

FINDEX

Charities Alert

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Governance

ACNC to introduce charity risk review programme

The 2020 Federal Budget saw the Commonwealth Government provide \$2.9m to the Australian Charities and Not-for-profits Commission (ACNC) to conduct charity risk reviews.

The funding will be provided over three years and will enable the ACNC to undertake field-based compliance reviews in order to intervene at an early stage where charities are at a high risk of failing to meet their regulatory obligations to the ACNC.

It is anticipated the compliance reviews conducted will help to uphold and establish public trust and confidence in the Australian Not-For-Profit sector. The implementation of field-based reviews is designed to provide greater assurance to Government and the public that charities are utilising income for charitable purposes and have appropriate governance structures in place.

Charities should begin a process of self-review now to ensure they are compliant with the appropriate standards before the ACNC begins any review.

The ACNC Governance Standards are principle based standards and, as such, each charity must carefully consider how to apply the standards in their own context to ensure compliance. Charities must not only be compliant; they must also be prepared to provide evidence of compliance when required.

Full details are available from the ACNC website:

<https://www.acnc.gov.au/media/news/acnc-introduce-charity-risk-review-program>



COVID-19: Governance report released

The Australian Institute of Company Directors and the Governance Institute of Australia released a new report on the impact of COVID-19 on board practices.

Compiled from interviews with senior directors, survey responses and feedback from roundtables, the report reveals insights into the governance challenges for charities in the current climate.

The Governance through a crisis: Learning from COVID -19 report details how the pandemic has had a profound impact on how boards operate and what they focus on.

Insights include:

- How boards have adapted to virtual meetings.
- How technology can elevate stakeholder voices.
- The need for agile decision making.
- The importance of contingency planning.

The report includes recommendations for directors as well as practical tips for working effectively through the crisis and in a virtual environment.

COVID-19 has shown that unlikely but catastrophic impact events can and do occur. It has also shown charities can develop stronger organisational resilience to ensure they survive when they do.

The Governance through a crisis: Learning from COVID-19 report is available at:

<https://www.governanceinstitute.com.au/advocacy/thought-leadership/governance-through-a-crisis-september-2020/>



Charitable Aged Care provider required to pay back \$3.3m to staff

The Office of the Fair Work Ombudsman (FWO) released information about the Uniting Church in Australia Property Trust (NSW) (Uniting NSW), a registered charity that runs more than 70 residential Aged Care facilities as well as other community services under the Uniting brand in NSW and the ACT.

Uniting NSW identified underpayments when it conducted a payroll review after receiving complaints from several employees about payment errors relating to laundry, uniform and vehicle allowances as well as failing to provide shift workers an extra week of annual leave they were entitled to each year.

The FWO reported that Uniting NSW is back-paying more than a total of \$3.36 million to 9,561 employees and has entered into an Enforceable Undertaking (EU) with the FWO.

The back payments include interest for underpayments between 2013 and 2019. The individual underpayments range from less than \$1 to more than \$11,000.

Uniting NSW follow Western Australia based Activ Foundation Inc (Activ), who also entered into an EU with the FWO to repay \$13.6 million after it breached Australia's workplace laws. Activ self-reported to the FWO it had underpaid workers between December 2011 and December 2017.

The full report can be found at:

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2020-media-releases/august-2020/20200812-uniting-media-release>



Court clarifies casual employment rules

The Australian Securities & Investments Commission (ASIC) has issued an FAQ on COVID-19 implications for financial reporting and audit. One of the matters it covers is the accounting implications of clarified casual employment rules.

ASIC urged companies to consider whether they should provide for additional employee entitlements (including annual leave, personal and carer's leave, compassionate leave, public holiday pay, and redundancy payments) for past and present 'casual employees' who were employed in circumstances covered by the recent *WorkPac Pty Ltd v Rossato* [2020] FCAFC 84 decision.

The case dealt with the circumstances in which employees (past and present) engaged as casuals may be reclassified as permanent employees. The decision failed to allow an offset against unused leave entitlements for any casual loading paid. Charities may wish to seek advice on whether they are affected.

CPA Australia has collaborated with CAANZ and the Australian Institute of Company Directors to develop and publish a guide to provide further guidance and background.

The full report can be downloaded at:

<https://www.cpaustralia.com.au/-/media/corporate/allfiles/document/professional-resources/reporting/accounting-for-entitlements.pdf>



Uniform fundraising proposals

The NSW government is working with other Australian states and territories (except the Northern Territory) and the ACNC to examine how to reduce regulatory burdens for charitable fundraisers.

