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HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

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

Contents

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

Preamble

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

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

The not-for-profit sector is funded by donations from members of the public and by tax concessions, grants and other support from Australian governments.

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

It is therefore necessary to establish a Commissioner of the Australian Charities and Not-for-profits Commission in order to focus on the not-for-profit sector, and in order to recognise and respond to the diversity and uniqueness of the sector.

The Parliament of Australia enacts:

Chapter 1—Introduction

Part 1-1—Preliminary

Division 5—Preliminary

5-5 Short title

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

5-10 Commencement

This Act commences on 1 October 2012.

5-15 Crown to be bound

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

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

5-20 Extension to external Territories

This Act extends to every external Territory.

Division 10—Guide to this Act

10-5 Guide to this Act

The following is a guide to this Act:

This Act establishes a regulatory system for not-for-profit entities.
This Act establishes a national regulator for not-for-profit entities. The regulator is the Commissioner of the Australian Charities and Not-for-profits Commission (the ACNC).
The Commissioner is responsible for registering entities as not-for-profit entities according to their type and subtypes. Registration with the ACNC is a necessary precondition for access to Commonwealth taxation concessions. Registration under this Act may also be a prerequisite for other exemptions, benefits and concessions provided under other Australian laws.
The Commissioner of the ACNC will cooperate with other government agencies to oversee a simplified and streamlined regulatory framework for not-for-profit entities.
The Commissioner of the ACNC will provide information to help the public understand the work of the not-for-profit sector and to improve the transparency and accountability of the sector.

Part 1-2—Objects of this Act

Division 15—Objects of this Act

15-5 Objects of this Act

(1) The objects of this Act are:

(a) to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and

(b) to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector.

(2) This Act achieves those objects by:

(a) establishing a national regulatory framework for not-for-profit entities that reflects the unique structures, funding arrangements and goals of such entities; and

(b) establishing the Commissioner of the Australian Charities and Not-for-profits Commission, who will:

(i) be responsible for registering entities as not-for-profit entities according to their type and subtypes; and

(ii) administer the national regulatory framework; and

(iii) assist registered entities in complying with and understanding this Act, by providing them with guidance and education.

(3) Registration is a prerequisite for an entity to access certain Commonwealth tax concessions.

(4) Registration under this Act may also be a prerequisite for other exemptions, benefits and concessions provided under other Australian laws.

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

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

(a) the maintenance, protection and enhancement of public trust and confidence in the not-for-profit sector;

(b) the need for transparency and accountability of the not-for-profit sector to the public (including donors, members and volunteers of registered entities) by ensuring the public has access to information about not-for-profit entities;

(c) the benefits gained from providing information to the public about not-for-profit entities;

(d) the maintenance and promotion of the effectiveness and sustainability of the not-for-profit sector;

(e) the following principles:

(i) the principle of regulatory necessity;

(ii) the principle of reflecting risk;

(iii) the principle of proportionate regulation;

(f) the benefits gained from minimising procedural requirements and procedural duplication, by:

(i) cooperation between the Commissioner and other Australian government agencies; and

(ii) the effective administration of the laws that confer functions and powers on the Commissioner;

(g) the benefits gained from assisting registered entities in complying with and understanding this Act, by providing them with guidance and education;

(h) the unique nature and diversity of not-for-profit entities and the distinctive role that they play in Australia.

Chapter 2—Registration of not-for-profit entities

Part 2-1—Registration

Division 20—Object of this Part

20-5 Object of this Part

Tax concessions

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

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

Other concessions

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

Division 25—Entitlement to registration

25-1 Simplified outline

The following is a simplified outline of this Division:

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

25-5 Entitlement to registration

(1) An entity is entitled to registration as a type of entity if:

(a) it meets the conditions in subsection (3); and

(b) it meets the description of that type of entity in column 1 of the table in subsection (5); and

(c) if the entity has previously been a registered entity, but its registration as a type of entity has been revoked—the Commissioner is satisfied that the matters which led to the revocation have been dealt with such that the registration of the entity would not conflict with the objects of this Act.

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

(2) An entity is entitled to registration as a subtype of entity if:

(a) it meets the conditions in subsection (3); and

(b) it meets the description of that subtype of entity in column 2 of the table in subsection (5); and

(c) it is entitled to registration as the type of entity that corresponds to that subtype of entity (as set out in that table); and

(d) it is registered as that type of entity.

(3) The conditions are as follows:

(a) the entity is a not-for-profit entity;

(b) the entity is in compliance with the governance standards and external conduct standards (see Part 3-1);

(c) the entity has an ABN;

(d) the entity is not covered by a decision in writing made by an Australian government agency (including a judicial officer) under an Australian law that provides for entities to be characterised on the basis of them engaging in, or supporting, terrorist or other criminal activities.

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

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

(5) The table is as follows:

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 *Extension of Charitable Purpose Act 2004* (provision of child care services)

Note: An entity commonly known as a health promotion charity could be an entity described in column 2 of item 5 of the table (Institution whose principal activity is to promote the prevention or the control of diseases in human beings).

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

Division 30—Process of registration

30-1 Simplified outline

The following is a simplified outline of this Division:

This Division outlines the process for the registration of entities as a type and subtypes.
The Commissioner must register an entity if the entity applies in the approved form, is entitled to registration and has given the Commissioner all necessary information and documents.

30-5 Application of Division to various kinds of registration

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

(a) registration as a type of entity;

(b) registration as a subtype of entity.

30-10 Applying for registration

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

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

30-15 Dealing with an application for registration

Requiring further information or documents

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

Treating application as being refused

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

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

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

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

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

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

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

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

30-20 Registration of entity

The Commissioner must register the applicant if:

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

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

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

30-25 Notifying outcome of application for registration

The Commissioner must give the applicant written notice if:

(a) the Commissioner registers the applicant; or

(b) the Commissioner refuses to register the applicant.

30-30 Date of effect of registration

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

30-35 Review of refusal of registration

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

Division 35—Revoking registration

35-1 Simplified outline

The following is a simplified outline of this Division:

> The Commissioner may revoke an entity's registration under this Act if the Commissioner reasonably believes that any of certain conditions exist. These conditions include the following:
>
> (a) the entity not being entitled to registration;
>
> (b) the entity contravening this Act or not complying with a governance standard or external conduct standard;
>
> (c) the entity providing information that was false or misleading in a material particular in its application for registration;
>
> (d) the entity requesting that the Commissioner revoke the registration.
>
> The Commissioner must consider a range of factors before revoking a registered entity's registration under this Act.
>
> If the Commissioner believes on reasonable grounds that a registered entity is not entitled to be registered, the Commissioner may give a show cause notice to the entity.

35-5 Application of Division to various kinds of registration

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

(a) registration as a type of entity;

(b) registration as a subtype of entity.

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

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

35-10 Revoking registration

(1) The Commissioner may revoke the registration of a registered entity if the Commissioner reasonably believes that any of the following conditions are met:

(a) at any time after the date of effect of the registration, the entity is or was not entitled to registration;

(b) the registered entity provided, in connection with its application for registration, information that was false or misleading in a material particular;

(c) at any time after the date of effect of the registration, the registered entity:

(i) has contravened, or is likely to contravene, a provision of this Act; or

(ii) has not complied with, or is likely to not comply with, a governance standard or external conduct standard;

(d) the registered entity has:

(i) a trustee in bankruptcy; or

(ii) a liquidator; or

(iii) a person appointed, or authorised, under an Australian law to manage the affairs of the entity because it is unable to pay all its debts as and when they become due and payable;

(e) the registered entity has made a request to the Commissioner, in the approved form, that the Commissioner revoke the registration.

(2) In deciding whether to revoke the registration of an entity the Commissioner must take account of the following matters:

(a) the nature, significance and persistence of any contravention of this Act or non-compliance with a governance standard or external conduct standard (or any likely such contravention or non-compliance) by the registered entity;

(b) what action the Commissioner, the registered entity, or any of the responsible entities of the registered entity, could take or have taken:

(i) to address any such contravention or non-compliance (or prevent any likely such contravention or non-compliance); or

(ii) to prevent any similar contravention or non-compliance;

(c) the desirability of ensuring that contributions (see section 205-40) to the registered entity are applied consistently with the not-for-profit nature, and the purpose, of the registered entity;

(d) the objects of any Commonwealth laws that refer to registration under this Act;

(e) the extent (if any) to which the registered entity is conducting its affairs in a way that may cause harm to, or jeopardise, the public trust and confidence in the not-for-profit sector mentioned in subsection 15-5(1) (Objects of this Act);

(f) any other matter that the Commissioner considers relevant.

(3) The revocation must specify the day on which the entity's registration is taken to be revoked. The specified day must be:

(a) if the reason for the revocation is that the entity is not entitled to registration:

(i) the day on which the entity first ceased to be entitled; or

(ii) a later day; or

(b) if the reason for the revocation is that the entity provided, in connection with its application for registration, information that was false or misleading in a material particular:

(i) the day on which the registration took effect; or

(ii) a later day; or

(c) otherwise:

(i) the day on which the revocation is made; or

(ii) a later day.

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

(5) If, in the opinion of the Commissioner it is reasonable to do so in the circumstances, the Commissioner may revoke the registration of an entity under subsection (1) without having regard to the following factors:

(a) whether or not the Commissioner has issued a show cause notice to the entity under section 35-20;

(b) if the Commissioner has issued such a notice to the entity—whether or not the entity has responded to the notice.

35-15 Review of revocation of registration

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

35-20 Notice to registered entity to show cause

(1) If the Commissioner believes on reasonable grounds that a registered entity is not entitled to be registered the Commissioner may give a written notice (a ***show cause notice***) to the registered entity.

(2) The show cause notice must:

(a) state the grounds on which the notice is given; and

(b) invite the registered entity to give the Commissioner, within 28 days after the day the notice is given, a written statement showing cause why the Commissioner should not revoke the registration of the entity.

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

Division 40—Australian Charities and Not-for-profits Register

40-1 Simplified outline

The following is a simplified outline of this Division:

> This Division provides for the Australian Charities and Not-for-profits Register. The Register contains information about each registered entity and each former registered entity.
>
> The Commissioner must publish the Register on the internet, but may, subject to the public interest, withhold certain information from such publication.

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

(1) The Commissioner is to maintain a register (known as the Australian Charities and Not-for-profits Register) in which the Commissioner includes the following information:

(a) the following information in respect of each registered entity:

(i) the entity's name;

(ii) the entity's contact details (including its address for service);

(iii) the entity's ABN;

(iv) the type of entity as which it is registered or has been registered;

(v) each subtype of entity (if any) as which it is registered or has been registered;

(vi) the date of effect of each such registration;

(vii) the entity's governing rules;

(b) the following information in respect of each former registered entity:
   (i) the entity's name;
   (ii) the entity's ABN;
   (iii) the type of entity as which it was registered;
   (iv) each subtype of entity (if any) as which it was registered;
   (v) the date of effect of each such registration;
   (vi) the entity's governing rules;

(c) the following details in respect of each responsible entity of each registered entity:
   (i) the name of each responsible entity;
   (ii) the position held by the responsible entity in relation to the registered entity;

(d) information statements given by registered entities under Division 60 (except to the extent (if any) that information in an information statement is classified, in the approved form mentioned in section 60-5, as "not for publication");

(e) financial reports, and any audit or review reports, given by registered entities under Division 60;

(f) the details of the following matters (including a summary of why the matter arose, details regarding any response by the relevant registered entity and the resolution (if any) of the matter):
   (i) each warning issued to a registered entity by the Commissioner under Division 80;
   (ii) each direction issued to a registered entity by the Commissioner under Division 85;
   (iii) each undertaking given by a registered entity and accepted by the Commissioner under Division 90;
   (iv) each injunction (including interim injunctions) made under Division 95;
   (v) each suspension or removal made under Division 100;

(g) any other information:
   (i) that the Commissioner is authorised to collect under a provision of this Act; and
   (ii) that is specified in the regulations.

(2) The Register is to be maintained by electronic means.

(3) The Register is to be made available for public inspection on the internet.

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

40-10 Commissioner may withhold or remove information from Register

(1) The Commissioner may decline to include information on the Register, or may remove information from the Register, if the Commissioner considers that any of the following circumstances exist:

(a) the information:

(i) is commercially sensitive; and

(ii) has the potential to cause detriment to the registered entity (or former registered entity) to which it relates, or to an individual;

(b) the information is inaccurate, likely to cause confusion or mislead the public;

(c) the information is likely to offend a reasonable individual;

(d) the information could endanger public safety;

(e) if the regulations specify circumstances (other than those mentioned in paragraphs (a), (b), (c) or (d)) for the purposes of this paragraph—those circumstances exist.

(2) However, the Commissioner may include the information on the Register, or decline to remove information from the Register, if the Commissioner considers that the public interest in the Register including the information outweighs the likely adverse effect of the relevant factor or factors set out in paragraphs (1)(a) to (e).

Chapter 3—Responsibilities of registered entities

Part 3-1—Governance standards and external conduct standards

Division 45—Governance standards

45-1 Simplified outline

The following is a simplified outline of this Division:

> This Division sets up a system to allow the creation of minimum governance standards that entities are required to meet (in order to become registered, and on an ongoing basis). These governance standards are to be set out in the regulations.
>
> Compliance with the governance standards is a condition of entitlement to registration under paragraph 25-5(3)(b).
>
> The object of the system setting up the standards is to provide a minimum level of confidence that registered entities will promote the effective and efficient use of their resources, will meet community expectations about managing their affairs and the use of public money, volunteer time and donations, and will minimise the risk of mismanagement and misappropriation.

45-5 Object of this Division

(1) The object of this Division is to give the public (including donors, members and volunteers of registered entities) confidence that registered entities:

(a) manage their affairs openly, accountably and transparently; and

(b) use their resources (including contributions and donations) effectively and efficiently; and

(c) minimise the risk of mismanagement and misappropriation; and

(d) pursue their purposes.

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

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

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

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

45-10 Regulations establishing governance standards

(1) The regulations may specify the ***governance standards***.

