



CHARITY COMPLIANCE REPORT 2017

Protecting public trust and confidence
in Australia's charity sector



Australian Government



Australian
Charities and
Not-for-profits
Commission

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01

Foreword



Each month the Australian Charities and Not-for-profits Commission (ACNC) registers and publishes a list of new charities on our website. A new group of people set out on a path to pursue a charitable cause. Our role is to ensure that charities meet their obligations set out in the law. Unfortunately, the charity path does not work out for every organisation and a small number may wish to exploit the benefits that come with being a registered charity, which is why charity regulation is essential.

Charities hold a special place in Australian society. They deliver significant public value in a wide range of areas such as health, housing, development, emergency relief, education, and faith based services (to name a few). To support this valuable work registered charities are granted generous tax concessions. With this privilege, donors, government and the broader community expect that charitable funds will be applied toward charitable purposes.

Most charities do the right thing and take their responsibilities seriously, carefully using their resources and being accountable to donors, the community and beneficiaries. However, there are a small number of charities that do the wrong thing and abuse their position and privileges. There are also a number of charities that set out with good intentions but, due to poor governance or mismanagement, place charitable funds and assets at risk of misuse.

Poor governance continues to be the common theme to emerge from our investigations. Of the concerns assessed by our Compliance team, the most common issues related to poor financial controls, inadequate due-diligence of employees and partners and a failure by the charity's responsible persons to act in the best interests of the charity.

In instances of serious mismanagement and abuse the ACNC must and does act swiftly. The misuse of charitable assets or funds not only impacts on the charity involved, it diminishes the public's trust and confidence in the entire charity sector.

In 2017, the ACNC received 1,695 concerns about charities, which is an increase of more than 40 per cent on the previous year. The increase in concerns is in part due to the public's increased awareness of the ACNC and the important role we play in addressing non-compliance and regulating the sector.

The ACNC continues to increase its capabilities to proactively identify charities at greater risk of misuse and non-compliance. In 2017, the ACNC partnered with the Australian Transaction Reports and Analysis Centre (AUSTRAC), in collaboration with the Australian Taxation Office (ATO) and the Australian Criminal Intelligence Commission (ACIC), to conduct a national risk assessment identifying the potential for money laundering and terrorism financing in Australia's not-for-profit sector. The assessment is the most comprehensive analysis of Australian Government intelligence holdings and data sets in relation to Australia's not-for-profit sector.

We also strengthened our connection with the private sector, working closely with AUSTRAC's FINTEL Alliance, a world first public-private partnership that brings together 19 public and private sector organisations to combat money laundering and terrorism financing. Through the Alliance, we raised awareness of not-for-profit risks with Australia's banking sector as well as improving information exchange with partner organisations.

The use of ACNC data and the data of other agencies assists us to identify emerging risks or risks that may otherwise go unreported. It is an effective way to focus on our compliance priorities, tailor our compliance initiatives and allocate our limited resources to have the greatest regulatory impact. In 2018, we will continue to build our intelligence capabilities, and establish a dedicated outreach function to engage early with charities that may be at increased risk of misuse.

Where we can, we share compliance data and information we have collected about charities. The purpose of this is twofold. Firstly, it allows us to share the lessons that can be learned from our investigations and support charities to better understand and mitigate similar risks. Secondly, it increases the level of transparency in the work of the ACNC and the investigations we undertake. We believe that by sharing our data, we can help prevent charities from not only making genuine mistakes, but also deter those who have more sinister intentions.

Our secrecy and privacy provisions limit the information that can be publicly released. Currently, we are unable to publish information about the reasons why we decided to revoke a charity's registration. In our submission to the five-year review of the ACNC's legislation, we raised this as an issue we feel needs to be addressed.

We would like the ability to disclose information where it is in the public interest – for example, confirming if an investigation has commenced, disclosing action the ACNC took in relation to a registered charity, and publishing why we decided to revoke a charity's registration.

In this report, we have shared as much information as our secrecy and privacy provisions currently allow. We have included case studies which illustrate the types of investigations we undertake; however, it is important to note that these case studies are not based on individual charities, rather, they are a fictional amalgamation of the types of concerns we identify. As such, any likeness to real charities is coincidental.

In the future, we hope we can bring you real stories of not just the charities that do the wrong thing, but also success stories where the ACNC was able to help charities get back on track. Ultimately, we would like to see all charities succeed and fulfil the intentions they were set up to achieve.

Best wishes,



The Hon. Dr Gary Johns
Commissioner
Australian Charities and
Not-for-profits Commission



02

ACNC's role

The ACNC was established in December 2012 with the statutory objects 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.

The ACNC is the national regulator of charities. Every charity registered with the ACNC must meet certain obligations under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (ACNC Act) and the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) (ACNC Regulation). For an organisation to be registered with the ACNC it must satisfy the statutory definition of a charity in the *Charities Act 2013* (Cth) (the Charities Act).

The Australian charity sector is large and diverse. It delivers broad social benefits to the community through education, healthcare, social services, religious services and emergency relief. The total combined revenue of the charity sector is over \$142.8 billion¹ and Australians generously support the charity sector, with \$10.5 billion in donations or bequests².

The Australian public entrusts charities to manage funds appropriately and deliver on their charitable purposes. The ACNC regulates the sector for the benefit of the public and will intervene if charities are not meeting their obligations. The ACNC works closely with charities, peak bodies, and state and Commonwealth Government agencies to improve the governance of charities, investigate potential breaches and take enforcement action when necessary.

¹ Based on data from the *Australian Charities Report 2016*, available at australiancharities.acnc.gov.au.

² Based on data from the *Australian Charities Report 2016*, available at australiancharities.acnc.gov.au.

03

Our activities

In 2017:



82 Investigations were finalised



338 Risk assessments were completed



26 Charities had their registration revoked following investigations



1 Charity entered into an Enforceable Undertaking³



16 Charities entered into Compliance Agreements with the ACNC



50 Charities were provided with regulatory advice by Compliance Officers to ensure future compliance



7 Charities had their registration revoked following a registration review of entitlement



311 Charities were issued with 'final warning' letters for failure to submit their Annual Information Statements



49 Notices were served on charities and third parties such as banks under section 70-5 of the ACNC Act to obtain information and documents



115 Charities were issued with penalty notices (up to the value of \$4,500) for the failure to lodge their Annual Information Statement



\$5.9b

Charities subject to compliance cases controlled over \$5.9 billion of charitable assets in total.



780

Double defaulter charities had their registration revoked for failure to file two Annual Information Statements.

³ An Enforceable Undertaking can only be entered into by a federally regulated entity.

Identifying terrorism financing and money laundering risks

In 2016–17, the ACNC partnered with the AUSTRAC, in collaboration with the ATO and the ACIC, to conduct a national risk assessment identifying the potential for money laundering and terrorism financing in Australia's not-for-profit sector.

