

# Not - For - Profit Newsletter

NEWSLETTER DATE JULY 2014

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## CHARITY GOVERNANCE

### Your Risk of Being Deregistered

Charities that the ACNC believes are no longer operating will have their registration revoked if they are unable to be contacted. If the ACNC does not hear from these charities by 30 September 2014, it will commence a process to revoke their registration as charities with the ACNC. After being revoked, the charities will no longer have access to their charity tax concessions.

Prior to 3 December 2012, the ATO endorsed charities for charity tax concessions. These charities were automatically registered with the ACNC based on information provided from the ATO. A number of registered charities have not responded to communication from the ACNC (i.e. no known address/contact details or correspondence has been returned to sender). The ACNC needs to determine whether these charities are still operating. Each quarter the ACNC will publish a Notice of Intention to revoke registration of listed charities not in contact with the ACNC with a spreadsheet list of charities which is searchable.

What should you do if your charity is on this list?

1. *If your charity is still operating:* Download form "3B: Change of Charity" from the ACNC website, complete, send and request a password. Then you can log into the charity portal and complete your 2013 Annual Information Statement and update other details. Also read the "Manage my charity section" on the website to understand the ongoing obligations.

2. *If your charity ceased operating before 3 December 2012:* Write to ACNC confirming when your charity ceased operating and provide evidence of this if possible, e.g. a Notice of Deregistration from another regulator, and
3. *If your charity ceased operating after 3 December 2012:* Download Form 5A: "Application to deregister charity" and send to the ACNC.

### Top Charity Concerns Revealed

Concerns about charity governance, fraud and private benefit are the leading causes for complaints about charities according to the "ACNC compliance – an overview of the compliance activity" report undertaken by the ACNC. The report includes identified case studies and lessons for other charities facing compliance issues.

The ACNC compliance team received and assessed 202 charity related concerns. The majority of concerns raised about charities fit three main risk types; governance (50), fraudulent or criminal activity (48), and private benefit (21).

The majority of the concerns (131) were raised by the public, 40 were referred by other government agencies and the remainder (31) came from other sources and active intelligence. Referrals to the ACNC from other government agencies have come from 11 different agencies, including seven state government bodies and four Commonwealth agencies. There are currently 55 cases open, eight of

the top charity concerns were:

**Governance (25%):** a conflict of interest between a charity's board members and the operational decisions made regarding the charity; the charity not following its constitution; financial mismanagement; and lack of, or inadequate policies and procedures

**Fraudulent or criminal activity (24%):** sham charity soliciting funds; bank accounts changed, funds missing, sale of charity assets; fundraising scams

**Private benefit (10%):** charity resources used for personal use; inappropriate personal expenses; corporate sponsorship used for personal, rather than charitable purpose, and

**Other (41%):** soliciting funds when not carrying out any charitable activities; insolvency; and harm to those who benefit from the charity.

The ACNC responds to concerns raised about charities and undertake intelligence gathering and investigations, when appropriate. When wrongdoing occurs, it is often not just a financial loss that damages the charity; there is the impact on reputation and the effects on staff, volunteers, beneficiaries and board members.

## CHARITY GOVERNANCE (Continued)

### Good Governance A Priority For New Charities

Good governance is an area of concern for newer charities, a recent review by the ACNC found. In examining its 15 most significant current compliance cases, the ACNC found that every case involved governance issues. One-third of these cases involved charities less than five years old, all were charities of varying size, and they were from every state and territory except the Northern Territory. Governance issues usually arose through a charity board's inexperience or understanding of good governance. At times, it had been clear a board has 'fallen asleep at the wheel' or engaged in willful and deliberate wrong doing. The ACNC acts firmly and quickly where there is a likelihood of serious mismanagement and misappropriation.

Since commencing as the national charity regulator 15 months ago, the ACNC has received 500 complaints, of which more than 240 have warranted an investigation or review by the ACNC's 12-person compliance team. The Commission's most common source of reliable information was from the public, followed by former charity employees or board members, and referrals from other agencies.

