied with.

22 **Subdivision 60-G—Collective and joint reporting**

23 **60-95 Commissioner may approve collective or joint reporting by**
24 **related entities**

25 *Joint reporting*

- 26 (1) The Commissioner may allow 2 or more registered entities
27 (*reporting group*) to prepare and lodge a single information
28 statement, or a single information statement and a single financial
29 report, in relation to the reporting group for a financial year.

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Collective reporting

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- (2) The Commissioner may allow a reporting group to prepare and lodge one or more information statements, or one or more single information statements and one or more single financial reports, in relation to the reporting group for a financial year on a basis other than an entity-by-entity basis.

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Example: The Commissioner may allow a reporting group of affiliated registered entities that advance religion and relieve poverty to prepare and lodge 2 financial reports, one report in relation to the reporting group's religious functions and one in relation to the reporting group's welfare functions.

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Application in approved form

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- (3) Registered entities seeking to form a reporting group may apply, in the approved form, to the Commissioner for the Commissioner to make a decision under subsection (1) or (2).

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Commissioner must consider certain issues

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- (4) In deciding whether to allow 2 or more registered entities to form a reporting group, the Commissioner must consider the following:

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- (a) how the public interest in the transparency and accountability of the registered entities is best served, including the possible effect on:

(i) the public's understanding of the activities of the registered entities and the information provided in the information statement or financial report; and

(ii) the public's ability to rely upon the information provided in the information statement or financial report;

- (b) how the altered reporting arrangements would affect the Commissioner's ability to assess a registered entity's entitlement to registration or compliance with this Act;

- (c) whether members of the reporting group have access to the same or different taxation concessions;

- (d) how the altered reporting arrangements would affect the Commissioner of Taxation's ability to assess a registered entity's compliance with a taxation law;

Chapter 3 Responsibilities of registered entities

Part 3-2 Record keeping and reporting

Division 60 Reporting

Section 60-100

- 1 (e) the possible effect on the compliance and administrative
2 costs of registered entities proposed to be included in the
3 reporting group;
4 (f) the degree of affiliation, control and proximity of registered
5 entities proposed to be included in the reporting group;
6 (g) the objects of this Act;
7 (h) any other matter that the Commissioner considers relevant.

8 **60-100 Commissioner may impose conditions**

- 9 (1) The Commissioner may impose conditions on a decision under
10 subsection 60-95(1) or (2) to allow 2 or more registered entities to
11 form a reporting group.
- 12 (2) The conditions may be imposed at the time of making the decision
13 or at any later time.
- 14 (3) Without limiting subsection (1), the conditions may include one or
15 more of the following:
16 (a) a condition that certain information in an information
17 statement or financial report be separately identified;
18 (b) a condition that additional line items or notes be added to a
19 financial report about the affairs of a particular registered
20 entity (or part thereof);
21 (c) conditions relating to how the information statements and
22 financial reports for the reporting group are to be structured
23 for the purposes of subsection 60-95(2).
- 24 Example: A reporting group that includes a deductible gift recipient may be
25 made subject to a condition to include information about deductible
26 donations received, and the spending of those donations, in its annual
27 information statement and notes to its financial reports.
- 28 (4) The Commissioner may revoke the decision if satisfied that a
29 condition has not been complied with.

30 **60-105 Treatment of reporting groups as small, medium or large**
31 **registered entities**

32 For the purposes of the application of this Division in relation to
33 the reporting group:

Section 60-105

- 1 (a) the reporting group is to be treated as a large registered entity
2 if one or more of the registered entities that form the
3 reporting group are large registered entities; or
4 (b) the reporting group is to be treated as a medium registered
5 entity if:
6 (i) paragraph (a) does not apply; and
7 (ii) one or more of the registered entities that form the
8 reporting group are medium registered entities; or
9 (c) the reporting group is to be treated as a small registered entity
10 if paragraphs (a) and (b) do not apply.
11

1 **Part 3-3—Duty to notify**

2 **Division 65—Duty to notify**

3 **65-1 Simplified outline**

4 The following is a simplified outline of this Division:

5 This Division requires registered entities to notify the
6 Commissioner of certain matters, including significant
7 contraventions or non-compliance that result in the entity ceasing
8 to be entitled to registration.

9 **65-5 Registered entities must notify Commissioner of certain**
10 **matters**

- 11 (1) A registered entity must notify the Commissioner in the approved
12 form if any of the following circumstances exist:
- 13 (a) its name has changed;
 - 14 (b) its address for service has changed;
 - 15 (c) an entity has ceased to be, or has become, a responsible entity
16 of the registered entity;
 - 17 (d) its governing rules have changed;
 - 18 (e) the circumstances described in subsection (2).

19 Note: Section 175-35 provides for an administrative penalty for failing to
20 give the Commissioner a notice required by this Act within the
21 required time.

- 22 (2) For the purposes of paragraph (1)(e), the circumstances exist if:
- 23 (a) the registered entity:
 - 24 (i) has contravened a provision of this Act; or
 - 25 (ii) has not complied with a governance standard or external
26 conduct standard; and
 - 27 (b) the contravention or non-compliance is significant (see
28 subsection (3)); and
 - 29 (c) as a result of the contravention or non-compliance, any of the
30 following apply:

Section 65-5

- 1 (i) the registered entity is no longer entitled to be registered
2 as a type of entity under Division 25;
- 3 (ii) the registered entity is no longer entitled to be registered
4 as a subtype of entity under Division 25.
- 5 (3) For the purposes of paragraph (2)(b), in determining whether the
6 contravention or non-compliance is significant, take account of the
7 following matters:
- 8 (a) the nature, significance and persistence of any contravention
9 or non-compliance;
- 10 (b) the desirability of ensuring that contributions (see
11 section 205-40) to the registered entity are applied
12 consistently with the not-for-profit nature, and the purpose,
13 of the registered entity.
- 14 (4) The notification must be given:
- 15 (a) as soon as practicable; and
- 16 (b) subject to paragraph (c)—no later than 28 days after the
17 registered entity first becomes aware of the circumstances
18 mentioned in subsection (1); and
- 19 (c) if the registered entity is a small registered entity and the
20 notification relates only to circumstances mentioned in
21 paragraph (1)(a), (b), (c) or (d)—no later than 60 days after
22 the registered entity first becomes aware of those
23 circumstances.
- 24 (5) To avoid doubt, 2 or more notifications may be included in the
25 same document.
26

1 **Chapter 4—Regulatory powers of the ACNC**
2 **Commissioner**

3 **Part 4-1—Information gathering and monitoring**
4 **powers**

5 **Division 70—Information gathering powers**

6 **70-1 Simplified outline**

7 The following is a simplified outline of this Division:

8 The Commissioner can gather information necessary to monitor
9 registered entities' compliance with certain provisions and to
10 assess registered entities' ongoing entitlement to registration.

11 The Commissioner can gather information and documents
12 necessary to determine whether information given in compliance
13 with certain provisions is correct.

14 **70-5 Commissioner may obtain information and documents**

- 15 (1) This section applies to an entity if the Commissioner reasonably
16 believes that the entity has information or a document that it is
17 reasonably necessary to obtain for the purpose of determining:
18 (a) whether a registered entity has complied, or is complying,
19 with a provision subject to monitoring under Division 75 (see
20 section 75-5); or
21 (b) whether information subject to monitoring under Division 75
22 (see section 75-10) is correct.
- 23 (2) The Commissioner may, by written notice given to the entity,
24 require the entity:
25 (a) to give to the Commissioner, within the period and in the
26 manner and form specified in the notice, any such
27 information; or

- 1 (b) to attend and give evidence before the Commissioner, or an
2 individual authorised by the Commissioner, for the purpose
3 of obtaining such information; or
4 (c) to produce to the Commissioner, within the period and in the
5 manner specified in the notice, any such documents; or
6 (d) to make copies of any such documents and to produce to the
7 Commissioner, within the period and in the manner specified
8 in the notice, those copies.
- 9 (3) For the purposes of paragraph (1)(b), the Commissioner may
10 require the evidence mentioned in that paragraph:
11 (a) to be given on oath or affirmation; and
12 (b) to be given orally or in writing.
13 For that purpose, the Commissioner or an ACNC officer may
14 administer an oath or affirmation.
- 15 (4) An entity commits an offence if:
16 (a) the entity is subject to a requirement under subsection (2);
17 and
18 (b) the entity fails to comply with the requirement.
- 19 Penalty: 20 penalty units.
- 20 (5) A period specified under subsection (2) must not be shorter than 14
21 days after the notice is given.
- 22 (6) A notice under subsection (2) must set out the effect of the
23 following provisions:
24 (a) subsection (4);
25 (b) sections 137.1 and 137.2 of the *Criminal Code* (which deal
26 with false or misleading information or documents).

27 **70-10 Commissioner may inspect and copy original documents**

- 28 The Commissioner may:
29 (a) inspect a document produced under paragraph 70-5(2)(c);
30 and
31 (b) make and retain copies of the whole or a part of such a
32 document.

Section 70-15

1 **70-15 Commissioner may retain original documents**

- 2 (1) The Commissioner may take, and retain for as long as is necessary,
3 possession of a document produced under paragraph 70-5(2)(c).
- 4 (2) The entity otherwise entitled to possession of the document is
5 entitled to be supplied, as soon as practicable, with a copy certified
6 by the Commissioner to be a true copy.
- 7 (3) The certified copy must be received in all courts and tribunals as
8 evidence as if it were the original.
- 9 (4) Until a certified copy is supplied, the Commissioner must, at such
10 times and places as the Commissioner thinks appropriate, permit
11 the entity otherwise entitled to possession of the document, or an
12 individual authorised by that entity, to inspect and make copies of,
13 or take extracts from, the document.

14 **70-20 Commissioner may inspect and retain copies of documents**

15 The Commissioner may inspect, and retain possession of, a copy of
16 a document produced under paragraph 70-5(2)(d).

17 **70-25 Self-incrimination**

- 18 (1) An entity is not excused from giving information, or producing a
19 document or a copy of a document, under this Division on the
20 ground that the information or the production of the document or
21 copy might tend to incriminate the entity or expose the entity to a
22 penalty.
- 23 (2) However, in the case of an individual:
24 (a) the information given, or the document or copy produced; or
25 (b) giving the information or producing the document or copy; or
26 (c) any information, document or thing obtained as a direct or
27 indirect consequence of giving the information or producing
28 the document or copy;
- 29 is not admissible in evidence against the individual in criminal
30 proceedings, or in proceedings for the recovery of a civil penalty,
31 other than:

- 1 (d) proceedings for an offence against subsection 70-5(4); or
2 (e) proceedings for an offence against section 137.1 or 137.2 of
3 the *Criminal Code* (which deal with false or misleading
4 information or documents) that relates to this Act; or
5 (f) proceedings for an offence against section 149.1 of the
6 *Criminal Code* (which deals with obstruction of
7 Commonwealth public officials) that relates to this Act.
8

1 **Division 75—Monitoring**

2 **Subdivision 75-A—Overview**

3 **75-1 Simplified outline**

4 The following is a simplified outline of this Division:

5 This Division allows an ACNC officer to monitor whether certain
6 provisions have been, or are being, complied with.

7 It also allows an ACNC officer to monitor whether information
8 given in compliance, or purported compliance, with certain
9 provisions is correct.

10 An ACNC officer may enter premises for the purpose of
11 monitoring.

12 Entry must be with the consent of the occupier of the premises or
13 under a monitoring warrant.

14 An ACNC officer who enters premises may exercise monitoring
15 powers. The ACNC officer may be assisted by other individuals if
16 that assistance is necessary and reasonable.

17 An occupier's consent to an ACNC officer entering premises for
18 the purposes of monitoring must be voluntary. ACNC officers must
19 abide by the terms of that consent.

20 An ACNC officer who enters premises under a monitoring warrant
21 must give details of the warrant to the occupier of the premises.

22 The occupier of the premises may observe the execution of a
23 monitoring warrant and must provide reasonable facilities and
24 assistance for the effective execution of the warrant.

1 **Subdivision 75-B—Application of this Division**

2 **75-5 Provisions *subject to monitoring***

3 The following provisions are *subject to monitoring* under this
4 Division:

- 5 (a) a provision of this Act that creates an offence;
6 (b) a provision of a legislative instrument made under this Act
7 that creates an offence;
8 (c) a provision of the *Crimes Act 1914* or the *Criminal Code* that
9 creates an offence, to the extent that the offence relates to this
10 Act or a legislative instrument made under this Act;
11 (d) a provision of this Act, if non-compliance with the provision
12 gives rise to an administrative penalty;
13 (e) a provision of a legislative instrument made under this Act, if
14 non-compliance with the provision gives rise to an
15 administrative penalty;
16 (f) a provision of this Act creating a condition, if:
17 (i) compliance with the condition is necessary for an entity
18 to be entitled to registration as a type or subtype of
19 entity; or
20 (ii) non-compliance with the condition may lead to an entity
21 having its registration as a type or subtype of entity
22 revoked.

23 Note: These conditions are contained in sections 25-5 (Entitlement to
24 registration) and 35-10 (Revoking registration).

25 **75-10 Information *subject to monitoring***

- 26 (1) Information given in compliance or purported compliance with one
27 or more of the following provisions is *subject to monitoring* under
28 this Division:
29 (a) a provision of this Act or of a legislative instrument made
30 under this Act;
31 (b) a provision of the *Crimes Act 1914* or of the *Criminal Code*,
32 to the extent that the provision relates to this Act or a
33 legislative instrument made under this Act.

Section 75-15

- 1 (2) Information is also *subject to monitoring* under this Division if:
- 2 (a) an entity has given the Commissioner the information
- 3 (whether it did so voluntarily or in fulfilling an obligation to
- 4 do so); and
- 5 (b) the information is included on the Register in accordance
- 6 with Division 40.

7 **Subdivision 75-C—Monitoring powers**

8 **75-15 ACNC officer may enter premises by consent or under a**

9 **warrant**

- 10 (1) An ACNC officer may enter any premises and exercise the
- 11 monitoring powers for either or both of the following purposes:
- 12 (a) determining whether a provision subject to monitoring under
- 13 this Division has been, or is being, complied with;
- 14 (b) determining whether information subject to monitoring under
- 15 this Division is correct.

16 Note: The *monitoring powers* are set out in sections 75-20, 75-25 and

17 75-30.

- 18 (2) However, an ACNC officer is not authorised to enter the premises
- 19 unless:
- 20 (a) the occupier of the premises has consented to the entry and
- 21 the ACNC officer has shown his or her identity card if
- 22 required by the occupier; or
- 23 (b) the entry is made under a monitoring warrant.

24 Note: If entry to the premises is with the occupier's consent, the ACNC

25 officer must leave the premises if the consent ceases to have effect

26 (see section 75-45).

27 **75-20 Monitoring powers of ACNC officers**

28 The following are the *monitoring powers* that an ACNC officer

29 may exercise in relation to premises under section 75-15:

- 30 (a) the power to search the premises and any thing on the
- 31 premises;
- 32 (b) the power to examine or observe any activity conducted on
- 33 the premises;
-

- 1 (c) the power to inspect, examine, take measurements of, or
2 conduct tests on, any thing on the premises;
3 (d) the power to make any still or moving image or any
4 recording of the premises or any thing on the premises;
5 (e) the power to inspect any document on the premises;
6 (f) the power to take extracts from, or make copies of, any such
7 document;
8 (g) the power to take onto the premises such equipment and
9 materials as the ACNC officer requires for the purpose of
10 exercising powers in relation to the premises;
11 (h) the power to sample any thing on the premises;
12 (i) the powers set out in subsections 75-25(1) and (3) and
13 75-30(2).

14 **75-25 Operating electronic equipment**

- 15 (1) The *monitoring powers* include the power to:
16 (a) operate electronic equipment on the premises; and
17 (b) use a disk, tape or other storage device that:
18 (i) is on the premises; and
19 (ii) can be used with the equipment or is associated with it.
- 20 (2) The *monitoring powers* include the powers mentioned in
21 subsection (3) if information (*relevant data*) is found in the
22 exercise of the power under subsection (1) that is relevant to
23 determining whether:
24 (a) a provision subject to monitoring under this Division has
25 been, or is being, complied with; or
26 (b) information subject to monitoring under this Division is
27 correct.
- 28 (3) The powers are as follows:
29 (a) the power to operate electronic equipment on the premises to
30 put the relevant data in documentary form and remove the
31 documents so produced from the premises;
32 (b) the power to operate electronic equipment on the premises to
33 transfer the relevant data to a disk, tape or other storage
34 device that:

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- 1 (i) is brought to the premises for the exercise of the power;
2 or
3 (ii) is on the premises and the use of which for that purpose
4 has been agreed in writing by the occupier of the
5 premises;
6 and remove the disk, tape or other storage device from the
7 premises.

- 8 (4) An ACNC officer may operate electronic equipment as mentioned
9 in subsection (1) or (3) only if:
10 (a) the ACNC officer believes on reasonable grounds that the
11 operation of the equipment can be carried out without
12 damage to the equipment; and
13 (b) the ACNC officer has reasonable grounds to suspect that:
14 (i) the equipment contains data relevant to determining
15 whether a circumstance described in paragraph (2)(a) or
16 (b) exists; or
17 (ii) the disk, tape or other storage device contains data
18 relevant to determining whether a circumstance
19 described in paragraph (2)(a) or (b) exists.

