



Australian Government



Australian
Charities and
Not-for-profits
Commission

NOT-FOR-PROFIT REFORM AND THE AUSTRALIAN GOVERNMENT

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Not-for-profit Reform and the Australian Government

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About this guide

The Australian Charities and Not-for-profits Commission (ACNC) was established as the national independent regulator of charities on 3 December 2012. The establishment of the ACNC formed part of a broader program of reforms taking place at the Commonwealth level to support the not-for-profit (NFP) sector.

This guide provides a historical record of the Australian Government's not-for-profit reform agenda from 2010 until 1 September 2013. It does not include developments that occurred after the federal election on 7 September 2013. It draws together information from a variety of government sources, including the Australian Government's report [Strength, Innovation and Growth: The Future of Australia's Not-for-Profit Sector](#) (July 2012). This is the final version of the guide. Where possible, this guide includes links to further information. All links were current in September 2013.

This guide includes:

- a short account of '[who's who](#)' in the NFP reform agenda
- a table summarising the current status of the parts of the [NFP reform agenda](#)
- some [key statistics](#) about charities and not-for-profits in Australia
- [a brief overview of the ACNC](#) and [its relationship with other regulators](#)
- an overview of some of the [significant reviews](#) that have informed the NFP reform agenda, and
- short descriptions of the different parts of the [NFP reform agenda](#).

Only the Australian Government's reforms are covered in this guide in detail. Reforms by Australian state and territory governments and the work of international charities regulators are not discussed. Both state and territory and international reforms have, however, significantly influenced the Australian Government's reform agenda.

Who's who

This section outlines some of the principle individuals and organisations involved in the NFP reform agenda at the Australian Government level, whose roles are referred to throughout this guide. This guide discusses reforms made between January 2010 and August 2013.

Ministers

Assistant Treasurer: Minister responsible for the ACNC. At the time the federal election was held in September 2013, the position was held by [Hon David Bradbury MP](#). Minister Bradbury was preceded in the role by then [Senator Mark Arbib](#) and the [Hon Bill Shorten MP](#).

Minister for Social Inclusion: Previously, one of the Ministers responsible for the NFP reform agenda, last held by the [Hon Mark Butler MP](#). Minister Butler was preceded in the role by the [Hon Tanya Plibersek MP](#), and before that [Senator Ursula Stephens](#) was Parliamentary Secretary for Social Inclusion and the Voluntary Sector.

Government bodies

[Australian Bureau of Statistics](#) (ABS): Responsible for developing the 2012-2013 Nonprofit Institutions Satellite Account and measuring the NFP sector.

[Australian Charities and Not-for-profits Commission](#): The independent national regulator of charities, established by the ACNC Act (2012). This is a key plank of the NFP reform agenda. The ACNC was preceded by an Implementation Taskforce.

[Australian Taxation Office](#) (ATO): The responsible Commonwealth agency for administering taxation legislation, including determining the eligibility of NFPs for Commonwealth tax concessions. Previously, the ATO also determined charity status, which is now the responsibility of the ACNC.

[Department of Finance](#): Responsible for streamlining procurement, contracting and grant agreements.

[Office for the Not-for-Profit Sector](#): A unit within the Department of the Prime Minister and Cabinet that drives and coordinates the NFP reform agenda. It is also responsible for the [National Compact](#), the [National Volunteering Strategy](#) and [social investment](#) initiatives. It is the secretariat for the Not-for-Profit Sector Reform Council and the Interdepartmental Committee on Not-for-Profit Reform.

[Philanthropy and Exemptions Unit, Treasury](#): The part of the Treasury responsible for policy and law design in relation to taxation and NFP regulatory reform. It has been responsible for developing the ACNC Act.

Consultative Bodies

[Australian Social Inclusion Board](#): An independent board established by the Commonwealth Government in May 2008 to advise the government on its social inclusion agenda. Members are appointed by the Minister for Social Inclusion for a term of up to three years. The Social Inclusion Unit at the Department of the Prime Minister and Cabinet provides secretariat services for the board.

[Council of Australian Governments Not-for-Profit Reform Working Group](#): Responsible for reviewing, developing and recommending NFP regulatory reform options to COAG with the aim of developing effective regulation and reducing the regulatory burden where possible.

[Not-for-Profit Sector Reform Council](#): The Not-for-Profit Sector Reform Council was established by the Australian Government for a term of three years in December 2010. The Council provides advice to the Government on the NFP reform agenda, and the implementation of the National Compact.

Acronyms used

ABS	Australian Bureau of Statistics
ACNC	Australian Charities and Not-for-profits Commission
ACNC Act	The <i>Australian Charities and Not-for-profits Commission Act 2012 (Cth)</i>
AIS	Annual Information Statement
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
COAG	Council of Australian Governments
DGR	Deductible Gift Recipient
FBT	Fringe Benefits Tax
GST	Goods and Services Tax
HPC	Health Promotion Charity
NFP	Not-for-profit
NSCOA	National Standard Chart of Accounts
ORIC	Office of the Registrar of Indigenous Corporations
PAF	Private Ancillary Fund
PBI	Public Benevolent Institution
PPF	Prescribed Private Fund
PuAF	Public Ancillary Fund
SEDIF	Social Enterprise Development and Investment Fund
SBR	Standard Business Reporting

Snapshot of reforms (current as at August 2013)

The following table provides a summary of the reforms (explained in the hyperlinked text) and their current status.

Reform	Responsible agency	Current status
<i>Coordinated architecture</i>		
Office of the Not-for-Profit Sector <i>Drives and coordinates the NFP sector policy reform agenda</i>	Department of the Prime Minister and Cabinet	Established October 2010
Not-for-Profit Sector Reform Council <i>Independent advisory body to the Australian Government</i>	Office for the Not-for-Profit Sector, Department of the Prime Minister and Cabinet	Established December 2010
COAG Not-for-Profit Reform Working Group <i>Intergovernmental body examining NFP reforms</i>	Council of Australian Governments (COAG) Chair: Commonwealth Treasury	Established November 2011 Consultation on regulatory impact assessment closed on 21 February 2013
Australian Charities and Not-for-Profits Commission <i>The independent Australian regulator of charities</i>	Treasury and the ATO	Established 3 December 2012
<i>Supporting and sustaining the sector</i>		
National Compact <i>An agreement between the Australian Government and NFP sector</i>	Office for the Not-for-Profit Sector, Department of the Prime Minister and Cabinet	Established March 2010
National Compact: Code of Best Practice for Engagement with the Not for Profit Sector <i>Framework for consultations between the NFP sector and government</i>	Office for the Not-for-Profit Sector, Department of the Prime Minister and Cabinet	Released for consultation 18 March 2013, comments closed 29 April Code of Best Practice released 5 August 2013

