



Anglican Church Diocese of Sydney

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21 December 2012

Circular to Ministers and Wardens

Notification obligations under the Australian Charities and Not-for-profits Commission

As advised in my recent circular memorandum of 5 December 2012, the new charities regulator, the Australian Charities and Not-for-profits Commission (ACNC), commenced operating on Monday 3 December 2012.

The ACNC's new website can be found at www.acnc.gov.au.

Your parish has a number of obligations under the ACNC. You should receive information about these obligations in the coming weeks from the ACNC itself. We will also provide information specifically to assist parishes to meet these obligations.

One obligation which starts applying immediately is notifying the ACNC about certain matters as they arise. In particular, you must notify the ACNC of the following changes to your parish that occur on or after 3 December 2012 –

- any change to the membership of your parish council
- any change to the legal name of your parish
- any change to the address and other contact details that should be used by the ACNC for sending communications to your parish

You have 28 days to notify the ACNC after you first become aware of these changes, unless your parish's annual revenue is less than \$250,000 in which case you have 60 days.

There is also an obligation to notify the ACNC about any change to the governing rules of the parish, namely the Parish Administration Ordinance 2008. It is intended that the Synod or Standing Committee will notify the ACNC of any such change on behalf of all parishes as the need arises.

Further comments on these notification obligations follow.

Please note that the following comments apply to the main or only ABN used by your parish and assume that this ABN represents the "entity" which is your parish. If your parish uses more than one ABN, you will have separate notification obligations to the ACNC in relation to each entity represented by an additional ABN. These separate obligations are not addressed in this circular. For this reason, if your parish currently uses more than one ABN, you are encouraged to review their use and take steps to revoke any unnecessary additional ABN(s). We intend providing further guidance about when additional ABN(s) may be unnecessary and therefore might be revoked once we have reviewed the information recently provided by parishes in our on-line survey on ACNC transition.

Notifying changes to the membership of your parish council

Changes to the membership of the parish council (ie, the “responsible persons” for your parish) must be notified to the ACNC using “Form 3A: Responsible person change” which can be found under “Manage my charity” on the ACNC’s website. This includes any change to your minister and those wardens who are members of the parish council.

Details of change and evidence change occurred in accordance with governing rules

Section B of Form 3A requires you to provide details of the change and evidence that the change occurred in accordance with the parish’s governing rules (ie, the Parish Administration Ordinance 2008). It is not entirely clear how far the ACNC expects parishes to go to satisfy this requirement. However, for the time being, it is suggested you provide the following with the completed form (as relevant) –

- For a person who is newly elected by the annual general meeting or newly appointed by the parish council as a warden or parish councillor, an extract of the minutes of the relevant annual general meeting or parish council meeting at which the warden or parish councillor was elected or appointed.
- For a person who is newly appointed by the minister as a warden or parish councillor, a brief statement explaining that the person was appointed to this office by the minister under the Parish Administration Ordinance 2008.
- For a new minister, a brief statement explaining that the new minister has been appointed and licensed by the Archbishop.
- For a person who has ceased being a member of the parish council for any reason (eg resignation, election of successor, death etc), a brief statement explaining why the person ceased being a member under the Parish Administration Ordinance 2008.

Private benefit

Section E of Form 3A requires you to indicate whether any new member of the parish council receives a “private benefit” from the parish.

Again, it is not entirely clear how the concept of “private benefit” applies in the parish context. However the guidance provided by the ACNC on its website suggests that these are benefits received in a private capacity (such as money or services) but do not include any benefit obtained from services which the parish provides to the public as part of its ministry, such as attending services of public worship.

While you will need to consider whether a new member of parish council receives any private benefit on a case by case basis, it is suggested that, as a minimum, you respond as follows (if relevant) –

- For any person who becomes a member of the parish council and who provides any services to the parish for payment, a brief description of the nature of these arrangements (bearing in mind that the Parish Administration Ordinance 2008 provides that a warden cannot be an employee of the parish and a parish councillor cannot be the auditor of the financial statements of the wardens).
- For the appointment of a new minister, a brief statement that he receives the applicable stipend, allowances and other benefits for his office as the minister of the parish.