20 Note: For compensation for damage to electronic equipment, see
21 section 75-70.

22 **75-30 Securing evidence of the contravention of a provision subject**
23 **to monitoring**

- 24 (1) This section applies if an ACNC officer enters premises (whether
25 under a monitoring warrant or by consent of the occupier) for
26 either or both of the following purposes:
27 (a) determining whether a provision subject to monitoring has
28 been, or is being, complied with;
29 (b) determining whether information subject to monitoring is
30 correct.
- 31 (2) The *monitoring powers* include the power to secure a thing for a
32 period not exceeding 24 hours if:
33 (a) the thing is found during the exercise of monitoring powers
34 on the premises; and

- 1 (b) an ACNC officer believes on reasonable grounds that:
2 (i) a provision subject to monitoring has been contravened
3 with respect to the thing; or
4 (ii) the thing affords evidence of the contravention of a
5 provision subject to monitoring; or
6 (iii) the thing is intended to be used for the purpose of
7 contravening a provision subject to monitoring; and
8 (c) the ACNC officer suspects on reasonable grounds that:
9 (i) it is necessary to secure the thing in order to prevent it
10 from being concealed, lost or destroyed before a warrant
11 to seize the thing is obtained; and
12 (ii) it is necessary to secure the thing without a warrant
13 because the circumstances are serious and urgent.
- 14 (3) If an ACNC officer suspects on reasonable grounds that the thing
15 needs to be secured for more than 24 hours, the ACNC officer may
16 apply to an issuing officer for an extension of that period up to a
17 specified time.
- 18 (4) The ACNC officer must give notice to the occupier of the
19 premises, or an individual who apparently represents the occupier,
20 of his or her intention to apply for an extension. The occupier or
21 individual is entitled to be heard in relation to that application.
- 22 (5) The issuing officer may issue the extension if he or she is satisfied,
23 by information on oath or affirmation, that it is necessary to do so
24 in order to prevent the thing from being concealed, lost or
25 destroyed before a warrant to seize the thing is obtained.
- 26 (6) The provisions of this Division relating to the issue of monitoring
27 warrants apply, with such modifications as are necessary, to the
28 issue of an extension.
- 29 (7) The period may be extended more than once.

1 **75-35 Individuals assisting ACNC officers**

2 *ACNC officers may be assisted by other individuals*

3 (1) An ACNC officer may be assisted by other individuals in
4 exercising powers or performing functions or duties under this
5 Division, if that assistance is necessary and reasonable. An
6 individual giving such assistance is an *individual assisting* the
7 ACNC officer.

8 *Powers, functions and duties of an individual assisting the ACNC*
9 *officer*

10 (2) An individual assisting the ACNC officer:

11 (a) may enter the premises; and

12 (b) may exercise powers and perform functions and duties under
13 this Division for the purposes of assisting the ACNC officer
14 to determine whether:

15 (i) a provision subject to monitoring under this Division
16 has been, or is being, complied with; or

17 (ii) information subject to monitoring under this Division is
18 correct; and

19 (c) must do so in accordance with a direction given to the
20 individual assisting by the ACNC officer.

21 (3) A power exercised by an individual assisting the ACNC officer as
22 mentioned in subsection (2) is taken for all purposes to have been
23 exercised by the ACNC officer.

24 (4) A function or duty performed by an individual assisting the ACNC
25 officer as mentioned in subsection (2) is taken for all purposes to
26 have been performed by the ACNC officer.

27 (5) If a direction is given under paragraph (2)(c) in writing, the
28 direction is not a legislative instrument.

1 **75-40 ACNC officer may ask questions and seek production of**
2 **documents**

3 *Application of this section*

- 4 (1) This section applies if an ACNC officer enters premises for the
5 purposes of determining whether:
6 (a) a provision subject to monitoring under this Division has
7 been, or is being, complied with; or
8 (b) information subject to monitoring under this Division is
9 correct.

10 *Entry with consent*

- 11 (2) If the entry is authorised because the occupier of the premises
12 consented to the entry, the ACNC officer may ask the occupier to
13 answer any questions, and produce any document, relating to:
14 (a) the operation of the provision; or
15 (b) the information.

16 *Entry under a monitoring warrant*

- 17 (3) If the entry is authorised by a monitoring warrant, the ACNC
18 officer may require any individual on the premises to answer any
19 questions, and produce any document, relating to:
20 (a) the operation of the provision; or
21 (b) the information.
- 22 (4) An individual is not excused from answering a question, or
23 producing a document or a copy of a document, under
24 subsection (3) on the ground that the answer or the production of
25 the document or copy might tend to incriminate the individual or
26 expose the individual to a penalty.
- 27 (5) However:
28 (a) the answer given, or the document or copy produced; or
29 (b) giving the answer or producing the document or copy; or

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- 1 (c) any information, document or thing obtained as a direct or
2 indirect consequence of giving the answer or producing the
3 document or copy;
4 is not admissible in evidence against the individual in criminal
5 proceedings, or in proceedings for the recovery of a civil penalty,
6 other than:
7 (d) proceedings for an offence against subsection (6); or
8 (e) proceedings for an offence against section 137.1 or 137.2 of
9 the *Criminal Code* (which deal with false or misleading
10 information or documents) that relates to this Act; or
11 (f) proceedings for an offence against section 149.1 of the
12 *Criminal Code* (which deals with obstruction of
13 Commonwealth public officials) that relates to this Act.

14 *Offence*

- 15 (6) An individual commits an offence if:
16 (a) the individual is subject to a requirement under
17 subsection (3); and
18 (b) the individual fails to comply with the requirement.

19 Penalty for contravention of this subsection: 20 penalty units.

20 **Subdivision 75-D—Obligations and incidental powers of ACNC**
21 **officers**

22 **75-45 Consent**

- 23 (1) Before obtaining the consent of an occupier of premises for the
24 purposes of paragraph 75-15(2)(a), an ACNC officer must inform
25 the occupier that the occupier may refuse consent.
26 (2) A consent has no effect unless the consent is voluntary.
27 (3) A consent may be expressed to be limited to entry during a
28 particular period. If so, the consent has effect for that period unless
29 the consent is withdrawn before the end of that period.
30 (4) The occupier may extend the period of a consent that is limited as
31 mentioned in subsection (3).
-

- 1 (5) A consent that is not limited as mentioned in subsection (3) has
2 effect until the consent is withdrawn.
- 3 (6) If an ACNC officer entered premises because of the consent of the
4 occupier of the premises, the ACNC officer, and any individual
5 assisting the ACNC officer, must leave the premises if the consent
6 ceases to have effect.

7 **75-50 Announcement before entry under warrant**

- 8 (1) Before entering premises under a monitoring warrant, an ACNC
9 officer must:
- 10 (a) announce that he or she is authorised to enter the premises;
11 and
- 12 (b) show his or her identity card to the occupier of the premises,
13 or to an individual who apparently represents the occupier, if
14 the occupier or individual is present at the premises; and
- 15 (c) give any individual at the premises an opportunity to allow
16 entry to the premises.
- 17 (2) However, an ACNC officer is not required to comply with
18 subsection (1) if the ACNC officer believes on reasonable grounds
19 that immediate entry to the premises is required:
- 20 (a) to ensure the safety of an individual; or
21 (b) to ensure that the effective execution of the warrant is not
22 frustrated.
- 23 (3) If:
- 24 (a) an ACNC officer does not comply with subsection (1)
25 because of subsection (2); and
- 26 (b) the occupier of the premises, or an individual who apparently
27 represents the occupier, is present at the premises;
- 28 the ACNC officer must show his or her identity card to the
29 occupier or individual as soon as practicable after entering the
30 premises.

1 **75-55 ACNC officer to be in possession of warrant**

2 An ACNC officer executing a monitoring warrant must be in
3 possession of the warrant or a copy of the warrant.

4 **75-60 Details of warrant etc. to be given to occupier**

- 5 (1) An ACNC officer must comply with subsection (2) if:
6 (a) a monitoring warrant is being executed in relation to
7 premises; and
8 (b) the occupier of the premises, or an individual who apparently
9 represents the occupier, is present at the premises.
- 10 (2) The ACNC officer must, as soon as practicable:
11 (a) make a copy of the warrant available to the occupier or
12 individual (which need not include the signature of the
13 issuing officer who issued it); and
14 (b) inform the occupier or individual of the rights and
15 responsibilities of the occupier or individual under
16 Subdivision 75-E, in English.

17 **75-65 Expert assistance to operate electronic equipment**

- 18 (1) This section applies if an ACNC officer enters premises (whether
19 under a monitoring warrant or by consent of the occupier).

20 *Securing equipment*

- 21 (2) The ACNC officer may secure any electronic equipment that is on
22 the premises if the ACNC officer suspects on reasonable grounds
23 that:
24 (a) there is relevant data on the premises; and
25 (b) the relevant data may be accessible by operating the
26 equipment; and
27 (c) expert assistance is required to operate the equipment; and
28 (d) the relevant data may be destroyed, altered or otherwise
29 interfered with, if the ACNC officer does not take action
30 under this subsection.

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1 The equipment may be secured by locking it up, placing a guard or
2 any other means.

3 (3) **Relevant data** means information relevant to determining whether:
4 (a) a provision that is subject to monitoring under this Division
5 has been, or is being, complied with; or
6 (b) information subject to monitoring under this Division is
7 correct.

8 (4) The ACNC officer must give notice to the occupier of the
9 premises, or an individual who apparently represents the occupier,
10 of:
11 (a) the ACNC officer's intention to secure the equipment; and
12 (b) the fact that the equipment may be secured for up to 24
13 hours.

14 *Period equipment may be secured*

15 (5) The equipment may be secured until the earlier of the following
16 happens:
17 (a) the 24-hour period ends;
18 (b) the equipment has been operated by the expert.

19 Note: For compensation for damage to electronic equipment, see
20 section 75-70.

21 *Extensions*

22 (6) The ACNC officer may apply to an issuing officer for an extension
23 of the 24-hour period up to a specified time if the ACNC officer
24 suspects on reasonable grounds that the equipment needs to be
25 secured for longer than that period.

26 (7) Before making the application, the ACNC officer must give notice
27 to the occupier of the premises, or an individual who apparently
28 represents the occupier, of his or her intention to apply for an
29 extension. The occupier or individual is entitled to be heard in
30 relation to that application.

31 (8) The issuing officer may issue the extension if he or she is satisfied,
32 by information on oath or affirmation, that it is necessary to do so

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1 in order to prevent the destruction, alteration or interference with
2 the relevant data.

3 (9) The provisions of this Division relating to the issue of monitoring
4 warrants apply, with such modifications as are necessary, to the
5 issue of an extension.

6 (10) The period may be extended more than once.

7 **75-70 Compensation for damage to electronic equipment**

8 (1) This section applies if:

- 9 (a) as a result of electronic equipment being operated as
10 mentioned in this Division:
- 11 (i) damage is caused to the equipment; or
 - 12 (ii) the data recorded on the equipment is damaged; or
 - 13 (iii) programs associated with the use of the equipment, or
14 with the use of the data, are damaged or corrupted; and
- 15 (b) the damage or corruption occurs because:
- 16 (i) insufficient care was exercised in selecting the
17 individual who was to operate the equipment; or
 - 18 (ii) insufficient care was exercised by the individual
19 operating the equipment.

20 (2) The Commonwealth must pay the owner of the equipment, or the
21 user of the data or programs, such reasonable compensation for the
22 damage or corruption as the Commonwealth and the owner or user
23 agree on.

24 (3) However, if the owner or user and the Commonwealth fail to
25 agree, the owner or user may institute proceedings in a designated
26 court for such reasonable amount of compensation as the court
27 determines.

28 (4) In determining the amount of compensation payable, regard is to
29 be had to whether the occupier of the premises, or the occupier's
30 employees or agents, if they were available at the time, provided
31 any appropriate warning or guidance on the operation of the
32 equipment.

1 **Subdivision 75-E—Occupier’s rights and responsibilities**

2 **75-75 Occupier entitled to observe execution of warrant**

- 3 (1) The occupier of premises to which a monitoring warrant relates, or
4 an individual who apparently represents the occupier, is entitled to
5 observe the execution of the monitoring warrant if the occupier or
6 individual is present at the premises while the warrant is being
7 executed.
- 8 (2) The right to observe the execution of the warrant ceases if the
9 occupier or individual impedes that execution.
- 10 (3) This section does not prevent the execution of the warrant in 2 or
11 more areas of the premises at the same time.

12 **75-80 Occupier to provide ACNC officer with facilities and**
13 **assistance**

- 14 (1) The occupier of premises to which a monitoring warrant relates, or
15 an individual who apparently represents the occupier, must
16 provide:
- 17 (a) an ACNC officer executing the warrant; and
18 (b) any individual assisting the ACNC officer;
19 with all reasonable facilities and assistance for the effective
20 exercise of their powers.
- 21 (2) An individual commits an offence if:
22 (a) the individual is subject to subsection (1); and
23 (b) the individual fails to comply with that subsection.

24 Penalty for contravention of this subsection: 20 penalty units.

1 **Subdivision 75-F—Monitoring warrants**

2 **75-85 Monitoring warrants**

3 *Application for warrant*

- 4 (1) The Commissioner may apply to an issuing officer for a warrant
5 under this section in relation to premises.

6 *Issue of warrant*

- 7 (2) The issuing officer may issue the warrant if the issuing officer is
8 satisfied, by information on oath or affirmation, that it is necessary
9 that one or more ACNC officers should have access to the
10 premises for the purpose of determining whether:
11 (a) a provision that is subject to monitoring under this Division
12 has been, or is being, complied with; or
13 (b) information subject to monitoring under this Division is
14 correct.
- 15 (3) However, the issuing officer must not issue the warrant unless the
16 Commissioner or some other individual has given to the issuing
17 officer, either orally or by affidavit, such further information (if
18 any) as the issuing officer requires concerning the grounds on
19 which the issue of the warrant is being sought.

20 *Content of warrant*

- 21 (4) The warrant must:
22 (a) describe the premises to which the warrant relates; and
23 (b) state that the warrant is issued under this section; and
24 (c) state the purpose for which the warrant is issued; and
25 (d) authorise one or more ACNC officers (whether or not named
26 in the warrant) from time to time while the warrant remains
27 in force:
28 (i) to enter the premises; and
29 (ii) to exercise the powers set out in this Division in relation
30 to the premises; and

- 1 (e) state whether entry is authorised to be made at any time of
2 the day or during specified hours of the day; and
3 (f) specify the day (not more than 1 month after the issue of the
4 warrant) on which the warrant ceases to be in force.

5 **Subdivision 75-G—Powers of issuing officers**

6 **75-90 Powers of issuing officers**

7 *Powers conferred personally*

- 8 (1) A power conferred on an issuing officer by this Division is
9 conferred on the issuing officer:
10 (a) in a personal capacity; and
11 (b) not as a court or a member of a court.

12 *Powers need not be accepted*

- 13 (2) The issuing officer need not accept the power conferred.

14 *Protection and immunity*

- 15 (3) An issuing officer exercising a power conferred by this Division
16 has the same protection and immunity as if the issuing officer were
17 exercising the power:
18 (a) as the court of which the issuing officer is a member; or
19 (b) as a member of the court of which the issuing officer is a
20 member.

21 **Subdivision 75-H—General provisions**

22 **75-95 Identity cards**

- 23 (1) The Commissioner must issue an identity card to an ACNC officer
24 who the Commissioner considers is likely to exercise powers and
25 functions under this Division.

26 *Form of identity card*

- 27 (2) The identity card must:
-

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- 1 (a) be in the form set out in writing by the Commissioner; and
2 (b) contain a recent photograph of the ACNC officer.

3 *Offence*

- 4 (3) An individual commits an offence if:
5 (a) the individual has been issued with an identity card; and
6 (b) the individual ceases to be an ACNC officer; and
7 (c) the individual does not return the identity card to the
8 Commissioner within 14 days after ceasing to be an ACNC
9 officer.

10 Penalty: 1 penalty unit.

- 11 (4) An offence against subsection (3) is an offence of strict liability.

12 Note: For strict liability, see section 6.1 of the *Criminal Code*.

13 *Defence: card lost or destroyed*

- 14 (5) Subsection (3) does not apply if the identity card was lost or
15 destroyed.

16 Note: A defendant bears an evidential burden in relation to the matter in this
17 subsection (see subsection 13.3(3) of the *Criminal Code*).

18 *ACNC officer must carry card*

- 19 (6) An ACNC officer must carry his or her identity card at all times
20 when exercising powers under this Division as an ACNC officer.
21

1 **Part 4-2—Enforcement powers**

2 **Division 80—Warnings**

3 **80-1 Simplified outline**

4 The following is a simplified outline of this Division:

5 The Commissioner may give a registered entity a warning notice if:

- 6 (a) the entity is a federally regulated entity and the
7 Commissioner reasonably believes that the entity
8 has contravened a provision of this Act, or that it is
9 more likely than not that the entity will contravene
10 a provision of this Act; or
- 11 (b) the entity is a federally regulated entity and the
12 Commissioner reasonably believes that the entity
13 has not complied with a governance standard, or
14 that it is more likely than not that the entity will
15 not comply with a governance standard; or
- 16 (c) the Commissioner reasonably believes that the
17 entity has not complied with an external conduct
18 standard, or that it is more likely than not that the
19 entity will not comply with an external conduct
20 standard.

21 The notice may inform the registered entity of the circumstances in
22 relation to the contravention or non-compliance and outline actions
23 that could be taken under this Act in response to the contravention
24 or non-compliance.

25 **80-5 Commissioner may issue formal warning**

26 (1) Subsection (2) applies if:

- 27 (a) a registered entity is a federally regulated entity and the
28 Commissioner reasonably believes that:

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- 1 (i) the registered entity has contravened a provision of this
2 Act; or
3 (ii) it is more likely than not that the registered entity will
4 contravene a provision of this Act; or
5 (b) a registered entity is a federally regulated entity and the
6 Commissioner reasonably believes that:
7 (i) the registered entity has not complied with a governance
8 standard; or
9 (ii) it is more likely than not that the registered entity will
10 not comply with a governance standard; or
11 (c) the Commissioner reasonably believes that:
12 (i) a registered entity has not complied with an external
13 conduct standard; or
14 (ii) it is more likely than not that a registered entity will not
15 comply with an external conduct standard.
- 16 (2) The Commissioner may, by written notice given to the registered
17 entity:
18 (a) inform the registered entity of the circumstances in relation to
19 the contravention, likely contravention, non-compliance or
20 likely non-compliance; and
21 (b) warn the registered entity of the action that may be taken
22 under this Act in response to the contravention, likely
23 contravention, non-compliance or likely non-compliance.
- 24 Note: Information relating to warnings may be placed on the Register in
25 accordance with Division 40.
- 26 (3) In deciding whether to give a warning, and deciding the content of
27 the warning, the Commissioner must take account of the matters
28 mentioned in subsection 35-10(2).
29

1 **Division 85—Directions**

2 **Subdivision 85-A—Overview**

3 **85-1 Simplified outline**

4 The following is a simplified outline of this Division:

5 The Commissioner’s guidance and education (see section 110-10) will
6 assist registered entities to comply with and understand their
7 obligations under this Act. However, where enforcement action is
8 required, the Commissioner’s range of enforcement powers includes
9 the power to issue directions, so that the Commissioner can provide a
10 proportionate and effective regulatory response.

