



Charities Alert

Summer 2021/2022



Audit / Tax / Advisory

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Governance

Director Identification Number regime

As part of the Government's Modernising Business Registers program, directors of charities that are a company, a registered Australian body, or an Aboriginal and Torres Strait Islander corporation will need to apply for a Director Identification Number (DIN)

A DIN is a unique identifier – once an individual is registered for and receives their unique DIN, they will keep it forever, even if they are appointed director of several different companies or cease a board appointment.

Having a DIN is a compulsory requirement under the new regime, and failure to obtain one will prevent you from accepting a director appointment or retaining any existing board appointments.

There are significant civil and criminal penalties that can be levied on directors who fail to apply for a DIN within the required timeframe, or take any actions that undermine the DIN regime, including providing false identification documents or statements.

Individuals must apply for their own DIN. Your tax agent or other adviser cannot apply for a DIN on your behalf. The quickest way to obtain a DIN is to use the online portal.

The timeframes required to apply for a DIN depends on when you became a director of a company, as set out in the following table:

Date you become a director	Date you must apply for a DIN
On or before 31 October 2021	By 30 November 2022
Between 1 November 2021 and 4 April 2022	Within 28 days of appointment
From 5 April 2022	Before you are appointed

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

Recent changes to the Corporations Act for electronic meetings, notices and e-signing

The Commonwealth Parliament has introduced temporary changes to the Corporations Act 2001 that will assist charities that are a company to conduct meetings of directors and members electronically and execute documents electronically.

Royal Assent was given to Schedule 1 of the *Treasury Laws Amendment (2021 Measures No.1) Act 2021 (Amending Act)* on 13 August 2021.

The Amending Act amended the Corporations Act 2001 to allow (temporarily, until March 2022):

- Full virtual meetings of directors of companies and full virtual meetings of members of companies provided persons entitled to attend have a reasonable opportunity to participate.
- Notices of meetings and other documents can be sent to or provided to members electronically.
- Directors and officers of companies to sign documents electronically.
- Recording and keeping of minute books to be carried out electronically.

While the Amending Act provides temporary amendments through to 31 March 2022, it may be prudent to amend your constitution to:

- Allow for flexibility to ensure you can take advantage of the changes; and
- Maintain this flexibility in the event these changes are extended beyond 31 March 2022.

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

The New South Wales Modern Slavery Amendment Bill 2021

The Modern Slavery Act 2018 (NSW) is scheduled to commence on 1 January 2022. On 14 October 2021, the NSW Government introduced the Modern Slavery Amendment Bill (MSA Bill).

The MSA Bill sets out that the NSW Act is to commence on 1 January 2022. This allows applicable stakeholders an opportunity to interpret the operational changes that the MSA Bill proposes and allows some time to establish the office of the Anti-Slavery Commissioner in NSW.

The Commonwealth Government's modern slavery legislation, the *Modern Slavery Act 2018 (Cth)* (**Federal Act**), which commenced in January 2019 sets out that the turnover threshold for an entity to be captured by the mandatory annual modern slavery statement provisions is a consolidated revenue of at least \$100 million per annum.

The NSW Act previously set this threshold at \$50 million per annum. However, the MSA Bill proposes to remove the reporting requirements within the NSW Act, meaning that entities operating in NSW will only be required to prepare a modern slavery statement for the purposes of compliance with the Federal Act where they meet the Federal Act's threshold criteria.

Additionally, the definition of 'government agency' for the purposes of the government sector procurement obligations in the NSW Act is proposed to be amended, courtesy of the MSA Bill.

As a result of the NSW Bill, the NSW modern slavery laws will more closely align with the Federal modern slavery laws.

The MSA Bill can be found [here](#).

The Not-for-Profit Governance and Performance Study 2021 makes interesting reading

The recently released 12th edition of the Not-for-Profit Governance and Performance Study (NFP Study) tells a predominantly optimistic story.

The Australian Institute of Company Directors (AICD) 2021 NFP Study was conducted against the backdrop of organisations being under enormous pressure and immense disruption from the ongoing impact of COVID-19.

The NFP Study reports that, for most organisations, the financial outlook is relatively positive over the medium term, but it will take some time to recover ground lost through COVID-19.