The assessment is the most comprehensive analysis of Australian Government intelligence holdings and data sets in relation to Australia's not-for-profit sector. The report, *Australia's Nonprofit Organisation Sector: Money laundering and terrorism financing risk assessment*, was released on 28 August 2017 by the then Minister for Justice and Minister Assisting the Prime Minister for Counter Terrorism, the Hon. Michael Keenan MP, and the Assistant Minister to the Treasurer, the Hon. Michael Sukkar MP.

The risk assessment examined approximately 257,000 not-for-profit organisations (NPOs) operating in Australia and involved extensive intelligence collection and data matching across key government agencies.

Key intelligence and data inputs included:

- a formal request for information to 23 agencies including all Commonwealth, state and territory law enforcement bodies and NPO regulators⁴
- financial, criminal and national security intelligence holdings, including the results of a comprehensive data-matching exercises across the ACNC, AUSTRAC, ATO and ACIC.
- 290 responses to a national survey of the NPO sector
- feedback and professional insights offered during interviews and consultations with key NPO sector representatives, including two round-table discussions.⁵

The risk assessment identified the main criminal, money laundering and terrorism financing threats facing Australia's NPO sector. It highlighted key vulnerabilities that are exploited for criminal misuse, or to support or promote terrorism and its financing.

NPOs were assessed as posing a 'medium' risk due to the limited number of cases and amount of intelligence concerning identified or suspected misuse. This rating is lower for terrorism financing risks than previous assessments of NPO risk. It mainly reflects shifts in Australia's terrorism threat environment and changes in the nature of terrorism financing activity (with self-funding dominant).

The assessment also identified a sub-set of NPOs which due to their activities and/or characteristics are likely to be at risk of terrorism financing. NPOs exposed to a higher risk of terrorism financing are more likely to be:

- a legal entity
- an incorporated association
- small (low annual financial turnover)
- based mainly in New South Wales
- relatively newly established
- service oriented, and
- linked to certain types of transaction reporting including international funds transfers – with a high likelihood that these involve a high-risk terrorism financing country .

Following the release of the report, the ACNC has established a multi-agency working group to further examine and address the risks of the high-risk NPO cohort. Members of the working group include ACNC, ATO, AUSTRAC, AFP and ACIC. The establishment of the cross-agency working group is an effective mechanism to ensure a thorough, effective and efficient investigative response. The working group also provides a channel for sharing information effectively and promptly to support preventive or investigative action.

⁴ Twenty-two responses were received.

⁵ Round table discussions were held in Melbourne and Sydney with approximately 20 sector representatives attending each round table discussion.

Improving timely submission of Annual Information Statements

In 2016–17 the ACNC implemented a number of strategies to improve submission rates for the 2016 Annual Information Statement.

We used behavioural economics when reminding charities to submit their Annual Information Statements. Through the strategic use of language and colour, we ‘nudged’ charities to act in their own self-interest (which ensured compliance with their ACNC obligations).

This project was a tremendous success, with the number of 2016 Annual Information Statements submitted by 30 June 2017 increasing by 6,945 compared to the previous year (which related to the 2015 Annual Information Statements). The increase in lodgement represents an 18.6 per cent improvement on the previous year.

The ACNC continued to issue penalty notices during 2017, for failure to submit Annual Information Statements. In 2017, 311 charities received final warning letters, prompting more than half of the charities to immediately lodge their Annual Information Statement or voluntarily revoke their status if they were no longer operating. This increased reporting on the Charity Register by more than \$319 million in assets. The 115 charities that did not submit their outstanding Annual Information Statements were issued penalty notices up to a maximum of \$4,500 each, (the maximum penalty for a large charity which has not lodged the document within a certain time period). The 115 charities that received penalty notices had total combined assets in excess of \$121 million.

Accurate Annual Information Statements and annual financial reports

The information charities provide in the Annual Information Statement (including any annual financial reports) is made available to the public on the Charity Register (unless the ACNC has approved a request for information to be withheld), and it is important that the information is accurate and up-to-date.

The ACNC continues to monitor the financial information provided by charities in their Annual Information Statements.

We have reviewed over 48,600 2016 Annual Information Statements to determine if an error had been made. We compared the financial information in the Annual Information Statement with the annual financial report for approximately 2,000 charities that collectively held 80 per cent of the sector’s revenue and/or assets. We also conducted a detailed review of annual financial reports for over 151 charities.

Where material errors were identified, the ACNC worked with charities to ensure that a corrected Annual Information Statement was submitted. Once notified of the error, a corrected Annual Information Statement was due within 28 days (for medium and large charities) or 60 days (for small charities).

While functionality improvements to the 2016 Annual Information Statement reduced error rates by 80 per cent year-on-year, over \$609 million in total revenue and \$8.7 billion in total assets had been corrected as at 31 December 2017.

To help charities correct errors, or avoid them entirely, we produced a range of education and guidance materials. We also published a report on the trends and errors found in the 2016 Annual Information Statement. The ACNC is committed to having accurate information on the Charity Register, and we will continue this work for the 2017 Annual Information Statement.



Visit the ACNC Charity Register at acnc.gov.au/charityregister

Political advocacy and unlawful activities

The ACNC continues to investigate concerns that relate to activities that may disclose a disqualifying purpose. This includes the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy. It also includes the purpose of promoting or opposing a political party or candidate for political office.

During 2017, the ACNC received 39 concerns about 28 charities regarding whether they were operating with a disqualifying purpose. The complaints originated from various sectors of the community, with concerns linking charities to a range of political parties or activities that may be unlawful or contrary to public policy. The subtypes of these charities include purposes relating to the protection of animals and the environment, advancing religion, education, health and employment.

Five charities were subject to investigation where information suggested that they may have a disqualifying purpose of promoting or opposing a political party or person for office.

Four charities were subject to investigation where information suggested that they may be at risk of having a purpose of engaging in, or promoting unlawful activities.

A charity's *activities* and a charity's *purpose* may seem like the same thing. However, they are different in a subtle but important way, and it is worth making the distinction clear.

A charitable purpose is what a charity has been set up to achieve. It is the overarching object or goal of the charity – some people may refer to it as a 'mission'. There are 12 charitable purposes listed in the Charities Act, and charities may have more than one charitable purpose.

Charity activities are the activities that a charity undertakes in support of its overarching purpose. This may include direct work with beneficiaries (for example, providing temporary accommodation to homeless people or providing education services) or more indirect work (for example, selling goods to raise funds for a homeless shelter or holding a conference to educate people about research into a disease).

The ACNC always considers concerns based on the facts and evidence available, and will determine what action (if any) is necessary by the ACNC. In determining whether a charity has a disqualifying political purpose, the ACNC will consider all the relevant circumstances of the charity, including its governing rules and its activities. Assessment of these matters will be a question of fact and degree.

Double defaulters

Charities that do not submit an Annual Information Statement for two or more years (demonstrating persistent non-compliance) will have their registration revoked by the ACNC. These charities are known as 'double defaulters'. Since December 2014, the ACNC has revoked the registration of 6,617 charities for failure to lodge their Annual Information Statements for two consecutive years. In 2017, 780 charities had their registration revoked as a double defaulter. It is likely that some of these charities have ceased to operate but failed to notify the ACNC. The ACNC will continue to run this process each year.