The ACNC has already encountered a wide range of governance issues. The most common problem is when charities use funds inappropriately, in ways which do not comply with the charity's not-for-profit purposes such as using charitable funds to purchase private assets for board members.

The ACNC has also seen a number of cases where there is a lack of accountability to mem-

bers. In some cases, charities have failed to convene meetings as required in their constitution or have failed to follow the appropriate process to amend constitutions.

The third most common theme is where responsible persons fail in their duties. This includes failing to declare conflicts of interest, not maintaining accurate records or operating while insolvent. At the extreme end, the ACNC have investigated charities where allegations have been made of criminal activity.

The ACNC has produced "Governance for good", a guide for charity board members, and "Protect your charity from fraud" to support the sector. These are very handy references for board members.



## CHARITY PASSPORT LAUNCHED

The ACNC launched the Charity Passport, a secure online system designed to save charities from reporting the same information to multiple government agencies. The Charity Passport has potential to create substantial time and cost savings for charities. Through the passport, the ACNC can securely share information it collects from registered charities with authorised government agencies. A single charity that conducts fundraising across the country, and receives government grants, may need to report to more than 10 different government agencies.

Authorised government agencies that use the Charity Passport will have access to substantive information about charities, including their contact details, registration information, charitable purpose and who benefits from their work, their size, activities, responsible persons, governance documents, and enforcement outcomes.

Agencies that need information from charities in relation to Commonwealth grants should use the Charity Passport rather than asking the charity to provide the same information again, this is outlined in the

Commonwealth Grant Guidelines. When government agencies request information, charities may direct them to the ACNC to obtain information, such as governing documents or financial reports that they have already provided to the ACNC.

The Charity Passport is being rolled out in two phases. The first phase uses a File Transfer Protocol (FTP) repository, where authorised government agencies can securely download the files they need, either using an FTP client or a web browser.

"The ACNC launched the Charity Passport, a secure online system designed to save charities from reporting the same information to multiple government agencies."

The second phase of the Charity Passport is scheduled for agencies' implementation at the end of 2014. It will improve integration with IT systems, increase data currency and have additional functionality to improve the experience for agencies that use it.

## ACNC REGISTER—ADDITIONAL INFORMATION PUBLISHED

Shortly, many charities will have additional information – including their addresses – published on the ACNC Register. The ACNC Register, available online at [ACNC.gov.au/findacharity](http://ACNC.gov.au/findacharity) contains important core information about all registered charities. Previously, information that had not been verified by charities, such as their address, was not visible on the register. This was to give charities the opportunity to give us up-to-date details and to apply for information to be withheld.

Charities identified as low-risk will have additional details (including their addresses) published on the ACNC Register, unless they have applied to have them withheld. The details are being published in a phased approach, to allow identified high-risk charities additional time to apply for their information to be withheld.

The ACNC wants to make sure that charities who work with people at risk (and any others that meet the criteria) apply to withhold their information

before this process begins.

There are limited circumstances where the ACNC may withhold information from the Register, for example where this presents a risk to public safety, or is commercially sensitive and harmful. The decision to publish or withhold this information is based on how likely the information meets the criteria for withholding it. This is consistent with the requirements of the ACNC Act. For charities that have already verified their details with the ACNC, the information is published on the Register.



## PUBLIC BENEVOLENT INSTITUTION ALERT

The Full Federal Court handed down its decision in the appeal against the decision of Perram J in *“The Hunger Project Australia v Commissioner of Taxation”* [2013] FCA 693, clarifying the meaning of “public benevolent institution” (PBI), and what is required for a charity to be

classified as a public benevolent institution.

The Court has unanimously held that Hunger Project Australia does not need to directly give aid in order to be endorsed as a PBI

The ACNC will update its Com-

missioners Interpretation Statement (CIS) on this case once the 28 day period to apply for special leave to appeal has expired. The CIS operates to provide guidance to the public and ACNC staff on the meaning of this decision, and is binding on ACNC staff when making ACNC decisions.

