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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment (Integrity and Transparency) Bill 2023: ACNC Review Rec 17 ‑ Secrecy Provisions

| Commencement information | | |
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| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule [X] | The day after this Act receives the Royal Assent. |  |
| 2. |  |  |
| 3. |  |  |

Schedule [X]—Disclosure of recognised assessment activity

Part 1—Amendments

Australian Charities and Not‑for‑profits Commission Act 2012

1 At the end of Subdivision 150‑C

Add:

150‑52 Exception—disclosure of information relating to a recognised assessment activity

(1) An ACNC officer may disclose protected ACNC information if the Commissioner has authorised the disclosure of the information under subsection (3).

(2) To make a disclosure under subsection (1), the ACNC officer:

(a) must cause the information to be published on the ACNC’s website; and

(b) may also disclose the information by any other means authorised, in writing, by the Commissioner.

Authorisation by the Commissioner

(3) The Commissioner may authorise, in writing, the disclosure of protected ACNC information under subsection (1) if:

(a) the Commissionerreasonably suspects that a 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 disclosure is for the purpose of describing a recognised assessment activity being carried out, or proposed to be carried out, by the Commissioner under this Act in relation to such a suspected contravention, or such suspected non‑compliance, by the entity; and

(c) the Commissioner is satisfied that the disclosure is necessary to:

(i) prevent or minimise the risk of significant harm to public health, public safety or an individual; or

(ii) prevent or minimise the risk of significant mismanagement or misappropriation of funds or assets of the entity, or contributions to the entity; or

(iii) prevent or minimise the risk of significant harm to the public trust and confidence in the Australian not‑for‑profit sector, or to a part of the sector; and

(d) if the information is personal information (within the meaning of the *Privacy Act 1988*)—the Commissioner is satisfied that the disclosure is necessary to achieve the objects of this Act.

(4) However, the Commissioner may only authorise a disclosure under subsection (3) if the Commissioner is satisfied that any harm that is likely to be caused to the registered entity mentioned in paragraph (3)(a), or to an individual who is:

(a) employed by the entity under a contract of service; or

(b) engaged by the entity under a contract for services; or

(c) being provided with services, or receiving benefits, under a program provided by the entity; or

(d) a volunteer of the entity; or

(e) a member of the entity; or

(f) otherwise connected to the entity;

would not be disproportionate, having regard to:

(g) the matters in paragraph (3)(c); and

(h) the seriousness of the contravention or non‑compliance mentioned in paragraph (3)(a) and the strength of the evidence of the suspected contravention or suspected non‑compliance available to the Commissioner; and

(i) whether the suspected contravention or suspected non‑compliance mentioned in paragraph (3)(a) is likely to be the result of an act or omission of the entity, or of an individual acting without the authority of the entity.

Commissioner may give notice before authorisation

(5) The Commissioner may give an entity notice, in writing, that the Commissioner is considering giving an authorisation under subsection (3) in relation to information that concerns the entity.

Note: An entity given notice under subsection (5) may be the registered entity mentioned in paragraph (3)(a), or another entity (such as an employee or member of the registered entity mentioned in paragraph (3)(a)).

(6) If:

(a) the Commissioner authorises the disclosure of information under subsection (3); and

(b) before authorising the disclosure, the Commissioner gave notice to an entity under subsection (5) that the Commissioner was considering giving the authorisation; and

(c) that entity gave the Commissioner a response to the notice, and did not indicate in the response that the response was confidential;

the Commissioner may cause a copy of the response, or any information included in the response, to be published on the ACNC’s website.

(7) To avoid doubt, the Commissioner is not required to do anything under subsection (5) or (6) before authorising the disclosure of information under subsection (3).

Part 2—Application

2 Application of amendments

The amendments of the *Australian Charities and Not‑for‑profits Commission Act 2012* made by this Schedule apply in relation to a recognised assessment activity (within the meaning of that Act) carried out by the Commissioner on or after the commencement of this item (the ***commencement time***) involving the assessment of:

(a) an entity’s entitlement to registration as a type or subtype of entity at any time before, on or after the commencement time; or

(b) an entity’s compliance with that Act, or any regulations made under that Act, at any time before, on or after the commencement time.