Nexia Australia

Not-for-Profit Newsletter

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Welcome to the latest edition of our Not-for-Profit Newsletter. Please feel free to contact us if you have any questions about the content of this Newsletter.

In this edition

With the 2022-23 reporting season for charities continuing, we a reminder about the required reporting of related-party transactions and note that the ACNC will be enhancing the monitoring of disclosures. This edition also covers other ACNC activities, several compliance related matters, and information for some types of Deductible Gift Recipients.

Governance

NFPs all at sea over cyber threats

One in five Australian charities and not-for-profits fear that a cyber-security attack would devastate their organisation, according to the *Australian Nonprofits State of the Sector 2023 Report* by the Charity Research Centre Australia.

The report surveyed 830 organisations registered with the Australian Charities and Not-for-profits Commission on issues ranging from the impact of COVID on fundraising to their level of digital competency and cyber-security training and capabilities.

It also revealed that 8 per cent of survey participants admitted that they had been affected by a cyber-security incident in the past 12 months.

Key findings are:

- More than 80 per cent of survey participants admitted to having had no recent cyber-security training and 88 per cent said they had devoted none of their budget to protecting themselves against cyber threats
- 57 per cent categorised their organisation's digital competency as 'average' while 31 per cent acknowledged that it needed to be improved
- Two out of three NFPs reported a drop in funds raised in FY2022–23 compared with FY2021–22
- Half of the NFPs surveyed said COVID had damaged their fundraising efforts
- Just one in three NFPs said they were compliant with data-privacy regulations, and
- 92 per cent said they did not want to accept cryptocurrency donations.

Criminals hack telemarketer's data

Pareto Phone, a Brisbane-based telemarketing company that contacts potential donors on behalf of charities, has been hacked by cybercriminals. An estimated 70 Australian and New Zealand charities might be affected.

Pareto Phone has made no public statements nor have relevant regulators. Some of those affected have made public statements.

CPA's guide for NFPs updated

CPA Australia's *Financial Management and Governance Guide for Not-for-Profit (NFP) Organisations* aims to improve financial sustainability and good governance in the NFP sector.

Given the broad range of NFPs and the various skills of those who govern, manage, work within, and consult to the sector, the guide aims to be general and non-technical.

Its focus is the most common and challenging topics of financial management and governance.

It covers:

- Financial risk management
- Policies, procedures, controls, and systems
- Accounting systems and cyber-security
- Operations

- External compliance, and
- Tax and payroll-related obligations (compliance).

Appendices cover ratios and checklists relevant to all NFPs and those that trade in goods and services.

The guide does not seek to address management and governance considerations outside financial matters. NFPs are encouraged to seek professional advice relevant to their specific situation.

Differences between an audit and review

The Auditing and Assurance Standards Board has issued *What not-for-profit entities need to know about the differences between an audit or review*, as part of its series targeted at NFPs.

The bulletin aims to help NFPs better understand the differences between an audit and a review and to help them to decide which might be more appropriate considering their regulatory and legal framework.

AICD to update its *Principles*

The Australian Institute of Company Directors is reviewing its *Not-for Profit Governance Principles*, which is a key source of publicly available guidance for those involved in NFP governance.

The guide was first published in 2013, an updated and expanded document released in 2019.

The review will examine developments in Australian governance practices and emerging issues (for example climate change and cyber-security), reflect changes in regulatory obligations (reforms arising from aged-care and disability royal commissions) and community expectations applying to NFP organisations and directors.

The AICD aims to release the update in the first quarter of 2024.

Compliance

Southern Cross Care back-pays staff $6.9m

Tasmania's biggest aged-care operator, Southern Cross Care (Tasmania) Inc is back-paying staff almost $6.9 million and has signed an enforceable undertaking with the Fair Work Ombudsman.

The not-for-profit organisation, which operates aged-care facilities and offers home and community-care services, self-reported its breaches to the FWO in August 2021 after identifying them during an internal review.

SCC conducted the review after identifying fundamental errors in its payroll and human-resources systems.

The errors included failing to have agreements in place with part-time staff to work additional hours at ordinary rates of pay. This meant that employees were entitled to – but not paid for – overtime for additional hours.

The NFP also failed to recognise that shift-workers without written agreements were entitled to be paid from the start of their first shift to the end of their final shift each day, rather than just the hours worked during the separate shifts.

Underpayments occurred between 2015 and 2022. The underpayments were made under the Social, Community, Home Care and Disability Services Industry Award 2010 and applicable enterprise agreements.