Parallel reports to Diocesan Registrar

Notifications to the ACNC about changes to the membership of the parish council do not replace the need for the minister to report to the Registrar changes to the wardens and other parish councillors under the Parish Administration Ordinance 2008 (rule 3.19 Schedule 1 and rule 3.18 Schedule 2). However, in due course, it may be possible to streamline these separate reporting obligations.

Notifying changes to the legal name of your parish

Any change to the legal name of your parish should be notified using “Form 3B Notification of change of charity details”. The legal name of your parish is the name that appears in the ACNC Register for the entity which is your parish (see ACNC website under “Find a charity”).

A change to the legal name of your parish is not a frequent event. It occurs when the Archbishop designates the name of your parish at the request of the minister and parish council under the Parish Administration Ordinance 2008 (rule 9.1 Schedules 1 and 2). One issue that will need to be addressed in due course is the fact that, for various historical reasons, the current legal name of the parish (appearing on the ACNC Register) is usually different to the name of the parish last designated by the Archbishop (appearing in the Yearbook). We are currently determining whether this issue can be resolved by a single notification to the ACNC by the Synod or Standing Committee on behalf of parishes.

Form 3B asks that a copy of your updated governing rules be provided in support of any name change on the basis that the new name will appear in such rules. However since the current name of your parish does not appear in its governing rules (ie, the Parish Administration Ordinance 2008), providing a copy of the instrument by which the Archbishop designates the new name of your parish should be sufficient.

Notifying changes to the address for service for your parish (including contact persons)

Any change to the address to which the ACNC should send communications to your parish and any change to the person who is authorised to be your contact person should be notified using “Form 3B Notification of change of charity details”.

The ACNC indicates in Section D of Form 3B that if an email address is nominated as the relevant address for sending correspondence to your parish, the ACNC will send all correspondence to the email address. In order to ensure continuity of correspondence from the ACNC, it is suggested, where possible, an email address for the parish office or the minister is nominated.

Any person can be authorised to be your contact person. It is possible (and indeed desirable) to authorise more than one contact person for the parish. It is suggested, for the sake of continuity, that one of the contact persons be the minister.

Signing the declaration in a completed notification form

There are two ways in which the declaration at the end of a completed notification form can be signed.

For most parishes, the declaration is best signed by the minister or other member of the parish council as a “responsible person” for the parish.

However for some, particularly larger, parishes, it may be convenient for another person to sign the declaration (for example, an Office Administrator or Treasurer). In this case it is necessary for a member of the parish council to formally authorise that person as an agent. The requirements for authorising an agent are referred to at the end of both Forms 3A and 3B under “Before you can complete this declaration as agent”. The authorisation must be given to the agent, and a copy must be kept by the parish for 7 years and be provided to the ACNC on request.

Please note that a failure to comply with the requirements relating to the authorisation of an agent may attract an administrative penalty.

Timeframe for notifying changes

You must notify the ACNC of the changes referred to in this circular no later than 28 days after you first become aware of the change, although if your parish has an annual revenue of less than \$250,000 or more, you may notify these changes within 60 days.

Please note that administrative penalties may apply if your parish fails to make these notifications within the requisite time.

Confirmation of details with the ACNC in the New Year

The obligation to notify the ACNC only arises when there is a change to your details on or after 3 December 2012. However we understand that in the New Year the ACNC will be contacting all parishes directly to request that they confirm all their details so that the ACNC Register can be populated with complete information about parishes, including details which have not changed since 3 December 2012.

We intend sending another circular to parishes about how to respond to this request from the ACNC once the request is made.

Finally

If you have any questions about your notification obligations to the ACNC, please contact Steve Lucas at szl@sydney.anglican.asn.au or on 9265 1647 for assistance.



ROBERT WICKS
Diocesan Secretary