

THE 11TH ANNUAL CHARITIES & NOT FOR PROFITS CONFERENCE

Regulatory Risks and Rewards for Charities conducting For-Profit Activities

Public benefit vs Private benefit requirements of the Charities Act

Insights from the ACNC Commissioner

Heading them off at the Pass and other Strategies for Member Disputes

Priming your Board for success

Protecting Personal Information and Managing Privacy Risk

Legal Obligations for Charities and NFPs involved with Children

Rethinking Fundraising and Donation Strategies

A Taxing Time for Charities and NFPs

Accounting and Finance Update for Charities and NFPs

Developments in Employment Law for Charities and NFPs

Psycho-social Hazards in the Charities and NFP Sector

A Two-day Conference
Thursday 25 & Friday 26 May 2023

Melbourne Marriott Hotel

Feedback from last year's conference:

- “I get so much information and action points from this conference. It keeps me busy for at least a year till the next.”
- “The speakers were great and knowledgeable, the material was delivered in a very effective way: theory-practice-example.”
- “Lots of relevant content and opportunity to network with the sector face to face again.”
- “Well organised, relevant topics good papers and great presentations. Length of presentations was just right.”
- “I am new to the sector and the whole conference added to my knowledge and pointed me in new directions for learning.”
- “It covered off on all the hot topics we are currently addressing.”



Leaders in online CPD for Lawyers & Accountants

DAY 1 - THURSDAY 25 MAY 2023

**CHAIR DAY 1: MURRAY BAIRD,
PRINCIPAL MURRAY BAIRD
ADVISORY AND CONSULTANT
PROLEGIS LAWYERS, MELBOURNE**

**MORNING THEME: GOVERNANCE AND
REGULATION**

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: Branching Out: Regulatory Risks and Rewards for Charities conducting For-Profit Activities

The diversification of charities from their traditional operations into commercial or profitable activities which provide funds for their core work is now an accepted practice but does require careful planning and structuring to avoid non-compliance with the regulatory framework. This session will explore how charities can successfully navigate a move to for-profit activities without risking the ire of the regulators, including:

- Re-visiting the meaning of “charitable purpose”
- How can a for-profit activity be considered charitable?
- Checking the constitution for limitations
- The ACNC’s view of when and how a charity can undertake for-profit activities
- Structuring issues - is a separate entity necessary?
- Cases and examples including Commissioner of Taxation v Word Investments Limited [2008] HCA 55; Commissioner of Taxation v Hunger Project Australia [2014] FCAFC 69; YWCA Australia v Chief Commissioner of State Revenue [2020] NSWSC 1798

Speaker: Vera Visevic, Partner, Mills Oakley, Sydney

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: Public Enemy No.1? The Demonisation of Private Benefit in Charity Regulation

Public benefit is an essential requirement of a charity, but private benefit also has its place in charitable activities, as determined by the courts. Concern has been expressed that the distinction between the two is much more blurred in reality than as defined in legislation. This session will explore the public benefit v private benefit requirements of the Charities Act 2013 and provide a guide to charities grappling with this issue as they seek to remain compliant with the law, including:

- Revisiting the law on public benefit in the context of charitable status
- Who is the “public” and is there a numerical requirement?
- What constitutes a “private benefit”? Are there any exemptions?
- Can a charity ever provide a private benefit and maintain its charitable status?
- A discussion of “private benefits” that are allowed and relevant cases and examples
- Consequences of failing the “public benefit” requirement
- ACNC focus and activity in ascertaining compliance, including *Angel Loop Ltd v Commissioner of Australian Charities and Not-For-Profit Commission* [2021] AATA3894
- Recent academic and legal thinking on the “public benefit v private benefit” tension in the charity sector and potential for reforms

Speaker: Dr Matthew Turnour, Chairman, Newman & Turnour Lawyers, Brisbane

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

11.25am - 12.10pm

Session 3: Insights from the ACNC

The ACNC has now been established for 10 years. The ACNC remains committed to providing guidance and education to charities, as outlined in the ACNC’s Regulatory Approach Statement, while focusing on the integrity of the Charity Register. This session will provide an insight into the priorities of the ACNC, including:

- Reporting changes that impact charities
- The role of the ACNC in providing guidance to the charity sector and the public
- The Charities Report and the use of ACNC data
- The reviews of DGR-endorsed charities
- The Commission Review Program

