

## Charities Alert

December 2012

In this edition we cover:

- What does the start up of the ACNC mean for charities?
- An analysis of how the tax status and concessions of different types of charities are affected by the introduction of ACNC.
- An overview of the present position with the Commonwealth's agenda for the not-for-profit reform.

### The Australian Charities and Not-for-profits Commission - what does it mean for your organisation?

The new Commonwealth regulator of charities in Australia commenced operation on 3 December 2012 with the commencement of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**). While the name infers that the ACNC will regulate Not-for-profits (**NFPs**) as well, this will not occur for some time in the future, on a date to be decided by the Commonwealth government.

#### What will the ACNC do?

The ACNC is responsible for registering charities. It is the ACNC which will determine the charitable status of organisations from now on rather than the ATO.

The ACNC will ensure that charities comply with governance standards and external conduct standards. It will collect information statements and financial statements from organisations. The ACNC will maintain a public searchable register of charities in Australia.

One of the main objects of the ACNC is to reduce 'red-tape'. In this regard, the ACNC is expected to work with other government bodies to develop a 'report-once, use-often' reporting framework. However, as with all changes, it will take some time for organisations to adjust, and for the ACNC to settle on the best processes for achieving this objective.

The ACNC has considerable information gathering and enforcement powers. While we would not expect such powers to be widely used as organisations settle into the new regime, the ACNC legislation does contain significant penalty provisions. The ACNC has already indicated its commitment to education and guidance prior to any enforcement action.

#### Ten Tips to help your organisation meet the ACNC's requirements

##### 1. Get your paper work in order

We recommend that charities review the documentation that they will need to meet the new regulatory requirements. This includes:

- Reviewing your organisation's governing rules, including all amendments from the time the organisation was established;

- Ensuring financial records are kept in such a manner that they correctly record and explain transactions, and the organisation's financial position;
- Reviewing, retaining and collating records, such as minutes of meetings, and other documents which demonstrate the activities of the charity, which show that the charity is striving to achieve its objects as set out in its governing rules; and
- Reviewing procedures and processes to ensure your charity is achieving an effective and efficient use of its resources.

## **2. Consider whether your charity is already registered, needs to register... or opt out**

Registration with the ACNC is voluntary, but it is a prerequisite for access to certain Commonwealth tax concessions.

If your organisation is already endorsed by the ATO as a charity, your organisation will automatically be registered with the ACNC. Your organisation does not need to do anything to become registered. The ACNC will contact you to confirm you have automatically been registered. We recommend you check the ACNC website to confirm you are registered – if a search against your name does not reveal your registration, search using your ABN only.

If your charity is not registered and wishes to register, it must meet five criteria:

- It must have an ABN;
- It must be a not-for-profit entity;
- It must meet the description of a relevant subtype of charity set out in section 25-5(5) of the ACNC Act. The government is presently considering a statutory definition of 'charity'. Until this is introduced, the ACNC will determine whether an entity is a charity by reference to the common law.
- It must meet the governance standards and external conduct standards – which are yet to be prescribed; and
- It must not support terrorist or other criminal activities.

If on 2 December 2012 your organisation was a religious institution that was self-assessing as income tax exempt, and has not been endorsed by the ATO as a charity, public benevolent institution or health promotion charity, your charity needs to notify the ACNC and opt-in to registration before 2 December 2013, as a charity with a purpose 'for the advancement of religion'. It needs to opt-in, if it wishes its Commonwealth tax concessions to remain unaffected.

If your organisation has automatically been registered, but you wish to opt out, then you must give notice to the ACNC within 6 months from the ACNC commencing (that is, by 2 June 2013). Opting out would mean that the charity is not required to comply with the consequences of registration, such as provision of information statements and compliance with governance standards. However, it also means that charity tax concessions would not be available, and that your charity would not receive the anticipated benefits of being 'ACNC approved'.

An important matter for an organisation that conducts numerous different charities is to consider whether it will be beneficial to have entities within the organisation registered separately. Complex organisations made up of numerous different registered entities will need to consider if they want to apply to the ACNC to allow collective or joint reporting for their whole group.

