



Charities Alert

Spring 2022



Audit / Tax / Advisory

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Governance

Nonprofit Trends Report

Survey responses from 1,250 nonprofit employees at manager level or above located in 10 countries reveal their biggest concerns.

The fourth edition of *Nonprofit Trends Report* published in November 2021 by Salesforce.org details the biggest challenges facing nonprofits today.

Based on responses from senior staff working in the sector across the globe provides a local and global perspective.

Surveyed during the pandemic, the top five major challenges reported by the 250 Australian participants were:

- Controlling expenses;
- Virtual/online events (hosting, creating content, promoting, etc);
- Implementing new technology tools/solutions;
- Managing remote employee/volunteers; and
- Ensuring employee mental health and wellbeing.

Nearly one-third (32%) of respondents said ensuring the mental health and wellbeing of their employees was a major issue, with 38% of nonprofits with revenues of more than USD\$10m rating it a major issue, compared to only 28% of those with revenues below USD \$1M.

Adoption to remote work, increasing ambiguity, safety concerns, rapid change, constant re-prioritisation, and a high staff turnover rate continue to impact the sector. Organizations will have to navigate these complexities in order to take care of their people today, as well as plan for a healthy future.

Further details on the Nonprofit Trends Report can be found [here](#).

Legislative changes for virtual meetings and electronic execution of documents

- The Commonwealth Parliament has introduced an amendment to the *Corporations Act 2001* that will assist charities that are a company to conduct meetings of directors and members virtually and execute documents electronically.

The *Corporations Amendment (Meetings and Documents) Bill 2021* received Royal Assent on 22 February 2022 and the Act makes permanent some of the temporary reform measures which have been in place for the last two years.

The amending Act, the *Corporations Amendment (Meetings and Documents) Act 2022* permits from 1 April 2022:

- The option to hold meetings in hybrid format (attendance at a physical location or to join the meeting virtually) provided persons entitled to attend have a reasonable opportunity to participate.
- The option to hold wholly virtual meetings provided persons entitled to attend have a reasonable opportunity to participate, but only if expressly permitted to do so under their constitution. This is a change to the temporary measures in place until 31 March 2022.

Temporary measures under the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* allowed wholly virtual meetings without reference to constitution. From 1 April 2022 only, ASIC have the power to grant relief by enabling companies to hold wholly virtual meetings in exceptional circumstances under *S253TA Treasury Laws Amendment (2021 Measures No. 1) Act 2021*.

- Notices of meetings and other documents can be sent to or provided to members electronically.
- Directors and officers of companies can sign documents electronically.

The Amending Act can be found [here](#).



Thinking about cybersecurity?

A member survey conducted by the Australian Institute of Company Directors in partnership with the Australian Information Security Association has found that cybersecurity is the top-ranking issue keeping directors 'awake at night'.

The online member survey conducted in May 2022 surveyed 856 practicing directors. 308 participants had a primary directorship with a not-for-profit entity.

The survey report - Boards and Cyber Resilience, was published in June 2022. The key findings relevant to charities and not-for-profit organisations were as follows:

- Director awareness of threats, rather than actual attacks or increased Government regulation, is driving increased cyber investment.
- It was considered that directors could do more to improve their cyber skills and build stronger cyber governance practices, with limited upskilling currently taking place.
- Although cyber is accepted as a material risk for many organisations, often there is a lack of formal governance frameworks to support board oversight.

- Directors of not-for-profits need greater support to overcome resource constraints and to demystify the topic.
- Almost all Australian organisations have characteristics that make them especially susceptible to a cyber-attack.

Managing cybersecurity risk is a crucial part of the role of the board of directors and senior management. An appropriate framework must be in place to identify and manage cybersecurity risk on an ongoing basis.

ASIC provides guidance on cyber resilience good practices.

Further details can be found below:

[More needs to be done to improve Cyber security](#)
and

[Key questions for an organisation's board of directors](#)

[Cybercrime protection services](#)

Cash reserves – What is the right level?

More than any other sector, Not-for-profit (NFP) entities are faced with a financial balancing act when managing cash reserves.

