Webinar transcript – Helping Parents & Citizens Associations (P&Cs)

21 March 2017

**Matt Crichton:**

Hello, everyone. Thanks for joining us for today's webinar which is, as you can see on the screen, about the ACNC's Compliance Directorate and how we approach and address concerns about charities. Today we're joined by, sorry; my name's Matt Crichton - I always forget that step - and I work in the ACNC's education area. Today, as special guest with me, is Ms Prue Monument, the Director of our compliance area.

Hello, Prue.

**Prue Monument:**

Hi, Matt. Thanks everyone for joining us today.

**Matt Crichton:**

Just before we get into the content today I'll just run through a few admin things if everyone doesn't mind. Throughout the webinar we'll be answering questions, text questions that is. If you want to ask us anything use the control panel on the right hand side of your screen, go to webinar control panel, that's it. Just shoot through a question and we have a couple of colleagues, Chris and Meenal who will be answering the questions for you throughout. So don't hesitate, there's no time restriction on this, you can ask questions as they come up for you.

Having said that, we will leave a bit of time at the end, 15 minutes or so, to do a Q&A session. If you want to wait until the final presentation is over before asking a question, that's fine as well, we'll get to your questions later. Also, we will respond to the questions directly to the person who asks the questions unless we feel it's broad and will be useful for a lot of people, in which case we may respond to everyone but we wouldn't let the name of the person who asked the question out, it will just be the answer and the question.

Just one more thing on the questions, if we do not get to your question today then do not fear, we will get in touch with you by email or we will give you a call or whatever it may be to address your concern and there will be a follow up email after this webinar which may address some of the common questions if there are such that we didn't get to today.

We will have a recording and transcript of the webinar on the website within a few days. So if for some reason you get called away and can't watch the end or anything like that or your internet drops out or whatever it may be then never fear, you'll be able to come back to the website and view the webinar again later. If you do have any difficulties with sound on your computer try calling the number on the go to webinar control panel, they have an option to log in via phone. So if you're having trouble with sound on your computer that's one option, to try and log in by phone.

Finally, we do value any suggestions we have for our webinars and, more broadly, our education content. So if you have any suggestions on how we can improve our webinars in the future please let us know and we really appreciate if you take a few seconds to answer a four question survey at the end of the webinar, a couple of them are multiple choice so it doesn’t take very long. We really appreciate that.

OK, all the admin stuff out of the way; let's move on to the content of today's webinar. We will look at the ACNC and concerns and how we address concerns about charities. First we'll cover the role of the ACNC Compliance Directorate. We'll look at how the ACNC identifies concerns in the charity sector, our approach to addressing them. We'll talk a bit about the powers that we have as an agency and then we'll get into some details of some recent activities and common issues faced in the charity sector and a useful selection to finish off, some tips for charities on making sure you do everything you're supposed to do and finally a Q&A session so if you do have any questions pop up and you didn't get a chance to ask them as we go through then feel free to hold them until that Q&A session.

That's probably enough from me for the moment. I'm going to pass over to Prue, our Director of compliance, who will start. Prue, would you mind just giving us an overview of the role of the ACNC Compliance Directorate?

**Prue Monument:**

The ACNC Compliance Directorate plays a really important role; I might be a little bit biased as the director of that area. I'm sure I'm preaching to the converted when I say the charity sector is rich and diverse and it contributes such a huge amount of value, not only to the Australian community but global communities. In Australia the charity sector holds assets worth in excess of $260 billion. It employs over 1.2 million staff and engages almost three million volunteers. The charity sector is actually the second largest employer in Australia, next to the retail industry. It's huge, it's diverse but the value is immense. The Compliance Directorate plays an important role in protecting that. Our critical role is maintaining trust and confidence in the charity sector. We recognise that the ACNC and I'm sure you're also aware that it only takes bad behaviour from a small number of individuals within charities to severely damage the public's trust and confidence in the sector as a whole.

The challenge to us in the Compliance Directorate is we have 54,000 charities to regulate. We play a really important role in identifying the charities that may be at a higher risk of non compliance and I'll go into a little bit more detail shortly on how we do that. We investigate and address non compliance where we do identify concerns. Wherever possible we work with charities to get charities back on track. We also play a really important role in monitoring trends or issues and think about how we can address those issues. We feed a lot of information back to our education team to improve our outreach and guidance to the sector to help charities protect themselves from fraud or mismanagement. We also have communities of practice that we share our experiences with, such as State and Territory based regulators, but we also share a group of international regulators, a teleconference with international charity regulators in common law countries. So we do share a lot of issues or emerging trends with that group as well.

**Matt Crichton:**

You did mention that there is great diversity in the sector and 54,000 charities would suggest as much. Of course, identifying the concerns would be quite a task for such a large and diverse sector. Can you tell us about the approach the ACNC takes for identifying concerns?

