

## 30 September 2020 NFP Compliance and Risks Content Provision Service

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## NFP Governance

### COVID-governance report released

The Australian Institute of Company Directors and the Governance Institute of Australia have released a new report on the impact of COVID-19 on board practices.

The report reveals insights into governance challenges in the current climate.

*Governance through a crisis: Learning from COVID-19* includes insights from interviews with senior directors, survey responses and feedback from roundtables with governance and risk professionals.

The research reveals that the pandemic has had a profound impact on how boards operate and what they focus on. It is hoped that the research will help to develop stronger organisational resilience and serve as a practical resource across sectors – from not-for-profits to ASX-listed companies.

Insights include:

- How boards have successfully adapted to virtual meetings, including AGMs;
- The need for agile decision-making in a crisis;
- The importance of contingency planning; and
- How technology can elevate stakeholder voices.

The report includes recommendations for directors and company secretaries as well as practical tips for working effectively in the virtual environment and through a crisis.

Download it at

<https://www.governanceinstitute.com.au/advocacy/thought-leadership/governance-through-a-crisis-september-2020/>.

### Court clarifies casual-employment rules

The Australian Securities & Investments Commission has issued an FAQ on accounting implications of clarified casual-employment rules.

ASIC urged companies to consider whether they should provide for additional employee entitlements (including annual leave, personal and carer's leave, compassionate leave, public-holiday pay, and redundancy payments) for past and present 'casual employees' who were employed in circumstances covered by the recent *WorkPac Pty Ltd v Rossato* [2020] FCAFC 84 decision.

The decision failed to allow an offset for any casual loading paid. While no provision would be required for 'casual employees' unaffected by it, a provision or contingent liability may be required for 'casual employees' employed in circumstances that were not clearly covered by it. Companies may wish to seek legal advice.

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

Download the report from [here](#).

### Uniting back-pays more than \$3.3m

The operator of the Uniting aged-care homes is back-paying employees more than \$3.3 million and has entered into an

enforceable undertaking with the Fair Work Ombudsman.

The Uniting Church in Australia Property Trust (NSW), a registered charity that runs more than 70 residential aged-care facilities as well as other community services under the Uniting brand in New South Wales and the ACT, reported that it had underpaid more than 9000 employees.

Uniting identified the underpayments when it conducted a review following employees' complaints. Many affected employees worked as front-line carers and community and disability-services workers. They were covered by several enterprise agreements.

The underpayments occurred as a result of errors made by Uniting in providing laundry, uniform and vehicle allowances. It also failed to provide shift workers an extra week of annual leave they were entitled to.

Uniting is back-paying 9561 workers a total of \$3.36 million, which includes interest, for underpayments that occurred between 2013 and 2019. Individual underpayments range from less than \$1 to more than \$11,000.

While Uniting has already back-paid the majority of workers, the enforceable undertaking required it to pay outstanding amounts by 15 August. It was obliged to make changes to ensure future compliance.

Fair Work Ombudsman Sandra Parker said that an enforceable undertaking was appropriate as the organisation had cooperated with the investigation.

'Uniting demonstrated a strong commitment to rectifying all underpayments owed to its workers,' said Ms Parker.

'The enforceable undertaking commits the aged-care operator to stringent measures to protect its employees. This includes engaging, at its own cost, an expert auditing firm to conduct an independent assessment of the outcomes of its rectification program and to audit its compliance with workplace laws over the next two years.

'This matter serves as a warning to all organisations that if you don't prioritise workplace compliance, you risk underpaying staff on a large scale and face not only a massive administrative exercise calculating underpayments but the cost of a significant back-payment bill. Any employers who need help meeting their lawful workplace obligations should contact us.'

Uniting must fund an independent 'hotline' for four months that employees may use to ask about entitlements, underpayments and related employment concerns. Uniting is also required to display public, workplace and online notices detailing its law breaches and apologise to workers.

### Minimum wage increased from 1 July

The FWO has reminded employers that the national minimum wage has increased to \$19.84 an hour (up from \$19.49) or \$753.80 a week (up from \$740.80).

