

Register of Harm Prevention Charities

Guidelines 2003

Revised 3 December 2012, 7 August 2013 and 21 March 2014

A Commonwealth Tax Deductibility Scheme for the promotion of harm prevention charities

Table of Contents

[Register of Harm Prevention Charities 1](#_Toc383609105)

[Guidelines 2003 1](#_Toc383609106)

[Revised 3 December 2012, 7 August 2013 and 21 March 2014 1](#_Toc383609107)

[A Commonwealth Tax Deductibility Scheme for the promotion of harm prevention charities 1](#_Toc383609108)

[General Information 4](#_Toc383609109)

[1. Background 4](#_Toc383609110)

[2. Meaning of a Harm Prevention Charity 4](#_Toc383609111)

[3. Application Process 5](#_Toc383609112)

[Step 1 5](#_Toc383609113)

[Step 2 5](#_Toc383609114)

[Step 3 5](#_Toc383609115)

[4. Assessment Process 5](#_Toc383609116)

[5. Donations of Gifts of Property over $5000 6](#_Toc383609117)

[6. Donations and Sponsorship 6](#_Toc383609118)

[7. Bequests 6](#_Toc383609119)

[8. Registered Charities with Commonwealth tax concessions 7](#_Toc383609120)

[9. Contact Information 7](#_Toc383609121)

[Section 1 – Applicant Details 8](#_Toc383609122)

[1.1 Australian Business Number 8](#_Toc383609123)

[1.2 Details of the Institution 8](#_Toc383609124)

[1.3 Endorsement of Public Fund 8](#_Toc383609125)

[1.4 Relevant Item Number 8](#_Toc383609126)

[1.5 Located in Australia 8](#_Toc383609127)

[1.6 Financial Statement 8](#_Toc383609128)

[1.7 Statistical Information 9](#_Toc383609129)

[1.8 Public Fund Account 9](#_Toc383609130)

[1.9 Public Fund Management Committee 9](#_Toc383609131)

[Section 2 – Mandatory Inclusions – Harm Prevention Charities 11](#_Toc383609132)

[2.1. Charitable Institution 11](#_Toc383609133)

[2.2. Principal Activity must be for the Promotion of Harm Prevention 11](#_Toc383609134)

[2.3. Establishing and Maintaining a Public Fund 12](#_Toc383609135)

[2.5. Agreement to Abide by Ministerial Rules 13](#_Toc383609136)

[Ministerial Rule 1 13](#_Toc383609137)

[Ministerial Rule 2 13](#_Toc383609138)

[2.6. Informing the Department 13](#_Toc383609139)

[2.7. Conduit Policy 14](#_Toc383609140)

[2.8. Winding Up of Public Fund 14](#_Toc383609141)

[2.9. Statistical Information 14](#_Toc383609142)

[Section 3 – Mandatory Inclusions – Public Funds 15](#_Toc383609143)

[3.1. Objective of the fund 15](#_Toc383609144)

[3.2. Seek funds from the public 15](#_Toc383609145)

[3.3. Separate bank account for the fund 15](#_Toc383609146)

[3.4. Public Fund Management Committee 15](#_Toc383609147)

[3.5. Income 16](#_Toc383609148)

[3.6. Not-for-Profit 16](#_Toc383609149)

[3.7. Receipts 17](#_Toc383609150)

[Section 4 – Enclosures to Application 18](#_Toc383609151)

[4.1. Essential Items 18](#_Toc383609152)

[4.1.1. Notification as a registered charity from the ACNC 18](#_Toc383609153)

[4.1.2. Constitutional documents 18](#_Toc383609154)

[4.1.3. Public Fund Management Committee Nomination Forms 18](#_Toc383609155)

[4.1.4. Description of your institution 18](#_Toc383609156)

[4.2. Additional Items that can assist Assessment 18](#_Toc383609157)

[Section 5 – Removal Process 19](#_Toc383609158)

[5.1. Grounds for removal of a harm prevention charity 19](#_Toc383609159)

[5.2. Process of Removal 19](#_Toc383609160)

[Section 6 – Model Clauses for Harm Prevention Charities 20](#_Toc383609161)

[6.1. ‘Establishment of the Public Fund’ clause 20](#_Toc383609162)

[6.2. ‘Requirements of the Public Fund’ clause 20](#_Toc383609163)