Most underpaid employees were part-time aged-care workers, nurses, and community-care workers who performed shift work, although full-time and casual employees were also affected. Some cleaners, laundry, and maintenance staff were also underpaid.

SCC is back-paying 1708 current and former employees a total of $6.87 million, including $5,806,756 in wages and entitlements, and $313,591 in superannuation, and $754,181 in interest.

Individual back-payments range from less than $1 to more than $220,000. Six workers were underpaid more than $100,000. The average back-payment was just over $4000.

FWO Anna Booth said an EU was appropriate as the employer had cooperated with the FWO's investigation and demonstrated a strong commitment to rectifying underpayments.

'Under the enforceable undertaking, Southern Cross Care (Tasmania) has committed to implementing stringent measures to ensure all its workers are paid correctly. These measures include commissioning, at its own cost, three annual independent audits to check its compliance with workplace laws,' Ms Booth said.

'This matter demonstrates how important it is for employers to place a high priority on their workplace obligations. Fundamental errors – including failing to ensure that written agreements with part-time employees were in place – were left unchecked, which led to long-term breaches and a substantial back-payment bill.

'We expect all employers to invest the time and resources to ensure they are meeting all lawful entitlements.'

The EU also requires Southern Cross Care (Tasmania) to provide FWO with evidence of systems and processes it has put in place to ensure future compliance, commission workplace relations training for human resources, payroll, and rostering staff, write to underpaid employees to notify them of the commencement of the EU, and display workplace notices detailing its contraventions.

While overtime entitlements accounted for most total underpayments, employees were also underpaid wages for ordinary hours, penalty rates for weekend and public-holiday work, meal breaks, shift penalties and allowances, including sleepover allowances.

Apollo Health back-pays $4.9m

Health-care provider Apollo Health Limited has back-paid staff more than $4.86 million, including interest and superannuation, and signed an enforceable undertaking with the FWO.

The not-for-profit charity owned by St John Ambulance Western Australia Limited since 2016, self-reported to the regulator in

November 2021 after discovering underpayments during a self-initiated review.

Underpayments were caused by payroll issues that failed to be identified by St John WA when it acquired Apollo Health in 2016. There were also failures to correctly apply some provisions of relevant awards, and time recording was found to be inadequate or incomplete.

As a result, between July 2013 and July 2021, Apollo Health underpaid 446 current and former employees about $3.8 million, excluding superannuation and interest.

Employees were underpaid their minimum rates, overtime, penalty rates, allowances, annual leave, and annual-leave loading owed under awards, national employment standards and the Fair Work Act.

Acting Fair Work Ombudsman Kristen Hannah said an EU was appropriate as Apollo Health had cooperated with the FWO's investigation and demonstrated a strong commitment to rectifying underpayments.

'Under the enforceable undertaking, Apollo Health has committed to implementing stringent measures to ensure all of its workers are paid correctly. These measures include commissioning, at its own cost, an independent audit to check its compliance with workplace laws next year', Ms Hannah said.

'This matter demonstrates how important it is for employers to place a high priority on their workplace obligations, to ensure that their systems provide for full compliance with all entitlements. Shortcomings in Apollo Health's payroll system and broader compliance were left unchecked, which led to hard-working employees missing out on their money.

'We expect all employers to invest the time and resources to regularly review whether they are meeting all lawful entitlements and to remedy any issues.'

The EU also requires Apollo Health to write to underpaid employees to inform them about the EU, publish a notice in a newspaper about its contraventions, establish a telephone hotline and a dedicated email for employees who worked during the relevant period so that they may make enquiries.

University faces court over record-keeping

The FWO has begun legal action against the University of New South Wales, alleging that it breached laws on record-keeping, pay slips, and the frequency of wage payments.

It is alleged that for more than four years from March 2018, certain record-keeping contraventions were serious under the Fair Work Act, which have a ten-fold increase in maximum penalties.

The Federal Circuit and Family Court have heard that the breaches were part of record-keeping practices so inadequate that they made it difficult to identify whether employees had been underpaid.

The FWO started investigating UNSW in 2020 after the university self-reported non-compliance.

The ombudsman alleges that UNSW breached the Fair Work Act between 2017 and 2022 by failing to:

- Make and keep records of hours, rates of pay and details of loadings and other entitlements owed to casual academic employees
- Include lawfully required information in pay slips, such as basic information relating to pay rates and casual loading, and
- Pay staff wages at least monthly for all hours worked. It is alleged that UNSW staff were often unlawfully paid certain parts of their entitlements several weeks or even months after they performed the work.

