

Australian Charities and Not-For-Profits Commission

Regulatory Approach Statement



This document was last reviewed in December 2018.

Purpose

This statement sets out the regulatory approach of the Australian Charities and Not-for-profits Commission (ACNC). It explains to charities and other stakeholders how we regulate charities, and helps ACNC staff make appropriate and consistent decisions.

Overview

1. The Regulatory Approach Statement has three main sections. The document begins with an overview of the ACNC and its functions. This section anchors our regulatory approach within the broader picture of our overarching functions and role. The second section of the Statement sets out how we will regulate charities. The third section articulates our understanding of the sector and the values that underpin our regulatory approach.
2. This document uses many terms that have a particular meaning in ACNC documents. These are defined in the [ACNC Policy Framework](#).





Contents

Purpose	1
Overview	1
Contents	2
Section One: Our role	3
Objects	3
Scope	3
Functions	3
Section Two: How we exercise our functions and powers	6
Regulatory Principles	6
Regulatory approach: support and compliance	6
Monitoring compliance	7
Managing non-compliance	8
Section Three: The foundations of our regulatory approach	13
Understanding charities	13
Fairness	13
Accountability and transparency	14
Integrity	15
Respect	15
Review Process	16
Version control	16



Section One: Our role

Objects

3. The ACNC is the independent national regulator of charities. It is established by, and administers, the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) ('ACNC Act'). The objects of the ACNC Act are to:
 - maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector;
 - support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
 - promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

Scope

4. Although the objects of the ACNC Act refer to charities and not-for-profits, the ACNC currently only regulates registered charities. Charities can choose to register with the ACNC, and registration is free. Only registered charities can access Commonwealth charity tax concessions and benefits.

Functions

Registering Charities

5. The ACNC registers organisations as charities through a transparent application process, applying the ACNC Act and the definitions of 'charity' and 'charitable purpose' in the *Charities Act 2013* (Cth).

Maintaining the ACNC Charity Register

6. The ACNC maintains a free and searchable online public register of charities. The ACNC Charity Register contains information about charities' purposes, activities, financial information, Responsible Persons, and the people they work to benefit.
7. This valuable information helps donors, funders and the wider community support charities with trust and confidence. The ACNC works to add value to this data through conducting analysis and research, which is made publicly available.

The ACNC Charity Register can be found at acnc.gov.au/charity.

Report once, use often

8. The ACNC administers a 'report once, use often' reporting framework. The ACNC Charity Passport is part of this and is a system that enables authorised government agencies to access ACNC charity data through a formal information sharing process. This reduces the amount of information that charities must provide to different government agencies – that is, charities report once to a central regulator, and other



government agencies can then access this information as required (see *Figure 1: ACNC and data flow*).

