



Adding to your ministry

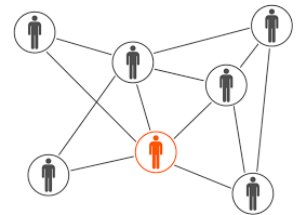
February 2024 Newsletter

Related Party Transactions

From 1 July 2023, ACNC need all registered charities to report related party transactions through their Annual Information Statement (AIS). This is a significant reportable obligation. Charities will need to maintain adequate records to cover the new requirements. The only exception is for a Basic Religious Charity (BRC).

Related Parties include –

- Board/Committee members and senior management and their close family members,
- Other people or organisations that can influence a charity’s decision making,
- Another organisation where a Related Party controls the organisation, or has a significant influence over that organisation, or is a member of the key management of that entity.



What is a Related Party/Transaction?

“A related party includes:-

- *A charity’s Responsible Persons and their close family members,*
- *a charity’s senior management and their close family members,*
- *other people or organisations that can influence a charity’s decision making,*
- *another organisation where a related party controls that organisation, or has significant influence over that organisation, or is a part of the key management personnel of that organisation.”*

The ACNC website states:

“For reporting purposes, a Related Party Transaction (RPT) is defined as a transfer of resources, services or obligations between related parties. It does not have to include financial payment.

The RPT reporting is designed to ensure that charities have good governance and their interests and funds are protected. Related parties, including key management personnel, should not receive significant private benefits from charity operations.”

ACNC recommend the use of a Register of Interests be maintained, preferably as an additional record. This would provide a speedy point of reference in the event of need. It is also very helpful when the AIS is being prepared.

ACNC have a template available on their website for such a Register. You can access their template by searching at ["Templates Register of Interests"](#).

What does Conflict of Interest mean?

Conflict of Interest matters are included in Related Party requirements.

ACNC define a conflict of interest as when someone's personal interest conflict with their ability to act in the best interests of the charity in which they are involved.

Conflict of Interest can be divided into three categories – actual, potential and perceived. Small charities, particularly in small communities are more likely to experience conflicts of interest. Conflicts of Interest matters are not an issue provided they are appropriately managed.



The Associations Incorporations Act 2015 (WA) at Sections 42 and 43 refers to the disclosure of a “material personal interest” for board/committee members. This includes identifying the nature and extent of the conflict (actual, perceived or potential) at the relevant meeting. The person must not be present when the matter is discussed and also cannot vote on the matter. Financial penalties can be imposed.

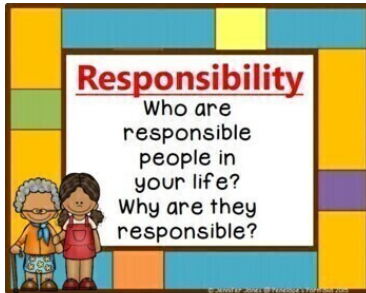
Annual Information Statement

ACNC guidance notes re the AIS for charities require a comment regarding “reportable related party transactions”. This may refer to the omission, misstating or obscuring of information whereby it could be reasonably expected to influence someone in the making of a decision. This includes instances where individuals charged with management responsibility and/or their close family members, and other people or organisations, may influence decision making. The actual AIS will ask for a response to specific questions. This can include: -

- Fees paid for goods or services,
- Loans to or from a related party,
- Salary paid to a related party's relative(s),
- Transfer of a charity's property,
- Provision of goods or services at a discount,
- Significant use of a charity's property
- Investment in a related property.

ACNC registration & ASIC reporting

Where a registered charity has its legal structure registered with ASIC as a company it has reporting and oversight obligations to ACNC only. There is no obligation to report to ASIC and no ASIC fees apply. However, there are some situations where corporate or legal requirements rely on ASIC registers instead of ACNC. The



banking sector is an example of this situation but there may be other instances. ACNC shares information with ASIC for the purpose of updating ASIC records. However, this does not include providing an update of Responsible Persons. There is a note on the ASIC Register directing users to the Charity Register but this is often overlooked.

In a recent case there was a power struggle on the board of a charity and an officer who ASIC recognised was able to make unauthorised changes to the ASIC records. As a consequence, he, with the support of some other board members, was able to take effective control of the company.

