



- Adding to your ministry

## Newsletter January 2020

### SENDING MONEY OVERSEAS:

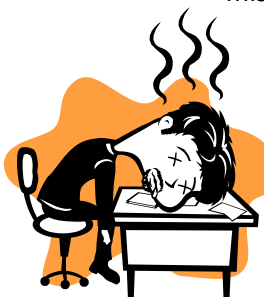
The two Commonwealth agencies that monitor charities are ACNC and the ATO. Both have now released their statements regarding charities sending money overseas. Both statements have an impact on charities.

#### ACNC:

In July 2019 the ACNC released their statement “External Conduct Standards”. This Statement requires all registered charities that send funds overseas to comply with a set of standards. The aim is to prevent money laundering and terrorism support and also to protect vulnerable people. A very brief precis of the new ACNC Standards are -



- Money needs to be traced from the sending charity through to the recipient entity and the Australian charity will need to satisfy itself that the support has been applied for its nominated purpose and that it is also a worthy charitable cause.
- The overseas recipient entity will need to demonstrate it is complying with reasonable governance procedures.
- Where the intended beneficiaries are children or aged or otherwise disadvantaged persons, steps may need to be taken to ensure there are reasonable safeguards in place to support them.
- Some charities may be asked by ACNC to prepare and lodge a special annual report, perhaps even on a country by country basis. Records need to be maintained in such a manner that enables the charity to comply if and when asked to do so.
- Charities need to take steps to protect themselves from the possibility of fraud or other financial misconduct.



This introduces a new era of governance for charities and has already added a new dimension to church administrators and treasurers’ roles. There will, in many instances, be a need for a clear policy to be prepared that establishes a procedure that complies with the Standards and meets the individual charity’s needs.

## **ATO:**

The ATO released their new Ruling TR 2019/6 on the same subject just before the Christmas break. ATO and ACNC have worked together to ensure there is consistency between the two statements with ATO identifying the impact on taxation law and ACNC the impact of charity law. Key issues of this new Ruling require –

1. DGRs to be “in Australia” before a gift is tax deductible,
2. Charities, in most circumstances, to have a “physical presence in Australia and incur their expenditure and pursue their objectives in Australia” to ensure they are exempt from income tax,
3. A registered charity to have a “physical presence in Australia” to qualify for a refund of franking credits.



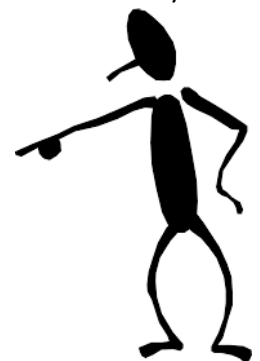
The words in quotation marks have a significant meaning.

“In Australia” for the DGR condition refers to the location of the charity i.e. where its key place of management and activity is located – often the registered office. This could, in some circumstances, allow for an overseas charity (that is also a registered charity with ACNC) to have a significant management presence in Australia that handles the Australian source activities.

“Physical presence in Australia and incur their expenditure and pursue their objectives in Australia” refers to actions taken in Australia even where the beneficiary group is overseas. It also needs to be action that is consistent with the objectives of the charity. Charities need to look at their Objects clause in their Rules or Constitution to ensure they meet this requirement. The expectation is that the majority of Board Members are physically based in Australia and key decisions are made here. Where decisions are made in Australia by a resident Board the charity would normally comply with this requirement.

The refund of franking credits on dividends to the charity needs to also comply with condition 2.

Be aware that an ATO Tax Ruling has the force of law. An ACNC statement is an interpretation of law and therefore has some slight flexibility.



## **WHISTLE-BLOWER LAWS:**

The Commonwealth Government has introduced new laws to protect whistle-blowers. These laws place obligations on companies, trading corporations and financial corporations, and also may include incorporated associations that are also trading corporations or financial corporations. The new laws impose obligations on all employers and provides enforceable protections to ensure that when a person makes a disclosure –

- Their identity must be protected,
- They are protected from reprisal, discrimination, harassment or victimisation,



- The disclosure is investigated in a confidential manner,
- Any issues identified in the enquiry will be addressed,
- The person making the disclosure will be informed of the outcome, and
- The person will be protected from any retaliation.

There is also an obligation on companies limited by guarantee and some other entities together with incorporated associations that are also trading corporations or financial corporations to have in place a whistle-blower policy by 1 January, 2020 – unless the entity is a small or medium size registered charity. Charities that are incorporated associations need to consider whether they are trading or financial corporations. This is a matter for judgement, but if a charitable entity has significant trading income, even in the fulfilling of its charitable objectives, then it will need an established whistle-blower policy unless the small and medium charity rule applies.

The question as to whether an entity is a trading or financial corporation for a charity is a question of judgement. We suggest for example that if a church has a small bookshop which provides a modest part of the church total revenue that it is excluded. However, where a church has a sizable bookshop, and sells goods on the internet, or where there is a bible college that they may be caught. It is ultimately a legal question that requires legal advice.

### **ACNC - ANNUAL INFORMATION STATEMENTS:**

Registered charities with a balance date of 30 June need to lodge their AIS by 31 January, 2020. If this is not possible, we advise that you should contact ACNC by phoning 13 22 62 or emailing the Commission at [advice@acnc.gov.au](mailto:advice@acnc.gov.au).

Special provision has been made for those charities in bushfire affected areas in New South Wales and Queensland. The postcodes to which this applies can be obtained by phoning ACNC. These areas may be expanded as the bushfire hazards continue.

### **INCORPORATED ASSOCIATIONS:**

The three-year transition period for lodging your upgraded Rules expired on 30 June 2019. For associations that have not updated their Rules the Prescribed Model Rules are deemed to apply in any areas that are missing from the Act Schedule 1 requirements. There are a number of new provisions and there are also some areas that have increased requirements. You can check your Rules by using the information provided on line by googling “Associations Rules Workbook”.



Three things that all incorporated associations must do each year –

1. Hold an annual general meeting (AGM),
2. Lodge an Annual Information Statement (AIS) with Dep't of Commerce (now Mines Dep't). This should not be confused with the AIS that registered charities are required to lodge with ACNC.
3. Prepare a financial report/statement and present it to the AGM. Note that small charities do not need to lodge this report with your AIS but it must be presented to your Members.

If you are unsure about any of these matters you can phone Associations Branch on 1300 304 074 or send us an email at [administry@hardingthornbury.com.au](mailto:administry@hardingthornbury.com.au)

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