



- Adding to your ministry

NEWSLETTER AUGUST 2020

ASSOCIATIONS MATTERS -

Charitable Collections licence changes

Charities who hold a charity collections licence will be pleased to know that the relevant legislation has been amended and there are important changes –

- Annual Reports to Charitable Collections will henceforth be through ACNC Annual Information Statement by way of a special menu. Charities who have an annual balance date of 30 June can report directly to ACNC now.
- Charities with a revenue below \$250,000 will no longer need to have an audit or review, subject to the provisions of the charities own Rules.
- The services of a Registered Company Auditor will no longer be required, except for large charities as specified in the ACNC Act.
- In future charity licences will be continuous – no expiry date. This removes the need for the periodic renewal process.
- Principal Executive Officers no longer need to provide a National Police Certificate.



Mines Dep't Associations Branch advice re Covid-19 matters –

Holding your AGM – While the Covid-19 restrictions continue to apply, many associations could experience difficulty with holding their AGM. Ask for an extension of time using Form 3 Application for extension of time. This will be readily granted.

Subject to the specific requirements of your Rules (Constitution),



Members Meetings may be held electronically through such programs as Zoom or a simultaneous telephone hook-up. Most Rules adopted under the new Associations Incorporation Act are likely to have such a provision.

Fee Relief relating to forms lodged has been granted on any applications lodged up to 31 March 2021.

Associations Branch staff are there to assist with advice in regard to such matters by phoning **1300 304 074**.

Private benefit – What does it mean?

Board and Committee Members (Responsible Persons in the ACNC Act) are required to disclose any private benefit received. Often the concept of Private Benefit is regarded lightly due to a misunderstanding of what it means. A benefit may be received in monetary form but it could represent the provision of a service or of some property by the charity, even if of modest value. Organisations that provide services to its members and that service is consistent with its charitable purpose in particular, need to ensure any benefit given to a Board Member is consistent with the benefits to members. Where the service is available to all members, even though a number of members do not avail themselves of the service, then it would not be a private benefit. Also, where a benefit is provided in return for the rendering of a service and is determined by the Board to be for fair value, no private benefit would apply. However, if a payment for services rendered is excessive there is an issue that needs to be disclosed. There are a number of examples of such an instance in charity case law. It could be the provision of a motor vehicle for the purpose of the charity but which also allows for the vehicle's use for private purposes. Valuing such a benefit to compensate the charity may well be difficult to determine so where it is of some substance an independent assessment should be obtained.

A recent case relates to the significant and lengthy service of a large charity's President in another State where his role required many hours of service each week. The President was paid a significant allowance for his time and effort and this was not in itself in question. However, when he retired from office, he was given a gratuity of a substantial sum of money and also the car he had been using to assist him in his official duties. The car itself was a valuable gift. The individual and the charity were both to experience significant trauma as this was deemed to be excessive, and had not been properly handled. The ACNC stated that there was a failure of governance at the highest level.



Charities need to take reasonable care that the actions of its Board/Committee are open to scrutiny and uphold the credibility of the charity they serve.

Conflict of interest

A conflict of interest occurs when your duty to act in the best interests of your charity is or may be in conflict with a benefit for yourself or a person or organisation you have a relationship with. This may occur through some private or business relationship, or through membership of a related organisation, or even by association (such as employment or family relationship) with another entity.

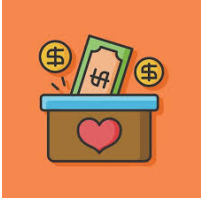
Where a material conflict of interest, whether perceived or actual occurs, the Board or Committee Member has a duty to disclose the conflict to the Board/Committee and step aside while the matter is handled by his/her colleagues. The instance also needs to be recorded in the Minutes of the meeting. Both the ACNC in Governance Standard 5 and the Associations Incorporation Act in Section 42 and 43 make a strong statement regarding such matters. The Associations Act specifically requires the Member to be absent from the meeting while the matter is being decided. There is a significant financial penalty involved for such a breach.

Payments to Board Members

The Associations Incorporation Act makes a specific restriction concerning payments to Board/Committee Members in Schedule 1, Division 2, item 1.1 of the Act. Such payments need the approval of Members at a Members' Meeting. The Board/Committee do not have the authority of themselves to approve, but they can of course recommend a process. This restriction may well create a problem for a person who is both an employee and also a Board/Committee Member. The Board/Committee may wish to handle the remuneration arrangements with discretion by ensuring an independent external process is in place that the Members have approved. An option for a charity may be provided through the Social & Community Services award, or perhaps through a recommendation of a peak body, such as the State or National denominational authorities in the case of a church. There is a need for Boards and Committees to be alert to their responsibilities.

