

# Not-for-Profit Briefing

**18 April 2013**

**Not-For-Profit Briefing**



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ACNC – rdl.accountants are here to help sort out your issues.....



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**RDL – Not For Profit Team**

- Rob Hurrell
- Joel Hernandez
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- Tania Yeung
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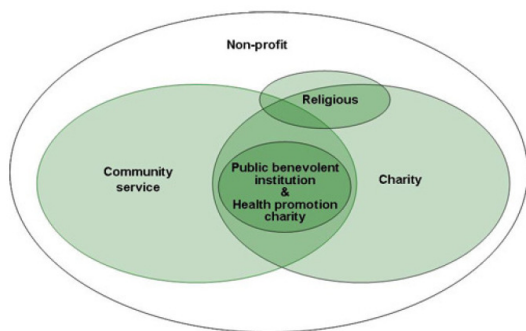
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Source: The Treasury Final Report- Scoping Study For a national Not-for-Profit Regulator (April 2011)

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### Charity sector: Who is in?

- Welfare and disability;
- (Non Government) Schools, Universities etc;
- Churches, Religious organisations
- Conservation, Arts, Childcare, Community infrastructure

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### Some Sector stats

- 600,000 entities ... includes...
  - 60,000 charities,
    - 5,000 coys limited by guarantee
    - 136,000 Incorporated associations
    - 440,000 Unincorporated associations
  - 21,000 with DGR status
- \$43 billion contributed to GDP pa.
- Employs over 1 million people
- NFP sector grew 7.7% annually between 2000 & 2007
- Govt contributes \$25.5 billion
- Philanthropic over \$7 billion
- Plus volunteer time estimated at \$14.9 billion

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## NFP Tax Concessions - Background

- Past 17 yrs – 6 separate reviews of charitable & NFP sector
- Inquiry into the definition of charities and related orgs – 2001
- Senate inquiry into the disclosure regimes for NFP's – 2008
- Review of Australia's Future Tax System – 2009
- Productivity Commission inquiry into contribution of NFP sector – 2010
- Senate inquiry into the Tax Laws Amendment (Public Benefit Test ) Bill 2010
- Budget 2011
- Consultation Paper – scoping study for a national NFP regulator – 27 May 2011

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## NFP Tax Concessions - Background

- 2010 Productivity Commission said NFP regulatory frameworks governing the sector is ....
  - Complex
  - Lacks coherence
  - Sufficient transparency
  - Is costly
  - Inconsistent Financial Statements
  - Different state fund raising legislation

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## An Australian Charities Commission

a new independent statutory agency, the Australian Charities and Not-for-profits Commission (ACNC), by 1 July 2012 and related structural changes required to the Australian Taxation Office



Federal Budget May 2011

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## What will ACNC Do?

Registration



Information



Compliance



Education and guidance



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## Trust

Maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector.



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## ACNC has 3 main objectives

1. Maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector
2. Support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector
3. Promote the reduction of unnecessary regulatory obligations on the sector

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### ACNC object 1:

Maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector

- 56,000 charities from ATO register of tax concession charities
- **Online charity registration** – 100% take-up
- 240 new charities registered with the ACNC
- Average registration time: 8.3 days
- 70 complaints / concerns about charities received by ACNC Advice Services
- Basic ACNC Register established –50,000 visits
- Increased public awareness of the ACNC Register
- 80,000 visitors to website

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### The ACNC Register

- free, online, public register of ACNC registered charities at [acnc.gov.au](http://acnc.gov.au).

Initial information on the ACNC Register includes the charity's:

- legal name
- Australian Business Number (ABN), which links to their record on ABN Lookup. This record includes basic information such as the types of tax concessions your organisation receives and whether it has the deductible gift recipient (DGR) status
- state or territory of registration.

— continued...

