



**Collins & Co**  
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# Collins & Co NFP Newsletter



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## Changes to NFP Tax Exemption

While charities represent about a third of all not-for-profits, most NFPs don't have a charitable purpose but may still self-assess as tax exempt. They are organisations formed to serve a specific aim, many meeting the requirements for special tax treatment.

Non-charitable organisations that can self-assess their exemption from income tax fall into eight categories: community service, cultural, educational, health, employment, resource development, scientific, and sporting.

NFPs that self-assess their own eligibility for income-tax exemption are not required to report their eligibility to the ATO.

Following reforms in last year's federal budget, however, from 1 July, self-assessing NFPs with an active ABN *will be required* to lodge an annual self-review return with the information they ordinarily use to decide their eligibility for income-tax exemption.

The ATO has begun talks with the NFP sector to discover the types of guidance and support needed for NFPs to transition smoothly to the new requirements. Consultations are expected to be concluded in June.

## Super Guarantees for all

As part of the 2021–22 federal Budget, the government announced that it will remove a \$450 a month threshold to expand coverage of super guarantee to eligible employees regardless of their pay.

The change has been gazetted through the *Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Act 2021*.

From 1 July, employers will be required to make super-guarantee contributions to eligible employees' super funds regardless of how much the employee is paid. Employees must still satisfy other super-guarantee eligibility requirements.

Employers will need to check that their payroll and accounting systems have been updated for super

payments made after 1 July to ensure that they correctly calculate their employees entitlements.

## New rules for meetings and documents give flexibility

Thousands of Australia's registered charities will enjoy greater flexibility when staging meetings – as well as signing and executing documents – through recent amendments to federal legislation.

The changes are included in the *Corporations Amendment (Meetings and Documents) Act*, and cover charities that are registered under the *Corporations Act*.

The amendments make permanent temporary laws first introduced in response to the COVID-19 pandemic, allowing companies to execute and send documents electronically and hold virtual meetings.

The changes mean that:

- Documents (including deeds) may be executed by signing either physically or electronically
- A person will not be required to sign the same form or page of a document as another person, or use the same method of signing as another person
- Agents (authorised representatives) may execute documents on behalf of companies without appointment by deed and without using a common seal
- Documents may be sent physically or electronically, and
- Companies may hold meetings physically or as a 'hybrid' (using one or more physical venues and virtual-meeting technology). Wholly virtual meetings are also permitted if expressly provided for in a company's constitution.

Changes relating to signing and executing documents came into effect on 23 February. Changes about meetings come into effect on 1 April.

While the amendments provide a minimum standard, charities' governing documents may require more. Charities must continue to comply with them, and those that are corporations could consider reviewing governing documents and seeking legal advice.

## You might need a Director ID

Anyone who is a director of a charity that is a company or Aboriginal and Torres Strait Islander corporation will need to apply for a director identification number.

A director ID is a unique 15-digit identifier that someone keeps forever. You may apply for one online at myGovID opting for 'standard or strong' identity strength.

Directors must apply personally so that identities can be verified. No one can apply on their behalf.

When you need to apply for the ID depends on when you became a director for the first time, and under which act you were appointed.

If appointed under the *Corporations Act*:

- From 1 November 2021 to 4 April 2022, you must apply within 28 days of being appointed
- On or after 5 April 2022, you must apply before being appointed, and
- Before or on 31 October 2021, you must apply by 30 November 2022.

Aboriginal or Torres Strait Islander corporation directors have longer to apply.

For more information about who needs to apply and when, including a full list of key dates, visit the Australian Business Registry Services website.

## Guidance for Board Secretaries

With the support of the Commonwealth Bank, the Institute of Community Directors has produced the free 48-page guide *Damn Good Advice for Board Secretaries – Twenty-five questions every not-for-profit secretary needs to ask*.

A good secretary is a good leader and a fount of knowledge about an organisation. She and he can keep your NFP on top of its governance obligations.

The new guide and its companions, *Damn Good Advice for Board Members*, *Damn Good Advice for Treasurers* and *Damn Good Advice for Chairs*, can help improve your understanding of governance roles within organisations.

To download the guide go to <https://communitydirectors.com.au/tools-resources/home>.

