



WINDSOR
GROUP

Welcome to ACNC Update: Compliance

Guest Speakers:

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Australian
Charities and
Not-for-profits
Commission

ACNC COMPLIANCE UPDATE

Windsor Group

Presented by
David Locke



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Assistant Commissioner | 23 August 2017



ACNC OBJECTS



- Maintain, protect and enhance public trust and confidence in the NFP sector
- Support a sustainable, robust, vibrant, independent and innovative NFP sector
- Contribute to the reduction of unnecessary regulatory duplication

REQUIREMENTS FOR REGISTRATION



- Be a not-for-profit
- Have a charitable purpose and be established for the public benefit
- Comply with governance standards
- Have an ABN
- Not be listed as engaging in, or supporting terrorist or other criminal activities

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.

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

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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 and controls
- Poor child protection policies and practice
- Poor record keeping including governance decisions and financial decisions.



WHAT THE ACNC EXPECTS

- Charities able to demonstrate entitled to Registration and Compliance with Governance Standards
- Proper Governance records and financial records - kept for 7 years
- Proper financial procedures, controls and delegations
- Conflicts of interest to be properly managed and recorded

WHAT THE ACNC EXPECTS (CONTINUED)



- Child protection policies and working with children checks in place and up to date
- Anti-fraud/corruption measures and reporting of criminality to the police
- No self dealing
- Honest, open and transparent engagement with the regulator and full cooperation
- Pro-active reporting of breaches

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 – Report to be released 28 August 2017

NATIONAL RISK ASSESSMENT



- Looked at 54,000 charities as well as the risks in 203,000 other associations and non-profit organisations (approximately 257,000 in total)
- It identified high risk groups of NPOs for further analysis and investigation
- Will help NPOs to self-assess their level of vulnerability, strengthen their controls, and report suspicious and criminal activity
- The overall money laundering risk for the non-profit sector is **medium**
- The overall terrorism financing risk for the non-profit sector is **medium**
- Consequences are extremely high – harm to public trust and confidence in the sector, and physical harm

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.

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

ANY QUESTIONS?



