



Australian Government



Australian  
**Charities** and  
Not-for-profits  
Commission

# Australian Charities and Not-for-profits Commission Statement: Regulatory Approach



# Introduction

The following statement explains the Australian Charities and Not-for-profits Commission's (ACNC) regulatory approach (as adopted in April 2013). This statement explains to charities and other stakeholders how ACNC staff will approach their regulatory work. A preliminary version was released for public consultation between December 2012 and March 2013, including through online, phone and face-to-face forums. This version includes amendments made as a result of the public consultation.

This statement guides ACNC staff in making appropriate and consistent decisions and sets out the relationships between the ACNC's values, regulatory approach and decision-making processes.

The first section of this statement sets out who we are and how we regulate. The second section of this statement sets out how we will use our powers and make our decisions. That section provides to the public a short general overview of what is set out in our Compliance and Enforcement policy. The statement includes hyperlinks to our website for more detailed information.

[Preliminary regulatory approach in Word format](#) or in [PDF format](#)

[Consultation analysis of preliminary regulatory approach](#)

Compliance and Enforcement Policy (forthcoming)

## Our role

### Objects

The Australian Charities and Not-for-profits Commission (ACNC) is established by, and administers, the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) ('ACNC Act'). The objects of this Act are to:

- maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector
- support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector
- promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

### Scope

Although the objects of the ACNC Act relate to not-for-profits, the ACNC will initially only regulate charities (in the meaning used by the law). The Australian Government will consult further if the role of the ACNC is extended to other types of not-for-profits.

[FAQ: What is a charity?](#)

[ACNC's approach to legal meaning of charity](#)

[Not-for-profits that are not charities](#)

Charities can choose to register with the ACNC and registration is free. However, charities must be registered if they want to access concessions under Commonwealth law, including charity tax concessions and other benefits. Charities previously endorsed by the Australian Taxation Office (the ATO) for charity tax concessions have been automatically registered with the ACNC. The ACNC also registers two types of tax categories: public benevolent institutions and health promotion charities. Under the ACNC Act these bodies are considered to be types of charities. The ATO remains responsible for other types of organisations that receive tax concessions, such as some types of deductible gift recipients (DGRs).

[Factsheet: Who can register with the ACNC?](#)

[Transitional arrangements between the ATO and the ACNC](#)

[Why register?](#)

[Deductible gift recipient status](#)

[Factsheet: What is a public benevolent institution?](#)

[Factsheet: What is a health promotion charity?](#)

[ACNC and other regulators \(including the ATO\)](#)

The ACNC is the specialist, independent national regulator of charities. There are, however, existing bodies at Commonwealth, State and Territory levels that also regulate and affect charities, including bodies that regulate fundraising and incorporated associations. Although the ACNC is working with other regulators to reduce unnecessary regulatory obligations, charities should continue to comply with the requirements of other government bodies until they are advised otherwise. However, charities regulated by the Australian Securities and Investment Commission (ASIC) will now report to the ACNC.

[ACNC and other regulators](#)

[Fact sheets \(including on ASIC, and regulation by State and Territory\)](#)

[Fundraising reform Discussion Paper](#)

## Functions

The ACNC will further the objects of the ACNC Act in a number of ways. These include publishing information about registered charities on a free, searchable electronic Register. This will help the public – including those who donate to, and join or volunteer for charities – find and learn about charities and their work.

The ACNC will work with other government agencies, sector organisations and, where relevant, other parties (such as philanthropic trusts) to reduce unnecessary and/or duplicative reporting.

The ACNC will also provide information and educate the public about charities and the not-for-profit sector. Together with the Register, this will help everyone understand better the vital role of charities in Australian life.

[Register my charity](#)

[Find a charity](#)

[Red tape reduction](#)

[What's on the Register?](#)

This statement focuses on how the ACNC will regulate charities, including by:

- providing information and education to enable registered charities to understand and comply with their obligations under the ACNC Act
- identifying risks and opportunities – for example, identifying situations in which people can defraud a charity and how we can help charities to reduce this risk, and
- taking action when registered charities do not meet their obligations under the ACNC Act, including when they are not acting as charities.

