



Charities and Not-for-profit Alert

A publication for the For Purpose sector
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Audit / Tax / Advisory

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Governance



Pressures build for directors

Directors are spending an increasing amount of time on duties.

The latest edition of The Australian of Company Directors (AICD) Not-for-Profit Governance & Performance Study 2022-23 (the Study) reveals that increased challenges and demands impacting directors in the not-for-profit sector has led to 75% of respondents reporting that they spend more time on their role than in the prior year.

Additionally, tougher governance standards resulting from various Royal Commissions, workforce shortages, and the ongoing legacy of COVID-19 are among issues contributing to directors re-evaluating their roles.

Key findings from the study include:

- Over 40% of director's spending more than three days per month on a single Not-for-Profit.
- The percentage of directors being remunerated has increased to 22%, compared to 14%, five years ago.
- Profitability has fallen with almost a quarter (24%) making a loss, compared to 15% last year.

AICD Managing Director and CEO Mark Rigotti said the annual survey gives an important insight into the contribution directors make to the Not-for-Profit sector and the additional demands they face.

"It's important that the regulatory environment doesn't serve as a handbrake on the sector, with the risk that NFP enterprises become overburdened.

While strong regulation and compliance are necessary, and done with the best intentions, it would be counterproductive if this comes at the expense of service delivery."

An interactive dashboard is provided with the survey enabling users to filter the results for deeper insights:

- The study can be downloaded [here](#).
- The interactive dashboard can be accessed [here](#).

Fraud: It's not going away

Fraud poses a serious risk to valuable funds, as well as sensitive data, and can damage the good reputation of social purpose organisations, affecting public trust and confidence in the sector.

There have been many examples of fraud in Australian not-for-profits over time – from the [National Safety Council of Australia](#) in the late 1980s to several that have received publicity more recently, including the [Immigrant Women's Health Service, Non-English Speaking Housing Women's Scheme](#), and [Surf Lifesaving NSW](#).

The generally high level of public trust in charities is one of the conditions that can allow fraud to slip under the radar. Coupled with this is a culture of trust within not-for-profit organisations, which is further complicated by the difficulty in achieving segregation of duties in small organisations.

In 2021-2022 The Australian Charities and Not-for-profits Commission ('ACNC') received [2,522](#) concerns about charities (generally from the public or members of a charity), and the most common concerns were about perceived mismanagement of funds (18%) or individuals obtaining a 'private benefit' from a charity (24%).

Examples of charitable assets being used for private benefit include a person misusing their position in a charity to conduct unauthorised transfers of charity funds to themselves or another, or the unauthorised (or inappropriate) use of charity credit cards.

In 2018 a former senior manager of Guide Dogs Victoria pleaded guilty to three charges of dishonestly obtaining financial advantage by deception (under [section 82](#) of the [Crimes Act 1958](#) (Vic)), having dishonestly obtained amounts totalling \$178,413.89 to cover personal expenses incurred for renovations and improvements on his own home, in addition to using his corporate credit card and fuel cards ([DPP v Cirianni](#)).

While charities may not report fraud to avoid reputational risk it is important to note **that there is a legal obligation to report to police if you think a crime has been committed** – this includes fraud or theft. If you are an ACNC registered charity, you also have an obligation to notify the ACNC within 28 days of a breach of the Act.

There are a number of resources available to help organisations protect themselves from fraud, including the ACNC's [fraud prevention guide](#) and the Crowe [Social Purpose and Non-Profit Organisations: Fraud Risk Assessment](#).



Who is a Responsible Person?

The role of Responsible Person within a not-for-profit organisation is extremely important, but do you know who it is?

All registered Australian not-for-profit organisations and associations must meet a set of governance standards as set out by the Australian Charities and Not-for-profits Commission (ACNC).

These standards help to promote public trust and confidence in the not-for-profit sector and must be adhered to for the life of the organisation.