The increase of 1.75 per cent followed an annual review; it applied from the first full pay period on or after 1 July.

Employees covered by awards also have base rates increased by 1.75 per cent. They are implemented as follows:

- Group-one awards such as for frontline health-care and social-assistance workers, teachers,

child carers and other essential services increased from 1 July;

- Group-two awards for construction workers and those in manufacturing and many other industries increase from 1 November; and
- Group-three awards for accommodation and food-service workers, those in arts and recreation services, aviation, retail and tourism increase from 1 February.

### JobKeeper payment extended

Legislation has extended JobKeeper by six months to 28 March.

The JobKeeper payment has provided cash-flow support to more than 900,000 businesses and income support to around 3.5 million workers.

A two-tiered payment was introduced from 28 September to better align with incomes of employees before COVID-19.

### Super-guarantee amnesty expires

The super-guarantee amnesty expired on 7 September.

It was a one-off opportunity that allowed employers to disclose and pay previously unpaid superannuation dating back to July 1992.

To take up the amnesty, businesses had to disclose payment irregularities to the Australian Taxation Office and either reimburse unpaid amounts in full with interest or put a payment plan in place to do so.

Payments made by 7 September were tax deductible.

Employers that failed to come forward during the amnesty and are found to

have underpaid employees will face significant financial penalties.

The economy-wide roll-out of Single Touch Payroll's real-time data reporting to the ATO means future underpayments are highly likely to be detected.

### DGRs to be registered as charities

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

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

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

*Deductible gift recipient reform – strengthening governance and integrity and reducing complexity* is an element of the government's 2017-18 Mid-Year Economic and Fiscal Outlook measure.

The move is being implemented through an amendment to the *Income Tax Assessment Act 1997*.

DGR status allows an entity to receive gifts of \$2 and more that donors are able to claim as income-tax deductions. The arrangement is intended to encourage philanthropy and provide support for the not-for-profit sector.

The draft bill, explanatory memorandum and FAQs can be downloaded from <https://treasury.gov.au/consultation/c2020-113633>.

Submissions are sought by 4 December and are to be sent to [dgr@treasury.gov.au](mailto:dgr@treasury.gov.au).



## Have you completed your annual review?

For not-for-profits that self-assess their eligibility for income-tax exemption, the end of the financial year is a good time to complete that task.

For DGRs, it's also a good time to review their endorsements, ensuring their eligibility.

The ATO has produced several guides and worksheets to help NFPs.

To view them, go to <https://www.ato.gov.au/Non-profit/Newsroom/General/Have-you-completed-your-annual-review/>.

## New guidance on reporting COVID-19 impacts

The Australian Institute of Company Directors, Chartered Accountants Australia and New Zealand and CPA Australia have joined to publish guidance on the disclosure and reporting of COVID-19 impacts.

*The Impacts of COVID-19 on annual report disclosures: a guide for directors and preparers*, recognises the unique set of challenges posed when describing in annual reports the impact of COVID-19.

The institute's CEO and managing director Angus Armour said that the guide was especially useful for charities and NFPs. '[It] specifically looks at the questions NFP and charities should be asking [...],' he said.

NFPs and charities need to consider peculiar effects of COVID-19, for example, its impact on their ability to conduct face-to-face fundraising.

The guide includes suggested questions that a director, responsible person or NFP office-holder might ask about such impacts.

It is also useful for many NFPs and charities that wrestle with assessing going concern (whether an entity can make enough money to stay afloat).

The guide provides a case study of a hypothetical charity assessing going concern, including its assumptions about future operations and determining whether the assumptions are material.

It notes that charities are not only dealing with fundraising issues but decreases in corporate and individual donations, reduced volunteer activities and problems completing government-funded projects.

It says that entities will need to form a view on the ways in which the pandemic can develop, including its transmission and effects on the wider community.

Entities have also been urged to consider providing details in reports of modelling they have performed on COVID-19 impacts.

Download the guidance from [here](#).

## New guide offers 'damn good' advice

A new guide for NFP boards and managers offers 'damn good' advice on creating COVID-19-safe workplaces when personnel return.

