

Contents

VOLUME 1 – COMMENTARY

Preface.....	iii
Contributors.....	v
User's Guide.....	101
Table of Contents.....	201
Table of Cases.....	351
Table of Statutes.....	551
Legislation Locator.....	1351
Table of Abbreviations.....	1801
Index.....	2051
Table of Limitation of actions.....	3001
Formation.....	2-1
Before selecting a structure: issues to consider	
Overview.....	[1.1.100]
Understanding the intentions of your client.....	[1.1.101]
Location of activities and future plans.....	[1.1.102]
Types of activities.....	[1.1.103]
Likely beneficiaries.....	[1.1.104]
Sources of NFP revenue.....	[1.1.105]
A need for several structures – subsidiary entities.....	[1.1.106]
Impact of taxing statutes.....	[1.1.107]
Initial briefing checklist for start-up NFPs and their lawyers.....	[1.1.108]
Selecting a legal structure: companies limited by guarantee.....	[1.1.201]
Overview.....	[1.1.201]
Definition and characteristics.....	[1.1.202]
Directors, secretary and members, and auditor.....	[1.1.203]
Registered office.....	[1.1.204]
Registration of company limited by guarantee.....	[1.1.205]
Advantages and disadvantages.....	[1.1.206]
Community land trusts	
Overview.....	[1.1.301]
Selecting a legal structure: proprietary limited company	
Overview.....	[1.1.401]
Subsidiary trading entity.....	[1.1.402]
Corporate trustee.....	[1.1.403]
Selecting a legal structure: incorporated associations.....	[1.1.501]
Overview.....	[1.1.501]
Definition and characteristics.....	[1.1.502]
Management Committee, secretary, members, and auditor.....	[1.1.503]
Registration of an incorporated association.....	[1.1.504]
Advantages and disadvantages.....	[1.1.505]
Selecting a legal structure: non-distributing co-operatives	
Overview.....	[1.1.601]

Definition and characteristics	[1.1.602]
Directors, secretary and members, and auditor.....	[1.1.603]
Registration of a non-distributing co-operative	[1.1.604]
Registered office.....	[1.1.605]
Advantages and disadvantages.....	[1.1.606]
Selecting a legal structure: charitable trusts	
Overview.....	[1.1.701]
Definition and characteristics	[1.1.702]
Types of charitable trusts: testamentary	[1.1.703]
Types of charitable trusts: inter vivos	[1.1.704]
Types of charitable trusts: impact of taxing statute	[1.1.705]
Creation of a charitable trust.....	[1.1.706]
Advantages and disadvantages.....	[1.1.707]
Further reading	[1.1.1001]
Precedents	
<i>Company limited by guarantee: constitution</i>	
Company limited by guarantee – precedent	[1.1.3001]
<i>Incorporated Association Rules</i>	
Incorporated Association Rules – Victorian model precedent	[1.1.3101]
<i>Non-distributing co-operative rules</i>	
Precedent rules – precedent	[1.1.3201]
<i>Public Ancillary Fund</i>	
Model trust deed – precedents.....	[1.1.3301]
PUBLIC ANCILLARY FUND GUIDELINES	[1.1.3302]
<i>Private Ancillary Fund</i>	
Model trust deed – precedent	[1.1.3401]
PRIVATE ANCILLARY FUND GUIDELINES 2009	[1.1.3402]

Taxation	5–1
Federal taxation	5–51
Introduction	
General information.....	[5.1.101]
Taxation of an organisation’s income	[5.1.102]
Self assessment	[5.1.103]
Endorsement by the Australian Taxation Office	[5.1.104]
Are federal tax concessions essential?	[5.1.105]
Before applying for federal tax concessions	[5.1.106]
Self assessment as income tax exempt	
Introduction	[5.1.201]
Community service organisations	[5.1.202]
Cultural organisations.....	[5.1.203]
Education organisations	[5.1.204]
Employment organisations.....	[5.1.205]
Health organisations.....	[5.1.206]
Religious institutions.....	[5.1.207]
Resource development organisations	[5.1.208]
<i>Scientific organisations</i>	
Introduction	[5.1.209]
Scientific institutions.....	[5.1.210]
Scientific associations.....	[5.1.211]
Scientific research funds.....	[5.1.212]
Sporting organisations.....	[5.1.213]
Taxable income and mutuality	
Overview.....	[5.1.301]
Endorsement for income tax exemption	
Introduction	[5.1.401]
Eligibility and application for endorsement as income tax exempt.....	[5.1.402]
Registration with the ACNC and charitable purpose	[5.1.403]
Other income tax exempt bodies.....	[5.1.404]
Unsuccessful charity registration, endorsement applications and loss of endorsement	[5.1.405]
Review and appeal of decisions	[5.1.406]
Review and revocation of endorsement	[5.1.407]
Special conditions for endorsement	
Not-for-profit	[5.1.501]
Australian Business Number	[5.1.502]
“In Australia” test for income tax exemption.....	[5.1.503]
Disregarded amounts	[5.1.504]
“In Australia” test for DGR endorsement	[5.1.505]
Institution	[5.1.506]
Deductible gift recipients – an overview	
Introduction	[5.1.601]
Eligibility and application for endorsement as a DGR	[5.1.602]
Categories of DGR.....	[5.1.603]
Unsuccessful DGR endorsement applications and loss of endorsement ..	[5.1.604]
Pursuing multiple purposes.....	[5.1.605]
Review and appeal of decisions	[5.1.606]
Special listing	[5.1.607]