**Prue Monument:**

Sure, the community can be incredibly helpful and most of our concerns come from the community. Sometimes it's people that work within the charities themselves or sometimes just from a member of the public. We also receive a number of referrals from other government agencies, a number of other regulators work within the charity space, State and Territory regulators, Department of Education, the ATO, social services, just to name a few. We receive referrals from other agencies where they may identify concerns that fall within the ACNC's jurisdiction. We also have strong working relationships with law enforcement and intelligence partners - AUSTRAC, which is Australia's financial intelligence unit, and also the Australian Criminal Intelligence Commission. So through their day to day work if they identify a concern that is of interest to the ACNC they will refer that through to us.

In compliance we tend to talk about reactive work and proactive work. Reactive work is when a concern is brought to the ACNC's attention such as those examples I've just given. Something's happened or we suspect something's happened, a member of the community reports it to us or perhaps another government agency. We also identify concerns in a proactive way and that's where we're looking for concerns that have not been brought to our attention yet or maybe even concerns that haven't actually happened yet. We can learn about the types of charities that are at higher risk of non compliance, we can intervene early and support those charities to stay on track. We do this proactive work by working smarter and starting to do a bit more data matching and data sharing with other government agencies to identify concerns. Government information holdings are vast and we need to use those to identify areas of risk. For example, we look to work with the Australian Taxation Office to identify risks around private benefit; we can work with AUSTRAC to identify suspicious financial transactions which then may lead us to engage with certain charities. The ACNC also has a great deal of its own information and intelligence that can help us identify areas of concern. This includes the information that may have been provided through the registration process but also through annual information statements. We also monitor the media and other open source materials for information.

**Matt Crichton:**

There is a lot there and a lot of avenues leading back to the Compliance Directorate which would be a lot to cover, as well. There's just one thing, before we move on, right here on the slide we have this little spot that says the ACNC can only accept concerns in relation to charities registered with the ACNC for an alleged breach of the ACNC Act and/or regulation may have occurred. Do you want to take a quick moment to elaborate on that a little, Prue?

**Prue Monument:**

Sure. People in the community may often contact the ACNC and think that we can deal with broader issues in relation to charities, fundraising, for example. If people are unhappy with fundraising tactics, I think that's a common concern that is sometimes reported. Or perhaps they're unhappy with… there may be an internal dispute within the charity but there may be no compliance contravention. Unless it really relates to the ACNC Act or regulation it's not within our jurisdiction to investigate the matter further. In those types of situations we will endeavour to refer their concern to the relevant agency or authority or give the person contacting the ACNC another path to pursue.

**Matt Crichton:**

Right. So that's where those relationships are really strong and important, it doesn’t stop with a lack of jurisdiction because there's those working relationships with other agencies.

**Prue Monument:**

That's right.

**Matt Crichton:**

All those avenues of intelligence leading back to the Compliance Directorate, can you take us through a break up of how much we receive from different areas?

**Prue Monument:**

Yeah, sure. So in the 2015/16 calendar year the ACNC received 930 concerns about charities. Approximately two thirds of those came from members of the public. Whether those people worked within charities, were beneficiaries, employees or just a general member of the public, two thirds come from the community. The majority of the concerns that we receive, 66% are actually minor in nature and are addressed by our Advice Services team. I'm sure if any of you who are listening have been in touch with our Advice Services team; they're an incredibly helpful bunch. Often they are able to resolve concerns through education, guidance or it may be that we've referred the matter to another agency if it was outside of our jurisdiction. The remaining 34% of the 930 came through to compliance for a more detailed assessment. The most common concerns that come to compliance relate to Governance Standard Five which is the duties of the charities responsible persons. This tended to include concerns such as financial mismanagement, failure to address harm to beneficiaries or not acting in the charities best interest. The other common concern we often received is in relation to Governance Standard One which is the purpose and not for profit nature of the charity. This tends to include concerns such as private benefit or failing to comply with charitable purposes. Entitlement to registration is something else that often comes up and that would include things like sham charities, again, private benefit or perhaps having a disqualifying purpose such as political advocacy.

**Matt Crichton:**

You mentioned just quickly there a couple of words that may not be familiar to all our audiences - Governance Standard Five and then Governance Standard One being a couple of common things that the Compliance Directorate will have a look at. Can you just briefly explain what the Governance Standards as a concept are?

**Prue Monument:**

The Governance Standards really relate to your obligations under the ACNC Act or ACNC regulation. When we're making an assessment from a compliance perspective these are the things that we will be looking at. There's five governance standards in total. When you register your charity you should get a Governance for Good pack or you can get it off our website. It will talk about these governance standards in more detail. In summary the five standards are, the first standard relates to the purpose and not for profit nature of the charity so you have to have a charitable purpose and you have to be not for profit. The second governance standard relates to remaining accountable to your membership. The third one is compliance with Australian laws. The fourth governance standard is ensuring that your responsible persons are suitable, so they're not disqualified from acting as a responsible person, disqualification may come if they've been involved in financial fraud previously or they've been disqualified by ASIC. Governance standard five, and this is one I really encourage everyone to familiarise themselves with, this is the duties of the responsible persons within the charity. There's a number of elements that sit under Governance Standard Five and it's about how the responsible persons are expected to act with care, due diligence and always acting in the best interests of the charity.

