

Religious Charities in Australia: Implications for Governance Under Traditional Values and Outlooks

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Attitudes and practices surrounding governance duties and conflicts of interest among charity leaders in Australia vary appreciably according to demographic and cultural factors. In this article we analyse views expressed by leaders of religiously affiliated charities in Australia and compare them to their 'other-than-religious peers'. While there are broad similarities in many respects, we identify potential weaknesses in governance practices in religious charities and suggest targeted education and guidance as a first step.

I INTRODUCTION

A broad and competent understanding of good governance, together with a sensitivity to conflicts of interest, are essential for leaders of modern charities. Not least among the reasons are governance duties and requirements arising from a number of sources. Charities, however, are not uniform regarding their governance philosophy and practice. Standards observed, desired, or tolerated within these entities are affected by jurisdictional, demographic, and cultural characteristics — including both of the organisation as a whole, and of the individuals who lead them. For example, comparisons between Australian charities and charities in England and Wales show marked differentiation regarding governance.¹ Similarly, striking differences have been observed between older or more experienced charity leaders and younger or emerging leaders.² It is also possible that the broad *purpose* of a charity could plausibly be a factor in determining attitudes to governance. In this article we look at another cultural marker which reflects a deeper philosophical outlook: religion. We investigate the outlooks espoused by leaders of religiously oriented or affiliated charities ('religious charities') and contrast their attitudes to governance and conflicts of interest with those of their peers in what might be termed 'other-than-religious' organisations — in other words, entities that do not have a specifically religious origin, orientation, or affiliation.

The first part of this article presents background on empirical data; in this case, from a recent survey of Australian charity leaders — from right across the spectrum — analysing their views and practices regarding governance and conflicts of interest.³ The second part examines

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¹ See Rosemary Teele Langford and Malcolm Anderson, 'Governance Duties and Conflicts of Interest in the Charities Sector: Australia and England & Wales Compared' (2022) 28(1) *Third Sector Review* 18.

² See Rosemary Teele Langford and Malcolm Anderson, 'Passing the Baton: Emerging Leadership Values, Governance and Responsibility in Australian Charities' (Research Paper, Melbourne Law School, August 2023) ('Passing the Baton') <https://law.unimelb.edu.au/__data/assets/pdf_file/0011/4745045/Langford-Anderson-Passing-the-Baton.pdf>.

³ For detail, see Rosemary Teele Langford and Malcolm Anderson, 'Restoring Public Trust in Charities: Empirical Findings and Recommendations' (2023) 46(2) *University of New South Wales Law Journal* 535 ('Restoring Public Trust in Charities'). Participants were recruited in the following ways: (1) Survey links were distributed by peak sector bodies via newsletter or email to members and by charity sector contacts; (2) The researchers obtained

demographic differences between religious, educational, health (including welfare and aged care-related) charities, and other types of charities.⁴ This examination also flags whether any distinctive demographic needs to be factored out when comparing attitudes and practices. The third part of this article uses multi-dimensional analysis, facilitating a scaling of factors (that is, groups of outlook and attitude variables that are highly correlated) to more immediately show the differences between charity cultures as defined by their broad purpose. This illustrates that religious charities are far more differentiated from the 'pack' than educational or health and welfare entities. The fourth part analyses the differences between leaders of religious charities and their peers in respect of issues of governance. The fifth part focuses specifically on conflicts of interest. Finally, we present some conclusions and practical suggestions.

This analysis is pertinent given that commentators have estimated that at least one third of Australian charities identify the advancement of religion as their charitable purpose,⁵ and in light of recent concerns relating to governance within religious entities (as documented in the Royal Commission into Institutional Responses to Child Sexual Abuse and in recent media commentary). Although some religious charities are classified as 'basic religious charities'⁶ and are therefore exempt from the Australian Charities and Not-for-profits Commission ('ACNC') Governance Standard 5,⁷ many are not. The survey did not ask respondents to identify whether their organisation was a basic religious charity. Moreover, as noted by the Panel reviewing the ACNC legislation, 'responsible persons'⁸ of many basic religious charities may already be subject to governance requirements via their denomination,⁹ and it has been shown that the better view is that all responsible persons are subject to fiduciary-based duties.¹⁰

details of individual charities using the ACNC Charities Register and sent emails with survey links to them. The total number of useable responses totalled 419. For the representative nature of the sample, see *ibid.* at 544.

⁴ The number of particular charity types in this analysis was controlled by the sufficiency of sample sizes.

⁵ See Penny Knight and David Gilchrist, *Australia's Faith-based Charities: A Study Supplementing the Australian Charities 2013 Report* (Report, Curtin Not-for-Profit Institute, 2015) 3; Nicholas Aroney and Matthew Turnour, 'Charities Are the New Constitutional Law Frontier' (2017) 41(2) *Melbourne University Law Review* 446.

⁶ For definition, see *Australian Charities and Not-for-profits Commission Act 2012* (Cth) s 205–35. The most recent Australian Charities and Not-for-profits Commission ('ACNC') Charities Report states that 17 per cent of charities are basic religious charities: Australian Charities and Not-for-profits Commission, *Australian Charities Report* (9th ed, 2023) 12.

⁷ Governance Standard 5 requires charitable entities to take reasonable steps to make sure that the people who govern them (known as 'responsible entities' or 'responsible persons') are subject to a number of duties. These relate to care and diligence, good faith and furthering purposes, disclosing certain conflicts of interest, avoiding misuse of position and of information, ensuring that the financial affairs of the charity are managed responsibly, and avoiding insolvent trading: *Australian Charities and Not-for-profits Commission Regulations 2022* (Cth) reg 45.25(2).

