2026 Legal Update for Churches

ACC QLD

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VOCARE
LAW



Overview

Multiple RECI Act corporations in Queensland are in receivership:

- **Presbyterian Church of Queensland;**
- **Anglican Diocese of North Queensland**

Catalyst Townsville SPV No 1 Pty Ltd v The Presbyterian Church of Queensland (receivers and managers appointed); Catalyst Corinda SPV No 2 Pty Ltd v The Presbyterian Church of Queensland (receivers and managers appointed); The Presbyterian Church of Queensland (receivers and managers appointed) v Catalyst Carina SPV Pty Ltd & Anor [2025] QSC 255

Currently listed for appeal in the Queensland Court of Appeal in November 2026

What should RECI Act corporations, and other charitable trustees, learn from PCQ?

- **How is property held?**
- **When should judicial advice be sought?**
- **When are other assets at risk?**
- **How can religious organisations safeguard assets for the future?**

Presbyterian Church of Queensland: What happened?

2017 – complex, non-traditional finance arrangements between PCQ and Catalyst:

- **Townsville, Corinda and Carina – agreements to build residential aged care facilities.**
- **Land owned by PCQ, or leased from a Catalyst party pursuant to 'triple net lease'.**
- **Funding to repay PCQ loan to CBA (approximately $27 million).**
- **Debt raised – approximately $100 million in total.**

2020 – '*clear that [PCQ] would not be able to operate the Townsville, Corinda and Carina RACFs, and meet its obligations to the Catalyst parties*' under the various agreements.

2021 – PCQ placed into receivership.

- Receivers commenced investigation in relation to how PCQ held its assets and what assets were available to meet the Catalyst debts.

Supreme Court claim by Catalyst parties – amounts owing under the finance agreements, unpaid rent and outgoings, costs and interest.



The Corporation vs The Church

The Corporation (PCQ)

A body corporate established by letters patent issued under the *Religious Educational and Charitable Institutions Act 1861* (QLD) (RECI Act)

- Trustee of a charitable trust (or trusts)
- Repository of property held on trust for the uses and purposes of an unincorporated association – the Church.
- Corporation aggregate comprised of religious officeholders of the Church.

The Church (Presbyterian Church of Queensland)

An unincorporated association

- Not a party to the PCQ case.
- The religious association established in 1683 in Queensland.
- Comprised of a Synod known as the General Assembly.
- Operates pursuant to a constitution controlled by the General Assembly known as The Code.

Outcomes of the case

1. PCQ did not hold its land as trustee of a specific purpose trust;

2. In its dealings with the Catalyst parties, the Corporation acted in good faith, responsibly and reasonably, exercising the degree of caution expected of a charitable trustee (i.e. it did not act in breach of trust);

3. PCQ's transactions with the Catalyst parties were not imprudent, hazardous or wholly unsuitable for PCQ acting as trustee for the Church;

4. The Catalyst parties did not induce any breach of trust;

5. The Catalyst parties did not act unconscionably in their dealings with PCQ;

6. The Catalyst parties (largely) succeeded in their claims against PCQ, and PCQ is liable to Catalyst for its outstanding debts under the finance agreements (and some rent and outgoings).

Nature of RECI Act Corporations



Bailey v Uniting Church in Aust Property Trust (Qld) [1984] 1 Qd R 42

An entity which has the power to receive, hold and deal with property as trustees of a trust for the charitable purposes of the unincorporated association in which the officeholders hold their offices, in accordance with the unincorporated association's constitution

On trust… but what trust

Must be consistent with the purposes of the underlying unincorporated association:

> [132] The RECI Act does not authorise such a corporation to hold property on a specific trust beyond the relevant charitable purposes of the appointing entity. Whether a RECI Act corporation (like the Corporation) holds property on trust for the general charitable purposes of an unincorporated association (like the Church) or only for one or more of those charitable purposes is determined as at the time the relevant trust was created

Receiver and Attorney General argued for the existence of specific purposes trusts (PresCare trust, or an Aged Care trust)

Catalyst argued that the Corporation did not hold its property on trust and the property it held vested in it absolutely.

On trust… but what trust

Outcome - Property held for the general charitable purposes of the Church

[33] In the absence of any contrary intention, if a person gifted or bequeathed property for the purposes of the Church, or declared they held property for the purposes of the Church, the Court should presume that the property is held on trust for the religious purposes prescribed by the Church's fundamental tenets of faith and its constitution.

