



IN THE EYES OF THE LAW

Joanne Grant takes a look at the legislative and compliance requirements that will impact the not-for-profit sector in the next 12 months.

There is never a dull moment in the legal or compliance area for the not-for-profit sector as governments and regulators continue to refine their approach to regulation and compliance of

charities and other not-for-profits, as well as address challenges they face so that the sector continues to thrive and retain the confidence of the broader community.

However, that means that there's a regular

change in compliance requirements for charities and other NFPs, and this coming 12 months will be no exception. We see the following factors as likely to have an impact upon some or all NFPs.

THE ACNC REVIEW

After its first five years in operation, a review of the Australian Charities and Not-for-profits Commission (ACNC) was handed down in August 2018. It contained many recommendations as it tried to find a balance between supporting the sector, reducing red tape, enhancing accountability and addressing misconduct. Amongst its recommendations were:

The directors' duties provisions in the Corporations Act should be turned back on for corporate charities, meaning that their directors will be subject to the same duties as commercial directors.

To redefine the categorisation of charities such that small registered charities will be those with annual turnover less than \$1 million, medium entities from \$1 million to less than \$5 million, and large entities from \$5 million or more based on a rolling three-year revenue. This is likely to provide relief for those entities in the \$250,000 to \$5 million revenue range.

The power of the Commissioner to remove responsible persons should be withdrawn.

Greater scrutiny of related party transactions and remuneration practices, particularly for large registered entities.

'Basic religious charity' status should be withdrawn and exemptions that attach to this status will no longer apply. The stated rationale behind this is that if the recommendation for the change in size of entities is adopted and the power of the Commissioner to remove responsible persons is withdrawn, then there will be no need for relief for religious entities from compliance with governance standards and accounting requirements.

There is a proposal to extend the ACNC's operation beyond charities to large income tax-exempt NFPs.

The ACNC should be a 'one-stop-shop' with responsibility for incorporation and regulation of charitable companies transferred from ASIC to ACNC.

ACNC EXTERNAL CONDUCT STANDARDS

These have been tabled in Parliament and are likely to come into effect in August 2019. They will apply to all charities operating directly or indirectly outside Australia. There are exemptions for activities which are merely incidental to operations in Australia. These Standards require reasonable internal control procedures to ensure that activities outside Australia and resources given to third parties

outside Australia are applied for the purpose of the organisation. Standards also apply for the protection of vulnerable individuals overseas who are provided with services by the charity or a third party collaborating with or who works for the charity. A charity may be required to report on compliance in its annual information statement.

FUNDRAISING REFORM

There is no doubt that the myriad laws within the different states and territories cause problems to NFPs seeking to fundraise in Australia. There is a groundswell of organisations within the sector looking for consistency in the application of the laws throughout Australia. Any reform in this area would be welcome and hopefully we will see a breakthrough in the next 12 months.

DGR REFORMS

It is proposed that all non-government deductible gift recipients (DGRs) be registered as charities with the ACNC. Also four DGR registers will be integrated into the ACNC: Register of Environmental Organisations; Register of Cultural Organisations; Register for Harm Prevention Charities; and Overseas Aid Gift Deduction Scheme. Applications to be on these registers will be streamlined with one application to be made to the ACNC.

'IN AUSTRALIA' ATO RULING

This ruling will have the effect of clarifying the ATO's interpretation of what is required for DGRs and other charities to obtain tax concessions or endorsements. This may impact upon some charities that operate overseas.

FBT RULING

There is clarification for religious organisations with a fringe benefits tax (FBT) ruling that expands upon the ATO's views as to what constitutes exempt benefits provided principally for pastoral duties or activities directly related to the practice, study, teaching or propagation of religious beliefs. There is also clarification regarding the definition of 'minister of religion'.

ELECTION ISSUES

The recent cycle of elections in Australia has tested the extent to which charities can be involved in advocacy, as well as electoral funding obligations, following new requirements by the Australian Electoral Commission. We have seen much advocacy and campaigning by NFPs and this can be a legitimate and effective way of furthering the purposes of an NFP. However, it is important that charities do not cross the line into a disqualifying political purpose.

AGED CARE ROYAL COMMISSION

As the Aged Care Royal Commission hearings continue, many in the NFP sector have been and will be impacted. It is expected that the Royal Commission will establish parameters for the operation of aged care into the future.

DISABILITY ROYAL COMMISSION

This Commission has broad-ranging terms of reference and those in the NFP sector operating in the disability space, particularly through the NDIS, are likely to be impacted by the findings and recommendations of the Commission.

RUDDOCK RELIGIOUS FREEDOM REVIEW

This Review came about through negotiations around the same sex marriage legislation in late 2018. The Review was established and a report prepared, which has already had some impact in the NFP school environment. There are likely to be more developments in this area during the coming year.

THE NATIONAL REDRESS SCHEME

This Scheme was set up in response to the Royal Commission into Institutional Responses to Child Sexual Abuse. It is now well underway after a slow start and it affects many in the NFP space. We can expect the number of claims to increase over the coming 12 months as more organisations agree to enter the Scheme.

MODERN SLAVERY ACTS

The *Modern Slavery Act (Cth)* commenced on 1 January this year. Under this Commonwealth Act, entities based or operating in Australia which have AU\$100 million or more in annual global revenue must report annually on their efforts to address modern slavery in their operations and supply chains.

The NSW government recently passed its own *Modern Slavery Act*, which will commence on 1 July this year. To prepare for the commencement of the NSW Act, NFPs should consider whether there is any risk of modern slavery arising from their operations (and those of their subsidiaries), as well as those of their business partners and suppliers.

As always, there are challenges that face the sector, but our experience is that the sector is responsive to necessary change and is as a whole very compliant and supportive.

Good luck navigating your way through these changes in the coming year. **F&P**

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Joanne Grant

Joanne Grant is a Partner of Makinson d'Apice Lawyers with expertise in property law, commercial law and the law relating to charities and not-for-profits. Joanne provides advice to religious institutions and other charities and not-for-profit organisations in a range of areas, as well as universities and other educational establishments, aged care and child care facilities, commercial and private clients.