[6.3 ‘Ministerial Rules’ clause 20](#_Toc383609164)

[6.4. ‘Not-for-profit’ clause 20](#_Toc383609165)

[6.5. ‘Conduit Policy’ clause 20](#_Toc383609166)

[6.6. ‘Winding-up’ clause 20](#_Toc383609167)

[6.7. ‘Statistical Information’ clause 21](#_Toc383609168)

[Section 7 – Model Rules for Public Funds 22](#_Toc383609169)

[General Information 23](#_Toc383609170)

[Section 1 – Applicant Details 23](#_Toc383609171)

[Section 2 – Mandatory Inclusions – Harm Prevention Charities 23](#_Toc383609172)

[Section 3 – Mandatory Inclusions – Public Funds 24](#_Toc383609173)

[Section 4 – Enclosures to Application 24](#_Toc383609174)

[Section 5 – Removal Process 24](#_Toc383609175)

[Section 6 – Model Clauses for Harm Prevention charities 24](#_Toc383609176)

[Section 7 – Model Rules for Public Funds 19 24](#_Toc383609177)

# General Information

The objective of the Register is to assist harm prevention charities to obtain financial support from the community for use in the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings by providing a tax incentive mechanism for the community to donate to those charities.

## Background

Following on from the *Report of the Inquiry into the Definition of Charities and Related Institutions* in June 2001, the Commonwealth Government has decided to establish a new register of charities whose principal activities promote the prevention or the control of behaviour that is harmful or abusive to human beings. This will assist these charities in attracting public support for their activities.

The new category for harm prevention charities applies from 1 July 2003.

Gifts made to a public fund on the Register are made deductible by Section 30-15 of the *Income Tax Assessment Act* *1997* (ITAA). The requirements for the admission of harm prevention charities on the Register are prescribed in Subdivision 30–EA of the ITAA.

The Register is maintained by the Secretary of the Department of Social Services (the department) in accordance with directions from the Minister for Social Services (the Minister) and the Treasurer.

## Meaning of a Harm Prevention Charity

The meaning of a harm prevention charity as referred to in Section 30–288 of the ITAA

* A harm prevention charity must be a registered charity that is endorsed as exempt from tax under Subdivision 50-B of the ITAA. Before seeking entry on the Register, institutions and their public fund must first register as a charity with the Australian Charities and Not-for-Profits Commission (ACNC) and then obtain endorsement as a tax concession charity from the Australian Taxation Office. More information is available from the ACNC and ATO websites.
* A charitable institution is a charity that is an institution.
* The criteria to decide whether or not an entity is a charity are established in common law. A charity is an entity established for charitable purposes. Charitable purposes are the relief of poverty, the relief of the needs of the aged, the relief of sickness or distress, the advancement of religion, the advancement of education and other purposes beneficial to the community.
* Whether an entity has the character of an institution will depend on a range of features including its activities, size, permanence, purposes and recognition. Incorporation is not enough, on its own, to show that an entity is an institution. A charitable institution would not usually include an entity that is established, controlled and operated by family members and friends.
* In order for an institution to be a harm prevention charity, the principal activity of the institution must be the promotion of the prevention or the control of human behaviour that is harmful or abusive to human beings.
* Behaviour that is harmful or abusive means one or more of the following:
* emotional abuse
* sexual abuse
* physical abuse
* suicide
* self-harm
* substance abuse
* harmful gambling.

[Schedule 12, item 6, definition of ‘behaviour that is harmful or abusive’ in subsection 995-1(1)]

## Application Process

Under the ITAA, a harm prevention charity must be a registered charity that is endorsed as exempt from tax under Subdivision 50-B of ITAA.

### Step 1

Before seeking entry on the Register, institutions and their public fund must first register as a charity with the Australian Charities and Not-for-Profits Commission and then obtain endorsement as a tax concession charity from the Australian Taxation Office. A registered charity must comply with the ACNC and the ATO requirements. To be a registered charity with Commonwealth tax concessions, a charity and their public fund will each need to have an Australian Business Number (ABN).

More information is available from the ACNC and ATO websites.

### Step 2

Charities, although already registered with the ACNC and endorsed as a tax concession charity from the ATO , may have to make amendments to their constitutional documents (as provided in the [model clauses for harm prevention charities](#_Section_2_–) in Section 2 of these Guidelines), in order to meet the requirements for entry on the Register.

