



- Adding to your ministry

NEWSLETTER April 2016

Add-Ministry Seminar - June 25 2016: -

Add-Ministry will be holding a Seminar on Saturday June 25. Full details will be announced shortly but the key focus will be on the new Associations Incorporations Act. The Seminar will identify the new requirements for all associations with a special emphasis on the interest of churches and religious organisations.

ACNC legal status confirmed: -

The Minister for Social Services and the Assistant Treasurer made a joint announcement in March to retain the Australian Charities and Not-for-profits Commission and to work with them particularly in the areas of public accountability and the removal of unnecessary red tape. In that context it is worth noting that ACNC had already established a working relationship with most States in respect to the acceptance of financial reports from registered charities that are incorporated associations, co-operatives, trusts or charitable fundraising organisations. In Western Australia there is currently no requirement for incorporated associations to lodge financial reports with Dep't of Commerce (unless they are the holders of a Charitable Collections Licence). However in all other States a reciprocal arrangement is now in place in respect to such reports.

Problems for Fourth "Head" Charities:-

In 2015 the State Government introduced a Tax Law Amendment Bill which changed the rules for some charities seeking exemption from State Tax imposts. The WA tax laws have not adopted the Commonwealth Charities Act so there is a similar, but not identical, definition in place. State law applies to the Definition of Charity under the Statute of Elizabeth. This refers to: -

- 1) Trusts for the relief of poverty,
- 2) Trusts for the advancement of education,
- 3) Trusts for the advancement of religion, and
- 4) Trusts for other purposes beneficial for the community, not falling under any of the preceding heads.

Where a charity is seeking tax relief under this fourth 'head', there are now extra tests. The amendment to the Act affects payroll tax, land tax and stamp duty matters, where the taxing authority deems they are carrying on a commercial activity. The impact of this new law may not affect the majority of fourth head charities but when a State tax assessment does issue, the procedures for reviewing or appeal are very onerous. This represents a significant change in the provision of charitable concessions that have



applied for many years. The object of the law changes is to remove exemptions from entities that are Not For Profit but are deemed to be carrying on a commercial activity. The Federal Government taxing concessions for all registered charities continue to apply.

WorkCover and Ministers of Religion: -

WorkCover are working on a major overhaul of the Workers Compensation Act for WA. When completed, it will take a new approach to the definition of “worker” as it relates to ministers of religion. The current definitions are antiquated and do not ensure Workers Compensation Insurance is available to a minister of an independent church unless it has arranged for a Gazette declaration to be made. We understand that all or most religious denominations have already established such a relationship with WorkCover to ensure that their member churches are appropriately covered. Our most recent information indicates that WorkCover are considering applying a definition for ministers of religion similar or identical to that which defines an obligation under PAYG in the Income Tax Assessment Act (Federal). This approach is not yet confirmed and we take this preliminary opportunity to enable the matter to be explored further. We would be happy to hear any comments you may wish to make and will pass them on to the relevant authorities at WorkCover.

Public Ancillary Fund changes: -

Changes are proposed to some provisions for Public and Private Ancillary Funds to take effect from 1 July 2016. The purpose of the change is to produce greater consistency with other laws, including the Australian Charities and Not-for-profits Commission Act and Charities Act. The proposals include: -

- Lodgement of a PAF return with ACNC will replace ATO obligations.
- No need to advise ATO re amendments to Trust Deeds.
- Changes in the minimum distribution rules to provide for a formula. This formula proposal is not simple (and seems inconsistent with the other intentions of the changes) and representations have been made to Federal Treasury in that regard.
- Modification of the investment strategy.
- Financial reports will need to comply with ACNC requirements.
- Stronger emphasis on real or perceived conflict of interest.

Those charities operating an Ancillary Fund need to be alert for the coming changes.

ACNC matters: -

Charities who have not lodged their Annual Information Statement (AIS) for the past two years are now in the process of having their charitable status cancelled. If your charity’s office bearers have changed **recently**, it is possible advice of such ACNC action may not have reached the appropriate person. We would encourage you to check your charitable status on the ACNC website. ACNC have advised that there are 2122 charities involved, of which 258 of these associations are in Western Australia.



ACNC have now provided **templates** for a constitution for a **company limited by guarantee** and also for an **unincorporated association**. The template for the company limited by guarantee could also be adapted to become the constitution for an incorporated association, but given the divergent arrangements under the different State’s Associations Incorporations Acts, this should not be attempted

without a good understanding of the essential requirements that will be introduced with the coming of the new WA Act.

Concessions in ACNC law for Basic Religious Charities (BRC). The key benefits of these concessions are to relieve the BRC of the obligation to submit annual financial reports and to remove the obligation to comply with the Governance Standards. Also the ACNC does not have the power to suspend or remove a person from the governing body of a BRC.

ACNC advise that there are a number of charities who claim to be BRC but are not. The key tests which bar eligibility for BRC are: -

- If the charity is registered as a company or incorporated association;
- If the charity has received a grant from Government in excess of \$100,000 in the current financial year or either of the past two financial years;
- If the charity is endorsed as a Deductible Gift Recipient.

We would encourage groups that claim to be BRC, where they are not a church, to review their status. Many charities that are operating from a predominantly or totally Christian perspective still do not qualify as religious institutions and therefore, even if not incorporated, are not eligible as BRC. Charitable and benevolent activities that are not primarily providing religious services do not qualify as 'religious'.

NFP Law: -

Justice Connect has recently announced that their related charity, NFP Law, has now become a national service, available at nfplaw.org.au. NFP Law provides access to web-based support for charities and provides information related to either national or individual State laws. It can also provide referral to pro bono assistance through WA legal firms for eligible charities. As a new service to the Charity Sector its range of services will gradually become more effective. We commend this new service to you.



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