

## **TAX DEDUCTIBLE FUNDS – THE OPTIONS AVAILABLE**

The Income Tax Assessment Act provides, in Division 30 for many different options that are available for tax-deductible purposes as Deductible Gift Recipient (DGR) endorsed entities. This paper is to provide a brief summary of those DGR structures that are most likely to be use to a Church.

There are special requirements for each type of Fund. There are also other more general, obligations that are applicable to all DGR Funds to ensure compliance with ATO obligations. The benefit of tax deductibility is not given by Government lightly and the compliance requirements are there to ensure the maximum benefit to the Australian community.

### **School Building Fund:**

Available for the whole or a part of a building provided it is being utilised primarily for a course or courses that are approved educational courses. The curriculum, the expected outcome of the study programme, and the trainers' qualifications are all important.

Cannot be used for unstructured bible studies but religious education that follows a curriculum and is taught by appropriately qualified people is in order. Can be utilised for the purchase of land, cost of building, including extensions, mortgage payment and borrowing costs, property maintenance, insurance, etc. Not for equipment (unless a fixture), grounds, fencing or other outdoor matters, or for a building unrelated to the educational activity.

Use of the building, or a section of it, by a non-educational activity that is a minor use (less than half) will not normally disqualify. Also, an educational activity provided by another entity, even if a related entity, will not qualify.

### **Public Library Fund:**

Often used in conjunction with a School Building Fund, however it has a wider benefit. A Church that does not necessarily have a School Building Fund or an educational programme may nevertheless have a substantial reference library. Subject to the library being available to a much wider group than the church family (the public benefit test), ATO approval could be available. Such a library would normally have a membership requirement which could include payment of a modest annual fee to entitle a person to access. The term "library" includes an assembly of books, journals, magazines, video, DVD and other electronic access. There is a growing trend with libraries today for Internet access for reference material to become just as significant as access to the printed material. Your 'library' may in fact be a series of 'Internet' subscriptions to data bases in other locations. Vose Seminary certainly has both a conventional library and significant electronic resources along these lines.

Expenditure from an approved library fund can be applied for the purchase of reference material, furnishings, equipment and, in a larger facility, a librarian salary. It cannot be used for building costs.

### **Public Benevolent Institution:**

A Public Benevolent Institution (PBI) is established for the direct relief of poverty, sickness, suffering, distress, misfortune, destitution or helplessness and those needs must also arouse compassion in the community. Both the Object Clause in its Constitution, and its activities need to clearly identify its target group. If the PBI carries out any other activities, they must be incidental, minor and supporting the principle Objects. Its activities are confined to within Australia. (Benevolent relief outside Australia must be through an approved overseas aid fund). Needs within the community that can be met by education, training, or promotion of other social objectives will not normally arouse community compassion and would therefore not be eligible for PBI endorsement. The promotion of social welfare generally will normally lack the required emphasis on benevolence. The focus must be more specific. The breakdown of marriage and its related stresses also do not meet the requirement of “arousing community compassion”.

PBI endorsement will also not be available where an organisation focuses on the prevention of distress. It is the relief of a distressed person or community that needs to be the focus. Prevention of distress is deemed to be charitable but not benevolent, therefore not eligible for DGR benefits.

Nevertheless the PBI would probably be the most common DGR endorsement within the Australian community. It is also a structure that is often utilised by churches as it is recognised as being one of the arms of normal church ministry. A PBI also has the benefit of being eligible for exempt fringe benefits for salaried staff, subject to the capping rules.

### **Necessitous Circumstance Fund:**

A Necessitous Circumstance Fund has some characteristics of the PBI but has a narrower focus. It is also a charitable fund, not a charitable institution (see notes below). In other words, not directly participating in the provision of benevolent relief as such. “Necessitous Circumstance” refers to financial necessity, not general needs. It involves some degree of poverty although it may be less than abject poverty or destitution.

It normally involves the provision of money or goods to the person in need. May be established for an individual or a category of people who are in need. A person who is physically handicapped and needs special facilities or accommodation is a frequent beneficiary. For example, physical modifications to a building to provide for wheelchair access would be acceptable as appropriate expenditure.