The department can advise charities on amendments. To assist charities the department will assess draft constitutional documents against the requirements of these Guidelines.

### Step 3

Complete the attached application form for entry to the Register and for Deductible Gift Recipient (DGR) status.

## Assessment Process

The department carries out an initial assessment of all applications for entry onto the Register. A check is made to ensure that the institution meets the legislative requirements of the ITAA and the requirements of ministerial rules and the Guidelines.

Applications are then referred to the minister. The minister must be satisfied that an institution is a harm prevention charity and recommend to the Treasurer that it be entered on the Register.

When the Treasurer has approved the recommendation, the ATO is advised and will then process each institution’s application for endorsement of its public fund as a DGR and will issue each complying institution with written notification of their endorsement.

When notified of the Treasurer’s approval, the department advises each applicant in writing of their inclusion on the Register. The date of entry on the Register is the date of the Treasurer’s written approval of the institution.

## Donations of Gifts of Property over $5000

Item 1, in the table in section 30-15 of the ITAA states that a fund, authority or institution covered by an item in any of the tables in Subdivision 30-B can receive donations of property valued by the Commissioner at more than $5000. Health promotion charities will qualify.

## Donations and Sponsorship

What is the difference between a donation and sponsorship?

A donation is made unconditionally – the donor gives of his/her free will to an institution that is free to determine the purpose for which the donation will be used, within the confines of that charity’s objectives. The donor may state a preference as to how it will use the gift.

The donor must not receive any pecuniary or other material benefit in return for the gift including such benefits as membership or newsletters. Details relating to tax deductions for donations are found under Division 30 (the gift provisions) of the ITAA. Further information can be obtained from the Gift Pack produced by the Australian Taxation Office.

Corporate sponsorship is a payment made by a business in exchange for promotional or advertising services, which creates mutual benefits for both the institution and sponsoring business. Partnerships through sponsorship arrangements are tax deductible to business under Section 8-1 of the ITAA.

For the purpose of the ITAA, donations are gifts made unconditionally under the terms of Subdivision 30-EA. Therefore, corporate sponsorships are not gifts, and sponsorship monies must not be placed in the public fund account. Corporate sponsorships are payments made by a business in exchange for promotional, advertising or other services.

## Bequests

Testamentary gifts (bequests) are not tax deductible (see Subsection 30-15(2) of the ITAA). The term bequest applies not only to those gifts specifically bequeathed under a will (or made by trustees as a result of a requirement placed on them by a will) but also to any gifts made by trustees out of the estate before the estate is settled. Consequently, donations by executors of deceased estates are not tax deductible.

## Registered Charities with Commonwealth tax concessions

This is the ‘‘registration’ referred to Step 1 of the application process. It is mandatory for eligibility for entry on the Register.

## Contact Information

If, after reading the Guidelines, you have queries about your application, please contact:

Register of Harm Prevention Charities

Department of Social Services

PO Box 7576 – Canberra Business Centre ACT 2610

Telephone: 1800 441 242

Email: harmpreventioncharitiesregister@dss.gov.au

# Section 1 – Applicant Details

## Australian Business Number

A registered charity must comply with the ACNC and ATO requirements. To be a registered charity with access to Commonwealth tax concessions, a charity and their public fund will each need to have an Australian Business Number (ABN).

For details on applying for an ABN contact the Australian Tax Office on 1300 130 248 or visit www.ato.gov.au

## Details of the Institution

Please include the full name of your institution. The name should be the same as that on the notification as a registered charity or the founding documents of your institution.

The contact officer’s name should be a person who is able to field queries from the department about the application. Ideally, the contact person should be a public office holder of that institution.

## Endorsement of Public Fund

All institutions seeking entry to the Register have to establish and maintain a public fund. It is the public fund that is endorsed as a deductible gift recipient. Therefore, this question is already completed for you on the application form.

The name of the public fund must be the same as the name that is in the establishment clause of the public fund in your constitution or other founding document.

## Relevant Item Number

This is an ATO requirement that is already filled out for you on the application form. The number for the Prevention of Harm Category is 4.1.4.

## Located in Australia

In order to be eligible for entry to the Register, charities and their public funds have to be physically located in Australia and provide their services in Australia.

