

DUTY TO NOTIFY THE ACNC



Honesty, Integrity & Accountability

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.

PURPOSE

The purpose of this Policy is to ensure that Apprenticeships Are Us Ltd (ARU) complies with its statutory duty to notify the Australian Charities and Not-for-profits Commission (ACNC) of all notifiable matters under the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)* (ACNC Act).

This Policy establishes:

- the matters requiring notification;
- who is responsible for initiating and approving notifications;
- required timeframes;
- what constitutes a “significant” contravention;
- internal escalation procedures; and
- recordkeeping and audit expectations.

Compliance with this Policy is mandatory for all directors, managers, staff and volunteers.

LEGISLATIVE AND REGULATORY FRAMEWORK

This Policy is governed by:

Primary Legislation

- *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*
- *Australian Charities and Not-for-profits Commission Regulation 2022*
- *Corporations Act 2001 (Cth)* (as modified by the ACNC Act)
- *Privacy Act 1988 (Cth)*
- *Fair Work Act 2009 (Cth)*
- *Work Health and Safety Acts (State/Territory)*
- *Income Tax Assessment Act 1997 (Cth)*

ACNC Governance Standards

- Governance Standard 1 – Purpose and NFP character
- Governance Standard 2 – Accountability
- Governance Standard 4 – Suitability of responsible persons
- Governance Standard 5 – Duties of responsible persons
- Governance Standard 6 – Maintaining and enhancing public trust and confidence

Sector Standards

- National Standards for Group Training Organisations (2017)
- State Training Authority contractual obligations
- AASB Accounting Standards

This Policy complements ARU's Board Charter, Corporate Governance Statement, Conflict of Interest Policy, Whistleblower Policy, Privacy Policy and Risk Management Framework.

DEFINITIONS

“Authorised Person”

A person formally authorised by the Board to lodge documents with the ACNC on behalf of ARU.

“Responsible Person”

A director or officeholder listed in the ACNC Register with governance responsibility.

“Governing Rules”

ARU’s Constitution and any bylaws, policies or resolutions that form part of ARU’s governance framework.

“Material Change”

A change that alters ARU’s structure, governance, purpose, risk profile or charity subtype.

“Significant Contravention / Significant Non-Compliance”

A breach that is serious, repeated, systemic, or indicative of governance failure, including anything that may affect ARU’s entitlement to registration.

“Notifiable Event”

A matter requiring notification to the ACNC under ss. 65-5, 65-10 or 65-15 of 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 when the requirements of the ACNC Act or related regulations are 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.

INTERNAL REPORTING OBLIGATIONS

Any ARU Board member, manager, staff member or volunteer who becomes aware of a notifiable change or potential contravention must report the matter **immediately** to:

1. The Managing Director; and
2. The Company Secretary / Compliance Officer.

The Managing Director must:

- assess the issue within 48 hours;
- escalate significant matters to the Board Chair;
- determine whether the 28-day ACNC clock has commenced; and
- commence an investigation if needed.

Failure to internally report a notifiable matter may itself constitute a disciplinary breach.

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

ARU is committed to complying with all relevant privacy and data security laws and has established protocols to ensure the confidentiality of personal data in line with ACNC standards.

BOARD OVERSIGHT AND RISK MANAGEMENT INTEGRATION

The ARU Board must ensure that:

- all notifiable matters are entered into ARU's Risk Register;
- material governance or compliance breaches are reviewed at the next Board meeting;
- legal advice is obtained where non-compliance may affect charity registration;
- systemic issues are addressed through continuous improvement;
- the ACNC Notifications Log is reviewed quarterly; and
- annual declarations to the ACNC can be made accurately.

This requirement is aligned with ACNC Governance Standard 5 and National GTO Standard 3.

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.

Steps for Seeking an Extension from the ACNC

If Apprenticeships Are Us Ltd is unable to meet the notification deadline to the ACNC (e.g., within the 28-day period for large charities), the following steps should be taken to seek an extension:

1. Assess the Reason for the Delay

- Determine the cause of the delay in notification (e.g., administrative issues, a delay in gathering required information, or other operational challenges).
- Gather supporting documentation to substantiate the reason for the delay. This documentation will be critical in demonstrating to the ACNC Commissioner that the extension request is necessary and valid.