## **3. Consider what reporting requirements your Charity has**

All organisations that are registered will need to provide the ACNC with an annual information statement in the form set by the regulations. At this time the prescribed form is not known, and so we are unsure how much information will need to be reported. The first information statement is due by 31 December 2013, unless your charity is approved for a substituted accounting period.

The table below summarises the financial reporting requirements.

One of the key goals of the ACNC is the stream lining of reporting to government authorities. In this regard, the ACNC plans to work with other government agencies to have what is referred to as a 'Charity Passport', which will be a collection of core information gathered by the ACNC as part of the registration process or annual information statement, which can then be provided to other government agencies. This will negate the need for other agencies to collect that information and minimise the interaction a Charity will have with the government. There have already been moves in this direction in relation to financial reporting by charities that operate schools. South Australia has announced that it will effectively hand over regulation of its incorporated associations to the ACNC. Until other States do the same, other charities that are incorporated associations will continue to have reporting and compliance obligations under State laws as well as the ACNC.

We anticipate most charities will be discussing with their accountants how to manage their financial reporting to comply with the ACNC requirements. We can arrange an introduction to accounting firms with expertise in advising charities on their financial reporting.

Type of Charity	Requirement	Due Date
<p>Basic religious charity (<b>BRC</b>):</p> <ul style="list-style-type: none"> <li>• Purpose of 'advancement of religion' and not incorporated.</li> <li>• Receipt of grants from government agencies of less than \$100,000</li> <li>• Operate DRG Funds of less than \$250,000</li> </ul>	<p>Submit an annual information statement only – containing basic information about operations and finances.</p> <p>Do not need to submit a financial report to the ACNC. A BRC does need to keep financial records which correctly record and explain transactions and its financial position.</p> <p>Other specific treatment for a BRC is:</p> <ul style="list-style-type: none"> <li>• Do not need to comply with governance standards; and</li> <li>• Exclusions from some of the ACNC's regulatory powers.</li> </ul>	<p>31 December 2013, unless your charity is approved for a substituted accounting period.</p> <p>(Consider if you wish to apply to the ACNC for a reporting period other than the financial year, 1 July to 30 June)</p>
<p>Small Charity</p> <p>Annual revenue less than \$250,000</p>	<p>Submit an annual information statement – containing basic information about operations and finances.</p> <p>Do not need to submit a financial report to the ACNC. However, you do need to keep financial records which correctly record and explain transactions and your financial position.</p>	<p>31 December 2013, unless your charity is approved for a substituted accounting period.</p> <p>(Consider if you wish to apply to the ACNC for a reporting period other than the financial year, 1 July to 30 June).</p>
<p>Medium Charity</p> <p>Annual revenue between \$250,000 and \$1 million</p>	<p>Submit an annual information statement – containing more detailed information about operations and finances.</p> <p>Submit an audited or reviewed financial report.</p>	<p>31 December 2013, unless your charity is approved for a substituted accounting period.</p> <p>(Consider if you wish to apply to the ACNC for a reporting period other than 1 July to 30 June).</p> <p>31 December 2014, unless your charity is approved for a substituted accounting period.</p> <p>(Consider if you wish to apply to the ACNC for a reporting period other than the financial year, 1 July to 30 June).</p>
<p>Large Charity</p> <p>Annual revenue of \$1 million or more</p>	<p>Submit an annual information statement – containing more detailed information about operations and finances.</p> <p>Submit an audited financial report.</p>	<p>31 December 2014, unless your charity is approved for a substituted accounting period.</p> <p>(Consider if you wish to apply to the ACNC for a reporting period other than 1 July to 30 June).</p> <p>31 December 2014, unless your charity is approved for a substituted accounting period.</p> <p>(Consider if you wish to apply to the ACNC for a reporting period other than 1 July to 30 June).</p>

#### **4. What does the ACNC regime mean for your organisation in terms of its tax status and concessions**

This is a critical area of concern for charities, and is analysed in the following article in this Alert.

