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Welcome to the latest edition of our Not-for-Profit Newsletter. Please feel free to contact us if you have any questions about the content of this Newsletter.

### In this edition

This edition covers a number of financial reporting matters including ASIC focus areas for 30 June financial reports and transitioning to simplified disclosures from 1 July 2021. There are also a number of items relating to fraud and compliance, as well as guidance on governance matters. Finally, we provide an update on NSW fundraising laws and upcoming requirements for deductible gift recipients.





## Governance

### DIN is on the way

As part of the *Treasury Laws Amendment (Registries Modernisation and Other Measures Act) 2020*, directors, including alternative directors and those of registered foreign companies and companies governed by the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* will be required to apply for a director identification number (DIN).

DINs hope to combat illegal phoenixing by providing more effective tracking of directors and their corporate histories. The move also improves data integrity and security.

A DIN will be a permanent unique identifier and will be issued only once a director has established his or her identity to the satisfaction of the registrar of the Australian Business Registry Services. The registrar is the commissioner of taxation.

DIN provisions began on 4 April, and testing, which ends on 31 October, aims to ensure their effective operation.

Deadlines set by Treasury through various legislative instruments for DIN implementation are:

- Directors will need to obtain a DIN by 30 November 2022
- CATSI-Act directors will need to obtain a DIN by 30 November 2023, and
- persons wishing to be appointed as a director after 30 November 2022 must have a DIN before their appointment.

Penalties for non-compliance, such as applying for several DINs or misrepresenting a DIN, include infringement notices and civil and criminal penalties, including imprisonment.

### Governance Institute releases guidance on board papers

The Governance Institute of Australia has released *Board papers guidance* aiming to arm decision-makers with clear, relevant information.

Well-prepared board papers are vital in equipping directors with the information they need to make effective, timely decisions.

But too often they are overwhelming in volume and information while providing insufficient detail for good decision-making.

Sub-standard board papers can cause serious consequences, recent corporate crises having highlighted inadequate information flows as contributing to failures.

The *guidance* outlines:

- the purpose of board papers: They are the primary means by which directors gain the necessary information required to fulfil their governance of organisations
- tips on writing style: Adopt a formal business-writing style that is factual, dispassionate and, where possible, evidence-based, and
- tips on developing guidelines for board-paper preparation: Ensure that papers contain key information so that directors can make informed decisions, but not so much information that critical elements are obscured.

A sample board-paper template is provided in the guidance.

Governance Institute of Australia CEO Megan Motto said board papers must improve, whether entities are listed or unlisted, public-sector organisations or NFPs. Size is irrelevant, said Ms Motto.

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## New guide on AGMs

New guidance should help organisations navigate uncertainty about holding AGMs and executing electronic documents during the pandemic.

The Governance Institute of Australia, Australian Institute of Company Directors, Australasian Investor Relations Association and the business-law section of the Law Council of Australia has released *Guidance: Update on AGMs, electronic document execution and digital shareholder communications*.

Key issues covered are:

- the latest legislative and regulatory updates and what these mean for holding virtual-only AGMs, hybrid AGMs and issuing notices of meetings
- tips for holding AGMs in the current environment, including how to build in flexibility in case of changing circumstances such as another COVID-19 outbreak
- some key lessons from the 2020 AGM season on how best to prepare, mitigate risks, and engage shareholders at meetings about using digital technology, and
- what you need to consider before and during AGMs.

## Fewer fees for directors

The number of organisations that pay directors' fees continues to decrease, the latest Association Board Survey has revealed.

Key findings included:

- presidents and board chairpersons are increasingly being elected by boards
- the number of female directors has increased slightly
- the average number of face-to-face board meetings scheduled in 2021 increased while the number of online meetings decreased
- the percentage of associations surveyed that allocated funds for directors' professional development has decreased, and
- the number of organisations that pay directors' fees, other than expense reimbursements, continues to decrease.





## Compliance

### RSPCA NSW to back-pay staff

The NSW branch of The Royal Society for the Prevention of Cruelty to Animals will back-pay staff more than \$220,000 under an enforceable undertaking with the Fair Work Ombudsman.

The workplace regulator began investigating the not-for-profit animal-welfare organisation in 2019 after RSPCA NSW publicly acknowledged that it had underpaid workers. It became aware of the underpayment after being prompted by a query from an employee.

Between 2011 and 2020, current and former RSPCA NSW employees were underpaid a range of allowances and entitlements, including annual leave, public holiday entitlements, Christmas bonuses, and superannuation.

In total, 458 current and former employees were owed \$222,352 (including \$203,985 in wages and a further \$18,366 in interest and superannuation).