The litigation focuses on a sample of 66 allegedly affected casual academic staff in UNSW's Business School, based at Kensington in Sydney.

FWO alleges that UNSW committed some of the contraventions despite several school staff having previously been made aware that UNSW's record-keeping was inadequate, and it needed to take action to address non-compliance.

The ombudsman alleges that from March 2018 some of UNSW's alleged breaches were committed knowingly and as part of a systematic pattern of conduct. They met the definition of 'serious contravention'' under the Fair Work Act.

Fair Work Ombudsman Anna Booth said the nature and extent of UNSW's alleged contraventions meant that litigation was the appropriate response.

'UNSW is providing the FWO with regular updates on its publicly announced extensive back-payment program, but we allege that because of its contraventions, we have not been able to properly verify the university's self-reported underpayments', Ms Booth said.

'Record-keeping is a crucial part of compliance with workplace laws, and this litigation and the penalties we will seek are a warning to all employers to prioritise getting records right.

'It is completely unacceptable for an employer's record-keeping practices to be so poor that they prevent us from assessing what hours its employees have worked and whether it has paid [them] their full lawful entitlements.'

The move against UNSW is the latest of several against universities. Ms Booth said that addressing systematic non-compliance by universities continues to be an FWO focus.

'We are committed to driving cultural change in the university sector. Universities need to place a much higher priority on investing in governance, human resources, and payroll functions to ensure they comply with workplace laws', she said.

Penalties for the alleged UNSW contraventions are up to $66,600 a contravention and up to $666,000 for serious contraventions.

The FWO is also taking court action against the University of Melbourne.

University faces court over record-keeping

The FWO has recovered $509 million in unpaid wages and entitlements for more than a quarter of a million workers in 2022-23. The sum is the second-largest annual figure in the regulator's history.

'The recovery of $509 million in the last financial year is a great result for the workers who have been backpaid their withheld wages, and also for the businesses that pay correctly and are no longer at a disadvantage as a result', acting FWO Kristen Hannah said.

'The latest recoveries mean [that FWO] has seen more than $1 billion recovered for workers across Australia in the last two years alone.'

More than half of the 2022-23 recoveries – $317 million – came from large corporate and university employers.

'These results occur after the consistent work that our agency has done to create an environment that expects large corporates to prioritise compliance and to report to us when they have got it wrong', Ms Hannah said.

'The Fair Work Ombudsman is continuing to use all the powers available to us to enforce compliance, especially where breaches impact vulnerable workers.'

FWO recovers half a billion dollars for workers

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ACNC Activities

ACNC releases AIS findings

The ACNC has released findings from 250 annual information and financial statements submitted for the 2021 reporting period.

Improvements compared with the previous year were:

- 79 per cent of financial statements reviewed correctly identified the ACNC Act as the relevant reporting framework, an increase of 8 per cent compared with the previous year
- 86 per cent of auditor's or reviewer's reports made the required reference to the ACNC Act compared with 79 per cent in 2020 and 70 per cent in 2019
- 97 per cent of charities attached a responsible persons' declaration with their financial statements, a percentage that mirrored 2020 levels
- 74 per cent of 2021 AFRs reviewed contained a complete set of financial statements, an improvement from 66 per cent in 2020, and
- 91 per cent of responsible persons' declarations attached to AFRs in the 2021 reporting year were correctly signed and dated, compared with 89 per cent in 2020. Of these attachments, 81 per cent of charities mentioned compliance with the ACNC Act, reflecting a significant improvement from 66 per cent in 2020.

In the 2021 review, fewer than 1 per cent of responsible persons' declarations failed to contain the solvency declaration – an improvement on the 2020 figure of 5 per cent.

Observations over the years:

- The accuracy of the type of financial report selected in annual information statements has continued to decrease. Only 57 per cent of charities correctly selected the type of AFR in 2021, down from 65 per cent in 2020
- In 2021 AISs, 97 per cent of charities correctly identified whether they had provided a consolidated financial report for several entities, a slight drop from 98 per cent in the previous year
- 15 per cent of charities incorrectly reported expenses using a mixture of nature and function in 2021, compared with 23 per cent in 2020 and 16 per cent in 2019
- Like the figures in last year's reviews, only a small number of charities provided incorrect financial information in AISs from their AFRs. In 2021 the biggest errors were for 'revenue from government' and 'employee expenses', which were both incorrectly transposed from AFRs to AISs in 4 per cent of reviews completed
- In the 2021 reporting year, 98 per cent of charities attached an auditor's or reviewer's report, compared with 91 per cent in the previous year. The figure represents the strongest result since the AFR-review process began. Of the reports, 94 per cent were signed and dated, and 89 per cent complied with new auditing standards, both slightly lower results than 2020
- Most of the common disclosure issues identified in 2020 were also present in the 2021 review, including insufficient or no disclosure about whether the charity was a for-profit or not-for-profit for financial-reporting purposes, the accounting estimates and judgements management had made in the application of a charity's accounting policies, and the fees paid to auditors/reviewers, and
- 10 per cent of audit reports contained a modified opinion. Of these, 54 per cent did not accurately report the modification in their AIS.

New observations:

- Of the charities required to disclose related-party transactions, only 3 per cent failed to do so. However, disclosure of key management personnel compensation was not provided in 14 per cent of the applicable charities' general-purpose financial statements
- 5 per cent of charities prepared GPFSs – simplified disclosure requirements, adopting AASB 1060 *General Purpose Financial*

Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities before it replaced the *General Purpose Financial Statements – Reduced Disclosure Requirements* framework for reporting periods from 1 July 2021, and

- Audit reports were provided in a greater number of AFRs examined (98 per cent), indicating a trend away from review reports.

Charities must disclose their related-party dealings

New questions in the recently launched 2023 AIS require charities to disclose their dealings with related parties.

For reporting purposes, an RPT is defined as a transfer of resources, services, or obligations among related parties. It does not have to include financial payment.

RPT reporting is designed to ensure that charities have good governance, and their interests and funds are protected. Related parties, including key management personnel, should not receive significant private benefits from charities.

Charities can manage the risk by recording related-party transactions and having clear conflict-of-interest policies and procedures. A RPT register would also help, the commission advises.

A reportable RPT may include:

- Fees paid to a related party for providing goods or services to the charity
- Loans from/to a related party
- Salary/wages paid to a related party's relative(s)
- Transfer of charity property or assets to a related party
- Charity goods or services provided at a discount to a related party
- Significant use of charity property by a related party, and
- Investment in a related party.

The 2023 AIS HUB on the ACNC website has guidance on the information that should be provided, based on a charity's size.

ACNC to focus on related parties

The ACNC has announced that it will enhance monitoring of related-party transactions and key management-personnel disclosures.

Reporting of these elements is set to become mandatory in AISs from 2022 (key management personnel) and 2023 (related-party transactions).

The commission intends to update its reporting guidance, including an AFR checklist to help charities meet their reporting obligations, particularly new key-management-personnel remuneration and related-party transaction reporting requirements, which apply from the 2022 and 2023 AISs respectively.

Government opens feedback on ACNC disclosures

The federal government has opened public consultations on proposed amendments to secrecy provisions that limit the ACNC's ability to disclose publicly its investigations.

An exposure draft amends the *Australian Charities and Not-for-profits Commission Act 2012* to allow the commission to disclose whether it is investigating alleged misconduct by a charity, subject to a public-harm test.

The test is intended to balance the benefits of enhanced transparency with potential reputational risks to charities and the need to ensure personal and confidential information is handled appropriately

Updated PBI interpretation

The commission has published an updated interpretation on public benevolent institutions following extensive consultation with the sector and its advisers.

The interpretation explains the ACNC's definition of PBIs and how it applies to applications for registration with that particular charity subtype.

The updated statement also considers the recent decision by the Administrative Appeals Tribunal about Equality Australia Ltd's PBI status.

The updated statement came into force from 31 August.

150 charities risk losing their registrations

More than 150 charities are at risk of losing their registrations because they failed to submit two or more annual information statements.

The ACNC has issued a public notice as it has been unable to contact the charities. The charities had until 11 October to submit overdue AISs before registrations are revoked.

ACNC acting assistant commissioner general counsel Natasha Sekulic said that those who run charities must ensure that their organisations comply with obligations to retain registration.

'Unfortunately, these charities have not met obligations for some time', Ms Sekulic said.

'Annual information statements must be submitted by all charities. While we understand many of these organisations have either wound up or merged, it is a requirement that they let us know.

'Good governance and accountability are critical for the public confidence in the sector. One important way we support that is to ensure data on the charity register is accurate. We urge all charities to keep their reporting up to date to avoid having their registration revoked, losing charity tax concessions and the need to re-register if they are still operating.'