Review and revocation of DGR endorsement	[5.1.608]
DGR endorsement for whole of organisation	
Public benevolent institutions	[5.1.701]
Health promotion charities	[5.1.702]
Charitable services institution	[5.1.703]
DGR endorsement for the operation of a fund, authority or institution	
<i>School/college building funds</i>	
Introduction	[5.1.801]
Applying for endorsement for a school building fund	[5.1.802]
Ways to establish a school building fund	[5.1.803]
Governing rules	[5.1.804]
Qualifying bodies	[5.1.805]
What can a school building fund pay for? General information	[5.1.806]
What can a school building fund pay for? More detail	[5.1.807]
Meaning of “established and maintained solely”	[5.1.808]
What is a school or college?	[5.1.809]
What is a building?	[5.1.810]
What is use as a school?	[5.1.811]
Additional guidance on what is a school building	[5.1.812]
Deductible gifts to school building funds	[5.1.813]
Fund administration	[5.1.814]
Ancillary funds	[5.1.815]
<i>Scholarship funds</i>	
Introduction	[5.1.830]
Applying for endorsement for a scholarship fund	[5.1.831]
Ways to establish a scholarship fund	[5.1.832]
Operating the fund	[5.1.833]
Scholarships, bursaries and prizes	[5.1.834]
Australian citizens and permanent residents	[5.1.835]
Openness Test	[5.1.836]
Promoting recipients’ education	[5.1.837]
Approved Australian courses	[5.1.838]
Overseas	[5.1.839]
Merit or equity	[5.1.840]
Curriculum related instruction	[5.1.841]
Excursions and field trips	[5.1.842]
Predominantly recreational	[5.1.843]
Excursions and field trips – examples	[5.1.844]
<i>Overseas aid funds</i>	
Introduction	[5.1.850]
Endorsement process for overseas aid funds	[5.1.851]
Ways to establish an overseas aid fund	[5.1.852]
Specific public fund requirements	[5.1.853]
Use of funds	[5.1.854]
Receipts	[5.1.855]
Approved countries	[5.1.856]
Approved organisation status – an overview	[5.1.857]
Approved organisation status – further detail	[5.1.858]
Fund names	[5.1.859]
<i>Harm prevention charities</i>	
Introduction	[5.1.870]
Applying for endorsement as a harm prevention charity	[5.1.871]

CONTENTS

Ways to establish a harm prevention fund.....	[5.1.872]
What is a harm prevention charity?	[5.1.873]
Fund names	[5.1.874]
Operating the public fund on the Register of Harm Prevention Charities (including the public fund management committee)	[5.1.875]
Provision of statistical and other account data	[5.1.876]
Ministerial rules.....	[5.1.877]
Receipts.....	[5.1.878]
Removal from the Harm Prevention Register.....	[5.1.879]
<i>Environmental organisations</i>	
Introduction	[5.1.890]
Applying for entry on the REO and for DGR endorsement.....	[5.1.891]
Ways to establish an environmental organisation.....	[5.1.892]
Specific requirements, including public fund requirements for environmental organisations and funds.....	[5.1.893]
What is meant by the natural environment?	[5.1.894]
Name of fund	[5.1.895]
Operating the public fund on the REO (including the public fund management committee).....	[5.1.896]
Provision of statistical and other account data	[5.1.897]
Ministerial rules.....	[5.1.898]
Receipts.....	[5.1.899]
Removal from the Register of Environmental Organisations.....	[5.1.900]
<i>Cultural organisations</i>	
Cultural organisations.....	[5.1.910]
Applying for entry onto the ROCO and for DGR endorsement.....	[5.1.911]
Ways to establish a cultural organisation.....	[5.1.912]
Specific requirements	[5.1.913]
Fund names	[5.1.914]
Operating the public fund on the ROCO	[5.1.915]
Provision of statistical information.....	[5.1.916]
Notification of changes	[5.1.917]
Receipts.....	[5.1.918]
Review and removal from the Register of Cultural Organisations	[5.1.919]
Ancillary funds	
General information.....	[5.1.951]
Private ancillary funds	[5.1.952]
Public ancillary funds	[5.1.953]
Public funds	
Introduction	[5.1.1001]
Overview of public fund requirements	[5.1.1002]
Objects of the fund.....	[5.1.1003]
Gifts to the fund must be kept separate	[5.1.1004]
Receipts must be issued in the name of the fund	[5.1.1005]
Public must be invited to contribute to the fund and must in fact contribute.....	[5.1.1006]
Fund must operate on a not-for-profit basis.....	[5.1.1007]
Operated in Australia.....	[5.1.1008]
Public responsibility requirement	[5.1.1009]
Winding up.....	[5.1.1010]
ATO is to be notified of any changes to the fund's founding documents.	[5.1.1011]
Gift funds	
Overview	[5.1.1101]

Deductible gifts and deductible contributions	
Introduction	[5.1.1201]
Deductible gifts	[5.1.1202]
Deductible contributions.....	[5.1.1203]
Goods and services tax (GST), Australian Business Number (ABN) and Pay-as-you-go (PAYG)	
Introduction	[5.1.1301]
Obtaining an ABN	[5.1.1302]
GST.....	[5.1.1303]
Pros and cons of registering for GST.....	[5.1.1304]
Pay-as-you-go withholding tax system – PAYG.....	[5.1.1305]
Fringe benefits tax	
Introduction	[5.1.1401]
What is a fringe benefit?.....	[5.1.1402]
FBT exemption and FBT rebate	[5.1.1403]
Appendix 1 – Application for endorsement as a tax concession charity or income tax exempt fund	
Application form.....	[5.1.3010]
Appendix 2 – Table of gifts or contributions that you can deduct	
Income Tax Assessment Act 1997 s 30-15	[5.1.3020]
Appendix 3 – Various exempt entities	
Income Tax Assessment Act 1997 Subdivision 50A.....	[5.1.3030]
Appendix 4 – Glossary	
Glossary of terms in this chapter	[5.1.3040]
State and Territory taxation, duties and imposts	7–1
Introduction	
General information.....	[5.2.101]
Stamp duty.....	[5.2.102]
Payroll tax	[5.2.103]
Land tax.....	[5.2.104]
New South Wales	
Tax and duty concessions for charities and not-for-profit organisations in New South Wales	[5.2.201]
Queensland	
Tax and duty concessions for charities and not-for-profit organisations in Queensland	[5.2.301]
South Australia	
Tax and duty concessions for charities and not-for-profit organisations in South Australia	[5.2.401]
Tasmania	
Tax and duty concessions for charities and not-for-profit organisations in Tasmania	[5.2.501]
Victoria	
Tax and duty concessions for charities and not-for-profit organisations in Victoria	[5.2.601]
Western Australia	

