



WINDSOR
GROUP

Welcome to **ACNC Update** **Compliance: learn how to avoid the pitfalls**

Guest Speaker:
David Locke





Australian
Charities and
Not-for-profits
Commission

COMPLIANCE: LEARN HOW TO AVOID THE PITFALLS

Presented by
David Locke

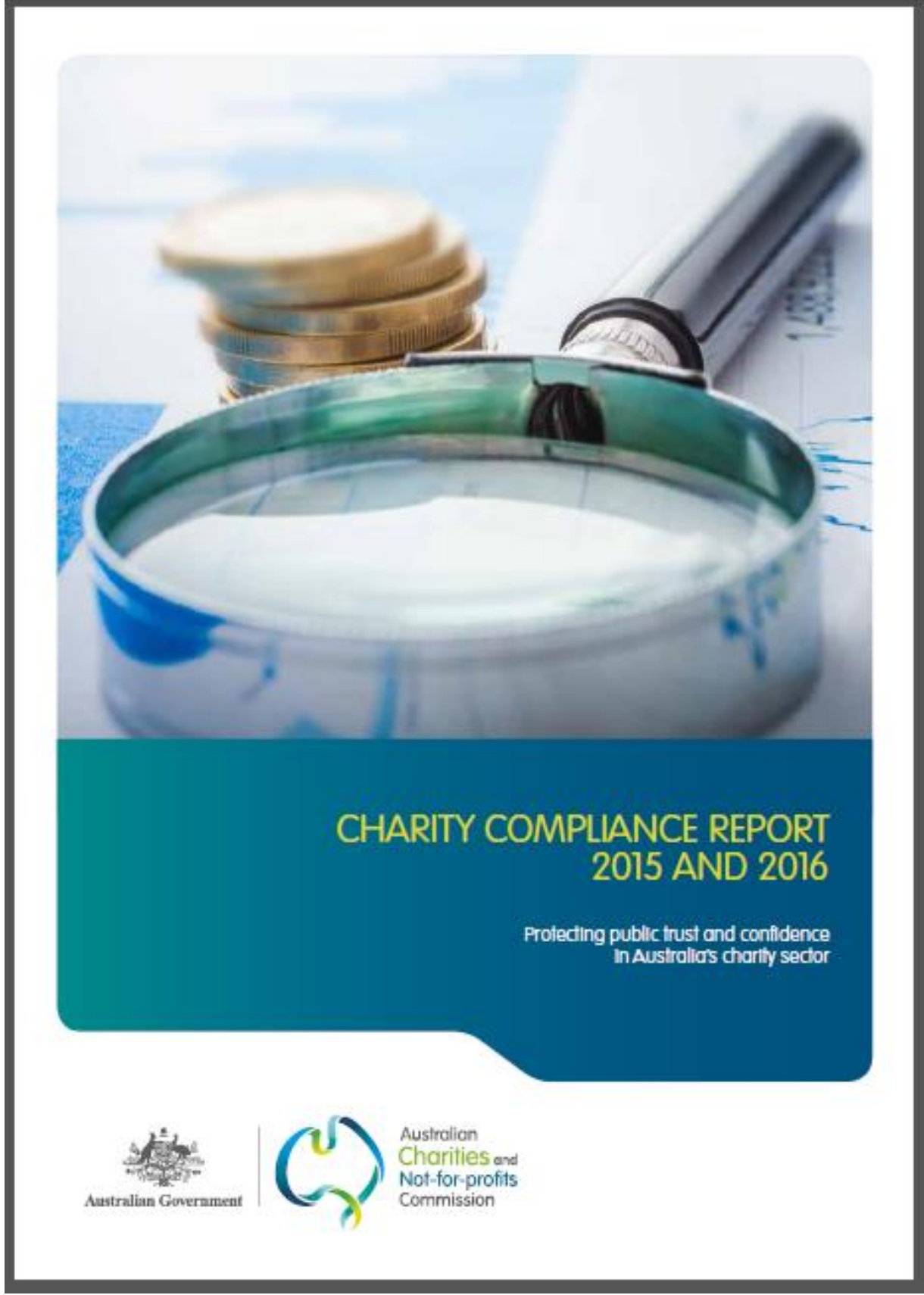


@DavidLockeACNC

Assistant Commissioner | 21 April 2017



CHARITY COMPLIANCE REPORT 2015 AND 2016



REQUIREMENTS FOR REGISTRATION



- Be a not-for-profit
- Comply with governance standards & external conduct standards
- Have an ABN
- Not be listed as engaging in or supporting terrorist or other criminal activities

