



CHARITY COMPLIANCE REPORT DECEMBER 2012 – DECEMBER 2014 AND BEYOND

Protecting public trust and confidence
in Australia's not-for-profit sector



Australian Government



Australian
Charities and
Not-for-profits
Commission

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This publication is current at March 2015

Contents

01. Foreword	2
02. About the ACNC	3
03. Compliance in context	4
04. Key figures from our compliance case work in the first two years	7
05. Concerns raised with the ACNC	10
06. Areas of non-compliance	14
07. Staying on track	16
08. Compliance focus for 2015–2016	17
09. Conclusion	19
Case studies:	20
Governance standard 1 – Purposes and not-for-profit nature of a registered charity	20
Governance standard 2 – Accountability to members	21
Governance standard 3 – Compliance with Australian laws	22
Governance standard 4 – Suitability of responsible persons	23
Governance standard 5 – Duties of responsible persons	24
Record-keeping	25
Reporting	26
Summary of ACNC governance standards	27
ACNC regulatory pyramid	28

01

Foreword



The Australian Charities and Not-for-profits Commission (ACNC) was established on 3 December 2012 as the dedicated national regulator of charities. We work to enhance public trust and confidence in the Australian not-for-profit sector by helping to ensure charities meet the public expectations of good governance and transparency. This was reflected in the introduction of governance standards on 1 July 2013 and the subsequent restatement and clarification of the common law definition of charity through the introduction of the *Charities Act 2013 (Cth)* (Charities Act) on 1 January 2014.

The ACNC supports charities to adopt and follow good practice. Our experience is that almost all charities want to address any regulatory risk that is raised with them. As a proportionate and light touch regulator, we are able to build on this disposition of charities to do the right thing.

Over the past two years, the ACNC has focused on creating a reliable register of charities. Over 5 000 entities have been newly registered since the establishment of the ACNC and 6 000 entities have been revoked as a result of being found inactive, have voluntarily revoked their registration themselves or have been revoked for compliance reasons.

The ACNC recognises that the overwhelming majority of registered charities are set up for charitable purposes. Our regulatory approach reflects that most people involved in charities are acting honestly and trying to do the right thing. However, the ACNC does act swiftly and firmly where vulnerable people or significant charity assets are at risk, where there is evidence of serious mismanagement or misappropriation, or if there is a serious or deliberate breach of the ACNC Act.

The ACNC provides education and advice so charities understand their regulatory obligations. There is great potential for charities to learn from the good practice of their peers, and from those instances where poor practice or mischief has occurred.

This publication is a thorough analysis of compliance activity that has taken place since we were established in December 2012. Our secrecy and privacy provisions limit the information that can be publically released when action (such as revocation) is taken against a charity. This report uses aggregated data and de-identified information to give readers an insight into the compliance work of the ACNC. It provides examples of common problems identified and provides practical advice to assist charities to avoid these types of issues occurring. This report also highlights the key areas of concern and our compliance focus for the year ahead.

We look forward to continuing to undertake our regulatory work to help sustain a robust, vibrant, innovative and independent sector in Australia.

A handwritten signature in black ink that reads "Susan Pascoe". The signature is fluid and cursive.

Susan Pascoe, A.M.
Commissioner, Australian Charities and Not-for-profits Commission

02

About the ACNC

The ACNC is the independent national regulator of charities in Australia established by the Australian *Charities and Not-for-profits Act 2012* (ACNC Act). The ACNC has been set up to achieve the following objects outlined in Division 15 of the ACNC Act:

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

To achieve our objects, the ACNC:

- registers organisations as charities
- helps charities understand and meet their obligations through the provision of information, guidance, advice and other support
- responds to charities that may not be meeting their obligations, including using compliance powers where necessary
- helps the public understand the work of the not-for profit sector through information, guidance, advice and other support
- maintains a free and searchable public register so that anyone can look up information about registered charities
- is working with state and territory governments as well as federal, state and territory government agencies to develop a 'report-once, use-often' reporting framework for charities that will reduce the red tape burden for the sector, and
- helps to promote a sustainable charity sector through the provision of advice and support relating to good governance and risk management, as well as facilitating sector research and analysis.



03

Compliance in context

Our approach in the first two years

The ACNC's compliance priorities to date have been to raise awareness of governance standards and regulatory obligations, facilitate the lodgment of 2013 and 2014 Annual Information Statements, and address concerns involving serious non-compliance. As the inaugural national regulator of charities in Australia, the ACNC has taken a proportionate approach to intervention, balancing the need to maintain public trust and confidence in charities with the concern to protect the reputation of trustworthy charities and community goodwill for the sector.

Much of our work has involved providing information, support and guidance. This approach is also reflected in the ACNC's regulatory pyramid (page 28), which begins from a strong base of educating and informing the charitable sector. As a result, we have achieved many outcomes that are similar to, or better than, international charity regulators that have been operating for much longer than the ACNC.

For example:

98% of our 2013 Annual Information Statements were filed electronically – a very high proportion by comparison with other jurisdictions.

Our 2013 lodgment compliance rate was also high – approximately 90%.

This is extremely positive, given the policy uncertainty about the future of the ACNC, and that many charities had not reported to a regulator before.

Building understanding

In our first two years of operation, our approach has recognised that charities need time to learn about their obligations, as required by the ACNC Act and the Charities Act.

For example:

- we excluded financial information from the 2013 Annual Information Statement so charities had an additional year to understand their financial reporting requirements
- we extended the 31 December due date for lodging both the 2013 and the 2014 Annual Information Statements so charities, particularly small ones, had additional time to prepare
- we extended the time for notifying the ACNC of changes to charity details and responsible persons. These notifications became an ongoing duty from 31 December 2014 and charities must now notify the ACNC of changes within a 28 or 60 day time period
- we remitted any administrative penalties that applied for failing to lodge a 2013 Annual Information Statement for the first three months after their due date, and
- our initial approach to enforcing the governance standards has been to provide information and guidance to help charities comply and to only consider stronger action where there are serious or deliberate breaches of the standards.