Reform	Responsible agency	Current status
Removal of 'gag' clauses <i>Ban on clauses restricting NFPs right to advocate in federal funding agreements</i>	Department of Finance and Deregulation	Not-For-Profit Sector Freedom to Advocate Act 2013 assented to on 13 June 2013
Statutory definition of charity	The Treasury	Charities Act 2013 assented to on 29 June 2013 to commence on 1 January 2014
Report, Contribution of the Not-for-profit Sector <i>A landmark research report profiling the sector</i>	Productivity Commission	Report released February 2010
Information development plan <i>A plan to gather statistical information on the NFP sector</i>	ABS	Draft produced July 2010
Non-Profit Institutions Satellite Account 2012-2013 <i>A report on the size and activities of the NFP sector</i>	ABS	Commenced, report expected June 2014
'Investing for Good', inquiry into Social enterprise and funding <i>A Senate Committee inquiry into developing social investment</i>	Senate Economics Reference Committee	Government response to inquiry published in June 2012
Social Enterprise Development and Investment Funds <i>A fund to provide support to social enterprises</i>	Department of Education, Employment and Workplace Relations	Managers appointed, ongoing development
National Volunteering Strategy <i>A strategy setting out the vision for volunteering</i>	Office for the Not-for-Profit Sector, Department of the Prime Minister and Cabinet	Complete, launched November 2011

<i>Reforming regulation and taxation</i>		
National Standard Chart of Accounts <i>An accounting data dictionary for NFPs</i>	COAG in partnership with the Australian Centre for Philanthropy and Nonprofit Studies	Complete, agreed to by COAG, and in process of implementation. Intellectual property transferred from QUT to ACNC on 12 June 2013
Standard Business Reporting <i>A COAG initiative to facilitate reporting by business to government</i>	The Treasury	Long-term work project; Use by superannuation funds progressively introduced from 1 July 2013
Disclosures by private sector NFP entities	Australian Accounting Standards Board	Project ongoing
Low-risk grant agreement templates <i>Simplification of grant agreements between Government and NFPs</i>	Department of Finance and Deregulation	Piloting, available for use from mid 2013
Commonwealth grants guidelines <i>Reduction of reporting by charities registered with ACNC to Commonwealth agencies</i>	Department of Finance and Deregulation	Updated; second edition took effect on 1 June 2013
Review of regulatory duplication	ACNC, The Treasury and the Department of Finance and Deregulation	Long-term work project
Governance standards <i>Additional regulations to be followed by ACNC registered charities</i>	The Treasury	Commenced 1 July 2013
External conduct standards <i>Additional regulations to be followed by ACNC registered charities</i>	The Treasury	External conduct standards in development
ACNC Financial reporting regulations	The Treasury	Australian Charities and Not-for-profits Commission Regulation 2013 (No. 3) made 13 June 2013

Fundraising regulation reform <i>Harmonisation of national fundraising regulation</i>	The Treasury	Public consultation completed
Companies limited by guarantee <i>Review of legal structure</i>	The Treasury	Discussion Paper expected in mid 2013
Private ancillary fund reform	The Treasury	Completed September 2009
Public ancillary fund reform	The Treasury	Completed July 2012
Restating and standardising special conditions including 'in Australia' <i>Measures to clarify conditions relating to tax concessions</i>	The Treasury	Bill lapsed in the House of Representatives, August 2012
Better targeting of tax concessions <i>Changes affecting unrelated business income of charities</i>	The Treasury	Consultation Paper released and submissions received, legislation expected in 2013 Measure to take effect from 1 July 2014
Not-for-Profit Sector Tax Concession Working Group <i>Established under the NFP reform council to examine tax concessions to NFPs</i>	NFP Sector Reform Council	Public consultation complete. Exposure Draft expected 2013
Gift deductibility for Volunteer Fire Brigades	The Treasury	Completed December 2012
Gift deductibility for schools ethics classes	The Treasury	Completed 29 June 2013

Charities and not-for-profits: An overview

This section provides some key statistics on charities and NFPs in Australia. The definition of Charity in Australia has traditionally been based on the common law, supplemented by the *Extension of Charitable Purpose Act 2004*. The *Charities Act 2013*, which will commence on 1 January 2014, sets out the definition of charity and charitable purpose that will be used to determine whether an entity is considered charitable.

Charitable purpose has traditionally been classified under four 'heads':

- relief of poverty
- advancement of religion
- advancement of education
- other purposes beneficial to the community.

The *Extension of Charitable Purpose Act* recognised NFP childcare services as charitable and also clarified the position of open self-help groups and closed and contemplative religious orders. The *Charities Act* recognises these purposes and extends the definition to cover purposes such as advancing culture, promoting or protecting human rights, and advancing the security or safety of Australia or the Australian public (s 12(1)).

NFPs include, but extend beyond, charities, to cover (for example) sports clubs, unions, professional associations, mutuals and cooperative organisations. The term 'third sector' is sometimes used to include bodies corporate, credit unions and building societies.

NFPs: Key statistics

There are a number of important sources of information about NFPs and charities, including the 2010 Productivity Commission report *Contribution of the Not-for-profit Sector*, the ABS, and the Australian Institute of Health and Welfare. However, each source has its limitations due to the different focuses of the data collections and the complexity of the sector itself.

- There are an estimated 600,000 NFPs in Australia (Productivity Commission, 2010, p. 53)
- Of these, the ATO identifies an estimated 189,219 organisations with an active tax status classified as an NFP by the ATO (ATO Non-profit profile, July 2011)
- Of these, around 59,000 are considered 'economically significant'¹ by the ABS ([ABS Non-Profit Institutions Satellite Account, 2006-2007](#))
- The NFP sector employed 890,000 staff (or 8.5% of total Australian employment) in 2006-2007 (ABS) and had 4.6 million volunteers
- NFPs contributed 4.1% to total gross domestic product in 2006-07 (ABS).

¹ The ABS defined 'economically significant' as all NFPs that employed staff and non-employed organisations with an estimated annual turnover of more than a set threshold. This turnover threshold varied for each in-scope Australian and New Zealand Standard Industrial Classification 2006 Edition (ANZSICo6) Class [http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8106.0Explanatory%20Notes12006-07%20\(Re-Issue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8106.0Explanatory%20Notes12006-07%20(Re-Issue)?OpenDocument)

Charities under the ACNC

The ATO holds information about the charities that are endorsed to access Australian Government tax concessions and transferred this data to the ACNC on its commencement. There are some limitations to this data, as charities did not need to report on their activities to the ATO after being endorsed as tax concession charities. More up-to-date information about these charities will become available as they begin reporting to the ACNC via the Annual Information Statement (AIS). The ACNC will provide up-to-date information on its online register based on the data that charities report.

The following statistics are drawn from the ATO's data as at 3 September 2012 and provide some information on the charities that the ACNC regulates.

How many charities are there?

