



Charities Alert

Winter 2021

Audit / Tax / Advisory

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Governance



Planned changes to ACNC governance standard

The Federal Government has announced planned amendments to the Australian Charities and Not-for-profits Commission (ACNC) governance standard relating to compliance with Australian laws.

The Federal Government has recently outlined its plan to strengthen regulations to ensure charities that engage in or use their resources to actively promote unlawful behaviour face enforcement action. The changes are in response to recommendations arising from *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review 2018*.

The Government's planned amendment to ACNC Governance Standard 3, will expand the reasons under which a charity can be deregistered beyond the current 'indictable' offences to include 'summary' offences. Such offences include trespassing, theft and vandalism.

The planned amendment is part of the Government's crackdown on "activist organisations masquerading as charities".

The revised standard state that charities must take reasonable steps to ensure their resources are not used to "actively promote" unlawful conduct.

The ACNC will provide guidance and education once the Regulation comes into effect.

Details are available from the ACNC website:

<https://www.acnc.gov.au/media/news/laws-regarding-charities-engage-unlawful-activity-change>

Privacy policy and data breaches

Over 1,000 notifiable data breaches were reported to the Office of the Australian Information Commissioner (OAIC) in the twelve months to December 2020.

When an organisation or agency covered by the Privacy Act 1988 has reasonable grounds to believe an eligible data breach has occurred, they must promptly notify any individual at risk of serious harm and the OAIC.

The COVID-19 pandemic has seen a spike in ransomware attacks and privacy breaches around the world. Since its commencement in February 2018, the Notifiable Data Breach Scheme (NDB Scheme) has seen an increase of 30% in reported data breaches from 813 incidents in the 2018 year to 1,057 in the 2020 year.

Key findings in the OAIC reports for 2020 include:

- 60% of incidents were malicious or criminal.
- 35% of incidents were caused by human error.
- 1 in 5 cases reported came from the health service sector.

The rapid shift to remote working caused by the COVID-19 pandemic has meant even greater reliance on digital systems.

Having a privacy policy that is fit for purpose is essential for all not-for-profit organisations to help ensure they comply with their responsibilities in treating information carefully. The Institute of Community Directors Australia has recently released a free privacy policy template to assist.

Source:

<https://www.oaic.gov.au/privacy/notifiable-data-breaches/notifiable-data-breaches-statistics/notifiable-data-breaches-report-january-june-2020/>

<https://www.oaic.gov.au/privacy/notifiable-data-breaches/notifiable-data-breaches-statistics/notifiable-data-breaches-report-july-december-2020/>

The Privacy Policy template is available at: <https://communitydirectors.com.au/policies/privacy-policy>



#FixFundraising now a national priority

Each Australian state and territory has its own distinct rules about fundraising. If you are planning to conduct fundraising activities, or are doing so already, you need to understand these laws and their requirements.

Compliance with fundraising laws is important to maintain public trust and confidence in the charity and not-for-profit sector. Get it wrong and legal penalties and reputational damage can quickly follow.

During the 2018 Senate inquiry into this issue, Senator Eric Abetz asked NSW Consumer Affairs officials if a small local bird watching charity in northern Tasmania had a “donate here” link on their website, would they have to comply with the myriad of different state and territory regulations and administrative requirements regarding fundraising licences, including in New South Wales? The answer was yes.

On 15 December 2020, in response to growing calls from leaders in the charity and not-for-profit sector Treasurer Josh Frydenberg and Senator Zed Seselja announced #FixFundraising will be put on the National Federation Reform Council agenda.

As a leading campaign voice in this area, Justice Connect have a guide to help charities and not-for-profit groups navigate the current laws in Australia.

The guide can be found at:

https://www.nfplaw.org.au/sites/default/files/media/Guide_to_Fundraising_Laws_in_Australia.pdf

False accounting charges

The County Court of Victoria has ordered Anthony Dieni to pay \$488,805 as part of a Pecuniary Penalty Order relating to a charge of false accounting.

Over a five-year period, Mr Dieni misappropriated donated funds while employed as a drug and alcohol counsellor and coordinator at St Paul's Prevention Rehabilitation.

