

# CHARITY COMPLIANCE REPORT 2018

Maintaining, protecting and enhancing  
public trust and confidence in  
Australia's charity sector



Australian Government



Australian  
**Charities** and  
**Not-for-profits**  
Commission

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# 01

## Foreword



Australians entrust charities to deliver critical services – education, research, healthcare, social services, religion and emergency relief just to name a few. And every day Australians enable charities to do this important work through their generosity and support.

According to the Australian Charities Report 2016, nearly 3 million Australians volunteered for a charity, and together, we gave \$10.5 billion as donations or bequests.

It is important that Australians can continue to support charities with confidence. We know that a single charity doing the wrong thing can have a damaging effect on the reputation of the entire charity sector, so our role in maintaining, protecting and enhancing public trust and confidence in the sector is critically important.

In 2018, with support from Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Australian Taxation Office (ATO), we identified charities at risk of misuse and worked with them to strengthen their processes and procedures.

Although risk is ever present, it can be minimised. We have been working with charities to help them understand and identify what risk is in their context, so that they can put mitigation strategies in place. In 2018, we developed and trialled a self-evaluation tool for charities. It was well received by the charities that participated in the trial. The self evaluation tool is now available on our website, [acnc.gov.au](https://www.acnc.gov.au).

Even large iconic charities are at risk of being misused, as we saw with Guide Dogs Victoria, who share their story in this report. This is the first time we have featured a real case study in our annual compliance report, and I applaud Guide Dogs Victoria for being willing to share their experience. You can read the Guide Dogs Victoria case study, which was written by the charity, on page 3. Guide Dogs Victoria faced fraud head on and demonstrated a swift, thorough and transparent response. The charity has no doubt emerged stronger than before.

Charities should discuss fraud internally to better understand what it is, and how it may occur within their organisation. Staff and volunteers should always feel that they can report their concerns.

A zero-tolerance approach to wrong-doing should also extend to safeguarding people from harm. In 2018, the ACNC broadened its compliance focus from 'harm to beneficiaries' to 'harm to people'. Charities need to protect not only vulnerable people they work with, but also their own staff, volunteers and anyone that comes into contact with the charity. By acting honestly and with integrity, even when harm has occurred, charities can protect both their own reputation and the public opinion of the charity sector in general.

I am pleased to publish the 2018 Charity Compliance Report, it is an excellent high-level summary of our work. I believe that it is the most interesting and insightful compliance report that we have published to date.

We have shared as much information as the secrecy and privacy provisions in the ACNC Act allow. Currently we are only able to publish limited information relating to the use of certain enforcement powers. In most cases the ACNC cannot discuss its reasons for taking action against a charity.

However, in our submission to the five-year review of the ACNC's legislation, we raised this restriction as an issue that should be addressed. In future, we hope we can bring you more real examples, to illustrate good governance and share lessons with the sector.

A handwritten signature in black ink, appearing to read 'Gary Johns'.

**The Hon Dr Gary Johns**

Commissioner

Australian Charities and Not-for-profits Commission

The following is a true case study written by Guide Dogs Victoria about their personal experience managing internal fraud.

## CASE STUDY

### Guide Dogs Victoria

Being 'Australia's Most Trusted Charity' brand for the 6th year in a row is a significant responsibility. When news spread throughout the not-for-profit sector of fraud perpetrated by a senior manager at Guide Dogs Victoria, all eyes were on us to understand what had happened and to see how we would respond.

#### What happened

We detected the initial fraud in 2016. It had escaped detection through independent external audits, but we found it through our own stocktake of assets – a part of our regular internal financial management.

We found that there was an asset missing and, when we looked into it further, we discovered a falsified invoice that had been used to deceive us about the asset's origin and purpose.

This triggered an extensive internal investigation and we found a catalogue of fraud. It was all committed within the individual's delegations and budget to evade detection by other internal financial control systems. The fraud included falsifying documents, so expenses were seen as reasonable.

#### Action taken

When we detected the fraud, the perpetrator had left our organisation. We immediately set about determining the full extent of the fraud and our strategy for recovering the money we lost.

We also took this opportunity to set up additional controls to reduce the risk of this type of fraud occurring again.

The board of Guide Dogs Victoria, external financial auditors and our legal counsel were immediately informed of the fraud when it was first detected and then notified of the result of the internal investigation. Following the internal investigation, we had external specialists conduct a high-level investigation to validate our findings to make sure we understood the scale of fraud accurately.

Once the external investigation was completed, our legal counsel approached the perpetrator about the findings. Thankfully, all the money was repaid within days, including our legal and investigative costs.

#### What we learned

One thing we learned was that no matter what controls are in place to limit risk, if an individual is determined to defraud – and has the power to do so they can. What is critical, is how an organisation responds to these events.

Many organisations that are the victims of fraud tend to focus their attention on financial restitution at the expense of criminal justice. With trust and transparency being core values of Guide Dogs Victoria, it was clear that, despite the risk to our reputation, we had to take a zero-tolerance stance on fraud and corruption.

It was a unanimous decision of the Executive team and the Board to prosecute the individual's fraudulent activity with the full force of the law.

It took more than a year to prosecute the perpetrator, and it was another year before the conviction and subsequent sentencing. This was a stressful time for us, but it was also a time of considerable evaluation, as we made improvements in our processes and controls. It was also a time of readjustment as we came to understand the full extent to which the incident affected all the people involved.

For organisations that read about our case, we are keen to share the lessons we learned:

- **Ensure that your organisation's zero-tolerance** of fraud and corruption is in writing and this is communicated to staff and volunteers. As part of this, include ways for staff and volunteers to report suspected fraud and corruption without fear of reprisal, for example a whistle-blower hotline or internal contact officers.

- **Be transparent with your financial information**

Invest time in making sure people at all levels of management have a competent understanding of finances so that they can be properly accountable for their areas of control and are able to identify anomalies.

- **Have your communications plan ready** for when things go wrong. Consider all your stakeholders and prepare for as many scenarios as possible.

Ensuring financial controls are strong is fundamental in any good governance structure. However, ultimately, a person of power that is wilful and deceptive may find ways around them. The lesson here is in ensuring your organisation's attitude and response to this behaviour is as critical as the controls themselves.

