

ANFPN CONFERENCE 2010-05-24

DGR Endorsement Issues

Institution Or Fund	Public Fund	Item		
F			Private Ancillary Funds	
F	Yes		Ancillary Funds	
I	No	1.1.1	Public Hospitals	Not TCC
I	No	1.1.2	Non-Profit Hospitals	
I	No	4.1.1	Public Benevolent Institutions	
I		1.1.6	Health Promotion Charities	
F	Yes	4.1.4	Harm Prevention Charities	
I	No	4.1.7	Charitable Services Institution	
F	Yes	4.1.3	Necessitous Circumstance Fund	
I	Yes	1.1.5	Public Institution for Research	
I	Yes	1.1.7	Public Ambulance Service	
F	Yes	2.1.10	School Building Fund	
F	No	12.1.2	Public Library	
F	Yes	5.1.3	War Memorial Repair Fund	
F	Yes	2.1.13	Scholarship Fund	
I	No	2.1.1	Public University	
I	No	2.1.3	Higher Education Institution	
I	No	2.1.4	Residential Educational Institution	
F	Yes	2.1.8	Religious Education in Govt. Schools	
I	No	2.1.12	Government Special School	Not TCC
I	No	3.1.1	Approved Research Institute	May not be TCC
F	Yes	4.1.5	Australian Disaster Relief Fund	
F	Yes	9.1.2	Developed Country Disaster Relief Fund	
F	Yes	9.1.1	Overseas Aid Fund	
I	No	4.1.6	Animal Welfare Charity	
F	Yes	6.1.1	Register of Environmental Organisations (REO)	
F	Yes	12.1.1	Register of Cultural Organisations (ROCO)	
F	Yes	8.1.1	Approved Marriage Guidance Organisation	
F	Yes	8.1.2	Public Family Counselling or Dispute Resolution	
I	No	10.2.3	Guides	
I	No	10.2.5	Scouts	

New DGR categories –

2003 Harm Prevention Charities –

Applications first to Dep't Families, Housing, Community Services (FAHCSIA). Special additional conditions needed in constitution. Harm prevention includes –

- Emotional abuse
- Sexual abuse
- Physical abuse
- Suicide
- Self-harm
- Substance abuse
- Harmful gambling

There are special obligations to the Dep't in addition to complying with ATO specifics. ATO endorsement as TCC is a prerequisite

2004

Public Ambulance Service

Public Fund for a Public Ambulance Service

Government Special Schools

2006

Scholarship Funds

Only for permanent residents or Australian citizens

Must be open to persons in a region of Australia with a population base of at least 200,000 – ABS records determine. Not much use to benefit persons from remoter parts of Australia.

Australian Disaster Funds

Established for relief of persons and communities experiencing a sudden disaster and declared to be a disaster or a state of emergency by a Minister of the State or Territory.

Needs to have resulted in death, serious injury or other physical suffering for a large number of people or widespread damage to property.

I suggest the establishment of a PBI that is only activated for the special occasions is of more use due to the special conditions involved.

Animal Welfare Charity

Previously you would have needed to have special approval, such as with the RSPCA – not easy.

Charitable Services Institution

Special category to assist an entity that doesn't qualify for PBI as benevolent relief is only a part of its activities. If it is part PBI, part Harm Prevention, and part Health Promotion there is now a way forward.

War Memorial Repair Fund

Developed Country Disaster Fund

Established to provide DGR support for disaster relief in a country that is not a developing country. Needs to be declared a disaster by the Federal Treasurer.

Would normally be administered by an existing PBI, as a special project.

ATO have fast track facilities to provide approval – I have found it isn't as simple as it was originally intended, but it is a process where a verbal approval to an existing PBI is probably sufficient, followed up by the paper work.

Public Fund for an approved Marriage Guidance Organisation

Established to provide marriage guidance education.

Special approval by Dep't families, Housing, Community Services (FAHCSIA) NEEDED.

This new structure was, I understand, established to provide some limited DGR benefits to entities that didn't qualify for DGR endorsement under the already existing **Public Fund For the Provision of Family Counselling or family Dispute Resolution** (Mediation). This latter category needed to be in receipt of funding from Federal Government and was extremely difficult to obtain. (My letters seeking information back in the 1980's went un-answered, I think deliberately.)

Notes on some other DGR's –

Health Promotion Charities

Established for –

- the provision of information in prevention or control of disease in humans, or
- conducts research to detect, prevent or treat disease, or
- develops or provides relevant aids to sufferers.

Includes physical and mental ailments.

Distribution of money to research organisations doesn't, in itself, qualify.

