

# Charities and not for profit update

*Despite uncertainty regarding the future of the Australian Charities and Not-for-profits Commission, there is general support for the organisation within the sector*



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## 1. The Future of the ACNC

The Australian Charities and Not-for-profits Commission (ACNC) has commenced operation and the not-for-profit (NFP) community is generally supportive of the ACNC.

The ACNC was created by an Act of Parliament, the Australian Charities and Not-for-Profits Commission Act 2012 (Cth) (ACNC Act), and will continue operation until the legislation is repealed or amended.

Prior to the election, the Coalition announced that it would abolish the ACNC replacing it with a centre for excellence focused on innovation, education and best practice.

The ACNC has been gathering data from the 2013 Information Statements required to be lodged by NFPs and has published its six-month progress report (available on its website at [acnc.gov.au](http://acnc.gov.au)). This report contains useful data, including that the NFP sector contributes to \$43 billion in Australia. Many private hospital operators are NFPs.

Whilst the future of the ACNC is uncertain, given the investment many NFPs have made in compliance with the ACNC Act, including governance compliance, and the sector's general support of the ACNC, it would be surprising if the ACNC was not retained in some shape or form, although it may be renamed by the Coalition Government.

## 2. Charities Act 2013

The *Charities Act 2013* (Commonwealth) has been passed and will commence on 1 January 2014. The Charities Act introduces a statutory definition of charity that sets out more clearly the common law meaning of charity.

The act defines the meaning of "charity" under Commonwealth Law, and therefore is relevant to registration under the ACNC Act and Australian Taxation laws, including deductible gift recipient status and charitable tax status (including fringe benefits tax). Therefore, whether or not a NFP hospital operator can continue to obtain those tax benefits is influenced by this legislation.

A charity is a not-for-profit entity and all of the purposes of the charity must be for public benefit or purposes that are incidental or ancillary to, and in furtherance or in aid of a public benefit.



A charity is not an individual, political party or a government entity (however, section 13 does enable some government entity *contributing funds* to be treated as charities)

None of the purposes must be what are defined as “disqualifying purposes”. These include engaging in, or promoting, activities that are unlawful or contrary to public policy.

Certain purposes are presumed to be for the “public benefit”, and include:

- The purpose of preventing and relieving sickness, disease or human suffering;
- The purpose of advancing education;
- The purpose of caring for and supporting the aged or individuals with disabilities and
- The purpose of advancing religion.

All NFP hospital operators should check their objectives against the Charities Act, to ensure that they continue to comply. [P2](#)

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