CONTENTS

Tax and duty concessions for charities and not-for-profit organisations in Western Australia	[5.2.701]
What is payroll tax?	[5.2.702]
What is the Metropolitan Region Improvement Tax	[5.2.703]
Land tax.....	[5.2.704]
Western Australian Local Government rates and service charges.....	[5.2.705]
Australian Capital Territory	
Tax and duty concessions for charities and not-for-profit organisations in the Australian Capital Territory	[5.2.801]
Northern Territory	
Tax and duty concessions for charities and not-for-profit organisations in the Northern Territory	[5.2.901]

Governance	9–1
Introduction	
Overview.....	[10.1.101]
The history of corporate governance.....	[10.1.102]
Current framework	[10.1.103]
The Australian Charities and Not-for-Profits Commission Act 2012	
The role of the ACNC.....	[10.1.201]
Governance standards	[10.1.202]
Reporting requirements	[10.1.203]
Offences and penalties.....	[10.1.204]
New standards for charities	[10.1.205]
Interaction with other Commonwealth Acts	[10.1.206]
Transitional provisions	[10.1.207]
Types of NFP organisations	
General.....	[10.1.301]
Unincorporated associations	[10.1.302]
Incorporated associations	[10.1.303]
Companies Limited by Guarantee	[10.1.304]
Co-operatives	[10.1.305]
Registrable Australian body	[10.1.306]
Trusts	[10.1.307]
Charitable trust.....	[10.1.308]
Private Ancillary Funds	[10.1.309]
Aboriginal Councils and Associations.....	[10.1.310]
The Board or Committee of management	
Is there a difference between a board and a committee of management?	[10.1.401]
The function of the Board/or Committee.....	[10.1.402]
What is the demarcation between a board or committee’s function and management?	[10.1.403]
Are there any guidelines for boards or committees to operate well?	[10.1.404]
Directors and officers	
Who is a director?.....	[10.1.501]
Who is an officer?.....	[10.1.502]
Do directors require qualifications?.....	[10.1.503]
How are directors appointed?	[10.1.504]
What makes a good director or committee member?	[10.1.505]
How do directors or committee members appropriately interact with the CEO and management?.....	[10.1.506]
How do directors or committee members appropriately interact with members?.....	[10.1.507]
Ethics	[10.1.508]
Directors duties	
General.....	[10.1.601]
Duty to exercise powers in good faith	[10.1.602]
Duty to act with care and diligence.....	[10.1.603]
Business judgment rule	[10.1.604]
“Ought fairly to be excused”.....	[10.1.605]
Duty to prevent insolvent trading	[10.1.606]
Defences.....	[10.1.607]
Disclosure of material personal interests.....	[10.1.608]
Conflicts of interest	[10.1.609]

CONTENTS

Definition of conflict of interest	[10.1.610]
Legal response to conflict of interest.....	[10.1.611]
Corporations Act	[10.1.612]
Duty of continuous disclosure	[10.1.613]
Related party transactions	[10.1.614]
The rulebooks	
Significance of Constitutions	[10.1.701]
Specific roles and responsibilities	[10.1.702]
Associations	[10.1.703]
Risk management and governance	
Identifying risk	[10.1.801]
Understanding risk and its impact in an organisation.....	[10.1.802]
Supervising and mitigating risk.....	[10.1.803]
Standards Australia standard AS/NZS ISO 31000 and HB 266:2010 Handbook: Guide for managing risk in not-for-profit organisations.....	[10.1.804]
Communication and follow-up	[10.1.805]
Strategy and governance	
Understanding strategy.....	[10.1.901]
The Board or Committee's role in strategic planning	[10.1.902]
Becoming effective	[10.1.903]
Structure	[10.1.904]
Appendix 1 – Offences and penalties under the ACNC Act.....	[10.1.3010]
Appendix 2 – An example of components of governance in small NFPs (not incorporated as Companies Limited by Guarantee).....	[10.1.3020]
Appendix 3 – An example of a governance framework model	[10.1.3030]
Appendix 4 – Necessary documentation	[10.1.3040]
Appendix 5 – Duties of committee members compared with Corporations Act director's duties (Source – Melbourne University)	[10.1.3050]
Appendix 6 – Risk management flow chart.....	[10.1.3060]

Risk Management & Insurance	12–1
Risk management, liability and insurance	
Introduction	
General.....	[15.1.101]
Risk assessments and risk management	
Risk management and assessment in general.....	[15.1.201]
Defining risk	[15.1.202]
Standards and guidance.....	[15.1.203]
Implementing a Risk Management Policy.....	[15.1.204]
Carrying out a risk assessment.....	[15.1.205]
Treating risks.....	[15.1.206]
The nature of liability	
Definition of liability	[15.1.301]
Sources of liability.....	[15.1.302]
Apportionment of liability	
Overview.....	[15.1.401]
Personal liability.....	[15.1.402]
Multiple party liability	[15.1.403]
Liability for the acts of others	[15.1.404]
Who is liable?	
General.....	[15.1.501]
Corporations.....	[15.1.502]
Associations	[15.1.503]
Trusts	[15.1.504]
Protecting you and your organisation against liability	
General.....	[15.1.601]
Insurance	
Basic principles of insurance.....	[15.1.701]
Obligations to insure	[15.1.702]
Taking out insurance	[15.1.703]
Types of insurance.....	[15.1.704]
Cancellation of insurance.....	[15.1.705]
Obligations of the insured.....	[15.1.706]
Claims	[15.1.707]
The Insurance Council of Australia General Insurance Code of Practice	[15.1.708]

