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Governance

AICD updates governance principles

At a time when governance is in the spotlight, the Australian Institute of Company Directors has updated its *Not-for-profit Governance Principles*.

The Royal Commission into Aged Care Quality and Safety and reports highlighting governance concerns within the community and NFPs, the

second edition of the *Principles* provides a practical framework to help NFPs –big and small – understand and achieve good governance.

It's a benchmark resource for NFP leaders.

The document has three components: 10 individual principles, supporting practices, and guidance.

Topic	Principle
Purpose and strategy	The organisation has a clear purpose and a strategy, which aligns its activities to its purpose
Roles and responsibilities	There is clarity about the roles, responsibilities and relationships of the board
Board composition	The board's structure and composition enable it to fulfil its role effectively
Professional behaviour	To comply with relevant laws and regulations and avoid any conduct that the member knows or should know might discredit the profession.
Board effectiveness	The board is run effectively, and its performance is periodically evaluated
Risk management	Board decision-making is informed by an understanding of risk and how it is managed
Performance	The organisation uses its resources appropriately and evaluates its performance
Accountability and transparency	The board demonstrates accountability by providing information to stakeholders about the organisation and its performance
Stakeholder engagement	There is meaningful engagement of stakeholders and their interests are understood and considered by the board
Conduct and compliance	The expectations of behaviour for the people involved in the organisation are clear and understood
Culture	The board models and works to instil a culture that supports the organisation's purpose and strategy

AICD managing director and CEO Angus Armour said good governance of NFP organisations had never been more important. 'Australians expect NFPs to be governed to the highest of standards, and the way they are run is increasingly being scrutinised,' he said.

The *Principles* are primarily for directors and executives but will be valuable to others involved in NFP governance such as managers, staff and volunteers. The document complements the Australian Charities and Not-for-profits Commission's *Governance Standards* and is intended to be applied voluntarily.

The revised *Principles* provide a framework for NFPs and charities to consider good governance practices, including the board's roles and responsibilities, managing conflicts of interest, organisational culture, stakeholder engagement and risk management.

New supporting practices provide greater clarity for NFP directors on what good governance looks like to help support and strengthen governance practice.

The AICD encourages users to conduct regular assessments of their performance and to report them to members and stakeholders, preferably on an annual basis. The institute suggests that users adopt an "if not, why not" approach to reporting. This means that, where an organisation is failing to meet the *Principles'* standards, it outlines to stakeholders why this is so.

External-conduct standards likely to begin in August

In November 2018, the federal government introduced proposed external-conduct standards for registered charities, intending to provide a minimum level of assurance that charities have

appropriate governance and behaviour when operating overseas.

The standards cover key issues for charities operating overseas, including:

- Activities and control of resources (including funds);
- Annual reviews of overseas activities and record-keeping;
- Anti-fraud and anti-corruption; and
- Protection of vulnerable individuals.

Charities that operate overseas are encouraged to review the proposed standards and consider how they might affect their operations when they're likely to begin operating in August 2019.

The ACNC is developing guidance to support charities in meeting the proposed standards.

For more information, visit acnc.gov.au/ExternalConductStandards.

Legislation might affect charities

Towards the end of 2018, the federal parliament passed two pieces of legislation concerning foreign donations that might affect several charities.

The *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* came into effect on 1 January 2019 and bans donations of more than \$100 from foreign governments and state-owned enterprises to political parties, individual candidates and significant political campaigners.

Read more about the changes, including how they affect charities, on the Australian Electoral Commission website at www.aec.gov.au/Parties_and_Representatives/.

The Foreign Influence Transparency Scheme came into effect on 10 December 2018. Its purpose is to show the public and government decision-makers the nature, level and extent of foreign influence on Australia's government and political process.

Charities that undertake activities on behalf of a foreign principal may need to register for the scheme.

A foreign principal may include a foreign government or government-related entity, a foreign political organisation or a foreign government-related individual.

More information at www.ag.gov.au/transparency.

Governance-concerns persist at Many Rivers

Registrar of Indigenous Corporations Selwyn Button has again placed Many Rivers Regional Housing Management Services under special administration.

The move was supported by the NSW Aboriginal Housing Office.

Many Rivers' main activity is to provide affordable housing for Aboriginal and Torres Strait Islander people throughout the Macleay Valley on the mid-north coast of New South Wales. The corporation had been placed under special administration from April to November last year and underwent significant transformation to address a range of governance concerns.