(2) Without limiting the scope of subsection (1), those standards may require a registered entity to:

(a) ensure that its governing rules provide for a specified matter; or

(b) act, or not act, in a specified manner; or

(c) establish and maintain processes for the purpose of ensuring specified matters.

(3) Without limiting the scope of subsection (1), those standards may provide that specified requirements do not apply to specified kinds of registered entity.

(4) Without limiting the scope of subsection (1), those standards may provide that different requirements apply to different kinds of registered entity.

(5) The regulations must not require a registered entity to do a thing (including the things mentioned in subsection (2)) if the registered entity is a basic religious charity.

Division 50—External conduct standards

50-1 Simplified outline

The following is a simplified outline of this Division:

> This Division sets up a system to allow the creation of minimum external conduct standards that entities are required to meet (in order to become registered, and on an ongoing basis). These external conduct standards are to be set out in the regulations.
>
> Compliance with the external conduct standards is a condition of entitlement to registration under paragraph 25-5(3)(b).

50-5 Object of this Division

(1) The object of this Division is to maintain, protect and enhance transparency and confidence in the not-for-profit sector among the public (including donors, members and volunteers of registered entities) by ensuring that:

(a) funds sent by not-for-profit entities outside Australia:

(i) are reaching legitimate beneficiaries; and

(ii) are being used for legitimate purposes; and

(iii) are not contributing to terrorist, or other criminal activities; and

(b) activities engaged in by such entities outside Australia are not contributing to terrorist, or other criminal activities.

(2) This Division achieves that object by setting up a system to allow the regulations to specify standards:

(a) with which a registered entity must comply in order to become registered under this Act, and to remain entitled to be registered under this Act; and

(b) regulating funds sent by not-for-profit entities outside Australia, and activities engaged in by such entities outside Australia.

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

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

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

50-10 External conduct standards

(1) The regulations may specify the ***external conduct standards***.

(2) Without limiting the scope of subsection (1), those standards may require a registered entity to:

(a) ensure that its governing rules provide for a specified matter; or

(b) act, or not act, in a specified manner; or

(c) establish and maintain processes for the purpose of ensuring specified matters.

(3) However, the external conduct standards must deal only with:

(a) matters external to Australia; or

(b) matters not external to Australia but that are closely related to, or have or will have a significant impact on, entities, things or matters external to Australia.

Part 3-2—Record keeping and reporting

Division 55—Record keeping

55-1 Simplified outline

The following is a simplified outline of this Division:

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

55-5 Registered entities must keep records

Registered entities must keep records

(1) A registered entity must keep written financial records that:

(a) correctly record and explain its transactions and financial position and performance; and

(b) enable true and fair financial statements to be prepared and to be audited;

so as to enable any recognised assessment activity to be carried out in relation to the entity.

(2) A registered entity must also keep written records that correctly record its operations, so as to enable any recognised assessment activity to be carried out in relation to the entity.

(3) The records must be:

(a) in English; or

(b) readily accessible and easily convertible into English.

Registered entities must retain records

(4) Subject to subsection (5), the registered entity must retain the records for 7 years after the transactions, operations or acts covered by the records are completed.

(5) The Commissioner may notify the entity in writing that it does not need to retain certain records under subsection (4).

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 an activity carried out by the Commissioner involving assessment of the entity's compliance with any taxation law.

Division 60—Reporting

Subdivision 60-A—Overview

60-1 Simplified outline

The following is a simplified outline of this Division:

> This Division sets out the reporting obligations for registered entities based upon the entity's size and determined according to whether the entity is a small, medium or large registered entity.
>
> All registered entities must provide the Commissioner with an annual information statement.
>
> Medium and large entities must also provide the Commissioner with a financial report. Generally, financial reports need to be reviewed for medium entities or audited for large entities.
>
> Additional reporting obligations may be placed on registered entities by the Commissioner in special circumstances, for example, if the Commissioner is concerned about an entity's compliance with this Act.

Subdivision 60-B—Annual information statements

60-5 Registered entities must give annual information statements

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

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

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

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

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

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

Subdivision 60-C—Annual financial reports

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

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

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

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

60-15 Requirements for annual financial reports

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

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

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

(1) A medium registered entity must:

(a) subject to subsection (2), do both of the following:
(i) have its financial report for a financial year reviewed in accordance with this Subdivision;
(ii) obtain a reviewer's report; or
(b) do both of the following:
(i) have its financial report for a financial year audited in accordance with this Subdivision;
(ii) obtain an auditor's report.

(2) The Commissioner may, by written notice given to the medium registered entity, provide that paragraph (1)(a) does not apply to the financial report.

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

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

60-30 Audit or review

(1) The audit or review must be undertaken by:
(a) a registered company auditor (within the meaning of the *Corporations Act 2001*); or
(b) a firm:
(i) that consents to be appointed, or is appointed, as auditor of a registered entity; and
(ii) at least one member of which is a registered company auditor (within the meaning of that Act) who is ordinarily resident in Australia; or
(c) an authorised audit company (within the meaning of that Act).

(2) In the case of a review of the financial report of a medium registered entity, an individual who is taken to be a registered company auditor under subsection 324BE(1) of the *Corporations*

Act 2001 is taken to be a registered company auditor for the purposes of this Subdivision.

Note: Subsection 324BE(1) of the *Corporations Act 2001* allows certain members of professional accounting bodies who are not registered company auditors to undertake a review.

(3) In the case of an audit, the auditor must form an opinion about:

(a) whether the financial report satisfies the requirements of this Division; and

(b) whether the auditor has been given all information, explanation and assistance necessary for the conduct of the audit; and

(c) whether the registered entity has kept financial records sufficient to enable a financial report to be prepared and audited; and

(d) whether the registered entity has kept other records as required by this Part.

(4) In the case of a review, the reviewer must form a conclusion about:

(a) whether the reviewer believes that the financial report satisfies the requirements of this Division; and

(b) whether the reviewer has been given all information, explanation and assistance necessary for the conduct of the review; and

(c) whether the registered entity has kept financial records sufficient to enable a financial report to be prepared and reviewed; and

(d) whether the registered entity has kept other records as required by this Part.

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

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

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

(1) A registered entity must obtain from its auditor or reviewer:

(a) a written declaration that, to the best of the auditor's or reviewer's knowledge and belief, there have been no contraventions of any applicable code of professional conduct in relation to the audit or review; or

(b) a written declaration that, to the best of the auditor's or reviewer's knowledge and belief, the only contraventions of any applicable code of professional conduct in relation to the audit or review are those contraventions details of which are set out in the declaration.

(2) The declaration must be signed by the auditor or reviewer (or an individual authorised by the auditor or reviewer).

60-45 Auditor's report on annual financial report

(1) An auditor's report must contain a statement from the auditor as to whether, in the auditor's opinion, the financial report has been prepared in accordance with this Division. If the auditor is not of that opinion, the auditor's report must say why.

(2) If the auditor is of the opinion that the financial report has not been prepared in accordance with this Division, the auditor's report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report. If it is not practicable to quantify the effect fully, the auditor's report must say why.

(3) The auditor's report must describe:

(a) any material defect or irregularity in the financial report; and

(b) any deficiency, failure or shortcoming in respect of the matters referred to in paragraph 60-30(3)(b), (c) or (d).

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

60-50 Reviewer's report on annual financial report

(1) A reviewer's report must contain a statement from the reviewer as to whether the reviewer has concluded that the financial report has been prepared in accordance with this Division. If the auditor has concluded that it has not, the reviewer's report must say why.

(2) If the reviewer has concluded that the financial report has not been prepared in accordance with this Division, the reviewer's report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report. If it is not practicable to quantify the effect fully, the reviewer's report must say why.

(3) The reviewer's report must describe:

(a) any material defect or irregularity in the financial report; and

(b) any deficiency, failure or shortcoming in respect of the matters referred to in paragraph 60-30(3)(b), (c) or (d).

(4) The reviewer's report must include any statements or disclosures required by the auditing standards.

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

In having its financial report audited or reviewed, a registered entity must ensure that the auditor or reviewer:

(a) has access at all reasonable times to the books of the registered entity; and

(b) is given all requested information, explanations or other assistance for the purposes of the audit or review.

A request under paragraph (b) must be a reasonable one.

60-60 Basic religious charities

(1) This Subdivision does not apply to a basic religious charity, or to any report relating to a basic religious charity.

(2) However, this Subdivision applies to a basic religious charity in relation to a financial year, and to any report for the year relating to the charity, if the charity gives the Commissioner a financial report for the year.

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

60-65 Errors in information statements and financial reports

(1) Subsection (2) applies if:

(a) a registered entity gives its information statement or financial report for a financial year to the Commissioner at a time; and

(b) after that time, the registered entity identifies a material error in the statement or report.

(2) The registered entity must give a corrected statement or report to the Commissioner within 28 days after the registered entity identifies the error.

Subdivision 60-E—Additional reporting requirements

60-70 Object of this Subdivision

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

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

60-75 Additional reporting requirements—particular registered entity

Additional report or additional reporting requirements

(1) The Commissioner may:

(a) determine, in writing, that:

(i) a particular registered entity must prepare a report in addition to any other statement or report the registered entity is required to prepare; and

(ii) the entity must give that report to the Commissioner by a time specified in the determination; or

(b) determine, in writing, that a particular registered entity must:

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

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

(2) A determination under subsection (1) is not a legislative instrument.

Additional reports

(3) A determination under paragraph (1)(a) must specify:

(a) the information to be included in the report; and

(b) any other requirements to be met in relation to the manner in which the report is prepared.

(4) A determination under paragraph (1)(a) may require the report to be prepared:

(a) for a particular period or periods; or

(b) in relation to circumstances as they exist as at a particular date or dates.

This subsection does not limit subsection (3).

(5) The determination may require the report to be prepared for all periods of a particular kind that start or end on or after a date specified in the determination. This subsection does not limit subsection (3).

Determination

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

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

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

60-80 Additional reporting requirements—classes of registered entities

Additional reports or additional reporting requirements

(1) The Commissioner may:

(a) make a determination in writing:

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

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

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

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

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

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

Additional reports

(3) A determination under paragraph (1)(a) must specify:

(a) the information to be included in the report; and

(b) any other requirements to be met in relation to the manner in which the report is prepared.

(4) A determination under paragraph (1)(a) may require the report to be prepared:

(a) for a particular period or periods; or

(b) in relation to circumstances as they exist as at a particular date or dates.

This subsection does not limit subsection (3).

(5) The determination may require the report to be prepared for all periods of a particular kind that start or end on or after a date specified in the determination. This subsection does not limit subsection (4).

Determinations

(6) A determination under subsection (1):

(a) may be expressed to be subject to conditions; and

(b) may be in respect of a past or future period but if it is in respect of a past period, the determination must be made no later than 6 years after the end of that period.

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

Subdivision 60-F—Substituted accounting periods

60-85 Commissioner may approve a different accounting period

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

(2) If the registered entity adopts such an accounting period, this Division applies in relation to a financial year that starts after the entity adopts the new accounting period as if:

(a) each reference in this Division (including this section, but not including this paragraph) to the financial year were a reference to the accounting period that starts during the financial year; and

(b) the reference in subsections 60-5(2) and 60-10(2) to 31 December were a reference to the last day of the 6 month period after the end of the accounting period.

(3) A registered entity seeking to adopt such an accounting period may apply, in the approved form, to the Commissioner for the Commissioner to make a decision under subsection (1).

60-90 Commissioner may impose conditions

(1) The Commissioner may impose conditions on a decision under subsection 60-85(1) to allow the registered entity to adopt such an accounting period.

(2) The conditions may be imposed at the time of making the decision or at any later time.

(3) The Commissioner may revoke the decision if satisfied that a condition has not been complied with.

Subdivision 60-G—Collective and joint reporting

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

Joint reporting

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

Collective reporting

(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.

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.

Application in approved form

(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).

Commissioner must consider certain issues

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

(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;

(e) the possible effect on the compliance and administrative costs of registered entities proposed to be included in the reporting group;

(f) the degree of affiliation, control and proximity of registered entities proposed to be included in the reporting group;

(g) the objects of this Act;

(h) any other matter that the Commissioner considers relevant.

60-100 Commissioner may impose conditions

(1) The Commissioner may impose conditions on a decision under subsection 60-95(1) or (2) to allow 2 or more registered entities to form a reporting group.

(2) The conditions may be imposed at the time of making the decision or at any later time.

(3) Without limiting subsection (1), the conditions may include one or more of the following:

(a) a condition that certain information in an information statement or financial report be separately identified;

(b) a condition that additional line items or notes be added to a financial report about the affairs of a particular registered entity (or part thereof);

(c) conditions relating to how the information statements and financial reports for the reporting group are to be structured for the purposes of subsection 60-95(2).

Example: A reporting group that includes a deductible gift recipient may be made subject to a condition to include information about deductible donations received, and the spending of those donations, in its annual information statement and notes to its financial reports.

(4) The Commissioner may revoke the decision if satisfied that a condition has not been complied with.

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

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

(a) the reporting group is to be treated as a large registered entity if one or more of the registered entities that form the reporting group are large registered entities; or

(b) the reporting group is to be treated as a medium registered entity if:

(i) paragraph (a) does not apply; and

(ii) one or more of the registered entities that form the reporting group are medium registered entities; or

(c) the reporting group is to be treated as a small registered entity if paragraphs (a) and (b) do not apply.

Part 3-3—Duty to notify

Division 65—Duty to notify

65-1 Simplified outline

The following is a simplified outline of this Division:

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

65-5 Registered entities must notify Commissioner of certain matters

(1) A registered entity must notify the Commissioner in the approved form if any of the following circumstances exist:

(a) its name has changed;

(b) its address for service has changed;

(c) an entity has ceased to be, or has become, a responsible entity of the registered entity;

(d) its governing rules have changed;

(e) the circumstances described in subsection (2).