[Factsheet: Ongoing obligations of charities](#)

[Factsheets, guides and quick tips](#)

Compliance and Enforcement Policy (forthcoming)

## Understanding charities

The foundation of the ACNC's approach is an understanding of charities. We recognise that the purpose of charities is to benefit the public. Charities contribute to our society in vital ways, including by addressing disadvantage, enabling people to live meaningful and rich lives, and strengthening the fabric of our communities and environment.

We understand that the public supports and sustains charities, including through donations of time, skills and money. We understand and respect that the purposes, activities, needs and the sources of funding of charities will change over time as charities reflect and shape changes in society.

We also understand and respect the fact that charities will pursue diverse goals in different

ways. Their goals, activities, sizes, legal structures, and those they help are different, and result in varying needs and challenges. Charities and the people involved in them have diverse beliefs and values and reflect communities from different cultures, languages and places. We value and support charities of all shapes and sizes.

We recognise that charities enjoy, and rely upon, the trust and confidence of the public. This trust is essential in attracting and maintaining funds, volunteers, and staff. We recognise that transparency and accountability will promote that trust. We recognise that the misconduct of a few can endanger confidence in others, and will act firmly in cases of serious misconduct or gross negligence.

We know that charities want to spend their resources on their mission, not on regulation.

As this statement explains, the ACNC's regulatory approach will reflect our five key values of: **Fairness, Accountability, Independence, Integrity and Respect (FAIR)**.

## Fairness

### Presumption of honesty

The ACNC understands that most people involved in charities are honest, acting in good faith and trying to do the right thing. If mistakes are made, they are usually honest mistakes, or because of a lack of knowledge, expertise or capacity. The ACNC will provide information and education to support the knowledge, expertise and capacity of those involved in charities.

When the ACNC investigates, one of the things we will look at is whether there was an intention to do the wrong thing and whether any of those responsible for the charity (such as committee members, directors, or trustees) knew about or participated in the conduct. We will consider the extent to which the charity is cooperating with us, and the willingness of those responsible to take action to remedy the problem. However, in cases of intentional misconduct or gross negligence, we will take firm action to protect public trust and confidence.

### Providing support

The ACNC will provide general information and education to help charities meet their obligations. This support will be timely and accessible to different audiences. It will be provided using a variety of methods. We recognise the diversity of charities and will draw upon the existing work and resources of relevant bodies.

[ACNC information and education sessions](#)

[Tools and resources](#)

Compliance and Enforcement Policy (forthcoming)

### Fair procedures

The ACNC's procedures reflect principles of procedural fairness. Complaints about charities will be assessed before we begin a confidential investigation.

Before the ACNC makes a decision, we will contact the charity to clarify matters or raise our concerns. In some cases, we may also contact those affected by the decision such as those responsible for running the charity. We will give them a reasonable opportunity to address our concerns, bearing in mind the capacity of the charity to respond. We will give written reasons for our decision and tell charities how they can challenge our decision. In doing so, we will

seek to limit the burden of our investigations on charities.

In exceptional cases, we may choose not to contact a charity where this would put at risk a person, assets or our investigation. For example, we may not be able to contact a person first if we become aware that they are about to divert significant assets from the charity for personal benefit. In such cases, however, the ACNC will contact the charity or affected person after taking this action and give them an opportunity to explain and address our concerns.

[Accountability and transparency](#)

[Complaints about charities](#)

[Decision-making policy](#)

[Reviews and appeals policy](#)

[Administrative Review Council, Natural Justice \(Best Practice Guide\)](#)

## Proportionality and consistency

The ACNC will take the minimum action required to address an issue. If at first a lesser option does not resolve the issue, we will take progressively stronger action until the issue is resolved. We will consider a wide range of factors in evaluating the seriousness of the issue and the minimum action required to address it. For serious cases, the minimum action is likely to be a strong one — for example, the only way to protect public trust and confidence in the case of an organisation falsely pretending to be a charity is to revoke its registration.

We will design processes to ensure decisions are made consistently. We will review regularly our decision-making processes for proportionality and consistency.

[When and how we will act](#)

## Accountability and transparency

The ACNC is accountable to others for our processes and work. We will be transparent about our procedures, decisions and actions.

The ACNC will be accountable through regular consultation and feedback, and more formally through quarterly meetings with sector representatives and with the ACNC Advisory Board. We have a Complaints and Compliments policy so that people can give us feedback if they encounter problems in their dealings with us, or want to give us advice on how we can perform better.