#### **5. Review the governance of your charity.**

Compliance with the yet to be announced governance standards and external conduct standards will be a prerequisite for maintaining registration. The aim of these requirements is to provide the public with a minimum level of confidence that organisations will promote effective and efficient use of their resources and will meet community expectations about managing their affairs.

The governance and external conduct standards will be set out in regulations to the ACNC Act, and are expected to be operational from July 2013. They will be principle based so that they will specify an outcome to be achieved. Therefore, it will be up to individual charities to consider what steps they need to take to achieve compliance in their particular situation. The governance standards will likely cover matters such as the content of a registered entity's governing rules, the conduct of the charity, and the conduct of its directors, for example to exercise their duties with the degree of care and diligence a reasonable person would exercise and in the best interests of the charity. We have commented further on the interaction between the ACNC Act and the *Corporations Act 2001* (Cth) in the next section of this article.

We recommend that you consider:

- What governance documentation your charity has in place, such as mission statements, constitutions, association rules, by laws or trust deeds – they may need to be amended and brought up to date once the governance standards are in place; and
- If your charity sends funds outside Australia, review current arrangements for ensuring funds are being applied for legitimate purposes and beneficiaries, and not for terrorist or criminal activities.

#### **6. Consider how your charity will interact with Government from now on – Commonwealth, State or Territory**

The ACNC acknowledges that charities are set up to help people and the community, and so may need some time and assistance to meet the requirements of the ACNC

legislation. Be responsive to the ACNC, and uphold a productive working relationship with ACNC officials. If the details of your charity change, for example it changes its name, there is a change in directorship or its governing rules, it is your responsibility to advise the ACNC.

While the **ATO** will no longer determine whether an organisation is a charity, it will continue to fulfil its taxation function for charities by determining which tax concessions registered charities are entitled to receive. Please refer to the next article in this Alert for more details on this.

If your charity is a company under the *Corporations Act 2001* (Cth), or another entity registered with ASIC, the ACNC will replace ASIC as your regulator in many respects.

The table below shows which major functions the ACNC will take over from ASIC. Companies should note they continue to be regulated by ASIC in many important areas.

All other obligations under the *Corporations Act 2001*, existing but not identified above as being moved across to the ACNC, will continue to be governed by ASIC.

If you are a registered entity (but not a company), such as an incorporated association under a State Act, you need to continue to report and comply with applicable State or Territory legislation in addition to the ACNC requirements, until such time as harmonisation is achieved between the ACNC and State and Territory regulators.

Similarly, charitable fundraising continues to be regulated by State and Territory legislation, not by the ACNC, and all current registrations, licences and exemptions need to be maintained by charities. The Commonwealth's NFP reform agenda includes national regulation of charitable fundraising, but federal and State legislation required to achieve that seems a way off.

Charities are often constituted as trusts and/or administer them, and State and Territory trustee legislation and common law rules regulating trusts, continue to apply to those charities. For example, if a charitable trust becomes impracticable to perform, the relevant State or Territory Attorney General will be involved with any cy-pres or similar scheme approved by a supreme court to vary the trust or give the trustee additional powers.