The NFP Study highlights that the financial impacts of COVID-19 have not been as damaging as many had predicted, and three-quarters of respondents believe they will be in a stronger financial position in three years' time.

Directors continued to devote more time on their roles but have largely focused on governance issues and avoided being too involved in operations.

Respondents reported that the majority of operational changes implemented during the pandemic were likely to remain after the pandemic has moved on.

Interestingly, merger discussion and activity were reported at an all time low.

The 2021 NFP Study is available [here](#).



High Court decision affects all Not-for-Profit organisations that use social media

The court case was started by Dylan Voller, who was abused and mistreated in the Northern Territory's Don Dale Youth Detention Centre.

Mr Voller sued three media companies who covered his story. He argued that they were responsible for allowing Facebook users to leave insulting comments on news articles posted on the company's Facebook pages. By a 5:2 majority, the High Court found that the media companies were the publishers of the third-party Facebook user comments.

The effect of this judgement extends well beyond Facebook and the media, and will apply to:

- Organisations that maintain their own websites and social media pages, including Not-for-Profits; and
- All websites and social media pages, not just Facebook.

The decision confirms that an organisation opening a site or post to comments by others may be liable for any defamation in the comments others then make.

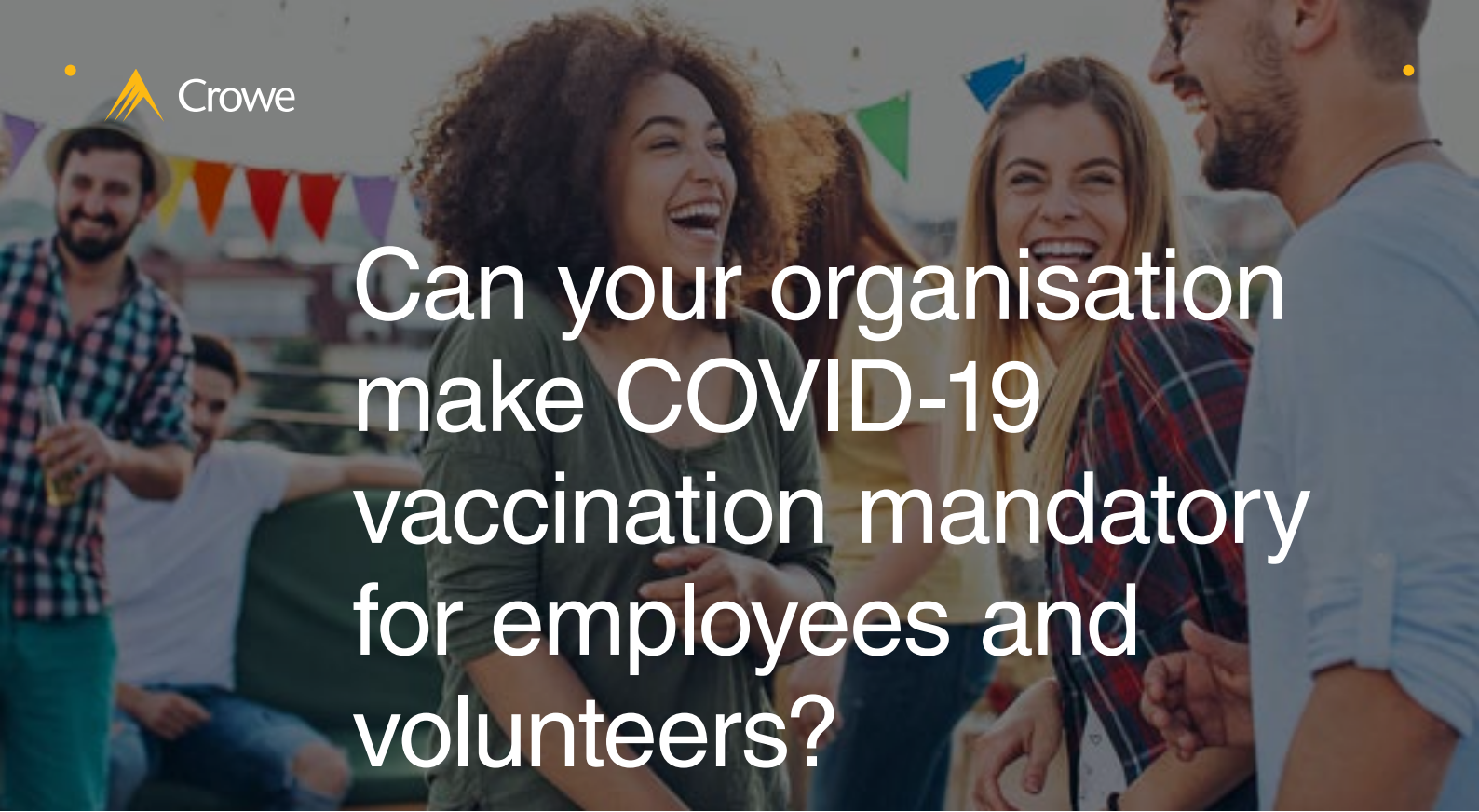
Larger Not-for-Profits may be able to track, vet and remove problematic posts quickly, but for those without continuous monitoring, their risk from such posts may be more difficult to control or mitigate.