2. Prepare a Formal Request for Extension

- Draft a formal letter or email to the ACNC Commissioner, clearly requesting an extension to the deadline for the submission of the required notification form(s).
- The letter should include:

- A clear subject line such as: *Request for Extension – Notification Deadline for [specific change or issue]*.
- A concise explanation of the reason for the delay.
- A summary of actions taken to resolve the issue or address the non-compliance.
- The requested extension period (e.g., an additional 14 days) and the expected date of compliance.
- Any supporting documentation that explains or justifies the delay (e.g., minutes from a board meeting or correspondence from third parties).

3. Submit the Extension Request Promptly

- Ensure the request for an extension is submitted as soon as it becomes apparent that the deadline will not be met. Delays in submitting the request may reduce the likelihood of the ACNC granting the extension.
- Use the official ACNC channels to submit the request:
 - Through the ACNC Charity Portal.
 - Via email to the relevant ACNC contact if communication has been established.
 - Ensure that the person submitting the request is an authorized person (e.g., Company Secretary or Compliance Officer).

4. Follow Up on the Request

- After submitting the extension request, monitor the ACNC Charity Portal or email inbox for a response. It may take time for the Commissioner to review and approve the request.
- If no response is received within 7-10 business days, follow up with a polite reminder, referencing the original extension request and including the relevant case or reference number if provided.

5. Demonstrate Good Faith in Compliance

- Throughout the process, emphasize that Apprenticeships Are Us Ltd is committed to compliance and that the delay in notification is an isolated issue.
- Where possible, indicate any proactive steps the organization has taken to prevent future delays (e.g., updating internal procedures or enhancing training for staff responsible for compliance).
- Be transparent in all communications with the ACNC, as demonstrating a willingness to cooperate can positively impact the ACNC's decision.

6. Document the Process

- Keep a detailed record of all communication with the ACNC, including the request for extension, any supporting documents, and the ACNC's response.
- If an extension is granted, note the new deadline and ensure compliance within the agreed period.
- Store copies of all relevant documents, including the ACNC's approval of the extension, for internal record-keeping and audit purposes.

Best Practices for Communicating with the ACNC Commissioner

- **Be Clear and Concise.** Ensure that all communication is professional, clear, and to the point. Avoid unnecessary details that may detract from the main message.
- **Be Honest and Transparent.** If the delay is due to an error or oversight, acknowledge this in the communication. Demonstrating a culture of honesty and transparency may positively influence the ACNC's decision.

- **Provide All Relevant Information.** Include all necessary details upfront, including the nature of the issue, the steps taken to resolve it, and any supporting documentation. This reduces back-and-forth communication and speeds up the decision-making process.
- **Maintain a Professional Tone.** Ensure all correspondence, whether by email or letter, maintains a respectful and professional tone. Address the Commissioner formally and express gratitude for their consideration.
- **Offer Solutions.** If possible, suggest a realistic new deadline and explain how the organisation will ensure the required action is completed within the new timeframe.

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's 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

NON-COMPLIANCE RESPONSE AND REMEDIATION

Where ARU identifies a contravention of the ACNC Act or Governance Standards, the Managing Director must ensure:

1. Immediate internal escalation;
2. Investigation and root cause analysis;
3. Board notification;
4. Notification to the ACNC within 28 days (or immediately for serious matters);
5. Implementation of corrective actions;
6. Follow-up monitoring;
7. Reporting to the ARU Board on remediation completion.

Where systemic governance failings are identified, the ARU Board must initiate a governance review.

TRAINING AND CAPACITY BUILDING

ARU will ensure that:

- all Responsible Persons receive governance induction training;
- all staff involved in compliance receive ACNC notification training;
- refresher training occurs annually;
- training completion records are maintained by:
 - i. HR for staff and volunteers;
 - ii. Company Secretary for Directors.

Training includes:

- ACNC Act obligations;
- Governance Standards;
- identifying notifiable events;
- reporting pathways;
- timelines;
- evidence requirements.

RECORDKEEPING REQUIREMENTS

ARU must maintain:

- copies of all ACNC notifications submitted;
- internal incident reports;
- Board papers and minutes relating to ACNC matters;
- legal advice obtained for notifiable events;
- training attendance records for all Responsible Persons;
- evidence of compliance with the 28-day timeframe.

Records must be retained for a minimum of 7 years in accordance with the ACNC Act and ARU Records Management Policy.

AUTHORISATION

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DOCUMENT CONTROL

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