⁸ The term 'responsible person' is defined in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) s 205–30 and includes, for example, directors of charitable companies, trustees of charitable trusts, and management committee members of incorporated associations.

⁹ Australian Charities and Not-for-profits Commission, *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Review Legislation Review 2018* (Report and Recommendations, August 2018) 69 ('ACNC Review'). This review was conducted to meet the Commonwealth Government's statutory obligation to undertake a review of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits (Consequential and Transitional) Act 2012* (Cth) after their first five years of operation: see *Australian Charities and Not-for-profits (Consequential and Transitional) Act 2012*, s 16.

¹⁰ See Rosemary Teele Langford, 'Charities and the Fiduciary Paradigm' (2022) 16 *Journal of Equity* 146. Although there were questions in the survey relating to ACNC guidance and to factors mentioned in ACNC conflict of interest guidance, the questions in the survey relating to conflicts of interest were not based on ACNC Governance Standard 5 but, rather, probed conflicts of interest generally. The term 'governance duties' was defined at the start of the survey as 'refer[ring] to the duties and responsibilities you may have as a board member in making decisions and in overseeing the organisation. Governance duties include, for example, obligations relating to conflicts of interest and financial management.' For reconciliation of the various governance duties

In this respect, the indirect duties imposed by ACNC Governance Standard 5 are just one component of the governance duties and requirements applicable to responsible persons of Australian charities.

II BACKGROUND

In previous articles we have reported on a survey of a broad spectrum of leaders across Australian charities.¹¹ To set the stage, it is necessary — and worthwhile — to recapitulate the general findings from this survey.

In short, we found a high level of clarity regarding general understanding of governance duties. As an example, over 95 percent of respondents agreed that they ‘have a clear understanding of the governance duties’ to which they are subject. While respondents were also confident that they had a good understanding of their entity's financial matters, this self-assurance was tempered by the finding that there was some degree of reliance upon ‘someone else’ when it came to financial responsibility. Respondents were emphatic that their organisation's purpose was *always* considered when it came to decision-making (71.1 percent) or *usually* considered (23.9 percent).

Many respondents complained of the complexity of their tasks, accentuated possibly by the multilayered nature of applicable general law and statutory governance duties. For example, 16 percent agreed with the proposition ‘I feel that the governance duties are complex and difficult to keep up with’, while almost a quarter more could not agree with the statement (i.e., they were unsure). Of some concern was the finding that well over a quarter of charity leaders have not received any dedicated training on their governance duties; the same proportion felt they had insufficient guidance on how these duties apply in practice. Some 13 percent of respondents cited ‘insufficient time to understand my governance duties’. In addition, another one in ten were unsure (whether they had sufficient time or not). Receptiveness to training, online guides, access to professional advice, and mentoring, however, was high. For instance, three-quarters of respondents agreed that ‘practical examples and scenarios showing how the duties are applied’ would help them to understand and comply with their governance duties.

When it came to identifying conflicts of interest, respondents were very sensitive to which sorts of relationships were problematic when someone received a benefit from the charity. Almost all respondents (99.1 percent) were adamant that if their organisation was committed to a transaction that benefited a sibling of someone on the board, there would be a conflict of interest. An identical figure was returned if it were the spouse of a board member who benefited (99.1 percent); similar agreement existed if it were a daughter (98.8 percent); or a business in which a board member held an investment (95.1 percent). In a more detailed hypothetical ‘scenario’ where the potential recipient of benefit was the CEO's de facto partner, again, 99.1 percent identified a conflict of interest. To be sure, as the relationship link weakened — that of a friend or ‘your daughter's boyfriend’ — responses drifted noticeably. If the person or entity that benefited was ‘your employer’ the percentage agreeing that a conflict of interest was apparent dropped to 85.7 percent.

and requirements relating to conflicts of interest, see Rosemary Teele Langford, ‘Conflicts and Coherence in the Charities Sphere: Would a Conflict by Any Other Name Proscribe the Same?’ (2020) 14 *Journal of Equity* 1.

¹¹ See Langford and Anderson, ‘Restoring Public Trust in Charities’ (n 3); Langford and Anderson, ‘Passing the Baton’ (n 2).

Nevertheless, these results encourage optimism that leaders of Australian charities, while struggling with complexity and time constraints, firmly hold high views of their governance responsibilities in general, of eschewing conflicts of interest, together with a determination to adhere to their organisation's purpose(s) when making decisions. It was also reassuring that respondents were keen to reach out and access practical assistance to help with understanding and complying with their governance duties. However, while respondents' *convictions* looked promising, there was some doubt as to how assiduously these played out in *practice*.

It was surprising, for example, how relatively infrequently board members declared or discussed a conflict of interest (nearly 18 percent declared they had 'never' seen it in the past three years). Interestingly also 14.4 percent of respondents indicated that a board member or their associate was paid by the organisation for work (such as legal, accounting, or consultancy services), raising the issue of related party transactions.¹² Conflict of interest that involved connected individuals gaining a *pecuniary* benefit was certainly seen as problematic for respondents; but situations where *non-pecuniary* benefits were awarded did not attract the same level of caution. And while respondents noted that generally sound practices applied where a conflict of interest did occur, it was surprising that many just 'did not know' what had occurred in these instances. Only three-quarters of respondents noted that a conflicted board member *always* 'abstained from voting on the matter', while just the same proportion volunteered that 'disclosure of conflicts of interest is a standing item on the agenda of meetings of the board'. It is also notable that not all entities even had a conflict of interest policy (one in five reported having no such policy), although it is possible that procedures relating to conflicts of interest may be contained in an entity's governing document.

