

# MEETING THE ONGOING NEEDS OF YOUR CHARITY



# ABOUT THIS BOOKLET

Thank you for engaging us to assist with the establishment of your charity. We are passionate about supporting the charity sector and want to see your charity flourish.

We understand that getting the right structure is only the first piece of the puzzle in what makes a charity succeed. That is why Corney & Lind provides holistic ongoing support for charities on legal and governance matters.

We have set out some further information and links to resources in this booklet that may assist your charity moving forward. We trust that this resource will assist your charity and look forward to discussing how we might support the work of your charity.

Any fee estimates noted in this booklet are a guide only and are subject to confirmation based on the specific needs of your charity.

We look forward to seeing the great work that your charity will do in the community and working together to support your ongoing legal and governance needs.

Sincerely,

ALISTAIR MACPHERSON  
MANAGING DIRECTOR

JESSICA LIPSETT  
DIRECTOR



# CONTENT

Free ACNC Resources .....	4
Deductible Gift Recipient Funds which complement your charity.....	5
Policies for good governance .....	7
Managing Board Liability: Deed of Access, Indemnity and Insurance .....	9
Employment of Staff.....	10
Charities and Anti-Discrimination Law .....	11
Mediating your Disputes .....	12
Complying with the ACNC's External Conduct Standards .....	13
Fundraising License Applications .....	14
Bequests and Significant Gifts .....	15
Registrations for state- based tax concessions .....	16
Exemptions from transfer duty and land tax .....	17
Policies for responding to Family and Domestic Violence in your Community .....	18
Lease Reviews .....	19

# FREE AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION RESOURCES

The Australian Charities and Not-for-profits Commission ("ACNC") is the primary regulator of the charity sector. The ACNC has a significant database of free resources and guidance materials for charities. We recommend that your charity take advantage of those resources and schedule regular professional development for your Board using these resources.

In particular, we recommend that your team take some time to participate in the ACNC's free training on the ACNC Governance Standards, which is available on:

<https://www.acnc.gov.au/tools/online-learning>

Our team of charity lawyers are also well placed to provide cost-effective tailored professional development and board sessions as may be required from time to time. Please do not hesitate to reach out if we can be of assistance.



# DEDUCTIBLE GIFT RECIPIENT FUNDS WHICH COMPLEMENT YOUR CHARITY

All ACNC registered charities are entitled to apply for income tax exempt status with the ATO. However, many charities will not qualify for Deductible Gift Recipient ('DGR') status.

If your charity is eligible for DGR status, the charity may benefit from establishing an associated DGR Fund/s for attracting donations for specific associated purposes of the charity.

For example, DGR Funds which may complement your charity include:

FUND	COMMON USE
Public Fund for Religious Instruction in Government Schools	<p>This fund exists to attract donations for religious instruction in government schools.</p> <p>A local church might set up this fund to attract DGR donations from its congregants to support religious instruction in its local government school/s.</p>
School Building Fund	<p>Private schools, educational institutions, or associated churches may seek to establish a School Building Fund to support the acquisition, construction, or maintenance of school or college buildings. The building must be predominately used for educational purposes.</p>
Scholarship Fund	<p>A charity may seek to establish a Scholarship Fund to provide scholarships to support the recipient's education who aligns with the purposes of the charity.</p> <p>This Fund would often be set up with a specific educational facility in mind (such as local non-state school).</p>

COMPLEMENTARY DEDUCTIBLE GIFT RECIPIENT FUNDS

FUND	COMMON USE
<p>Public Fund for Persons in Necessitous Circumstances</p>	<p>This Fund is used for relieving 'necessitous circumstances' (e.g. providing funds for accommodation and clothing to a family experiencing financial hardship). Churches or charities may wish to have a Fund set up so that it can readily call for tax deductible donations from its community as and when the need arises.</p> <p>This Fund must be used to meet the needs for those who do not have enough financial resources to have a modest standard of living by Australian standards.</p>

This is a non-exhaustive list. Please do not hesitate to ask us for further advice on the suitability of a DGR Fund to complement your charity's purposes. We can often provide a fixed fee for establishing these complementary DGR Funds.

# POLICIES FOR GOOD GOVERNANCE

Good governance is pertinent for all charities. Often, we are called upon to assist charities with challenges that could have been easily avoided had the correct policies and procedures been in place. A sample of key policies that may be important for your charity to consider are set out below.

