



– *adding to your ministry*

Newsletter June 2013

REFORM PROGRAMME UPDATE:

New Charity Definition: -

One of the last acts of the current Parliament was to approve a new Act to adopt a “Statutory Definition of Charity”. This widens the definition of charity while retaining the Common Law definition. This objective is useful and the Bill is a much-improved Bill, following two substantial consultations with the Charities Sector. It proposes fourteen “Heads” in lieu of the original four and this provides greater clarification, which is beneficial for 21st century understanding. In broad terms this Bill has the support of the Charities Sector. There are however some areas of difficulty.

- The Objects Clause of a charity must have no non-charitable purposes or Objects, unless the non-charitable Objects are clearly ancillary to the principal Objects.
- The charity will be judged as much by its activities as the Objects in its Constitution.
- Where a charity has accumulated surplus funds it needs to demonstrate that the surplus funds are retained in furtherance of its charitable purposes.
- Where a charity’s focus is on a section of the public, the identification of that section of the public appears, at least to us, more restrictive than the current legal position.
- The presumption of a public benefit has been retained in respect to the first three heads of charity, as identified in current law. It also includes a presumption of public benefit in respect to the aged or disabled; the advancement of health; self-help groups and contemplative religious orders.

The implementation date of the new Definition is 1 January 2014.

The “In Australia” Special Conditions Bill: - This Bill is languishing in the House of Representatives and was not passed during the current session of Parliament. Assuming there is a change of Government, the incoming Government will no doubt withdraw this Bill, but a replacement along somewhat similar lines seems inevitable. This Bill included provisions for the tracing of funds going off-shore, which in our view would create major administrative difficulties. It is to be hoped that in any future legislation this potential problem will be addressed with greater sensitivity, while still achieving the Bill’s main aim of combating terrorism and money laundering.

Within this same Bill there is a definition of the term “Not-for-profit”. There would be a significant benefit to all if this definition ultimately comes into law. The objective is to have the definition applicable to all Federal legislation and, hopefully to encourage States and Territories to also adopt it. Currently there is no common definition of “non-profit” or “not-for-profit”, so it remains at present one of the areas of difficulty.

Governance Standards: - The Governance Standards have also just received the approval of the Federal Parliament. They are to take effect from 1 July 2013. The five Standards should not impose significant difficulty in implementation for most charities.

Unrelated Business Income Tax (UBIT): - No legislation on this proposed measure has been introduced as yet so it appears certain that this will not become law – at least in its present form. Many in the Charity Sector would see this proposed legislation as being unnecessary and adding significantly to the administrative obligations of charities. It would be our view that the Government’s objective can be achieved from existing laws; – but it would mean Government bureaucrats would have the main responsibility instead of the Sector.

Financial Reporting Standards: - We still await the introduction of the financial reporting standards, which also need to go before the Parliament.

Private Ancillary Funds: - The Government has announced their intention to introduce a regulation to protect the privacy of donors of these special category funds. The ACNC has advised that as a temporary measure, pending approval by the Parliament, they will be withholding or removing information relating to Private Ancillary Funds in respect to certain matters. Nevertheless, there will continue to be some information in respect to the Private Ancillary Funds displayed on the ACNC register. This initiative has been taken in accordance with the Commissioner’s powers under the ACNC Act to withhold information that is deemed to be commercially sensitive. (It appears this measure has also been approved now but we have been unable to confirm this.)

2013 Annual Information Statement: - The AIS 2013 will be available on the ACNC website from early July. Where charities have responded to the ACNC request for an update on their status the AIS for your charity will already include some core information. The form can be completed on-line and is accompanied by guidance notes.

There is also good news in respect to the categories of people who are able to sign the Declaration on the AIS and other ACNC forms on behalf of a charity. The position to date has required a member of the governing body of the charity to be the person authorised to sign; – or alternatively specific written authority was required from a Board member to another delegated person. ACNC have accepted this is a cumbersome procedure (our words – not their’s) and have announced their intention to change the Declaration to provide for a wider category of people who are able to sign the document.

Federal Contracts and Grant Conditions: - Effective from 1 July 2013 there are new guidelines, which apply to all Federal Government departments in respect to contracts and grants provided to the Sector. These guidelines are linked to the reform agenda, but we understand departments retain some internal flexibility. Under the guidelines, Federal Government departments are now unable to include a provision that prevents a charity from lobbying in respect to areas involving their own objects and activities.

Title (ownership) of goods gifted, donated or purchased? - The Personal Property Security Act (effected 30/1/2012) was enacted to provide security for assets (excluding real estate) for owners, lenders, purchasers and others as deemed appropriate. It is now possible for suppliers, financiers and others to obtain security (a charge) over goods or money which they have provided or even in respect of funds realised, which may apply to goods provided by themselves and or others.

In order to minimise the risk of claims by others, it is good practice and for large transactions essential practice, to ensure that you do have legal rights and entitlements to such goods. This can be effected by a search of the PPS Register (www.ppst.gov.au) for a nominal fee. Alternatively you can register for goods lent to others!

Suppliers under terms of trade will often include a clause, which allows them to register their claim for amounts due on PPSR. Have you checked your trading terms or whether your assets have been secured on the PPSR? If incorrect details are recorded no security will be found or obtained.

Beware:

- 1) The search must be very accurate in all detail(s) and;
- 2) Use expert or legal assistance in conducting such search;
- 3) Obtain an understanding of PPSR- refer website above

ABN changes coming: - Currently the Australian Business Register (ABR) provides details of trading names for each entity recorded in the Register. This enables the ABR to issue in the legal name, but also identify such other names as the entity utilises. Recent changes on the ABR have also shown the Registered Business Name. However other changes identify that from 1 July 2014 the trading names will be removed from the ABR. Entities that wish trading names to remain for public information and to assist 'Search' facilities on the ABR will now need to register the Business Name with ASIC. ASIC will now accept names of churches or schools (that are not incorporated entities) for registration, although previously this was not possible under WA Law, when Business Names were a State matter.

There remains uncertainty as to whether this change may affect entities that hold an ABN but are not incorporated and do not hold a Registered Business Name. ASIC and the ABR are currently looking at potential anomalies.

As this may have wider implications, this is clearly a matter of **"Watch this space"**.

ACNC Information Sessions: - The ACNC team have now visited all States and Territories and the final information sessions will be held in regional Victoria in July. Western Australia has benefited with the team visiting the regional centres of Geraldton, Bunbury, Broome, South Hedland and Kalgoorlie. These WA seminars have been co-sponsored by WA Council of Social Service and Add-Ministry, and it has been encouraging for Add-Ministry to be part of an effective team effort in providing important information about the reform agenda to a wide part of our State.

Add-Ministry is available to provide information and advice on ACNC matters and also on tax-compliance and related matters to regional communities and other organisations – subject to demand. Please feel free to contact us by e-mail if this would be of assistance to your community.

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

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Publications available:

Voluntary Treasurers' Handbook (from Add-Ministry)

Hard copy — 59 pages\$50.00

Missionary Tax Guide 2012-2013 — available through Missions Interlink

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