



Australian Government

Department of Social Services

Register of Harm Prevention Charities Guidelines

June 2017

A Commonwealth tax deductibility initiative for Harm Prevention Charities whose principal activity is to promote the prevention or the control of behaviour that is harmful or abusive to human beings.

Behaviour means one or more of the following:
emotional abuse; sexual abuse; physical abuse; suicide;
self harm; substance abuse; harmful gambling.

Register of Harm Prevention Charities (the Register)

Contact information

For further information or assistance on admission to the Register, please contact:

Telephone: 1800 441 242

Email: harmpreventioncharitiesregister@dss.gov.au

Website: www.dss.gov.au

Postal address:

Register of Harm Prevention Charities
Department of Social Services
GPO Box9820
Canberra ACT 2601

Glossary

ACNC	Australian Charities and Not-for-profits Commission
ATO	Australian Taxation Office
Constitutional document	Constitution, rules, governing documents, articles of association, deed of trust or settlement etc
Department	The Department responsible for the Register of Harm Prevention Charities (currently the Department of Social Services)
DGR	Deductible Gift Recipient
ITAA	<i>Income Tax Assessment Act 1997</i>
Minister	The Minister responsible for the Register of Harm Prevention Charities or his/ her authorisee (currently the Social Services Minister)
Public Fund	The fund to which all gifts of money or property and deductible contributions for the principal activity of the charity are made
Register	Register of Harm Prevention Charities (the Register)
Secretary	The Secretary responsible for the Register of Harm Prevention Charities (currently the Social Services Secretary)
TCC Endorsement	Endorsement as a Tax Concession Charity (TCC) , also known as an Income Tax Exempt Charity
Treasurer	Treasurer of Australia or his/ her delegate
Object	In constitutional documents the aims/purposes are known as 'objects'

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1. Requirements for institutions applying for entry on the Register – Key facts

This section provides guidance, instructions explanatory notes and legislation relating to sections B, C, D & F of the Register's application form.

1.1 Principal activity – key facts

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 means one or more of the following:

- Emotional abuse
- Sexual abuse
- Physical abuse
- Suicide
- Self-harm
- Substance abuse
- Harmful gambling

It is important that the institution can clearly demonstrate – what activity/ies directly address promoting the prevention or control of specified behaviour/s. The starting point to this is:

- which of the specified behaviours is the institution involved with and
- what activities directly address the promotion of the prevention or control of the specified behaviours.

The principal activity must outweigh all other activities of the institution.

In descriptions of the institution: verbally; in print and electronically, it is important that it is clear the institution's main activity is to promote the prevention or control of the narrowly defined behaviours. Institutions that demonstrate through their descriptions that they conduct a broad range of activities are unlikely to meet the principal activity requirement for the Register. Institutions should discuss their activities with the Department.

1.2 Constitution – key facts

To be assessed as meeting the legislative requirements of the Register, constitutional documents must include:

- model rules relating to the Public Fund and
- model clauses relating to the harm prevention charity

Institutions can find the constitutional requirements in either the application form or these Guidelines. Institutions may seek clarification from the Department.

The model clauses and rules document the legislative requirements for harm prevention charities. Modifying the model clauses and rules will delay the progress of an application.

1.3 Charity – key facts

Before seeking entry on the Register of Harm Prevention Charities, **institutions** must first be:

- Registered as charity with the Australian Charities and Not-for-Profits Commission; and
- Endorsed as a Tax Concession Charity with the Australian Taxation Office.

A public fund must be a registered charity or operated by a registered charity. If the public fund is to be a registered charity it will also need to be registered as a charity with the Australian Charities and Not-for-Profits Commission, with Tax Concession Charity endorsement.

1.4 Public fund – key facts

A public fund must be established and maintained, to which gifts of money or property are made, along with the establishment of a public fund management committee.

- The institution must establish and maintain a public fund for the specific purpose of the promotion of the prevention or the control of human behaviour that is harmful or abusive to human beings.
- A public fund management committee must be established with a minimum of three people the majority of them must have Register responsible person qualifications as found in the nomination form and these guidelines.
- A separate bank account must be set up to deposit tax-deductible donations.

Note:

- Donations are given unconditionally, they are offered to you. Grants are given with conditions, you have asked for them and they go in the institution's main account.
- It is a requirement that institutions on the Register actively seek and actually collect tax deductible donations from the public.
- Statistical Returns must be provided to report on donation activity each year.

1.5 Conduit Policy

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

1.6 Winding up the public fund

The institution must have rules 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.

1.7 In Australia

The institution and its public fund must be established and operated in Australia and have its purposes and beneficiaries in Australia.