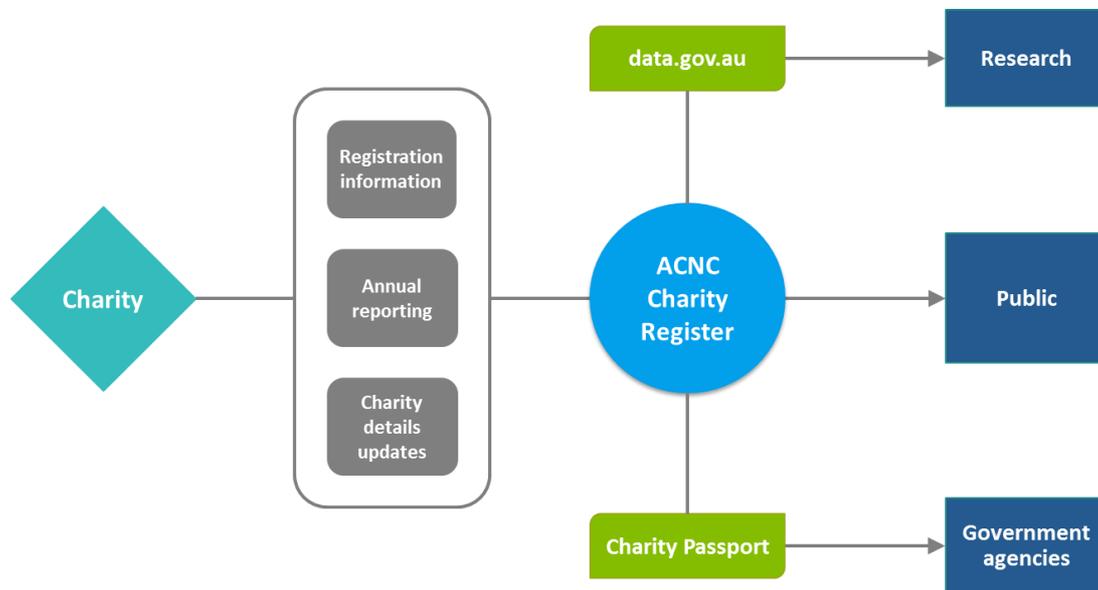


Figure 1: ACNC and data flow

Reducing unnecessary regulatory burden

9. We work with other Australian Government agencies to reduce unnecessary or duplicative administrative requirements imposed on the sector. This function includes ongoing work with state and territory governments to align regulatory and reporting obligations.¹

Providing guidance, education and advice

10. The ACNC provides guidance and education to help registered charities in understanding and complying with their obligations under the ACNC Act.
11. Charities can access guidance in a range of ways, such as through web-based and printed guidance, a telephone advice service, online educational tools, and, as needed, face-to-face information sessions.

¹ The ACNC reports annually to the government on the work undertaken to reduce duplicative administrative requirements, through the Regulator Performance Framework. This report can be accessed via the [ACNC website](#).



12. The ACNC also provides resources to help the public better understand the work of charities, and to improve the transparency and accountability of the sector.
13. One way we do this is through the [ACNC Tick of Charity Registration](#). This symbol provides reassurance to the public that the charity is transparent and accountable by highlighting its presence on the ACNC Charity Register.

Monitoring compliance and managing non-compliance

14. The ACNC monitors how registered charities comply with their obligations as set out by the ACNC Act.
15. The ACNC works across the whole of government to address risks that pose a threat to trust and confidence in the charity sector. We use tools and approaches to proactively identify trends and emerging risks in the sector.
16. When charities do not meet their obligations, we take appropriate action proportionate to the problem we seek to address.



Section Two: How we exercise our functions and powers

17. The ACNC uses its powers in accordance with the values outlined in Section Three of this document. We assess the risks and the evidence before us. In exercising our powers and functions, we consider the matters set out in section 15-10 of the ACNC Act, including the principles of regulatory necessity, reflecting risk, and proportionate regulation.

Regulatory Principles

Regulatory necessity

18. The ACNC only asks charities to report information that we need to enable us to assess compliance with the ACNC Act and Regulation.
19. The ACNC also works with other government agencies to reduce unnecessary regulatory requirements imposed on charities. In exercising our powers, we do not burden charities any more than is reasonably necessary in the circumstances.

Reflecting risk

20. The ACNC operates under an evidence and risk-based framework and uses appropriate compliance and enforcement measures to address non-compliance.
21. The ACNC is not resourced to investigate every regulatory concern that is brought to its attention. The ACNC targets its resources in those areas that present the greatest risk to public trust and confidence.

Proportionate regulation

22. ACNC regulatory actions are proportionate to the problems we seek to address.
23. This means that where charities have minor problems in complying with the ACNC Act or Regulation, we will seek to work with them to address the minor problem and get the charity back on track. This is consistent with our approach to provide guidance and education to help charities comply with their obligations.
24. The ACNC will act swiftly and firmly where vulnerable people or significant charity assets are at risk, where there is evidence of serious mismanagement or misappropriation, or if there is a serious or deliberate breach of the ACNC Act or ACNC Regulation.

Regulatory approach: support and compliance

25. The ACNC's regulatory approach is summarised in Figure 2 (The ACNC pyramid of support and compliance) shown on page 7.
26. Much of our work involves preventing problems by providing information, support and guidance to help charities stay on track. This is reflected in the pyramid's wide base encompassing educating and informing the charitable sector. Where possible, we work collaboratively with charities to address concerns.