A cross-border-recognition model is being considered. The proposed model would allow a charity registered with the ACNC to be automatically deemed as a holding authority in all participating Australian states and territories.

Under the proposed model, each ACNC-registered charity could be deemed to hold a local fundraising authority in each participating jurisdiction. This would overcome the need for ACNC registered fundraisers to complete an individual application process in each jurisdiction and would greatly facilitate the conduct of online appeals across Australia.

Organisations are entitled to be registered with the ACNC if they meet the eligibility conditions set out in the *Australian Charities and Not-For-Profits Commission Act 2012 (Cth)*. Currently, charities are the only type of Not-For-Profit entities eligible for registration with the ACNC.

While deemed authorisation based on ACNC registration is the primary goal, individual jurisdictions may retain some flexibility to manage who is authorised to fundraise in the jurisdiction, such as applying additional conditions for deemed authorisation.

The discussion paper seeks to promote discussion of a proposed cross-border recognition model for charitable fundraising regulatory frameworks as identified by the Working Group. Some jurisdictions are already implementing schemes of this type. For others, adoption of this initiative will require amendment of primary legislation.

More information can be found at:

<https://www.financeminister.gov.au/assistant/media-release/2020/09/01/easing-regulatory-burden-charitable-fundraising>

Compliance

ACNC: Annual Information Statement changes

Changes to the 2020 Annual Information Statement will assist better data searches in the future.

The 2020 ACNC Annual Information Statement (AIS) is the first to ask questions about charity programmes using a recognised taxonomy to create metadata that will then be used to create an enhanced search function on the ACNC Charity Register.

The Charity Marketplace initiative will provide increased transparency and enable individuals and grant administrators wanting to support charities to better understand the programmes they deliver.

While the search function is due for release in 2021, registered users will be able to view data on individual charity programmes once they have submitted their 2020 AIS by searching the register.

The ACNC is also developing best practice guidance to encourage consistent disclosure of government revenue when charities report.

Charities will be asked to include details in their financial statements about:

- The source and amount of revenue received from each level of government and agency or department name.
- Goods and services provided to government funded beneficiaries (e.g. NDIS).
- Economic dependency from government revenue.
- Unspent government revenue including the amount not included as revenue, and the amount included as a liability.

Details can be found at:

<https://www.acnc.gov.au/media/news/charity-register-innovation-showcase-charities-work>



Charities and data protection

Your charity may have legal obligations for the way it collects and stores information. This will depend on the location and nature of your operations.

As cyber attacks become more sophisticated and frequent, it is important for charities to have systems in place to protect themselves.

During September 2020, it was reported that Anglicare Sydney was held to ransom over a large amount of potentially sensitive information. Anglicare confirmed that 17 gigabytes of data had been transferred to a remote location.

The Government's intelligence, cyber warfare and information security agency, the Australian Signals Directorate, also confirmed it was working with Anglicare Sydney to investigate the attack.

Suffering a data breach is serious for any organisation. Yet for charities, whose success is built upon their reputations and the goodwill of supporters, the loss of any sensitive information or fraud through phishing attempts can be devastating

Cybercriminals target charities in several different ways, from stealing funds directly to encrypting key assets and demanding a ransom to unlock them. However, cybercriminals are just as likely to target personally identifiable information (PII) in order to take money directly from bank accounts or in phishing campaigns where they imitate the charity to request more funds.

One of the biggest threats is the exploitation of third-party providers. Charities outsource large aspects of their internal processes, ranging from data storage and software, through to accounting and human resources. This means data is stored or processed outside the charity's own IT network.

In July 2020, American cloud software firm Blackbaud, one of the world's largest providers of financial and fundraising technology to charities, disclosed it had been hit by ransomware with the company confirming cyber criminals gained access to personal information.

Charities should ensure they have a relevant security policy and be aware of any obligations they may have to Government agencies. Boards should be requesting regular reporting on information security incidents, no matter how small, to give confidence in the charities' monitoring systems.

More information can be found at:

The Australian Cyber Security Centre

<https://www.cyber.gov.au/acsc/view-all-content/publications/small-business-cyber-security-guide>

ACNC

<https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-toolkit/governance-toolkit-cybersecurity>

Modern Slavery Reporting: Who is impacted?

All charities that deliver Government funded services should familiarise themselves with the new Federal, NSW and Tasmanian modern slavery laws.

While only a minority of Australian charities will be required to report directly to Government, many more can expect to be affected by the laws particularly if they are funded by Government.