Individual back-payments range from less than \$2 to more than \$7000. The undertaking requires the organisation to back-pay entitlements within 60 days.

Fair Work Ombudsman Sandra Parker said that the undertaking was appropriate because RSPCA workers had been underpaid for almost 10 years.

'[...] RSPCA NSW has committed to implementing stringent measures to ensure workers are being paid correctly. These measures include engaging, at the company's own cost, audits of its compliance with workplace laws over the next three years,' Ms Parker said.

'The underpayments were the result of payroll errors and RSPCA NSW not having adequate payment systems and governance processes in place. This matter demonstrates how important it is for employers to place a high priority on workplace compliance and to perform regular payroll checks.

'Any employer who needs help meeting their lawful obligations to their employees should contact the Fair Work Ombudsman for free advice and assistance,' Ms Parker said.

RSPCA NSW is required to display workplace notices detailing its breaches, apologise to workers, commission workplace-relations training for payroll and human-resources staff, commission an independent organisation to operate a hotline for employees for three months and provide evidence that it has developed systems to ensure future compliance.

### Aboriginal Hostels back-pays staff more than \$2.7 million

Aboriginal Hostels Limited has back-paid staff more than \$2.7 million after entering into an enforceable undertaking with the Fair Work Ombudsman.

Aboriginal Hostels, a federal-government organisation, operates 45 hostels across Australia. It provides accommodation for indigenous Australians who need to be away from home to access education, employment, health, and other services.

The organisation self-reported underpayments to the Fair Work Ombudsman in March last year.

After being prompted by a pay query from an employee, Aboriginal Hostels commissioned an audit and discovered that it had failed to ensure its lowest-classification employees received minimum pay rates and entitlements.

Night attendants, cooks, kitchen hands, cleaners, handymen, and hostel workers were underpaid minimum wage rates, Sunday penalty rates, an overtime meal allowance, annual leave pay, and pay-point progressions between August 2017 and September 2020.

In total, Aboriginal Hostels has back-paid 687 current and former employees more than \$2.7 million (including interest and superannuation). Individual back-payments ranged from \$3 to more than \$37,000.

Fair Work Ombudsman Sandra Parker said the underpayments were the result of Aboriginal Hostels not having adequate payment systems.

'Under the enforceable undertaking, Aboriginal Hostels has committed to implementing stringent measures to protect the rights of its workforce. [They are] developing systems and processes for ensuring compliance in future and engaging an independent auditor to conduct two audits of [the organisation's] compliance with workplace laws,' Ms Parker said.

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'This matter demonstrates how important it is for employers to perform regular payroll checks and be aware of every lawful entitlement they must pay their employees. Any employer who needs assistance meeting their lawful obligations should contact the Fair Work Ombudsman.'

Under the EU, Aboriginal Hostels are required to display workplace and online notices detailing its breaches, apologise to workers, commission workplace-relations training for relevant staff, and commission an independent organisation to operate for a year a hotline for employees.

## Minimum wage increased

The Fair Work Ombudsman is reminding employers that the national minimum wage increases to \$20.33 an hour (up from \$19.84) or \$772.60 a week (up from \$753.80).

The Fair Work Commission announced on 16 June a 2.5 per cent increase to the national minimum wage following its annual review. This increase applies from the first full pay period starting on or after 1 July.

Employees covered by awards will also have base rates increased by 2.5 per cent, the increases beginning on different dates for different groups of awards.

Casual employees that the national minimum wage applies to must receive a minimum of \$25.41 an hour, including their 25 per cent casual loading.

Most award wages increased from 1 July with the following exceptions:

- wages in the Retail Award will increase from 1 September, and
- wages in 21 other awards where the Fair Work Commission deemed there were exceptional circumstances will increase from 1 November.

Employees covered by awards will have their base-rate increase from the first full pay period starting on or after the relevant date.

## Super-guarantee rate rises

The super-guarantee rate rose on 1 July from 9.5 to 10 per cent. Entities will need to ensure that payroll and accounting systems are updated to incorporate the increase.

The super rate is scheduled to progressively increase to 12 per cent by July 2025.

## Ancillary funds must lodge returns

Public and private ancillary funds must lodge annual information returns.

Ancillary funds that are ACNC-registered charities must complete an online ACNC annual information statement. Funds that are not registered as charities with the ACNC must continue to lodge a return with the ATO and might also need to lodge an income tax return.

Funds must meet respective ancillary-fund guidelines, and failure to comply might mean penalties.

## Self-assessment changes on the way

Non-charitable NFPs may self-assess their eligibility for income-tax exemptions without an obligation to report to the ATO.