We recommend Not-for-Profits put measures in place to ensure that posts or comments made by others are not defamatory - this may include:

- Establishing systems to actively monitor and moderate comments;
- Disabling comments if it is not possible to moderate them;
- Using tools offered by social media platforms to block keywords and profanities, hide offensive comments or restrict who can reply to posts; and
- Documenting agreed strategies in a social media policy.

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

Compliance



Can your organisation make COVID-19 vaccination mandatory for employees and volunteers?

Many organisations are thinking about whether they can require workers and volunteers to be vaccinated against COVID-19.

States and territories have issued public health orders and directions mandating COVID-19 vaccination for a range of occupations and volunteer roles, and employers, workers and volunteers need to comply with any public health order that applies to them.

The Fairwork Ombudsman has published guidance for employers considering mandatory vaccination requirements.

Where an employment contract or an agreement has a term about coronavirus vaccinations, the advice from the Fairwork Ombudsman is for employers to consider whether the term complies with the anti-discrimination laws.

Your organisation may also be able to encourage employees to get COVID-19 vaccinations by offering incentives in certain circumstances. More information about when it is appropriate to do this can be found on the [Therapeutic Goods Administration Website](#).

Overall, the advice from the Fairwork Ombudsman is to seek legal advice if considering making COVID-19 vaccinations mandatory in the workplace.

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

Want to change your charity's governing rules?

Following your charity's rules is important, but they need to work for your charity. Making changes to your rules is a significant decision and requires careful consideration.

If you are thinking of making changes to your charity's current rules, check the current requirements to ensure that any legislative requirements are met. For example, you may need to give 21 days' notice to members about the meeting at which the change will be considered.

Ensure all regulatory requirements have been complied with. This may require notification and lodgement of information with relevant state or federal regulators.

You will need to notify the Australian Charities and Not-for-Profits Commission of the change in your rules, within the required time period.

It is important to ensure that any change to your rules does not result in your organisation no longer being entitled to registration as a charity.

For example, changing your charity's purpose to include a non-charitable purpose may affect its entitlement to registration as a charity.

Ensuring your charity's rules are fit for purpose is important, and they should be reviewed regularly by the charity's Responsible People (i.e. its governing body). However, it is important not to leave these changes too late and risk delaying any related plans for the charity.

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



Managing people's information and data – what are your obligations?

Most charities and Not-for-Profit organisations collect information and data concerning their staff, volunteers, donors and supporters. This brings important legal and ethical responsibilities.

The Responsible Persons in your charity (i.e. its governing body) need to be aware of the legal requirements of managing people's information and data. They must ensure that the charity complies with all relevant laws governing the collection, storage and usage of people's information and data.

Numerous data breaches over the past few years has led to people becoming increasingly aware of the importance of privacy and information and data protection.

The way your charity manages people's information and data needs to reflect your charity's values and at the same time, meet the community's reasonable expectations.

Donors, members and supporters of your charity expect it to operate responsibly, honestly and ethically. This includes the way it collects, stores and uses the information and data it holds about people.

Good policies and processes for information and data management, which mitigate risks and protect the charity's reputation, should be considered important aspects of good governance by the charity's responsible persons. Don't wait until it is too late to put the necessary measures in place.

Further information can be found at [ACNC](#) and in this [Forbes article](#) by Crowe.