## Reports examines how NFPs use financials

CPA Australia has released *Annual Reports of Australian Not-For-Profit Organisations: Insights from Internal and External Stakeholders*.

The report examines how:

- NFPs use annual reports and financial statements to show they are accountable, and
- How stakeholders use NFP annual reports and financial information.

NFPs are highly diverse, having varied legal structures, sizes, tax concessions, missions, activities and results.

CPA Australia wanted to discover who used NFP annual reports, what they wanted to know, whether their questions were answered, and whether report preparers knew what they needed to do.

Were there red-tape challenges, and what are the costs of NFP annual reporting?

As diverse as the participants, the findings were categorised under rubrics such as annual reporting, accountability, accounting standards, measuring outcomes, and risks.

Observations included:

- As the sector receives taxpayer funds, whether directly or indirectly through deductible-gift-recipient status, this is generally accepted to create a moral obligation for transparency and storytelling about organisations' missions and performance against their missions. There was little enthusiasm for performance measurement, however
- In terms of application of accounting standards and the threshold for general-purpose financial reporting, the feeling was that the current reporting trigger needed to be increased and a turnover of \$5 million was mentioned
- Several participants noted the different treatment of charities compared with other NFPs and anomalies that this created
- The heavy reliance on audits and auditors by many in the sector, especially users of financial reports who are not always financially literate, preparers who sometimes are volunteers and ill-equipped for the task, and boards struggling to keep up with changing accounting standards
- Auditors were under pressure to minimise costs and some NFPs misunderstood what auditors took responsibility for when providing an opinion on financial statements, and
- Regulators thought that not all auditors understood the regulations and frameworks under which they reported.

## NFPs' Indirect Costs Fail to Get Funded

New research from Social Ventures Australia and the Centre for Social Impact has found that NFPs lack funding for indirect costs such as IT and marketing.

Their 55-page report *Paying what it takes – Funding indirect costs* uncovered four key points:

- The size of indirect costs such as for training and marketing fail to assess charities well. NFPs that spend less on indirect costs are not necessarily more effective than those that don't. Indeed, there is clear evidence that spending insufficient resources on indirect costs can potentially reduce an NFP's effectiveness
- Charities' true indirect costs fail to be covered by funders. On average, charities' real indirect made up 33 per cent of overall costs. Yet NFPs believe (potentially incorrectly) that funders are mostly unwilling to fund above 20 per cent, or even lower
- Indirect-costs underfunding leads to lower capability and effectiveness. Case-study NFPs universally under-invested in their core capabilities. Compared with them, a corporate-sector study suggested that corporates spent twice as much per employee on key capabilities such as training, IT, quality, and marketing. The lack of funds forces charities to spend time searching for untied funding and leads to inefficiencies, and
- The drivers of indirect-costs underfunding are complex and interrelated. The complexity of measuring NFP effectiveness, the power dynamics in the funder/fundee relationship, and a
- lack of consistent measuring all contribute to the issue.

The report is available from [www.philanthropy.org.au](http://www.philanthropy.org.au).

# ACNC

## Updating Charities' Work

Charities may now update on their Australian Charities and Not-for-profits Commission portals at any time details about their programs.

Previously, the inclusion of new information had been done annually through the annual information statement.

If charities developed a new program, a change of strategy, or had a crisis or disaster to respond to, they may now add changes in real time on the ACNC register.

Donors, volunteers, and philanthropists have endorsed the register, and visitor numbers continue to climb. The register helps charities showcase their work and reach out to key groups, including funders and grant-makers.

Governments and other funders often identify charities providing specific services to particular groups, and up-to-date information is now available.

Charities wanting to update information should select 'Manage other charity details' and an icon for 'Changing your charity's program' on their portal.

For the first time, new charity register search features allow you to look up the kind of charity program you would like to support, in your local area or your preferred location anywhere in Australia. Donors, philanthropists, grant-makers and volunteers may use the register to find a cause close to their heart, while charities can use it to connect with each other.

## Health Check aims to Improve Boards

A new online health check aims to improve the boards of charitable organisations.

Developed and launched by Tanarra Philanthropic Advisors, *The Board Health Check* aims to help boards improve their effectiveness, boost performance, and focus better on their core purposes.