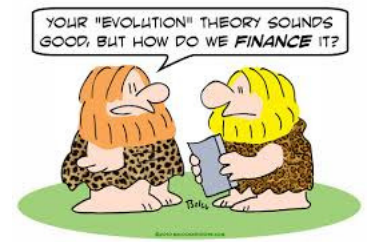
ACNC MATTERS - 2020 Annual Information Statement (AIS)

There will be a delay in the availability of the 2020 AIS while some changes are being finalised in its format. There will be a noticeably stronger emphasis on the programs of the charity so that the information can be used as a promotional support. The Commissioner has expressed the hope that these changes will help charities in their endeavour to obtain financial support through donations and grants. Some questions have been removed, and in



other instances they will be positioned in a more relevant place.

The 2019 - year AIS makes provision for “Activities” but this relates to the Objects of the charity. What is being sought now is a description of how these activities are being implemented in an effort to better inform the public. There is an expectation that a minimum of one program will be detailed, but there will be the opportunity to provide details of up to ten programs.



Financial Reporting

ACNC, in consultation with the Australian Accounting Standards Board, are seeking clearer reporting of material government support to enable the public’s understanding and decision making. They are emphasising that Best Practice reporting should –

- Identify each material government source of support by agency name,
- Identify where there is an economic dependency with another organisation,
- Separately report revenue streams for provision of goods or services from government, such as NDIS,
- Disclose government funding received but not yet recognised as revenue.



It is anticipated that would predominantly done through the Notes to the Accounts.

ATO MATTERS

Ancillary Funds - The Ministerial guidelines for both Public and Private Ancillary Funds have been amended as a result of the COVID-19 pandemic. As a consequence, funds that exceed their minimum distribution rate for 2019-20 and 2020-21 by 5 percentage points or more will have a carry forward

credit that will reduce their minimum distribution rate in subsequent years. This will have minimal impact on those funds that annually distribute most of their DGR income.

COVID-19 has been declared a disaster for the purpose of tax-deductible donations to COVID-19 relief funds such as Australian Disaster Relief Funds. This is for a period of two years effective from 18 March 2020.

New Deductible Gift Recipient (DGR) reforms – The four proposed changes that are aimed at reducing administrative complexity have been delayed in their passage through Parliament due to the pandemic. It is still anticipated that they will receive final approval this calendar year.

CELESTE BARBER'S FUNDRAISER – Lessons that can be learned

The horrendous bush fires in NSW and Victoria late last year aroused the compassion of many Australians and also many people in other countries. Celeste Barber, a well-known Australian comedian, was motivated to take positive action. She used her extensive social media presence to invite people to donate money through PayPal and Facebook Pay to a special fund of which she had effective control for the benefit of the Trustee for the NSW Rural Fire Service & Brigades Donations Fund (RFS). Her special fund was not a registered charity, she was relying on the standing of the RFS. She was acting in good faith but in ignorance of the range of regulatory issues that are involved here. Celeste was hoping that she may be the means of raising some money for the aid of the RFS and people in need generally. The result far surpassed her expectations - \$2 million was donated within 24 hours. The fund went on to raise in excess of \$50 million, well beyond anybody's expectations.



That is when the problems arose. There were real restrictions in the RFS Trust Deed as to how the funds could be applied. The matter went to the NSW Supreme Court. The NSW Attorney General intervened on behalf of the Crown as it was such a significant matter of public interest, as did the Law Society of NSW. Celeste, the Trustees of the RFS Fund and the Government were seeking a way to broaden the range of beneficiaries, but the Court, in its judgement, ruled that the Trustees were bound by the pre-existing terms of the Trust Deed. A good cause, a good intent by Celeste and also by the many donors from around the world, but a result that was far from the expectations of the donors. None of the parties in this matter have done anything wrong but the arrangements made were inadequate to meet the intentions of organisers & donors. Detailed research before action was taken would almost certainly have produced a more beneficial way forward.

In these days of crowd-funding promotions via the Internet, no doubt many good things are happening. However, it is not controlled. There is a need to be sure that donors' intentions are met. Uncontrolled fund-raising arrangements are capable of producing an unintended result – and also capable of being applied for an illegal purpose. Across Australia, registered charities must meet their



regulatory obligations and one important obligation is to ensure they do not seek donations from the public unless they are registered to do so under the fund-raising regulations in their relevant jurisdiction. To promote a need and to raise funds for a charitable purpose without complying with those obligations is an offence, harming not only directly intended recipients, but goodwill towards the wider charitable community as well. The RFS case reinforces the need to temper the intentions of satisfying an immediate need with assurances of being able to comply with the regulatory framework to achieve those outcomes.

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