## Financial Statement

If you are an established institution, then please identify the year that you last prepared an audited annual financial statement. If you have only recently been established as an institution, and have not yet been required to prepare audited accounts, then write ‘n/a’ on the application form.

## Statistical Information

Under this section, you are required to identify your total income for the period identified in the financial statement and then to provide the remaining information on a percentage basis.

If you are a new institution (ie have not been operating for more than a year), you are not required to answer this section.

## Public Fund Account

The public fund must have its own bank account for the deposit of donated monies, and monies earned from public fund assets.

## Public Fund Management Committee

A management committee appointed by the institution must manage the public fund. It can be made up of members from the institution’s management committee or be a sub-committee of the institution’s management committee. It can also be a committee made up entirely of responsible persons from the community who are not members of the institution.

To qualify as a public fund, a majority of the administrators of the fund are required to have the requisite degree of responsibility to the wider Australian community by virtue of their tenure of public office or their position in the community etc. These persons must have a wider degree of responsibility to the community as a whole than just their obligation to the institution seeking entry to the Register. Holding office in the applicant institution will not qualify an individual as a ‘responsible person’.

The minimum requirement for the number of members appointed to the committee to manage the fund is three and the majority of the members of the committee must be deemed by the department to be a ‘responsible person’.

A public fund committee member nomination form is attached. A nomination form must be filled in for each committee member for assessment by the department as a ‘responsible person’.

The following is a guide to who may qualify as a ‘responsible person’:

* people with honours (eg OBE, KCMG, AO )
* clergy and church authorities
* trustees or board members of a not-for-profit school or college
* Justice of the Peace
* judges/magistrates
* public servants with more than five years’ service
* barristers/solicitors
* doctors
* accountants (must be CPA, ASA, ICA or NIA registered)
* persons holding public or elected office:
	+ mayors
	+ town clerks
	+ councillors
	+ members of parliament
	+ directors of large public companies
	+ academics or teachers with more than five years’ experience
	+ people who hold (or have held) other public positions (eg member of the Australia Council)
	+ past or present office holders of other community charities (eg President of Parent an Citizens Association, Secretary of Lions, Treasurer of Rotary).

If doubt exists in any particular case, please contact the department for advice.

#

# Section 2 – Mandatory Inclusions – Harm Prevention Charities

## Charitable Institution

Refer to Subsection 30-288(B) of the ITAA

A harm prevention charity must be a registered charity that is endorsed as exempt from tax under Subdivision 50-B of ITAA. Before seeking entry on the Register, institutions and their public fund must first register as a charity with Commonwealth tax concessions from the Australian Charities and Not-for-Profits Commission and then obtain endorsement as a tax concession charity from the Australian Taxation Office.

A charitable institution is a charity that is an institution.

The criteria to decide whether or not an entity is a charity are established in common law. A charity is an entity established for charitable purposes. Charitable purposes are the relief of poverty, the relief of the needs of the aged, the relief of sickness or distress, the advancement of religion, the advancement of education and other purposes beneficial to the community.

Whether an entity has the character of an institution will depend on a range of features including its activities, size, permanence, purposes and recognition. Incorporation is not enough, on its own, to show that an entity is an institution. A charitable institution would not usually include an entity that is established, controlled and operated by family members and friends.

## Principal Activity must be for the Promotion of Harm Prevention

In order for an institution to be a harm prevention charity, the principal activity of the institution must be the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings.

[Schedule 12, item 4, section 30-228, subsection 30-289I]

‘Behaviour that is harmful or abusive’ means one or more of the following:

* emotional abuse
* sexual abuse
* physical abuse
* suicide
* self-harm
* substance abuse
* harmful gambling

[Schedule 12, item 6, definition of ‘behaviour that is harmful or abusive’ in subsection 995-1(1)]

## Establishing and Maintaining a Public Fund

Refer to Section 30-289 of the ITAA and Taxation Ruling TR 95/27

A harm prevention charity must establish and maintain a public fund:

1. to which gifts of money or property for its principal activity are to be made and
2. to which any money received because of such gifts is to be credited and
3. that does not receive any other money or property.

A public fund has:

* its own name
* its own objects (in the context of the Register, the promotion of harm prevention)
* its own management committee
* its own bank account (separate to the charitable institution) and
* its own rules.