The ACNC believes most charities on the ACNC Register that did not lodge a 2013 and 2014 Annual Information Statement may no longer be operating. These charities will have their registration revoked in 2015.

Additionally, as a new regulator, the ACNC had to build its own internal capacity including the development of appropriate procedures and oversight of compliance decisions. These procedures are now published on the ACNC website to provide transparency on the ACNC's approach to compliance. We have also worked closely with international charity regulators to ensure we adopt international best practice, and with state, territory and commonwealth agencies, sharing information and making referrals where appropriate.¹

The ACNC investigated a wide variety of serious issues involving charity non-compliance with the ACNC Act and Regulations.

Charities subject to compliance cases controlled over \$100 million of charitable assets in total.

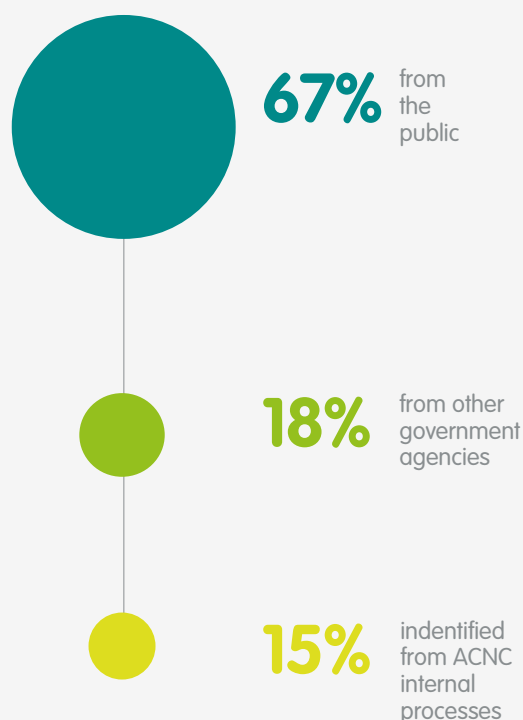


Investigations have largely been initiated from complaints made about charities by members of the public (67%), information received from other government agencies (including federal, state and territory agencies) (18%), and issues identified through the media and our own internal processes (15%).

The results of this work is summarised in section 4 of this paper.

¹ Commonwealth agencies we have worked with include the Australian Federal Police, the Australian Taxation Office, the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Attorney-General's Department, the Office of the Registrar of Indigenous Corporations (ORIC), the Australian Securities & Investments Commission (ASIC), the Department of Social Services, the Department of Education and Training and the Department of Foreign Affairs and Trade.

Concerns about charities and their source



Using information reported in Annual Information Statements

As a new regulator, the ACNC has had a strong initial focus on verifying charity information provided to us at inception by the Australian Tax Office. The 2013 Annual Information Statement formed the first reliable 'census' of charities in Australia. Annual Information Statements are used by the ACNC to maintain an accurate and up-to-date Register, to assess whether charities are entitled to ongoing registration, and to ensure charities are compliant with the ACNC Act and its Regulation.

Most of the 2013 Annual Information Statements were not lodged until mid-2014² so they have not played a significant role in informing our compliance activity to date, although they will do so in the future. At the time of preparation of this report, we had received over 47 000 Annual Information Statements for the 2013 reporting period. In addition, the first set of 2014 Annual Information Statements, which capture financial information for the first time, are now being lodged. This will enable the ACNC to take an even more comprehensive and proactive approach to identifying compliance issues in the future.

We anticipate the Annual Information Statements will also change the nature of complaints we receive from the public. For example, we expect we will receive fewer concerns raised about the lack of financial transparency now all charities must provide financial information³, information about their activities and their governing documents on the publicly available ACNC Charity Register.

Our regulatory approach

The ACNC commenced a review of its regulatory approach in early 2015. This is in line with the requirements of the Australian Government's new performance framework for Commonwealth regulators.⁴ The review will focus on refining the ACNC's overarching regulatory approach policy document, the Regulatory Approach Statement. It is not anticipated that there will be substantial changes and the updated Regulatory Approach Statement will be published later in 2015.

2 Most charities must submit their Annual Information Statement within six months from the end of their reporting period. However, there was an exception for charities with a financial year ending 30 June 2013 – their statements were not required until 31 March 2014. This meant the majority of 2013 Annual Information Statements were received between March 2014 and June 2014.

3 Basic religious charities, as defined in the ACNC Act, are the only category of charities which are not required to provide financial information to the ACNC.

4 The Regulator Performance Framework (RPF) is a core element of the Australian Government's deregulation agenda. The RPF establishes a common set of performance measures that will allow for the assessment of the way regulators administer regulations (their regulatory approach), and requires agencies to align their policies and procedures with the RPF.

04

Key figures from our compliance case work in the first two years

Concerns about charities

1 307 concerns about charities were raised with the ACNC

786 concerns were resolved by our Advice Services team or were identified by Advice Services as being outside of the ACNC's responsibilities

Monitoring the sector

521 concerns were assessed in detail by our Compliance team

67% of these concerns originated from individuals, for example past or current volunteers, employees, beneficiaries or responsible persons of a charity; **18% originated from other government agencies** and **15% originated from the ACNC's own internal processes**

96 charities were the subject of a compliance case (either a compliance review or an investigation) following a concern being raised

Charities subject to compliance cases controlled over **\$100 million of charitable assets** in total

79 compliance cases were finalised during this period

67 notices were served under Section 70-5 of the ACNC Act to obtain information and documents

The ACNC began to **monitor risks that affect certain broad sub-sectors**. For example, we launched a project to **analyse data for more than 6 000 charities that have international connections**. In doing so we worked closely with other agencies responsible for countering terrorism financing and will continue to do so

Results of compliance activity

324 significant or high risk charities with overdue 2013 Annual Information Statements subsequently lodged them as a result of our direct compliance inquiries. This **increased public transparency and accountability for 162 large charities, 84 medium charities and 78 small charities**.

