

Freehills

Community organisations Compliance check

March 2008

alice.macdougall@freehills.com

101 Collins Street Melbourne VIC 3000 Australia
GPO Box 128A Melbourne VIC 3001 Australia
Sydney Melbourne Perth Brisbane Singapore

Telephone +61 3 9288 1234 Facsimile +61 3 9288 1567
www.freehills.com DX 240 Melbourne
Correspondent offices in Hanoi Ho Chi Minh City Jakarta

This is a suggested checklist of legal head office compliance. It doesn't cover operational or accounting compliance. It is not exhaustive.

[If you adjust it to suit your organisation, please include the wording: *This is based on a compliance checklist prepared by Freehills but has been adjusted by...eg deleting parts that were not applicable and inserting parts relevant to our organisation/re-ordering the questions...*].

Recommendation 1: Complete annually and distribute to all the Board and senior executives.

Recommendation 2: Have systems and planners in place to ensure on going compliance.

Recommendation 3: If you don't have the time or expertise, engage a professional volunteer from one of the several volunteering organisations offering volunteers with professional or business skills to assist in getting your 'house in order':

<http://www.probonoaustralia.com.au/volunteer.shtml>

<http://www.leadershipvictoria.org/skillsbank/skillsbank.cfm>

<http://www.goodcompany.com.au/>

<http://www.greatconnections.com.au/>

	YES/NO	ACTION/COMMENTS
<p>1 Location of documents</p> <hr/> <p>Do you have a place (a folder, a filing draw or cabinet) where the official documents are kept? Provide location(s):</p>		
<p>2 Relevant personnel</p> <hr/> <p>(a) Who is the company secretary, public officer or person on the committee of management responsible for compliance:</p>		

(b) Who is the company secretary or public officer on the records at ASIC or Registrar of Incorporated Associations? (check forms lodged)		
(c) Who is the ATO contact person/public officer – check ABN application and subsequent changes:		
(d) Who keeps the official documents:		
(e) Who knows where the official documents are kept (should include company secretary, public officer, treasurer, CEO, executives, chairperson. Fundraiser needs to have access to ATO tax endorsement notices)		
(f) Who are the bank signatories? List bank accounts and signatories including the gift fund (if the organisation is a DGR)		
<p>3 Structure</p> <hr/> <p>What is the structure of the community organisation (may be a trust with a company or incorporated association as trustee, so you may need to note both, below):</p> <p>(a) company limited by guarantee? (referred to as Co below)</p> <p>(b) incorporated association? (referred to as Inc below)</p> <p>(c) trust? (referred to as Tr below)</p> <p>(d) other – describe:</p>		

<p>4 Numbers</p> <hr/> <p>(a) What is your: Co: ACN or Inc: registered number Inc: (if registered on ASIC) ARB number:</p>		
<p>(b) What is your ABN?</p>		
<p>(c) Co: Is the company's full name (including Limited or Ltd, if part of the name on the certificate of incorporation) and ACN or ABN on all public documents? Inc: Is the association's full name (including Inc) and Registered number and ABN on all public documents? letterhead, cheques, invoices, receipts, notices, purchase orders, agreements, contracts, fundraising brochures (but ABN not required on business cards)</p>		
<p>5 Tax Status</p> <hr/> <p>Tax status can be checked on the ABR (www.abr.business.gov.au) and from the notices from the ATO</p>		
<p>5.1 Income tax exemption</p> <p>(a) Is the organisation endorsed as a tax concession charity (TCC) as a:</p> <ul style="list-style-type: none"> • charitable institution? • charitable fund? • public benevolent institution? • health promotion charity? 		
<p>(b) Is there another basis the organisation is income tax exempt eg State government entity, mutuality principle?</p>		
<p>(c) If the organisation invests in Australian shares do you reclaim the franking credits? If so, where are the copies of the returns kept?</p>		

<p>5.2 Fringe Benefits tax (FBT)</p> <p>(a) Do you provide fringe benefits to employees?</p>		
<p>(b) Are you entitled to an FBT:</p> <ul style="list-style-type: none"> • rebate? • capped exemption (only hospitals, PBI's and health promotion charities)? 		
<p>(c) Where are the copies of the FBT returns kept?</p>		
<p>5.3 GST</p> <p>(a) Are you registered for GST? (Only required if you provided goods or services of over \$100,000.)</p>		
<p>(b) Who files the GST/BAS returns and where are the copies?</p>		
<p>(c) Have you carefully considered the transactions you enter for GST consequences?</p>		
<p>5.4 Tax Deductibility (DGR)</p> <p>(a) Are you endorsed as a deductible gift recipient? What category (take from notice of endorsement):</p>		
<p>(b) Do you do annual self reviews to ensure continuing compliance?</p>		
<p>(c) Are the self reviews filed with the notices of endorsement? If not, where are they kept?</p>		
<p>(d) Do you issue receipts in the name and ABN of the DGR as shown on the endorsement notice?</p>		
<p>(e) Do you record the donations in a separate gift fund or public fund?</p>		
<p>(f) If the organisation is on the following registers do you file returns and notices of changes? Register of Cultural Organisations, Register of Environmental Organisations, Register of Harm Prevention Charities?</p>		

