Charities Alert

Summer 2023

Audit / Tax / Advisory

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Data security - know your legal obligations

Why do charities need to turn their mind to data security?

In recent months, a significant number of high-profile cybersecurity incidents have affected prominent Australian companies.

Charities and not-for-profits are usually highly trusted and may hold sensitive information about vulnerable beneficiaries (including health information) and their members. Unfortunately, many charities and not-for-profits are susceptible to cybersecurity attacks due to low levels of cyber resilience. For a charity or not-for-profit, failing to take appropriate action to secure data could mean:

- The exposure of sensitive information of beneficiaries, donors or members;
- The loss of charity funds or resources;
- Reputational damage;
- Breach of legal obligations (including privacy laws and the ACNC Governance Standards).

Charities need to be aware of several rules governing this area, including:

- The Privacy Act 1988 Reputational damage;
- Security of Critical Infrastructure Act 2018;
- ACNC Governance Standards;
- ACNC External Conduct Standards.

In addition to the potential harm to beneficiaries, members and donors, reputational damage and loss of funds, charities face regulatory and civil action in the event of a cybersecurity breach.

Regulators globally are increasingly taking action against organisations for failing to appropriately protect data and information. For example, in 2021 the UK Information Commissioner's Office, the equivalent of the Office of the Australian Information Commissioner, imposed a significant penalty on a prominent Scottish health charity for failing to put in place appropriate internal measures to prevent the disclosure of sensitive beneficiary data.

We can help you develop and implement data security strategies that are appropriate to their particular context and operations.

Helpful materials published to assist with this include:

- The Australian Institute of Company Directors - Cyber Security Governance Principles;
- The Australian Cyber Security Centre (**ACSC**) - Cyber Risk Mitigation Strategies;
- The Crowe free-to-use Cybercrime Vulnerability Scorecard.

Charity banking

Banking is a fundamental requirement for the voluntary sector, yet a growing number of charities are struggling to find banking services that meet their needs.

Banking is a fundamental requirement for the voluntary sector. Charities and other voluntary organisations must have access to banking services to appropriately manage their finances, which allows them to provide vital services to their communities.

UK based National Association for Voluntary and Community Action (NAVCA) recently published a report on the banking challenges of charities based on responses from over 1,200 voluntary organisations.

Four key messages connecting all respondents were:

- Services that charities need are increasingly unavailable;
- Available services are not suited to the way charities operate;
- Charities often encounter poor customer service;
- Online banking is not designed for or accessible to charities.

The latest data from the Australian Prudential Regulation Authority (APRA), released in October 2022, revealed in the financial year ending June 2022, 309 branches closed in Australia, bringing the total to 1,680 or almost 30 per cent branch closures in the five years since 2017. The statistics can be found here.

With the growth of challenger banks over recent years, it may be worth charities looking at the services and features these new entrants to the market have in determining who best meets their banking needs.

Diversified boards

Reach beyond your network to find directors to help your organisation thrive.

Charities often struggle to find the board members they need, and most people don't know what a board member is or how to become one, and even those who are aware tend to believe it is reserved for a certain demographic. The most common way board members are recruited is through word-of-mouth, and this could be part of the problem.

With so few vacancies ever advertised, those who are interested in the role can find it difficult to find one that fits their objectives. Adverts for such roles can often be dull and legalistic rather than inspiring.

Diversifying your board is vital for its success as it brings a valuable range of views from different lived experiences, which recruiting from the same pool of talent cannot supply. Benefits it can bring include:

- **Good governance -** Boards should be designed to debate, disagree, have different perspectives and then reach the best way forward. It is not good governance where everybody agrees with everybody else;
- **Understanding your service users -** Having people on the board with lived experience of what your charity is trying to achieve can add great value;
- **Credibility -** Having leadership that reflects the communities you're supporting can help locally based charities in achieving the support required for success.

Diversifying a charity's board goes beyond simply the moral case for diversity - that it's morally wrong that the board is divorced from the communities it serves and doesn't reflect wider society. The strongest reason to diversify is that it can provide the board with an opportunity to be more effective, and as a result for the charity to improve both performance and impact.

The Australian Charities and Not-for-profits Commission have some useful guidance on this very important topic.

Applying probity in procurement

Probity provides a level of assurance to boards, suppliers and grantors that procurement was conducted in a manner that is fair, equitable and defensible.

Probity is the evidence of ethical behaviour and can be defined as complete and confirmed integrity and uprightness and honesty in a particular process.