**Matt Crichton:**

Excellent, thank you. So they are just a set of minimum standards which charities are expected to be able to follow. It really is, as Prue mentioned, it's worth reiterating that it's something that all people in charities should familiarise themselves with. We do have a fairly comprehensive guide to all five on the website. If people have a pen handy, I'll copy a link into the email as well so if you don't have one handy you don't need it but the short link is [www.acnc.gov.au/governancestandards](http://c/%5CUsers%5CJosalent%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CTemporary%20Internet%20Files%5CContent.Outlook%5CTAQ0MQGD%5Cwww.acnc.gov.au%5Cgovernancestandards) and that will cover these five minimum operating standards to which charities must comply. And, of course, they're the ones that, as Prue mentioned, often pop up in a concern about a charity so it's worth having a look at those.

The compliance approach, when concerns do come through to the Compliance Directorate for a bit of a deeper look and assessment then what's the basis stance of the Compliance Directorate? What's the approach that you take to addressing these?

**Prue Monument:**

We start from the premise that charities are doing the right thing or trying really hard to do the right thing. We're incredibly conscious of the fact that the majority of charities registered with the ACNC, I think about 67%, are small in size. Many of these organisations are going to be run by volunteers, regulatory frameworks can be complex at the best of times so whenever possible we will work with charities to address non compliance and provide education and guidance and really try and work to get the charities back on track. However I think it's really important to note that when the failures are so significant and the charity is not willing to work with the ACNC to rectify non compliance we will act swiftly and firmly.

**Matt Crichton:**

We have a diagram here which may appear a little bit difficult to see but it will come through in your follow up email if you want to have a detailed look and it's also on the website so you can have a look at that later. This basically is an outline of the approach that the ACNC takes. Can you describe it for us, Prue?

**Prue Monument:**

This is what we call a regulatory pyramid and many regulators will have something similar but it's really outlining our approach and that it's consistent with the ACNC's principle of proportionality. We're really aiming to employ the minimum level of compliance intervention required to return the charity to compliance. We're not keen to go out with harsh punitive penalties, if we can actually fix the situation with a bit of support, education and guidance. The base of the pyramid, which is really the bulk of ACNC work, represents self regulation. So the ACNC does a lot through the provision of education and guidance or even our annual information statement reminder letters to help charities understand their obligations and remain compliant. The Compliance Directorate really comes in at the next level of the pyramid where perhaps some additional intervention is required. Despite our best efforts to help charities self comply some need a bit of extra prompting and that may involve some regulatory and targeted regulatory advice to help get the charity back on track. As you move up the pyramid the compliance action tends to become a little bit more firm and may result in penalties, injunctions, warnings with the most serious outcome from an investigation resulting in revocation of charity status.

**Matt Crichton:**

At the pointy end, where it's sharp and hurts. OK, we mentioned earlier there were 54,000 or thereabouts registered charities and quite a diverse sector. Of course that's a lot of things to be keeping a look out for. Can you give us an idea of the way in which the Compliance Directorate will take on what seems to be such a massive task?

**Prue Monument:**

There are about 54,000 charities and we know most are doing the right thing or trying to do the right thing. We have developed a risk based regulatory strategy because we need to ensure that our compliance resources are really focused on the areas of greatest risk. The areas of greatest risk from the ACNC's perspective are those concerns that are going to present the greatest risk to trust and confidence in the sector.

So there's five factors that we always look at from a compliance perspective that helps us prioritise our caseload. The first we're going to look at is the nature of the concern itself. This includes considering whether it involves fraud or criminal activity, whether there may be harm to beneficiaries. There's certain concerns that we as a Compliance Directorate prioritise above others and I'll go through those in a little bit more detail on the next slide.

The other factor we look at is persistence. So we'll consider whether the concern relates to an isolated incident or conduct that has persisted over a longer period of time. We'll also look at whether or not the charity has a history of non compliance. We will also think about harm to the sector as a whole, this includes considering whether public funds such as government grants and public donations have been involved. Other factors specific to the concern that we will consider is whether or not the matter is [indistinct 21.32], whether it presents a new and emerging issue and we also think about factors specific to the charity - whether the charity is closely controlled, the extent of oversight by any other regulators and we will work with other regulators where possible and the size of the charity is also an important factor for us to think about in terms of how we'll engage with that organisation.

**Matt Crichton:**

So there really isn't a one size fits all situation with compliance, it really depends on a number of factors. You mentioned that it's a risk based approach and you have certain priorities. Can you take us through some of the more detailed aspects of that?

**Prue Monument:**

As I mentioned, we are going to prioritise some concerns over others. The Compliance Directorate wouldn't have the resourcing to go out and investigate every technical breach of the Act or regulation. So we think about the harms, the harms that are really going to undermine trust and confidence. The ones that we prioritise in the Compliance Directorate - not in priority order, these are all priority one concerns - are fraud and financial abuse or financial mismanagement, this includes things like money laundering and tax avoidance or private benefit. We know that private benefit is something that particularly concerns the community.