### **Cultural Organisations:**

An application for admission to the Register of Cultural Organisations (ROCO) needs to be submitted to the Office for the Arts, Dept. of Environment, Water, Heritage and the Arts, not to ATO. ATO DGR rules still apply in addition to the ROCO requirements.

Cultural activities include –

- literature
- music
- performing arts
- visual arts
- craft
- design
- film
- Aboriginal art, or
- Moveable cultural heritage
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Special 6 monthly reports to ROCO are required.

ROCO staff are helpful, but not all “cultural” activities will qualify. Religious activities are not “culture” in themselves, but some religious entities qualify; – Examples include some Christian radio and television entities. This is because of the media activity.

### **Australian Disaster Fund:**

This was established for the relief of persons and communities experiencing a sudden disaster and the area has been declared to be a disaster or a state of emergency by a Minister of the State or Territory.

It needs to have resulted in death, serious injury or other physical suffering for a large number of people or widespread damage to property.

The establishment of a PBI that is only activated for such special needs is of more use due to the special conditions involved.

### **Charitable Services Institution:**

This is a special category established to assist an entity that doesn't qualify for PBI as benevolent relief is only a part of its activities. If it is part PBI, part Harm Prevention, and part Health Promotion there is now a way forward.

### **Scholarship Fund:**

Scholarship Funds were approved for DGR benefits in 2006. There are substantial requirements to be met to be eligible for endorsement. As a consequence there has not been a major take-up by the community. A Scholarship Fund can provide assistance through the granting of an approved

scholarship, bursary or prize, but also needs to comply with the following conditions: -

- Eligibility is restricted to Australian citizens or permanent residents.
- It must be open to individuals or groups of individuals within Australia drawn from a population region of at least 200,000 people. This restriction makes it difficult for remoter parts of Western Australia to derive benefit.
- It needs to be for the purpose of promoting the recipient's education in approved educational courses. In special circumstances, overseas study could be approved as a component of an approved Australian course.
- It must be awarded on merit or by reasons of equity on an impartial basis.

### **Ancillary Fund:**

Ancillary Funds are conduits for the channelling of DGR funds from the donor public to other DGR endorsed funds. They can be particularly beneficial to larger churches who have several DGR entities (PBI, School Building Fund, ROCO fund, etc) as a planning and control tool. Funds can be channelled to the area of appropriate need, thus preventing imbalance in funding between several potentially competing entities. Plan it and promote it correctly and the Church Board guide the giving to where it is most needed.

\*\*\*See diagram attached.

### **Special Issues:**

Where an entity has DGR endorsement for the whole of its activities it is no longer normally required by ATO to have a separate Gift Fund Bank Account. (There are some exceptions here). However it needs to retain separate internal records of the Gift Fund. Where the DGR endorsed fund applies to a part only of the activities, then a separate Gift Fund Bank Account is still needed. Also, where the entity has several internal DGR funds, it may use one DGR Bank Account for all of them – provided separate accounting records are maintained. However where the entity has also needed endorsement by another Government Dep't you also need to consider their requirements. They will normally require that a special Bank Account is maintained, irrespective of ATO concessions.

### **Planning your DGR:**

**Structure options** – Incorporated Association, Company Ltd by Guarantee, Special Purpose Non-Profit Company, Trust, Private Act of Parliament (rare today). Not normally an unincorporated entity, but it is possible.

**Objects (Key Clause in Constitution)** – Need to be brief.. The earlier approach of covering the world’s needs is not acceptable to ATO, as it leaves uncertainty as to your specific intent. Focus on the need to be addressed, make the wording clear, and stay with your Objects always. Do not be distracted by funding grants or you will miss your real target.

**Charitable Institution or Charitable Fund? – (What is the difference?)**

A charitable fund is a trust established under a Will or *inter vivos* (during life). It holds or manages property to direct its income to another charitable activity – commonly administered by a charitable institution. It often has primarily a fund-raising role.

A charitable institution is an entity that is carrying out a charitable purpose (activity). It is the “doing” entity. It can be structured as either a trust or as a corporate entity. This can sometimes lead to misunderstanding, but it is its function that determines its status.