Charities should have mechanisms in place that ensure probity is applied sensibly in the procurement process, with the management of probity issues tailored to each process.

Probity needs to be part of the charity's procurement culture, not a standalone consideration. It is important that boards and senior management take responsibility to embed this culture.

Of all charity activities, procurement is one of the most vulnerable to fraud and corruption. Weak governance in procurement can also lead to the charity paying increased prices for goods and services.

The Institute of Internal Auditors in Australia has released The 20 Critical Questions Series: What Directors should ask about Procurement Integrity (Probity).

The biggest question is: How does management, the audit committee, and the board of directors clearly know that there is sound and transparent integrity around procurements?

Further information can be found here.

Compliance

Director ID

All directors of not-for-profit organisations and clubs registered with the Australian Securities and Investments Commission (ASIC) that have an ARBN or ACN need a director ID.

An estimated 2.5 million directors were required to have registered for their director ID by 30 November 2022, however, up to 700,000 had not done so when the deadline passed.

A smaller number of people who run Indigenous entities covered by the Corporations (Aboriginal and Torres Strait Islander) Act have been given until November next year to get an ID.

To find out if your organisation is registered with ASIC, you can search for your organisation's details, including director details on ASIC Connect.

The Australian Business Registry Services (ABRS), a unit within the Australian Tax Office (ATO), continues to contact directors who have not applied for their director ID. Applications can be made online, through the post, or on the phone.

"We are taking a reasonable approach to those who are trying to do the right thing," the ATO said in a 6 December 2022 statement.

If you have not already done so, time is of the essence in completing the necessary application to avoid financial penalties of up to $13,200.

Further information can be found here.

Complaint handling

The recent Royal Commission's Violence, Abuse, Neglect and Exploitation of People with Disability report has provided crucial guidance for developing accessible, trauma-informed and person-focused complaints handling processes.

The **Disability Royal Commission** has recently published a research report titled *Complaint mechanisms: Reporting pathways for violence, abuse, neglect and exploitation* (**the Report**). The Report provides guidance to the Disability Royal Commission on the design of effective, inclusive, and trauma-informed complaint mechanisms.

As the Report concludes, care is required in designing complaints mechanisms as reporting pathways for violence, abuse, neglect and exploitation, to ensure that victim-survivors have access to fair and effective processes and outcomes.

The Report, which surveyed over 80 complaint mechanisms nationally, concluded that generally, an organisation's internal complaints mechanism regulates the service and helps to maintain and enforce the organisation's staff code of conduct. This may mean that the complaints mechanism is not victim-centred and is not equipped to manage reports of abuse.

The Report provides some useful guiding principles for organisations in reviewing their internal complaints mechanisms.

Further information can be found here.

Free governance short courses

The Australian Charities and Not-for-profits Commission (ASIC) has recently launched free online short courses to support good governance in the nation's charity sector.

There are eight courses available and ASIC plans to launch more in the future. Topics covered include:

- Duties of a board member;
- The board's role in reputation management;
- Fraud prevention;
- Safeguarding vulnerable people that charities work with;
- Financial reporting within an organisation;
- Reporting obligations to the ACNC;
- Managing conflicts of interest;
- Effective complaints management;
- Dealing with internal dispute and;
- Complying with the ACNC's External Conduct Standards for charities that operate overseas.

The free online program is designed to be flexible, accessible, and self-paced.

Each course takes from one to two hours, and a certificate can be downloaded on completion.

Further information can be found here.

Charities and crypto assets

Recently appointed Australian Charities and Not-for-profits (ACNC) Commissioner Sue Woodward AM is urging charities to fully consider the risks and benefits before accepting donations of crypto assets or investing in crypto assets.