Nuanced results, however, were apparent when responses from key sub-groups were examined. The main predictors of difference concern the age of respondent and the size of their organisation. Less significant, but still important, predictors include length of time in the position (experience), and whether the respondent served in a paid or volunteer capacity. The clear contrasts in opinion and practice, for example, between respondents from different jurisdictions can likely be attributed (at least in part) to their unique legislative environments. However, it is potentially the case that unique *cultural* influences are present. In the case of differences between age groups, it is likely the contrast is a result of a different cultural matrix that each age group tends to inhabit. The focus of this article is on the disparities in opinion and practice that are apparent within charities that are *organised for different purposes*, and more specifically, those which are religious in orientation or affiliation as contrasted with others. A question arises as to whether the religious basis or influence moderates, exacerbates, or imperils attitudes to governance. And is practice any different or otherwise more seriously compromised when it comes to the management of conflicts of interest by religious charities?

III DEMOGRAPHIC CONSIDERATIONS

There were some noticeable demographic differences between charities when compared according to their broad purpose. Religious charities, for example, were far less likely to be organised as incorporated organisations (22.2 percent) as against all other charities (56.0 percent), the former opting for 'other' forms of legal structure. The size profile of religious charities was generally on par with other kinds: around 40.7 percent in our survey reported revenues of one million dollars or more annually (compared to 45.7 percent of all other, non-

¹² Note that, when asked about the general nature of the work, some responded with 'Church', 'Church ministry', or 'Pastoral care'.

religious, kinds).¹³ More of the health (63.2 percent) and education (59.5 percent) entities were likely to be in the larger revenue category, though since sample sizes were not large these estimates are more 'indicative' than statistically significant. Interestingly, board sizes tended to be greater among religious charities (22.6 percent having ten or more on their boards) — similarly for educational charities (27 percent with large boards). For all others the corresponding proportion was lower (for example, just 6.6 percent of health, welfare, and aged care having large boards).

Among those answering the survey there was little differentiation in age between respondents of different charity purposes. Overall, two-thirds of charity leaders were aged 55 or over, though possibly more younger leaders were found in the education group (56.8 percent aged 55 or over). However, more respondents who represented religious charities were full-time paid employees (33.3 percent) as opposed to 19.7 percent for all others (Table 1). These proportions appeared to be lower for health-related groups (just 23.1 percent paid full-time). More remarkable was the fact that experience was in greater supply at the religious charities: over one third (38.9 percent) had been in their positions more than ten years (Table 2) — as against just over one in five for all other charities (22.2 percent).

In short, while characteristics of different sorts of charities are interesting for their own sake, our concern here is that we are measuring the background culture or tradition aspect of different sorts of charities (according to purpose). We identify the experience of respondents (how long they have been in the position), state whether the respondent is a full-time paid employee, and classify the entity's legal structure, as extra demographic characteristics differentiating religious from secular charities. It is also apparent — when looking at attitudes (summarised in our previous publications) — that respondents' age and the size of the organisation play a significant role in the formation of attitudes to governance and conflicts of interest. After exhaustive regression analysis, however, we found the influence of the entity's legal structure and of the respondents' full-time paid status exerted negligible impact on attitudes to governance.

Table 1: Position within Organisation

	Aust ALL (n=419)	Religious (n=54)	Stat Test	Other Than Religious (n=365)	Health (n=78)	Education (n=37)	Other (n=202)
	<i>percent</i>	<i>percent</i>		<i>percent</i>	<i>percent</i>	<i>percent</i>	<i>percent</i>
Paid full time	21.4	33.3	*	19.6	23.1	29.7	14.4
Paid part time	8.6	7.4		8.8	9.0	5.4	10.9
Unpaid/Volunteer	53.4	46.3		54.5	50.0	59.5	55.4
Executive/ Senior Manager	21.7	16.7		22.4	17.9	29.7	23.3
Other position	17.5	16.7		17.6	24.4	13.5	17.3

Notes: Statistical tests in third column: one asterisk: significant at the 0.05 level of significance (Chi-square test of independence). Only differences between religious and other-than-religious groups were tested.

¹³ We note that there was little difference between the size profile of religious and 'other-than-religious' respondents. If anything, there were proportionately *fewer* religious organisations (5.6 percent — compared to 13.5 percent of the other-than-religious entities) in the very smallest size category (that is, with revenue less than \$50,000 pa); and proportionately *more* religious organisations (25.9 percent) in the very large (revenues in excess of \$10 million pa) category (just 17.6 percent of other-than-religious organisations being very large).

Table 2: Length of Time Respondents Have Held their Position

	Aust ALL (n=419)	Religious (n=54)	Stat Test	Other- than- religious (n=365)	Health (n=78)	Education (n=37)	Other (n=202)
	<i>percent</i>	<i>percent</i>		<i>percent</i>	<i>percent</i>	<i>percent</i>	<i>percent</i>
Five years or less	54.9	40.7	*	57.1	56.4	43.2	59.4
Between five and ten years	20.7	20.4		20.7	20.5	24.3	20.8
Over ten years	24.4	38.9	**	22.2	23.1	32.4	19.8

Notes: Statistical tests in third column: one asterisk: significant at the 0.05 level of significance; two asterisks: significant at the 0.01 level (Chi-square test of independence). Only the first and third rows between religious and other-than-religious groups were tested.

IV OVERALL DIFFERENCE IN OUTLOOK, ATTITUDES, AND VIEWS

A range of question types was presented in the survey: general demographic information regarding both the entity and the respondent (see above), as well as a suite of two-option 'agree/disagree' questions, together with other question and option forms, as well as open-ended items soliciting extended comment.

