



National Community Foundations Forum 2014

An Australian Community Philanthropy event

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Tax and Legislation

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ACNC, CHARITIES ACT, REFORM AND COMPLIANCE...

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REFORM REFRESHER

- **Huge** reform undertaken by the Labour government from budget in May 2011 to the election in 2013.

Reforms relevant to community foundations:

- Australian Charities and Not-for-profit Commission (ACNC)
- Charities Act 2013 (Cth)
- Increased regulations for public ancillary funds



BEFORE THE ELECTION....

The Liberal party said they would:

- repeal the Charities Act
- unwind the ACNC so it remains only as an education and information centre
- regulation will be returned to the ATO and to ASIC and State regulators
- it is unlikely the register will be continued if charities are not reporting to the ACNC
- continue to reduce red tape!?

When? – It was not on the list of action items in the AFR immediately after the election

How? – Will need Senate approval...

Ensure you subscribe to both the ACNC and ATO e-news services and ensure your contact details are up to date.

WHAT HAS HAPPENED?

- **Sept 2013** – Office for the Not-for-profit Sector disbanded
- **Dec 2013** - By a late inclusion to another Bill, the govt. tried to prevent **Charities Act** from commencing – resistance from the sector prevented this! The Act has commenced (from **1 Jan 2014**) there have been no further announcements as to its repeal.
- **ACNC Repeal Bill** was introduced to Parliament **March 2014** and referred to a Senate Review committee. No details as to replacement or transition were in the Bill – this was to follow after consultation. This has not been passed as yet.
- DSS ‘consultation’ on the replacement of the ACNC as a regulator just closed.
- Centre for Social Impact is consulting on the ‘**Centre of Excellence**’ and what it might do: www.civilsocietycentre.org.au
- Unlikely to continue with a reliable register
- continue to reduce red tape!?

ACNC – BUSINESS AS USUAL



1. Public Information: a public register with up to date information on charities. **Very useful** for donors, grant makers and **community foundations** to see who is doing what in your region!

Curtin University Not-for-profit Initiative is **analysing data** provided by over 26,000 registered charities.

Trying to contact and revoking charities listed but not responding – **check the list** for any in your region: <https://www.acnc.gov.au/ACNC/FindCharity>

2. Educate: provide **education** to support charities. Check out the **publications** on governance, charitable purposes, public ancillary funds, reporting and more!

ACNC are also conducting regional **workshops** – only Vic, Tas and NSW left.

3. Enforce: investigate complaints and take appropriate regulatory action – main issues raised are related to **governance**.

WHO REGULATES COMMUNITY FOUNDATIONS NOW?

- **ACNC** – regulator of charities including trusts through power over corporate trustees
- **State/Territory Attorney-Generals** – protects the charitable nature/intention
- **ASIC** – regulates companies or **State registrars of incorporated associations** – regulates incorporated associations
- **ATO** – regulates the access to tax concessions, income tax, GST, FBT and DGR
- **State departments** – regulate fundraising
- **State revenue** – regulate the access to State tax concessions

EFFECT OF THE CHARITIES ACT 2013?

Trusts need to be charitable both in their relevant State/
Territory and in the Commonwealth



This now means complying with 2 definitions:

- State/Territory – common law
- Commonwealth – Charities Act 2013 (Cth)

WHAT ARE CHARITABLE PURPOSES?

Common law

- Four heads of charity
 - Relief of poverty
 - Advancement of religion
 - Advancement of education
 - Other purposes beneficial to the community for the public benefit
- Public benefit required for all except relief of poverty

Charities Act 2013 (Cth)

12 categories or sub-types of charity

- Advancing health
- Advancing religion
- Advancing education
- Advancing social or public welfare
- Advancing culture and heritage
- Advancing the natural environment
- Advancing the safety of Australians
- Promoting human rights
- Promoting reconciliation
- Another purpose analogous
- Promoting a change in law or policy

WHERE ARE THEY DIFFERENT?

At the moment it appears there are 3 main differences:

- **native title groups** – public benefit is deemed in the Charities Act
- **disaster relief** – wider than charitable under State law as it includes rebuilding in aid of any exempt entity (eg including community assets of the local council)
- trusts granting to **govt entities** – must first ‘opt in’ under relevant State legislation where possible

WHAT IS NOT CHARITABLE PURPOSES?

Still:

- Sport
- Recreation
- Private benefit
- Government



TAKE CARE!

- Charitable purposes 'at law' is not always the same as what the lay person may think
- Just because it is good for the community doesn't make it charitable
- Relevant when talking to donors and prospective donors

CHARITABLE VS DGR

What is the difference between charitable and a deductible gift recipient (DGR)?

- **Charitable** is a general catch all of everything that has charitable purposes and is for the public benefit
- **DGR** is only available to certain purposes and activities which fit neatly within a 'pigeon hole' in the Tax Act

GIVING TO GOVERNMENT DGRs

The complications with the Act for community foundations are:

- for trusts which ‘**opted in**’ **pre 1 Jan 2014** and were ‘ITEFs’ you should keep declaration with trust deed (though WA, NSW and Qld may have been established as ITEFs and so no declaration – it should be clear in deed)
- for pre 1 Jan 2014 trusts which **want to opt in now** - requires a change to the purposes in the trust deed and is limited to giving to item 1 DGRs which either are charitable or are government entities which would be charitable if they were not government entities
- the **definition of government entity** is different to the common law which means there maybe inconsistencies between the ACNC register and the State law.

COMPLIANCE POINTERS

Charitable entity (trust or company)

- activities and grant making must be charitable at law
- comply with ACNC governance standards
- if trustee of a public ancillary fund or scholarship fund, the majority of the board must meet the Responsible Person requirement in trust deed and these members must be active!
- report to ACNC (and other regulator if incorporated assoc but not if company)

Public ancillary fund

- investment policy review annually
- separate accounts from trustee
- annual valuation of assets (3yrs for land)
- minimum distribution - 4%
- grant making checklist – TCC + item 1 DGR
- fundraising activities
- donors can't direct
- trustee must make decisions
- report to ACNC and ATO
- audit

STILL TO COME...MAY BE...

- repeal of the ACNC
- repeal of the Charities Act 2013 – what will that mean for ITEFs?
- reinstatement of previous regulators
- ~~UBIT = unrelated business income tax~~ **NOW GONE!**
- 'In Australia' requirements = tighten requirements for the benefits of tax concessions to be in Australia, limiting activities overseas

Nothing has been said on these:

- Review of structure of charities focussing on companies limited by guarantee
- Fundraising reform to simplify and nationalise
- Consultation on NFP tax concessions – report to government last year. Recommendations including making all charities DGRs.

OPPORTUNITIES

1. **Lobby** your government representative to keep the ACNC and the Charities Act.
2. Liberal govt is meant to reinstate the Prime Minister's Business Community Partnership to promote philanthropy.

ACP has already put in a submission requesting:

- **simplification** of the structure of community foundations
- **item 1 DGR status** for community foundations
- **enabling private ancillary funds** to both wind up in favour of public ancillary funds and make grants to public ancillary funds.



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