Within the ACNC standards there are specific references to the role of a not-for-profit Responsible Person. The role of Responsible Person within a not-for-profit organisation is extremely important when registering with the ACNC. They are different from the managing director or CEO and they aren't just a nominated contact person.

The reason the ACNC requires someone to be the Responsible Person is to ensure that the NFP is not controlled by individuals who may jeopardise the organisation's financial position or interfere with the pursuit of its non-profit work.

The [ACNC website](#) states:

A Responsible Person is someone who is responsible for governing a charity. Generally, a charity's Responsible Persons are its board or committee members, or trustees (including insolvency trustees or administrators).

The ACNC requires charities to meet Governance Standards. Under Governance Standard 4 charities must make sure its Responsible Persons are suitable, and under Governance Standard 5 they must ensure their Responsible Persons are aware of their duties and comply with them.

We recommend all not-for-profits advise the Responsible Person of their responsibilities by including the necessary details in a letter of appointment when they are newly nominated.

The ACNC have developed a [self-evaluation tool](#) to assist in determining if your not-for-profit is meeting its regulatory obligations.

Online donation website security

You need to show potential donors that you are serious about data privacy and online security.

Australians donate generously to charities. Results from the [Charities Aid Foundation's World Giving Index 2022](#), indicated that 64% of Australians had made a financial donation within the previous 12 months, making it one of the top 10 countries for donating money.

With a significant and growing portion of these donations being by bank or credit card transaction, it is extremely important that not-for-profit organisations make sure their online donation platform and all website data remain well-secured.

Unlike most commercial e-commerce websites that have complex shopping carts and multiple layers of security through their check out process, not-for-profit donation websites tend to be more straightforward and have easy to navigate donation forms.

Unfortunately, while these types of 'donate now' pages are extremely user-friendly for a potential donor to complete, they can also be targeted by hackers seeking to harvest personal information. This is where you need to have a sharp focus on security and minimise the possibility of donors' information being compromised.

If you are unsure about the security of your online donation platform, then the first step is to speak with your IT service provider and potentially conduct a risk assessment. Once you understand where you are vulnerable, you can put processes in place to improve your cybersecurity.

It's also imperative that you meet all the [compliance requirements of the Payment Card Industry Data Security Standards](#) (PCI DSS). If you don't meet these standards, you could experience a range of repercussions.

You need to make sure your data protection solution provider is PCI DSS-compliant. Features such as multifactor authentication, donor fraud protection, credit card and bank account security, and IP security should all be incorporated into your system to protect it from both local and international online threats.

Further information can be found [here](#) or from Crowe's [cybercrime services](#).

Compliance



Related party disclosures

All charities registered with the Australian Securities and Investments Commission (ASIC) are now required to report their related party transactions annually.

The requirement to report related party transactions is effective from the 2023 Annual Information Statement (AIS) onwards. Under the new rules, medium and large charities also need to disclose related party transactions in their financial reports, in accordance with relevant Australian Accounting Standards.

- For 30 June year-ends related party transactions must be reported from 1 July 2022; and
- For 31 December year-ends related party transactions must be reported from 1 January 2023.

The key to ensuring that correct disclosure is reported is having the necessary policies and procedures in place to identify and deal with related party transactions and conflicts of interest. Information systems will also need to be effective in identifying and recording both the related party relationship and the transactions.

Related party relationships and transactions can however be difficult to identify and may operate via an extensive and complex network of relationships.

The problems of identifying and disclosing related party transactions are compounded in a group structure or complex business arrangement.

Discussing related parties is often a sensitive area, so it is important to ensure that those affected understand the requirements.

Having a robust related party transactions register will ensure that the information required to be reported is both transparent and easily obtained.

Further information can be found [here](#).



Two regulators abolished

The Australian Building and Construction Commission (ABCC) and the Registered Organisation Commission (ROC) have recently been abolished.

Abolition of the ABCC took effect from 6 February 2023 with all ongoing legal matters currently before the courts transferred to the General Manager of the Fair Work Commission (FWC).