2. Register eligibility requirements

The requirements for admission to the Register are set out in Subdivision 30-EA of the *ITAA*. A copy of this is provided in Section 11 of these Guidelines.

2.1 Key requirements

A harm prevention charity is a charitable institution that satisfies the following requirements:

- Registered as a charity with Commonwealth tax concessions
- Principal activity
- Public fund
- Other legislative requirements

Sections 3-6 further explain these requirements.

Note: The Department initially assesses an institution's principal activity. If it does not meet the 'principal activity test', it will not be eligible for entry on the Register. This is to avoid applicant institutions being put through processes that may be unnecessary, such as changing governing documents, which could require a special meeting of the governing committee to be convened.

2.2 Submitting the application form

An application may be submitted at any time. The application form and all relevant information should be sent to the address provided in the application form. It is strongly recommended that institutions refer to these Guidelines and instructions in the application form. Please ensure that all required information is correct and essential documents are attached. Institutions are encouraged to contact the Department to ensure that all the necessary and up-to-date information has been included.

PREPARATION SUMMARY

Contact the Department - To check for any updates or changes and to ensure the Register is the most appropriate Deductible Gift Recipient category for your organisation.

Guidelines and Application Form - Download and read the Register of Harm Prevention Charities Guidelines 2014 and Application Form

Describe Principal Activity - It is recommended you submit a preliminary assessment of the organisation's principal activity (section B of the application form) before completing any other requirements.

Prepare Constitutional documents – Ensure the constitutional documents contain the words found in section C of the application form; the institution may contact the Department about this.

Establish Public Fund - Download and complete the Public Fund Management Committee Nomination Form, decide if the public fund will be a registered charity or operated by a registered charity, and complete any other public fund requirements.

Complete and submit the Application Form - Submit the completed application form to the Department along with copies of required documents including: charity registration, endorsement as a Tax Concession Charity and amended constitutional documents.

2.3 Application assessment

Receipt of the application will be acknowledged in writing by the Department. An assessment of the application is carried out by the Department, to ensure that the institution meets the requirements set out in the legislative provisions of the *ITAA* and administrative requirements set out these Guidelines.

Assessment of applications by the Department can take some time depending on the quality and completeness of the application. More time will be needed if the assessor needs further information or clarification. The assessment involves examination of all required information and integrity checks on the institution.

ASSESSMENT SUMMARY

Assessment process - Assessment of eligibility for the Register operates through a two-stage process, as the statutory power to approve an institution's entry is jointly held by the Families Minister and the Treasurer

Departmental assessment - The Department assesses each application and recommends eligible institutions to the Minister.

Incomplete information - If any parts of the application are incomplete or the Department requires more information; the institution will be contacted for the information, and will have 60 days to respond.

Unsatisfactory assessment - If the information is unsatisfactory and the Department is unable to progress the application the application will be closed.

2.4 Approval process

If the documentation complies with the requirements set out in the legislation, these Guidelines and the Register's application form, and the integrity checks are satisfactory, the application and direction to enter the institution is forwarded to the Minister (or authorisee) for consideration. The Minister must be satisfied that an institution fulfils the requirements of a harm prevention charity before recommending to the Treasurer that it be entered on the Register.

The final decision on approval rests with the Treasurer (or delegate). If the Treasurer approves the institution for inclusion on the Register, the Department advises the applicant, in writing, of its entry on the Register. The date of effect of the entry on the Register is the date of the Treasurer's written direction.

APPROVAL SUMMARY

Satisfactory assessment - The Minister seeks the Treasurer's/ delegate's agreement to co-sign a legislative direction.

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.

3. Background to the Register of Harm Prevention Charities

3.1 About the Register

The Australian Government assists charities whose principal activities promote the prevention or control of behaviour (as narrowly defined) that is harmful or abusive to human beings by making donations to those charities tax deductible.

Before tax deductible donations can be made, a charitable institution must:

- Be entered on the Register of Harm Prevention Charities; and
- Be endorsed as a Deductible Gift Recipient (DGR).

The Register of Harm Prevention Charities is a general DGR category as specified in the tax law; admission on to the Register is administered by the Secretary for the Department of Social Services, under Ministerial direction. Subsequent endorsement of institutions as a DGR is handled by the Australian Taxation Office (ATO).

These Guidelines outline the requirements for admission on the Register and assist institutions in completing a Register application. Once a charitable institution has been admitted to the Register it is a harm prevention charity and is entitled to apply to the ATO for DGR endorsement.