*Damn Good Advice on Creating a COVID-19 Safe Workplace* by the Institute of Community Directors Australia sets out the steps your organisation needs to take before bringing back staff, managers and volunteers to their usual workplaces.

Included are template checklists covering building modifications, policies and practices, events and meetings, dealing with the public, and incident procedures.

Download the guide from [here](#).

### **Uniform fundraising proposals gather pace**

The NSW government is working with other Australian states and territories (except the Northern Territory) and the Australian Charities and Not-For-Profits Commission to examine how to reduce regulatory burdens for charitable fundraisers.

A cross-border-recognition model is being considered. The proposed model would allow a charity registered with the ACNC to be automatically deemed as holding authority in all participating Australian states and territories.

This proposal is explained in the discussion paper *Proposed Cross-border recognition model for charitable fundraisers*.

Download the discussion paper from [here](#).

### **New factsheet outlines core internal audit principles**

The Institute of Internal Auditors in Australia has released *New factsheet – internal audit core principles*.

Ten core principles that internal auditors should demonstrate are:

- Integrity;
- Competence and due professional care;
- Objectivity and freedom from undue influence (independence);
- Alignment with strategies, objectives, and an organisation's risks;
- Appropriate positioning and adequate resourcing;

- Quality and continuous improvement;
- Effective communication;
- Risk-based assurance;
- Insightfulness, proactiveness and a future focus; and
- Promoting organisational improvement.

By designing and implementing standards that focus on the outcomes of conforming rather than solely on outputs, internal audits are able to demonstrate the principles.

Internal audits should be insightful, proactive, and future-focused; they should actually promote organisational improvement. Demonstrating the principles is not only about creating documents but also about understanding and meeting stakeholder expectations.

### **New risk-management queries**

In its '20 critical questions' series, the Institute of Internal Auditors in Australia has examined what directors should ask of risk management.

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

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

A 'killer question' is posed. 'How does management, audit or risk committee and board of directors clearly know the organisation has identified and is

effectively managing its risks in a timely way?’

### **Townsville disabled corporation to be wound up**

The Registrar of Indigenous Corporations Selwyn Button has announced the end of special administration of the Aboriginal & Torres Strait Islander Corporation for Disabled and Respite Care.

The decision follows a Queensland Supreme Court order on 24 July for the corporation's closure.

The organisation had provided respite care for aged and disabled Aboriginal and Torres Strait Islander people in Townsville and surrounds for more than 30 years.

It had been on a clear path to failure, its auditor alerting members to warning signs of poor management and inadequate board oversight.

The auditor was unable to express an opinion for three consecutive years because the corporation had insufficient records to support its financial transactions.

Mr Button reminded corporations and their members that ‘[auditing] is a way for members to assure themselves that financial management is up to standard.

‘They need to listen to their auditor and if concerns are raised then speak up and ask your board to explain. Directors are accountable to members, and members need to hold them to account.’

The registrar's 2019 examination of the corporation confirmed a perilous and spiralling financial position and poor management and governance. When special administration began in February, the corporation's debt exceeded \$1.1 million.

‘Unfortunately, the corporation's poor governance and management left no alternative but to wind [it] up,’ said Mr Button.

‘Despite every effort by the special administrators to renegotiate financial arrangements and reinstate a system of good governance, in the end there was no prospect of restoring the viability of the corporation, and the best interests of the community will be served by finding alternative organisations to deliver the corporation's services.’

## **Financial reporting insights**

### **Wage underpayment FAQs**

Wages underpayment has become a pressing issue in the Australian economy. Several large businesses have admitted to having (often inadvertently) underpaid staff.

The Australian Accounting Standards Board has released *Staff FAQs – Remuneration underpayments* to remind entities of the standards that might apply when accounting for underpayments.

Three questions posed and answered are:

- In what year should the payments be recorded?
- How do I determine whether any prior-year payments are material and require a restatement of the financial statements? and
- What disclosures are required?

### **AASB answers government-support intricacies**

Governments are supporting businesses significantly affected by the pandemic.



