

DUTY TO NOTIFY THE ACNC

Apprenticeships
R US



Honesty, Integrity & Accountability

SUITE 401 LEVEL 4, 1
WENTWORTH STREET
PARRAMATTA NSW 2150
(02) 9891 6900

LEVEL 3, 10/10
NORTHUMBERLAND ST
SOUTH MELBOURNE VIC 3205
(03) 9898 2887

UNIT 4, 38 TENNYSON
MEMORIAL AVENUE
YEERONGPILLY QLD 4001



www.apprus.com.au



(02) 9891 6900

Apprenticeships Are Us Ltd is committed to meeting its ongoing compliance with the ACNC and the *Australian Charities and Not-for-profits Commission Act 2012 (Cth) (ACNC Act)*. As part of that commitment this Policy Statement sets out Apprenticeships Are Us Ltd.'s obligation to notify the ACNC of certain matters, including changes to their details or matters that may affect their entitlement to registration under the ACNC Act.

DUTY TO NOTIFY

Record keeping

Under section 65-5 of the *Australian Charities and Not-for-profits Commission Act 2012 (Cth) (ACNC Act)*, Apprenticeships Are Us Ltd, through its Responsible Persons or Authorise Persons, must notify the Commissioner in the approved form of changes to:

- a) its name;
- b) its Address for Service;
- c) its Responsible People; and
- d) its governing rules.

Significant contravention or non-compliance

Apprenticeships Are Us Ltd must also notify the ACNC if it has contravened a provision of the ACNC Act or not complied with the governance or external conduct standards if the contravention or non-compliance is **both**:

- significant (see below); and
- may impact its entitlement to registration as a charity.

A contravention occurs if the requirements of the ACNC Act or regulations have been breached.

Non-compliance occurs where the charity has not complied with an ACNC governance standard or external conduct standard.

In determining the significance of a contravention or non-compliance, the charity should consider:

- the nature, significance and persistence of any contravention or non-compliance; and
- the desirability of ensuring that contributions to the charity are applied consistently with the not-for-profit nature, and the purpose of the charity.

The Commissioner may take regulatory action, which may include revocation of charity registration, in response to any significant non-compliance they are notified of.

Timeframe to notify

The timeframe within which a registered charity must notify the ACNC of certain matters varies depending on its size: small, medium, or large. The charity's size is based on its revenue for the reporting period (*section 205-25 of the ACNC Act*). A large charity is classified as a charity with annual revenue of \$3 million or more.

Apprenticeships Are Us Ltd falls under the category of a large charity and is therefore required to notify the ACNC of any of the above changes as soon as practicable and within 28 days after the charity becomes aware of the change.

As the matters at a) to d) above are within the control of the Board, the changes must be notified to the ACNC within 28 days of the change.

In the case of a significant contravention or non-compliance as described above, all charities must notify the ACNC as soon as practicable and no later than 28 days after they first become aware of the issue.

In these circumstances, the timeframe will commence as soon as the contravention or non-compliance is brought to the attention of the Board. The Board must properly investigate and consider the contravention or non-compliance, and where appropriate, to take legal advice, to form a view as to whether the nature of the contravention or non-compliance is required to be reported to the ACNC on the basis that it meets the dual limbs of:

- a) breaching the ACNC Act or non-compliance with the ACNC governance standards in a significant way, and
- b) as a result of a) above, is no longer entitled to be registered as a charity or registered under a specific charity subtype.

Where the Board requires further information to properly form a view on any notifiable breach or non-compliance, the Board must take immediate steps to investigate the nature and extent of the potential breach or non-compliance.

NOTIFYING OF CHANGES OR SIGNIFICANT CONTRAVENTIONS OR NON-COMPLIANCE

Charities should use the appropriate ACNC form to notify the ACNC of changes to certain matters and of significant contraventions or non-compliance. The forms approved by the Commissioner for these purposes are:

- **Form 3A:** Change of Responsible Person.
- **Form 3B:** Change of charity details.
- **Form 3C:** Notify contravention or non-compliance.