56,073 (endorsed by the ATO). Of these:

- 68% (38,378) were classified as charitable institutions
- 19% (10,415) were Public Benevolent Institutions (PBIs are a particular tax category of charitable institution defined as providing direct services to those in need of benevolent relief)
- 11% (or 6,046) were charitable funds
- 2% (1,234) were Health Promotion Charities (HPCs are a particular tax category of charitable institution whose principal activity is to promote the prevention or control of diseases in humans).

Where do charities operate?

The ATO data indicate only where a charity is registered and not where it operates. This means that these statistics do not reflect the activities of charities that operate nationally. In the future, the ACNC will collect more information about where charities operate.

The number of charities registered in each state or territory generally reflects population numbers.

- 34% (18,943) are registered in New South Wales
- 24% (13,333) are registered in Victoria
- 18% (10,139) are registered in Queensland
- 8% (4,486) are registered in South Australia
- 10% (5,800) are registered in Western Australia
- 3% (1,512) are registered in Tasmania
- 2% (1,142) in the Australian Capital Territory
- 1% (675) in the Northern Territory

Interestingly, 70% of charitable funds are registered in New South Wales or Victoria.

What do charities do?

The ATO data only indicate the main charitable purpose and activities nominated by a charity when it was endorsed. Charities nominate a single charitable purpose when they apply for endorsement by the ATO. The ACNC will collect more information in the future about ongoing charitable activities.

The main purposes of endorsed charities were:

- social and community welfare - 43% (24,000)
- religious purposes - 22% (12,616)
- educational purposes - 17% (9,420).

While charities nominated only one charitable purpose for endorsement, they could conduct a range of activities to achieve that purpose.

The most common activities of endorsed charities were:

- education - 15% (23,728)
- religion - 12% (18,3120)
- activities relating to young people - 8% (12,420)
- health promotion activities - 6.9% (10,856)
- disability-related activities - 6.6% (10,394)
- activities to relieve poverty - 6.6% (10,287).

As at 27 August 2013, the ACNC had registered 1,000 new charities. An profile of these charities is available [from the ACNC's website](#).

How much do Australians give charities?

The following information is based on the tax deductions for donations that individuals have claimed in their tax returns. There are therefore several important limitations to this data. First, it only reflects donations to Deductible Gift Recipients (DGRs), which is a status that applies only to some charities and also to other entities that are not endorsed as charities. Second, it only reflects giving by individuals. Third, not all donations (especially small amounts) are claimed. However, the ATO data for 2010-11 indicate:

- 4.76 million individual taxpayers claimed deductions of \$2.19 billion in total
- the average amount claimed was \$460
- 61% of the donations were claimed by males, although a slightly higher percentage of females claimed deductions for donations
- the average donation was around 0.33% of taxable income
- of the total amount claimed, taxpayers from New South Wales claimed 37%, Victoria 26% and Queensland 14%
- the highest proportion of taxpayers claiming donations was in the Australian Capital Territory, where nearly half of tax-payers claimed a donation.
- Further analysis of data relating to charitable giving, including a look-up tool, is available from the [Australian Centre for Philanthropy and Nonprofit Studies](#).

The Australian Charities and Not-for-profits Commission

The establishment of the ACNC creates for the first time in Australia a national regulator for charities. The ACNC Act has three objects:

- to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
- to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
- to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

Registration with the ACNC

The ACNC is responsible for registering entities as charities and classifying them as sub-types of charity in order for them to access tax concessions from the ATO and various concessions or exemptions from other Australian Government agencies. Once registered, charities have ongoing obligations, including reporting, record keeping and compliance with governance standards. The ACNC helps registered charities to understand and meet their obligations through guidance and support materials, and email, phone and face to face advice.

All charities that were endorsed by the ATO to receive tax concessions prior to the commencement of the ACNC have been automatically registered with the ACNC. Registration is voluntary but is required to access a number of Australian Government concessions, including tax concessions. Charities that did not wish to be registered with the ACNC were able to withdraw by notifying the ACNC before 2 June 2013. Charities that opted out in this way are considered to never have been registered, which means that they lost any tax concessions as of 2 December 2012.

Some religious organisations have been assessing their own eligibility for Australian Government tax exemptions and have not been endorsed by the ATO. These organisations have not been automatically registered with the ACNC but can register by notifying the ACNC before 2 December 2013. These organisations will be treated as having been registered from 3 December 2012.

Reporting and governance requirements

Registered charities must notify the ACNC of changes to their details and supply an Annual Information Statement (AIS) to the ACNC. The AIS will usually be due within six months of the end of the financial year. Charities may apply to use a substituted accounting period and, if this is approved, they will be required to submit their AIS within six months of the end of the substituted accounting period. The information supplied by charities via the AIS will be used to populate the online ACNC Register and will assist the ACNC, governments and the public to improve their understanding of the charitable sector.

The AIS for the 2012-2013 financial year will not include financial information. The full AIS, which will include financial reporting requirements, will be in use from the end of the 2013-14 financial year (or approved substituted accounting period). The level of financial reporting required will depend on a charity's income. Charities classified as 'small', with annual revenue of less than \$250,000 will not need to lodge financial reports with the ACNC. It is estimated that the majority of charities will fall into this group. Charities classified as 'basic religious charities' will also not be required to lodge financial reports. Charities classified as medium (with annual revenue from \$250,000 and less than \$1,000,000) and large (with annual revenue in excess of \$1,000,000) must prepare and lodge financial reports with the ACNC. Financial reports for medium registered entities must be reviewed (or audited in some cases) and large

registered entities must have their financial reports audited. The ACNC Act is supplemented by regulations that cover issues in relation to financial reporting in greater detail. These regulations were made under the Act in June 2013 following a consultation period.

In addition to their reporting obligations, registered charities (except basic religious charities) have to comply with a set of governance standards set out in regulations under the ACNC Act. The proposed governance standards were released for public consultation on 17 December 2012 and the revised standards commence on 1 July 2013. They are intended to ensure that registered charities meet minimum standards in areas such as the duties of those responsible for charities, accountability to members (if the charity has members) and financial management. A further set of standards, governing the conduct of charities relating to overseas activities, was in development at the time of writing.

Reducing the regulatory burden

One of the objects of the ACNC Act is to promote the reduction of unnecessary regulatory obligations on the Australian NFP sector. To support this objective, the ACNC is working with other government agencies to develop a 'report once, use often' reporting framework. This framework will align the reporting requirements of different government agencies and facilitate the sharing of information across government, thereby reducing the amount of reporting that charities must do.

Central to the 'report once, use often' reporting framework is the Charity Passport. The purpose of the Charity Passport is to reduce the need for charities registered with the ACNC to reproduce their corporate and financial information every time they deal with a government agency.

Registered charities will report their key information to the ACNC, which will act as a central data repository on behalf of Australian Government agencies. This standardised set of data will then be made available to participating government agencies. Information covered by the Charity Passport will be sourced from the charity's initial registration form, the AIS, annual financial reports (where applicable) and any changes in details of which a registered charity must notify the ACNC.

