

Charities Commission in Australia:

The Federal Government have committed themselves to the establishment of an Australian Charities and Not-for-Profit Commission (ACNC) to be operative from 1 July 2012. The Implementation Task Force and Advisory Council have already been appointed.

There has been considerable pressure from a number of Government Enquiries, substantially supported by the charitable Sector for some years, so this move is in general, welcome. Nevertheless, the changes it will introduce will impact on charitable and religious entities initially, as they adapt to further changes.

The ACNC will have, as its initial aims, these tasks: -

1. Determining the legal status of entities seeking charitable, Public Benevolent Institution, and other NFP benefits with Commonwealth agencies.
2. Establishment of a "Report Once Use Often" reporting framework.
3. Provide education and support to the Sector on technical matters.
4. Establish a Public Information portal.

The objective is to extend the activities of the ACNC across Australia involving co-operation from all States and Territories. This is a part of the Council on Australian Government (COAG) initiative aiming to reduce red tape and establish standardised principles for the Sector.

The Commission will be independent and will report directly to the Parliament via the Assistant Treasurer.

Public Benefit: -

With the introduction of the new ACNC it appears likely that **all** Tax Concession Charity (TCC) endorsements will be subject to review. When the New Zealand Charities Commission was introduced in 2005 this was one of the changes introduced. In the New Zealand experience a Public Benefit Test was a requirement. As a consequence some entities that previously had enjoyed income tax exemption lost their exempt status. It is clear that the Government have been looking closely at Charities

Commission operations in other countries, including New Zealand and England, where both have a Public Benefit Test. As this has also been a matter under discussion recently in the Australian Senate, it seems quite possible that such a test will also be introduced in Australia. If so, its impact will be small, but it will require charities to more closely identify their activities with their stated Objects in their Constitutions. This has been a focus with ATO for TCC for some time in any event. Some Charities that were automatically granted TCC status with the introduction of the new tax regime on 1 July 2000 may not have yet realised that they should have been looking more closely at their activities in conjunction with their Objects clause. It could be timely to ensure your entity has carried out an appropriate review.

Better Targeting of Not-For-Profit Tax Concessions: -

A further initiative undertaken by Government is to consult with the Sector on a range of matters relating to the tax concessions granted to the Not-For-Profit Sector (NFP).

The consultation paper states that there are approximately 600,000 entities; – charities, community organisations, sporting clubs, religious bodies and others. They range from tiny entities such as the CWA in a small country town, to very large organisations such as hospitals operated by religious organisations. Government estimates that the identifiable cost to the Commonwealth in 2010/11 is \$3.3 billion, with substantial unquantifiable concessions primarily consisting of income tax exemptions that could amount to a similar dollar value. They recognise that the NFP Sector contributes significantly to Australian society and wish to ensure that the substantial Government concessions are utilised responsibly for the benefit of the wider Australian community. The announced aim is to ensure that where an NFP engages in commercial activities unrelated to their altruistic purpose restrictions will be imposed regarding income tax exempt concessions. The intent is to limit the income tax exemption only to a situation where the profits of a commercial activity are directed to advance the altruistic purpose. However, it is clear that the Government objective is to introduce changes, mainly aimed at their perception of problems from the Word Investments case and other recent cases.

Needless to say the charitable sector awaits these changes with bated breath.

"In Australia" Conditions for Charities: -

Legislation being prepared for the Federal Parliament may, if finalised in its current form, have significant consequences for charities and church bodies that currently send money to overseas charities.

The current law provides that an entity that is a Prescribed Institution and sends the bulk of its income overseas is granted TCC endorsement. Charities (including religious organisations), that send modest amounts of income to overseas charities are not currently subject to such regulatory control and their TCC endorsement has not been in question. Mission groups have benefited from Prescribed Institution status by joining Missions Interlink (the Missions Commission of Australian Evangelical Alliance).

