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Newsletter June 2012

Charities Commission Special Edition

In this edition we provide information as current as is publicly available on developments with the Australian Charities & Not-For-Profits Commission (ACNC). With the commencement date of 1 October 2012 now very near much, but not all, of the detail is becoming clear. Some pre-planning may now be appropriate, especially for charities with annual revenue above \$250,000.

In September, when the laws are finalized, a Newsletter will provide an updated commentary. At that time we will also provide information about Seminars we are planning. We are hoping to have in Perth in October, a representative of the ACNC available and subsequently will aim to provide visits to some regional centres, working in co-operation with WA Council of Social Service and the WA Christian Church community. Details will be available later through the Newsletter, our website, and through the support of radio Sunshine 98.5FM.

As previously advised the commencement date for the Charities Commission has now been deferred to 1 October 2012. Other key matters relating to the initial operation of the Commission are set out below.

Susan Pascoe AM, the Interim Commissioner for the Implementation Task Force has now been nominated to be the permanent Commissioner for the Charities Commission (ACNC).

Two Assistant Commissioners have also been appointed. They are: -

David Locke, formerly the Executive Director of the Charities Commission of England & Wales. David has been on secondment to the Implementation Task Force for the past twelve months and will provide relevant experience to this role.

Murray Baird – formerly a partner in Moores Legal and a solicitor with substantial valued experience in the Charity and Not-For-Profit Sector.

These three appointments bring a wealth of experience in the top level of the Commission.

A draft of the proposed Act to establish the ACNC has been referred to the House of Representatives Economics Committee for review and will then be referred back to the Implementation Task Force for any final changes in drafting. It is expected that the Bill will pass through all stages of the Federal Parliament by early September.

The Government has advised that the **Governance Standards** and the **financial reporting framework** will now be delayed with implementation expected from 1 July 2013 and the first financial reports will now be for the year ending 30 June 2014. This is a very welcome response to the requests for more consultation on complex matters. We understand there will be further consultation with the Charity Sector as a consequence of these decisions.

From 1 October 2012 the ACNC will be the decider of **charitable status**. However availability of taxation concessions will still be subject to ATO review. Applications for endorsement for tax deductibility as a DGR are also to be lodged with the Commission but ATO will have a role in final approval of DGR status.

The establishment of a **Public Information Portal** on the Internet will enable charities, Government departments and the wider public to obtain information regarding individual charities. Once fully developed this portal will include the constitution of each Charity, some financial information (depending on the size of the organisation), a statement regarding its current activities, contact information and details of the Board or controlling Committee membership. Charities and churches will now be open to public scrutiny.



Education will be provided through the Portal, through the availability of Facts Sheets and a telephone Help Line. There is the possibility that some initial limited regional training will be available.

The Government has also announced that two complex matters will now be deferred to a date to be advised. These matters are; -

- **Harmonisation of Fund-Raising Laws.** The intent of Government is to establish a National Fund-raising Licence to eliminate duplication and the complexity of the present State and Territory arrangements. However further negotiation is required with the States and Territories Governments before this can be finalised.

- The **“In Australia”** tests. The initial contentious Discussion Paper on “In Australia” included proposals that could have caused many worthy charities to lose their tax concessions. It was recognised by Government to be unworkable following vigorous objections from within the Charities Sector. The more recent, and much more discerning, second Discussion Paper still retains some sensitive matters although it is a much more practicable working document. The most difficult issue this later document raises is the need for donations to be traced through charity A to its application in charity B (where there is a transfer of funds legally permissible) to ensure they are applied for an approved purpose.



It is important to note that Government is now listening to the significant concerns expressed by the Charity Sector. It is to be hoped that the ACNC when formally constituted will be the body that explores the application of these important matters.

Other matters related to the ACNC development include: -

An entity with an **alternative accounting period** to 30 June will be permitted to continue with that accounting period, at least until 30 June 2014. Post 1 July 2014 approval from ACNC will be needed for all new charities.

Grant funding acquittals will be separate from ACNC financial reporting and not part of the proposed “One Stop Shop”. Many within the Sector had anticipated that Grant acquittals would be channelled through the ACNC and reduce the multiple reporting that currently exists. At least initially, this will not be the case.

Joint reporting for churches and similar structures through a collective or consolidated report is currently being considered.

The initial **three-tier levels** are still under consideration. The initial proposal is for:

- Tier 1 - revenue up to \$250,000 p.a.
- Tier 2 - revenue from \$250,000 - \$1,000,000 p.a.
- Tier 3 - Over \$1,000,000 p.a.



Representations have been made for an increase in the number of tiers with special consideration being given to very small charities. It is to be hoped that these submissions will bear fruit but it will be some weeks before the matter is clarified.

The Government is considering the establishment of a **new legal structure** for not-for-profit entities. The intent is to replace the current incorporated associations and companies limited by guarantee with such a new structure. The matter is being researched currently by Melbourne University.

There has been some difficulty in understanding Government objectives regarding the **format of financial reports**. There has been a lack of clarity as to whether the present ‘reporting entity concept’ would be retained and also whether General Purpose Financial Reports would be an obligation for Tier 2 and Tier 3 entities. Government has now advised that the ACNC Implementation Task Force, Treasury and the Australian Accounting Standards Board are working together on this issue to provide guidance on when Special Purpose Financial Reports will be accepted.



Entities that are Tier 2 or Tier 3 (entities with a turnover in excess of \$250,000 p a) will need to present their financial reports utilising the **Standard Chart of Accounts (SCOA)** format. Government is also aiming for them to utilize online reporting through Standards Business Reporting (SBR). Paper reports will still be accepted but Government considers that charity and Government will receive maximum benefit by using the SCOA and SBR procedures. The SCOA is primarily a Data Dictionary and will still leave substantial flexibility in the presentation of financial reports to meet the needs of an entity. We understand that the SCOA reporting obligation is now obligatory for new grants from Government, both State and Federal. It would be wise for charities and churches in Tier 2 and Tier 3 to review their Chart of Accounts now so that from 1 July 2012 their financial report will comply with the SCOA requirements. This is to ensure that the prior year comparative figures that will be required in reports presented for 2013/14 can be adapted without difficulty.

The current Common Law **Definition of Charity** will be the definition that will apply with the introduction of the ACNC Bill into Parliament. This definition will continue until 1 July 2013

when Government intends to have implemented a new legal Definition of Charity. We understand that the new definition will be substantially based on the present Common Law position but will seek to broaden the definition to include within its scope activities that do not qualify under the present Common Law tests.

A major concern with the proposed changes is the requirement that charity endorsement will be subject to a **Public Benefit Test** under all the heads of charity. The current position is that a Public Benefit Test is only required under the fourth head “Trusts for other purposes beneficial to the Community, not falling under any of the preceding heads”. However under the proposed changes a Public Benefit Test will apply to the first three heads also, being Trust for the relief of poverty, Trusts for the advancement of education and Trusts for the advancement of religion. The objective is to ensure that before an entity is endorsed as a charity it needs to be able to demonstrate the benefit of its activities to the public or a broad section of the public, and also continues to demonstrate that public benefit in its annual report. Some charities and churches will experience difficulty with this requirement.

Charities will need to **review the “Objects” clause** in their Constitution to ensure that their activities are consistent with their Constitution and also that the Objects do not include non-charitable objectives. Churches will need to ensure their Objects are clearly religious in character to ensure their status as religious institutions is retained. Over time, all existing endorsed charities will have their endorsement reviewed by ACNC in respect to both activities and their Objects clause. Many older charities will have quite diverse sub-clauses in their Objects which may not be consistent with their primary activity. Those Constitutions will need revision.



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)