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Lutheran Education Queensland Webinar Series

PART 2: Foundation Entities

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Wednesday, 24 August 2016 –
12:30 pm (Brisbane time)

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Introduction

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Webinar Series Outline

Part 1 – Trading Entities (this webinar)

- Typical Lutheran School structure
- What entities / activities may not be under the governance oversight of the College Council? (Early Childhood, After School Care, Sporting Clubs, Parents & Friends, Foundation, DGRs)
- What needs to be housed under separate ABNs?
- Separate ABNs – separate Charity registrations, reporting and Tax concessions
- Problems of moving surplus from one to another?
- Are there restructuring options – for common governance oversight and empowering delegated autonomy?
- How to deal with Common employees, i.e. are there employees, being used in more than one entity?

Available for viewing on our website.



Webinar Series Outline

Part 2 - Foundation Entities (next webinar)

- Do we really need a Foundation entity?
- How does a Foundation entity relate to the College Council?
- Who are the controlling minds to a Foundation entity?
- The problem of unmaintained Foundation entities and how to fix them
- DGRs under the Foundation entity – how this works and how to move money back to the College?
- When and why consider a “Public Ancillary Fund”?

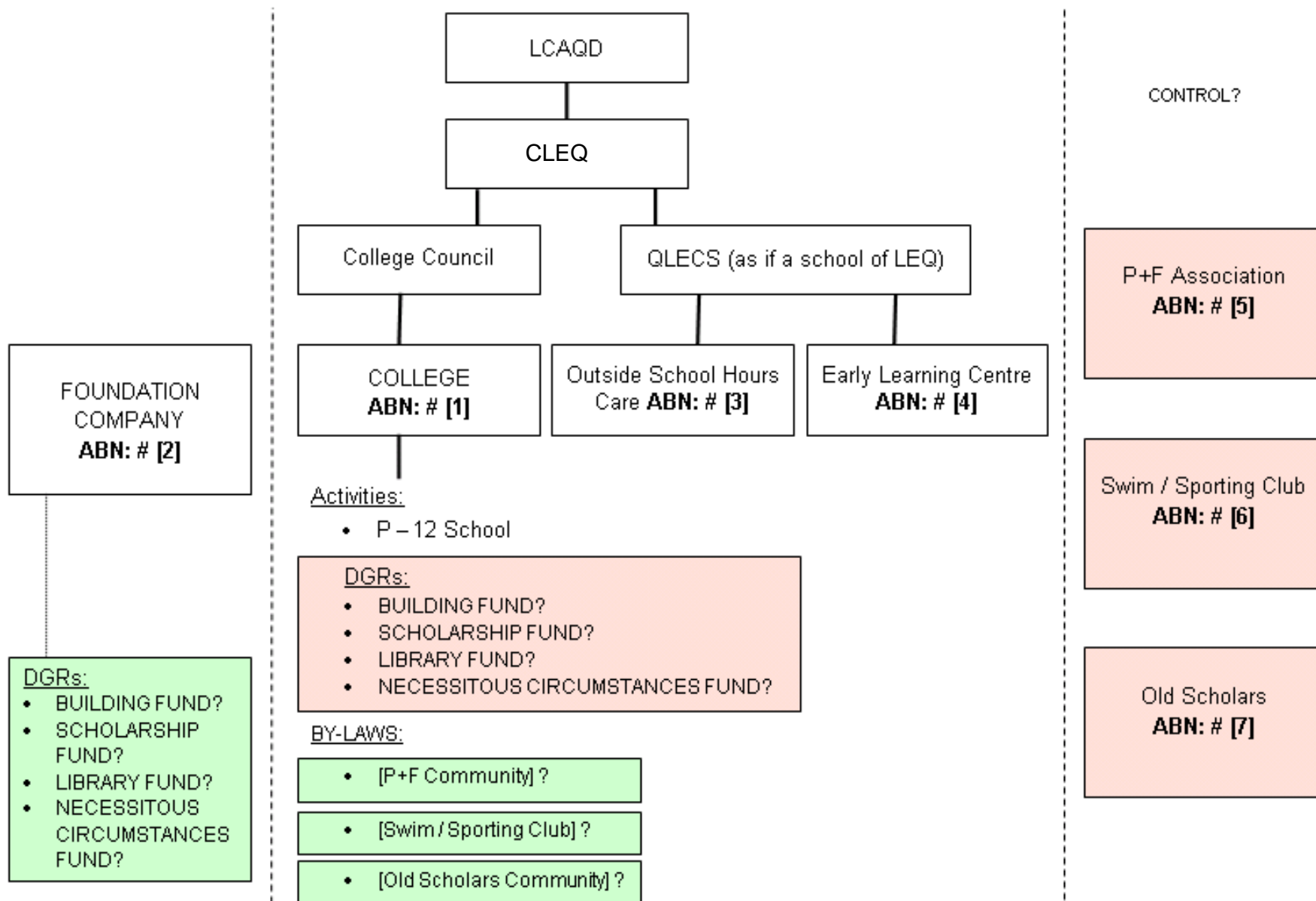


What is a Foundation entity?

- The Foundation entity is a **separate entity** to the College.
- Generally a Company Limited by Guarantee.
- Primary purpose of the Foundation entity in your context: Acts as the controller of the College's Deductible Gift Recipient Funds.



Structure Diagram – Typical Queensland Lutheran School





Do we really need a Foundation entity?

- Level of asset protection.