3.2 Legislative framework

The Register is administered under Subdivision 30-EA of the ITAA and administration is guided by Taxation Ruling 95/27. Organisations entered on the Register and subsequently endorsed by the ATO as a DGR are eligible to receive tax deductible donations.

3.3 About Deductible Gift Recipient Categories

More information on general DGR categories is available on the ATO website www.ato.gov.au/nonprofit and in the guide, *Gift Pack – a guide for deductible gift recipients*. The phone number for general enquiries about tax matters for non-profit organisations is 1300 130 248. DGR categories that may also be of interest include Public Benevolent Institution, Health Promotion Charity, and Charitable Services Institution.

4. Principal activity

This section provides guidance, instructions explanatory notes and legislation relating to section B of the Register's application form.

References: ITAA sections 30-288, 30-289 & 995-1(1); Taxation Ruling 2004/8 & 2005/21 Charities

4.1 About the principal activity

Although an institution may be engaged in more than one activity, to qualify for entry on the Register, the promotion of the prevention or control of human behaviour* that is harmful or abusive to human beings must be its **principal activity (that is its main activity)**, and this must outweigh its other activities.

*Behaviour that is harmful or abusive means one or more of the following specified and narrowly defined behaviours:

- Emotional abuse
- Sexual abuse
- Physical abuse
- Suicide
- Self-harm (self injury, self-mutilation)
- Substance abuse
- Harmful gambling.

Institutions that are involved in other behaviours and social issues are unlikely to meet the principal activity requirement. It is not necessary that the institution's activities promote both prevention *and* control of human behaviour that is harmful or abusive to human beings - either is sufficient.

The principal activity must be clearly evident and reflected in the institution's constitutional documents as well as other documentation about the institution such as websites and printed material.

4.2 Assessing the principal activity

The Department needs to be sure that an institution's principal activity fits within the criteria specified in the *ITAA*. In order to do so, the Department needs to know:

- which of the specified behaviours the institution is seeking to prevent or control;
- the activities (*see 'Explanation of Terms' below*) that directly address each specified behaviour, who conducts them and how they are conducted;
- the percentage of time spent on each activity; and
- the priority given to activities addressing each specified behaviour.

The information requested in the application form should adequately address the above questions. The information should clearly show how the charitable institution's activities are promoting the prevention or control of the specified behaviours. Further documentation can be provided to support the application.

An institution would NOT be assessed as suitable for entry on the Register if:

- the activities of the institution are about a broad prevention of harm;
- the institution supports others to address the specified behaviours;
- harm prevention or control activities are not the bulk of its work;

- the institution’s constitutional document does not specify that the principal object of the institution is the prevention or the control of behaviour that is harmful or abusive to human beings; or
- the impact of the principal activity on the relevant harm prevention or control is tenuous or difficult to establish directly.

4.3 Explanation of Terms

Activity

The legislation does not limit the activities that may be adopted and utilised, given the complexity and variety in the specified behaviours, a broad range of activities could be considered suitable. Examples of activities **may** include:

- running courses and programs on how to prevent, avoid, overcome or manage the specified behaviour;
- providing information about prevention or control to those involved with or affected by the relevant specified behaviour, and to the public;
- counselling people who are affected by the specified behaviour, such as family members; and
- training carers and professionals in ways of dealing with the relevant specified behaviour.

However, if the activity is too remote from the prevention or control it will not qualify.

The institution must be able to demonstrate that its principal activity directly contributes to the promotion of the prevention or the control of that behaviour. Activities that are indirect, too remote or unrelated and where the impact is difficult to establish, would not qualify. Previous examples that have not qualified have included: providing craft, sport, music or other social activity; general school education; camping; general employment programs, litigation; road, pool, workplace safety, accident prevention, parenting programs, and or financial support as the principal activity.

Promotion

Promoting the prevention and control of specified behaviours is about getting the message out to the public on whatever narrowly defined behaviour is being prevented or controlled. This might be by advertising campaigns, education, telling others at events, targeting groups that would find your work useful, and much more.

Control and Prevention

There are many examples that have been promoted to the public which are preventative in nature. For example, there are charitable institutions that promote the prevention of suicide, and other charitable institutions work to promote the prevention of sexual abuse.

Similarly there are charitable institutions that promote the control of specified behaviours. Control, like prevention, extends to activities which manages and controls the extent of the specified behaviours. Control is about the steps, measures, actions, activities, treatment, interventions to reduce a specified harmful or abusive behaviour, eg. Domestic abuse. Further understanding can be found in the ‘cycle of abuse’ social theory, and from research in the human services and social work fields.

