

# Adviser Forum – Thursday 5 December 2024

## Agenda Item 1: Welcome

Rachel Smith, Acting Assistant Commissioner, opened the meeting with an Acknowledgement of Country and welcomed Adviser forum members for attending this in person event.

No conflict of interests was declared.

## Agenda Item 2: Commissioner's update

Commissioner Sue Woodward AM welcomed everyone to the meeting, with special acknowledgment to the new Adviser forum members. Sue provided an update on the following:

- **Previous quarter update**
  - The ACNC Annual report was published and tabled at Parliament in October 2024.
  - The [Commissioner's Interpretation Statement: Withholding or Removing Commercially Sensitive Information from the ACNC Charity Register](#) was updated.
  - The ACNC has conducted a survey on the ACNC's Company Limited by Guarantee constitution, with a revised draft being produced for consultation soon.
  - Progressed multi-factor authentication, with the intention of being ready before the end of the year.
  - Core work:
    - Reporting: 92% of charities have submitted their Annual Information Statement (AIS) with 73% of them submitting on time.
    - Working with the Centre for Evaluation and the Behavioural Economics Team of the Australian Government to trial ways to increase on time lodgements by sending reminders to Responsible people.
    - Registration: The time for registration applications to be assessed and processed has almost halved and the introduction of Online registration forms is going smoothly.
  - Sue noted that England and Wales counterparts took 41 days to process an application and that on average, it takes their staff 3 full days to review and make a decision.
- **International trip to England and Wales, general reflections**
  - Active discussions around the processes and systems across agencies.
  - Commonality amongst other countries with the issues that they face as charity regulator, i.e. how to write decisions which are robust and comprehensible across all audiences.
  - Sue stated that she had a lot of pride in the work the ACNC is doing, particularly the quality of the ACNC's Website.

- There were differences in the compliance powers between countries.
- Overall, there was a strong commitment for all agencies to work together.
- Sue thanked Rachel Smith, Acting Assistant Commissioner – Operations and Engagement, for stepping up as Acting ACNC Commissioner while she and Natasha Sekulic were working overseas.
- **Senate Enquiry into the Self-assessing not-for-profit-reporting**
  - Sue attended the enquiry virtually.
  - Educational materials are being reviewed in response the feedback from the roughly 70 peak bodies and the enquiry.
  - There has been a good response to the ACNC's webinar.
  - Large amount of work has been done with peak bodies, which has meant strong connections have been built with these organisations.
- **General reflections and the year ahead**
  - Intentional presence at stakeholder engagements.
  - Working with Government bodies closely.
  - Building strong relationships with international regulators.
  - Secrecy provisions reform anticipated to pass parliament in 2025.
  - Upcoming election in 2025.
  - Continuing to do the core work.

**Natasha Sekulic, Assistant Commissioner – General Counsel update:**

- **Provided key observations from her trip to England and Wales**
  - No secrecy laws in England.
  - Compliance powers are stronger than Australia's, particularly protecting charitable assets.
  - Some of the significant powers the England and Wales regulator have are to:
    - disqualify responsible people for up to 15 years
    - suspend and prevent people from being in senior positions in charities
    - freeze bank accounts.
  - Freedom of information is a relatively new concept for England and Wales (roughly 10 years ago in comparison to Australia having it since the 1980's).
  - **Similarities**
    - Customer focused; similar technologies in the call centres and approach to resolving queries.
    - Fraud and corruption are key issues.
    - Desire to make communication readily available for all audiences to understand.
  - **Differences**
    - Commissioners' interpretation statements are public in Australia.
    - Their approach to transparency is different from Australia's.

### Agenda Item 3: Director Updates

**Carina Mitsinikos, Director of Registration update:**

- Reduction of queue waits times.
- Anticipated increase in demand for registration services leading into March 2025 (due to SAITE deadline).
- Proactive engagement with peak bodies to encourage early submission and facilitate tailored support (e.g. bulk submissions).
- Other support includes educational content, and in-person presentations.
- Working closely with ATO to coordinate registrations.

