UNSW
THE UNIVERSITY OF NEW SOUTH WALES

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Never Stand Still
Faculty of Law

Regulating Charity Investment

University of Melbourne Workshop
Online
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Regulation of charity investment governance is underdeveloped

Trust law is light touch

- Trustee Acts are not prescriptive
- Prudence bar set low for non-commercial trustees
- Enforcement through AGs is ineffective

ACNC is focused elsewhere

- Brief guidance on website
- Limited reporting and disclosure

Contrast other public-facing trustees

- Registered managed investment schemes (MIS)
  - *Corps Act*
  - Disclosure regime
- Public offer superannuation funds
  - s 52 *SIS Act* covenants
  - APRA Prudential Standards
  - Intensive disclosure regime

Rationality is especially vulnerable in charity governance

- The virtue 'halo' protects well-intentioned maladministration (eg conflicts)
- The mission focus encourages conformity
- The in-group bias may impede delegation and reliance on out-group experts
- Time constraints favour executive management
- Lack of transparency hampers accountability

And in investment governance specifically:

- Inattention relative to fund-raising and giving activities
- 'Doing good' can cloud mission focus

Regulating charities is all about balance

Efficiency

Accountability

Market integrity

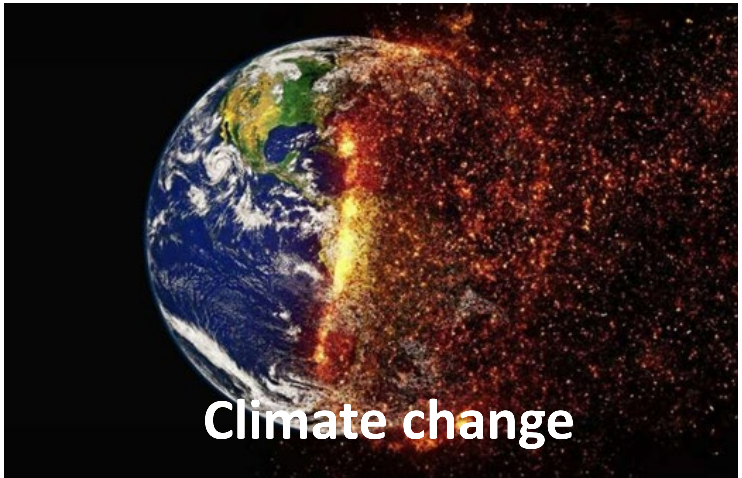
Privacy

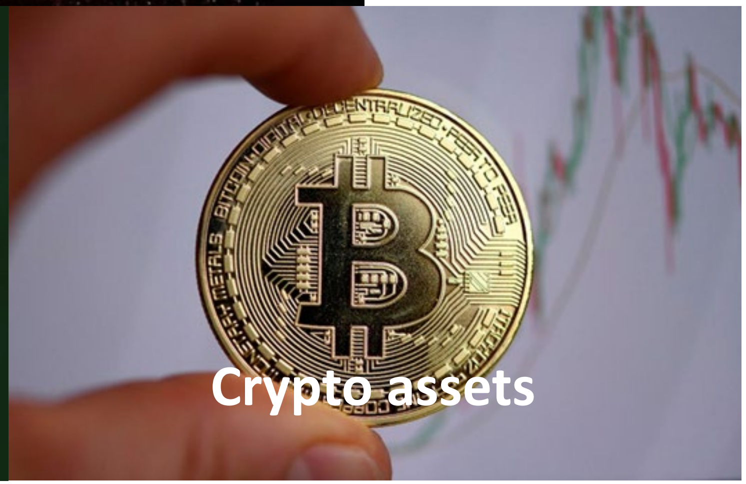
Personal autonomy

Promote giving

State concessions

Contemporary investment issues are never straightforward for trustees





Three initial (tentative) recommendations

Uncontroversial:

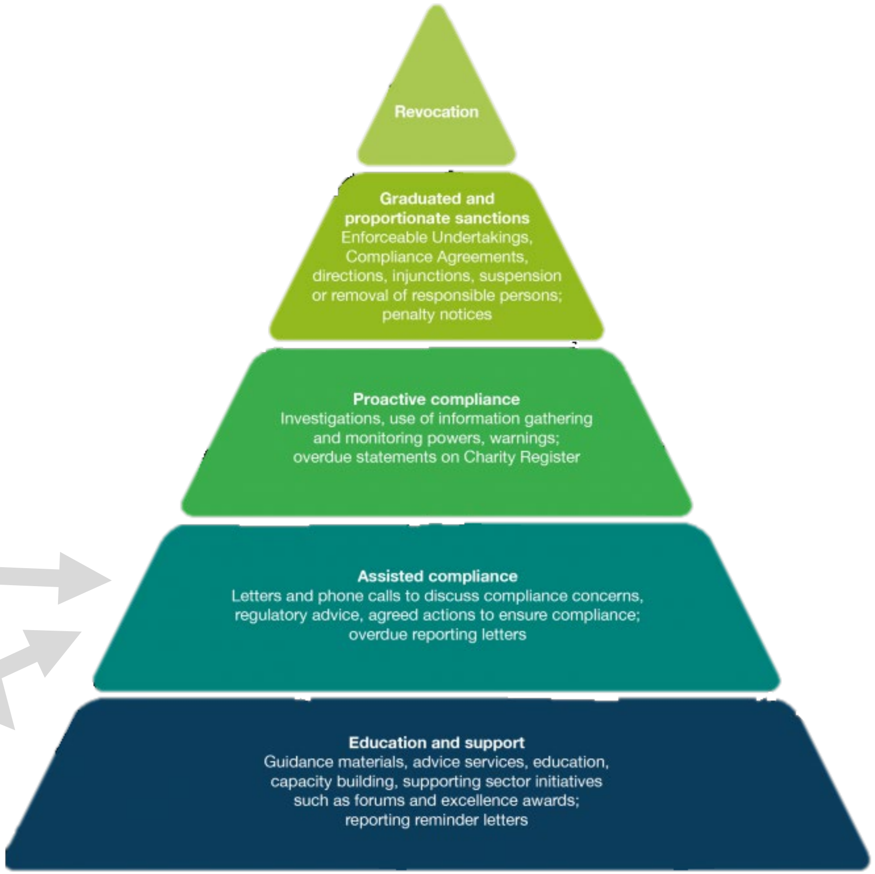
ACNC to increase investment guidance material and training (esp helpful for small charities)

Slightly more controversial

ACNC to develop a Governance Principle on Investment Governance

Controversial:

ACNC to require increased investment disclosure for large charities to assist accountability



ACNC Compliance and Enforcement Pyramid

Questions, thoughts etc