46 charities were provided with education or guidance to assist with future compliance

Four charities had their registration revoked by December 2014 and a **further five charities had their registration revoked** early in 2015 as a result of our earlier investigations

Three determinations were issued that required additional reporting, **to increase public transparency and accountability** about matters that may otherwise cause public concern

The ACNC gave **one warning** and **issued one direction**

We entered into one enforceable undertaking⁵

⁵ The enforceable undertaking was officially signed in January 2015.

* All figures from Dec 2012 to Dec 2014, unless stated otherwise.

CHARITY COMPLIANCE REPORT: DECEMBER 2012 – DECEMBER 2014 AND BEYOND

Protecting public trust and confidence in Australia's not-for-profit sector

The *Charity Compliance Report: December 2012 – December 2014 and beyond* is a thorough analysis of the compliance activity that has taken place since the establishment of the Australian Charities and Not-for-profits Commission (ACNC) in December 2012.



\$100m
in charitable assets protected



1,307
concerns were raised
with the ACNC –
that's **12 per week!**



786 concerns
were resolved by
the ACNC Advice
Services team



of concerns substantiated and
addressed by the ACNC were
**about breaches of the ACNC
governance standards**



521 concerns were
assessed in detail by the
ACNC Compliance team



96 charities
were the subject of a
compliance case following
a concern being raised



**26% of concerns were
about large charities**
(with revenue greater
than \$1 million), but
**large charities
make up only 17% of
registered charities**



79
compliance cases were
finalised from Dec 2012
to Dec 2014

Compliance focus for 2015–2016

The ACNC will continue to prioritise its compliance activities on concerns that involve serious mismanagement or misappropriation, serious or deliberate breaches of the ACNC Act, and situations where vulnerable people or significant charitable assets are at risk.

We also plan to focus on five other compliance areas:



Lodgement of Annual
Information Statements



Accuracy of Annual
Information Statements
and financial reports



Charities operating
overseas



Charities that provide
private benefits to their
responsible persons or
associates



Charities that are
involved with illegal
activity or tax avoidance

CHARITY COMPLIANCE REPORT: DECEMBER 2012 – DECEMBER 2014 AND BEYOND

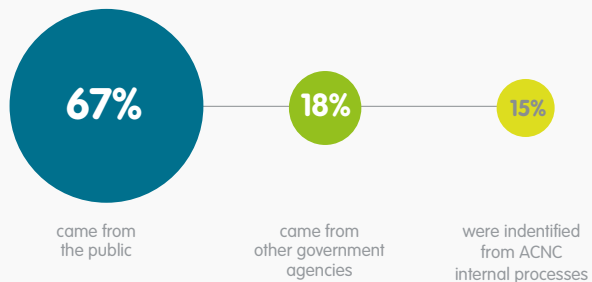
Protecting public trust and confidence in Australia's not-for-profit sector

Most common concerns raised by the public



- charitable resources being used inappropriately for the private benefit of individuals controlling the charity or their associates
- possible financial mismanagement and fraud within the charity
- charities failing to follow their constitutions and not being transparent or accountable to members
- charities that appear to be harming their beneficiaries
- sham charities soliciting funds, and fundraising scams generally

Concerns about charities



>62%

of the charities subject to complaints have Deductible Gift Recipient (DGR) status or operate a DGR fund, however only 32% of registered charities have DGR status or operate a DGR fund.



By early 2015 **nine charities** had their charity status revoked through investigations. The ACNC gave **one warning**, issued **one direction** and entered into **one enforceable undertaking**.

05

Concerns raised with the ACNC

Dealing with concerns

The ACNC regularly receives concerns from the public regarding registered charities. In our first two years, 1 307 concerns were raised with the ACNC, which is an average of over 12 concerns raised each week. Of these, about two thirds were addressed by our Advice Services team and 521 concerns were assessed in detail by the Compliance team. Even when concerns raised by the public do not progress to a compliance case, the ACNC values the information provided. This intelligence helps us identify broader issues, and is taken into account if future concerns are raised about the charity in question.

Members of the public will usually raise a concern with us if a registered charity is (or could be):

- **losing a significant amount of money or assets without a good reason**
- **harming the people who should benefit from the charity**
- **set up for illegal or improper purposes, such as being a 'sham' charity**
- **being used for the private benefit of members or directors**
- **being misgoverned or mismanaged in a way that puts it at serious risk**
- **involved in criminal activities**
- **posing a threat to national security such as funding or engaging in terrorist activities, or**
- **otherwise breaching the ACNC Act, especially where this conduct threatens public trust and confidence in the charity and the not-for-profit sector more broadly.**

The ACNC is only able to deal with concerns that relate to obligations under the ACNC Act and meeting the governance standards set out in the ACNC Regulations. The ACNC cannot deal with issues such as internal disputes, employment issues or concerns about the services a charity provides unless they are part of wider governance failings.

Secrecy provisions

The secrecy provisions in the ACNC Act prevent us from providing information to complainants about how specific concerns are progressed. However, where the ACNC does investigate a charity and finds non-compliance has occurred, the ACNC will put some matters on the public record. For example, actions will be published on the ACNC Register where the ACNC:

- **revokes the charity's registration**
- **uses its enforcement powers, such as issuing a warning or direction, or entering an enforceable undertaking**
- **requires the charity to report additional information to the public, and**
- **requires a medium-sized charity to be subject to an audit instead of a review.**

If you have a concern about a charity, the ACNC encourages you to raise your concern directly with the charity or its governing body before contacting us. Most charities welcome feedback and are prepared to address issues without the intervention of a regulator. However, if you cannot resolve your concern by doing this, you can complete [Form 6A: Raise a concern about a charity](#) and email it to charityconcern@acnc.gov.au. Alternatively you can call us on 13 ACNC (13 22 62).