- PAF requires a **corporate trustee**:
 - College is an **activity** of LCAQD – it is not an incorporated entity in its own right. Therefore, the College cannot be the trustee of the PAF.
 - LCAQD cannot be the trustee of the PAF.
- Ensures that funds raised in a specific College remain in the College:
 - The trustee of the PAF should be linked specifically to the College (i.e. Controlled by the College), so that funds are not taken out of the PAF and given to another school.

NOTE: Funding bodies will generally consider assets in the Foundation entity when determining level of funding.



How does a Foundation entity relate to the College Council?

- College Council will be the “controlling minds” of the Foundation entity.
- The Directors and Members should be the College Council from time to time. That is, each member of the College Council would be a Director and Member of the Foundation entity.
- Inbuilt mechanism into Constitution of Foundation entity that once a person leaves the College Council for any reason, their membership and directorship of the Foundation entity automatically ceases.
- In this way, the College still retains control of the Foundation entity.



Requirement for “Responsible Persons”

- Foundation entities control the College’s DGRs;
- DGR’s must be controlled by a majority of “Responsible Persons”. Therefore, the majority of the College Council must be “Responsible Persons” to satisfy this requirement.
- **Definition** (from the Public Ancillary Fund Guidelines): Individuals with a degree of responsibility to the Australian community as a whole, including an individual before whom a statutory declaration may be made.
- **Includes:** School principals, teachers, judges, religious practitioners, solicitors, doctors and other professional persons, mayors, councillors, town clerks and members of parliament and individuals who have received formal recognition from the Government for their services to the community.