CHARITY

- Have a charitable purpose
- Be established for the benefit of the public
- Not have a disqualifying purpose



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 in Australia
- Promoting human rights





CHARITABLE PURPOSE (CONTINUED)

- Advancing the security or safety of Australia
- Preventing or relieving the suffering of animals
- Advancing the national environment
- Any other purpose analogous to the above
- Promoting or proposing a change in the law, policy or practice in furtherance of another purpose

DISQUALIFYING PURPOSES



- The purpose of engaging in, or promoting activities that are unlawful or contrary to public policy
- The purpose of promoting or opposing a political party or candidate for office

COMMON PROBLEMS



- Private benefit – is the organisation NFP?
- Is there an independent non-charitable purpose?
- Mission drift?
- Direct action/unlawful activity?
- Political purpose?

GUIDANCE: CHARITIES, ELECTIONS & ADVOCACY



Charities can undertake advocacy if:

- What it does advances its charitable purpose
- It's rules don't prevent the activity
- It does not have a purpose of advancing a particular political party or candidate
- It doesn't have a purpose of engaging in or promoting activity activities that are unlawful
- It doesn't have a purpose of engaging in or promoting activities contrary to public policy



ACTIVITIES THAT CAN INDICATE POLITICAL PURPOSE

- Funding a political party or candidate
- Endorsing support for a party or candidate e.g. how to vote cards
- Providing accommodation space or other support
- Appearing in manifesto or publicity in a way that could be viewed as partisan.



POLITICAL ADVOCACY

- 27 concerns regarding 21 charities
- 1 revocation
 - Catch the Fire Ministries
- 1 voluntary undertaking
- 2 regulatory advice
- 4 active investigations



OTHER PROBLEMATIC ACTIVITY

- Supporting criminal activity such as assault or damage to property
- Advocating for and encouraging others to break the law
- Putting the safety and security of the public at risk

FIVE GOVERNANCE STANDARDS

- Purposes and character of an NFP entity
- Accountability to members
- Compliance with Australian laws
- Suitability of responsible entities
- Duties of responsible entities



ACNC'S APPROACH TO REGULATION



SOURCES OF CONCERN

- 23% Identified by the ACNC
- 24% Members of the general public (not part of other categories)
- 10% Other Government agency referral
- 10% Responsible persons
- 4% Other
- 6% Media
- 6% Anonymous
- 5% Employees (current or past)
- 4% Charity beneficiaries
- 3% Funding providers/donors/volunteers
- 5% Charity (self-report)



PRIORITISING CONCERNS

- The ACNC uses a risk-based approach to allocate its compliance resources in addressing complaints about charities.
- There are five factors we always consider as part of our prioritisation process:



The nature of the concern.

This includes considering whether it may involve fraud and/or criminal activity and whether there may be harm to beneficiaries.



Harm to the sector as a whole.

This includes considering whether public funds (such as government grants and public donations) are involved.



Persistence.

This includes considering whether the concern relates to an isolated incident or conduct that has persisted over a long period; we also consider whether the charity has a history of non-compliance.



Other factors specific to the concern.