When completing the initial ABN application you are asked to identify whether it is a fund or an institution. Often this is incorrectly identified. The table at the end of these notes identifies whether a particular DGR is a fund or an institution. There are some building funds that are established as a part of the main structure but current expectations seem to expect it to be a trust.

**Statement of Faith**

There are not normally any objections to identifying our Christian motivation. However some specific DGR structures have special requirements that limit the promotion of religion. ROCO and Overseas Aid Funds are examples. Even there the Statement of Faith, in itself, is not a fundamental negative.

**Membership**

Restricted, or open? Benefits and disadvantages either way. Where an entity is a public fund (See table at the end of these notes) there is an expectation that the public are invited to donate, and also to participate in the actual organisation. A commitment to the Objects and to the Statement of Faith present some restrictions without normally intruding on the public nature of the entity. “Public” extends to a significant section of the public. It could be ‘all the nurses in Western Australia’ for example.

**Closely Held membership or Board**

Where the Board in particular is made up of a closely knit group – family or close friends, ATO will, where it is aware, normally decline TCC or DGR endorsement. The same issue can relate to the membership itself, but doesn’t seem to be a current target. The ATO rely on the PAMAS case, where the control was with a Christian doctor, his wife, children and two very close friends. It was held that the entity failed the “public” test.

**Audit?**

Is audit to be obligatory in the constitutional documents? If so, why? Alternatives - It could be a Review, or the membership decides periodically, or

the Constitution is silent. If audit is obligatory for some other reason, such as funding obligations, then the matter is already decided. However if there is no immediate clear reason then there is an argument for the members having options.

**Fund-raising from the public:**

If your charity wishes to raise funds from outside its own close support base, a Charitable Collections Licence is needed from Dept. of Commerce. This is to give assurance to the public that responsible accountability is in place. The Licence conditions include an obligation to have the financial records audited by a recognised accountant.

**Caveat (Beware):**

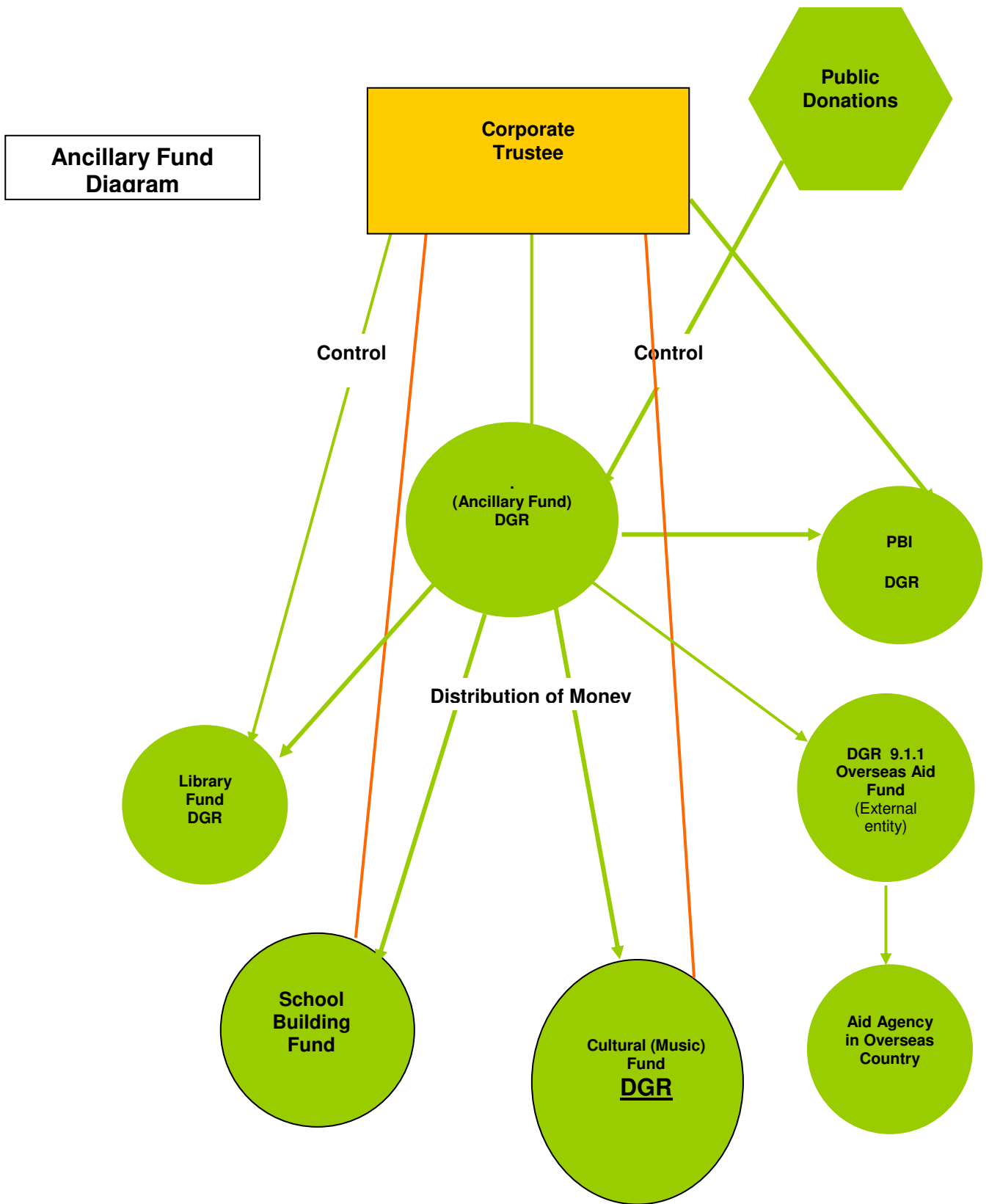
ATO are alert for accidental or deliberate breach of conditions. Penalties will be imposed where appropriate. Ignorance of the law is no excuse. In one recent WA situation involving a Christian controlled PBI major breaches occurred. The Board were really wanting to help others but either did not know the rules, or ignored them, and were prosecuted by ATO. The entity had its tax-deductible gift (DGR) endorsement removed, back-dated to 1 January 2001. ATO, at least initially, denied some donors' tax deductibility for their donations going back several years. This has caused much emotional stress and presumably legal costs as well.