Unmaintained Foundation entities

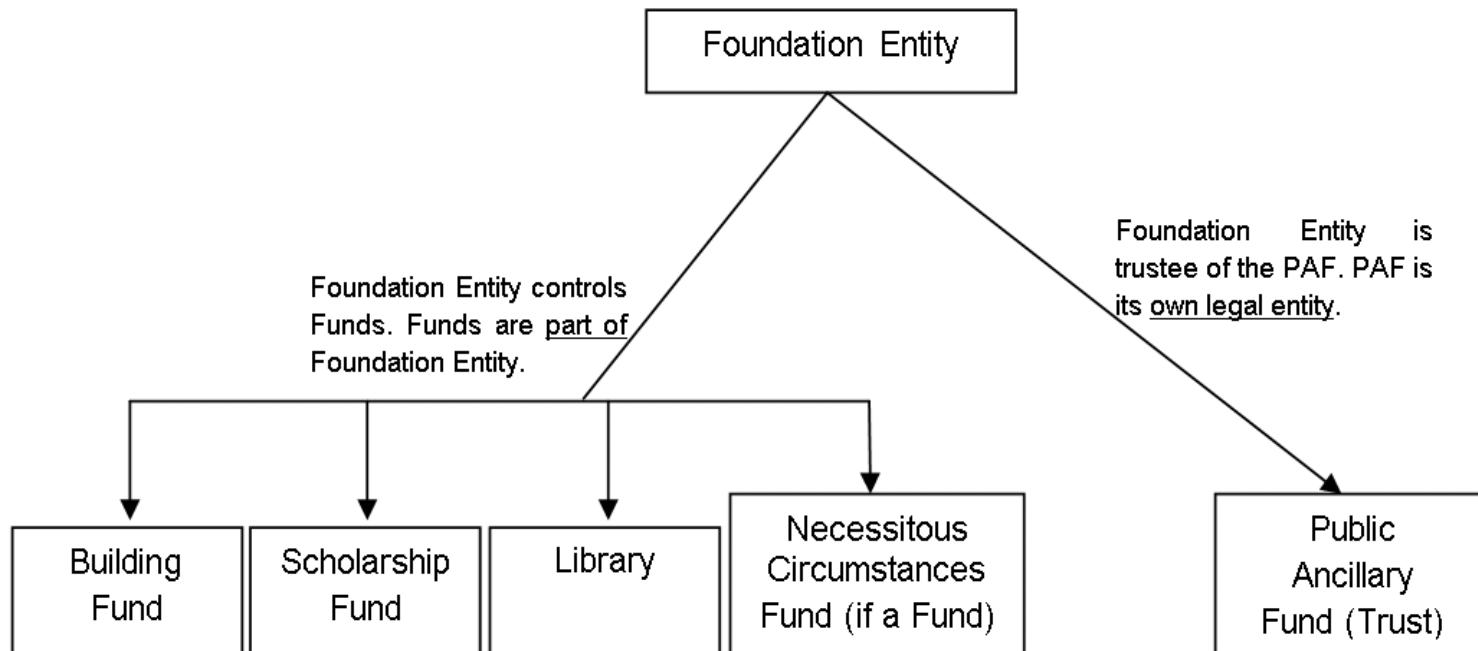
- Foundation entities are generally the most “neglected” in the College stable.
- Common problems:
 - Outdated classes of membership;
 - Difficulty identifying who the members are, whether member’s meetings are validly called and held, whether Directors have been validly appointed and whether constitutional amendments are valid;
 - Old Constitution;
 - Activities no longer match the Objects as set out in the Constitution;
 - Different centre of gravity for decision-making if the controllers of the Foundation entity are different to the controllers of the College;
 - Not fulfilling a beneficial purpose to the College.



Unmaintained Foundation entities

- It is possible to take an unmaintained Foundation entity and repurpose it for the activities that we have discussed in this webinar – good use of an unused company.
- This would generally involve:
 - Adopting a new Constitution;
 - Replacing the current members and directors of the Foundation entity with the current College Council.
- Problems that you may run into: Difficulty identifying members for the purpose of passing required resolutions, existing Directors and Members may not wish to resign. Best to seek legal advice in these circumstances.

DGRs under the Foundation entity





Why use DGR Funds?

Building Fund: Maintenance, development and expansion of school buildings

- Repairs, painting and plumbing;
- Cleaning costs for the school building;
- Costs for purchase of equipment used exclusively for maintaining the building;
- Insurance costs.