Speaker: Anna Longley, ACNC Assistant Commissioner General Counsel

12.10 - 12.20pm Panel Comments and Questions

DAY 1 - THURSDAY 25 MAY 2023

12.20 - 1.05pm

Session 4: Heading them off at the Pass and other Strategies for Member Disputes

Disputes within organisations often start off small, but without careful handling can escalate into something much bigger that threatens the whole organisation and can leave it financially, emotionally and reputationally in tatters. This session provides a guide to effective internal conflict management and warns of what can happen if the bull isn't taken by the horns at an early stage, including:

- Governance standards for obligations to member
- Common areas of dispute and how to spot the red flags
- What good dispute resolution looks like
- Casting a critical eye over dispute resolution processes in:
 - constituent documents
 - policies and procedures
- Common mistakes and how to avoid them
- Alternative dispute resolution methods
- Involving the regulator and other authorities
- When can and should the matter be referred to the courts?
- Cases and examples including the *Moala v Free Wesleyan Church of Tonga in Australia (Vic) Inc* litigation
- Resources for effective dispute management

Speaker: Rebecca Lambert-Smith, Practice Leader, Moores, Melbourne

1.05 - 1.15pm Panel Comments and Questions

1.15 - 2.15pm Luncheon

AFTERNOON THEME: MANAGING RISKS

2.15 - 3.00pm

Session 5: Tone from the Top: Priming Your Board for Success

The right Board can make or break an organisation: from attracting and retaining staff, to weathering economic uncertainty and challenging times, an organisation's growth lies very much in developing and maintaining the right Board. This session will explore what steps NFPs and charities need to be taking to assess and improve their Board, and how the tone from the top can make or break an organisation, including:

- Is the Board comprised of the right people to make the right decisions?
- Does the Board need a makeover and what might that look like?
- Extent and scope of Board duties and responsibilities
- Understanding the ACNC governance standards and fiduciary obligation
- What are Board charters and why they are relevant to the charities and NFP sector?
- Role of Board committees and the independence factor
- Essential items for every Board meeting agenda
- Case studies

Speaker: Sonya Beyers, Director, Governance by Design, Brisbane

3.00 - 3.10pm Panel Comments and Questions

DAY 1 - THURSDAY 25 MAY 2023

3.10 - 3.55pm

Session 6: Protecting Personal Information and Managing Privacy Risk

Charities and NFPs collect and hold a significant amount of personal information, some of which is very sensitive. The legislative requirements for the collection and disclosure of personal information are complex, and the obligations on organisations have to keep information secure are increasingly onerous. This session provides an overview of the legal and practical issues in the management of personal information, including:

- The data protection obligations in the Privacy Act and how they apply to charities and NFPs
- What personal information can be requested and when?
- How should personal information be stored?
- What should be in your data breach policy and immediate steps to take following a breach
- Board duties and liability for information management and security

Speaker: Veronica Scott, Partner, KPMG Law, Melbourne

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

4.25 - 5.10pm

Session 7: Legal Obligations for Charities and NFPs Involved with Children

Activities with child participants are very common in charity and NFPs but bring into play a number of legal requirements and risks that organisations need to be aware of. This session will examine some of these and provide a guide to organisations on proactive policies and strategies they need to have in place to best protect children in their care, including:

- The application of federal and state child safety principles and obligations
- Implementing child safety and reporting requirements into the organisation
- What should be in child safety protection policies?
- Common law duties and workplace safety duty for child wellbeing and what it requires in practice: *SafeWork NSW v SNAP programs Limited and State of NSW [Department of Communities and Justice] [2021] NSWDC 259*
- Managing outsourced service providers and child safety risks
- What to do if your organisation receives an allegation of child abuse
- Personal and organisational liability issues
- An update on historical and current child abuse claims and cases.