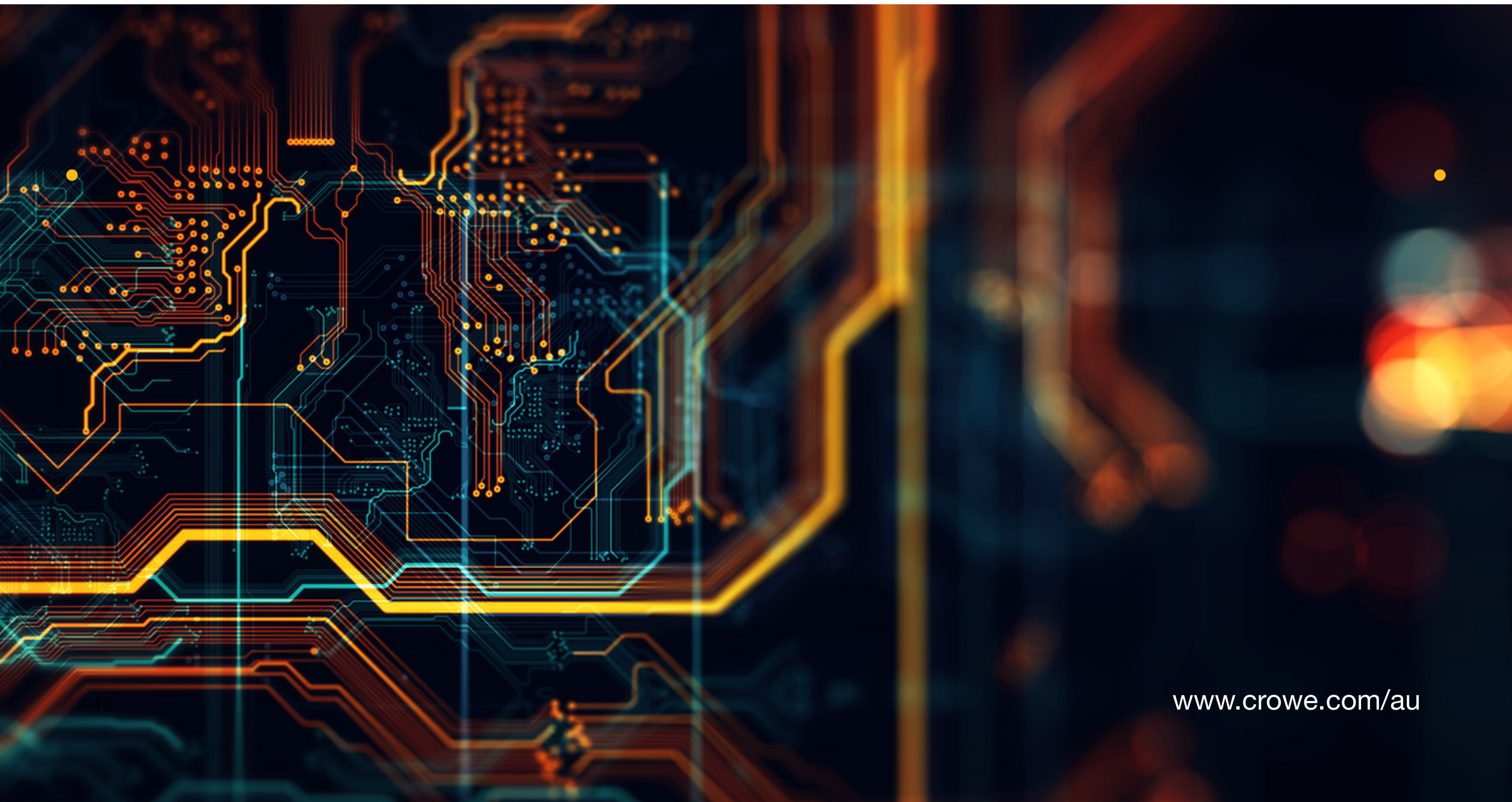
Crypto assets are digital representations of value that can be transferred, stored, or traded electronically using blockchain technology. This includes cryptocurrency and non-fungible tokens (NFTs). They can be highly volatile and can experience significant value fluctuations.

With several Australian charities including UNICEF Australia and the Australian branch of the medical aid charity Médecins Sans Frontières now accepting cryptocurrency as general donations, this new source of funding is clearly opening up.

However, it is important that charities contemplating receiving cryptocurrency investments understand the risks associated with such donations and have good governance and clear policy in this area.

As an emerging and complex area for charities to be entering into, the ACNC has recently released guidance for the sector.

ACNC guidance can be found here.



Financial reporting and other reporting

Proposed new reporting tier

The Australian Accounting Standards Board (AASB) is calling on industry professionals to review proposed changes aimed at simplifying accounting and reducing costs for small private-sector NFPs.

The proposed changes were created in response to ongoing concerns from small private-sector NFPs (non-governmental organisations with revenue between $500,00 and $3 million) that current reporting requirements were too arduous.

The changes proposed by the AASB would introduce a third tier of accounting standards that are easier to apply. This new tier will see substantial updates to the revenue model, the ability to expense leases, and an accounting policy choice to prepare consolidated financial statements or separate financial statements with disclosures, among other items.