Prioritising concerns

The ACNC uses a risk-based approach to allocate its compliance resources to address concerns about charities. This is consistent with objects of the ACNC Act, which require the Commissioner to have regard to, among other things, the principles of regulatory necessity, reflecting risk and proportionate regulation.⁶

All concerns raised about charities are evaluated to determine whether the concern is credible and the potential consequences of the concern.

If an evaluation determines a concern is credible and serious, the next step will usually be a risk assessment. The purpose of the risk assessment is to provide a more detailed analysis to support a final decision about the prioritisation of the risk and the appropriate ACNC response.

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

- **the nature of the concern** – this will include considering whether it may involve fraud and/or criminal activity and whether there may be harm to beneficiaries
- **persistence** – this will include considering whether the concern relates to an isolated incident or conduct that has persisted over a long period; we also consider whether the charity has a history of non-compliance
- **harm to the sector as a whole** – this will include considering whether public funds (such as government grants and public donations) are involved
- **other factors specific to the concern** – for example, whether the matter is time-bound and whether it represents a new or emerging issue, and
- **other factors specific to the charity** – for example, whether the charity is closely controlled and the extent of oversight by other regulators.

The ACNC acts swiftly and firmly where vulnerable people or significant charity assets are at risk, where there is evidence of serious mismanagement or misappropriation, or if there is a serious or deliberate breach of the ACNC Act.

Analysis of concerns evaluated by the ACNC's Compliance team in the first two years

In January 2014, the ACNC published an overview of its first year of compliance activity. The types of concerns raised by complainants in our second year are consistent with those raised in the first year. Complainants are most commonly concerned about:

- charitable resources being used inappropriately for the private benefit of individuals controlling the charity or their associates
- possible financial mismanagement and fraud within the charity
- charities failing to follow their constitutions and not being transparent or accountable to members
- charities that appear to be harming their beneficiaries, and
- sham charities soliciting funds, and fundraising scams generally.

At the end of December 2014, the ACNC analysed all of the concerns raised about charities and assessed by the Compliance team. We considered the findings in the context of information provided in the Curtin University Not-for-profit Initiative's report: [Australian Charities 2013 – The first report on charities registered with the Australian Charities and Not-for-profits Commission.](#)

⁶ Section 15-10 of the ACNC Act sets out the matters to which the Commissioner must have regard in exercising powers and functions under the Act.

Observations about concerns evaluated by the ACNC Compliance team:

- We received significantly more concerns about large charities (with revenue greater than \$1 million) compared to the proportion of large charities on the Register.
- A high proportion of charities with the subtype of Public Benevolent Institution (PBI) were the subject of a concern compared to the number of registered charities with PBI status.



In the first two years **26% of concerns were about large charities** but **large charities make up only 17% of registered charities**



over 33% of concerns were raised about PBIs even though they make up **only 17% of registered charities**

- Similarly, a high proportion of charities that are registered as Australian Public Companies have been the subject of a concern.
- One fifth (20%) of charities which were the subject of a concern were established after January 2010.



26% of concerns made in respect of public companies even though they make up **only 12% of registered charities**



20% of charities which were the subject of concern were established after Jan 2010 although only **8% of registered charities had been established since that date**

- Charities that are unincorporated entities are under-represented in complaints.
- A high proportion of charities with Deductible Gift Recipient (DGR) status from the Australian Tax Office were the subject of concerns being raised compared to the number of charities with DGR.



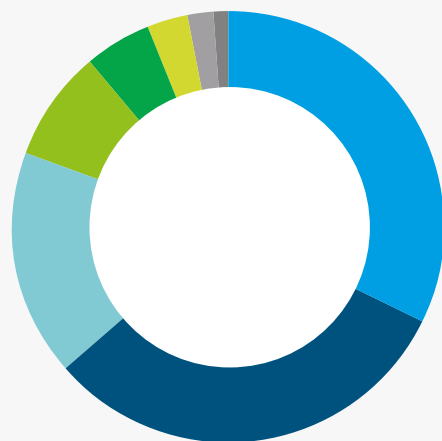
18% of concerns made in respect of unincorporated entities even though they make up **33% of registered charities**



>62% of the charities subject to complaints have Deductible Gift Recipient (DGR) status or operate a DGR fund, however only 32% of registered charities have DGR status or operate a DGR fund.

- Charities that were the subject of a concern had a similar distribution across the states and territories to the national distribution of all charities. The relative proportions are shown in the graph below:

Figure 1: Breakdown of concerns by state/territory charities are registered in



32% VIC	5% SA
31% NSW	3% ACT
17% QLD	2% TAS
8% WA	1% NT

Concerns raised with the ACNC assist in the identification of non-compliance in the sector. However, the skewed proportional representation of the complaints towards larger and newer charities highlights that the ACNC must also use a proactive risk-based approach to identify and address the most serious non-compliance in the sector. Data collected in the Annual Information Statements, sector analysis such as that provided by the Curtin University's analysis of Annual Information Statements, and intelligence from other sources will enable this work to be undertaken.

06

Areas of non-compliance

In the first two years, the ACNC completed 79 compliance cases. Although concerns raised about charities vary widely, they are all assessed against four categories of non-compliance:

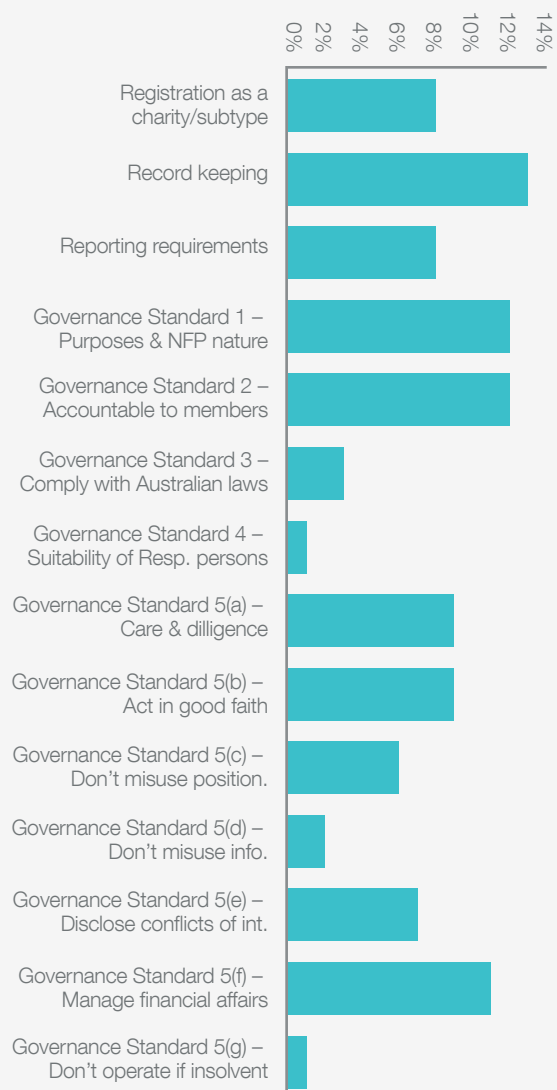
- whether the entity is entitled to be registered as a charity and its nominated subtype, as defined in the Charities Act 2013. Our assessment will include examining whether charities are working towards their charitable purpose and whether they are using their profits and assets solely for their charitable purpose (or purposes incidental and ancillary to that charitable purpose)
- whether the charity is meeting its reporting obligations
- whether the charity is meeting its record-keeping obligations, and
- whether the charity is meeting all five governance standards set out in the ACNC Regulations.

Compliance concerns addressed

The following graph shows the proportion and nature of compliance concerns substantiated and addressed up to 31 December 2014.

Poor governance has been the common theme of ACNC investigations in the first two years. Australian charities must comply with five governance standards which are summarised on page 27.

Figure 2: Compliance concerns substantiated and addressed by the ACNC up to 31 December 2014



Of substantiated concerns, 72% were about breaches of the governance standards. The most common breach is of governance standard 5, where charities had not taken reasonable steps to ensure that their responsible persons (such as board members) had complied with seven specific duties.



of concerns substantiated and addressed by the ACNC were about **breaches of the ACNC governance standards**

This is followed by breaches of record-keeping requirements, breaches of governance standard 1 (charities had not complied with their character as a not-for-profit entity and funds had been misappropriated or diverted for non-charitable purposes) and governance standard 2 (charities had not been accountable and transparent to their members).

At the end of this report we have provided case studies on issues involving each of the governance standards, along with reporting and record-keeping requirements.

07

Staying on track

How ACNC guidance supports charities

During 2014, the booklet Your charity and ACNC compliance: Working with you to help your charity stay on track was published, along with a simple self-assessment checklist Take the ACNC compliance test: is your charity complying? These documents outline the role of the ACNC's compliance function and enable charities to self-assess their compliance with the ACNC Act using five basic questions:

- Is your charity working towards its charitable purposes?
- Is your charity using its profits and assets only for its charitable purposes?
- Is your charity meeting its reporting obligations?
- Is your charity meeting its record-keeping obligations?
- Is your charity meeting all five governance standards, showing it has met minimum requirements for good governance?

These resources support a range of other guidance tools available to charities on meeting their obligations, including:

- information on acnc.gov.au about how the ACNC regulates charities, our powers and our approach
- information on acnc.gov.au and in printed format about the obligations of registered charities and how these can be met, including detailed guidance on the Annual Information Statement and the governance standards (with tools such as checklists and case studies), and
- a help service provided via phone (13 22 62) and email (advice@acnc.gov.au).

The ACNC also delivers face-to-face and online information and education sessions to charity representatives, and has done so nationally since early 2013. Each session focuses on assisting charities to understand what is required of them to promote compliance. In March 2015, the ACNC started delivering online education sessions on the governance standards and other compliance-related topics via regular webinars.

Obligations if charities go off track

Charities have a formal obligation to notify the ACNC if:

- they are not meeting their obligations in a significant way, and as a result their organisation is no longer entitled to registration (for example, if the charity is not complying with the governance standards),⁷ or
- there is a material error in an Annual Information Statement or financial reports.⁸

The ACNC also encourages charities to notify us if they discover they have made a false or misleading statement to the ACNC in relation to a material particular. A voluntary disclosure of a false and misleading statement, in the approved form, reduces the administrative penalty that could otherwise apply.

⁷ See Section 65-5(2) ACNC Act.

⁸ See Section 60-65 ACNC Act.

08

Compliance focus for 2015–2016

In the next 12–18 months the ACNC will continue to prioritise our compliance activities on concerns that involve serious mismanagement or misappropriation, serious or deliberate breaches of the ACNC Act, and situations where vulnerable people or significant charitable assets are at risk. We also plan to focus on five other compliance areas:

- lodgement of Annual Information Statements
- accuracy of Annual Information Statements and financial reports
- charities operating overseas
- charities that provide private benefits to their responsible persons or associates, and
- charities that are involved with illegal activity or tax avoidance.

Lodgement of Annual Information Statements

Charities must submit their Annual Information Statement within six months of the end of their reporting period. The public rely on the regulator to provide accurate and up-to-date information about charities via the online ACNC Charity Register. If charities do not meet obligations to send up-to-date information, or take no action to try to do so, the ACNC will:

- issue penalty notices if we find a charity is deliberately not meeting its obligations to report, and/or
- publish a statement that a charity's Annual Information Statement is overdue on the ACNC Register. This will appear on a charity's entry on the Register if it fails to submit for more than six months after the due date.

If a charity does not submit an Annual Information Statement for two consecutive years the ACNC will revoke its registration.