## Reflections

As we close off on this chapter of our history, we are thankful to remain an iconic and much loved and trusted organisation. We received resounding support from donors and supporters regarding the courage we showed in shining a light on fraud and acting on our core values.

As trust becomes ever more important to consumers, we are reminded that the definition of trust is 'the firm belief in the reliability, truth or ability of someone or something'. Trust is not only built by sharing the good stories; it is built by being honest and reliable in every account or deed, however difficult it may be.

# 02

## The ACNC's role

The ACNC is the independent national regulator of charities. The ACNC Act has three objects:

- to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector
- to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector
- to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

We determine whether an organisation meets the legal definition of charity and we work to ensure charities understand and meet their obligations by providing guidance, support or regulatory intervention (where necessary).

When charities are not meeting their obligations, we investigate and take appropriate action to ensure charities are well governed and that charitable funds are used for their intended purposes.

We help the public understand the work of the charity sector by maintaining the Charity Register – an online, searchable database of information about charities. The Charity Register enables charities to be transparent by publishing information about their governance, activities, operations, and finances.

Although the ACNC Act refers to not-for-profits and the not-for-profit sector, the ACNC currently only regulates registered charities – those that meet the definition of charity, as set out in the *Charities Act 2013* (Cth) (the Charities Act).



# 03

## Compliance priorities

The ACNC is not resourced to investigate every regulatory concern that is brought to our attention. We prioritise investigations based upon the level of risk.

The ACNC uses a risk-based approach in allocating our compliance resources.

We prioritise concerns that present the greatest risk to trust and confidence in the charity sector. Our proportionate approach to compliance allows charities a chance to address unintended mistakes while dealing with cases of serious misconduct quickly and firmly.

Before acting, we carefully consider the risk and the most effective response in the circumstances. We will assess and consider several factors, including:

- the type of problem, contravention or misconduct
- what or who is at risk
- the likelihood and frequency of occurrence or reoccurrence
- the potential impact on the charity (including the impact of any proposed enforcement action), and
- the risk profile of the charity and the behaviour of the charity's responsible persons.

The following forms of conduct are so detrimental to trust and confidence in the charity sector that they are always considered a priority:



### **Fraud and financial mismanagement**

– including money laundering, tax avoidance, private benefit.



### **Terrorism**

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



### **Failure to safeguard people**

– particularly children and vulnerable adults.



### **Political or unlawful activities**

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



# 04

## Our activities



90

Investigations finalised



16

Revocations



24

Compliance agreements



31

Preliminary enquiries\*



1

Revocation following registration review of entitlement



87

Risk assessments completed



2

Enforceable undertakings



3

Directions



71

Regulatory advice issued



39

Penalty warning letters



18

Penalty notices issued



113

Double defaulter revocations



**\$11.9b**

Charities subject to compliance cases controlled over \$11.9 billion in assets

\* preliminary enquiries are used in circumstances where it is appropriate to seek comment from a charity before determining whether a compliance investigation is required.

## Proactive compliance work

Proactive and targeted regulation is an important part of the ACNC's compliance approach. We identify areas of risk in the sector that are new, emerging or unreported. This work enables us to identify and address risks early and work with charities to address non-compliance or protect against misuse.

The ACNC has a dedicated intelligence analyst and a strong focus on a data and intelligence-led approach. To identify areas of potential risk we consider information from a variety of sources, including:

- concerns submitted to the ACNC (often by members of the public or people involved with the charity)
- Annual Information Statements and financial reports
- intelligence from other government agencies and peak bodies
- findings from our investigations work, and
- media reporting

In 2018, the ACNC used AUSTRAC data to identify charities that were sending funds overseas despite reporting to the ACNC that they only operated domestically. We examined the activities of those charities within the high-risk cohort, including those sending funds to known tax havens, to determine the nature of the transactions, and how they related to the charitable purposes.

We worked closely with the ATO and found that in the majority of cases the international transfers related to supplier costs that supported legitimate charity business. However, a small number of charities will be subject to further investigation by the ACNC and a number have been referred to the ATO for further consideration.

At the end of 2018, we conducted a risk-profiling project in collaboration with the ATO to identify charities that may be at risk of what we refer to as 'private benefit'.

### Private benefit in focus

Charities must be for the 'public benefit'. This means that their work and assets must be of benefit to the community. An organisation cannot be a charity if it only exists to make money for the members of its board, or its staff – this is called a 'private benefit'. A private benefit does not just have to be money – it could be a service or goods or anything else the charity has or provides. It is also important to note that in some instances, private benefit can be a form of fraud.

Working with the ATO, we defined several potential risk indicators, for example, where salary costs appear excessive compared to employee numbers.

Charities that provide individuals a private benefit that goes beyond what is necessary to achieve their charitable purposes are not complying with their not-for-profit status and this can quickly erode trust and confidence in the sector. In 2019, the ACNC will investigate a number of these charities.

## Targeted outreach

This year the ACNC established a dedicated outreach function within our Compliance directorate. The purpose of the outreach function is to:

- Engage earlier with charities at a higher risk of non-compliance to build their capability to stay on track and ensure they have good governance in place to protect their assets and pursue their charitable purposes.
- Implement targeted strategies to address known risk areas and support charities to improve their governance and meet their obligations.

While the ACNC takes all concerns seriously, we are unable to investigate every concern we receive. The ACNC has a rigorous triage and risk assessment process to determine which matters present the greatest risk and require intervention or investigation. Where matters do not require formal investigation, we believe that it is still important that these matters are brought to the attention of charities. This gives charities the opportunity to consider the matter and review their governance and avoid future concerns.

We have developed a [self-evaluation tool](#) to help charities assess if they are meeting their obligations to the ACNC and identify issues that may prevent them from doing so. It prompts charities to reflect on what practical steps they are taking to meet their obligations and if these steps are appropriate for their individual circumstances. Where a charity identifies any issues or areas for improvement, we expect the charity will take action to address them.

We trialled the self-evaluation tool with a range of charities in 2018 and received positive feedback. Charities reported that the process was valuable and resulted in improvements to their governance.

“It was an excellent exercise for us to reflect on our governance and enlightening in the ways we can improve”

In 2019, the tool will be sent to all charities that are subject to lower risk concerns.