**Matt Crichton:**

Just quickly on that, sorry to interrupt, I think there might be a few people listening in that might not quite have an idea of what private benefit means. Can you give a brief outline of that?

**Prue Monument:**

Sure. So private benefit can look like different things but it's really where you're gaining some kind of benefit from the charity. The ones we tend to see in compliance would be a financial benefit to an individual and that financial benefit is not really in the best interests of the charity, it's actually in the best interests of the individual and improving their own financial situation. I'll give a few more examples of that and how it may eventuate as we progress.

Terrorism is another key focus and this includes the misuse of charity funds for terrorist purpose or to foster extremism. This could be charities that support terrorism financially or otherwise or perhaps charities that have connection to a listed terrorist organisation or person or organisation of concern.

Beneficiaries, we're particularly concerned when we have information that suggests children or vulnerable adults may be at risk. Political activities is another priority area for us. This is where charities may be placing themselves at risk of having a disqualifying purpose through their political advocacy or perhaps through illegal activities or activities that are contrary to public policy. There's a great piece of guidance on the ACNC website about political advocacy and understanding what the acceptable boundaries of political advocacy are. Any charities that do get involved in political advocacy, I encourage you to read that guidance. We certainly don't expect charities to not get involved in political debate and discussion, especially when it's relevant to their political purpose, but they do need to be mindful of the risks of being found to have a disqualifying purpose.

The other thing that is really important to the ACNC is the lodgement and accuracy of our annual information statements. The integrity of the Charity Register is just critical for community confidence. Each year the number of people referring to the Charity Register is increasing and people need to have that confidence that the information on there is up to date and correct.

They're our compliance priorities and just to quickly mention in relation to fraud and financial abuse and terrorism, we are actually completing at the moment a National Risk Assessment of Australia's not for profit sector. We're doing that piece of work in partnership with AUSTRAC, Australia's financial intelligence unit, the Australian Criminal Intelligence Commission and the Australian Tax Office. The purpose of that risk assessment is to specifically identify terrorism financing and money laundering risks in the sector. A public report will be released some time in May. The assessment will not only help us identify charities that are high risk but it's also going to help influence some more targeted guidance for the sector so they can insure they protect themselves from any of those risks as well.

**Matt Crichton:**

It's a really important one; a lot of charities think they have nothing to do with it whatsoever until some of the details are uncovered and then they're surprised at how insidious this sort of activity can be. We look forward to the result of that assessment and report.

Actually, just before we move on, that last point there about accuracy and transparency of the Register and how Prue mentioned completing the annual information statement, it's a really simple, easy one to cover for a charity. It's not going quite to the depths of fraud or financial management errors or anything like that but it still can get charities in a little bit of strife. It's one easy thing that a charity can do, make it as part of their regular processes that they get around to completing an annual information statement each year and making sure their details are up to date on the website to prevent any sort of need for the ACNC's Compliance Directorate to get in touch with them over something as simple as that. It's worth keeping a note.

The approach is pretty clear. Can you give us a run through of the powers? We did briefly mention at the beginning about the ACNC's jurisdiction. Can you describe to us the ACNC's powers and how we apply them?

**Prue Monument:**

Broadly the ACNC's compliance powers tends to be grouped into three different types of powers. We have information gathering powers, monitoring powers and enforcement powers.

Starting with information gathering powers, we can request documents and require a person to attend and give evidence to the ACNC. We can also request information from a third party. We don't just have to request information from the charity itself; we may request information from banks or other entities. Those information gathering powers are set out in Division 70 of the ACNC Act. We also have to be mindful of privacy legislation and other Acts that may also apply. If we do decide to use those formal information gathering powers the charity or the entity we're requesting information from will receive a formal notice outlining the exercise of those powers and what we request.

In terms of our monitoring powers, in an investigation where we're looking at serious contraventions or non compliance we may need to gain access to premises, the charity's premises. We can do that either with the consent of the charity or we can request a formal monitoring warrant. Where we decide that access to the premises is necessary we will always seek to access the premises with the consent of the charity. We would only ever seek a formal monitoring warrant if the charity was uncooperative or appeared unwilling to provide the information that the ACNC required. Once we're actually on the premises of a charity we can search the premises, we can take photographs, video recordings, make copies of any documents or pieces of information that we may need. Section 75-20 of the Act provides further detail on the monitoring powers of the ACNC.

ACNC compliance powers, we have a number of different powers we can use. As I mentioned before, our first focus is always on helping charities meet their obligations through guidance, education or support. Where charities don't respond to this and still fail to meet their obligations we will consider the formal use of powers. We can warn a charity that they're not meeting their obligations and explain what action we expect them to take. We can direct charities to do certain things or make certain changes. We can make arrangements or go to a formal agreement of sorts with a charity about what they need to do to meet their obligations and then we will monitor that over an agreed period of time, it's an undertaking and it can be a voluntary undertaking or an enforceable undertaking. An enforceable undertaking can actually be enforced through the Court. We can ask a Court to make charities do or not do something and that's called an injunction. We can suspend or remove responsible persons such as a Board or Committee member. We can disqualify a responsible person - during that time the person is not allowed to be a responsible person for a charity and they'll also be listed on a disqualified persons register. In the most exceptional cases we can revoke a charity's registration and that would affect their access to any tax concessions and we also can apply administrative penalties if the charity makes false or misleading statements or fails to lodge documents such as reports, notices, returns or even annual information statements on time then charities can be subject to penalties.