For more information on political advocacy visit [acnc.gov.au/advocacy](https://www.acnc.gov.au/advocacy)

04

Our risk-based compliance approach

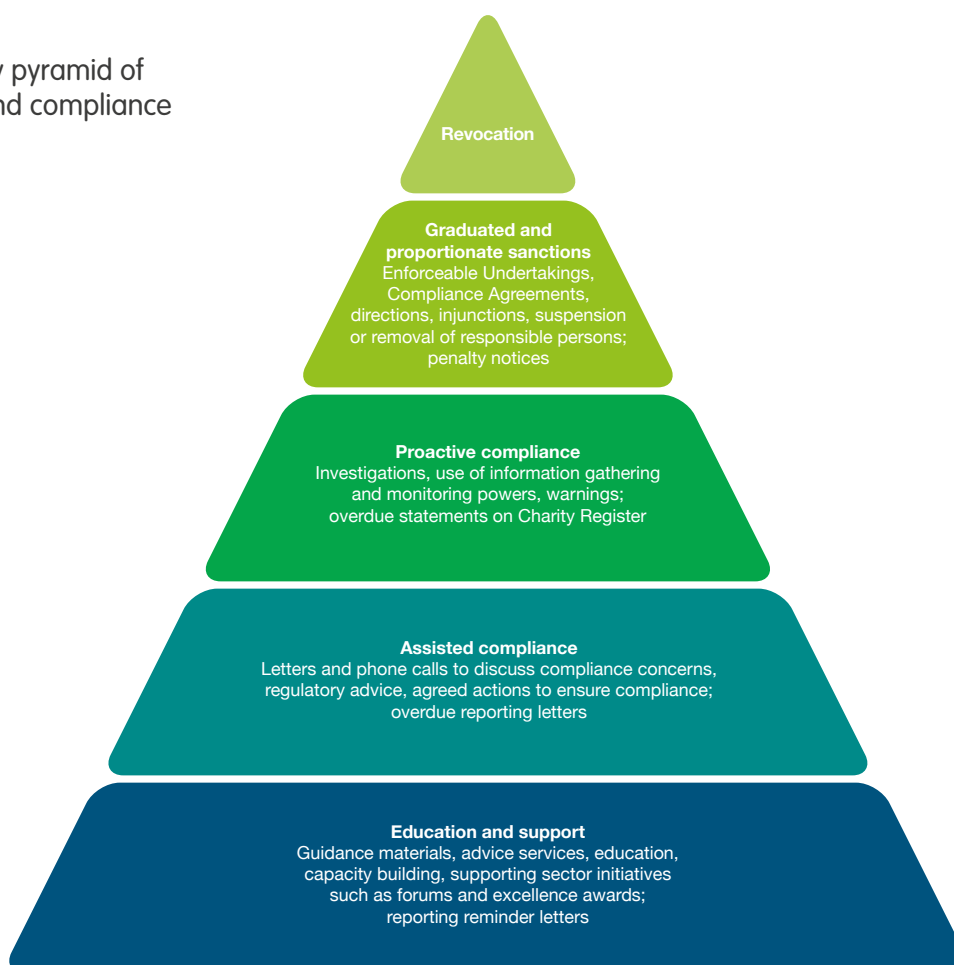
The ACNC's [Regulatory Approach Statement](#) explains how the ACNC undertakes its role as the national charity regulator.

Charities are publicly accountable for the funds they receive and privileges they enjoy because of their charity status. The ACNC recognises that most registered charities are set up for charitable purposes and are run by dedicated, capable people who make a valuable contribution to the community. Much of our work involves preventing problems by providing

information, support and guidance to help charities stay on track. This approach is reflected in the ACNC's regulatory pyramid (see Figure 4.1), which begins from a wide base of educating and informing the charitable sector.

The ACNC will not hesitate to use its powers when charities do not act lawfully and reasonably. Non-compliant charities can have a significant impact on public trust and confidence and damage the reputation of the entire sector.

Figure 4.1
Regulatory pyramid of support and compliance



For more information visit
acnc.gov.au/regulatoryapproach

The ACNC targets its compliance resources at the most serious risks – those most likely to undermine trust and confidence in the sector, and where intervention will have the greatest impact.

The ACNC recognises that many charities operated by unpaid volunteers may get some things wrong or make mistakes. ACNC guidance and resources aims to reduce these mistakes and promote best practice. Where honest mistakes have been made the ACNC will work with the charity's responsible persons to get the charity back on track. The ACNC expects the charity's responsible persons to act and follow the advice and guidance provided by the ACNC to address breaches or avoid future non-compliance. Should a charity be unwilling to make changes the ACNC will consider further regulatory intervention.

Where a charity's non-compliance is significant, but the ACNC determines that the charity's responsible persons are willing and able to correct matters, the ACNC's response may include a compliance agreement or enforceable undertaking. These are effectively action plans for the charity, and the ACNC monitors the charity's progress to ensure all measures have been implemented.

Should the ACNC identify deliberate or wilful wrongdoing that cannot be addressed by the charity, the ACNC will use its regulatory powers to remedy the breach or revoke the charity's registration.

ACNC legislation

The ACNC Act sets out the objects and functions of the ACNC, as well as the framework for the registration and regulation of charities.

The ACNC Regulation provides more detailed requirements in relation to the ACNC Charity Register, financial reporting and sets out the governance standards.

The Charities Act introduces statutory definitions of "charity" and "charitable purpose" which apply for the purposes of all Commonwealth law.

Governance Standards

Registered charities must meet a set of Governance Standards to be registered and remain registered with the ACNC.⁶ The standards require charities to remain charitable, operate lawfully, and be run in an accountable and responsible way. Where charities are not meeting the Governance Standards, the ACNC will act according to our regulatory approach.



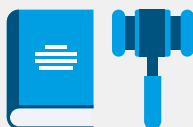
Standard 1: Purposes and not-for-profit nature

Charities must be not-for-profit and work towards their charitable purpose. They must be able to demonstrate this and provide information about their purposes to the public.



Standard 2: Accountability to members

Charities that have members must take reasonable steps to be accountable to their members and provide them with adequate opportunity to raise concerns about how the charity is governed.



Standard 3: Compliance with Australian laws

Charities must not commit a serious offence (such as fraud) under any Australian law or breach a law that may result in a penalty of 60 penalty units (currently \$10,800) or more.



Standard 4: Suitability of responsible persons

Charities must take reasonable steps to:

- be satisfied that its responsible persons (such as board or committee members or trustees) are not disqualified from managing a corporation under the *Corporations Act 2001* (Cth) or disqualified from being a responsible person of a registered charity by the ACNC Commissioner, and
- remove any responsible person who does not meet these requirements.