Fraud charges have also been filed against Emma Morton the former director of a registered charity, Canberra Child Care Centre. Ms Morton is charged with allegedly defrauding the Weston Creek Children's Centre for more than \$300,000.

These two recent cases echo the ACNC's previously reported comments that breaches of trust and lack of satisfactory controls have been identified as the main factors leading to fraud.

The ACNC has a useful guide that sets out steps and strategies charities should consider to help reduce the risk of fraud. Additionally, Crowe has developed a Fraud Risk Health Check to help you determine your exposure to the risk of loss through fraud.

The ACNC guide is available at:

<https://www.acnc.gov.au/tools/guides/protect-your-charity-fraud>

The Crowe Fraud Health Check is

available at: <https://www.crowe.com/au/fraud-risk>



Further self-reported underpayments and changes to casual employees

Disability services provider Breakthru Ltd has entered into an Enforceable Undertaking with the Fair Work Ombudsman and is back-paying employees more than \$2.7million.

Breakthru Ltd, a registered charity operating in NSW, Victoria and Queensland self-reported underpayments in March 2020.

While negotiating a new enterprise agreement, Breakthru became aware that it had incorrectly classified a number of employees under the applicable awards and industrial agreements, resulting in an underpayment of base rates for those employees.

Breakthru is back-paying 649 current and former employees \$2.75 million (including interest and superannuation) in relation to underpayments for the period 2014 – 2020, with individual payments of up to \$34,000.

Fair Work Ombudsman Sandra Parker commented, *“This matter demonstrates how important it is for companies to check that they have classified every employee correctly.”*

Recent amendments to the Fair Work Act 2009 (FW Act) that came into effect on 27 March 2021 have also changed the workplace entitlements and obligations for casual employees.

Amendments to the FW Act include a new definition of a casual employee.

Undertaking a workplace relations audit of all casual contracts to ensure compliance with the FW Act is highly recommended.

More information can be found at:

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2021-media-releases/march-2021/20210312-breakthru-eu-media-release>

and

<https://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/reforms>

Compliance

Charity registrations revoked

The May 2021 release of the seventh edition of the Australian Charities Report in respect to the year ended 30 June 2019 brings together data from over 48,000 Australian charities.

The report reveals some interesting findings including:

- Charity sector revenue growth of 6.8%.
- Charities employed 11% of the Australian workforce.
- Charity revenue of \$166 billion.
- Charity donations of \$11.8 billion.
- 51% of charities operate without paid staff.
- 3.6m volunteers in the charity sector.

From 1 July 2019 to 30 June 2020, the ACNC reported that it had revoked the charity registrations of 18 organisations as a result of compliance issues.

Ten of the revoked charities had revenue of less than \$250,000, with one reporting as large.

The 18 charities held assets of approximately \$12.9 million with one charity holding \$12 million.

Additional to those charities whose registrations were involuntarily revoked, a further 1,116 charities applied for voluntary revocation. Interestingly mergers accounted for 17% of voluntary revocations, which may indicate this is becoming a more palatable option for charities looking at long-term sustainability.

The 2021 report can be found at:

<https://www.acnc.gov.au/tools/reports/australian-charities-report-7th-edition>

Financial reporting thresholds raised for 5,000 charities

- Over 5,000 charities will no longer be required to produce a reviewed or audited financial report as reporting thresholds are increased.

Assistant Treasurer Michael Sukkar recently announced that from 1 July 2022, small charities registered with the ACNC will see their financial reporting annual revenue thresholds increased from <\$250,000 to <\$500,000. Thresholds for medium sized charities will also increase from the current threshold range of \$250,000 - <\$1,000,000 to a new threshold of \$500,000 - <\$3,000,000.

The new thresholds are significantly lower than those recommended by the ACNC's 2018 review.

Other recommendations due to be implemented from the ACNC's 2018 review include:

- From 1 July 2022, large charities with two or more key management personnel will be required to report remuneration paid to responsible directors and senior executives on an aggregated basis.
- From 1 July 2023, all charities will be required to report related-party transactions in their annual reporting to the ACNC.

The coming months should see the ACNC develop and provide guidance and education resources to assist charities and not-for-profit organisations understand the new reporting requirements.