I think we'll talk about penalties a little bit more?

**Matt Crichton:**

We will, we'll go into some penalties. Just before we get to penalties, do you find that, anecdotally, the work as the Compliance Directorate does nearer this idea that charities are trying to do the right thing in that it's not so common that things will escalate to revocation of registration statues or hefty fines or anything like that. Do you find that it's mostly on the lower end of the intervention where charities clean up their act or get things going straight again?

**Prue Monument:**

The majority of charities that the Compliance Directorate engages with or undertakes formal investigation of can continue their charitable work so the outcome will be that we help get them back on track and they can continue. It is the minority that would have their registration revoked. I think we do enter into a number of undertakings with charities, particularly where you've got a really good charity and they've been the victim of fraud or financial mismanagement which was the conduct of one individual in that charity. That's really about helping a charity understand how that was able to occur in the first place and putting in place good governance to ensure that it doesn't happen again in the future and getting them back on track. In most instances charities will be able to continue to operate.

**Matt Crichton:**

That prevention in those cases, prevention is better than cure. But having said that we do have access to some harsher pieces of intervention if required and this slide demonstrates a little bit of that.

**Prue Monument:**

I think penalties, as Matt said earlier, charities have ample opportunity to lodge their annual information statements on time. The ACNC has been around for a long time now and we have a really rigorous reminder regime in place where emails and letters go out to charities to encourage them to submit their AIS on time. In light of all that late last year we issued financial penalties for the first time to charities that were late in lodging their annual information statements and this really goes to the point of how important it is that the Charity Register is current and correct and that information is critical to have on the register and available for the public to view. Late last year we issued final warning letters to a number of large charities and luckily a number of them then lodged their AIS which were overdue but we did issue 40 penalty notices to large charities. That's $4,500 and a penalty notice was issued to the charities for being late, these charities had received multiple reminders. While the ACNC issues the penalty notice the Tax Office then pursues that debt.

**Matt Crichton:**

It's a pretty hefty amount of money to pay for something so simple, an administrative step that really could be easily put into a charity's operations and covered as part of all the other things.

**Prue Monument:**

Absolutely. Through the final warning process, before we went ahead and issued penalties we issued final warnings and we learned a lot. Charities can do really simple things so this is not overlooked. Some emails from the ACNC were going to charities junk emails and so charities need to make sure they set up their emails in such a way that they'll accept emails from the ACNC. We found that the reminder letters weren't being escalated appropriately within the charity to the more senior staff that could then action the AIS. Or someone had left the charity and the communication was still going to that person, they didn't have processes in place to ensure these sort of things didn't fall through the cracks. So really simple things that can avoid these types of penalties.

**Matt Crichton:**

It's worth making the effort to put the simple steps in place so you don't have to deal with something like a fine later on. Can you take us through some of the activities that has happened recently? We mentioned the powers and the approach of the ACNC but how is that played out in reality?

**Prue Monument:**

This is a bit of a sneak peek, I suppose, because we will be launching our compliance report hopefully in the coming weeks and some of this data is from that report. Between December 2014 and December 2016 we've revoked the registration of 28 charities, we've entered 12 undertakings, issued one warning and 43 charities received regulatory advice. I think that really demonstrates that in many cases it's just about informing charities and helping them understand their obligations and putting improvements in place. We issued 40 penalty notices, we've just sent out our next round of final warning notices so we will be issuing more penalties in the coming weeks. Twenty seven charities received self assessment guidance, what that means is that we considered the concerns in these cases were so minor that it really didn't warrant compliance investigating at this point in time and so we sent out some targeted guidance to the charities to undertake their own self assessment audit and put in place some improvements. That might have been things as basic as improving their record keeping minutes, et cetera. We issued 62 notices under Section 70-5 of the Act which is the formal requests for information but the ACNC compliance report which will go into quite a bit more detail and have some really useful de-identified case studies should be coming out in the next few weeks.

**Matt Crichton:**

All those stats come from certain problems or issues in the sector. What are the common things that you have seen and that charities should be aware of and look at their own processes to make sure they don't fall into this basket, too?

