



- adding to your ministry

Newsletter September 2014

Federal Budget Changes: – Items that impact on the Charity Sector from the Federal budget, and are almost certain to be ratified when the budget negotiations are finalised included: -

1. **UBIT is dead.** The Unrelated Business Income Tax proposal that had been proposed by the former Labor government, but was also initially attractive to the Coalition administration, has been recognised as being unnecessary and has been 'put to bed'. The Coalition Government has announced they would explore simpler alternatives to address the risks to revenue. Many in the Charity Sector consider there are already responsible measures in place in taxation law to cover this matter. That seems to be the only good news.
2. **The Council of Australian Government Reform Council is to be abolished.** A major responsibility for the COAG Reform Council was the harmonisation of fund-raising regulations across the country. This very important and long overdue harmonisation programme has now experienced a further, and significant, setback. Given that COAG identified the harmonisation of fund-raising as a major project of benefit to charities and fund-raising organisations, this is a sad day.

The harmonisation programme is also a function where the ACNC has a potential role. Should the ACNC be abolished, it is far from clear as to what, if anything, will happen to this necessary reform in respect to fund-raising.

3. **Overseas aid slashed:** - The Government has cut funding to the overseas aid sector of \$7.9 billion spread over five years, announcing that this was the biggest saving measure in the Budget. The Government announcement also states that they will no longer target an increase in overseas aid to reach 0.05% of Gross National Income but will reconsider the situation when the Budget is in a stronger position.
4. **Fringe Benefits Tax Concessions:** - The Fringe Benefits Tax rate is being increased to maintain consistency with the top marginal individual income tax rate. However, as a concession to the Charity Sector the Government has now decided to increase the Cap for exempt Fringe Benefits. They have not identified the new Cap level as yet, but the inference is that the Cap will increase to allow for the higher notional rate of tax. This change, if and when it comes to fruition, will be of assistance to Public Benevolent Institutions (PBIs), Health Promotion Charities and some other entities. The arrangement whereby an exemption is available to religious institutions is not affected by this announcement.

Some months ago, Add-Ministry posted two papers relating to Fringe Benefits Tax on its website. One related to religious institutions and the other to PBIs. The PBI document has been upgraded this week to allow for the new FBT rates and is now available. When we have information about the change in the Cap, this document will need to be further modified and you will be advised in a future newsletter.

Associations Incorporations Act Review

The long awaited updating of the WA Associations Incorporations Act will soon be available. It is expected to be introduced into the WA State Parliament in September. It is to be hoped that this long overdue reform will receive the support of both the Government and Opposition, as Labor initiated the review when they were in Government some years ago. Part of the reason for the delay in introduction was to ensure that, where possible, there is consistency in terminology with the ACNC Act. The WA Dep't of Commerce are to be complimented on the thoroughness of their consultation with associations within Western Australia and issues arising from comparable legislation across Australia.

The Bill, when approved by Parliament, is expected to include a requirement for an annual return to be provided by each association to Commerce Dep't. This is primarily about providing information about appropriate contact address and office bearers. We do not anticipate a financial report will be required. However the Act also will include guidance in respect to accounting and auditing obligations with a three-tiered structure identical with the ACNC tiers. It will also identify the minimum qualifications for a person conducting the review or audit of a financial report.

Basic Religious Charities: -

The special concessions introduced by the ACNC Act for unincorporated religious entities will, we understand, continue even if the ACNC Act is repealed. Currently there is information on the ACNC website setting out the conditions under which a religious organisation can become eligible for the Basic Religious Charity concession. These concessions are not available to organisations that are incorporated under the Associations Incorporations Act of a State or the Corporations Act nationally. There are also other conditions. More information is available on the ACNC website and some leaflets are also available from the Add-Ministry office.

Add-Ministry has prepared a "model" constitution for a small church that qualifies as a Basic Religious Charity. It is a "model" only and can be modified to meet the needs of a particular congregation. A Word version can be made available upon request, but we would require you to answer certain core questions first to ensure that your congregation is eligible.

WA Tax Law changes:-

The Taxation Legislation Amendment Bill 2014 has now passed through the Legislative Assembly and is before the Council for debate. The intention of this Bill is to amend the Duties Act (Stamp Duty), the Land Tax Assessment Act and the Payroll Tax Assessment Act so that some entities previously eligible to be accepted under the charity exemptions will lose that exempt status. A superficial reading of the Bill will suggest that all that is intended is to ensure some organisations on the fringe of the Charity Sector, but which are in reality commercial undertakings, will be excluded. A closer reading suggests strongly that what will be happening is that the decision as to whether an organisation carrying on what appears to be commercial activities, will be left solely with the relevant Minister with no right of appeal to State Administrative Tribunal or the Court. This is, in our view, an inappropriate transfer of authority from the normal oversight of the Courts and that the areas of concern could have been addressed

in a much simpler way. One barrister with an understanding of the detailed wording of the proposed legislation has described it as “draconian”.

ACNC Matters: -

1. The ACNC Commissioner, Susan Pascoe AM, recently published a list of 250 charities she was proposing to strike off the Charity Register. This is because every effort made by the Commission to contact the charities had failed. She also announced that there were more than 2,000 additional charities that were likely to meet the same fate based on the research they had undertaken to date.
2. ACNC have advised of matters that were dealt with by their Compliance Directorate during the year just ended. This included: -
 - a. Nearly 200 concerns were raised by the public, 160 were found to be within their jurisdiction, 35 were progressed for compliance review or investigation.
 - b. The co-operation from the charities was high. ACNC have only needed to issue five formal compliance notices as a consequence of the high level of co-operation.
 - c. 80% of compliance reviews and investigations were completed within six months.
 - d. The most serious issues identified arising from these matters refer to inappropriate use of funds, lack of accountability to members and the Responsible Persons failing in their duties, particularly relating to conflict of interest matters.

New PBI Development: -

The Hunger Project Australia has recently been confirmed as a PBI by decision of the Full Court of the Federal Court of Australia. This introduces new grounds as to what is a PBI. Specifically the case addressed the predominant issues of fund-raising activity and indirect relief to needy persons. There were some special circumstances involved in the Hunger Project as it is a part of an international organisation so it cannot be presumed that this opens a large door for future PBI applications. Nevertheless the decision is important and there will be some opportunities for a review of eligibility that arise from this important decision.

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