Record-keeping checklist

The ACNC has released a record-keeping checklist to promote good record-keeping practice and to support charities in meeting their ACNC obligations.

Topic	Question
Keep financial and operational records	• A policy about record-keeping that includes which records it keeps, how they are kept securely, and who is responsible for doing so? • Records that show all of its financial transactions? • Records that show charity activities?
Keep records in English, or in a form that can be easily translated into English	Can your charity quickly translate its records into English if needed?
Have a system or process for record-keeping	Does your charity have: • A specific role encompassing responsibility for record-keeping? • Staff, volunteers, or board members who have had training on the record-keeping system and process? • A procedure that describes how records (for example, written, print-outs or electronic) are kept and secured, as well as who is responsible for record-keeping?
Keep records in a way that is readily accessible	Does your charity have a record-keeping: • Policy that describes where its records are kept and who is responsible for them? • Procedure that describes its filing system and how it is maintained?
Secure any sensitive records	Does your charity have a record-keeping policy that describes how sensitive records are kept securely, as well as who is authorised to access those records?

Topic	Question
Back up any electronic records	Does your charity: • Keep a back-up of records at a secure site located separately from its computers? • Ensure its cloud-based systems and records are secure and backed up? • Print out only the records it needs to?
Retain and organise paper records	Does your charity: • Ensure paper copies of important electronic records are retained when appropriate? • Organise paper records into files, boxes, folders, or envelopes? • Separate different paper records into categories (bank statements, communication, bills, receipts)? • Separate paper records by reporting periods (financial years)?
Keep all records for seven years	Does your charity have: • A record-keeping policy that includes the requirement to keep all records for seven years? • Enough storage space (including electronic storage) to keep records for seven years?
Report to other regulatory bodies that have their own record-keeping requirements	Has your charity ensured its: • Record-keeping policy complies with state and commonwealth legislation, statutory contracts, and accreditation requirements? • Board receives at least an annual update of whether it is meeting record-keeping requirements?

NDIS

Adelaide men accused of NDIS fraud

Two men accused of defrauding National Disability Insurance Scheme participants have been banned from delivering NDIS services and are facing court.

From Adelaide, the men are accused of knowingly submitting false claims from NDIS participants' plans despite not having delivered supports. It is alleged the pair made false claims totalling more than $465,000.

One man was arrested and later charged with 19 fraud-related offences following a Fraud Fusion Taskforce operation, which focused on an Adelaide-based disability provider. The second man is expected to be summoned by Adelaide magistrates.

The NDIS Quality and Safeguards Commission has issued banning orders against two companies and the alleged offenders linked to the provider, preventing them from being able to deliver NDIS services.

The accusations follow the sentencing of a man in northern Queensland for fraud offences against the NDIS. The man was sentenced to two years' prison after pleading guilty to dishonestly obtaining a gain.

Fraud-related referrals continue to increase, recent data showing that the National Disability Insurance Agency received 5540 tip-offs in a quarter compared with 2519 for the same period a year earlier.

'The National Disability Insurance Agency continues to assess every tip-off it receives and will investigate if there's any indication someone is looking to skim money from the people for whom it is intended', said NDIS minister Bill Shorten.

Mr Shorten last year vowed to crack down on crooks ripping off the NDIS through fake and vastly inflated invoices.

He said that an estimated $6billion is being pocketed by crooks dipping into the $30billion program.

Woman charged over $2m NDIS rip-off

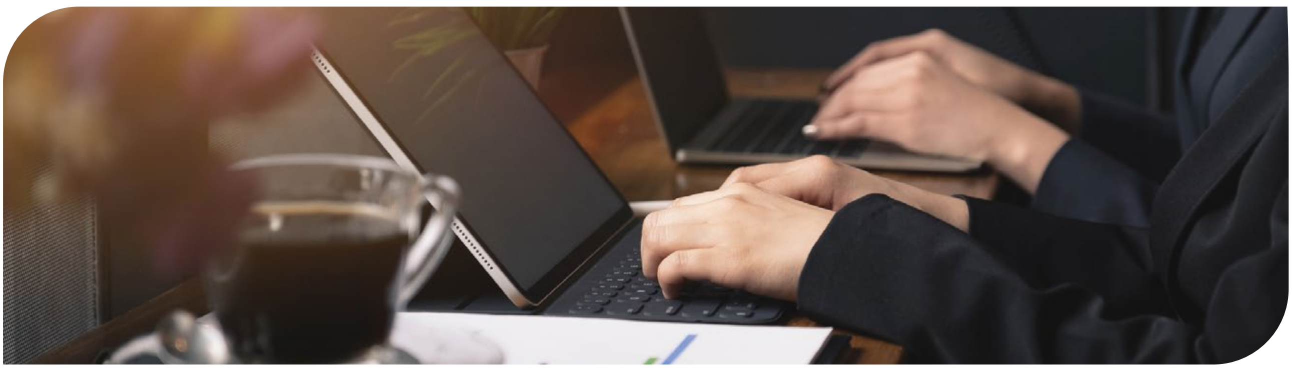
Ebtesam Fahmy has been accused of running a $2m National Disability Insurance Scheme fraud ring while director of four Western Sydney service providers.

