



Collins & Co
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Governance

Australian Identification Director Number Scheme

Australian directors have a year to apply for their unique director identification numbers before fines of more than \$1.1 million kick in.

Company directors must apply for a DIN by 30 November next year, and directors of Indigenous corporations that are governed by the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* must apply for the unique identifier by 30 November 2023.

The deadline was confirmed in *Corporations (Director Identification Numbers—Transitional Application Period) Instrument 2021* made by the Minister for Superannuation, Financial Services and the Digital Economy Jane Hume. DIN applications are free and will open next month on the newly established Australian Business Registry Service, a single platform administered by the taxation commissioner that brings together ASIC's 31 business registers and the Australian Business Register.

Directors must personally apply for DINs and will be required to produce myGov IDs, and two identity documents from a list that includes bank-account details, super-account details, ATO notices of assessment, dividend statements, Centrelink payment summaries, and PAYG summaries.

Directors appointed between 1 November and 4 April next year will have just 28 days after appointment to apply for DINs. Directors appointed from 5 April 2022 will be required to apply for DINs before being appointed. Directors who fail to apply for DINs within the stipulated deadlines can face criminal and civil penalties of 5000 units, which now amounts to \$1.11 million. Directors of a CATSI organisation can face penalties of up to \$200,000.

Penalties will also apply for conduct that undermines the new requirements, including providing false identity information and intentionally applying for several DINs. More than 2.5 million directors will need DINs. They will be permanent, even if holders cease to be directors, change their names, or move interstate or overseas.

Find out more at <https://www.abrs.gov.au/director-identification-number>.



Addressing Corruption Risks

The Victorian Independent Broad-based Anti-Corruption Commission has released a 60-page report *Corruption risks associated with government funded human services delivered by community service organisations* that outlines a range of corruption-prevention strategies to help mitigate risks.

Key corruption risks identified were:

- A lack of awareness of risks
- Vulnerabilities in how departments and community-service-organisation boards oversee the delivery of government-funded services by CSOs
- False or inaccurate reporting due to limited systems
- Misuse of sensitive information
- Overlap or duplication of regulatory activity, and
- Lack of capabilities and resources in CSOs' governance and corruption prevention.

Prevention measures recommended included:

- Strong conflict-of-interest frameworks
- Information security management
- Training on the identification and reporting of corruption risks
- Strengthened procurement practices
- Developing profiles to assess and manage corruption risks, and
- Implementing proactive governance, auditing, and corruption-prevention strategies that identify potential corrupt behaviour.

Insight into revised fraud-control standard

Standards Australia has updated its fraud-and-corruption-control standard to provide conforming guidance for organisations' governing bodies.

AS 8001:2021 *Fraud and corruption control* now provides minimum requirements for organisations wishing to develop, implement, and maintain an effective fraud-and-corruption-control system.

It addresses internal and external fraud and corruption in organisations and businesses, not individuals. Fraud and corruption are significant issues for Australian businesses, governments, and not-for-profit organisations, often resulting in financial and reputational damage.

The revised standard includes a requirement for information-security management consistent with ISO/IEC 27001 *Information technology – Security techniques – Information Security Management Systems – Requirements*.

The updates also include guidance on the roles of governing bodies and top management, and whistle-blower protection.

The standard outlines initiatives that aim to prevent and detect fraud and corruption, as well as guidance on how to respond to frauds that have already occurred. Organisations wishing to develop and implement fraud-and-corruption controls are provided guidance on early detection and effective responses for optimal outcomes.

Dean Newlan, director of the Australian Institute of Professional Investigators, said, 'AS 8001 has had a significant impact on fraud-and-corruption control in Australian organisations since 2003. It is widely regarded as a benchmark for preventing and detecting fraud and corruption and for responding to fraud-and-corruption events when they occur.'

'It not only considers fraud-and corruption-risks where the organisation itself is the target, but also where the organisation, or someone believing they are acting in the organisation's best interest, is the perpetrator.

'This third edition of the standard recognises and responds to an alarming increase in cyber-attack and technology-enabled fraud and provides upgraded guidance on the accountabilities of boards and senior management in controlling organisational fraud and corruption [...].'