The fund is public in the sense that it is to be administered by a committee of persons of whom a majority has a degree of responsibility to the wider community in Australia. These persons must demonstrate a commitment to the community outside of the harm prevention charity.

Both the harm prevention charity and the public fund it maintains are entered on the Register. The public fund must therefore be established and maintained as an entity distinct from the harm prevention charity.

The harm prevention charity must authorise the establishment of the public fund by including an establishment clause in its constitutional document. The clause must clearly establish the public fund as a distinct entity.

Harm prevention charities are encouraged to give their public funds distinctive names so as to identify the public fund from the harm prevention charity. It is preferable to keep the public fund name as short as possible.

It is acceptable to use the institution’s name as the foundation of the public fund’s name but the words ‘incorporated’ and ‘limited’ should not be included. The word ‘fund’ must be used in the name of the public fund, preferably at the end of the name.

It is wise to check and see if a public fund name is recorded already on the Register by contacting the department on 1800 441 242

##

## Agreement to Abide by Ministerial Rules

A harm prevention charity must agree to comply with any rules that the Treasurer and the minister make to ensure that gifts made to the fund are used only for its principal activity.

Harm prevention charities wanting to be on the Register must include a clause in their constitutional documents to say that they will accept any rule the minister makes to ensure that gifts made to public funds will only be used for the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings.

There are currently two ministerial rules.

### Ministerial Rule 1

A harm prevention charity listed on the Register must answer all questions required by the department stated on the annual statistical return form. It is to provide, with the statistical return, an audited financial statement for itself and its public fund. The statement is to provide information on the expenditure of public fund monies and the management of public fund assets.

### Ministerial Rule 2

A harm prevention charity listed on the Register must inform the department as soon as possible:

* if it changes its principal activity; or
* if it changes its name or the name of its public fund ;or
* if there is any change to the membership of the management committee of the public fund; or
* if there has been any departure from the [model](#_Section_7_–) rules of the public funds; or
* if it, or its public fund, suffers any financial difficulties.

## Informing the Department

Refer to Ministerial Rule 2 above. As both the name of the institution and the name of its public fund are entered onto the Register, it is essential that the department is informed if either the harm prevention charity and/or its public fund name are changed.

Whenever a change occurs on the management committee of the public fund, a nomination form is required to be submitted to the department for assessment for all proposed members. The department is responsible for assessing proposed members for ‘responsible person’ status.

It is the department’s responsibility to ensure that a majority of ‘responsible persons’ administer the management committee.

The department must also be informed if there is any departure, in your constitutional document, from the [Model Rules for Public Funds](#_Section_7_–) for your public funds.

## Conduit Policy

Refer to Subsection 30-289A(1) of the ITAA

The institution must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons. The conduit policy applies to the behaviour of a potential donor to a harm prevention charity and its public fund. A harm prevention charity must not act as a collection agency for tax-deductible donations intended by a donor to be passed on to another institution or person.

## Winding Up of Public Fund

Subsection 30-289A(2) of the ITAA states

A harm prevention charity must have a clause/rule providing that, if the public fund is wound up, any surplus assets of the fund are to be transferred to another fund that is on the Register.

## Statistical Information

Subsection 20-289A(3) of the ITAA states

Harm prevention charities must provide the department with statistical information about the donations and gifts made to the public fund for a financial year within four months of the end of that year.

Harm prevention charities must include the following information in their annual statistical returns:

* to provide information on the expenditure of public fund monies and the management of public fund assets
* to provide audited financial statements for the financial year for the harm prevention charity and
* to answer any questions about the public fund.

[See Agreement to Abide by Ministerial Rules](#_Agreement_to_abide) 2.4

This will involve completing a statistical return form provided by the department to harm prevention charities upon being admitted to the register.

# Section 3 – Mandatory Inclusions – Public Funds

The public fund must have its own rules, which must be inserted into the harm prevention charity’s constitutional documents.

A copy of the Register’s [Model Rules for Public Funds](#_Section_7_–) is included at the end of these Guidelines.

## Objective of the fund

The objective of the public fund is to support the principal objectives/activities of the harm prevention charity and which must be the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings.

## Seek funds from the public

Harm prevention charities listed on the Register must actively seek donations of money or property from the community in order to maintain their tax deductibility status.