Fundraising	15–1
Introduction	
Charitable fundraising regulatory framework.....	[20.1.101]
Charitable gaming regulatory framework	[20.1.102]
Queensland	
<i>Collections (public fundraising)</i>	
Legislation and regulatory bodies	[20.1.201]
Who needs to register?	[20.1.202]
Who is exempt from registering?	[20.1.203]
What is an appeal for support?	[20.1.204]
How to register	[20.1.205]
What is the difference between a charity and community purpose association?	[20.1.206]
Registering as a charitable association	[20.1.207]
Advertising for objections.....	[20.1.208]
Applying for a sanction as a community purpose association.....	[20.1.209]
Applying for a short-term sanction	[20.1.210]
After expiry of a short-term sanction	[20.1.211]
Conducting a door-to-door appeal or street collection.....	[20.1.212]
Requirements and reporting.....	[20.1.213]
Interstate charities and overseas charities.....	[20.1.214]
Contacts for further information	[20.1.215]
<i>Gaming</i>	
Legislation and regulatory bodies	[20.1.251]
What is a game?	[20.1.252]
Categories of games and licensing requirements.....	[20.1.253]
Can an individual conduct a charitable game?.....	[20.1.254]
What is an association?.....	[20.1.255]
What is an eligible association?	[20.1.256]
Applying for a category 3 gaming licence	[20.1.257]
Applying for a special category 3 gaming licence.....	[20.1.258]
Category 4 games	[20.1.259]
Other types of gaming licenses	[20.1.260]
Requirements and reporting.....	[20.1.261]
Third party operators/commercial fundraisers and consultants	[20.1.262]
Contacts for further information	[20.1.263]
New South Wales	
<i>Collections (public fundraising)</i>	
Legislation and regulatory bodies	[20.1.301]
Who needs to obtain the authority to fundraise?.....	[20.1.302]
What is a fundraising appeal?	[20.1.303]
Who is exempt from obtaining an authority to fundraise?.....	[20.1.304]
How is a licence to fundraise obtained?.....	[20.1.305]
Commercial fundraisers/consultants.....	[20.1.306]
Children participation in appeal	[20.1.307]
Requirements and reporting.....	[20.1.308]
Contacts for further information	[20.1.309]
<i>Gaming</i>	
Legislation and regulatory bodies	[20.1.351]
Types of activities that are regulated.....	[20.1.352]
Art union lotteries.....	[20.1.353]

Bingo or charity housie	[20.1.354]
Card jackpot games	[20.1.355]
Chocolate wheels	[20.1.356]
Club bingo.....	[20.1.357]
Football doubles	[20.1.358]
Gaming nights	[20.1.359]
Gratuitous lotteries (lucky door or lucky seat promotions)	[20.1.360]
Lucky envelopes.....	[20.1.361]
Mini-numbers lotteries	[20.1.362]
No-draw lotteries or Lotto-style lotteries	[20.1.363]
Progressive lotteries (hundreds clubs, silver circles).....	[20.1.364]
Promotional raffles	[20.1.365]
Raffles and guessing competitions	[20.1.366]
Social housie.....	[20.1.367]
Sweeps and Calcuttas.....	[20.1.368]
Tipping competitions	[20.1.369]
Trade promotions.....	[20.1.370]
Overview of charitable gaming in New South Wales.....	[20.1.371]
Contacts for further information	[20.1.372]

Victoria

Collections (Public fundraising)

Legislation and regulatory framework.....	[20.1.401]
What is a fundraiser?	[20.1.402]
Who is exempt from registration?	[20.1.403]
How to register	[20.1.404]
Is money being distributed overseas?	[20.1.405]
Fundraising beneficiaries	[20.1.406]
Conditions on fundraising registration	[20.1.407]
Requirements and reporting.....	[20.1.408]
Contacts for further information	[20.1.409]

Gaming

Legislation and regulatory framework.....	[20.1.451]
Declaration as a community or charitable organisation	[20.1.452]
What kinds of organisations can be declared?.....	[20.1.453]
What gaming activities require a permit?.....	[20.1.454]
Applying for a permit	[20.1.455]
Raffles	[20.1.456]
Bingo	[20.1.457]
Lucky Envelopes.....	[20.1.458]
Fundraising events.....	[20.1.459]
Requirements and reporting.....	[20.1.460]
Contacts for further information	[20.1.461]

South Australia

Collections (Public fundraising)

Legislation and regulatory framework.....	[20.1.501]
When is a licence required?.....	[20.1.502]
Section 6 licence	[20.1.503]
Section 7 licence	[20.1.504]
Section 6A licence (collection agent's licence)	[20.1.505]
How is a licence obtained?	[20.1.506]
Requirements and reporting.....	[20.1.507]
Contacts for further information	[20.1.508]

CONTENTS

Gaming

Legislation and regulatory framework.....	[20.1.551]
Minor lotteries.....	[20.1.552]
Minor bingo sessions	[20.1.553]
Sweepstakes.....	[20.1.554]
Contacts for further information	[20.1.555]

Western Australia

Collections (Public fundraising)

Legislation and regulatory framework.....	[20.1.601]
When is a fundraising licence required?.....	[20.1.602]
How do you obtain a licence?	[20.1.603]
Covering submission	[20.1.604]
Revocation of licence	[20.1.605]
Voluntary code of practice	[20.1.606]
Street collections	[20.1.607]
Door-to-door collections.....	[20.1.608]
Commercial fundraisers.....	[20.1.609]
Requirements and reporting.....	[20.1.610]
Contacts for further information	[20.1.611]

Gaming

Legislation and regulatory framework.....	[20.1.651]
What gaming activities are covered?	[20.1.652]
Standard lotteries.....	[20.1.653]
Continuing lotteries	[20.1.654]
Trade promotion lotteries	[20.1.655]
Bingo	[20.1.656]
Two-up.....	[20.1.657]
Calcutta lottery	[20.1.658]
Gaming functions.....	[20.1.659]
Minor fundraising activities.....	[20.1.660]
Application fees	[20.1.661]
Contacts for further information	[20.1.662]