In 2017, the ACNC, in partnership with AUSTRAC, published a [National Risk Assessment of Australia's Non-profit Organisation Sector](#). The assessment analysed and rated the risk of money laundering and terrorism financing misuse in Australia's not-for-profit sector. International anti-money laundering and counter terrorism financing (AML/CTF) standards require countries to identify the sub-set of not-for-profit organisations which, due to their activities or characteristics, are likely to be at a higher risk of terrorism financing misuse. The National Risk Assessment identified that those at higher risk of terrorism financing in Australia are likely to be:

- a legal entity
- an incorporated association
- small (low annual turnover)
- based mainly in New South Wales
- relatively newly established
- service-oriented
- linked to certain types of transactions including international funds transfers.

The ACNC's outreach team has engaged with all charities that fall within this higher risk sub-set to ensure they understand the risks and have strong governance in place to protect themselves from misuse.

## Terrorism financing

Throughout 2018, we continued to investigate several charities that the National Risk Assessment identified as having specific terrorism financing risks or organised crime links. The ACNC chairs the Not-for-profit Risk Working Group. Members of the working group include AUSTRAC, ATO, Australian Federal Police (AFP), and Australian Criminal Intelligence Commission (ACIC). The working group has proven to be an effective mechanism to ensure a collaborative approach and thorough investigative response.

## Accessing AUSTRAC data

AUSTRAC is Australia's primary source for financial intelligence used to fight serious and organised crime and terrorism financing. In 2018, the ACNC became a designated agency under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act). This means that the ACNC now has direct access to AUSTRAC data, intelligence and suspicious matter reporting information.

AUSTRAC data gives us a much more detailed picture of the financial transactions of registered charities, particularly those sending funds overseas. It assists the ACNC to more efficiently and effectively identify money laundering and terrorism financing risks, as well as other risks such as private benefit.

## Financial Action Task Force

Australia is a member of the Financial Action Task Force (FATF), a global inter-governmental body. The FATF has developed a series of recommendations to set standards and promote the effective implementation of legal, regulatory and operational measures to combat money laundering, terrorist financing and other related threats to international finance systems.

The FATF monitors the progress of its members in implementing risk identification and mitigation strategies.

Australia requested that the FATF provide an interim upgrade to Australia's compliance with recommendation 8 (which relates specifically to the not-for-profit sector) from non-compliant to largely compliant. This upgrade was approved in late 2018.

The upgrade was considered appropriate given the significant amount of work undertaken by the ACNC and other agencies to better understand, identify and mitigate money laundering and terrorism financing risks in the sector. This work includes the National Risk Assessment, the establishment of the Not-for-profit Risk Working Group and the improvements to education and targeted outreach to high risk cohorts.

## Safeguarding

The ACNC has broadened its compliance focus from 'harm to beneficiaries – particularly children and vulnerable adults' to 'harm to people – particularly children and vulnerable adults'.

All charities must ensure they take adequate steps to protect people from harm. This is not just limited to the charities that work with children, vulnerable adults or in the international aid and development sector. Protecting people and safeguarding responsibilities should be a governance priority for all charities. This includes working to ensure no harm comes to staff, volunteers, beneficiaries and anyone who comes into contact with the charity.

In its final report in December 2017, the Royal Commission into Institutional Responses to Child Sexual Abuse set out [ten standards for making institutions in Australia safe for children](#).

The ACNC has been actively engaged as a member of the Implementation Advisory Group to oversee the application of the National Principles for Child Safe Organisations.

The National Principles aim to create environments that protect the safety and wellbeing of children and young adults across all types of organisations. To support this important work, we have coordinated engagement with charity sector representatives and sought feedback from a range of registered charities. This feedback has been provided to the Implementation Advisory Group to assist with the development of tools and resources to support child safe organisations.

In October, the ACNC attended the international summit on *Putting People First: Tackling Sexual Exploitation, Abuse and Sexual Harassment in the Aid Sector* in London. The purpose of the conference was to drive collective action across the charity and not-for-profit sector to prevent and respond to sexual exploitation, abuse and harassment. The summit was co-hosted by the United Kingdom's Department for International Development (DFID) and the Charity Commission for England and Wales (CCEW), and was also attended by international development charities, regulatory bodies, government and independent safeguarding experts.

The conference highlighted several positive initiatives that are being trialled, such as:

- A new International Criminal Police Organisation (Interpol) system to improve background checks on staff working in the aid sector. The new system provides advice to employers on international vetting and identifying high-risk individuals.
- A new disclosure of misconduct scheme across the not-for-profit sector. The scheme is aimed at preventing known perpetrators moving around the not-for-profit sector.

A summary of the outcomes can be found on the [GOV.UK](#) website.

## Education and guidance

Providing education and guidance continues to be an important way to ensure charities understand risks, protect against misuse and meet their obligations to the ACNC. The ACNC offers charities a range of educational materials, including webinars, podcasts, videos, factsheets and guides.

Through our compliance work we identify common areas of misunderstandings and themes of non-compliance. We use this experience to develop new guidance or improve existing guidance, so we can offer practical guidance for charities to help them avoid common misunderstandings or governance failures.

## Gifts and honorariums

The ACNC recently published [guidance on gifts and honorariums](#). This followed a number of investigations where significant gifting, honorariums or allowances had provided individuals with a private benefit.

The ACNC understands that charities may want to provide gifts or honorariums to individuals – including current or outgoing board or committee members, staff or volunteers – as a gesture of gratitude and appreciation for their services. However, the decision to provide gifts or honorariums comes with some important considerations and charities should approach it with care and diligence.

As each charity is different, operating in different environments with different aims and challenges, the considerations in deciding to provide gifts or honorariums will differ. Charities that are contemplating or currently have a practice of gifting or making payments such as honorariums should consider the guidance carefully.

## Political advocacy guidance

Charity representatives should think very carefully before deciding to attend an event organised by a political party. Using charity money to attend events that raise funds for a political party or candidate for office may place the charity at risk of having a disqualifying purpose.

The ACNC has improved its political advocacy guidance to include a set of questions a charity should consider prior to attending a political event. This includes considering the purpose of attending, if attendance at the event is in the best interests of the charity, and how attendance will be perceived by the public.

This guidance is particularly relevant for charities in 2019 – a Federal Election year.

## Charity Fraud Awareness Week

In October, the ACNC played a key role in the first ever international Charity Fraud Awareness Week.