The following ISO standards were particularly relevant to the AS 8001:2021 update:

- ISO 37001 *Anti-bribery management systems*
- ISO 37002 *Whistleblowing management systems*
- ISO 37301 *Compliance management systems, and*
- ISO 37007 *Corporate governance – guidelines for efficiency measurement.*

Standards Australia's head of standards development Roland Terry-Lloyd said, 'Australian organisations and businesses will benefit from this standard. The updates and revisions are comprehensive, and the committee has done a thorough job of allocating guidance that is inclusive of the technology updates we've experienced over the past 10 years.'

Investigation into union branch nears conclusion

The Registered Organisations Commission has concluded its investigation into the Queensland branch of the Construction, Forestry, Maritime, Mining and Energy Union.

The investigation arose from a qualified auditor's report lodged with the branch's financial statements for the year ended 30 June 2016. The auditor said, 'We were unable to obtain sufficient appropriate evidence to verify that all the credit-card expenses (\$721,116) that have been included as business expenses in the union's annual financial statements have been incurred solely for business purposes.'

The investigation was begun under sections 331 and 332 of the *Fair Work (Registered Organisations) Act 2009* and considered potential systemic failures to keep proper records, potential failures to have effective and appropriate policies, and the potential misuse of branch funds.

It recommended that the commissioner consider further regulatory curbs on the branch and one of its senior officials.

Separately, the commission has suggested financial controls to manage credit-card use. They are:

- Comprehensive expenditure policies to regulate, monitor, and place limits on how credit cards are used. Record-keeping and timely reconciliation procedures (including the checking of transactions) were deemed essential to limiting expenditure to a work-related purpose. Appropriate delegation levels must be enforced
- Review the practices of your organisation. They should align with policies and rules. If policies are not followed in practice, consider how this can be achieved, including whether officers and employees have adequate access to them and how education and enforcement can influence a compliance culture
- Avoid ambiguity in rules and policy documents. Look at providing specifics (including dollar limits) to overcome broad discrepancies in personal views about what is allowed and what constitutes 'reasonable' under the circumstances
- Ensure sufficient oversight. Officers should not be authorised to sign off on their own expenditure. In small branches where there is a single paid officer, expenditure may be overseen by a group of people (for example the branch executive)
- Establish internal procedures to help officers and employees comply with policies. A form or template document can create consistency, accuracy, and promote detailed record-keeping, and
- Be clear about how credit cards affect financial-reporting obligations.

Maximizing an audit's value

A new guide published by Chartered Accountants ANZ aims to help not-for-profits and charities get the most out of an audit.

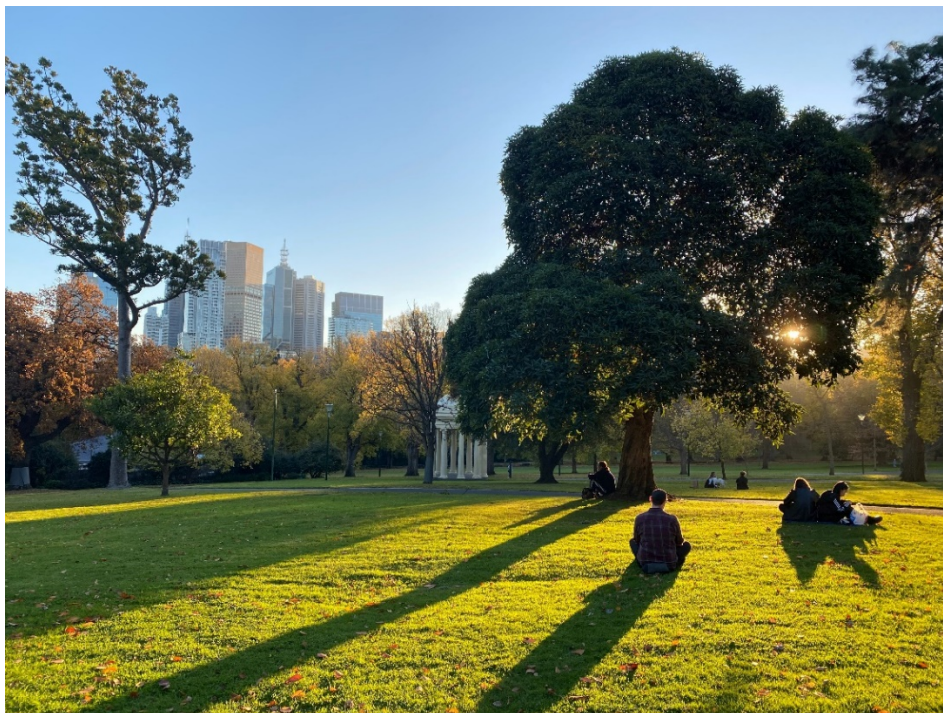
Maximising the value of audit for not-for-profits addresses:

- How audits contribute tangible benefits to NFPs and charities, and
- Getting the most out of an audit. How to look for a good fit, think beyond the cost, and build a partnership. Minding the over-expectation gap, preparing, being proactive, and ensuring that you do not set and forget.

Key messages are:

- An audit doesn't just help the organisation be accountable. It also allows it to be *seen* to be accountable
- An NFP and its auditor can build a mutually beneficial relationship that can add value to the effective governance of an organisation and the achievement of its objectives, and
- Ensure you make the most of all the skills, abilities and experience on offer. The guide is designed to help maximise the value of an audit and to recognise that the process can be much more than a perfunctory compliance exercise

An audit can help strengthen an organisation's credentials, offering stakeholders the opinion of a qualified, independent professional on the quality of an organisation's financial statements.



ACNC Activities

Check your entitlement to registration

The Australian Charities and Not-for-profits Commission is urging charities to check that they are maintaining their entitlement to registration.

They must ensure that they are still not-for-profit, their purposes are charitable, their activities lawful, that they are operating for the public benefit, and have an ABN.

ACNC commissioner Gary Johns said charities must maintain their entitlement to registration to avoid revocation. He said the ACNC recommended that charities build in a way of regularly checking their entitlement to registration. The ACNC had a tool to help charities make that assessment, he added.

Each registered charity has a record on the ACNC charity register and is obliged to have a governing document attached as well as a list of current responsible people.

Dr Johns said, 'Common lapses include charities not keeping their records of responsible people up-to-date, or not having enough responsible people listed as required, and not having a governing document attached to their record [...].'

Charities must also ensure that their purposes and activities are aligned with their registered-charity subtype.

The seventh *Australian Charities Report* published in May showed that, on average, registered charities had been operating for 32 years.

Dr Johns said, 'Over the long life-cycle of a charity many things can change, including boards and staff, so it's crucial charities have an established process for [...] entitlement checks.'

'Our [...] register provides key information about Australian charities to the public. It is critical that this information is up-to-date because that demonstrates the integrity of the sector and its willingness to be transparent.'

'It is always of public interest to know how charities are run and by whom, how their funds are accrued and spent. Keeping those details accurate is therefore an important [...] task.'

The ACNC has information about maintaining charity registration and a checklist. Go to <https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/keep-charity-status>.

Hundreds of charities struck off

The ACNC has revoked the registrations of 420 Australian charities that have failed to submit two or more annual information statements.

ACNC assistant commissioner Anna Longley said the organisations were no longer eligible for certain Commonwealth tax concessions.

'It is important that we keep the ACNC [...] register up-to-date and accurate,' Ms Longley said.

The commission notified in August more than 600 charities that they risked being struck off the register.

'We take steps to allow charities that are still active to have every opportunity to maintain registration,' Ms Longley said.

'Some charities have since submitted their overdue statements, [...] retained registration, and will continue to access generous commonwealth [...] tax concessions.'



Don't operate insolvent

The ACNC's governance standard 5 requires a charity's responsible persons to ensure that their charity is not operating while insolvent.

Charities must take reasonable steps to ensure its responsible persons fulfil duties set out in the standard.

For a charity that is a company, in addition to standard 5, duties set out in the *Corporations Act 2001* apply to responsible persons (directors), including the duty to prevent insolvent trading. If a charity that is a company continues to operate while insolvent, its directors may be subject to legal action.

Charities incorporated as associations might also have responsibilities to their state and territory regulators.

The ACNC wants charities to be aware of warning signs that might indicate a charity is facing financial trouble.