Harmful or Abusive Behaviours

These behaviours are listed in 4.1 of these Guidelines. These expressions take their ordinary meaning. For example, self-harm means self-injury and self-mutilation. Institutions may wish to explain how they apply and define a specified behaviour.

5. Constitutional information – mandatory inclusions

This section provides guidance, instructions, explanatory notes and legislation relating to section C of the Register’s application form.

Introduction

To be eligible for entry on the Register, a charitable institution’s constitutional documents **must** contain certain provisions. To assist charitable institutions to fulfil these requirements, the mandatory provisions have been framed into the model clauses and model rules set out in this section of the Guidelines.

It can also be useful for charitable institutions to discuss the mandatory inclusions with Department staff prior to preparing the constitution.

Any modifications or omissions to these mandatory model clauses and model rules may delay the assessment process.

Mandatory inclusions

For an institution to be approved for entry on the Register, the constitutional documents must:

- have established rules for the management of the public fund;
- state that it is endorsed as a Tax Concession Charity;
- state the principal activity of the institution;
- agree to comply with any rules that the Treasurer and the Minister make to ensure that gifts to the public fund are used only for its principal activity;
- agree to inform the Department of certain changes;
- agree to provide statistical information to the Department;
- have a conduit policy as provided in the legislation; and
- have acceptable rules for winding up of the public fund.

Types of 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 provisions, and must be approved where necessary by the appropriate state authority, normally a Department for consumer affairs, before a formal application is submitted to the Department.

An institution may have two constitutional documents: a constitution and a charitable trust deed. In this case, the model clauses and model rules may appear in one or other of the constitutional documents, as long as all are included; or may be included in both documents. If the model clauses and model rules are duplicated in both documents, the wording of the provisions must be the same.

An institution’s constitutional documents could operate together to complement each other and operate collectively. For example, the constitution is usually considered the main constitutional document for the institution, and would contain provisions for establishing and operating the public fund. The deed for the institution could be used as a separate document to specify the rules by which the public fund must be maintained. Where a deed confirms the establishment of the public fund then it is acceptable to have an application containing two separate constitutional documents.

5.1 Model clauses for Harm Prevention Charities

These clauses relate to the institution's activities and are best placed in the main part of the constitutional documents. To be eligible for entry on the Register, each model clause encased in a box below should be included in the constitutional documents.

- **Charitable institution**

Reference: ITAA Subdivision 30-EA, subsection 30-288(b)

A harm prevention charity must be a charitable institution that is endorsed as exempt from tax under Subdivision 50-B of the ITAA (known as endorsement as a Tax Concession Charity).

Model Clause – to be inserted

[Name of institution] has been endorsed as exempt from tax under Subdivision 50-B of the *Income Tax Assessment Act 1997* (endorsement as a Tax Concession Charity). The institution is established as a charitable institution, pursues charitable purposes only and applies its income in promoting these purposes.

- **Establishing and maintaining a public fund**

Reference: ITAA subsection 30-289(2), section 30-130; Taxation Ruling 95/27, Section 30-45

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

- to which gifts of money or property for its principal activity are to be made;
- to which any money received because of such gifts, such as interest accruing there on, is to be credited; and
- that does not receive any other money or property.

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, and prior to an application being lodged. 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.

The institution's public fund can either be operated by the institution or it can be a registered charity.

In relation to constitutional documents, if the institution chooses to have the public fund operate as a registered charity it will also need to:

- Set up a separate constitutional document or trust deed for the public fund, or, amend the institution's constitutional document by inserting the following words immediately after model clause *Establishing and maintaining a public fund* of the Register's Guidelines:

"The trustee [name of the harm prevention charity] intends that the public fund be established and maintained as a trust".

The Department may be contacted 1800 441 242 for further assistance.

Model Clause – to be inserted

The [insert name of harm prevention charity] will 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 public fund is established to receive all gifts of money or property for this purpose and any money received because of such gifts will be credited to its bank account. The public fund will not receive any other money or property into its account and it will comply with Subdivision 30-EA of ITAA.

If the public fund is a registered charity please include the following sentence in the institution’s constitutional document:

“The trustee, [name of harm prevention charity], intends that the public fund be established and maintained as a trust”.

- **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.

Model Clause – to be inserted

The income and property of the [insert name of harm prevention charity] will be used and applied solely in promotion of its objects and no portion will 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.

- **Principal Activity**

References: ITAA, section 30-228, subsection 30-289(1), subsection 995-1(1)

As 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. 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.

This clause is best placed with the objects/purposes in the constitutional documents.

