

The committee has sought further information in relation to the following legislative instruments

Australian Charities and Not-for-profits Commission Amendment Regulation 2013 (No. 1)

FRLI ID: F2013L00402

Portfolio: Assistant Treasurer

Summary of committee view

2.6 The committee seeks clarification as to why it is necessary to make a disqualified responsible entities register publicly available and how this is compatible with the right to privacy.

Overview

2.7 The purpose of this instrument is to specify five governance standards with which registered entities must comply in order to become registered under the *Australian Charities and Not-for-profits Commission Act 2012* (the Act) and to remain entitled to be registered under the Act.

Governance Standard 4 (suitability of responsible entities)

2.8 A 'responsible entity' is defined in the Act to be a person responsible for the control and/or management of a registered entity, including, for example, a trustee of a charitable trust or a director of a not-for-profit organisation.

2.9 Under the Act, the Commissioner of the Australian Charities and Not-for-profits Commission (ACNC) may suspend or remove a responsible entity if the Commissioner reasonably believes that the registered entity has contravened, or it is more likely than not that they will contravene, a provision of the Act, a governance standard or an external conduct standard.¹

2.10 Governance Standard 4, prescribed in this regulation, provides the mechanism by which the Commissioner may disqualify a person from being eligible to be a responsible entity, or a particular type of responsible entity, where:

- the entity has been previously suspended or removed as a responsible entity; and

1 See Part 4-2, Division 100 of the Act.

- the entity has been given notice of the disqualification; and
- the Commissioner reasonably believes that the disqualification is justified having regard to the objects of the Act.

2.11 Section 45.150 of this regulation provides that the Commissioner must maintain a register, to be known as the Disqualified Responsible Entities Register, which includes the name of all disqualified entities (i.e. the name of the disqualified director or trustee), the date they were disqualified, and whether the disqualification remains subject to review. The disqualified responsible entities register will be publicly available on a website maintained by the Commissioner.

Compatibility with human rights

2.12 The statement of compatibility states that the instrument does not engage any human rights. It says that while the instrument provides for the publication of certain information by the ACNC, it does not engage the right to privacy under article 17 of the International Covenant on Civil and Political Rights (ICCPR) because it does not involve the collecting, using, storing and sharing of personal information.

2.13 However, it is unclear how such information could be included on a website maintained by the ACNC Commissioner unless such information is collected, used and stored, and clearly the information is shared given it is put up on a public website. The information that is publicly shared relates to a person's fitness to be a director or trustee and is based on a decision by the Commissioner of a suspected breach, or suspected liability to breach. Making this information publicly available appears to engage and limit the right to privacy, which includes privacy in the workplace, under article 17.

2.14 The committee intends to write to the Assistant Treasurer to seek clarification as to why it is necessary to make the disqualified responsible entities register publicly available on a website and how this is compatible with the right to privacy.