A 'general purpose inference' was applied in the absence of any clear evidence of specific purpose trusts. This was despite:

- **Gifts of real property applied towards the Church's social mission (including aged care);**
- **The establishment of PresCare in 1998, with a constitution adopted into the Code;**
- **PresCare holding separate ABN, ACNC registration, PBI endorsement and its own management and governance structure;**
- **$9.4 million being distributed to PresCare pursuant to cy-pres orders in 1999;**
- **The allocation of management and responsibility of various residential aged care facilities by the General Assembly to PresCare.**

On trust… but what trust

Why were specific trust arguments rejected?

- Despite holding a separate ABN, ACNC registration and PBI endorsement, PresCare did not have its own trust deed;
- The PresCare board was subject to the decisions and direction of the General Assembly in its management of PresCare;
- The General Assembly could conceptually appropriate the land to another purpose within the Church's general purposes at any time, in the absence of any specific declaration of trust;
- PresCare's responsibility for the properties was reflective of an 'internal administrative arrangement' rather than distinct trust purpose;
- The Church's objects were broad enough to encompass the more specific purpose trusts alleged – higher bar for unequivocal evidence of intent to establish specific purpose trusts to defeat the general purpose inference.

Congregational Property

[91] The Code distinguishes “congregational property” from “denominational property”.

Property held by the Corporation (or other trustees) for the purposes of a particular congregation of the Church is **congregational property**. When the Corporation holds congregational property, it “can only be sold, mortgaged, purchased or dealt with in any way whatsoever provided the action is carried out in terms of … the Code.”

Property held by the Corporation for the charitable purposes of the Church is **denominational property**. Denominational property is “given over” to the committees and boards of the General Assembly to which the General Assembly has allocated responsibility. The Code provides that, “[t]hese bodies do not own any property but simply administer such property as authorised by the Assembly.”

[92] Gregory Rodgers explained his understanding that denominational property was “owned by the State Church”, and congregational property was “owned by a congregation.”





Congregational Property

- Caution should be exercised – comments were *obiter dicta* only. The Court was not required to consider whether Mr Rodgers' understanding was correct.

- Likely to be a key issue on appeal.

- The PCQ model of congregational property is such that:
  - Land acquired by a congregation must vest in the Corporation;
  - Prior approval of Property Board required;
  - Congregational property may only be dealt with pursuant to the Code.

- The distinction between 'congregational' and 'denominational' property **should not be applied towards other denominations** without specific regard to their constitution and practices.





Fitness for purpose of Church structures

- RECI Act corporations (or indeed unincorporated associations) may no longer be fit for purpose structures for religious organisations.

- Religious organisations should consider:
  - Its activities which present distinct operational risks;
  - The assets it is most concerned to safeguard for the future; and
  - The legal structure which best supports the ongoing achievement of mission and purpose.

- Many factors to weigh up when implementing new structures – do no harm:
  - Current tax endorsements and concessions;
  - Cost of change including availability of duty concessions;
  - Charitable trust obligations;
  - Exposure of officeholders to personal risk.

