

Adviser and Sector Forum – Thursday 10 October 2024

Agenda Item 1: Welcome

Rachel Smith, Acting Assistant Commissioner opened the meeting with an Acknowledgement of Country and welcomed Adviser and Sector members to the Forum.

Agenda Item 2: Commissioner's update

Sue Woodward AM welcomed everyone to the meeting, especially the new members who joined the Adviser Forum since the recent biannual review.

The recent Equality Australia decision by the Full Federal Court was acknowledged. The elective session on Equality Australia will focus on hearing member views to inform the ACNC's drafting of a decision impact statement. No detailed comment will be given by the ACNC today as the appeal period is still open.

Sue noted the upcoming [Senate Inquiry](#) into the implementation of the new reporting requirements for self-assessing income exempt not-for-profits and that the ACNC is finalising a [submission](#) to the Inquiry. Registration applications have increased (by 14%), for the period to 30 June this year compared to the same period the previous year. This has seen the highest number of applications since our establishment. Sue thanked the ATO for providing additional support with staffing. An overview was provided of what the ACNC has done to streamline processes, such as implementing the new registration form, new online charity eligibility tool, and outreach work to 63 peak bodies to provide guidance and information about our bulk application process. The Registration queue is now under three months.

Other matters of note include the ACNC working with specialist regulators that impact the sector such as the Australian Signals Directorate; Privacy Commission; AUSTRAC on education campaigns.

Sue and Natasha Sekulic (Assistant Commissioner – General Counsel) will be attending a meeting of international charity regulators hosted by Charity Commission of UK in October. This is the first face-to-face meeting between international regulators since 2016. The meeting will focus on sharing information about trends and practices in charity regulation. A communique will be released following the meeting.

Agenda Item 3: Director Updates

- *Karen Coghlan, Acting Director Advic Services, Education and Public Affairs* spoke about an initiative to track and trace charities with an invalid Address for Service (AFS) where mail such as reminders to submit the Annual Information Statement (AIS) has been returned unclaimed. This aims to reduce the risk of charities double defaulting. 211 charities were contacted. This work prevented 34 charities from having their registration revoked. 42% of charities that we contacted were either in the process of winding up or had wound up. Some charities were unaware they had to notify the ACNC.
- *Tim Liu, Acting Director Corporate Services, Reporting & Red Tape Reduction* announced that the online 2024 Annual Information Statement (AIS) is now available via the Charity Portal. He noted that there are no new questions in the AIS and encouraged members to use and share the 2024 AIS guidance, which includes a checklist and detailed guide. He also noted the ACNC will host a



webinar on 12 November focussed on supporting first-time AIS lodgers. The webinar will be promoted through The Charitable Purpose and our social media channels. Registration will open within the next fortnight.

- *Carina Mitsinikos, Acting Director Registration* noted that applications peaked in May 2024 and have since stabilised, we believe due to the ATO's extended reporting due date for self-assessing entities. Based on current data, an increase in demand for our services is expected over the later part of the year and extending into the second quarter. In anticipation, we are forward planning to prepare for this period. We continue to work to respond to strong demand for our services by:
 - implementing process and system improvements
 - initiatives to improve productivity
 - focusing on the oldest cases
 - bringing on new staff
 - continue to engage with peak bodies to provide guidance on registration requirements.
 - streamline registration through a bulk application form.
- *Michelle Cozadinos, Director Compliance* noted that complex structures create governance obligations and may increase the risk of inadvertent non-compliance. The ACNC is concerned about the deliberate use of complex structures to conceal non-compliance and our enforcement efforts will focus on complex structures as a priority area.

[Reviews](#) play a key role in the ACNC's operations. Targeted surveys or audits of charities are conducted to gain insights into certain risk areas and develop educational resources. The recently published safeguarding findings and the upcoming cybersecurity review were highlighted, along with plans to initiate a follow-up review on cybersecurity.

Michelle acknowledged the current media scrutiny surrounding various charities and emphasized the team's commitment to closely monitoring media reports and addressing concerns through appropriate investigations. It was noted that instances of non-compliance in the sector may also fall under the jurisdiction of multiple regulators, and Michelle highlighted collaborative efforts with other regulators to uphold public trust and confidence in the sector.

- *Joanna Ashton, Director Legal & Policy* noted that the Administrative Appeals Tribunal is to be replaced by the Administrative Review Tribunal on 14/10/2024. The ACNC will make an announcement on the day and the website will be updated accordingly.

We have nearly completed a decision impact statement on the decision of the Full Federal Court in Equality Australia and will consult on it shortly.

Joanna thanked members for their feedback on the review of the template constitution for companies limited by guarantee and noted that we are collating that feedback and will build it into a further draft and embedded guidance. We will then come back to the Adviser and Sector forums for detailed consultation.

Joanna also highlighted the proposed amendments to the secrecy provisions in the ACNC Act were read for a 3rd time in the House of Representatives on 09/10. The bill is now in the Senate, which sits today and then again in November.



- *Rob Jackson, Director IT* noted that we are finalising development work to enable Multi Factor Authentication otherwise known as MFA on the Charity Portal. Once deployed the login pages on the portal will be changed giving you an option to opt in to MFA or skip MFA registration to a later date. This update will include a button that when selected will send a token to a user's registered email address to enable login verification. This new functionality will be progressively rolled out in November.

Agenda Item 4: Complex Structures

ACNC staff Ruby from Policy from and Ian from Compliance presented to the group on the [ACNC compliance focus area of complex corporate structures](#). The explained to the group that charities are entitled to use complex structures if that is what best suits their purposes, and there are legitimate reasons to do so. Complex structures can make it more difficult to achieve good governance. Complex structures are not an issue if they have appropriate governance in place to mitigate risks.