Standard 5: Duties of responsible persons

Charities must take reasonable steps to make sure that responsible persons are subject to, understand and carry out the duties set out in this standard which includes acting with reasonable care, diligence, honesty and in the best interest of the charity.



For more information visit
acnc.gov.au/governancestandards

⁶ The governance standards do not apply to a limited class of charities called 'basic religious charities'.

Our enforcement powers

The ACNC has powers to gather information, monitor activities, and respond to charities that are not meeting their obligations.

The ACNC has a range of enforcement powers at its disposal. These can include issuing guidance and support, through to warnings, directions and Enforceable Undertakings. The ACNC can only exercise enforcement powers against ‘federally regulated entities’. For more information about the definition of ‘federally regulated entities’, visit the [ACNC glossary](#).

Revocation of registration is the most serious compliance action, which removes the organisation’s entitlement to Commonwealth charity tax concessions.

Information gathering and monitoring

Most charities provide information voluntarily during compliance investigations. However, the ACNC will use its formal information gathering powers under section 70-5 of the ACNC Act as required. The ACNC also has monitoring powers such as the power to search premises and to inspect any documents on the premises under section 75-20 of the ACNC Act.

Warnings

The ACNC may send a charity a written warning that they are not meeting their obligations and explain what action the ACNC may take.

Directions

The ACNC may send a charity a written direction which instructs them to do or not do something.

Enforceable Undertakings

An Enforceable Undertaking is a formal mechanism the ACNC can use to ensure a charity takes certain steps to satisfy their obligations as a registered charity. These arrangements can be enforced by a designated court.

Injunctions

The ACNC can seek an injunction from a designated court to make charities do or not do something.

Suspension or removal of a responsible person

The ACNC can suspend or remove a ‘responsible person’ such as a board or committee member.

Disqualification of a responsible person

The ACNC can disqualify a responsible person (such as a committee or board member, or trustee) who has previously been suspended or removed for 12 months. During that time, the person is not allowed to be a responsible person of any charity and will be listed on the [disqualified persons register](#).

Administrative penalties

Entities (including charities, complainants and representatives) are liable to administrative penalties if they make false or misleading statements. Charities are also liable to pay administrative penalties if they fail to lodge certain documents (such as Annual Information Statements) on time.

Revocation

In the most serious cases, the ACNC will revoke a charity’s registration, which removes the organisation’s entitlement to Commonwealth charity tax concessions. Commonwealth charity tax concessions are administered by the ATO.

Compliance Agreement

A Compliance Agreement is an action plan developed in consultation with a charity to address identified issues. This is not a formal enforcement power, but a documented commitment from a charity to get back on track. If the ACNC is not satisfied with a charity’s progress in addressing the concerns set out in a Compliance Agreement, the ACNC will consider using our formal enforcement powers.

The ACNC Charity Register

The ACNC [Charity Register](#) is a key component of the ACNC's work to maintain and enhance public trust and confidence in Australia's registered charities. The Charity Register contains information about the 55,500 charities registered with the ACNC.

The Charity Register is a valuable tool that provides unprecedented information to the public, donors, regulatory bodies and government, and has been searched over 1.6 million times.

Registered charities are required to report annually to the ACNC. The information reported by charities is published on the Charity Register unless the information has been withheld.

The Annual Information Statement helps the ACNC to assess whether charities are entitled to ongoing registration, and are compliant with the ACNC Act and ACNC Regulation. Charities must submit their Annual Information Statement within six months of the end of their reporting period. If charities do not meet their obligations to lodge Annual Information Statements or required annual financial reports (for medium and large charities that are not basic religious charities). The ACNC will reflect this on the Charity Register with a red statement indicating the charity is more than six months late with their reporting.

Where charities have been revoked by the ACNC their details will still appear on the Charity Register, however, their entry will clearly indicate in red that the charity has been 'revoked'.

Many charities wind up voluntarily because they have come to the end of their life. Charities that have voluntarily revoked their charity registration have 'voluntarily revoked' listed on their register entry.



You can access the Charity Register at acnc.gov.au/charityregister

The ACNC Registered Charity Tick aims to give reassurance to the public that the charity is transparent and accountable by highlighting its presence on the Charity Register. If the ACNC uncovers evidence of organisations using the Charity Tick that are not registered, we will take appropriate action.



Making decisions public

Division 150 of the ACNC Act sets out secrecy provisions that prevent the ACNC from providing information to complainants about how specific concerns have progressed. However, where the ACNC does investigate a charity and finds non-compliance has occurred, the ACNC will put some matters on the public record, for example, where the ACNC:

- revokes the charity's registration (noting the details on the Charity Register will include the charity's revoked status); and
- uses its enforcement powers, such as issuing a warning or direction, or accepting an enforceable undertaking given by the charity.

The secrecy provisions generally prevent the ACNC from explaining specifically to the public why we have taken action against registered charities.

However, if inaccurate or incomplete information is made public by a charity regarding the ACNC's compliance actions, we are able to correct the record and the ACNC will do so.

05

Identifying concerns

Concerns from the public

Reports from the community continue to be important in helping us identify areas of risk. We carefully assess all concerns, and while the ACNC values the information provided, not all concerns will progress to a formal compliance investigation. Information from the public may help us identify broader issues, and we may also take this into account if future concerns are raised about the charity in question.

In 2017, the ACNC received 1,695 concerns in total. Of these concerns, 1,423 concerns were received by the Advice Services team, which is an average of more than 100 concerns each month. Concerns increased 42 per cent compared to 2016. Of these, approximately 1,084 were resolved by our Advice Services team or were identified by Advice Services as being outside of the ACNC's jurisdiction. If the matter is not within the ACNC's jurisdiction, we do our best to refer people to where their matter can be addressed.

If you have a concern about a charity, the ACNC encourages you to raise your concern directly with the charity or its governing body before contacting us.

Most charities welcome feedback and are prepared to address issues without the intervention of a regulator. However, if you cannot resolve your concern with a registered charity, you can contact us at acnc.gov.au/raiseaconcern

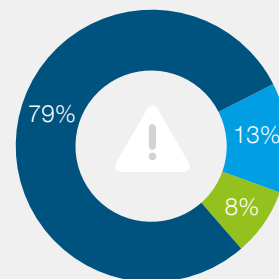
1,695 concerns were **received** by the ACNC about charities in 2017.

1,084 concerns were **resolved by our Advice Services team** or were identified by Advice Services as being outside of the ACNC's jurisdiction.

321 concerns were **assessed** by the Compliance team.

202 charities were the subject of a **compliance investigation**.

Who raised concerns about charities?



- Individuals – for example past or current volunteers, employees, the public, beneficiaries or responsible persons of a charity
- Other government agencies
- ACNC's internal processes

Proactively identifying risk

During 2017, the ACNC increased its efforts to proactively identify charities at risk of misuse or non-compliance. This included establishing and strengthening working relationships with other government agencies.

The ACNC analyses the data and information we gather about charities. This includes data from Annual Information Statements, complaints we receive and data holdings of other government agencies.