Audit of trust terms

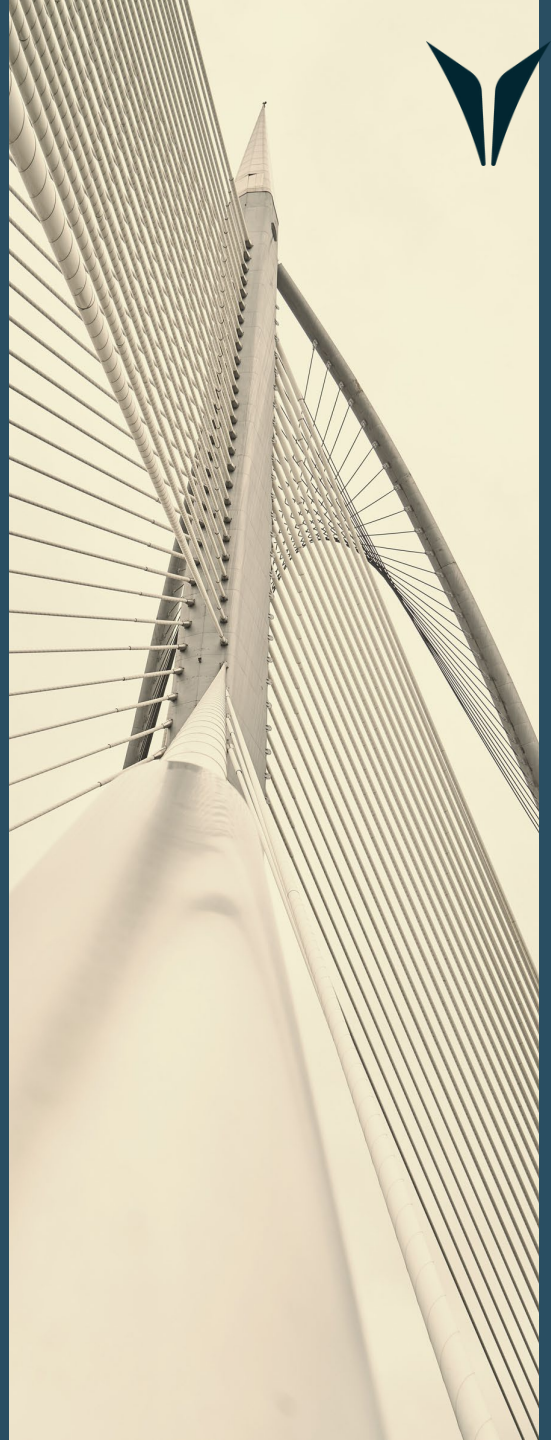
Is your organisation confident that it knows the trust terms that apply to property it holds?

Consider the approach taken by PCQ Receivers:

- Firstly, are there any specific terms of trust? Look to express declarations, trust deeds or gift terms for ‘formal external manifestation of an intention;
- Secondly, do internal manifestations of intention affirm or clarify the intention. Look to governing documents, resolutions, balance sheets and long usage.

Clear declarations of trust and documentation of trust terms ensures that the passage of time does not exacerbate risks of trust property being applied in breach of the trust’s purpose.





Commercial dealings

PCQ case exemplifies the need for parties to commercial arrangements to understand the nature of the religious body they are dealing with.

- Which organisation is contracting?
  - If trustee, execute commercial documents consistently with reference to the organisation's role as trustee.
- Does the organisation have the power to enter into the transactions?
  - Consider its grant of letters patent, its trust deed and governing documents;
- Have internal approvals been complied with?
- How is security for the transaction expressed? Is it clear which assets can be called upon?
- Is the religious organisation sufficiently well advised in relation to the transaction?
- Consider whether contractual warranties as to title, authority and no breach of trust are suitable.

From Compliance to Prevention

Anti-discrimination reform, positive duties and practical governance actions

The legal shift: responding ⟹ preventing

- Traditional model: respond after a complaint or incident.
- Positive duty model: identify risks and act before harm occurs.
- A complaint is not required to trigger preventative obligations.

Compliance matters. Prevention makes the difference.

The legislative landscape

- Queensland: Anti-Discrimination Act 1991 (Qld).
- 2024 Queensland reforms proposed an additional positive duty; commencement was delayed.
- Commonwealth: Sex Discrimination Act 1984 (Cth) positive duty in effect since December 2022.

What is a positive duty?

- A proactive obligation to take reasonable and proportionate measures.
- Prevent relevant discrimination or harassment, rather than simply resolve complaints.
- Measures depend on the size, nature, resources and circumstances.

Policies must work in practice

- Review anti-discrimination, harassment and conduct policies
- Explain expected behaviour during induction and regular refresher training.
- Make reporting pathways clear to employees and volunteers
- Check understanding – having a policy on paper is not enough

Policies are not effective when they're not understood

Board and management responsibilities

- Demonstrate leadership and a respectful culture.
- Oversee risk assessment, controls and compliance reviews.
- Ensure accessible reporting, support and response processes.
- Track training, accountability and continuous improvement.

Example 1 – Home visits

- Risk: Outreach employees working alone may experience harassment from clients.
- Assess exposure before an incident occurs.
- Introduce home-visit safety protocols, escalation channels and additional support.

POSITIVE DUTY IN ACTION

Identify the risk ⟶ Implement proportionate safeguards ⟶ review effectiveness

Example 2 – Workplace Culture

- Anonymous staff survey identifies inappropriate conduct and reluctance to report.
- Management reinforces standards, provides targeted training and reviews reporting pathways.
- A follow-up survey check whether interventions worked.