## Whistleblower Policy

Companies limited by guarantee are required to comply with [Part 9.4AAA](#) of the Corporations Act 2001 (Cth) regarding whistleblower protections. Although whistleblower policies are not strictly required for charities with a consolidated revenue of less than \$1 million per year,<sup>[1]</sup> we recommend that all charities structured as a company limited by guarantee consider adopting a whistleblower policy to assist in ensuring best practice responses to whistleblower complaints and compliance with the whistleblower protection regime more generally.

We can work with you to develop a whistleblower policy to assist with compliance (or review your existing policy) at a fixed fee.

## Privacy Policy

Managing personal information is an increasingly regulated and difficult endeavour. As at October 2022, your charity will be required to comply with the Privacy Act 1988 (Cth) if it meets the following criteria:

- It has an annual turnover of more than \$3 million
- It provides a health service to a person
- It sells or purchases personal information
- It is required to comply with the Privacy Act under a contract (e.g. an aged-care provider or a disability services provider under a Commonwealth agreement)

- It is related to a body corporate (e.g. it is a subsidiary) that meets any of the above criteria (even if the charity alone does not), or
- It has opted in to the Privacy Act (by choosing to comply despite not meeting any of the above criteria).

If in doubt, we recommend reviewing guidance documents published by the Office of the Australian Information Commissioner. We also recommend that you consider guidance published by the ACNC for best practice tips. Penalties for non-compliance with the Privacy Act 1988 are significant, and the potential for reputational damage is also high.

Even if your charity is not strictly required to have a privacy policy, there is great wisdom in beginning with best practice, rather than implementing it at a later time (say, when revenue grows to the annual turnover threshold), given privacy obligations on all entities will likely become stricter over time. Privacy Policies must be customised to reflect the specific activities of your charity. Please ask us for a fee estimate tailored to your organisation's needs.



**Social Media Policy**

As your charity begins to expand and you start to hire staff, you may want to consider implementing a Social Media Policy. The importance of a Social Media Policy is to ensure that your employees understand the charities expectations as to how they are to conduct themselves on social media platforms, particularly to ensure they do not disparage the charity's reputation. The failure to have a Social Media Policy in place makes it difficult for your charity to take disciplinary action against your employees if an employee's actions on social media lead to reputational damage. By having a Social Media Policy in place, your charity can be afforded greater protection in ensuring its reputation is safeguarded.

We can provide a standard Social Media Policy for your charity at a fixed fee.

**Staff Code of Conduct**

We also recommend ensuring your charity has a Staff Code of Conduct. This provides clarity to employees as to the charity's expectations of behaviour and conduct within the workplace. If employees breach your Staff Code of Conduct, your charity can easily take steps to commence disciplinary action as your employees fail to meet the expected standard of behaviour established by your Staff Code of Conduct.

We are able to assist you in drafting a Staff Code of Conduct for your charity at a fixed fee.





# MANAGING BOARD LIABILITY: DEED OF ACCESS, INDEMNITY AND INSURANCE

Our standard company limited by guarantee constitution provides that the company will, in certain circumstances, indemnify the directors of the company from personal liability. It also provides that the company can pay the fees for any supporting insurance policy.

However, this general assurance in the company constitution is a baseline only and is not intended to deal with director liability and indemnities in any detail. The terms of the constitution are also in the hands of the company's members rather than the directors, which can mean (although unlikely) that the terms might be amended by the members without the directors' consent. As a result, many directors prefer direct contractual assurances with the charity in the form of a deed of indemnity, access, and insurance.

As indemnities are only as sound as the financial position of the entity giving the indemnity (which is likely not significant for a start-up charity), and personal liabilities might extend beyond a director's tenure, a director may reasonably wish to have contractual assurances from the charity that a certain level of insurance will be maintained for that whole period. This is a key matter addressed by a deed of access, indemnity and insurance.

All in all, a deed of access, indemnity and insurance is a good way of providing peace of mind to the directors (including future directors) of your charity.

We can provide a template deed of access, indemnity and insurance for your charity to utilise each time an additional director is appointed, for a fixed fee.



# EMPLOYMENT OF STAFF

## Template Employment Contracts

We expect that your charity will reach a point where it needs to hire staff or resolve employment disputes. Corney & Lind have a specialist employment law team that can assist with the hiring and disciplining of staff as the need arises.

Although we always recommend that you take advice on the terms of your employment agreements, our employment law team can offer template employment contracts (fulltime, part-time, and casual) to get you started at a fixed fee. Our team works with you to cater to the specific needs of your charity to ensure the clauses in the employment contract accurately reflect the mission and goals your charity is setting out to achieve.