Believed to be the first resource of its kind in Australia, the 'check' contains information specific to charity boards. Tanarra Philanthropic Advisors is a pro bono enterprise of the Tanarra alternative-asset investment group.

The 'check' may be used by Australian charities and not-for-profits, takes around 15 minutes to complete, and will help organisations uncover their key strengths, deficiencies, and potential issues.

The Governance Institute's general manager of membership and engagement Leon Cox said the tool would allow charities to focus better on their core purposes.

'To have a complimentary tool available to help charities govern their own entities means more time and resources can be directed into their own purpose and by extension better outcomes for society,' Mr Cox said.

To find out more go to <https://www.boardhealthcheck.org>.

# Know how to campaign and lobby legally

Advocacy and campaigning are important to the work of many of Australia's registered charities.

Not only are they legitimate and effective ways of furthering charitable purposes, but charities' ability to advocate and campaign remains an important part of Australian democracy.

With a federal election looming, it is important that charities and their responsible people ensure that any advocacy or campaigning complies with ACNC guidelines and does not threaten the charity's registration.

The ACNC has written to at least one charity over material it was distributing that was likely to be construed as opposing a political candidate and party.

Charities are allowed to engage in advocacy or campaigning if these efforts:

- Further their charitable purpose – what they are set up to achieve – and,
- Are allowed under their governing document – for example, their constitutions and rules.

Any advocacy or campaigning charities conduct must not:

- Promote or oppose a political party or a candidate for political office
- Engage in or promote activities that are unlawful, or
- Engage in or promote activities that are contrary to public policy.

Charities that make these errors risk losing their ACNC registration.

A charity may advocate for or against a change to a law, make a submission to a public consultation or inquiry, and produce material comparing the policies of political parties.

But in doing any of these things, charities must ensure that they are furthering their charitable purposes. Any advocacy must be permitted under a charity's governing document and should not risk behaviour that constitutes a disqualifying political purpose.

Charities should also be conscious of how campaigning might affect their reputations. This is especially true in an election year, where there is an increased risk that the public could see it as promoting or opposing a particular political party or candidate.

Charities need to be aware of their responsibilities to all regulators whenever they undertake advocacy and campaigning – especially political campaigning.

## AEC Rules on Charities' Campaign

In addition to ACNC rules, charities and their responsible people should be familiar with obligations they might have to the Australian Electoral Commission if they spend money on campaigning or undertaking political advocacy.

Organisations, including charities, that spend money on campaigning or advocating on what are known as 'electoral matters' – communicating on issues with the dominant purpose of influencing how people might vote at the next election – might incur 'electoral expenditure'.

Depending on the level of electoral expenditure, an organisation will be classed as either:

- A 'third party', and need to comply with certain obligations, including submitting an annual return to the AEC, or
- A 'significant third party', and have to comply with more stringent obligations, including a formal AEC registration.

The expenditure threshold to be classed as a third party in 2021-22 is \$14,000.

The threshold for a significant third party recently changed to \$250,000 over a single financial year. The need to register as a significant third party also applies if an organisation's electoral expenditure exceeds \$250,000 in any of the previous three financial years.

Since July, registered charities that have reported political donations and electoral expenditure to the AEC have seen their ACNC charity-register listing updated to include links to the AEC's transparency register.

Charities that comply with ACNC rules on advocacy and campaigning might still need to meet other regulators' requirements.

Both the AEC and ACNC have useful guidance to help charities understand their advocacy obligations.



## AAT upholds Angel Loop's Barring

The Administrative Appeals Tribunal has upheld an ACNC decision to bar Angel Loop Ltd from charity status.

Angel Loop Ltd aimed to connect investors in start-ups with entrepreneurs and inventors. It applied to the ACNC for registration as a charity, contending that it promoted a culture of innovation and entrepreneurship.

The commission refused the application because the applicant had an 'independent, non-charitable purpose of facilitating private business relationships for the primary benefit of entrepreneurs and "angel" investors'.

Angel Loop Ltd appealed the ACNC's decision but the tribunal upheld it.

In the *Commissioner of Taxation v Triton Foundation* (2005), the federal court accepted that the promotion of a culture of innovation and entrepreneurship was capable of being a charitable purpose as an aspect of the promotion of industry or commerce.