Both the Federal and NSW Government have passed laws to require large organisations to report on the risks of modern slavery in their organisations' supply chains. The Tasmanian Bill is currently progressing through parliament.

While the laws are similar in their requirements for modern slavery statements to be made, they do have some important differences:

- Federal law requires charities with consolidated annual revenue of over \$100m to report, with statements being made publicly available.
- NSW law requires charities with consolidated revenue of \$50m-\$100m to report.
- Tasmanian draft law requires charities with consolidated annual revenue of over \$30m to report.

Prior to COVID-19, charities were required to lodge their financial statements by 31 December 2021 (or earlier, depending on where their financial year falls).

However, deadlines for 2020 have now been extended by three months to account for the disruption and complications caused by COVID-19.

Around 160 charities are expected to be required to comply with the Federal Act.

However, as part of the Government's own obligation to address the risks of modern slavery in its supply chain, expect to see modern slavery requirements imported into Government funding contracts. This may require charities to provide certain warranties in relation to their compliance with the laws, or to participate in supply chain audits.

Charities should carefully assess whether they are caught by the Federal Act, the NSW Act or the draft Tasmanian Act. They should also start thinking about what they need to do in anticipation of the trickle-down effects of these new laws.

Further information and support can be found at:

<https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>

Financial Reporting

Wage underpayment FAQs

Wage underpayment has become a pressing issue in the Australian economy with several large businesses admitting to (often inadvertently) underpaying staff.

The Australian Accounting Standards Board has released Staff FAQs – Remuneration underpayments to remind entities of the standards that might apply when accounting for underpayments.

Link details:

https://www.aasb.gov.au/admin/file/content102/c3/FAQ_WageUnderpayments_07-20.pdf

Three questions posed and answered are:

1. In what year should the payments be recorded?
2. How do I determine whether any prior-year payments are material and require a restatement of the financial statements?
3. What disclosures are required?



Reduced reporting burdens on the horizon

Australian charities are set to see reduced administrative and reporting burdens as the Federal Government looks to act on several recommendations from a key review.

In March 2020, the Government released its response to the ACNC legislation review. It supported a recommendation for registered entities to be required to report based on size, in a bid to reduce the number of charities required to provide financial reports.

The recommendation called for an adjustment of current revenue thresholds for minimum reporting, proposing thresholds of:

- < \$1 million (currently < \$250,000);
- \$1million < \$5 million (currently \$250,000 <\$1 million); and
- > \$5 million (currently > \$1 million)
- The Government will consult with states and territories before deciding on the appropriate threshold levels.

Additionally, the Government also agreed in principle to ease the minimum reporting requirements for small charities by permitting them to provide Annual Information Statements consistent with their accounting method. This is anticipated to benefit over 18,000 charities that currently use cash accounting.

The Government has also supported the recommendation that all charities should disclose related party transactions as part of their financial disclosures, with small charities being able to make simplified disclosure.

The full response can be found at:

<https://treasury.gov.au/publication/p2020-61958>



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) do 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 late last year.

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), 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-final-cpapdf?la=en&rev=10fc24ad7b3e499aad4decb4ea5640e0>



Changes to the definition of Not-For-Profit

The AASB identified the current definition as inadequate to demarcate for-profit entities from Not-For-Profit (NFP) entities for financial reporting framework purposes.

Accounting standards currently define the term 'Not-For-Profit' as 'an entity whose principle objective is 'not the generation of profit'. The AASB consulted on a revised definition in 2019, via ED 293.

Having considered stakeholder feedback to this ED, the AASB approved the following definition of the term 'Not-For-Profit' at its March 2020 meeting:

'An entity whose primary objective is to provide goods or services for community or social benefit and where any equity has been provided with a view to supporting that primary objective rather than for a financial return to equity holders.'

The AASB's current plan is to supplement this definition with additional implementation guidance. It will include a rebuttable presumption that 'an entity is a NFP for financial reporting purposes if it is a NFP for taxation purposes'. This change is being proposed to address stakeholder feedback that some entities currently classified as NFPs may no longer be able to meet the above definition when it is implemented.

Charities should consider the impact of the proposed new NFP definition on their particular circumstances.

The application of the definition will require judgement and it is possible that some existing charities may no longer meet the new NFP definition. Therefore, these charities will be considered a For-Profit entity for financial reporting purposes while remaining an NFP entity for tax and other regulatory purposes. Possible entity types are some member-based entities, some cooperatives and some NFPs within a group structure.