11 The Commissioner may give a registered entity a written direction
12 if:

- 13 (a) the entity is a federally regulated entity and the
14 Commissioner reasonably believes that the entity
15 has contravened a provision of this Act, or that it is
16 more likely than not that the entity will contravene
17 a provision of this Act; or
- 18 (b) the entity is a federally regulated entity and the
19 Commissioner reasonably believes that the entity
20 has not complied with a governance standard, or
21 that it is more likely than not that the entity will
22 not comply with a governance standard; or
- 23 (c) the Commissioner reasonably believes that the
24 entity has not complied with an external conduct
25 standard, or that it is more likely than not that the
26 entity will not comply with an external conduct
27 standard.

28 The Commissioner may only issue directions that the
29 Commissioner considers are necessary to address the contravention

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or non-compliance, and may only do so after considering a range of policy matters.

A decision of the Commissioner to issue a direction is reviewable in accordance with Part 7-2.

A registered entity that does not comply with a direction commits an offence.

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Subdivision 85-B—Commissioner’s power to give directions

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85-5 Commissioner may give directions in certain circumstances

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(1) The Commissioner may give a registered entity a written direction of a kind specified in subsection 85-10(1) only if:

(a) the registered entity is a federally regulated entity and the Commissioner reasonably believes that:

(i) the registered entity has contravened a provision of this Act; or

(ii) it is more likely than not that the registered entity will contravene a provision of this Act; or

(b) the registered entity is a federally regulated entity and the Commissioner reasonably believes that:

(i) the registered entity has not complied with a governance standard; or

(ii) it is more likely than not that the registered entity will not comply with a governance standard; or

(c) the Commissioner reasonably believes that:

(i) the registered entity has not complied with an external conduct standard; or

(ii) it is more likely than not that the registered entity will not comply with an external conduct standard.

(2) In deciding whether to give a direction, and deciding the content of the direction, the Commissioner must take account of the matters mentioned in subsection 35-10(2).

(3) The direction must:

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- 1 (a) specify the ground or grounds mentioned in subsection (1) on
2 the basis of which the direction is given; and
3 (b) specify the time by which, or the period during which, the
4 registered entity must comply with the direction.

5 **85-10 Kinds of direction**

- 6 (1) The kinds of direction that the registered entity may be given are
7 directions to:
8 (a) do a specified act that:
9 (i) if paragraph 85-5(1)(a) applies—the Commissioner
10 considers is necessary to address the contravention
11 mentioned in that paragraph (or prevent the likely
12 contravention mentioned in that paragraph); or
13 (ii) if paragraph 85-5(1)(b) or (c) applies—the
14 Commissioner considers is necessary to address the
15 non-compliance mentioned in that paragraph (or prevent
16 the likely non-compliance mentioned in that paragraph);
17 or
18 (b) not do a specified act that:
19 (i) if paragraph 85-5(1)(a) applies—the Commissioner
20 considers is necessary to refrain from doing to address
21 the contravention mentioned in that paragraph (or
22 prevent the likely contravention mentioned in that
23 paragraph); or
24 (ii) if paragraph 85-5(1)(b) or (c) applies—the
25 Commissioner considers is necessary to refrain from
26 doing to address the non-compliance mentioned in that
27 paragraph (or prevent the likely non-compliance
28 mentioned in that paragraph).

29 Note: Information relating to directions, variations of directions and
30 revocations of directions may be placed on the Register in accordance
31 with Division 40.

- 32 (2) Without limiting the generality of paragraphs (1)(a) and (b), the
33 direction may be:
34 (a) to ensure that an individual covered by subsection (3) does
35 not make, or participate in making, decisions that affect the

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- 1 whole, or a substantial part, of the business of the registered
2 entity; or
- 3 (b) to not enter into a specified commercial transaction, financial
4 transaction or other transaction, including the following:
- 5 (i) borrowing any amount;
- 6 (ii) repaying any money on deposit or advance;
- 7 (iii) paying or transferring any amount or asset to any entity,
8 or creating an obligation (contingent or otherwise) to do
9 so.
- 10 (3) This subsection covers an individual (other than a responsible
11 entity of the registered entity):
- 12 (a) who makes, or participates in making, decisions that affect
13 the whole, or a substantial part, of the business of the
14 registered entity; or
- 15 (b) who has the capacity to affect significantly the registered
16 entity's financial standing; or
- 17 (c) in accordance with whose instructions or wishes the
18 responsible entities of the registered entity are accustomed to
19 act (excluding advice given by the individual in the proper
20 performance of functions attaching to the individual's
21 professional capacity or his or her business relationship with
22 the responsible entities of the registered entity).
- 23 (4) Without limiting the generality of subsection (1), the direction
24 may:
- 25 (a) specify a particular class of acts or particular classes of acts;
26 or
- 27 (b) make different provision with respect to different acts or
28 different classes of acts.
- 29 (5) A direction does not apply to the payment or transfer of money
30 pursuant to an order of a court or a process of execution.

85-15 Power to comply with directions

31
32 The registered entity has power to comply with the direction
33 despite anything in its governing rules or any contract or
34 arrangement to which it is a party.

1 **85-20 Variation and revocation of directions**

- 2 (1) The Commissioner may, by notice in writing to the registered
3 entity, vary the direction if, at the time of the variation, the
4 Commissioner considers that the variation is necessary and
5 appropriate.
- 6 (2) In deciding whether to vary a direction, and deciding the content of
7 the variation, the Commissioner must take account of the matters
8 mentioned in subsection 35-10(2).
- 9 (3) The direction has effect until the Commissioner revokes it by
10 notice in writing to the registered entity. The Commissioner may
11 revoke the direction if, at the time of revocation, the Commissioner
12 considers that the direction is no longer necessary or appropriate.
- 13 (4) In deciding whether to revoke a direction, the Commissioner must
14 take account of the matters mentioned in subsection 35-10(2).
- 15 (5) Subsection (6) applies if:
16 (a) either:
17 (i) the Commissioner gives a direction to the registered
18 entity at a time; or
19 (ii) the Commissioner varies a direction at a time; and
20 (b) the Commissioner does not vary or revoke the direction for
21 12 months after that time.
- 22 (6) The Commissioner must consider within a reasonable time after
23 the end of that 12 months whether it would be reasonable to vary
24 or revoke the direction.

25 **85-25 Objections**

26 A registered entity that is dissatisfied with any of the following
27 decisions may object against it in the manner set out in Part 7-2:

- 28 (a) a decision to give a direction;
29 (b) a decision to vary a direction;
30 (c) a decision not to vary or revoke a direction after considering
31 whether to vary or revoke it in accordance with subsection
32 85-20(6).

1 **Subdivision 85-C—Non-compliance with a direction**

2 **85-30 Non-compliance with a direction**

- 3 (1) A registered entity commits an offence if:
- 4 (a) it does, or fails to do, an act; and
- 5 (b) doing, or failing to do, the act results in a contravention of a
- 6 direction given to it under Subdivision 85-B.

7 Penalty: 40 penalty units.

8 Note: If a body corporate is convicted of an offence against this subsection,

9 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a

10 fine of up to 5 times the penalty stated above.

- 11 (2) If a registered entity does or fails to do an act in circumstances that
- 12 give rise to the registered entity committing an offence against
- 13 subsection (1), the registered entity commits an offence against that
- 14 subsection in respect of:

- 15 (a) the first day on which the offence is committed; and
- 16 (b) each subsequent day (if any) on which the circumstances that
- 17 gave rise to the registered entity committing the offence
- 18 continue (including the day of conviction for any such
- 19 offence or any later day).

20 Note: This subsection is not intended to imply that section 4K of the *Crimes*

21 *Act 1914* does not apply to offences against this Act or the regulations.

22

1 **Division 90—Enforceable undertakings**

2 **90-1 Simplified outline**

3 The following is a simplified outline of this Division:

4 The Commissioner’s guidance and education (see section 110-10) will
5 assist registered entities to comply with and understand their
6 obligations under this Act. However, where enforcement action is
7 required, the Commissioner’s range of enforcement powers includes
8 the power to accept enforceable undertakings, so that the
9 Commissioner can provide a proportionate and effective regulatory
10 response.

11 This Division provides the Commissioner with the authority to
12 accept an undertaking relating to provisions in this Act or in
13 legislative instruments made under this Act from a registered entity
14 that is a federally regulated entity. The Commissioner will also
15 have the authority to accept an undertaking relating to external
16 conduct standards from any registered entity.

17 Undertakings may be enforced in a designated court. The orders
18 that may be made by a court include an order directing compliance
19 with an undertaking, an order requiring any financial benefit from
20 a failure to comply with an undertaking to be surrendered, an order
21 for damages, and any other orders that the court considers
22 appropriate.

23 **90-5 Enforceable provisions**

24 The following provisions are *enforceable* under this Division:

- 25 (a) a provision of this Act;
26 (b) a governance standard or external conduct standard;
27 (c) a provision of a legislative instrument made under this Act.

28 **90-10 Acceptance of undertakings**

29 (1) The Commissioner may accept any of the following undertakings:

Section 90-10

- 1 (a) a written undertaking given by a registered entity that is a
2 federally regulated entity that the entity will, in order to
3 comply with a provision enforceable under this Division, take
4 specified action;
- 5 (b) a written undertaking given by a registered entity that is a
6 federally regulated entity that the entity will, in order to
7 comply with a provision enforceable under this Division,
8 refrain from taking specified action;
- 9 (c) a written undertaking given by a registered entity that is a
10 federally regulated entity that the entity will take specified
11 action directed towards ensuring that:
- 12 (i) the entity does not contravene a provision enforceable
13 under this Division in the future; or
- 14 (ii) it is more likely than not that the entity will not
15 contravene such a provision in the future.
- 16 (2) The Commissioner may accept any of the following undertakings:
- 17 (a) a written undertaking given by a registered entity that the
18 entity will, in order to comply with an external conduct
19 standard, take specified action;
- 20 (b) a written undertaking given by a registered entity that the
21 entity will, in order to comply with an external conduct
22 standard, refrain from taking specified action;
- 23 (c) a written undertaking given by a registered entity that the
24 entity will take specified action directed towards ensuring
25 that:
- 26 (i) the entity does not fail to comply with an external
27 conduct standard in the future; or
- 28 (ii) the entity is more likely than not to comply with such a
29 standard in the future.
- 30 (3) The undertaking must be expressed to be an undertaking under this
31 section.
- 32 Note: Information relating to undertakings may be placed on the Register in
33 accordance with Division 40.
- 34 (4) The entity may withdraw or vary the undertaking at any time, but
35 only with the written consent of the Commissioner.

Section 90-15

1 (5) The written consent of the Commissioner is not a legislative
2 instrument.

3 (6) The Commissioner may, by written notice given to the entity,
4 cancel the undertaking.

5 **90-15 Enforcement of undertakings**

6 (1) If:

7 (a) the Commissioner has been given an undertaking under
8 section 90-10; and

9 (b) the undertaking has not been withdrawn or cancelled; and

10 (c) the Commissioner considers that the entity that gave the
11 undertaking has breached the undertaking;

12 the Commissioner may apply to a designated court for an order
13 under subsection (2).

14 (2) The court may make any or all of the orders mentioned in
15 subsection (3) if it is satisfied that:

16 (a) the entity has breached the undertaking; and

17 (b) the entity is still a registered entity; and

18 (c) if the Commissioner was given the undertaking under
19 subsection 90-10(1) (undertakings by federally regulated
20 entities)—the entity is still a federally regulated entity.

21 (3) The orders are as follows:

22 (a) an order directing the entity to comply with the undertaking;

23 (b) an order directing the entity to pay to the Commonwealth an
24 amount up to the amount of any financial benefit that the
25 entity has obtained directly or indirectly and that is
26 reasonably attributable to the breach;

27 (c) any order that the court considers appropriate directing the
28 entity to compensate any other entity that has suffered loss or
29 damage as a result of the breach;

30 (d) any other order that the court considers appropriate.
31

1 **Division 95—Injunctions**

2 **95-1 Simplified outline**

3 The following is a simplified outline of this Division:

4 The Commissioner’s guidance and education (see section 110-10) will
5 assist registered entities to comply with and understand their
6 obligations under this Act. However, where enforcement action is
7 required, the Commissioner’s range of enforcement powers includes
8 the power to apply for injunctions, so that the Commissioner can
9 provide a proportionate and effective regulatory response.

10 A designated court may grant an injunction (including a consent
11 injunction or interim injunction) in the enforcement of provisions
12 enforceable under this Division if:

- 13 (a) the injunction or interim injunction relates to a
14 registered entity that is a federally regulated entity;
15 or
16 (b) the injunction or interim injunction relates to a
17 registered entity and is in respect of an external
18 conduct standard.

19 Injunctions may restrain registered entities from contravening a
20 provision enforceable under this Division, or compel the doing of a
21 thing.

22 **95-5 Enforceable provisions**

23 The following provisions are *enforceable* under this Division:

- 24 (a) a provision of this Act;
25 (b) a governance standard or external conduct standard;
26 (c) a provision of a legislative instrument made under this Act.

1 **95-10 Injunctions relating to federally regulated entity etc.**

2 A designated court may grant an injunction or an interim injunction
3 under this Division only if:

- 4 (a) the injunction or interim injunction relates to a registered
5 entity that is a federally regulated entity; or
6 (b) the injunction or interim injunction relates to a registered
7 entity and is in respect of an external conduct standard.

8 **95-15 Grant of injunctions**

9 *Restraining injunctions*

10 (1) If a person has engaged, is engaging or is proposing to engage, in
11 conduct in contravention of a provision enforceable under this
12 Division, a designated court may, on application by the
13 Commissioner, grant an injunction:

- 14 (a) restraining the person from engaging in the conduct; and
15 (b) if, in the court's opinion, it is desirable to do so—requiring
16 the person to do a thing.

17 *Performance injunctions*

18 (2) If:

- 19 (a) a person has refused or failed, or is refusing or failing, or is
20 proposing to refuse or fail, to do a thing; and
21 (b) the refusal or failure was, is or would be a contravention of a
22 provision enforceable under this Division;
23 the designated court may, on application by the Commissioner,
24 grant an injunction requiring the person to do that thing.

25 *Consent injunctions*

26 (3) A designated court may grant an injunction by consent of all the
27 parties to proceedings under this section, whether or not the court
28 is satisfied that the person has contravened, or will contravene, a
29 provision enforceable under this Division.

30 Note: Information relating to injunctions may be placed on the Register in
31 accordance with Division 40.

Section 95-20

1 **95-20 Interim injunctions**

2 *Grant of interim injunctions*

- 3 (1) Before deciding an application for an injunction under
4 section 95-15, a designated court may grant an interim injunction:
5 (a) restraining a person from engaging in conduct; or
6 (b) requiring a person to do a thing.

7 *No undertakings as to damages*

- 8 (2) The designated court must not require the Commissioner to give an
9 undertaking as to damages as a condition of granting an interim
10 injunction.

11 **95-25 Discharging or varying injunctions**

12 A designated court may discharge or vary an injunction granted by
13 that court under this Division.

14 **95-30 Certain limits on granting injunctions not to apply**

15 *Restraining injunctions*

- 16 (1) The power of a court under this Division to grant an injunction
17 restraining a person from engaging in conduct may be exercised:
18 (a) whether or not it appears to the court that the person intends
19 to engage again, or to continue to engage, in conduct of that
20 kind; and
21 (b) whether or not the person has previously engaged in conduct
22 of that kind; and
23 (c) whether or not there is an imminent danger of substantial
24 damage to any other entity if the person engages in conduct
25 of that kind.

26 *Performance injunctions*

- 27 (2) The power of a court under this Division to grant an injunction
28 requiring a person to do a thing may be exercised:

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- 1 (a) whether or not it appears to the court that the person intends
2 to refuse or fail again, or to continue to refuse or fail, to do
3 that thing; and
4 (b) whether or not the person has previously refused or failed to
5 do that thing; and
6 (c) whether or not there is an imminent danger of substantial
7 damage to any other entity if the person refuses or fails to do
8 that thing.

9 **95-35 Court to take account of objects of this Act**

10 In exercising the powers conferred on a court under this Division,
11 the court must take into account the objects of this Act.

12 **95-40 Other powers of a court unaffected**

13 The powers conferred on a court under this Division are in addition
14 to, and not instead of, any other powers of the court, whether
15 conferred by this Act or otherwise.
16

Section 100-1

1 **Division 100—Suspension and removal of responsible**
2 **entities**

3 **Subdivision 100-A—Overview**

4 **100-1 Simplified outline**

5 The following is a simplified outline of this Division:

6 The Commissioner’s guidance and education (see section 110-10) will
7 assist registered entities to comply with and understand their
8 obligations under this Act. However, where enforcement action is
9 required, the Commissioner’s range of enforcement powers includes
10 the power to suspend or remove a responsible entity of a registered
11 entity, so that the Commissioner can provide a proportionate and
12 effective regulatory response.

13 The Commissioner may suspend or remove a responsible entity of
14 a registered entity if:

- 15 (a) the registered entity is a federally regulated entity
16 and the Commissioner reasonably believes that the
17 registered entity has contravened a provision of
18 this Act, or that it is more likely than not that the
19 registered entity will contravene a provision of this
20 Act; or
- 21 (b) the registered entity is a federally regulated entity
22 and the Commissioner reasonably believes that the
23 registered entity has not complied with a
24 governance standard, or that it is more likely than
25 not that the registered entity will not comply with a
26 governance standard; or
- 27 (c) the Commissioner reasonably believes that the
28 registered entity has not complied with an external
29 conduct standard, or that it is more likely than not
30 that the registered entity will not comply with an
31 external conduct standard.
-

1 The Commissioner may only do so if the suspension or removal is
2 necessary to address the contravention or non-compliance, and
3 may only do so after considering a range of policy matters.

4 A decision of the Commissioner to suspend or remove a
5 responsible entity is reviewable in accordance with Part 7-2.

6 The Commissioner may appoint acting responsible entities to
7 replace suspended or removed responsible entities, so that the
8 registered entity may continue to function.