Speaker: Jessica Lipsett, Director, Corney & Lind Lawyers, Brisbane

5.10 - 5.20pm Panel Comments and Questions

DAY 2 - FRIDAY 26 MAY 2023

**CHAIR DAY 2: MARK FOWLER,
PRINCIPAL, FOWLER CHARITY LAW,
SYDNEY**

MORNING THEME: FINANCIAL MANAGEMENT

9.00 - 9.05am

Introduction and welcome

9.05 - 9.50am

Session 8: The Race for the Dollar: Rethinking Fundraising and Donation Strategies

In challenging economic times fundraising becomes paramount, and charities and NFPs relying on more than government funds need to think outside the box. This session will examine some of the challenges to the traditional way of raising money and proactive changes that may be beneficial, including:

- The key challenges facing traditional fundraising methods
- The consequences of the expanding charity and NFP sector
- How have the expectations of donors changed?
- The impact of technology and social media on fundraising activity
- What skills does an organisation's fundraising team need to have?
- What works? Strategies for approaching donors
- Examples of alternative fundraising methods including impact investing, outcome-based projects and bonds
- A cold hard look at fund management and costs
- Tips for ensuring regulatory compliance in non-traditional fundraising activities

Speaker: Catherine Brooks, Senior Advisor, Wendy Brooks & Partners, Melbourne

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 9: A Taxing Time for Charities and NFPs

The not-for-profit sector is coming under increasing focus from the ATO. This session will examine some of the recent developments in taxation in the sector, including:

- ATO focus on the NFP sector - what is behind it?
- Application of the Division 50 exemption and proposed changes to self-assessment
- How will the reforms impact NFPs and what steps do organisations need to take now?
- Developments in DGR status and reforms
- Recent cases including *The Buddhist Society of Western Australia v Commissioner of Taxation* [No 2] [2021] FCA 136

Speaker: Jennifer Moltisanti, Assistant Commissioner Australian Taxation Office, Melbourne

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

11.15 - 12.00pm

Session 10: Accounting and Finance Update for Charities and NFPs

This session will provide a guide and update on proposals and reforms under regulatory changes and accounting standards to the financial obligations of NFPs and charities, including:

- Proposal to simplify accounting for tier 3 not-for-profit entities (nfps)
- ITC 50 & ITC 51
 - ITC 50 Post-implementation Review – Income of Not-for-Profit Entities considers the accounting for income of NFP entities set out in:
 - AASB 1058 Income of Not-for-Profit Entities
 - Appendix F of AASB 15 Revenue from Contracts with Customers
 - ITC 51 Post-implementation Review of Not-for-Profit Topics – Control, Structured Entities, Related Party Disclosures and Basis of Preparation of Special Purpose Financial Statements considers:
 - Appendix E of AASB 10 Consolidated Financial Statements
 - Appendix E of AASB 12 Disclosure of Interests in Other Entities
 - AASB 124 Related Party Disclosures by NFP public sector entities
 - AASB 1054 Australian Additional Disclosures requirements relating to special purpose financial statements
- Non-refundable upfront fees
- ACNC guidance – disclosing key management personnel remuneration and related party disclosures
- ACNC guidance – who is a related party?
- Peppercorn leases of private sector NFP lessees

Speaker: Dean Ardern, Director, IFRS & Corporate Reporting, BDO, Melbourne

12.00pm - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

DAY 2 - FRIDAY 26 MAY 2023

AFTERNOON THEME: WORKPLACE CHALLENGES

1.10 - 1.55pm

Session 11: Developments in Employment Law for Charities and NFPs

The new government took little time in commencing its proposed workplace reforms, which will significantly impact all employers to varying degrees including the charities and NFP sector. This session will examine some of the more significant changes and what organisations should be doing to plan for these, including:

- New industrial relations and enterprise bargaining processes - how will they affect your organisation?
- Labour hire reforms for outsourced arrangements
- Limitations on “rolling” fixed contract employment
- Changes to casual employment and the rights of casual employees in the charities and NFP sector
- Increased access to flexible working arrangements
- Future focus of the Fair Work Ombudsman impacting charities and NFPs

Speaker: Adam Foster, Partner, Colin Biggers & Paisley, Melbourne

1.55 - 2.05pm Panel Comments and Questions

2.05 - 2.50pm

Session 12: On the Inside: Psycho-social Hazards in the Charities and NFP Sector

Mental health concerns are on the rise generally, and the risks to workers in the charities and NFP sector are even more so as they are directly exposed in many instances to vulnerable people experiencing difficult circumstances. This session will examine what organisations need to be doing to look after the mental health and wellbeing of their own staff, including:

- Identifying and understanding the impacts of a mental health illness on individuals and their employers
- What do the WHS laws require of employers?
- Key steps in developing a risk-based approach to WHS in your organisation
- Establishing policies, procedures and training
- Disability discrimination and the treatment of employees with a mental health condition
- What are “reasonable adjustments” and how are they assessed?
- Strategies for balancing the rights of the individual with the impact on a workplace and colleagues
- Lessons from *Kozarov v State of Victoria* [2022] HCA 12 and other cases

Speaker: Luke Geary, Partner, Mills Oakley, Brisbane

2.50 - 3.00pm Panel Comments and Questions

3.00pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference, conference materials, refreshment breaks and lunch on both conference days.

