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## NFP Governance

### Targeted funding critical for NFPs' survival

The Australian Institute of Company Directors annual *NFP Governance and Performance Study* reveals that many organisations' future was under threat even before the challenges of COVID-19.

While most NFPs expected to make a loss this financial year, almost 40 per cent had made a loss in the previous three years.

COVID-19 unsurprisingly dealt a huge financial blow to the NFP sector. However, the study reveals that many organisations were facing considerable financial challenges even before the crisis.

AICD managing director and CEO Angus Armour said: 'Many organisations entered the pandemic already facing serious financial challenges and COVID-19 intensified that pressure, pushing boards and organisations to their limits.'

'Just when demand for NFP services increased, their revenue took a huge hit.'

The government's JobKeeper program has been nothing short of a lifeline for many, but significant concerns remain about how organisations will manage when the current scheme ends.

'These organisations need to be able to continue their vital work through the pandemic and on the other side, but unless issues of funding are addressed, it is likely some will be forced to wind up.'

'Given the vital role these organisations play in our society, targeted assistance is required to ensure [they] survive over the long-term.'

The study highlights the disparity of differing NFP categories to navigate the crisis. Arts, sports, and health NFPs, as well as the aged-care sector see greater impacts than those operating in other areas.

Sources of funding play a significant role, organisations reliant on government funding faring better than those depending on philanthropy and face-to-face fundraising.

Key findings from the study are:

- In FY20 the number of respondents expecting to make a profit dropped to 48 per cent, with over half expecting to make a loss, break even or come close
- 55 per cent of survey respondents noted that their organisation was receiving JobKeeper payments. However, more than a third of organisations were ineligible
- With boards focused on the survival of their organisations, merger activity and discussions on mergers reduced considerably. Only three per cent of directors reported that they were in the midst of a merger, down from five per cent last year
- One-third of respondents stated that their financial positions were unaffected by COVID-19
- The onset of COVID-19 brought immediate change, 77 per cent reporting that their organisation significantly changed the way it operated

- Directors were particularly proud of their NFP’s response to COVID-19, 90 per cent agreeing or strongly agreeing that their organisation had responded well to the crisis
- When asked to rate the effectiveness of their organisation in achieving its stated purpose, sentiment was higher (94 per cent) than in previous years
- 87 per cent of directors said they were worried about the Australian economy, and there was a high degree of uncertainty about the future, and
- 44 per cent of respondents expected client numbers to increase and 45 per cent predicted that service volumes would increase. Twenty-seven per cent expected a decrease in clients.

**Thoughts on paying NFP boards**

Chartered Accountants Australia and New Zealand has released *Remunerating Not-for-profit Directors*, which covers key factors NFPs should consider in determining whether those charged with governance should be paid.

The paper includes a checklist highlighting aspects to be considered when contemplating the move.

Among factors are an entity’s constitution, funding constraints, potential tax implications, and key agreements. An analysis of the pros and cons of remunerating boards is outlined.

The case for remunerating boards centres on a need to attract skilled and diverse people and recognise their time and effort.

The argument for not remunerating them is focused on reducing potential liability risks associated with being a director.

Paying directors might also be contrary to the spirit of the NFP sector. Many believe that all of an NFP’s resources should go to furthering the organisation’s purpose.

Download the paper from the CA ANZ website.

**Revised corporate principles take effect**

Revised *ASX Corporate Governance Principles and Recommendations* apply to entities admitted to the ASX official list and are effective for 31 December reporting periods.

As they reflect a contemporary view of appropriate corporate-governance standards, other bodies might find them helpful in formulating governance rules and practices.

The principles and recommendations adapted for NFPs in summary are:

Principle	Description
Lay solid foundations for management and oversight	Clearly delineate the respective roles and responsibilities of boards and management and regularly review their performance
Structure the board to be effective and add value	Boards should be of an appropriate size and collectively have the skills, commitment, and knowledge of the entity and the industry in which they operate to enable them to discharge duties effectively and to add value
Instil a culture of acting lawfully, ethically, and responsibly	Instil and continually reinforce a culture across the organisation of acting lawfully, ethically, and responsibly
Safeguard the integrity of corporate reports	Have appropriate processes to verify the integrity of corporate reports
Recognise and manage risk	Establish a sound risk management framework and periodically review its effectiveness
Remunerate fairly and responsibly	Pay director remunerations sufficient to attract and retain high-quality people and design executive remuneration to attract, retain and motivate high-quality senior executives, aligning their interests with the creation of value for security holders and entities’ values and risk appetite

NFPs might wish to review their corporate-governance policies and procedures using *ASX Corporate Governance Principles and Recommendations* as a reference. Download it at the ASX website.

**IIA issues helpful governance tools**

The Institute of Internal Auditors in Australia has issued the following publications, which should interest boards and management:

- *Procurement integrity*
- *20 Critical Questions – What to ask yourself during a pandemic lockdown*
- *20 Critical Questions – What directors should ask of business continuity, and*
- *20 Critical Questions – What directors should ask of compliance.*

In its ‘20 critical questions’ series, the institute has examined what directors should ask of risk management.

