



- ADDING TO YOUR MINISTRY

ADD-MINISTRY NEWSLETTER

MARCH 2017

WHAT IS A PBI?

Add-Ministry, in conjunction with Jackson McDonald Lawyers, will be holding a Seminar concerning Public Benevolent Institutions. The Seminar will consider the new ACNC Commissioner's Interpretation Statement on PBIs, which includes the legal principles arising from The Hunger Project case and the essential need to have sound governance in place. As PBIs can now, in special circumstances, direct to send money overseas, this issue will be commented on. We will also have available a specialist speaker, representative of an overseas aid organisation, who will outline the options under the Overseas Aid Gift Deduction Scheme. Information will be provided for present PBIs and for those organisations which are considering establishing a PBI with the aim of providing current information on best practice.

More details, and registration, can be organised through WA Council of Social Service by pasting this address into your browser (<https://www.trybooking.com/book/event?embed&eid=272811>).

DUTY OF CARE:

A recent court case placed emphasis on the duty of care owed by an employer to its employees – in this case a charity. The case identifies the charity as reaching out to a person with a disability and placing emphasis on the client's needs before its staff. There was responsible supervision but the problems of the client over a lengthy period caused them to miss the impact on the staff providing support. Details of this workers compensation case are available at *Beven v Brisbane Youth Service Inc.* (2016) QSC 163. This is not an area we would normally review but there is an important message here that was worth bringing to your attention.

HAVE YOU BEEN HACKED?

Amendments to the Privacy Act approved in February make it compulsory for organisations to notify regulators and affected individuals in the event of a data breach of Privacy information. The specific requirement is for each organisation to have a data breach response plan. Each organisation is responsible for the



security of their own electronic data base but these amendments have broadened the matter to requiring notification where there has been a breach.

ACNC ANNUAL INFORMATION STATEMENTS:

For all entities with a June balance date the final date for lodging 2016 Annual Information Statements (AIS) was 31 January 2017. ACNC is forwarding notices to those entities that have not as yet completed their obligations and advising them of the risk of a penalty if these matters are not attended to promptly.



We would encourage entities that have not as yet filed their AIS to attend to this as soon as possible. If for some reason this is not practical we recommend that you contact ACNC promptly and advise them that you need additional time. Communication, as always, is the key.

ACNC CHARITIES REPORT:

At a recent meeting held in WA the ACNC identified some interesting statistics.

- 37% of charities have an annual revenue of <\$50,000;
- 30% of charities have an annual revenue of \$50,000 - \$250,000;
- 16% are medium charities with revenue from \$250,000 - \$1,000,000;
- 17% of charities are large with an annual revenue in excess of \$1,000,000.



In WA there are 5,252 registered charities. A breakdown by type identifies : -

- Religion – 27.4%
- Education/research – 19.5%
- Social Services – 13.7%
- Health - 8%
- Housing & Development – 7.7%
- Culture & recreation – 6.3%
- Philanthropy – 2.6%
- Environment – 3.2%
- Law & advocacy – 1.2%

Although religious entities are by far the largest numerically, education and research are by far the largest sub-type in terms of annual revenue followed by health and social services before religion.

The WA charities sector has annual revenue of \$12.7B and occupies the third largest place for sector employment at 7%, behind manufacturing (7.4%) and mining (8%). The wider community may not be aware of the significant contribution to the WA economy and community life that the Sector provides. Any reduction in these services would have a significant impact on community life within this State.

IS YOUR COMMITTEE IN CONTROL?

Several examples have crossed the editor's desk in recent days that identify deficiencies in the constitutional rules regarding the appointment of the Committee by members, or other difficulties regarding the governance of the organisation. Some examples are: -

- A special category of foundation members having the power to overrule decisions made by the Committee or in some circumstances, remove the Committee from office and appointing an internal administrator in its place;
- An association that lost contact with its membership list and was unaware of who were entitled to vote at a members' meeting. As a consequence members were excluded from receiving notice of an AGM and /or being excluded from voting, whereas there were some instances of non-members being granted the opportunity to vote, although not eligible to do so.
- An organisation revising its Rules so that the executive members of its Committee had to endorse a nomination for appointment to the Committee. Following a split, this special group resigned from membership and ceased to participate in its activities. As a consequence the Constitution in its present form prevented new Committee members being appointed and the organisation was in serious danger of being obliged to wind up. The matter was averted in this instance because one of the existing Committee members was authorised to convene a members' meeting. At that members' meeting, changes to the Constitution were approved which enabled them to re-establish effective government.



We have seen other instances of similar problems arising where an organisation has tight leadership control. It is important to ensure there is a backstop provision to avert such a matter ever arising.

IS AN UNINCORPORATED BODY LIABLE IN LAW FOR ITS ACTIONS?

A curious and little-known decision of the Full Court of the Federal Court of Australia, known as *Grigor-Scott v Jones*, addressed a matter under the Racial Discrimination Act. The complaint was specifically about a statement on a website on behalf of a church group. The church was an unincorporated body. The complaint was made in the name of another religious body which was also an unincorporated entity. The Court held that neither named organisations, (the respondent and the applicant), had standing before the Court. The matter therefore needed to proceed in the names of a representative of each entity. An individual in a group of individuals may be sued but not usually as a representative of the group.

This ruling appears to create a difficulty in holding an unincorporated group of people responsible for their actions but at the same time leaves persons involved in the leadership of that organisation to be held personally responsible.



ACNC:

The ACNC has advised of their intention to revoke the charity endorsement for a large group of registered charities due to their failure to submit two years AISs. ACNC assure us that each charity has been contacted multiple times at their nominated address. There is the possibility that in some instances the nominated address has changed and ACNC has not been advised. We would encourage charities to: -

1. Check the ACNC charity portal to see what, if any, AISs are outstanding and if so, to contact ACNC urgently by phone or e-mail to let them know you are taking action, and arrange to lodge the outstanding AIS as a matter of high priority;
2. Check the ACNC register to check that the address for the charity is the current address.



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