

ACCOUNTABILITY – THE CHANGING LANDSCAPE.

Many treasurers of churches have expressed concern about the growth of legal obligations that surrounds their activities. Therefore it is worth spending a few minutes on the background to many of the recent changes.

In 1995 the industry Commission (since renamed the Productivity Commission) presented a report to the then Labor Government entitled “Charitable Organisations in Australia”. Perhaps the major matter identified by this report was that the charitable sector was by and large totally outside of any regulatory controls. Some old charities incorporated under a Private Act of Parliament refused to co-operate with the Industry Commission in respect to the provision of any statistical information. Many other larger charities were found to have very little appropriate accountability controls in place. The Commission found that the Government was providing the charitable sector with millions of dollars in concessions in respect to tax-free charitable status and also regarding tax-deductible donations. The granting of these charitable provisions was encouraged by Government to widen the benefits to the community of these organisations. However there was no way of measuring the cost to Government or the effectiveness of the organisations that were carrying out the charitable activity. The religious community were included under this general heading of “Charity” as that is where they belong legally.

The Keating Labor Government at the time decided to adopt some of the many recommendations of the Commission and to closer investigate the others. Because of the subsequent election of a Liberal Government, effectively nothing happened. However the bureaucrats forgot nothing and nor should they. The Government of the country has the responsibility to ensure that where major concessions are granted reasonable accountability is required.

Alongside this, the Howard Liberal Government was looking for a new source of revenue. This was related to better regulating the market place and making a determined effort to stop the “black” economy – the cash back-handers. The result of these two related areas of interest resulted in the introduction of the Goods and Services Tax Act implemented from 1 July 2000. This was described by the Government of the day as “A New Tax System”. Most commercial and non-profit organisations had little awareness of the enormous changes that were coming. The non-profit sector was subject to significantly increased legislative and regulatory control through the introduction of the Australian Business Number, the Pay As You Go Act (much wider than its previous “Pay As You Earn” legislative counterpart) and a requirement that all charities and tax-deductible gift approved entities had to be specifically endorsed with Australian Taxation Office. These were momentous changes. Those of you who oversaw the introduction of these changes in 2000 will recall some of the confusion that occurred. However the regulation in all of these areas has been tightened since and will continue to be tightened if what we are seeing developed today continues. ATO already had a tight regulatory

control of Fringe Benefits Tax exemptions and concessions. Access to these benefits for the Charitable Sector was further tightened from 2000 onwards.

State and Federal Governments are united in saying that they want to simplify the regulations and laws that restrict us. However the simplification is still coming. Any entity, whether incorporated or not, requires an ABN. Any charity is obliged to have Tax Concession Charity (TCC) endorsement, to ensure it is exempt from Income Tax and from the obligation to lodge tax returns. It also needs charitable endorsement to be eligible for the GST concessions for charities. The charity endorsement obligations were further tightened in 2005 and the Government monitoring of the Deductible Gift Recipient (DGR) has been further tightened through the application of self-regulatory annual reviews of endorsement status.

Associations Incorporation Act:

The WA Associations Incorporations Act underwent a major review in 2007. The intention was to replace the 1987 Act with a completely new Act with significant accountability obligations. This was primarily because the existing Act was toothless, leaving Dept. of Commerce in a situation where it was not able legally, without a Court Order, to resolve some relatively straightforward administrative matters. However it was also because the Department had lost contact with many of the associations. Under the current Act there is no obligation to advise Dept of Commerce of changes of address. Some associations were almost certainly defunct but were still showing as being registered. Another reason was to introduce more onerous penalties. However the Government objective overall was to improve efficiency for each association, as well as for the Department charged with the administration of the Act. They entered into a major Sector consultation and took great care to listen. As a result many modifications and concessions to the draft legislation were agreed to in principle. However before the Act could be introduced to Parliament there was a change in Government and the process has been substantially delayed. What is now expected is that major amendments will be made to the 1987 Act incorporating the major changes proposed in the negotiations from 2007. It is hoped that the amending Act will be introduced in this current session of State Parliament, with the aim for an implementation date this calendar year. Once implemented we expect there will be an obligation for simplified annual returns and other accountability issues.

Corporations Act:

Amendments to the Act have had as their objective simplification of reporting and audit obligations for Companies Limited by Guarantee. This has introduced three tiers for reporting.

Tier 1 – Small Company with turnover below \$250,000 per annum – no longer required to prepare a financial report or notify members of annual reports. The audit obligation is removed. (However if the Constitution, or other legal obligations, require audit, then audit remains an obligation).

Tier 2 – Company with annual revenue between \$250,000 and \$1,000,000 per annum – can elect to have its financial reports ‘reviewed’ rather than audited. (A “Review” is a special provision under Australian Auditing Standards requiring substantial reviewing of the financial report but not with the same level of testing as an audit). Where a Review for a Tier 2 Company is undertaken, it does not require a Registered Company Auditor, provided the reviewer is a member of one of the three recognised accounting bodies and holds a Public Practice Certificate. As with a Tier 1 Company, where the Constitution or other legal obligations require an audit, then the proposed relief does not apply.