More information can be found at:

<https://ministers.treasury.gov.au/ministers/michael-sukkar-2019/media-releases/cutting-red-tape-charities>

National Redress Scheme – what are your obligations?

The February 2021 introduction of a new governance standard:

Governance Standard 6 – Maintaining and enhancing public trust and confidence in the Australian not-for-profit sector (Governance Standard 6) requires specific action to ensure compliance.

Governance Standard 6 requires registered charities to take reasonable steps to participate in the National Redress Scheme for Institutional Child Sexual Abuse (National Redress Scheme) where the charity has been named, or is likely to be named, in an application (or otherwise) to the National Redress Scheme.

This can include charities named in the Royal Commission into Institutional Responses to Child Sexual Abuse but may not have been identified so far in a redress application.

A registered charity will be impacted if it is, or is likely to be, identified as being involved in the abuse of a person in the context of the National Redress Scheme.

If your charity has provided services to children prior to 1 July 2018, and you are aware of the likelihood of claims being forthcoming in the future, you should consider applying to join the National Redress Scheme now.

If a charity fails to meet the requirements of Governance Standard 6, the ACNC will be able to exercise its regulatory power including, enforceable undertakings and revocation of registration.

Further information and support can be found at:

[https://www.acnc.gov.au/
for-charities/manage-your-charity/
governance-hub/governance-
standards/6-maintaining-and-enhancing](https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards/6-maintaining-and-enhancing)

Changes to Anti-Money Laundering and Counter-Terrorism Financing Laws

The *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019 (the Bill)* was passed by the Government on 17 December 2020.

The amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)* via the Bill establishes a suite of reforms that strengthen anti-money laundering and counter-terrorism measures in Australia.

Changes impacting charities and not-for-profit organisations include:

- Information sharing powers – from 18 June 2021, various government agencies will be able to access information regarding money laundering and terrorism financing more easily.
- The Bill expands the regime requiring the transfer of large sums of money overseas to include promissory notes (cheques, traveller's cheques etc.) as well as cash.

These changes continue the trend of greater regulation on the transfer of overseas funds following the introduction of the External Conduct Standards within the Australian Charities and Not-for-Profits Commission Regulation 2013.

The External Conduct Standards require all charities to have demonstrable measures in place to ensure they comply with the law when operating overseas.

Specifically, External Conduct Standard 3 requires charities to monitor conduct overseas to minimise any risk of corruption, fraud, bribery or other financial impropriety.

Charities not complying with the External Conduct Standards risk losing their charity status and tax concessions. The greater information sharing measures will expand the information that the ACNC has access to and increase scrutiny on the methods that charities can use to move funds overseas.

For those 3,500+ charities operating overseas, we recommend conducting a review of their current practices relating to use and transfer of funds to ensure they are compliant with all legal obligations.

Further information and support can be found at:

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6431

Financial reporting



IFR4NPO – What is it all about?

IFR4NPO is an initiative to develop the world's first internationally applicable Financial Reporting guidance for non-profit organisations (NPOs).

Led by Humentum, a non-profit membership association, and CIPFA, The Chartered Institute of Public Finance and Accountancy in the UK, the highly collaborative project design includes engagement with national standard setters and practitioners from every continent. The International Accounting Standards Board and International Public Sector Accounting Standards Board are actively observing the development process.

Key timeframes in the project are:



The publication of a Consultation Paper in January 2021 gives NPOs the opportunity to contribute to the development of international financial reporting in the sector.

Responses to Part 1 of the January 2021 consultation paper are due by 30 July 2021, with responses to Part 2 due by 24 September 2021.

While the Consultation Paper is open for response, a series of webinars and events are being held for NPOs to learn more about the issues.

Crowe is actively represented in the project through Pesh Framjee (Global Head of Non-Profits), who is a member of the Practitioner Advisory Group.

Further information can be found at:

<https://www.ifr4npo.org/about/>

Cutting the clutter for 30 June 2021

As many Australian charity and non-profit organisations prepare their 30 June 2021 financial reports, new accounting standards will require consideration.

The past few years have seen several significant accounting standards coming into force for financial report preparers.