Initially, the Charity Passport will be shared between Australian Government agencies. The ACNC will also be working with individual states and territories to seek their agreement to a progressive national adoption of the Charity Passport.

In addition, the ACNC is promoting the use of the [National Standard Chart of Accounts](#) (NSCOA), developed by the Australian Centre for Philanthropy and Nonprofit Studies at Queensland University of Technology, and [Standard Business Reporting](#) (SBR), developed by the Treasury, and is working to ensure that ACNC forms are consistent with these platforms. These tools are intended to make it easier for charities to manage, collate and report their financial information. These initiatives are discussed in more detail in the sections on regulatory reform below.

Chronology

The following chronology presents some of the major steps in the establishment of the ACNC, commencing with the recommendation of the Productivity Commission in February 2010 and culminating in the ACNC's official launch on 10 December 2012.

11 February 2010	Productivity Commission recommends a national Registrar for Community and Charitable Purpose Organisations
9 August 2010	The Australian Labor Party commits to a scoping study
21 January 2011	Treasury publishes the Scoping Study for a National Not-for-Profit Regulator
10 May 2011	Budget 2011-2012 includes \$53.6 million of funding over four years to establish the ACNC and make related structural changes in the ATO
27 May 2011	Australian Government announces that Robert Fitzgerald AM will be the Chair of the ACNC's Advisory Board
4 July 2011	Final Report of the Scoping Study released and Susan Pascoe AM appointed the Chair of the ACNC Implementation Taskforce
8 December 2011	Treasury publishes Consultation Paper reviewing governance arrangements
9 December 2011	Treasury publishes Exposure Draft of the Australian Charities and Not-for-profits Commission Bill and ACNC Implementation Taskforce release a Discussion Paper on the functions and operations of the ACNC
January to February 2012	ACNC Taskforce conducts community consultations across the country
1 March 2012	Australian Government extends the start date of the ACNC to 1 October 2012
17 May 2012	Australian Government defers timing of proposed governance and external conduct standards and financial reporting to allow for further consultation
12 June 2012	ACNC Implementation Taskforce publishes its Implementation Report

5–6 July 2012	Revised Exposure Draft of the ACNC Bill and accompanying Exposure Draft of the ACNC Consequential and Transitional Bill published and referred to the House of Representatives Standing Committee on Economics
26-27 July 2012	House of Representatives Committee public hearings on the Bill
15 August 2012	House of Representatives Committee reports on Bill
23 August 2012	The ACNC Bill 2012 and its accompanying Consequential and Transitional Bill introduced into the House of Representatives and referred to the Senate Community Affairs Legislation Committee and the Joint Committee on Corporations and Financial Services
3 September 2012	Joint Committee public hearings on the ACNC Bill
4 September 2012	Senate Committee public hearings on the ACNC Bill
10 September 2012	Joint Committee report tabled
12 September 2012	Senate Community Affairs report tabled
18 September 2012	ACNC Bills pass the House of Representatives
31 October 2012	ACNC Bills pass the Senate
1 November 2012	Senate amendments passed by the House of Representatives
3 December 2012	Royal assent and ACNC commences operations
6 December 2012	Susan Pascoe AM appointed by the Governor General as the inaugural Commissioner of the ACNC
10 December 2012	ACNC officially launched by the Assistant Treasurer, the Hon. David Bradbury MP

The regulatory landscape

The Productivity Commission report, *Contribution of the Not-for-Profit Sector* (January 2010) found that:

The current regulatory framework for NFPs is characterised by uncoordinated regimes at the Commonwealth and state/territory levels. Disparate reporting and other requirements add complexity and cost, especially for organisations operating in more than one jurisdiction (p 113)

The Productivity Commission recommended establishing a national registrar, acting as a one-stop-shop, to bring together current Australian Government regulatory functions. The establishment of the ACNC is the Government's response to that recommendation.

ACNC and ATO

Previously, the ATO determined an entity's status as a charity, PBI or HPC when assessing the entity's entitlement to be endorsed to access Commonwealth tax concessions. The ACNC now determines whether an entity is a charity, PBI or HPC. These types of entities must be registered with the ACNC before the ATO can endorse them to access charity tax concessions. The ACNC does not, however, determine the status of non-charitable NFP entities. The ATO remains responsible for administering and enforcing tax law for all NFP entities (charitable and non-charitable) including the endorsement processes to access charity tax concessions and DGR status.

Types of Regulation

The ACNC is the only specialist Australian Government regulator of charities but there are other regulators, both state and federal, to which charities report or are otherwise accountable. The types of regulation that affect charities and NFPs can be categorised as:

- regulation because of the legal structure
- regulation because of the activities they conduct
- regulation that applies generally to workplaces or businesses (such as taxation, privacy and workplace health and safety)
- reporting required by funding or fundraising arrangements.

Regulation and Legal Structures

Charities and other NFPs may be structured in a number of different legal forms. The table below sets out the most common forms, the regulators, and the approximate numbers of such organisations.

Legal form	Regulator	Approximate number
Incorporated associations	State or territory agencies	136,000
Companies and Registered Australian Bodies	Australian Securities and Investments Commission	11,700 (of which approximately 6,000 are charities)
Indigenous corporations	Office of the Registrar of Indigenous Corporations	2,421 (as at 9 November 2012), of which around 500 are charities

Charitable Trusts	State and territory Attorneys-General	7,144
Cooperatives	State or territory agencies	1,850
Under other legislation	Specified in particular legislation	9,000
Unincorporated associations	No general regulator	440,000

Source: [Contribution of the Not-for-Profit Sector](#) 2010 p 58 except for number of trusts (ATO) and number of indigenous corporations (ORIC).

Australian Securities and Investments Commission (ASIC)

Charities that are registered with ASIC may be registered as companies limited by guarantee, proprietary companies limited by shares, [Registered Australian Bodies](#), such as incorporated associations that operate in more than one state, and foreign companies. Of the 1.9 million companies registered with ASIC, only about 6 000 are estimated to be charities.

As a result of the ACNC Act, some of the most common notification and reporting obligations that were required to be submitted to ASIC are 'turned off' and are now required to be provided to the ACNC. From the date of registration with the ACNC, affected organisations will have to notify, report and meet the obligations of the ACNC. These obligations continue as long as the organisation remains a registered charity. If it is deregistered (voluntarily or because of action taken by the ACNC) its obligations to notify and report to ASIC will resume from the date of de-registration with the ACNC.

The NFP reform agenda includes a [review by Treasury of the legal form of companies limited by guarantee](#).

Office of the Registrar of Indigenous Corporations (ORIC)

The Registrar of Indigenous Corporations (the Registrar) is an independent statutory office holder who administers the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). The Registrar regulates and provides support services to Aboriginal and Torres Strait Islander corporations. Some of these Aboriginal and Torres Strait Islander corporations are also charities. Reporting obligations to ORIC are not affected by the establishment of the ACNC. The ACNC and ORIC are working together to determine the extent to which current reporting requirements overlap.