The AAT distinguished between Triton – where 'all of the help was given to the inventor' – and Angel Loop, where 'help is not only given to the inventor'.

The tribunal found that Angel Loop's purpose was to bring about a commercial deal between the investor and inventor. While 'worthy', the purpose was not incidental or ancillary to a charitable one, meaning Angel Loop was unable to be registered as a charity.

ACNC commissioner Dr Gary Johns said: 'The Tribunal's comments about purposes that are incidental or ancillary to a charity's main purpose will continue to guide our assessments of charities' ongoing entitlement to registration, including compliance with ACNC governance standards.'

## So you want to become a charity?

Each year thousands of new charities are established but more than half of applicants fail official registration.

Last financial year, the ACNC processed 5886 registration applications, registering 2659 new charities. Almost 2000 applications were incomplete, 862 were withdrawn, and 151 were refused as ineligible.

Before starting a charity, many things should be considered. Demonstrating what your organisation aims to achieve, its charitable purpose, is critical.

Your organisation's purpose is what it has been set up to achieve – its mission. To be eligible to be registered as a charity it must have a charitable purpose that benefits the public.

The ACNC registers thousands of new charities every year, but applicants make common errors. Some tips follow to help your organisation demonstrate its mission.

Make sure your organisation:

- Is clear about the activities that support its charitable purpose
- Has a governing document such as a constitution that states its purpose
- Has a current ABN

- Has an ABN that is correct for its legal structure, for example, a trust, incorporated association or co-operative. Individuals, sole traders, government entities and partnerships cannot be registered charities
- Provides the name and details of its responsible people, such as the CEO, board members or trustees, and
- Complies with the external conduct standards if it operates overseas.

If also applying to be registered as a charity sub-type (such as promoting human rights or advancing the natural environment) make sure your organisation's governing document names the sub-type.

If applying for the sub-types Public Benevolent Institution and Health Promotion Charity and your organisation was only recently established, develop a strategic plan that sets out its activities for 12 months.

## AAT backs ACNC Decision

The Administrative Appeals Tribunal has upheld the ACNC's decision to refuse to register three companies as charities.

The tribunal found that the companies were established to duplicate the fundraising activities of the Cancer and Bowel Research Association Inc and the trusts it administers. Funds raised by CBRA Inc would be required to repay a debt to the Australian Taxation Office.

It found each applicant was formed to seek to terminate or substantially reduce CBRA Inc's liability to the ATO by taking over its functions and donor lists, leaving it with insufficient assets to pay the liability.

The three applicants were Cancer & Bowel Research Australia Ltd, Breast Cancer Australia Ltd, and Kids Cancer Research Australia Ltd. Each applicant was incorporated in 2017 as a company limited by guarantee. It was intended that the applicants would raise funds in respect of different types of cancer.

The applicants were refused registration on the basis that they each had a purpose, among others, of providing private benefits to people involved in their operations. The ACNC commissioner upheld the decision on objection.

The tribunal found that in deciding whether each applicant was eligible for registration as a charity, the ACNC commissioner was obliged to consider the circumstances in which each applicant was formed, not just their recorded purposes. It found that the circumstances indicated the applicants did not have solely charitable purposes (or ancillary purposes) as required under the definition of 'charity' in the *Charities Act* (2013).

It commented that the purpose of avoiding or limiting the tax liability of CBRA Inc may well be a disqualifying purpose, as defined in the Act, for being contrary to public policy.

ACNC commissioner Gary Johns said the tribunal's finding that the ACNC should consider any relevant circumstances in which the applicants were incorporated supports the ACNC's approach to determining an organisation's purpose.

'Apart from an organisation's governing documents, we look at other types of evidence, including [an] organisation's activities and reports, to determine whether [it] has a charitable purpose,' Dr Johns said.

# Fifteen Charities Revoked

Following compliance investigations, the ACNC revoked in 2021 the registrations of 15 charities.

The organisations were found to have breached the ACNC Act or governance standards.

ACNC commissioner Gary Johns said most of Australia's 60,000 registered charities were well-run and complied with their obligations, but a few failed at good governance and following rules.