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

(2) For the purposes of paragraph (1)(e), the circumstances exist if:

(a) the registered entity:

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

(ii) has not complied with a governance standard or external conduct standard; and

(b) the contravention or non-compliance is significant (see subsection (3)); and

(c) as a result of the contravention or non-compliance, any of the following apply:

(i) the registered entity is no longer entitled to be registered as a type of entity under Division 25;

(ii) the registered entity is no longer entitled to be registered as a subtype of entity under Division 25.

(3) For the purposes of paragraph (2)(b), in determining whether the contravention or non-compliance is significant, take account of the following matters:

(a) the nature, significance and persistence of any contravention or non-compliance;

(b) the desirability of ensuring that contributions (see section 205-40) to the registered entity are applied consistently with the not-for-profit nature, and the purpose, of the registered entity.

(4) The notification must be given:

(a) as soon as practicable; and

(b) subject to paragraph (c)—no later than 28 days after the registered entity first becomes aware of the circumstances referred to in subsection (1); and

(c) if the registered entity is a small registered entity and the notification relates only to circumstances mentioned in paragraph (1)(a), (b), (c) or (d)—no later than 60 days after the registered entity first becomes aware of those circumstances.

(5) To avoid doubt, 2 or more notifications may be included in the same document.

Chapter 4—Regulatory powers of the ACNC Commissioner

Part 4-1—Information gathering and monitoring powers

Division 70—Information gathering powers

70-1 Simplified outline

The following is a simplified outline of this Division:

> The Commissioner can gather information necessary to monitor registered entities' compliance with certain provisions and to assess registered entities' ongoing entitlement to registration.
>
> The Commissioner can gather information and documents necessary to determine whether information given in compliance with certain provisions is correct.

70-5 Commissioner may obtain information and documents

(1) This section applies to an entity if the Commissioner reasonably believes that the entity has information or a document that is reasonably necessary to obtain for the purpose of determining:

- (a) whether a registered entity has complied, or is complying, with a provision subject to monitoring under Division 75 (see section 75-5); or
- (b) whether information subject to monitoring under Division 75 (see section 75-10) is correct.

(2) The Commissioner may, by written notice given to the entity, require the entity:

- (a) to give to the Commissioner, within the period and in the manner and form specified in the notice, any such information; or

(b) to attend and give evidence before the Commissioner, or an individual authorised by the Commissioner, for the purpose of obtaining such information; or

(c) to produce to the Commissioner, within the period and in the manner specified in the notice, any such documents; or

(d) to make copies of any such documents and to produce to the Commissioner, within the period and in the manner specified in the notice, those copies.

(3) For the purposes of paragraph (1)(b), the Commissioner may require the evidence mentioned in that paragraph:

(a) to be given on oath or affirmation; and

(b) to be given orally or in writing.

For that purpose, the Commissioner or an ACNC officer may administer an oath or affirmation.

(4) An entity commits an offence if:

(a) the entity is subject to a requirement under subsection (2); and

(b) the entity fails to comply with the requirement.

Penalty: 20 penalty units.

(5) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

(6) A notice under subsection (2) must set out the effect of the following provisions:

(a) subsection (4);

(b) sections 137.1 and 137.2 of the *Criminal Code* (which deal with false or misleading information or documents).

70-10 Commissioner may inspect and copy original documents

The Commissioner may:

(a) inspect a document produced under paragraph 70-5(2)(c); and

(b) make and retain copies of the whole or a part of such a document.

70-15 Commissioner may retain original documents

(1) The Commissioner may take, and retain for as long as is necessary, possession of a document produced under paragraph 70-5(2)(c).

(2) The entity otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commissioner to be a true copy.

(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(4) Until a certified copy is supplied, the Commissioner must, at such times and places as the Commissioner thinks appropriate, permit the entity otherwise entitled to possession of the document, or an individual authorised by that entity, to inspect and make copies of, or take extracts from, the document.

70-20 Commissioner may inspect and retain copies of documents

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

70-25 Self-incrimination

(1) An entity is not excused from giving information, or producing a document or a copy of a document, under this Division on the ground that the information or the production of the document or copy might tend to incriminate the entity or expose the entity to a penalty.

(2) However, in the case of an individual:

(a) the information given, or the document or copy produced; or

(b) giving the information or producing the document or copy; or

(c) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document or copy;

is not admissible in evidence against the individual in criminal proceedings, other than:

(d) proceedings for an offence against subsection 70-5(4); or

(e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) that relates to this Act; or

(f) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

Division 75—Monitoring

Subdivision 75-A—Overview

75-1 Simplified outline

The following is a simplified outline of this Division:

> This Division allows an ACNC officer to monitor whether certain provisions have been, or are being, complied with.
>
> It also allows an ACNC officer to monitor whether information given in compliance, or purported compliance, with certain provisions is correct.
>
> An ACNC officer may enter premises for the purpose of monitoring.
>
> Entry must be with the consent of the occupier of the premises or under a monitoring warrant.
>
> An ACNC officer who enters premises may exercise monitoring powers. The ACNC officer may be assisted by other individuals if that assistance is necessary and reasonable.
>
> An occupier's consent to an ACNC officer entering premises for the purposes of monitoring must be voluntary. ACNC officers must abide by the terms of that consent.
>
> An ACNC officer who enters premises under a monitoring warrant must give details of the warrant to the occupier of the premises.
>
> The occupier of the premises may observe the execution of a monitoring warrant and must provide reasonable facilities and assistance for the effective execution of the warrant.

Subdivision 75-B—Application

75-5 Provisions *subject to monitoring*

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

(a) a provision of this Act that creates an offence;

(b) a provision of a legislative instrument made under this Act that creates an offence;

(c) a provision of the *Crimes Act 1914* or the *Criminal Code* that creates an offence, to the extent that the offence relates to this Act or a legislative instrument made under this Act;

(d) a provision of this Act, if non-compliance with the provision gives rise to an administrative penalty;

(e) a provision of a legislative instrument made under this Act, if non-compliance with the provision gives rise to an administrative penalty;

(f) a provision of this Act creating a condition, if:

(i) compliance with the condition is necessary for an entity to be entitled to registration as a type or subtype of entity; or

(ii) non-compliance with the condition may lead to an entity having its registration as a type or subtype of entity revoked.

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

75-10 Information *subject to monitoring*

(1) Information given in compliance or purported compliance with one or more of the following provisions is ***subject to monitoring*** under this Division:

(a) a provision of this Act or of a legislative instrument made under this Act;

(b) a provision of the *Crimes Act 1914* or of the *Criminal Code*, to the extent that the provision relates to this Act or a legislative instrument made under this Act.

(2) Information is also ***subject to monitoring*** under this Division if:

(a) an entity has given the Commissioner the information (whether it did so voluntarily or in fulfilling an obligation to do so); and

(b) the information is included on the Register in accordance with Division 40.

Subdivision 75-C—Monitoring powers

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

(1) An ACNC officer may enter any premises and exercise the monitoring powers for either or both of the following purposes:

(a) determining whether a provision subject to monitoring under this Division has been, or is being, complied with;

(b) determining whether information subject to monitoring under this Division is correct.

Note: The ***monitoring powers*** are set out in sections 75-20, 75-25 and 75-30.

(2) However, an ACNC officer is not authorised to enter the premises unless:

(a) the occupier of the premises has consented to the entry and the ACNC officer has shown his or her identity card if required by the occupier; or

(b) the entry is made under a monitoring warrant.

Note: If entry to the premises is with the occupier's consent, the ACNC officer must leave the premises if the consent ceases to have effect (see section 75-45).

75-20 Monitoring powers of ACNC officers

The following are the ***monitoring powers*** that an ACNC officer may exercise in relation to premises under section 75-15:

(a) the power to search the premises and any thing on the premises;

(b) the power to examine or observe any activity conducted on the premises;

(c) the power to inspect, examine, take measurements of, or conduct tests on, any thing on the premises;

(d) the power to make any still or moving image or any recording of the premises or any thing on the premises;

(e) the power to inspect any document on the premises;

(f) the power to take extracts from, or make copies of, any such document;

(g) the power to take onto the premises such equipment and materials as the ACNC officer requires for the purpose of exercising powers in relation to the premises;

(h) the power to sample any thing on the premises;

(i) the powers set out in subsections 75-25(1) and (3) and 75-30(2).

75-25 Operating electronic equipment

(1) The ***monitoring powers*** include the power to:

(a) operate electronic equipment on the premises; and

(b) use a disk, tape or other storage device that:

(i) is on the premises; and

(ii) can be used with the equipment or is associated with it.

(2) The ***monitoring powers*** include the powers mentioned in subsection (3) if information (***relevant data***) is found in the exercise of the power under subsection (1) that is relevant to determining whether:

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

(b) information subject to monitoring under this Division is correct.

(3) The powers are as follows:

(a) the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises;

(b) the power to operate electronic equipment on the premises to transfer the relevant data to a disk, tape or other storage device that:

(i) is brought to the premises for the exercise of the power; or

(ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;

and remove the disk, tape or other storage device from the premises.

(4) An ACNC officer may operate electronic equipment as mentioned in subsection (1) or (3) only if:

(a) the ACNC officer believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment; and

(b) the ACNC officer has reasonable grounds to suspect that:

(i) the equipment contains data relevant to determining whether a circumstance described in paragraph (2)(a) or (b) exists; or

(ii) the disk, tape or other storage device contains data relevant to determining whether a circumstance described in paragraph (2)(a) or (b) exists.

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

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

(1) This section applies if an ACNC officer enters premises (whether under a monitoring warrant or by consent of the occupier) for either or both of the following purposes:

(a) determining whether a provision subject to monitoring has been, or is being, complied with;

(b) determining whether information subject to monitoring is correct.

(2) The ***monitoring powers*** include the power to secure a thing for a period not exceeding 24 hours if:

(a) the thing is found during the exercise of monitoring powers on the premises; and

(b) an ACNC officer believes on reasonable grounds that:

(i) a provision subject to monitoring has been contravened with respect to the thing; or

(ii) the thing affords evidence of the contravention of a provision subject to monitoring; or

(iii) the thing is intended to be used for the purpose of contravening a provision subject to monitoring; and

(c) the ACNC officer suspects on reasonable grounds that:

(i) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and

(ii) it is necessary to secure the thing without a warrant because the circumstances are serious and urgent.

(3) If an ACNC officer suspects on reasonable grounds that the thing needs to be secured for more than 24 hours, the ACNC officer may apply to an issuing officer for an extension of that period up to a specified time.

(4) The ACNC officer must give notice to the occupier of the premises, or an individual who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or individual is entitled to be heard in relation to that application.

(5) The issuing officer may issue the extension if he or she is satisfied, by information on oath or affirmation, that it is necessary to do so in order to prevent the thing from being concealed, lost or destroyed before a warrant to seize the thing is obtained.

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

(7) The period may be extended more than once.

75-35 Individuals assisting ACNC officers

ACNC officers may be assisted by other individuals

(1) An ACNC officer may be assisted by other individuals in exercising powers or performing functions or duties under this Division, if that assistance is necessary and reasonable. An

individual giving such assistance is an ***individual assisting*** the ACNC officer.

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

(2) An individual assisting the ACNC officer:

(a) may enter the premises; and

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

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

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

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

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

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

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

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

Application

(1) This section applies if an ACNC officer enters premises for the purposes of determining whether:

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

(b) information subject to monitoring under this Division is correct.

Entry with consent

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

Entry under a monitoring warrant

(3) If the entry is authorised by a monitoring warrant, the ACNC officer may require any individual on the premises to answer any questions, and produce any document, relating to:
- (a) the operation of the provision; or
- (b) the information.

(4) An individual is not excused from answering a question, or producing a document or a copy of a document, under subsection (3) on the ground that the answer or the production of the document or copy might tend to incriminate the individual or expose the individual to a penalty.

(5) However:
- (a) the answer given, or the document or copy produced; or
- (b) giving the answer or producing the document or copy; or
- (c) any information, document or thing obtained as a direct or indirect consequence of giving the answer or producing the document or copy;

is not admissible in evidence against the individual in criminal proceedings, other than:
- (d) proceedings for an offence against subsection (6); or
- (e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) that relates to this Act; or
- (f) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

Offence

(6) An individual commits an offence if:

(a) the individual is subject to a requirement under subsection (3); and

(b) the individual fails to comply with the requirement.

Penalty for contravention of this subsection: 20 penalty units.

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

75-45 Consent

(1) Before obtaining the consent of an occupier of premises for the purposes of paragraph 75-15(2)(a), an ACNC officer must inform the occupier that the occupier may refuse consent.

(2) A consent has no effect unless the consent is voluntary.

(3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.

(4) The occupier may extend the period of a consent that is limited as mentioned in subsection (3).

(5) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.

(6) If an ACNC officer entered premises because of the consent of the occupier of the premises, the ACNC officer, and any individual assisting the ACNC officer, must leave the premises if the consent ceases to have effect.

75-50 Announcement before entry under warrant

(1) Before entering premises under a monitoring warrant, an ACNC officer must:

(a) announce that he or she is authorised to enter the premises; and

(b) show his or her identity card to the occupier of the premises, or to an individual who apparently represents the occupier, if the occupier or individual is present at the premises; and

(c) give any individual at the premises an opportunity to allow entry to the premises.

(2) However, an ACNC officer is not required to comply with subsection (1) if the ACNC officer believes on reasonable grounds that immediate entry to the premises is required:

(a) to ensure the safety of an individual; or

(b) to ensure that the effective execution of the warrant is not frustrated.

(3) If:

(a) an ACNC officer does not comply with subsection (1) because of subsection (2); and

(b) the occupier of the premises, or an individual who apparently represents the occupier, is present at the premises;

the ACNC officer must show his or her identity card to the occupier or individual as soon as practicable after entering the premises.

75-55 ACNC officer to be in possession of warrant

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

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

(1) An ACNC officer must comply with subsection (2) if:

(a) a monitoring warrant is being executed in relation to premises; and

(b) the occupier of the premises, or an individual who apparently represents the occupier, is present at the premises.