Individuals are encouraged to review the full proposal or an accessible 12-page snapshot and complete an online survey with their feedback.

Development of the first International Non-Profit Accounting Guidance

In November, IFR4NPO released an Exposure Draft for the development of the first International Non-Profit Accounting Guidance (INPAG) with a mission to improve the clarity and consistency of non-profit organisation (NPO) financial reports.

The first Exposure Draft (ED1), launched in November 2022, was developed with input from the project's Technical and Practitioner Advisory Groups with volunteer members from 25 countries, bringing their expertise in the fields of standard setting, auditing, reporting, funding and academia.

ED1 looks at four main topics which include:

- Describing Non-Profit Organisations / Reporting entity;
- INPAG Framework;
- Financial statement presentation, and;
- Narrative reporting.

The project is now in its second phase following the completion of the consultation process (2019-2021). The current development phase is expected to complete in 2024.

ED1 is the first of three exposure drafts, each followed by a four-month consultation period. INPAG is expected to launch in 2025 following the next rounds of exposure drafts which will focus on accounting and presentation aspects.

ED1 is open until 31 March 2023. Find out more and share your view on INPAG Exposure Draft 1.

Double scrutiny: the value of impact audits

Unlike most other UK charities, the Furniture Resource Centre (FRC) Group goes the extra mile by seeking independent assurance of its impact report which forms part of the charity's annual report.

This assurance engagement is conducted by FRC Group's auditors and conducted in accordance with International Standard on Assurance Engagements 3000. As a result, FRC Group's annual accounts include two independent assurance reports: one on the social value generated in the reporting period alongside the financial 'true and fair' audit report.

It was important to the charity to include its impact report and the assurance report within its annual report and FRC's assurance provider, Crowe UK, understood this. Crowe UK sent a separate team for the impact assurance work after the field work for the financial audit has taken place. However, the audit report is only approved when both engagements are completed, and no inconsistencies have been identified.

The independent assurance review of the charity's impact report not only gives confidence to the board, helps FRC Group to demonstrate its public benefit to the UK charity regulator, it also sets the charity apart from competitors when tendering for contracts with social housing providers and local authorities.

For Australian charities at the start of their impact reporting journey, it is recommended to start with relevant and reliable metrics before attempting to calculate the social value generated. A good starting point is to ask questions that lead to data insights that eventually improve decision-making:

- What are the charity's objects and aims?
- What does the charity do that is measurable?
- What are the relevant key performance indicators to measure performance?
- Are impact results improving year on year?
- What can the charity do to address challenges?

FRC Group's financial report can be found here.

Why charities must embrace ESG reporting

As the volume of environmental, social and governance (ESG) reporting required from businesses continues to mount, expectations are high among stakeholders that charities will follow suit.

Larger charities may be familiar with ESG terminology through their investment into 'responsible' assets, but the essential concepts at the heart of ESG can be relevant to charities' operations and strategic planning too.

Effective governance is critical for a well-run charity, and that underpins the ESG agenda. However, governance also considers the impact that a charity has on wider society, including opportunities and risks across areas such as climate change, diversity and inclusion, and executive pay.

ESG measures whether an organisation is doing the right thing, not just in terms of its charitable cause, but how well its day-to-day activities align with that mission.

A number of other sectors have increased their awareness of ESG, and the quality of reporting for example, the social housing sector has developed its own ESG reporting framework, with key stakeholders, such as banks, investment managers and housing associations, involved in the working group.

ESG together with sustainability reporting has emerged to meet information needs in recognition that sound financial decisions are based on data and analysis wider than that provided alone by financial information.

Examples of mandatory reporting requirements are already found in the UK, EU, and US. Charities can be proactive in seeking current best practice guidelines, rather than wait for mandatory disclosure requirements to be introduced.

The aim of the International Sustainability Standards Board (ISSB), announced during COP26 in November 2022 is to set recommendations for ESG reporting and signal potential convergence of existing standards for future reporting.

Charities which are not already doing so need to prepare for an era where ESG considerations affect every facet of business.

Taxation

Deductible Gift Recipient (DGR) Registers Reform

Proposed changes aim to prevent the government from withholding DGR status from charities which may go against their interests or agenda.

Under a new reform currently open for public consultation, the Australian Taxation Office (ATO) will be responsible for the administration of the full suite of DGR categories. DGR status allows an entity to receive tax deductible gifts and contributions from the public, thus providing increased revenue opportunities.