From 1 July 2023, the ATO will require income-tax-exempt NFPs with an active Australian business number to submit online annual self-review forms with the information they ordinarily use in self-assessing.

NFPs will need to ensure that as part of governance they satisfy requirements to retain income-tax exemptions.





## ACNC Activities

### Governance standard strengthened

The federal government has announced amendments to governance standard three to ensure that Australian charities that engage in unlawful behaviour face enforcement action.

The move equally applies to charities that use resources to promote illegal behaviour.

The new regulations will empower the ACNC commissioner to investigate charities engaging in or promoting serious unlawful acts of trespass, vandalism, theft, assault, and threatening behaviour.

They will amend ACNC governance standard three to require that charities must not engage in these kinds of offences irrespective of their description as indictable or summary.

'Australians support charities through donations and tax concessions with the expectation that a charity's resources are directed towards charitable works. By making these regulations, the government is ensuring [that] charities that misuse and take advantage of their status to take part in or actively promote illegal activity can be stripped of tax concessions and other benefits,' assistant treasurer Michael Sukkar said

Charities will also be required to maintain reasonable internal controls over resources such as funds, social-media accounts, and employees to ensure that they do not use them to encourage others to commit offences.

Governance standard three requires charities to comply with Australian laws. Acting lawfully protects a charity's assets, reputation, and the people it works with. Compliance with Australian laws sets a minimum benchmark by which all charities should govern themselves.

Charities will still be able to participate in advocacy activities provided they are consistent with their charitable purpose and conducted lawfully.

The ACNC will provide guidance and education once the regulation comes into effect to help charities understand and comply with the new rules.

### Clarifying political donations

Changes to ACNC regulations will require the ACNC commissioner to publish where to find details of charities' electoral expenditures and political donations.

When a registered charity is required to report expenditure to the Australian Electoral Commission and the commission publishes it, the ACNC will be required to publish where the details of the expenditure may be found.

From 30 July, the ACNC will provide links on the charity-register listing of affected registered charities to the AEC's transparency register, which discloses details of political donations and electoral expenditure.

The changes will fail to affect what registered charities are required to submit to the ACNC.

### Tell me more

The ACNC is encouraging charities to include in annual information statements the addresses of their activities and services.

ACNC data shows that charities reported more than 55,000 programs in their 2020 statements. The information is available on the commission's charity register.

Later this year the register will have an enhanced *geosearch* feature that will enable users to search for programs by location.

Charities should be specific when submitting location details of their activities.

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## Review your governing document

As the new financial year begins, the ACNC is urging charities to review their governing documents to ensure that they are still working towards their stated purposes.

Charities are responsible for ensuring that they maintain eligibility for registration, which includes meeting their obligations to the ACNC and fulfilling their charitable purposes.

Data from the *Australian Charities Report* (seventh edition) showed that many charities on the ACNC register have been in operation for decades – on average 32 years.

'Over the life-cycle of a charity, if it is successful and grows, its activities may also expand, which is great,' ACNC commissioner Gary Johns said. 'However, it is important that charities don't drift away from their purposes inadvertently.'

'A charity's activities and programs should reflect its documented purposes.'

A charity's governing document sets out its activities. Responsible persons and staff should be familiar with it and ensure that its objectives reflect its mission.

'Drafting your governing document is not a set and forget activity,' said Dr Johns. 'Charities must ensure they are staying true to their purposes.'

Charities should also check that information on their charity portal is accurate.

Charities may check on the ACNC website that their current activities and purposes match their charity subtype.

As part of its regular regulatory work, the ACNC reviews charities' entitlement to registration.

## Know the charity sector

Official data has shown that Australia's charity sector was robust just before the advent of COVID-19 and the 2020 bushfires, employing 11 per cent of Australia's workforce and generating revenue of \$166 billion.

The ACNC has released its annual sector analysis in the seventh edition of the *Australian Charities Report*. It analysed data submitted to the regulator by more than 48,000 charities in 2019 annual information statements.

As charities' financial years vary, this edition of the report includes information from charities with financial years between 1 July 2018 and 31 December 2019.