**Prue Monument:**

I think one of the ones that we see a lot of in the Compliance Directorate is conflicts of interest. I think conflicts of interest and private benefit are often tied into together. What we see with conflicts of interest are related party transactions. Charities need to be really careful about related party transactions. What I mean by that is we often see a situation where a charity engages a third party service provider - whether it's events management or to produce a particular product for the charity - and might engage a family member who has that business or it may actually be their own business yet they haven't conducted any due diligence or there's no evidence of decision making to demonstrate that the decision was in the best interest of the charity and that they're not demonstrating that conflicts, whether actual or perceived conflicts of interest, were appropriately managed. We can see that often charities do this because they think they want to use the services of their brother or sister and they trust them to do the right thing by them and the charity but we have to be really careful with these decisions and that proper research is conducted, due diligence is conducted to ensure that engaging that third party provider is in the best interests of the charity and enhancing their purposes and that there aren't other providers that can do it in a more cost effective way. The charity has to be very careful.

**Matt Crichton:**

It's not a blanket rule that the ACNC will crack down on anyone who uses a relative's or their own business that they know of, there's no absolute prohibition on that. It's just about the processes by which the charity comes to the decision to use that organisation and if there are proper processes followed with documented evidence of the steps that led to that decision then it could be that the decision was fine.

**Prue Monument:**

Yes, it could be that the decision was in the best interest of the charity but the conflicts have to be properly managed and people that have an interest need to be removed from the decision making process and it needs to be transparent and well considered process.

**Matt Crichton:**

I suppose it doesn't help when you've got poor record keeping.

**Prue Monument:**

That's right. It really is important; we do see poor record keeping. Then when we do go out to charities and ask them to show us how they came to the decision and where is it documented in their minutes, where was it discussed at Board level that charities are often unable to provide us with that information. It's really critical that charities have good records to demonstrate their activities.

Just going back to private benefit for a minute, the other types of private benefit that we sometimes come across in our compliance casework is excessive salaries without explanation. So, again, if there are people within that charity, whether it's a CEO or member of the Board, someone in that charity that's receiving a salary we need to see what type of due diligence was undertaken to determine that salary was appropriate. The other thing that we've seen is personal loans to staff; the charity would need to be able to demonstrate why it's in the best interest to give a staff member a personal loan. These types of things can really get charities into some problematic areas. Also, excessive allowances to cover out of pocket expenses but not having any accounting of the actual out of pocket expenses incurred. These things start to look like private benefits are being obtained by the individuals that are benefiting from these arrangements. In some instances it almost looks like out of pocket expenses are becoming quasi salaries when the person may not be entitled to the salary. Charities need to be very mindful of this. The other thing we sometimes see with private benefit, to a lesser extent, but again for charities to remain mindful of is that people often want to reward the good work of their volunteers which we understand. Rewards require charitable funds or charitable assets in any way then the charity needs to think very carefully about that and justify any such expense is in the best interest of the charity.

Fraud and criminal activity, this often relates to financial mismanagement and charities not having adequate protections in place to protect their charitable funds. Working with vulnerable beneficiaries, working with children or vulnerable beneficiaries really requires robust governance practices including comprehensive child safety strategies. Working with Children checks in and of themselves is really not enough, charities need to have policies and procedures in place to prevent, detect, report and manage child protection issues. I really encourage any charity working with children or vulnerable beneficiaries to do their research.

**Matt Crichton:**

That's an important one and often don't think about, you get the Working with Children check and that's it, off we go, but there's more to it. How about some tips? We've gone through things the Compliance Directorate of the A.C.T. has seen. So obviously there would be some lessons learned. What tips can you give charities?

**Prue Monument:**

Protect your finances and your assets. We often hear charities tell us they're not at risk of financial abuse because they know and trust all their staff and volunteers. To be frank, this is really naïve and charities need to have robust financial management practices in place. One person shouldn't be able to access all the funds. Use of credit cards needs to be carefully scrutinised and charities responsible persons must continue to ask whether certain expenses are necessary in advancing the charity's purposes.

The other point I wanted to make is we often go to charities and they can give us every policy and written procedure we could ask for but they're just not using them. It's essential that policies are fit for purpose and they're actually being used by the charity. Many charities may have Conflict of Interest Registers or Conflict of Interest policies but when we actually go out to ask how they're being used they're just not being used. Similarly, charities need to ensure that their governing documents such as a constitution is understood by members and it's kept current and up to date, that it remains relevant to the organisation.

We talked about record keeping and how important that is to demonstrate how decisions are being made and how finances are being spent. I think one of the other quite timely topics as well is about protecting the charity's greatest asset which in most cases is the charity's reputation. It's always important for charities to consider whether the actions of the charity, while maybe the actions are technically lawful, do they align with the values of the charity and do they meet public expectations? What will the public perception of these activities or actions be? This is particularly important when engaging third parties to work with your charity. You need to always ensure they're operating consistently with the values of your own charity. I think a recent example of this is in relation to fundraising organisations. Charities can't outsource responsibility so if you are going to engage third party providers for whatever it may be then undertake careful due diligence and that includes ongoing monitoring and insurance checks because loss of public trust for your charity is going to be quite devastating.

I think they're some of the key things that charities should be mindful of and they're the areas we often find common problems.