Under the ACNC Act, we are accountable for most of our formal decisions to the Administrative Appeals Tribunal and the courts. We are also accountable for our conduct to others including the Commonwealth Ombudsman, Auditor-General and Parliament.

[Advisory Board](#)

[Complaints and compliments about the ACNC](#)

The ACNC will publish online its Annual Report, its strategic plan and its policies and (where appropriate) its procedures. It will communicate its policies, procedures, and decisions in a variety of ways and means, including in meetings, events, online and using social media. We have published service standards so charities know what they can expect from our services, and publish performance against these standards. We will use feedback to improve our services.

[Corporate information](#)

[ACNC Strategic Plan](#)

[ACNC Corporate policies and procedures](#)

[ACNC information and speaking events](#)

[Sign up for email updates](#)

[Social media](#)

[Service standards](#)

## Independence

The ACNC Commissioner is an independent statutory office holder. Our independence is reflected in our organisational structure and our impartial decision-making.

Staff are appointed by and report to the Commissioner of the ACNC. We have our own budget held in a statutory special account and we report annually to Parliament. We are governed by our own legislation, the ACNC Act. ACNC staff have a mix of backgrounds from the not-for-profit, public and private sectors.

Within the ACNC, decisions will be based on evidence, including that given by charities themselves. We will impartially apply the ACNC Act, other laws and ACNC policies.

We will publish a conflict of interest policy to manage apparent and actual conflicts of interest with staff. We will not promote the services of particular charities to the public or in our work, although we may refer to freely available useful resources provided by charities and other sector bodies.

Conflict of Interest Policy (forthcoming)

[Linking to external materials policy](#)

## Integrity

The ACNC is committed to acting with integrity, adhering to Australian laws and the Australian Public Service's Code of Conduct, as well as the ACNC's own policies, procedures and values. The ACNC Act sets boundaries on when and how we can act.

[ACNC Values](#)

[APS Values](#)

[APS Code of Conduct](#)

## Respect

The approach of the ACNC is founded on respect for charities and those who work with and for them. We will listen to and work with charities. We recognise the unique nature and diversity of charities, and respect the autonomy of charities.

## Engaging with charities

The ACNC will listen to, learn from, and work with charities. Our staff receive training to

develop their understanding of the distinctive context of charities. We are developing a stakeholder engagement strategy, including a regular consultative forum. We will work closely with peak bodies, advisors and other key stakeholders. We will run education sessions to help charities comply, often delivered in partnership with peak bodies. Our Advisory Board will hold community consultations across all Australian jurisdictions within a two-year period. We will work with the Not-for-Profit Reform Council, in partnership with the Office of the Not-for-Profit Sector in the Department of Prime Minister and Cabinet.

We recognise the need to ensure diverse, innovative and accessible ways of reaching charities and those involved at all levels of charities. We will engage with charities using the web, social media, phone and face-to-face information sessions, and are committed to engaging with small and regional charities in particular.

[How to contact us](#)

[ACNC information sessions and speaking events](#)

[Sign up to email updates](#)

[Social media](#)

[Public consultation and comment](#)

[ACNC Advisory Board](#)

## Respecting autonomy

The ACNC will respect the freedom of individuals to associate with others, which underpins the role of charities. We understand that charities are an important part of civil society, not a part of government or of the business ('for-profit') sector. It is for charities to determine their own goals and strategies and to decide how they should best fulfil them. It is also the role of the charity to manage, administer and accept responsibility for governance.

The ACNC's role is to help ensure that charities are managed and administered effectively and operate for their charitable purposes. We will (including by working with others) support charities through guidance, education and the promotion of good practices. When support and guidance are not enough to address an issue, the ACNC will use its powers to protect public trust and confidence.

## Respecting capacity and accountability

In all its work, the ACNC will take into account the available resources of charities and the level of administrative burden. We will also bear in mind the existing mechanisms charities have to account to their diverse and multiple stakeholders (for example, those who benefit from their services, their members, staff, volunteers, funders and the public).

We recognise and encourage the desire of many charities to improve their transparency and accountability (for example, by taking part in self-regulation or accreditation schemes). Many charities are also regulated by other government agencies or by funders, and we will take into account this regulation when designing our processes or when deciding how we will address concerns about a charity.