In the 2019 reporting year:

- The most common activities for charities were religious, primary, and secondary education.
- Small charities (annual revenue less than \$250,000) made up 65 per cent of the sector.
- Large charities (annual revenue of \$1 million or more) made up 19 per cent of the sector and medium charities (annual revenue of \$250,000 to \$999,999) made up 16 per cent.
- Charity revenue grew by 6.8 per cent on the previous year.
- Revenue rose by \$10.5 billion to \$166 billion.
- Revenue from goods and services increased by \$3.5 billion to \$56.7 billion.
- Donations rose to \$11.8 billion – an increase of \$1.3 billion from the previous year.
- Government funding accounted for \$78.1 billion, an increase of \$4.4 billion.
- Charities employed 1.38 million people – about 11 per cent of total employment in Australia.
- Charities spent \$85.9 billion on employee expenses, up 6 per cent from \$81.1 billion the previous year.
- Volunteer numbers decreased by about 200,000 to 3.6 million.
- More than half of all charities (51 per cent) operated without any paid staff.
- Overall, Australia's charities operated at a surplus, supported by substantial assets.
- Assets increased by \$30 billion to \$354 billion.





## Fraud

### Fraud-control standard updated

Fraud and corruption are significant issues for Australian businesses, governments, and not-for-profit organisations, often resulting in financial and reputational damage.

Managing fraud and corruption risks in business is a governance issue.

AS 8001:2021 Fraud and corruption control has been updated by Standards Australia to provide minimum requirements for organisations wishing to develop, implement, and maintain effective fraud and corruption controls.

It includes a requirement for information-security systems to be consistent with ISO/IEC 27001, Information technology – Security techniques – Information Security Management Systems – Requirements.

The updates also include guidance on the roles of governing bodies and top management as well as whistleblower protection.

## Financial-reporting insights

### ASIC focus areas for 30 June financial reports

ASIC has highlighted key focus areas for financial reporting for periods ending 30 June 2021.

ASIC expects directors, preparers of financial reports, and auditors to pay particular attention to asset values, provisions, solvency and going-concern assessments, events occurring after year-end and before completing reports.

The Commission has extended the deadline for both listed and unlisted entities to lodge financial reports under chapters 2M and 7 of the *Corporations Act 2001* by a month for balance dates from 23 June to 7 July.

The extended deadlines will assist with any pressures on smaller entities' resources and provide adequate time for completing audits given COVID-19.

When deciding whether to depart from normal statutory deadlines directors should consider the information needs of shareholders, creditors, and other users of their financial reports. They should ensure that they meet borrowing covenants and other obligations

### Pandemic-related rent concessions extended

AASB 2020-4 *Amendments to Australian Accounting Standards – Covid-19-Related Rent Concessions* amends AASB 16 Leases to extend by a year the application period of a practical expedient.

The expedient permits lessees not to assess whether rent concessions that occur as a direct consequence of the COVID-19 pandemic are lease modifications.

The standard extends the practical expedient to rent concessions that reduce lease payments originally due on or before 30 June 2022, provided other conditions for applying it are met.

This standard applies to annual periods beginning on or after 1 April.



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## Transitioning to simplified disclosures

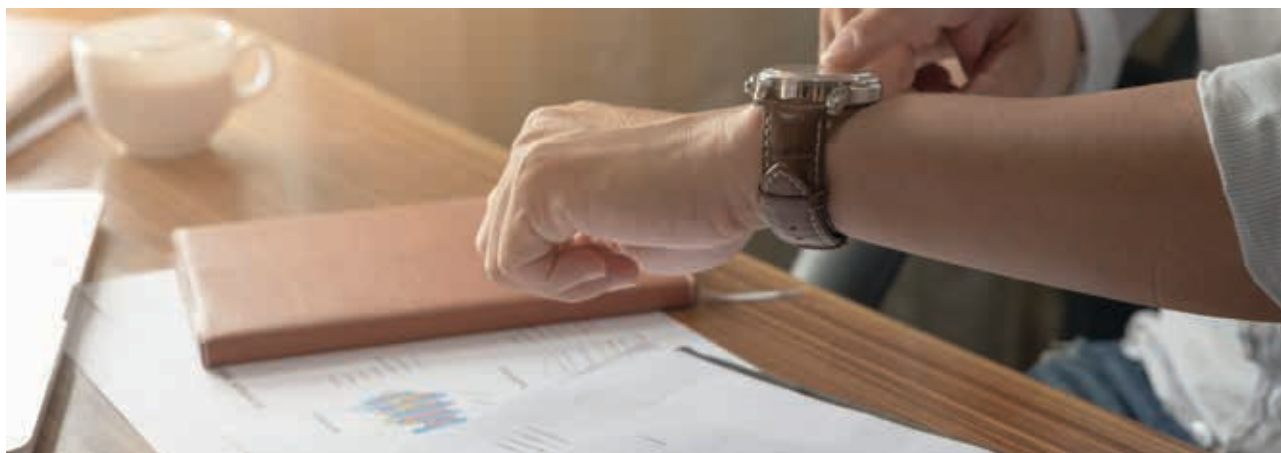
The Australian Accounting Standards Board has issued *AASB 2021-1 Amendments To Australian Accounting Standards – Transition To Tier 2: Simplified Disclosures For Not-For-Profit Entities*.