acnc.gov.au

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

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Aussie Charities and NFPs

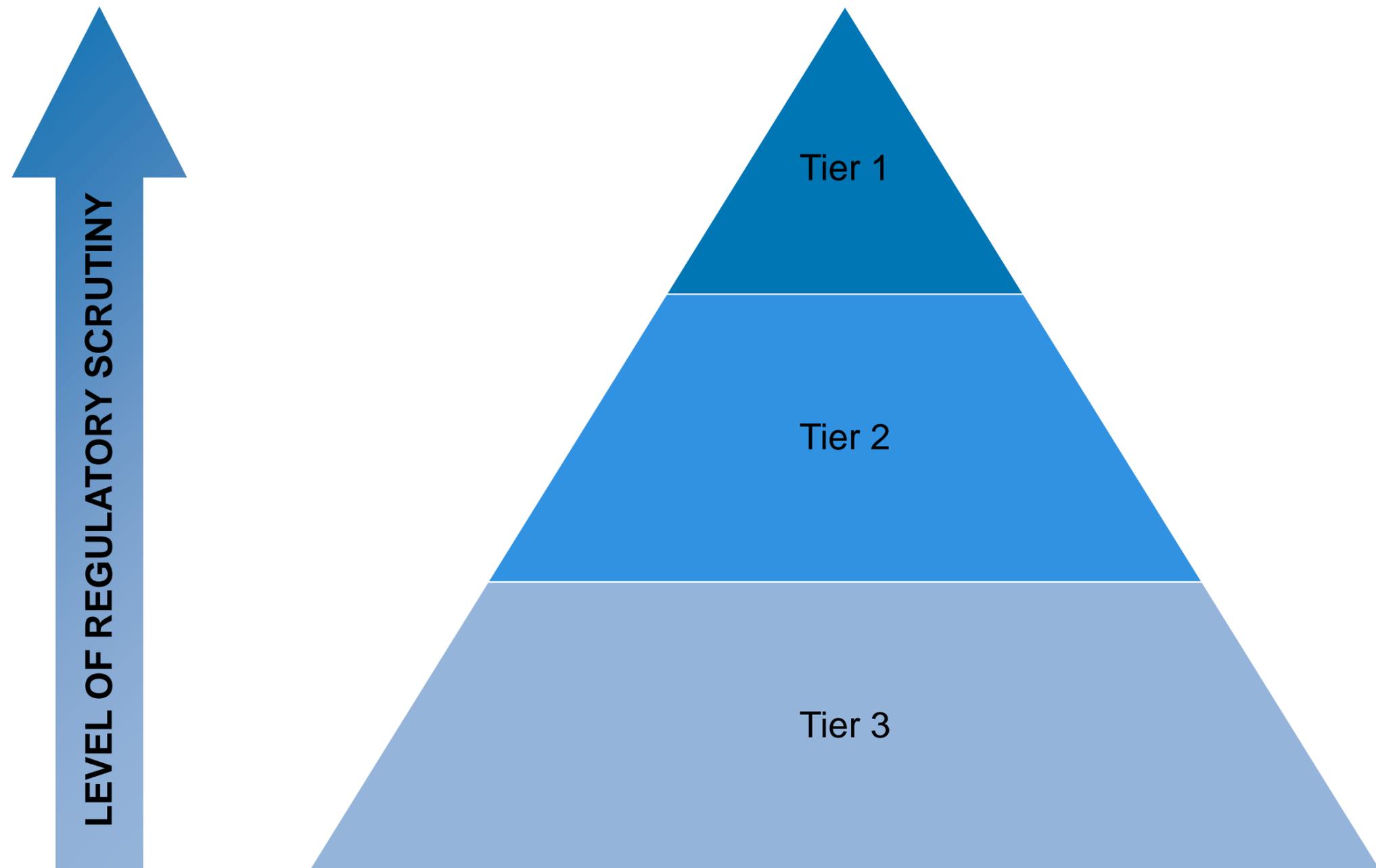
The National Regulatory System for Community Housing (NRSCH)

The Journey to Good Governance

The NRSCH

- National system for registration and regulation of community housing providers to ensure:
 - Good governance
 - Good management
 - Financial viability
- Separates registered providers into 3 distinct tiers based on the scale and scope of their community housing portfolios and level of associated risk

A Tiered System of Regulation



Example

- Typical registration tier for different community housing activities:

SCOPE						
Ongoing development activities at scale	Tier 1	Tier 1	Tier 1	Tier 1	Tier 1	Tier 1
Ongoing small-scale development activities	Tier 2	Tier 2	Tier 2	Tier 2	Tier 1 or 2	Tier 1
One-off and/or very small scale development activities	Tier 3	Tier 2 or 3	Tier 2	Tier 2	Tier 2	Tier 1 or 2
No development activities	Tier 3	Tier 3	Tier 2 or 3	Tier 2	Tier 2	Tier 2
	0	50	100	300	500	2,000
	<p align="center">Scale of community housing tenancy and property management activities Number of community housing tenancies / Number of community housing properties (whichever is larger)</p>					

The NRSCH journey in QLD

- Registrations commenced **January 2014**
- Providers given 8 weeks to complete an application for registration online
- Submit information against 7 Performance Outcomes:
 - 153 providers invited to apply
 - 77 are now registered under the NRSCH, with several applications currently in progress
 - of the 77, 59 are registered with the Australian Charities and Not-for-profits Commission (ACNC)