Fraud is a serious threat to every organisation, charities included. With reported fraud increasing at an alarming rate it is vital for charities of all shapes and sizes to protect their income and assets by building strong defences.

This week-long campaign offered charities the opportunity to take part in an internationally co-ordinated effort to promote openness and honesty about fraud. Each day covered a specific theme including cyber-fraud, grant-fraud, donation and fundraising fraud, insider-fraud and moving money safely.

Charity Fraud Awareness Week involved an international partnership of more than 40 charities, regulators, professional representative bodies and other stakeholders working together to combat fraud against charities. This group included:

- Charity Commission for England and Wales
- Charity Commission for Northern Ireland
- Charity Finance Group
- Chartered Accountants Worldwide
- Foundation for Social Improvement
- Fraud Advisory Panel
- United States National Association of State Charity Officers
- New Zealand Charities Services
- Office of the Scottish Charity Regulator
- US Federal Trade Commission
- Oxfam
- British Council
- Help for Heroes
- Macmillan, and
- Amnesty International.

The campaign resulted in a significant global reach, with over 17 million social media impressions in the United Kingdom alone. The ACNC promoted the campaign through our Commissioner's Column (with over 11,000 subscribers) and reached over 18,000 people through our social media channels. We also worked with the Australian Competition and Consumer Commission (ACCC), who issued a media release with statistics on reported charity scams.

In February 2019, the campaign won the Outstanding International Collaboration award at the UK Government's Counter Fraud Awards ceremony. The ACNC will continue to participate in Charity Fraud Awareness Week annually.



## Working with other agencies

Taking a whole-of-government approach, the ACNC works closely with other agencies to avoid duplication and improve outcomes.

The ACNC is a civil regulator and cannot prosecute individuals. We work with law enforcement agencies where we suspect or find evidence of criminal activity. Similarly, other agencies refer concerns about charities to us where they identify a charity may be breaching its obligations.

In 2018, we received 82 referrals and made 147 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.

In 2018, the ACNC maintained its strong relationship with Home Affairs (previously ACIC). An ACNC Compliance Officer is seconded to ACIC to review potential risk indicators applicable to registered charities.

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.

The ACNC Act allows the ACNC to share information with another government agency where that information will assist the government agency to perform or exercise its own functions or powers. The ACNC has had a strong working relationship with the Department of Prime Minister and Cabinet (PM&C). In March 2018 the ACNC and PM&C signed a Memorandum of Understanding (MoU) to more formally articulate the framework for cooperation between our agencies in relation to the sharing of information and intelligence. Throughout the year we have worked closely with PM&C on a number of investigations of mutual interest. The MOU is available on our website, [acnc.gov.au](https://www.acnc.gov.au).



# 05

## Charity concerns

The majority of concerns we receive come from the community and are an important way for us to identify areas of risk. We carefully assess all concerns, and although 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 information into account if future concerns are raised about the same charity.

### Concerns in 2018

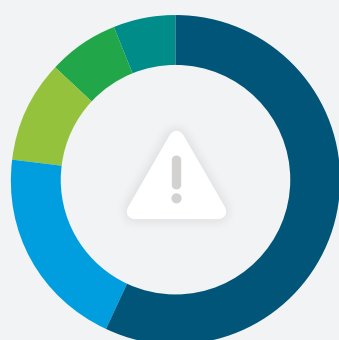
In 2018 the ACNC received 1,804 concerns, an average of 150 concerns each month. Concerns increased 6 per cent compared to 2017.

Of these concerns, 1,595 were received by our Advice Services team. Approximately 1,100 were resolved by our Advice Services team or were identified 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 an agency where their matter can be addressed.

In addition to concerns from the public, we analyse our own data as well as working with other regulators and law enforcement agencies to identify risk and prevent harm from occurring. In 2018, 15 per cent of the cases we commenced were identified through our own data matching work.

### Who raised concerns about charities?

Figure 5.1: The source of concerns assessed by the Compliance team



**57%** Individuals – for example past or current volunteers, employees, the public, beneficiaries or previous responsible persons of charities

**20%** Proactive

**10%** Other government agencies

**7%** Media

**6%** Charity – the charity notified the ACNC of the concern

**1,804**

concerns **received** in total

**1,108**

concerns were **resolved by our Advice Services team** or were identified as being outside the ACNC's jurisdiction

**696**

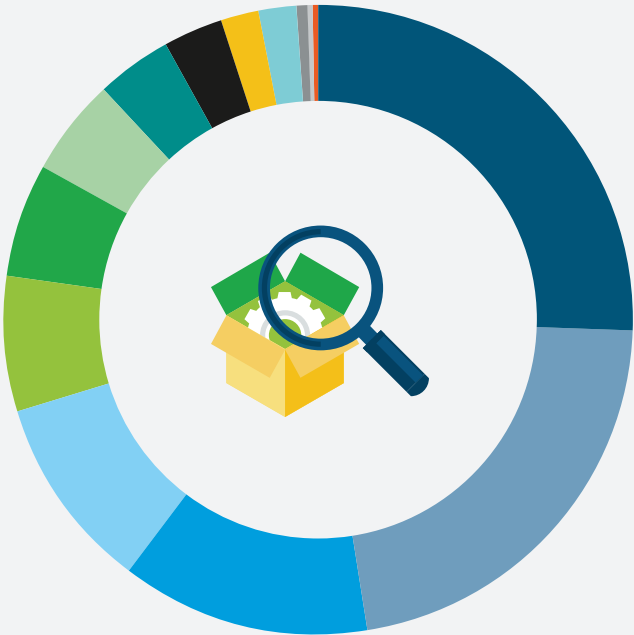
concerns were **assessed** by the Compliance team