Function	Who?
<b>With effect from 3 December 2012:</b>	
Apply to register a company, a foreign company or a registrable Australian body.	ASIC
Apply to register a charity.	ACNC
Apply to change the name of a company to omit the word 'Limited'.	ASIC
Apply to change the name of a company.	ASIC
Notify changes to member details and share structure of a company	ASIC
Notify changes to company details including: <ul style="list-style-type: none"> <li>addresses (including registered office address);</li> <li>officeholders (directors, alternate directors and company secretaries); and</li> <li>constitution/governing rules.</li> </ul>	ACNC
Notify changes to details of a foreign company or registered body including: <ul style="list-style-type: none"> <li>address;</li> <li>directors;</li> <li>constitution/governing rules; and</li> <li>name.</li> </ul>	ACNC
Request to revoke registration of a charity or cease to be entitled to registration as a charity.	ACNC
Notify external administration of a company.	ASIC
Apply to deregister a company, foreign company or registered body.	ASIC
<b>With effect from 1 July 2013:</b>	
<ul style="list-style-type: none"> <li>Directors and officers civil obligations of care and diligence, good faith and not to misuse position or information (sections 180 to 183 of the Corporations Act will no longer apply).</li> </ul>	ACNC
<ul style="list-style-type: none"> <li>Directors and officers criminal offences – lack of good faith and misuse position or information (section 184 of the Corporations Act will continue to apply).</li> </ul>	ASIC
<ul style="list-style-type: none"> <li>Provisions relating to reliance on information and actions of delegates (sections 189 and 190 of the Corporations Act continue to apply).</li> </ul>	ASIC
<ul style="list-style-type: none"> <li>Provisions relating to directors' interests etc (sections 191 to 194 of the Corporations Act will no longer apply).</li> </ul>	ACNC
<ul style="list-style-type: none"> <li>Meetings of members (with some exceptions).</li> </ul>	ACNC
<ul style="list-style-type: none"> <li>Financial reporting and audit.</li> </ul>	ACNC

## 7. Consider the information about your Charity which will be published to the public

The ACNC will maintain a public register of all Australian charities. This is to achieve a more transparent NFP sector and develop public confidence.

The type of information which will be available to the public is:

- the entity's name;
- the entity's contact details;
- the entity's ABN;
- the type of entity and subtype entity under which it is registered or has been registered;
- the date of effect of each such registration; and
- the entity's governing rules.

There is provision for the ACNC not to include information on the register in certain circumstances, such as for example where the information is commercially sensitive, or it has the potential to cause detriment to the entity or an individual.

If you consider your charity has such information, you may need to consider making an application to the ACNC not to make available the information.

## 8. Your organisations is not a charity, but it is a NFP – How are you affected by the ACNC

Only registered charities are affected by the new regulator. In future years, this is likely to broaden to include the wider NFP sector.

It will be very useful for NFP entities to monitor, and keep

appraised of developments for charities, so that they are ready when other NFPs are included under the ACNC regime.

## 9. Can your organisation participate in consultation with the ACNC

The ACNC has expressed a desire to consult with charities and receive feedback about how the ACNC can assist the charities and NFP sector.

Presently, the government is consulting about:

- The statutory definition of 'charity'. Until this is settled, the ACNC will apply the common law definition of charity;
- The establishment of governance and external conduct principles;
- The structure and information to be included in financial reports; and
- The 'Not-for-profit sector tax concession working group' discussion paper released on 2 November 2012. A discussion of some of the key issues associated with the discussion paper is set out in Thomsons Charities Alert, Tax Concessions for the not-for-profit sector, November 2012, which can be found [here](#).

## 10. What are the time frames and when does your charity need to be compliant

Time frames for compliance are summarised in the table below. The ACNC website also contains a useful timeline of ongoing obligations for charities. A link to the page is [here](#).

Date	Event
3 December 2012	The ACNC commences operation.  Check the public database on the ACNC website under the "Find a Charity" tab to see whether your charity has been automatically registered.
3 December 2012	For charities that are companies, ACNC takes over from ASIC in receiving notifications of certain changes [see table at item 6 above]
January / February 2013	National community presentations will be run by the ACNC in capital cities and large towns. This will be an opportunity to participate in consultation on the proposed governance standards – dates and locations are on the ACNC website.
2 June 2013	Last day of being able to 'opt out' of the ACNC for those charities automatically registered due to receiving a Commonwealth charity tax concession before 3 December 2012.
2 June 2013	If you wish to apply to the ACNC for a reporting period other than the financial year, for example if you usually prepare reports using the calendar year, you must make this application to the ACNC by 2 June 2013 for the 2012/2013 reporting period.