The commission nominates:

- Difficulty in paying bills for goods and services
- A history of financial losses in consecutive financial periods
- Trouble producing accurate and timely information about performance and financial positions
- Overdue tax debts (for example, superannuation guarantee contributions, PAYG withholding, and GST)
- Late payments to creditors that have resulted in stricter credit terms and creditors requiring cash-on-delivery payment
- Payments being declined (for example, payments by credit cards and cheques)
- Loan applications being declined
- Trouble paying staff on time
- Loss of a major income source or significant funding
- Relying on funding from unreliable sources
- A noticeable increase in costs or decrease in income compared with budget projections
- Creditors threatening or commencing legal action for unpaid debts, and
- Board members or staff raising concerns about the charity's financial situation.

Guide helps with AISs

The ACNC's *2021 Annual Information Statement Guide* aims to help charities complete their annual information statements.

The commission recommends that you use the AIS checklist before filing your statement.

Go to <https://www.acnc.gov.au/tools/guides/2021-annual-information-statement-guide>.

Tougher standards coming on unlawful behaviour

The federal government has tabled regulations in Parliament that strengthen governance standards, ensuring that registered charities do not engage in or actively promote unlawful activity.

The regulations reaffirm that compliance with Australian laws sets a minimum benchmark by which registered charities should govern themselves.

The changes will empower the ACNC commissioner to investigate registered charities engaging in or actively promoting theft, vandalism, trespass, and assault and threatening behaviour, and to take appropriate enforcement action if warranted.

Registered charities that act lawfully and do not use their resources to promote others to engage in unlawful activities already comply with the amended standards.

Charities will not be deregistered for inadvertent or unintentional non-compliance. Education underpins the ACNC's regulatory approach, and revoking registration is reserved for serious and deliberate contraventions.

The ACNC will provide guidance to registered charities once the amended standard comes into effect to help them to understand and comply.

Red-tape reduction nears

The federal government is seeking stakeholder views on reforms to reduce red tape for – and increase transparency of – the charity sector.

The reforms arise from the government’s agreement to recommendations in the *Australian Charities and Not-for-profits Commission Legislation Review 2018*.

Recommendation 12 increases the revenue thresholds that define small, medium and large registered charities. Recommendation 14 will require registered charities to disclose related-party transactions. Small, registered charities may make a simplified disclosure involving a brief description of related-party transactions.

Regulations also provide an exemption for some charities from the requirement to disclose, as part of their related-party transactions, aggregate remuneration paid to responsible persons and senior executives.

The exemption will apply to medium registered charities and large charities with only one remunerated key management person. (Senior executives and responsible persons are referred to as ‘key management personnel’ in accounting terms.) The requirement balances increased transparency against the privacy of individuals.

The draft regulations will be complemented by the ACNC’s implementation of recommendation 14 for small charities.

Feedback needed on ACNC secrecy

The federal Treasury has issued *Reform of the Australian Charities and Not-for-profits Commission secrecy provisions*, seeking feedback from stakeholders on issues identified in the 2018 legislation review.

The paper seeks to understand stakeholder views on the ACNC’s secrecy provisions. Feedback is wanted on:

- Concerns and impacts of the ACNC’s secrecy provisions
- Views about the benefits and sensitivities of public disclosures of certain information about the ACNC’s regulatory activities

- Circumstances under which the ACNC should disclose information about its regulatory activities to the public, and
- Factors and risks that should form the basis of discretion when considering whether to disclose information to the public.

The consultation paper compares the ACNC’s secrecy provisions with disclosure rules of other regulators.

It explores issues surrounding the ACNC’s limited ability to disclose information.

Financial Reporting Insights

Streamlining remuneration disclosures

An Australian Accounting Standards Board staff paper *Review of Executive Remuneration Disclosure Requirements* assesses how Australian executive-remuneration disclosures compare with those of selected overseas jurisdictions.

Listed and public-sector entities as well as NFPs are invited to provide further input into public discussion of the topic.

The comparison suggests that Australia provides among the most detailed disclosures for listed-entities’ executives. It suggests that Australia might cut red tape and further streamline disclosure requirements.

The paper aims to provide a basis to support regulators working with other standard-setters, users and stakeholders in efforts to keep Australian executive-remuneration reporting aligned with global best-practices.

An upcoming AASB agenda consultation will provide a chance to gather further feedback, such as identifying key users and their information needs.

AASB proposes simplicity

The AASB is proposing to develop Tier 3 financial-reporting requirements as a single stand-alone pronouncement.