The ACNCs aim is addressing risks of non-compliance to maintain, protect and enhance public trust and confidence in Australia's charity sector. We understand the majority of charities do the right thing, but where there are risks of non-compliance it's important that the regulator responds to these risks. The development of complex structures also comes with increasingly complex compliance and governance obligations.

Our focus is on the deliberate use of complex corporate structures to obscure non-compliance and illegal activities. A condition of entitlement for charity registration is complying with the governance standards and external conduct standards. We consider the governance charities have in place.

- How decisions are made
- If there is sufficient transparency and oversight in the decisions being made
- How related party transactions are disclosed and managed
- Whether the charity's best interests being considered

Expectations of good governance

- Charities document the risks and benefits of operating in the group
- Charities within the group are working towards their purposes
- Decisions are being made in each of the charities' own best interests
- There is transparency regarding the use of funds and how decisions are made
- Conflicts of interests are identified and managed

Ian shared with the group legislative obligations that relate to charities that operate with complex corporate structures and discussed some hypothetical examples.

- GS 1 - funds are applied towards their purposes and character as a not-for-profit
- GS 5(a) - responsible people are making decision with reasonable care and due diligence
- GS 5(b) – responsible people are acting in the charity's best interests
- GS 5(e) - responsible people are declaring conflicts of interest
- GS 5(f) - responsible people are responsibly managing the charity's financial affairs

Agenda Item 6: Break-out sessions

Members were divided into breakout rooms for three presentation and discussion sessions:

- Equality Australia



- Advocacy in the Leadup to Elections
- Financial Reporting – a joint session with the ACNC and Australian Accounting Standards Board (AASB)

Agenda Item 8: Treasury Update

Pete Robjert provided an update from Treasury:

- The Inquiry into Philanthropic Giving is with government for consideration.
- The NFP Blueprint is being finalised by representatives.
- The Bill has passed House of Reps for Area 2 of ACNC secrecy reforms, with the Government to consider timing for the introduction of Area 3 changes.
- Treasury aim to complete consultation by the end of the year on the Community Foundations DGR guidelines.
- Rachel reminded the forum that the ACNC will keep the sector up to date about any consultation that is happening if subscribed to our newsletter.
- It was announced in the 22/23 October budget that the government would look to set out a [Not-for-profit Development Blueprint](#), which is a sector led road map over a ten-year window. Development is being led by the Department of Social Services. It's now in its final stages but hasn't been handed to government yet. The Blueprint aims to deliver advice to Government charting out a better future for the Australian not-for-profit (NFP) and charities sector.

Agenda Item 9: NFP update

Jennifer spoke to the ATO Keynote presentation '[Helping not-for-profits get it right](#)' dated October 2024. This can be widely shared through the forums given all the information is in the public domain. Attention was drawn to:

- the income tax obligations of NFPs - noting charities are income tax exempt only once they are endorsed by the ATO as a tax charity concession.
- the importance for all NFPs to undertake annual reviews to ensure their activities reflect the purposes for which they have received tax endorsements and concessions.
- the GST and Employer obligations NFPs have and the importance of having appropriate governance in place to ensure correct reporting and payment including refunds obtained
- what attracts the ATO's attention.
- the new reporting requirements for ABN registered non charitable NFPs that self-assess as income tax exempt.
- an update on DGR reforms and integrity. The ATO recommends reviews annually and especially where there is a major change in a DGR's structure or operations.

An update was also provided on two issues:

School Building Funds

The ATO has now published an update to ATO Taxation Ruling [TR 2013/2 Income tax: school or college building funds](#) following the decision handed down by the Full Federal Court (the Court) in *The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2)* on 4 November 2021.

The ATO released a [decision impact statement](#) in May 2023:

- The Court found the views expressed in ATO Taxation Ruling TR 2013/2 Income tax: school or college building funds do not reflect the ordinary meaning of the term 'school'. The



Court's interpretation of a school is that a school is an organisation that provides a place where people assemble for the purpose of being instructed in some area of knowledge or of activity.

- While the Court's decision impacts the DGR administration of School Building Funds (SBFs) to the extent that it widens the scope of organisations that will be able to apply for the category, it does not affect eligibility for existing SBFs.
- The Commissioner has updated TR 2013/2 and [relevant website guidance](#) to reflect the decision of the Court.
- Changes to TR 2013/2 have been made through an addendum and are limited to aspects that were inconsistent with the Court's decision.

December Activity Statement due dates for education providers and associated bodies

Since the implementation of the Goods and Services Tax (GST) in 2000, the ATO has provided a deferral to education providers and associated bodies registered under specific ANZSIC codes, allowing them an additional calendar month to lodge their December monthly Activity Statements. This meant that the 21 January due date was extended to 21 February.

- The December monthly Activity Statement due date for schools and associated bodies is changing, and the Activity Statement will now be due on 21 January each year.
- Taxpayer correspondence via email and letter will be issued by the ATO from 14 October advising that the deferral will not be granted for the December 2024 activity statement and education providers; and associated bodies will have until 21 January 2025 to request a deferral of lodgement if required.
- If education providers and associated bodies require additional time to lodge their Activity Statements, they can still request an extension of time. The ATO will consider these requests on a case-by-case basis.

Agenda Item 10: Breakout rooms for member discussion and suggestions for topics for future forums

Members were divided into breakout rooms for member discussion and suggestions for future forum topics.

Agenda Item 11: Feedback for breakout groups

Feedback included:

1. Members would like the ACNC to provide more clarity about the focus on complex structures.
2. A request to include regular agenda item at forums on red tape reduction and feedback on common issues staff are seeing, for example in registration applications and compliance.
3. A query about the outcomes of the five-year review of the ACNC and the format of the Adviser and Sector Forums.
4. Questions about the Registration process.