Operating cash reserves are generally understood to be the unrestricted cash or liquid assets available for use to support the operations of the organisation in unexpected circumstances. For NFP entities this can present many challenges due to the unpredictable nature of the funding environment.

A cash reserve balance which is perceived as being too high can be negatively interpreted by future funding providers as an indication that no additional funding is necessary, or that the mission of the organisation is not being fulfilled. In addition, there are income tax implications to consider. Under the *Income Tax Assessment Act 1997* there are restrictions on the accumulation of income without any identified purpose. This could result in the income tax exemption status of the NFP entity being jeopardised.

Conversely, a cash reserve balance which is perceived as being too low may generate concerns about the viability or the financial mismanagement of the organisation. In this case it will be difficult for the organisation to respond to unexpected changes in economic conditions.

Unfortunately, there is no mathematical formula to determine the 'right' level of cash reserves as the circumstances in each case are unique and must be considered in conjunction with the overriding purpose of the organisation.

However, the pressure on NFP entities to justify the cash reserve balance could be reduced by promoting a greater understanding of how an appropriate level of cash reserves has been determined and how they are to be applied. A reserves policy can be communicated to stakeholders by including an explanation in the financial statements.

The Australian Charities and Not-for-profits Commission (ACNC) provides guidance, including a non-exhaustive checklist of considerations for determining the right level of reserves and for developing a reserves policy.

The ACNC checklist is available at:
[Australian Charities and Not-for-profits Commission Factsheet on reserves](#)
and
[Chartered Accountants NFP Insight Paper](#)



Compliance

Recent FWC decisions on the COVID-19 and influenza vaccination.

The outcomes of several recent Fair Work Commission (FWC) hearings have provided helpful insight into the management of vaccination policies.

Public health orders issued by States and Territories and directions mandating COVID-19 and influenza vaccination for a range of occupations and volunteer roles have been in place and evolving since 2020. The FWC's recent decisions have confirmed that non-compliance constitutes a valid reason for dismissal.

In the unfair dismissal case of *Mr Floors Aucamp v Ass'n for Christian Senior Citizens Homes Inc.* - [2021] FWC 6669, the employee's refusal to become vaccinated against COVID-19 resulted in the termination of his employment. The termination was on the basis that the vaccination directions prohibited the employer from allowing non-vaccinated employees to work and therefore the employee could not lawfully perform his role. It was held that this was a valid reason for dismissal.

Similarly, the FWC found that in the case of *Kimber v Sapphire Coast Community Aged Care Ltd* [2021] FWC 1818 (29 April 2021), it was lawful for an employer to dismiss an employee on the basis of their refusal to receive a vaccination for influenza where a public health order was in place.

Where an employee refuses to provide proof of vaccination or their exemption status, this can be a valid reason for dismissal. In the case of *Ms Aleisha Jean Shephard v Calvary Health Care T/A Little Company Of Mary Health Care Limited* - [2022] FWC 92, it was found that the employer would have been in breach of the public health order had the employee continued in employment.

Whilst these cases had similar outcomes, each case needs to be assessed by the individual circumstances. Employers need to ensure they follow a fair suspension and termination process to mitigate the risk of unfair dismissal claims by:

- Obtaining legal advice on whether your business is covered by mandatory vaccination requirements; and
- Following communication and consultation guidelines provided by the Fair Work Ombudsman.

Further information can be found at:
[Fair Work Commission](#) and
[Fair Work Ombudsman:](#)
[Communication in the workplace](#)

Is your ACNC registration at risk?

Close to 750 charities which have failed to submit two or more Annual Information Statements are at risk of losing registration.

The Australian Charities and Not-for-profits Commission (ACNC) has recently notified hundreds of Australian charities that their registration could be revoked due to failure to submit their Annual Information Statement at the end of each reporting period.

The data provided in the Annual Information Statement is published in the Charity Register maintained by the ACNC and helps to maintain transparency in the charity sector and the requirement to submit an Annual Information Statement is considered a critical compliance obligation.

Once registration is revoked the charity will no longer receive Commonwealth charity tax concessions or other benefits associated with being a registered charity.

To avoid having charity registration revoked, outstanding statements can be lodged via the ACNC portal.

