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## Newsletter - January 2015

### WA Parliament

**Associations Incorporations Bill 2014:** The long expected legislation to totally replace the Associations Incorporations Act 1987 is now before the WA Parliament. This Bill will provide much needed changes to bring the WA Act into line with other Associations Incorporations Acts across the country. It will also, as far as is possible, ensure its structure is harmonious with the ACNC legislation.

Many of the provisions in the Act will be helpful in improving overall administration for the Not-for-Profit Sector, but also means there are a greater range of obligations. The Department of Commerce have sought, by careful discussion with the Not-for-Profit Sector, to ensure that any increase in obligations is kept to the simplest level possible, while achieving the overall objectives of the Bill. The consultation by Department of Commerce has been the most thorough and thoughtful consultation to new legislation that your editor has ever experienced. New and upgraded features include:

- A provision for associations to merge – replacing the current need for an association to wind up and integrate its assets into another association.
- Significantly improved provisions for associations in financial difficulty in relation to creditors control and winding up.
- Requirement for an annual report to Department of Commerce. This will ensure their records regarding associations are current. We have been assured that the information required is for communication simplicity and will not have onerous obligations.
- A requirement that all associations will be obliged to bring their present constitutions/rules into line with this new legislation within three years. However many of the provisions in the new Act will have the force of law from the date the Bill gets royal assent.
- There will be new Model Rules. These can be adopted by an association as their own rules, subject to the association adopting its own Name and Objects clauses. Where an association adopts the Model Rules any future change in legislation will automatically be included in the individual association's rules.
- Dispute resolution procedures will now be an obligatory feature with all associations. The proposed dispute resolution in the Model Rules is, in our view helpful, but associations can establish an alternative dispute resolution process if they wish.

- The Rules also provide for appeals from the association’s nominated dispute resolution process to the State Administrative Tribunal (SAT). This is a significant improvement on the present requirement, which requires access to the Court system only. A dispute referred to SAT simplifies the process, enables an applicant to handle their own complaint without needing to engage a solicitor and has a far less formal hearing process.
- Peak bodies can, if they choose, provide a procedure for handling disputes on referral from a member association as an intermediary step, which may well enable a matter to be resolved without needing to be referred to SAT. To ensure such a process is operating most effectively, the peak body should establish their own dispute resolution appeals process and the individual association should incorporate a reference for disputes to be referred to its peak body in their own rules. This would ensure that the peak body procedure is the required process, while still leaving the SAT option as the final step.
- The new Bill has bi-partisan support, although it is anticipated there will be some minor amendments. It is currently in the second reading stage in the Legislative Assembly and is anticipated to become law early in 2015.

**Taxation Legislation Amendment Bill 2014:** - This Bill is now before the Legislative Council and at a final stage in its debate. Some of its provisions have caused significant concern within the Not-for-Profit Sector. As a result WA Council of Social Service (WACOSS) and a number of other agencies and individuals have made significant representations to the Parliament to modify its provisions. The concerns relate to the Minister of the day having the authority to determine as to whether an entity is eligible for the Charity Taxation concessions. Currently the Bill applies to the Duties Act, the Payroll Tax Assessment Act and the Land Tax Assessment Act only. A related concern is that there is a risk of the changes being widened to embrace other taxation and related Acts.

The Bill proposes to modify the provisions of the definition of ‘Charity’ so that the fourth head of the definition of “charity” identified in Pemsel’s case, i.e. “other purposes beneficial to the community” will be subject to the relevant Ministers decision if the charity is conducting commercial activities. This appears to be a decision that cannot be appealed against, thus removing the right of a charity to appeal to the Court if they consider they are unfairly impacted by the ministerial decision. This politicizes the process and removes the whole case law that has developed over many years from consideration.



**Fringe Benefits Tax rates changes effective for 1 April 2015**

The FBT tax rate was increased from 46.5% to 47% on 1 April 2014. The 0.5% increase was to bring the FBT Tax rate into line with the ceiling Income Tax rate, as a consequence of the Medicare levy increase from 1.5% to 2%.