There is a need to be vigilant.

Noel Harding

Add Ministry Inc.

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## DGR Endorsement Issues

Institution Or Fund	Public Fund	Item		
F			<b>Private Ancillary Funds</b>	
F	Yes		<b>Ancillary Funds</b>	
I	No	1.1.1	Public Hospitals	Not TCC
I	No	1.1.2	Non-Profit Hospitals	
I	No	4.1.1	Public Benevolent Institutions	
I		1.1.6	Health Promotion Charities	
F	Yes	4.1.4	Harm Prevention Charities	
I	No	4.1.7	Charitable Services Institution	
F	Yes	4.1.3	Necessitous Circumstance Fund	
I	Yes	1.1.5	Public Institution for Research	
I	Yes	1.1.7	Public Ambulance Service	
F	Yes	2.1.10	School Building Fund	
F	No	12.1.2	Public Library	
F	Yes	5.1.3	War Memorial Repair Fund	
F	Yes	2.1.13	Scholarship Fund	
I	No	2.1.1	Public University	
I	No	2.1.3	Higher Education Institution	
I	No	2.1.4	Residential Educational Institution	
F	Yes	2.1.8	Religious Education in Govt. Schools	
I	No	2.1.12	Government Special School	Not TCC
I	No	3.1.1	Approved Research Institute	May not be TCC
F	Yes	4.1.5	Australian Disaster Relief Fund	
F	Yes	9.1.2	Developed Country Disaster Relief Fund	
F	Yes	9.1.1	Overseas Aid Fund	
I	No	4.1.6	Animal Welfare Charity	
F	Yes	6.1.1	Register of Environmental Organisations (REO)	
F	Yes	12.1.1	Register of Cultural Organisations (ROCO)	
F	Yes	8.1.1	Approved Marriage Guidance Organisation	
F	Yes	8.1.2	Public Family Counselling or Dispute Resolution	
I	No	10.2.3	Guides	
I	No	10.2.5	Scouts	