Scholarship Fund: The Fund can pay the school the value of scholarships

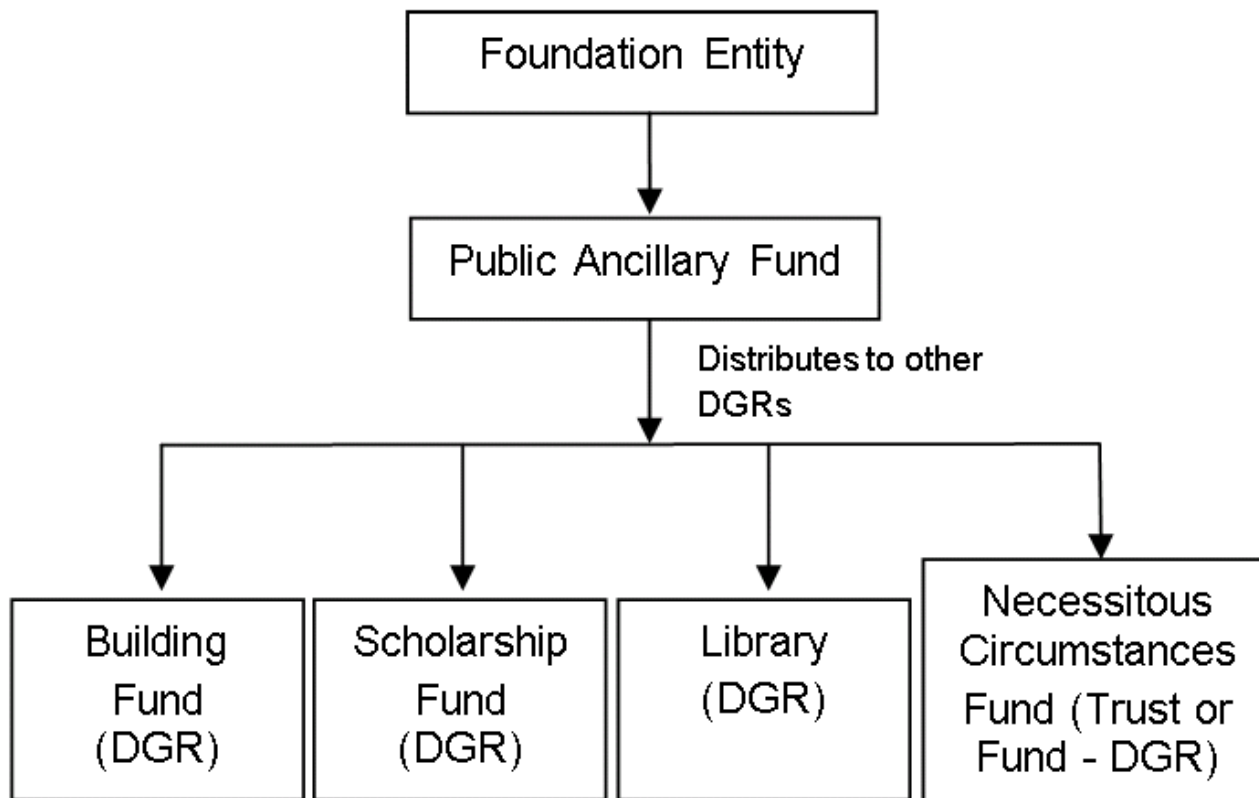
- The Scholarship Fund funds the school in terms of the fees forgone for the cost of the scholarship or bursary.

Public Library: All expenses of the library (including staff wages) and subscriptions.

Necessitous Circumstances Fund: The Fund can pay the school the value of usual fees forgone

- Loss of employment for a fee-paying parent;
- Illness which puts financial pressure on a family resulting in an inability to pay tuition fees.

When and why consider a Public Ancillary Fund?





Public Ancillary Funds

Must be controlled by a majority of “Responsible Persons”.

Distribution Requirements

- Not required to make distributions in the financial year that it was established, or in the following 4 years (“**Grace Period**”);
- Following the Grace Period, if any of the expenses of the fund for the financial year in question are paid out of the fund, PAFS must annually distribute the greater of:
 - 4% of the market value of the fund. The market value of the fund is calculated as at the end of the previous financial year; or
 - \$8,800.00.



PAF Distributions to other DGRs

- In a College structure, PAFS can legally distribute to:
 - Building Funds;
 - Scholarship Funds;
 - Public Libraries; and
 - Necessitous Circumstances Funds.
- PAFS act as a central fundraising hub for any or all of the other DGRs.
- Public can gift to the PAF or to the other DGRs directly.
- Benefit of PAF: Foundation entity retains control in deciding which DGR to distribute to, depending on the needs of the College in that particular year.



