



– adding to your ministry

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## Newsletter November 2012

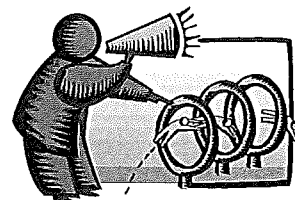
### The Charities Commission is now law

On Thursday 1 November 2012 the Australian Parliament finally brought into law the Australian Charities and Not-for-profits Commission Act (ACNC) and the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act. These two Acts of Parliament bring together the complex provisions that establish the ACNC. The Assistant Treasurer, the Hon. David Bradbury MP, who has been guiding the passage of the legislation stated that this was the most controversial piece of legislation he has introduced in his experience as a Government Minister. It seems that all of the key parties had views at variance with the others. It was subjected to substantial delays particularly in the House of Representatives, where it is possible that much of the delay was caused by current tension within our Commonwealth Parliament and was unrelated to the issues facing the Charities Sector itself.

Following the passing of the actual legislation the matter needs Royal Assent from the Governor General and then the Minister will announce the actual commencement date. The start date is likely to be 1 December 2012.

Matters of which you need to be aware: -

- Existing charities endorsed as such with Australian Taxation Office (ATO) will have their key endorsement data transferred to the ACNC.
- *New charity endorsement applications must be submitted to the ACNC and not to ATO as was previously the case.*
- No initial action is needed by currently endorsed charities. However ACNC will be in contact with them in the foreseeable future seeking some initial information. This will include information as to the members of your governing body and also a copy of your current governing Rules or Constitution. The exact nature of that individual information is not yet available publicly.



- *ACNC will have a website readily available on the Internet. The website will include a "Frequently Asked Questions" page and also substantial information to provide guidance to current and prospective charities.*
- *Charities that are incorporated as either a Company Limited by Guarantee or a Special Purpose Non-Profit Company through Corporations Act will have their reporting obligations transferred from the Australian Securities & Investments Commission (ASIC) to the ACNC. ASIC will only retain responsibility for incorporation of new companies and winding-up procedures.*
- *Initially, incorporated associations will continue to have reporting obligations to the State Department responsible for the administration of associations. Similarly the reporting arrangements for fund-raising will continue to be a State function, – at least for the time being.*
- *The introduction of the ACNC will add additional reporting obligations on every charity in the country. The ultimate aim is to obtain the co-operation of all of the States and Territories so that the ACNC achieves its objective of being a one-stop-shop for reporting for all charities within the country, including fund-raising activities,. The South Australian Government is the first State to agree to work in co-operation with the ACNC. We understand that at least one other State has agreed in principle and the negotiations are at a final stage of being completed.*
- *While charities do not currently need to make changes to their Constitution, it would be an appropriate time to review your Constitution, in particular your Objects clause, to ensure that your activities and the Objects in your constituent document are consistent.*
- *All charities will have an obligation to report annually to the ACNC with the first report becoming due for the year ending 30 June 2013. Charities will have a six-month period to have their accounts prepared and hold their Annual General Meeting prior to the lodgement of the return.*
- *Charities' annual reporting obligations will be determined in accordance with their size.*



1. Tier 1- charities with annual revenue not exceeding \$250,000 - their annual report will only include very basic financial information.
2. Tier 2 – charities with revenue from \$250,001 – to \$1M annually. In year one no financial report will be needed. In subsequent years a detailed financial report will be needed and will be required to be either audited or reviewed. The details regarding financial reports are still being finalised.
3. Tier 3 – charities with revenue in excess of \$1M will be required to provide more financial information than Tier 2, and will not have the option of a review of their accounts, but must be audited. As with Tier 2, no financial report is required in this initial transition year.
4. There is a special category of “basic religious charity”. This provides special concessions for religious organisations, such as a church, if it is an unincorporated entity and has an annual revenue not greater than \$250,000. No financial report will be required for a basic religious charity. There are special obligations in respect to any Deductible Gift Recipient (DGR) structure controlled by a basic religious charity, such as an educational building fund. Provided such a DGR fund revenue does not exceed \$250,000 per year, eligibility as a basic religious charity can be maintained.

5. There is provision for a group of registered charities with common and central governance to lodge their financial reports jointly or collectively. This will require special permission from the ACNC.
- ATO will continue to have a responsibility for monitoring the taxation concessions for endorsed charities. The ACNC is responsible for the endorsement of a charity and for the overall control and reporting obligations. However where there is an issue arising from a possible breach of a taxation law, the ATO continue to have the legal responsibility. There are complex issues arising from the Australian Constitution that impact here, however the reality is that charities that go about their affairs in a responsible manner would not need to have any concerns.

#### **Other matters relating to ACNC:**

1. Work continues within Government regarding a draft definition of the meaning of “charity”. A Discussion Paper will issue in the New Year and the intent is to have a new definition of “charity” in operation from 1 July 2013. The current Common Law definition of “charity” arising from Pemsel’s case of 1892 continues in the meantime. The new definition will, we are given to understand, retain the core issues of Pemsel’s case definition, but there is an intention to widen the definition to ensure it meets the needs of the 21st century. For example there is consideration being given to some sporting organisations being endorsed as charities because of the substantial encouragement of healthy bodies to which their activities relate.
2. The Governance obligations are still in the process of being finalised. There will be consultations regarding the Governance issues early in 2013, although the Government’s initial objective was to have these governance standards the subject of a ministerial direction. One of the amendments regarding governance and external conduct standards requires regulations to be approved by Parliament and is only to be introduced after appropriate consultation with the Charities Sector. It remains to be seen how those requirements will work in practice, but it was a very helpful modification to the legislation before the Parliament.
3. The ACNC Act specifies a 30 June reporting date. Where a currently endorsed charity has a different reporting date the transitional arrangements provide for this to be maintained, but new charities will need to obtain the consent of the Commissioner. The emphasis in the Act seems to anticipate such consent may not be easy to obtain.
4. With the transfer of the reporting obligations from ASIC to ACNC comes relief from the payment of fees. The Minister’s announcement only referred to ‘annual fees’.
5. The ACNC Task Force continues to seek the views of the Charity Sector on the issues of governance and financial reporting. Other arms of Government are also actively involved in the same matters. The steps taken by Government to consult with the Sector have ultimately, in our view, added to the demands on the Sector, because of the several bodies seeking feedback. What seems to have been a genuine effort to listen has, we suggest, become self-defeating.



#### **Training**

The dates for the adjourned training schedule are not available as yet, but are expected to be in February 2013, except for Port Hedland. We anticipate Port Hedland will probably be late March or early April. Advice regarding the new training schedule should be available soon.

## The 'In Australia' Bill

In an unexpected move the Government introduced the controversial 'In Australia' Bill to Parliament at the same time as the two ACNC Bills. The Sector had expected further consultation, as had been indicated. The 'In Australia' Bill (sometimes referred to as the 'Unrelated Business Income Tax' (UBIT) Bill) was separated from the ACNC Bills and remains at present in the House of Representatives. This Bill, if passed into law in its present form, will seriously limit the potential for charities to operate, or assist operations, overseas.



*"These are the Commandments. Those over there are the Government regulations they have added."*

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Previous copies of this newsletter are also available on the Add-Ministry website.

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### **Missionary Tax Guide—2011 (currently being updated – available very soon)**

Hard copy— 47 pages ..... \$50.00  
E-mail copy ..... \$30.00

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