Police allege that she came to the attention of the NDIS's fraud task force in May after 15 'tip-offs' that included reports of collusion with participants who received kickbacks.

Operation Ivy was set up to investigate four companies under her control, resulting in recent raids across western Sydney. Mobile phones, computers, banking documents, and boxes of paperwork were seized.

The companies, and Fahmy, are subject to an intention to make banning orders.

Ms Fahmy's case will return to Liverpool Local Court later this year.



Fraud against NDIS participants

Andreas Strepelias has admitted that he dishonestly obtained more than $191,000 from NDIS frauds committed over a months-long period in 2018.

His company, Quality Home Improvements, was approved in 2017 to provide services to NDIS participants. Between May 23 and July 24 of 2018, Mr Strepelias created false requests for payments for services he purportedly provided for 50 NDIS participants. He was paid $191,159.71.

Mr Strepelias's victims had between $987.50 and $3675.50 claimed against their packages.

One victim had to reduce her support hours because of insufficient funds in her account as a result of Mr Strepelias's claim. Another recipient had been due to attend a YMCA camp, funded by her NDIS package, but was unable to because of Mr Strepelias's claim.

Judge Trevor Wraight said that unlike a fraud against Medicare, in which the sole victim is the commonwealth, a fraud against the NDIS affects individuals and their plans.

'These people had to work out what's wrong with their package, why is it going down in number and (they're) not getting the services', he said.

'It's the greatest fear, when you look at your bank account and someone has taken money out of it.

'I think we're going to see a lot more of these cases in the next year or so.'

Mr Strepelias will be sentenced shortly.

Aged Care Sector

Feedback invited on aged-care act

The Department of Health and Aged Care has released a consultation paper seeking feedback on the proposed foundations of a new Aged Care Act. Feedback will inform the final draft legislation, which will be released at the end of the year for public consultation.

The recent royal commission found that the current *Aged Care Act 1997* was no longer fit for purpose.

The new act will:

- Outline the rights of older Australians who are seeking and accessing aged care services
- Create a single-system entry point, with clear eligibility requirements
- Incorporate a fair, culturally safe single-assessment framework
- Support the delivery of a range of aged-care services, including new in-home care services
- Establish new system oversight-and-accountability arrangements, and
- Introduce a new approach to regulating aged care to increase provider accountability and encourage delivery of high-quality and safe aged-care services. The new approach will also strengthen enforcement powers of the aged-care regulator.

The government plans to introduce the new act from 1 July next year, subject to parliamentary passage.

Further consultations will be available on the department's aged-care engagement hub.

Aged-care finances reported

The aged-care department has released *Financial Report on the Australian Aged Care Sector 2021–22*.

It analyses the financial performance of the sector, including home care, residential care, the *Commonwealth Home Support Programme*, and future demand for aged care.

The report uses data submitted annually by aged-care providers such as income, expenses, cash-flow statements, and assessments.

The data shows how much is spent on care, nursing, food, maintenance, cleaning, administration, and profits The report provides an insight into the financial performance of the aged care sector, including identifying industry trends.

Deductible-Gift Recipients

Community foundations to profit by new DGR status

Proposed amendments to a draft bill are aimed at establishing a new class of deductible-gift recipients for up to 28 organisations affiliated with Community Foundations Australia.

Four DGR categories transferred to the ATO

Four deductible-gift-recipient categories have been transferred from government departments to the Australian Taxation Office.

The change comes into effect from 1 January for environmental organisations, harm-prevention charities, cultural organisations, and overseas-aid organisations and funds.

The amendments make all DGR categories consistent in administration and will reduce regulatory burden by streamlining applications for new DGRs and aligning reporting requirements with other categories.

The ATO is working with government departments to develop a smooth transition for DGRs already endorsed under one of the four categories. Over the next six months guidance will be released to support the sector through the transition.

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