For the purposes of this section, the core of the survey included some 44 (in all cases five-item response category) Likert items. Some of these items came with response options labelled from 'strongly agree' to 'strongly disagree'; others were constructed so that the response items ran from 'very important' to 'not important'; yet others asked 'how often' an action occurred and were therefore optioned from 'always' to 'never'. These items were divided into six separate sections broadly covering the respondents' level of understanding of governance duties, difficulties in comprehending governance responsibilities, assistance measures to help gain governance skills, motivations for compliance, reactions to board conflict of interest situations, and finally, options for determining how a conflict of interest might be managed. Likerts in each of the six sections were then subject to Principal Component Analysis and the result was the creation of nine scales enabling a more manageable variable reduction process. Six of these scales represented dimensions concerned with governance issues in general; another three were extracted from the more specific conflict of interest items (Table 3).

Our immediate aim was to look at the *structure of responses* to these items by comparing five 'charity types' as defined by what we knew (or, as it turned out, what we did not know) of their broad purposes. Respondents were asked for a brief open-ended description of the purposes of their charity, and this was used as the basis of attributing a classification to charity type. These groups included religious charities, health-oriented charities (including welfare and aged care), and education-focused entities.¹⁴ A final group of 'all others' was divided, for the purposes of

¹⁴ We note that our survey questions on purpose were designed to elicit whether respondents knew the purpose of their organisation and to find out how important their organisation's purpose was in decision-making — these questions were not designed with a view to categorising or identifying organisations. In this sense our categorisation was imprecise in that our 'religious' category includes organisations with the sole purpose of advancing religion, as well as organisations with that purpose and an additional purpose (such as health or education). It is also possible that some faith-based organisations (whose sole purpose is not advancing religion) represented in our survey are not included in our religious category due to this methodology. The survey provided an open-ended place when asking respondents to describe the purpose of their organisation. Some 54 respondents provided answers that indicated that their organisation's purpose was religious in character or mission. Answers included: 'It's a Church. It's [sic] purpose is to facilitate worship'; 'Synagogue providing religious services and guidance'; 'Dissemination of Buddhist teachings'; 'Religious order committed to education and formation'; 'Faith-based not-for-profit'; and 'Basic Religious Charity'. One respondent noted that the purpose of their entity

the exercise below, into two groups: those of which the primary purposes were stated (other than religious, educational, or health) and bundled into a 'non-classified' group; and those where *no purpose at all* was stated (grouped as 'unknown').

This data was then put through multidimensional scaling analysis ('MDS') using the SPSS program 'Proximities' and presented as maps using the SPSS 'ALSCAL' procedure. In short, the process compares — for each of the five charity-type categories — averages for each of the nine scales which, as they were themselves created out of a 1-to-5 scoring of their component Likert items, were themselves a score ranging between 1 and 5. Therefore, with both individual Likert items and Principal Component factors (or scales) the scoring was such that it ran from 5 (strongly agree) to 1 (strongly disagree) — or whatever the options were (recalling that some ran from very important to not important). If, for sake of example, there were only two scales, one could map them with Cartesian coordinates. If the average score for the 'Clear Understanding of Duties' scale and the 'Disclose and Abstain' scale for, say, education and health charities was extremely similar, one could 'map' these as two coordinates on a graph in very close proximity. If their average was markedly different, the coordinates would be far apart.

In MDS, the differences between charity types based on the nine scales (or potentially nine dimensions) are calculated using Euclidean distance, (optimally scaled) effectively calculating the 'degree of dissimilarity' between the groups on the basis of all nine scales. These are then reduced further to two main (generally orthogonal) factors and mapped into a graph. One particular variation available in SPSS MDS is not to calculate a particular score using the raw figures, but to utilise the *standardised* scores so that disproportionate scores in one factor do not wash out the scoring contribution of factors that show little or less scoring variation. In addition, in order to ensure that the two-dimensional plot comports with the Euclidean distance scores in the (theoretical) nine-dimension calculation, SPSS routinely plots the scores of both series against one another and calculates a correlation r-squared measure (which in this case was quite high at 0.99931).

In Chart A below the results of the MDS on the nine scales for each of the five charity types are mapped. We can probably say little about the 'unknown' charities — we have no information at all as to their purpose (representing 12.6 percent of all cases). The immediate picture is that it is evident that the attitudinal answers from the respondents representing educational and health charities are quite similar: hence they are plotted almost on top of each other. The 'non-classified' group is also located close to these two. The 'non-classified' were a diverse group where the purpose or object of amelioration covered social sectors (or characteristics) such as: the 'disadvantaged', 'young', 'information', 'children', 'vulnerable', 'women', 'housing', 'heritage', 'legal', 'accommodation', 'animals', 'violence', 'environment', 'food', 'families', 'poverty', 'sustainable', 'veterans', and 'agricultural'. Since the number of cases represented just under half of all respondents, it might be postulated that they represent something close to the 'average charity'.

was to 'Support independence and resilience in ... the Jewish community'; although this might reflect an ethnic group rather than a strictly religious one, it was nevertheless included. In addition, within our religious category four entities volunteered their purpose as being both religious and educational. In conclusion, we isolated, as best as the identification of purpose allowed, those organisations which were certainly or highly likely to be religious in character. These factors therefore potentially undermine our findings and in this respect we draw attention to our recommendations (later in this article) for further, more detailed empirical research, and to the high level nature of our recommendations.