9 Subdivision 100-D deals with the property of a registered entity
10 that is a trust, if a trustee of the trust is suspended or removed.

11 **Subdivision 100-B—Suspension and removal of responsible**
12 **entities**

13 **100-5 Commissioner’s exercise of power under this Subdivision**

- 14 (1) The Commissioner can exercise a power under this Subdivision in
15 relation to a registered entity only if:
- 16 (a) the registered entity is a federally regulated entity and the
17 Commissioner reasonably believes that:
 - 18 (i) the registered entity has contravened a provision of this
19 Act; or
 - 20 (ii) it is more likely than not that the registered entity will
21 contravene a provision of this Act; or
 - 22 (b) the registered entity is a federally regulated entity and the
23 Commissioner reasonably believes that:
 - 24 (i) the registered entity has not complied with a governance
25 standard; or
 - 26 (ii) it is more likely than not that the registered entity will
27 not comply with a governance standard; or
 - 28 (c) the Commissioner reasonably believes that:
 - 29 (i) the registered entity has not complied with an external
30 conduct standard; or

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- 1 (ii) it is more likely than not that the registered entity will
2 not comply with an external conduct standard.
- 3 (2) This Subdivision does not apply to an entity that is a responsible
4 entity of the registered entity only because of paragraph 205-30(c)
5 (about trustees in bankruptcy, liquidators etc.).
- 6 (3) The Commissioner cannot exercise a power under this Subdivision
7 in relation to a registered entity that is a basic religious charity.
- 8 Note: Information relating to suspensions and removals may be placed on
9 the Register in accordance with Division 40.

10 **100-10 Suspension of responsible entities**

11 *Suspension*

- 12 (1) The Commissioner may suspend any of the responsible entities of
13 the registered entity, if the Commissioner considers that doing so is
14 necessary to address the contravention or non-compliance
15 mentioned in subsection 100-5(1) (or to prevent the likely
16 contravention or non-compliance mentioned in that subsection).
- 17 (2) The suspension of a responsible entity under subsection (1):
18 (a) starts when the Commissioner gives the responsible entity
19 notice of the suspension under subsection (3); and
20 (b) ends at the time specified in the notice.
- 21 (3) If the Commissioner decides to suspend a responsible entity under
22 subsection (1), the Commissioner must give to the responsible
23 entity a written notice:
24 (a) setting out the decision; and
25 (b) giving the reasons for the decision; and
26 (c) setting out the time the suspension ends.

27 *Suspension—show cause notice*

- 28 (4) Before suspending a responsible entity, the Commissioner must
29 give a written notice (a **show cause notice**) to the registered entity.
- 30 (5) The show cause notice must:

- 1 (a) state the grounds on which the Commissioner proposes to
2 suspend the responsible entity; and
3 (b) invite the registered entity to give the Commissioner, within
4 28 days after the day the notice is given, a written statement
5 showing cause why the Commissioner should not suspend
6 the responsible entity.
- 7 (6) Subsections (4) and (5) do not apply if the Commissioner believes,
8 on reasonable grounds and taking into account the matters
9 mentioned in subsection 35-10(2), that it would be appropriate for
10 the Commissioner to suspend the responsible entity without giving
11 a show cause notice to the registered entity.

12 *Extension of suspensions*

- 13 (7) The Commissioner may change the time the suspension of a
14 responsible entity ends.
- 15 (8) If the Commissioner decides to change the time the suspension of a
16 responsible entity ends under this section, the Commissioner must
17 give to the responsible entity a written notice:
18 (a) setting out the decision; and
19 (b) giving the reasons for the decision; and
20 (c) setting out the new time the suspension ends.

21 *Matters Commissioner must take into account*

- 22 (9) In deciding whether to suspend any of the responsible entities,
23 when the suspension starts and ends, or whether to change the time
24 the suspension ends, the Commissioner must take account of the
25 matters mentioned in subsection 35-10(2).

26 *Review of decisions under this section*

- 27 (10) A responsible entity that is dissatisfied with either of the following
28 decisions under this section may object against the decision in the
29 manner set out in Part 7-2:
30 (a) a decision to suspend the responsible entity;
31 (b) a decision to change the time a suspension of the responsible
32 entity ends.

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1 **100-15 Removal of responsible entities**

2 *Removal*

- 3 (1) The Commissioner may remove any of the responsible entities of
4 the registered entity if the Commissioner considers that doing so is
5 necessary to address the contravention or non-compliance
6 mentioned in subsection 100-5(1) (or prevent the likely
7 contravention or non-compliance mentioned in that subsection).
- 8 (2) If the Commissioner decides to remove a responsible entity under
9 this section, the Commissioner must give to the responsible entity a
10 written notice:
11 (a) setting out the decision; and
12 (b) giving the reasons for the decision.

13 *Removal—show cause notice*

- 14 (3) Before removing a responsible entity, the Commissioner must give
15 a written notice (a *show cause notice*) to the registered entity.
- 16 (4) The show cause notice must:
17 (a) state the grounds on which the Commissioner proposes to
18 remove the responsible entity; and
19 (b) invite the registered entity to give the Commissioner, within
20 28 days after the day the notice is given, a written statement
21 showing cause why the Commissioner should not remove the
22 responsible entity.
- 23 (5) Subsections (3) and (4) do not apply if the Commissioner believes,
24 on reasonable grounds and taking into account the matters
25 mentioned in subsection 35-10(2), that it would be appropriate for
26 the Commissioner to remove the responsible entity without giving
27 a show cause notice to the registered entity.

28 *Matters Commissioner must take into account*

- 29 (6) In deciding whether to remove any of the responsible entities, the
30 Commissioner must take account of the matters mentioned in
31 subsection 35-10(2).

1 *Review of decisions under this section*

- 2 (7) A responsible entity that is dissatisfied with a decision to remove
3 the responsible entity under this section may object against the
4 decision in the manner set out in Part 7-2.

5 **100-20 Effect of suspension or removal—suspended or removed**
6 **responsible entities must not be reappointed**

- 7 (1) A responsible entity suspended under section 100-10 cannot
8 become a responsible entity of the registered entity until the
9 suspension ends.
- 10 (2) A responsible entity removed under section 100-15 cannot become
11 a responsible entity of the registered entity.
- 12 (3) If:
- 13 (a) an individual is a responsible entity of a registered entity
14 because:
- 15 (i) the registered entity is a company (or is a trust, a trustee
16 of which is a company); and
- 17 (ii) the individual is a director of the company; and
- 18 (b) the individual is suspended under section 100-10 or removed
19 under section 100-15;
- 20 the individual ceases to be a director of the company (until, in the
21 case of suspension, the suspension ends).

22 Note: Suspension or removal of an individual as a responsible entity does
23 not necessarily affect the rights or duties of the individual in other
24 capacities.

25 For example, under the governing rules of an incorporated sporting
26 club an individual may be a director of the club (and therefore a
27 responsible entity) because he or she is the club captain. Removal of
28 the individual as a responsible entity may not in itself remove the
29 individual from the office of club captain.

30 **100-25 Effect of suspension or removal—prohibition on managing**
31 **the registered entity**

- 32 (1) An entity commits an offence if:

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- 1 (a) the entity is suspended under section 100-10 or removed
2 under section 100-15; and
3 (b) the entity makes, or participates in making, decisions that
4 affect the whole, or a substantial part, of the business of the
5 registered entity.

6 Penalty: Imprisonment for 1 year or 50 penalty units, or both.

- 7 (2) An entity commits an offence if:
8 (a) the entity is suspended under section 100-10 or removed
9 under section 100-15; and
10 (b) the entity exercises the capacity to affect significantly the
11 registered entity's financial standing.

12 Penalty: Imprisonment for 1 year or 50 penalty units, or both.

- 13 (3) An entity commits an offence if:
14 (a) the entity is suspended under section 100-10 or removed
15 under section 100-15; and
16 (b) the entity is an individual; and
17 (c) the entity communicates instructions or wishes to the
18 remaining responsible entities of the registered entity:
19 (i) knowing that those responsible entities are accustomed
20 to act in accordance with the suspended or removed
21 entity's instructions or wishes; or
22 (ii) intending that those responsible entities will act in
23 accordance with those instructions or wishes; and
24 (d) the communication of those instructions or wishes is not
25 advice given by the entity in the proper performance of
26 functions attaching to the entity's professional capacity or his
27 or her business relationship with the remaining responsible
28 entities of the registered entity.

29 Penalty: Imprisonment for 1 year or 50 penalty units, or both.

- 30 (4) Strict liability applies to paragraphs (1)(a), (2)(a) and (3)(a).

31 Note: For strict liability, see section 6.1 of the *Criminal Code*.

1 **Subdivision 100-C—Acting responsible entities**

2 **100-30 Appointment of acting responsible entities**

3 *Suspension*

- 4 (1) If the Commissioner suspends a responsible entity under
5 section 100-10, the Commissioner may appoint one or more
6 persons (the *acting responsible entities*) to act in the place of the
7 responsible entity during the period of the suspension.
- 8 (2) If the Commissioner suspends:
9 (a) all directors of a company; or
10 (b) all trustees of a trust;
11 under section 100-10, the Commissioner must appoint one or more
12 persons (the *acting responsible entities*) to act in the place of the
13 suspended directors or trustees during the period of the suspension.

14 *Removal*

- 15 (3) If the Commissioner removes a responsible entity under
16 section 100-15, the Commissioner may appoint one or more
17 persons (the *acting responsible entities*) to act in the place of the
18 removed responsible entity until all of the vacancies created by the
19 removal are filled.
- 20 (4) If the Commissioner removes:
21 (a) all directors of a company; or
22 (b) all trustees of a trust;
23 under section 100-15, the Commissioner must appoint one or more
24 persons (the *acting responsible entities*) to act in the place of the
25 removed directors or trustees until at least one of the vacancies
26 created by the removal are filled.

27 **100-35 Acting responsible entities of trusts with constitutional**
28 **corporations as trustees**

- 29 (1) This section applies if:

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- 1 (a) the Commissioner removes or suspends a responsible entity
2 of a registered entity at a time; and
- 3 (b) at that time, the registered entity is a federally regulated
4 entity to which paragraph 205-15(b) (a trust, all of the
5 trustees of which are constitutional corporations) applies, and
6 to which no other paragraph in section 205-15 applies; and
- 7 (c) just before that time, the responsible entity was:
- 8 (i) a corporation to which paragraph 51(xx) of the
9 Constitution applied; or
- 10 (ii) a body corporate that was incorporated in a Territory.
- 11 (2) Subject to subsection (3), the Commissioner must not appoint a
12 person as an acting responsible entity of the registered entity unless
13 the person meets whichever of the following requirements is
14 applicable:
- 15 (a) in a case to which subparagraphs (1)(c)(i) and (ii) apply—the
16 person is a constitutional corporation;
- 17 (b) in a case to which only subparagraph (1)(c)(i) applies—the
18 person is a corporation to which paragraph 51(xx) of the
19 Constitution applies;
- 20 (c) in a case to which only subparagraph (1)(c)(ii) applies—the
21 person is a body corporate that is incorporated in that
22 Territory.
- 23 (3) The Commissioner may appoint a person that does not meet the
24 requirement in subsection (2) as an acting responsible entity of the
25 registered entity under section 100-30 if it is not practical for the
26 Commissioner to appoint a person that does meet that requirement.
- 27 (4) If the Commissioner appoints a person that does not meet the
28 requirement in subsection (2) as an acting responsible entity in
29 accordance with subsection (3) at a time:
- 30 (a) the person cannot act as a responsible entity under
31 section 100-30 for longer than 6 months; and
- 32 (b) if it becomes practical at a later time for the Commissioner to
33 appoint a person that does meet that requirement—the person
34 cannot act as a responsible entity after that later time.

1 **100-40 Terms and conditions of appointment of acting responsible**
2 **entities**

- 3 (1) The Commissioner may determine the terms and conditions of the
4 appointment of the acting responsible entities. The determination
5 has effect despite anything in:
6 (a) any Australian law other than this section; or
7 (b) the registered entity's governing rules; or
8 (c) if the suspended or removed responsible entities were
9 directors of a trustee of the registered entity—the governing
10 rules of the trustee.
- 11 (2) Without limiting subsection (1), the Commissioner may make a
12 determination under that subsection to the effect that the acting
13 responsible entities' fees are to be paid out of the assets of:
14 (a) the registered entity; or
15 (b) if the suspended or removed responsible entities were
16 directors of a trustee of the registered entity—the trustee.

17 **100-45 Termination of appointments of acting responsible entities**

18 The Commissioner may terminate the appointment of an acting
19 responsible entity at any time.

20 **100-50 Resignation of acting responsible entities**

- 21 (1) An acting responsible entity may resign by writing given to the
22 Commissioner.
- 23 (2) The resignation does not take effect until the end of the seventh
24 day after the day on which it was given to the Commissioner.

25 **100-55 Powers of acting responsible entities**

- 26 (1) The acting responsible entities have and may exercise all the rights,
27 title and powers, and must perform all the functions and duties, of
28 the removed or suspended responsible entities.
- 29 (2) The registered entity's governing rules (and, if the suspended or
30 removed responsible entities were directors of a trustee of the

Section 100-60

- 1 registered entity, the governing rules of the trustee), and every
2 Australian law apply in relation to the acting responsible entities as
3 if the acting responsible entities:
4 (a) in a case to which subsection 100-20(3) applies—occupied
5 the same offices as the suspended or removed responsible
6 entities; or
7 (b) otherwise—were the trustees of the registered entity.

8 **100-60 Commissioner may give directions to acting responsible**
9 **entities**

- 10 (1) The Commissioner may give an acting responsible entity a written
11 notice directing the acting responsible entity to do, or not to do,
12 one or more specified acts or things in relation to the registered
13 entity.
14 (2) The acting responsible entity commits an offence if:
15 (a) the acting responsible entity engages in conduct (within the
16 meaning of section 300-5); and
17 (b) that engagement in conduct contravenes a notice given to the
18 acting responsible entity under subsection (1) of this section.
19 Penalty: 40 penalty units.
20 (3) This section does not affect the validity of a transaction entered
21 into in contravention of a notice given under subsection (1).

22 **Subdivision 100-D—Special provisions about acting trustees**

23 **100-65 Property vesting orders**

- 24 (1) If the Commissioner appoints an acting responsible entity to act in
25 the place of a suspended or removed trustee of the registered entity,
26 the Commissioner must make a written order vesting the property
27 of the registered entity in the acting responsible entity.
28 (2) If the appointment ends, the Commissioner must make a written
29 order vesting the property of the registered entity in the new acting
30 responsible entity, the previously suspended trustee or trustees or
31 the new permanent trustee or trustees (whichever is applicable).

- 1 (3) If the Commissioner makes an order under this section vesting
2 property of a registered entity in a person or persons, then, subject
3 to subsection (4), the property immediately vests in the person or
4 persons by force of this section.
- 5 (4) If:
- 6 (a) the property is of a kind whose transfer or transmission may
7 be registered under an Australian law; and
- 8 (b) that law enables the registration of such an order, or enables
9 the person or persons to be registered as the owner or owners
10 of that property;
- 11 the property does not vest in the person or persons until the
12 requirements of the law mentioned in paragraph (a) have been
13 complied with.

14 **100-70 Property vested in acting trustee—former trustees’**
15 **obligations relating to books, identification of property**
16 **and transfer of property**

17 *Books*

- 18 (1) An entity commits an offence if:
- 19 (a) the Commissioner makes an order under subsection
20 100-65(1) or (2) vesting the property of a registered entity in
21 an acting responsible entity; and
- 22 (b) just before the Commissioner made the order, the property
23 was vested in:
- 24 (i) the entity (the *former trustee*); or
25 (ii) 2 or more entities (the *former trustees*), including the
26 entity; and
- 27 (c) the former trustee or former trustees do not, within 14 days of
28 the Commissioner making the order, give the acting
29 responsible entity all books (within the meaning of the
30 *Corporations Act 2001*) relating to the registered entity’s
31 affairs that are in the former trustee’s or former trustees’
32 possession, custody or control.

33 Penalty: 50 penalty units.

Section 100-70

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Identification of property and transfer of property

- (2) Subsections (3) to (5) apply if:
- (a) the property of a registered entity is vested in an entity (the *former trustee*) or entities (the *former trustees*); and
 - (b) the Commissioner makes an order under subsection 100-65(1) or (2) vesting the property in an acting responsible entity.
- (3) The acting responsible entity may, by notice in writing to the former trustee or former trustees, require the former trustee or former trustees, so far as the former trustee or former trustees can do so:
- (a) to identify property of the registered entity; and
 - (b) to explain how the former trustee or former trustees have kept account of that property.
- (4) The acting responsible entity may, by notice in writing to the former trustee or former trustees, require the former trustee or former trustees to take specified action that is necessary to bring about a transfer of specified property of the registered entity to the acting responsible entity.
- (5) The former trustee, or each of the former trustees, commits an offence if:
- (a) the acting responsible entity gives the former trustee or former trustees a notice under subsection (3) or (4); and
 - (b) the former trustee or former trustees do not, within 28 days of the notice being given, comply with the requirement in the notice.

Penalty: 50 penalty units.

Strict liability

- (6) An offence against subsection (1) or (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

1 **Chapter 5—The Australian Charities and**
2 **Not-for-profits Commission**

3 **Part 5-1—The ACNC**

4 **Division 105—Establishment and function of the ACNC**

5 **105-5 Establishment**

6 The Australian Charities and Not-for-profits Commission (the
7 *ACNC*) is established by this section.

8 Note: The ACNC does not have a legal identity separate from the
9 Commonwealth.

10 **105-10 Constitution of the ACNC**

11 The ACNC consists of:

- 12 (a) the Commissioner; and
13 (b) any staff assisting the Commissioner as mentioned in
14 subsection 120-5(1).

15 **105-15 Function of the ACNC**

16 The ACNC's function is to assist the Commissioner in the
17 performance of the Commissioner's functions.

18 **105-20 ACNC has privileges and immunities of the Crown**

19 The ACNC has the privileges and immunities of the Crown.
20

Section 110-5

1 **Part 5-2—The Commissioner**

2 **Division 110—Establishment, functions and powers of the**
3 **Commissioner**

4 **110-5 Establishment**

5 (1) There is to be a Commissioner of the ACNC.