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### The ACNC Register

In future, the ACNC Register will also list:

- business address and contact details
- the type of charity it is registered as
- registration date
- responsible person details (including names and positions)
- a copy of the governing rules
- the annual information statements provided to the ACNC, including financial reports and audit reports if the charity is medium or large and therefore required to provide these
- enforcement action taken by the ACNC (such as warnings, directions, or removal of director)

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## The ACNC Register

Home > Find a charity > Search the ACNC Register

**Find a charity**

Search the ACNC Register

Information on ACNC Register

**About the Register**

The Australian Charities and Not-for-profits Commission (ACNC) maintains a public database of the organisations we have registered as charities (the Register). To be registered as a charity and appear on the Register, organisations must meet our requirements under the ACNC Act.

Find out more about the [information shown on the ACNC Register](#).

Searching for an organisation by ABN will give you the best result. When entering an ABN into the search box, make sure there are no spaces between the numbers. The tip box to the right includes some more search tips you may find helpful.

We are currently working to improve the search functionality of the Register.

**Search the register**

ABN:

Organisation:

State:  (Any) ☒

**Find**

Please enter your search criteria to view results.

Please note that clicking on an ABN in these search results will direct you to the relevant entry on the Australian Business Register.

If your organisation was endorsed as a charity by the ATO between late November and early

**Search tips:**

- "acnc" will find all charities with "acnc" in their name
- "Or" will find a charity named "Orange Juice"
- Only the first 500 results will be found.

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## How the ACNC can help your charity?

Home > Publications

**Publications**

Factbooks  
Reports  
FAQ  
Media centre  
ACNC forms  
Corporate policies

**Publications**

The ACNC produces a range of publications, including:

- [factbooks](#) and guides
- [reports](#), and
- [FAQs](#)

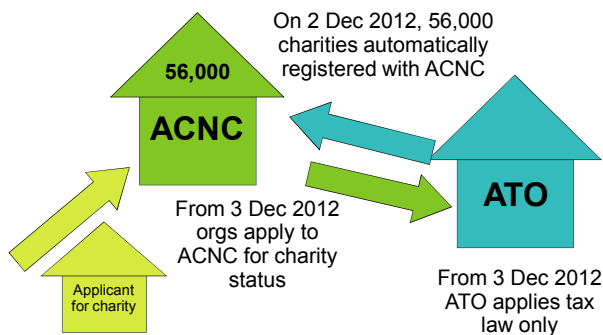
We also publish information such as media releases, latest news and the Commissioner's Column via our [Media Centre](#).

We have a number of [ACNC forms](#) that you can use to notify us of changes, or take other action.

The ACNC is developing a range of [corporate policies and procedures](#) to support us in achieving our objectives. We are also negotiating agreements with other government agencies relating to our work in the not-for-profit sector, and will publish these as they are agreed upon.

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## The situation at 3 December 2012



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## Questions?



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## School Building Funds – 2013 Tax Ruling



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## Background

Section 30-25 item 2.1.10 of the ITAA 1997 sets out the law

Original tax ruling TR 96/8 (1996) – the “>50% school use” test

Draft tax ruling TR 2011/D5

Final tax ruling TR 2013/2 issued 13/2/2013

What is a tax ruling?

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### What's new?

- Longer ruling
- More examples
- Broader than just a >50% school use test
- "used as a school"? Consider:
  - the amount of time the building is used as a school
  - the number of people using it
  - the physical area
  - modifications made to the building
  - whether the school controls the use of the building.

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### Who does it impact?

- All School Building Funds relying on tax deductibility to donors
- Minimal impact on dedicated school buildings
- Greatest impact on buildings that are partly used for school purposes (eg buildings used for both church and school use)

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### Transitional Provisions

- Acquisition & Construction Costs
  - Projects to which a fund became committed to pre 13/2/2013 can continue to apply the >50% test under TR 96/8
  - Others – apply the new ruling
- Maintenance
  - All funds can apply the >50% test to **30/6/2013**. From 1/7/2013 must meet the requirements of the new ruling

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### The Next Step

- Consider the application of the ruling
- If uncertain, you can seek a private binding tax ruling
- Consider segregating “pre” and “post” ruling Building Funds to protect the tax deductibility of “pre” funds

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### Questions?