Fundraising Survey 2021 reveals continuing compliance burden on charities

The Charities Crisis Cabinet Fundraising Survey 2021 released by the Community Council for Australia (CCA) finds that one in five charities believe current regulations have become a huge barrier to fundraising.

The report based on an independent survey of more than 600 charities and Not-for-Profits also found the majority of organisations across all states and territories agreed that the fundraising registration process was either very complex or somewhat complex.

With each state and territory applying their own fundraising regulations, often inconsistent with each other and written in the days before the internet, problems are inevitable.

COVID-19 has forced many charities to fundraise online and different regulations across all states and territories has simply compounded the issue further. The report

estimates that 39 percent of charities are not aware that if they are running a fundraising initiative they are legally bound to get approval from seven different regulatory regimes.

The survey reports that leading the pack in imposing the highest costs, complexity and time delays on charities was Queensland followed by Victoria and Western Australia.

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

Financial reporting





Award winning Not-for-Profit financial reporting

Financial reporting should be used to showcase your organisation and what it has achieved and not simply be seen as a compliance headache.

In the for-profit world, high quality financial reporting is codified in the International Financial Reporting Standards. In the absence of an international equivalent that is tailored to the unique needs of non-profit organisations, the Chartered Institute of Public Finance & Accountancy and Humentum have partnered in the IFR4NPO Project, to develop much needed guidance for the sector.

More and more around the globe Not-for-Profit financial reports are being redesigned to better tell the organisation's story in an objective and compelling way.

Humentum have provided a host of top tips to put your financial report on the path to be an award winner.

We would echo Humentum's advice that 'overall, the report needs to tell your story as objectively and compellingly as you can. Aim for your report to be readable, concise and integrated.

This doesn't happen by accident and your auditors can't do it for you.'

Recent winners of international awards for excellence in Not-for-Profit reporting around the world include:

- AGE UK
- Zealandia/Karori Sanctuary Trust
- The Children's Rights Alliance (Ireland)

Top tips can be found [here](#).

Maximising the value of your audit

A new guide published by Chartered Accountants ANZ aims to help Not-for-Profit charities get the most out of an audit.

The guide is designed to help Not-for-Profits and charities maximise the value of an audit and to recognise that the process can be more than a compliance exercise.

As the guide explains, with the right approach, an auditor can become a valued independent partner helping the organisation to advance, with the auditor's impartiality and objectivity being key to the process.

The guide emphasises that the audit doesn't just help the organisation to be accountable, it critically allows it to be seen to be accountable.

The independent process shows key stakeholders, including donors, regulators and banks, the impact of the organisation and the adequacy of its financial controls.

The informative guide can be found [here](#).



Removal of aged care bed licences from 2024

In view of the announcement in the Federal Budget for 2021–22 and the decision by the Australian Government that bed licences will be discontinued from 1 July 2024, ASIC has noted that aged care providers should review the carrying amount of aged care bed licences.

In September 2021, the Department of Health released a discussion paper 'Improving Choice in Residential Aged Care – ACAR Discontinuation'. Whilst the focus of the consultation is not on whether the bed licences will be discontinued, the paper has indicated the following:

- A large number of new bed licences remain available to be allocated at no charge in the period until 1 July 2024 and that a large number of provisional places will also be available.
- Whilst further measures may be required to mitigate potential risks that may arise from the removal of the licences, currently there are no plans to provide direct compensation to providers for the removal of the licences as the licences were initially provided by the government at no cost.

Whilst the relevant legislation may not be passed before the next Federal election, ASIC has released guidance for aged care providers to consider how the discontinuation of the current licencing regime may affect any bed licence intangible assets appearing on their statement of financial position in the lead up to 1 July 2024.

Further details can be found at [FAQ 9D](#).

Related party transaction disclosures

Following the 30 June 2021 announcement on red-tape reduction, the Treasury has issued the draft legislation *Exposure draft: Australian Charities and Not-for-Profits Commission Amendment (2021 Measures No. 3) Regulations 2021* (the ED Regulations) on 20 September 2021.

A key amendment in the ED Regulations includes the requirement from the 2022-2023 financial year onwards for all registered charities to disclose related party transactions.

For all medium and large registered entities preparing special purpose financial statements, the ED Regulations will prescribe compliance with an additional standard, *AASB 124 Related Party Disclosures*. The ED Regulations will require all medium and large registered entities preparing annual financial reports (not only those preparing general purpose financial statements) to disclose related party transactions.