Tasmania

Collections (public fundraising)

Legislation and regulatory framework.....	[20.1.701]
What fundraising activities are regulated?	[20.1.702]
What activities are not regulated?	[20.1.703]
Tasmanian-based charities.....	[20.1.704]
Non-Tasmanian-based charities.....	[20.1.705]
Non incorporated associations	[20.1.706]
Individuals	[20.1.707]
Children used for collection.....	[20.1.708]
Door-to-door appeals	[20.1.709]
Telephone appeals.....	[20.1.710]
Collections on public streets.....	[20.1.711]
Contacts for further information	[20.1.712]

Gaming

Legislation and regulatory framework.....	[20.1.751]
What gaming activities are regulated?	[20.1.752]
What permits or approvals are required?	[20.1.753]
Exempt games	[20.1.754]
Trade promotions.....	[20.1.755]

Rules and conditions.....	[20.1.756]
Contacts for further information	[20.1.757]

Australian capital territory

Collections (public fundraising)

Legislation and regulatory framework.....	[20.1.801]
What is a charitable collection?	[20.1.802]
Who needs to be licensed?	[20.1.803]
How to apply for a charitable collections licence	[20.1.804]
Individuals	[20.1.805]
Unincorporated bodies	[20.1.806]
Requirements for people taking part in a collection	[20.1.807]
Requirements and reporting.....	[20.1.808]
Contacts for further information	[20.1.809]

Gaming

Legislation and regulatory framework.....	[20.1.851]
What gaming activities are regulated?	[20.1.852]
When is a permit required?.....	[20.1.853]
Trade promotion lotteries	[20.1.854]
Raffles	[20.1.855]
Calcuttas.....	[20.1.856]
Card jackpot raffles	[20.1.857]
Lucky envelope raffles.....	[20.1.858]
Housie	[20.1.859]
Small fundraising gaming nights.....	[20.1.860]
Contacts for further information	[20.1.861]

Northern territory

Collections (public fundraising)

Overview.....	[20.1.901]
---------------	------------

Gaming

Legislation and regulatory framework.....	[20.1.951]
Who may conduct charitable gaming?	[20.1.952]
How to apply to be an approved association	[20.1.953]
Which games do not require a further permit?.....	[20.1.954]
Which games require a further permit?	[20.1.955]
Ongoing requirements and reporting.....	[20.1.956]
Contacts for further information	[20.1.957]

Web-based appeals

If a charity based in another jurisdiction has a website that appeals for donations, is a licence required?.....	[20.1.971]
--	------------

Commonwealth legislation

Introduction	[20.1.1001]
--------------------	-------------

The Australian Consumer Law

Overview	[20.1.1011]
Complying with unsolicited consumer provisions in the ACL	[20.1.1012]
Other provisions in the ACL that could be relevant to fundraising	[20.1.1013]

Corporations Act 2001 (Cth)

Overview.....	[20.1.1021]
---------------	-------------

Income Tax Assessment Act 1997 (Cth)

CONTENTS

Overview	[20.1.1031]
<i>Charitable fundraising regulation reform</i>	
Overview	[20.1.1041]
<i>Privacy and information disclosure</i>	
Introduction	[20.1.1051]
<i>Privacy and the national privacy principles</i>	
Overview	[20.1.1061]
Things to be aware of when fundraising	[20.1.1062]
What charitable fundraisers may need to do?	[20.1.1063]
Checklist for compliance	[20.1.1064]
Further information	[20.1.1065]
<i>Contractors and suppliers</i>	
Introduction	[20.1.1071]
Why use professional fundraisers	[20.1.1072]
Some issues to consider in your contracts generally	[20.1.1073]
<i>Complaints</i>	
Introduction	[20.1.1091]
State and territory complaints process	[20.1.1092]
Tips and hints for managing complaints	[20.1.1093]
Appendix 1 – Current state and territory fundraising legislation	[20.1.1101]
Appendix 2 – Current state and territory charitable gaming legislation	[20.1.1102]
Appendix 3 – Snapshots – State and territory regulatory framework for charitable collections and gaming	
Queensland	[20.1.1103]
New South Wales	[20.1.1104]
Victoria	[20.1.1105]
South Australia	[20.1.1106]
Western Australia	[20.1.1107]
Tasmania	[20.1.1108]
Australian Capital Territory	[20.1.1109]
Northern Territory	[20.1.1110]

Employment Law	17-1
Introduction	[25.1.101]
Australian workplace relations system.....	[25.1.102]
Nature of Employment Law	
Overview.....	[25.1.201]
Contracts of service and contract for service	[25.1.202]
Common law and statutory regulation.....	[25.1.203]
Awards and enterprise agreements	[25.1.204]
Legislation	
Workplace Relations Act.....	[25.1.301]
Fair Work Act.....	[25.1.302]
Who is covered by the Fair Work Act?.....	[25.1.303]
Who is not generally covered by the national industrial relations system?	[25.1.304]
Key features of the Fair Work Commission	[25.1.305]
Fair Work Ombudsman	[25.1.306]
Types of Employment Arrangements	
Overview.....	[25.1.401]
The importance of establishing employment status	[25.1.402]
Employees	[25.1.403]
Independent contractors	[25.1.404]
Table of differentiation	[25.1.405]
Drafting contracts for independent contractors.....	[25.1.406]
Volunteers.....	[25.1.407]
Internships, vocational placements and unpaid trials	[25.1.408]
Outworkers.....	[25.1.409]
<i>Types of Employees</i>	
Overview.....	[25.1.501]
Full-time employees	[25.1.502]
Part-time employees	[25.1.503]
Casual employees	[25.1.504]
Choosing the Right Employee	
Overview.....	[25.1.601]
Full time and part-time employee	[25.1.602]
Casual employees	[25.1.603]
Drafting employee contracts	
General.....	[25.1.701]
Employer obligations	
General.....	[25.1.801]
Enforceability of the employment contract	[25.1.802]
Legislation and common law	[25.1.803]
Employment conditions	
General.....	[25.1.901]
National employment standards	[25.1.902]
Modern awards.....	[25.1.903]
Leave	