Mr Button has appointed Peter McQuoid of PDM Consultancy as special administrator until 10 May.

Strong governance and risk management rely on robust and effective working relationships among the groups within a corporation. Key stakeholders have raised concerns about Many Rivers' governance and stability.

'When corporations are recovering from a challenging experience or significant change it can take some time to stabilise governance and operations,' Mr Button said.

'This is one of the reasons my office continues to monitor corporations after a special administration ended. We are better placed to respond and provide support if the need arises.

'The provision of affordable housing for indigenous people across the Macleay Valley is an essential service for the local community. Without strong governance and sound decision-making [...] in local housing corporations there is a real risk that these services will be lost to local people.

This is why I have appointed a special administrator to ensure appropriate responses are put in place to rectify these issues.'

ACNC Activities

Concerns about charities increase

The ACNC has reported a 6 per cent increase in concerns about charities in 2017-18.

The 2018 edition of the commission's *Charity Compliance Report* found that more than 1800 concerns were raised about charities.

Key findings were:

- 1804 concerns were raised; up 6 per cent from 2017;
- Biggest type of issue encountered by the compliance team was private benefit (26 per cent);
- 20 per cent of concerns assessed by the team were identified by internal processes – up from 8 per cent in 2017

- 90 investigations were finalised – up from 82 in 2017;
- 16 charities had their registrations revoked;
- 18 penalty notices were issued;
- 24 charities entered into a compliance agreement with the ACNC;
- Two charities entered into an enforceable undertaking;
- The ACNC issued regulatory advice 71 times;
- 113 double-defaulter charities had their registrations revoked for failure to submit two annual information statements; and
- Charities subject to compliance cases controlled over \$11.9 billion of charitable assets.

ACNC Commissioner Gary Johns noted that charity concerns have increased each year since the ACNC was established in late 2012.

'We have seen concerns grow from the mid-600s in 2013-14 to almost three times that in 2018,' Dr Johns said.

'The annual increase [...] likely mirrors the community's growing awareness of the ACNC as the national charity regulator. This is supported by the fact that most of these concerns – 57 per cent – were raised by individuals. Individuals being past or current volunteers, employees, beneficiaries, and members of the public.'

Dr Johns said that a key theme of this year's report was identifying and managing risk.

'The key is identifying and managing risk appropriately through strong governance policies and procedures. In this year's report we shared a real-life case study where a charity identified fraud and took firm action. The charity not only addressed

the matter – they also reduced the risk of fraud occurring again.

'Guide Dogs Victoria have courageously shared their story, and in doing so have shown that even the largest, most iconic charities face risk, both internal and external.'

In 2019, the ACNC will focus on publishing practical guidance and tools to help charities mitigate risks and strengthen their governance.

How the ACNC approaches concerns about charities

The ACNC receives more than 150 concerns a month about the actions, activities and eligibility of Australia's registered charities.

Increased media coverage and a better understanding of the commission's role as national charity regulator has seen the number of concerns received from members of the public rise by 46 per cent between 2016-17 and 2017-18.

The most common concerns allege financial mismanagement, potential harm to beneficiaries, private benefit and fraudulent activity.

The ACNC has the power to investigate breaches of its Act and governance standards. The commission may decide whether a charity is entitled to registration, whether it meets requirements to keep records and provide accurate information, and whether charitable funds are being used for private benefits, among other things.

The commission does not have jurisdiction over fundraising, contracts, internal disputes, service standards or employment issues.

House of Hope loses charity status

The ACNC has revoked the charity status of the House of Hope Recovery Centre following an investigation into the organisation's activities and operations.

The centre was also known as the Illawarra Food Hub, The Hope Centre and Hope Centre Foodbarn.

Revocation of charity status removes the organisation's tax concessions, including deductible-gift-recipient status, income-tax exemption, fringe-benefits-tax rebates and goods-and-services-tax concessions.

The centre was registered as a charity by the Australian Taxation Office and transferred to the ACNC on 3 December 2012 – the day the ACNC was established. The organisation was registered to advance religion and as a public benevolent institution.

The revocation is reflected on the charity register. However, the ACNC is prevented from publishing the findings from investigations and the nature of the concerns due to secrecy provisions in its Act.

ACNC Commissioner Gary Johns said status revocation was reserved for the most serious cases.

'Concerns about charities come to light in [several] ways; through our own internal analysis, from the public, or in the media,' said Dr Johns.