## Separate bank account for the fund

Each harm prevention charity seeking entry to the Register must open a bank account for its public fund. Gifts to the public fund must be kept separate from any other funds of the harm prevention charity. Only gifts of money or property must be placed in the public fund’s account. Sponsorship monies or testamentary gifts must not be deposited into the fund’s bank account but rather be deposited into one of the harm prevention charities other accounts.

## Public Fund Management Committee

A management committee appointed by the institution must manage the public fund. It can be made up of members from the institution’s management committee or be a sub-committee of the institution’s management committee. It can also be a committee made up entirely of responsible persons from the community who are not members of the institution.

To qualify as a public fund, a majority of the administrators of the fund are required to have the requisite degree of responsibility to the wider Australian community by virtue of their tenure of public office or their position in the community etc. These persons must have a wider degree of responsibility to the community as a whole than just their obligation to the institution seeking entry to the Register. Holding office in the applicant institution will not qualify an individual as a ‘responsible person’.

The minimum requirement for the number of members appointed to the committee to manage the fund is three and the majority of the members of the committee must be deemed by the department to be ‘responsible persons’.

A public fund committee member nomination form is attached. A nomination form must be filled in for each committee member for assessment by the department as a ‘responsible person’.

The following is a guide to who may qualify as ‘responsible persons’:

* people with honours (eg OBE, KCMG, AO )
* clergy and church authorities
* trustees or board members of a not-for-profit school or college
* Justice of the Peace
* judges/magistrates
* public servants with more than five years service
* barristers/solicitors
* doctors
* accountants (must be CPA, ASA, ICA or NIA registered)
* persons holding public or elected office:
	+ mayors
	+ town clerks
	+ councillors
	+ members of parliament;
	+ directors of large public companies
	+ academics or teachers with more than five years experience;
	+ people who hold (or have held) other public positions (eg member of the Australia Council)
	+ past or present office holders of other community charities (eg president of parent an citizens association, Secretary of Lions, Treasurer of Rotary)

If doubt exists in any particular case, please contact the department for advice.

## Income

Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the fund.

The release of monies from the public fund account and the management of, and sale of, public fund assets must be authorised by the fund’s management committee. Members of the public fund management committee permanently located in Australia must be the only signatories to the public fund account.

## Not-for-Profit

It is a requirement of both the harm prevention charity and the public fund that they be operated on a not-for-profit basis.

## Receipts

Receipts must be issued in the name of the public fund. Donations with a value of less than $2.00 are not allowable deductions.

To ensure tax deductibility of donation, receipts issued in the name of a harm prevention charity public fund should contain the following elements:

* the number of the receipt;
* the date the donation was received;
* name of the harm prevention charity;
* the harm prevention charities Australian Business Number (ABN);
* name of the fund;
* signature of a person authorised to act on behalf of the fund;
* name of the donor;
* an indication that the fund is listed on the register; and
* the amount of the gift.

The following is an example of a receipt which contains all the required elements:

Name of institution

(ABN Number)

No\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Received from $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Representing a donation to the ( name of fund)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Received by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The (name of fund) is a public fund listed on the Register of Harm Prevention Charities under Subdivision 30-EA of *the Income Tax Assessment Act 1997*

# Section 4 – Enclosures to Application

## Essential Items

###  Notification as a registered charity from the ACNC

Please provide the department along with your application a copy of the notification as a registered charity from the ACNC and endorsement as a tax concession charity from the ATO for the institution and the public fund.

### Constitutional documents

The constitutional documents (which may include a harm prevention charity’s constitution, memorandum and articles of association, deed of trust or settlement etc) must contain all the amendments required by the Guidelines and be provided with your application to the department. The amendments must be approved by the appropriate state authority, normally a bureau for consumer affairs before a formal application is submitted to this department.

### Public Fund Management Committee Nomination Forms

A [nomination form](file:///%5C%5CPRINFNAS002N%5CMicrosoft%5CWindows%5CTemporary%20Internet%20Files%5CContent.Outlook%5CForms%5CMember%20Nomination%20Form%5CMember%20nomination%20form.doc) for each member of the management committee of the public fund must be submitted to the department along with your application. The department will assess each member against the Guideline’s criteria for ‘responsible person’.