(2) The ACNC officer must, as soon as practicable:

(a) make a copy of the warrant available to the occupier or individual (which need not include the signature of the issuing officer who issued it); and

(b) inform the occupier or individual of the rights and responsibilities of the occupier or individual under Subdivision 75-E, in English.

75-65 Expert assistance to operate electronic equipment

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

Securing equipment

(2) The ACNC officer may secure any electronic equipment that is on the premises if the ACNC officer suspects on reasonable grounds that:

(a) there is relevant data on the premises; and

(b) the relevant data may be accessible by operating the equipment; and

(c) expert assistance is required to operate the equipment; and

(d) the relevant data may be destroyed, altered or otherwise interfered with, if the ACNC officer does not take action under this subsection.

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

(3) ***Relevant data*** means information relevant to determining whether:

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

(b) information subject to monitoring under this Division is correct.

(4) The ACNC officer must give notice to the occupier of the premises, or an individual who apparently represents the occupier, of:

(a) the ACNC officer's intention to secure the equipment; and

(b) the fact that the equipment may be secured for up to 24 hours.

Period equipment may be secured

(5) The equipment may be secured until the earlier of the following happens:

(a) the 24-hour period ends;

(b) the equipment has been operated by the expert.

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

Extensions

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

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

(8) The issuing officer may issue the extension if he or she is satisfied, by information on oath or affirmation, that it is necessary to do so in order to prevent the destruction, alteration or interference with the relevant data.

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

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

75-70 Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of electronic equipment being operated as mentioned in this Division:

(i) damage is caused to the equipment; or

(ii) the data recorded on the equipment is damaged; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the individual who was to operate the equipment; or

(ii) insufficient care was exercised by the individual operating the equipment.

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

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

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

Subdivision 75-E—Occupier's rights and responsibilities

75-75 Occupier entitled to observe execution of warrant

(1) The occupier of premises to which a monitoring warrant relates, or an individual who apparently represents the occupier, is entitled to observe the execution of the monitoring warrant if the occupier or individual is present at the premises while the warrant is being executed.

(2) The right to observe the execution of the warrant ceases if the occupier or individual impedes that execution.

(3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

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

(1) The occupier of premises to which a monitoring warrant relates, or an individual who apparently represents the occupier, must provide:

(a) an ACNC officer executing the warrant; and

(b) any individual assisting the ACNC officer;

with all reasonable facilities and assistance for the effective exercise of their powers.

(2) An individual commits an offence if:

(a) the individual is subject to subsection (1); and

(b) the individual fails to comply with that subsection.

Penalty for contravention of this subsection: 20 penalty units.

Subdivision 75-F—Monitoring warrants

75-85 Monitoring warrants

Application for warrant

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

Issue of warrant

(2) The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that it is necessary that one or more ACNC officers should have access to the premises for the purpose of determining whether:

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

(b) information subject to monitoring under this Division is correct.

(3) However, the issuing officer must not issue the warrant unless the Commissioner or some other individual has given to the issuing officer, either orally or by affidavit, such further information (if

any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

(4) The warrant must:

(a) describe the premises to which the warrant relates; and

(b) state that the warrant is issued under this section; and

(c) state the purpose for which the warrant is issued; and

(d) authorise one or more ACNC officers (whether or not named in the warrant) from time to time while the warrant remains in force:

(i) to enter the premises; and

(ii) to exercise the powers set out in this Division in relation to the premises; and

(e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and

(f) specify the day (not more than 1 month after the issue of the warrant) on which the warrant ceases to be in force.

Subdivision 75-G—Powers of issuing officers

75-90 Powers of issuing officers

Powers conferred personally

(1) A power conferred on an issuing officer by this Division is conferred on the issuing officer:

(a) in a personal capacity; and

(b) not as a court or a member of a court.

Powers need not be accepted

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

Protection and immunity

(3) An issuing officer exercising a power conferred by this Division has the same protection and immunity as if the issuing officer were exercising the power:

(a) as the court of which the issuing officer is a member; or

(b) as a member of the court of which the issuing officer is a member.

Subdivision 75-H—General provisions

75-95 Identity cards

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

Form of identity card

(2) The identity card must:

(a) be in the form set out in writing by the Commissioner; and

(b) contain a recent photograph of the ACNC officer.

Offence

(3) An individual commits an offence if:

(a) the individual has been issued with an identity card; and

(b) the individual ceases to be an ACNC officer; and

(c) the individual does not return the identity card to the Commissioner within 14 days after ceasing to be an ACNC officer.

Penalty: 1 penalty unit.

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

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

Defence: card lost or destroyed

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

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

ACNC officer must carry card

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

Part 4-2—Enforcement powers

Division 80—Warnings

80-1 Simplified outline

The following is a simplified outline of this Division:

> The Commissioner may give a registered entity a warning notice if:
>
> (a) the entity is a federally regulated entity and the Commissioner reasonably believes that the entity has contravened, or is likely to contravene, a provision of this Act; or
>
> (b) the entity is a federally regulated entity and the Commissioner reasonably believes that the entity has not complied, or is likely to not comply, with a governance standard; or
>
> (c) the Commissioner reasonably believes that the entity has not complied, or is likely to not comply, with an external conduct standard.
>
> The notice may inform the registered entity of the circumstances in relation to the contravention or non-compliance and outline actions that could be taken under this Act in response to the contravention or non compliance.

80-5 Commissioner may issue formal warning

(1) Subsection (2) applies if:

(a) a registered entity is a federally regulated entity and the Commissioner reasonably believes that the registered entity has contravened, or is likely to contravene, a provision of this Act; or

(b) a registered entity is a federally regulated entity and the Commissioner reasonably believes that the registered entity has not complied, or is likely to not comply, with a governance standard; or

(c) the Commissioner reasonably believes that a registered entity has not complied, or is likely to not comply, with an external conduct standard.

(2) The Commissioner may, by written notice given to the registered entity:

(a) inform the registered entity of the circumstances in relation to the contravention, likely contravention, non-compliance or likely non-compliance; and

(b) warn the registered entity of the action that may be taken under this Act in response to the contravention, likely contravention, non-compliance or likely non-compliance.

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

Division 85—Directions

Subdivision 85-A—Overview

85-1 Simplified outline

The following is a simplified outline of this Division:

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

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

(a) the entity is a federally regulated entity and the Commissioner reasonably believes that the entity has contravened, or is likely to contravene, a provision of this Act; or

(b) the entity is a federally regulated entity and the Commissioner reasonably believes that the entity has not complied, or is likely to not comply, with a governance standard; or

(c) the Commissioner reasonably believes that the entity has not complied, or is likely to not comply, with an external conduct standard.

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

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

85-5 Commissioner may give directions in certain circumstances

(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 the registered entity has contravened, or is likely to contravene, a provision of this Act; or

(b) the registered entity is a federally regulated entity and the Commissioner reasonably believes that the registered entity has not complied, or is likely to not comply, with a governance standard; or

(c) the Commissioner reasonably believes that the registered entity has not complied, or is likely to 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:

(a) specify the ground or grounds referred to in subsection (1) on the basis of which the direction is given; and

(b) specify the time by which, or the period during which, the registered entity must comply with the direction.

85-10 Kinds of direction

(1) The kinds of direction that the registered entity may be given are directions to:

(a) do a specified act that:

(i) if paragraph 85-5(1)(a) applies—the Commissioner considers is necessary to address the contravention mentioned in that paragraph (or prevent the likely contravention mentioned in that paragraph); or

(ii) if paragraph 85-5(1)(b) or (c) applies—the Commissioner considers is necessary to address the non-compliance mentioned in that paragraph (or prevent the likely non-compliance mentioned in that paragraph); or

(b) not do a specified act that:

(i) if paragraph 85-5(1)(a) applies—the Commissioner considers is necessary to refrain from doing to address the contravention mentioned in that paragraph (or prevent the likely contravention mentioned in that paragraph); or

(ii) if paragraph 85-5(1)(b) or (c) applies—the Commissioner considers is necessary to refrain from doing to address the non-compliance mentioned in that paragraph (or prevent the likely non-compliance mentioned in that paragraph); or

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

(2) Without limiting the generality of paragraphs (1)(a) and (b), the direction may be:

(a) to ensure that an individual covered by subsection (3) does not make, or participate in making, decisions that affect the whole, or a substantial part, of the business of the registered entity; or

(b) to not enter into a specified commercial transaction, financial transaction or other transaction, including the following:

(i) borrowing any amount;

(ii) repaying any money on deposit or advance;

(iii) paying or transferring any amount or asset to any entity, or creating an obligation (contingent or otherwise) to do so.

(3) This subsection covers an individual (other than a responsible entity of the registered entity):

(a) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the registered entity; or

(b) who has the capacity to affect significantly the registered entity's financial standing; or

(c) in accordance with whose instructions or wishes the responsible entities of the registered entity are accustomed to act (excluding advice given by the individual in the proper performance of functions attaching to the individual's professional capacity or his or her business relationship with the responsible entities of the registered entity).

(4) Without limiting the generality of subsection (1), the direction may:

(a) specify a particular class of acts or particular classes of acts; or

(b) make different provision with respect to different acts or different classes of acts.

(5) A direction does not apply to the payment or transfer of money pursuant to an order of a court or a process of execution.

85-15 Power to comply with directions

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

85-20 Variation and revocation of directions

(1) The Commissioner may, by notice in writing to the registered entity, vary the direction if, at the time of the variation, the Commissioner considers that the variation is necessary and appropriate.

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

(3) The direction has effect until the Commissioner revokes it by notice in writing to the registered entity. The Commissioner may

revoke the direction if, at the time of revocation, the Commissioner considers that the direction is no longer necessary or appropriate.

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

(5) Subsection (6) applies if:

(a) either:

(i) the Commissioner gives a direction to the registered entity at a time; or

(ii) the Commissioner varies a direction at a time; and

(b) the Commissioner does not vary or revoke the direction for 12 months after that time.

(6) The Commissioner must consider within a reasonable time after the end of that 12 months whether it would be reasonable to vary or revoke the direction.

85-25 Objections

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

(a) a decision to give a direction;

(b) a decision to vary a direction;

(c) a decision not to vary or revoke a direction after considering whether to vary or revoke it in accordance with subsection 85-20(6).

Subdivision 85-C—Non-compliance with a direction

85-30 Non-compliance with a direction

(1) A registered entity commits an offence if:

(a) it does, or fails to do, an act; and

(b) doing, or failing to do, the act results in a contravention of a direction given to it under Subdivision 85-B.

Penalty: 40 penalty units.

Note: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty stated above.

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

(a) the first day on which the offence is committed; and

(b) each subsequent day (if any) on which the circumstances that gave rise to the registered entity committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

Division 90—Enforceable undertakings

90-1 Simplified outline

The following is a simplified outline of this Division:

> The Commissioner's guidance and education (see section 110-10) will assist registered entities to comply with and understand their obligations under this Act. However, where enforcement action is required, the Commissioner's range of enforcement powers includes the power to accept enforceable undertakings, so that the Commissioner can provide a proportionate and effective regulatory response.
>
> This Division provides the Commissioner with the authority to accept an undertaking relating to provisions in this Act or in legislative instruments made under this Act from a registered entity that is a federally regulated entity. The Commissioner will also have the authority to accept an undertaking relating to external conduct standards from any registered entity.
>
> Undertakings may be enforced in a Court. The orders that may be made by a Court include an order directing compliance with an undertaking, an order requiring any financial benefit from a failure to comply with an undertaking to be surrendered, an order for damages, and any other orders that the Court considers appropriate.

90-5 *Enforceable* provisions

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

(a) a provision of this Act;

(b) a governance standard or external conduct standard;

(c) a provision of a legislative instrument made under this Act.

90-10 Acceptance of undertakings

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

(a) a written undertaking given by a registered entity that is a federally regulated entity that the entity will, in order to comply with a provision enforceable under this Division, take specified action;

(b) a written undertaking given by a registered entity that is a federally regulated entity that the entity will, in order to comply with a provision enforceable under this Division, refrain from taking specified action;

(c) a written undertaking given by a registered entity that is a federally regulated entity that the entity will take specified action directed towards ensuring that:

(i) the entity does not contravene a provision enforceable under this Division in the future; or

(ii) the entity is unlikely to contravene such a provision, in the future.

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

(a) a written undertaking given by a registered entity that the entity will, in order to comply with an external conduct standard, take specified action;

(b) a written undertaking given by a registered entity that the entity will, in order to comply with an external conduct standard, refrain from taking specified action;

(c) a written undertaking given by a registered entity that the entity will take specified action directed towards ensuring that:

(i) the entity does not fail to comply with an external conduct standard in the future; or

(ii) the entity is unlikely to fail to comply such a standard in the future.

(3) The undertaking must be expressed to be an undertaking under this section.

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

(4) The entity may withdraw or vary the undertaking at any time, but only with the written consent of the Commissioner.

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

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

90-15 Enforcement of undertakings

(1) If:

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

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

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

the Commissioner may apply to a Court for an order under subsection (2).

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

(a) the entity has breached the undertaking; and

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

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

(3) The orders are as follows:

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

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

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

(d) any other order that the Court considers appropriate.

Division 95—Injunctions

95-1 Simplified outline

The following is a simplified outline of this Division:

> The Commissioner's guidance and education (see section 110-10) will assist registered entities to comply with and understand their obligations under this Act. However, where enforcement action is required, the Commissioner's range of enforcement powers includes the power to apply for injunctions, so that the Commissioner can provide a proportionate and effective regulatory response.
>
> A Court may grant an injunction (including a consent injunction or interim injunction) in the enforcement of provisions enforceable under this Division if:
>
> (a) the injunction or interim injunction relates to a registered entity that is a federally regulated entity; or
>
> (b) the injunction or interim injunction relates to a registered entity and is in respect of an external conduct standard.
>
> Injunctions may restrain registered entities from contravening a provisions enforceable under this Division, or to compel the doing of a thing.

95-5 *Enforceable* provisions

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

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

95-10 Injunctions relating to federally regulated entity etc.