Date	Event
1 July 2013	Charities must commence to keep records of all financial and operational activities in order to prepare their 2013/2014 annual information statement.  Medium & Large charities will also need to prepare and submit their annual financial report for the 2013/2014 year.  For charities that are companies, ACNC takes over from ASIC regulating financial reporting and some provisions for directors and officers duties.
1 July 2013	The Government's proposed date for the introduction of a statutory definition of 'charity'.
1 July 2013	The Government's proposed date for when registered charities will be expected to comply with governance standards, and if applicable external conduct standards.
1 July 2013	Public database of registered charities is expected to be fully operational.
2 December 2013	Last day a <i>religious institution</i> (not already registered) can opt in/register with ACNC - by 'opting in' a religious institution will be treated as having been registered since 2 December 2012.
2 December 2013	All registered charities with a purpose of 'advancing religion' must notify their 'subtype' to ACNC by 2 December 2013 to continue to receive additional tax concessions as a <i>religious institution</i> . Basic religious charities must ensure that by 2 December 2012 they are registered <i>only</i> for the subtype of advancing religion.
2 December 2013	Last day for certain <i>deductible gift recipients (DGRs)</i> , that were not registered charities before 3 December 2012, to 'opt in' and register.
31 December 2013	Submission of the first annual information statement for all charities is due for the 2012/2013 period, unless the charity has arranged an alternative reporting period with the ACNC.  <i>Note that annual information statements must be submitted within six months of the end of a charity's reporting period.</i>
31 December 2014	Submission of the second annual information statement for all charities is due for the 2013/2014 reporting period, unless the charity has arranged an alternative reporting period with the ACNC.  Submission of annual financial reports for <i>Medium and Large Charities</i> is due for the 2013/2014 reporting period.  <i>Note that annual information statements and annual financial reports must be submitted within six months of the end of a charity's reporting period.</i>

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## What does the ACNC regime mean for your charity in terms of its tax status and concessions?

The ACNC is not a one stop shop for all key regulations affecting your charity. This is particularly the case in relation to tax issues.

### 1. From 3 December 2012, which government authorities will administer the law affecting your organisation's charity tax concessions?

The Australian Taxation Office (ATO) continues to administer the tax law dealing with Commonwealth charity tax concessions (eg income tax exemptions, refunds of franking credits, GST concessions, FBT exemptions/rebates) and determine your organisation's eligibility for Commonwealth tax concessions and deductible gift recipient (DGR) status.

The relevant state, territory and local governments continue to administer the law dealing with the state, territory or local government tax exemptions and concessions (eg stamp duty, payroll tax, land tax, council rates and water rates).

### 2. How would the establishment of the ACNC affect your organisation's existing charity tax concessions?

If, on 2 December 2012, your organisation was already endorsed by the ATO as a tax concession charity to receive Commonwealth charity tax concessions, your organisation should be automatically registered with the ACNC. Your organisation's existing Commonwealth tax concession charity endorsement and its Commonwealth tax concessions should be unaffected by the establishment of the ACNC.

In relation to your organisation's existing state, territory and local government tax exemptions and concessions, they are not affected by the establishment of the ACNC. Your organisation does not need to be registered with the ACNC in order to obtain the state, territory and local government tax exemptions and concessions. Your organisation needs to satisfy the applicable state and territory requirements for accessing these exemptions and concessions.

All tax concession charities should check if they are already registered with the ACNC, and take appropriate action if they are not on the ACNC register or if corrections are necessary.

### 3. How does the establishment of the ACNC affect your organisation's existing DGR endorsement and associated tax deduction for donations to it?

If, on 2 December 2012, your organisation was already a DGR and also a tax concession charity, then your organisation should be automatically registered with the ACNC. This means that your organisation's existing DGR endorsement should be unaffected by the ACNC regime. Accordingly, donations made to your organisation should continue to be tax deductible.

If, on 2 December 2012, your organisation was already a DGR, but was not endorsed by the ATO as a tax concession charity, your organisation would not be automatically registered with the ACNC. You will need to check whether the DGR category for your organisation requires your organisation to be a registered charity under the DGR provisions of the tax law.

Before 3 December 2012, some of the DGR categories did not explicitly require an entity to be an endorsed charity before being endorsed as a DGR. For example, public hospitals endorsed as DGRs under item 1.1.1 of the table in s30-20(1) of the *Income Tax Assessment Act 1997 (ITAA 97)* on or before 2 December 2012, were not legally required to be endorsed as charities.