More information from the Australian Charities and Not-for-profits Commission can be found [here](#).

Legislative changes for incorporated associations

• Incorporated Associations registered in Queensland and South Australia
• are affected by amendments to Associations Incorporation legislation
• which aim to strengthen regulation of the association structure.

Queensland

The Associations Incorporation and Other Legislation Amendment Act 2020 was passed by the Queensland Parliamentary Counsel on 22 June 2020 and effects changes to the *Associations Incorporation Act 1981 (Qld)*.

Key changes come into effect in stages, commencing on 22 June 2020, further stages commence on 22 June 2022 and in August 2022, and regulation changes are anticipated to commence in 2023.

The changes relate to governance requirements for incorporated associations and include changes in the following areas:

- Common seals and execution of contracts
- Eligibility of secretary
- Duties of management committee members
- Breach of duty defences
- Financial reporting
- Internal grievance procedure

Amendments to the Associations

Incorporation Act 1981 (Qld) affects 3,750 incorporated associations registered as charities in Queensland.

South Australia

The Associations Incorporation (Miscellaneous) Amendment Bill 2021 was introduced into the South Australian Legislative Assembly on 24 August 2021 and effects changes to the *Associations Incorporation Act 1985 (SA)*.

Key changes come into effect within a 12-month transition period and include changes in the following areas:

- Minimum number of members
- Minimum number of directors
- Governance principles
- Annual verification statements
- Additional Enforcement powers

More information on the Associations Incorporation and Other Legislation Amendment Act 2020 can be found [here](#) and [here](#).

Employer's duty of care for mental health

A recent high court decision in the case of *Kozarov v Victoria [2022] HCA 12* (13 April 2022) ruled that the Victoria Office of Public Prosecutions was negligent in failing to protect the mental health of a lawyer exposed to vicarious trauma in her work.

The case involved a lawyer, Ms Kozarov whose role involved prosecuting serious sex offences. After a few years in this role she complained of an excessive and stressful workload and that the role was having an impact on her personal life. Ms Kozarov was later diagnosed with post-traumatic stress disorder and major depressive disorder. After a period of leave her employment was eventually terminated.

The High Court found that the Victoria Office of Public Prosecutions had breached its duty of care to Ms Kozarov as it has not taken all reasonable steps to prevent foreseeable harm to her.

Key messages for employers:

- The employer owes a duty of care not just for physical safety but also for the safety of the mental health of employees. If the role within the organisation involves an inherent and obvious risk to the psychiatric

health of the employee a duty of care is owed by the employer to proactively reduce the risk of psychiatric injury.

- The employer should develop policies and procedures which allow the employee to continue working without being exposed to trauma the whole time, for example rotating roles.
- It is not enough for the employer to have documented workplace safety policies; these policies must be actively implemented.
- The organisation should promote a culture of safety to ensure that employees can communicate mental health concerns and receive support.

Further information and support through the High Court of Australia can be found [here](#).

Financial reporting and other



What's new for 30 June 2022 financial reporting?

- ACNC has issued revised reporting thresholds and new remuneration reporting rules under the amended Australian Charities and Not-for-profits Commission Regulation 2013, effective for financial years ending on 30 June 2022.

Revised revenue thresholds

The ACNC's increased reporting thresholds will reduce the cost of financial reporting obligations for some charities and are effective for financial years ending on 30 June 2022 and later.

Size of charity	Old revenue thresholds	New revenue thresholds for 30 June 2022 and later years	Reporting obligations
Small	Less than \$250,000	Less than \$500,000	Complete Annual Information Statement (AIS) online
Medium	\$250,000 to \$1 million	\$500,000 to \$3 million	Financial report can be either reviewed or audited and AIS to be completed
Large	Greater than \$1 million	Greater than \$3 million	Financial report must be audited and AIS to be completed

AASB 1060 General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities (SDS)

Previously not-for-profit Tier 2 entities preparing general purpose financial statements applied a reduced level of disclosure referred to as Reduced Disclosure Requirements (RDR). This has been replaced by Simplified Disclosures (SDS) for reporting periods beginning on or after 1 July 2021.