For many entities, accounting for it will not be something previously encountered.

The AASB has released *Staff FAQs – Accounting for Government Support* to remind entities of the various standards that may apply to for-profit and not-for-profit entities.

Twelve questions posed and answered are:

- Scope – is government support within the scope of AASB 120?
- Is the accounting different among government grants and other forms of government assistance?
- Government support meets the definition of a government grant. When do I recognise it?
- When and how does an entity recognise government grants in profit or loss?
- How to account for a grant if it becomes repayable?
- What disclosure is required for government support?
- Are any other disclosures required?
- Scope – which standards are relevant to government support?
- How should government support be accounted for?
- Presentation – can grant income be presented net against the related expense?
- What disclosure is required under AASB 1058 for government support? and
- What additional disclosures should be considered?

### **AASB releases staff FAQs on subsequent events**

The board has released nine pages of staff FAQs on the effects of COVID-related events after reporting periods.

*AASB Staff FAQs – Events after the reporting period during the COVID-19 pandemic* reminds entities of requirements in accounting standards for assessing them.

### **FAQ on NFPs' concessionary loans**

A new AASB staff FAQ focuses on accounting for concessionary loans, investigating the interaction between AASB 1058 *Income of Not-for-Profit Entities* and AASB 9 *Financial Instruments*.

The FAQ provides non-authoritative guidance on how a not-for-profit applies AASBs 1058 and 9 in accounting for concessionary loans, highlighting that the standards are applied together. The same accounting outcome should result, regardless of whether an entity appears to apply either AASB 9 or AASB 1058 first.

The FAQ includes a flowchart to set out accounting process to follow and a simple practical example to illustrate it.

It responds to feedback that AASB 1058 paragraph BC88 could cause confusion in applying relevant AASB 1058 and AASB 9 requirements.

### **New accounting standard on leases – factsheet updated**

CPA Australia has released an updated fact sheet on the revised – and operational – leases standard.

To download it go to this [link](#).

## ACNC

### Charity register to be improved

Charities have the opportunity to showcase their work to donors, supporters and the broader public with the release of 2020 annual-information statements.

Charities may provide the details of up to 10 programs, including each program's beneficiaries and the location in which it is delivered.

The information that a charity submits in its 2020 AIS will be displayed on its Charity Register listing.

Each charity will categorise its programs using a standard classification system. A charity and its programs will be much more accessible on the register when an enhanced search function is introduced in 2021.

Next year the aim is to implement enhanced geospatial register search functionality that will enable public users to search for charities by areas of service as well as program type.

Providing details about programs using a standard classification will help charities speak to volunteers and donors in a common language. In time, it will work to support donations, volunteering, fundraising and collaboration.

Critically, it will improve transparency and increase public trust and confidence in the sector.

### ACNC focuses on DGR reforms

Reviewing deductible-gift-recipient reforms is a notable focus of the ACNC's 2020-21 corporate plan.

The plan sets out priorities for 2020-24 and explains how the commission will meet its statutory obligations.

In 2020–21, the commission will begin reviews of 500 existing charities with DGR endorsement to assess their entitlement to registration and their subtypes.

In 2019–20, the ACNC developed governance and resources for the review and will monitor progress to ensure that reform objectives are met.

### Red tape further shortened

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

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

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

### Millions viewed ACNC website

The ACNC's website was viewed more than 12 million times in 2019-20.

Highlights from the commission's latest annual report were:

- There was a significant rise in activity on the website. There were more than 12 million-page views – six times the number of the previous year;
- There were 3.2 million register searches – more than three times the number of the previous year;
- 2568 new charities were registered;
- 2102 concerns about charities were registered, down from 2323

the previous year. Most were from the public and members of a charity. The most common were about perceived mismanagement of funds and individuals obtaining a private benefit from a charity; and

- 79 investigations were finalised, resulting in 18 charities having their registrations revoked. The figure compares with 12 revocations in the previous year from 100 investigations.

The ACNC's 2019-20 annual report is available at [here](#).