[Red tape reduction](#)

# How we will use our powers and make our decisions

The ACNC will use its powers in a way that reflects both the risks and the evidence before us. We will begin by assuming that people involved in charities are acting honestly, give people a chance to address our concerns, and use the least intrusive powers that are sufficient to address those concerns. We will, however, act firmly and quickly in cases where gross negligence or serious misconduct has been established, or where vulnerable people or significant charitable assets are at risk.

## When we will and won't act

The ACNC Compliance and Enforcement Policy, which sets out our approach in more detail, explains the scope of our powers under the ACNC Act. There are three main situations where the ACNC has powers:

- when a charity does not meet its obligations under the ACNC Act to report to us or keep proper records
- when a charity does not meet minimum standards of governance (for example, where those responsible for a charity are not taking reasonable care or not managing conflicts of interest), and
- when an organisation is not, or is no longer, a charity (for example, where it is being used to make a profit for private individuals or is set up for illegal or improper purposes).

The ACNC Compliance and Enforcement Policy also explains the limits to our powers under the ACNC Act, such as the conditions we must satisfy before using our powers, and our role in relation to 'basic religious charities' and 'federally regulated entities'.

The ACNC does not deal with all complaints relating to charities. We know that it is not our role to run charities. We do not assess the effectiveness of a charity in meeting its objectives. We will not become involved in internal differences of opinion or employment disputes in charities. For example, we do not intervene where board members have a legitimate difference of opinion about a decision which does not raise any issues of good governance.

The ACNC does not regulate the service quality of charities such as aged care providers, although there may be times when service quality is relevant to our investigations. If a complaint is made, we will assist the person complaining to contact the relevant regulator. We will work with these regulators if they have broader concerns about the governance of a registered charity, for example about any excessive private benefits going to those running the charity.

There will be times where another regulator is already acting to address the problem. For example, another agency may be investigating a breach of fundraising laws. In these cases, we will, if asked, assist the other regulator (including sharing information, where permitted by law) and follow up on any outcomes to ensure that our concerns are addressed.

[ACNC glossary \(federally regulated entities\)](#)

[ACNC and other regulators](#)

[Guide to the ACNC Act](#)

[Compliance and Enforcement Policy \(forthcoming\)](#)

## How we will act

The ACNC's regulatory approach is summarised in the regulatory pyramid shown below. Our approach is to use the minimum action necessary to address the issue. Generally, this will mean beginning at the bottom of the pyramid by providing information and guidance, and move upwards only when circumstances require it. In serious cases, the minimum action needed to address an action is likely to be near the top of the pyramid.

The ACNC will be alerted to concerns about charities through the regular reporting by charities to us, from complaints (from the public and others), and from referrals from other agencies (including agencies of states and territories). We will also actively seek to identify risks, vulnerabilities and good practice in partnership with the sector.