Model Clause – to be inserted

The principal activity of [name of institution] is the promotion of the prevention or the control of human behaviour that is harmful or abusive to human beings. The behaviour addressed by the institution is [insert specified behaviours - emotional abuse; sexual abuse; physical abuse; suicide; self-harm; substance abuse; harmful gambling]. The specified behaviour is addressed through the following activities:

- **Agreement to abide by Ministerial Rules**

References: ITAA, Subsection 30-289(4)

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. Constitutional documents must include a clause to the effect that the institution 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 three Ministerial Rules.

MINISTERIAL RULE 1 – STATISTICAL INFORMATION

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 – INFORMING THE DEPARTMENT

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 rules of the public fund; or
- if it, or its public fund, suffers any financial difficulties.

Model Clause – to be inserted

[Insert name of harm prevention charity] agrees to comply with any rules that the Minister and the Treasurer may make to ensure that gifts made to the public fund are only used for its principal activity.

- **Statistical information**

References: ITAA, Subsection 30-289A (3), Ministerial Rule 1

Harm prevention charities must provide the Department with statistical information about gifts (including donations) made to the public fund for a financial year within four months of the end of that year. The annual statistical return will include:

- information on the expenditure of public fund monies and the management of public fund assets; and
- answers to any questions asked about the public fund.

The statistical return must be accompanied by audited financial statements for the financial year for the harm prevention charity and its public fund.

It is recommended that this reporting requirement be incorporated into an institution's normal planning and reporting processes to avoid the possibility of non-compliance.

Model Clause – to be inserted

The harm prevention charity and 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.

- **Informing the Department**

References: ITAA, Subsection 30-289(4), Ministerial Rule 2

As both the name of the institution and the name of its public fund are entered on 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 to the management committee of the public fund, a nomination form is required to be submitted to the Department for assessment of all proposed members. The Department is responsible for assessing proposed members for 'responsible person' status, and for ensuring that a majority of 'responsible persons' administer the management committee. See section 5.2 of the Register's Guidelines for a list of responsible persons.

The Department must be informed if there is any departure, in an institution's constitutional document, from the Model Rules for Public Funds.

The Department must also be informed if there are changes to the principal activity of the harm prevention charity and or its public fund, and if the harm prevention charity or its public fund suffers any financial difficulties.

Model Clause – to be inserted

The [insert name of harm prevention charity] must inform the Department 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 Charities; or
- it or its public fund, suffers any financial difficulties.

- **Conduit Policy**

Reference: ITAA Subsection 30-289A (1)

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. Donations of money are to be used only for the principal activity of the Harm Prevention Charity. The conduit policy applies to the behaviour of a potential donor to a harm prevention charity and its public fund. The harm prevention charity must NOT:

- simply channel or pass donations on to others;
- act as a mere conduit for the donor by passing a donation of money or property to other charities, bodies or persons;
- act as a collection agency for tax-deductible donations intended by a donor to be passed on to another institution or person; and
- be directed by a donor to act as a conduit by passing a donation of money or property to other organisations, bodies or persons.

Model Clause – to be inserted

[Insert name of harm prevention charity] will not act as a mere conduit for the donation of money or property to other organisations, bodies or persons.

- **Winding up the Public Fund**

Reference: ITAA Subsection 30-289A (2)

This clause relates to the **winding up of the public fund** and is separate to the winding up of the institution. A harm prevention charity must have a clause/rule providing that, if the public fund is wound up, any surplus assets of the public fund are to be transferred to

another public fund that is on the Register. This clause is best placed with information in the constitutional documents that shows what the institution will do with the public fund.

Model Clause – to be inserted

If the public fund of the [insert name of harm prevention charity] is wound up, any surplus assets of the fund will be transferred to another public fund that is on the Register of Harm Prevention Charities.

5.2 Model Rules for Public Funds

Reference: ITAA Subdivision 30-EA, section 30-289(2), Taxation Ruling 95/27

The institution must establish and maintain a public fund, as an entity distinct from the harm prevention charity, prior to an application being lodged.

A public fund must have its own rules and objects. The rules and objects can be set out in a separate founding document or incorporated in the constitution or other founding documents of the sponsoring institution (the harm prevention charity). The harm prevention charity's constitution or founding document must authorise the establishment of the public fund, for example, in the objects of the harm prevention charity.

For a public fund to be eligible for entry on the Register, each model rule for public funds encased in a box below should be included in the constitutional documents.

- **Objectives of the fund**

The objectives of the public fund are to support the principal activity/ies of the harm prevention charity, and must be to promote the prevention or the control of behaviour that is harmful or abusive to human beings.