Role of the Regulator

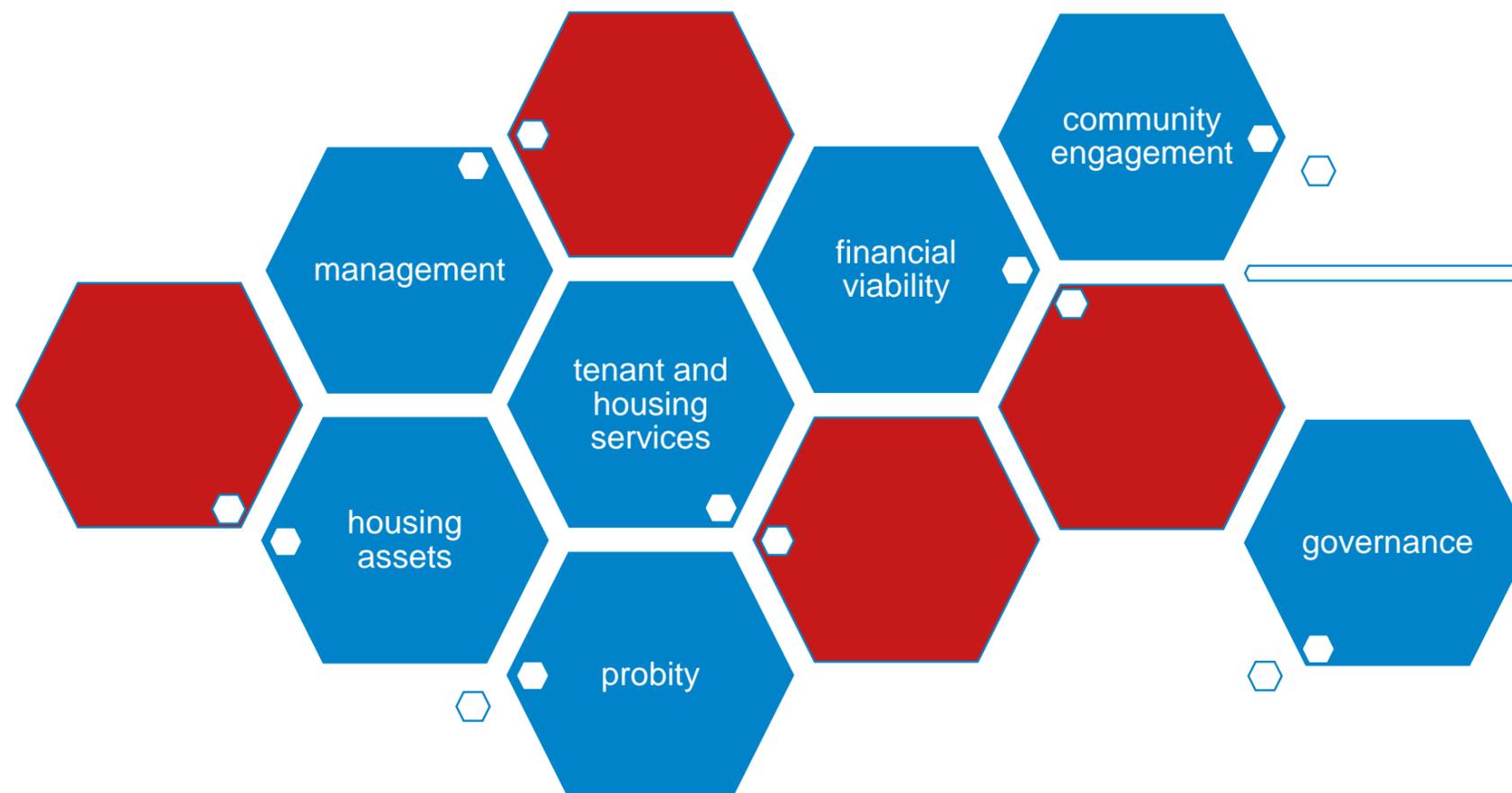
Regulatory Services

- Regulatory Services team within HPW:
 - team of analysts led by the QLD Registrar for Community Housing
 - assesses evidentiary documentation and metric data provided by organisations,
 - completes site visits on registered providers
 - enforcement powers outlined in the *Housing Act 2003* when a registered provider is found to be non-compliant

The 7 Performance Outcomes

Regulatory Services

- Registered community housing providers are held to performance standards and requirements outlined in the National Regulatory Code, which cover 7 areas:



The Assessment Process

Regulatory Services

- All Tiers held to the same 7 Performance Outcomes, but evidence to support an application varies by Tier
- Desktop assessments and on-site compliance visits
- Registered Tier 1 and Tier 2 providers assessed annually
- Tier 3 providers assessed every 2 years

The Assessment Process

Regulatory Services

- From a governance, probity, asset, tenancy, and management point of view, Tiers 1 and 2 are required to submit more documentation, e.g.:
 - strategic asset management plan
 - growth and development plan
 - business continuity and risk management assessment
 - integrated system for monitoring compliance with legal and policy requirements
 - fraud, corruption and criminal conduct prevention plans.

The Assessment Process

Regulatory Services

- Registration and compliance assessment determines financial viability over an outlook period that is:
 - 10 years for Tiers 1 and 2
 - 2 years for Tier 3.
- The 10-year term for Tier 1 and 2 providers recognizes the greater financial risk of development activities, and contrasts with the ACNC which is concerned with the past financial year balance sheet only

Trends in recommendations made at registration through compliance

Regulatory Services

- Regulatory Services has assessed applications from 77 registered community housing providers, making recommendations related to each performance outcome
- Recommendations related to Performance Outcomes:

Performance Outcome	Registration Recommendations		Performance Outcome	Compliance Recommendations	
	Tier 2	Tier 3		Tier 1	Tier 2
PO 1 Tenant and Housing Services	9	251	PO 1 Tenant and Housing Services	1	
PO 2 Housing Assets	10	154	PO 2 Housing Assets		
PO 3 Community Engagement		18	PO 3 Community Engagement		
PO 4 Governance	12	230	PO 4 Governance		1
PO 5 Probity	8	138	PO 5 Probity		
PO 6 Management	3	80	PO 6 Management		
PO 7 Financial Viability	10	246	PO 7 Financial Viability	8	20

Trends in recommendations made at registration through compliance

Recommendation themes

- Updating **policy and procedure documentation** to ensure they refer and link to current legislation, regulations, policies and guidelines
- Ensuring the **level of detail provided to Board members** by operational staff is sufficient
- Ensuring the level and quality of **financial information** provided to Board members during Board meetings is sufficient
- Ensuring the **skill-set and current knowledge base of the Board** is sufficient
- Ensuring business plans/planning documents state **clear objectives and action plans** against which progress can be monitored (i.e. KPIs, timeframes, person responsible)
- Reporting/disclosing and demonstrating **financial awareness** of program surpluses, restricted funds and equity position

The Journey to Good Governance



Some Case Studies

Case Study – Tier 1

- Strong governance procedures and probity systems
- Dedicated position embedded in organisation related to maintaining compliance with legislation and regulation
- Pro-active approach to engagement with Regulatory Services
- Needed to implement changes
 - Notifications Policy
 - Constitutional wind-up clause
 - Provision for anonymous complaints

Some Case Studies

Case Study – Tier 2

- At registration, solid policies and procedures
- However, the operational arm (staff) and the strategic arm (Board) of the organisation did not have strong reporting arrangements
- At compliance, policies and procedures had not been updated to reflect current information
- Unwillingness from some staff to engage with regulatory process
- Following enforcement action – organisation has made changes and is now engaged in regulatory process

Some Case Studies

Case Study – Tier 3

- Organisation demonstrated minimum necessary to achieve registration – multiple recommendations provided
- At compliance, recommendations were not addressed and Board had lack of awareness of NRSCH and regulatory process
- Issues with Board and financial decision making within organisation
- To strengthen Board skillset, Board was required to attend governance training and upskill
- Regulatory engagement remains ongoing, with some improvements noted



Questions And Answers





WINDSOR GROUP

Thank you for attending

We hope you can join us for upcoming events:

- World Mental Health Day Forum 9th October
- Fiscal Fundamentals Session 16th October
- Sparks Around the Boardroom 16th November

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