### Reporting

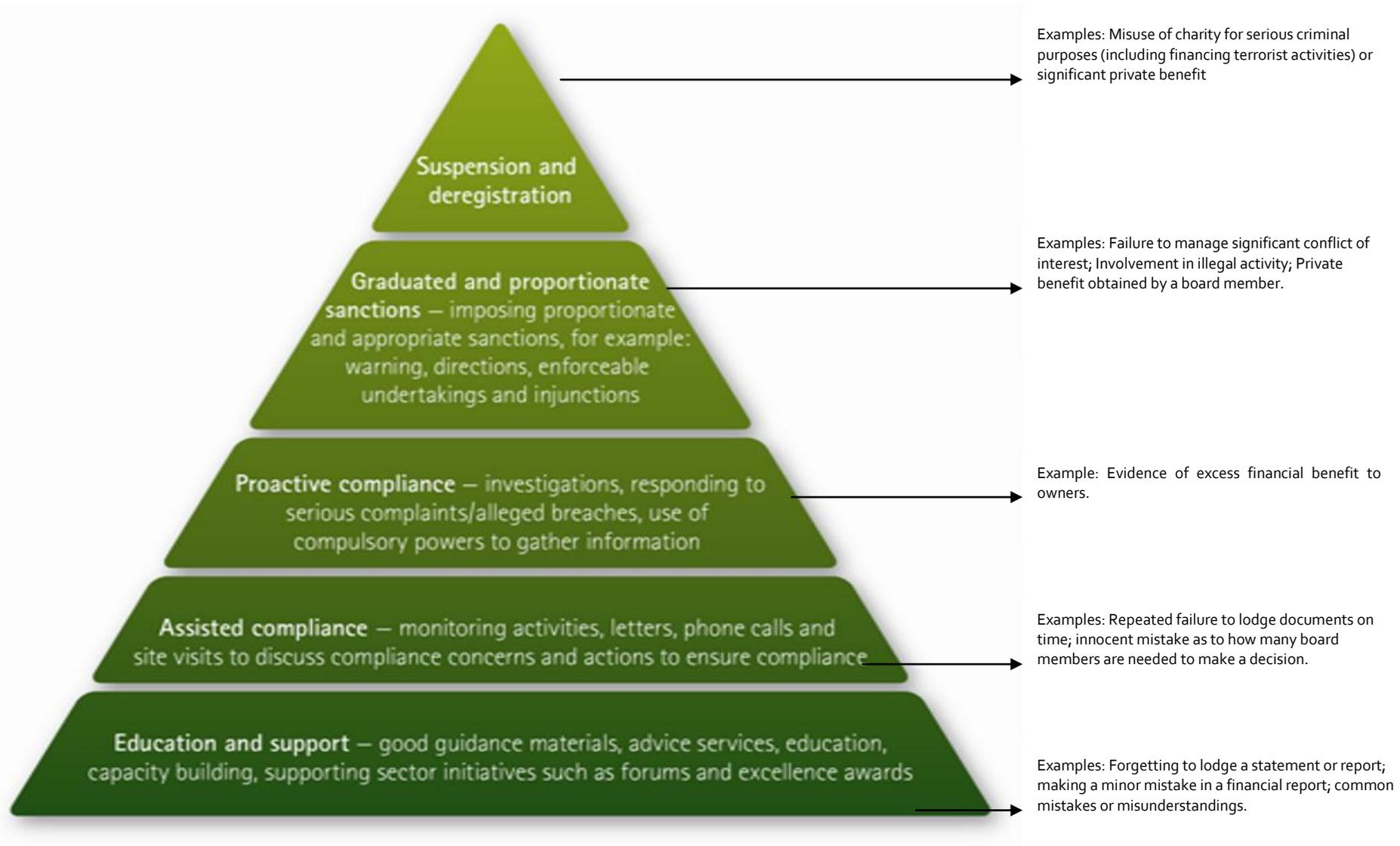
#### Raise a concern about a charity

In determining whether further investigation or action is required, we will employ a consistent process using staff across the ACNC to assess risks by examining the following factors as a whole:

- **Type of problem:** Some problems will be minor or technical and will not affect the operation of the charity or its mission. Others might indicate poor governance or management. Other problems might indicate serious criminal behaviour or a misuse of the charity itself. The type of problem will affect the priority we give it.
- **What or who is at risk:** Some issues will directly affect the clients or assets. Other issues might affect the broader public trust and confidence in charities generally.
- **Nature and degree of potential harm:** If the issue might harm particular people (or animals), we will consider the nature, extent and duration of the harm, and the extent to which they are able to protect their own interests. If the issue could undermine public trust and confidence in charities, we will consider the nature of the harm, the profile of the charity, whether the issue is part of an emerging trend or precedent, and whether other charities or charities in general will suffer harm because of the issue.
- **Likelihood and frequency of occurrence or recurrence:** If a charity has failed to comply because of a very unusual set of circumstances, we will be less likely to act. If there is a continued failure to comply, we will graduate our response by considering stronger action. In some cases, the issue may require urgent action to prevent harm.
- **Risk profile of the charity:** This will include factors such as the size of a charity, its area of operation, whether it has vulnerable stakeholders or clients, the existence and strength of internal or external accountability mechanisms, and its history of compliance and cooperation.
- **Behaviour of those responsible for the charity:** This will include consideration of whether those responsible reported the issue or knowingly participated in conduct of concern, and their willingness and ability to take action.

We will assess these overall factors in relation to the objects of the ACNC Act and those of any other relevant laws.

In some cases, limits to the ACNC's legal powers mean that we will not be able to suspend or remove individuals or impose graduated and proportionate sanctions. In these cases, the ACNC will seek to refer to other regulators under agreements with them with the aim of achieving a consistent approach to all registered charities.