It provides entities with optional relief from presenting comparative information in the notes to financial statements where they failed to disclose comparable information in their most recent general-purpose financial statements.

The standard amends *AASB 1060 General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities*.

Relief is available for not-for-profit entities transitioning from either Tier 1: Australian Accounting Standards and Tier 2: Australian Accounting Standards – Reduced Disclosure Requirements to Tier 2: Australian Accounting Standards – Simplified Disclosures for a reporting period before entities' mandatory application of AASB 1060.

The standard applies to annual periods beginning on or after 1 July. Earlier application is permitted, provided that AASB 1060 is also applied in the same period.



## Fundraising

### Raise funds within the law

While the ACNC does not regulate fundraising, the commission considers that the way charities conduct it is a crucial aspect of good governance. Practices must comply with governance standards.

Appeals and fundraising campaigns are a significant part of the sector's engagement with the community and must be conducted in ways that maintain and enhance public confidence, it believes.

Regardless of whether donations are sought in person or online, the manner of the approach must comply with relevant state and territory fundraising laws, be in the best interests of a charity, and meet community expectations.

A charity should have policies and procedures to address a range of pertinent matters, such as:

- record-keeping
- managing donors' data
- responding to those who decline to give, and
- engaging with vulnerable people, such as the elderly and those who have an intellectual disability.

They must also ensure that money raised, less reasonable expenses is put towards pursuing the charity's purpose.

Donations may be used only for activities that advance charitable purposes.

Regardless of the way fundraising is conducted, a charity's board and responsible persons are accountable.

Each state and territory has its own regulations, and it's important for charities to understand them. Different regulations apply to different types of charities. Some charities, for example, may offer donors a tax-deductible receipt but others are not eligible to do so.

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## New NSW fundraising laws begin

The NSW government's key reforms to charitable-fundraising laws commenced on 1 July.

Reforms include a tiered system of record-keeping and auditing, and clearer powers for the regulator to suspend and cancel an authority to raise funds.

From 1 July:

- A new maximum five-year term for fundraising authority will be introduced to increase surveillance of fundraisers. The department secretary will be prompted to conduct a compliance review if necessary when a charity's authority is up for renewal.
- Authority holders will be required to submit an annual return to NSW Fair Trading, even if no money was received or no appeal was conducted within six months of the end of the financial year.
- Charities that raise more than \$250,000 annually will have to submit an auditor's report and annual return.
- Charities must submit a written statement affirming they are complying with their requirements.
- ACNC-registered charities will automatically be eligible for an authority in NSW, and
- The secretary will have discretion over the time taken to evaluate and approve applications.

Inspectors will be given a broad range of investigative and compliance powers, disciplinary options ranging from penalty notices to hefty fines and incarceration. The measures should provide effective and appropriate deterrents to bad behaviour.

The maximum penalty for serious offences, including conducting and advertising unlawful fundraising appeals, appeals for personal gain, and falsely representing appeals has been quadrupled to \$22,000.

Charities registered with the ACNC can access a simpler application process when applying to NSW Fair Trading to receive and renew an authority to fundraise. Registered charities that are authority holders will not need to submit a separate annual return to NSW Fair Trading. They need only report to the ACNC.

New arrangements apply for 2021 annual information statements.





## Deductible gift recipients

### DGR reform updated

A measure requiring non-government deductible-gift recipients to be registered with the ACNC is before federal parliament.

The Treasury Laws Amendment (2021 Measures No. 2) Bill 2021 includes an explanatory memorandum that contains more information about the measure's policy intent.

Fewer than 2,000 DGRs will be required to register as a charity with the ACNC for them to maintain their DGR status.

Key messages are:

- A transition period of 12 months will be provided to allow current DGRs to retain their status while they register as a charity.
- DGRs that have not successfully registered as charities with the ACNC within the 12-month period must apply for an ATO commissioner's time-limited exemption to maintain DGR endorsement.
- Applications for an exemption must be received within the 12-month transition period and will be time-limited to an extra three years after the end of the initial 12-month transition period.
- DGRs will be able to indicate that they wish to apply to the ATO for the exemption in their ACNC application for charity registration. A streamlined process will enable the ACNC to forward relevant information to the ATO.
- The government has postponed remaining measures (relating to the transfer of the administration of the four DGR registers to the ATO and ACNC and the removal of certain public-fund requirements for DGRs) and there is no timetable for their adoption.

It is intended that the amendments will begin three months after royal assent.





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