A Court may grant an injunction or an interim injunction under this Division only if:

(a) the injunction or interim injunction relates to a registered entity that is a federally regulated entity; or

(b) the injunction or interim injunction relates to a registered entity and is in respect of an external conduct standard.

95-15 Grant of injunctions

Restraining injunctions

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

(a) restraining the person from engaging in the conduct; and

(b) if, in the Court's opinion, it is desirable to do so—requiring the person to do a thing.

Performance injunctions

(2) If:

(a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and

(b) the refusal or failure was, is or would be a contravention of a provision enforceable under this Division;

the Court may, on application by the Commissioner, grant an injunction requiring the person to do that thing.

Consent injunctions

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

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

95-20 Interim injunctions

Grant of interim injunctions

(1) Before deciding an application for an injunction under section 95-15, a Court may grant an interim injunction:

(a) restraining a person from engaging in conduct; or

(b) requiring a person to do a thing.

No undertakings as to damages

(2) The Court must not require the Commissioner to give an undertaking as to damages as a condition of granting an interim injunction.

95-25 Discharging or varying injunctions

A Court may discharge or vary an injunction granted by that Court under this Division.

95-30 Certain limits on granting injunctions not to apply

Restraining injunctions

(1) The power of a Court under this Division to grant an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any other entity if the person engages in conduct of that kind.

Performance injunctions

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

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and

(b) whether or not the person has previously refused or failed to do that thing; and

(c) whether or not there is an imminent danger of substantial damage to any other entity if the person refuses or fails to do that thing.

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

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

95-40 Other powers of a Court unaffected

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

Division 100—Suspension and removal of responsible entities

Subdivision 100-A—Overview

100-1 Simplified outline

The following is a simplified outline of this Division:

> The Commissioner's guidance and education (see section 110-10) will assist registered entities to comply with and understand their obligations under this Act. However, where enforcement action is required, the Commissioner's range of enforcement powers includes the power to suspend or remove a responsible entity of a registered entity, so that the Commissioner can provide a proportionate and effective regulatory response.
>
> The Commissioner may suspend or remove a responsible entity of a registered entity if:
>
> (a) the registered entity is a federally regulated entity and the Commissioner reasonably believes that the entity has contravened, or is likely to contravene, a provision of this Act; or
>
> (b) the registered entity is a federally regulated entity and the Commissioner reasonably believes that the entity has not complied, or is likely to not comply, with a governance standard; or
>
> (c) the Commissioner reasonably believes that the registered entity has not complied, or is likely to not comply, with an external conduct standard.
>
> The Commissioner may only do so if the suspension or removal is necessary to address the contravention or non-compliance, and may only do so after considering a range of policy matters.

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

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

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

Subdivision 100-B—Suspension and removal of responsible entities

100-5 Commissioners' exercise of power under this Subdivision

(1) The Commissioner can exercise a power under this Subdivision in relation to a registered entity only if:

(a) the registered entity is a federally regulated entity and the Commissioner reasonably believes that the registered entity has contravened, or is likely to contravene, a provision of this Act; or

(b) the regulated entity is a federally regulated entity and the Commissioner reasonably believes that the registered entity has not complied, or is likely to not comply, with a governance standard; or

(c) the Commissioner reasonably believes that the registered entity has not complied, or is likely to not comply, with an external conduct standard.

(2) This Subdivision does not apply to an entity that is a responsible entity of the registered entity only because of paragraph 205-30(c) (about trustees in bankruptcy, liquidators etc.).

Note: Information relating to suspensions and removals may be placed on the Register in accordance with Division 40.

(3) The Commissioner cannot exercise a power under this Subdivision in relation to a registered entity that is a basic religious charity.

100-10 Suspension of responsible entities

Suspension

(1) The Commissioner may suspend any of the responsible entities of the registered entity, if the Commissioner considers that doing so is necessary to address the contravention or non-compliance mentioned in subsection 100-5(1) (or to prevent the likely contravention or non-compliance mentioned in that subsection).

(2) The suspension of a responsible entity under subsection (1):
- (a) starts when the Commissioner gives the responsible entity notice of the suspension under subsection (3); and
- (b) ends at the time specified in the notice.

(3) If the Commissioner decides to suspend a responsible entity under subsection (1), the Commissioner must give to the responsible entity a written notice:
- (a) setting out the decision; and
- (b) giving the reasons for the decision; and
- (c) setting out the time the suspension ends.

Extension of suspensions

(4) The Commissioner may change the time the suspension of a responsible entity ends.

(5) If the Commissioner decides to change the time the suspension of a responsible entity ends under this section, the Commissioner must give to the responsible entity a written notice:
- (a) setting out the decision; and
- (b) giving the reasons for the decision; and
- (c) setting out the new time the suspension ends.

Matters Commissioner must take into account

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

Review of decisions under this section

(7) A responsible entity that is dissatisfied with either of the following decisions under this section may object against the decision in the manner set out in Part 7-2:

(a) a decision to suspend the responsible entity;

(b) a decision to change the time a suspension of the responsible entity ends.

100-15 Removal of responsible entities

Removal

(1) The Commissioner may remove any of the responsible entities of the registered entity if the Commissioner considers that doing so is necessary to address the contravention or non-compliance mentioned in subsection 100-5(1) (or prevent the likely contravention or non-compliance mentioned in that subsection).

(2) If the Commissioner decides to remove a responsible entity under this section, the Commissioner must give to the responsible entity a written notice:

(a) setting out the decision; and

(b) giving the reasons for the decision.

Matters Commissioner must take into account

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

Review of decisions under this section

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

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

(1) A responsible entity suspended under section 100-10 cannot become a responsible entity of the registered entity until the suspension ends.

(2) A responsible entity removed under section 100-15 cannot become a responsible entity of the registered entity.

(3) If:

(a) an individual is a responsible entity of a registered entity because:

(i) the registered entity is a company (or is a trust, a trustee of which is a company); and

(ii) the individual is a director of the company; and

(b) the individual is suspended under section 100-10 or removed under section 100-15;

the individual ceases to be a director of the company (until, in the case of suspension, the suspension ends).

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

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

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

(1) An entity commits an offence if:

(a) the entity is suspended under section 100-10 or removed under section 100-15; and

(a) the entity makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the registered entity.

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

(2) An entity commits an offence if:

(a) the entity is suspended under section 100-10 or removed under section 100-15; and

(b) the entity exercises the capacity to affect significantly the registered entity's financial standing.

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

(3) An entity commits an offence if:

(a) the entity is suspended under section 100-10 or removed under section 100-15; and

(b) the entity is an individual; and

(c) the entity communicates instructions or wishes to the remaining responsible entities of the registered entity:

(i) knowing that those responsible entities are accustomed to act in accordance with the suspended or removed entity's instructions or wishes; or

(ii) intending that those responsible entities will act in accordance with those instructions or wishes; and

(d) the communication of those instructions or wishes is not advice given by the entity in the proper performance of functions attaching to the entity's professional capacity or his or her business relationship with the remaining responsible entities of the registered entity.

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

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

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

Subdivision 100-C—Acting responsible entities

100-30 Appointment of acting responsible entities

Suspension

(1) If the Commissioner suspends a responsible entity under section 100-10, the Commissioner may appoint one or more persons (the ***acting responsible entities***) to act in the place of the responsible entity during the period of the suspension.

(2) If the Commissioner suspends:

(a) all directors of a company; or

(b) all trustees of a trust;

under section 100-10, the Commissioner must appoint one or more persons (the ***acting responsible entities***) to act in the place of the suspended directors or trustees during the period of the suspension.

Removal

(3) If the Commissioner removes a responsible entity under section 100-15, the Commissioner may appoint one or more persons (the ***acting responsible entities***) to act in the place of the removed responsible entity until all of the vacancies created by the removal are filled.

(4) If the Commissioner removes:

(a) all directors of a company; or

(b) all trustees of a trust;

under section 100-15, the Commissioner must appoint one or more persons (the ***acting responsible entities***) to act in the place of the removed directors or trustees until at least one of the vacancies created by the removal are filled.

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

(1) This section applies if:

(a) the Commissioner removes or suspends a responsible entity of a registered entity at a time; and

(b) at that time, the registered entity is a federally regulated entity to which paragraph 205-15(b) (a trust, all of the trustees of which are constitutional corporations) applies, and to which no other paragraph in section 205-15 applies; and

(c) just before that time, the responsible entity was:

(i) a corporation to which paragraph 51(xx) of the Constitution applied; or

(ii) a body corporate that was incorporated in a Territory.

(2) Subject to subsection (3), the Commissioner must not appoint a person as an acting responsible entity of the registered entity unless the person meets whichever of the following requirements is applicable:

(a) in a case to which subparagraphs (1)(c)(i) and (ii) apply—the person is a constitutional corporation;

(b) in a case to which only subparagraph (1)(c)(i) applies—the person is a corporation to which paragraph 51(xx) of the Constitution applies;

(c) in a case to which only subparagraph (1)(c)(ii) applies—the person is a body corporate that is incorporated in that Territory.

(3) The Commissioner may appoint a person that does not meet the requirement in subsection (2) as an acting responsible entity of the registered entity under section 100-30 if it is not practical for the Commissioner to appoint a person that does meet that requirement.

(4) If the Commissioner appoints a person that does not meet the requirement in subsection (2) as an acting responsible entity in accordance with subsection (3) at a time:

(a) the person cannot act as a responsible entity under section 100-30 for longer than 6 months; and

(b) if it becomes practical at a later time for the Commissioner to appoint a person that does meet that requirement—the person cannot act as a responsible entity after that later time.

100-40 Terms and conditions of appointment of acting responsible entities

(1) The Commissioner may determine the terms and conditions of the appointment of the acting responsible entities. The determination has effect despite anything in:

(a) any Australian law other than this section; or

(b) the registered entity's governing rules; or

(c) if the suspended or removed responsible entities were directors of a trustee of the registered entity—the governing rules of the trustee.

(2) Without limiting subsection (1), the Commissioner may make a determination under that subsection to the effect that the acting responsible entities' fees are to be paid out of the assets of:

(a) the registered entity; or

(b) if the suspended or removed responsible entities were directors of a trustee of the registered entity—the trustee.

100-45 Termination of appointments of acting responsible entities

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

100-50 Resignation of acting responsible entities

(1) An acting responsible entity may resign by writing given to the Commissioner.

(2) The resignation does not take effect until the end of the seventh day after the day on which it was given to the Commissioner.

100-55 Powers of acting responsible entities

(1) The acting responsible entities have and may exercise all the rights, title and powers, and must perform all the functions and duties, of the removed or suspended responsible entities.

(2) The registered entity's governing rules (and, if the suspended or removed responsible entities were directors of a trustee of the registered entity, the governing rules of the trustee), and every Australian law apply in relation to the acting responsible entities as if the acting responsible entities:

(a) in a case to which subsection 100-20(3) applies—occupied the same offices as the suspended or removed responsible entities; or

(b) otherwise—were the trustees of the registered entity.

100-60 Commissioner may give directions to acting responsible entities

(1) The Commissioner may give an acting responsible entity a written notice directing the acting responsible entity to do, or not to do, one or more specified acts or things in relation to the registered entity.

(2) The acting responsible entity commits an offence if:

(a) the acting responsible entity engages in conduct (within the meaning of section 900-5); and

(b) that engagement in conduct contravenes a notice given to the acting responsible entity under subsection (1) of this section.

Penalty: 40 penalty units.

(3) This section does not affect the validity of a transaction entered into in contravention of a notice given under subsection (1).

Subdivision 100-D—Special provisions about acting trustees

100-65 Property vesting orders

(1) If the Commissioner appoints an acting responsible entity to act in the place of a suspended or removed trustee of the registered entity, the Commissioner must make a written order vesting the property of the registered entity in the acting responsible entity.

(2) If the appointment ends, the Commissioner must make a written order vesting the property of the registered entity in the new acting responsible entity, the previously suspended trustee or trustees or the new permanent trustee or trustees (whichever is applicable).

(3) If the Commissioner makes an order under this section vesting property of a registered entity in a person or persons, then, subject to subsection (4), the property immediately vests in the person or persons by force of this section.

(4) If:

(a) the property is of a kind whose transfer or transmission may be registered under an Australian law; and

(b) that law enables the registration of such an order, or enables the person or persons to be registered as the owner or owners of that property;

the property does not vest in the person or persons until the requirements of the law referred to in paragraph (a) have been complied with.

100-70 Property vested in acting trustee—former trustees' obligations relating to books, identification of property and transfer of property

Books

(1) An entity commits an offence if:

(a) the Commissioner makes an order under subsection 100-65(1) or (2) vesting the property of a registered entity in an acting responsible entity; and

(b) just before the Commissioner made the order, the property was vested in:

(i) the entity (the ***former trustee***); or

(ii) 2 or more entities (the ***former trustees***), including the entity; and

(c) the former trustee or former trustees do not, within 14 days of the Commissioner making the order, give the acting responsible entity all books (within the meaning of the *Corporations Act 2001*) relating to the registered entity's affairs that are in the former trustee's or former trustees' possession, custody or control.

Penalty: 50 penalty units.

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*.

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

Part 5-1—The ACNC

Division 105—Establishment and function of the ACNC

105-5 Establishment

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

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

105-10 Constitution of the ACNC

The ACNC consists of:

(a) the Commissioner; and

(b) any staff assisting the Commissioner as mentioned in subsection 120-5(1).

105-15 Function of the ACNC

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

105-20 ACNC has privileges and immunities of the Crown

The ACNC has the privileges and immunities of the Crown.