**Question and response:**

*Has the ACNC noticed any pattern in the type of registration cases we are receiving?*

- The 'advancing social and public welfare' subtype was the most popular subtype in applications from Oct-Dec 2024. This mirrors the same period the previous year. However, the number of applications with this subtype was approximately 22% higher during Oct-Dec 2024 compared to Oct-Dec 2023.
- We received a greater number of applications across most subtypes during the Oct-Dec 2024 period compared to Oct-Dec 2023, including:
  - 'public benevolent institution' subtype applications increased by approximately 33.8%.
  - 'health promotion charity' subtype applications increased by approximately 22.5%.
  - 'advancing culture' subtype applications increased by approximately 32%.
  - 'advancing religion' subtype applications increased by approximately 41.5%.
  - 'advancing the natural environment' subtype applications increased by approximately 91%.
  - 'advancing education' subtype applications increased by approximately 33.8%.
  - 'other purposes beneficial to the community' subtype applications increased by approximately 36%
- Some of increases in application numbers are associated with the 'self-assessing income tax exempt' (SAITE) reforms. For example, we have seen an increase in land care organisations with a purpose of advancing the natural environment applying to be registered as charities. We have also seen an increase in parents and citizens associations with a purpose of advancing education applying to be registered as charities.

**Tim Liu, Director of Reporting and Corporate Services update:**

- Reminder that for charities with a year ending 30 June, the 2024 Annual Information Statement is due on 31 January.
- Provided an update on deemed recognition, implementation of national fundraising principles and engagement with state, territory and commonwealth regulators.

**Karen Coghlan, Director of Advice, Education and Public Affair update:**

- **MFA:** We are improving security on the charity portal by adding multifactor authentication to the login. This will initially be an opt in feature for existing users, mandatory for new users.
- **SAITE:** As my colleague mentioned we have been engaging with NFP peaks about requirements to Register. One of the concerns coming out of those conversations was about the ACNC reporting obligations and what it means to report to the ACNC. In response to this feedback, we hosted a bespoke webinar on reporting to the ACNC for the first time and invited NFP SAITE

peaks as well as newly registered charities to attend. We tailored the content to the questions and concerns of these groups. The webinar had the highest webinar attendance of all our webinars and received very positive feedback.

- **Safe giving:** Each year we run a safe giving campaign to promote the Register as a source of truth for charities, which goes out to media Australia-wide. That media release went out this week and we have received good pick up so far. The annual report, released in October, shows 19 million interactions with the Register last year.
- **Charity engagement:** We have several projects aimed at helping to improve reporting, understand barriers to reporting, and how we can engage differently to overcome those barriers. We conducted outbound call to double defaulters (charities that failed to lodge two or more AIS) to encourage them to update their records and to gain a better understanding of why they had not lodged their AIS. We will use this information to better inform how we engage with charities and to improve our guidance.

#### **Michelle Cozadinos, Director of Compliance update:**

- Ongoing priorities remain predominantly in the education and support space, working with charities that require support getting their organisations back into compliance.
- Complex structures are an emerging area of interest for the Compliance team. There will be a review of complex structures, to better understand the risks.
- There will be a review of the [Regulatory Approach Statement](#) in 2025.

#### **Nicola Bennett, Director of Legal and Policy update:**

- We are reviewing the ACNC's template constitution for charitable Australian public companies limited by guarantee (CLG). We intend to run a public consultation regarding the amendments we have made to the CLG template in February 2025. This will include:
  - a revised version of the standard CLG template constitution.
  - customised versions of the CLG template which are intended for use by:
    - CLGs seeking registration with the Public Benevolent Institution subtype of charity
    - CLGs seeking registration with the Health Promotion Charity subtype of charity
    - CLGs seeking endorsement as a deductible gift recipient.
  - We've also prepared the following documents to complement the CLG templates:
    - a template registers of members
    - a template dispute resolution policy.
- Decision Impact Statement (DIS) regarding Equality Australia Ltd:
  - We have carefully considered the impacts of the Full Federal Court decision regarding Equality Australia Ltd.
  - A DIS is being prepared and we are also considering amendments to our [Commissioner's Interpretation Statement: Public Benevolent Institutions](#)
  - We will run a public consultation on the DIS. It won't take place until 2025, because we have taken onboard feedback that our stakeholders find it very difficult to participate in consultations if they are run over periods in which there are school and public holidays.
- Secrecy provisions:

- The Bill to amend the ACNC's secrecy provisions to empower the Commissioner to make public comment on recognised assessment activities that are in progress (subject to a public harm test) is still being considered by the Senate.
- Senator Dean Smith proposed that the original Bill under consideration be split into two Bills.
- The Bill containing the proposed amendments to the ACNC's secrecy provisions is now called the Treasury Laws Amendment (Miscellaneous Measures) Bill 2024.
- The Senate will consider the Bill when it next sits on 6 February 2025.