Model Rule – to be inserted

The objective of the public fund is to promote the prevention or the control of behaviour that is harmful or abusive to human beings.

- **Seek funds from the public**

Institutions listed on the Register must actively seek donations of money or property from the community in order to maintain their tax deductibility status. The public will contribute to the fund and does in fact contribute to the public fund.

Model Rule – to be inserted

Members of the public will be invited to make gifts of money or property to the public fund for the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings.

- **Public fund management committee**

The public fund is public in the sense that it is to be administered by a committee of people of whom the majority have a degree of responsibility to the wider community in Australia (see below). These people must demonstrate a commitment to the community outside of their involvement with the harm prevention charity.

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 other 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 management committee of the public fund must have a minimum of three (3) members, and the majority of the members of the committee must be **deemed by the Department to be a 'responsible person'** (*see below*). However, it is the institution's responsibility to ensure that the majority of nominated members for the management committee meet the criteria for 'responsible persons'.

A nomination form **must** be completed for each committee member, to be assessed by the Department and approved as a 'responsible person'.

Public Fund Committee Member Nomination Forms are available from the Department's website: <http://www.dss.gov.au>

Responsible persons

As a general guide, 'responsible persons' may include:

- people with honours (e.g. OBE, KCMG, AO) that recognise Australian citizens for excellence, achievement or meritorious service. Please ensure that the person's name appears on this website: http://www.itsanhonour.gov.au/honours/honour_roll/index.cfm);
- clergy and church authorities;
- trustees or board members of a not-for-profit school or college;
- Justices 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 which have a degree of responsibility to the community; and
- past or present office holders of other community charities (e.g. President of Parents and Citizens Association, Secretary of Lions, Treasurer of Rotary).

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

Model Rule – to be inserted

A committee of management of no fewer than three persons will administer the public fund. The committee will be appointed by the institution. A majority of the members of the committee are required to be 'responsible persons' as set out in the Register of Harm Prevention Charities Guidelines.

- **Separate bank account for the public fund**

Model Rule – to be inserted

A separate bank account is to be opened to deposit money donated to the public fund, including interest accruing thereon, and gifts to it will be kept separate from other funds of the institution.

- **Income and the 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.

An institution must establish and maintain a public fund for the principal activity of the institution to which:

- gifts of money or property are made;
- any money received because of such gifts or contributions is credited; and
- it does not receive any other money or property.

An institution must use a gift or contribution made to the public fund and any money credited to the public fund only for the principal activity of the institution to which the gift, contribution or money relates.

Each charitable institution 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 into one of the harm prevention charity's other accounts.

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

Model Rule – to be inserted

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

- **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. Monies must not be distributed to members of the managing committee or trustees of the public fund except as reimbursement for out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative purposes.

Model Rule – to be inserted

The public fund will be operated on a not-for-profit basis.

- **Receipts**

If a DGR issues a receipt for a gift, it must include certain information on the receipt. Receipts for gifts made to the public fund 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's 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 charity's 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 that contains all the required elements:

Name of institution (ABN Number)	
No _____	Date _____
Received from \$ _____	
Representing a donation to the (name of fund and ABN) _____	
Received by _____	
The (name of fund) is a public fund listed on the Register of Harm Prevention Charities under Subdivision 30-EA of <i>the Income Tax Assessment Act 1997</i>	

Model Rule – to be inserted

Receipts, containing specified elements, will be issued in the name of the fund and proper accounting records and procedures will be kept and used for the fund.

6. Register as a charity with Commonwealth tax concessions

This section provides guidance, instructions explanatory notes and legislation relating to section D of the Register's application form.

6.1 Register as a charity

Before seeking entry on the Register, **institutions** must first register as a charity with the ACNC.

6.2 Endorsement as a tax concession charity (TCC)

Institutions must then obtain endorsement as a TCC to be exempt from income tax from the ATO.

A registered charity must comply with the ACNC and ATO requirements.

To be a registered charity with Commonwealth tax concessions, a charity will need to have an Australian Business Number (ABN). More information is available from www.acnc.gov.au and www.ato.gov.au.

Registering as a charity with Commonwealth tax concessions meets the legislative requirement where a harm prevention charity is a charitable institution, endorsed as exempt from income tax under Subdivision 50B of the *ITAA*.

A copy of registration as a charity with the ACNC, and a copy of the institution's endorsement as a TCC from the ATO must be provided with the Register's application form.

6.3 Register the public fund as a charity – if applicable

A public fund must be:

- a) a registered charity; **or**
- b) operated by a registered charity.