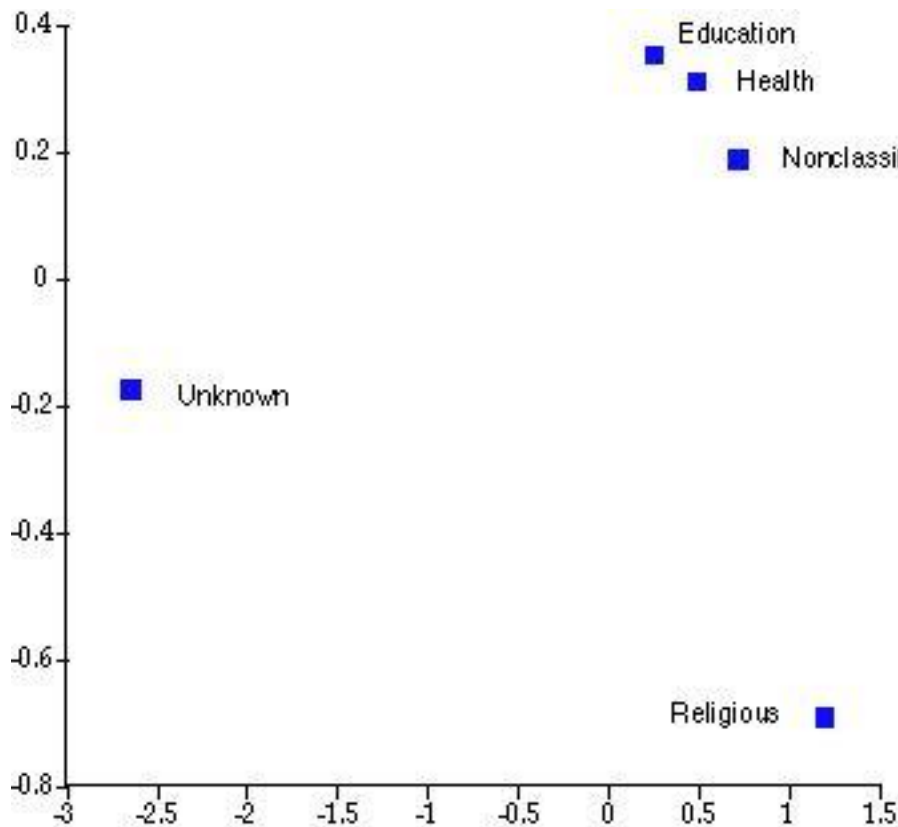
Suffice it to say, the outlier concerned the religious charities (although the three — if we group education, health, and non-classified together — were also quite distinct from the 'unknown' group). The remainder of the article, therefore, focuses on how the attitudinal responses of the religious charity respondents varies from the 'other-than-religious' entities.

Table 3: Summary of Scales

Scale	Number of Items	Cronbach Alpha
<i>Governance Issues:</i>		
Clear Understanding of Duties Scale	6 items	0.7802
Lack of Awareness and Understanding Scale	6 items	0.8418
Tools and Assistance Scale	3 items	0.8625
Practical and Mentoring Scale	4 items	0.8101
Law and Optimal Scale	3 items	0.7416
Reputational Scale	3 items	0.7741
<i>Conflict of Interest Issues:</i>		
Disclose and Abstain Scale	4 items	0.7886
Advice Scale	3 items	0.5893
Perception and Trust Scale	8 items	0.7907

Notes: Scales formed from 40 items and six separate Principal Component Analyses.

Chart A: Multidimensional Scaling Map: Charity Governance and Conflict of Interest



Notes: r-square statistic for MDS was 0.99931.

V GOVERNANCE CHALLENGES FOR RELIGIOUS ORGANISATIONS

A number of the strengths and doubts regarding awareness of governance duties were similar between entities whether religious or secular. Leaders from both kinds of organisations accorded a high priority to considering the charity's purpose when making decisions. They similarly welcomed any assistance on offer to help them understand and comply with governance duties; the only item that stood out here was that religious charity leaders were less inclined to think that access to professional advice would help them to understand and comply with their governance duties (just 51.1 percent; for leaders of other-than-religious entities it was 65.3 percent).

A tabulation of the direct questions on governance duties is presented in Table 4. Here we see that religious charity leaders were also less likely to have received any training in relation to governance: just 60.4 percent, compared to their other-than-religious counterparts, coming in at 74.4 percent. And, furthermore, respondents from religious charities were much less likely to have read the ACNC guidance on governance duties (just 64.8 percent; 80.3 percent for other-than-religious).¹⁵ Moreover, the first four items of the Table each show the slightly poorer confidence in understanding governance issues by leaders of religious entities — a result which is abundantly clear for the two bottom items (where the difference is statistically significant). Taken together, they raise concerns about whether religious leaders are equipped to meet their governance responsibilities (recalling that the third item in Table 4 needed to be reversed since it is negatively correlated with all other items).

It might be possible, however, that any differences do not arise from the culture of the organisation (i.e., whether religious or other-than-religious) but may be the result of *demographic* differences in the respondents — since these often vary between charity types. While none of the individual differences between religious and other-than-religious charity leaders for these four items was statistically significant, the story overall was different. Since all items correlated highly (note the scale in the first row of Table 3), we tested a reduced scale, using just the first four items, in a multiple regression analysis. To factor out effects other than religion, we included in the regression three key demographics — age of the respondent, size of the entity, and experience (i.e., how long respondents have been in the position). The results are shown in Table 5. This demonstrates that both size of the organisation and age of the respondent have a positive (and statistically significant) effect on the average of the first four items in Table 4 (the 'Clear Understanding of Governance Duties Scale' in the top row in Table 3). Since it is derived from multiple regression, the interpretation is that these two explanatory characteristics are independent of any other characteristics. However, the 'religious entity' item is also statistically significant. This also means that, regardless of any possible confounding demographic characteristics, 'religious entity' has a (statistically significant) effect on the understanding of governance. Furthermore, the sign of the coefficient (first column) for 'religious entity' is *negative*: in other words, it reduces the score for clear understanding of religious duties.

¹⁵ It is, however, notable that basic religious charities are not subject to the ACNC Governance Standards and that we did not ask respondents whether their entity was a basic religious charity.