**Public Fund-Raising Regulatory Association**

This new association has been established at the instigation of several large charities, including Australian Red Cross and Amnesty International. The objective is to provide a self-regulatory facility for face-to-face fund-raising by charities. Charities

who utilise such fund-raising methods can obtain more information by e-mailing Paul Tavattis at [admin@pfra.org.au](mailto:admin@pfra.org.au). The association identifies that without such an internal self-regulatory arrangement the availability of face-to-face fund-raising would be subjected to increased controls by local government bodies and others.

### **PM's Community Business Partnership**

The Coalition Prime Minister has re-established the Prime Minister's Community Business Partnership, which had been of significant benefit to the Charity Sector under the Howard Government. The public statement declares "a key component of the partnership's work will be examining trends and promoting best practice in the Sector considering how innovative investment and financing can better support a culture of giving and volunteering in Australia".

### **ACNC matters**

**ACNC Repeal:** The consultation with the Charity Sector regarding the proposed repeal of the ACNC Act has not as yet resulted in the introduction of repeal legislation. It should be noted that the introduction of the ACNC Act in the first instance was complex because of matters impacting on the Australian Constitution. The revocation will no doubt experience similar complications. With no draft legislation in sight it is clear the ACNC will continue to be functioning in the second half of 2015, even in the event of repeal legislation being approved by the Senate. It should also be noted that there is strong support for the continuance of the ACNC within the Charity Sector.

**"Governance for Good"** – One significant matter for ACNC oversight is the appropriate governance by charities. The ACNC publication "Governance for Good" is readily available with a Google search and contains much useful information for charities. Committee members could refer to that for mutual benefit.

**Commonwealth Regulatory Burdens:** - ACNC engaged accounting firm EY (formerly Ernst & Young) to research the regulatory and reporting burden on charities. Key findings from the EY research include: -

- Commonwealth funding agreement obligations impose a far greater burden on charities than legislative obligations.
- In the 15 case studies conducted by EY there was an average estimated cost of Commonwealth burden of \$108,000 per year. This was reduced to \$18,000 per year for small charities. The extent of the cost clearly depends on the level of Commonwealth funding and the number of funding agreements imposed so these costs are not a good indicator in themselves.
- The estimated average annual burden imposed by ACNC was \$150 – a microscopic amount in the total context of Commonwealth regulatory obligations.
- A key recommendation was that Commonwealth agencies funding charitable bodies should encourage the use of the ACNC Charity Passport and the National Standard Chart of Accounts.

**Annual Information Statements (AIS):** ACNC have announced that the 2014 AIS lodgements have been granted an extension of time to 31 January 2015. They have also advised that if a 2013 AIS has not yet



been lodged, penalties will be imposed effective from 1 January 2015. Charities should note that small charities (with revenue below \$250,000 annually) are not required to lodge financial reports with ACNC. They merely need to provide a limited amount of financial information in the AIS itself. Medium and large charities have obligations to lodge a copy of their financial report and auditors' or reviewers' report with ACNC, along with additional information within the AIS itself.

**Company Limited by Guarantee (CLBG) Template:** ACNC have developed a model constitution for a CLBG. The document has been tested with specialists within the Charity Sector and has also been reviewed by ATO and ASIC. This template is available in a Word format and can be used or modified as a constitution for a CLBG. It could also be a useful structure, with modification, for an incorporated association. The document is presented in an easy-to-read format with a good index. The Template can be located on the ACNC website under the heading "Publications" and then "Templates".

**Audits for Companies Limited by Guarantee (CLBG):** The Corporations Act was amended, effective from 1 July 2013, to remove the obligation for compulsory audit for small CLBG's. Effective from those amendments, small CLBGs (those with a revenue below \$250,000) are no longer obliged to have an audit. However there remained an inconsistency in the law, which required those companies to still appoint an auditor. The Commonwealth Government has now introduced legislation into Parliament to remove this anomaly. It is now before the Senate and, it would be hoped, will be approved in the near future.

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*The team at Add-Ministry wish our readers every blessing for 2015*

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