Effective 1 July 2023, The Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 then amended the Fair Work Act 2009 (the Act) to establish an ongoing National Construction Industry Forum ([the Forum](#)) as a statutory advisory body.

The Forum will operate as a statutory advisory body to the Government on workplace issues in the building and construction industry.

Abolition of the ROC took effect from 6 March 2023, with its regulatory powers and functions being transferred to the General Manager of the Fair Work Commission.

There are new enforcement options for the regulation of registered organisations, which the General Manager of the Commission now administers. This includes infringement notices and enforceable undertakings.

Where an organisation enters into an enforceable undertaking with the FWC and then doesn't comply with it, the FWC can seek to have the undertaking enforced by a court.

Registered organisations continue to have the same reporting and compliance obligations under the Fair Work (Registered Organisations) Act 2009.

Further information on the FWC and registered organisations can be found [here](#).

Registration failures

Each year thousands of new charities are established, yet more than half of those applying for registration fail.

In the 2022 financial year, the Australian Charities and Not-for-profits Commission (ACNC) processed 5,886 registration applications, registering 2,659 of those. Of the remainder, almost 2,000 applications were incomplete, 862 were withdrawn and 151 refused as ineligible.

To be eligible to be registered as a charity, an organisation must have a charitable purpose that benefits the public. This charitable purpose is what the organisation has been set up to achieve – its mission.

This purpose or mission is key when registering and running your charity. It is good governance hygiene to ensure that your organisation:

- Is clear about the activities that support its charitable purpose;
- Has a governing document such as a constitution that states its purpose;

- Has a current ABN and one that is correct for its legal structure;
- Provides the names and details of its Responsible Persons; and
- Where operating overseas, complies with the external conduct standards.

Organisations applying to be registered as a charity sub-type will also need to ensure additional matters relating to its governing document and the development of a strategic plan are completed.

With less than 50% of all registration applications being successful, the compliance obligations can be difficult to navigate.

Further information can be found [here](#).



Whistleblower policies – what are they and do you need one?

Recent statements made under Parliamentary privilege relating to Whistleblower disclosures raised with the Australian Charities and Not-for-profits Commission (ACNC) in respect to concerns about Hillsong Church charities has brought the matter into focus.

Whistleblowing plays a crucial role in managing risk and cultivating an ethical culture in a not-for-profit organisation. It's an essential and effective tool in a not-for-profit governance toolkit.

A Whistleblower is a person associated with your organisation – a board member, manager, employee, contractor or volunteer – who reports known or reasonably suspected misconduct within the organisation. The disclosure may be reported openly or anonymously.

Having a policy or strategy in place for dealing with any Whistleblower reports that you may receive will ensure you have a consistent, effective and compliant approach to whistleblowing, and can bring other benefits including:

- Helping combat fraud.
- Avoiding reputational damage.
- Preventing the escalation of issues.
- Reducing losses.
- Raising awareness.
- Creating an open culture.

There are also certain Whistleblower protections that are mandated by legislation. Not-for-profit organisations affected by this legislation must know the protections and apply them to Whistleblowers or face penalties. For example, charities or not-for-profits structured as public companies limited by guarantee need a [Whistleblower policy](#) if their annual (consolidated) revenue is \$1 million or more.

ASIC has released [Regulatory Guide 270 Whistleblower policies \(RG 270\)](#) to help organisations set up a Whistleblower policy that complies with their legal obligations.

Justice Connect have produced a series of factsheets relating to [Whistleblower protection laws](#), and the ACNC has a series of [Whistleblower protection](#) resources to assist.

Financial reporting and other reporting

Not-for-profit post implementation reviews

The Australian Accounting Standards Board (AASB) has now closed the post implementation review (PIR) period on two key Invitation to Comment (ITC) documents in relation to not-for-profit entities.

ITC 50 Post-implementation Review – Income of Not-for-Profit Entities (ITC 50) - sought comments about not-for-profit users' experiences when applying the accounting requirements for income contained in AASB 1058 Income of Not-for-profit Entities, and revenue contained in AASB 15 Revenue from Contracts with Customers (AASB 15).