# Analysis of concerns

Figure 5.2: Concerns assessed by Compliance team by risk type

Risk type

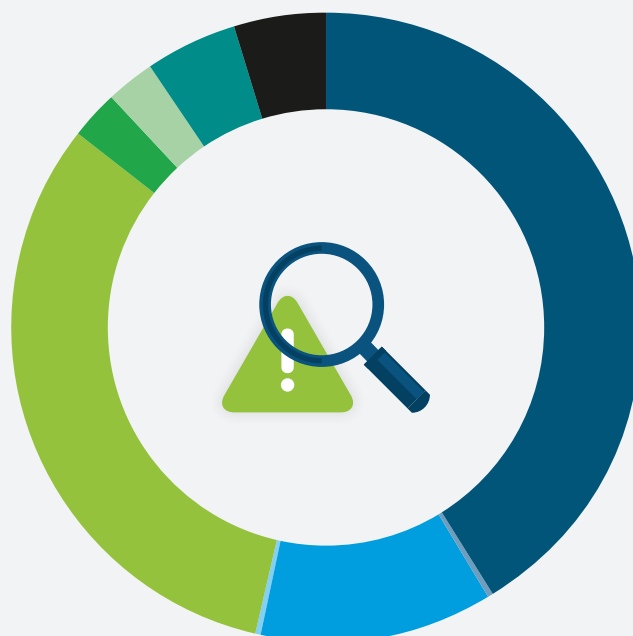
- 26% Private benefit
- 22% Poor governance
- 13% Other
- 10% Criminal or improper purposes
- 7% Mismanagement
- 6% Harm to beneficiaries
- 5% Conflicts of interest
- 4% Disqualifying political purposes
- 3% Risk that assets will be lost
- 2% Not entitled to charity subtype
- 2% Reporting issues
- 0.4% Terrorism
- 0.3% Record-keeping
- 0.3% Disqualified persons



**Figure 5.3: Potential breach in concerns assessed by the Compliance team**

#### Risk category

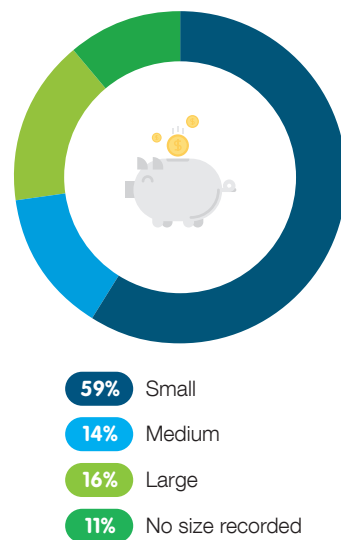
- 41.2%** **Governance Standard 1** – Purposes and not-for-profit nature of a registered charity – this includes concerns such as private benefit or failing to comply with its charitable purposes.
- 0.3%** **Governance Standard 2** – Accountability to members – this includes concerns such as failing to hold annual general meetings or not providing sufficient information to its members.
- 11.9%** **Governance Standard 3** – Compliance with Australian Laws – this includes concerns such as fraudulent or other criminal activity.
- 0.3%** **Governance Standard 4** – Suitability of responsible persons – this includes concerns such as disqualified persons being responsible persons for charities.
- 31.8%** **Governance standard 5** – Duties of responsible persons – this includes concerns such as financial mismanagement, managing conflicts of interest.
- 2.7%** **Entitlement to registration** – this includes concerns such as sham charities, disqualifying purposes or private benefit.
- 2.4%** **Non-compliance with record keeping obligations** – this includes concerns such as a failure to keep adequate financial or operational records.
- 4.6%** **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.
- 4.7%** **Concerns outside** of the ACNC's jurisdiction.



## Charity size

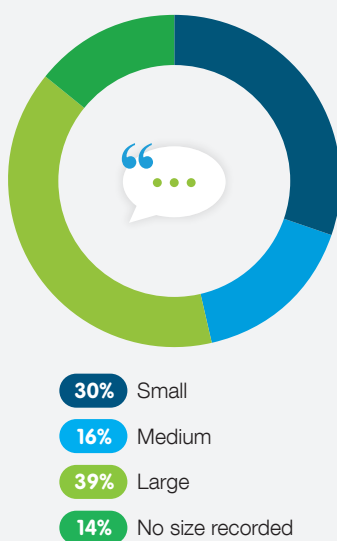
While two-thirds of charities registered with the ACNC are small in size, only one-third of the concerns we receive relate to small charities. Most of the concerns received by the ACNC relate to large charities. We believe this may be due to the public having more visibility of larger charities. They tend to have more high-profile services, larger volunteer and donor numbers, and more significant fundraising efforts.