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### The Australian Charities and Not-for-Profits Commission (ACNC)



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### ACNC General Principles



- Applies to charities only
- Companies – will stop reporting to ASIC, and start reporting to the ACNC.
- Incorporated Associations (Victorian) – will report to Consumer Affairs and also to the ACNC.
- Unincorporated Associations/Trusts – will start reporting to the ACNC
- Basic Religious Charities – will report, but much less, to the ACNC
- Different reporting requirements for small, medium and large charities

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### ACNC What is a Basic Religious Charity

- ☒ Charity for the advancement of religion
- ☒ Not a company
- ☒ Not an incorporated association
- ☒ Not grouped
- ☒ Has not received Government Grants over \$100,000 in financial year, or in the two previous years
- ☒ Does not receive more than \$250,000 in gifts for DGR funds.

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## ACNC Responsible Persons

ACNC: "a person...who is responsible for directing a charity, who is a member of the governing body (including directors or committee members) or trustees (including insolvency trustees, administrators). This is the word we use in this guide in place of 'responsible entity' which is the term used in the ACNC Act"

The following are Responsible Persons:

- Directors
- Committee Members
- Trustees
- Directors of Trustee Companies

Not non-executive directors or secretaries.

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## ACNC Governing Documents

You will need to provide the ACNC with a copy

- Constitution
- Articles of Association
- Other

Can you find it?

Does it need updating?

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## ACNC Reporting Tiers

	Revenue	Reporting Requirements
Small	< \$250,000	Information Statement
Medium	Between \$250,000 and \$1,000,000	Information Statement and Financial Report
Large	> \$1,000,000	Information Statement and Financial Report

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## ACNC What to report?

### Changes to your details

- Change of address
- Changes to responsible people
- Changes to your governing documents

To be lodged within 60 (small) or 28 days (medium and large).

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## ACNC What to report?

### Information Statement

- Due six months after financial year end.
- First applies to financial years ended 30 June 2013.
- 2013 statement is non-financial information only and is the same for all charities.
- 2014 statement will contain financial and non-financial information.
- Proposed that Basic Religious Charities will not have to complete the financial information.

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## ACNC What to report?

### Financial Report

- Only applies to charities with revenue >\$250,000
- Does not apply to Basic Religious Charities
- Special or General Purpose Financial Reports that are compliant with the accounting standards:
  - Comprehensive Income Statement
  - Statement of Financial Position
  - Statement of Changes in Equity
  - Statement of Cash Flows
  - Notes to the accounts

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## ACNC What to report?

### Financial Report

- Charities with revenue less than \$1,000,000 can choose to have an audit or a review.
- Charities with revenue over \$1,000,000 must have an audit

### Review

"we have not become aware of any matter that makes us believe that the financial report does not present a true and fair view"

### Audit

"the financial report presents a true and fair view, in all material respects"

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## ACNC Substituted Accounting Period

ACNC have to accept your year end if you are currently reporting to satisfy a law

- *Corporations Act*
- *Incorporated Associations Reform Act*
- General Trust Law

They are cooperative about other requests to have a different year end.

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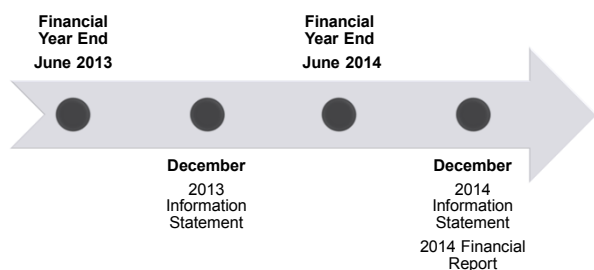
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## ACNC When to report?



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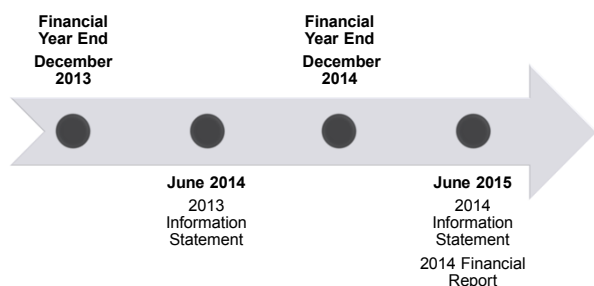
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## ACNC When to report?