## Governments

### Fundraising reforms to aid Vic charities

The Victorian government has passed *Consumer Legislation Amendment Act 2019*, which made important changes from 31 August to the state's *Fundraising Act 1998*.

Entities already registered with the ACNC will no longer need to register as a fundraiser with Consumer Affairs Victoria (CAV). Instead, they will need only to notify CAV of their intention to fundraise and will become 'deemed registered fundraisers'.

The situation is similar for registered charities in South Australia.

A deemed registered fundraiser must notify CAV within 28 days if it contracts a commercial fundraiser to conduct an appeal. Penalties may be imposed for not complying with the provision.

The penalties bring matters within ACNC governance standard 3 *Compliance with Australian Laws* (refer <https://www.acnc.gov.au/for->

[charities/manage-your-charity/governance-hub/governance-standards/3-compliance-australian-laws](#)), which means failing to comply is a breach of both the law and the standard.

Charities that are Victorian incorporated associations no longer need to duplicate reporting to both CAV and ACNC. They need only report their fundraising activities in their annual information statements to the ACNC.

For non-ACNC entities in Victoria (for example, not-for-profit sporting clubs) existing registration continues and fundraising licences are required.

### Major fundraising reforms cut WA red tape

Major reforms are lifting the red-tape burden on Western Australian charities, reducing their administration costs and resulting in more money being available to charity recipients.

The changes to WA's *Charitable Collections Act* simplify application and reporting requirements while removing duplication of compliance.

Charity licences no longer have an expiry date, so they don't have to be renewed every three years as required previously. However, continuous licences remain valid only if charities comply with annual reporting and other obligations.

An updated memorandum of understanding between WA's Consumer Protection and the ACNC streamlines and reduces the regulatory burden on WA charities while allowing greater sharing of information and harmonisation between the agencies.

From the 2020 financial year, most WA charities that are registered with the

ACNC no longer need to submit annual financial statements to both agencies as the ACNC already shares the information. If annual revenue is less than \$250,000, the accounts do not need to be audited or reviewed.

To participate in this arrangement, eligible WA charities must provide their WA fundraising licence number when submitting their AIS to the ACNC.

Commissioner for Consumer Protection Lanie Chopping said: 'The less charities spend on compliance and administration costs; the more funds will be available for the charitable purpose.

'These reforms are a significant step forward in harmonising charity laws throughout Australia and reducing the regulatory burden on the sector, which deals with federal and various state and licensing agencies.

'The changes in the law won't change the high level of scrutiny of organisations that collect donations and we will continue to ensure that funds are used as donors intended, which is important for the confidence of the community as well as the reputation of the sector.'

### **ACNC welcomes WA associations reforms**

The ACNC has welcomed reforms that will further reduce red tape for charities in Western Australia.

Under the reforms, duplicated reporting requirements for incorporated associations in Western Australia will be removed. Associations will need to report to the ACNC only through their information statements. They will not need to submit a separate annual statement to Consumer Protection.

The arrangement applies from the 2020 financial year or reporting period. This means that charities will see the benefits of the arrangement from their 2020 AIS.

ACNC commissioner Gary Johns praised the reforms. He said: 'Removing the duplicated reporting requirements for incorporated associations will help to streamline reporting for charities, allowing them to focus on their beneficiaries.

'One of our main goals at the ACNC is to reduce the regulatory burden for charities by harmonising reporting.'

### **Queensland co-operatives legislation revised**

Queensland has adopted national co-operatives law, replacing counterpart legislation that had existed since 1997.

The move brings Queensland co-operatives law into line with other Australian states and territories, which have already adopted the CNL.

The CNL covers the establishment, registration and administration of co-operatives. States and territories remain responsible for administering co-operatives laws in their respective jurisdictions, but they apply a consistent framework.

Key Queensland CNL reforms include:

- Automatic mutual recognition of co-operatives by other states and territories resulting in lower costs and paperwork for co-operatives operating interstate;
- Simplification of financial-reporting and auditing requirements for small co-operatives; and
- Updating of directors' and officers' duties to contemporary

standards of corporate  
governance.

For further information visit  
<https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/cooperatives/new-laws>.