Special Purpose Financial Statements (SPFS)

Not-for-profit entities preparing SPFS may continue to do so if considered appropriate.

Remuneration reporting

The ACNC has issued new remuneration reporting rules to deliver greater transparency and accountability. Large charities that prepare SPFS will be required to report aggregate key management personnel (KMP) remuneration in the AIS and financial report at 30 June 2022 if they have two or more KMP's.

Related party disclosures

Medium and large charities preparing SPFS will require related party disclosures for 30 June 2023.

All charities must submit their AIS, and medium and large charities must submit their financial report within six months from the end of their reporting period.

More information from the Australian Charities and Not-for-Profit Commission can be found [here](#) and [here](#).

Recent AASB Amendments to Australian Accounting Standards and Exposure Drafts for Not-for-Profit entities

Additional guidance has been issued in relation to the accounting treatment of upfront payments from customers or members in the form of AASB 2022-3.

AASB 2022-3 Amendments to Australian Accounting Standards – Illustrative Examples for not-for-profit Entities accompanying AASB 15 was issued on 3 May 2022.

The purpose of AASB 2022-3 is to better illustrate the recognition and measurement of upfront fees charged by the entity to its customers or members by providing an additional example for guidance. The amendment does not change the requirements of AASB 15 *Revenue from Contracts with Customers*. AASB 2022-3 also provides certainty to not-for-profit private sector lessees by retaining the accounting policy choice in AASB 16 *Leases* to elect to initially measure a class of concessionary right-of-use assets at cost or fair value. AASB 2022-3 applies to annual reporting periods beginning on or after 1 July 2022.

There is currently an exposure draft open for public comment - ED 320 *Fair Value Measurement of Non-Financial Assets of Not-for-Profit Public Sector Entities*.

ED 320 proposes implementation guidance on AASB 13 *Fair Value Measurement* in respect of non-financial assets not held primarily for their ability to generate new cash inflows. It is proposed that the amending Standard would be applicable to annual reporting periods beginning on or after 1 January 2024. Comments to the AASB closed on 30 June 2022.

Further information from the Australian Accounting Standards Board can be found [here](#) and [here](#).

Sustainability-related Reporting

The Australian Accounting Standards Board (AASB) has issued a staff article on the development of sustainability-related financial reporting standards in Australia.

There is increasing demand for high-quality, transparent, reliable and comparable reporting of sustainability-related information in annual reports. Many organisations currently produce sustainability and Environmental, Social and Governance (ESG) reports as part of their annual reporting package.

In response to the growing demand for this type of information the IFRS Foundation Trustees established a new standard-setting board - the International Sustainability Standards Board (ISSB) on 3 November 2021. The objective of the ISSB is to develop a global baseline of high-quality sustainability disclosure standards to meet the needs of the users of the financial statements.

The AASB will use the work of the ISSB in their approach to developing sustainability-related financial reporting standards modified for Australian specific matters and requirements for adoption in Australia.

Similar to the AASB's approach to Australian Accounting Standard setting, the decision to mandate sustainability-related financial reporting for not-for-profit entities will be with the relevant Australian legislators and is likely to fall within the scope of general-purpose financial reporting. Exposure Draft IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* proposes that sustainability-related financial information is prepared separately from financial statements but forms part of the annual financial reporting package for the same reporting period.

The first two exposure drafts in the series - Exposure Draft – ED 321 *Request for comment on [Draft] IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and [Draft] IFRS S2 Climate-related Disclosures* closed for comment to AASB on 15 July 2022.

Further details from the Australian Accounting Standards Board can be found [here](#).

More details on the IFRS Exposure Draft can be found [here](#).

Taxation

AAT decision to deny charity status for cancer fundraising entities

The Administrative Appeals Tribunal (AAT) has recently upheld the decision of the Australian Charities and Not-For-profits Commission (ACNC) to deny registration as charities for three applicants who were formed to raise funds in respect of different types of cancer.

The ACNC refused registration on the basis that each applicant has a disqualifying purpose, among others, of providing benefits to the people involved in their operations.