6 (2) The Commissioner has:

7 (a) the general administration of this Act; and

8 (b) the other powers and other functions conferred or imposed on
9 him or her by this Act or any other law.

10 **110-10 Assistance functions of Commissioner**

11 (1) The Commissioner has the function of assisting registered entities
12 in complying with and understanding this Act, by providing them
13 with guidance and education.

14 (2) The Commissioner also has the function of assisting the public in
15 understanding the work of the not-for-profit sector, in order to
16 improve the transparency and accountability of the sector, by
17 giving the public relevant information on the Commission's
18 website.

19 (3) To avoid doubt, this section does not limit any other function of the
20 Commissioner.

21 **110-15 Powers of Commissioner**

22 The Commissioner has the power to do all things necessary or
23 convenient to be done for or in connection with the performance of
24 his or her functions.

25 Note: The expenditure of public money must comply with the requirements
26 in the *Financial Management and Accountability Act 1997*.

1 **110-20 Working with the Advisory Board**

2 (1) In performing his or her functions and exercising his or her powers,
3 the Commissioner may (but is not required to) have regard to the
4 advice and recommendations given to him or her by the Advisory
5 Board (whether or not the advice and recommendations were given
6 in response to a request).

7 (2) The Commissioner may attend Advisory Board meetings if invited
8 to do so under subsection 145-5(8).
9

Section 115-5

1 **Division 115—Terms and conditions of appointment**

2 **115-5 Appointment**

3 (1) The Commissioner is to be appointed by the Governor-General by
4 written instrument.

5 (2) The Commissioner is to be appointed on a full-time basis.

6 **115-10 Term of appointment**

7 The Commissioner holds office for the period specified in the
8 instrument of appointment. The period must not exceed 5 years.

9 Note: The Commissioner is eligible for reappointment (see section 33AA of
10 the *Acts Interpretation Act 1901*).

11 **115-15 Acting Commissioner**

12 The Minister may appoint an individual to act as the
13 Commissioner:

14 (a) during a vacancy in the office of the Commissioner (whether
15 or not an appointment has previously been made to the
16 office); or

17 (b) during any period, or during all periods, when the
18 Commissioner is absent from duty or from Australia, or is,
19 for any reason, unable to perform the duties of the office.

20 Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules
21 that apply to acting appointments.

22 **115-20 Remuneration**

23 (1) The Commissioner is to be paid the remuneration that is
24 determined by the Remuneration Tribunal. If no determination of
25 that remuneration by the Tribunal is in operation, the
26 Commissioner is to be paid the remuneration that is prescribed.

27 (2) The Commissioner is to be paid the allowances that are prescribed.

28 (3) This section has effect subject to the *Remuneration Tribunal Act*
29 *1973*.

1 **115-25 Leave of absence**

- 2 (1) The Commissioner has the recreation leave entitlements that are
3 determined by the Remuneration Tribunal.
- 4 (2) The Minister may grant the Commissioner leave of absence, other
5 than recreation leave, on the terms and conditions as to
6 remuneration or otherwise that the Minister determines.

7 **115-30 Disclosure of interests to the Minister**

8 The Commissioner must give written notice to the Minister of all
9 interests, pecuniary or otherwise, that the Commissioner has or
10 acquires and that conflict or could conflict with the proper
11 performance of the Commissioner's functions.

12 **115-35 Outside employment**

13 The Commissioner must not engage in paid employment outside
14 the duties of his or her office without the Minister's approval.

15 **115-40 Other terms and conditions**

16 The Commissioner holds office on the terms and conditions (if
17 any) in relation to matters not covered by this Act that are
18 determined by the Minister.

19 **115-45 Resignation**

- 20 (1) The Commissioner may resign his or her appointment by giving
21 the Governor-General a signed notice of resignation.
- 22 (2) The resignation takes effect on the day it is received by the
23 Governor-General or, if a later day is specified in the resignation,
24 on that later day.

25 **115-50 Termination of appointment**

- 26 (1) The Governor-General may terminate the appointment of the
27 Commissioner:
28 (a) for misbehaviour; or
-

Section 115-55

- 1 (b) if the Commissioner is unable to perform the duties of his or
2 her office because of physical or mental incapacity.
- 3 (2) The Governor-General may terminate the appointment of the
4 Commissioner if:
- 5 (a) the Commissioner:
- 6 (i) becomes bankrupt; or
7 (ii) applies to take the benefit of any law for the relief of
8 bankrupt or insolvent debtors; or
9 (iii) compounds with his or her creditors; or
10 (iv) makes an assignment of his or her remuneration for the
11 benefit of his or her creditors; or
- 12 (b) the Commissioner is absent, except on leave of absence, for
13 14 consecutive days or for 28 days in any 12 months; or
14 (c) the Commissioner fails, without reasonable excuse, to
15 comply with section 115-30; or
16 (d) if the Commissioner engages, without the Minister's
17 approval, in paid employment outside the duties of his or her
18 office (see section 115-35).

19 **115-55 Delegation**

- 20 (1) The Commissioner may, by instrument in writing, delegate any of
21 the Commissioner's powers or functions to an SES employee, or
22 acting SES employee, of the ACNC.
- 23 (2) In exercising powers under a delegation, the delegate must comply
24 with any written directions of the Commissioner.

25 Note: See section 34AAB of the *Acts Interpretation Act 1901*.
26

1 **Division 120—Staff and consultants**

2 **120-5 Staff**

3 (1) The staff assisting the Commissioner are to be persons engaged
4 under the *Public Service Act 1999* and made available for the
5 purpose by the Commissioner of Taxation.

6 (2) When performing services for the Commissioner under this
7 section, a person is subject to the directions of the Commissioner.

8 Example: In making a decision about the registration of an entity under this Act
9 in accordance with the directions of the Commissioner, an ACNC
10 officer acts independently of the Australian Taxation Office.

11 **120-10 Consultants**

12 (1) The Commissioner may, on behalf of the Commonwealth, engage
13 consultants to assist in the performance of the ACNC's functions.

14 (2) The Commissioner may not engage a member of the Advisory
15 Board as a consultant.
16

1 **Part 5-3—Finance and reporting requirements**

2 **Division 125—ACNC Special Account**

3 **125-5 ACNC Special Account**

4 (1) The Australian Charities and Not-for-profits Commission Special
5 Account (the *Account*) is established by this section.

6 (2) The Account is a Special Account for the purposes of the *Financial*
7 *Management and Accountability Act 1997*.

8 **125-10 Credits to the Account**

9 There may be credited to the Account amounts equal to the
10 following:

- 11 (a) amounts received by the Commonwealth in connection with
12 the performance of the Commissioner's functions under this
13 Act;
- 14 (b) amounts received by the Commonwealth in relation to
15 property paid for with amounts debited from the Account;
- 16 (c) amounts of any gifts given or bequests made for the purposes
17 of the Account.

18 Note: An Appropriation Act provides for amounts to be credited to a Special
19 Account if any of the purposes of the Account is a purpose that is
20 covered by an item in the Appropriation Act.

21 **125-15 Purposes of the Account**

22 The purposes of the Account are as follows:

- 23 (a) paying or discharging the costs, expenses and other
24 obligations incurred by the Commonwealth in the
25 performance of the Commissioner's functions;
- 26 (b) paying any remuneration and allowances payable to any
27 person under this Act (including staff mentioned in
28 section 120-5);
- 29 (c) meeting the expenses of administering the Account.

30 Note: See section 21 of the *Financial Management and Accountability Act*
31 *1997* (debits from Special Accounts).

1 **Division 130—Annual report**

2 **130-5 Annual report**

3 *Annual report to be given to Minister*

- 4 (1) The Commissioner must, as soon as practicable after the end of
5 each financial year, prepare and give to the Minister, for
6 presentation to the Parliament, a report on the Commissioner's
7 operations during that year.

8 Note: See also section 34C of the *Acts Interpretation Act 1901*, which
9 contains provisions about annual reports.

10 *Contents of annual report*

- 11 (2) The Commissioner must include in the report an evaluation of the
12 ACNC's overall performance during the year.
13

1 **Chapter 6—The Advisory Board**

2 **Part 6-1—The Advisory Board**

3 **Division 135—Establishment, functions and powers**

4 **135-5 Establishment**

5 The ACNC Advisory Board is established by this section.

6 **135-10 Membership**

7 The Advisory Board is to consist of:

- 8 (a) the holders of any offices determined by the Minister for the
9 purposes of this paragraph; and
10 (b) at least 2, but no more than 8, other members (the *general*
11 *members*) with:
12 (i) expertise relating to not-for-profit entities (including
13 charities); or
14 (ii) experience and sufficient qualifications in relation to
15 law, taxation or accounting.

16 **135-15 Function and powers of Advisory Board**

- 17 (1) The Advisory Board's function is, at the request of the
18 Commissioner, to provide advice and make recommendations to
19 the Commissioner in relation to the Commissioner's functions
20 under this Act.
21 (2) The Advisory Board has power to do all things necessary or
22 convenient to be done for or in connection with the performance of
23 its function.

24 Note: The expenditure of public money must comply with the requirements
25 in the *Financial Management and Accountability Act 1997*.

- 26 (3) To avoid doubt, the Advisory Board cannot give any directions to
27 the Commissioner.

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Example: The Advisory Board could not direct the Commissioner in relation to the management of the ACNC.

1 **Division 140—Terms and conditions of appointment of**
2 **members of the Advisory Board**

3 **140-5 Appointment**

4 *General members*

- 5 (1) A general member is to be appointed by the Minister by written
6 instrument, on a part-time basis.
- 7 (2) An individual is eligible to be appointed as a general member only
8 if the person is ordinarily resident in Australia.

9 *Chair and Deputy Chair*

- 10 (3) The Minister must appoint one member to be the Chair and another
11 member to be the Deputy Chair.

12 *Validity of appointments*

- 13 (4) An individual's appointment as a general member, the Chair or the
14 Deputy Chair is not invalid because of a defect or irregularity in
15 connection with the individual's appointment.

16 **140-10 Term of appointment**

17 A general member holds office for the period specified in the
18 instrument of appointment. The period must not exceed 3 years.

19 Note: A general member is eligible for reappointment (see section 33AA of
20 the *Acts Interpretation Act 1901*).

21 **140-15 Remuneration and allowances**

- 22 (1) A general member is to be paid the remuneration that is determined
23 by the Remuneration Tribunal. If no determination of that
24 remuneration by the Tribunal is in operation, the general member
25 is to be paid the remuneration that is prescribed by the regulations.
- 26 (2) A general member is to be paid the allowances that are prescribed
27 by the regulations.

- 1 (3) This section (other than subsection (2)) has effect subject to the
2 *Remuneration Tribunal Act 1973*.

3 **140-20 Standing obligation to disclose interests**

- 4 (1) A member of the Advisory Board must give written notice to the
5 Minister of all interests, pecuniary or otherwise, that the member
6 has or acquires and that conflict or could conflict with the proper
7 performance of the Advisory Board's function.
- 8 (2) The notice must be given to the Minister as soon as practicable
9 after the member becomes aware of the potential for conflict of
10 interest.

11 **140-25 Other terms and conditions**

12 A member of the Advisory Board holds office on the terms and
13 conditions (if any) in relation to matters not covered by this Act
14 that are determined, in writing, by the Minister.

15 **140-30 Resignation**

- 16 (1) A general member may resign his or her appointment by giving the
17 Minister a signed notice of resignation.
- 18 (2) The Chair may resign his or her appointment as the Chair without
19 resigning his or her appointment as a general member (if
20 applicable).
- 21 (3) The Deputy Chair may resign his or her appointment as the Deputy
22 Chair without resigning his or her appointment as a general
23 member (if applicable).
- 24 (4) A resignation takes effect on the day it is received by the Minister
25 or, if a later day is specified in the resignation, on that later day.

26 **140-35 Termination of appointment**

27 The Minister may terminate a general member's appointment at
28 any time.
29

1 **Division 145—Advisory Board procedures**

2 **145-5 Meetings of the Advisory Board**

3 *Holding meetings*

- 4 (1) The Chair:
- 5 (a) must convene 4 meetings of the Advisory Board in each
- 6 financial year; and
- 7 (b) may convene such additional meetings as are necessary for
- 8 the efficient performance of the Advisory Board's function.

9 *Procedure of meetings*

- 10 (2) Subject to subsection (4), the Commissioner may, by writing,
- 11 determine matters relating to the operation of the Advisory Board.
- 12 (3) Subject to subsection (4), if no determination is in force for the
- 13 purposes of subsection (2), the Advisory Board may operate in the
- 14 way it determines.
- 15 (4) The Chair must ensure that minutes of meetings are kept.

16 *Disclosure of interest by a member*

- 17 (5) If a member of the Advisory Board has a direct or indirect financial
- 18 interest in a matter being considered, or about to be considered, at a
- 19 meeting, being an interest that could conflict with the proper
- 20 performance of the Advisory Board's function, then the member
- 21 must disclose that interest to the other members as soon as
- 22 practicable.

23 *Disclosure to be recorded in the minutes of the meeting*

- 24 (6) Any disclosure under subsection (5), and any decision made by the
- 25 Advisory Board in relation to the disclosure, must be recorded in
- 26 the minutes of the meeting.
- 27 (7) The member must not take part in the making of a decision by the
- 28 Board in relation to the matter mentioned in subsection (5) unless

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1 the Chair agrees or, if the member is the Chair, the Commissioner
2 agrees.

3 *Attendance by Commissioner*

4 (8) The Chair may invite the Commissioner to attend all or part of an
5 Advisory Board meeting.

6 *Determination not a legislative instrument*

7 (9) A determination made under subsection (2) is not a legislative
8 instrument.
9

1 **Chapter 7—Miscellaneous**

2 **Part 7-1—Secrecy**

3 **Division 150—Secrecy**

4 **Subdivision 150-A—Preliminary**

5 **150-5 Objects of this Division**

6 The objects of this Division are:

- 7 (a) to protect confidential and personal information by imposing
8 strict obligations on ACNC officers (and other entities that
9 acquire protected ACNC information), and so encourage
10 people to provide correct information to the Commissioner;
11 and
12 (b) to facilitate efficient and effective government administration
13 and law enforcement by allowing disclosures of protected
14 ACNC information for specific purposes.

15 **150-10 Application of this Division to entities other than ACNC**
16 **officers**

17 This Division applies in relation to the following entities in the
18 same way as it applies in relation to ACNC officers:

- 19 (a) an entity engaged to provide services relating to the ACNC;
20 (b) an individual employed by, or otherwise performing services
21 for, an entity mentioned in paragraph (a);
22 (c) an individual:
23 (i) appointed or employed by, or performing services for,
24 the Commonwealth or an authority of the
25 Commonwealth; and
26 (ii) performing functions or exercising powers under or for
27 the purposes of this Act;
28 (d) a member of the Advisory Board.

1 **150-15 Meaning of *protected ACNC information***

2 In this Act:

3 ***protected ACNC information*** means information that:

- 4 (a) was disclosed or obtained under or for the purposes of this
5 Act; and
6 (b) relates to the affairs of an entity; and
7 (c) identifies, or is reasonably capable of being used to identify,
8 the entity.

9 **150-20 ACNC officer not required to provide information in certain
10 cases**

11 Except where it is necessary to do so for the purposes of giving
12 effect to this Act, an ACNC officer is not to be required:

- 13 (a) to produce to a court or tribunal a document containing
14 protected ACNC information; or
15 (b) to disclose protected ACNC information to a court or
16 tribunal.

17 **Subdivision 150-B—Disclosure of protected ACNC information
18 by ACNC officers**

19 **150-25 Offence—disclosure or use of protected ACNC information**

20 (1) An entity commits an offence if:

- 21 (a) the entity is, or has been, an ACNC officer; and

22 Note: This Division applies to certain other entities in the same way as
23 it applies to ACNC officers (see section 150-10).

- 24 (b) the entity has acquired protected ACNC information in the
25 entity's capacity as an ACNC officer; and

26 (c) the entity:

- 27 (i) discloses the information to another entity, other than an
28 entity covered by subsection (2); or

- 29 (ii) uses the information.

30 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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- 1 (2) This subsection covers the following entities:
2 (a) the entity to whom the information relates;
3 (b) if the entity to whom the information relates has an agent in
4 relation to the information—the agent;
5 (c) if the entity to whom the information relates is a registered
6 entity—a responsible entity of that registered entity.
- 7 (3) Subdivision 150-C provides for exceptions to the prohibition in
8 subsection (1).

9 Note: A defendant bears an evidential burden in relation to a matter in this
10 subsection (see subsection 13.3(3) of the *Criminal Code*).

11 **Subdivision 150-C—Authorised disclosure**

12 **150-30 Exception—disclosure in performance of duties under Act**

13 An ACNC officer may disclose or use protected ACNC
14 information if the disclosure or use is in the performance of his or
15 her duties under this Act.

16 **150-35 Exception—disclosure on Register to achieve objects of this
17 Act**

18 An ACNC officer may disclose protected ACNC information if:
19 (a) the Commissioner may include the information on the
20 Register under Division 40; and
21 (b) the disclosure is for the purpose of including the information
22 on the Register under Division 40; and
23 (c) if the information is personal information (within the
24 meaning of the *Privacy Act 1988*)—the disclosure is
25 necessary to achieve the objects of this Act.

26 **150-40 Exception—disclosure to an Australian government agency**

27 An ACNC officer may disclose protected ACNC information if:
28 (a) the disclosure is to an Australian government agency; and
29 (b) the ACNC officer is satisfied that the information will enable
30 or assist the Australian government agency to perform or
31 exercise any of the functions or powers of the agency; and

- 1 (c) the disclosure is for the purpose of enabling or assisting the
2 Australian government agency to perform or exercise any of
3 the functions or powers of the agency; and
4 (d) the disclosure is reasonably necessary to promote the objects
5 of this Act.

6 **150-45 Exception—disclosure or use with consent**

7 An ACNC officer may disclose or use protected ACNC
8 information that relates to the affairs of an entity if:

- 9 (a) the entity has consented to the disclosure for a purpose; and
10 (b) the disclosure or use is for that purpose.