27. The ACNC will not hesitate to use its powers when charities do not act lawfully and reasonably. In serious cases, the appropriate response may be near or at the top of pyramid, ie sanctions or revocation.



Figure 2: The ACNC pyramid of support and compliance

Monitoring compliance

28. The ACNC monitors compliance - and identifies non-compliance - with the ACNC Act and Regulation in the following ways:

- a. Assessing information provided by charities in their Annual Information Statements and financial reports.
- b. Assessing concerns received from the community and other government agencies.



- c. Data-matching and intelligence projects² across government agencies to identify areas of risk.
29. The ACNC works closely with the sector, including through formal professional and sector user groups. These forums can also provide valuable insights into areas of risk.

The [Commissioner's Policy Statement: Compliance and Enforcement](#) sets out the compliance and enforcement aspects of our regulatory approach in more detail.

Managing non-compliance

When we will act

30. There are three main situations where the ACNC may take compliance and enforcement action:
- when a charity does not meet its obligations under the ACNC Act to report to us, notify us of certain matters or keep proper records
 - when a charity does not meet minimum standards as set out in our Governance Standards and External Conduct Standards (if applicable)
 - when an organisation is not, or is no longer eligible to be registered as, a charity
31. Further information on when we will act is in the section [Prioritisation and response](#).

When we will not act

32. The ACNC does not act in response to all charity-related concerns. It is not our role to run charities.
33. We will not become involved in internal³ differences of opinion or employment disputes in charities. For example, we do not intervene where board members have a difference of opinion about a decision if no governance-related issues are raised.
34. The ACNC does not regulate the quality of services provided by charities, for example charities that provide health, education or aged care services, although there may be times when service quality is relevant to a related investigation, or to whether a charity meets registration requirements.
35. If we receive a concern about these matters, we will inform the concerned person about the relevant regulator to contact. We will work with other regulators when they investigate a registered charity or have broader concerns about the organisation's governance.

² Such projects operate within the parameters set by the ACNC Act, the *Privacy Act 1988* (Cth) and other relevant legislation.

³ See the ACNC [Commissioner's Policy Statement 2017/01: ACNC's approach to internal disputes within charities](#) for further information on this.



36. In some cases, limits to the ACNC's legal powers mean that we are not able to use all our regulatory options.⁴ The ACNC may refer these cases to other regulators with the aim of achieving a consistent approach to all registered charities.
37. There are also times where another regulator is already working to address the problem. For example, another agency may be investigating the misuse of charitable funds. In these cases, we will work in collaboration where appropriate.

Prioritisation and response

38. The ACNC uses a risk-based approach to allocate its compliance resources when addressing concerns about charities.
39. We evaluate concerns to determine if they are within our jurisdiction, credible and have serious consequences. If we deem a concern to be credible and serious, we will usually conduct a risk assessment to determine the appropriate action for the ACNC to take.

Level of response

40. The type of compliance and enforcement action the ACNC undertakes is determined by the kind of non-compliance we seek to address.
41. We consider several factors to determine the appropriate action, including the severity and persistence of the breach, the risk of harm to the sector and community, and the willingness of the charity to work with the ACNC to address the non-compliance.⁵ We also consider if it is appropriate to refer the matter to another regulator or agency that is better placed to act.
42. Our approach begins with an emphasis on education and advice aimed at helping charities meet their regulatory obligations. Some charities may need more help.
43. In some situations we will need to use our formal powers under the ACNC Act. When this occurs, we will usually give charities a chance to explain their actions and we will consider that explanation before using our formal powers.

Help to address non-compliance

44. We may help charities by providing **regulatory advice or information** on how to comply with their obligations. For example, we provide guidance on what charities need to do to meet their ACNC obligations, to practice good governance, and to protect themselves from fraud.
45. We may refer the charity to appropriate **educational material**. This includes a range of topic-specific videos, webinars and podcasts, as well as high quality text-based

⁴ The ACNC's enforcement powers are generally only available in relation to a 'federally regulated entity', or to address non-compliance with the External Conduct Standards. The term 'federally regulated entity' is defined in section 205-15 of the [ACNC Act](#), and the External Conduct Standards are prescribed under Division 50 of the ACNC Act.