CONTENTS

General.....	[25.1.1001]
Annual leave	[25.1.1002]
Personal leave.....	[25.1.1003]
Parental leave	[25.1.1004]
Long service leave	[25.1.1005]
Action to recover entitlements under the Fair Work Act	[25.1.1006]
Termination of Employment.....	[25.1.1007]
Notice of termination	[25.1.1008]
Redundancy	[25.1.1009]
Discrimination in the Workplace	
General	[25.1.1101]
Workplace safety	
General.....	[25.1.1201]
Conclusion	
General.....	[25.1.1301]

Contracting	19–1
Introduction	
General.....	[30.1.101]
Key practical issues	[30.1.102]
Formation of a contract	
Introduction	[30.1.201]
<i>Formation of contract</i>	
Practical questions.....	[30.1.202]
Special considerations for NFP entities.....	[30.1.203]
Due diligence	[30.1.204]
Elements of a contract – what is required to form a legally binding contract?.....	[30.1.205]
Offer and acceptance	[30.1.206]
Intention to enter into contractual relations	[30.1.207]
The dangers of hiding fine print on tickets, invoice terms and receipts...	[30.1.208]
Binding or non-binding – what is in a name?.....	[30.1.209]
Certainty	[30.1.210]
Consideration.....	[30.1.211]
<i>Capacity to enter into contacts</i>	
General.....	[30.1.212]
Corporations (including Companies Limited by Guarantee).....	[30.1.213]
Incorporated Associations	[30.1.214]
Unincorporated associations	[30.1.215]
The Crown and Public Authorities.....	[30.1.216]
Minors.....	[30.1.217]
Mental Incapacity.....	[30.1.218]
Other issues, such as language, financial or cultural barriers.....	[30.1.219]
<i>Form</i>	
Does a contract have to be in writing?.....	[30.1.220]
Under Seal (in the form of a Deed) – What is a deed?.....	[30.1.221]
Under Hand (in Writing).....	[30.1.222]
In Compliance with Statutory Form.....	[30.1.223]
Special execution requirements.....	[30.1.224]
<i>The rule of privity of contract – can the organisation enforce a contract to which it is not a party?</i>	
General.....	[30.1.225]
<i>The terms of the contract</i>	
Express terms	[30.1.226]
Implied Terms	[30.1.227]
<i>Sale of goods legislation</i>	
General.....	[30.1.228]
<i>Australian Consumer Law</i>	
Introduction	[30.1.229]
Misleading or deceptive conduct	[30.1.230]
Unconscionable conduct.....	[30.1.231]
Unfair contract terms.....	[30.1.232]
Unfair practices.....	[30.1.233]
What is a consumer contract?.....	[30.1.234]
Consumer guarantees	[30.1.235]

CONTENTS

Exclusion and Exemption clauses	[30.1.236]
<i>Duress and undue influence</i>	
Duress	[30.1.237]
Undue influence.....	[30.1.238]
<i>Contracts Review Act (NSW)</i>	
General.....	[30.1.239]
<i>Estoppel</i>	[30.1.240]
<i>Cross-border contracts and conflict of laws</i>	[30.1.241]
<i>Stamping, registration and securities</i>	[30.1.242]
<i>Electronic contracts</i>	[30.1.243]
Practical contract checklist.....	[30.1.244]
Performance, breach and discharge	
General.....	[30.1.301]
Performance.....	[30.1.302]
Breach	[30.1.303]
Discharge by agreement.....	[30.1.304]
Discharge by frustration.....	[30.1.305]
Discharge by breach	[30.1.306]
Repudiation	[30.1.307]
Condition precedent	[30.1.308]
Breach of fundamental term.....	[30.1.309]
Force Majeure	[30.1.310]
Rescission.....	[30.1.311]
<i>Remedies for breach of contract</i>	
Breach of contract.....	[30.1.401]
Damages	[30.1.402]
Specific performance.....	[30.1.403]
Injunction	[30.1.404]
Rescission of contracts for defects in formation	[30.1.405]
Liquidated damages.....	[30.1.406]
Statutory remedies.....	[30.1.407]
Concurrent liability	[30.1.408]
Limitation of actions	[30.1.409]
<i>Illegality and public policy</i>	
Contracts prohibited by statute.....	[30.1.410]
Contracts contrary to public policy	[30.1.411]
Restraint of trade covenants	[30.1.412]
Government contracting and procurement	
Dealing with Governments.....	[30.1.501]
Financial framework, probity and authority issues	[30.1.502]
Procurement.....	[30.1.503]
Tender process contracts.....	[30.1.504]
Funding agreements and grants.....	[30.1.505]
Government Contracts	[30.1.506]
Goods and Services contracts.....	[30.1.507]
Funding and grant agreements	[30.1.508]
Sources of advice and information.....	[30.1.509]
Contract management	
Key issues	[30.1.601]
Some key tips.....	[30.1.602]
Check list.....	[30.1.603]