ITC 51 Post-implementation Review of Not-for-Profit Topics – Control, Structured Entities, Related Party Disclosures and Basis of Preparation of Special Purpose Financial Statements – sought comments about not-for-profit users' experiences when applying accounting standards dealing with control, structured entities, related party disclosures and the basis of preparation for special purpose financial statements with disclosures, among other items.

ITC 50 and ITC 51 were closed for comment on 31 March 2023. AASB have issued a snapshot that provided a summary of feedback received prior to the conduct of outreach sessions in February 2023 and March 2023.

Key feedback included:

- Concerns that the comparability of not-for-profit entity financial statements may have been reduced since the term 'sufficiently specific' in AASB 15:
 - » Is unclear and there is confusion in practice, causing different accounting treatment for agreements with similar terms and conditions.
 - » Seems to have a higher threshold than a legal interpretation of breach of contract.
- That recognising income on receipt can be unhelpful for users of financial statements because activities still need to be performed, leading to internal finance reports being prepared based on the activities of the project, rather than the accounting standards, because they are more useful.

We look forward the AASB's findings in due course.

The AASB Snapshot can be found [here](#).

International Non-Profit Accounting Guidance (INPAG) Exposure Draft 2.

Publication of International Non-Profit Accounting Guidance (INPAG) Exposure Draft 2 is due in September 2023, which will be open for public consultation until the 15 March 2024.

In preparation for Exposure Draft 3, International Financial Reporting for Non-Profit Organisations (IFR4NPO) will be consulting with preparers and users of financial statements through three focus group sessions in August and September 2023.

Focus sessions are focused on the Classification of Expenses, Fund accounting, and Fundraising costs.

IFR4NPO have also released a [survey](#) to identify the characteristics of equity claims and their potential uses in the not-for-profit sector.

A key aspect of the IFR4NPO international due process is the transparent sharing of proposals and discussions during the development process.

Recent advisory meetings included discussions on recognition of grant revenue, measurement of donations-in-kind, expenses on grants and donations, foreign exchange, classification of expenses, and Supplementary Statements. You can find links to meeting resources below:

- Technical Advisory Group (TAG) [meeting](#): 27 June 2023.
- Practitioner Advisory Group (PAG) [meeting](#): 7 June 2023.

The current activities form part of phase 2 (Development Phase) of a three-stage process targeting a Final Guidance launch date in 2025.

Keep up to date by subscribing to the IFR4NPO newsletter [here](#).



Data breach survey

There has been a sharp increase in the number of Australians who feel data breaches are the biggest privacy risk they face today, according to a major survey released by the Office of the Australian Information Commissioner (OAIC).

The [Australian Community Attitudes to Privacy Survey \(ACAPS\) 2023](#) provides a comprehensive view of Australians' privacy attitudes and experiences and how recent events have impacted them.

The survey tested attitudes on topics such as data practices, privacy legislation, data breaches, biometrics, artificial intelligence and children's privacy. With survey findings showing strong support for privacy law reform.

2023 has also seen the publication of a report from The National Cyber Security Centre in the UK outlining the cyber threats currently facing UK charities of all sizes. The report notes that the charity sector is particularly vulnerable as they can hold significant amounts of sensitive or valuable data making them attractive targets, alongside the perception that charities have fewer resources to commit to cyber security.

The report provides details of the commonly perpetrated cyber-attacks, as well as a few recommendations and links to guidance that assist charities with strengthening their defences.

A copy of the report can be found [here](#).

The most recent Australian Signals Directorate's Australian Cyber Security Centre (ACSC) Annual Cyber Threat Report indicates that no-one is immune to cyber threats, with one cybercrime reported to ACSC on average every 7 minutes. With cybercrime having serious consequences including financial loss and damage to reputation, it is crucial that not-for-profit organisations take necessary steps to protect their own and donor information.