Conference Materials

TEN will not provide printed copies of the conference materials. Access to the papers and/or Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

CPD

Lawyers (except WA): 11 CPD units (substantive law).

WA Lawyers: 6 CPD points (substantive law) - being the maximum claimable per event by the LPBWA. TEN is an accredited QA provider.

CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

The Conference Venue

Melbourne Marriott Hotel

Corner Exhibition & Lonsdale Streets, Melbourne

Delegate Accommodation – Marriott Melbourne

The Marriott is offering conference delegates 10% off the best available rate at the time of booking, subject to availability. Please contact the Marriott reservations department directly to book and tell them that you are attending the TEN conference.

Phone: 03 9660 1128

reservations.melbourne@marriotthotels.com

Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

Conference Dress

Smart casual attire is suitable (note: the temperature in the conference rooms can vary depending on where you are sitting. Short sleeves are generally OK, but it is advisable that you bring a jacket/long sleeved top just in case you need it).

TERMS AND CONDITIONS

1. In these terms,
 - a. "TEN" means Television Education Network Pty Ltd
 - b. "you" means the person who has registered to attend or the person or persons who attend[s] the conference (if different from the person registered)
 - c. "conference" means the live face to face or live or recorded online educational event or which you have registered (by whatever name called and includes conferences, masterclasses, webinars and webinar series).
 - d. "live conference" means a conference other than a recorded conference.
 - e. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
 - f. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
 - g. "face to face" in relation to a conference means a conference held in an external venue where you view the conference in the conference room

General – all conferences

2. TEN may change the program for a live conference as described in the brochure you have downloaded or in the TEN website without notice to you in any manner and at any time.
3. The information and opinions of presenters at the conference are not necessarily those of TEN and are in the nature of general information and not professional advice and you rely on these at their own risk. TEN is not responsible for the accuracy of the information or the correctness of the opinions offered by presenters at the conference.
4. TEN is not responsible for any financial or other losses incurred by you or for injury or damage to persons or property which occur at or in connection with the conference.

Conversion of face to face conferences to live online conferences

5. If the conference is being held face to face or face to face AND online, TEN reserves the right to convert the conference on no less than 24 hours' notice to a solely online conference or to cancel the conference or to postpone the conference to a later date if TEN determines that it is unable to hold the conference face to face on the date/s advertised for any one or more of the following reasons:
 - a. State or national border closures
 - b. Restrictions on movement of persons imposed on persons by any responsible authority in Australia
 - c. The inability or refusal of one or more presenters or TEN team members to attend the conference to present
 - d. In its opinion, it is unsafe to hold the conference face to face for any reason.
6. If TEN converts the conference from face to face only or to face to face and online to online only or postpones the conference or cancels the conference, TEN will not be responsible for any loss or damage you suffer as a result including any travel costs relating to the conference.
7. If TEN converts the conference from face to face to online or postpones the conference and as a result you are not able to attend you will be entitled to a full refund of registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.

Copyright

8. The copyright in materials prepared by presenters at a conference and made available to you by TEN is and remains the property of each presenter.
9. You are entitled to use those materials for private study and research only.
10. The copyright in the live stream and in any recording of a conference offered online is the property of TEN.
11. You are entitled to watch a conference for private study and research only.

Conference cancellation by TEN – all conferences

12. TEN reserves the right to cancel a conference for any reason.
13. If TEN cancels the conference, you will be entitled either to a refund of the registration fee you have paid or to a credit equal to that fee which you can use to purchase another TEN product within 12 months of the first day of the cancelled conference.

Cancellation by You – all conferences

14. Refunds for registration cancellation by you other than under Clause 6(b):
 - a. If notice of cancellation is actually received by TEN more than 10 days before the first day on which the conference is to be held, 85% of the registration fee you have paid
 - b. Otherwise, no refund.

Governing Law – all conferences

15. The agreement between TEN and you is governed by the laws in force in the State of Victoria and the courts and tribunals of that State have sole jurisdiction to determine disputes arising in relation to it.