Accuracy of Annual Information Statements and financial reports

Charities are responsible for submitting Annual Information Statements and financial reports. If a charity identifies a material error in their Annual Information Statement or financial report after these have been submitted, they must give a corrected statement or report to the ACNC within either 28 days or 60 days of identifying the error.⁹

The ACNC will review a sample of Annual Information Statements and financial reports on a risk basis to identify whether errors have occurred. If errors are identified, the ACNC will alert the charity and ask them to provide a corrected statement within the legislated timeframe.

⁹ The 28-day time frame applies to medium and large charities; the 60-day time frame applies to small charities with annual revenue of less than \$250,000 (section 60–65 ACNC Act).

Charities operating overseas

The Terrorism Financing in Australia 2014 report released by AUSTRAC in September 2014 identified charities as a potential channel for terrorism financing. AUSTRAC assessed the risks associated with the misuse of charities and not-for-profit organisations as a potential channel for terrorism financing as high.

Approximately 17% of all charities have some international involvement, according to Curtin University's analysis of the ACNC's 2013 Annual Information Statement data.

In our first two years, the ACNC has focused on these charities in our education and guidance work. For example, we have confirmed that Australian Council for International Development (ACFID) members which comply with their code will be deemed to be complying with the ACNC governance standards, we have issued guidance to overseas aid charities in respect of terrorism financing and, in early 2015, we published a comprehensive checklist – Protecting your charity against the risk of terrorist financing. Charities with some international involvement will continue to be an area of focus for us in the immediate future.

Charities that provide private benefits to their responsible persons or associates

The public has told us that their trust and confidence in the sector is significantly affected when they see charitable resources being used inappropriately for the private benefit of individuals controlling charities (or their associates). Identifying and addressing charities that abuse the public trust and confidence in this way will be another area of focus for us in the year ahead.

Charities that are involved with illegal activity or tax avoidance

We will actively work with other regulators to identify and address charities that are involved with illegal activity or tax avoidance and make referrals to the police, the Australian Taxation Office and other agencies where appropriate. This includes identifying charities that could be deliberately involved with fraud, terrorism financing and/or money laundering.

09

Conclusion

Australia's 60 000 registered charities make up an economically important sector to Australia that is complex and diverse. The regulatory framework for many of these charities is also complex. Since the introduction of the ACNC in December 2012, we have operated as a proportionate regulator. We have worked with other government agencies to determine who is best placed to act, so charities are not burdened with enquiries from multiple government regulators. We have also narrowed our compliance focus to four specific areas: entitlement, reporting, record keeping and compliance with the ACNC governance standards.

The ACNC has adopted and applied a regulatory approach that reflects our belief that the overwhelming majority of people involved with charities are honest and want to do the right thing. However, our regulatory approach also requires us to act swiftly and firmly where vulnerable people or significant charity assets are at risk, where there is evidence of serious mismanagement or misappropriation, or if there is a serious or deliberate breach of the ACNC Act. We have not hesitated to do so in our first two years of operation.

We believe our compliance outcomes over the first two years are consistent with what might be expected from the ACNC's regulatory approach. Over 500 concerns have been assessed by our Compliance team; 96 compliance cases have been opened and the outcomes have ranged from providing regulatory advice to revoking the registration of nine charities. Revocations and enforcement outcomes such as enforceable undertakings generally occur at the end of extensive investigation work, which takes between three and nine months to complete. In the majority of cases, we are pleased to report that the level of cooperation from charities has been extremely high.

The ACNC has also launched several proactive compliance projects since December 2012. For example, we have made direct contact with significant or high risk charities with overdue 2013 Annual Information Statements and we have also focused on charities with overseas operations that could benefit from regulatory guidance to avoid being misused as channels for terrorism financing.

The ACNC will continue to take a proactive approach. We plan to review the accuracy of Annual Information Statements and financial reports, launch more investigations into charities that use their resources inappropriately for private benefit, and to identify charities that are involved in illegal activities or tax avoidance.

The ACNC takes its objective of protecting public trust and confidence in Australia's not-for-profit sector very seriously. Our compliance activities hold registered charities to account, and ultimately benefit the charitable sector as a whole. We hope that the insights provided in this report, including the case studies that follow, will be of benefit to both charities and other readers with an interest in the sector.

Case studies:

Each of the following case studies is based on an amalgamation of facts and outcomes that arose from several real cases. They are intended to give an insight into the types of non-compliance the ACNC has identified and addressed. No case study represents a specific ACNC case or investigation.

CASE STUDY

Governance standard 1 Purposes and not-for-profit nature of a registered charity

About the charity

A charity that was fundraising in multiple states came to our attention. It was a company limited by guarantee that was less than five years old and was medium-sized with revenue between \$250 000 and \$1 million per annum. It had been registered as a Public Benevolent Institution and had Deductible Gift Recipient status prior to commencement of the ACNC.

Why we got involved

The charity did not appear to be conducting significant charitable activities and there were substantial payments being made to related parties.

What action we took

Our investigation focused on what charitable activities were being conducted and where fundraising money ultimately went. Because public fundraising was involved, there was close liaison with the relevant state regulators.

What we found

Based on discussions with the charity and the information we obtained, our conclusion was that the entity operated to provide a profit and private benefit to associated entities and did not have solely charitable purposes, and therefore did not have the character of a not-for-profit.

What were the consequences

Having reached this conclusion, we revoked the charity's status as a registered charity.

Lessons for other charities

If a charity makes payments to its responsible persons or their associates, it must be able to demonstrate that conflicts of interest have been disclosed and addressed, and that these payments are made for legitimate reasons, with appropriate controls in place and at an arms-length basis. If this is not done, there may be doubt over whether the charity has solely charitable purposes.

More information:

[Further ACNC guidance on governance standard 1](#)

Governance standard 2

Accountability to members

About the charity

A charity incorporated as an association in one state had the purpose of supporting homeless people in overseas countries. It had a Deductible Gift Recipient Aid Fund under the Overseas Aid Gift Deductibility Scheme (OAGDS).