⁵ Further details on our risk assessment process, including the criteria we use to assess risks, can be found in the [Compliance and Enforcement Policy](#).



guidance and educational material available on the ACNC website. Through our website we also offer links to other organisations that provide information for charities.

46. We may **agree with a charity on a course of action** to resolve the non-compliance within a reasonable timeframe. This is called a compliance agreement and is a voluntary undertaking between the charity and the ACNC aimed at ensuring the charity does not breach the ACNC Act or the ACNC Regulation.

Administrative actions

47. **Overdue statement:** We will publish a notice on the ACNC Charity Register where a statement or report required under the ACNC Act is more than six months overdue.
48. **Administrative penalties:** The ACNC Act provides that registered charities are liable for an administrative penalty if they make false or misleading statements, or if they fail to lodge documents on time. However, the ACNC Commissioner may choose to waive part or all of any administrative penalty.
49. A charity can ask for a review of any ACNC decision not to reduce a penalty – or to remove only part of a penalty – where the penalty is greater than a specified amount.⁶

Revocation

50. We may revoke a charity's registration on certain grounds – including if it is not entitled to registration, has not complied with the ACNC Act or Regulation, or is insolvent or in administration.⁷ For example, it would be appropriate to revoke the registration of an organisation established as a charity merely to launder money, or as a front for conducting serious criminal activity.
51. Revocation may also be appropriate where the charity has significantly and persistently failed to comply with ACNC Governance Standards, the ACNC External Conduct Standards or reporting obligations under the ACNC Act, particularly where other enforcement options are not available.
52. If a charity's registration is revoked, it loses its charitable status under Commonwealth law, including its access to Commonwealth tax concessions (and, where relevant, deductible gift recipient status). This revocation is published on our Register.
53. All ACNC decisions to revoke the registration of a charity can be reviewed or appealed.

Enforcement powers

54. The ACNC's enforcement powers are specified in Part 4-2 of the ACNC Act and only apply in certain circumstances.⁸

⁶ The amount is specified in S175-60(3) of the ACNC Act.

⁷ While we may revoke charity registration on these grounds, it does not necessarily follow that we **must** revoke if these conditions are present in a situation. Other enforcement options may be more appropriate.

⁸ See footnote 2.



- **Warning:** We may formally warn a charity not complying with its obligations or more likely than not to not comply in the future. A formal warning will not be issued if informal advice or education would suffice.
- **Direction:** We can direct a charity to either take action, or stop acting in a certain way, to ensure it complies with the law.

For example, we could direct a charity to amend a serious error in a financial report if it doesn't respond to our advice to do so.

- **Enforceable undertaking:** We can establish formal agreements with charities which direct them to take action in order to comply with the ACNC Act or Regulation. If the charity breaches that agreement, it can be enforced by a court.

For example, if a new or incoming charity board discovers that the charity has previously diverted funds for private benefit, we can reach an agreement where they will take specific action to address the issue.

- **Injunction:** We can ask a court to order a person to do – or not do – something to ensure they comply with the law. A court can also make these orders with the consent of the ACNC and the person or charity.
- **Suspension, removal and appointment of Responsible Persons:** In exceptional cases, we can suspend or remove a member of a charity's governing body if doing so addresses a registered charity's failure to comply with the ACNC Act, the Governance Standards, or the External Conduct Standards.

For example, we could suspend or remove a person who is responsible, in a serious and persistent way, for misdirecting charity funds. In this type of case our preference would be to provide evidence of misconduct to enable the charity to suspend or remove that person.

Therefore, we would generally use this power to remove or suspend a Responsible Person only where other members of the charity's governing body refuse to act, or are unable to act. In such cases, we may also appoint one or more persons to act in the place of the Responsible Person during the period of suspension, or until the role has been filled.

Note that that ACNC cannot suspend, remove or appoint a responsible person of a Basic Religious Charity.

55. Any decision to use our formal enforcement powers can be reviewed or appealed.

Publication of enforcement actions

56. The ACNC has strict secrecy provisions and the Act sets out the circumstances in which protected ACNC information can be disclosed. Broadly speaking, protected ACNC information is information we collect for the purposes of the ACNC Act, and includes information we obtain in the course of investigations. There are penalties for breaching secrecy provisions.