Small registered charities will be required to make a simplified disclosure involving a brief description of related party transactions in the Annual Information Statement.

The ED Regulations will provide an exemption for some charities from the requirement to disclose, as part of their related party transactions, aggregate remuneration paid to responsible persons and senior executives.

This exemption will apply from the 2021-22 financial year onwards, to medium registered charities and large charities with only one remunerated key management person.

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

Taxation

Deductible Gift Recipients (DGR) now required to be registered charities

The Treasury Laws Amendment (2021 Measures No.2) Act Received Royal Assent on 13 September 2021.

The Act amended the *Income Tax Assessment Act 1997* (ITAA 97) to require all funds, authority or institutions to, as a precondition for DGR endorsement, be:

- A registered charity; or
- An Australian government agency; or
- Operated by a registered charity or an Australian government agency.

This requirement already previously applied to the majority of general DGR categories in Subdivision 30-B of the ITAA 97. The amendments extend this requirement to the remaining general DGR categories.

From 14 December 2021, existing DGRs not registered as charities may need to apply for and obtain charity registration

status from the Australian Charities and Not-for-Profit Commission (ACNC) to qualify for DGR status.

A 12-month transitional period automatically applies for entities that are either a DGR or have applied to become a DGR immediately before that date.

An entity requiring a longer transitional period can apply to the Commissioner for an additional three-year extension.

This change was part of DGR reform announced by the Government in December 2017. The change is intended to improve consistency of regulation, governance and oversight of DGRs in order to uphold community confidence in the sector.

Further details can be found at the [ATO](#) and this [Explanatory Memorandum](#).



University of Melbourne wins land tax exemption case

The University of Melbourne (the University) succeeded in overturning a land tax assessment in the recent Victorian Supreme Court decision of *University of Melbourne v Commissioner of State Revenue (VIC) 2021 ATC 20-787*.

The case concerned the application of the land tax exemption for charities in section 74 of the *Land Tax Assessment Act 2005 (Vic)* which inter-alia provides that land is exempt from land tax when it is used by a charitable institution exclusively for charitable purposes. There was no dispute that for the purposes of the exemption, the University was a charity.

The relevant land was owned by the University as part of a facility known as the Student Village. The University engaged a commercial operator (CVLM) to build affordable student accommodation facilities in the Student Village and to manage and operate the business for 38 years. The land was leased to CVLM for peppercorn rent. Under the arrangements, the University was able to impose restrictions on rent and fees and CVLM were obliged to prioritise students and staff when allocation accommodation.

The Victorian Commissioner of State Revenue issued a 2019 land tax assessment for the land. The University objected to the assessment and the matter proceeded to the Victorian Supreme Court.

The Court determined that the Section 74 exemption applied on the basis that the use of the land by the lessee, although commercial, contributed to the overall charitable purposes of the University.

The Court also noted that the University retained an ongoing involvement in the activities conducted on the land in a manner that went beyond the arrangements which would ordinarily be part of a standard commercial lease.

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

What is a school for DGR purposes?

A school or college building fund may qualify as a Deductible Gift Recipient (DGR) if the conditions in item 2.1.10 of Section 30-25(1) of the *Income Tax Assessment Act* (ITAA 97) are met.

In a recent Federal Court ruling, a decision by the Commissioner of Taxation to revoke the DGR status of the building fund operated by the Buddhist Society of Western Australia Inc. was overturned.

The Commissioner had contended that the building (Buddhist Centre) did not have the character of a school, but rather was a place where Buddhist teachings were made available to the general public.

The court found in favour of the Buddhist Society of Western Australia Inc. and determined that for the purpose of the DGR exemption a “school” could include organisations more focused on recreational instruction or teachings.

The decision of the court opens the door to various organised activities that

the Commissioner previously would not consider amounting to a school to now be considered a school such that a DGR exemption for a building fund could be applied for. Examples might include:

- Yoga schools;
- Childcare centres;
- Pre-school kindergartens,
- Dressmaking, woodwork and ceramics and cookery schools.

It seems that the ATO will need to revise its views in TD 2013/2 if this case is not successfully challenged.

Further details can be found at the [ATO](#) and [Federal Court of Australia](#).

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