<p>5.5 TCC/DGR Notices</p> <p>(a) Notice of endorsement as Tax concession Charity</p>		
<p>(b) Notice of endorsement as a deductible gift recipient and copy of the documents provided to the ATO in support</p>		
<p>(c) Correspondence with the ATO on tax status</p>		
<p>(d) If endorsed as a DGR on a Register (eg Cultural Organisation, Environmental Organisation, Harm Prevention Charity or are a prescribed private fund):</p> <ul style="list-style-type: none"> • copies of the annual returns to the Register • notification of changes in public fund management committee 		
<p>6 Fundraising</p> <hr/> <p>(a) Is the organisation registered for fundraising in:</p> <ul style="list-style-type: none"> • Victoria? • NSW? • SA? • WA? • Tasmania? • QLD? • ACT? 		
<p>(b) Where do you keep fundraising information and requirements and who is responsible for compliance?</p>		
<p>(c) Have you checked the licence conditions to ensure compliance?</p>		
<p>(d) Do you have businesses or professional fundraisers assisting you with fundraising? If yes, there are additional compliance requirements. See the relevant website for each State and Territory.</p>		

7 Registers		
You should keep the following information on a file or a folder together – often referred to as a company or corporate register		
7.1 Certificate (a) Co: certificate of registration as a company or Inc: certificate of incorporation as an incorporated association		
(b) Any subsequent certificates on a change of name		
7.2 Constituent documents (a) Co: constitution (if an old company, called memorandum and articles of association) or Inc: statement of purposes and rules (check for both) or Tr: trust deed		
(b) Any amendments to the constituent documents		
7.3 Board (a) Co: register of directors or Inc: committee members or Tr: trustees (including name, address, contact details – phone/email, date of appointment, date of resignation)		
(b) Register of any conflict of interests		
(c) Consents or nominations of successful members of the board		
7.4 Members Members' register (list of members' names and addresses and dates of appointment and cessation, details of any payments)		
7.5 Auditors Nomination, consent and resolution appointing auditors		

7.6	ASIC/Incorporated Associations Registrar Notices and documentation		
(a)	Co: ASIC corporate key:		
(b)	Co and Inc:		
(c)	Notices of changes in directors/company secretary/public officers		
(d)	Co and Inc: Notice of change of registered office		
(e)	Co and Inc: Changes in constituent documents		
(f)	Co: Annual financial report, directors report (and auditors report) Inc: Annual Statement		
(g)	Co: Annual review statement (sent from ASIC on anniversary of incorporation date)		
8	Board/Committee register		
8.1	New Directors Procedure for appointment/electing directors set out? [See Director's Appointment Paper for overview of these issues.]		
8.2	Board Policies List Board policies in register: <ul style="list-style-type: none"> • Board Charter • Conflict of Interest • Composition and nomination to Board 		
8.3	Current Directors		
(a)	Contact details		
(b)	Length of term and time for review/rotation		
(c)	CV's		
8.4	Board meetings		
	Consider:		
(a)	Set agendas		

(b)	Timeline of board meetings and issues to be dealt with		
8.5	Minutes Minutes of board meetings once signed by Chairperson		
8.6	Register of Interests Conflict of interests declared or standing		
8.7	Delegations Delegations to sub-committees or executives		
8.8	List of sub-committees Set out list of sub-committees of the board and the functions and rules of the sub-committees eg: <ul style="list-style-type: none"> • fundraising committee • governance committee • finance and audit committee 		
8.9	Planning Annual Planner/Timeline may include: <ul style="list-style-type: none"> • strategic review and business plan deadlines • strategy/away day for board and/or executives • executive performance review • budget setting • board review • AGM plan and timeline • annual reporting requirements • fundraising submissions/events/reporting • review of tax status • review of compliance check 		

<p>9 AGMs</p> <hr/> <p>See AGM timeline and reporting paper</p>		
<p>(a) Do you know what needs to be included in the AGM?</p> <p>(b) Do you have a timeline to ensure the deadlines are met?</p> <p>(c) Has the Board considered the content of the annual report and who else it may be sent to?</p> <p>(d) Do the directors carefully check the annual financial statements?</p> <p>(e) Do the accounts need to be audited?</p> <p>Co: Yes.</p> <p>Inc: check requirements and fundraising requirements.</p> <p>Tr: check deed or register requirements.</p>		
<p>10 Constitutional compliance</p> <hr/> <p>List the relevant sections</p>		
<p>(a) Objects:</p>		
<p>(b) Appointment of members:</p>		
<p>(c) AGM requirements:</p>		
<p>(d) Quorum of AGM:</p>		

(e) Appointment/composition of Board:		
(f) Quorum of Board:		
11 Employees and volunteers <hr/>		
11.1 Employees		
If you have employees, have you covered paperwork and timelines:		
(a) employment agreements		
(b) job descriptions		
(c) KPIs or clear expectations		
(d) regular reviews of performance		
(e) PAYG, FBT, superannuation, WorkCover		
(f) OH&S policy and training		
(g) discrimination policy and training.		
11.2 Volunteers		
(a) job/task description and training		
(b) clear expectations		
(c) regular reviews		
(d) FBT		
(e) Volunteer insurance		
(f) OH&S policy and training		
(g) discrimination policy and training		

<p>12 Risk Management</p> <hr/> <p>(Note: this checklist does not address operational risks)</p>		
<p>12.1 Insurances</p> <p>Have you reviewed the cover required:</p> <ul style="list-style-type: none"> • D&O insurance • public liability • professional indemnity • other operational insurances 		
<p>12.2 Financial</p> <p>(a) Regular review of:</p> <ul style="list-style-type: none"> • reporting lines • qualifications of those reporting • separation of powers to minimise fraud (ie approvals/signatories) • bookkeeping and accounting processes 		
<p>(b) Accounts reviewed and discussed at every board meeting</p>		
<p>(c) Financial delegations</p>		