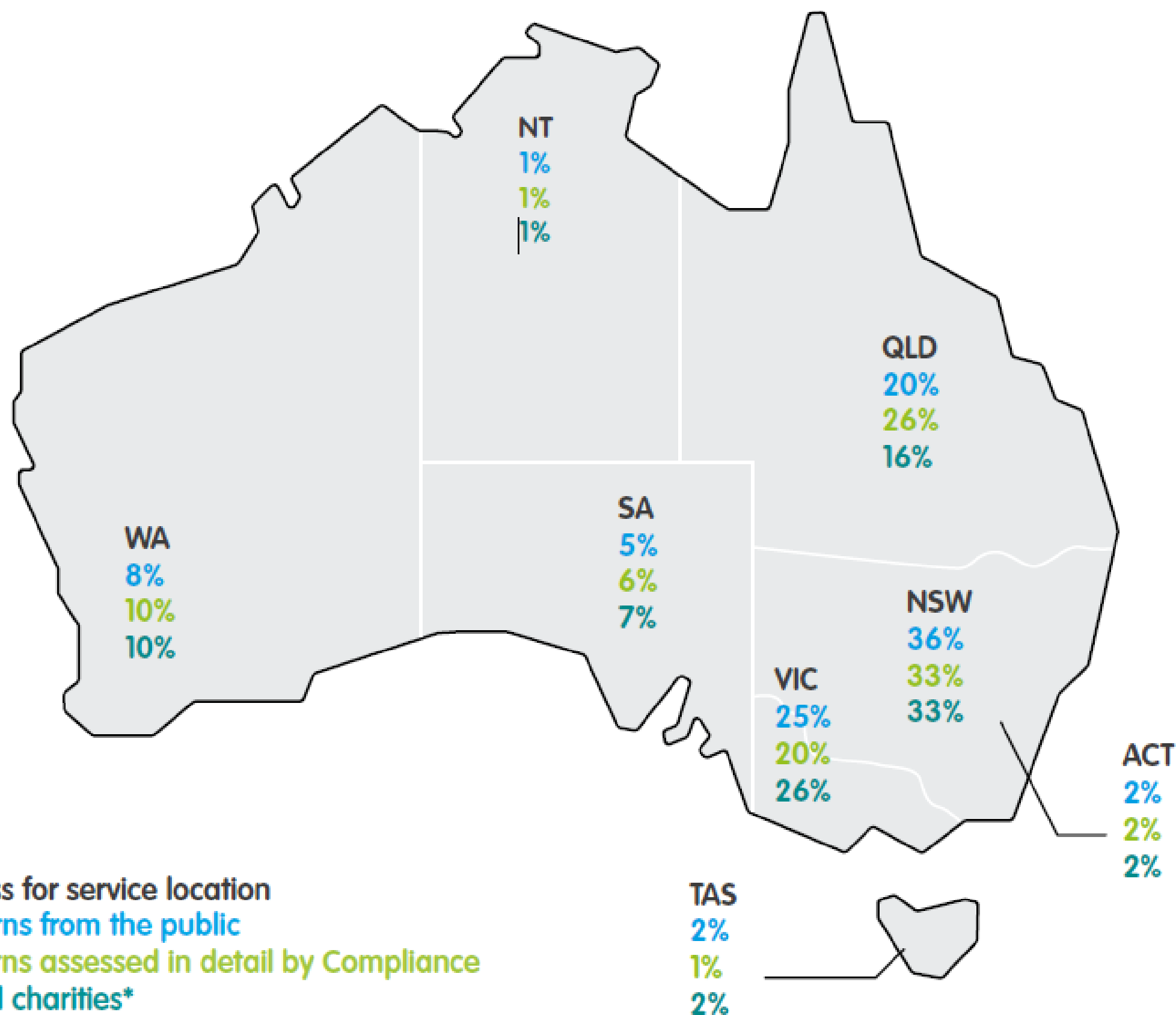
For example, whether the matter is time-bound and whether it represents a new or emerging issue



Other factors specific to the charity.

For example, whether the charity is closely controlled and the extent of oversight by other regulators.

CHARITY CONCERNS DISTRIBUTION ACROSS STATES AND TERRITORIES



Note: Percentages are rounded to closest full figure.

ENFORCEMENT POWERS

The ACNC has powers to gather information and monitor whether charities are meeting their obligations, as well as formal compliance powers to respond to charities which are not meeting their obligations.

- Information gathering and monitoring
- Warnings
- Directions
- Enforceable undertakings
- Injunctions
- Suspension or removal a responsible person
- Disqualification of a responsible person
- Administrative penalties
- Revocation





WHEN WILL ACNC REVOKE REGISTRATION?

- The Commissioner can revoke if:
 - Not entitled to registration – not a charity
 - False information provided
 - Non compliance with Act/regulations
 - Failure to lodge Annual Information Statement – double defaulter
 - Bankruptcy/Liquidation
 - Charity requested voluntary revocation

Revocation of ACNC registration

=

Loss of entitlement to Cth tax concessions with ATO



COMMON PROBLEMS

- Conflicts of interest not managed
- Private benefit including with related for-profit businesses
- Lack of due diligence and robust processes when sending funds overseas
- Lack of robust financial procedures
- Poor child protection policies and practice
- poor record keeping including governance decisions and financial decisions.

RECENT COMPLIANCE OUTCOMES



In 2015 and 2016:



69

Investigations were finalised



62

Notices served under section 70-5 of the ACNC Act to obtain information and documents



28

Charities had their registration revoked following investigations (see appendix 1 for full list)³



27

Charities received self-assessment guidance to address low-risk concerns.