Questions are posed under headings such as risk-management foundations, risk assessment, risk registers and review.

The first is ‘Does the organisation have (a) risk management framework aligned to an appropriate standard such as ISO 31000:2018 ‘Risk management – Guidelines’ (b) defined risk appetite ideally encapsulated in a risk appetite statement?’

And a ‘killer question’ is posed. ‘How does management, audit or risk committee and board of directors clearly know the organisation has identified and is effectively managing its risks in a timely way?’

# Financial reporting insights

**New SPFS disclosures take effect**

Under 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*, new disclosure requirements take effect for the first time for financial years ending 31 December.

NFPs will need to make new disclosures about their compliance with recognition and measurement requirements in Australian accounting standards’

They apply to:

- Charities registered with the ACNC with an annual revenue of \$250,000 or

more preparing special-purpose financial statements, and

- NFPs lodging SPFSs with the Australian Securities & Investments Commission under the *Corporations Act 2001* (for example, companies limited by guarantee).

Your SPFSs will need to disclose:

- Why the decision was made to prepare an SPFS
- For each material accounting policy that does not comply with the recognition and measurement requirements, an indication of where it does not comply, or that the assessment has not been made

- The overall compliance of your SPFS with the recognition and measurement requirements of accounting standards (except for consolidation and equity accounting), or whether this assessment has not been made, and
- How the consolidation-and-equity accounting requirements have been applied.

AASB 2019-4 makes amendments to AASB 1054 *Australian Additional Disclosures*.

Our **GAAPinar No. 9 NFP lessons from first-year reporting revenue standards and SPFS disclosures** on 10 December with Carmen Ridley is relevant. A recording and PowerPoint notes are available. Contact [andrew@gAAPtraining.com.au](mailto:andrew@gAAPtraining.com.au) or order from [www.gAAPtraining.com.au](http://www.gAAPtraining.com.au).

### Revised definition of materiality operative

The definition of ‘material’ in AASB 101 *Presentation of Financial Statements* has been amended and applies to the 31 December balance date for the first time. The changes made by AASB 2018-7 *Amendments to Australian Accounting Standards – Definition of Material* are subtle but significant.

As materiality drives accounting standards’ recognition, measurement, and disclosure, the revised definition and application guidance should significantly influence how boards, accountants and auditors make their financial-reporting decisions and disclosures.

The revised definition: ‘Information is material if omitting, misstating or *obscuring* it could *reasonably be expected* to influence decisions that the *primary users* of general-purpose financial statements make based on those financial statements, which provide financial information about a *specific reporting entity*.’ (Emphasis added.)

Materiality depends on the nature or magnitude of information, or both. An entity assesses whether information, either individually or in combination with other information, is material in the context of its financial statements taken as a whole.

Information is obscured if it is communicated in a way that would have a similar effect to omitting or misstating the information for financial-statement primary users.

Following are examples of circumstances that may result in material information being obscured:

- Information regarding a material item, transaction or other event is disclosed in the financial statements but the language used is vague or unclear

- Information regarding a material item, transaction or other event is scattered throughout the financial statements
- Dissimilar items, transactions or other events are inappropriately aggregated
- Similar items, transactions or other events are inappropriately disaggregated, and
- The understandability of financial statements is reduced because of material information being hidden by immaterial information to the extent that a primary user is unable to determine what information is material.

Assessing whether information could reasonably be expected to influence decisions made by primary users requires an entity to consider users’ characteristics and its own circumstances.

Many existing and potential investors, lenders, and other creditors cannot require reporting entities to provide information direct to them and must rely on general-purpose financial statements for much of the financial information they need. Consequently, they are the primary users to whom general-purpose financial statements are directed.

Practice statement 2 *Making Materiality Judgements and the Framework* applicable to NFPs should help in making materiality decisions.

### ASIC focus areas for 31 December

Under COVID-19 conditions, ASIC expects directors, preparers of financial reports and auditors to pay particular attention to asset values, provisions, solvency and going concern assessments, events occurring after year-end and before completing a financial report, and disclosures in financial reports and operating and financial reviews.

Assumptions underlying estimates and assessments should be reasonable and supportable. Assumptions should be realistic, and not overly optimistic or pessimistic.

Disclosures about uncertainties, key assumptions and sensitivity analysis are important to investors.

OFRs should complement the financial report and tell the story of the pandemic’s effects on a business. Underlying drivers of results and financial position should be explained as well as risks, management strategies, and prospects.

Appropriate experience and expertise should be applied in reporting, particularly in more difficult and complex areas such as asset values and other estimates.

Directors and auditors should be given sufficient time to consider reporting issues and to challenge assumptions, estimates, and assessments.

Directors should make appropriate enquiries of management to ensure that key processes and internal controls have operated effectively during periods of remote work.

ASIC has also extended by a month the deadline for lodging financial reports for certain balance dates up to and including 7 January.