Regulation and Activities

Certain types of activities commonly conducted by charities are regulated by specific regulatory bodies or regimes. For example, schools, universities, hospitals, aged care and child care have one or more specialist regulators. Examples of other Australian Government regulators and authorities that may affect NFPs include:

- [Aged Care Standards and Accreditation Agency](#) Residential aged care facilities must be accredited to receive Australian Government subsidies. The Accreditation Agency is an independent body that assesses facilities against a set of legislated standards
- [Australian Curriculum, Assessment and Reporting Authority](#) ACARA is responsible for a national curriculum in specified learning areas, a national assessment program and national data collection and reporting

- [Tertiary Education Quality and Standards Agency](#) TEQSA regulates and assures the quality of Australia's higher education sector
- [Australian Children's Education and Care Quality Authority](#) ACECOA provides national leadership in promoting quality in early childhood education and care and school age care in Australia. Accreditation of childcare services is regulated at a state level
- [Australian Commission on Safety and Quality in Health Care](#) ACSQHC developed the National Safety and Quality Health Service Standards to improve the quality of healthcare in Australia. A number of bodies are able to provide accreditation to the Standards.

There are also four registers of Deductible Gift Recipients (DGRs) based on activity. These are the [Register of Cultural Organisations](#), the [Register of Environmental Organisations](#), [Overseas Aid Funds](#) and [Register of Harm Prevention Charities](#). To maintain registration, organisations must meet certain requirements, including supplying reports.

Reporting and Funding

Charities and NFPs often have additional reporting requirements that arise from their funding or fundraising, including:

- requirements under government contracts and grants
- requirements from philanthropic funders
- requirements under fundraising legislation.

Several elements of the reform agenda relate to reviewing and harmonising requirements under government contracts. These include a [Commonwealth review of regulatory duplication](#) led by the ACNC, the Treasury and the Department of Finance and Deregulation, the [piloting of low-risk grant agreement templates](#), and changes to the [Commonwealth Grant Guidelines](#).

State and Territory regulators

Currently, fundraising is regulated by state and territory governments, which adds complexity for charities that operate in more than one jurisdiction. Another part of the NFP reform agenda is to establish a single [nationally consistent approach to fundraising](#), which will harmonise and simplify requirements. This is discussed further below.

Respondents to the [Australian Council for Social Service's Community Sector Survey](#) indicated that aligning regulation between states and territories and the Australian government would make the biggest difference to their organisation in terms of reducing the regulatory burden. In October 2012, the government of [South Australia announced](#) that it will make amendments to its incorporated associations and charitable collections legislation to harmonise reporting requirements and allow charities registered with the ACNC to collect donations in South Australia. In March 2013, the [ACT government announced](#) similar changes, so that charities incorporated as associations in the ACT will have to report only to the ACNC. Amendments will also be made to the *Charitable Collections Act 2003* (ACT).

Significant reviews and reports

The Australian Government's NFP reform agenda draws on issues identified and recommendations made in multiple government and independent inquiries over more than 15 years. It has also looked to reforms in other Australian jurisdictions and overseas. This section summarises some of the key reform reports that have informed the Australian Government's NFP reform agenda.

In addition to the reviews and reports discussed here, a substantial number of reports have been produced by academic researchers and sector bodies. These include the [National Roundtable of Nonprofit Organisations' assessment of charitable status in Australia](#) and [Woodward and Marshall's report on reforming not-for-profit regulation](#). The ACNC will be publishing a list of further resources separately.

Industry Commission, Charitable Organisations in Australia (1995)

This report was commissioned by the then Assistant Treasurer, George Gear, on 16 December 1993. The report was wide-ranging and included recommendations in relation to government funding, quality management, best practice, improving evidence, accounting standards, taxation arrangements, and legal structures. The report also identified inconsistencies in the regulation of fundraising as a significant cost to charities and recommended that Council of Australian Governments (COAG) should consider ways of harmonising fundraising regulation among the States and territories.

Report of the Inquiry into the Definition of Charities and Related Organisations (2001) ('Charities Definition Inquiry')

This inquiry was established by the then Prime Minister, John Howard, on 18 September 2000. The Committee of Inquiry was chaired by a former judge, the Hon Ian Sheppard AO QC. The other members were Robert Fitzgerald AM and David Gonski AC. The inquiry considered ways to improve the clarity and consistency of Australian Government definitions of charities and related organisations, and recommended the adoption of a statutory definition codifying, clarifying and correcting the common law meaning of charity. It also recommended the establishment of either an independent administrative body to administer the definition of charity, or a permanent advisory body for the ATO.

The then Treasurer, Peter Costello, released an [Exposure Draft of a Charities Bill](#) largely based on this report on 22 July 2003, which was subject to a further inquiry by the [Board of Taxation](#) which released its report on 11 May 2004. The Government decided instead to pass more limited legislation, the [Extension of Charitable Purposes Act 2004 \(Cth\)](#), which clarified the definition of charity in the cases of NFP child care, self-help groups and closed or contemplative religious orders.

Senate Standing Committee on Economics, Inquiry into the Disclosure Regime for Charities and Not-for-Profit Organisations (2008)

The Senate established this inquiry on 18 June 2008, following an article in [Choice](#). The inquiry examined current disclosure regimes, models of regulation and legal forms of governance, and other measures to improve governance, standards, accountability and transparency. Its key recommendations included the establishment of a unit to manage issues arising for NFP organisations within the Department of the Prime Minister and Cabinet, the establishment of a single independent national regulator for NFP organisations, the development of national fundraising legislation and the implementation of a standard chart of accounts.

Productivity Commission, Contribution of the Not-for-Profit Sector (2010)

The Australian Government established this inquiry on 17 March 2009. Its terms of reference were to: assess and use measures of the sector's contribution to Australian society; identify obstacles to the efficient and effective operation of not-for-profits; consider government funding of service delivery; examine changing relationships between government, business and community organisations; and examine tax arrangements. The study was overseen by Commissioner Robert Fitzgerald AM and Associate Commissioner Dennis Trewin.

The Commission published its report on 11 February 2010. Its key recommendations included the establishment of a national registrar for NFPs, harmonisation of fundraising legislation, implementation of a standard chart of accounts, and establishment of an Office for NFP Sector Engagement and Centre for Community Service Effectiveness.

Australia's Future Tax System (2010) ('Henry Review')

The Australian Government established this review on 13 May 2008 to examine Australia's tax and transfer system. The Review Panel was chaired by Dr Ken Henry AC (then Secretary to the Treasury) and released its report on 2 May 2010. Its key recommendations in relation to NFPs included retaining income tax concessions, establishing a national charities commission, and modernising and codifying the definition of charity. It also recommended phasing out fringe benefits tax over 10 years and replacing it with direct government funding, and changing income tax arrangements for clubs, but these recommendations were not accepted.