### Percentage of all charities

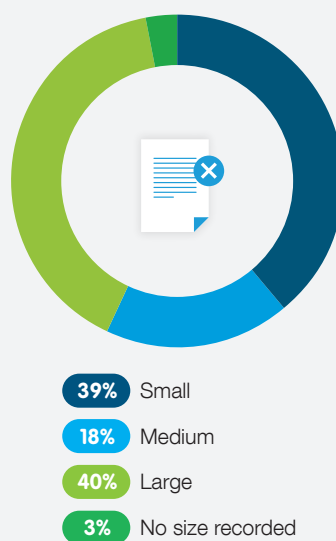


**Figure 5.4: Charity concerns and investigations by charity size**

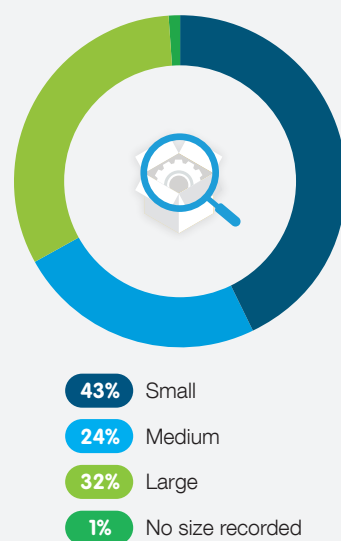
#### All concerns



#### Concerns assessed in detail by the Compliance team



#### Compliance investigations



# 06

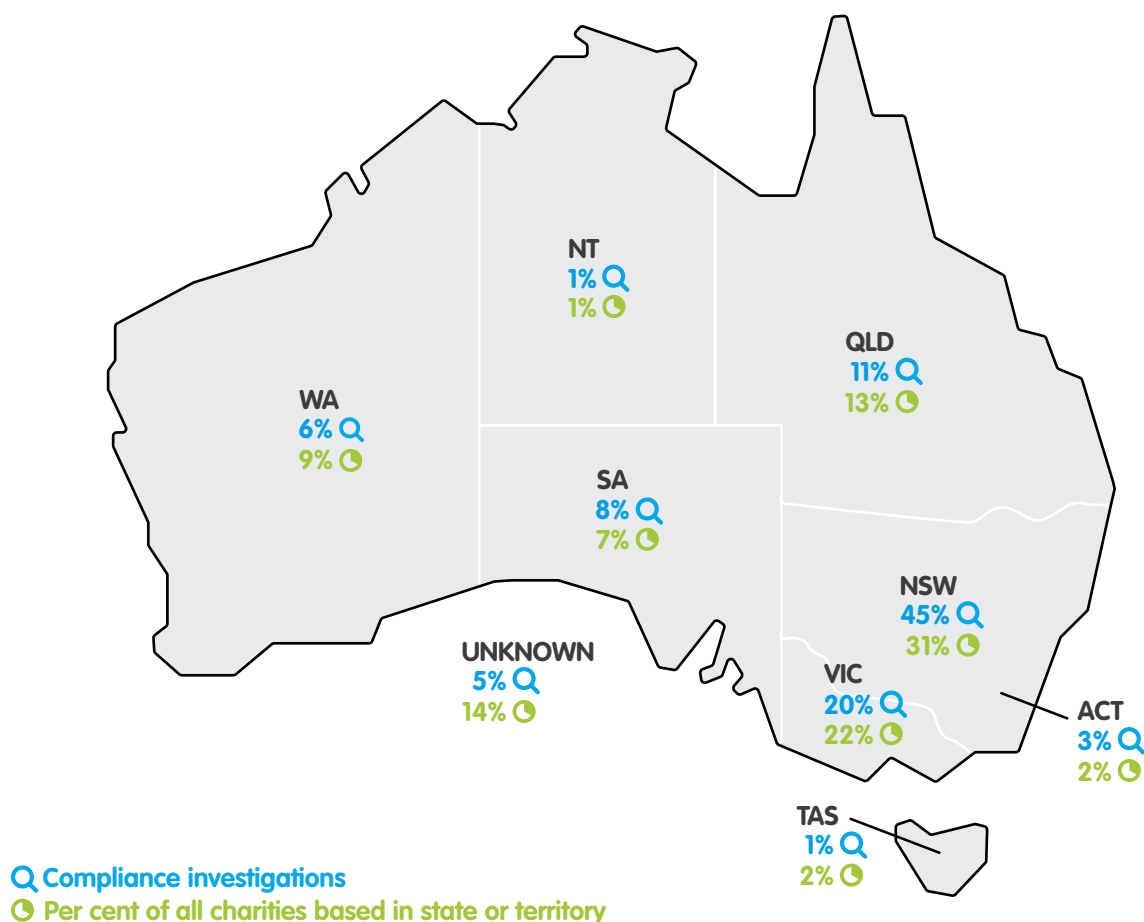
## Investigations

A total of 179 investigations were progressed throughout 2018. Eighty-three new investigations were commenced, and 90 open investigations were finalised. The following is an analysis of the investigations undertaken during 2018.

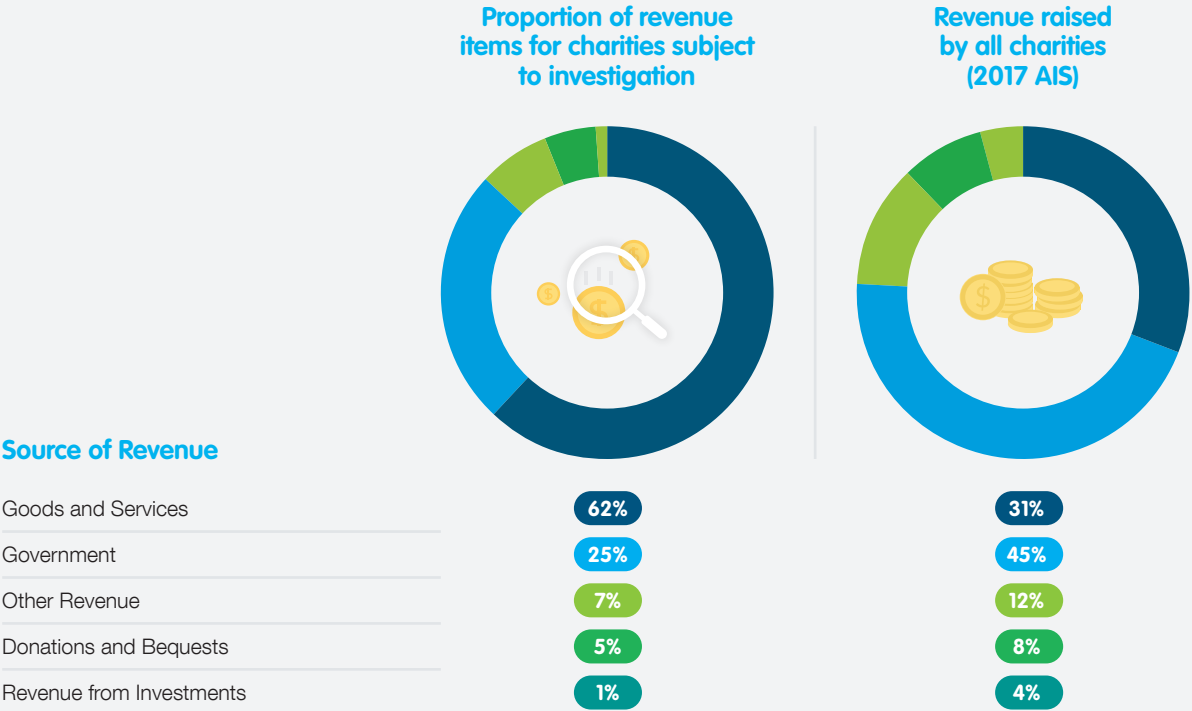
### Investigations by location

The geographical distribution of charities being investigated generally reflects the distribution of the wider charity sector. However, New South Wales was slightly over-represented.

