

advocacy is not in itself a bar to charitable purposes. The reasoning of the High Court on this point seems to indicate that there will be circumstances where advocacy can be held to be an acceptable charitable activity without establishing a precedent.

#### **Non-Profit Sector Reform Council:**

The Australian Government has established the Non-Profit Sector Reform Council following significant public commentary arising from multiple Government enquiries. The Council is to provide advice and support to the Office for the Non-Profit Sector which has recently been established within the Dept. of Prime Minister & Cabinet. Membership of the Reform Council itself has now been made and represents the significant diversity of the Non-Profit Sector.

The objective of the establishment of the Office of the Non-Profit Sector is to co-ordinate the many different areas where Government legislation impacts on the Non-Profit Sector. Hopefully this will lead eventually to a 'one-stop shop' for the Sector in respect to Government regulation, both State and Federal.

#### **Overseas Charity Tax Schemes:**

ATO have issued a warning alerting charities and individuals to be cautious about arrangements promoting a tax deduction for gifts of pharmaceutical items to charities for use overseas. The scheme relates to purchasing pharmaceuticals from an overseas country and having them valued for gifting purpose at a much higher value than the actual cost.

ATO states *"We are of the view that these arrangements are not legitimate, and that those involved may face a large tax debt, substantial penalties, or even prosecution."*

#### **Volunteer Fire Brigades now DGR:**

Deductible Gift Recipient (DGR) status is now available for volunteer fire brigades. This change to the law regularises a situation where some volunteer fire brigades were eligible for DGR endorsement as Public Benevolent Institutions (PBI) and others were not. It also regularises the difficulty where some brigades were 'hybrid', providing wider volunteer emergency services than fire-fighting itself.

The Government had identified there were more than 6,000 rural volunteer brigades in Australia. Of this group, only 1,800 were currently endorsed as a PBI.

#### **Consumer Law changes:**

From 1 January 2011 the new uniform Australian Consumer Law came into operation. It applies at Commonwealth level in every State and Territory. This new law draws heavily on the national Trade Practices Act and the WA Fair Trading Act.

More information is available from:

[www.commerce.wa.gov.au/consumerprotection/](http://www.commerce.wa.gov.au/consumerprotection/) and follow the links for consumers and business.

This new law is one of the national COAG initiatives to simplify business regulation and competition

#### **ATO Review of Charity & Church Endorsements:**

ATO have asked that all entities with Tax Concession Charity and/or Deductible Gift Recipient endorsements conduct an annual review of their eligibility. A simple check-list is available on our web-site under 'Links – Australian Taxation Office'.

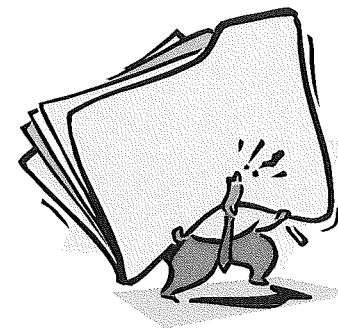
We encourage all entities to complete the review worksheets, have your Board conduct the review, confirm it by resolution, and include a copy of the work-sheet in your Board Minutes.

#### **Publications available:**

**Voluntary Treasurers' Handbook —**  
Hard copy — 59 pages ..... \$50.00

**Missionary Tax Guide—2010**  
Hard copy— 47 pages ..... \$50.00  
E-mail copy ..... \$30.00

(GST Free supplies under Section 38-250  
of GST Act)



**NEWSLETTER**

**JANUARY 2011**

***"Getting it Right – 2011"***

**Add-Ministry Seminar to guide Church  
Leaders**

***Perth – Saturday March 12  
Bunbury – Saturday March 26***

**For more information see our website.**

Locked Bag 5  
BAYSWATER WA 6933

Phone: 08 9271 1844  
Fax: 08 9271 1944

[addministry@hardings.org.au](mailto:addministry@hardings.org.au)

Visit our Website at:  
[www.addministry.org.au](http://www.addministry.org.au)

*Previous copies of this newsletter are also available on the  
website.*

### **Paid Parental Leave:**

The Federal Government scheme to provide financial assistance to employer bodies in respect to parental leave pay commences on 1 January 2011. This scheme is designed to work in conjunction with the Fair Work Act 2009 and other existing leave entitlement arrangements. Where an employee has worked in an entity for twelve months or more and is expecting to receive more than eight weeks parental leave pay, they need to contact the Federal Government Family Assistance Office to determine their eligibility to a claim for Parental Leave pay.