The ACNC also allows charities such as Apprenticeships Are Us Ltd to advise the ACNC of some changes to their details as part of completion of the Annual Information Statement. However, because the Annual Information Statement is only submitted annually notification by this method may not meet the time limits set out above.

The ACNC Commissioner also has the power to defer the due date for an approved form to be lodged under *section 190-15 of the ACNC Act*. In exercising this power, the Commissioner must have regard to the matters listed in *section 15-10 of the ACNC Act*. The Commissioner will exercise this discretion if it is fair and reasonable or there is a genuine need to do so, considering the charity's individual circumstances. This discretion will be exercised in line with the ACNC's regulatory approach.

Should Apprenticeships Are Us Ltd be late in notifying the ACNC, Apprenticeships Are Us Ltd must also make submissions to the ACNC as to why the ACNC Commissioner should exercise the discretion to defer the due date for lodgement of the approved form.

FAILURE TO NOTIFY

Failure to notify the ACNC of the required matters is a breach of the ACNC Act and may result in further compliance action being taken. In some circumstances, failing to notify the ACNC of required matters may be grounds for the ACNC to revoke the registration of a charity. Secondly, a charity's willingness to disclose its non-compliance to the Commissioner may be considered a relevant factor by the Commissioner when determining what a proportionate regulatory response is, as it may demonstrate that the charity is prepared to work with the ACNC to remedy the non-compliance.

Where a charity is required to notify the ACNC in the approved form but fails to do so within the timeframe, it is liable to pay an administrative penalty for failing to lodge documents on time. Penalties become due for payment once the Commissioner has given written notice of the charity's liability to pay the penalty.

For large charities, the minimum penalty (where the notification is less than 28 days overdue), is \$1,100 and the maximum penalty (where the notification is more than 112 days overdue) is \$5,500.

ACKNOWLEDGEMENT BY BOARD MEMBERS, MANAGEMENT, STAFF, AND VOLUNTEERS

The responsibility to notify the ACNC is with the Board, comprising the Responsible Persons, or where the Board has instructed its Authorised Person, the Authorised Person.

The Authorised Person must be properly appointed as an authorised person by the Board and be authorised to declare and sign documents for the charity or on the charity's behalf. The Authorised Person must be added to the charity via the ACNC Charity Portal.

Whilst the responsibility to notify the ACNC rests with the charity (via its Board), Apprenticeships Are Us Ltd recognises that the risk of a breach or non-compliance with the ACNC Act and regulations is managed where:

- persons involved in the organisational at all levels, including Board members, management executives, staff and volunteers, are trained on the ACNC notification requirements and the organisation' policy; and
- the organisation builds and fosters a culture of compliance at all levels.

All existing Board members, management, staff and volunteers have been trained and aware of this policy statement at time of production.

All Board members, management, staff and volunteers that joined Apprenticeships Are Us Ltd after the date of production of the policy statement will be trained with regards to *section 65-5 of Australian Charities and Not-for-profits Commission Act 2012 (Cth)* as part of their induction amongst other items.

Corporate Governance education is mandatory as part of the Board education policy (see the Board Recruitment Policy).

Corporate governance education is not mandatory for all Apprenticeships Are Us Ltd staff and volunteers, however Apprenticeships Are Us Ltd runs internal training sessions for its staff to foster a culture of compliance.

All staff and volunteers are required to notify any potential concern, breach or non-compliance with their immediate manager or Apprenticeships Are Us Ltd.'s Compliance Officer, so that the matter may be properly investigated and escalated where appropriate.

Evidence of training and acknowledge of the Board members, management, staff, and volunteers are kept with:

- Management, Staff and Volunteers = Human Resources Manager
- Boards Members = Company Secretary

Michael Wentworth



Chief Executive Officer
Apprenticeships Are Us Limited

DOCUMENT CONTROL

Version	Authorized by	Authorization Date	Sections	Amendment
1.1	M Wentworth	31/03/2023	All	N/A