Part 5-2—The Commissioner

Division 110—Establishment, functions and powers of the Commissioner

110-5 Establishment

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

(2) The Commissioner has:

(a) the general administration of this Act; and

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

110-10 Assistance functions of Commissioner

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

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

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

110-15 Powers of Commissioner

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

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

110-20 Working with the Advisory Board

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

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

Division 115—Terms and conditions of appointment

115-5 Appointment

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

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

115-10 Term of appointment

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

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

115-15 Acting Commissioner

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

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

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

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

115-20 Remuneration

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

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

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

115-25 Leave of absence

(1) The Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

115-30 Disclosure of interests to the Minister

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

115-35 Outside employment

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

115-40 Other terms and conditions

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

115-45 Resignation

(1) The Commissioner may resign his or her appointment by giving the Governor-General a signed notice of resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

115-50 Termination of appointment

(1) The Governor-General may terminate the appointment of the Commissioner:

(a) for misbehaviour; or

(b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity.

(2) The Governor-General may terminate the appointment of the Commissioner if:

(a) the Commissioner:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) the Commissioner fails, without reasonable excuse, to comply with section 115-30; or

(d) if the Commissioner engages, without the Minister's approval, in paid employment outside the duties of his or her office (see section 115-35).

115-55 Delegation

(1) The Commissioner may, by instrument in writing, delegate any of the Commissioner's powers or functions to an SES employee, or acting SES employee, of the ACNC.

(2) In exercising powers under a delegation, the delegate must comply with any written directions of the Commissioner.

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

Division 120—Staff and consultants

120-5 Staff

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

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

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

120-10 Consultants

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

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

Part 5-3—Finance and reporting requirements

Division 125—ACNC Special Account

125-5 ACNC Special Account

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

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

125-10 Credits to the Account

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

(a) amounts received by the Commonwealth in connection with the performance of the Commissioner's functions under this Act;

(b) amounts received by the Commonwealth in relation to property paid for with amounts debited from the Account;

(c) amounts of any gifts given or bequests made for the purposes of the Account.

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

125-15 Purposes of the Account

The purposes of the Account are as follows:

(a) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the Commissioner's functions;

(b) paying any remuneration and allowances payable to any person under this Act (including staff mentioned in section 120-5);

(c) meeting the expenses of administering the Account.

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

Division 130—Annual report

130-5 Annual report

Annual report to be given to Minister

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

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

Contents of annual report

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

Chapter 6—The Advisory Board

Part 6-1—The Advisory Board

Division 135—Establishment, functions and powers

135-5 Establishment

The ACNC Advisory Board is established by this section.

135-10 Membership

The Advisory Board is to consist of:

(a) the holders of any offices determined by the Minister for the purposes of this paragraph; and

(b) at least 2, but no more than 8, other members (the ***general members***) with:

(i) expertise relating to not-for-profit entities (including charities); or

(ii) experience and sufficient qualifications in relation to law, taxation or accounting.

135-15 Function and powers of Advisory Board

(1) The Advisory Board's function is, at the request of the Commissioner, to provide advice and make recommendations to the Commissioner in relation to the Commissioner's functions under this Act.

(2) The Advisory Board has power to do all things necessary or convenient to be done for or in connection with the performance of its function.

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

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

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

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

140-5 Appointment

General members

(1) A general member is to be appointed by the Minister by written instrument, on a part-time basis.

(2) An individual is eligible to be appointed as a general member only if the person is ordinarily resident in Australia.

Chair and Deputy Chair

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

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

140-10 Term of appointment

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

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

140-15 Remuneration and allowances

(1) A general member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the general member is to be paid the remuneration that is prescribed by the regulations.

(2) A general member is to be paid the allowances that are prescribed by the regulations.

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

140-20 Standing obligation to disclose interests

(1) A member of the Advisory Board must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the Advisory Board's function.

(2) The notice must be given to the Minister as soon as practicable after the member becomes aware of the potential for conflict of interest.

140-25 Other terms and conditions

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

140-30 Resignation

(1) A general member may resign his or her appointment by giving the Minister a signed notice of resignation.

(2) The Chair may resign his or her appointment as the Chair without resigning his or her appointment as a general member (if applicable).

(3) The Deputy Chair may resign his or her appointment as the Deputy Chair without resigning his or her appointment as a general member (if applicable).

(4) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

140-35 Termination of appointment

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

Division 145—Advisory Board procedures

145-5 Meetings of the Advisory Board

Holding meetings

(1) The Chair:

(a) must convene 4 meetings of the Advisory Board in each financial year; and

(b) may convene such additional meetings as are necessary for the efficient performance of the Advisory Board's function.

Procedure of meetings

(2) Subject to subsection (4), the Commissioner may, by writing, determine matters relating to the operation of the Advisory Board.

(3) Subject to subsection (4), if no determination is in force for the purposes of subsection (2), the Advisory Board may operate in the way it determines.

(4) The Chair must ensure that minutes of meetings are kept.

Disclosure of interest by a member

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

Disclosure to be recorded in the minutes of the meeting

(6) Any disclosure under subsection (5), and any decision made by the Advisory Board in relation to the disclosure, must be recorded in the minutes of the meeting.

(7) The member must not take part in the making of a decision by the Board in relation to the matter referred to in subsection (5) unless

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

Attendance by Commissioner

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

Determination not a legislative instrument

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

Chapter 7—Miscellaneous

Part 7-1—Secrecy

Division 150—Secrecy

Subdivision 150-A—Preliminary

150-5 Objects of this Division

The objects of this Division are:

(a) to protect confidential and personal information by imposing strict obligations on ACNC officers (and other entities that acquire protected ACNC information), and so encourage people to provide correct information to the Commissioner; and

(b) to facilitate efficient and effective government administration and law enforcement by allowing disclosures of protected ACNC information for specific purposes.

150-10 Application of Division to entities other than ACNC officers

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

(a) an entity engaged to provide services relating to the Commission;

(b) an individual employed by, or otherwise performing services for, an entity referred to in paragraph (a);

(c) an individual:

(i) appointed or employed by, or performing services for, the Commonwealth or an authority of the Commonwealth; and

(ii) performing functions or exercising powers under or for the purposes of this Act;

(d) a member of the Advisory Board.

150-15 Meaning of *protected ACNC information*

In this Act:

protected ACNC information means information that:

(a) was disclosed or obtained under or for the purposes of this Act; and

(b) relates to the affairs of an entity; and

(c) identifies, or is reasonably capable of being used to identify, the entity.

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

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

(a) to produce to a court or tribunal a document containing protected ACNC information; or

(b) to disclose protected ACNC information to a court or tribunal.

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

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

(1) An entity commits an offence if:

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

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

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

(c) the entity:

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

(ii) uses the information.

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

(2) This subsection covers the following entities:

(a) the entity to whom the information relates;

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

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

(3) Subdivision 150-C provides for exceptions to the prohibition in subsection (1).

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

Subdivision 150-C—Authorised disclosure

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

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

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

An ACNC officer may disclose protected ACNC information if:

(a) the Commissioner may include the information on the Register under Division 40; and

(b) the disclosure is for the purpose of including the information on the Register under Division 40; and

(c) if the information is personal information (within the meaning of the *Privacy Act 1988*)—the disclosure is necessary to achieve the objects of this Act.

150-40 Exception—disclosure to an Australian government agency

An ACNC officer may disclose protected ACNC information if:

(a) the disclosure is to an Australian government agency; and

(b) the ACNC officer is satisfied that the information will enable or assist the Australian government agency to perform or exercise any of the functions or powers of the agency; and

(c) the disclosure is for the purpose of enabling or assisting the Australian government agency to perform or exercise any of the functions or powers of the agency; and

(d) the disclosure is reasonably necessary to promote the objects of this Act.

150-45 Exception—disclosure or use with consent

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

(a) the entity has consented to the disclosure for a purpose; and

(b) the disclosure or use is for that purpose.

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

An ACNC officer may disclose protected ACNC information if:

(a) the information has already been lawfully made available to the public; and

(b) the disclosure is for the purposes of this Act.

Subdivision 150-D—On-disclosure of protected ACNC information

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

(1) An entity commits an offence if:

(a) the entity acquires protected ACNC information; and

(b) the entity acquired the protected ACNC information otherwise than as an ACNC officer; and

(c) the acquisition occurred because of a disclosure or use of the protected ACNC information under an exception in Subdivision 150-C or this Subdivision for a purpose specified in that exception; and

(d) the entity:

(i) discloses the protected ACNC information to another entity (other than an entity covered by subsection (2)); or

(ii) uses the protected ACNC information.

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

(2) This subsection covers the following entities:

(a) the entity to whom the information relates;

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

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

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

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

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

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

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

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

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

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

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

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

An entity may disclose protected ACNC information if:

(a) the information has already been lawfully made available to the public; and

(b) the disclosure is for the purposes of this Act.

Part 7-2—Review and appeals

Division 155—Preliminary

155-5 Application of Part

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

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

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

If:

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

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

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

Division 160—Objections

160-5 How objections are to be made

The entity making the objection must:

(a) make it in the approved form; and

(b) lodge it with the Commissioner within the review period (see section 160-10); and

(c) state in it, fully and in detail, the grounds on which the entity relies.

160-10 When objection is to be made

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

Late lodgement

(2) If the review period has passed, the entity may nevertheless lodge the objection with the Commissioner together with a written request asking the Commissioner to deal with the objection as if it had been lodged within the review period.

(3) The request must state fully and in detail the circumstances concerning, and the reasons for, the entity's failure to lodge the objection with the Commissioner within the review period.

(4) After considering the request, the Commissioner must decide whether to agree to it or refuse it.

(5) The Commissioner must give the entity written notice of the Commissioner's decision under subsection (4).

(6) If the Commissioner decides to agree to the request, then the objection is treated as having been lodged within the review period.

(7) If the Commissioner decides to refuse the request, the entity may apply to the Administrative Appeals Tribunal for review of the extension of time refusal decision.

160-15 Commissioner to decide objections

(1) The Commissioner must decide whether to:

(a) allow the objection, wholly or in part; or

(b) disallow it;

if the entity has complied with section 160-5.

(2) Such a decision is called an ***objection decision***.

(3) The Commissioner must cause to be served on the entity written notice of the Commissioner's objection decision.

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

(1) The entity may give the Commissioner a written notice requiring the Commissioner to make an objection decision, if:

(a) the objection has been lodged with the Commissioner within the review period; and

(b) the Commissioner has not made an objection decision by the later of:

(i) the end of the period (the ***original 60-day period***) of 60 days after the day (the ***objection day***) on which the objection is lodged with the Commissioner; and

(ii) if the Commissioner, by written notice served on the entity within the original 60-day period, requires the entity to give information relating to the objection—the end of the period of 60 days after the Commissioner receives that information.

(2) Treat the reference in subparagraph (1)(b)(i) to the objection day as being a reference to the day on which the Commissioner decides under subsection 160-10(6) to agree to a request in relation to the objection, if the Commissioner does so after the objection day.

(3) The Commissioner is taken, at the end of the period of 60 days after being given the notice under subsection (1), to have made a decision under subsection 160-15(1) to disallow the objection, if the Commissioner has not made an objection decision by the end of that period.

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

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

(a) apply to the Administrative Appeals Tribunal for review of the objection decision; or

(b) appeal against the objection decision to a Court.

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

165-5 Modified AAT Act to apply

The AAT Act applies in relation to:

(a) the review of objection decisions; and

(b) the review of extension of time refusal decisions; and

(c) AAT extension applications;

subject to the modifications set out in this Division.

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

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

(a) an objection decision; or

(b) an extension of time refusal decision.

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

165-15 Modification of section 29 of the AAT Act

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

“(1) An application to the Tribunal for a review of a decision:

(a) must be in writing; and

(b) may be made in accordance with the prescribed form; and

(c) must set out a statement of the reasons for the application; and

(d) must be lodged with the Tribunal within 60 days after the person making the application is served with notice of the decision.".

165-20 Modification of section 30 of the AAT Act

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

"(1A) If an application has been made by a person to the Tribunal for the review of an objection decision or an extension of time refusal decision:

(a) any other person whose interests are affected by the decision may apply, in writing, to the Tribunal to be made a party to the proceeding; and

(b) the Tribunal may, in its discretion, by order, if it is satisfied that the person making the application consents to the order, make that person a party to the proceeding.".

165-25 Modification of section 37 of the AAT Act

(1) Section 37 of the AAT Act (Lodging of material documents with Tribunal) applies in relation to an application for review of an objection decision as if:

(a) the requirement in subsection (1) of that section to lodge with the Tribunal such numbers of copies as is prescribed of statements or other documents were instead a requirement to lodge with the Tribunal such numbers of copies as is prescribed of:

(i) a statement giving the reasons for the objection decision; and

(ii) the notice of the administrative decision concerned; and

(iii) the objection concerned; and

(iv) the notice of the objection decision; and

(v) every other document that is in the Commissioner's possession or under the Commissioner's control and is considered by the Commissioner to be necessary to the review of the objection decision concerned; and

(vi) a list of the documents (if any) being lodged under subparagraph (v); and

(b) the power of the Tribunal under subsection (2) of that section to cause a notice to be served containing a statement and imposing a requirement on a person were instead:

(i) a power to make such a statement and impose such a requirement orally at a conference held in accordance with subsection 34A(1) of the AAT Act; and

(ii) a power, by such a notice, to make such a statement and impose a requirement that the person lodge with the Tribunal, within the time specified in the notice, the prescribed number of copies of each of those other documents that is in the person's possession or under the person's control; and

(iii) a power, by such a notice, to make such a statement and impose a requirement that the person lodge with the Tribunal, within the time specified in the notice, the prescribed number of copies of a list of the documents in the person's possession or under the person's control considered by the person to be relevant to the review of the objection decision concerned.

(2) Paragraph (1)(b) does not affect any powers that the Administrative Appeals Tribunal has apart from that paragraph.

(3) The imposition of a requirement covered by subparagraph (1)(b)(iii) does not prevent the subsequent imposition of a requirement covered by subparagraph (1)(b)(ii).

165-30 Modification of section 38 of the AAT Act

Section 38 of the AAT Act (Power of Tribunal to obtain additional statements) applies in relation to an application for a review of an objection decision as if the reference to paragraph 37(1)(a) of that Act were instead a reference to subparagraph 165-25(1)(a)(i) of this Act.