Why we got involved

Members were concerned about governance and control of the charity. The charity's website had been taken down after a former responsible person, who had control of that website, resigned. After that, almost no information was available to members.

What action we took

The ACNC conducted a review of the charity and met with the charity's new management committee. We provided regulatory advice on what action was required to address the issues identified.

What we found

A new board was trying to fix the past governance failures, but did not hold regular meetings with members or provide them with regular information. This caused a significant number of charity donors, sponsors and volunteers to lose confidence in the charity and to withdraw their support.

What were the consequences

The new committee eventually regained control of its website and updated its contents. It also introduced new ways to communicate with members, for example by setting up a Facebook page and publishing a monthly electronic newsletter. The committee also amended its 2013 Annual Information Statement to provide more complete and accurate information to the public.

Lessons for other charities

Where a charity is undergoing significant change it is important to update members and ensure accurate and timely information is available to the ACNC and to members.

More information:

[Further ACNC guidance on governance standard 2](#)

[Comply with the ACFID code and meet the governance standards](#)

GS2

Governance standard 3

Compliance with Australian laws

About the charity

The charity was involved with providing support to vulnerable people.

Why we got involved

There were allegations that the charity had been engaging in financial fraud.

What action we took

The ACNC commenced an investigation and met with those responsible for the charity, former members of the charity and other government agencies.

What we found

Our investigation uncovered the alleged criminal conduct was related to an individual who had been removed as a responsible person prior to the date on which the ACNC commenced. The other members of the charity had not been aware of the conduct at the time of the alleged offence and the conduct was no longer occurring.

What were the consequences

The charity was able to demonstrate to the ACNC that the individual was no longer actively involved in the charity and there was no conduct by the charity that could be considered to be part of any crime. Procedures had changed significantly since the alleged conduct occurred. Appropriate agencies had been informed of the alleged conduct.

Lessons for other charities

Charities need to understand their legal obligations and take steps to ensure that they do not engage in conduct (or omit to engage in conduct) that may be dealt with as an indictable offence under Australian law (usually punishable by imprisonment for a period exceeding 12 months) or a breach of law that has a civil penalty of 60 penalty units (\$10 200) or more.

More information:

[Complying with Australian laws](#)

GS3

Governance standard 4

Suitability of responsible persons

About the charity

A charity with annual revenue less than \$250 000 (which the ACNC Act categorises as a small charity) came to our attention. It had been operating for over 10 years but its charitable purposes were unclear and it had not filed its Annual Information Statements with the ACNC.

Why we got involved

During our risk assessment, the ACNC identified that there was only one responsible person for the charity. That person had been previously convicted of fraud and was still disqualified under the Corporations Act from operating a corporation for a period of five years after release from prison.

What action we took

The ACNC opened an investigation and asked the charity to demonstrate that it had taken steps to ensure that its responsible persons were suitable, as required by governance standard 4.

What we found

The charity did not demonstrate that it had taken steps to ensure that its responsible persons were suitable, as required by governance standard 4.

What were the consequences

Because the ACNC reached the conclusion that there had been a significant breach of a governance standard, and the charity did not indicate it would rectify that breach, its charitable status was revoked.

Lessons for other charities

All charities must ensure that each responsible person is not disqualified from managing a corporation within the meaning of the *Corporations Act 2001* (Cth). If a responsible person has been convicted of an offence that involves dishonesty and is punishable by imprisonment for at least three months, they are disqualified from being a responsible persons of a charity from the date the person is convicted. If the person serves a term of imprisonment then they are disqualified for five years after the day on which they are released from prison.

More information:

[Disqualification from being a responsible person](#)

GS4

Governance standard 5

Duties of responsible persons

About the charity

A medium-sized, closely-held charity raised funds from a variety of sources including charity bins and then made donations to charities overseas.

Why we got involved

Another agency notified the ACNC that charitable funds may have been used by responsible persons to purchase private property.

What action we took

The ACNC commenced an investigation and worked with the charity to establish how it had used its charitable funds.

What we found

The ACNC investigation found that the responsible persons had taken charitable funds for private use by taking out a personal loan. The charity had not met the requirements of governance standard 5, as it had failed to take reasonable steps to ensure that its responsible persons acted in good faith and in the charity's best interests, managed financial affairs responsibly and did not misuse their position.

What were the consequences

The ACNC reached the conclusion that there had been a serious breach of the governance standards and charitable funds had been misused, and therefore charity status was revoked.

Lessons for other charities

Charities need to take steps to ensure their responsible persons are meeting their duties. Where a charity provides any loan to a responsible person, the charity should ensure:

- the charity is not prohibited from making loans to responsible persons or their associates in its governing documents or any relevant legislation
- the responsible person discloses their conflict of interest and removes themselves from the decision-making process
- if a loan is made, its terms and conditions are on an arms-length basis and the charity receives an appropriate return on investment, and
- all the money is accounted for, financial affairs are managed responsibly and appropriate records are kept.

More information:

[Duties of responsible persons](#)

GS5

Record-keeping

About the charity

The charity was a trust which had Deductible Gift Recipient (DGR) status.

Why we got involved

A complaint was received from a member of the public that there was a failure to administer the trust in accordance with its terms (and contrary to its charitable purpose); and specifically that there was no public benefit.

What action we took

The ACNC conducted an investigation and met with the charity to discuss the concerns. The charity was provided guidance and an opportunity to rectify its record-keeping, and was subject to ongoing monitoring by the ACNC.

What we found

The charity was unable to produce records of its activities. However, it did submit a 2013 Annual Information Statement and was able to satisfy the ACNC that it was taking steps to meet its charitable purpose.

What were the consequences

The charity agreed to implement improved record-keeping in the future and was advised that the ACNC would monitor the progress of the charity in regards to its record-keeping obligations.

Lessons for other charities

Keeping good records of the operations of a charity ensures that it is transparent regarding its charitable activities and can easily respond to any questions raised about how the charity is meeting its purposes.