If the institution chooses to have the public fund operate as a registered charity it will also need to:

- Set up a separate constitutional document or trust deed for the public fund, or, amend the institution's constitutional document by inserting the following words immediately after model clause *Establishing and maintaining a public fund* of the Register's Guidelines:

"The trustee [name of the harm prevention charity] intends that the public fund be established and maintained as a trust".
- Obtain an Australian Business Number for the Public Fund. Use the entity type – Fixed Trust
- Register the Public Fund as a charity with the ACNC, mark yes to the Tax Concession Charity and Deductible Gift Recipient areas, and
- Advise the ACNC of the changes to your constitutional documents. This obligation is in addition to any other obligations your institution has under other laws or to other regulators related to updating constitutional documents.

The Department may be contacted on 1800 441 242 for further assistance.

7. Public Fund

This section provides guidance, instructions, explanatory notes and legislation relating to section F of the Register's application form.

References: ITAA subsections 30-289(2), 30-289A(2), 30-289(3) & 30-130-130; Taxation Ruling 95/27 Public Funds, and Sections 30-45.

7.1 About the public fund

A harm prevention charity must establish and maintain a public fund to promote the prevention or the control of behaviour that is harmful or abusive to human beings.

A public fund has:

- its own name;
- its own objects (*in a constitutional document the aims/purposes are known as objects*) which must be clearly set out in the institution's constitutional documents;
- its own bank account (separate to the charitable institution) with clear accounting procedures to allow for transparency and accountability;
- its own receipts which must be issued in the name of the public fund;
- its own management committee of at least three people to manage the public fund; the majority of them must have Register 'responsible person' qualifications as found in the nomination form and these Guidelines;
- its own rules in the constitutional document; and
- its own Australian Business Number.

In addition,

- the public must be invited to and in fact does contribute to the public fund;
- the public fund must operate on a not-for-profit basis;
- the public fund must have an acceptable winding up clause; and
- the public fund must be established and operated in Australia.

The Department assesses the application documentation to ensure that the charity's public fund complies with the requirements of the *ITAA* and *Taxation Ruling 95/27, Public Funds*, including ensuring that the model rules are incorporated into the institution's constitutional documents.

Requirements for public funds and how to comply with these are further outlined in *Model Rules for Public Funds* in these Guidelines.

7.2 Statistical Returns

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. The annual statistical returns will include:

- information on the expenditure of public fund monies and the management of public fund assets; and
- answers to any questions asked about the public fund.

The statistical return must be accompanied by audited financial statements for the financial year for the harm prevention charity.

It is recommended that this reporting requirement be incorporated into an institution's normal planning and reporting processes to avoid the possibility of non-compliance.

7.3 Public Fund name

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

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.

It is acceptable to use the institution's name as the basis of the public fund's name but the words 'incorporated' and 'limited' should not be included. **The word 'fund' or words 'public 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.

7.4 Donations, sponsorships, bequests, grant payments and the public fund

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

The public fund is established to receive all gifts of money or property for the specific purpose of the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings. Any money received because of such gifts must be credited to its bank account (*see 'Donations' below*). The public fund must not receive any other money or property into its account (*see 'Sponsorship', 'Bequests', and 'Grant money' below*) and it must comply with Subdivision 30-EA of the ITAA.

Donations

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 but the decision ultimately rests with the institution.

The donor must not receive any pecuniary or other material benefit in return for the gift including benefits such as membership or newsletters.

Sponsorship

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. **Sponsorships do not constitute donations and should not be credited to the public fund.** Partnerships through sponsorship arrangements are tax deductible to business under Section 8-1 of the ITAA.

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 and should not be placed in the public fund account.

Grant payments

Grant payments should not be placed in the public fund account and are not tax deductible. Grants like sponsorships are made on condition of the institution agreeing to certain criteria and for specific purposes.

7.5 Publicising tax deductible donations

It is appropriate to provide information on your website and in written documentation that you accept tax deductible donations. You may wish to use these suggested words, and add why people should donate to the organisation and how they should do that.

Donate to (Name of organisation's) Public Fund

(Our organisation) is a Registered Gift Recipient with the Australian Tax Office. (Our Organisation) has a public fund which is set up to enable the organisation to accept tax deductible donations. The institution and the public fund is listed on the Register of Harm Prevention Charities under Subdivision 30-EA of the *Income Tax Assessment Act 1997*.

In order to comply with the Guidelines for the Register (our organisation) has a public fund committee comprised of a majority of people holding public office or certain positions in the community. This committee ensures that funds are used appropriately and gives approval for funds to be transferred out of the public fund account.