Building Funds

- **Principal mechanism through which Colleges are able to raise funds for the purpose of expanding, developing and maintaining school buildings.**
- In your context, established through “Rules” adopted by the Foundation entity.
- Building Funds must obtain and maintain DGR endorsement from the ATO.

CONDITIONS:

- Fund must be a public fund
- There must be a school;
- There must be a building;
- The building must be used as a school by a qualifying body; and
- The use of the fund must be for an acquisition, construction or maintenance of a building.



Building Funds

ALLOWABLE EXPENDITURE:

- For the acquisition, construction or maintenance of school buildings *for the purpose of using that building as a school.*
- Repairs, painting and plumbing relating solely to the building;
- Cleaning costs for a school building;
- Costs for the purchase of equipment used exclusively for maintaining the building; and
- Insurance costs relating solely to the building.

PROHIBITED EXPENDITURE:

- Building and maintaining facilities that are not buildings (sports fields, landscaping, playgrounds and open air car parks);
- General operating costs of the schools such as water, gas electricity and contents insurance;
- [In relation to shared use facilities only] Maintenance relating to non-school use of the building.

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Scholarship Funds

CONDITIONS:

- Fund must be a ‘public fund’;
- Endorsed as a DGR by the ATO;
- It is established and maintained for the sole purpose of providing funds for eligible scholarships, bursaries or prizes.

The Scholarship Funds “pays” the College for the fees forgone for the “cost” of the scholarship of bursary.



Scholarship Funds (cont)

- Every scholarship, bursary or prize that is provided by a scholarship fund must meet all of the following requirements to be considered an ‘eligible scholarship, bursary or prize’:
 - Be a scholarship, bursary or prize within the “ordinary meaning” of those terms – this may be an ongoing or one off benefit payment to cover tuition fees or other related educational expenses;
 - Be awarded to Australian citizens or permanent residents only;
 - Be open to individuals or groups of individuals throughout a State, territory or region of at least 200,000 people;
 - Promote the recipient’s education in an approved Australian course (or at an overseas educational institution for the purpose of study for a component of an approved Australian course; and
 - Be awarded on merit or for reasons of equity.
- Criteria cannot place limits on eligibility such as the recipient’s attendance at a particular school, or membership of a particular society or organisation.



Libraries

- Often incorrectly referred to as 'Library Funds'.
- Must obtain and maintain endorsement from the ATO as a DGR.
- **All expenses of the Library including staff wages and subscriptions can be funded through the Library DGR monies.**

Library Requirements:

1. Collection must be made available to the public (available to the entire student body);
2. Library must be owned or controlled by persons having a degree of responsibility to the community (this condition is satisfied by having the Foundation entity act as trustee of the Library, the majority of Directors of such Company being Responsible Persons);



Libraries (cont)

3. Is constituted as a Library, recognised as such by other people, and conducts itself in a way consistent with such a character;
 - Collections must be made available for use, through lending, display and being made available for reading.

4. It is an institution
 - The Library must have an institution character separate from the College itself;
 - Affairs of the Library must be separate from the general affairs of the College;
 - The public can readily distinguish the Library from the rest of the College;
 - The Library's collection is readily distinguishable as that of a Library;
 - The accounts of the Library are separate to the general accounts of the College; and
 - Any gifts made to the Library are only used for the purposes set out in the Objects of the Library's Rules.



Necessitous Circumstances Funds

• Public fund established and maintained to provide relief for persons in Australia who are in necessitous circumstances.

• **“Necessitous circumstances”:**

- Refers to financial necessity only;
- A person is in necessitous circumstances where their “financial resources are insufficient to obtain all that is necessary, not only for a bare existence, but for a modest standard of living in the Australian community”.
- An indicator of being in necessitous circumstances is where a person qualifies to receive income-tested government benefits.

Likely expenditure from the Necessitous Circumstances Fund will be paid to the College for the otherwise forgone fees during a period where a family is unable to fund tuition fees.

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