The pronouncement will:

- Be drafted in simple language using terminology tailored to NFP private-sector entities of the size contemplated by the board for Tier 3 entities (revenue between \$500,000 and \$3 million)
- Have minimal cross-referencing to other Australian accounting standards
- Include a simple basis for conclusions, and
- Include application and implementation guidance, and template financial statements.

In developing an NFP private-sector reporting framework, the board decided to specify that the primary objective of Tier 3 reporting was simplification that met the needs of smaller NFPs' report-users.

The AASB decided to allow a private-sector NFP presenting Tier 3 general purpose financial statements the choice of presenting either: consolidated financial statements that consolidate all its controlled entities, as specified by AASB 10; or separate financial statements as its only financial statements.

Where an entity presents separate statements as its only financial statements, the board formed a tentative view that disclosure of the entity's 'significant relationships' should be required.

An entity of Tier 3 size should be able to prepare Tier 1 or Tier 2 general-purpose financial statements if it elected to do so.

The board decided against specifying reporting thresholds as part of the project. Tier 1 and Tier 2 reporting requirements in the NFP private-sector differential-reporting framework should comprise Tier 1 and Tier 2 requirements set out in Australian accounting standards.

A discussion paper is being developed; publication expected in the second half of 2022.

AASB seeking project suggestions

The AASB wants suggestions on potential domestic projects it should prioritise concerning public-sector, for-profit, and NFP entities.

The Invitation to Comment *ITC 46 AASB Agenda Consultation 2022–2026* is seeking views on whether some of the AASB's inactive projects should be retained. Three potential projects aligned with AASB strategic directions are included in the ITC and seek stakeholder feedback. They are sustainability reporting, service-performance reporting, and digital financial reporting.

The ITC also aims to receive feedback on the AASB research program.

While the list of potential topics in the ITC is not intended to be exhaustive, stakeholders are invited to suggest other financial and external reporting topics for board consideration.

Submit your comments to the AASB via its website or email standard@aab.gov.au



Governments

CATSI Act changes near

The *CATSI Act Amendment Bill* has passed the House of Representatives and has been referred for consideration to the Senate's Finance and Public Administration Legislation Committee. The committee is due to report on 14 October.

A comprehensive review of the act proposed changes that included:

- More closely aligning the registrar's powers with those of the Australian Securities & Investments Commission by including a suite of lower-level discretionary powers
- Changing and expanding the registrar's powers concerning members, meetings, lodgements, rule books, and publishing information
- Modernising the act to allow for electronic communication
- Increasing regulatory oversight of registered native-title body corporates
- Allowing the registrar to use unclaimed monies to support corporations, and
- Changing mechanisms regarding special administration, insolvency, and winding up of corporations.

Council credit-card management under the microscope

The NSW government has released new guidelines to strengthen the management of credit cards and expenditure by local councils.

Minister for Local Government Shelley Hancock said the new guidelines were part of the government's commitment to improving financial management, transparency, and accountability.

'All councils in NSW must ensure they have proper financial-management systems [...] to regulate and account for [...] credit-card expenditure by their staff,' Ms Hancock said.

'The guidelines provide councils, county councils, and joint organisations with the necessary information to put in place internal controls surrounding the establishment, management, review, and maintenance of a credit-card policy.'

The *Guideline on the Use and Management of Credit Cards* may be accessed on the Office of Local Government website.

Mandatory risk-management a step closer for NSW councils

NSW Minister for Local Government Shelley Hancock has called draft risk-management guidelines for LGAs Australia's strongest framework for minimising financial risk and preventing fraud and corruption.

The framework is titled Guidelines for Risk Management and Internal Audit for Local Councils in NSW.

'The state's 128 local councils would be required to establish a risk-management framework and internal-audit function to help improve overall [...] performance and operations,' Ms Hancock said.

'Under the reforms, every council in NSW will be required to appoint and operate an Audit, Risk and Improvement Committee made up of independent experts by June 2022 to ensure continuous improvement in governance and financial management as well as accountability and transparency [...].'

The draft guidelines include a tiered model that reflects the differing needs of metropolitan, regional, and rural councils according to resourcing, risk profile, population and location.

'The framework is based on the worldwide "three lines of defence" model, where independent experts provide advice, management takes action to properly manage risk, and staff work every day to identify and address risks.'