Necessitous Circumstance Fund

Normally involves the provision of money or goods to the person in need. May be established for an individual or a category of people who are in need. A person who is physically handicapped and needs special facilities or accommodation is a frequent beneficiary.

School Building Fund

Available for the whole or a part of a building provided it is being utilised primarily for a course or courses that are approved educational courses. The curriculum, outcome of the study programme, trainers qualifications are all important.

Cannot be used for unstructured bible studies but religious education that follows a curriculum and is taught by appropriately qualified people is in order.

Can be utilised for purchase of land, cost of building, including extensions, mortgage and borrowing costs, property maintenance, insurance, etc. Not for equipment (unless a fixture), grounds, fencing or other outdoor matters, or for a building unrelated to the educational activity.

Use of the building, or a section of it, by a non-educational activity that is a minor use (less than half) will not normally dis-qualify.

Public Fund on the register of Cultural Organisations (ROCO)

Applications need to be submitted to the Dep't of Environment, Water, Heritage and the Arts, not by ATO. ATO DGR rules apply in addition to the ROCO requirements.

Cultural activities include –

- literature
- music
- performing arts
- visual arts
- craft

- design
- film
- Aboriginal art, or
- Moveable cultural heritage

Special 6 monthly reports to ROCO required.

ROCO people are helpful, but not all “cultural” structures will qualify. Religious activities are not “culture” but some religious, evangelistic entities qualify – eg Christian radio.

Ancillary Funds

Ancillary Funds are conduits for the channelling of DGR funds from the donor public to other DGR endorsed funds. They can be particularly beneficial to larger churches who have several DGR entities (PBI, School Building Fund, ROCO fund, etc) as a planning and control tool. Funds can be channelled to the area of appropriate need, thus preventing imbalance in funding between several potentially competing entities. Plan it and promote it correctly and the Church Board guide the giving to where it is most needed.

Special Issues

Where an entity has DGR endorsement for the whole of its activities it is no longer required by ATO to have a separate Gift Fund Bank Account. However it needs to retain separate internal records of the Gift Fund. Also, where the entity has several internal DGR funds, it may use one DGR Bank Account for all of them – provided separate accounting records are maintained. However where the entity has endorsement by another Government Dep’t you also need to consider their requirements. It normally requires that a special Bank Account is maintained, irrespective of ATO issues.

Planning your DGR

Structure – Incorporated Association, Company Ltd by Guarantee, Special Purpose Non-Profit Company, Trust, Private Act of Parliament (rare today). Not normally an unincorporated entity, but it is possible.

Objects – Need to be brief.. The old idea of covering the world’s needs is not acceptable. Focus on the need to be addressed, make the wording clear, and stay with your Objects always. Do not be distracted by funding opportunities or you will miss your target.

Charitable Institution or Charitable Fund?

A charitable fund is a trust established under will or *inter vivos*. It holds or manages property to direct it to a charitable purpose – commonly administered by a charitable institution.

A charitable institution is an entity that is carrying out a charitable purpose. It is the “doing” entity. It can be structured as a trust or as a corporate entity – it is its function that determines its status.

When completing the initial ABN application you are asked to identify whether it is a fund or an institution. Often this is incorrectly identified. The table at the beginning of these notes identifies whether a particular DGR is a fund or an institution. There are some building funds that are established as a part of the main structure but current expectations seem to always require it to be a trust.

Statement of Faith

There are not normally any objections to identifying our Christian motivation. However some specific DGR structures have special requirements that limit the promotion of religion. ROCO and Overseas Aid Funds are examples. Even there the Statement of Faith, in itself, is not a fundamental negative.

Membership

Restricted, or open. Benefits and dis-advantages either way. Where an entity is a public fund (See table at the beginning of these notes) there is an expectation that the public are invited to donate, and also to participate in the actual organisation. A commitment to the Objects and to the Statement of

Faith present some restrictions without normally intruding on the public nature of the entity. “Public” extends to a significant section of the public. It could include all professing Christians in Perth and qualify, but that is not a procedure I would recommend.

Closely Held membership or Board

Where the Board in particular is made up of a closely knit group – family or friends, ATO will, where it is aware, normally decline TCC or DGR endorsement. The same issue can relate to the membership itself, but doesn’t seem to be a current target. The ATO rely on the PAMAS case, where the control was a Christian doctor of medicine, his wife, children and two very close friends. It was held that the entity failed the “public” test.

Audit?

Is audit to be obligatory in the constitutional documents? If so, why? It could be a Review, or the membership decide, or silent. If audit is obligatory for some other reason, such as funding obligations, then the matter is already decided. However if there is no immediate clear reason then there is an argument for the members having options.

Noel Harding
May 2010

Basic Diagram

