



Anglican Church Diocese of Sydney

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Circular to Ministers and Wardens

Australian Charity and Not for Profits Commission: the Basic Religious Charity exemption

Purpose of this circular

1. The Australian Charities and Not for Profits Commission Act 2012 (the "ACNC Act") exempts certain charities (known as Basic Religious Charities) from some of the most onerous parts of the legislation.
2. The purpose of this circular is to outline the requirements that parishes need to meet to be a Basic Religious Charity ("BRC") and the steps that parishes should take to maintain their status as a BRC.

Please note that the guidance provided in this circular is largely directed towards the main or only ABN used by your parish and assumes that this ABN represents the "entity" which is your parish. If your parish uses more than one ABN, you will need to consider these separately.

Why is being a Basic Religious Charity important?

3. BRCs are exempt from –
 - mandatory Governance Standards under the ACNC Act,
 - the requirement to prepare and lodge with the ACNC audited/reviewed Annual Financial Reports (for medium and large charities),
 - the requirement to include financial information in Annual Information Statements lodged with the ACNC, and
 - the powers of the ACNC Commissioner to suspend or remove (and replace) the members of your parish council (ie, the "responsible entities" of your parish).
4. Failure to qualify as a BRC, or loss of this status at a future point in time, would therefore have significant implications for your compliance obligations. There would be corresponding cost implications if, for example, you needed to prepare Annual Financial Reports in the form required by the ACNC and have these reviewed or audited by a qualified company auditor.
5. It is therefore important that you understand the qualifications necessary for your parish to be a BRC, and also the factors which can potentially disqualify your parish from being a BRC.

6. It is also important to note that BRCs must still notify the ACNC of certain changes to their details (such as their name, address or other contact details, governing rules or to those who are its responsible entities) and must still lodge Annual Information Statements with the ACNC.
7. Notifying the ACNC of changes to your details has been the subject of a previous circular to ministers and wardens dated 21 December 2012. The lodgement of Annual Information Statements will be addressed in a future circular.

Is my parish a Basic Religious Charity?

Qualifying criteria

8. To qualify as a BRC your parish must –
 - be registered on the ACNC Register as a charity,
 - be registered on the ACNC Register as a sub-type of charity that has a purpose that is the advancement of religion, and
 - not be entitled to be registered as any other sub-type of charity.
9. We have confirmed (with a very few exceptions) that the main or only ABN of each parish of the Diocese is registered on the ACNC Register as a charity. We are working with the very few parishes which are not registered to correct this situation.
10. Existing charities have until 2 December 2013 to notify the ACNC whether they are a charity for the advancement of religion in order to be registered as that sub-type of charity. You may have notified the ACNC of this if you recently completed and lodged the *Confirm your registered charity details* form that was sent to you by the ACNC. Given the importance of notifying the ACNC of this matter, we will also lodge a bulk notification with the ACNC that all parishes of the Diocese are charities for the advancement of religion.
11. In some circumstances, a charity which is registered as a sub-type for the advancement of religion may be entitled to register as another sub-type, such as for the relief of poverty or for the advancement of education. However in the case of parishes in the Diocese we consider there is no entitlement to register as another sub-type. This is because the purposes associated with other sub-types will only be incidental or ancillary to the religious purpose of the parish. Accordingly, we consider that parishes will satisfy this criteria for being a BRC.

Disqualifying factors

12. There are also some factors that will disqualify your parish from being a BRC even if the above criteria are met. These disqualifying factors are as follows –

- *If the entity is a body corporate registered under the Corporations Act 2001 (Cth) or an incorporated association under the Incorporated Associations Act 2009 (NSW).*

Parishes are not incorporated and therefore this disqualifying criteria will not apply to parishes.

However organisations associated with parishes, such as op-shops or pre-schools, are often incorporated under the Incorporated Associations Act 2009. These incorporated associations cannot be BRCs.

- *If the entity is endorsed as a deductible gift recipient in its entirety.*

Parishes cannot be endorsed as deductible gift recipients in their entirety and therefore this disqualifying criteria will not apply to parishes.

However if, for example, you have a gift deductible School Building Fund that has its own ABN (as distinct from coming under your main or only parish ABN) such a fund will be endorsed as a deductible gift recipient in its entirety and therefore cannot be a BRC.

- *If the entity is endorsed as a deductible gift recipient for the operation of one or more funds which have a total annual revenue greater than \$250,000.*

Although parishes cannot be endorsed as deductible gift recipients in their entirety, it is possible for your parish to be endorsed as a deductible gift recipient to operate one or more funds (ie, these operate under your main or only parish ABN). In this case, your parish will not be disqualified from being a BRC provided the total revenue (which includes donations) from the funds is less than \$250,000 in the relevant financial year.

- *If the entity forms part of an ACNC reporting group at any time during the relevant financial year.*

Unless you have applied to the ACNC to have your parish included in a reporting group, this disqualifying criteria will not apply to your parish.

- *If the entity receives grants from Australian government agencies which (in total) exceed \$100,000 in a financial year or in either of the 2 prior financial years.*

An Australian government agency is a State or the Commonwealth or one of its authorities (eg, a government department or instrumentality). It does not include local councils.

What can my parish do to avoid being disqualified as a Basic Religious Charity?

13. The key risks for a parish losing its status as a BRC are through the receipt of gift deductible funds and Australian government grants (paragraphs 12(c) and (e) above).

Deductible gift recipient funds

14. If you operate one or more deductible gift recipient funds under your main or only parish ABN you should ensure that you place a limit of \$250,000 per annum on funds raised on a deductible basis.
15. If you wish to raise (in total) more than \$250,000 of deductible funds in a financial year and the principal reason for exceeding this threshold will be funds raised through a School Building Fund, it may be possible for you to utilise a School Building Fund that is maintained by the Anglican Church Property Trust Diocese of Sydney (the "Property Trust") to ensure the parish itself does not go above the \$250,000 threshold.
16. The Property Trust will generally only allow its School Building Fund to be used for projects that are of broad diocesan significance, and after being satisfied that the building to be constructed or acquired is a school building in accordance with the applicable tax ruling. The Property Trust will need to make deductions from funds raised in order to cover its administration costs.
17. If you would like to discuss using the Property Trust's School Building Fund please contact –
 - James Cartwright (by phone on 9265 1561 or by email at jac@sydney.anglican.asn.au) if you are in the South Sydney, Georges River or Wollongong regions, or
 - Scott Lincoln (by phone on 9265 1633 or by email at sxl@sydney.anglican.asn.au) if you are in the Northern or Western Sydney regions.

Government grants

18. It is important that you keep a careful watch on the extent of Australian government grants you receive in a year to ensure you remain below the \$100,000 threshold.
19. The Property Trust maintains a grant recipient fund with its own ABN and charity status which can be used to receive Commonwealth or State government grants on behalf of parishes. Since the Property Trust is the recipient of the grants via this fund and not your parish it will be this fund that is disqualified from being a BRC if its exceeds the \$100,000 threshold. If you are presently in direct receipt of government grants which exceed, or may exceed, \$100,000 in a financial year you should make contact with the Property Trust (contact details as above) to discuss use of the Property Trust grant recipient fund.

Contact

20. If you would like to discuss these matters further, please contact me on the contact details below.

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