For 30 June 2021 the following additional new standards will need to be considered:

- – AASB 2018-6 – *Amendments to Australian Accounting Standards Definition of a business*
- – AASB 2018-7 – *Amendments to Australian Accounting Standards Definition of Material*
- AASB 1059 *Service Concession Arrangements: Grantors*
- – AASB 2019- 7– *Amendments to Australian Accounting Standards Disclosure of GFS Measures of Key Fiscal Aggregates and GAAP / GFS Reconciliations*
- – AASB 2019-3 – *Amendments to Australian Accounting Standards Interest Rate Benchmark Reform*
- – AASB 2019 – 5 – *Amendments to Australian Accounting Standards Disclosure of the Effect of New IFRS Standards Not Yet Issued in Australia*
- – AASB 2020 – 4 – *Amendments to Australian Accounting Standards Covid-19-Related Rent Concessions*

For preparers suffering from disclosure overload, we recommend a focus on materiality to better tailor the annual financial report to users. Remembering that materiality applies to disclosures as much as to the numbers themselves:

- Change the order – present notes and disclosures of greatest interest to users first.
- Accounting policies – describe only those that are significant, removing others.
- Use plain English – avoid technical language and accounting jargon.
- Change the approach – don't rely on 'model' financial reports or disclosure checklists.

Improving the presentation of your financial report will not only make them easier for users to read but can lead to efficiencies in your year-end reporting process.

Further information can be found at:

<https://www.crowe.com/au/insights/australian-financial-reporting-and-tax-updates-2021-webinar>

Changes to the AASB Reduced Disclosure Regime

The recently released AASB 1060 - *General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities* applies to financial years beginning on or after 1 July 2021.

AASB 1060 is a new self-contained standard that sets out all the disclosure requirements relevant to Tier 2 General Purpose Financial Statements (GPFS).

The new disclosures have been significantly simplified when compared to either those required by a Tier 1 entity or those required under the AASB's existing Tier 2 Reduced Disclosure Requirements (RDR), especially in the areas of revenue, leases, impairment and financial instruments.

Charities currently preparing Tier 2 GPFS under the RDR framework, will be required to transition to AASB 1060. Early adoption is permitted and should be considered.

Some charities preparing Special Purpose Financial Statements (SPFS) have new disclosure requirements following the issue of AASB 2019-4 *Amendments to Australian Accounting Standards – Disclosure in Special Purpose Financial Statements of Not-for-Profit Private Sector Entities on Compliance with Recognition and Measurement Requirements*.

This standard requires NFPs that prepare SPFS that are required to comply with AASB 1054 *Australian Additional Disclosures* (e.g. charities registered with the ACNC), to now disclose information about compliance with all the recognition and measurement requirements in Australian Accounting Standards (AAS). These requirements are effective for annual periods ending on or after 30 June 2020.

Further details can be found at:

<https://www.cpaaustralia.com.au/-/media/corporate/allfiles/document/professional-resources/reporting/ca-anz-cpa-joint-fact-sheet-nfps-financial-cpa.pdf?la=en&rev=10fc24ad-7b3e499aad4decb4ea5640e0>

Portable Long Service Leave – the accounting impact

- Recently introduced Portable Long Service Leave laws in the community services sector require some navigating to ensure the correct Long Service Leave (LSL) provisions are recognised.

Portable Long Service laws that cover the community services industry are now in place in Victoria, Queensland and the ACT. The legislation relating to portable LSL varies from state to state and organisations should establish whether they have legal responsibility for making LSL payments to employees.

Where organisations can recover all or a significant portion of the LSL paid to its employee from the relevant LSL authority, LSL provisions recognised in the financial report will be reduced accordingly.

Amounts eligible for recovery may however be less than those paid to employees as a result of several factors, including:

- Service periods prior to the commencement of the scheme will not be covered by the scheme.
- Superannuation paid on LSL may not be recoverable.
- More generous employer schemes.
- Employees' time spent in States or Territories that do not have a portable LSL scheme.

Charities and not-for-profit organisations should refer to the relevant legislation to determine if they meet the definition of a community service sector organisation, and if so, ensure they are registered and paying the appropriate levy.