The use of ACNC data and the data of other agencies assists the ACNC to identify emerging risks or risks that may otherwise go unreported. It is an effective way to focus on our compliance priorities, tailor our compliance initiatives, and allocate our limited resources to have the greatest regulatory impact.

The National Risk Assessment of Australia's Not-for-profit organisations (discussed on page 6) was the largest proactive data-matching project undertaken by the ACNC to date. This risk assessment work identified a number of registered charities at risk of misuse for terrorism financing or money laundering.

At the end of 2017, the ACNC conducted proactive data matching work against Australian Electoral Commission (AEC), NSW Electoral Commission and QLD Electoral Commission data holdings to identify registered charities that have declared donations to political parties or candidates. Twenty-three registered charities were identified as declaring donations to political parties or candidates. The ACNC is looking into these charities further to ensure they are not at risk of having a disqualifying purpose and that charitable funds are solely being applied to advance the charity's purpose.

Working with other agencies

Taking a whole-of-government approach, the ACNC works closely with other agencies to avoid duplication and improve outcomes. This is the most effective way for us to operate, and helps us achieve our third statutory object to remove regulatory duplication.

We work with law enforcement agencies where we suspect or find evidence of criminal activity. Similarly, other agencies refer concerns about charity law to us.

In 2017, the ACNC strengthened its relationship with the ACIC. An ACNC Compliance Officer was seconded to ACIC to review a broad number of potential risk indicators that emerged from the National Risk Assessment (beyond terrorism financing and money laundering risks).

In 2017, the ACNC worked closely with AUSTRAC's FINTEL Alliance. The FINTEL Alliance is a public-private partnership combating money laundering and terrorism financing. The partnership brings together 19 public and private sector organisations to counter these threats. Led by AUSTRAC, the Alliance members include law enforcement and intelligence agencies, the ATO, and private sector companies including the big four banks and Macquarie Bank, Western Union and PayPal. The ACNC involvement in the FINTEL Alliance is proving to be an effective way to raise awareness of NPO risks with Australia's banking sector as well as establishing improved information exchange.



In 2017, we received 144 referrals from other government agencies and made 102 referrals to other government agencies. We work with other government agencies to determine who is best placed to act, so charities are not burdened with enquiries from multiple government regulators.

The ACNC chairs the international regulators forum, which shares risk management strategies and discusses best practice regulatory approaches with charity regulators in common law countries. This includes charity regulators from the United States of America, Canada, England and Wales, Scotland, Singapore, New Zealand and Ireland.

We also chair a compliance forum with state and territory regulators to discuss emerging compliance themes and issues and consider coordinated responses. These forums are important in ensuring that we learn from each other and have helped us to identify individuals of concern and scams that have crossed different jurisdictions.

06

Prioritising concerns

Prior to taking action, the ACNC carefully considers the nature and the level of risk being addressed and the most effective response in the circumstances.

There are five factors we always consider as part of our prioritisation process:



The nature of the concern

This includes considering whether it may involve fraud and/or criminal activity and whether there may be harm to beneficiaries.

Persistence

This includes considering whether the concern relates to an isolated incident or conduct that has persisted over a long period; we also consider whether the charity has a history of non-compliance.



Harm to the sector as a whole

This includes considering whether public funds (such as government grants and public donations) are involved.

Other factors specific to the concern

For example, whether the matter is time-bound and whether it represents a new or emerging issue.



Other factors specific to the charity

For example, whether the charity is closely controlled and the extent of oversight by other regulators.

In 2017, the ACNC focused on the following risks:



1. Fraud and financial mismanagement

including money laundering, tax avoidance, private benefit.



2. Terrorism

misuse of a charity for terrorist purposes or to foster extremism. This includes charities that support terrorism (financial or otherwise), and/or connections to a listed terrorist organisation, or a person or entity of concern.



3. Harm to beneficiaries

particularly children and vulnerable adults.



4. Political activities

where the charity may be at risk of having a disqualifying purpose.

07

Analysis of concerns

The most common types of concerns received by our Advice Services team were about governance breaches, fraud, lack of transparency, and mismanagement, including breaching the charity's own governing document.

Poor governance continues to be the common theme of ACNC investigations. Of the concerns sent onto the Compliance team to assess, the most common

risk category was Governance Standard 5 – duties of responsible persons. This includes concerns such as financial mismanagement, and failure to apply due care and diligence or act in the best interests of the charity.

Figure 7.1 shows the proportion and nature of compliance concerns assessed in 2017.

Figure 7.1 Types of concerns received from the public that were assessed by the Compliance team



Risk category

- 29%** **Governance Standard 1** – Purposes and not-for-profit nature of a registered charity – this includes concerns such as private benefit or failing to comply with its charitable purposes.
- 1%** **Governance Standard 2** – Accountability to members – this includes concerns such as failing to hold annual general meetings or not providing sufficient information to its members.
- 16%** **Governance Standard 3** – Compliance with Australian Laws – this includes concerns such as fraudulent or other criminal activity.
- 1%** **Governance Standard 4** – Suitability of responsible persons – this includes concerns such as disqualified persons being responsible persons for charities.
- 42%** **Governance Standard 5** – Duties of responsible persons – this includes concerns such as financial mismanagement, failure to address potential harm to beneficiaries.
- 7%** **Entitlement to registration** – this includes concerns such as sham charities, disqualifying purposes⁷ or private benefit.
- 2%** **Non-compliance with record keeping obligations** – this includes concerns such as a failure to keep adequate financial or operational records.
- 1%** **Non-compliance with reporting obligations** – this includes concerns such as a failure to notify of changes to charity details, failure to lodge Annual Information Statement and errors in financial reporting.
- 1%** **Concerns outside of the ACNC's jurisdiction.**

Note: Percentages are rounded to closest full figure

⁷ Disqualifying purpose is defined in s.11 of the Charities Act 2013 (Cth) as follows:
a. the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or
b. the purpose of promoting or opposing a political party or a candidate for political office.

Source of concerns

The most common source of concerns was from members of the public.

Figure 7.2 Source of concerns that were assessed by the compliance team

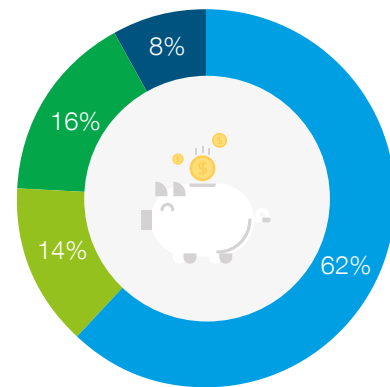


Note: Percentages are rounded to closest full figure.