Intellectual Property	25–1
Overview	
Introduction	[40.1.101]
What is intellectual property?	[40.1.102]
Existence of IP rights	[40.1.103]
Types of IP protection	[40.1.104]
Copyright	
General.....	[40.1.201]
Creation of copyright.....	[40.1.202]
How copyright works.....	[40.1.203]
Copyright ownership.....	[40.1.204]
Duration of copyright.....	[40.1.205]
Websites and emails	[40.1.206]
Copyright issues with using photographs on websites and in publications	[40.1.207]
Trade marks	
General.....	[40.1.301]
Protection of unregistered trade marks	[40.1.302]
Acceptable trade marks	[40.1.303]
Making a trade mark application.....	[40.1.304]
Opposing a trade mark.....	[40.1.305]
How long does a trade mark last?	[40.1.306]
Business names, company names and domain names which are trade marks	[40.1.307]
Patents	
General.....	[40.1.401]
Types of patents	[40.1.402]
The registration process	[40.1.403]
Who can register a patent?.....	[40.1.404]
Should a NFP register their patent?.....	[40.1.405]
How to register your patent.....	[40.1.406]
Confidentiality	
Confidentiality agreements.....	[40.1.501]
Trade secrets	[40.1.502]
Ownership of IP	
Know your IP rights.....	[40.1.601]
Proof of IP ownership.....	[40.1.602]
Crown use exception.....	[40.1.603]
Commercialising your IP	
General.....	[40.1.701]
Licensing.....	[40.1.702]
Types of licences	[40.1.703]
Exclusive licences.....	[40.1.704]
Creative Commons	[40.1.705]
Infringement: Enforcing your IP rights	
General.....	[40.1.801]
What action can be taken?	[40.1.802]
What evidence is required	[40.1.803]
Exceptions to infringement.....	[40.1.804]

CONTENTS

Infringing on others' IP rights

General.....	[40.1.901]
Using others' copyright material on a website.....	[40.1.902]
Linking or framing	[40.1.903]
NFPs which are educational institutions	[40.1.904]
Developing a good practice strategy.....	[40.1.905]

Conclusion

General.....	[40.1.1001]
--------------	-------------

Privacy	27–1
Introduction to the Privacy Act	
General.....	[45.1.101]
What is personal information?	[45.1.102]
What is sensitive information	[45.1.103]
What privacy is not	[45.1.104]
Compliance with the Privacy Act	[45.1.105]
Where the Act does not apply	[45.1.106]
Other relevant legislation	[45.1.107]
Consequences of not complying	
Privacy Commissioner’s Powers.....	[45.1.201]
Privacy Commissioner investigation of Telstra	[45.1.202]
Complaints made to the Privacy Commissioner	[45.1.203]
Resolving a privacy complaint.....	[45.1.204]
Additional Powers under the Amending Act	[45.1.205]
What information is regulated by the Privacy Act?	
Personal information	[45.1.301]
Information that is not personal information	[45.1.302]
Sensitive and health information.....	[45.1.303]
Solicited and unsolicited information	[45.1.304]
The National Privacy Principles	
General.....	[45.1.401]
NPP 1: Collecting information	[45.1.402]
NPP 2: Using/disclosing information	[45.1.403]
NPP 2: Using information	[45.1.404]
NPP 3: Data quality.....	[45.1.405]
NPP 4: Data security.....	[45.1.406]
NPP 5: Openness	[45.1.407]
NPP 6: Access and Correction	[45.1.408]
Privacy Commission investigation.....	[45.1.409]
NPP 7: Identifiers.....	[45.1.410]
NPP 8: Anonymity	[45.1.411]
NPP 9: Transborder data flows	[45.1.412]
NPP 10: Sensitive and Health Information.....	[45.1.413]
Privacy codes	[45.1.414]
Recent amendments creating the Australian Privacy Principles	[45.1.415]
Protection of privacy	
FAQs	[45.1.501]
Do not call the register	
Telemarketing calls.....	[45.1.601]
Checking the Register	[45.1.602]
Agreements for the making of telemarketing calls	[45.1.603]
When can a call be made to a number listed on the Do Not Call Register?	[45.1.604]
Designated telemarketing call	[45.1.605]
Consent	[45.1.606]
International privacy law	
General.....	[45.1.701]
Recent Developments in Privacy	
The Privacy Amendment (Enhancing Privacy Protection) Act 2012.....	[45.1.801]

CONTENTS

Key amendments	[45.1.802]
The Australian Privacy Principles (APPs)	[45.1.803]
Situations that do not breach the APPs.....	[45.1.804]
Acts and practices of overseas recipients of personal information	[45.1.805]
AAPs in more detail	[45.1.806]
Credit reporting changes	[45.1.807]
The Spam Act	
Application of the Spam Act.....	[45.1.901]
What is a commercial electronic message?.....	[45.1.902]
Consent	[45.1.903]
Sender identification.....	[45.1.904]
Unsubscribe function.....	[45.1.905]

Defamation	29–1
Introduction to defamation	
Introduction	[50.1.101]
Defamation law in Australia	
General.....	[50.1.201]
Uniform defamation legislation	[50.1.202]
What is defamation?	[50.1.203]
Publication	
General.....	[50.1.301]
Liability for publications	[50.1.302]
Recipient of publications.....	[50.1.303]
Multiple publications and choice of law	[50.1.304]
Single cause of action	[50.1.305]
Identification	
General.....	[50.1.401]
Extrinsic facts	[50.1.402]
The ordinary reasonable person.....	[50.1.403]
Defamation of a class.....	[50.1.404]
Defamatory meaning	
General.....	[50.1.501]
Natural and ordinary meaning	[50.1.502]
True innuendo	[50.1.503]
Mode of publication and context.....	[50.1.504]
What is considered to be defamatory?.....	[50.1.505]
Suing	
Who can sue?	[50.1.601]
Who can be sued?.....	[50.1.602]
Statutory defences	
General.....	[50.1.701]
Time limitation	[50.1.702]
Justification	[50.1.703]
Contextual truth	[50.1.704]
Absolute privilege	[50.1.705]
Publication of public documents	[50.1.706]
Fair report of proceedings of public concern.....	[50.1.707]
Qualified privilege	[50.1.708]
Honest opinion	[50.1.709]
Innocent dissemination.....	[50.1.710]
Triviality.....	[50.1.711]
Dispute resolution	
Non-litigious dispute resolution under the uniform defamation law	[50.1.801]
Offers to make amends	[50.1.802]
Apologies	[50.1.803]
Damages	
Factors	[50.1.901]
Other causes of action	
General.....	[50.1.1001]
Injurious falsehood.....	[50.1.1002]