From 3 December 2012, public hospitals endorsed as DGRs under item 1.1.1 of the table in s30-20(1) of the ITAA 97 are required to be registered as charities with the ACNC, unless they are Australian government agencies.

If the DGR provisions in the tax law require your organisation to be a registered charity, and your organisation intends to maintain its DGR status, your organisation would need to apply to the ACNC for registration as a charity by 2 December 2013 if it is not already registered. Most of the DGR categories for organisations that are endorsed by the ATO would require the organisations to be registered charities.

For example, those public hospitals that were endorsed as DGRs under item 1.1.1 on 2 December 2012, and have not been automatically registered as charities on 3 December 2012, will need to be registered with the ACNC as charities by 2 December 2013, if they are not Australian government agencies, and if they want their existing DGR endorsement unaffected.

All existing DGRs should consider whether they are required to register with the ACNC, and take action to register if needed.

#### **4. If your organisation does not have, but wishes to apply for, Commonwealth charity tax concessions, what does it need to do under the new rules?**

You will need to check the tax requirements for the particular charity tax concessions that your organisation wishes to have access to.

If tax concession charity endorsement is required, your organisation would need to apply to the ATO for the endorsement. However, your organisation will need to be registered with the ACNC first. Your organisation has the option of applying to register with the ACNC and applying for the tax concession charity endorsement with the ATO on the same registration form. The ACNC will decide on your organisation's charity status and will pass on the tax concession charity application to the ATO which will make the decision on the tax concession charity application.

Refer to the ATO and ACNC publications on their websites for instructions on how to apply.

#### **5. If your organisation wishes to become a DGR, what does it need to do under the new rules?**

You will need to check the tax requirements for the particular DGR category that your organisation wishes to apply. If DGR endorsement is required, your organisation will need to apply to the ATO for the endorsement.

Most categories of DGRs are only available to registered charities, for example, a registered public benevolent institution under item 4.1.1 of the table in s30-45(1) of the ITAA 97. If your organisation wishes to apply for DGR status under one of these categories, your organisation will need to be registered with the ACNC first. Your organisation has the option of applying to register with the ACNC and applying for the DGR endorsement with the ATO on the same registration form. The ACNC will pass on the DGR application to the ATO which will make the decision on the DGR application.

Refer to the ATO and ACNC publications on their websites for instructions on how to apply.

#### **6. How will the ACNC regime impact on public benevolent institutions and health promotion charities in relation to their existing tax concession charity and DGR endorsements?**

The ACNC regime should not affect the existing tax concession charity and DGR endorsements for public benevolent institutions (PBIs) and health promotion charities (HPCs), provided that they are already endorsed by the ATO as tax concession charities before 3 December 2012.

#### **7. How would the ACNC regime affect regulation of private ancillary funds and public ancillary funds and their existing charity tax concessions and DGR status?**

Ancillary funds (both private and public) are funds with DGR status that can distribute to certain DGRs (other than, for example, private ancillary funds or public ancillary funds).

Broadly, for tax concession purposes, ancillary funds (both public and private) are treated either as 'charitable funds' or 'income tax exempt funds'.

The distinction between 'charitable funds' and 'income tax exempt funds' generally arises from the type of DGRs to which the funds could distribute.

If the ancillary funds (both private and public) **cannot** distribute to DGRs that are not charities, they should be 'charitable funds'.

If the ancillary funds (both private and public) **can** distribute to DGRs that are **not** charities, they should be 'income tax exempt funds', and that is how the ATO would treat them. Very broadly, these are funds that are able to distribute to a wider class of DGRs (eg including DGRs that are not charities under the general law, such as DGRs that are not charities because they are too closely associated with the government).

Different types of tax concessions are available to charitable funds and income tax exempt funds. For example, certain types of GST concessions are available to charitable funds but not income tax exempt funds.

If the ancillary funds (both private and public) are endorsed as 'charitable funds' on or before 2 December 2012, they should be automatically registered with the ACNC. They are regulated by the ACNC. Certain information on the funds will be available to the public through the ACNC register.