11 **150-50 Exception—disclosure of information lawfully made**
12 **available to the public**

13 An ACNC officer may disclose protected ACNC information if:

- 14 (a) the information has already been lawfully made available to
15 the public; and
16 (b) the disclosure is for the purposes of this Act.

17 **Subdivision 150-D—On-disclosure of protected ACNC**
18 **information**

19 **150-55 Offence—on-disclosure of protected ACNC information**

- 20 (1) An entity commits an offence if:
21 (a) the entity acquires protected ACNC information; and
22 (b) the entity acquired the protected ACNC information
23 otherwise than as an ACNC officer; and
24 (c) the acquisition occurred because of a disclosure or use of the
25 protected ACNC information under an exception in
26 Subdivision 150-C, or section 150-60, for a purpose specified
27 in that exception; and
28 (d) the entity:
29 (i) discloses the protected ACNC information to another
30 entity (other than an entity covered by subsection (2));
31 or
-

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1 (ii) uses the protected ACNC information.

2 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

3 (2) This subsection covers the following entities:

4 (a) the entity to whom the information relates;

5 (b) if the entity to whom the information relates has an agent in
6 relation to the information—the agent;

7 (c) if the entity to whom the information relates is a registered
8 entity—a responsible entity of that registered entity.

9 (3) Sections 150-60 and 150-65 provide for exceptions to the
10 prohibition in subsection (1).

11 Note: A defendant bears an evidential burden in relation to a matter in this
12 subsection (see subsection 13.3(3) of the *Criminal Code*).

13 **150-60 Exception—on-disclosure or use for the purpose of the**
14 **original exception**

15 (1) An entity may disclose or use protected ACNC information if:

16 (a) the information was originally disclosed under an exception
17 in Subdivision 150-C or this Subdivision for a purpose
18 specified in that exception (the *original purpose*); and

19 (b) the disclosure or use is made by the entity for the original
20 purpose, or in connection with the original purpose.

21 (2) Without limiting subsection (1), treat the disclosure or use as being
22 in connection with the original purpose if:

23 (a) the disclosure is to, or the use is for, any entity, court or
24 tribunal; and

25 (b) the disclosure or use is for the purpose of criminal, civil or
26 administrative proceedings (including merits review or
27 judicial review) that are related to the original purpose.

28 **150-65 Exception—on-disclosure of information lawfully made**
29 **available to the public**

30 An entity may disclose protected ACNC information if the
31 information has already been lawfully made available to the public.
32

1 **Part 7-2—Review and appeals**

2 **Division 155—Preliminary**

3 **155-5 Application of this Part**

4 (1) This Part applies if a provision of this Act or of the regulations
5 provides that an entity that is dissatisfied with a decision may
6 object against it in the manner set out in this Part.

7 (2) Such a decision is called an *administrative decision*.

8 **155-10 Decisions covered by single notice to be treated as single**
9 **decision**

10 If:

11 (a) a provision of this Act or of the regulations provides that an
12 entity that is dissatisfied with a decision may object against it
13 in the manner set out in this Part; and

14 (b) a notice incorporates notice of 2 or more such administrative
15 decisions;

16 then, for the purposes of the provision and of this Part, the
17 administrative decisions are taken to be one decision.
18

1 **Division 160—Objections**

2 **160-5 How objections are to be made**

3 The entity making the objection must:

- 4 (a) make it in the approved form; and
5 (b) lodge it with the Commissioner within the review period (see
6 section 160-10); and
7 (c) state in it, fully and in detail, the grounds on which the entity
8 relies.

9 **160-10 When objection is to be made**

- 10 (1) The entity must lodge the objection within the period of 60 days
11 (the *review period*) after notice of the administrative decision has
12 been served on the entity.

13 *Late lodgement*

- 14 (2) If the review period has passed, the entity may nevertheless lodge
15 the objection with the Commissioner together with a written
16 request asking the Commissioner to deal with the objection as if it
17 had been lodged within the review period.
- 18 (3) The request must state fully and in detail the circumstances
19 concerning, and the reasons for, the entity's failure to lodge the
20 objection with the Commissioner within the review period.
- 21 (4) After considering the request, the Commissioner must decide
22 whether to agree to it or refuse it.
- 23 (5) The Commissioner must give the entity written notice of the
24 Commissioner's decision under subsection (4).
- 25 (6) If the Commissioner decides to agree to the request, then the
26 objection is treated as having been lodged within the review
27 period.
- 28 (7) If the Commissioner decides to refuse the request, the entity may
29 apply to the Administrative Appeals Tribunal for review of the
30 extension of time refusal decision.
-

1 **160-15 Commissioner to decide objections**

- 2 (1) The Commissioner must decide whether to:
3 (a) allow the objection, wholly or in part; or
4 (b) disallow it;
5 if the entity has complied with section 160-5.
6 (2) Such a decision is called an *objection decision*.
7 (3) The Commissioner must cause to be served on the entity written
8 notice of the Commissioner's objection decision.

9 **160-20 Entity may require Commissioner to make an objection**
10 **decision**

- 11 (1) The entity may give the Commissioner a written notice requiring
12 the Commissioner to make an objection decision, if:
13 (a) the objection has been lodged with the Commissioner within
14 the review period; and
15 (b) the Commissioner has not made an objection decision by the
16 later of:
17 (i) the end of the period (the *original 60-day period*) of 60
18 days after the day (the *objection day*) on which the
19 objection is lodged with the Commissioner; and
20 (ii) if the Commissioner, by written notice served on the
21 entity within the original 60-day period, requires the
22 entity to give information relating to the objection—the
23 end of the period of 60 days after the Commissioner
24 receives that information.
25 (2) Treat the reference in subparagraph (1)(b)(i) to the objection day as
26 being a reference to the day on which the Commissioner decides
27 under subsection 160-10(6) to agree to a request in relation to the
28 objection, if the Commissioner does so after the objection day.
29 (3) The Commissioner is taken, at the end of the period of 60 days
30 after being given the notice under subsection (1), to have made a
31 decision under subsection 160-15(1) to disallow the objection, if
32 the Commissioner has not made an objection decision by the end
33 of that period.

Section 160-25

1 **160-25 Entity may seek review of, or appeal against,**
2 **Commissioner's decision**

3 If the entity is dissatisfied with the Commissioner's objection
4 decision, the entity may either:

- 5 (a) apply to the Administrative Appeals Tribunal for review of
6 the objection decision; or
7 (b) appeal against the objection decision to a designated court.
8

1 **Division 165—AAT review of objection decisions and**
2 **extension of time refusal decisions**

3 **165-5 Modified AAT Act to apply**

4 The AAT Act applies in relation to:

- 5 (a) the review of objection decisions; and
6 (b) the review of extension of time refusal decisions; and
7 (c) AAT extension applications;

8 subject to the modifications set out in this Division.

9 **165-10 Sections 27, 41 and 44A of the AAT Act not to apply to**
10 **certain decisions**

11 (1) Sections 27 (Persons who may apply to Tribunal) and 41
12 (Operation and implementation of a decision that is subject to
13 review) of the AAT Act do not apply in relation to:

- 14 (a) an objection decision; or
15 (b) an extension of time refusal decision.

16 (2) Section 44A of the AAT Act (Operation and implementation of a
17 decision that is subject to appeal) does not apply in relation to an
18 objection decision.

19 **165-15 Modification of section 29 of the AAT Act**

20 Section 29 of the AAT Act (Manner of applying for review)
21 applies in relation to an objection decision as if subsections (1) to
22 (6) (inclusive) of that section were omitted and the following
23 subsection were substituted:

- 24 “(1) An application to the Tribunal for a review of a decision:
25 (a) must be in writing; and
26 (b) may be made in accordance with the prescribed form; and
27 (c) must set out a statement of the reasons for the application;
28 and

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- 1 (d) must be lodged with the Tribunal within 60 days after the
2 person making the application is served with notice of the
3 decision.”.

4 **165-20 Modification of section 30 of the AAT Act**

5 Section 30 of the AAT Act (Parties to proceeding before Tribunal)
6 applies in relation to an objection decision or an extension of time
7 refusal decision as if subsection (1A) of that section were omitted
8 and the following subsection were substituted:

9 “(1A) If an application has been made by a person to the Tribunal for the
10 review of an objection decision (within the meaning of the
11 *Australian Charities and Not-for-profits Commission Act 2012*) or
12 an extension of time refusal decision (within the meaning of that
13 Act):

- 14 (a) any other person whose interests are affected by the decision
15 may apply, in writing, to the Tribunal to be made a party to
16 the proceeding; and
17 (b) the Tribunal may, in its discretion, by order, if it is satisfied
18 that the person making the application consents to the order,
19 make that person a party to the proceeding.”.

20 **165-25 Modification of section 37 of the AAT Act**

- 21 (1) Section 37 of the AAT Act (Lodging of material documents with
22 Tribunal) applies in relation to an application for review of an
23 objection decision as if:
24 (a) the requirement in subsection (1) of that section to lodge with
25 the Tribunal such numbers of copies as is prescribed of
26 statements or other documents were instead a requirement to
27 lodge with the Tribunal such numbers of copies as is
28 prescribed of:
29 (i) a statement giving the reasons for the objection
30 decision; and
31 (ii) the notice of the administrative decision concerned; and
32 (iii) the objection concerned; and
33 (iv) the notice of the objection decision; and

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- 1 (v) every other document that is in the Commissioner's
2 possession or under the Commissioner's control and is
3 considered by the Commissioner to be necessary to the
4 review of the objection decision concerned; and
5 (vi) a list of the documents (if any) being lodged under
6 subparagraph (v); and
7 (b) the power of the Tribunal under subsection (2) of that section
8 to cause a notice to be served containing a statement and
9 imposing a requirement on a person were instead:
10 (i) a power to make such a statement and impose such a
11 requirement orally at a conference held in accordance
12 with subsection 34A(1) of the AAT Act; and
13 (ii) a power, by such a notice, to make such a statement and
14 impose a requirement that the person lodge with the
15 Tribunal, within the time specified in the notice, the
16 prescribed number of copies of each of those other
17 documents that is in the person's possession or under
18 the person's control; and
19 (iii) a power, by such a notice, to make such a statement and
20 impose a requirement that the person lodge with the
21 Tribunal, within the time specified in the notice, the
22 prescribed number of copies of a list of the documents
23 in the person's possession or under the person's control
24 considered by the person to be relevant to the review of
25 the objection decision concerned.
26 (2) Paragraph (1)(b) does not affect any powers that the
27 Administrative Appeals Tribunal has apart from that paragraph.
28 (3) The imposition of a requirement covered by
29 subparagraph (1)(b)(iii) does not prevent the subsequent imposition
30 of a requirement covered by subparagraph (1)(b)(ii).

31 **165-30 Modification of section 38 of the AAT Act**

32 Section 38 of the AAT Act (Power of Tribunal to obtain additional
33 statements) applies in relation to an application for a review of an
34 objection decision as if the reference to paragraph 37(1)(a) of that

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1 Act were instead a reference to subparagraph 165-25(1)(a)(i) of
2 this Act.

3 **165-35 Modification of section 43 of the AAT Act**

4 Section 43 of the AAT Act (Tribunal’s decision on review) applies
5 in relation to:

- 6 (a) a review of an objection decision; and
7 (b) a review of an extension of time refusal decision; and
8 (c) an AAT extension application;

9 as if the following subsections were inserted after subsection (2B):

10 “(2C) If a hearing of a proceeding for the review of a decision or an AAT
11 extension application (within the meaning of the *Australian*
12 *Charities and Not-for-profits Commission Act 2012*) is not
13 conducted in public, that fact does not prevent the Tribunal from
14 publishing its reasons for the decision.

15 “(2E) In subsection (2C):

16 *reasons for decision* includes findings on material questions of fact
17 and references to the evidence or other material on which those
18 findings were based.”.

19 **165-40 Grounds of objection and burden of proof**

20 On an application for review of an objection decision:

- 21 (a) the applicant is, unless the Administrative Appeals Tribunal
22 orders otherwise, limited to the grounds stated in the
23 objection to which the objection decision relates; and
24 (b) the applicant has the burden of proving that the
25 administrative decision concerned should not have been
26 made or should have been made differently.

27 **165-45 Implementation of Tribunal decisions**

28 (1) When the decision of the Administrative Appeals Tribunal on the
29 review of an objection decision or an extension of time refusal
30 decision becomes final, the Commissioner must, within 60 days,

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1 take such action as is necessary to give effect to the Tribunal's
2 decision.

3 (2) For the purposes of subsection (1), if no appeal is lodged against
4 the Tribunal's decision within the period for lodging an appeal, the
5 Tribunal's decision becomes final at the end of the period.

6 **165-50 Pending review not to affect implementation of**
7 **administrative decisions**

8 The fact that a review is pending in relation to an administrative
9 decision does not in the meantime interfere with, or affect, the
10 administrative decision and any tax, additional tax or other amount
11 may be recovered as if no review were pending.

12 **165-55 Reviews may be combined**

13 (1) This section applies if:

14 (a) an entity may apply to the Administrative Appeals Tribunal
15 for review of:

16 (i) an objection decision; and

17 (ii) one or more other decisions (whether or not of the
18 Commissioner); and

19 (b) the decisions are related, or it would be efficient for the
20 Tribunal to consider the decisions together.

21 (2) Subject to the requirements of this Act or any other law relating to
22 review of the decisions:

23 (a) the entity may apply for review of the decisions together; and

24 (b) the Administrative Appeals Tribunal may deal with the
25 decisions together.
26

Section 170-5

1 **Division 170—Court appeals against objection decisions**

2 **170-5 Time limit for appeals**

3 An appeal to a court against an objection decision must be lodged
4 with the court within 60 days after the entity appealing is served
5 with notice of the decision.

6 **170-10 Grounds of objection and burden of proof**

7 In proceedings on an appeal under section 160-25 to a court against
8 an objection decision:

- 9 (a) the appellant is, unless the court orders otherwise, limited to
10 the grounds stated in the objection to which the objection
11 decision relates; and
12 (b) the appellant has the burden of proving that the
13 administrative decision concerned should not have been
14 made or should have been made differently.

15 **170-15 Order of court on objection decision**

16 Where a court hears an appeal against an objection decision under
17 section 160-25, the court may make such order in relation to the
18 decision as it thinks fit, including an order confirming or varying
19 the objection decision.

20 **170-20 Implementation of court order in respect of objection
21 decision**

- 22 (1) When the order of the court in relation to the objection decision
23 becomes final, the Commissioner must, within 60 days, take such
24 action as is necessary to give effect to the objection decision.
- 25 (2) For the purposes of subsection (1):
- 26 (a) if no appeal is lodged against the order within the period for
27 lodging an appeal—the order becomes final at the end of the
28 period; or
- 29 (b) if the only possible appeal against the order is appeal to the
30 High Court with special leave, and no application for special

1 leave is made within the period of 30 days after the order is
2 made—the order becomes final at the end of the period.

3 **170-25 Pending appeal not to affect implementation of**
4 **administrative decisions**

5 The fact that an appeal is pending in relation to an administrative
6 decision does not in the meantime interfere with, or affect, the
7 administrative decision and any tax, additional tax or other amount
8 may be recovered as if no appeal were pending.

9 **170-30 Appeals may be combined**

- 10 (1) This section applies if:
- 11 (a) an entity may appeal to a designated court against:
 - 12 (i) an objection decision; and
 - 13 (ii) one or more other decisions of Australian government
14 agencies (whether or not the Commissioner); and
 - 15 (b) the decisions are related, or it would be efficient for the court
16 to consider the decisions together.
- 17 (2) Subject to the requirements of this Act or any other law relating to
18 appeals against the decisions:
- 19 (a) the entity may appeal against the decisions together; and
 - 20 (b) the court may deal with the decisions together.
- 21

1 **Part 7-3—Penalties**

2 **Division 175—Administrative penalties**

3 **Subdivision 175-A—Overview**

4 **175-1 Simplified outline**

5 The following is a simplified outline of this Division:

6 Subdivision 175-B sets out the circumstances in which
7 administrative penalties apply for making false or misleading
8 statements. It also sets out the amounts of those penalties.

9 An entity is liable to an administrative penalty if the entity is
10 required to give a report, return, notice, statement or other
11 document to the Commissioner by a particular time and the entity
12 does not do so. Subdivision 175-C sets out when the penalty
13 applies and how the amounts of the penalty are calculated.

14 **Subdivision 175-B—Penalties for statements**

15 **175-5 Application of this Subdivision to statements**

- 16 (1) This Subdivision applies to a statement made orally, in a
17 document, or in any other way (including electronically) for a
18 purpose connected with this Act.
- 19 (2) This Subdivision applies to a statement made by an entity's agent
20 as if it had been made by the entity.

21 **175-10 Penalty for false or misleading statements**

- 22 (1) An entity is liable to an administrative penalty if:
23 (a) the entity makes a statement to the Commissioner or to an
24 entity that is exercising powers or performing functions
25 under this Act; and

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1 (b) the statement is false or misleading in a material particular,
2 whether because of things in it or omitted from it.

3 Note: This section applies to a statement made by an entity's agent as if it
4 had been made by the entity (see subsection 175-5(2)).

- 5 (2) An entity is liable to an administrative penalty if:
6 (a) the entity makes a statement to an entity other than:
7 (i) the Commissioner; or
8 (ii) an entity exercising powers or performing functions
9 under this Act; and
10 (b) the statement is, or purports to be, one required or permitted
11 by this Act; and
12 (c) the statement is false or misleading in a material particular,
13 whether because of things in it or omitted from it.

14 *Exception for reasonable care*

- 15 (3) The entity is not liable to an administrative penalty under this
16 section if the entity, and the entity's agent (if relevant), took
17 reasonable care in connection with the making of the statement.

18 **175-15 Amount of penalty**

19 *Base penalty amount*

- 20 (1) Work out the base penalty amount under section 175-20.

21 *Adjustments*

- 22 (2) Increase the amount in accordance with section 175-25.
23 (3) Decrease the amount in accordance with section 175-30.

24 *Amount of penalty*

- 25 (4) The result is the amount of the penalty.