The employing entity, on the other hand, has an obligation to be the conduit for the payment of such parental leave pay. This includes handling the PAYG Withholding arrangements as an employer. More information is available from us on receipt of an e-mail request, or from Centrelink Business Online services or by 'phoning the Centrelink Business Hotline – 13 1158.

### **ATO Non-Profit Hotline:**

The ATO have established a hotline for the Not-for-Profit Sector. However this has not received prominence in the telephone directory or most other ATO published services.

You can access the hotline by 'phoning 1300 130 248.

### **Ministers of Religion and Workers' Compensation:**

There continues to be significant uncertainty with churches as to whether Ministers are covered by Workers' Compensation Insurance. The difficulty arises because of the definition of "worker" in the Workers' Compensation Act, which states "*any person who has entered into or works under a contract of service ...*". However the relationship between a church and its minister(s) is not consistent with a contract of service. Centrelink refers to it as a 'contract for service'. The role of a minister is seen to be similar to the role of a public officer such as a Member of Parliament or member of the judiciary.

The Act, in Clause 8 & 9 make special provision for some, but not all, ministers within the Baptist and Anglican denominations which deems them to be employees when serving with a church of their denomination.

The Act, at Section 10, provides an option for a church to request WorkCover to arrange for a notice to be published in the State Gazette to have a minister serving with that particular Church to be deemed to be a worker for the purpose of the Act. Such a notice in the Gazette will ensure that the church and the minister are protected for the purposes of Workers' Compensation law. Work Cover advise that such a request to their office needs to be supported by: -

- A copy of the Certificate of Incorporation of the entity;
- A copy of the Constitution;
- Advice from the Office of State Revenue confirming that the church is a declared charitable organisation.
- Where the church is not an incorporated entity, the name of the Chief Executive Officer of the unincorporated entity is required.

### **GST News:**

#### **A supply that is partly GST-free.**

Section 9 – 80 of the GST Act states that where a supply is partly taxable and partly either GST – free or input taxed, the value of the taxable supply is to be calculated on a *proportionate* basis. Sub-division 36-B of the GST Act relates to the provision of GST-free health services. This includes a range of health services including optometry.

A recent Administrative Appeals Tribunal (AAT) addressed the provisions of these parts of GST Law in *Luxottica Retail Australia Pty Ltd v FC of T 2010 ATC 10-119*. In this case, the supply was of spectacles, where the spectacle frames are subject to GST and the lenses, being an optical supply, being GST-free under the health exemption provisions. The case was complex because Luxottica were offering a special deal to their clientele where the spectacle frames were offered at a discount from normal selling price on condition the customers acquired not only the frame but also the lenses. There was no discount offered for the lenses. The central issue was how the discount could be treated for GST purposes, given that the lenses were GST-free and the frames were subject to GST.

The AAT held that *apportionment* should be based on the discounted frame price. In so doing they rejected the ATO

submission that the undiscounted frame price should be taken into account.

The case identifies some of the more complex issues that can arise under GST Law. The matter is not final, as the ATO are appealing to the Federal Court from the AAT's decision.

### **FBT and non-resident employers:**

ATO have issued a draft Taxation Determination TD 2010/D 1. This relates to the situation where a non-resident employer pays an Australian resident employee for work performed overseas. It requires PAYG Withholding Tax to be deducted if the non-resident employer has a sufficient connection with Australia.

The Ruling goes on to say that the term "*sufficient connection to Australia*" will apply if the non-resident employer has a physical business presence in Australia. This is further described as "*the carrying on of an enterprise or income –producing activities or part of such activities in Australia and having a physical presence in Australia.*"

This issue also needs to consider whether the employee is an Australian resident for tax purposes. The holding of Australian citizenship or Australian domicile does not automatically mean that the person is an Australian resident for Australian Income Tax purposes. This is a subjective test and two seemingly similar circumstances can possibly produce different residency results.

### **Aid/Watch confirmed as a charity:**

In earlier newsletters we identified the activity of Aid/Watch as advising and reviewing overseas entities established under Australian Tax Law. Its role also involved significant public advocacy. The Federal Court had previously found in favour of Aid/Watch and ATO appealed to the High Court. The High Court have now decided to confirm the Federal Court's decision in favour of Aid/Watch. In the judgement it was stated that although Aid/Watch was not directly involved in the provision of the relief of poverty or advancement of education, the generation by lawful means of public debate concerning the efficiency of foreign aid is a purpose beneficial to the community. The High Court also found that public