The draft legislation places in doubt the Prescribed Institution concession currently available for Mission organisations. What is more concerning still is that church organisations that operate principally in Australia, but donate a modest part of their annual income to overseas charities including missions, may also lose their TCC endorsement.

Organisations that are approved overseas aid organisations will not be subject to these changes for obvious reasons.

Approaches are being made to Government to seek to ensure that the present Prescribed Institution concession is retained.

The whole emphasis of the proposed change is to ensure that the benefits of philanthropy are retained within Australia. It is initiated apparently by concerns about money laundering and terrorism. However the 1995 law changes introduced measures of control in this area, and these laws have been tightened even further in recent years.

This produces significant potential problems for churches supporting philanthropic and mission activities overseas. It is to be hoped that a greater wisdom will prevail.

“Charity” defined: -

The Federal Government have also announced their intention to introduce a statutory definition of ‘Charity’, applicable across all Commonwealth agencies, effective from 1 July 2013. The Government announcement states that the statutory definition will be based on the 2001 ‘Report of the Enquiry into the Definition of Charities and Related Organisations’, but taking into account recent judicial decisions, such as Aid/Watch Inc.

The Courts, over the years have recognised that what constitutes a charitable act is subject to changes in understandings and community attitudes over the passage of time. The current definition of charity is based on over 400 years of Common Law. The announcement suggests that the present Common Law understanding of the meaning of charity has been inconsistent between different jurisdictions in Australia, and that it creates considerable uncertainty for the Sector. An alternative view would suggest that the Common Law legal traditions have actually served the Sector well in adjusting to changes in community understandings and circumstances. However, it is possible that the intention is to broaden the meaning of the term, which may well be a beneficial move.

Ancillary Funds: -

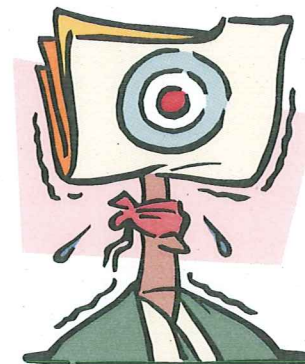
Ancillary Funds exist to provide Deductible Gift Recipient (DGR) endorsement for a structure which is really a fund-raising conduit for other DGRs. Larger churches and charities often use them as an efficient tool in better organising their religious and charitable activities where DGR endorsement is possible. An example is a large church which has several DGR structures. The church encourages the congregation and wider community to make donations to the Ancillary Fund. The church leadership, where donations are not designated, is then able to direct the donations to the area of greatest identifiable need.

There are two types of ancillary funds. The Private Ancillary Fund is used by the philanthropist and large public companies as a means of exercising philanthropy from internal resources.

Public Ancillary Funds are now to be the subject of further law changes. Draft legislation has been released for public comment. The primary aim of the changes appears to give the Government, through the ATO, increased regulatory control (although there appear to be substantial legal obligations already). Trustees will now be obliged to be corporate entities, although there would be few, if any, instances of natural persons as Trustees of such funds. There is also the introduction of administrative penalties to enforce the legal obligations. This in fact is clearly the preferred option as previously the only alternative would be for ATO to cancel the ancillary fund’s DGR endorsement. The proposed changes follow similar earlier changes introduced in 2009 in respect to Private Ancillary Funds.

Special Disability Trusts: -

Significant beneficial changes have recently been made to the benefits provided to disabled persons. More information is available on our website: www.addministry.org.au



**NEWSLETTER
JULY 2011**

Publications available:

Voluntary Treasurers’ Handbook —
Hard copy — 59 pages \$50.00

Missionary Tax Guide—2010
Hard copy— 47 pages \$50.00
E-mail copy (single use) ... \$30.00
E-mail copies (multiple use) \$200.00

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

Locked Bag 5
BAYSWATER WA 6933

Phone: 08 9271 1844
Fax: 08 9271 1944

addministry@hardings.org.au

Visit our Website at:
www.addministry.org.au

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