

Obligations of Charities Registered with the Australian Charities and Not-for-Profits Commission

Not for Profit Update

The Australian Charities and Not-for-Profits Commission (“ACNC”) commenced operations on 3 December 2012. On this date, all charities that were endorsed for charity tax concessions by the ATO were automatically registered with the ACNC. New charities can apply to be registered with the ACNC. Registration with the ACNC is voluntary, however registration does affect eligibility for certain benefits, including charity tax concessions. The *Australian Charities and Not-for-Profit Commission Act 2012* (Cth) (“ACNC Act”) lists the requirements a charity must meet to be entitled to register with the ACNC.

Charities registered with the ACNC need to:

- comply with governance standards;
- comply with external conduct standards;
- maintain records;
- report to the ACNC; and
- notify the ACNC of certain changes.

These obligations are detailed in the ACNC’s *Guide to the Australian Charities and Not-for-Profits Commission Act 2012* (Cth). A summary of the obligations is provided below.

There are various exemptions that apply to basic religious charities in relation to the above listed obligations. These are highlighted below.

Governance Standards

The governance standards are a set of requirements that registered charities will be required to meet. Entities will need to comply with these standards to become registered with the ACNC and to remain entitled to be registered (subject to the transitional arrangements).

Who does this affect?

Charities registered with the ACNC.

Article Highlights

- Explains the obligations of charities registered with the ACNC.



The governance standards have not yet been released, however the Government has released a consultation paper on the governance standards for comment by the not-for-profit sector by 15 February 2013.

The consultation paper sets out six draft governance standards covering the following topics:

- purposes and not-for-profit character of a charity;
- accountability to members;
- compliance with Australian laws;
- responsible management of financial affairs;
- suitability of responsible entities; and
- duties of responsible entities.

It is intended that the governance standards will be made and in force by 1 July 2013. It is proposed that registered charities will have 18 months from the commencement of the governance standards to make any necessary changes to ensure compliance. However, where amendments to the governing rules of a registered charity are required to comply with the governance standards, the registered charity will have 4 years from 1 July 2013 to make these amendments.

Basic religious charities are **not required** to comply with any governance standards.

External Conduct Standards

The external conduct standards will set out requirements for registered charities that send funds outside Australia or engage in activities outside Australia. To maintain its status as a registered charity, a charity must continue to comply with the external conduct standards.

The ACNC Act states that the aim of the external conduct standards is to give the public confidence that funds sent outside Australia by registered charities are reaching legitimate beneficiaries and being used for legitimate purposes.

It is proposed that the external conduct standards will be made and in force by 1 July 2013.

Basic religious charities **are required** to comply with the external conduct standards if sending funds or engaging in activities overseas.

Record Keeping

Registered charities are required under the ACNC Act to keep financial records and records that explain the operations of the charity.



A registered charity must maintain financial records that:

- accurately record and explain the charity's transactions, financial position and performance; and
- allow true and fair financial statements to be prepared and audited (although not all charities need to have audited accounts, they must keep their records in a way that would allow for an audit to be conducted).

A registered charity must also maintain records that accurately record and explain its operations. The type of records maintained will depend on the size of the charity and are likely to include the charity's governing rules, operational policies and procedures (if any), annual reports (if produced), minutes of governing body meetings and other similar documents.

A registered charity is required to keep records for seven years.

Reporting

Under the ACNC Act, registered charities are required to provide annual information statements and annual financial reports to the ACNC. Basic religious charities have to submit an annual information statement each year, but they are not required to provide annual financial reports to the ACNC.

Draft regulations and accompanying explanatory material outlining the proposed financial reporting requirements applying to registered charities have been released for consultation. Feedback is being sought on the content and application of the draft regulations by 15 February 2013.

Annual Information Statements

The annual information statement must contain information that allows the ACNC to assess the charity's:

- entitlement to registration; and
- compliance with the ACNC Act and regulations.

Annual Financial Reports

The ACNC Act divides registered charities into three sizes depending on their revenue:

- small registered entities (revenue for financial year is less than \$250 000);
- medium registered entities (revenue for financial year is \$250 000 to \$999,999); and
- large registered entities (revenue for financial year is over \$1 million).

Only medium and large registered charities are required to provide the ACNC with annual financial reports for each financial year.



Before submitting an annual financial report, a:

- large registered entity must have its annual financial report audited and obtain a report from the auditor; or
- medium registered entity must have its annual financial report audited or reviewed and obtain a report from the auditor or reviewer.

Commencement of Reporting Obligations

The reporting obligations will be introduced in two phases:

Phase 1: 2012–13 reporting period:

- All charities (small, medium and large) must submit an annual information statement containing only basic non-financial information.
- The annual information statement is due within six months of the end of the charity's reporting period.

Phase 2: 2013–14 reporting period onwards:

- All charities (small, medium and large) will need to submit an annual information statement containing both financial and non-financial information.
- Medium and large charities must also submit an annual financial report.
- Both the annual information statements and financial statements are due within six months of the end of the charity's reporting period.

Duty to notify

Registered charities have a duty to notify the ACNC if certain events occur including a:

- change of name;
- change of address for service;
- change to the responsible persons of the registered charity;
- change to the registered charity's governing rules; and
- significant contravention of the ACNC Act or significant non-compliance with the governance or external conduct standards.

If a registered charity does not comply with the duty to notify within the timeframes set by the ACNC Act, then it will be liable to pay administrative penalties.

The timeframes for notification differ depending on the size of the registered charity. Medium registered charities and large registered charities must notify the ACNC as soon as practicable but no later than 28 days after the registered



charity becomes aware that the circumstances requiring notification exist. Small registered charities must notify the ACNC as soon as practicable, but no later than 60 days after the small registered charity becomes aware that circumstances exist, with one exception being that where there has been a significant contravention of the ACNC Act or the governance/external standards, the small registered entity must notify the ACNC as soon as practicable but no later than 28 days of becoming aware of the circumstance.

A registered charity must notify the ACNC of any of the above listed events by submitting the approved form contained on the ACNC's website. charity becomes aware that the circumstances requiring notification exist. Small registered charities must notify the ACNC as soon as practicable, but no later than 60 days after the small registered charity becomes aware that circumstances exist, with one exception being that where there has been a significant contravention of the ACNC Act or the governance/external standards, the small registered entity must notify the ACNC as soon as practicable but no later than 28 days of becoming aware of the circumstance.

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Contact Us

t +61 8 9426 6611 **f** +61 8 9321 2002 **e** jacmac@jacmac.com.au

a Level 25, 140 St Georges Terrace, Perth, Western Australia 6000
GPO Box M971, Perth, Western Australia 6843

www.jacmac.com.au

Contact



Adam Levin

PARTNER

t: +61 8 9426 6753

e: a Levin@jacmac.com.au



Elizabeth Tylich

PARTNER

t: +61 8 9426 6700

e: etylich@jacmac.com.au