2

Charities entered into an enforceable undertaking⁴



9

Charities had their registration revoked following a registration review of entitlement.



10

Charities entered into a voluntary undertaking



40

Large charities were issued with penalty notices (\$4,500) for the failure to lodge their 2015 Annual Information Statement.



1

The ACNC gave one charity a statutory warning⁵

WORKING WITH PARTNERS



- ACNC is working with the AFP, State Police, AUSTRAC, ATO, Australian Criminal Intelligence Commission and others
- National risk assessment of Charities and NPOs

COMPLIANCE FOCUS FOR 2017-19



1. Fraud and financial mismanagement – including money laundering, tax avoidance, private benefit.



2. Terrorism – misuse of a charity for terrorist purposes or to foster extremism. This includes charities that support terrorism (financial or otherwise), and/or have connections to a listed terrorist organisation, or a person or entity of concern.



3. Harm to beneficiaries – particularly children and vulnerable adults.



4. Political Activities – where the charity may be at risk of having a disqualifying purpose.



5. Lodgement and accuracy of Annual Information Statements – on time and accurate Annual information Statement submissions are vital to the integrity of the Charity Register.

DON'T FORGET REPORTING



- 5,837 charities revoked for failure to file AIS
- 40 penalties issued in 2016
- 168 notices issued so far in 2017

RECENT ACNC GUIDANCE



acnc.gov.au/fundraising

- For Charities
 - Vulnerable persons
 - Working with fundraising agencies
 - Managing data
 - State regulation
 - External resources
- For Public
 - Administration & overhead costs
 - Fundraising FAQ

The screenshot shows the ACNC website's 'Charity fundraising' page. At the top, there is the Australian Government logo and the ACNC logo. A navigation menu includes 'Home', 'Register my charity', 'Manage my charity', 'Find a charity', 'Publications', 'About ACNC', 'Contact us', and 'Portal'. Below the menu, a breadcrumb trail reads 'Home > Manage my charity > Manage charity money > Fundraising'. The main heading is 'Charity fundraising', followed by five piggy bank icons in various shades of blue and green. A paragraph states: 'The responsible persons of a charity are, collectively, responsible for the way a charity conducts its fundraising. The ACNC sees the oversight of fundraising activities as an important aspect of good charity governance. The materials on this page will help the responsible persons of charities manage their fundraising activities and know what issues they should look out for.' Below this, there are several sections with blue underlined titles and brief descriptions: 'Know your obligations' (with a link to 'List of regulators that may affect charities'), 'State regulation' (with a link to 'Research into Commonwealth regulatory and reporting burdens'), 'Responsible fundraising' (with a link to 'Fundraising: people in vulnerable circumstances'), 'Emerging issues in fundraising' (with a link to 'Working with fundraising agencies'), 'Protecting your charity against the risk of terrorism financing' (with a link to 'Charities are at risk of being abused by individuals or other organisations, to raise funds to finance or support terrorist activities'), and 'Charities and administration costs' (with a link to 'A factsheet jointly produced by the ACNC and the Queensland University of Technology about administration costs for charities').

OTHER USEFUL ACNC GUIDANCE

acnc.gov.au/guides

- Reserves and sustainability
- Governance for Good
- Elections and advocacy
- Managing charity money
- Raising money
- Conflicts of interest
- Strong financial controls



SUPPORT AND GUIDANCE

Factsheets and guides:

- Protect your charity from fraud guide
- Conflicts of interest
- Managing charity money
- Governance for good
- Overseas aid charities and terrorist financing
- Charities, elections and advocacy
- Fundraising: people in vulnerable circumstances
- Internal disputes

Check lists:

- Record keeping
- Protecting your charity against the risk of terrorism financing



AND FINALLY...



- Most charities are well run
- Most people are honest, altruistic and making a difference
- Swim between the flags and you will be in safe water

QUESTIONS?



STAY IN TOUCH

acnc.gov.au

13 ACNC (13 22 62)
9.00am – 6.00pm AEST

advice@acnc.gov.au



facebook.com/acnc.gov.au



[@acnc_gov_au](https://twitter.com/acnc_gov_au)



Aussie Charities and NFPs

Questions And Answers





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Thank you for attending

We hope you can join us for upcoming events:

- Office Support Professionals Day 5 May 2017