'In those cases, our first step is to educate the charity to help it meet requirements, and this results in a positive outcome in most cases,' said Dr Johns.

'However, if there is a serious breach or the organisation does not cooperate with an investigation we will revoke its registration — the strongest action we can take. That means it no longer has access to commonwealth charity tax concessions, including income-tax exemption, and deductible-gift-recipient status,' he said.

Last year, the ACNC received 2034 concerns about charities and finalised 87 investigations. The most common concerns were about perceived mismanagement of funds and individuals obtaining private benefits from charities.

## Governance standard 3 unaltered

Federal senators have blocked proposed laws aimed at cracking down on activist groups. The proposals would have given the ACNC the power to deregister charities for minor offences, even when it believed they were merely likely to occur.

Governance standard 3 remains unchanged and still applies. It requires charities not to act in a way that, under commonwealth, state and territory laws, could be an indictable offence (a serious crime that is generally tried by a judge and a jury), or a breach of law that has a civil penalty of 60 units (\$12,600) or more.

The ACNC has identified some simple steps to reduce the risk of a charity's breaching the standard. In most cases, common sense and good practice will reduce risk. Charities should:

- Be familiar with the main areas of regulation
- Protect their finances and assets, and
- Ensure legal obligations are met.

# Financial reporting insights

## Charity Thresholds Change

Thresholds for determining a charity's size are changing, and thousands of charities will see their reporting obligations reduced.

About 2500 charities will no longer be required to produce financial reports; only an annual information statement will be needed. About 2700 charities will be allowed to have their financial report reviewed instead of audited.

When charities complete their 2022 annual statements – which, for many, will cover a reporting period between 1 July 2021 and 30 June – the thresholds will change.

The table below compares old and new revenue thresholds for small, medium, and large charities.

Size of charity	Current revenue thresholds for the 2021 AIS	Revenue thresholds from 1 July 2022	Audit/review requirement
Small	Less than \$250,000	Less than \$500,000	Must complete only an AIS online
Medium	\$250,000 - \$999,999	\$500,000 - \$2,999,999	Financial report can be either reviewed or audited
Large	\$1 million or more	\$3 million or more	Financial report must be audited

While thresholds have changed, the following should also be considered:

- Check governing documents to see if an audit is required. If an audit is required, then the changes to thresholds have no effect unless governance documents are amended
- If a review has become an option, consider whether this lower level of assurance provided by your auditor meets your needs and those of report users, and
- If a review is no longer required, consider how the lack of any firm assurance will affect your compliance obligations with governance standards and relationships with external stakeholders.

## Proposed Amendments to NFP Revenue Standards

The Australian Accounting Standards Board's exposure draft 318 is proposing amendments to illustrative examples for income of not-for-profit entities in AASB 15 *Revenue from Contracts with Customers* and AASB 1058 *Income of Not-for-Profit Entities*.

It proposes amendments to:

- AASB 15 – to add illustrative example 7A to clarify accounting for upfront fees, and
- AASB 1058 – to amend illustrative example 3 to clarify the analysis of recognition of a financial liability.

The amendments are proposed to apply to annual periods beginning on or after 1 July.

A basis for conclusions documents the AASB's proposed intention to retain the accounting policy choice in AASB 16 *Leases* for not-for-profit private-sector lessees to elect to measure initially a class of concessionary right-of-use assets at cost or fair-value.

## New reporting guidelines announced

The federal government and the Fundraising Institute Australia have announced new guidelines for the reporting of charitable fundraising during natural disasters.

Charities can sometimes face intense public scrutiny during natural disasters about the timeliness of donation distributions. Frequent and transparent communication from charities involved in response efforts is key to assuring the public that their donations are funding critical assistance.

Minister for Housing Michael Sukkar said the government had partnered the FIA to deliver a way of improving transparency.

'These guidelines are intended to improve transparency obligations for charities and give the public a better understanding of how their donations are being put to work,' said Mr Sukkar.

'Good communication by charities supports public trust and understanding of the recovery process.'

FIA CEO Katherine Raskob said a new practice note established a set of minimum conduct standards that charities may follow and expand upon to achieve best-practice and reporting during natural disasters.

