

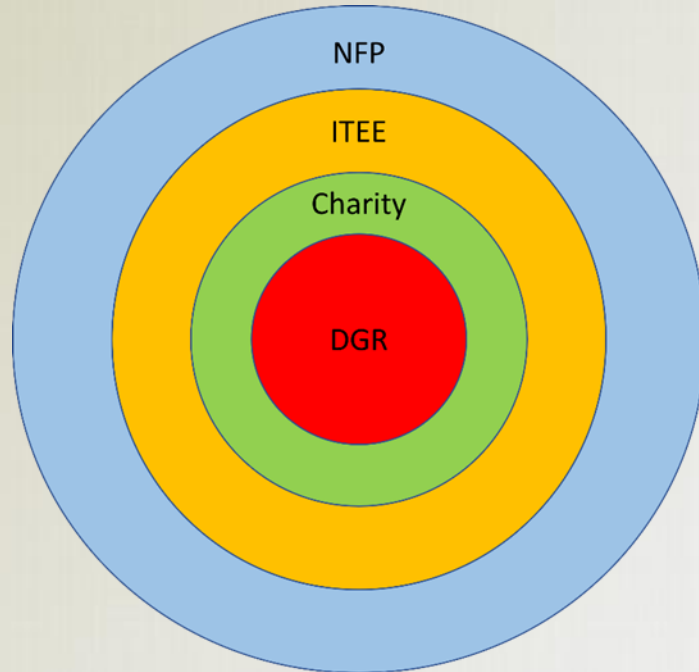


DGR Status for Churches – Legal Update

Australian Christian Churches

November 2023

Starting point...



Key	Definition
NFP	Not-for-Profit Entity
ITEE	Income Tax Exempt Entity
Charity	ACNC- registered charity
DGR	Deductible Gift Recipient

What is DGR Status?

- Organisations endorsed as “deductible gift recipients” are entitled to receive donations that are deductible from the donor’s income tax.
 - Ability to issue tax deductible receipts to donors for monetary donations of \$2 or more (or other gifts – e.g. property, trading stock, shares).
- Limited charities are eligible for DGR endorsement.
- 56 categories of endorsement in areas such as:
 - Health;
 - Education;
 - Welfare and Rights;
 - Environment.



General DGR requirements

To be eligible for DGR endorsement, an organisation or fund must generally:

- Be a not-for-profit and a registered charity (or operated by a registered charity);
- Have an Australian Business Number (ABN);
- Fit into a specific DGR category/type and satisfy any specific eligibility criteria for that DGR type;
- Be established and operated in Australia;
- Have specific rules for transferring surplus gifts and deductible contributions if the organisation is wound up or its DGR status is revoked; and
- Comply with any public fund or gift fund entitlements.

Building Funds for Ministry Schools

- **DGR Category – School or College Building Funds**
- Item 2.1.10, Section 30-25 *Income Tax Assessment Act 1997* (Cth) – DGR endorsement available for:
 - “*a public fund established and maintained solely for providing money for the acquisition, construction or maintenance of a building used, or to be used, as a school or college by... a society or association which is carried on otherwise than for the purposes of profit or gain to the individual members of the society or association.*”
- **Taxation Ruling 2013/2** – practical (strict) requirements for eligibility.
- Changes ahead as a result of *The Buddhist Society of Western Australia Inc v Commissioner of Taxation* (No 2) [2021] FCA 136 (“the Buddhist Society Case”)

Building Funds for Ministry Schools

- **Buddhist Society Case**
- First instance – ATO Commissioner revoked DGR Status of Buddhist Society on the basis that funds were applied to non-School or College buildings.
- Revocation Decision:
 - it was not a ‘school’ within the ordinary usage of that word, as it was not a place with the primary function of providing regular, ongoing and systematic instruction in a course of nonrecreational education;
 - any school use was not substantial. Other uses of the building precluded the conclusion that it had the character of a school building.
- Issue - Were the buildings at Dhammaloka Buddhist Centre used as a school or college within the meaning of Item 2.1.10 ITAA/Taxation Ruling 2013/2?



Building Funds for Ministry Schools

- **Buddhist Society Case**
- The ATO's definition of "school" and associated requirements were not supported in law. The word "School" in the ITAA97 was to be given its ordinary and simple dictionary meaning.
- *"A school is 'a place where people, whether young, adolescent or adult, assemble for the purpose of being instructed in some area of knowledge or of activity' has not been doubted. That statement, in my view, aligns comfortably with the various dictionary definitions cited in the authorities above. Particularly, a school is 'an institution in which instruction of any kind is given'."*
- The ATO's position that a school required: 'regular, ongoing and systematic instruction' was not supported by the words of the Act.



Building Funds for Ministry Schools

- **Buddhist Society Case**
- The ATO's view that a school must satisfy non-recreational or vocational requirements were inconsistent with Australian law, in that a school may provide both recreational and nonvocational instruction.
- In considering whether a building fund is “used, or [is] to be used, as a school or college”, it is not sufficient to simply assign percentages for the times that the building is used for school activities versus non-school activities. Identification of the main purpose(s) for which that building is used, and the importance of each of the particular activities carried out to that purpose, is also required. It is also necessary to establish whether there are any connections between the non-school activities and school activities, and how both types of activities contribute to furthering the main purpose(s).