Charity size

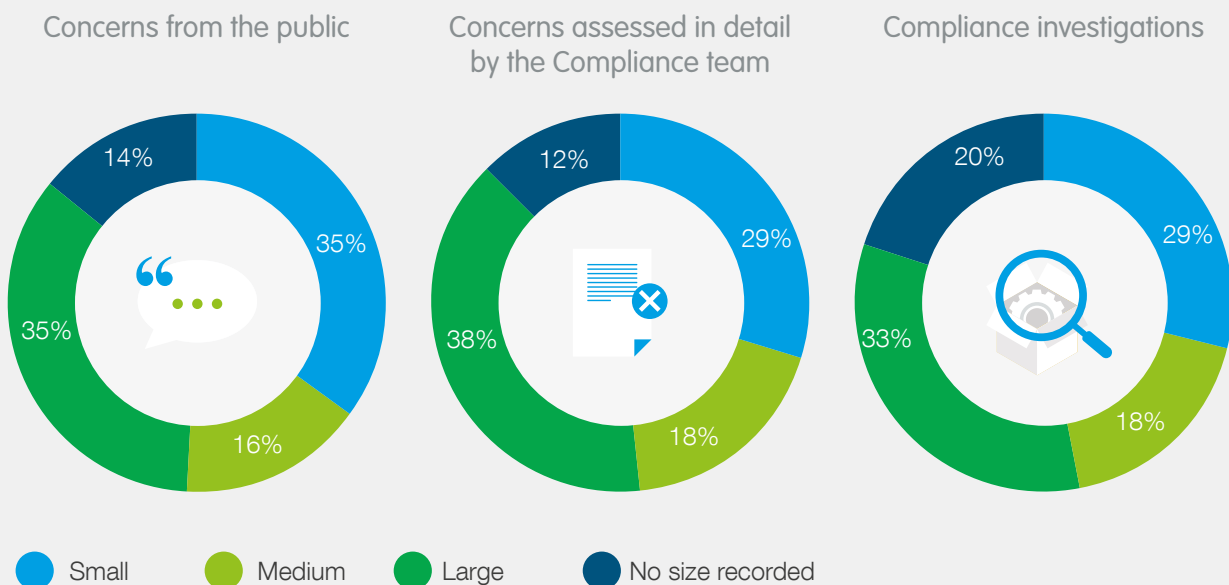
Small⁸ charities were under-represented in the number of concerns received by our Advice Services team. We believe this may be due to the public having more visibility of larger charities and their services, larger volunteer and donor numbers, and more significant fundraising efforts. This is also reflected in the number of concerns assessed by our Compliance team.

Small charities were also under-represented in the number of investigations undertaken by our Compliance team.



Percentage of all charities

Figure 7.3 Charity concerns and investigations by charity size



Note: Percentages are rounded to closest full figure.

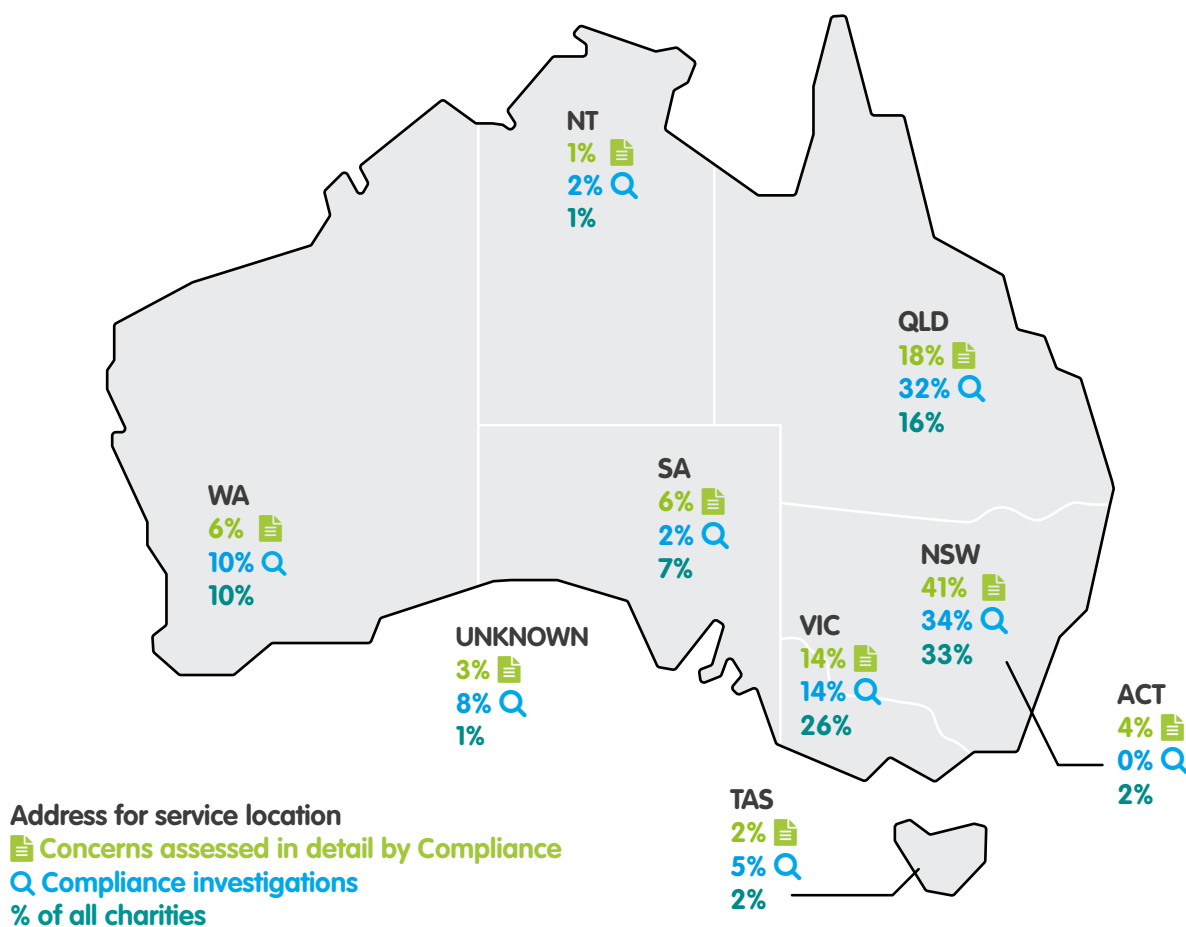
⁸ The charity's size is based on its revenue for the reporting period. Small registered charities are those with annual revenue of less than \$250,000.

Charity location

The geographical distribution of charities the subject of concerns generally reflected the distribution of the wider charity sector. The exception to this is New South Wales and Victoria. New South Wales based charities (41% of concerns) were over-represented in the Compliance caseload, and Victoria based

charities (14% of concerns) were under-represented in the Compliance caseload. This under-representation and over-representation is not consistent with previous years and is likely to be an anomaly as opposed to being indicative of broader compliance concerns in these regions.

Figure 7.4 Charity concerns and investigation distribution across states and territories



Note: Percentages are rounded to closest full figure.

Investigations

Of the concerns received by the ACNC, 321 were assessed by the Compliance team. This assessment resulted in 202 investigations. The following is an analysis of the investigations undertaken by the ACNC during 2017.