The standards include requirements to publish disaster-appeal intents and progress reports on the use of donations in response and recovery efforts.

To maximise coverage and benefit to the sector, charities without FIA membership will be able to volunteer as 'practice note signatories' at no cost and without the commitment to comply with the full FIA code. FIA Members will adhere to the guidance in the practice note as part of their FIA membership which is a commitment to ethical best-practice fundraising.

The practice note is published on the FIA website, along with accompanying FAQs.

# Deductible Gift Recipients

## Treasury seeks feedback on new DGR category

Federal Treasury is seeking feedback from stakeholders on implementing a new DGR category about pastoral-care services.

The government announced in the 2021-22 mid-year economic outlook that it would establish a DGR category for funds supporting pastoral-care services for students in Australian primary and secondary schools.

The proposed new category will be implemented through amendments to the *Income Tax Assessment Act 1997*. Subdivision 30-B of the act outlines various DGR categories. Each has its own set of eligibility criteria aimed broadly at delivering public benefits.

A Treasury consultation paper seeks stakeholder feedback and views on the implementation of the new category, which will be used to draft legislative amendment.

# Public Ancillary Funds

## PAF Guidelines Amended

The *Public Ancillary Fund Guidelines 2022* came into effect on 25 February. They set the minimum standards for the governance and conduct of a public ancillary fund and its trustee.

An ancillary fund is a trust set up and maintained solely for the purpose of providing money, property, and benefits to deductible-gift-recipients. Although an ancillary fund is also a DGR, it does not undertake charitable work, acting as an intermediary between donors and DGRs that undertake such work.

Ancillary funds encourage philanthropy by allowing donors to receive an upfront tax deduction for gifts that are distributed over time to other DGRs.

The 2022 guidelines mirror their 2011 counterparts, and no changes were made to requirements. Language has been simplified for ease of comprehension and navigation to align with the *Private Ancillary Fund Guidelines 2019*.

To view the amended guidelines go to <https://www.legislation.gov.au/Details/F2022L00184>.

## Moves to reduce red tape

The federal government is consulting on ways to reduce red tape for Australia's philanthropers.

To ensure that ancillary funds meet their philanthropic goals, guidelines made under the *Taxation Administration Act 1953* require funds to (among other things) make a minimum distribution each financial year to type 1 DGRs that undertake charitable work and restrict the transfer of assets among ancillary funds.

The government is consulting on options for increased flexibility in ancillary-funds operations, particularly by improving their ability to support large projects or transfer assets to other ancillary funds that are better placed to support on-the-ground charities.

Ancillary funds play a significant role in Australian philanthropy by providing a bridge between donors and the thousands of deductible-gift recipients that contribute to Australia's wellbeing through their work in welfare, education, research, arts, health, volunteer emergency services, and the environment.

In 2018-19, ancillary funds held more than \$10 billion in net assets and provided benefits of \$9.6 million to other deductible-gift recipients.

The government welcomes views on policy options and other suggestions on how the operation of ancillary funds could be improved.

The discussion paper *Distribution guidelines for ancillary funds – Consultation on possible policy changes* is available on the Treasury website. Submissions are sought by 6 May.

## Governments

### Reports wages underpayment released

A senate committee released on 30 March a 182-page report on what it calls 'shameful' underpayment.

*Systemic, Sustained and Shameful Unlawful Underpayment of Employees' Remuneration* makes 19 recommendations, including to criminalise Australian wage theft.

Key recommendations are:

- Prioritise amendments to the *Fair Work Act 2009* to criminalise wage theft in Australia
- Amend the act to increase civil penalties for wage theft, make it an offence for employers to advertise employment with a rate of pay less than the national minimum wage, and list parties and individuals that take part in wage theft, including those that knowingly or recklessly create a wage-theft environment (including franchisors, advisors, head contractors and other third-party participants in supply chains), and
- Improve protection for employees who engage in lawful activity to prevent wage theft, including joining a union, pursuing underpayments through established processes, publicly speaking out against poor workplace practices, exercising workplace rights, and engaging in industrial activity.

The committee also recommended that the Australian Securities & Investments Commission improve enforcement action and enhance director disqualifications from managing a company where companies use superannuation guarantee payments and wages owed to trade while otherwise insolvent.



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