Our **GAAPinar No. 12 Reporting and auditing considerations for 31 December** on 17 December with Carmen Ridley is relevant. A recording and PowerPoint notes are available.

### COVID-19 and going concern

COVID-19 is having an unprecedented impact on the economic outlook for Australian and global economies.

For 31 December balance date, many NFPs for the first time will be required to consider in more detail their solvency and ability to continue operating as a going concern.

Surprisingly, there are only two paragraphs in AASB 101 *Presentation of Financial Statements* that directly address the going-concern basis:

‘25 When preparing financial statements, management shall make an assessment of an entity’s ability to continue as a going concern. An entity shall prepare financial statements on a going concern basis unless management either intends to liquidate the entity or to cease trading or has no realistic alternative but to do so. When management is aware, in making its assessment, of material uncertainties related to events or conditions that may cast significant doubt upon the entity’s ability to continue as a going concern, the entity shall disclose those uncertainties. When an entity does not prepare financial statements on a going concern basis, it shall disclose that fact, together with the basis on which it prepared the financial statements and the reason why the entity is not regarded as a going concern.’

‘26 In assessing whether the going concern assumption is appropriate, management takes into account all available information about the future, which is at least, but is not limited to, twelve months from the end of the reporting period. The degree of consideration depends on the facts in each case. When an entity has a history of profitable operations and ready access to financial resources, the entity may reach a conclusion that the going concern basis of accounting is appropriate without detailed analysis. In other cases, management may need to consider a wide range of factors relating to current and expected profitability, debt repayment schedules and potential sources of replacement

financing before it can satisfy itself that the going concern basis is appropriate.’

To help with this assessment, the Australian Accounting Standards Board and the Auditing and Assurance Standards Board have released a new 27-page publication *The Impact of COVID-19 on Going Concern and Related Assessments*. It provides an overview of directors’ and management’s responsibilities. They are:

- Duties in relation to assessments of solvency and going concern, how these concepts interact and how they might be affected by COVID-19, and
- Responsibilities to assess whether the going-concern basis of preparation is appropriate and how this affects preparation and disclosures in financial statements.

The publication is available at [https://www.aasb.gov.au/admin/file/content102/c3/AASB-AUASB\\_TheImpactOfCOVID19\\_05-19.pdf](https://www.aasb.gov.au/admin/file/content102/c3/AASB-AUASB_TheImpactOfCOVID19_05-19.pdf).

### New AASB FAQs on initial recognition of an asset

Staff FAQs for NFPs have been extended to assist with accounting for transactions relating to AASB 1058 *Income of Not-for-Profit Entities*.

They may be grants for activities that an NPF has partially but not yet fully performed. Equally, grant funding in cash or another asset has not yet been fully received.

In circumstances such as accrued grants a non-cash asset might exist (for example, a financial asset under AASB 9 *Financial Instruments* representing a contractual right to receive cash) and should be recognised and appropriately described in the statement of financial position.

The focus is on initial recognition of this type of asset, although consequential matters relating to the recognition of associated income are also addressed.

The FAQ includes a simple practical example to illustrate the accounting.

### New disclosure standard for Tier 2

Disclosures relevant to Tier 2 entities have been detailed in a new standard – shading will no longer be used to show which disclosures in other standards may be omitted.

AASB 1060 *General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities* will apply for financial years beginning on or after 1 July 2020.

It aims to reduce the reporting ‘burden’ of for-profit and not-for-profit entities using current Tier 2 requirements for preparing general-purpose financial statements. Some existing disclosures have been removed and new disclosures required.

AASB 1060 does not change which entities are permitted to apply Tier 2 reporting requirements nor Tier 2’s recognition and measurement requirements, which are the same as for Tier 1 entities.

If you have to step up from special-purpose to general-purpose financial reports you will see an overall increase in disclosures (for example, in related parties, tax and financial instruments), but you will also be able to remove some disclosures because of not having to comply fully with:

- AASB 101 *Presentation of Financial Statements*
- AASB 107 *Statement of Cash Flows*
- AASB 108 *Accounting Policies, Changes in Accounting Estimates and Errors*
- AASB 1048 *Interpretation of Standards*, and
- AASB 1054 *Australian Additional Disclosures*.

Early adoption of AASB 1060 is encouraged via special transitional relief (provided in AASB 2020-2) from disclosing certain comparative information in the first year.

### Proposals for transition between reporting tiers

Exposure draft 306 *Transition Between Tier 2 Frameworks for Not-for-Profit Entities* proposes limited comparative-information relief for NFPs adopting AASB 1060 *General Purpose*

*Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities*.

Currently, NFPs cannot access the same comparative-information relief that is available to for-profit private-sector entities.

The draft proposes limited relief for NFPs that adopt AASB 1060 for reporting periods beginning before 1 July. No comparative information in the notes to financial statements are required if an entity had not previously disclosed the comparable information in its most recent Tier 2 general-purpose financial statements.

### Report reviews NFPs’ service-performance reporting

Under the Australian reporting framework, disclosure of service-performance information is mostly unregulated for NFPs.

