



Australian
Charities and
Not-for-profits
Commission

RSL NSW ANNUAL STATE CONGRESS 2018

Presented by
David Locke

Assistant Commissioner | 22 May 2018



@DavidLockeACNC

OBLIGATIONS OF CHARITIES



- Operate as a Not-for-profit
- Have exclusively charitable purposes
- Comply with ACNC Governance Standards
- Proper record keeping
- Comply with reporting obligations to ACNC



OBLIGATIONS OF CHARITIES (CONTINUED)

- Comply with Governing rules
- Comply with Commonwealth legislation
- Comply with State legislation and State regulations.

12 CHARITABLE PURPOSES



1	Advancing health	7	Human rights
2	Advancing education	8	Security/safety
3	Advancing social/ public welfare	9	Animal welfare
4	Advancing religion	10	Advancing environment
5	Advancing culture	11	Advocacy
6	Reconciliation, mutual respect and tolerance	12	Other purposes

CHARITABLE PURPOSES MOST RELEVANT TO RSLs



- Advancing social and public welfare
- Advancing Health
- Advancing the security or safety of Australia or the Australian Public
- Advancing Culture



BUT WHAT ABOUT THE FOLLOWING:

- Social or recreational?
- Patriotic Purposes?
- Fundraising or commercial 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



THE GOVERNANCE STANDARDS INCLUDE REQUIREMENTS THAT THE BOARD MEMBERS MUST



- Act with degree of care and diligence that a reasonable individual would exercise
- Act in good faith in the charities best interests
- Properly disclose (and manage) conflicts of interest
- Ensure that the financial affairs of the charity are properly managed.



MEMBER BENEFITS

- Charity must be established for the benefit of the public not for the benefit of member
- Any member benefits must be legitimately incidental
- What is the extent and nature of those benefits?
- How are they determined and managed?



BOARD REMUNERATION AND EXPENSES

- Pay must be authorised by Governing rules
- Pay must be in the best interests of the Charity
- How is it determined? Professional advice?
Comparable? Reasonable Nery?
- Expenses must be to reimburse actual costs legitimately incurred. Must be reasonable, authorised and properly acquitted

BOARD REINNERVATION AND EXPENSES CONTINUED



- Proper written policies and financial procedures.
- Acquitted and audited.
- Not open to abuse
- Conflicts of Interest – reported and managed



FINANCIAL DECISIONS - INVESTMENTS

- Board need to be clear are they applying funds in furtherance of purpose?
- If making an investment decision then this needs to be made prudently and professional advice taken and relied on if significant.
- Written decision and rationale what else was considered? Arms length?
- Conflicts of Interest
- Reputation

ACNC 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



RSL NSW ENFORCEABLE UNDERTAKING

- Entered into on 11th May 2018
- Enforceable by the Court
- Sets out action RSL NSW will take to comply with:
 - Governance Standard 5 – duties of directors
 - Governance Standard 1 – Not-for-profit
 - Operational Record Keeping



ENFORCEABLE UNDERTAKING CONTROLS

Governance

- Training and induction of state councillors
- Familiarity with ACNC guidance
- Continue to employ qualified executive management team

Conflicts of Interest

- Maintain Conflict of Interest policy, declarations and Conflicts register
- Maintain register of related party transactions

ENFORCEABLE UNDERTAKING CONTENTS (CONTINUED)



Transparency

- Externally managed whistle blower hotline
- Publish expenditure incurred by State Councillors
- Adopt a Code of Conduct and a range of Policies to cover such matters as fraud prevention, internal complaints handling and risk management



ENFORCEABLE UNDERTAKING CONTENTS (CONTINUED)

Financial Management

- Maintain significant contracts register
- Financial accounting systems that separately identifies funds from charitable fundraising appeals.



ENFORCEABLE UNDERTAKING ENFORCEABLE UNDERTAKING CONTENTS (CONTINUED)

- Expenses Policies and Procedures
 - Regulating to reimbursement or expenses incurred by State councillors and employees
 - Regulating use of credit cards
 - Require State councillors and employees to keep records of all expenses. In exceptional circumstances where no record, provide a statutory declaration
 - Ensure all expenses are properly reviewed and verified



DURATION OF THE ENFORCEABLE UNDERTAKING

- Maintain a financial delegations matrix
- 3 years
- First 12 months will be quarterly reports to the ACNC and annual reports for the remainder of the undertaking
- Copies of all policies, procedures and other evidence will be provided
- ACNC welcomes RSL NSW'S Committee to take remedial action to address the concerns
- Progress is being made but ACNC will closely monitor and review

SOME KEY LESSONS FROM ACNC INVESTIGATIONS



- Zero tolerance of corruption/cronyism required
- Skills based board is required
- All of the Charity's money must be applied in furtherance of its purposes.
- Conflicts of Interest poorly managed
- Poor financial procedures and controls
- Poor record keeping including financial decisions

SOME KEY LESSONS FROM ACNC INVESTIGATIONS (CONTINUED)



- ACNC Governance Standards and Fundraising Legislation must be complied with
- ACNC proposed action with sub branches
- Guidance on parameters of Charity and obligations
- Series of risk based and random audits
- Now is the opportunity to self audit and address issues
- Procedures and Controls and their effectiveness

ACNC'S APPROACH TO REGULATION



ANY QUESTIONS?



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