POSITIVE DUTY IN ACTION

Use early warning signs rather than waiting for formal complaints.

AHRC: seven compliance standards

1. Leadership
2. Culture
3. Knowledge
4. Risk management
5. Support
6. Reporting & Response
7. Monitoring, evaluation & transparency

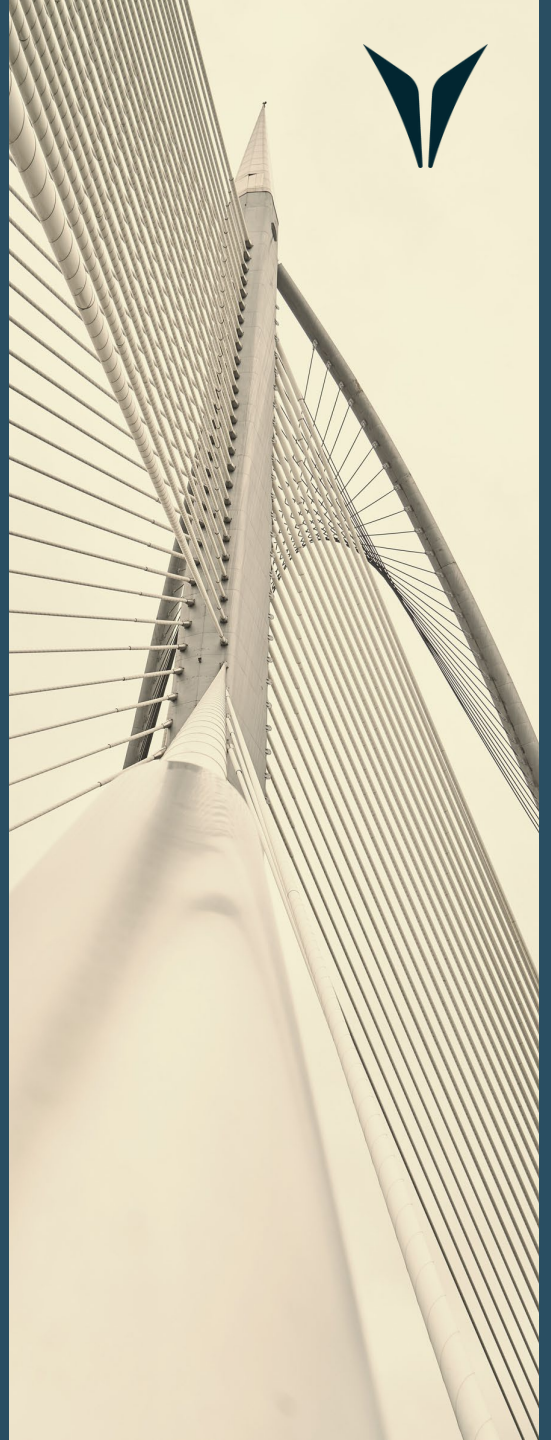
Four questions for every organisation

- Are we being proactive?
- Are our policies and procedures effective?
- Is prevention part of our organisational culture?
- Are we regularly reviewing our practices and identifying opportunities to improve?

Key takeaway

Compliance is important, but prevention is what makes the difference!





Maximising QLD State Tax Exemptions

Why are there tax concessions?

Reasons:

- Historic overhang from English law
- Intentional indirect subsidy of certain activities / purposes
- Intentional incentivising of certain activities / purposes with a public benefit
- Minimising the chance of donations going to tax and therefore encouraging donations
- NFP constraints (i.e. profits cannot be privately extracted) warrants different treatment

Counterpoints:

- Lost government revenue. Government therefore may recalibrate what and how it subsidises from time to time.
- Creates competitive distortion
- Generality of concessions can lead to poor targeting.
- Boundaries can be controversial

Key Takeaway:

- Do not assume that all activities of a charity warrant a government subsidy via a tax concession.

Federal Tax System

One charity. Three layers of government. Separate taxes and concession eligibility tests.

COMMONWEALTH

ACNC & ATO

- Income tax exemption;
- GST concessions;
- FBT rebate or exemption;
- DGR endorsement where eligible.

STATE

Queensland Revenue Office

- Transfer duty;
- insurance duty;
- vehicle registration duty;
- land tax;
- payroll tax exemptions

LOCAL GOVERNMENT

Local Council

- General rates exemptions or concessions.

