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## NEWSLETTER

### SEPTEMBER 2016

#### **Public Ancillary Funds - Effective from 5 May 2016**

Amendments have been made to the Rules relating to the operations of Public Ancillary Funds (PAFs). The changes are modest and provide for some modifications that simplify the procedures for operating the Fund or merely make some legislative changes consistent with current laws. The core changes include: -

1. Annual PAF returns no longer need to be forwarded to ATO provided the PAF is a registered charity. The Annual Information Statement (AIS) lodged with ACNC covers the matter. This new arrangement will apply to all AIS lodged for financial years closing after 5 May 2016.
2. There will continue to be a need for either an audit or review for PAFs with annual revenue below \$250,000 even though ACNC would not normally require it. The law applicable to PAFs will continue to apply in this regard.
3. The minimum distribution rules remain unchanged. There had been a proposal to introduce more complex rules. Fortunately the Government abandoned these proposals having recognised they were too complex and would have imposed an unfair burden on those charged with governance of the PAFs.
4. Clarity was given in respect to a PAF interaction with another DGR. A PAF can lend money to a DGR. Any discount in the investment rate on market rates would be presumed to be a distribution and can be taken into account in the minimum distribution rules. If a loan guarantee has been given by the PAF to a DGR then the market value of the granting of the loan guarantee could be presumed to be a distribution for minimum distribution purposes. These changes presume that the DGR is an eligible DGR under the particular Trust Deed.
5. A new provision allows the Commissioner of Taxation to approve a lower distribution rate for a particular year if he sees fit. Such approval may be prior to, or after, the end of the financial years affected.
6. Financial reports will now need to be prepared in accordance with Australian Accounting Standards – in accordance with the requirements of ACNC.



7. In considering the investment strategy any real or perceived material conflicts of interest need to be taken into account. A guide to the conflict of interest rules can be found in the ACNC Governance Standards.



8. Provision is now made for a review to be conducted in place of an audit for medium size charities in accordance with ACNC guidelines

### **.Associations need to report:**

With the introduction of the new Associations Incorporations Act effective from 1 July 2016, there are now new obligations on associations. The first and urgent obligation is for all associations in WA to advise Commerce Dep't of their contact address. This must be done by no later than **29 September 2016**. This can be done by going on-line to Associations Online ([www.commerce.wa.gov.au/consumer-protection/associations-online](http://www.commerce.wa.gov.au/consumer-protection/associations-online)) and registering with them (the preferred communication method), which you will also find of great benefit. Alternatively you could send them an e-mail or write them a letter and advise them of the Association name, incorporation number (where known), and appropriate contact address. This would be the minimum requirement at this early stage. The e-mail address is: [associations@commerce.wa.gov.au](mailto:associations@commerce.wa.gov.au)

There is also a need for each incorporated association to file an annual statement with Commerce Dep't within six months of the end of its financial year. This statement should be filed shortly after your Annual General Meeting. The information required is basic to ensure communication links remain open but there is a penalty for non-compliance.



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It is hoped that in the foreseeable future an agreement will be developed between Commerce Dep't and ACNC whereby an ACNC Annual Information Statement can be accepted as meeting Commerce Dep't needs. However such arrangements take significant negotiation, so all we can advise is that the discussions have started.

### **Model Rules for Associations:**

With the introduction of the new Associations Incorporations Act, Commerce Dep't has also developed a set of Model Rules. Associations that choose these Model Rules will benefit from not needing to amend them when there is a change in the law. However they do not offer much flexibility to achieve this objective and have limited the area where you can provide your association's special input to: -

- Name of the association;
- The Objects;
- The quorum for Committee meetings;
- The quorum for Members' meetings;
- The financial year;



In an effort to assist associations that would find this too restrictive Add-Ministry has developed its own Model Rules, based on the Commerce Department's document, but providing for greater flexibility. This document is now available on our website at [www.addministry.org.au](http://www.addministry.org.au)

### **Accounting Standards for Charities:**

ACNC are pressing the Australian Accounting Standards Board (AASB) to expedite the introduction of a dedicated Accounting Standard that applies to the Not-for-profit Sector. ACNC are looking for clear guidelines to set out how charities report different income and expense areas. We are aware that the AASB have been working on the development of relevant standards for the Charities Sector for some time. However funding for such a programme seems to be consistently disadvantaged by urgent matters in the commercial area, hence the delays. It is to be hoped that this additional pressure will produce a beneficial result in the near future. The Standard Chart of Accounts is of help to the Sector. More consistency in reporting will significantly improve the Sector's credibility.

### **Single definition of "Charity" coming:**

There are many Commonwealth, State and Territory Acts which refer to 'Charity' or 'Charitable Activities'. There are 45 different Acts with different definitions of 'what is a charity'. There have been several efforts to achieve harmonisation over the last 15 years. The only success has been the establishment of the Charities Act of 2013 to cover all Federal Acts of Parliament.

ACNC have now moved to work on a single definition of Charity across Australia to further achieve a reduction in red tape. Such a move will require negotiations with all State and



Territory Governments and it is to be hoped that positive results can be achieved within the foreseeable future. Currently charities using websites should have a fund-raising registration in each State and Territory – each requiring their own annual reporting. There are other problems of a similar nature occurring. From this it will be obvious to all that this reform is badly needed.

### **PBIs may work overseas:**

A recent Court decision in The Hunger Project case has agreed that The Hunger Project could be endorsed as a Public Benevolent Institution (PBI), notwithstanding its principal function was to raise money to send overseas to its international affiliates. In this particular case it was seen that the raising of funds was a part of its benevolent purpose and the benevolent purpose was effective even though the fund-raising was within Australia and the money, in the main, was remitted overseas. As a consequence there has been debate as to the consequences of this decision for other PBIs. It appears to go against the "In Australia" principle so important to ATO decisions in respect to charitable purposes overseas. It also appeared to go against Dep't of Foreign Affairs and Trade (DFAT) in respect to overseas aid activities. ATO and ACNC have been giving this matter considerable attention and ACNC will soon release a Commissioner's Interpretation Statement as to how they view such matters.

It is quite clear from the authoritative statements made to date that this does not open the door to all PBIs to actively pursue benevolent activities overseas. It appears ACNC guidelines will impose obligations relating to the overall governance obligations that will be necessary for a PBI to follow, in addition to their control issues within Australia.

A recent seminar held in Brisbane under the auspices of the Australian Not-for-Profit Accountants Network gave prominent attention to this matter. Papers were presented by Geoff Armstrong, CEO of Global Developments Group, an approved overseas aid organisation; Mark Fowler, a senior lawyer with Neumann Turnour in Brisbane, who has researched the impact of these matters thoroughly; and Murray Baird, Assistant Commissioner, (Legal Counsel) of ACNC. Notwithstanding the different approach each of these presenters took, there was much common ground in the need for careful control mechanisms being included – not dissimilar to the overseas aid scheme currently in force. However the PBI issue does open the door wider as the overseas aid development scheme only applies to Third World developing countries and the PBI issue widens the scope to countries that are not declared as “developing countries’ by DFAT.

We have delayed making any clear statement on this matter due to the lack of authoritative guidelines and the multiple views being expressed, but now believe it is important to identify the need for careful thought. We recommend that any PBI considering such a new activity should get careful advice from a reliable source.



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