



Asset protection

Structuring your church arms – maintaining sufficient diversity, accountability and control between entities under the church (Part 2)

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About your speakers



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Overview

- **Structuring**

- DGR's
- PBI's

- **Control**

- Putting the right people in the right places

- **Accountability**

- Transparency and accountability
- Where charities and DGR funds have been mismanaged

This webinar contemplates related entities that you may wish to bring into your church structure with a particular focus on **care arms** of churches.

Churches → normally registered as charities.

Care Arms → generally endorsed as Deductible Gift Recipients.



Differences between a Charity and a DGR

Traditionally four heads of Charity:

- Relief of poverty;
- Advancement of education;
- Advancement of religion; and
- Other purposes beneficial to the community.



The *Charities Act 2013 (Cth)* definition of “charity”:

- An entity:
 - That is a not-for profit entity; and
 - All of the purposes of which are:
 - **Charitable Purposes** that are for the public benefit; or
 - Purposes that are incidental or ancillary to, and in furtherance or in aid of purposes of the entity covered by the above.



Key term - Charitable Purposes

- The advancement of health;
- The advancement of education;
- The advancement of religion;
- The advancement of “Social and public welfare”;
- The advancement of culture;
- Promoting or protecting human rights; and
- Advancing and securing the safety of the Australia public.

Churches are generally entitled to be registered as charities under the subtype of “advancement of religion”

Charitable Purposes (cont.)

- A charity has to be an “entity”
 - An individual
 - A body corporate;
 - A body politic;
 - Any other unincorporated association or body of person; or
 - A trust
- The charity must have an Australian Business Number and comply with “Governance Standards”.



Charity Tax Concessions and Exemptions

- Income tax exemption;
- GST concessions; and
- Limited FBT concessions.



Deductible Gift Recipients (DGRs)

DGRs are eligible to receive:

- Tax deductible **gifts** (such as financial donations of \$2 or more); and
- Tax deductible **contributions** (such as the purchase of a ticket to attend a fundraising event, or real property”

PBI's can also access the following tax concessions:

- Income tax exemptions;
- Goods and services tax concessions; and
- FBT exemptions.



General categories of DGRs

- Health
- Education
- Research
- Welfare and rights
- Defence
- Environment
- Industry, trade and design
- Family
- International affairs
- Sports and recreation
- Philanthropic trust
- Cultural organisations

Each category has specific criteria that must be met in order to obtain DGR endorsement under that category



Care Arms through PBIs

- There are many churches who, as an outworking of their faith, wish to undertake “benevolent” type activities such as feeding the homeless, emergency food relief and assisting struggling single mothers. These sorts of activities fit underneath what we will call the “Care Arm” of the church.
- Churches are able to set up a separate entity (or business unit) from which to conduct their Care Arm. These entities may be entitled to be Public Benevolent Institutions (“**PBIs**”), which is one of the more common types of DGR.



Predominant Purpose

- **Predominant purpose** of PBI must be to provide benevolent relief to people in need → predominant purpose can't be the advancement of religion.
- Other purposes can only be **ancillary or incidental to** the predominant purpose of providing benevolent relief to people in need.



Extract from Commissioner's Interpretation Statement

An entity's motives are not directly relevant to determining its main purposes. For example, if an entity's main purpose is advancing religion it will not be eligible to be registered as a PBI. However if the entity is motivated by religious faith and its main purpose is benevolent, it may still be eligible – CIS paragraph 5.5.3



Extract from Commissioner's Interpretation Statement

Example 4

The Christian Church of Carrara was established to operate a church which meets for public worship weekly and pursues a number of weekly discipleship and evangelism activities. In furtherance of the Christian faith, the Church also undertakes a food bank and soup van ministry amongst the homeless in its neighbourhood on Tuesday nights. The objects clause of the organisation's constitution emphasises the advancement of the Christian religion.

The organisation is unlikely to be a PBI. It appears that its main purpose is not to provide benevolent relief but to advance religion, albeit motivated by the Christian faith.

However if the benevolent activities were organised in a distinct entity with benevolent purposes, that entity may be a PBI.



PBI activities do not have to be devoid of religious connection

¹⁴ What good is it, my brothers and sisters, if someone claims to have faith but has no deeds? Can such faith save them? ¹⁵ Suppose a brother or a sister is without clothes and daily food. ¹⁶ If one of you says to them, “Go in peace; keep warm and well fed,” but does nothing about their physical needs, what good is it? ¹⁷ In the same way, faith by itself, if it is not accompanied by action, is dead.

(James 2:14-17)



Matthew 24:31

“For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in, I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me.

Then the righteous will answer him, *“Lord, when did we see you hungry and feed you, or thirsty and give you something to drink? When did we see you a stranger and invite you in, or needing clothes and clothe you? When did we see you sick or in prison and go to visit you?”*

The King will reply *“Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me”*



Care needed in developing:

- The objects of the PBI;
- The control of the PBI by the leadership of the church;
- The narrative of the PBI as “benevolent” with the thread of faith being maintained but as bedrock rather than purpose;
- Consideration of discrimination risks as all exemptions available to churches are not normally available to PBI’s;
- The trapping of assets of the PBI in PBI purposes.



The Characteristics of a PBI

- a) **Registered as a Charity** – as previously discussed.
- b) **Institution** – can include unincorporated associations.
- c) **Public** – Extensiveness of class of persons being benefited.
- d) **Benevolent** – an entity must have the main purpose of providing relief that is specifically targeted to relieving the poverty or distress of people in need.
 - Concrete objects of benevolent relief
 - Clear mechanisms for delivering the benevolent relief
 - Relationship of collaboration or common public benevolent purpose



The Characteristics of a PBI (cont)

- d) **In Australia** - interpretation of the “In Australia” requirement
- e) **Prevention and relief** – E.g. In *Maughan*, facilities were provided to boys in necessitous circumstances in slum areas to keep them off the streets. Homeless young people who live on the streets will generally be considered people in need.



Structure of PBI

- Company limited by guarantee;
- Church is able to provide services to PBI and charge market rates, such as:
 - Market lease or licence payments where the PBI operates from church owned property;
 - Provision of administrative services (payroll, accounting, compliance, etc);
 - Management Services;
 - Equipment hire;
 - Loans (on commercial terms).
- Key → arms length on usual commercial terms.



Church control

- Get controls right at the start → avoids some issues later on.
- Some methods of control:
 - The Church company (if an incorporated structure) being the **sole corporate member** of the PBI;
 - The Constitution can be drafted so that church company, as sole member, **controls director appointment and removal**, admission of new members and any changes to the constitution;
 - Otherwise, if the members are to be **individuals** member and director criteria can be hardwired into the constitution to ensure a tie to the church company;
 - Not allowing an amendment to the Constitution without the written approval of the church;
 - Senior staff appointments ratified by the church board.



Bad structures

- Unincorporated associations → personal assets exposed
- Incorporated associations → less understood; issues operating outside of Queensland
- Old governing documents → no longer current; various risks.

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