If the ancillary funds (both private and public) are endorsed as 'income tax exempt funds' on or before 2 December 2012, they should not be automatically registered with the ACNC, and would not be regulated by the ACNC.

Regardless of whether the ancillary fund (both private and public) is a charitable fund or an income tax exempt fund, the ATO continues to regulate the fund's tax concessions and DGR status. Accordingly, the fund needs to continue to satisfy the tax law, the ATO's requirements and the applicable Private Ancillary Fund Guidelines or Public Ancillary Fund Guidelines.

The trustees of ancillary funds should review their existing tax concession status, and check whether they are already registered with the ACNC.

Private ancillary funds that are 'charitable funds' should consider whether they should change from 'charitable funds' to 'income tax exempt funds' (and potentially broaden the recipients of the funds), and opt out of the ACNC register (by lodging the relevant ACNC form) if they have already been registered with the ACNC. A relevant factor to consider is the level of information about the fund that is available to the public from the ACNC register and the entities that are intended to benefit from the fund. Also, if registered with the ACNC, the fund is subject to the regulatory requirements under the ACNC regime. However, they should also consider the Commonwealth tax concessions that would be available under the relevant category.

Public ancillary funds that are 'income tax exempt funds' should consider whether they should change from 'income tax exempt funds' to 'charitable funds' and register with the ACNC. A relevant factor for consideration is that the public can use the ACNC register to find out certain information about an organisation before they make a decision to donate to that organisation. A change from 'income tax exempt fund' to charitable fund' would generally limit the potential recipients from the fund.

Whether or not this would be relevant would depend upon the fund's particular requirements.

## 8. Can your organisation be both a DGR and also a 'basic religious charity' under the ACNC regime?

A 'basic religious charity' is a registered charity that is registered for a purpose that is the advancement of religion and could not be registered as any other subtype of charity (eg PBI or HPC). There are also some other requirements that need to be met for such a registered charity be a 'basic religious charity'.

An organisation cannot be both a DGR itself and also a 'basic religious charity'. However, a basic religious charity can be endorsed to operate DGR funds, institutions or authorities as long as their total revenue is less than \$250,000 (or other amount as prescribed by regulations) for the particular financial year.

Religious bodies should review the DGR status of entities and funds associated with them when determining their eligibility for being a 'basic religious charity'. They should also consider how to structure their entities and funds to minimise compliance costs.

## 9. Summary table - responsibilities of various government authorities in relation to taxation concessions

Responsibilities	Which government authority is responsible?
Make decisions on charity registration applications and register charities with the ACNC; regulate registered charities (including private and public ancillary funds and other DGRs that are also registered charities)	ACNC
Make decisions on tax concession charity endorsement applications; administer tax law dealing with charity tax concessions (including private and public ancillary funds and other DGRs that have charity tax concessions).	ATO
Make decisions on DGR endorsement applications; administer tax law dealing with DGRs (including private and public ancillary funds and other DGRs)	ATO
Make decisions on stamp duty, payroll tax, land tax, council rates and water rates exemption/ concession applications for charities; register charities for these purposes where applicable; administer state laws dealing with these exemptions and concessions	Relevant state/ territory/ local government authorities

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## Reforms for the NFP sector