Table 4: Governance Duties

('Please indicate the extent to which you agree with the following statements')

Item	Aust ALL	Religious	Stat Test	Other-than-religious
I have a clear understanding of the governance duties to which I am subject.	95.6	92.6		96.2
I understand the organisation's financial accounts (profit and loss/balance sheet).	95.1	92.6		95.5
I rely on someone else to take responsibility for the organisation's financial position.	25.9	29.6		25.2
The board is provided with regular updated financial information.	96.2	94.4		96.5
I have received training and guidance in relation to my governance duties.	72.4	60.4	*	74.4
I have read ACNC guidance on governance duties.	78.0	64.8	*	80.3

Notes: Figures are the sum of agrees. Statistical tests in third column: one asterisk: significant at the 0.05 level of significance (Chi-square test of independence).

Table 5: Multiple Regression Results for the (shortened) Clear Understanding of Duties Scale

Variable	Coeff	St Error	Beta	t-stat	Signif of t
Revenue Size of Entity	0.0711	0.0229	0.1619	3.109	0.0020
Religious Entity	-0.1974	0.0877	-0.1181	-2.250	0.0250
Age	0.0085	0.0029	0.1547	2.840	0.0048
How Long Position Held	-0.0045	0.0051	-0.0491	-0.884	0.3773
(Constant)	3.7165	0.1906		19.496	0.0000

Notes: OLS (Ordinary Least Squares) regression returned an adjusted r-square value of 0.04679 with an F-stat=5.41813 (Signif F=0.0023); df (regression)=4; df (residual)=356. Scales averages first four items of Table 4.

The reasons advanced concerning the *difficulties in understanding governance* issues were also quite similar, although consistently more of the respondents from religious organisations were aware of their deficiency (Table 6). Notably, 13.5 percent of the religious charity leaders were 'unaware that I had governance duties' (as against just 3.9 percent of other-than-religious entities), and the former were far more likely to complain of the complexity and difficulty of keeping up with those duties (28.8 percent of religious vs 16.0 percent of other-than-religious entities). It is quite clear that there exist differences between leaders of religious charities and their other-than-religious colleagues.

Table 6: Reasons that Make it Difficult to Understand Governance Duties

(‘There may be a number of reasons that make it difficult for you to understand your governance duties. Please indicate the extent to which you agree or disagree with the following statements’)

Item	Aust ALL	Religious		Other-than-religious
I do not understand where to find an outline of my governance duties.	7.5	13.5		6.5
I was unaware that I had governance duties.	3.9	13.5	**	2.3
I feel that the governance duties are complex and difficult to keep up with.	16.0	28.8	**	13.8
I do not understand what the duties mean.	2.8	5.8		2.3
I have insufficient time to understand my governance duties.	8.1	7.7		8.2
I have insufficient guidance as to how my governance duties apply in practice.	13.4	17.3		12.7

Notes: Figures are the sum of agrees. Statistical tests in third column: one asterisk: significant at the 0.05 level of significance (Chi-square test of independence).

It is notable that religious charity leaders were as welcoming of assistance to remedy their difficulties with governance duties as their other-than-religious colleagues (Table 7). Their ready reception of ACNC guidance, mentoring, and the provision of practical examples and scenarios was the equal of that of their other-than-religious peers. As mentioned, the one area of difference that stood out was the item concerning professional advice: just over half of the leaders of religious charities would welcome this (51.1 percent) as opposed to nearly two-thirds of the other-than-religious charities (65.3 percent).

The fact that religious leaders appear less receptive to professional advice than their other-than-religious peers may be for cost reasons. In addition, where an organisation’s primary purpose is faith-based, it is perhaps unsurprising that leaders would more naturally seek faith-based (as distinct from professional) governance advice than their other-than-religious counterparts. It may also potentially reflect an inclination to rely on those on the board with expertise or on the church/central faith body.¹⁶

¹⁶ In England and Wales, it has been shown that charity trustees are twice as reliant on colleagues and other trustees and the internet as they are on the Charity Commission for England and Wales for guidance: see Yonder, *Charity Trustee Research 2022* (Research Report, Charity Commission for England and Wales, 14 July 2022) <<https://www.gov.uk/government/publications/research-into-public-trust-in-charities-and-trustees-experience-of-their-role/charity-trustee-research-2022>>.

Table 7: What Would Help Respondent Understand and Comply with Governance Duties

Item	Aust ALL	Religious	Other-than-religious
Training on the governance duties	71.8	73.9	71.5
A Charity Governance Code that sets out general principles for accepted modern practice of good governance	76.2	68.1	77.5
A Charity Governance Code combined with a diagnostic (i.e. self-evaluation) tool for board members to fill in concerning their organisation's performance	77.0	77.1	77.0
A detailed online guide that sets out all the governance duties of board members, with an optional self-evaluation tool	79.5	75.0	80.3
More guidance from the ACNC on the governance duties	45.2	41.7	45.8
Access to professional advice	63.4	51.1	65.3
Practical examples and scenarios showing how the duties are applied	76.0	75.0	76.2
Mentoring	53.3	51.1	53.7

Notes: Figures are the sum of agrees. Statistical tests between religious and other-than-religious performed on all items, none statistically significant at the 0.05 level (Chi-square test of independence). The 'Access to professional advice' item was significant at the 0.10 level (Chi-square test of independence p-value=0.0594).