**Matt Crichton:**

Excellent, thanks. I think that last one is a really good point because a lot of people understandably get caught up in the day to day work of a charity which is very busy and many would agree it's often an understaffed work force that is doing lots of work. It's easy to be a little bit naïve about the importance of policies and make sure that you're following procedures and policies and thinking about public expectation or public perspective on decisions that your charity has made and the actions your charity has taken, particularly with something like fundraising. I think it's a really good point.

We have come to the end of the formal presentation but of course we have some time to answer some questions. A few of them have come through. On the slide here is a list of important resources and guides and tips and whatnot on our website which will help lots of charities get their heads around what we've talked about today. That will be included in a follow up email so you don't need to rush for a pen and paper and start scribbling them down now, we will send them out to everyone. You often see a bunch of links and think "Oh, yeah. I'll look at that one day." We just want to reiterate how much of the problems charities face can be mitigated by simple, simple steps and making sure that the operations follow these simple steps and keeping the Compliance Directorate from the ACNC away is pretty easy if you do this.

We're getting a few questions. One that popped up, there was one about all the stats and I think Prue did cover that in one of the slides that we have a report coming out fairly soon. Someone wanted to know if all the stats and information is available in a document or something. Can you just outline that report coming out soon?

**Prue Monument:**

We will have the compliance report coming out in the next few weeks which will look at the ACNC's compliance activities over the last two years. There are reports prior to that up on the website, compliance reports. There's one looking at the two year period prior to the end of December 2014. To date we've issued these compliance reports every two years. From now on we will be releasing the reports annually. There is some data on there but the next report is not far away.

**Matt Crichton:**

Excellent. And you can see there's a link there to that report that Prue mentioned, the fourth one down from the top.

**Prue Monument:**

Also, there's a lot of data and statistics in our annual report which is very easy to navigate and is available on the website.

**Matt Crichton:**

Predictably, I guess, private benefit is a huge one. There are a few questions that have popped through on private benefit. There are a few we might get to but we'll start with one. You mentioned salaries and I think the phrase you used was excessively large or something along those lines. Can you take up a moment to clear up the difference between someone getting paid and getting a reasonable salary which, of course, isn't doing any wrong and crossing that line? Where does that line lie? A few people have asked about percentages of funds or is there a limit on CEO's salaries? How do you look at that?

**Prue Monument:**

We don't have limits or percentages. Again, it reflects that we don't have a one size fits all approach to this. If we had any concerns about salary appearing particularly excessive we would ask the charity to demonstrate how they came to that decision. So what kind of due diligence did the charity itself undertake? Maybe there were some similar charities they could have used as a point of comparison, maybe it was in assessing the person's skills and experience for that role. At the end of the day it may be quite justified and their roles and responsibilities within the charity may make it quite justified. What we would be looking at, we would never go out and say "Organisations A, B and C pay this much so we would expect you to be paying the same" but would just ask to see what type of considerations went into coming to that salary.

**Matt Crichton:**

Similar to the point we made earlier about making the effort to go through proper decision making processes and record them to make sure any decisions such as a CEO salary or staff salary or out of pocket expenses follow a procedure and that it's clear, documented and anything can be justified.

**Prue Monument:**

The situations we've seen in compliance where it's a private benefit are much more blatant and concerning where one individual has decided alone that their salary will be $200,000 as opposed to it being more transparently considered at Board level. If we can see there's been some consideration undertaken and it's been an open, transparent process and it's justified we're not going to be concerned about it.

**Matt Crichton:**

Pretty easy to give yourself a huge salary if you're the only one making the decision. Imagine if all jobs were like that. We have another one about conflict of interest and declarations of current employment or service on another organisations Boards. We did touch on conflict of interest briefly before. What should charities look out for with conflict of interest and then what sort of detail should be on a record or conflict of interest register or something like that?

**Prue Monument:**

There is some quite good information on our website about conflict of interest but also the Governance Institute has some really useful and practical information around managing conflicts of interest. Charities should have a conflict of interest register so if you are bringing new people on or your current employer's situation is changing they should be putting in potential conflicts. That may be in relation to working with another organisation or maybe in relation to working with a different organisation outside of the charity sector, a private organisation. It could be to do with relationships with Board members, et cetera. So all those things where there's a risk of there being an actual or perceived conflict of interest, really. It's important to remember it can also be a perceived conflict of interest, all these things should be placed onto a register and they should be regularly reviewed at the Board level and you should have processes and policies in place so that people that may be at risk of having a perceived conflict of interest are removed from having any decisions where that conflict would come into play. For example, if my partner had a business and the charity was looking to engage that business I should be completely removed from any of that decision making process, everything should be well documented and there should be thorough due diligence undertaken to ensure that decision to engage my partner's company is in the best interests of the charity.

**Matt Crichton:**

That point about perceived conflict of interest is really important in that hypothetical that Prue gave. I guess in the case if you promised and promised with your hand across your heart that you wouldn't allow your emotions to influence your decision and you didn't and you were honest, it doesn’t matter if everyone thinks the decision hasn't been made properly because of the connection that you have to the company that the charity might be used, it's a perception of conflict of interest.