Additional comments:

- ACNC noted that in the event of a natural disaster declaration by the Australian Government, the ACNC would automatically extend the AIS due date of those charities affected by the event. The ACNC's website would be updated to reflect any information for the public's awareness to the relevant postcodes. Where a natural disaster is not declared requests for extension will be considered on a case by case basis.

## Agenda Item 4: Roundtable Discussion – Emerging issues for the Sector, Agenda ideas and additional feedback for the ACNC

In this session each member was invited to raise current or emerging issues for the sector and to provide feedback to the ACNC. Topics covered included:

- complexity of applications for charities that provide housing
- challenges and expectations for insurance in not-for-profits, particularly smaller charities.
- confusion for charities with regard multiple regulators and reporting requirements to each
- how the ACNC works with other regulators and related challenges with reference to the ATO, ASIC and the ABRs. Members asked the ACNC to invite ASIC and the ABR to a forum.
- members noted charity clients asking about Environment Social Governance (ESG) reporting and what it means for them
  - there aren't sustainability standards or ESG reporting requirements to the ACNC.
  - some large companies may need to begin reporting in 2025 as a result of the [\*Treasury Laws Amendment \(Financial Market Infrastructure and Other Measures\) Bill\*](#)
- additional guidance was requested in relation to:
  - the ACNCs approach to investigations, with the ATO provided as an example where audit plans are provided
  - complex structures
  - clarity around charity director duties and responsibilities, specifically around smaller charities who are registering
  - implementation of fundraising principles - ACNC to more clearly outline on their website in which states and territories charities must notify of their intention to fundraise before they get the benefit of the national fundraising principles.
  - improved guidance on safeguarding
- members asked how charities have responded to reporting on related party transactions. The ACNC noted:
  - that from a review of the 2023 AIS, only 14% of submissions said that they had reportable related party transactions, which seems low.

- ACNC will undertake a deep dive into what charities have written in the 'other' section of the form, which will inform what is put in the 2025 AIS.
- ACNC is happy to work with forum members to assist with refining the AIS for 2025.

The ACNC will consider all feedback and requests within our remit in its forward workplan and continue to work with other regulators on a range of matters. Of particular note, the ACNC:

- is drafting guidance on complex structures
- migrating online learning material to the ACNC website – forum members will be updated on this
- developing a range of online self-assessment tools for charity governing bodies
- has invited the ABR to present at the February 2025 forums

## Agenda Item 5: Insights from Compliance reviews on cybersecurity and safeguarding

Michelle provided a high-level presentation to forum members on insights from compliance reviews on cyber security and safeguarding:

- As the national regulator of registered charities, the ACNC plays a pivotal role in supporting public trust and confidence in the charity sector. In 2020, the ACNC commenced its review program to focus on specific risks and issues to provide assurance to the public that the reviewed charities were acting appropriately.
- The purpose is to help us work with charities to better address issues early on and respond proactively to emerging risks.
- Helping charities maintain good governance also supports the sustainability of the charity sector and confidence in the sector, as well as informing improvements to our risk-based approach to managing compliance.
- The ACNC has [published report summaries](#) of the reviews completed to date. They summarise review outcomes and include lessons for charities based on the findings and our understanding of best practice.
- We audit relevant guidance and update, if necessary, based on findings.
- We amplify findings and summaries via a news piece and socials to inform charities. Other communication such as media releases, webinars or podcasts are developed if relevant.
- If the ACNC identifies issues, refer for investigation, or regulatory advice.