57. The ACNC will publish on the ACNC Charity Register details of each warning, direction, undertaking, injunction and suspension or removal of a Responsible Person. This will be published on the charity's page on the Register.
58. In some instances, a charity may permit the ACNC to release information in relation to an investigation where it is considered in the charity's and/or the public's interest.
59. Revocation of a charity's registration is shown on the Charity Register, but does not include a response from the charity. [The Compliance and Enforcement Policy](#) details our policy on publishing our enforcement actions.



Section Three: The foundations of our regulatory approach

60. The ACNC's regulatory approach reflects our five key values: **Fairness, Accountability, Independence, Integrity and Respect (FAIIR)**. Our regulatory approach is also strongly underpinned by our understanding of the charity sector.

Understanding charities

61. Charities exist to provide benefits for communities and the society more broadly. They contribute to society in a number of vital ways, including addressing disadvantage and strengthening the fabric of our communities and environment.
62. The public provides significant support to charities through donations of time, skills and money. The ACNC recognises that charities' purposes, activities, needs and funding sources will alter over time as charities reflect and shape changes in society.
63. We know that charities want to devote their time, efforts and resources to their mission rather than on meeting regulatory requirements. We also understand that charities pursue diverse goals in different ways. Their goals, activities, sizes, legal structures, and those they help are different, and result in varying needs and challenges.
64. Charities and their people have diverse beliefs and values, and reflect communities diverse in culture, language and belief.

Charities enjoy, and rely upon, the trust and confidence of the public. This trust is essential in attracting and maintaining funding, volunteers, and staff. The ACNC believes that transparency and accountability promotes that trust. We also recognise that the misconduct of a few can endanger confidence in others, and we will act swiftly and firmly where necessary to protect trust in the sector.

Values

Fairness

Presumption of honesty

65. The ACNC understands that most people involved in charities are honest, act in good faith and try to do the right thing. If mistakes are made, they are usually honest mistakes, or due to a lack of knowledge, expertise or capacity.
66. When the ACNC considers how to exercise its regulatory functions, one of the things we look at is whether there was an intention to do the wrong thing and whether any of those responsible for the charity (such as committee members, directors, or trustees) knew about, or participated in, improper conduct.



67. We consider the extent to which the charity is co-operating with us as well as the willingness of those responsible to try and remedy the problem. However, the ACNC will take firm action to address serious non-compliance.

Providing support

68. The ACNC provides information and education to help charities understand and meet their obligations, and to help organisations wishing to register as charities understand our registration requirements. This support is timely, accessible to different audiences and provided through a variety of methods. We recognise the diversity of charities and draw upon the existing work and resources of relevant bodies.

Fair procedures

69. The ACNC applies principles of procedural fairness.

70. Before we make a decision, we generally contact the charity to clarify matters or raise our concerns.

71. We provide the charity with a reasonable opportunity to address our concerns, taking into consideration the charity's capacity to respond. We give written reasons for our decisions and tell charities how they can challenge our decisions.

72. In exceptional cases we may choose not to contact a charity before taking action, usually where doing so might jeopardise our investigation, or put a person or assets at risk.

73. For example, we may not contact a Responsible Person first if we become aware that they are about to divert significant assets from the charity for personal benefit. In such cases, however, the ACNC contacts the charity or affected person after taking action and gives them an opportunity to explain and address our concerns.

Proportionality and consistency

74. The ACNC takes appropriate and proportionate action to address an issue. We consider a wide range of factors in evaluating how serious an issue is, and the appropriate action to address it.

75. For serious cases, the appropriate action is likely to be a strong one – for example, the only way to protect public trust and confidence in the case of an organisation using a charity to break the law is to revoke its registration.

76. The ACNC makes decisions according to published policies and procedures. This ensures consistency so that charities and the public understand what to expect.

Accountability and transparency

77. The ACNC is accountable for its processes and work. As far as our legislative constraints allow, we are transparent about our procedures, decisions and actions.