CONTENTS

Misleading and deceptive conduct.....	[50.1.1003]
Criminal defamation	[50.1.1004]
Important information	
Points to remember.....	[50.1.1101]
Publications checklist.....	[50.1.1102]
Potential claims – tips.....	[50.1.1103]

Dispute Management	32–1
<i>Internal disputes</i>	
Introduction	
Scope of chapter	[55.1.101]
Internal disputes	[55.1.102]
Common law approach.....	[55.1.103]
Natural justice.....	[55.1.104]
Statutory approach.....	[55.1.105]
Qualified privilege – a note on internal disputes.....	[55.1.106]
Companies limited by guarantee	
Statutory contract.....	[55.1.201]
Removal of directors	[55.1.202]
Oppressive conduct towards CLG members.....	[55.1.203]
Other remedies for members	[55.1.204]
Disputes between members.....	[55.1.205]
Incorporated associations	
Statutory contract.....	[55.1.301]
Removal of management committee members	[55.1.302]
Oppressive conduct towards association members	[55.1.303]
Other remedies for members	[55.1.304]
Disputes among members	[55.1.305]
Co-operatives	
Statutory contract.....	[55.1.401]
Removal of directors	[55.1.402]
Oppressive conduct towards cooperative members.....	[55.1.403]
Other remedies for members – Wednesbury unreasonableness.....	[55.1.404]
Disputes among members	[55.1.405]
Trustees of charitable trusts – general principles	
No statutory contract	[55.1.501]
Trustee appointment and removal – by trustees and by the appointor ...	[55.1.502]
Appointment and removal of directors of corporate trustees.....	[55.1.503]
<i>External disputes</i>	
Introduction	
Overview.....	[55.1.601]
Intervention by NFP regulators	
Overview.....	[55.1.701]
Incorporation regulators	[55.1.702]
ATO	[55.1.703]
Objecting to an ATO refusal to endorse decision.....	[55.1.704]
Obligations for a NFP upon endorsement.....	[55.1.706]
Fundraising and minor gaming regulators	[55.1.707]
Other regulators – the ACCC	[55.1.708]
Attorney-General.....	[55.1.709]
Disputes involving trustees of charitable trusts	
Standing to sue trustees.....	[55.1.801]
Appointment and removal of trustees – intervention by the court.....	[55.1.802]
Trustees standing to vary trust terms	[55.1.803]
Disputes involving the trustee of Private Ancillary Funds	

CONTENTS

Private ancillary fund guidelines	[55.1.901]
Standing to sue for breach of the Guidelines	[55.1.902]
Standing to sue for breach of trustee duties	[55.1.903]
Standing of NFPs in public interest matters	
Overview	[55.1.1001]
Standing – common law	[55.1.1002]
Standing – express conferral by statute	[55.1.1003]
Costs – departure from the ordinary rule	[55.1.1004]
Indoor management rule	
Overview	[55.1.1101]
Right to sue and liability to be sued – contract and tort	
The separate entity doctrine	[55.1.1201]
Liability to be sued does not apply to members	[55.1.1202]
Liability may apply to directors and officers	[55.1.1203]
CLGs right to sue and be sued	[55.1.1204]
Incorporated associations right to sue and be sued	[55.1.1205]
Non-trading co-operatives right to sue and be sued	[55.1.1206]
Trustees of charitable trusts right to sue and be sued	[55.1.1207]
Statutory demands	
Overview	[55.1.1301]
Defamation	
Overview	[55.1.1401]

Collaborative & Cooperative Arrangements	35–1
Introduction	
General.....	[60.1.101]
What are collaborative and cooperative arrangements?.....	[60.1.102]
Why enter into collaborative or cooperative arrangements?	[60.1.103]
Emerging trends in collaborative and cooperative arrangements	[60.1.104]
Forms of collaborative and cooperative arrangements	
General.....	[60.1.201]
Joint venture.....	[60.1.202]
Partnership.....	[60.1.203]
Association.....	[60.1.204]
Company	[60.1.205]
Trust	[60.1.206]
Cooperatives	[60.1.207]
Licensing arrangements.....	[60.1.208]
Governance issues	
General.....	[60.1.301]
Rules of the collaboration	[60.1.302]
Purposes.....	[60.1.303]
Membership	[60.1.304]
Roles and responsibilities	[60.1.305]
Decision-making processes	[60.1.306]
Profits	[60.1.307]
Ownership of IP	[60.1.308]
Ownership of assets.....	[60.1.309]
Management of IP	[60.1.310]
Ownership and licensing of IP	[60.1.311]
Protection of Background IP	[60.1.312]
Structure and IP	[60.1.313]
Commercialisation and exploitation of IP	[60.1.314]
Taxation	[60.1.315]
Liability	[60.1.316]
CRC Program	
General.....	[60.1.401]
Establishing a CRC.....	[60.1.402]
Applying for CRC funding	[60.1.403]
Tendering	
Tendering as a consortium.....	[60.1.501]
Conclusion	
General.....	[60.1.601]

Winding Up	42-1
Introduction	
General.....	[75.1.101]
Unincorporated associations	
General.....	[75.1.201]
Incorporated associations	
Introduction	[75.1.301]
Deregistration by members	[75.1.302]
Deregistration by a court or regulator.....	[75.1.303]
Part 5.7 of the Corporations Act 2001	[75.1.304]
Companies limited by guarantee	
Introduction	[75.1.401]
Voluntary winding up	[75.1.402]
Court ordered winding up	[75.1.403]
Voluntary administration.....	[75.1.404]
Deregistration	[75.1.405]
Aboriginal and Torres Strait Islander corporations	
Introduction	[75.1.501]
Voluntary deregistration	[75.1.502]
Voluntary winding up	[75.1.503]
Compulsory Deregistration.....	[75.1.504]
Court-ordered winding up	[75.1.505]
Charitable trusts	
General.....	[75.1.601]
Deductible gift recipients	
General.....	[75.1.701]
Conclusion	
General.....	[75.1.801]

[The next text page is 201]