Seventy per cent of NSW councils already conduct some form of risk management and 103 councils have an internal-audit function.

Fundraising

Transparency code coming on disaster donations

The federal government is working with the charity sector to develop a voluntary code to improve the transparency of collecting charitable donations during natural disasters.

A 'transparency' code will offer charities a framework for reporting disaster-recovery fundraising and activities.

A working group of charity representatives (Australian Red Cross, BlazeAid, the Minderoo Foundation, and RSPCA Australia) and Treasury officials are developing the code's key features.

The working group has issued a consultation paper *Developing a Transparency Code* that identifies five of them.

The code will:

- Require that signatories publish an 'appeal intent', outlining how donated funds will be used in response to a natural disaster
- Prescribe specific information for signatories to report
- Set out minimum reporting frequencies, and
- Be voluntary, and target charities involved in the response to a natural disaster that receive substantial public donations.

The commonwealth will facilitate but neither administer nor enforce the code, compliance to be driven by signatories.

CCC summarises crisis fundraising

The Charities Crisis Cabinet has surveyed 643 charities and other NFPs on difficulties faced in complying with fundraising regulations.

The *Charities Crisis Cabinet Fundraising Survey 2021* seeks to identify practical ways in which complexity, duplication, and red tape can be reduced.

Major findings included:

Charity donation origin by state and territory – Charities and NFPs undertaking fundraising are required to complete registrations across states and territories depending on where they raise donations. Organisations most frequently registered are in NSW (40 per cent) and Victoria (40 per cent). Between 19 and 28 per cent are registered in the other states and territories – 20 per cent did not register in any state or territory.

Fundraising activities – Fundraising events are used by 60 per cent of charities and NFPs. The majority raise funds online (55 per cent). This has implications for registration, reporting, and compliance requirements. Online fundraising requires consideration of seven different state and territory registration systems and compliance regimes.

Awareness of the need to comply with differing licences and regulations across states and territories when fundraising online – Thirty-nine per cent of charities and NFPs are not aware of the need to comply with differing state and territory licences and regulations when fundraising online.

Importance of a single national regulation scheme as recommended by the Royal Commission into National Natural Disaster Arrangements – Ninety-one per cent of charities and NFPs believe it is very important or somewhat important for state and territory governments to create a single national regulation scheme for charitable fundraising.

State and territory comparison – Charities and NFPs reported that Queensland, Victoria, Western Australia, and New South Wales imposed the highest costs and delays on charities seeking to raise funds. Their rules were also the most complex.

Aged Care

Bed Licenses to go

The federal Department of Health has issued the fact sheet *Improving choice in residential aged care* as a prelude to significant changes.

Until 1 July 2024, the department will design a new residential aged-care system that assigns places direct to senior Australians. This means that the Aged Care Approvals Round will be discontinued following the 2020 round and 'bed licenses' will be abolished

Deductible Gift Recipients

DGRs must become registered charities

Legislation amended in September requires non-government deductible-gift recipients to be registered charities from 14 December.

Charity registration is an existing requirement for most general DGR categories. The amendment extends the requirement to remaining DGR categories except for ancillary funds and DGRs specifically listed in tax law.

To obtain DGR endorsement, funds, authorities, and institutions must be one of the following: a registered charity, an Australian-government agency, be operated

by a registered charity or be an Australian government agency.

Registered charities need do nothing.

Updated general DGR categories that need to be registered as charities are:

- Public funds for hospitals
- Public funds for public ambulance services
- Public funds for religious instruction in government schools
- Roman Catholic public funds for religious instruction in government schools
- School building funds
- Public funds for rural-school hostel buildings
- Approved research institutes
- Public funds for persons in necessitous circumstances
- Fire and emergency services funds
- Public funds on the Register of Environmental Organisations, and
- Public funds on the Register of Cultural Organisations.

Transitional arrangements provide more time to meet the new requirements. An automatic 12-month general transition period give entities until the 14 December next year to become a registered charity. In limited circumstances, there is a three-year extension.

Applications require copies of governing documents.

DGRs failing to register as charities within the transition period will have endorsements revoked, resulting in:

- Loss of tax-deductible donations and gifts
- Removal of tax-deductible status from websites and other materials, and
- Distribution of surplus gifts and donations to an eligible DGR.



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