165-35 Modification of section 43 of the AAT Act

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

(a) a review of an objection decision; and

(b) a review of an extension of time refusal decision; and

(c) an AAT extension application;

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

"(2C) If a hearing of a proceeding for the review of a decision or an AAT extension application is not conducted in public, that fact does not prevent the Tribunal from publishing its reasons for the decision.

"(2E) In subsection (2C):

reasons for decision includes findings on material questions of fact and references to the evidence or other material on which those findings were based.".

165-40 Grounds of objection and burden of proof

On an application for review of an objection decision:

(a) the applicant is, unless the Administrative Appeals Tribunal orders otherwise, limited to the grounds stated in the objection to which the objection decision relates; and

(b) the applicant has the burden of proving that the administrative decision concerned should not have been made or should have been made differently.

165-45 Implementation of Tribunal decisions

(1) When the decision of the Administrative Appeals Tribunal on the review of an objection decision or an extension of time refusal decision becomes final, the Commissioner must, within 60 days, take such action as is necessary to give effect to the Tribunal's decision.

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

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

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

165-55 Reviews may be combined

(1) This section applies if:

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

(i) an objection decision; and

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

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

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

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

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

Division 170—Court appeals against objection decisions

170-5 Time limit for appeals

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

170-10 Grounds of objection and burden of proof

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

(a) the appellant is, unless the court orders otherwise, limited to the grounds stated in the objection to which the objection decision relates; and

(b) the appellant has the burden of proving that the administrative decision concerned should not have been made or should have been made differently.

170-15 Order of court on objection decision

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

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

(1) When the order of the court in relation to the objection decision becomes final, the Commissioner must, within 60 days, take such action as is necessary to give effect to the objection decision.

(2) For the purposes of subsection (1):

(a) if no appeal is lodged against the order within the period for lodging an appeal—the order becomes final at the end of the period; or

(b) if the only possible appeal against the order is appeal to the High Court with special leave, and no application for special leave is made within the period of 30 days after the order is made—the order becomes final at the end of the period.

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

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

170-30 Appeals may be combined

(1) This section applies if:

(a) an entity may appeal to a court against:

(i) an objection decision; and

(ii) one or more other decisions of Australian government agencies (whether or not the Commissioner); and

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

(2) Subject to the requirements of this Act or any other law relating to appeals against the decisions:

(a) the entity may appeal against the decisions together; and

(b) the court may deal with the decisions together.

Part 7-3—Penalties

Division 175—Administrative penalties

Subdivision 175-A—Overview

175-1 Simplified outline

The following is a simplified outline of this Division:

> Subdivision 175-B sets out the circumstances in which administrative penalties apply for making false or misleading statements. It also sets out the amounts of those penalties.
>
> An entity is liable to an administrative penalty if the entity is required to give a report, return, notice, statement or other document to the Commissioner by a particular time and the entity does not do so. Subdivision 175-C sets out when the penalty applies and how the amounts of the penalty are calculated.

Subdivision 175-B—Penalties for statements

175-5 Application of Subdivision to statements

(1) This Subdivision applies to a statement made orally, in a document, or in any other way (including electronically) for a purpose connected with this Act.

(2) This Subdivision applies to a statement made by an entity's agent as if it had been made by the entity.

175-10 Penalty for false or misleading statements

(1) An entity is liable to an administrative penalty if:

(a) the entity makes a statement to the Commissioner or to an entity that is exercising powers or performing functions under this Act; and

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

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

(2) An entity is liable to an administrative penalty if:

(a) the entity makes a statement to an entity other than:

(i) the Commissioner; or

(ii) an entity exercising powers or performing functions under this Act; and

(b) the statement is, or purports to be, one required or permitted by this Act; and

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

Exception for reasonable care

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

175-15 Amount of penalty

Base penalty amount

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

Adjustments

(2) Increase the amount in accordance with section 175-25.

(3) Decrease the amount in accordance with section 175-30.

Amount of penalty

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

175-20 *Base penalty amount*

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

Base penalty amount

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

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

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

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

(b) general administrative practice under this Act; or

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

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

175-25 Increase in penalty

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

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

(b) the entity:

(i) became aware of the false or misleading nature of the relevant statement made to the Commissioner or another entity after the statement had been made; and

(ii) did not tell the Commissioner or other entity about it within a reasonable time; or

(c) the entity had previously been liable to a penalty under this Subdivision.

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

(1) Reduce the amount by 20% of the base penalty amount if:

(a) the Commissioner tells the entity that an examination is to be made of the entity's affairs relating to this Act; and

(b) *after* that time, the entity voluntarily tells the Commissioner, in the approved form, about the false or misleading nature of the relevant statement; and

(c) telling the Commissioner can reasonably be estimated to have saved the Commissioner a significant amount of time or significant resources in the examination.

(2) Reduce the amount to nil if the entity voluntarily tells the Commissioner, in the approved form, about the false or misleading nature of the relevant statement *before*:

(a) the day the Commissioner tells the entity that an examination is to be made of the entity's affairs relating to this Act; or

(b) if the Commissioner makes a public statement requesting entities to make a voluntary disclosure by a particular earlier day about a matter that applies to its affairs—that earlier day.

(3) If the entity voluntarily tells the Commissioner, in the approved form, about the false or misleading nature of the statement *after* the Commissioner tells the entity that an examination is to be conducted of the entity's affairs relating to this Act, the Commissioner may treat the entity as having done so *before* being told about the examination if the Commissioner considers it appropriate to do so in the circumstances.

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

175-35 Liability to penalty

An entity is liable to an administrative penalty if:

(a) the entity is required under this Act to give a report, return, notice, statement or other document to the Commissioner in the approved form by a particular day; and

(b) the entity does not give the report, return, notice, statement or document to the Commissioner in the approved form by that day.

175-40 Amount of penalty

(1) The amount of the penalty is:

(a) if the entity is a medium registered entity—double the base penalty amount; or

(b) if the entity is a large registered entity—5 times the base penalty amount; or

(c) otherwise—the base penalty amount.

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

(a) starting on the day when the report, return, notice, statement or other document is due; and

(b) ending when the entity gives it;

(up to a maximum of 5 penalty units).

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

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

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

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

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

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

Subdivision 175-D—Machinery provisions for administrative penalties

175-45 Scope of Subdivision

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

175-50 Notification of liability

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

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

175-55 Due date for penalty

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

175-60 Remission of penalty

(1) The Commissioner may remit all or a part of the penalty.

(2) If the Commissioner decides:

(a) not to remit the penalty; or

(b) to remit only part of the penalty;

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

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

(3) If:

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

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

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

(c) the entity is dissatisfied with the decision;

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

175-65 General interest charge on unpaid penalty

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

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

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

(i) the amount;

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

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

175-70 Collection of penalty by Commissioner of Taxation

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

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

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

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

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

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

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

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

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

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

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

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

Part 7-4—Application of the Act to entities

Division 180—Obligations, liabilities and offences

180-1 Simplified outline

The following is a simplified outline of this Division:

> If an entity (the ***primary entity***) is subject to an obligation or liability, or commits an offence, certain entities that are responsible for managing the primary entity may also be subject to the obligation or liability, or commit the offence, in specific situations.

180-5 Obligations and liabilities of entities

Obligations

(1) Subject to subsection (2), an obligation that is imposed under this Act on an entity (the ***primary entity***) is imposed on each entity that was covered by section 180-15 at the time the obligation arose, but may be discharged by any such entity.

Liabilities

(2) An amount that is payable under this Act by an entity (the ***primary entity***) is payable by each entity that was covered by section 180-15 at the time the amount became payable.

(3) Subsection (4) applies if a director of a company is an entity covered by section 180-15 because of subparagraph 180-15(a)(ii) or (c)(ii).

(4) An amount is payable by the director under subsection (2) only if the amount is payable by the primary entity because of:

(a) the director's dishonesty, gross negligence or recklessness; or

(b) a deliberate act or omission of the director.

Liabilities—Joint and several liability

(5) If an amount is payable under this section by more than one entity, those entities are jointly and severally liable to pay the amount.

Liabilities—Commissioner of Taxation has direct access to trust assets

(6) For the purpose of ensuring the payment of an amount payable under this section by an entity in relation to a liability of a primary entity that is a trust, the Commissioner of Taxation has the same remedies against the property of the trust as the Commissioner of Taxation would have against the property of the entity.

180-10 Rights of indemnity and contribution

(1) This section applies if:

(a) an amount is payable under section 180-5 by 2 or more entities (the ***jointly liable entities***); and

(b) one of the jointly liable entities (the ***paying entity***) pays that amount; and

(d) the paying entity is not the primary entity.

(2) The paying entity has the same rights (whether by way of indemnity, subrogation, contribution or otherwise) against anyone else as if:

(a) the paying entity made the payment under a guarantee of the liability of the primary entity to pay the amount; and

(b) under the guarantee:

(i) the paying entity; and

(ii) every other entity (other than the primary entity) that is or was liable to pay that amount under that section;

were jointly and severally liable as guarantors.

180-15 Covered entities

(1) This section covers the following entities:

(a) if the primary entity is a company that is a body corporate:

(i) the company; and

(ii) each director of the company;

(b) if the primary entity is a company that is an unincorporated association or a body of persons—each director of the company;

(c) if the primary entity is a trust:

(i) each trustee of the trust (whether an individual or a company that is a body corporate); and

(ii) if the trustee, or one or more of the trustees, of the trust is a company that is a body corporate—each director of each such company.

(2) However, this section does not cover an entity if:

(a) the primary entity is a company that is a body corporate; and

(b) the primary entity is not a registered entity.

180-20 Offences of entities

(1) An offence covered under subsection (6) that is committed by an entity (the ***primary entity***) is taken to have been committed by each entity that was covered by section 180-15 at the time the primary entity committed the offence.

(2) Subsection (3) applies if a director of a company is an entity covered by section 180-15 because of paragraph 180-15(1)(b).

(3) Despite subsection (1), the offence is taken to have been committed by the director under that subsection only if the director:

(a) aided, abetted, counselled or procured the relevant act or omission; or

(b) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the director).

(4) Subsection (5) applies if a director of a company is an entity covered by section 180-15 because of subparagraph 180-15(1)(a)(ii), paragraph 180-15(1)(b) or subparagraph 180-15(1)(c)(ii).

(5) Subsection (1) does not apply in respect of the director if section 180-25 applies to the director.

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

(6) The following offences are covered under this subsection:

(a) if the primary entity is a company that is an unincorporated association or body of persons—any offence against this Act;

(b) if the primary entity is a trust and no trustee of the trust is a body corporate—any offence against this Act;

(c) in any other case—an offence against section 85-30 (Non-compliance with a direction).

180-25 Offences of directors—defences

Illness

(1) This section applies to a director of a company if, because of illness or for some other good reason, it would have been unreasonable to expect the director to take part, and the director did not take part, in the management of the company at any time when:

(a) the person was a director of the company; and

(b) the offence was committed.

All reasonable steps

(2) This section applies to a director of a company if:

(a) the director took all reasonable steps to ensure that the company did not commit the offence; or

(b) there were no such steps that the director could have taken.

(3) In determining what are reasonable steps for the purposes of subsection (2), have regard to:

(a) when, and for how long, the director was a director of the company; and

(b) all other relevant circumstances.

Part 7-5—Constitutional matters

Division 185—Constitutional matters

185-5 Concurrent operation of State and Territory laws

This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

185-10 Compensation for acquisition of property

(1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

(4) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and that arises out of the same event or transaction.

Part 7-6—Forms and regulations

Division 190—Requirements about giving material

Subdivision 190-A—Object of this Division

190-5 Object of this Division

The object of this Division is to set out requirements to ensure the integrity and efficiency of giving material to the Commissioner and other entities.

Subdivision 190-B—General provisions

190-10 Approved forms

(1) A return, notice, statement, application or other document under this Act is in the ***approved form*** if, and only if:

(a) it is in the form approved in writing by the Commissioner for that kind of return, notice, statement, application or other document; and

(b) it contains a declaration signed by an entity or entities as the form requires (see section 190-35); and

(c) it contains the information that the form requires, and any further information, statement or document as the Commissioner requires, whether in the form or otherwise; and

(d) for a return, notice, statement, application or document that is required to be given to the Commissioner—it is given in the manner that the Commissioner requires (which may include electronically).

(2) Despite subsection (1), a document that satisfies paragraphs (1)(a), (b) and (d) but not paragraph (1)(c) is also in the ***approved form*** if it contains the information required by the Commissioner. The Commissioner must specify the requirement in writing.

(3) The Commissioner may combine in the same approved form more than one return, notice, statement, application or other document.

(4) The Commissioner may approve a different approved form for different entities.

Example: The Commissioner may require medium and large registered entities to lodge a different annual information statement to that required to be lodged by small registered entities.

190-15 Commissioner may defer time for lodgement

The Commissioner may defer the time within which an approved form is required to be given to the Commissioner or to another entity.

190-20 Declaration by entity

If an entity gives a return, notice, statement, application or other document to the Commissioner in the approved form, the entity must make a declaration in the approved form that any information in the document is true and correct.

190-25 Declaration by entity where agent gives document

(1) If a return, notice, statement, application or other document of an entity is to be given to the Commissioner in the approved form by an agent on the entity's behalf, the entity must make a declaration in writing:

(a) stating that the entity has authorised the agent to give the document to the Commissioner; and

(b) declaring that any information the entity provided to the agent for the preparation of the document is true and correct.

(2) The entity must give the declaration to the agent.

(3) The entity must retain the declaration or a copy of the declaration for:

(a) 7 years after it is made; or

(b) a shorter period determined by the Commissioner in writing for the entity; or

(c) a shorter period determined by the Commissioner by legislative instrument for a class of entities that includes the entity.

(4) A determination under paragraph (3)(c) may specify different periods for different classes of entities.

(5) The entity must produce the declaration or copy if requested to do so within that period by the Commissioner.

(6) The agent must not give the document to the Commissioner before the entity makes the declaration.

(7) The entity must sign the declaration.