More information:

[Record-keeping checklist](#)



Reporting

About the charity

A small religious charity was based in a single location and had been registered as a charity for several years.

Why we got involved

We were notified of concerns from a member of the public regarding how the funds raised by the public were being used and accounted for. We identified a history of non-compliance with reporting requirements for another regulator.

What action we took

The ACNC commenced a review, and initially the charity responded to the ACNC's enquiries. However the charity subsequently disengaged and failed to respond to enquiries or submit overdue Annual Information Statements. The ACNC escalated the review to an investigation and made formal information requests but the charity still failed to respond.

What we found

The charity had failed to meet its reporting requirements and also failed to establish that it was entitled to registration under the ACNC Act.

What were the consequences

Because the charity did not cooperate with the ACNC and refused to provide any records to demonstrate it was conducting charitable activities, including its Annual Information Statements, the ACNC revoked its charity registration.

Lessons for other charities

Charities must submit complete and accurate Annual Information Statements by the due date.

More information:

[Information on 2014 Annual Information Statements on reporting obligations](#)

[About the Annual Information Statement](#)



Appendix 1

Summary of ACNC governance standards

From 1 July 2013, all registered charities, apart from a specific type of religious charity called 'Basic religious charities', have been required to meet five governance standards to maintain their registration with the ACNC¹⁰. The governance standards require registered charities to:

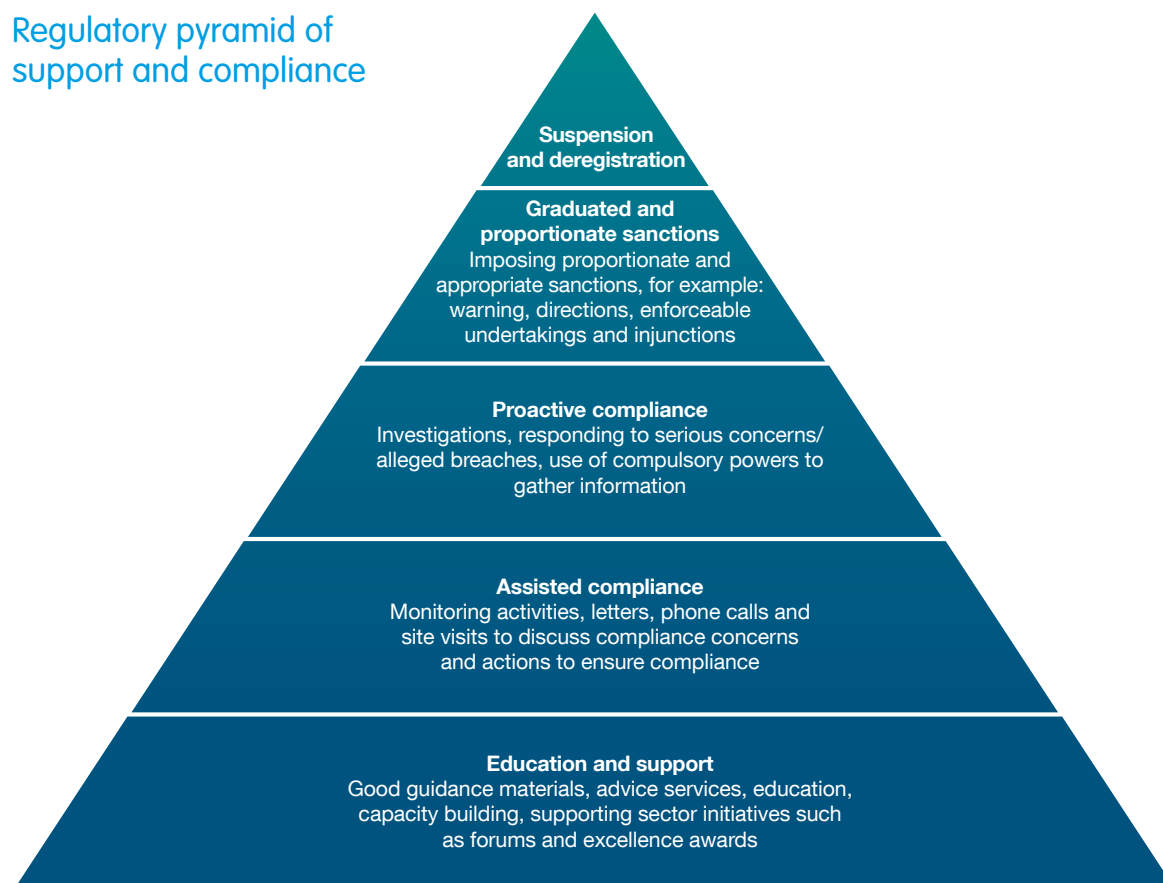
1. Be not-for-profit in nature and work towards their charitable purposes.
2. Be accountable to members by providing members the opportunity to raise concerns about how the charity is governed.
3. Comply with Australian laws.
4. Take reasonable steps to ensure their responsible persons are suitable and are not disqualified.
5. Take reasonable steps to ensure their responsible persons are subject to and comply with certain duties. The ACNC Regulation lists seven specific duties of responsible persons. They must:
 - act with reasonable care and diligence
 - act in the best interest of the charity and for a proper purpose
 - not misuse their position
 - not misuse information obtained in the performance of their duties
 - disclose perceived or actual material conflicts of interest
 - manage financial affairs responsibly, and
 - not allow the charity to operate while insolvent.

¹⁰ Australian Charities and Not-for-profits Commission Regulation 2013, Division 45.

Appendix 2

ACNC regulatory pyramid

Regulatory pyramid of support and compliance



The regulatory pyramid summarises the ACNC's regulatory approach. Our approach is to begin at the bottom of the pyramid by providing information, guidance and advice and move upwards only when circumstances require it. Our regulatory approach is to take the minimum action required to address the issue. If a lesser option does not resolve the issue at first, we will take progressively stronger action until the issue is resolved.

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