Senate Economics Legislation Committee, Inquiry into Tax Laws Amendment (Public Benefit Test) Bill (2010)

In May 2010 the independent senator Nick Xenophon introduced the *Tax Laws Amendment (Public Benefit Test) Bill 2010* into the Senate. The Bill sought to introduce a public benefit test for religious and charitable organisations seeking tax exempt status and was referred to the Senate Economics Legislation Committee for inquiry. The Committee report, released in September 2010, made a number of recommendations, including the establishment of an independent national commission that would increase accountability and transparency in the NFP sector but also promote public trust and confidence. The Committee supported a public benefit test in the context of broader reform. The [Government response](#) to the Committee's report reaffirmed its election commitment to strengthening the NFP sector and agreed to consider a public benefit test as part of any proposal to codify the key principles of the common law definition of charity.

The NFP Reform Agenda

Social Inclusion Agenda

The NFP reform agenda is part of the Australian Government's [social inclusion agenda](#). The social inclusion agenda is a whole-of-government approach to providing opportunities for all Australians to participate in the life of the nation. The long-term vision and strategy for the social inclusion agenda is set out in [A Stronger, Fairer Australia](#) (2009), with a snapshot of how the Government is delivering on social inclusion.

The social inclusion agenda has a number of priority areas, including [reform of the NFP sector](#).

Understanding the NFP Reform Agenda

The NFP reform agenda has many parts and is constantly developing. We have set out the agenda in the following broad categories:

- [Creating a coordinated architecture within government for NFPs](#)
- [Supporting and sustaining the NFP sector](#)
- [Reforming the regulation and taxation of NFPs](#)

Coordinated Government Architecture

Office for the Not-for-Profit Sector

The [Office for the Not-for-Profit Sector](#), located within the Department of the Prime Minister and Cabinet, drives and coordinates the NFP sector policy reform agenda. It is also responsible for the [National Compact](#), [social investment](#), philanthropy and [volunteering](#). The Office also provides secretariat support to the [Not-for-Profit Sector Reform Council](#) and to the Interdepartmental Committee on NFP Reform, a whole-of-government committee in charge of coordinating implementation of reforms.

Key developments

11 February 2010	The Productivity Commission's Recommendation 14.1 recommended establishing an Office for Not-for-profit Sector Engagement.
October 2010	Establishment of the Office for the Not-for-Profit Sector

Not-for-Profit Sector Reform Council

The Not-for-Profit Sector Reform Council is an independent advisory body that advises the Australian Government on its NFP reform agenda. It is chaired by former Queensland Attorney-General Linda Lavarch from the [Australian Centre of Philanthropy and Nonprofit Studies at Queensland University of Technology](#).

Key developments

14 December 2010	Appointment of the Not-for-Profit Reform Council
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Not-for-Profit Reform Working Group

The [Not-for-Profit Reform Working Group](#) is responsible for reviewing, developing and recommending NFP regulatory reforms options to COAG through the Standing Council on Federal Financial Relations.

Key developments

13 April 2012	Agreement to terms of reference and work plan for NFP Reform Working Group
25 July 2012	COAG reconfirmed objective of minimising compliance costs. COAG also agreed to consider the results of a regulatory impact assessment on governance and reporting standards in the NFP sector in light of the then proposed ACNC Bill
25 January 2013:	COAG consultation on regulatory impact assessment released for public comment

Supporting and Sustaining the Sector

There are several elements to this aspect of the reform agenda:

- [Recognising and respecting the role of NFPs](#)
- [Building knowledge and evidence about NFPs](#)
- [Supporting investment in NFPs and their workforce.](#)

Recognising and respecting the role of NFPs

National Compact

The [National Compact](#) sets out a shared vision for how the Australian Government and the NFP sector will work together in partnership. The Compact is a joint commitment by the Government and the NFP sector to make life better for all Australians by building on the strengths of individuals and communities to improve social, cultural, civic, economic and environmental outcomes.

All Australian Government departments are committed to the Compact and have each appointed a [Compact Advocate](#) at the Deputy Secretary level to support a positive and open relationship with the NFP sector. Advocates will encourage the consideration of the impacts on and opportunities for NFP organisations when developing and implementing policies and programs. The Not-for-Profit Sector Reform Council has a Working Group to support the implementation of the National Compact.

NFP organisations can [sign up](#) to the Compact as Compact partners to show their support for the Compact's shared vision, purpose and principles. At the time of writing, there are [932 NFP organisations](#) who are Compact partners.

Key developments

27-29 April 2007	Australian Labor Party commits to a National Compact
April 2008	Development of National Compact begins, including initial consultations led by the Australian Council of Social Service
11 May 2009	National Compact Joint Taskforce meets for the first time
17 February 2010	National Compact Sector Advisory Group convened
17 March 2010	Launch of the National Compact

Consultation Code of Good Practice

As part of the process of progressing the National Compact, the Office of the Not-for-Profit Sector and a working group of the Not-for-Profit Sector Reform Council is creating a Consultation Code of Good Practice to provide a framework for communications and collaboration between the NFP sector and the Government.

Key developments

May 2012	Online survey involving 525 NFP organisations published
Oct–Nov 2012	Workshops held across the country to consider Code and online forum established
18 March 2013	Draft code released for consultation
6 August 2013	Code of Best Practice approved by the Minister for Community Services

Removing 'gag clauses'

The Australian Government is committed to ensuring that charities and NFPs have the right to advocate on the issues that matter to them. It has removed clauses in funding agreements (known as gag clauses) that restricted that right, and announced it would legislate to ban such clauses in Australian Government contracts.

Key developments

9 January 2008	Australian Government announces removal of gag clauses in funding agreements
December 2010	High Court of Australia rules in Aid/Watch v Commissioner of Taxation that the common law rule restricting charities from advocating for changes in law or policy did not apply in Australia. The Government does not propose to reverse this in its statutory definition .
19 September 2012	Australian Government announces it will legislate to ban gag clauses in Australian Government funding agreements
4 March 2013	Australian Government announces that it will introduce the <i>Not-for-Profit Sector Freedom to Advocate Bill</i> to Parliament
13 June 2013	Not-For-Profit Sector Freedom to Advocate Act 2013 receives Royal Assent

Statutory definition of charity

The Australian Government intends to introduce a statutory definition of charity for Commonwealth purposes from 1 July 2013. The definition is intended to be based on the [Report of the Inquiry into the Definition of Charities and Related Organisations](#), and will take into account recent judicial decisions including [Aid/Watch](#). The ACNC will administer this new definition when it is introduced.

Key developments

10 May 2011	Australian Government announces it will introduce statutory definition of charity
28 October 2011	Treasury publishes Consultation Paper
29 June 2013	Charities Act 2013 receives Royal Assent to commence on 1 January 2014

Building knowledge and evidence

There have been several initiatives to build knowledge and evidence about the NFP sector. These include the [Productivity Commission's report](#) on the contribution of the NFP sector, the production of a [draft Information Development Plan](#) by the ABS, and funding for the ABS to produce a Non-Profit Institutions Satellite Account for the 2012-13 financial year to provide an updated picture of the size, value, composition and economic importance of the NFP sector ([last produced](#) in 2006-2007).

