

## **RELIGIOUS CHARITIES IN AUSTRALIA (Dec 2016)**

As a result of multiple inquiries from overseas based Religious Charities who are considering establishing an operation within Australia, we have prepared the following brief summary of the positioning of Religious Charities, for your general information.

### **Jurisdiction**

Australia is comprised of 8 principle self governing States and Territories with a Federal Government that also has certain legislative powers over the States and Territories. The States are Western Australia, Northern Territories, Queensland, New South Wales, Victoria, South , Tasmania, Australia and Australian Capital Territories (ACT).

### **Methods of Incorporation**

#### **State / Territory based -**

The Incorporated Associations Act, which means the Registered Office and its Public officer / Secretary must reside within that State. The Acts are similar in that they have various levels (Tier 1, Tier 2) of reporting disclosure and audit, but each State has its own variations on other requirements. Incorporated Associations are State based and not transportable between other States and Territories.

Trusts. Each state has its own Trusts Act. Professional advice should be obtained on this type and the need/preference for a Corporate Trustee

#### **Federal -**

The Corporations Act using a by Company Limited by Guarantee model. This type of Company does not have shares (or Stock) but requires a Directors guarantee in the case of closure default. (normally limited to AUS \$100 per Director. In other parts of the world these are known as Non Stock Companies. The company can operate in and relocate to various States within Australia, but not relocate overseas. The Registered Office and its Public officer / Secretary must reside within Australia. A corporate member (i.e. not a person) is permitted

### **Federal Approval Agencies**

Overarching all methods of incorporation are two Federal agencies that approve the Registration and the Tax positioning of a Charity. The Australian Charities and Not for Profit Commission (ACNC) and the Australian Tax Office (ATO) are independent of each other in legislation but do collaborate through various information exchanges.

### **Frequently Asked Questions**

**Q - Does a Charity registered and approved by the ATO pay Corporate income tax ?**

*Normally, no*

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**Q - Can a registered Charity be liable for other Taxes.**

*Yes, a charity can be liable for property taxes and Stamp Duty (in some States), Fringe Benefit Taxes (for staff other than Pastors) and some others.*

**Q - Can Charities issue tax deductible receipts to donors?**

*Normally no, Australian Tax law does provide for a Deductible Gift Recipient (DGR) for various restrictive activities governed by legislation, such as Disaster Relief, relief of poverty/suffering and distress, necessities, pursuit of Cultural activities etc. These have to be the SOLE focus of the organisation*

**Q - Is preaching the Gospel a DGR eligible activity?**

*No, there is no tax deductibility available for religious or Christian endeavour within or outside of Australia. That includes Church specific buildings and facilities, operational costs, asset purchases and staffing*

**Q - Can money be sent overseas from an Australian registered religious charity?**

*Yes, but there are a number of controls including payment tracking for remittances over \$10,000 by AUSTRAC (Government Agency)/Example would be missionary support. Some DGR's depending on the approval category, may have a right to send money overseas. The primary purpose of Australian Charities (except those like AusAid) is to be within Australia. As at December 2016, there is draft legislation on the "in Australia Test", however this has been in Draft form for several years.*

**Q - What steps are involved in a registration**

*There are several components*

- *Collection of relevant personal details for Directors*
- *Drafting, issuing and approval by proposed Directors of Draft Constitution*
- *Submission to relevant State or Federal Agency for entity registration*
- *Filing online with ATO for an Australian Business Number (a unique legal entity number)*
- *Filing online with ACNC*
- *Await approval of Registration from ACNC, field any questions*
- *On approval, client to file online for Goods and Services Tax and Employee Payroll Registration*

**Q - How Long does the process take?**

*Normally this process takes between two (2) and three (3) months.*

**Q - Can the organisation have overseas Directors?**

*Yes, however there MUST BE an Australia registered Office / Address and an Australian based Secretary / Public Officer. Financial Records must be kept / accessible in Australia*

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