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-final-cpapdf?la=en&rev=10fc24ad7b3e499aad4decb4ea5640e0>

Taxation

Deductible gift recipients to be registered as charities

Federal Treasury is seeking submissions on the draft bill *Treasury Laws Amendment (Measures for a later sitting) Bill 2020: Requiring all DGRs to be registered charities*.

The Bill will require non-government item-1 Deductible Gift Recipients (DGRs) to register as charities.

The reform is designed to strengthen the transparency and oversight of DGRs and help ensure tax concessions are appropriately targeted.

DGR reform – strengthening governance and integrity and reducing complexity – is an element of the Government's 2017–18 Mid-Year Economic and Fiscal Outlook measure.

The move is being implemented through an amendment to the *Income Tax Assessment Act 1997*.

DGR status allows an entity to receive gifts of \$2 or more that donors can claim as income tax deductions. The arrangement is intended to encourage philanthropy and provide support for the Not-For-Profit sector.

The draft bill, explanatory memorandum and FAQs can be downloaded at:

<https://treasury.gov.au/consultation/c2020-113633>



ATO clarification on ‘in Australia’

*In late 2019, the ATO released Taxation Ruling **Income Tax: the ‘in Australia’ requirement for certain deductible gift recipients and income tax exempt entities** (“TR 2019/6”).*

This ruling provides the Commissioner’s views on what the phrase ‘in Australia’ means in the Income Tax Assessment Act 1997, where the Act sets out rules working out whether certain funds, authorities and institutions are eligible to be Deductible Gift Recipients (DGRs) and whether the income of certain Not-For-Profit entities is exempt.

The Commissioner is of the view that an entity will not operate in Australia if the management and operational decisions occur outside of Australia.

To have a physical presence in Australia, an entity must conduct physical operations in Australia. The mere ownership of property in Australia does not constitute having a ‘physical presence’ in Australia. The entity must also incur its expenditure and pursue its objectives principally in Australia and the location where this occurs is very fact dependent.

An entity must continue to satisfy the ‘in Australia’ requirements to maintain their Division 50 income tax exemption.

We recommend where charities have operations outside Australia, they ensure they do not fall foul of the definitions in the ruling.

Further details can be found at:

<https://www.ato.gov.au/Non-profit/Newsroom/Lodgment-and-concessions/Finalised-ruling---In-Australia--condition/>



ATO activity and enforcement powers

With increased funding to target tax avoidance, ATO activity is expected to escalate due to the Government's various COVID-19 relief measures.

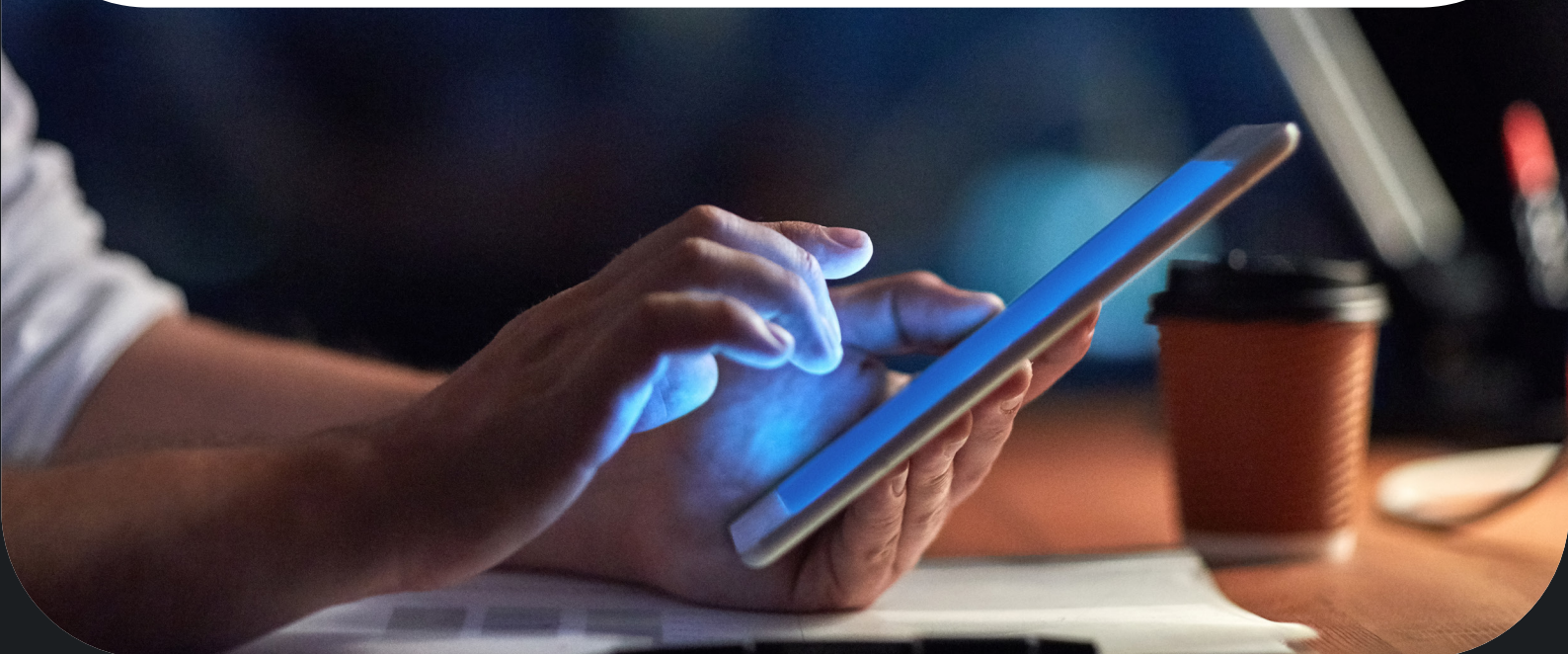
Three key areas are:

1. ATO audits of Jobkeeper claims – charities should ensure all eligibility conditions have been satisfied and appropriate documentation maintained to substantiate claims.
2. The ATO has been encouraging larger taxpayers to adopt the tax risk management and governance review guide and embrace tax risk management as part of good corporate governance. As such the ATO is likely to focus on tax risk management and governance practices.
3. The ATO has begun issuing penalty notices to Significant Global Entities for failing to lodge any form type. We recommend affected charities ensure all tax reporting obligations are up to date.

We recommend charities develop a tax risk management framework to ensure compliance with all their regulatory obligations.

Further details can be found at:

<https://www.ato.gov.au/Business/Large-business/In-detail/Key-products-and-resources/Tax-risk-management-and-governance-review-guide/>



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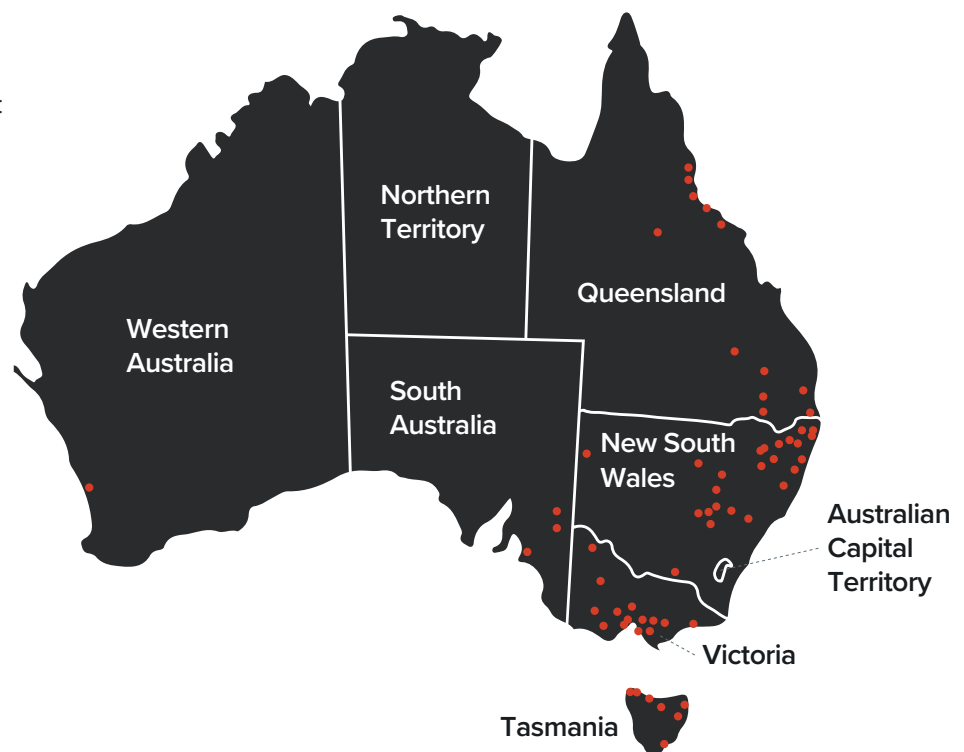
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