Due to a general lack of emphasis on non-financial information in both national and state legislations, efficiency information being reported by NFPs is insufficient to meet users’ need.

For charities, stakeholders compare their overall objectives with service-performance disclosures.

Appropriate guidance is required on mandatory disclosures about linking efficiency information to mission-related objectives and long-term goals.

AASB research report 14 *Literature Review: Service Performance Reporting for Not-for-Profits* reviews both Australian and international literatures. It suggests that the introduction of a tiered service-performance reporting framework could assist in alleviating operational and cost pressures on smaller NFPs.

The report supports the AASB’s *Management Commentary and Service Performance Reporting* project to determine whether the International Accounting Standards Board’s practice statement 1: *Management Commentary* being updated by the IASB can be adequately adapted to become mandatory.

## ACNC activities

### ACNC reports more than \$195 million in revenue errors in 2018

The Australian Charities and Not-for-profits Commission has disclosed errors totalling \$195,522,440 in 2018 information statements and financial reports.

The faults were catalogued in the

commission’s *Reporting statistics for the 2018 reporting period*.

Amendments to the ACNC register have corrected \$195,522,440 in revenue and \$614,226,373 in assets.

Key findings included:

- 68 per cent of charities selected the correct type of financial report to submit with their AIS. Of the remainder, the most common errors were the misclassification of the reduced-disclosure requirement in general-purpose financial statements and special-purpose financial statements as general-purpose statements

- 21 per cent incorrectly stated they were using transitional reporting arrangements – where the ACNC accepts financial reports prepared for and submitted to other regulators. These charities stated that they had to report to another regulator when in fact there was a streamlined reporting arrangement in place with the regulator. The charities were required to submit a report only to the ACNC
- 17 per cent incorrectly identified their financial report as ‘consolidated’ when it was in fact a single-charity report
- 42 per cent of charities that submitted a consolidated report provided figures for the group instead of information for an individual charity
- 75 per cent of financial reports included a complete set of financial statements. Of the remaining 25 per cent, the most common missing figures were statements of changes in equity and cash flow, and
- A lack of disclosures about whether charities were for-profit or not-for-profit for financial-reporting purposes and the absence of whether a legislative framework under which the financial report was prepared complied with the ACNC Act.

The commission stressed that it would continue to review charities’ reports to ensure compliance with ACNC requirements. It would ensure that financial information charities provided matched the information in their formal statements.

### Know to whom you must report

An ACNC objective is to ‘promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector’.

The commission has produced a table-by-charity structure summarising annual reporting obligations and fundraising licence requirements by state.

For information go to <https://www.acnc.gov.au/about/red-tape-reduction>.

The federal government is continuing to support philanthropic work by announcing a further extension of the ACNC’s transitional-reporting arrangements.

They aim to reduce the burden on charities required to report to several regulators.

The ACNC may use its discretion to accept documents that were originally prepared for another regulator.

‘The extension will reduce red tape for over 7000 charities and allow them to focus on philanthropy and giving,’ said assistant minister for finance, charities, and electoral matters Zed Seselja.

It will be in place for five financial years from 2019–20. The previous extension of the arrangements applied until the 2018–19 financial year.

Since 2012, the ACNC has streamlined reporting requirements for incorporated associations with several states and territories, including the Australian Capital Territory, New South Wales, Northern Territory, South Australia, Tasmania, and Victoria.

It has streamlined requirements for charitable fundraisers in the ACT and South Australia and is continuing to work with the remaining states and territories on similar moves.

### ACNC releases annual report

The ACNC has tabled its 2019–20 annual report, revealing insights into the charity sector and the commission’s activities.

To allow charities to focus on relief and recovery efforts for bushfires, the commission paused most compliance activity for charities in bushfire-affected areas unless there was a significant ongoing risk of non-compliance.

The commission provided annual information statement extensions for around 7000 affected charities and prioritised charity-registration applications related to bushfires.

‘A critical part of our work is to provide information about charities to the public,’ ACNC commissioner Gary Johns said.

‘We have seen the ACNC charity register visits significantly grow year on year, with more than 3.2 million searches last financial year.’

When COVID-19 hit Australia, the commission helped charities with their governance and operations by publishing news, information, and guidance on its website. It also adjusted its approach to regulation, deferring information-statement due dates for more than 18,000 charities and suspended some investigations.

The ACNC has continued to work with other government agencies to streamline reporting requirements across jurisdictions.

Highlights include a new law passed to relieve Queensland charities of duplicated annual financial reporting, and bilateral negotiations with several states to reduce red tape for fundraisers.

‘The importance of the charity sector should not be underestimated. It is crucial to supporting the Australian community and it employs 10 per cent of Australians,’ Dr Johns said.

‘We directed a substantial proportion of our efforts this year to helping charities navigate through these tough times and to reducing the burden on them as much as we can.’

