



- Adding to your ministry

Newsletter January 2017

HANDOVER CHECKLIST:

The ATO recently released a checklist for when a change of secretary or treasurer occurs. This checklist is very helpful so we have taken some liberties by expanding the checklist to widen the scope beyond Tax Office matters. We anticipate the checklist will prove to be a valuable guide when office bearers change. The checklist can be found on the Add-Ministry Website Publications page on the following link:



http://www.addministry.org.au/Documents/Docs/NFP_Checklist.pdf

ASSOCIATIONS TO REPORT:

With the introduction of the new Associations Incorporations Act, there are new obligations. The key one is to keep Commerce Dep't communications open through lodgement of an Information Statement. This needs to be done annually within six months of the end of your financial year. It also needs to be AFTER your AGM. Commerce Dep't preferred method of communication is through AssociationsOnline.

FUNDRAISING LAW CHANGES:

A recent move initiated by several larger charities has brought attention to the potential of Australian Consumer Law (ACL) in relation to regulating fund-raising on a national basis.

The issue is that the various States and Territories all have different reporting requirements for fund-raising by the Charity Sector. Where a charity has a website and seeks to use the website for receiving donations, this is deemed to be a request for funds from the general public in all Australian States & Territories. This means a multiple number of reports are required under different legislative arrangements. This is a very difficult area in which to obtain current reliable information. There have been attempts by COAG to bring some working co-operative between the different legislative bodies across Australia. While a considerable

amount of preliminary work has been done in this area, the main stumbling block seems to be the lack of a common definition of charity across all legislative bodies. The Commonwealth have set a good example with the introduction of the Charities Act in 2013 which covers all Federal Acts. The new move to bring in Australian Consumer Law may provide some enlightenment once the matter is explored more carefully.



The preliminary report that we have received from Not-for-Profit Law indicates that Consumer Affairs Australia have released the interim view that Australian Law already applies to many activities of charities and not-for-profits including fund-raising activities.

There will be more to come on this matter in the foreseeable future.

ACNC MATTERS:

Red Tape Reduction: -One of the key platforms in the establishment of the ACNC was red tape reduction. One of the first significant steps in this direction following implementation of ACNC was the passage of the Charities Act. This Act introduced a standard definition of “charity” within all Commonwealth legislation. The objective is to have standardisation regarding the definition of charity across Australia to enable links between different areas of legislation to be readily understood. Such a move requires the passing of legislation in the various State and Territory Parliaments. It is not a speedy project.



We can now report that the South Australian and Tasmanian Parliaments have passed legislation with the aim of reducing red tape for charities. We are aware that ACNC have also initiated discussions with the other States and Territories and this is one of their ongoing tasks.

Basic Religious Charities: - The ACNC Annual Report for 2015-16 identifies that there continues to be misunderstandings regarding Basic Religious Charities (BRC). To be eligible as a BRC: -

- The charity must not be an incorporated entity under State or Federal corporate legislation;
- The BRC must be established for the purpose of advancing religion and carrying out religious activities;
- The charity is registered with ACNC under the sub-title of advancing religion and is not entitled to be registered as any other sub-type of entity;
- The charity has not been allowed to report to ACNC as part of a reporting group;
- The charity cannot be endorsed as a Deductible Gift Recipient (DGR) in its own right. If it is administering a DGR fund it may still be eligible provided its annual revenue from all funds is less than \$250,000 annually;
- The charity cannot receive more than \$100,000 in Government grants in the reporting period and the two previous reporting periods.

ACNC advise that of 1,000 charities recently analysed to check on their classification as a BRC, nearly half needed to have their endorsement status corrected as they were not eligible for BRC. We encourage charities that have adopted the BRC sub-type to review their status to ensure they continue to be eligible.

Outstanding Annual Information Statements (AIS): - Retaining eligibility for ACNC registration (and the accompanying taxation concessions) is conditional upon the annual lodgement of the AIS. For those with a

June 30 balance date, the due date is 31 December (with some allowance for the January holiday period). ACNC have been policing this area and consider the educational period is over and it is becoming a higher priority to enforce compliance for the benefit of all concerned. Where a charity has failed to lodge two AIS the ACNC are going through the process of deregistering these charities. We have been advised that in the September-October period 100 large charities received final warning letters to lodge their AIS or be issued with penalties. 60 complied and 40 were issued penalties. This is a timely reminder to all charities with an outstanding AIS to ensure



it is lodged promptly. Be aware that the impost of a penalty is a softer option than having to go through the process of reregistering as a charity (or risk losing the tax concessions so generously provided in tax law).

COMPANY FINED FOR UNDERPAYING CHARITY COLLECTOR:

A recent case found a company which fund-raises on behalf of charities and not-for-profit organisations, breached contracting laws. A backpacker on a working holiday visa was being paid as an independent contractor despite the company knowing the Fair Work Act required the company to classify and pay him as an employee. It appears the collector was told he had to operate his own business and obtain an ABN to obtain payment, despite the company exercising a high degree of control over his duties. The company and its director were fined \$124,000 for this legal breach.

This raises afresh the issue of an employee and a contractor. Where there is doubt about the status of a party engaged by your organisation you should seek input from your advisors. Be aware that employment law requirements (which relate to the current case) will have a different definition of what is an employee or worker to other laws such as PAYG, Tax, Superannuation Guarantee and Workers Compensation Laws.



PBIS AND OVERSEAS AID:

In our September newsletter we indicated that as a consequence of a change in interpretation of the status of a Public Benevolent Institution (PBI) it is possible for a PBI to operate overseas separately to arrangements required under the Overseas Aid Gift Deduction Scheme (OAGDS). We refer you to our September newsletter for additional information on this matter. However it is worth noting that subsequently Dep't of Foreign Affairs and Trade have issued new guidelines for OAGDS. Reference to DFAT website under the "Tax Deductibility" Section will provide more detailed information. Also ACNC have issued a Commissioner's Interpretation Statement regarding Public Benevolent Institutions (PBI), which sets out more clearly the requirements for a PBI, including issues relating to operating overseas.

We anticipate Add-Ministry Inc. will hold a Seminar in the near future where a major theme will be the areas of overseas aid and PBI's operating overseas.

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