
THOMSON GEER

LAWYERS

Advice | Transactions | Disputes

Domestic & Cross Border

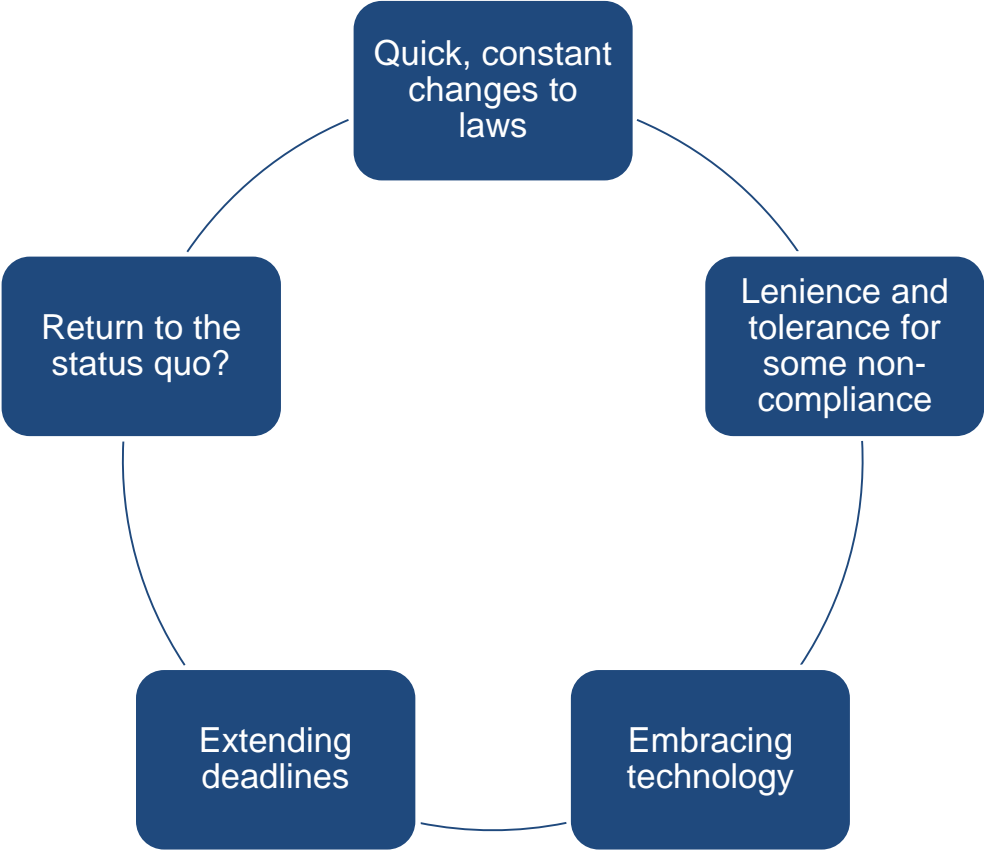


2020 Update on Governance Environment

Wednesday 21 October 2020

Lucinda Smith, Partner

Common Themes of Recent Governance Changes



How has COVID-19 changed the way your board has operated in 2020?

- What changes have been the most unexpected?
- Which changes have had the most positive/negative impact on how you govern?
- What has been most effective in practically supporting directors and management during these times?
- What is the greatest challenge to good governance?

Feedback from Break Out

- Most unexpected changes?
- Positive and negative impacts on how you govern?
- Effective practical support for directors and managers?
- Greatest challenge to good governance?