“The Court has unanimously held that Hunger Project Australia does not need to directly give aid in order to be endorsed as a PBI.”

## ACNC WEBSITE

**Have you reviewed the information contained on the ACNC register about the charity that you manage?**

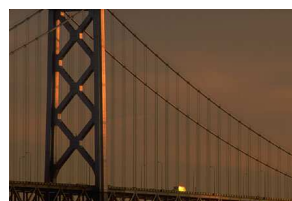
The register contains a large bank of information on each charity. This data was initially obtained from various Government departments. Each charity was asked to review and update

their information and include data and information which was not previously available to the public .

As this information is freely available to the public it makes good sense to keep it up to date so as to present a honest, current and compliant snapshot of your charity.

The beginning of the financial year makes it a good time to review and update this information if you have not already done so.

The register is located at <http://www.acnc.gov.au/ACNC/FindCharity>



## FINANCIAL REPORTING INSIGHTS

### What is required for the 2014 Financial Reports?

Unless falling into the exemption, medium and large charities must also submit an annual financial report which includes:

1. a charity's financial statements
2. the notes to the financial statements, and
3. a declaration made by a charity's responsible persons (such as committee or board members, or trustees).

The ACNC will accept financial statements that are either general purpose or special purpose, under the Australian Charities and Not-for-profits Commissions Regulation 2013 (ACNC Regulation).

Medium charities must have their reports reviewed or audited and submit a reviewer's report or an auditor's report.

Large charities must have their reports audited and submit an auditor's report. Small charities can choose to submit financial reports, but this is not required. The exemption:

1. If the charity is an incorporated association, cooperative or charitable fundraising organisation, and currently submits financial reports to a state or territory regulator, and is a medium or large charity, the Charity **can** submit the same financial report to the ACNC. The ACNC will accept this financial report as meeting its requirements for the 2014 reporting period, and
2. The charity must still complete the 2014 AIS, and submit the ACNC the same financial report previously provided to the State or territory regulator.

### Special Purpose Financial Statements

If a registered entity is not required to apply the Accounting Standards, and is not exempted from producing financial statements, it is still required to apply the parts of these accounting standards that do expressly apply only to a reporting entity:

- AASB 101 "Presentation of Financial Statements"
- AASB 107 "Statement of Cash Flows"
- AASB 108 "Accounting Policies, Changes in Accounting Estimates and Errors"
- AASB 1031 "Materiality"
- AASB 1048 "Interpretation of Standards" and
- AASB 1054 "Australian Additional Disclosures"



As Directors and Managers are you concerned about your entity's Financial Statements?

Timely preparation, the cost of preparation, selection of the appropriate format to comply with reporting requirements or concerns about required disclosure

LBW & Partners has the technology knowledge and expertise to assist with drafting appropriate financial statement for your entity.

Contact Rupa Dharmasiri on 02 9411 4866 or email [rupa@lbw.com.au](mailto:rupa@lbw.com.au) to discuss how LBW can provide a cost effective service for your entity to meet its obligation to prepare financial statements.

## SENATE REPORT ON ACNC FUTURE

On 27 March, the Senate referred the Australian Charities and Not-for-profits Commission (Repeal) (No. 1) Bill 2014 to the Senate Economics Legislation Committee for inquiry and report. In the Federal Budget, the ACNC's full allocation of funding in the Forward Estimates has been retained for 2014-15.

A majority Senate Committee report tabled on 16 June recommended the Bill to abolish the ACNC be passed by the Senate. The two dissenting minority reports called for the continuation of Australia's national charity regulator. The ACNC (Repeal) (No1) Bill 2014 was

referred to the Senate Economics Legislation Committee after it was introduced in the House of Representatives in March. Over 150 submissions were received by the committee, with more than 80 per cent opposing the proposed legislation to abolish the ACNC.