A final differential was apparent when respondents were asked about their *motivations for complying* with governance duties. In general, all respondents tended to rate the organisation's reputation and public perception more highly than their own personal liability or reputation (Table 8). Although protecting the good name of the organisation was still evident, religious charity respondents cared far less about their personal reputation: just 63.8 percent rated 'concern for my reputation' highly. For respondents from other-than-religious entities it was 85.3 percent. Nor were religious leaders as concerned about any personal liability that might arise from governance failures (70.2 percent) as their other-than-religious peers (84.2 percent). This might partly be explained by comments such as 'Biblically-based Christian values' and 'Respect for church law or policy' in response to the question about motivations. However, for both groups, respect for the law as a factor motivating compliance was high, as was also facilitating optimal decision-making in the organisation.

Table 8: Factors That May Motivate Respondents to Want to Comply with Governance Duties

('What factors motivate you to want to comply with your governance duties? Please indicate how important the following motivations might be')

Item	Aust ALL	Religious		Other-than-religious
Concern for my personal liability	84.2	70.2	**	86.3
Concern for my personal reputation	85.3	63.8	**	88.6
Concern about liability or sanction for the organisation	97.1	89.4	**	98.3
Concern about the organisation's reputation and public perception of the organisation	98.3	95.7		98.7
My personal ethical or social values	96.5	100.0		96.0
To enable optimal decision-making within the organisation	96.8	97.9		96.7
Respect for the law	96.3	97.9		96.0

Notes: Figures are the sum of 'very important' with 'fairly important'. Statistical tests in third column: two asterisks: significant at the 0.01 level of significance (Chi-square test of independence).

As a final point, we note that 22.2 percent of those representing religious entities disclosed that board members (or their associates) were paid for consultancy-type work by the organisation; this compares to 14.4 percent for all others (Table 9). While it is important to caution that this was not a statistically significant result, there is a good chance that a larger sampled survey might corroborate this result.

Table 9: Consulting

(‘Are any of the board members of your organisation or their associates (such as a family member or an entity the board member works for or has an ownership interest in), paid by your organisation for other work (for example, for legal, accounting or consultancy services?’)

Answer	Aust ALL	Religious	Other-than-religious
Yes	15.4	22.2	14.4
No	83.3	75.9	84.5
Unsure	1.2	1.9	1.1

Notes: Statistical test for percentage answering 'Yes' only; not statistically significant (p-value of 0.1371; Chi-square test of independence)

VI CONFLICTS OF INTEREST: NUANCED BUT STILL PROBLEMATIC

Respondents from religious charities expressed similar views and cautions to their other-than-religious colleagues with regard to conflicts of interest. What stands out at the outset is the diminished likelihood that religious charities have a stated conflict of interest policy in the first place. Among the other-than-religious category, 82.2 percent of organisations possessed such a policy, dropping to seven in ten among religious entities (Table 10). We note, however, that conflicts procedures may be contained in an entity’s governing document.

Table 10: Whether Organisation has a Policy in Relation to Conflict of Interest

(Stat test for ‘Yes’ only)

	Aust ALL	Religious	Other-than-religious
Yes	80.5	70.2	82.2
No	12.8	14.9	12.5
Do not know	6.7	14.9	5.4

Notes: Statistical test for percentage answering 'Yes' only; not statistically significant at the 0.05 level yet highly indicative (p-value of 0.0547)

Results concerning the *management* of conflicts of interest were broadly similar. However, we might detect a slight, yet heightened, sense of probity among the religious entities. In Table 11, the proportion of respondents from religious charities appeared to have a slight edge in willingness to disclose conflicts of interest, as well as in the conflicted member abstaining from voting and discussion, and in other measures identified across the top six items listed in Table 11. Conversely, religious entities appeared less likely to place conflicts of interest as a standing item on the agenda of meetings of the board.

Table 11: Where a Board Member/Trustee Has Had a Conflict of Interest, How Often Had it Been Managed in the Following Ways

Item	Aust ALL	Religious	Other-than-religious
The conflicted board member disclosed the conflict to the board.	89.9	94.4	89.2
The conflicted board member abstained from participating in discussion on the matter.	67.7	71.4	67.1
The conflicted board member abstained from voting on the matter.	86.6	91.4	85.8
The conflicted board member or the board sought authority from members.	49.3	58.1	48.0
The conflict was recorded in the organisation's conflicts register (or register of interests).	78.3	80.6	78.0
The board obtained independent expert advice.	5.5	5.9	5.5
The conflicted board member resigned.	0.8	0.0	1.0
The board sought guidance from the ACNC/Charity Commission.	0.4	0.0	0.5
Disclosure of conflicts of interest is a standing item on the agenda of meetings of the board.	74.1	63.9	75.6

Notes: Figures are the sum of 'always' and 'frequently'. Statistical tests between religious and other-than-religious performed on all items, none statistically significant at the 0.05 level (Chi-square test of independence). The 'Disclosure of conflicts of interest is a standing item' returned a p-value of 0.1342 (Chi-square test of independence).

The sharper delineation, however, was apparent in the identification of *factors determining* how conflicts of interest should be managed (Table 12). The 'standing to benefit' test was either 'very important' or 'fairly important' for the vast majority of respondents representing other-than-religious charities (95 percent). For the religious entities, such importance was expressed by only 85.1 percent. Again, the provisions in the entity's governing document were quite important for 87.6 percent of the other-than-religious, but only for slightly over three-quarters of the religious subset (76.6 percent). If the particular conflict involving a member was likely to be a regular occurrence, 85.8 percent of those from other-than-religious entities thought this an important consideration in how conflicts of interest were managed; among the religious it dropped to 72.3 percent. And finally, and perhaps surprisingly, while leaders from other-than-religious charities were quite jealous of their organisation's reputation as an important factor in managing conflicts of interest (94.7 percent), the same level of regard dropped to 83 percent for religious charities. These figures could be interpreted in different ways. For example, they may indicate that religious charity leaders regard all conflicts of interest as problematic regardless of whether there is personal benefit or regular occurrence. This interpretation is consistent with a number of comments (from unidentified respondents)¹⁷ and also with religious leaders' attention to conflicts management (in the sense of declaration and abstention — as shown in Table 1). Alternatively, they could indicate a more relaxed attitude to conflicts of interest or that religious charity leaders are guided by religious motivations. Further empirical research (in the form of interviews and focus groups) would be beneficial in testing and nuancing these findings.