Charitable “Institution” Registration

1 INSTITUTION

Mustbe an “institution” within s 149C *Taxation Administration Act 2001 (Qld)*, or a trustee of a qualifying institution.

2 CATEGORY / PURPOSE

Either:

- a listed s 149C(2) body (the categories mirrors usual charity categories – incl religion); or
- an institution whose principal object or pursuit is charitable / public good and not leisure, recreation, social or sporting.

3 GOVERNING DOCUMENT

Unless excepted, the constitution must expressly:

- lock income and property to objects; and
- prohibit member distributions, and provide an eligible destination of surplus assets on dissolution.

Essentially, specific not-for-profit wording / clauses is required.

There are some exceptions for religious bodies.

“Institution” or “Mere Trust”?

INDICATORS OF AN INSTITUTION

- ✓ Specific charitable purpose translated into a living and active principle
- ✓ Direct, ongoing or substantive activities using trust property
- ✓ Organisational systems, governance and personnel
- ✓ Fundraising, active grants administration and public engagement
- ✓ Evidence of activities at the relevant date

RED FLAGS FOR A “MERE TRUST”

- × Only holding or investing property
- × Passive or automatic income distributions
- × Activities belong to another entity or capacity
- × No evidence showing how purposes are actively pursued
- × Reliance on label, trust deed or ACNC status alone

Commissioner of State Revenue v Montessori Children's Foundation

MATERIAL FACTS

- The Foundation was a company limited by guarantee and trustee of the Masterman Montessori Indigenous Children's Trust, established to advance Montessori education for Indigenous children in Cape York.
- The Foundation moved beyond funding other providers to delivering Montessori education itself, including curriculum development and programs. It acquired property in Cairns to support its activities.
- The Foundation sought charitable institution registration to claim duty exemptions for three property acquisitions. The Commissioner refused because it was not considered an "institution". QCAT overturned that refusal, prompting the Commissioner's appeal.

COURT OF APPEAL HELD

- "Institution" takes its ordinary meaning in Part 11A.
- No universal technical rule requiring a particular membership or structure.
- The appeal was dismissed.

WHY IT QUALIFIED

- Trustee pursued specific charitable objects in its trustee capacity.
- It did far more than merely hold assets.
- Curriculum development and direct program delivery made it "living and active".

IMPORTANT LIMITS

- A trust is a relationship, not a separate legal person.
- Examine the trustee, trust relationship and activities in that capacity.
- The Court did not finally resolve separate registration of a trust.

Mackay Community Foundation Ltd v Commissioner of State Revenue

MATERIAL FACTS

- The Foundation operated through a company limited by guarantee as trustee, with seven local directors.
- The Foundation supported social and community welfare in the Mackay region and distributed nearly $1.5 million in grants between 2003 and 2022.
- In 2021, a businessperson donated property earning about $120,000 annual rent to fund grants. The Commissioner refused charitable institution registration, triggering about $50,000 in transfer duty. After an unsuccessful objection, the trustee sought QCAT review of whether the Foundation qualified as an "institution".

MONTESSORI APPLIED TO A COMMUNITY FOUNDATION

SUBSTANCE	Two decades of fundraising, donor cultivation, grants, research, flood appeal work and income generation.
STRUCTURE	Board, systems, processes, personnel and public accountability exceeded passive asset-holding.
PUBLIC CHARACTER	Public fundraising, grantmaking, volunteers, community recognition and direct public service.

RESULT

The Foundation was an institution, not merely a trust that collected, accumulated and distributed money.

State Taxes

Tax	Concession Core qualifying element
Transfer duty Tax on transactions involving property or other dutiable assets (e.g. real property and business assets).	• Must use the property solely or almost solely for an exempt purpose (e.g. education, religion or relief of poverty). • Use must start within 6 months of duty liability and continue for 1 year. • Other than a manse, property used as part salary package fails test.
Insurance duty Tax on general insurance premiums for cover applying in Queensland.	• General insurance must cover a charitable institution's property or undertaking. • Qualifying use must start immediately after payment of the premium and continue solely or almost solely for an exempt purpose for 1 year.
Vehicle registration duty Tax on registering a vehicle or transferring its registration, based on its value.	• Register or transfer the vehicle in charitable institution's name. • Begin qualifying use immediately and continue solely or almost solely for an exempt purpose for 9 months. • Employee salary-package use generally fails the use test.
Land tax Annual tax on the taxable value of freehold land held at 30 June, above a threshold (for corporations / trusts $350,000 +).	• Must use the land for an exempt purpose. • Vacant land may qualify if intended mainly for exempt use within 3 years of acquisition, or a longer Commissioner-approved period.
Payroll tax Tax on employers' Queensland wages when total wages exceed the relevant threshold (usually $1.3M +).	• For the relevant wage period, the employee must work exclusively for a qualifying exempt purpose, or in ordinary hospital or non-tertiary education work for the charitable institution.