Charitable Trusts Act 2022 (WA)

This new WA Act has introduced significant new obligations on organisations and individuals involved in the administration of charitable trusts. The Act establishes the **Western Australian Charitable Trusts Commission**, is administered by the State Ombudsman and has the powers of a Royal Commission. The WA Act is also linked to the Commonwealth Charities Act 2013 administered by ACNC. It replaces the former 1962 Act of the same name. The term *charitable trust* has the meaning given under WA law.

The WA Attorney-General stated that “these new laws give WA the most rigorous and comprehensive charitable trusts legislation across Australia. They significantly expand the powers of those investigating charitable trusts as well as the Attorney-General and the Supreme Court.”

The Act provides for sweeping new provisions in the administration of charitable trusts. It gives the Commission the power, either directly or through the Court, to –

- Conduct an investigation,
- Appoint an auditor to investigate financial matters,
- Vary the purpose of a trust through a scheme of arrangement where its administration is experiencing difficulties,
- Preclude a person from the administration of a trust,
- Remove a trustee or other individual,
- Appoint an alternative trustee.



This gives WA more stringent and specific powers than ACNC have. There is also provision for the imposition of heavy fines.

Recent ATO statistics for Not-For-Profit entities

Within Australia there are in excess of 600,000 not-for-profit entities. They exist in various structures with a significant number not being incorporated entities. Some interesting details include –

28,300 Deductible Gift Recipients. (There are specific general conditions that control DGR endorsement and each category also needs to meet the specific requirements applicable to such endorsement.)

6,363 charities can provide FBT exempt payments to employees. This applies only to Public Benevolent Institutions and Health Promotion Charities. (Other charities can provide FBT concessional payments but in most instances, there is little or no net remuneration benefit).

66,400 registered for GST
 40,900 registered for PAYG
 \$900 million in franking credits refunded in 2021-22
 \$88.8 billion in revenue received by charities from government
 \$4.4 billion donations from 4.2 million Australian taxpayers to DGR entities
 1.9 million employees in the Sector
 57,800 registered charities
 157,100 self-assessed income tax exempt entities
 9,000 taxable not-for-profits



Of the 600,000 NFPs 223,900 are registered with ATO as either charities, self-assessing NFPs or taxable NFPs. 37.3% of the total NFP population. The remainder would be small sporting, social or community organisations, many in rural and regional Australia. A significant number are unincorporated so office-bearers do not have the same protective provisions of incorporated entities.

The Sector is a large employer group.

Artificial Intelligence and charities

A recent survey by *Infochange* found that 24% of respondents were using AI. This appears to be primarily for service delivery or to support fundraising activities. Be aware that the respondents to this survey would have been primarily larger charities.



Not-for-profit Sector Development Blueprint

The Commonwealth Government have established a Blueprint Reference Group to examine ways to assist the community to be stronger. While this may prove to be another quango it is attracting submissions regarding some of the present issues impacting the Not-for-profit Sector.

The submission by Justice Connect highlighted the inconsistent laws currently, and in particular gave emphasis to –

- Inconsistent definitions of “charity” and “charitable purpose” across jurisdictions,
- Inconsistent laws impacting volunteers and volunteer involving organisations, and
- Complex and confusing fund-raising laws.

While each State is fiercely independent (especially of course WA!) these issues illustrate the incredible red-tape nightmare we all are obliged to work in.

Self-assessment for income tax exemption

From 1 July this year many not-for-profits that are not registered charities will need, for the first time, to determine whether they need to self-assess as income tax exempt – and potentially report to ATO. There are about 157,000 not-for-profits affected by these changes. While many small entities will find they are not affected by these changes they should take care to check.



Not-for-profits that have an active ABN and have self-assessed as income-tax-exempt must lodge an annual self-review return. More information is available by searching *“Self-assessed income tax organisations”* at ATO.gov.au. We understand the self-assessment return will need to be lodged online.

Notifiable Data Breach scheme

The British privacy regulator, who has a similar function to these Australian law provisions, recently fined HIV Scotland £10,000 for a data breach. The data breach was caused by an email sent to 105 people using the carbon copy (CC) function instead of the blind carbon copy (BCC). The breach also identified 65 people by name. This would have been highly sensitive information under the Privacy Act 1988 (Cth).



Are you being hacked?

At a recent meeting of the ACNC Professional Advisors Forum we learned that Non-Government organisations (NGOs) were the second highest group being hacked. Government at 48% and NGOs at 35%. It is clear that commercial organisations are much more successful with the anti-virus and other protections.

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