It is the department’s responsibility to ensure that there is a majority of ‘responsible persons’ administering the management committee of the public fund.

### Description of your institution

A brief description of your institution and its activities must be included with your formal application. The description will be included in a brief to the minister for her consideration of the application.

## Additional Items that can assist Assessment

* most recent annual report
* most recent audited financial statement
* most recent publication (eg newsletter, publication, information sheet, membership information etc).

# Section 5 – Removal Process

The ITAA allows the minister and the Treasurer to direct the removal of a harm prevention charity from the Register.

The process of removal endeavours to be transparent, fair and accountable.

## Grounds for removal of a harm prevention charity

The grounds for removing a harm prevention charity from the Register include:

* no longer meeting the requirements of the ITAA; or
* not collecting tax-deductible donations from the public; or
* not using donations to the public fund for the principal activities; of promoting the prevention or control of behaviour that is harmful; or abusive to human beings; or
* not adhering to the [Model Rules for Public Funds](#_Section_7_–);
* in the event of conducting illegal activities.

## Process of Removal

The process will involve two warning letters.

The first letter will be posted to the harm prevention charity requesting a response within three months. If a satisfactory response is not received within the three months of the sending of the first letter, then a second letter will be sent.

A satisfactory response to the second letter is also required within three months.

If such a response is not received within that time, or if the response is unsatisfactory, the department will submit an instrument of removal for consideration by the minister and the treasurer.

# Section 6 – Model Clauses for Harm Prevention Charities

The clauses below reflect the requirements of the ITAA and [ministerial rules](#_Agreement_to_abide) and must be included in your constitutional documents. Ideally, the ‘establishment of the public fund’ clause should be placed with the objects of the harm prevention charity.

## ‘Establishment of the Public Fund’ clause

To establish and maintain a public fund to be called the [state name of public fund] for the specific purpose of the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings. The fund is established to receive all gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. The fund must not receive any other money or property into its account and it must comply with Subdivision 30-EA of ITAA*.* The trustee [name of harm prevention charity] intends that the public fund be established and maintained as a trust.

## ‘Requirements of the Public Fund’ clause

The harm prevention charity must inform the Department of Social Services as soon as possible if:

* it changes its principal activity or
* it changes its name or the name of its public fund or
* there is any change to the membership of the management committee of the public fund or
* there has been any departure from the model rules for public funds located in the *Guidelines to the Register of Harm Prevention* or
* it or its public fund, suffers any financial difficulties.

## ‘Ministerial Rules’ clause

The harm prevention charity agrees to comply with any rules that the Minister for Social Services and the Treasurer may make to ensure that gifts made to the fund are only used for its principal activity.

## ‘Not-for-profit’ clause

The income and property of the institution shall be used and applied solely in promotion of its objects and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to members, directors, or trustees of the harm prevention charity.

## ‘Conduit Policy’ clause

The institution must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons.

## ‘Winding-up’ clause

In the case of the winding-up of the Fund, any surplus assets are to be transferred to another fund with similar objectives that is on the Register for Harm Prevention Charities.

## ‘Statistical Information’ clause

The public fund will provide statistical information on donations requested by the department within four months of the end of the financial year.

An audited financial statement for the harm prevention charity and its public fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of public fund monies and the management of public fund assets.

# Section 7 – Model Rules for Public Funds

These model rules for public funds reflect the requirements of taxation policy especially Taxation Ruling TR 95/27. The rules must be inserted into your constitutional documents.

|  |  |
| --- | --- |
| 1. | The objective of the fund is to promote the prevention or the control of behaviour that is harmful or abusive to human beings. |
| 2. | Members of the public are to be invited to make gifts of money or property to the fund for the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings. |
| 3. | Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the funds. |
| 4. | A separate bank account is to be opened to deposit money donated to the fund, including interest accruing thereon, and gifts to it are to be kept separate from other funds of the institution. |
| 5. | Receipts are to be issued in the name of the fund and proper accounting records and procedures are to be kept and used for the fund.  |
| 6. | The fund will be operated on a not-for-profit basis. |
| 7. | A committee of management of no fewer than three persons will administer the fund. The committee will be appointed by the institution. A majority of the members of the committee are required to be ‘responsible persons’ as defined by the Guidelines to the Register of Harm Prevention. |