Word Investments Arguments

Commissioner of Taxation v Word Investments Ltd [2008] HCA 55

Facts:

- Word was a company limited by guarantee established in 1986 to raise funds for Wycliffe Bible Translators Australia.
- Word earned income from investments and, from 1996 to 2002, a funeral business, directing profits to charitable bodies rather than carrying out their religious work itself.
- The dispute concerned whether Word itself qualified for income tax exemption as a charitable institution.

Principle:

- Commercial activities can serve an exclusively charitable purpose. This case upheld federal income tax exemption for a business that funded charitable work through other bodies.
- Surplus must be directed to charitable purposes.

Application:

- The QRO accepts that commercial use of property can be a qualifying use for land tax and transfer duty exemptions.
- E.g. Leasing a property for a commercial return where profits are applied to chartable purpose qualifies.

Reassessments & Refunds

- The QRO can, on application, reassess taxes paid within the 5 years of an assessment.
- QRO refusal to reassess is usually non-reviewable.
- Reassessments are distinct from objection rights. Objects must usually made within 60 days of an assessment. Decisions involving an objection are usually reviewable.
- We have assisted many charities with successful reassessments of land tax and transfer duty going back up to 5 years resulting in significant refunds.
- Review what your charity have paid in the past 5 years and seek advice if it qualified for a concession and prospects of a reassessment.

Council Rates Exemptions

Each Council is able to set own policy. Examples below:

Council	Summary
Brisbane City Council	• Partial rates rebate available for eligible not-for-profit organisations. • May be available to charities, welfare organisations, community organisations, kindergartens and affordable housing providers. • Brisbane also provides certain full exemptions from rates and certain charges for land used for religious worship, charitable purposes and other qualifying community purposes where the Council's exemption criteria are met. Eligibility depends heavily on the ownership and use of the land.
City of Gold Coast	• Not-for-profit rate donation (rebate) scheme available. • Includes charitable, religious, educational, welfare, health, arts and cultural organisations. • Organisation must be not-for-profit and satisfy property use requirements.
Sunshine Coast Council	• General rate concession available by way of a rebate. • Available to certain charitable, sporting, cultural and community organisations. • Charities must generally be not-for-profit, provide direct community benefit, and be endorsed for ATO charity tax concessions. • Property must be owned and used by the organisation for community-benefit purposes.

Council Rates Exemptions

In addition to any local policy, all local Councils (except Brisbane) have the following exemptions:

Religious Entities

The land must:

- be less than 20 hectares; and
- be used for one or more of the following:
  - religious purposes (including public worship);
  - education, health or community services (including aged-care and disability facilities);
  - administration of the religious entity; or
  - housing incidental to those activities.

Community Organisations

The land must:

- be less than 20 hectares; and
- be used for providing:
  - accommodation associated with the protection of children;
  - accommodation for students; or
  - educational, training or information services aimed at improving labour market participation or leisure opportunities.



Summary

1. Always consider who regulates the tax in question and understand that regulators requirements.
2. ACNC charity registration does not entitle you to State and Council charity tax concessions.
3. Charitable institution registration is the gateway to QLD State tax exemptions. You need to qualify **before** the tax liability arises.
4. Most State and Council tax concessions have a further “use” test. Understand this **before** entering a transaction so it can be appropriately structured.
5. Commercial use **may** still qualify as exempt use. Framing of use and supporting evidence is important.
6. Recent cases have allowed the recognition of some charitable trusts as “charitable institutions”.
7. Reassessments can be made going back up to 5 years. Review your charities tax records and seek advice.
8. For all Council areas other than Brisbane there is a general rates exemption for some religious uses of land. Otherwise, exemptions / concessions vary between Council areas.

QUESTIONS?

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