Electronic Meetings



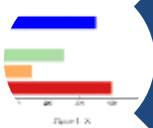
Extended from 6 November 2020 to 21 March 2021



Notice must explain how to use the technology to access and participate at the meeting



Provide attendees with an opportunity to speak, vote and participate



Votes must be taken by a poll, which is preferably available before the meeting



Have a back up plan to overcome technical issues

Electronic Signing - Validity

Common Law

Over various cases which came before courts, electronic signing was determined to be acceptable, under certain circumstances which caused uncertainty

Electronic Transactions Act

The ETAs across Australia tried to overcome that uncertainty, but each operates slightly differently and carved out electronic signing under the Corporations Act and for deeds

COVID-19 Changes

The advent of COVID-19 has forced most State and Territory governments to widen the permissibility of electronic signing

Electronic Signing – Types

- **Printing and Scanning** – even a scanned copy of a wet ink signature is an electronic signature
- **Split Execution** – signatories sign two different counterparts, which together create a full signature
- **Modified Split Execution** – the second signatory signs a printed out copy of the first signatory's executed document
- **Stylus** – using your finger or a stylus to sign on a screen
- **Inserted Image** – copying and pasting a scanned photocopy of your signature
- **DocuSign** – using software such as docuSign, adobeSign etc to execute documents
- **Typing a Name** – typing your name, more commonly used on online, click-wrap type agreements or acknowledgements

Electronic Signing – Corporations Act

Until 21 March 2021:

- Directors and secretaries signing under s127 can sign contracts (including deeds) electronically by any of the means described in the previous slide
 - Agreements could always be signed under s127 electronically – albeit this was not always preferable or accepted by counterparties
 - Deeds can only now be executed electronically
 - No attestation / endorsement or audio visual link between the signatories is needed
- NSW, Vic, Qld and ACT have also introduced new electronic signing laws which permit deeds to be electronically witnessed typically via audio-visual link and with an attestation. Each of these laws expire at different times

Electronic Signing – Tips



- Update or create signing protocols
- Engage with the counterparty (e.g. ASIC, land titles, office of state revenue, local council documents) to confirm if they accept electronic signatures
- Authorised representatives cannot sign deeds (i.e. don't sign under s126)
- When in doubt, sign documents as a company under section 127 and not under State and Territory laws (which all differ)

Changes to Insolvency Laws

Until 31 December 2020:

Statutory Demands

New minimum threshold of \$20,000 (increased from \$2,000)

Six months to respond to statutory demands (increased from 21 days)

Insolvent Trading

Directors are relieved from their duty to prevent insolvent trading for debts incurred in the ordinary course