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## ACNC Reducing Some Red Tape

- Charity Passport
- Streamlined reporting with DEEWR, ISCA, ACARA, NCEC
- Amendments to Commonwealth Grant Guidelines
- Collaborating with State and Territory Government agencies to reduce duplication.
- National Standard Chart of Accounts (NSCOA)

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## ACNC Governance Standards

Effective from 1 July 2013

Governance Standards

- Purposes and NFP nature of a registered entity
- Accountability to members
- Compliance with Australian laws
- Suitability of Responsible Persons
- Duties of Responsible Persons

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## ACNC Governance Standards: Duties of Responsible Persons

Duties of Responsible Persons:

- To exercise powers and discharge duties with the degree of care and diligence that a reasonable individual would exercise;
- To act in good faith in the best interests of the charity;
- Not to misuse position;
- Not to misuse information;
- To disclose perceived or actual material conflicts of interest;
- Not to allow charity to operate while insolvent.

The obligation is placed with the registered entity

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## ACNC More details please

### Grouping

ACNC Legislation provides for group reporting.

### Funds

School Building Funds, Scholarship Funds, Library Funds without separate ABN.

Under the ACNC legislation, need to be a registered charity.

ACNC discussing with ATO whether this is necessary.

Watch this space.

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## ACNC Companies Limited By Guarantee

### Now

- AGM within four months of year end.
- Annual Report to ASIC
- Report changes to ASIC within 28 days.
- Duties of Directors in *Corporations Act 2001*

### Then

- AGM within six months of year end
- Lodgement of financial report with ACNC (size dependent). No fee.
- Report changes to ACNC within 60 or 28 days.
- Governance Standards under ACNC

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## ACNC Victorian Incorporated Associations

### Now

- AGM within five months of year end.
- Annual Report to Consumer Affairs
- Report changes to Consumer Affairs – including changes to Committee Members, Secretary and address
- Governance Standards in *Associations Incorporations Reform Act 2012*

### Then

- AGM within five months of year end.
- Same Annual Report to Consumer Affairs and the ACNC (size dependent)
- Report changes to ACNC within 60 or 28 days and report changes to Consumer Affairs
- Just Governance Standards in *Associations Incorporations Reform Act 2012* until 2017

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## ACNC Basic Religious Charity

### Now

- In accordance with your governing documents

### Then

- AGM within six months of year end.
- Annual Information Statement to ACNC – no financial report
- Report changes to ACNC within 60 or 28 days and report changes to Consumer Affairs

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## ACNC Other Unincorporated Charity

### Now

- In accordance with your governing documents

### Then

- AGM within six months of year end.
- Annual Financial Report to the ACNC (size dependent)
- Annual Information Statement to ACNC.
- Report changes to ACNC within 60 or 28 days and report changes to Consumer Affairs

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## ACNC To Do List

- ☐ Understand your organisation
- ☐ Find your governing documents
- ☐ Check out the ACNC website: [www.acnc.gov.au](http://www.acnc.gov.au)
- ☐ Make sure your charity is registered
- ☐ Complete "Confirm your charity's details form"
  - ☐ Tick for the advancement of religion
  - ☐ Indicate or request your substituted accounting period
- ☐ Start reporting any changes in the following to the ACNC using forms 3A and 3B:
- ☐ Think about your Financial Report. Does it need changes?

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## Questions?



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## *Incorporated Associations Reform Act 2012*



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## Associations Incorporation Reform Act 2012

- Replaces the *Associations Incorporations Act 1981* from 26 November 2012
- New requirements:
  - Duties for committee/board members
  - Duties extended to employees who make decisions substantially affecting the organisation
  - Indemnification of committee members acting in good faith
  - New rights for members
  - New Financial Reporting Requirements
    - Report income and assets and liabilities where Association is Trustee

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## Associations Incorporation Reform Act 2012

### Financial Reporting Requirements

#### New tiers of reporting:

	Revenue	Reporting Requirements	Fee
Small Tier One	< \$250,000	Income Statement and a Balance Sheet	\$50.10
Medium Tier Two	Between \$250,000 and \$1,000,000	Financial Report in accordance with accounting standards. Audited or reviewed.	\$100.20
Large Tier Three	> \$1,000,000	Audited Financial Report in accordance with accounting standards.	\$200.50

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## Questions?