The ACNC also has a function of educating the public about charities and the NFP sector and will make information about the activities of registered charities available via its [register](#).

Key developments

2010	Productivity Commission report
July 2010	ABS publish a draft Information Development Plan
7 June 2012	Australian Government announces funding for ABS Non-Profit Institutions Satellite Account for 2012-13
11 July 2013	Launch of mobile version of ACNC register

Supporting investment in NFPs

The Australian Government is exploring ways to increase private investment in the NFP sector through philanthropy and innovative social financing, in order to better equip the NFP sector to meet complex social challenges in the short and long term. These include:

- a [Senate inquiry](#) into the development of a capital market for social economy entities and the development of social impact investment
- seed funding for Social Enterprise Development and Investment Funds (SEDIF) to provide flexible, tailored financial products and support to social enterprises to help them to grow their business and achieve greater social outcomes.

Key developments

17 February 2011	Philanthropy Australia publishes Strategies for Increasing High Net Worth and Ultra Net Worth Giving
9 August 2011	Australian Government announced that Social Enterprise Finance Australia (SEFA) and Foresters Community Finance will be the fund managers for SEDIF
November 2011	Senate Economics References Committee report on capital markets for social economy entities and social impact investment
19 July 2012	Australian Government accepts in principle five of the Senate Committee's recommendations
2 April 2013	DEEWR releases ' Impact Australia: Investment for social and economic benefit ' report

Volunteering and workforce

The [National Volunteering Strategy](#) sets out the vision for volunteering, including supporting those who are currently volunteers and encouraging more Australians to participate in their communities through volunteering. The Strategy will set the direction for volunteering in Australia for the next ten years and will support organisations to adapt to changes in the ways that Australians want to volunteer.

The NFP Reform Council has formed the [Future NFP Workforce Working Group](#) to examine and advise on current workforce pressures.

Key developments

23 October 2009	First meeting of Volunteering Policy Advisory Group
June-July 2010	Public consultations on national volunteering strategy
9 December 2010	Australian Government announces new advisory group
30 November 2011	National Volunteering Strategy launched

Reforming Regulation and Taxation

The NFP reform agenda includes a range of reforms to regulation and taxation of charities and NFPs.

Improving Reporting

National Standard Chart of Accounts

A [National Standard Chart of Accounts](#) (NSCOA) was initially developed by the [Australian Centre for Philanthropy and Nonprofit Studies at Queensland University of Technology](#) and adopted by [COAG](#) to address inconsistent financial reporting. The NSCOA is a set of common definitions of financial account categories available for recipients of Australian, state and territory government grants. It is a data entry tool and data dictionary designed primarily for small to medium nonprofits, which typically do not have an accounting department or a sophisticated accounting system.

Use of the NSCOA is not mandatory for NFPs, but its use reduces the administrative burden and cost of grant applications and financial reporting for NFP entities. It also assists public understanding of NFP financial arrangements and informs the development of policy by ensuring that data is comparable.

Key developments

19-20 April 2010 [COAG agreed to adopt](#) the NSCOA for all Australian governments and agencies

12 June 2013 [Intellectual property transferred from QUT to ACNC](#)

Standard Business Reporting

Work is being undertaken to align NSCOA with [Standard Business Reporting](#) (SBR) and to align the ACNC registration form and Annual Information Statement to SBR.

SBR is an Australian Government initiative focused on reducing business reporting burden. Under SBR, Australian businesses are able to use SBR-enabled software to prepare and lodge key government forms directly from their software to the agencies participating in the SBR program. Businesses use a single secure log on, AUSkey, when sending reports to agencies via SBR. Led by the Australian Treasury, the agencies participating in SBR are the ATO, ASIC, the Australian Prudential Regulation Authority, all State and Territory Government revenue offices and the ABS.

The use of SBR by superannuation funds and employers is required as part of the [SuperStream](#) reforms. APRA funds and retirement savings account providers will be required to use SBR for processing fund rollovers from 1 July 2013. In November 2012, the Australian Government released an [options paper](#) on a range of options relating to the use of SBR for the lodgement of financial reports with ASIC, including whether its use should be mandatory. Submissions closed on 15 March 2013.

Australian Accounting Standards Board (AASB) project

In July 2009, the AASB began a project on [Disclosures by Private Sector NFP entities](#), including service performance reporting. The project explores the information not currently disclosed by private sector NFPs and how these gaps might best be addressed. It will also consider what current disclosure requirements should be removed or refocused. The project encompasses new financial and non-financial disclosure requirements and assesses existing disclosure requirements. It includes service performance reporting, that is, reporting about an entity's performance in achieving its objectives. This project is ongoing.

Reducing regulatory duplication

Streamlining funding

The Department of Finance and Deregulation is leading a project to streamline grant agreements between the Australian Government and grant recipients, particularly in the NFP sector, by developing a grant agreement template and accompanying guidance. The template is designed to be used for low-risk grants and will not be mandated.

This work is overseen by a Grant Agreement Working Group, which involves representatives from all Australian Government portfolio departments. Similarly, Finance has liaised regularly with the Not-for-Profit Sector Reform Council during the development of the template. The template is currently being piloted by several Australian Government agencies to provide an opportunity to refine the template and associated guidance material.

Grants Guidelines

The Australian Government [announced on 17 October 2012](#) that changes to the Commonwealth Grant Guidelines mean that if an entity provides an annual audited financial statement to a regulator, such as the ACNC, then a financial acquittal should not be required, unless the granting activity is higher risk. The [updated Commonwealth Grants Guidelines](#) are available on the Finance website and took effect on 1 June 2013.

Fundraising regulation

In its 2011-12 Budget, the [Australian Government announced](#) it would review the regulation of fundraising legislation. This is currently the subject of state and territory legislation. The Australian Government is working with states and territories through COAG to agree upon a nationally consistent approach to fundraising legislation.

Treasury released a [Consultation Paper](#) on this measure on 12 February 2012; submissions closed on 5 April 2012. The Not-for-Profit Sector Reform Council has formed a Working Group to provide advice on fundraising. This project will be developed in the future.

Review of regulatory duplication

The Commissioner of the ACNC will cooperate with Australian Government agencies to oversee a simplified, streamlined regulatory framework for NFP entities.

The ACNC, in collaboration with the Department of the Prime Minister and Cabinet, the Treasury, and the Department of Finance and Deregulation will undertake a stocktake of regulation and identify areas of duplication. This is under the guidance of the Reducing Duplication of Regulation Working Group which is a sub-group of the Inter-Departmental Committee on NFP Sector Reform chaired by the Department of the Prime Minister and Cabinet. The working group will identify and report on areas of potential duplication with existing NFP sector regulators and regulatory frameworks at the Australian Government level and identify options to harmonise requirements without compromising other government policy objectives.