## What we can do

The ACNC's approach begins with an emphasis on providing education and advice to support charities to meet their regulatory obligations. Some charities may need more assistance. For a smaller number, we will need to use our formal powers under the ACNC Act.

Our proportionate approach means that we will take the minimum action required to address the issue. If a lesser option does not resolve the issue at first, we will take progressively stronger action until the issue is resolved. We will usually give those involved a chance to explain and consider any explanation seriously before we use our formal powers.

The ACNC's informal options include:

- **Informal assistance to address non-compliance:** We may tell charities how they can comply; refer an individual or charity to our education and guidance materials; give advice on the available options under the legislation or on how to comply with the law; or develop education or guidance resources if we think others may be confused or make the same mistake.
- **No-action letters:** We may provide a letter expressing our intention not to act. These letters do not prevent us from taking action later.
- **Referral:** We may refer the matter to another regulator (or, in serious cases, to the police) for action.

The ACNC's formal powers under the ACNC Act are:

- **Administrative penalties:** Where we have discretion under the ACNC Act, we may decide to issue non-criminal (civil) penalties for late reporting or notification, or for false or misleading statements.
- **Warnings:** We may formally warn a charity that it is not complying with its obligations if it doesn't respond to informal advice or education and support.
- **Enforceable undertakings:** We can make voluntary agreements with charities for them to take or stop actions that would breach our Act or Regulations. If the charity breaches that agreement, a court can enforce the agreement. For example, if those responsible, on taking office, discover that a charity has diverted funds for private benefit, we can agree with them that they will take specific action to address these concerns.
- **Directions:** We can direct a charity to act, or stop acting, in a certain way to make sure they comply with the law. For example, we could direct a charity to amend a serious error in a financial report if they don't respond to our advice to do so.
- **Injunctions:** We can ask a court to order a person to do, or not do, something to make sure they comply with the law. A court can also make these orders by the consent of the ACNC and the person or charity. For example, we might ask a court to stop illegal activity or prevent a transaction that will jeopardise the interests of clients.
- **Suspension and removal:** In exceptional cases, we can (except in the case of 'basic religious charities') suspend or remove a member of a charity's governing body who has breached our Act or Regulations. For example, we could suspend or remove a person who has, in a serious and persistent way, misdirected funds. As our preference would be to provide evidence of misconduct to enable the charity itself to suspend or

remove that person, this would only be used where the other members of the governing body refused (or were unable) to take action.

- **Revocation:** We can revoke the registration of a charity on certain grounds (mainly that a charity is not entitled to registration, has not complied with our Act or the Regulations under them, or is insolvent or in administration). We expect that this would happen rarely. For example, it would be appropriate to revoke the registration of an organisation that has been established as a charity merely to launder money or as a front for conducting serious criminal activity. If a charity's registration is revoked, it would lose its charitable status under Commonwealth law, including its access to Commonwealth tax concessions (including, where relevant, deductible gift recipient status) and the revocation (together with any responses by the charity) would be published on our Register.

The ACNC Act includes only a small number of crimes relating to obligations under the ACNC Act. The ACNC may, however, refer matters to the police or other regulators for further action if other crimes are identified.

ACNC investigations will be confidential and no information will be published (or comment made in the media) until we have decided to use a formal power under the Act. Under the ACNC Act, decisions to use our formal powers must usually be published on our Register. These can only be published after the charity has had a chance to respond, and the charity's responses and actions to fix the problem will also be published. The ACNC can remove this information from the Register after five years. The Compliance and Enforcement policy sets out in more detail our policy on publishing our enforcement actions.

All ACNC decisions to use our formal enforcement powers can be reviewed or appealed.

[Guide to the Act \(Chapters 10 and 11\)](#)

[Complaints about charities](#)

[Reviews and appeals policy](#)

## Conclusion

The ACNC's regulatory approach reflects the policy intent in the ACNC Act, our understanding of the not-for-profit sector in Australia, a consideration of good regulatory practice, and feedback from the sector.

We are committed to full implementation of the objects in the ACNC Act and have adopted a regulatory approach that will enhance public trust and confidence in the sector, supports its sustainability and minimises administrative requirements.

This regulatory approach statement will be regularly reviewed as we gain further experience.

We invite feedback on our regulatory approach as it is adopted, and will work with the public and the sector to ensure charities remain vibrant and able to concentrate on their mission.