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## **“In Australia” Requirement for Income Tax Exemption**



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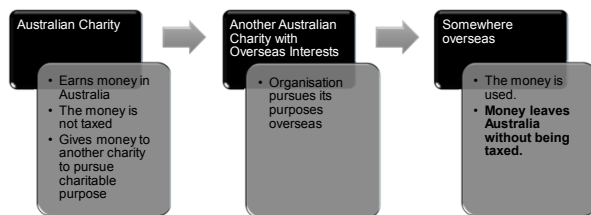
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## **“In Australia” The Mischief**



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## **“In Australia” The Changes**

### **Current Test**

- “incurs its expenditure and pursues its objectives principally in Australia”

### **Proposed Test**

- “Operates principally in Australia”
- “Pursues its purposes principally in Australia”

### **DGR Funds**

- “Operates solely in Australia”
- “Pursues its purposes solely in Australia”

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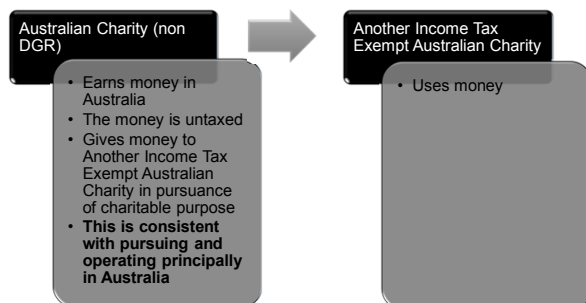
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### **“In Australia” The Changes-Distribution to another charity**



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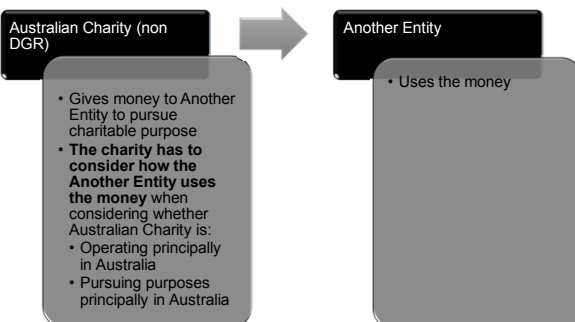
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### **“In Australia” The Changes – Distribution to a non charity**



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### **“In Australia” Special Exemptions**

- Government Grants
- Non-tax Deductible Gifts
- Overseas Aid Funds
- Scholarship Funds
- Prescribed Associations including Members of Missions Interlink

### **Special Requirements?**

External Governance requirements to come.

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**Questions?**



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**Statutory Definition of Charity**



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**Statutory Definition of Charity**

- To be a charity:
- Not-for-Profit
  - Have charitable purpose/s for the public benefit
  - May have ancillary purposes if they aid charitable purposes
  - No disqualifying purposes
  - Not an individual, political or government.

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## Charitable Purposes

- advancing health
- advancing education
- advancing social or public welfare;
- advancing religion;
- advancing culture;
- promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;
- promoting or protecting human rights;
- protecting the safety of the general public;
- preventing or relieving the suffering of animals;
- advancing the natural environment;
- any other purpose beneficial to the general public;
- lobbying for promoting or opposing law change for any of the above purposes.

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## Charitable Purposes

In the absence of evidence to the contrary, some purposes are assumed to be for public benefit:

- Purpose of relieving illness;
- Purpose of relieving the needs of the aged;
- Purpose of advancing education;
- Purpose of relieving poverty;
- Purpose of advancing religion

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## Questions?



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**Finding out more:**

[www.acnc.gov.au](http://www.acnc.gov.au)

[www.rdlaccountants.com.au](http://www.rdlaccountants.com.au)

Providing you with access to information is a priority for ACNC & rdl.accountants

- Speak to our NFP Team
- Sign up for the ACNC Weekly Commissioner Column
- Media alerts and releases and newsflashes
- ACNC Podcasts and videos – coming soon
- Phone: 13 ACNC (13 22 62) 8 am to 8 pm AEDST
- Email: [advice@acnc.gov.au](mailto:advice@acnc.gov.au)

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**CALM**  
AND  
**CARRY**  
**ON**

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