The Repeal Bill and the Senate inquiry have caused confusion and uncertainty for parts of Australia's charity sector over the past few months. The ACNC remains Australia's charity regulatory body until the Parliament votes otherwise. The ACNC Commissioner, Susan Pascoe,

stated the national charity regulator will continue to regulate the sector and perform its legislative functions until future arrangements are known.

Charities that they were still obliged to meet the immediate reporting requirement to submit their Annual Information Statement, due by 30 June. It is a legal requirement that all registered charities submit an annual statement, and consistent with the ACNC regulatory approach, charities which have missed their reporting deadlines will receive final reminders prior to any penalties

(under the ACNC Act) being applied.

The Department of Social Services is delivering on the Australian Government's commitment by streamlining processes for civil society organisations and removing red tape. This includes the repeal of the ACNC to allow organisations within the sector to self-manage and focus more on their work within the community.

An Options Paper will explain

the ACNC replacement arrangements and provide options on how key functions will be transitioned to the Australian Taxation Office and ASIC. The paper and submission template for written submissions will be available on the Department's website early July.

To support the consultation process, the Department is holding a number of consulta-

tion sessions with charities and civil society organisations on the Options Paper and the proposed replacement arrangements for the ACNC. Written submissions, utilising the submission template, will be accepted up until 20 August 2014. A summary of stakeholder feedback will be made available on the Department's website, following the consultation period.

## ESTABLISHING THE NATIONAL CENTRE FOR EXCELLENCE FOR CIVIL SOCIETY

The Centre for Social Impact (CSI) is preparing advice for the Australian Government outlining the best models for establishing the new National Centre for Excellence for Civil Society. An interim report will be delivered to Government in July and will be based on CSI's research and consultation. This will provide a basis for concrete discussions with stakeholders on the form and functions of the Centre for Excellence.

The Australian Government engaged CSI to help civil society establish independently of government a National Centre for

Excellence that advances the interests of charities and not-for-profit entities. The National Centre for Excellence will help build capacity of the civil society sector by supporting innovation, providing education and training, and working to reduce reporting and red tape.

The task of the Centre for Social Impact is to propose models for the Centre for Excellence that will be relevant to the landscape in Australia and that include functions that fill existing gaps in support for civil society. The Centre for Social Impact will

use its academic and applied research expertise to look at best practice Australian and international support for civil society organisations. Advisory Council members in Sydney, Melbourne and Perth and other stakeholder networks will feed into the report and will help identify the most feasible and sustainable models for the Centre for Excellence.



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## Not-for-profit Accountants & Auditors At Your Service!



LBW & Partners is a firm of chartered accountants that offers specialist audit services to not-for-profit organisations.

Our team members are able to help with unique issues faced by not-for-profits such as: reporting to funding agencies; ACNC compliance; fund-raising related accounting and tax issues; FBT rules and impact on PBIs; GST concessions; constitutions and governance.

We work with a range of not-for-profit organisations including:

- ◊ Associations
- ◊ PBIs
- ◊ Charities & DGRs
- ◊ Churches, congregations, religious institutions
- ◊ Aged care
- ◊ Peak Industry Bodies
- ◊ Community organisations
- ◊ Sports Clubs
- ◊ Registered training organisations
- ◊ Companies limited by guarantee

If you are looking for accountants with specialist not-for-profit expertise, please contact Rupa Dharmasiri or Joe Kofod.

Phone: 02 9411 4866 | Email: [rupa@lbw.com.au](mailto:rupa@lbw.com.au) | [www.lbw.com.au](http://www.lbw.com.au)

### SPECIAL OFFER

During July and August we will review your organization's latest audited/reviewed financial statements and provide a 1 hour consultation on the following free of charge:

- Organisation is properly registered to access income tax concessions
- Filing with ACNC is up to date
- Financial Statements comply with the latest Australian Accounting Standards

If you wish to take up this offer, please email a copy of your organisation's most recent audited/reviewed Financial Statements to [rupa@lbw.com.au](mailto:rupa@lbw.com.au)