Tier 3 – Companies with revenue of \$1,000,000 plus. Financial report, in audited format, still required. Directors’ report requires less detail than that required for other public companies.

The procedures for changing to the benefits of Tier 1 or Tier 2 have their own complications.

Business Names Registration:

The Business Names registration procedure, currently a State controlled matter, will be transferred from Dept. of Commerce (WA) to ASIC later this year. This is one of the simplification procedures introduced as an initiative of the Council of Australian Government, in 2008.

This welcome change will include the following initiatives: -

- Common application form for ABN and Business Name for new registrations. (This will gradually remove the anomalies with ABNs where there are several ‘Smith Family Trusts’.
- ATO will continue to control ABR, working co-operatively with ASIC.
- Present Business Names will be automatically rolled into the new system.
- On-line registration will be available 24/7.

Under current WA Law, a church cannot obtain a business name, unless it is actually carrying on a business.

Australian Accounting Standards:

The common Standard required in financial reporting required by the Australian Accounting Standards Board is what is known as a ‘General Purpose Financial Report’ (GPSR). However a concession was made for what is currently described as a “non-reporting entity”. This allows such entities to agree to adopt Special Purpose Financial Reports (SPFR), provided the Board of the entity agree to this style of presentation. This enables the entity to decide which Australian Accounting Standards are to be

applied in the preparation of the financial reports. This limit often means that the Standards are reduced to certain core Standards, thus reducing much of the onerous Board reports which, with quite small entities, would be seen to have little benefit.

Currently the Accounting Standards Board is considering changes with a view to removing SPFR concession and introducing a differential reporting Standard with reduced disclosures. No decisions have yet been made on this matter. At the same time the Auditing Standards Board have introduced Clarity Auditing Standards, which impose substantial additional obligations on the auditor. These may be of benefit in auditing large entities but impose additional obligations, and therefore cost, on the auditors of small entities.

Standard Chart of Accounts (SCOA):

The SCOA, initially introduced in Queensland about five years ago, is now an obligation both nationally, and in Western Australia for all Government departments providing funding to the Not-for-Profit Sector, and also on those entities within the Sector who receive such Government funding grants. It involves a common approach to recording accounting information to simplify reporting. Once properly implemented, this will be of real benefit to funding bodies and the Government alike. While this is not an obligation on churches (except where they receive Government grants), it is nevertheless one of the additional changes being implemented in 2011, so you should at least be aware of it.

Fund-raising Licence:

In Western Australia, charities approaching the public for donations for other fund-raising support need to have a Charitable Collections Licence, issued by Department of Commerce. In other States, this is normally referred to as a 'Fund-raising Licence'. If your activities are across State boundaries you would be expected currently to have a Fund-raising Licence in each State. State and Federal Governments have agreed to introduce appropriate legislation so that there will be, in the foreseeable future, a national Fund-raising Licence. This will simplify matters and standardise obligations with substantial benefit to all concerned. Implementation is expected in 2012 or 2013.

The WA Act is a 1946 Act with a quite restrictive definition of 'charity'. It excludes 'religion' which is one of the core pillars of the legal meaning of charity.

Office of the Not-for-Profit Sector:

Arising from recommendations from a number of Government enquiries and also pressures from within the Not-for-Profit Sector itself, the Government have given serious consideration to the establishment of a regulator along the lines of the UK Charities Commission. In 2010 the Government established

the Office of the Not-for-Profit Sector, which has a charter to introduce the new national regulatory body. It has also established a Not-for-Profit Sector Reform Council, comprised of twelve representatives from the Not-for-Profit Sector. The purpose of the Reform Council is to act as an advisory body to the 'Office' and has a three-year charter. It appears the intention is to have all of the complex matters between State and Federal Governments agreed and legislation introduced and approved by Parliament within that time frame. This is a massive undertaking with implications that could be as far-reaching as the changes that occurred in 2000. However in this instance, it is likely that the proposed regulatory changes will be on a progressive basis with substantial consultation with the Sector. The objectives for this body are: -

- Provision of a "one-stop shop" regulator to remove complex regulatory arrangements and streamline reporting;
- Introduce greater harmonisation and simplification between various levels of Government for the Sector;
- Reducing red tape for Government funded non-profit organisations;
- Provision of an advisory facility for the Sector in coping with the compliance obligations brought about by the massive regulatory framework the Sector now operates in.

In the last eleven years the Sector has absorbed, mainly quite effectively, substantial change. You will now be aware of the rationale for many of the changes and also to some degree, aware of what is ahead also. The other sessions in today's Seminar will provide more detail on some only of these matters. However you need to be alert to changes. Recognise that church treasurers, administrators and bookkeepers are in need of support and understanding from church leaders. You will also need to ensure that you keep in tune with what is occurring.

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