Further details can be found at:

<https://www.fairwork.gov.au/leave/long-service-leave>

Taxation

2021-22 Federal Budget announcement: Not-For-Profits self-assessing eligibility for tax exemptions to lodge self-review form with the ATO from 1 July 2023

Certain types of not-for profit entities are currently able to self-assess their entitlement to be income tax exempt and benefit from other tax concessions. Examples of such entities are:

- Community service societies, associations or clubs.
- Sporting, recreational or cultural clubs or associations.
- Societies or associations established for the development of certain primary and secondary resources or tourism.

In contrast, not-for-profit charitable entities must generally obtain formal endorsement of their charitable status from the ACNC as a condition to receive income tax exempt status and be entitled to other tax concessions.

In the 2021-22 Federal Budget handed down in May 2021, the Government announced that from 1 July 2023, non-charitable not-for-profit bodies with an active ABN will be required to formally submit the information used to self-assess their eligibility for income tax exemptions in an online self-review form. The lodgement will be an ongoing annual requirement.

The ATO will be provided \$1.0 million capital funding to build an online system to support the measure. This measure will go some way to providing a more level playing field in the not-for-profit sector between charitable and non-charitable entities seeking to access tax concessions.

**Further details can be found at:
Budget Paper No 2 page 22**

<https://budget.gov.au/2021-22/content/bp2/index.htm>



YWCA Australia – Found to be an “exempt charitable or benevolent body” for NSW duty exemption purposes

In a recent decision of the NSW Supreme Court, the Young Women’s Christian Association (YWCA) was held to be an “exempt charitable or benevolent body” for the purposes of accessing a duty exemption under section 275(3)(a) of the *Duties Act 1997* (NSW).

The context of the decision was a re-organisation and amalgamation of various state-based YWCA organisations into a single national body, YWCA Australia.

YWCA Australia’s objectives are the provision of benevolent relief to people, in particular women and children experiencing poverty, homelessness, violence or disadvantage.

Assets transferred under the amalgamation included commercially operated hotels in Sydney whose profits were used solely to support YWCA NSW’s charitable activities. YWCA Australia applied for a duty exemption under section 275(3)(a) of the *Duties Act 1997* on the basis that it used its resources wholly or predominantly for the relief of poverty or the promotion of education in Australia and was thus an exempt charitable or benevolent body for the purposes of that section.

The NSW Commissioner of State Revenue refused the exemption on the basis that the commercial operation of the hotels meant the resources were not being directly and immediately applied for its charitable purposes.

YWCA Australia objected, and the matter then proceeded to the courts.

The NSW Federal Court revoked the assessments and allowed YWCA Australia’s objections in full. It held that the requirement of direct immediacy was an unwarranted gloss on the status. On a more holistic assessment, it found that the taxpayer predominantly used its resources for the relief of poverty and/ or the promotion of education as the purpose of the commercial operation of the hotels was to raise for those charitable purposes.

This case is a useful revisitation of the considerations the courts will give to whether a charitable organisation that engages in some level of commercial activities will qualify as a Public Benevolent Institution (PBI). In general, PBIs are entitled to an enhanced level of tax concessions, including Deductible Gift Recipient (DGR) status, and the Fringe Benefits Tax (FBT) Exemption as well as duty exemptions and other state-based tax exemptions.

Further details can be found at *YWCA Australia v Chief Commissioner of State Revenue* [2020] NSWSC 1798:

<https://www.caselaw.nsw.gov.au/decision/176504afc9260f3685e5c210>



Community Sheds now entitled to DRG status

Community Sheds (such as Men's Sheds and Women's Sheds) are not-for-profit organisations that provide a range of activities for their members with the purpose of advancing mental health and preventing or relieving social isolation.

From 1 October 2020, a new general category of deductible gift recipients (DGR) for Community Sheds is available. It is listed on the DGR table as Item number 1.1.9 A community shed.

Community Sheds that are DGR endorsed can mention their tax-deductible status on their website or material. Donors who donate \$2 or more to a DGR endorsed Community Shed will generally be able to claim an income tax deduction.

Further details can be found at:

https://www.ato.gov.au/Non-profit/Getting-started/In-detail/Types-of-DGRs/Community-sheds/?=redirected_communitysheds

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