Dr Johns said that each concern was taken seriously 'We receive more than 150 concerns every month and we take each seriously.'

Justice Empowerment Mission Inc had its charity status revoked on 23 January, losing its charity tax concessions.

ACNC releases online self-evaluation tool

The ACNC has released a new pdf file to allow charities to monitor their compliance with governance standards.

Charities fill in the pdf with the steps they are taking to meet their obligations. They are prompted to list policies and procedures they are following.

There is no obligation to fill in the file and send it to the commission.

The resource will help charities to identify issues that might prevent them from meeting their obligations. Answering 'no' to a question does not necessarily mean that a charity is failing to comply. But it could be a handy prompt to reconsider governance practices.

You can access the self-evaluation tool at www.acnc.gov.au/self-evaluation-charities.

ACNC updates fundraising guidance

The ACNC has updated its fundraising guidance, urging charities to remain transparent on administration costs and refrain from misleading the public on the use or destination of donations.

Read more at www.acnc.gov.au/tools/guides/working-fundraising-agencies and www.acnc.gov.au/for-public/understanding-charities/charities-and-fundraising.

Charities should do their homework before political campaigning

Campaigning and advocacy can be legitimate and effective in furthering a charity's purposes. There is an obvious link, for example, between a charity that advances education and government school-funding policies.

But with the federal election looming, it's time to remember that charities also have responsibilities.

Charities should not have a 'disqualifying' political purpose and they need to remain independent from party politics. A 'disqualifying' purpose means that an organisation will no longer be entitled to registration as a charity, which removes entitlement to Commonwealth charity tax concessions.

Ahead of the next federal election the ACNC published guidance in April 2016 to assist charities in deciding what advocacy and campaigning they may undertake and what should be avoided. Despite the help, the commission still regularly receive concerns about alleged political advocacy by charities.

Charities should review the guidance before getting involved in political discussions. You can read the ACNC's guide *Charities, Elections and Advocacy* at www.acnc.gov.au/tools/guides/charities-elections-and-advocacy.

Charities should also be aware that certain types of expenditure may need to be disclosed to the Australian Electoral Commission as required by the *Commonwealth Electoral Act 1918*. More information is available on the Australian Electoral Commission website at www.aec.gov.au.

2017 AIS data released

ACNC's analysis of 2017 Annual Information Statements and financial reports has been published on the commission's website.

The commission contacted 747 charities about identified errors. Corrections to financial data resulted in adjustments of:

- 51,484 full-time equivalent staff;

- \$20.7 billion in total revenue; and
- \$670 million in total assets.

The reporting team also reviewed more than 150 annual financial reports submitted by medium and large charities to ensure that they met reporting requirements. Where necessary, charities were contacted to ensure that material errors were corrected.

By publishing the findings, preparers and auditors are armed with information that should improve the accuracy of reporting in 2018 statements.

The commission has published guidance and a checklist to help charities complete and submit their 2018 Annual Information Statements. Read it at acnc.gov.au/2018AIS.

Most charities usually file their Annual Information Statements by 31 January. However, the Commissioner has exercised his discretion to extend the due date to 31 March, giving extra time to navigate the new charity portal.

Financial Reporting Insights

Applying standards

This year is big for NFPs that report in compliance with accounting standards.

The following complex accounting standards apply for annual reporting commencing on or after 1 January 2019. Year-enders on 31 December are first cabs off the rank. The standards to watch out for are:

- AASB 15 *Revenue from Contracts with Customers (NFP version)*;
- AASB 1058 *Income of Not-for-profit Entities*; and
- AASB 16 *Leases*.

The Australian Accounting Standards Board late last year issued amending standard AASB 2018-8 *Amendments to Australian Accounting Standards – Right-of-Use Assets of Not-for-profit Entities*, which affects leases.

AASB 2018-8 provides a *temporary* option for NFP lessees to elect to measure a class (or classes) of right-of-use assets arising under 'concessionary leases' at initial recognition, either:

- At cost, in accordance with AASB 16 *Leases* paragraphs 23–25, which incorporates the amount of the initial measurement of the lease liability; or
- At fair value (under AASB 13 *Fair Value Measurement*) in accordance with AASB 16 paragraph Aus25.1 (as amended).

There are important disclosure requirements where the 'cost' option is chosen.

This extra information helps financial-statements users to assess:

- An entity's dependence on leases that have significantly below-market terms and conditions principally to enable the entity to further its objectives; and
- The nature and terms of the leases, including lease payments, terms, a description of underlying assets and restrictions on the use of underlying assets specific to the entity.