Australia currently has 52 categories of DGR set out in the gift provisions (Division 30) of the Income Tax Assessment Act 1997. Currently 4 DGR categories are administered by government agencies other than the ATO, being:

- Environmental Organisations;
- Harm Prevention Charites;
- Cultural Organisations and;
- Overseas Aid Organisations.

The ATO would gain responsibility for assessing eligibility for the 4 unique DGR categories, consistent with the 48 other DGR general categories. The ATO would continue to be responsible for the endorsement of all 52 DGR categories.

The change is intended to make all DGR categories consistent in administration, reduce red tape imposed on endorsed organisations, and simplify the application process for organisations seeking DGR status.

Further information can be found here.

Employee, contractor or volunteer?

The Australian Taxation Office has recently released updated guidance to assist organisations meet their Pay As You Go (PAYG) and Withholding and Superannuation Guarantee (SG) obligations when engaging workers.

Following the recent High Court decisions in *CFMEU & Anor v Personnel Contracting Pty Ltd* [HCA 1 (***Personnel Contracting***) and *ZG Opersations Australia Pty Ltd & Anor v Jamsek & Ors* [2022] HCA 2 (***Jamsek***) earlier this year, the ATO has updated guidance on organisations obligations for PAYG and SG when engaging workers.

The guidance is intended to refresh the Commissioner of Taxation's (**Commissioner's**) previous views on worker classification, whilst offering practical guidance for organisations to consider, with respect to the degree of risk associated with contracting arrangements. Specifically, two draft publications have been released.

- Draft Taxation Ruling 2022/D3 Income tax: pay as you go withholding - who is an employee? (TR 2022/D3) and;
- *Draft Pratical Compliance Guideline PCG 2022/D5: Classifying workers as employees or independent contractors - ATO compliance approach* (PCG 2022/D5).

Depending on whether the worker is an employee, an independent contractor or a volunteer, different legal entitlements and obligations apply to your organisation.

Justice Connect have issued a helpful guide that can be found here.

Improving the utilisation of Fringe Benefits Tax Concession by Public Benevolent Institutions

Public Benevolent Institutions (PBIs) are a class of charity which are entitled to access a Fringe Benefits Tax (FBT) Concession.

A recently released working paper issued by the Tax and Transfer Policy Institute and the Australian National University explores the history of this concession and how it has evolved since its introduction.

In practice the employees of PBI's are utilising the Concession at levels well below optimal, and the working paper identifies barriers which inhibit access to the FBT Concession by employees of PBI charities, as well as offering some suggestions, at both a policy level and practice, to address these barriers.

The Fringe Benefit Tax Concession is intended to incentivise employees to work for PBIs, to improve the PBIs' ability to attract good employees, and ultimately to add to the public good created by those Institutions.

Based on feedback from a survey of 10 PBI employers with a combined workforce of 3,400 together with four salary packaging provider organisations with coverage of over 263,500 employees the working paper looks at ways to increase the uptake of the FBT concession by PBIS's employees to enhance the capacity of those organisations to deliver their charitable purpose.

The working paper can be found here.

Changes to income tax reporting requirments

New income tax reporting requirements will come into effect from 1 July 2023 and affect up to 140,000 organisations.

Treasury announced in the 2021-22 Budget that, from 1 July 2023, non-charitable income tax exempt not-for-profits with an active Australian Business Number will need to submit online self-review forms to the ATO to remain eligible for the exemption.

The *Income Tax Assessment Act 1997* will not be modified to achieve this power, but a legislative instrument called self assessing reform tool will be enacted.

Previously, not-for-profits have not been required to provide their self-assessments to the ATO or obtain confirmation of their income tax status.

From July 2023 not for profits will have to fill out a worksheet to prove income tax exemption status, as not all not for profits are exempt; non-profit clubs, societies and associations will be affected.

Further information can be found here.

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About us

Crowe Australasia helps local and multi-national organisations anticipate and respond to the impacts of a rapidly changing tax and regulatory landscape. With a unique combination of local and regional talent coupled with the global reach of the Crowe network, we help organisations make smart decisions that create lasting value.

Crowe Australasia is a wholly owned business of Findex, and a member of Crowe Global, a top 10 accounting network. With our vast footprint across Australia and New Zealand, and globally via more than 200 firms in 145 countries, Crowe Australasia provide the highest quality support for our clients regardless of where their challenge resides - at home or abroad - or both.

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