Figure 7.5 Types of concerns that were investigated by Compliance following initial assessments



9 Disqualifying purpose is defined in s.11 of the Charities Act 2013 (Cth) as follows:
a. the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or
b. the purpose of promoting or opposing a political party or a candidate for political office.

08

Compliance focus in 2018

Throughout 2018, the ACNC will continue to respond to breaches and non-compliance that could impact significantly on public trust and confidence in the not-for-profit sector. The ACNC will also continue to work in partnership with other government agencies to identify areas of risk in the sector.

We will continue to focus our compliance resources in the following areas:



1. Fraud and financial mismanagement – including money laundering, tax avoidance, private benefit.



2. Terrorism – misuse of a charity for terrorist purposes or to foster extremism. This includes charities that support terrorism (financial or otherwise), and/or connections to a listed terrorist organisation, or a person or entity of concern.



3. Harm to beneficiaries – particularly children and vulnerable adults.



4. Political or unlawful activities – where the charity may be at risk of having a disqualifying purpose.

Proactively identifying and addressing risk

The ACNC will continue to analyse its own data and information holdings as well as work with other regulators and law-enforcement agencies to proactively identify and address charities that are involved in illegal activities such as fraud, money laundering, tax avoidance or harm to beneficiaries.

Following proactive data matching work during 2017, the ACNC has a number of on-going investigations into charities with the following risks:

- High-risk of misuse for money laundering or terrorism financing
- Organised crime links
- Charities sending funds to tax havens
- Charities declaring political donations to a party or candidate

In 2018, as the ACNC completes thematic investigations it will publish its findings where there are lessons for other charities. The ACNC secrecy provisions prevent the ACNC providing details about the charities that were subject to investigation. However, we look forward to sharing our findings in broad terms, including de-identified case studies to assist the sector and the community to better understand the work of the ACNC and how charities can ensure best practice.

Early intervention

In 2018, the ACNC Compliance team will establish a dedicated outreach function to engage early with charities that we believe may be at an increased risk of misuse. This may include charities operating in high-risk countries, or charities working with particularly vulnerable beneficiaries or children. The purpose of the outreach function will be to educate and guide charities on best practice governance, including partner due diligence and monitoring, and sound financial practices to ensure funds are only applied for intended purposes. Through one to one engagement and targeted workshops the early outreach will be designed to ensure the charity's responsible persons understand their obligations and how to protect their charity and the charity's assets or beneficiaries from abuse.

Improving education and guidance

The ACNC publishes and promotes a wide range of guidance to help the sector address vulnerabilities and mitigate risks. This includes best practice steps to mitigate terrorism financing risks, good governance, due diligence and working with partners, transparency and sound financial management.

Following the completion of Australia's first NPO risk assessment, the ACNC will now embark on a project to refine and more effectively target its guidance to those in the sector that are most vulnerable to misuse.

The final report from the Royal Commission into Institutional Responses to Child Sexual Abuse was released December 2017. Some of the findings of the report will help the ACNC to produce better targeted guidance and resources for charities to ensure children and vulnerable people are appropriately protected and concerns are managed and referred appropriately.

The ACNC has been working with the Australian Human Rights Commission (AHRC) and the Department of Social Services (DSS) to review and consult on draft national child safe principles. The ACNC looks forward to these principles being implemented in 2018 and continuing to work with Commonwealth and state and territory agencies to ensure registered charities have adequate measures in place to ensure that children are protected from harm.

Review of the ACNC Act

The ACNC welcomes the review of the ACNC Act. As the national regulator of registered charities, the ACNC considers it important that we have sufficient powers to undertake regulatory action to support the objects of the ACNC Act, including regulatory action to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector.

Lodgement and accuracy of Annual Information Statements

On time and accurate Annual Information Statement submissions are vital to the integrity of the Charity Register. The ACNC will continue to improve reminders to assist charities to remain compliant. The ACNC will also issue financial penalties to charities that fail to submit their Annual Information Statements on time. The ACNC penalty regime will focus on large and medium sized charities that have history of non-compliance, were recently registered by the ACNC, or were a previous double-defaulter.

09

Compliance case studies

To give readers an insight into the ACNC's compliance approach, we have prepared the following case studies.

Case studies are hypothetical scenarios drawn from the broader investigative work conducted by the ACNC, and are indicative of the ACNC's risk based compliance approach. Please note, the case studies listed do not relate to any particular charity registered or previously registered with the ACNC.

CASE STUDY 1

The circumstances

The charity is a large sized charity that provides educational services. The charity has been established for more than 15 years and was registered with the ACNC in December 2012. The ACNC received information claiming that the charity board had used charitable funds to purchase retirement gifts for two responsible persons, valued at a total of \$10,000.

The ACNC commenced an investigation into this matter to examine the charity's governance arrangements in place and assess its compliance with the Governance Standards.

Governance considerations

1. Charities must ensure that their board members comply with their legal duties, including properly declaring, managing conflicts of interests and ensuring financial affairs are managed in a responsible manner.
2. Gifts should not provide any individual with a significant personal benefit. Significant gifting places the charity at risk of not complying with its purpose and character as a not-for-profit entity.

In determining the acceptable value for gifts to outgoing or retiring directors or members, it is for the charity to judge taking account of the charity's ability to deliver on its objects and its financial situation. However, any gift must be of a token nature.

3. Charities must ensure they have robust financial approval and expenditure processes in place, and board members act in the charity's best interests at all times.

Governance issues identified

The charity acknowledged that two former responsible persons had been presented with gifts of a watch, valued at \$5,000 each. However, the charity failed to demonstrate that it had considered whether it was appropriate to use charitable funds to provide the gifts. The charity also failed to demonstrate that the decisions made to approve these gifts were properly authorised and documented. The ACNC was not satisfied that the use of charitable funds for the gifts was applicable to its charitable objects.



The outcome

After becoming aware of the limitations on gifting, the charity proactively approached both former responsible persons to advise them of the issue regarding the gifts, and both former responsible persons chose to reimburse the charity rather than return the gifts. As the charity cooperated with the ACNC's investigation, took prompt and appropriate measures in response to the concern and the ACNC was satisfied that there were no other compliance issues, the ACNC entered into a Compliance Agreement with the charity to improve its governance. The Compliance Agreement provided the charity an opportunity to develop and implement policies and procedures in relation to gifting including to ensure any decision making in relation to gifts was in line with its charitable objects, charitable funds for gifts were appropriately authorised and documented and the gifts did not go beyond a token nature.

Resources

Managing conflicts of interest – a guide for charity board members

This guide has been developed to help explain what conflicts of interest are and how they can be managed. The guide includes a template conflict of interest policy and template register of interests.

[acnc.gov.au/conflictsofinterest](https://www.acnc.gov.au/conflictsofinterest)

Managing charity money - a guide for board members on managing finances and meeting ACNC duties

This guide has been developed to help charities understand their obligations to the ACNC related to managing their finances, reporting on their transactions and ensuring their funds are used to further their charitable purpose, and not for any private benefit.