Section 175-20

1 **175-20 Base penalty amount**

2 (1) The *base penalty amount* under this Subdivision is worked out
3 using this table:

4

Base penalty amount

| Item | Column 1 If the entity is liable to a penalty under section 175-10 in relation to a statement that was false or misleading because of: | Column 2 the base penalty amount is: |
|------|---|---|
| 1 | intentional disregard of this Act by the entity or its agent | 60 penalty units |
| 2 | recklessness by the entity or its agent as to the operation of this Act | 40 penalty units |
| 3 | a failure by the entity or its agent to take reasonable care to comply with this Act | 20 penalty units |

5 (2) If 2 or more items in that table apply and one of them produces a
6 greater base penalty amount than any of the others, use that item.

7 (3) If, apart from this subsection, the entity would have a base penalty
8 amount because the entity or its agent treated this Act as applying
9 in a particular way, and that way agreed with:

10 (a) advice given to the entity or its agent by or on behalf of the
11 Commissioner; or

12 (b) general administrative practice under this Act; or

13 (c) a statement in a publication approved in writing by the
14 Commissioner;

15 the base penalty amount is reduced to the extent that it was caused
16 by that treatment.

17 **175-25 Increase in penalty**

18 Increase the amount by 20% of the base penalty amount if:

19 (a) the entity took steps to prevent or obstruct the Commissioner
20 from finding out about the false or misleading nature of the
21 relevant statement; or

22 (b) the entity:

- 1 (i) became aware of the false or misleading nature of the
2 relevant statement made to the Commissioner or another
3 entity after the statement had been made; and
4 (ii) did not tell the Commissioner or other entity about it
5 within a reasonable time; or
6 (c) the entity had previously been liable to a penalty under this
7 Subdivision.

8 **175-30 Reduction of penalty if entity voluntarily tells the**
9 **Commissioner**

- 10 (1) Reduce the amount by 20% of the base penalty amount if:
11 (a) the Commissioner tells the entity that an examination is to be
12 made of the entity's affairs relating to this Act; and
13 (b) *after* that time, the entity voluntarily tells the Commissioner,
14 in the approved form, about the false or misleading nature of
15 the relevant statement; and
16 (c) telling the Commissioner can reasonably be estimated to
17 have saved the Commissioner a significant amount of time or
18 significant resources in the examination.
- 19 (2) Reduce the amount to nil if the entity voluntarily tells the
20 Commissioner, in the approved form, about the false or misleading
21 nature of the relevant statement *before*:
22 (a) the day the Commissioner tells the entity that an examination
23 is to be made of the entity's affairs relating to this Act; or
24 (b) if the Commissioner makes a public statement requesting
25 entities to make a voluntary disclosure by a particular earlier
26 day about a matter that applies to its affairs—that earlier day.
- 27 (3) If the entity voluntarily tells the Commissioner, in the approved
28 form, about the false or misleading nature of the statement *after* the
29 Commissioner tells the entity that an examination is to be
30 conducted of the entity's affairs relating to this Act, the
31 Commissioner may treat the entity as having done so *before* being
32 told about the examination if the Commissioner considers it
33 appropriate to do so in the circumstances.

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1 **Subdivision 175-C—Penalties for failing to lodge documents on**
2 **time**

3 **175-35 Liability to penalty**

4 An entity is liable to an administrative penalty if:

- 5 (a) the entity is required under this Act to give a report, return,
6 notice, statement or other document to the Commissioner in
7 the approved form by a particular day; and
8 (b) the entity does not give the report, return, notice, statement or
9 document to the Commissioner in the approved form by that
10 day.

11 **175-40 Amount of penalty**

12 (1) The amount of the penalty is:

- 13 (a) if the entity is a medium registered entity—double the base
14 penalty amount; or
15 (b) if the entity is a large registered entity—5 times the base
16 penalty amount; or
17 (c) otherwise—the base penalty amount.

18 (2) The **base penalty amount** under this Subdivision is 1 penalty unit
19 for each period of 28 days or part of a period of 28 days:

- 20 (a) starting on the day when the report, return, notice, statement
21 or other document is due; and
22 (b) ending when the entity gives it;
23 (up to a maximum of 5 penalty units).

24 Note: See section 4AA of the *Crimes Act 1914* for the current value of a
25 penalty unit.

26 Example: An entity lodges a return 31 days late. The base penalty amount under
27 subsection (2) is 2 penalty units.

28 (3) In working out the base penalty amount, the amount of a penalty
29 unit is the amount applying at the start of the relevant 28-day
30 period.

31 (4) The fact that the entity has not yet given the relevant report, return,
32 notice or other document does not prevent the Commissioner

1 notifying the entity that it is liable to an administrative penalty
2 under this Subdivision. That penalty may be later increased under
3 this section.

4 Note: The Commissioner is required to notify the entity of an administrative
5 penalty (see section 175-50).

6 **Subdivision 175-D—Machinery provisions for administrative**
7 **penalties**

8 **175-45 Scope of Subdivision**

9 This Subdivision applies if an administrative penalty is imposed on
10 an entity by another provision of this Act.

11 **175-50 Notification of liability**

12 The Commissioner must give written notice to the entity of the
13 entity's liability to pay the penalty and of the reasons why the
14 entity is liable to pay the penalty. The Commissioner may do so in
15 any other notice he or she gives to the entity. The Commissioner is
16 not required to give reasons if he or she decides to remit all of the
17 penalty.

18 Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about
19 the contents of a statement of reasons.

20 **175-55 Due date for penalty**

21 The penalty becomes due to the Commonwealth for payment on
22 the day specified in the notice, which must be at least 14 days after
23 the notice is given to the entity.

24 **175-60 Remission of penalty**

- 25 (1) The Commissioner may remit all or a part of the penalty.
26 (2) If the Commissioner decides:
27 (a) not to remit the penalty; or
28 (b) to remit only part of the penalty;

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1 the Commissioner must give written notice of the decision and the
2 reasons for the decision to the entity.

3 Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about
4 the contents of a statement of reasons.

5 (3) If:

6 (a) the Commissioner refuses to any extent to remit an amount of
7 penalty; and

8 (b) the amount of penalty payable after the refusal is more than 2
9 penalty units; and

10 Note: See section 4AA of the *Crimes Act 1914* for the current value of
11 a penalty unit.

12 (c) the entity is dissatisfied with the decision;

13 the entity may object against the decision in the manner set out in
14 Part 7-2.

15 **175-65 General interest charge on unpaid penalty**

16 If any of the penalty remains unpaid after it is due, the entity is
17 liable to pay the general interest charge (within the meaning of the
18 *Taxation Administration Act 1953*) on the unpaid amount of the
19 penalty for each day in the period that:

20 (a) started at the beginning of the day by which the amount was
21 due to be paid; and

22 (b) finishes at the end of the last day, at the end of which, any of
23 the following remains unpaid:

24 (i) the amount;

25 (ii) general interest charge on any of the amount.

26 Note: The general interest charge is worked out under Part IIA of the
27 *Taxation Administration Act 1953*.

28 **175-70 Collection of penalty by Commissioner of Taxation**

29 (1) For the purposes of Part IIB of the *Taxation Administration Act*
30 *1953* (Running balance accounts, application of payments and
31 credits, and related matters):

32 (a) treat the penalty in the same way as a primary tax debt; and

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1 (b) treat general interest charge (if any) under section 175-65 in
2 respect of the penalty in the same way as a primary tax debt.

3 Note: This allows the Commissioner of Taxation to add the penalty to an
4 entity's running balance account.

5 (2) For the purposes of Chapter 4 in Schedule 1 to the *Taxation*
6 *Administration Act 1953* (Generic collection and recovery rules):

7 (a) treat the penalty in the same way as a tax-related liability;
8 and

9 (b) treat general interest charge (if any) under section 175-65 in
10 respect of the penalty in the same way as a tax-related
11 liability.

12 Note 1: When the penalty is due and payable (see section 175-55), it is a debt
13 due to the Commonwealth and payable to the Commissioner of
14 Taxation (see section 255-5 in Schedule 1 to the *Taxation*
15 *Administration Act 1953*).

16 Note 2: For exceptions to the duty to pursue recovery of a debt, see section 47
17 of the *Financial Management and Accountability Act 1997*.

18 (3) If the Commissioner gives an entity a written notice under
19 section 175-50, the Commissioner must notify the Commissioner
20 of Taxation that he or she has done so.

21 (4) If the Commissioner later remits all or a part of the penalty under
22 section 175-60, the Commissioner must notify the Commissioner
23 of Taxation that he or she has done so.

24 (5) The Commissioner of Taxation must notify the Commissioner of
25 any action taken to recover a debt attributable to the penalty, if the
26 Commissioner requests the Commissioner of Taxation in writing to
27 do so.
28

Section 180-1

1 **Part 7-4—Application of this Act to entities**

2 **Division 180—Obligations, liabilities and offences**

3 **Subdivision 180-A—Overview**

4 **180-1 Simplified outline**

5 The following is a simplified outline of this Division:

6

| |
|---|
| 7 If an entity is subject to an obligation or liability, or commits an 8 offence, certain entities that are responsible for managing the entity 9 may also be subject to the obligation or liability, or commit the offence, in specific situations. |
|---|

10 **Subdivision 180-B—Unincorporated associations and bodies of**
11 **persons**

12 **180-5 Obligations and liabilities**

13 *Obligations*

14 (1) Subject to subsection (2), an obligation that is imposed under this
15 Act on a company that is an unincorporated association or body of
16 persons is imposed on each individual who was a director of the
17 association or body at the time the obligation arose, but may be
18 discharged by any such individual.

19 *Liabilities*

20 (2) An amount that is payable under this Act by a company that is an
21 unincorporated association or body of persons is payable by each
22 individual who was a director of the association or body at the time
23 the amount became payable.

24 (3) If an amount is payable under this section by more than one entity,
25 those entities are jointly and severally liable to pay the amount.

1 **180-10 Offences**

- 2 (1) An offence against this Act committed by a company that is an
3 unincorporated association or body of persons is taken to have
4 been committed by each individual who was a director of the body
5 or association at the time the body or association committed the
6 offence.
- 7 (2) Despite subsection (1), the offence is taken to have been
8 committed by a director under that subsection only if the director:
9 (a) aided, abetted, counselled or procured the relevant act or
10 omission; or
11 (b) was in any way knowingly concerned in, or party to, the
12 relevant act or omission (whether directly or indirectly and
13 whether by any act or omission of the director).
- 14 (3) Subsection (1) does not apply in respect of a director if
15 section 180-15 applies to the director.

16 Note: A defendant bears an evidential burden in relation to the matter in this
17 subsection (see subsection 13.3(3) of the *Criminal Code*).

18 **180-15 Offences—defences**

19 *Illness*

- 20 (1) This section applies to a director if, because of illness or for some
21 other good reason, it would have been unreasonable to expect the
22 director to take part, and the director did not take part, in the
23 management of the association or body at any time when:
24 (a) the director was a director of the association or body; and
25 (b) the offence was committed.

26 *All reasonable steps*

- 27 (2) This section applies to a director if:
28 (a) the director took all reasonable steps to ensure that the
29 association or body did not commit the offence; or
30 (b) there were no such steps that the director could have taken.

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- 1 (3) In determining what are reasonable steps for the purposes of
2 subsection (2), have regard to:
3 (a) when, and for how long, the director was a director of the
4 association or body; and
5 (b) all other relevant circumstances.

6 **Subdivision 180-C—Trusts**

7 **180-20 Obligations and liabilities**

8 *Obligations*

- 9 (1) Subject to subsection (2), an obligation that is imposed under this
10 Act on a trust is imposed on each of the following entities, but may
11 be discharged by any such entity:
12 (a) each entity (whether an individual or a company that is a
13 body corporate) that was a trustee of the trust at the time the
14 obligation arose;
15 (b) if the trustee, or one or more of the trustees, mentioned in
16 paragraph (a) is a company that is a body corporate—each
17 individual who was a director of such a company at the time
18 the obligation arose.

19 *Liabilities*

- 20 (2) An amount that is payable under this Act by a trust is payable by
21 each of the following entities:
22 (a) each entity (whether an individual or a company that is a
23 body corporate) that was a trustee of the trust at the time the
24 amount became payable;
25 (b) if the trustee, or one or more of the trustees, mentioned in
26 paragraph (a) is a company that is a body corporate—each
27 individual who was a director of such a company at the time
28 the amount became payable.
- 29 (3) An amount is payable by a director under paragraph (2)(b) only if
30 the amount is payable by the trust because of a deliberate act or
31 omission of the director involving dishonesty, gross negligence or
32 recklessness.

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- 1 (4) If an amount is payable under this section by more than one entity,
2 those entities are jointly and severally liable to pay the amount.
- 3 (5) For the purpose of ensuring the payment of an amount payable
4 under this section by an entity mentioned in paragraph (2)(a) or (b),
5 the Commissioner of Taxation has the same remedies against the
6 property of the trust as the Commissioner of Taxation would have
7 against the property of the entity.

8 **180-25 Offences**

9 An offence against this Act committed by a trust no trustee of
10 which is a body corporate is taken to have been committed by each
11 entity that was a trustee of the trust at the time the trust committed
12 the offence.

13 **Subdivision 180-D—Bodies corporate**

14 **180-30 Liabilities**

- 15 (1) An amount that is payable under this Act by a company that is a
16 body corporate is payable by each of the following entities:
17 (a) the body corporate;
18 (b) each individual who was a director of the body corporate at
19 the time the amount became payable;
20 if, at the time the amount became payable, the body corporate was
21 a registered entity.
- 22 (2) An amount is payable by a director under paragraph (1)(b) only if
23 the amount is payable by the body corporate because of a
24 deliberate act or omission of the director involving dishonesty,
25 gross negligence or recklessness.
- 26 (3) If an amount is payable under this section by more than one entity,
27 those entities are jointly and severally liable to pay the amount.

Section 180-35

1 **Subdivision 180-E—Rights of indemnity and contribution**

2 **180-35 Rights of indemnity and contribution**

- 3 (1) This section applies if:
- 4 (a) an amount is payable under section 180-5, 180-20 or 180-30
5 by 2 or more entities (the *jointly liable entities*); and
- 6 (b) one of the jointly liable entities (the *paying entity*) pays that
7 amount; and
- 8 (c) the paying entity is not the company that is an unincorporated
9 association or body of persons, the trust, or the company that
10 is a body corporate, mentioned in that section (the *primary*
11 *entity*).
- 12 (2) The paying entity has the same rights (whether by way of
13 indemnity, subrogation, contribution or otherwise) against anyone
14 else as if:
- 15 (a) the paying entity made the payment under a guarantee of the
16 liability of the primary entity to pay the amount; and
- 17 (b) under the guarantee:
- 18 (i) the paying entity; and
- 19 (ii) every other entity (other than the primary entity) that is
20 or was liable to pay that amount under that section;
21 were jointly and severally liable as guarantors.
22

1 **Part 7-5—Constitutional matters**

2 **Division 185—Constitutional matters**

3 **185-5 Concurrent operation of State and Territory laws**

4 This Act is not intended to exclude or limit the operation of a law
5 of a State or Territory that is capable of operating concurrently
6 with this Act.

7 **185-10 Compensation for acquisition of property**

- 8 (1) If the operation of this Act would result in an acquisition of
9 property from a person otherwise than on just terms, the
10 Commonwealth is liable to pay a reasonable amount of
11 compensation to the person.
- 12 (2) If the Commonwealth and the person do not agree on the amount
13 of the compensation, the person may institute proceedings in a
14 designated court for the recovery from the Commonwealth of such
15 reasonable amount of compensation as the court determines.
- 16 (3) In this section:
- 17 *acquisition of property* has the same meaning as in paragraph
18 51(xxxi) of the Constitution.
- 19 *just terms* has the same meaning as in paragraph 51(xxxi) of the
20 Constitution.
- 21 (4) Any damages or compensation recovered or other remedy given in
22 a proceeding that is commenced otherwise than under this section
23 is to be taken into account in assessing compensation payable in a
24 proceeding that is commenced under this section and that arises out
25 of the same event or transaction.
26

1 **Part 7-6—Forms and regulations**

2 **Division 190—Requirements about giving material**

3 **Subdivision 190-A—Object of this Division**

4 **190-5 Object of this Division**

5 The object of this Division is to set out requirements to ensure the
6 integrity and efficiency of giving material to the Commissioner and
7 other entities.

8 **Subdivision 190-B—General provisions**

9 **190-10 Approved forms**

- 10 (1) A return, notice, statement, application or other document under
11 this Act is in the *approved form* if, and only if:
- 12 (a) it is in the form approved in writing by the Commissioner for
13 that kind of return, notice, statement, application or other
14 document; and
- 15 (b) it contains a declaration signed by an entity or entities as the
16 form requires (see section 190-35); and
- 17 (c) it contains the information that the form requires, and any
18 further information, statement or document as the
19 Commissioner requires, whether in the form or otherwise;
20 and
- 21 (d) for a return, notice, statement, application or document that is
22 required to be given to the Commissioner—it is given in the
23 manner that the Commissioner requires (which may include
24 electronically).
- 25 (2) Despite subsection (1), a document that satisfies paragraphs (1)(a),
26 (b) and (d) but not paragraph (1)(c) is also in the *approved form* if
27 it contains the information required by the Commissioner. The
28 Commissioner must specify the requirement in writing.
- 29 (3) The Commissioner may combine in the same approved form more
30 than one return, notice, statement, application or other document.

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- 1 (4) The Commissioner may approve a different approved form for
2 different entities.

3 Example: The Commissioner may require medium and large registered entities
4 to lodge a different annual information statement to that required to be
5 lodged by small registered entities.

6 **190-15 Commissioner may defer time for lodgement**

7 The Commissioner may defer the time within which an approved
8 form is required to be given to the Commissioner or to another
9 entity.

10 **190-20 Declaration by entity**

11 If an entity gives a return, notice, statement, application or other
12 document to the Commissioner in the approved form, the entity
13 must make a declaration in the approved form that any information
14 in the document is true and correct.