190-30 Declaration by agent

If an agent gives a return, notice, statement, application or other document to the Commissioner in the approved form on behalf of another entity, the agent must, if the document so requires, make a declaration in the approved form stating that:

(a) the document has been prepared in accordance with the information supplied by the other entity; and

(b) the agent has received a declaration from the other entity stating that the information provided to the agent is true and correct; and

(c) the agent is authorised by the other entity to give the document to the Commissioner.

190-35 Signing declarations

(1) An entity must sign a declaration in a return, notice, statement, application or other document the entity gives to the Commissioner in paper form.

(2) If an entity agent gives a return, notice, statement, application or other document to the Commissioner on the entity's behalf in paper form, the document must contain:

(a) if the document so requires—a declaration made by the entity with the entity's signature; and

(b) if the document so requires—a declaration made by the agent with the agent's signature.

(3) Any return, notice, statement, application or other document of an entity's that is lodged electronically:

(a) if the entity gives it to the Commissioner—must contain the entity's declaration (see section 190-20) with the entity's electronic signature; or

(b) if the entity's agent gives it to the Commissioner—must contain the agent's declaration (see section 190-30) with the agent's electronic signature.

Division 195—Address for service

195-5 Address for service

(1) An entity's address for service for the purposes of this Act is:

(a) a physical address in Australia; or

(b) a postal address in Australia; or

(c) an electronic address;

that the entity has given the Commissioner as the entity's address for service for the purposes of this Act.

(2) If an entity has given the Commissioner more than one address for service for the purposes of subsection (1), the entity's address for service is such of those addresses as the Commissioner considers reasonable in the circumstances.

(3) If an entity has not given the Commissioner an address for service, the entity's address for service is the address that the Commissioner reasonably believes to be the entity's address for service for the purposes of this Act.

195-10 How documents may be given

(1) For the purposes of this Act, a document (however described) may be given to an entity:

(a) in the manner specified in section 28A of the *Acts Interpretation Act 1901*; or

(b) if the entity's address for service is an electronic address—by sending it to that address; or

(c) if the entity is a company and a liquidator of the company has been appointed—by leaving it at, or posting it to, the address of the liquidator's office in the most recent notice of that address lodged with ASIC; or

(d) if the entity is a company and an administrator of the company has been appointed—by leaving it at, or posting it to, the address of the administrator in the most recent notice of that address lodged with ASIC.

(2) Despite section 29 of the *Acts Interpretation Act 1901*, a document under subsection (1) of this section is taken to be given at the time the Commissioner leaves or posts it.

(3) This Division has effect despite paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999*.

Division 200—Regulations

200-5 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Chapter 8—Interpretation

Part 8-1—Core concepts

Division 205—Core concepts

Subdivision 205-A—Entities

205-5 Entities

(1) ***Entity*** means any of the following:

(a) an individual;

(b) a body corporate;

(c) a body politic;

(d) any other unincorporated association or body of persons;

(e) a trust.

Note: The term ***entity*** is used in a number of different but related senses. It covers all kinds of legal person. It also covers groups of legal persons, and other things, that in practice are treated as having a separate identity in the same way as a legal person does.

(2) Paragraph (1)(d) does not include a non-entity joint venture (within the meaning of the *Income Tax Assessment Act 1997*).

(3) The trustee of a trust is taken to be an entity consisting of the person who is the trustee, or the persons who are the trustees, at any given time.

Note 1: This is because a right or obligation cannot be conferred or imposed on an entity that is not a legal person.

Note 2: The entity that is the trustee of a trust does not change merely because of a change in the person who is the trustee of the trust, or persons who are the trustees of the trust.

(4) A legal person can have a number of different capacities in which the person does things. In each of those capacities, the person is taken to be a different entity.

Example: In addition to his or her personal capacity, an individual may be:

(a) sole trustee of one or more trusts; and

(b) one of a number of trustees of a further trust.

In his or her personal capacity, he or she is one entity. As trustee of each trust, he or she is a different entity. The trustees of the further trust are a different entity again, of which the individual is a member.

(5) If a provision refers to an entity of a particular kind, it refers to the entity in its capacity as that kind of entity, not to that entity in any other capacity.

Example: A provision that refers to a company does not cover a company in a capacity as trustee, unless it also refers to a trustee.

205-10 Companies

In this Act, ***company*** means:

(a) a body corporate; or

(b) any unincorporated association or body of persons;

but does not include a partnership.

205-15 *Federally regulated entity*

A ***federally regulated entity*** is:

(a) a constitutional corporation; or

(b) a trust, all of the trustees of which are constitutional corporations; or

(c) a body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*; or

(d) a trust, if the proper law of the trust and the law of the trust's administration are the law of a Territory; or

(e) an entity, the core or routine activities of which are carried out in or in connection with a Territory.

205-20 *Constitutional corporation*

An entity is a ***constitutional corporation*** if it is:

(a) a corporation to which paragraph 51(xx) of the Constitution applies; or

(b) a body corporate that is incorporated in a Territory.

Subdivision 205-B—Registered entities

205-25 Small, medium and large registered entities

(1) A registered entity is a ***small registered entity*** for a particular financial year if the revenue of the registered entity for the financial year is less than $250,000, or any other amount prescribed by the regulations for the purposes of this subsection.

(2) A registered entity is a ***medium registered entity*** for a particular financial year if:

(a) it is not a small registered entity for the financial year; and

(b) the revenue of the registered entity for the financial year is less than $1,000,000, or any other amount prescribed by the regulations for the purposes of this paragraph.

(3) A registered entity is a ***large registered entity*** for a particular financial year if it is not a small registered entity or a medium registered entity for the financial year.

(4) Revenue is to be calculated for the purposes of this section in accordance with accounting standards in force at the relevant time (even if the standard does not otherwise apply to the financial year of the registered entity concerned).

(5) The Commissioner may continue to treat a registered entity as either a small, medium or large registered entity for a financial year if the Commissioner is of the opinion that the entity was a registered entity of that size for the previous financial year, and the entity, while not being of that size for the current financial year, is likely to return to that size during the next financial year.

205-30 *Responsible entity*

Each of the following is a ***responsible entity*** of a registered entity:

(a) in the case of a registered entity that is a company—a director of the registered entity;

(b) in the case of a registered entity that is a trust—each of the following:

(i) a trustee of the registered entity;

(ii) if a trustee of the registered entity is a body corporate—a director of the trustee;

(c) a person who is any of the following:

(i) a trustee in bankruptcy of the registered entity;

(ii) a receiver, or receiver and manager, of the property of the registered entity;

(iii) an administrator of the registered entity;

(iv) an administrator of a deed of company arrangement executed by the registered entity;

(v) a liquidator of the registered entity;

(vi) a trustee or other entity administering a compromise or arrangement made between the registered entity and someone else.

205-35 *Basic religious charity*

(1) An entity is a ***basic religious charity*** if:

(a) the entity is a registered entity; and

(b) the entity is registered as the subtype of entity mentioned in column 2 of item 3 of the table in subsection 25-5(5) (Entity with a purpose that is the advancement of religion); and

(c) the entity is not entitled to be registered as any other subtype of entity.

(2) However, an entity is not a ***basic religious charity*** if:

(a) the entity is a body corporate that is registered under the *Corporations Act 2001*; or

(b) the entity is a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

(c) the entity is a corporation registered under the *Companies Act 1985* of Norfolk Island; or

(d) the entity is incorporated under any of the following:

(i) the *Associations Incorporation Act 2009* of New South Wales;

(ii) the *Associations Incorporation Act 1981* of Victoria;

(iii) the *Associations Incorporation Act 1981* of Queensland;

(iv) the *Associations Incorporation Act 1987* of Western Australia;

(v) the *Associations Incorporation Act 1985* of South Australia;

(vi) the *Associations Incorporation Act 1964* of Tasmania;

(vii) the *Associations Incorporation Act 1991* of the Australian Capital Territory;

(viii) the *Associations Act 2010* of the Northern Territory;

(ix) the *Associations Incorporation Act 2005* of Norfolk Island.

(3) An entity is also not a ***basic religious charity*** if it is a deductible gift recipient.

(4) An entity is also not a ***basic religious charity*** at a time in a financial year if the Commissioner has allowed it (together with one or more other entities) to form part of a reporting group for the year under section 60-95.

(5) An entity is also not a ***basic religious charity*** at a time if it has received a grant (however described) by an Australian government agency in any of the following financial years:

(a) the financial year in which the time occurs;

(b) the previous 2 financial years.

Subdivision 205-C—Other core concepts

205-40 *Contribution*

A ***contribution*** to a registered entity is the provision of money, property or any other benefit to the entity, and includes the following:

(a) the provision by an individual of his or her time or reputation to the entity;

(b) the provision by a government of tax concessions or other forms of government support to the entity.

Part 8-2—Dictionary

Division 900—Dictionary

900-5 Dictionary

In this Act:

AAT Act means the *Administrative Appeals Tribunal Act 1975*.

AAT extension application means an application under subsection 29(7) of the AAT Act that relates to a review of an objection decision or an extension of time refusal decision.

ABN (short for Australian Business Number) has the meaning given by the *Income Tax Assessment Act 1997*.

Account has the meaning given by subsection 125-5(1).

accounting standards has the same meaning as in the *Corporations Act 2001*.

ACNC means the Australian Charities and Not-for-profits Commission.

ACNC officer means:

(a) the Commissioner; or

(b) a member of the staff assisting the Commissioner as mentioned in subsection 120-5(1).

administrative decision has the meaning given by subsection 155-5(2).

Advisory Board means the Advisory Board of the ACNC.

approved form has the meaning given by section 190-10.

ASIC means the Australian Securities and Investments Commission.

audit means an audit conducted for the purposes of this Act.

auditing standard has the same meaning as in the *Corporations Act 2001*.

auditor's report means a report under section 60-45.

Australia includes the external Territories.

Australian government agency means:
(a) the Commonwealth, a State or a Territory; or
(b) an authority of the Commonwealth or of a State or a Territory.

Australian law has the meaning given by the *Income Tax Assessment Act 1997*.

base penalty amount:
(a) under Subdivision 175-B, has the meaning given by section 175-20; and
(b) under Subdivision 175-C, has the meaning given by subsection 175-40(2).

basic religious charity has the meaning given by section 205-35.

Chair means the Chair of the Advisory Board.

Commissioner means the Commissioner of the ACNC.

company has the meaning given by section 205-10.

constitutional corporation has the meaning given by section 205-20.

contribution has the meaning given by section 205-40.

Court means:
(a) the Federal Court of Australia; or
(b) a Supreme Court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

damage, in relation to data, includes damage by erasure of data or addition of other data.

deductible gift recipient has the same meaning as in the *Income Tax Assessment Act 1997*.

Deputy Chair means the Deputy Chair of the Advisory Board.

director, of a company, means:

(a) if the company is incorporated—a director of the company, or an individual who performs the duties of a director of the company; or

(b) if the company is not incorporated—a member of the committee of management of the company, or an individual who performs the duties of such a member;

regardless of the name that is given to his or her position, or whether or not he or she is validly appointed to occupy, or duly authorised to act in, the position.

electronic signature of an entity means a unique identification of the entity in electronic form that is approved by the Commissioner.

enforceable:

(a) a provision is ***enforceable*** under Division 90 if it is mentioned in section 90-5; and

(b) a provision is ***enforceable*** under Division 95 if it is mentioned in section 95-5.

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

entity has the meaning given by section 205-5.

extension of time refusal decision means a decision of the Commissioner under subsection 160-10(4) to refuse a request by an entity.

external conduct standard has the meaning given by section 50-10.

federally regulated entity has the meaning given by section 205-15.

former registered entity means an entity that is not a registered entity, but that used to be a registered entity.

general member, of the Advisory Board, has the meaning given by section 135-10.

governance standard has the meaning given by section 45-10.

governing rules, of an entity, means written rules that:
(a) govern the establishment or operation of the entity; and
(b) can be enforced against the entity.

individual assisting an ACNC officer has the meaning given by section 75-35.

information statement has the meaning given by section 60-5.

issuing officer means a magistrate or a Federal Magistrate.

large registered entity has the meaning given by section 205-25.

lodge electronically: a document is lodged electronically if it is transmitted to the Commissioner in an electronic format approved by the Commissioner.

medium registered entity has the meaning given by section 205-25.

monitoring powers has the meaning given by sections 75-20, 75-25 and 75-30.

monitoring warrant means a warrant issued under section 75-85.

not-for-profit entity has the same meaning as in the *Income Tax Assessment Act 1997*.

Note: This definition will be included in the Income Tax Assessment Act 1997 *by legislation intended to be introduced by the Government.*

objection decision has the meaning given by subsection 160-15(2).

premises includes the following:
(a) a structure, building, vehicle, vessel or aircraft;
(b) a place (whether or not enclosed or built on);

(c) a part of a thing referred to in paragraph (a) or (b).

protected ACNC information has the meaning given by section 150-15.

recognised assessment activity has the meaning given by section 55-10.

Register means the Australian Charities and Not-for-profits Register mentioned in section 40-5.

registered entity means an entity that is registered under this Act.

relevant data has the meaning given by subsection 75-65(3).

reporting group has the meaning given by subsection 60-95(1).

responsible entity has the meaning given by section 205-30.

review means a review of a financial report for a financial year conducted for the purposes of this Act.

reviewer, in relation to a registered entity, means another entity that, under subsection 60-30(1) or (2), can undertake a review of a financial report of the registered entity.

reviewer's report means a report under section 60-50.

review period has the meaning given by subsection 160-10(1).

small registered entity has the meaning given by section 205-25.

subject to monitoring:

(a) a provision is ***subject to monitoring*** under Division 75 if section 75-5 provides that it is subject to monitoring under that Division; and

(b) information given in compliance, or purported compliance, with a provision is ***subject to monitoring*** under Division 75 if section 75-10 provides that it is subject to monitoring under that Division.

taxation law has the same meaning as in the *Income Tax Assessment Act 1997*.