Key statistics include:

- There was a significant rise in activity on the ACNC website. Page views totalled more than 12 million – six times more than the previous year
- There were 3.2 million register searches – more than three times the previous year’s
- A total of 32,602 phone calls and 13,362 written enquiries were received during the year
- 2568 new charities were registered
- There were 2102 concerns about charities, down from 2323 the previous year, most having been received from the public or members of a charity. The most common concerns were about perceived mismanagement of funds and individuals obtaining a private benefit from a charity, and
- 79 investigations were finalised, resulting in 18 charities having their registrations revoked. That compares with 12 revocations in the previous year from 100 investigations.

The ACNC’s 2019–20 annual report is available at <https://acnc.gov.au/tools/reports/acnc-annual-report-2019-20>.

### Charity risk review program introduced

The ACNC has welcomed the federal government’s announcement of \$2.9 million in the budget to conduct risk reviews of charities.

The funding, which will roll out over three years, will enable the ACNC to undertake field-based compliance reviews to assess charities’ governance risks, intervene before significant issues arise, and where possible and appropriate provide assurance to the public to maintain confidence in the sector.

A total of \$474,000 will be allocated in 2020–21 to review charities at risk of failing to meet governance standards.

The program’s aim is to strengthen assurance that charities have appropriate governance in place and use their incomes for charitable purposes, including when responding to natural disasters.

Acting commissioner Anna Longley said it was a positive move to help charities comply with their obligations.

‘We intend to conduct reviews of charities based on risks and issues that we identify through our engagement with the sector, compliance work and intelligence analysis. How we select each cohort will depend upon the risks that we seek to address,’ she said.

‘In future we may decide to produce educational resources for the sector to improve governance more broadly. We may also undertake further compliance activity if significant issues are identified.’

### Registration of hundreds of charities revoked

The ACNC has revoked the registration of 303 charities for twice failing to submit their annual information statements.

The organisations have been referred to the Australian Taxation Office, as they are no longer eligible for certain Commonwealth tax concessions.

### Check your NFP’s purpose

Many charities’ operations are affected by COVID-19. This might mean that some or all of them might need to be modified or even temporarily halted.

The ACNC has stressed the importance of charities keeping stakeholders informed about what they are doing and why. Regular communication about charities’ changed activities should be a priority.

The commission has stressed that if charities’ activities change, they need to match their charitable purpose – what the charities were set up to achieve.

Charities need to consider financial moves that might include:

- Considering using financial reserves
- Assessing their eligibility for federal, state, and territory stimulus packages
- Considering any other financial assistance available (for example, business-relief packages from banks and financial institutions)
- Assessing future cash flows and doing a forecast – or adjusting their forecasts – considering current events
- Speaking to funders about the effects of cancelling or delaying activities that are part of funding agreements
- Knowing fixed costs and when they will need to be paid. Not committing to any more expenditure if possible, and
- Reviewing existing liabilities (for example, exploring options with banks and financial institutions, including deferring loan repayments).

Responsible persons should speak to their charity’s accountant and auditor in preparation of budgets, forecasts, and financial statements.

A charity that has decided to cancel or postpone a fundraising event might need to decide what to do with money already committed (for example, through ticket sales or other purchases).

Questions needing answers might include:

- Will the money be refunded – either immediately or in time?
- Will the charity hold the money until the fundraiser is rescheduled? and
- Will the charity commit the money towards a future event or effort?

The ACNC emphasises that transparency is paramount.

It is important that a charity communicates clearly with supporters and other stakeholders on why it made the decision as well as measures it has in place to ensure that funds are properly refunded or used in line with donors’ original intent and the charity’s charitable purpose.

### ACNC sets up a COVID-19 webpage

The ACNC has recognised that a charity’s usual operations might be affected by COVID-19 and has set up a dedicated web page <https://www.acnc.gov.au/node/5781959> to help.

Topics covered include:

- ACNC compliance during COVID-19
- Federal government support for eligible charities
- Charity meetings and AGMs
- Charity operations and governance
- Charity financial considerations
- Charity reserves
- Charity fundraising
- State and territory stimulus packages, and
- Other useful resources and information.

The ACNC has also updated its guidance on record-keeping, including more information on keeping records when working remotely and from home (<https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/keep-charity-records>).

### Amendments to reporting thresholds on the way

Treasurer Josh Frydenberg and assistant finance minister Zed Seselja have announced the easing of a regulatory burden on charities by moving towards lifting financial-reporting thresholds.

Australian charities hit hard by the pandemic’s impacts will receive relief from burdensome financial-reporting requirements under an agreement signed by federal, state and territory treasurers.

The Council on Federal Financial Relations, consisting of the Commonwealth, State and Territory Treasurers, reports to National Cabinet agreed to develop a framework by mid-2021 to lift the financial reporting

thresholds to benefit more than 5000 small and medium charities.

The CFFR oversees the financial relationship between the Commonwealth and the States and Territories, including the Intergovernmental Agreement on Federal Financial Relations.

More than 3000 charities will no longer need to produce reviewed financial statements, saving each around \$2400 in annual accounting expenses. Around 2000 charities will no longer be required to produce audited financial statements, saving around \$3000 annually.