15 **190-25 Declaration by entity where agent gives document**

- 16 (1) If a return, notice, statement, application or other document of an
17 entity is to be given to the Commissioner in the approved form by
18 an agent on the entity's behalf, the entity must make a declaration
19 in writing:
20 (a) stating that the entity has authorised the agent to give the
21 document to the Commissioner; and
22 (b) declaring that any information the entity provided to the
23 agent for the preparation of the document is true and correct.
- 24 (2) The entity must give the declaration to the agent.
- 25 (3) The entity must retain the declaration or a copy of the declaration
26 for:
27 (a) 7 years after it is made; or
28 (b) a shorter period determined by the Commissioner in writing
29 for the entity; or
30 (c) a shorter period determined by the Commissioner by
31 legislative instrument for a class of entities that includes the
32 entity.
-

Section 190-30

- 1 (4) A determination under paragraph (3)(c) may specify different
2 periods for different classes of entities.
- 3 (5) The entity must produce the declaration or copy if requested to do
4 so within that period by the Commissioner.
- 5 (6) The agent must not give the document to the Commissioner before
6 the entity makes the declaration.
- 7 (7) The entity must sign the declaration.

8 **190-30 Declaration by agent**

9 If an agent gives a return, notice, statement, application or other
10 document to the Commissioner in the approved form on behalf of
11 another entity, the agent must, if the document so requires, make a
12 declaration in the approved form stating that:

- 13 (a) the document has been prepared in accordance with the
14 information supplied by the other entity; and
- 15 (b) the agent has received a declaration from the other entity
16 stating that the information provided to the agent is true and
17 correct; and
- 18 (c) the agent is authorised by the other entity to give the
19 document to the Commissioner.

20 **190-35 Signing declarations**

- 21 (1) An entity must sign a declaration in a return, notice, statement,
22 application or other document the entity gives to the Commissioner
23 in paper form.
- 24 (2) If an entity's agent gives a return, notice, statement, application or
25 other document to the Commissioner on the entity's behalf in paper
26 form, the document must contain:
- 27 (a) if the document so requires—a declaration made by the entity
28 with the entity's signature; and
- 29 (b) if the document so requires—a declaration made by the agent
30 with the agent's signature.

Section 190-35

- 1 (3) Any return, notice, statement, application or other document of an
2 entity's that is lodged electronically:
3 (a) if the entity gives it to the Commissioner—must contain the
4 entity's declaration (see section 190-20) with the entity's
5 electronic signature; or
6 (b) if the entity's agent gives it to the Commissioner—must
7 contain the agent's declaration (see section 190-30) with the
8 agent's electronic signature.
9

Section 195-5

1 **Division 195—Address for service**

2 **195-5 Address for service**

- 3 (1) An entity's address for service for the purposes of this Act is:
4 (a) a physical address in Australia; or
5 (b) a postal address in Australia; or
6 (c) an electronic address;
7 that the entity has given the Commissioner as the entity's address
8 for service for the purposes of this Act.
- 9 (2) If an entity has given the Commissioner more than one address for
10 service for the purposes of subsection (1), the entity's address for
11 service is such of those addresses as the Commissioner considers
12 reasonable in the circumstances.
- 13 (3) If an entity has not given the Commissioner an address for service,
14 the entity's address for service is the address that the
15 Commissioner reasonably believes to be the entity's address for
16 service for the purposes of this Act.

17 **195-10 How documents may be given**

- 18 (1) For the purposes of this Act, a document (however described) may
19 be given to an entity:
20 (a) in the manner specified in section 28A of the *Acts*
21 *Interpretation Act 1901*; or
22 (b) if the entity's address for service is an electronic address—by
23 sending it to that address; or
24 (c) if the entity is a company and a liquidator of the company has
25 been appointed—by leaving it at, or posting it to, the address
26 of the liquidator's office in the most recent notice of that
27 address lodged with ASIC; or
28 (d) if the entity is a company and an administrator of the
29 company has been appointed—by leaving it at, or posting it
30 to, the address of the administrator in the most recent notice
31 of that address lodged with ASIC.

Section 195-10

- 1 (2) Despite section 29 of the *Acts Interpretation Act 1901*, a document
2 under subsection (1) of this section is taken to be given at the time
3 the Commissioner leaves or posts it.
- 4 (3) This Division has effect despite paragraphs 9(1)(d) and (2)(d) of
5 the *Electronic Transactions Act 1999*.
6

1 **Division 200—Regulations**

2 **200-5 Regulations**

3 The Governor-General may make regulations prescribing matters:

4 (a) required or permitted by this Act to be prescribed; or

5 (b) necessary or convenient to be prescribed for carrying out or
6 giving effect to this Act.
7

1 **Chapter 8—Interpretation**

2 **Part 8-1—Core concepts**

3 **Division 205—Core concepts**

4 **Subdivision 205-A—Entities**

5 **205-5 Entities**

6 (1) **Entity** means any of the following:

- 7 (a) an individual;
- 8 (b) a body corporate;
- 9 (c) a body politic;
- 10 (d) any other unincorporated association or body of persons;
- 11 (e) a trust.

12 Note: The term **entity** is used in a number of different but related senses. It
13 covers all kinds of legal person. It also covers groups of legal persons,
14 and other things, that in practice are treated as having a separate
15 identity in the same way as a legal person does.

16 (2) Paragraph (1)(d) does not include a non-entity joint venture (within
17 the meaning of the *Income Tax Assessment Act 1997*).

18 (3) The trustee of a trust is taken to be an entity consisting of the
19 person who is the trustee, or the persons who are the trustees, at
20 any given time.

21 Note 1: This is because a right or obligation cannot be conferred or imposed
22 on an entity that is not a legal person.

23 Note 2: The entity that is the trustee of a trust does not change merely because
24 of a change in the person who is the trustee of the trust, or persons
25 who are the trustees of the trust.

26 (4) A legal person can have a number of different capacities in which
27 the person does things. In each of those capacities, the person is
28 taken to be a different entity.

29 Example: In addition to his or her personal capacity, an individual may be:

- 30 (a) sole trustee of one or more trusts; and
 - 31 (b) one of a number of trustees of a further trust.
-

Section 205-10

1 In his or her personal capacity, he or she is one entity. As trustee of
2 each trust, he or she is a different entity. The trustees of the further
3 trust are a different entity again, of which the individual is a member.

4 (5) If a provision refers to an entity of a particular kind, it refers to the
5 entity in its capacity as that kind of entity, not to that entity in any
6 other capacity.

7 Example: A provision that refers to a company does not cover a company in a
8 capacity as trustee, unless it also refers to a trustee.

9 **205-10 Companies**

10 In this Act:

11 *company* means:

- 12 (a) a body corporate; or
13 (b) any unincorporated association or body of persons;
14 but does not include a partnership.

15 **205-15 Federally regulated entity**

16 A *federally regulated entity* is:

- 17 (a) a constitutional corporation; or
18 (b) a trust, all of the trustees of which are constitutional
19 corporations; or
20 (c) a body corporate that is taken to be registered in a Territory
21 under section 119A of the *Corporations Act 2001*; or
22 (d) a trust, if the proper law of the trust and the law of the trust's
23 administration are the law of a Territory; or
24 (e) an entity, the core or routine activities of which are carried
25 out in or in connection with a Territory.

26 **205-20 Constitutional corporation**

27 An entity is a *constitutional corporation* if it is:

- 28 (a) a corporation to which paragraph 51(xx) of the Constitution
29 applies; or
30 (b) a body corporate that is incorporated in a Territory.

1 **Subdivision 205-B—Registered entities**

2 **205-25 Small, medium and large registered entities**

3 (1) A registered entity is a *small registered entity* for a particular
4 financial year if the revenue of the registered entity for the
5 financial year is less than \$250,000, or any other amount
6 prescribed by the regulations for the purposes of this subsection.

7 (2) A registered entity is a *medium registered entity* for a particular
8 financial year if:

9 (a) it is not a small registered entity for the financial year; and

10 (b) the revenue of the registered entity for the financial year is
11 less than \$1,000,000, or any other amount prescribed by the
12 regulations for the purposes of this paragraph.

13 (3) A registered entity is a *large registered entity* for a particular
14 financial year if it is not a small registered entity or a medium
15 registered entity for the financial year.

16 (4) Revenue is to be calculated for the purposes of this section in
17 accordance with accounting standards in force at the relevant time
18 (even if the standard does not otherwise apply to the financial year
19 of the registered entity concerned).

20 (5) The Commissioner may continue to treat a registered entity as
21 either a small, medium or large registered entity for a financial year
22 if the Commissioner is of the opinion that:

23 (a) the entity was a registered entity of that size for the previous
24 financial year; and

25 (b) the entity, while not being of that size for the current
26 financial year, is likely to return to that size during the next
27 financial year.

28 Note: For registered entities that form a reporting group, see section 60-105.

29 **205-30 Responsible entity**

30 Each of the following is a *responsible entity* of a registered entity:

31 (a) in the case of a registered entity that is a company—a
32 director of the registered entity;

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- 1 (b) in the case of a registered entity that is a trust—each of the
2 following:
3 (i) a trustee of the registered entity;
4 (ii) if a trustee of the registered entity is a body corporate—
5 a director of the trustee;
6 (c) a person who is any of the following:
7 (i) a trustee in bankruptcy of the registered entity;
8 (ii) a receiver, or receiver and manager, of the property of
9 the registered entity;
10 (iii) an administrator of the registered entity;
11 (iv) an administrator of a deed of company arrangement
12 executed by the registered entity;
13 (v) a liquidator of the registered entity;
14 (vi) a trustee or other entity administering a compromise or
15 arrangement made between the registered entity and
16 someone else.

17 **205-35 Basic religious charity**

- 18 (1) An entity is a *basic religious charity* if:
19 (a) the entity is a registered entity; and
20 (b) the entity is registered as the subtype of entity mentioned in
21 column 2 of item 3 of the table in subsection 25-5(5) (Entity
22 with a purpose that is the advancement of religion); and
23 (c) the entity is not entitled to be registered as any other subtype
24 of entity.
- 25 (2) However, an entity is not a *basic religious charity* if:
26 (a) the entity is a body corporate that is registered under the
27 *Corporations Act 2001*; or
28 (b) the entity is a corporation registered under the *Corporations*
29 *(Aboriginal and Torres Strait Islander) Act 2006*; or
30 (c) the entity is a corporation registered under the *Companies Act*
31 *1985* of Norfolk Island; or
32 (d) the entity is incorporated under any of the following:
33 (i) the *Associations Incorporation Act 2009* of New South
34 Wales;

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- 1 (ii) the *Associations Incorporation Act 1981* of Victoria;
2 (iii) the *Associations Incorporation Act 1981* of Queensland;
3 (iv) the *Associations Incorporation Act 1987* of Western
4 Australia;
5 (v) the *Associations Incorporation Act 1985* of South
6 Australia;
7 (vi) the *Associations Incorporation Act 1964* of Tasmania;
8 (vii) the *Associations Incorporation Act 1991* of the
9 Australian Capital Territory;
10 (viii) the *Associations Act 2010* of the Northern Territory;
11 (ix) the *Associations Incorporation Act 2005* of Norfolk
12 Island.
- 13 (3) An entity is also not a ***basic religious charity*** if it is a deductible
14 gift recipient.
- 15 (4) An entity is also not a ***basic religious charity*** at a time in a
16 financial year if the Commissioner has allowed it (together with
17 one or more other entities) to form part of a reporting group for the
18 year under section 60-95.
- 19 (5) An entity is also not a ***basic religious charity*** at a time if:
20 (a) the total of the grants (however described) (if any) it receives
21 from Australian government agencies in a financial year
22 exceeds \$100,000; and
23 (b) the financial year is:
24 (i) the financial year in which the time occurs; or
25 (ii) either of the previous 2 financial years.

26 **Subdivision 205-C—Other core concepts**

27 **205-40 Contribution**

- 28 A ***contribution*** to a registered entity is the provision of money,
29 property or any other benefit to the entity, and includes the
30 following:
31 (a) the provision by an individual of his or her time or reputation
32 to the entity;

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1
2
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(b) the provision by a government of tax concessions or other forms of government support to the entity.

1 **Part 8-2—Dictionary**

2 **Division 300—Dictionary**

3 **300-5 Dictionary**

4 In this Act:

5 *AAT Act* means the *Administrative Appeals Tribunal Act 1975*.

6 *AAT extension application* means an application under subsection
7 29(7) of the AAT Act that relates to a review of an objection
8 decision or an extension of time refusal decision.

9 *ABN* (short for Australian Business Number) has the meaning
10 given by the *Income Tax Assessment Act 1997*.

11 *Account* has the meaning given by subsection 125-5(1).

12 *accounting standards* has the same meaning as in the
13 *Corporations Act 2001*.

14 *ACNC* means the Australian Charities and Not-for-profits
15 Commission.

16 *ACNC officer* means:

- 17 (a) the Commissioner; or
18 (b) a member of the staff assisting the Commissioner as
19 mentioned in subsection 120-5(1).

20 *administrative decision* has the meaning given by subsection
21 155-5(2).

22 *Advisory Board* means the Advisory Board of the ACNC.

23 *approved form* has the meaning given by section 190-10.

24 *ASIC* means the Australian Securities and Investments
25 Commission.

26 *audit* means an audit conducted for the purposes of this Act.

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- 1 ***auditing standard*** has the same meaning as in the *Corporations*
2 *Act 2001*.
- 3 ***auditor's report*** means a report under section 60-45.
- 4 ***Australia*** includes the external Territories.
- 5 ***Australian government agency*** means:
6 (a) the Commonwealth, a State or a Territory; or
7 (b) an authority of the Commonwealth or of a State or a
8 Territory.
- 9 ***Australian law*** has the meaning given by the *Income Tax*
10 *Assessment Act 1997*.
- 11 ***base penalty amount***:
12 (a) under Subdivision 175-B, has the meaning given by
13 section 175-20; and
14 (b) under Subdivision 175-C, has the meaning given by
15 subsection 175-40(2).
- 16 ***basic religious charity*** has the meaning given by section 205-35.
- 17 ***Chair*** means the Chair of the Advisory Board.
- 18 ***Commissioner*** means the Commissioner of the ACNC.
- 19 ***company*** has the meaning given by section 205-10.
- 20 ***constitutional corporation*** has the meaning given by
21 section 205-20.
- 22 ***contribution*** has the meaning given by section 205-40.
- 23 ***damage***, in relation to data, includes damage by erasure of data or
24 addition of other data.
- 25 ***deductible gift recipient*** has the same meaning as in the *Income*
26 *Tax Assessment Act 1997*.
- 27 ***Deputy Chair*** means the Deputy Chair of the Advisory Board.
- 28 ***designated court*** means:
-

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- 1 (a) the Federal Court of Australia; or
2 (b) a Supreme Court of a State or Territory that has jurisdiction
3 in relation to matters arising under this Act.

4 **director**, of a company, means:

- 5 (a) if the company is incorporated—a director of the company,
6 or an individual who performs the duties of a director of the
7 company; or
8 (b) if the company is not incorporated—a member of the
9 committee of management of the company, or an individual
10 who performs the duties of such a member;
11 regardless of the name that is given to his or her position, or
12 whether or not he or she is validly appointed to occupy, or duly
13 authorised to act in, the position.

14 **electronic signature** of an entity means a unique identification of
15 the entity in electronic form that is approved by the Commissioner.

16 **enforceable**:

- 17 (a) a provision is **enforceable** under Division 90 if it is
18 mentioned in section 90-5; and
19 (b) a provision is **enforceable** under Division 95 if it is
20 mentioned in section 95-5.

21 **engage in conduct** means:

- 22 (a) do an act; or
23 (b) omit to perform an act.

24 **entity** has the meaning given by section 205-5.

25 **extension of time refusal decision** means a decision of the
26 Commissioner under subsection 160-10(4) to refuse a request by
27 an entity.

28 **external conduct standard** has the meaning given by
29 section 50-10.

30 **federally regulated entity** has the meaning given by
31 section 205-15.

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- 1 **former registered entity** means an entity that is not a registered
2 entity, but that used to be a registered entity.
- 3 **general member**, of the Advisory Board, has the meaning given by
4 section 135-10.
- 5 **governance standard** has the meaning given by section 45-10.
- 6 **governing rules**, of an entity, means written rules that:
7 (a) govern the establishment or operation of the entity; and
8 (b) can be enforced against the entity.
- 9 **individual assisting** an ACNC officer has the meaning given by
10 section 75-35.
- 11 **information statement** has the meaning given by section 60-5.
- 12 **issuing officer** means a magistrate or a Federal Magistrate.
- 13 **large registered entity** has the meaning given by section 205-25.
- 14 **lodge electronically**: a document is lodged electronically if it is
15 transmitted to the Commissioner in an electronic format approved
16 by the Commissioner.
- 17 **medium registered entity** has the meaning given by section 205-25.
- 18 **monitoring powers** has the meaning given by sections 75-20,
19 75-25 and 75-30.
- 20 **monitoring warrant** means a warrant issued under section 75-85.
- 21 **objection decision** has the meaning given by subsection 160-15(2).
- 22 **premises** includes the following:
23 (a) a structure, building, vehicle, vessel or aircraft;
24 (b) a place (whether or not enclosed or built on);
25 (c) a part of a thing mentioned in paragraph (a) or (b).
- 26 **protected ACNC information** has the meaning given by
27 section 150-15.

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- 1 **recognised assessment activity** has the meaning given by
2 section 55-10.
- 3 **Register** means the Australian Charities and Not-for-profits
4 Register mentioned in section 40-5.
- 5 **registered entity** means an entity that is registered under this Act.
- 6 **relevant data** has the meaning given by subsection 75-65(3).
- 7 **reporting group** has the meaning given by subsection 60-95(1).
- 8 **responsible entity** has the meaning given by section 205-30.
- 9 **review** means a review of a financial report conducted for the
10 purposes of this Act.
- 11 **reviewer**, in relation to a registered entity, means another entity
12 that, under subsection 60-30(1) or (2), can undertake a review of a
13 financial report of the registered entity.
- 14 **reviewer's report** means a report under section 60-50.
- 15 **review period** has the meaning given by subsection 160-10(1).
- 16 **small registered entity** has the meaning given by section 205-25.
- 17 **subject to monitoring:**
- 18 (a) a provision is **subject to monitoring** under Division 75 if
19 section 75-5 provides that it is subject to monitoring under
20 that Division; and
- 21 (b) information given in compliance or purported compliance
22 with a provision is **subject to monitoring** under Division 75
23 if section 75-10 provides that it is subject to monitoring
24 under that Division.
- 25 **taxation law** has the same meaning as in the *Income Tax*
26 *Assessment Act 1997*.