

# EXPOSURE DRAFT

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Inserts for  
**Treasury Laws Amendment (Integrity  
and Transparency) Bill 2023: ACNC  
Review Rec 17 - Secrecy Provisions**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>

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1. Schedule [X]	The day after this Act receives the Royal Assent.	
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## 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 Commissioner reasonably 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:

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- 1 (i) prevent or minimise the risk of significant harm to  
2 public health, public safety or an individual; or  
3 (ii) prevent or minimise the risk of significant  
4 mismanagement or misappropriation of funds or assets  
5 of the entity, or contributions to the entity; or  
6 (iii) prevent or minimise the risk of significant harm to the  
7 public trust and confidence in the Australian  
8 not-for-profit sector, or to a part of the sector; and  
9 (d) if the information is personal information (within the  
10 meaning of the *Privacy Act 1988*)—the Commissioner is  
11 satisfied that the disclosure is necessary to achieve the  
12 objects of this Act.
- 13 (4) However, the Commissioner may only authorise a disclosure under  
14 subsection (3) if the Commissioner is satisfied that any harm that is  
15 likely to be caused to the registered entity mentioned in  
16 paragraph (3)(a), or to an individual who is:  
17 (a) employed by the entity under a contract of service; or  
18 (b) engaged by the entity under a contract for services; or  
19 (c) being provided with services, or receiving benefits, under a  
20 program provided by the entity; or  
21 (d) a volunteer of the entity; or  
22 (e) a member of the entity; or  
23 (f) otherwise connected to the entity;  
24 would not be disproportionate, having regard to:  
25 (g) the matters in paragraph (3)(c); and  
26 (h) the seriousness of the contravention or non-compliance  
27 mentioned in paragraph (3)(a) and the strength of the  
28 evidence of the suspected contravention or suspected  
29 non-compliance available to the Commissioner; and  
30 (i) whether the suspected contravention or suspected  
31 non-compliance mentioned in paragraph (3)(a) is likely to be  
32 the result of an act or omission of the entity, or of an  
33 individual acting without the authority of the entity.

34 *Commissioner may give notice before authorisation*

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

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

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1 employee or member of the registered entity mentioned in  
2 paragraph (3)(a).

3 (6) If:

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

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

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

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

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

1 **Part 2—Application**

2 **2 Application of amendments**

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

- 8 (a) an entity's entitlement to registration as a type or subtype of  
9 entity at any time before, on or after the commencement  
10 time; or  
11 (b) an entity's compliance with that Act, or any regulations made  
12 under that Act, at any time before, on or after the  
13 commencement time.

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