
Handbook – Public Benevolent Institution Status

NQ Regional Aboriginal Corporation Languages Centre

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1 Legal and tax status

1.1 NQ Regional Aboriginal Corporation Languages Centre (NQRACL) was incorporated under the Aboriginal Councils and Associations Act 1976 (now the Corporations (Aboriginal and Torres Strait Islander) Act 2006) on 26th August 2005.

1.2 NQRACL has the power to do all things that an individual can do provided it is in furtherance of its purpose (set out in its constitution). In paragraph 3 of its constitution it provides that the purpose of NQRACL is:

The corporation is established as a public benevolent institution to provide direct relief of poverty, suffering, distress, misfortune, disability or helplessness to Aboriginal and Torres Strait Islander people living in Australia by assisting traditional owners and community groups to retrieve, reclaim and maintain the use and development of traditional language.

1.3 NQRACL is registered as a charitable institution under the subtype of public benevolent institution with the Australian Charities and Not-for-Profit Commission (**ACNC**). It has been endorsed by the ACNC as a PBI as the ACNC was satisfied that it is an institution which has charitable purposes of advancing social or public welfare and which provides relief to people suffering from disadvantage.

1.4 Information about NQRACL is on the ACNC Register, which can be accessed through its website. The website also features information and advice to help to run the charity as effectively as possible and to meet NQRACL's obligations to the ACNC. The ACNC Charity Portal is used to update the information about NQRACL available on the ACNC Register. You will need the username and unique password provided below to log into the Charity Portal. The log in details can only be used by NQRACL's responsible persons or other authorised people:

1.5 NQRACL is endorsed by the ATO as income tax exempt because it is a charity (under section 50-5 Income Tax Assessment Act 1997 (Cth) and a deductible gift recipient.

1.6 Being endorsed as income tax exempt, means the company is:

- (a) not required to pay income tax in Australia on its taxable income;
- (b) not required to lodge income tax returns in Australia, unless specifically asked to do so by the Commissioner of Taxation;
- (c) entitled to access GST concessions;
- (d) self regulatory but must regularly review its ongoing entitlement to endorsement; and

- (e) must advise the ACNC and the ATO if there is a change to its constitution.
- 1.7 Being a DGR entitles an entity to:
- (a) give a donor a receipt for a donation which will enable the donor to claim a tax deduction; and
 - (b) fringe benefits tax relief.
- 1.8 The documents evidencing the legal and tax status of the NQRACLCLC are:
- (a) Certificate of registration by ORIC dated 26th August 2005;
 - (b) Rule Book adopted on 22 April 2017;
 - (c) Notice of registration as a charity from ACNC dated 31 July 2017;
 - (d) Letter from the ATO about endorsement as a DGR;
 - (e) ABN Look up which is the website with the public register of the ATO
- 1.9 You should keep together the documents provided to the ACNC as a part of the application process and regularly review those that relate to operations and governance.

2 Registration as a charity

- 2.1 To remain entitled to endorsement as a charity, NQRACLCLC must:
- (a) be charitable and exist for the benefit of the public;
 - (b) be a not- for- profit entity; and
 - (c) pursue its purposes and conduct its activity principally in Australia (see paragraph 5.7.)

What does 'not for profit' mean?

- 2.2 The meaning of 'not- for- profit' is set by tax law and means that an entity is forbidden from distributing to or benefiting its members either during its operation or upon windup, unless the distribution is made for charitable purposes or in genuine compensation for services rendered.
- 2.3 Any distribution by NQRACLCLC must:
- (a) be in accordance with its purposes,
 - (b) be in accordance with any criteria around its tax concessions; and
 - (c) be in accordance with its constitution.

3 What is a public benevolent institution (PBI)?

- 3.1 The ACNC has published a Commissioner's Interpretation Statement on Public Benevolent Institutions (CIS 2016/3) which you will find on its website. You should review this from time to time.

- 3.2 In summary, to qualify as a PBI, an entity must :
- (a) be registered as a charity with the ACNC;
 - (b) be 'public' – have public involvement in its membership and governance;
 - (c) be an institution – have permanence and conduct activity;
 - (d) have the dominant purpose to provide benevolent relief to people in need of that relief.
- 3.3 An organisation is benevolent if it is organised, promoted or conducted for the relief of poverty or distress (sickness, disability, destitution, suffering, misfortune or helplessness). To qualify as a PBI, the poverty or distress that is relieved must be 'of such seriousness as will arouse community compassion and thus engender the provision of relief.' This usually includes people from disadvantaged backgrounds, migrants, refugees, people with a disability, people from remote communities, indigenous Australians, disaster relief, people suffering poverty, illness, long-term unemployed.
- 3.4 The activity of an organisation is a sign post to its purpose.
- 3.5 Currently the ACNC takes the view that provided the activity undertaken by the PBI is directed towards relieving the poverty or distress experienced by the people it assists, the PBI may:
- (a) itself directly give or provide the benevolent relief;
 - (b) provide the relief via, or in coordination with, related or associated entities;
 - (c) provide some of its services by agents or contractors; or
 - (d) fund another PBI.
- 3.6 NQRACLC itself undertakes the PBI activity. It can operate PBI activity in Australia and overseas.