## Exempt Fringe Benefits for Religious Practitioners

If your charity is registered with the ACNC for the 'advancement of religion', it may be able to take advantage of fringe benefit tax exemptions for religious practitioners. However, understanding the application of this exemption in para-church organisations and ministries can be difficult.

We routinely provide advice on exempt fringe benefits for religious practitioners, including adding 'exempt fringe benefit' clauses in employment contracts to clearly define an individual's eligibility for access to 'exempt fringe benefits'. Please do not hesitate to contact us if we can be of any assistance in this regard.

## Spiritual Appointments for Religious Charities

Many religious charities (such as churches) have a practice of, or a theological preference for, 'calling' rather than employing their pastors and ministers of religion. Unfortunately, some religious charities have found they have unintentionally legally defined their relationship with their pastors and ministers of religion as an "employment relationship" as opposed to a "spiritual calling" which can lead to costly disputes. This can be a difficult line to tread at law and charities can often benefit from early legal advice in relation to entitlements and clearly documenting the relationship between the religious charity and pastors and minister of religion.

Our team can provide 'spiritual appointment' agreements that may assist your charity in navigating this space. Please do not hesitate to contact us if you need assistance with drafting spiritual appointment agreements at a fixed fee. This includes taking specific instructions from you regarding your institution and providing written advice on whether a "calling" document is appropriate and the broader ramifications.



# CHARITIES AND ANTI-DISCRIMINATION LAW



We understand that charities, particularly religious charities, will often provide their services to particular groups of persons or prefer to have their employees embody their values in their lifestyles.

Discrimination law is a complex and increasingly contested area, as the law changes in-line with changing societal expectations of our legal system, safeguarding individual rights.

Currently anti-discrimination laws prohibit discrimination in a range of settings against people on grounds including sex, sexual orientation, gender identity, marital or relationship status. Complexities are exacerbated by/federal laws differing from laws in each state and territory.

If your charity intends to exclude certain people from accessing its services or only employ people who adopt a specific faith or lifestyle, we recommend that you obtain legal advice to manage the risk of non-compliance. Our lawyers are well placed to advise in this challenging and developing landscape.

# MEDIATING YOUR DISPUTES

We offer mediation services to your employees and your boards, helping them navigate workplace issues such as conflict, relationship breakdowns, stress related absenteeism, complaints of bullying and harassment, in a cost-effective, timely and constructive way, avoiding court. Our role as mediators is to create a safe space where people can identify key matters of disagreement, understand others' interests better, and reach a cooperative, compassionate resolution.

More information about our mediators, the process and pricing can be found on our website here:

WEBSITE



[WWW.CORNEYANDLIND.COM.AU](http://WWW.CORNEYANDLIND.COM.AU)



# COMPLYING WITH THE ACNC EXTERNAL CONDUCT STANDARDS

## **Value of having a ‘Overseas Distributions Policy’**

If your charity pursues its charitable purposes overseas, or sends funds overseas for its partners to do so, it is likely that your charity will need to comply with the ACNC’s External Conduct Standards.

Best practice is that all such charities should establish an Overseas Distributions Policy that the Board follows when dealing with overseas distributions. In the absence of such a policy, there is a higher likelihood your charity will unintentionally breach the ACNC’s External Conduct Standards.

Overseas Distribution Policies must be customised carefully to reflect the activities of your charity. Please ask us for a fee estimate tailored to your organisation’s needs.

## **Benefit of a Memorandum of Understanding with Overseas Partners**

Compliance with the ACNC’s External Conduct Standards will usually involve your charity entering into a memorandum of understanding (‘MOU’) with your overseas partners. The function of the MOU will be to provide certain assurances to your charity about how the funds it sends overseas will be spent, as well as requiring certain reporting obligations to ensure compliance with the ACNC’s External Conduct Standards.

MOUs with Overseas Partners must be carefully customised to accurately reflect the activities of your charity. Please ask us for a fee estimate tailored to your organisation’s needs.



# FUNDRAISING LICENSE APPLICATIONS



Fundraising laws in Australia are widely regarded as being both convoluted and outdated. There is a push to reform the sector and to have fundraising licensing centralised and simplified. However, until then, charities need to operate under the assumption that they will need to apply for a fundraising license:

- in the state/territory where they primarily operate; and
- in all states and territories if they fundraise online.

We can assist with your fundraising license applications for a fixed fee.

There are also a number of exemptions available under the various state/territory regimes that might mean that you do not require a fundraising license in one or more jurisdiction. We can provide advice on your accessibility to exemptions if needed. Please do not hesitate to reach out if we can assist in this regard.