We did have a question here about the suspension, removal and disqualification of responsible persons. Has the ACNC…?

**Prue Monument:**

The ACNC's Commissioner has the power to disqualify responsible persons. Based on my understanding she hasn't exercised that power to date. We have had situations where ASIC, somebody is disqualified under ASIC's regulations and that in turn automatically disqualifies them from being a responsible person with the charity. We have had some situations where the charity has applied for registration and we've identified that one of the responsible persons is disqualified and said that they can't act as a responsible person for the charity. Similarly we've had situations where a charity is operating and one of the responsible persons situation changes and they're disqualified by ASIC and in turn they need to step aside and bring that to the ACNC's attention. Just because they are disqualified doesn’t automatically mean they can't continue to operate with the charity but they would need to put forward a case to the Commissioner and it would be considered by the ACNC as to whether it was appropriate for them to remain with the charity.

**Matt Crichton:**

Again, not a one size fits all with that one either. Just back to private benefit again, one of the questions we didn't quite get around to. You mentioned out of pocket expenses and what not and it not being a one size fits all and all charities will have different activities that incur different costs and reasonable costs, of course. How should a charity record these and how should it decide what is a reasonable cost and when people's out of pocket expenses are becoming a supplementary salary and when shouldn't be?

**Prue Monument:**

I think it really comes down to good record keeping. Out of pocket expenses should be out of pocket expenses, there should be an expense that's been incurred and employees or volunteers should have receipts for those. Then it comes to record keeping of how those costs are considered and how the person is subsequently reimbursed. The charity should have their own policies and procedures to determine what is an appropriate out of pocket expense, whether it's related to travel or the use of their own private vehicle, et cetera. Where it becomes problematic is where there's no record keeping so people aren't producing receipts and it's just lump sum payments agreed to volunteers or employees. There's no system or process that they're checking to ensure it does relate to out of pocket expenses.

**Matt Crichton:**

Just one final one, would you say much of this does come down to maybe we could call it naivety or perhaps simple poor practices which don't cover some of these record keeping practices more rather than deliberate attempts to filter money from a charity or make sure they benefit privately? Would you say across the board it's just general mismanagement and naivety?

**Prue Monument:**

It's hard to answer that question because I think sometimes when you have weak systems and processes which may just be poor financial management you will have people who want to knowingly exploit that. It's difficult. It's important that you have really robust practices in place and going back to this point where we often hear charities tell us they know their volunteers and employees and trust them, that's not sufficient. You do need to protect the charities finances and interests. I think we see a bit of both. I think there's a small number in the sector that set out to structure the entity in such a way as to gain a private advantage or private benefit but they're very small in number. Through our approach we hope to identify those and in most cases it's just poor financial management or poor governance that makes the charity vulnerable to abuse.

**Matt Crichton:**

Which brings us to one of the first sentences you said today, Prue. One poor act or one scandal from one charity has the capacity to really affect the entire sector. So keeping strong processes in place and good governance is really crucial, not only to a single charity but the whole charity sector as a whole.

**Prue Monument:**

That's right. The ACNC's job really is to maintain trust and confidence in the sector but the individual level, the charities role is to protect their reputation and these types of things will damage their reputation and risk losing a lot of funds and risk the viability of the charity into the future and we don't want that.

**Matt Crichton:**

Excellent. That will be it for today's webinar. As always, this has been recorded and will be published on our website within a few days and a follow up email will go through to everyone with these links and a link to the published presentation so you have all the resources.

I'm sorry if we didn't get around to one of your questions today; we did have quite a few attendees and quite a lot of questions coming through. We do still have Chris and [indistinct 1.02.38] so if you want to get through a couple of last minute ones on text we can manage that, otherwise we can get in touch with you via email or, as Prue mentioned, our advice service team is really knowledgeable and there's no waiting time to call us, it's not like some other departments. You can just call up and get tailored, specific advice to your charity's issue.

Also, it's a good idea to stay in touch; lots of announcements come through the Commissioner's column in our fortnightly email updates. We do have lots of web guidance, podcasts and webinars on the website so it's worth checking out if there are other topics you want to catch up on. Our advice services team number is 13ACNC which is 132262 and they're great. Call up and ask some questions about your charity specific circumstances and you'll be able to have your question answered there. And of course we are big on social media; follow us on all those channels.

Thank you for joining us, we really appreciate it. Our next webinar will be on March 21st, it's dedicated to helping out Parents and Citizens Associations. If you know anyone in a P&C, or Parents and Friends I think they're called sometimes, let them know that we've got a webinar specifically aimed at helping them out, helping with their charity registration and what they need to do to maintain charity registration. We'll look forward to speaking to lots of P&C's or people that help out P&C's then.

If you have any feedback send us an email at eduation@acnc.gov.au and at the end of this webinar if you wouldn't mind taking a couple of minutes to fill in a survey that would be greatly appreciated.

Once again, thanks for attending today. Thank you, Prue.

**Prue Monument:**

Thank you. Thanks, everybody.

**Matt Crichton:**

We'll see you next time. Bye.