The information must be provided individually for each material lease that has significantly below-market terms and conditions principally to enable the entity to further its objectives or in aggregate for leases involving right-of-use assets of a similar nature.

You will need to consider the level of detail necessary to satisfy the disclosure objective and how much emphasis to

place on each of the various requirements.

Remember to aggregate or disaggregate disclosures so that useful information is not obscured by either the inclusion of a large amount of insignificant detail or the aggregation of items that have substantially different characteristics.

As 30 June approaches, NFPs will apply AASB 9 *Financial Instruments* (classification, impairment and hedging) and the revised AASB 7 *Financial Instruments: Disclosures* for the first time. The expected credit-losses model will be particularly challenging.

Good news, though, as NFPs are relieved from extensive disclosures when the reduced-disclosure regime is applied.

NFPs preparing special-purpose financial statements that are lodged with regulators or otherwise made generally available will need to consider the application of the new and revised standards.

AASB staff post FAQs for NFPs

The AASB staff have addressed how NFP schools may work out which standard to apply to different types of upfront fees they charge.

The staff FAQs also show how NFPs may identify and recognise performance obligations under AASB 15 *Revenue from Contracts with Customers* and AASB 1058 *Income of Not-for-Profit Entities*.

The additions accompany the existing FAQs addressing the effective date and scope of new NFP income standards. Visit www.aasb.gov.au/admin/file/content102/c3/NFP_Staff_FAQs_03-19.pdf.

Fraud and NOCLAR

What good local government integrity frameworks looks like

A new 88-page research report shows how local governments in Victoria protect themselves against corruption.

Released by the Independent Broad-based Anti-Corruption Commission (IBAC), *Local government integrity frameworks review* identifies a sample of councils that have built solid anti-corruption frameworks, providing models for other councils.

A key objective of IBAC's review is to help councils review and strengthen their own integrity measures against corruption.

IBAC found that six councils had sound frameworks and good practice in several areas. The commission reported that improvements could be made in others.

Corruption risks were identified in procurement, cash-handling, conflicts of interest, gifts, benefits and hospitality, employment practices, and misuse of assets and resources.

IBAC CEO Alistair Maclean said that the review was undertaken to show councils what a good integrity framework might look like. IBAC would support councils in examining their approaches and identify opportunities to improve their systems and controls to identify and manage corruption risks.

'We recommend all Victorian councils use the findings from this important review to assess their own integrity frameworks and identify where they can improve,' Mr Maclean said.

'Corrupt conduct by public-sector employees, including council employees, adversely [affects] delivery of vital services and facilities. It wastes significant time and

public money, means there is unfairness in the opportunity to provide services to councils, and damages reputations and community trust.'

The review showed that councils could improve on the development and communication of a clear policy on conflicts of interest, a broader consideration of corruption risks associated with employment practices, and ensuring that suppliers understood the probity standards expected of them.

The IBAC review also found that councils could do more to encourage reporting of suspected corrupt conduct.

'It is critical that councils increase efforts to reassure employees they can be protected and that their report will be taken seriously,' Mr Maclean said.

IBAC's review sample included metropolitan, outer-metropolitan and regional councils. They were not identified.

The review was not an audit, the focus being on good practice and potential opportunities for improvement.

The full report and summary are available at www.ibac.gov.au.

Former Frankston City Council manager charged

IBAC has charged a former Frankston City Council manager with 79 charges, including obtaining property by deception, making false documents, using false documents, and misconduct in public office.

The commission has also charged an electrical supplier to the council with 78 similar offences.

The charges follow Operation Topi, an IBAC investigation into allegations of

improper procurement to obtain Frankston City Council funds.

The investigation began after a council tip-off.

Under mandatory notification requirements that came into effect in 2016, all heads of Victorian public-sector departments and agencies, including council CEOs, must by law notify IBAC of any matter that they suspect, on reasonable grounds, involves corrupt conduct.

Former NSW RSL president charged

Disgraced former New South Wales RSL president Don Rowe has been charged with fraud following a police investigation. The 70-year-old was accused of misusing his corporate credit card to cover personal expenses during his 11-year tenure. The matter will return to court on 21 June.

Ethics

Getting to know revised Fundamental Principles

The Accounting Professional and Ethical Standards Board has restructured considerably its *Code of Ethics for*

Professional Accountants (including Independence Standards).