A copy of the report can be found [here](#).

New sustainability guide for not-for-profits and charities

Just as the corporate sector is under pressure to address the social and environmental impacts of their operations, the not-for-profit and charity sector is also coming under scrutiny. A new playbook from Chartered Accountants Australia and New Zealand (CA ANZ) aims to assist organisations to meet this challenge.

A new sustainability guide for not-for-profits and charities offers actionable insights for not-for-profits and charities which have a critical role in the transition to a sustainable future.

'Purpose, people, planet' is a new playbook by CA ANZ that provides Not-for-Profit organisations tailored tips and free resources and outlines how they can deliver on their purpose and enhance their financial sustainability by considering sustainability-related issues within their operations and supply chains.

The playbook highlights how this can improve not-for-profit organisations appeal to funders, employees and volunteers as well as strengthen their resilience.

The playbook showcases case studies of not-for-profit organisations that are already taking steps in the right direction and offers practical advice to assist others.

In today's world not-for-profit organisations are defining, measuring, and achieving success in increasingly diverse ways other than simply financial.

As a not-for-profit, being able to credibly demonstrate your unique positive impact on people and planet and your organisational purpose can reduce risks.

A copy of the playbook can be found [here](#).



Taxation

New reporting for tax exempt not-for-profits

ATO reporting obligation from 1 July 2023.

The not-for-profit landscape in Australia can be a very broad church, and depending on the profile of an organisation, it can qualify for a range of different endorsements and tax concessions.

The ATO statistics from June 2023 indicate that approximately 225,000 organisations are registered with an ABN as not-for-profit entities. Of this, approximately 25% are registered charities and just under 4% are “taxable” not-for-profits, leaving over 150,000 entities which are self-assessed income tax exempt entities.

A new reporting obligation for this category of not-for-profit was announced in the Federal Budget 2021-22 commencing on 1 July 2023 and from 1 July 2024 to 31 October 2024, these organisations will have to lodge a return with the ATO for the first time.

The return has not yet been released but we are aware that it will be focussed on eligibility and will not ask organisations to provide detailed financial data.

The return will be an online lodgement with the intention that it will tailor based on the responses provided so that an organisation should only have to answer questions which are relevant to their organisation’s particular profile.

Many organisations are organised and run by volunteers and working through precise technical eligibility requirements is likely to be a new process for many.

Once they work through the eligibility criteria, some organisations may discover that they may not qualify to self-assess as income tax exempt.

The two groups likely to see a change in status are organisations which identify that all of their purposes are in fact charitable purposes or minor and incidental to charitable purposes. Where this is the case, tax legislation mandates that these entities become endorsed by the Australian Charities and Not-for-profit Commission (ACNC) in order to be tax exempt. Since 2013 there has been a statutory definition of charity and the definition of charitable purposes has many similarities with the categories of entity which can self-assess tax exemption under Division 50 of the Income Tax Assessment Act 1997.

Where organisations identify that they should be endorsed as a charity, they will need to prepare and submit an application to the ACNC for endorsement.

Alternatively, an organisation may discover that they have a non-qualify purpose or perhaps fail to meet the requirements around prohibition of benefits to individual members. These organisations would be more appropriately classified as a taxable not-for-profit.

In this circumstance the organisation must start preparing and lodging annual income tax returns where their taxable income exceeds \$416. This does not necessarily mean that tax will have to be paid, but a return will be required.

The return will not be open for lodgement until 1 July 2024, however, organisations can take steps now to prepare.

Firstly, all organisations should review their ABN status and ensure all contacts are up to date. This will ensure that all guidance and notifications are received correctly.

The other step is to go through the ATO's existing self-assessment worksheets to identify any potential concerns or to allow time to discuss with the ATO around circumstances which may raise questions.

The ATO has resources to help organisations [here](#) and Crowe has a range of advisors who are well placed to assist organisations with all matters surrounding eligibility and reporting.

Further information can be found [here](#).



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