[acnc.gov.au/charitiesandmoney](https://www.acnc.gov.au/charitiesandmoney)

Related party transactions

The ACNC has information on our website about what are related party transactions and what charities need to do to manage them.

[acnc.gov.au/relatedpartytransactions](https://www.acnc.gov.au/relatedpartytransactions)

Damn Good Advice for Board Members

Produced by Our Community, this guide has 25 questions a not-for-profit board member needs to ask about the finances.

[ourcommunity.com.au](https://www.ourcommunity.com.au)

CASE STUDY 2

The circumstances

The charity provides aged care services. The charity is large sized and has been registered with the ACNC since 2013. The ACNC obtained information indicating that the charity had entered into a contract with a for-profit company and this contract generated a private benefit for one of the charity's responsible persons. The available information indicated that the responsible person of the charity was also a director of the for-profit company and used this as a means to divert charitable funds to the for-profit entity.

The ACNC takes the misuse of charitable funds very seriously. The ACNC readily uses its information gathering powers to obtain evidence from third parties, such as banks and financial institutions, and forensically analyses material to see where charity money actually goes.

The ACNC commenced an investigation into the charity to establish the governance arrangements in place and whether the charity was complying with its not-for-profit character.

Governance considerations

1. Directors who have an interest in for-profit entities must declare those conflicts if that business is engaging with the charity.
2. Charities need to ensure that appropriate mechanisms are in place to manage conflicts of interest and take reasonable steps to ensure its responsible persons comply with their duties including to disclose perceived or actual material conflicts of interest, to act in good faith in the charity's best interests, to further the charity's purposes, and not to misuse their position.
3. A charity must be able to demonstrate and comply with its purposes and character as a not-for-profit entity.

Governance issues identified

The ACNC found that the contracts directed significant amounts of charity funds to the for-profit company. The charity was unable to demonstrate that the arrangements with the for-profit company were made at arm's length. The charity's responsible person who held an interest in the for-profit company had significant influence over the decisions to engage the for-profit company and the terms of the contract.

The charity did not maintain operational records to establish that services provided by the for-profit company were delivered and reviewed to ensure the contract with the for-profit company was providing 'value for money' results to support the charity's purpose.

The outcome

The ACNC issued the charity with a notice to show cause as to why its registration should not be revoked for not complying with the ACNC Governance Standards. The charity's response did not address the ACNC's concerns, and the material that was provided was insufficient to satisfy us that the charity was not-for-profit. The charity failed to demonstrate that it had sufficient governance in place to ensure its financial affairs were managed responsibly, conflicts of interest were disclosed and that decisions were made in the charity's best interest to further the purposes of the charity.

The charity's revoked status was published on the Charity Register and the [compliance decision page](#) on the ACNC website and the charity lost its access to charity tax concessions.

Resources

Managing conflicts of interest – a guide for charity board members

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acnc.gov.au/conflictsofinterest

Managing charity money - a guide for board members on managing finances and meeting ACNC duties

This guide has been developed to help charities understand their obligations to the ACNC related to managing their finances, reporting on their transactions and ensuring their funds are used to further their charitable purpose, and not for any private benefit.

acnc.gov.au/charitiesandmoney

CASE STUDY 3

The circumstances

The charity is medium sized and has been registered with the ACNC since 2014. The charity works with partner agencies to provide services in a country considered to be high-risk for terrorism financing.

The ACNC commenced a proactive investigation to assess the charity's governance to ensure funds being sent overseas to high-risk areas were being used for charitable purposes and were not vulnerable to misuse including the potential to finance terrorism.

Governance considerations

1. Charities must ensure that their funds and assets are properly monitored and secure so it is confident the money is only being used for charitable purposes.
2. When funds are being sent overseas directly or via partner organisations, charities must have proper control measures and systems in place to ensure these funds are not misapplied or diverted.
3. Charities need to have effective policies and processes in place, including strong financial controls, and exercise a high degree of due diligence and on-going monitoring in relation to its overseas partners, staff, volunteers and contractors.
4. Charities need to routinely review their policies and processes to ensure that the policies are implemented effectively and support good governance.
5. Charities must ensure that they do proper due diligence in respect all partners, including checking they do not appear on [sanctions lists](#).

Governance issues identified

The ACNC's investigation found significant deficiencies in the charity's governance. The charity had written policies in place for managing and reviewing its engagement with partner agencies. However, the charity was only able to provide limited evidence of the policies being implemented. The charity accepted the word of its partner agencies that programs were being delivered and did not monitor results or request additional information. The ACNC found the charity did not keep appropriate records and the responsible persons had not exercised due diligence in relation to the engagement and on-going monitoring of the partners it worked through in its overseas locations.

The outcome

The ACNC found the charity had not met the ACNC's Governance Standards and record keeping obligations and was at risk of being misused for terrorism financing. In response to the ACNC investigation, the charity acknowledged the issues identified by the ACNC and demonstrated a commitment to improve its processes and therefore the ACNC entered into a Compliance Agreement with the charity. The charity agreed to undertake an independent audit of their internal processes and review of the in-country programs to ensure that policies are implemented effectively, finances managed responsibly and that partner agencies are accountable for the expenditure of the charity's funds.

Resources

Protecting your charity against the risk of terrorism financing

The ACNC has information on our website about how to protect your charity from terrorism financing.

acnc.gov.au/terrorismfinancing

Checklist: protecting your charity against the risk of terrorism financing

This checklist can help you identify whether your charity is meeting the ACNC governance standards and other ACNC obligations in ways that reduce the risk of funds being misused for terrorism financing.

acnc.gov.au/terrorismchecklist

Safeguarding your organisation against terrorism financing

Produced by the Australian Government, this guidance is intended to help not-for-profit organisations understand their obligations under Australian law.

livingsafetogether.gov.au

10

Support and guidance

The ACNC has a range of resources available to provide practical guidance to help registered charities stay on track. The following publications are available on acnc.gov.au

Factsheets and guides:

- Protect your charity from fraud guide
- Conflicts of interest
- Managing charity money
- Governance for good
- Overseas aid charities and terrorist financing
- Charities, elections and advocacy
- Fundraising: people in vulnerable circumstances
- Internal disputes

Check lists

- Record keeping
- Protecting your charity against the risk of terrorism financing

Webinars

The ACNC delivers free monthly webinars on a range of topics. You can sign up for upcoming webinars and watch the past webinars at acnc.gov.au/webinars.

Contact us

You can contact the ACNC on 13 ACNC (13 22 62) weekdays 9am to 5pm AEST.

To book a call back from an ACNC staff member, email us nominating a day and time between 9am and 5pm weekdays (excluding public holidays) for an ACNC representative to contact you.

You can also email us at advice@acnc.gov.au. We will aim to respond within 2 to 5 working days, depending on the complexity of your request.

If you would like to raise a concern about a charity, visit acnc.gov.au/raiseaconcern



acnc.gov.au