Companies limited by guarantee review

In its 2011–12 Budget, the [Australian Government announced](#) it would review the legal structure of companies limited by guarantee, the principal Commonwealth legal structure for charities. Treasury will

develop a discussion paper on the issues with the current statutory framework applying to companies limited by guarantee to ensure it remains appropriate. This paper is expected in mid 2013.

Reforming tax arrangements

Charities receive a variety of tax concessions from both the Australian Government and state and territory governments. These tax concessions recognise the value of their work to the Australian community.

Private and public ancillary fund reforms

The Australian Government has reformed the regulation of private ancillary funds (PAFs, previously known as prescribed private funds (PPFs)) and public ancillary funds (PuAFs) to improve transparency and accountability. Changes included ensuring regular valuation of assets at market rates, increasing the size of compulsory distributions, and giving the ATO greater regulatory powers

PAFs were established in 2001 to encourage private philanthropy by providing private groups with greater flexibility to start their own trust funds for philanthropic purposes. Such funds are mostly exempt from income tax and donors receive tax deductions for donations to them.

PuAFs are a form of ancillary trust fund commonly used by community and fundraising foundations. Donations to these funds are tax deductible and the funds distribute money to other organisations with DGR status.

Key developments

13 May 2008	Australian Government announced reform of PPFs
26 November 2008	Treasury publishes a Discussion Paper
14 May 2009	Treasury publishes an Exposure Draft
25 June 2009	Bill introduced into Parliament and draft guidelines published
1 October 2009	Schedule 2 of the Tax Laws Amendment (2009 Measure No. 4) Act and Private Ancillary Fund Guidelines commence
11 May 2010	Australian Government announced reform of PuAFs
19 November 2010	Treasury publishes Discussion Paper
14 July 2011	Treasury publishes Exposure Draft
21 September 2011	Bill introduced into Parliament
29 November 2011	Commencement of part of Schedule 8 of the Tax Laws Amendment (2011 Measures No 7) Act reforming public ancillary funds
1 July 2012	All elements of PuAF reforms in operation

Restating and standardising the special conditions applying to tax concession entities

The Australian Government has announced that it will restate the 'in Australia' special conditions for tax concession entities. In general, the measure requires that income tax exempt entities must be operated principally in Australia and for the broad benefit of the Australian community. DGRs generally must be operated solely in Australia and for the broad benefit of the Australian community. The measure also standardised the definition of 'not-for-profit' in relation to tax concessions.

The proposed legislation is intended to support anti-avoidance measures, to address possible abuse of NFP entities for the purposes of money laundering and terrorist financing, and ensure the proper operation of NFP entities, their use of public donations and funds, and the protection of their assets.

The legislation was introduced into Parliament along with the ACNC legislation but had not yet been debated when Parliament was dissolved.

Key developments

3 December 2008	High Court rules in the Word Investments decision on the meaning of the 'in Australia' special conditions
12 May 2009	Australian Government announced that it would amend these requirements
4 July 2011	Treasury publishes an Exposure Draft
17 April 2012	Treasury publishes Revised Exposure Draft
23 August 2012	Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 was introduced into the House of Representatives and referred to the Senate Community Affairs Legislation Committee and the Joint Committee on Corporations and Financial Services
10 September 2012	Joint Committee report tabled
12 September 2012	Senate Community Affairs report tabled
5 August 2013	Lapsed at dissolution

Better targeting of tax concessions

The Australian Government intends to reform the use of tax concessions by unrelated businesses run by NFP entities to ensure tax concessions are targeted only at those activities that further the altruistic purposes of the NFP.

NFP entities will pay income tax on profits from their unrelated commercial activities that are not directed back to their altruistic purpose, that is, the earnings they retain in their commercial undertaking. They will not be able to use input tax concessions, such as fringe benefits tax and GST concessions, for their unrelated commercial activities.

The [consultation paper](#) released by the Treasury stated that the reforms will not affect commercial activities that directly further a NFP's altruistic purpose, such as NFP hospitals, NFP child care centres, and businesses that provide meaningful employment to disabled persons.

This reform has not yet been implemented and is intended to be developed further in 2013. The [Australian Government has announced](#) that this measure will now commence from 1 July 2014.

Key developments

2008	High Court rules in Word Investments decision
10 May 2011	Australian Government announced intended measure

27 May 2011	Treasury publishes Consultation Paper
30 March 2012	Australian Government extended start date for measure to 1 July 2012
31 January 2013-	Australian Government announces commencement date delay to 1 July 2014

Not-for-Profit Sector Tax Concessions Working Group

This working group of experts and sector representatives was established to examine whether the current level of support provided through the tax systems for the activities of the sector could be delivered more effectively. It is established under the [Not-for-Profit Sector Reform Council](#) and chaired by Linda Lavarch.

Key developments

4–5 October 2011	Tax Forum was held to discuss the recommendations of the Henry Review
12 February 2012	Membership of Working Group announced
2 November 2012	Working Group release Consultation Paper
17 December 2012	Submissions on Consultation Paper closed

Gift deductibility for volunteer fire brigades

The Australian Government has extended DGR status to all state and territory government bodies that coordinate volunteer fire brigades and state emergency services that are not already DGRs. The legislation also enabled individual brigades to establish a public fund to receive DGR support, or collect donations through a centralised state fund. The measure addressed [recent legal cases](#) that had led the ATO to the view that volunteer brigades did not meet the criteria for public benevolent institution status.

Key developments

4 May 2010	Treasury publish Exposure Draft
7 December 2010	Sch 7 of the Tax Laws Amendment (2010 Measures No. 4) Act commences

Gift deductibility for ethics classes

The Australian Government passed legislation enabling providers of ethics classes in government schools to receive tax deductible donations. The legislation means that organisations that provide ethics classes can access DGR status without having to be named in tax law.

Key developments

29 June 2013	Sch 3 of the Tax Laws Amendment (2013 Measures No. 1) Act commences
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Other selected reforms affecting NFPs

The Australian Government has also introduced other policy significantly affecting parts of the sector.

Some major initiatives affecting the sector include:

- In arts and culture, the [National Cultural Policy](#) and the [Review of Private Sector Support for the Arts](#) ('Mitchell Review')
- In children's services, the [National Framework for Protecting Australia's Children 2009-2020](#)
- In community and social services, the commitment to funding pay increases consistent with Fair Work Australia's Order on 22 June 2012 for [equal pay](#)
- In disability, the [National Disability Insurance Scheme](#)
- In education, the [Review of Funding for Schooling](#) ('Gonski Review')
- In health, the [National Health and Hospitals Reform Commission Report](#) and the [National - Preventative Health Taskforce](#);
- In housing, the [Road Home](#) (White Paper) and the [National Rental Affordability Scheme](#)
- In higher education, the [Review of Australian Higher Education](#) ('Bradley Review')
- In mental health, the [National Mental Health Commission](#)