Building Funds for Ministry Schools

- **Taxation Ruling 2013/2 – what is a school?**
- An educational organisation with a distinct identity;
 - A quality of permanence;
 - A governing body which controls its affairs;
- Regular, ongoing and systematic instruction in a course of non-recreational education;
 - Set curriculum;
 - Instruction or training provided by suitably qualified persons;
 - The enrolment of students;
 - Some form of assessment and correction;
 - The creation of a qualification or status that is recognized outside of the organisation.



Building Funds for Ministry Schools

- **Taxation Ruling 2013/2 – use of the building by a school?**
- Acquisition, construction or maintenance.
- School has a legal or equitable interest in the building.
- Part of a building – *‘... could qualify as a school building if it is a permanent, fixed and structurally delineated part of the building and it is capable of being made the subject of a separately identifiable legal or equitable interest’.*
- Used by a school – ATO will consider “overall purpose” for which the building was established and maintained, and the activities that support its purpose.
 - Mixture of school/non-school activities – ATO will consider the connection of the activities and the extent to which both activities contribute to the purpose for which the building was established and maintained.



Public Benevolent Institutions

- “An institution that is organised, conducted or promoted for the relief of poverty, sickness, destitution, helplessness, suffering, misfortune, disability or distress”.
- A distinct charitable subtype, eligible for “whole of entity” DGR status.
- Organisation must meet three elements – “**public**”, “**benevolent**”, and “**institution**”.
 - Public – aims to help an appreciable section of the community.
 - Benevolent:
 - Poverty – unable to maintain a modest standard of living;
 - Other conditions – causing suffering beyond the pain and suffering of everyday life.
 - Institution – a body created to conduct activities towards benevolent relief of an appreciable class in the community.



Public Benevolent Institutions

- **“An institution that is organised, conducted or promoted for the relief of poverty, sickness, destitution, helplessness, suffering, misfortune, disability or distress”.**
- PBIs may provide direct relief to people in need, engage others to provide relief, or provide relief within a relationship of collaboration.
- Relief may be provided outside of Australia:
 - May include development assistance if the whole community (or vast majority of the community) are people in need.
- “Prevention is better than a cure” – in some circumstances.
- PBIs can advocate for a particular cause or policy – in some circumstances.

Public Benevolent Institutions

What is an example of a PBI?

- An organisation which provides housing, groceries, clothing, and other necessities to members of the Australian community living below a modest standard of living.
- A clinic which provides mental health services and counselling to persons suffering from mental illness.
- An organisation which aims to relieve the distress of people affected by natural disasters by providing emergency clothing, food, toiletries and shelter to people unable to return to their homes in the aftermath of a natural disaster.
- A social enterprise which sells secondhand goods, and applies the proceeds to partner humanitarian aid organisations engaged in providing benevolent relief to people in poverty.

Public Benevolent Institutions

Dual subtypes – including Advancement of Religion?

- New Commissioner’s Interpretation Statement released by ACNC in August 2023.
- CIS Paragraph 87 – additional charitable purposes must be “incidental or ancillary to benevolent relief”.
- Organisation must remain “organized, conducted or promoted for benevolent relief”.
- ACNC Example – prison chaplaincy ministry, which aims to advance religion and relieve the distress of people who are in prison by providing chaplaincy services for inmates who wish to maintain a connection with their faith.
- Benefit – payment of exempt fringe benefits to religious practitioners.



Necessitous Circumstances Funds

An alternative to PBIs?

- “A public fund established and maintained to provide relief for individuals in Australia who are in necessitous circumstances”.
- “Necessitous circumstances” = financial necessity.
 - Not abject poverty, but not just living without luxuries.
 - Falling short of a modest standard of living in Australia.
- Providing relief = money or goods directly to persons in need, or to other organisations providing care and relief to persons in necessitous circumstances.

Health Promotion Charities

An alternative to PBIs for counselling ministries?

- “A charitable institution whose **principal activity** is to promote the prevention or control of diseases in human beings”.
 - Narrower purpose than “advancing health”.
- Includes taking action to reduce the spread of the disease, research into the management and treatment of disease, managing and treating disease, and activities to alleviate suffering or distress caused by the disease.
- “Disease” – broad term that covers both physical and mental illnesses, but not a general health condition or symptom.
- “Principal activity” – main or predominant activity, more than any other.

Other options for consideration

- Item 2.1.8 - “A public fund established and maintained solely for the purpose of providing religious instruction in government schools in Australia”.
- Item 8.1.1 – “A public fund established and maintained solely for the purpose of providing money to be used in giving or providing marriage education under the *Marriage Act 1961* to individuals in Australia”.
- Item 4.1.5 – “A public fund that is established and maintained solely to provide money for the relief (including relief by way of assistance to re-establish a community) of people in Australia in distress as a result of a Disaster”.
- Pastoral Care services in Government/Non-Government Schools DGR category – announced in 2022, now “on hold” indefinitely.



QUESTIONS?

Contacts



Name: *Jessica Lipsett*

Position: *Director*

Email: *Jessica.Lipsett@corneyandlind.com.au*

Call us on 07 3252 0011 or visit www.corneyandlind.co.au

Schools & Education | Not for Profit & Charity | Commercial | Employment & Discrimination | Compensation Law | Family Law | Estate & Elder Law
Litigation | Criminal & Traffic | Institutional Abuse | Personal Injury & Compensation