### Sanctions for National Redress Scheme non-joiners

The federal government plans to introduce sanctions for charities that fail to join the National Redress Scheme for victims of institutional child sexual abuse.

The changes include a new governance standard and an amendment to the *Australian Charities and Not-for-Profits Commission Act 2012*.

Under the new standard, registered charities will be required to take all reasonable steps to become a participating non-government institution in the scheme if a claim has been, or is likely to be, made against them.

The amendment to the ACNC act will mean that religious institutions will fail classification as ‘basic religious charities’ and exemption from ACNC governance standards if they have been named in an application but have not joined the scheme.

‘Affected charities risk losing charity registration and access to a range of Commonwealth charity tax concessions, which is a serious penalty’, ACNC commissioner Gary Johns said.

He added that no action would be taken until these changes became law.

Minister for Families and Social Services Anne Ruston said the ACNC would be given the power to deregister a charity that did not take reasonable steps to participate in the scheme.

Senator Seselja said a new ACNC governance standard would require registered charities to take all reasonable steps to become a participating non-government institution in the scheme if a claim had been, or was likely to be, made against them.

‘The Government will also introduce legislation this year which amends the definition of a basic religious charity in the *Australian Charities and Not-for-Profits Commission Act 2012* to remove a religious institution’s eligibility to be classified as a BRC if it has been named in an application but refuses to join the Scheme,’ he added.

Charities failing to join the scheme will be subjected to ACNC compliance powers, including deregistration. Deregistration would result in the entity losing access to a range of Commonwealth benefits, tax, and other concessions.<sup>7</sup>

Relevant legislation was introduced into parliament through the *Treasury Laws Amendment (2020 Measures No. 6) Bill 2020* to give effect to changes to the BRC definition.

A consultation period closes on 8 January.

About 80 institutions which provided an intent to join before the 30 June 2020 deadline are reminded that they have until 31 December to complete the steps to sign on or they will be named and face sanctions.

To date, the federal, state and territory governments, and 358 non-government institutions are participating.

Further information about the National Redress Scheme is available on the website: [www.nationalredress.gov.au](http://www.nationalredress.gov.au).

Our **GAAPinar No. 10 Latest NFP and ACNC developments and insights** on 10 December with Colin Parker is relevant to many of these developments. A recording and PowerPoint notes are available.

# Deductible-gift recipients

## Check your tax-deductible gift status

The bushfire crisis has seen an unprecedented number of donations to a range of NFPs. As a result, the need for good governance and record-keeping are as important as ever, the ATO has stressed.

Make sure that your NFP is operating for purpose. If it is a deductible-gift recipient, you can use tax-deductible gifts only for the purpose of the DGR category in which you are endorsed.

You must also keep records relevant to your organisation's status as a DGR. Records must show that gifts and deductible contributions are being used for your principal DGR purpose.

Good records help you to manage your obligations and make it easier to report and pay on time. Some of the basic records you may need to keep include:

- Governing documents
- Financial reports and operational records
- Tax invoices and income tax records
- Copies of reviews of entitlement to tax concessions, and
- Records to help prepare tax statements and returns.

Your records must be kept for five years and be in English or easily converted to English. You should regularly review your circumstances and entitlement to DGR.

The ACNC has several useful resources for charities, including a record-keeping checklist (<https://www.acnc.gov.au/for-charities/manage/keep-charity-records/record-keeping-checklist>) and self-evaluation checklist (<https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards/self-evaluation-charities>).

## 'In Australia' defined

Taxation ruling TR2019/6 *Income tax: the 'in Australia' requirement* concerning certain deductible-gift recipients and income-tax-exempt entities has been issued.

It sets out the ATO commissioner's view on what the phrase 'in Australia' means in divisions 30 and 50 of the *Income Tax Assessment Act 1997*.

The divisions set out rules for working out whether certain funds, authorities, and institutions are eligible to be deductible-gift recipients and whether the income of certain NFPs is tax exempt.

The DGR 'in Australia' condition refers to the special condition that NFPs must be in Australia to be entitled to DGR endorsement. The ruling provides examples of when an entity is established or legally recognised in Australia and makes operational or strategic decisions mainly in Australia.

The 'in Australia' condition for exempt entities refers to special conditions that certain NFPs need to meet to be tax-exempt. The ruling provides examples of how an entity meets the physical-presence requirement and demonstrates that it incurs expenditure and pursues objectives principally in Australia.

The finalised ruling is consistent with guidance published in draft taxation ruling TR 2018/D1dd in July 2018.

## Bill proposes DGRs to be registered as charities

Federal treasury is seeking submissions on the draft bill *Treasury Laws Amendment (Measures 4 for a later sitting) Bill 2020: Requiring all DGRs to be registered charities*.

It requires non-government item-1 deductible-gift recipients to register as charities.

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

*Deductible gift recipient reform – strengthening governance and integrity and reducing complexity* is part 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 and 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 from <https://treasury.gov.au/consultation/c2020-113633>.

Submissions were sought by 4 December.

## ACNC urges PBIs to check their details

The ACNC is urging charities with deductible-gift-recipient endorsement to check their registration details.