The revision is 211 pages. The previous version had 133 pages.

Operative from 1 January next year, time is short to understand the changes and implement them.

The code sets out fundamental principles of ethics for members, reflecting the profession's recognition of its public-interest responsibility. The principles establish the standard of behaviour expected of a member of the accounting bodies whether in business or in public practice.

A member in business is employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not-for-profit sector, regulatory bodies and professional bodies, or a member contracted by such entities.

There are five fundamental principles. While they sound familiar, there have been subtle changes and more explicit identification of a member's responsibilities.

A member must comply with each of them. They are:

Principle	Explanation	Member's responsibilities
Integrity	Be straightforward and honest in all professional and business relationships	Not knowingly be associated with reports, returns, communications or other information where the member believes that the information: contains a materially false or misleading statement; contains statements or information provided recklessly; or omits or obscures required information where such omission or obscurity would be misleading

		When becoming aware of having been associated with information take steps to be disassociated from that information
Objectivity	Not to compromise professional or business judgements because of bias, conflict of interest or undue influence of others	Not undertake a professional activity if a circumstance or relationship unduly influences the member's professional judgement regarding that activity
Professional competence and due care	Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent professional activities, based on current technical and professional standards and relevant legislation; and Act diligently and in accordance with applicable technical and professional standards.	Take reasonable steps to ensure that those working in a professional capacity under the member's authority have appropriate training and supervision Where appropriate, make clients, the employing organisation, or other users of the member's professional services or activities, aware of the limitations inherent in the professional services or activities
Confidentiality	Respect the confidentiality of information acquired as a result of professional and business relationships	Be alert to the possibility of inadvertent disclosure, including in a social environment, and particularly to a close business associate or an immediate or a close family member Maintain confidentiality of information within the firm or employing organisation Maintain confidentiality of information disclosed by a prospective client or employing organisation Not disclose confidential information acquired as a result of professional and business relationships outside the firm or employing organisation without proper and

		<p>specific authority, unless there is a legal or professional duty or right to disclose</p> <p>Not use confidential information acquired as a result of professional and business relationships for the personal advantage of the member or for the advantage of a third party</p> <p>Not use or disclose any confidential information, either acquired or received as a result of a professional or business relationship, after that relationship has ended</p> <p>Take reasonable steps to ensure that personnel under the member's control, and individuals from whom advice and assistance are obtained, respect the member's duty of confidentiality.</p> <p>Continue to comply with the principle of confidentiality even after the end of the relationship between the member and a client or employing organisation. When changing employment or acquiring a new client, the member is entitled to use prior experience but shall not use or disclose any confidential information acquired or received as a result of a professional or business relationship</p>
Professional behaviour	Comply with relevant laws and regulations and avoid any conduct that the Member knows or should know might discredit the profession	<p>Shall not knowingly engage in any business, occupation or activity that impairs or might impair the integrity, objectivity or good reputation of the profession, and as a result would be incompatible with the fundamental principles.</p> <p>When undertaking marketing or promotional activities, a member shall not bring the profession into disrepute.</p> <p>Shall be honest and truthful and shall not make: exaggerated claims for the services offered by, or the qualifications or experience of, the member; or disparaging references or unsubstantiated comparisons to the work of others</p>

We will look in future editions at other elements of the code as they affect members in business.

Governments and ATO

Senate committee tables fundraising report

The senate select committee on charity fundraising has tabled an 89-page report.

Charity Fundraising in the 21st Century is divided into five chapters:

- Chapter 1 provides an overview of the conduct of the inquiry;
- Chapter 2 details previous inquiries and recent developments relevant to the inquiry's terms of reference;
- Chapter 3 outlines the current legislative and regulatory frameworks governing charity fundraising and not-for-profits at the state, territory and federal levels as well as bodies responsible for their oversight and enforcement;
- Chapter 4 highlights issues identified in the absence of a consistent nation-wide regulatory framework for charity fundraising; and
- Chapter 5 outlines the options for reform to fundraising regulation of charities and not-for-profits and sets out the committee's views and recommendations.

The committee heard that many charities failed to comply with relevant regulations and that non-compliance with various commonwealth and state regulations was both accidental and deliberate.

The committee made two recommendations to the Australian government:

- To provide urgently a public response to the recommendations made in the review panel's report *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review*; and
- To commit to working with state and territory governments and the NFP sector to develop a consistent national model for regulating NFP and charitable fundraising activities within two years.