78. The ACNC is accountable through regular consultation and feedback, and through periodic meetings with sector and professional representatives, as well as with the ACNC Advisory Board. We have a [Complaints and Compliments Policy](#) which encourages people to provide feedback on our performance.



79. The ACNC Act stipulates that many of our decisions can be appealed to the Administrative Appeals Tribunal, and to the courts. We are also accountable to the Parliament, Commonwealth Ombudsman, Auditor-General and the Australian Information Commissioner.
80. The ACNC Annual Report is tabled in Parliament and published online. We also publish our strategic plan, policies and, where appropriate, procedures.
81. We communicate our policies, procedures, and decisions in a variety of ways. This includes through meetings and events, as well as on our website and via social media. We publish our service standards so charities know what they can expect from our services, and we report our performance against these standards. We use feedback to improve our services.
82. We are also accountable through the Australian Government Regulator Performance Framework, which includes yearly assessment against performance indicators.

The [ACNC Regulator Performance Framework](#) is published on our website.

Independence

83. The ACNC Commissioner is an independent statutory office holder. We have our own budget held in a statutory special account and we report annually to Parliament. We are governed by the ACNC Act and Regulation.
84. Within the ACNC, decisions are based on evidence, including information given by charities themselves. We impartially apply the ACNC Act, other laws and ACNC policies.
85. We have a published [conflict of interest policy](#) to manage staff members' apparent and actual conflicts of interest. We do not promote the services of particular charities to the public or in our work, although we may refer to freely available useful resources provided by charities and other sector bodies.

Integrity

86. The ACNC is committed to acting with integrity, adhering to Australian laws and the Australian Public Service's Code of Conduct and Values, as well as our organisational values.
87. The ACNC Act sets out when and how we may act. Our values and principles guide us in doing so and are embedded through our policies and procedures.
88. Our staff are critical to the ACNC's integrity. We support our staff to adhere to the highest ethical standards, and to engage openly and genuinely with charities and the public.

Respect

89. The ACNC's approach is grounded in respect for charities and those who work with them, and for them. We listen to and work with charities. We recognise the unique nature and diversity of charities, and respect their autonomy.



Engaging with charities

- 90. We have a [stakeholder engagement framework](#), which includes staging regular consultative forums. We work closely with peak bodies, advisors and other key stakeholders. We run education sessions, often delivered in partnership with peak bodies, to help charities comply with the ACNC Act.
- 91. We recognise the need to ensure diverse, innovative and accessible ways of reaching charities and those involved with them – particularly small and regional charities. We engage with charities using the web, social media, phone and face-to-face information sessions.

Respecting autonomy

- 92. We understand that charities are an important part of civil society, not part of government or the business sector. It is for charities to determine their own goals and strategies, and to decide how they should best fulfil them. It is also each individual charity's role to manage, administer and accept responsibility for governance.

Respecting capacity and accountability

- 93. In its work, the ACNC considers the available resources of charities and the level of administrative burden. We also consider the existing mechanisms that charities use to account to their diverse and multiple stakeholders. This includes those who benefit from their services, their members, staff, volunteers, funders and the public.
- 94. We recognise and encourage many charities' desire to improve their transparency and accountability. Many charities are also regulated by other government agencies or by funders, and we take this regulation into account when designing our processes and when deciding how we will address concerns about a charity.

Review Process

- 95. The ACNC's regulatory approach reflects the objects in the ACNC Act, our understanding of the charity sector in Australia, considerations of good regulatory practice, and feedback from the sector.
- 96. We will review this statement every three years to ensure it demonstrates best regulatory practice. We invite ongoing feedback on our regulatory approach.

Version control

Version	Date of effect	Brief summary of change
Version 1	17/04/2013	Original Regulatory Approach Statement.
Version 2	03/02/2015	Minor amendment to clarify processes for removing information from the Charity Register



Version 3	29/2/2016	Redrafting key sections to improve clarity, inclusion of regulatory principles, updating of terms
Version 4	20/12/2018	Restructured to place "How we will regulate" earlier in the document. Pyramid updated to include Compliance Agreements. Links provided to legislation and Policies, terminology clarified or adapted to plain English to aid comprehension