The commission has begun reviewing DGR reforms announced by the federal government in 2017.

The review is designed to strengthen governance arrangements and bolster confidence in the NFP sector by ensuring that tax concessions are held only by eligible charities, that the integrity of the ACNC register is protected, and donors are confident that donations are used for a charitable purpose.

The commission will review about 500 charities a year to assess whether they are still eligible to be registered as a charity, charity subtype, and for DGR status. An initial focus will be on public benevolent institutions.

PBIs are the biggest demographic in the DGR population (about 11,000), they can access the highest rate of tax concessions, and, because they service such a diverse section of the community, have a substantial impact on trust and confidence in the sector.

They will be reviewed according to a risk profile, which will include that they were registered as a charity and PBI before 3 December 2012, that they are not regulated by the Office of the Registrar of Indigenous Corporations, and have no, or only one

responsible person listed or no governing document.

‘[There] should be no impact on charities under review unless an issue is identified,’ ACNC commissioner Gary Johns said.

In line with its commitment to transparency and education and to ensure procedural fairness, the ACNC is encouraging charities to self-assess using an online tool available at <https://www.acnc.gov.au/for-charities/charity-tax-concessions/deductible-gift-recipients-dgrs-and-acnc/deductible-gift>.

‘By using our self-assessment tool, charities will be able to identify and rectify most issues, such as nominating responsible persons and uploading their governing document to the register,’ Dr Johns said.

‘Charities don’t need to notify us of those changes or send us their self-assessment. They can make changes easily through the ACNC charity portal.

‘To promote good practice, we encourage charities to assess themselves periodically.’

# Fundraising

## Bushfire royal commission report released

The royal commission into National Natural Disaster Arrangements has made 80 recommendations to improve Australia’s response to disasters.

The report noted that fundraising during natural disasters was significant, and that it was important that the community understood the legal framework for fundraising as well as various limitations in charities’ fund dispersals.

Better known as the ‘Bushfire’ royal commission, its report highlighted a lack of public awareness of various fundraising laws during the 2019–2020 bushfires, leading to a recommendation that a single national scheme be created for the regulation of charitable fundraising.

It recommended that ‘Australian, state and territory governments should create a single national scheme for the regulation of charitable fundraising’.

The commission noted that the 2018 legislation review of the ACNC was a useful starting point for the creation of a national scheme for fundraising regulation. A national scheme could provide greater community confidence in the management of financial donations following a natural disaster.

It recommended that the Australian

government should consider whether additional regulatory responses are required to address the risk of fraud associated with digitally-enabled fundraising campaigns.

## FIA releases guidance on disaster fundraising

In response to the ‘Bushfire’ royal commission and the extreme 2019–2020 season, the Fundraising Institute of Australia has produced a *National Disaster Practice Note* to assist its members in their fundraising for, during, and after a national and/or natural disasters.

A national disaster is defined as a flood, bushfire, drought, and act of terrorism that causes national strife. The note acknowledges that national disasters could cause significant impact to communities and local-government areas.

The note covers:

- Accountability – FIA members and fundraising organisations are ultimately accountable to their donors
- Governance – FIA members and fundraising organisations should be registered with the ACNC and always adhere to state and/or territory fundraising regulations
- Fundraising materials and communications – pursuant to the FIA Code, all fundraising materials must be accurate,

including clearly stating the specific purpose of each donation. Further guidance on communications transparency is provided, and

- Outsourced fundraising activities – special provisions for fundraising activities that are undertaken by agencies and/or by the public on behalf of charities including provisions around the authority to fundraise.

## Fundraising laws to be ‘harmonised’

Treasurer Josh Frydenberg and assistant finance minister Zed Seselja have announced further easing of charities’ regulatory burden by establishing a cross-border ‘recognition’ model to harmonise fundraising laws.

Inconsistent and outdated regulations across jurisdictions create an estimated regulatory burden of \$13.3 million a year for the sector. The recent ‘Bushfire’ royal commission highlighted the crucial role charities play in disaster-recovery efforts but noted the complexities of operating across jurisdictions with differing regulatory schemes.

The Council on Federal Financial Relations has agreed to establish a cross-border recognition model to harmonise charitable-fundraising laws. The model will provide a single registration point for national operators, which will reduce fundraisers’ costs and administrative burdens.

# Compliance

## Court rules on new rights for casual employees

Earlier this year the Federal Court ruled in *WorkPac Pty Ltd v Rossato* [2020] FCAFC 84 that some casual employees working regular shifts have the right to certain benefits such as

annual and personal leave and public holidays usually enjoyed only by permanent staff.

The court also ruled that topping up workers’ pay through casual loading does not offset leave liabilities. This essentially means that some casual employees could be entitled to

both paid leave and casual loadings, typically worth 25 per cent of their pay.

ASIC has issued an FAQ on accounting implications of clarified casual-employment rules.

Companies should 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 court ruling.

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

Companies may wish to seek legal advice.