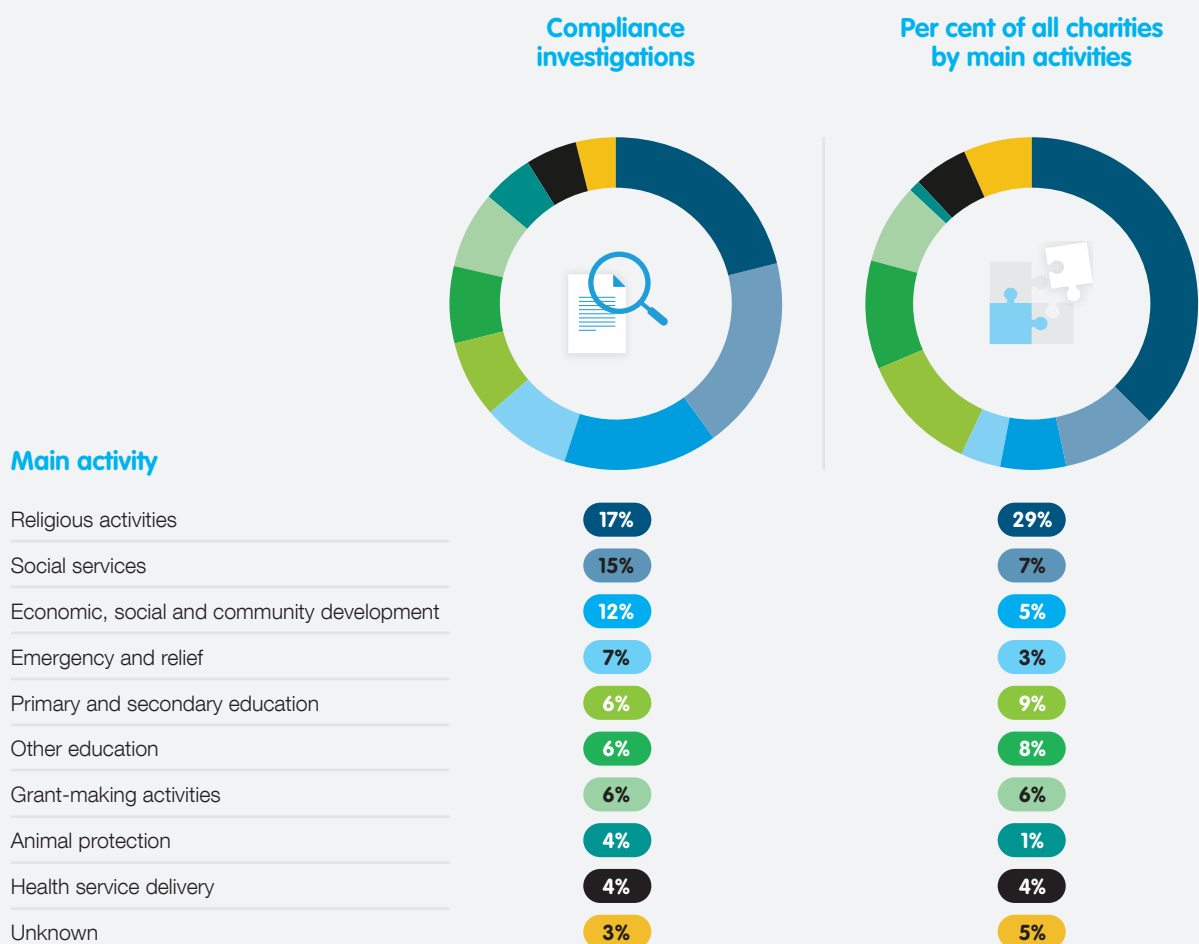
**Figure 6.1: Investigation by location**



**Figure 6.2: Charities subject to investigation  
– source of revenue**



**Figure 6.3: Top 10 main activities reported by charities subject to investigation**



# 07

## Regulatory Approach Statement

The ACNC's Regulatory Approach Statement explains how we undertake our role as the national charity regulator.

Charities are publicly accountable for the funds they receive and the concessions that they benefit from due to their charity status. The ACNC recognises that most registered charities are set up for charitable purposes and are run by dedicated, honest, 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 7.1), which begins from a wide base of educating and informing the charity 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.

In late 2018, we made minor updates to our Regulatory Approach Statement. You can access the statement on our website at [acnc.gov.au/regulatoryapproach](https://acnc.gov.au/regulatoryapproach)

**Figure 7.1: Regulatory pyramid of support and compliance**





## Governance Standards

Registered charities must meet a set of Governance Standards to be registered and remain registered with the ACNC. 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 Statement.

### 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 their 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 include acting with reasonable care, diligence, honesty and in the best interest of the charity.

## 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.

## 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 our [website](#).

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 it is not meeting its obligations and explain what action the ACNC may take.

### Directions

The ACNC may send a charity a written direction which instructs it 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 its 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 a charity 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 rather 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 is unable to publish a Compliance Agreement without consent from the charity.

## 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 57,000 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 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 fail to report on time, this is reflected on the Charity Register.

Similarly, if the ACNC takes enforcement action against a charity, this will also be reflected on the Charity Register.

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

You can search the Charity Register at [acnc.gov.au/charityregister](https://acnc.gov.au/charityregister)

## Making decisions public

The ACNC is unable to provide information to complainants about how specific concerns have progressed due to the secrecy provisions in our legislation. 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 a charity's registration; or 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 will do so.

# 08

## Compliance focus for 2019

The ACNC will continue to respond to breaches and non-compliance that could adversely impact public trust and confidence in the charity sector. This includes a continued focus on our four enduring priority areas (outlined on page 6).

### Proactively identifying and addressing risk

The ACNC will continue to analyse our 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 causing harm to people.

Following a proactive risk identification project at the end of 2018, the ACNC will commence several investigations into charities considered at risk of private benefit.

Our outreach work will focus on charities that work with children or vulnerable adults. We will be improving our safeguarding guidance and will be sharing this with the sector. We will be asking charities to review their safeguarding practices and to report any significant contraventions or non-compliance to the ACNC.

### Financial Action Taskforce – Five-year review of Australia

In the second half of 2019, the Financial Action Taskforce (FATF) will conduct a review of Australia's effectiveness in identifying and combating terrorism financing and money laundering risks.

A key focus of the FATF's five-year review will be on the National Risk Assessment conducted by Australia (ACNC and AUSTRAC) and the outreach and monitoring of Australia's not-for-profit sector. The ACNC is part of a whole of government working group preparing for the FATF review.

### New governance toolkit

Through our risk assessment work, compliance cases, and regular engagement with charities we have learned that many charities, particularly small and medium charities, would benefit from more practical guidance and tools to help them better understand and mitigate risks.