¹⁷ These included: 'I found these questions hard to answer. The issue for us is any conflict, serious or minor they do not get to vote on the issue'; 'Question is ambiguous. If there is a strict practice regarding conflict of interest then none of these things are important, they are all dealt with strictly'; 'The culture is critical to good governance, so all conflicts should be treated equally'; 'All conflicts are important and should be treated seriously'; 'All conflicts are relevant to be disclosed irrespective'; 'All conflicts of interest are equally important, that's why the seriousness or extent are not important in themselves'.

Table 12: Importance of Factors in Determining How a Conflict of Interest Should Be Managed

(‘Please indicate how important the following factors are, in your opinion, in determining how a conflict of interest should be managed’)

	Aust ALL	Religious	Stat Test	Other-than-religious
Whether the conflict is serious or minor	78.5	70.2		79.9
The extent to which the conflict affects the board member’s ability to decide the matter in the best interests of the organisation	94.2	89.4		95.0
Whether the conflicted board member or an associated person or organisation stands to gain a benefit	93.6	85.1	**	95.0
The provisions in the organisation’s conflicts of interest policy or governing document	86.1	76.6	*	87.6
Whether there is a perception of conflict (in the sense of whether an outsider or member of the public might think that the decision might be affected by the conflict of interest)	91.2	85.1		92.2
Whether the conflict will affect the charity’s reputation	93.0	83.0	**	94.7
Whether the conflict could affect trust or free discussion between board members	94.8	89.4		95.7
Whether the conflicted board member is regularly affected by this conflict of interest	83.8	72.3	*	85.8

Notes: Sum of 'Very Important' and 'Fairly Important'. Statistical tests in third column: one asterisk: significant at the 0.05 level of significance; two asterisks: significant at the 0.01 level (Chi-square test of independence).

VII CONCLUSIONS

In summary, the evidence from our preliminary empirical research points to religious charity leaders holding marginally less confidence in their grasp of governance duties — with almost one in seven not cognisant that they even had governance duties — and significant proportions revealing they had not received any training for those governance duties. Furthermore, well over one in four complained that the governance duties were complex and difficult to keep up with. Religious leaders were less influenced by concern for reputation and liability than their other-than-religious peers.

There may be some mitigating circumstances that attend the nature of religious charities: a high level of trust (and overlap) of charity staff and donors; a closer sense of 'fellowship' as intrinsic to the charity's mission; personal accountability mediated through congregational structures, and so on. And it should be stressed that the figures stated are 'averages', meaning that certain proportions of both religious and other-than-religious charities will be over these averages, while both will also be represented under. It also needs to be acknowledged that governance within religious charities is complex.¹⁸ There is, however, an evident need to empower and enable leaders of religious charities to understand and meet their governance duties. Whether or not religious entities are subject to the ACNC Governance Standards (due to either being or

¹⁸ See Brian Lucas, ‘Governance in the Catholic Church: Issues and Challenges’ (2019) 25 *Third Sector Review* 273.

not being a basic religious charity), leaders of such entities are subject to other governance requirements, not least of which are fiduciary-based duties.¹⁹

Given the receptiveness of religious leaders to practical assistance in relation to governance duties (and their expressed difficulties in understanding such duties), we recommend, as a first step, that the ACNC direct appropriate guidance and education to leaders of Australian religious charities²⁰ in a similar way to recent initiatives by the Charity Commission for England and Wales Charity Guidance Redesign Project.²¹ There is also a clear need to simplify and harmonise governance and regulatory requirements applicable to charities generally in light of the explosion of regulation (quite apart from ACNC regulation). The complex and multilayered nature of governance duties applicable to leaders of Australian charities is overwhelming and in need of reform.²² This article demonstrates particular difficulties in the context of religious charities, thus further highlighting the need for practical measures which would in turn benefit leaders of all Australian charities.²³ Additional analysis based on further empirical research (in the form of interviews and focus groups) would also be beneficial in testing and nuancing these results and suggestions.

¹⁹ See Langford, 'Charities and the Fiduciary Paradigm' (n 10); Richard H Helmholz, 'Fiduciary Principles in the Canon Law' in Evan J Criddle, Paul B Miller and Robert H Sitkoff (eds), *The Oxford Handbook of Fiduciary Law* (Oxford University Press, 2019) 491. Statutory and general law duties apply to management committee members of incorporated associations and trusts, for example.

²⁰ In this respect there is merit in the submission made by the Law Council of Australia to the ACNC Review that the ACNC should consider providing more educational material to charities and charity leaders to explain the equitable duties that apply (which are often more onerous than the minimum standards in the Governance Standards) and their interaction with the Governance Standards: Law Council of Australia, Submission to Treasury, *Review of Australian Charities and Not-for-profits Commission Legislation* (28 February 2018).

²¹ Note also that the Charity Commission for England and Wales has found that charity leaders who have read its guidance are better at managing conflicts of interest: Yonder (n 16).

²² See Langford and Anderson, 'Restoring Public Trust in Charities' (n 3); Andrew Godwin and Rosemary Teele Langford, 'Corporations, Financial Services and Charities: Regulatory Complexity and Coherence' (2023) 39 *Australian Journal of Corporate Law* 1.

²³ Elsewhere we have recommended that the ACNC develop 'Five-Minute Guides' and connect relevant guidance by hyperlink: see Godwin and Langford (n 22).