### Recognising a superannuation liability for contactors

A recent decision by the full Federal Court will result in many contractors previously considered to be outside the scope of compulsory superannuation payments being entitled to them.

In *Dental Corporation v Moffet*, Dr David Moffet provided his services as a dentist to Dental Corporation under an agreement. Upon termination of the agreement, Dr Moffet brought proceedings asserting that he was an employee of Dental Corporation and was entitled to be paid annual leave, long-service leave and superannuation.

The Court found that Dr Moffet was not an employee of Dental Corporation but was an independent contractor conducting his own business. He had no entitlement to annual leave or long-service leave. However, on the issue of superannuation the Court was required to consider section 12(3) of the *Superannuation Guarantee (Administration) Act 1992*.

Section 12(3) defines an 'employee' to include a person working under a 'contract that is wholly or principally for the labour of the person'. Section 12(3) can therefore apply to an independent contractor.

The court found that Dr Moffet was entitled to superannuation and this finding was upheld on appeal by the full court.

### Casual workers' overtime updated

The Fair Work Commission has issued its final determination on overtime for casual workers in its four-yearly review of awards.

Under this determination, the overtime clause for casuals has been varied in 97 modern awards. As a result, the way that overtime for casuals is calculated might change.

Any changes to overtime calculations for casuals will come into effect from the first full pay period on or after 20 November for 96 of the affected awards.

Changes to the remaining award (Aged Care Award 2010) will not come into effect until 1 March.

Under these clauses, overtime for casuals may be calculated in one of the following ways:

- In substitution for casual loading
- In addition to casual loading (cumulative approach), and
- In addition to the sum of an employee's minimum hourly rate plus casual loading (compounding approach).

To view further details, visit the Fair Work Australia website.

### ACNC urges charities to prevent fraud and cybercrime

The ACNC has urged charities to take steps to prevent fraud and cybercrime.

Commissioner Johns said charities were vulnerable to fraud and cybercrime, especially as fraudsters try to exploit national and global crises.

'As I meet with Australian charities it is clear many are affected by the global COVID-19 crisis,' said Dr Johns. 'It is perhaps more important now than it has ever been to safeguard against the risk of fraud and cybercrime as charities face unprecedented challenges.'

In 2019-20, the ACNC received 2102 concerns about charities, most received from the public or members of a charity. The most common were about perceived mismanagement of funds or individuals obtaining a private benefit from a charity.

'It takes time and hard work for charities to

build their reputations but falling prey to fraud and cybercrime can quickly dent or damage it, particularly if a charity failed to put in place preventative measures', said Dr Johns.

'It's better to get on the front foot by establishing good governance [...] to prevent fraud rather than take remedial action after it happens.'

The ACNC provides many resources to equip charities to increase awareness and to implement measures to prevent fraud. The resources are of value to everyone involved in the sector including directors, board members, trustees, staff, and volunteers, as well as accountants, auditors and solicitors acting as professional advisers.

A *Governance Toolkit* includes resources to help charities manage risks, including financial abuse, cybersecurity, and working with partners. Access the toolkit at the ACNC website.

### Whistleblower policy reminder

Public companies, among others, were required to have a whistleblower policy by 1 January last year.

This is a reminder to act if your policy is not yet up and running and made available to officers and employees.

Large charities that are companies limited by guarantee are required to have a whistleblower-protection policy that meets requirements set out in the *Corporations Act*.

Small and medium-sized charities that are companies limited by guarantee do not need a policy but are required to manage whistleblowing in line with the act.

### ReportFraud 'If you see something, say something'

*ReportFraud* is a cutting-edge fraud-protection tool you need to have. It's designed to safeguard your organisation from fraud, non-compliance with laws, bribery and corruption 24 hours a day, seven days a week. It allows whistleblowers to report unethical activity safely and – most importantly – anonymously.

Use *ReportFraud* because it:

- Allows whistleblowers to report by web portal, email, and smartphone
- Ensures their anonymity
- Helps your organisation select an internal fraud-contact person
- Sends a report of a whistleblower's alleged fraud to him or her within 24 hours
- Is available 24/7, every day of the year
- Provides tools and quarterly newsletters to help manage your fraud risks
- Safeguards sensitive company information
- Complies with Australian law, and
- Is an independent third-party.

Once the fraud is assessed and reported, *ReportFraud* offers several ways of dealing with it.

An annual subscription to *ReportFraud* is based on employee numbers. It usually works out to be the cost of a cup of coffee per person.

Can you afford NOT to investigate how *ReportFraud* can help your organisation?

Check out the website [www.reportfraud.org.au](http://www.reportfraud.org.au) or contact Andrew Parker 0401 858 889 or [andrew@reportfraud.org.au](mailto:andrew@reportfraud.org.au).

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- **Whistleblowing service** – *ReportFraud* is a cutting-edge fraud protection tool you need to have. It's designed to safeguard your organisation from fraud, bribery and corruption 24 hours a day, seven days a week. It allows whistleblowers to report unethical activity safely and – most importantly – anonymously ([www.reportfraud.org.au](http://www.reportfraud.org.au)).



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