### Safeguarding:

- Safeguarding is an important focus area for the ACNC. Ineffective safeguards can result in an increased risk of harm to vulnerable people including children, seniors and people with impaired intellectual or physical functioning. Safeguarding can be defined as “protecting the welfare and human rights of people that are, in some way, connected with your charity or its work – particularly people that may be at risk of abuse, neglect or exploitation.” It is viewed as part of a charity's primary duty of care. Best practice for safeguarding is not limited to a charity's beneficiaries or the use of its services; it can include a charity's staff, volunteers, and third parties connected to the charity, such as suppliers and partners.
- Safeguarding itself is a priority concern for the ACNC because ineffective safeguarding can result in harm to people. This can manifest itself as:

- threats of violence
- discrimination
- exploitation and coercion
- sexual harassment or offenses
- verbal, emotional, or social abuse.

## The Data

- Twenty-six charities were selected. Of these, 19 were large, 3 were medium, and 4 were small. All but one of the charities only operated within Australia. Over half of the charities selected operated in the disability sector.
- We sought information from each of these charities to evaluate their performance against the following questions:
  - How does the charity ensure its RPs and KMP are suitable?
  - How does the charity ensure its RPs identify and manage risks related to safeguarding people connected to its work?
  - How does the charity ensure its RPs understand and meet their legal obligations to safeguard people the charity engages with?
  - What mechanisms does the charity have to allow people to raise concerns and report incidents and allegations of wrongdoing?
- Of 26 charity reviews, half demonstrated satisfactory compliance with requirements.
- Many of the charities that demonstrated particularly exceptional compliance, stated that they frequently engaged with other charities and organisations in their sector. This allowed those charities to share resources and knowledge, reducing the overall burden on individual entities.
- For example, we saw charities that were part of a network of charities or a peak body in their sector receiving information and regular updates on reforms and legislative changes that have implications for them. e.g. disability sector. This engagement supported them to meet regulatory requirements.

## Cybersecurity

- In this review, we looked at cyber security as an emerging area of risk. We aimed to identify key areas where charities can strengthen their governance to ensure they minimise cyber security risks, and manage a cyber incident, if necessary.
- Cyber security refers to protecting a charity's electronic information from unauthorised access. It applies to all electronic information, but if a charity handles personal or sensitive information, it must take particular care to protect it.
- Cyber security is also about protecting a charity's communications and financial transactions from unauthorised access.
- Charities need to make sure that staff and volunteers understand cyber security risks and put in place mechanisms to avoid and adequately deal with any incidents if they occur.
- Those who run a charity, such as board or committee members, ultimately have the obligation to make sure the charity is taking appropriate measures to protect its business systems, data, finances and operations from a cyber-attack, and other cyber threats.
- Summary publication is pending
- We have already updated our guidance and done a podcast with Australian Signals Directorate.

**Focus was placed on the following risks:**



- **Whether a charity's responsible people are effectively governing the charity:** the board is ultimately responsible for ensuring a charity is taking a proactive approach to reduce the risk of a cyber-attack and have a plan to respond to cyber security issues and data breaches.
- **Financial mismanagement** charities can avoid basic mistakes and make sure they are well protected from cyber-attacks by having strong financial management and controls. Funds and assets stolen from a charity through a cyber-attack means that those resources cannot be used to carry out activities for the charity's beneficiaries.
- **Fraud:** fraud and financial crime are one of the most common types of abuse for charities in cyber security.
- **Data breaches:** charities (and contracted partners) hold sensitive data in relation to charity donors and beneficiaries. If this data is compromised the resultant breaches of privacy can expose charities to financial and reputational damage that would be significantly disruptive to a charity's ability to achieve its purposes.

**ACNC evaluated charities based on:**

- the cyber risks identified by the charity
- how the charity protects itself from cyber attacks
- the steps the charity would take or has taken in the event of a cyber security breach.
- Of 25 charities reviews, 84 % satisfactory

**Compliance was supported by:**

- detailed policies & procedures
- a culture of cyber security awareness
- board members with knowledge and skills to drive strong governance practices
- using resources, tools and advice from lead agencies e.g. 'Essential Eight' – [cyber.gov.au](https://www.cyber.gov.au)
- understanding the risks and taking steps to manage this risk.