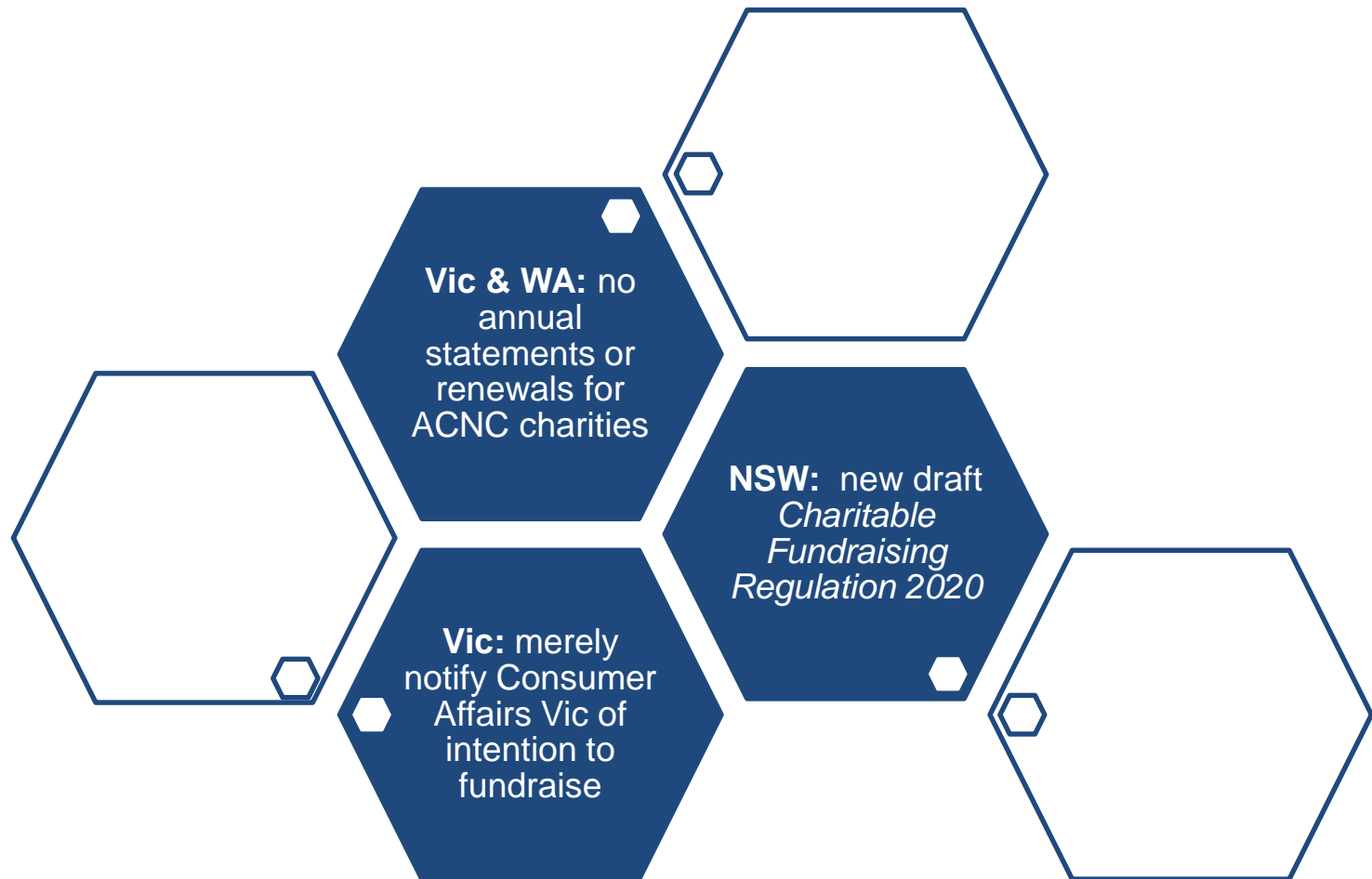
Egregious cases of dishonesty and fraud will remain subject to criminal penalties

ACNC's Approach to Compliance

Until 31 December 2020:

| Standard | Conditions under which action will not be taken |
|---|--|
| Standard 1: Acting outside its charitable purpose | If a charity takes on activities in response to COVID-19 that do not clearly align with its charitable purposes, and it: <ul style="list-style-type: none">• reasonably shows its members would approve of the activity; and• documents how it believes the new activities align with its charitable purpose or purposes or are incidental or ancillary to its charitable purposes. |
| Standard 5: Does not operate while insolvent | Extending the insolvency amendments to the Corporations Act to all charity types (not just companies), if debt is incurred in the: <ul style="list-style-type: none">• ordinary course of business;• during the relevant period; and• before the appointment of an administrator or liquidator The charity must ensure its Responsible People are aware of the issue and have an achievable aim to return to viability when the crisis has passed. |

Fundraising Law Changes



New ACNC Annual Statements

- Annual Information Statements (**AIS**) are due 6 months after the end of each charity's reporting year
- 2020 AIS will now allow charities to provide details about their programs and activities, such as where they are located and who they benefit
 - For 30 June 2020 year end entities, the new AIS will apply – change commenced 1 September 2020
- Intention is to assist the public to find charities that deliver the programs they wish to support
- Charities will provide this information by responding to a new section when completing the online Annual Information Statement

Break Out + Feedback



Which changes do you believe have been the most important or meaningful and how will they impact 2021?



SYDNEY | Level 14, 60 Martin Place | Sydney NSW 2000

MELBOURNE | Level 39, Rialto South Tower, 525 Collins Street | Melbourne VIC 3000

BRISBANE | Level 28, Waterfront Place, 1 Eagle Street | Brisbane QLD 4000

PERTH | Level 27, Exchange Tower, 2 The Esplanade | Perth WA 6000

ADELAIDE | Level 7, 19 Gouger Street | Adelaide SA 5000

tglaw.com.au

 Thomson Geer

 @ThomsonGeer