Summary of recent reforms and proposed reforms impinging on the NFP sector

Development Area	Timing
<p><b>Private ancillary funds</b></p> <ul style="list-style-type: none"> <li>• <i>Private Ancillary Fund Guidelines 2009</i> were released in September 2009. The purpose of the Guidelines is to set minimum standards for the governance and conduct of a private ancillary fund and its trustee.</li> </ul>	<p>The Guidelines commenced on 1 October 2009.</p> <p>The trustee must have amended the governing rules of the fund if required to comply with the Guidelines by 1 October 2012.</p>
<p><b>Public ancillary funds</b></p> <ul style="list-style-type: none"> <li>• <i>Public Ancillary Fund Guidelines 2011</i> were released in December 2011. The purpose of the Guidelines is to set minimum standards for the governance and conduct of a public ancillary fund and its trustee.</li> <li>• The law has also been amended in the area of public ancillary funds.</li> </ul>	<p>The Guidelines commenced on 1 January 2012. Each public ancillary fund should review its compliance with the Guidelines and the new law as soon as possible, and amend its trust deed as required.</p> <p>The trustee must amend the governing rules of the fund if required to comply with the Guidelines by 1 July 2015.</p>
<p><b>Taxing NFPs for conducting unrelated commercial activities</b></p> <ul style="list-style-type: none"> <li>• <i>Consultation Paper: Better Targeting of NFP Tax Concessions</i> was released on 27 May 2011. The Government sought public views on possible approaches to implement the Government's Budget announcement to better target NFP tax concessions to the altruistic activities of NFPs.</li> </ul>	<p>The exposure draft legislation was expected in 2012. The new legislation is proposed to apply from 1 July 2012 for certain commercial activities that commenced after 10 May 2011.</p>
<p><b>Australian Charities And Not-for-profits Commission (ACNC)</b></p> <ul style="list-style-type: none"> <li>• The Australian Charities and Not-for-Profits Commission Act 2012 and the Australian Charities and Not-for-Profits Commission (Consequential and Transitional) Act 2012 apply on and from 3 December 2012. The ACNC commenced formal operation on that date. These Acts establish the ACNC, set out the objects and functions of the ACNC, and provide a regulatory framework for charities and the NFP sector.</li> </ul>	<p>The ACNC commenced operation on 3 December 2012. It determines charitable status, including public benevolent institution status, for all Commonwealth purposes, provides education and support to the sector, and administers a regulatory and reporting framework for the sector.</p> <p>The ACNC will implement a general reporting framework and a public information portal from 1 July 2013.</p> <p>The ACNC regulations dealing with important details are still to be released.</p>
<p><b>Statutory definition of charity</b></p> <ul style="list-style-type: none"> <li>• <i>Consultation Paper: Statutory definition of 'charity'</i> was released on 28 October 2011. The Government sought public views on possible approaches to introduce a statutory definition of charity, applicable across all Commonwealth laws.</li> </ul>	<p>The exposure draft legislation was expected in 2012.</p> <p>The new legislation is planned to be effective from 1 July 2013.</p>

Development Area	Timing
<p><b>Restating and standardising the special conditions for tax concession entities</b></p> <ul style="list-style-type: none"> <li>On 23 August 2012, the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 was introduced into parliament to restate and standardise the special conditions for tax concession entities.</li> <li>It ensures that income tax exempt entities generally must be operated principally in Australia and for the broad benefit of the Australian community; and deductible gift recipients generally must be operated solely in Australia and for the broad benefit of the Australian community.</li> <li>Broadly, it also requires income tax exempt entities to comply with all the substantive requirements in their governing rules, and to be 'not-for-profit' entities.</li> <li>It standardises the term 'not-for-profit'.</li> </ul>	<p>The proposed new law will apply to determine whether an entity is entitled to be or remain income tax exempt/DGR for income years following Royal Assent.</p>
<p><b>Charitable fundraising regulation reform</b></p> <ul style="list-style-type: none"> <li><i>Charitable fundraising regulation reform - Discussion paper and draft regulation impact statement</i>, was released in February 2012.</li> </ul>	<p>Submissions to the discussion paper were due 5 April 2012.</p>
<p><b>Review of companies limited by guarantee</b></p> <ul style="list-style-type: none"> <li>The Government is working on a consultation paper on its review of the company limited by guarantee structure, and its continuing appropriateness for NFP entities.</li> </ul>	<p>The consultation paper was supposed to be released in early 2012.</p>
<p><b>Tax concessions for the NFP sector</b></p> <ul style="list-style-type: none"> <li>The Not-for-Profit Sector Tax Concession Working Group Discussion Paper was released on 2 November 2012. It raises issues relating to tax concessions that the Group believed important to consider.</li> </ul>	<p>Submissions to the discussion paper were due 17 December 2012.</p>

For further information, please [click here](#) to contact our national Charities team

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