**Insights for charities with good cyber security governance:**

- Strong governance around cyber security is driven by the skills and culture of the board.
- Charity has a sub-committee that provides a good foundation for the charity to manage cyber security.
- Charity is quite advanced in terms of its governance to manage cyber security with policies and procedures in place to protect the charity from cyber security threats.
- Charity has cyber security awareness and detailed procedures and policies in place. Despite this, the charity is still vulnerable to cyber breaches and relies on strong cyber security for protection.
- Strong awareness of the peak authority (Aust Signals Directorate) and the 'Essential Eight Mitigation Strategies' - [Essential Eight | Cyber.gov.au](https://www.cyber.gov.au).
- Charity noted ACNC guidance should align with what already exists from other agencies.
- Charity shares their cyber security policies with other charities.
- Charity has strong cyber security as a breach would impact their reputation and operations. This would likely set the charity back several years.
- Charity noted there is a dilemma around the risks/benefits of storing donor data. Risks include exposure to data breaches when data is stored. Benefits exist when donors re-subscribe if data is stored.
- Of 25 charities reviews, 16% unsatisfactory.



**Compliance impacted by:**

- little attention to cyber security risks
- no plan to respond to cyber incidents
- working with third parties who failed to comply with an agreement to delete data when contract ended.

**Insights for charities needing to strengthen cyber security:**

- Charity is focused on delivery of purpose with minimal attention given to cyber-security.
- Charity has some insight into risk and best practice but there is a need to strengthen governance and adopt policies/procedures to ensure the charity is equipped to deal with cyber security.
- Charity is working towards making improvements and developing an appropriate level of cyber security.
- Charity had in place a contract with a third-party and the third party failed to comply with the agreement to delete data when the contract ended.
- Need to develop a response plan for cyber breaches/incidents.

**Agenda Item 6: Treasury Update**

- Peter Robjert, provided a high-level update on the work Treasury have been doing recently:
  - wrapped up a consultation process of Charity guidelines.
  - 28 organisations have been announced by the Government to be included in the Ministerial instrument.
  - consulting on the transitional reporting arrangements.
  - Not-For-Profit Blueprint report finalised.
  - changing the name of Auxiliary funds for better clarity, subject to the passage of legislation.
  - legislative updates.
  - secrecy provisions awaiting passage through Senate.

**Agenda Item 7: Australian Accounting Standard Board - AASB: 'Tier 3' reporting framework (Slides attached)**

- Fredrich Housa provided a AASB update:
  - discussed the purpose of ED 334 and entities affected by the proposals.
  - major simplifications proposed for the [Tier 3 reporting requirements](#).
  - project status on Service Performance Reporting.

**Agenda Item 9: The Not-for-profit Sector Development Blueprint (NFP Blueprint) (Slides attached)**

- Ian Hamm provided an overview of [the NFP blueprint](#).
  - provided context around the Not-for-profit sector.
  - explained the significance of the Not-for-profit Sector.
  - vision and goals.
  - provided a timeline of the project.
  - provided the Blueprint phases
  - pillars, priorities and outcomes.

## ATO Update (Slides attached)

- Jennifer Moltisanti, Assistant Commissioner of the ATO provided a high-level overview of the not-for-profits landscape in Australia. Key highlights included:
  - landscape of regulators and administrators of the NFP's
  - NFP's Income tax obligations
  - NFP's GST and employer obligations
  - improving assurance
  - key focus areas.
    - operating and purpose
    - private and public ancillary funds
    - self-assessing tax exemption
    - emerging risks
  - public advice and guidance
  - new annual self-review return
  - deductible gift receipt reforms and integrity
  - support for indigenous not-for-profits

### Question and response:

*What if a Tax File Numbers (TFNs) is compromised?*

- If TFNs are compromised, Charities need to call ATO. Where your organisation is subject to a cyber-attack and TFNs or other tax related information may be compromised, please refer to the following guidance on the ATO website for next steps <https://www.ato.gov.au/online-services/scams-cyber-safety-and-identity-protection/help-with-data-breaches/data-breach-guidance-for-businesses>
- Taxpayers can also call the ATO Client Identity Support Centre on 1800 467 033 Monday to Friday, 8:00 am – 6:00 pm AEST, so we can apply measures to protect the business, staff and clients where necessary.

## Agenda Item 10: Closing Remarks

Rachel concluded the meeting by expressing her gratitude to all the participants for their valuable contributions and insights to the sector. She wished everyone a safe and happy holiday season.