The AAT upheld the decision of the ACNC, but on different grounds. It found that the applicants were established for the purpose of duplicating and taking over the activities of a charity called Cancer and Bowell Research Association Inc (CBRA Inc) and a trust it administered. CBRA Inc had an outstanding Australian Taxation Office (ATO) tax debt relating to unpaid employee superannuation entitlements.

The AAT considered that a substantial purpose of the formation of the applicants was to terminate or substantially reduce CRBA Inc's liability to the ATO by taking over its functions and lists and leaving it with insufficient assets to pay the ATO debt. Such a purpose was a disqualifying purpose as defined in the *Charities Act 2013 (Cth)* as being one that is contrary to public policy.

Notably, the AAT noted that in deciding whether each applicant was eligible for registration as a charity, the ACNC Commissioner was obliged to consider the actual circumstances in which each organisation was formed, not just their recorded purposes.

The ACNC has issued a decision impact statement and media release in relation to this AAT decision.

More information from the Australian Charities and Not-for-Profit Commission can be found [here](#).



ACNC invites comment on its updated “PBI” and “Health Promotion Charity” guidance

The ACNC has recently released revised “Commissioner’s Interpretation Statements” concerning how to determine whether a charity is a Public Benevolent Institution (PBI) or a Health Promotion Charity (HPC).

In general, these types of charities enjoy the highest level of tax concessions including Deductible Gift Recipient (DGR) status and various Fringe Benefits Tax (FBT) exemptions.

In particular, the revised Commissioner’s Interpretation in relation to PBI’s incorporates case law developments following the decisions in *Global Citizen Ltd v Commissioner of ACNC 2021 ATC 10-593* (the Global Citizen case) and *the Hunger Project Australia v FCT 2017 ATC 10-467* (the Hunger Project Case).

The Global Citizen case concerned a charity that was formed to lobby governments and philanthropists to persuade them to provide financial support to other entities engaged in specific activities to relieve poverty. The charity was able to demonstrate that following its lobbying activities, governments had committed financial support to relieve poverty. The Administrative Appeals Tribunal held that in such circumstances the charity had a purpose of relieving global poverty, and its activities went beyond merely advocating for policy change.

The Hunger Project Case involved a charity that raised funds in Australia to send to partner entities in developing countries to relieve hunger in those countries. The Court accepted that the charity had a purpose of relieving the poverty of people in developing countries because it was clear that the funds raised would be used for that purpose, albeit through a partner entity.

The Global Citizen and Hunger Project cases demonstrate an evolution in accepted ways charities can pursue benevolent relief in more modern times. It is now well accepted that a charity can be a PBI whilst not itself directly pursuing benevolent relief purposes.

The ACNC invited public comment in relation to both of these revised Commissioner’s Interpretation Statements. The last day to submit comments was Tuesday 30 August 2022.

More information from the Australian Charities and Not-for-Profit Commission can be found [here](#).

Victorian land tax: ruling on charity exemption finalised

The State Revenue Office of Victoria has finalised a ruling on the land tax exemption available for charitable institutions.

New LTA – 009 replaces LTS-004 and LTA 005.

LTA -009 - Land Tax Charity Exemption reflects recent amendments to the charity exemption in section 74 of the *Land Tax Act 2005 (Vic)* (the Vic Land Tax Act) with effect from the 2022 income year.

Amongst other categories, land is exempt from land tax under section 74(1)(a) of the Vic Land Tax Act if the Commissioner determines that the land is used and occupied by a charitable institution exclusively for charitable purposes.

The words “and occupied” were inserted into section 74(1)(a) following the recent Victorian Supreme Court’s decision in *University of Melbourne v Commissioner of State Revenue [2021] VSC 156*.

That case involved the application of the exemption for university owned land and buildings leased to a private commercial company for the purpose of operating a student accommodation facility.

LTA -009 also provides additional guidance on the used “exclusively for charitable purpose” requirement. It also discussed opportunity shops, the vacant land charity exemption, the outdoor leasing charity exemption, and evidentiary requirements.

Other Australian states and territories have similarly worded land tax exemption for property owned by charities.

More information from the State Revenue Office of Victoria can be found [here](#).

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