4 Obligations arising out of registration as a charity with the ACNC

- 4.1 NQRACLC is registered as a charity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**), therefore NQRACLC and its directors must comply with:
- (a) the Corporations Act; and
 - (b) the ACNC Act including the 'Governance Standards' established by the regulations made under the ACNC Act.
- 4.2 Due to section 111L of the Corporations Act, some of the requirements of the Corporations Act imposed on a company are switched off because the company is registered as a charity. You should regularly review the ACNC website about this. It explains to whom you must report for various things. The link is <http://www.an\cnc.gov.au/ACNC/Edu/CLG.aspx>.
- 4.3 There is more information about the portal and ongoing obligations in the below links:
http://www.acnc.gov.au/ACNC/Comms/Med_R/MR_057.aspx
http://www.acnc.gov.au/ACNC/Edu/On_obgtns.aspx
http://www.acnc.gov.au/ACNC/Manage/ACNC/Edu/Mqe_charity.aspx

Directors Duties

- 4.4 The ACNC regards directors as ‘responsible persons’, as they are responsible for governing the charity itself, and each person who is identified as a responsible person by the ACNC, is bound to ensure that the charity complies with the requirements imposed on it by the ACNC Act and is also bound by the governance standards imposed by the ACNC Act.
- 4.5 The key duties of directors under the governance standards include:
- (a) to act with reasonable care and diligence;
 - (b) to act honestly and fairly in the best interests of the charity and for its charitable purposes;
 - (c) not to misuse their position or information they gain as a responsible person;
 - (d) to disclose conflicts of interest;
 - (e) to ensure that the financial affairs of the charity are managed responsibly; and
 - (f) not to allow the charity to operate while it is insolvent.
- 4.6 Generally, the duties mean that director’s should act with standards of integrity and common sense.

To manage financial affairs responsibly

- 4.7 As a minimum, directors are required to have financial management practices in place to ensure that a charity’s resources are used effectively and protected from misuse. Appropriate and tailored financial systems and processes, suitable to the size and circumstances of a charity and the complexity of its financial affairs, should be utilised in order to comply with this duty.

Not to allow the charity to operate while insolvent

- 4.8 Directors have a duty to prevent a charity trading while it is insolvent or where there are reasonable grounds for suspecting that is insolvent or will become insolvent if the charity incurs a particular debt. It must be ensured that the charity can pay its debts when they are due. Reasonable steps should be taken to prevent a charity from taking on more debt, including regular financial reviews.

Record keeping

- 4.9 Companies registered with the ACNC must keep written financial records that:
- (a) correctly record and explain its transactions and financial performance; and
 - (b) enable true and fair financial statements to be prepared and to be audited,
- so as to enable any recognised assessment activity to be carried out in relation to the company.
- 4.10 The company must retain records for seven years after the transaction, operations or acts covered by the records are completed.

Reporting

- 4.11 The company must lodge an annual information statement for each financial year.

- 4.12 Medium and large registered companies must give a financial report for a financial year, together with any auditor’s report or reviewer’s report that is required. Medium registered companies have the option to have annual financial reports audited or reviewed. However, large companies must have the annual financial reports audited.

Duty to notify

- 4.13 A company must notify the Commissioner in the approved form if any of the following circumstances occur:
- (a) its name has changed;
 - (b) its address for service has changed;
 - (c) an entity has ceased to be, or has become, a responsible entity of the registered entity; or
 - (d) its governing rules change.

5 Fund raising

- 5.1 Set out in the table below is a list of the possible sources of income for NQRACL and the document that NQRACL should provide in relation to that transaction:

Sources of income	Document
(a) donations by individuals Gifts over \$2.00 in cash or in property are tax deductible. Note not all forms of payments from individuals are donations for example funds raised by the sale of an article (promotion T-shirt) or the sale of food (e.g. a sausage sizzle) are not donations.	Receipt
(b) donations from corporate and other business entities	Receipt
(c) sponsorships This is a fee for service arrangement under which the sponsor receives a benefit for the funds it provides to the charity	Sponsorship agreement
(d) government funding	Funding agreement
(e) income generated through commercial activities	Service agreement or other contract
(f) distributions from public and private ancillary funds and some discretionary trusts	Receipt

- 5.2 An example of the receipt for a gift is below

Receipt	No.
Name of deductible gift recipient	
Australian Business Number (ABN) of DGR	
Received from	
Type of payment	
	(cash/cheque/property)
To the value of/ for the amount of	\$
Date of gift	
Received by	
	(signature)

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