The ACNC is currently working with Deloitte to develop practical guidance and tools to support charities (particularly small and medium sized charities) to better understand and mitigate risks in the following areas:

- Safeguarding people
- Cyber security
- Financial abuse
- Working with partners

Key stakeholders and charities have been closely involved in the development of these resources and the content was tested with the sector in early 2019. We aim to have the toolkit available on the ACNC website in the first half of 2019.

## Introduction of External Conduct Standards

In 2019, charities that work overseas will be subject to new standards of governance – the External Conduct Standards. These standards will cover a range of activities – including sending funds overseas from Australia – and are intended to provide a minimum level of assurance that charities meet appropriate standards of governance and behaviour when operating outside Australia.

The proposed standards cover:

- Activities and control of resources (including funds)
- Annual review of overseas activities and record keeping
- Anti-fraud and anti-corruption
- Protection of vulnerable individuals

On 26 November 2018, the proposed External Conduct Standards were tabled in Parliament. Unless they are disallowed, the standards will come into effect in the second half of 2019. For charities that operate overseas, it may be sensible to review the proposed standards and consider how they may affect their operations if they come into effect as drafted.

The proposed standards will operate in addition to the existing ACNC Governance Standards. We will be publishing new guidance and conducting targeted outreach to ensure charities are aware of the changes and are well equipped to meet them.

# 09

## Private benefit in focus

One of the most common concerns the ACNC investigates is charities providing individuals with a private benefit. All charities must use their funds to further their charitable purposes – this is what it means to be not-for-profit, and is a requirement of registration with the ACNC. Charities that provide individuals with a private benefit risk breaching the ACNC Act and Governance Standards.

Through our investigations, we see private benefits occurring in several different ways.

Below are some of the most common scenarios that we came across in 2018.

We understand that it is not possible for a charity (or any entity) to operate with zero risk. However, charities should understand their risks and ensure they have good governance in place to prevent and identify issues. And if issues do arise, charities must have robust responses to address failures.

### SCENARIO 1 Related party transaction

#### What is it?

When the charity conducts a business transaction with another party that has a relationship with the charity.

#### What we see most often

- Charities receiving goods or services from for-profit organisations that are owned or operated by relatives of the charity's responsible persons – its board or committee members. This is done

without conflicts of interest being considered and managed, and in the absence of any formal arrangement such as a contract or service agreement.

- Good and services are provided at inflated prices beyond what would be a reasonable market rate. No due-diligence was conducted by the charity to determine that the price was appropriate.
- Board members awarding contracts or projects to their own companies without managing conflicts of interest or considering any alternative providers.

#### What you can do

Charities are allowed to undertake transactions with related parties. However, it is essential that the charity carefully manages these transactions.

- Disclose actual or perceived conflicts of interest. Visit [acnc.gov.au/conflictsofinterest](https://acnc.gov.au/conflictsofinterest) for more.
- Consider implementing a related-party transactions policy and procedures. These can reduce the risk of decisions being influenced by the interests of others.
- Consider different providers for the product or service you require. This will help you ensure you are acting in the best-interests of the charity and that the costs are within market rates and provide value for money for the charity.

## SCENARIO 2

### Gift, honorariums and other payments

#### What is it?

**A gift** is something given to someone without obligation and may be in the form of money, goods or other property.

**An honorarium** is an honorary payment made to someone without obligation in recognition of their professional service.

#### What we see most often

- Gifts are excessive and lack transparency to members.
- The decisions to provide gifts are often undocumented and do not demonstrate how the charity determined that providing gifts were in the best interest of the charity.
- Automatic and regular honorarium payments that appear to be provided in lieu of remuneration.
- No due diligence or documented decisions to demonstrate the honorarium is appropriate and in the best interests of the charity.
- Consultancy fees being paid to directors despite consultancy services not being provided.
- Generous and regular out-of-pocket expense allowances being paid to directors in the absence of any out-of-pocket expenses being demonstrated or reconciled.

#### What you can do

- Ensure gifts and honorariums are of a token nature.
- Carefully consider the decision to provide a gift or honorarium and make sure the decision is documented and transparent.
- Ensure honorariums, consultancy fees and out-of-pocket expenses are being provided for the right reason; not because the charity's rules prevent it from offering remuneration.
- Ensure consultancy services are well documented, defined and delivered.
- Ensure receipts are provided for out-of-pocket expenses and that reimbursements are made to the value of the receipt.

## SCENARIO 3

### Financial fraud

#### What is it?

An intentional act of deception involving the charity's finances or assets for the purpose of a private gain.

**Internal fraud** – committed by someone within or connected to the charity.

**External fraud** – committed by someone with no connection to the charity at all.

#### What we see most often

- Staff or volunteers misusing charity banking facilities – including credit and debit cards, or internet banking accounts – for personal expenditure.
- Creating false or inflated invoices or purchase orders to obtain payment for goods and services that have not been supplied to the charity.
- Claiming non-existent, excessive or inappropriate expenses.

#### What you can do

- Create a fraud awareness culture. Discuss fraud, what it is and how it may occur in your charity. Encourage people to report concerns.
- Understand your fraud risks – conduct a risk assessment and have strategies in place to reduce those risks.
- Have strong financial policies and procedures in place – separate financial duties. For example, one person should not be solely responsible for authorising, completing and reviewing your charity's financial transactions.
- Have clear rules in place to govern the use of charity credit and debit cards.
- Complete reconciliations regularly and investigate discrepancies.



## SCENARIO 4

### Founder syndrome

#### What is it?

When the person or people that established the charity do not adequately separate their own interests and finances from the charity's interests and finances.

#### What we see most often

- Inadequate separation of charity and personal finances.
- Conflicts of interest are not considered or managed.
- Inadequate controls to approve and monitor the use of charitable funds and assets, such as vehicles and property.
- Sense of entitlement to access charity funds and assets because of the volunteer hours contributed.

#### What you can do

- Ensure the charity's finances are kept separate from personal accounts of other people or entities.
- Ensure that expenditure is in the best interests of the charity and is documented and approved by more than one person.
- Ensure that all funds coming into a charity are correctly categorised. For example, if it is a loan then this should be well documented and loan agreements and terms must be in the best interests of the charity.
- Create a fraud awareness culture. Discuss fraud, what it is and how it may occur in your charity. Encourage people to report concerns.
- Ensure the charity's board has independent responsible persons to support decision making that is not compromised by conflicts of interest.

[acnc.gov.au](http://acnc.gov.au)