# BEQUESTS AND SIGNIFICANT GIFTS



If your charity works with older people, in the cultural space, or you have particularly passionate volunteers, you might be asked questions around how someone can best give your charity a significant gift, or bequeath a gift in a Will.

Bequests might be small gifts of money or might involve a significant gift of a particular item. Do not assume that receiving a gift of a particular item or for a particular purpose will be a simple exercise for your charity. It is important to understand how best to work with a potential bequestor or donor to ensure that any specific gifts or gifts for specific purposes will benefit your charity's beneficiaries, as well as meeting the donor's wishes. Otherwise, your charity may be saddled with a separate charitable trust to administer the gift, which imposes more administrative burden on your charity than benefit.

It is a good idea to have your ACN or ABN and full legal name of your charity clearly accessible on your charity's website, as this is usually what lawyers will consult when drafting a clause providing for a gift in a person's Will.

If you are intending to fundraise specifically for bequests, talk to us first about how to ensure that your bequest clause directs gifts to your trust's purposes, and doesn't create new trusts for your charity to administer.

# REGISTRATION FOR STATE-BASED TAX CONCESSIONS

Registration with the ACNC entitles your charity to apply to the ATO for certain tax concessions/exemptions (such as income tax exemptions and GST concessions). However, concessions on state-based taxes require a further registration with the relevant state regulator (such as the Queensland Revenue Office in Queensland).

Registration as a charity with your state regulator will often entitle your charity to concessions on:

1. Payroll tax;
2. Transfer duty; and
3. Land tax.

Revenue offices in each state and territory have similar registrations, which should be considered if your charity operates across multiple jurisdictions.

**We recommend that charities apply and obtain this registration within 6 months of establishment.**

This is because the application process becomes more difficult if the charity applies for registration later and seeks to have its registration backdated to the date the charity was established without a reasonable explanation for the delay.

We can assist with charitable institution (or equivalent status) registrations in each relevant state and territory. Please ask us for a costs estimate.





# EXEMPTIONS FROM TRANSFER DUTY AND LAND TAX



The rules regarding transfer duty and land tax exemptions vary slightly between state and territory jurisdictions. However, as a general proposition, if your charity acquires property for the purpose of pursuing its charitable purposes (even if just to earn income to support your charitable purposes) it may be entitled to a transfer duty and land tax exemption.

In our experience, these exemptions are not well understood by conveyancing firms and charities are often advised to pay transfer duty when there is no requirement (or relevant state regulator) to do so. It is also best to have your 'charitable institution' registration with the Queensland Revenue Office before entering into a dutiable transaction.

We routinely make transfer duty and land tax exemption applications to the Queensland Revenue Office for our charity clients. Our fees will vary depending on the value and complexity of the acquisition and land holding. Please ask us for a costs estimate.

# POLICIES FOR RESPONDING TO FAMILY AND DOMESTIC VIOLENCE IN YOUR COMMUNITY

Charities are often in the business of helping people who are doing it tough. Very often this means helping people who are experiencing domestic and family violence. Further, given how wide-spread this issue is across demographics and geography, it is also likely to be an issue for your volunteers and staff. This is an issue that affects everyone, but recognising and responding effectively to family violence can be complicated.

It is imperative that charities are well-equipped to address the issue of domestic and family violence as they become aware of it in their workplaces and amongst their clients. We recommend that charities conduct training for staff and also have clear policies for dealing with disclosures and discoveries of violence from staff, volunteers and the clients of the charity.

We are able to provide helpful staff training in this area and can assist in preparing appropriate policies. Please ask us for a fee estimate tailored to the needs of your organisation.



# LEASE REVIEWS

All charities need a physical space to operate from. This usually involves entering into a commercial lease of premises. Unlike in the residential context, there is no such thing as a standard lease as there is wide scope for commercial negotiation on the terms.

We recommend that charities take particular care when it comes to giving security for performance under leases. Most landlords will require personal director or member guarantees. In our view, this is unnecessary and likely inappropriate as the directors/members of charities do not have a financial stake in the charity's success (i.e. they do not have an entitlement to profits).

Corney & Lind offers fixed fee 'high point' lease reviews to assist its clients in understanding the lease terms and identifying any unusual, sneaky, or inconsistent terms. Please contact us for a copy of our fixed-fee lease review schedule.



# MEET THE TEAM



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# FOR MORE INFORMATION



For more information about our Webinars and Not-for-Profit Services scan these QR CODES:

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## NFP SERVICES




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