A donation of over \$2.00 made to (our organisation's public fund) is tax deductible for the donor. (Our organisation) will send the donor a tax receipt listing the amount of the donation. The donor can then list this donation on their tax return for the year that the donation was made to receive a reduction in the amount of tax to be paid in that year.

8. Endorsement as a Deductible Gift Recipient

Endorsement as a DGR takes place after an institution and its public fund have been entered on the Register of Harm Prevention Charities.

The Department advises the ATO about the entry on to the Register, sends a copy of the direction to enter the institution and its public fund, and a copy of the letter from the Department informing the applicant of their successful admission to the Register. The ATO then endorses the Harm Prevention Charity as a deductible gift recipient. The DGR category is '4.1.4, Public fund on the register of harm prevention charities'. The ATO advises each applicant, in writing, of their endorsement as a DGR.

As a harm prevention charity with DGR status, the institution must comply with all legislative requirements explained in these Guidelines, including:

- promote the prevention or the control of specified behaviour/s and continue to meet the principal activity requirement
- actively seek and receive donations from the public
- submit statistical returns each year
- not act as a mere conduit
- advise the Department when and if there are any changes to the harm prevention charity and its public fund
- provide an official letter to the Department when the institution and its public fund are to be removed from the Register.

9. Review of Department's assessment – request for reassessment

9.1 Does not meet the 'principal activity test'

If the Department assesses that an applicant institution does not meet the 'principal activity test', as outlined in these Guidelines and the Register Application form, the institution will be notified in writing of the reasons. An institution will have up to 60 days to respond if it wishes to request a reassessment. An application will be considered withdrawn if the institution does not request a reassessment within this period.

9.2 Reassessment

The applicant institution may request the Department reassess its initial assessment by lodging an objection against it.

The request must:

- explain the grounds for the objection;
- be in writing, signed and dated by an authorised officer of the institution (usually an executive); and
- lodged within 60 days of the date of the Department's written notification (see 9.1 above), however, the Department may grant an extension of time if advised within the 60 day period of your intention to request a reassessment, and if circumstances for the requested extension are considered reasonable.

Requests for reassessment should be emailed to the Department at harmpreventioncharitiesregister@dss.gov.au.

First phase – review by independent Departmental officer

Where the Department undertakes a reassessment it will be undertaken by an independent Departmental officer who was not involved in the initial assessment. The institution will be advised in writing of the outcome following the reassessment. Where the institution is still considered to not meet the 'principal activity test' it will be provided with a statement of reasons.

Second phase – review by Executive or Senior Executive Officer

If the applicant is not satisfied with the review outcome the claimant institution can request that the decision be reviewed by the relevant Executive and or Senior Executive Officer. This officer is responsible for referring Departmental advice to relevant Minister/s for their ultimate and legislated decision make related to the Register. The formation of Departmental advice can include: making a decision, exercising a judgement, signing a document, or approving a certain course of action. This phase gives senior officers in the Department the opportunity to consider advice likely to be referred to the relevant Minister/s.

Third phase – Consideration by the Minister responsible for the Register

In these circumstances, the Department will give the institution the opportunity to confirm whether it would like its application to be provided to the Minister and the Treasurer for their consideration in relation to eligibility for entry on the Register. The institution will have 60 days in which to respond. Should the institution seek such consideration it will be necessary for the Department to ensure the institution complies with the other legislative

requirements for entry on the Register, if this assessment has not already been undertaken. When the application is fully assessed under all the criteria for entry on the Register, the request for Ministerial consideration, along with the Department's assessments will be referred to the relevant Ministers for their decision.

9.3 Complaints

In the first instance, applicant institutions should contact:

Manager
Register of Harm Prevention Charities
GPO Box 9820
Canberra ACT 2601

Any complaints in relation to the application process will be dealt with under the Department's Complaints Management System. The Complaints Management System ensures that any dissatisfaction an applicant may have with the Department's services, decision or policies are taken seriously and dealt with promptly.

If the applicant still feels the issue or complaint has not been resolved satisfactorily, the applicant will need to contact the Department's Complaints Team on 1800 634 035 or email complaints@dss.gov.au. The Complaints Team will work with you to satisfactorily resolve the complaint or suggest further action as appropriate.

If you are dissatisfied at any time with the administrative processes for assessment of an application or the handling of a complaint, you may also contact the Commonwealth Ombudsman. For more information please see www.ombudsman.gov.au.

10. Removal from the Register

The ITAA (section 289C) allows the Minister and the Treasurer to direct the secretary to remove of a harm prevention charity and the public fund it maintains from the Register. The process for removal endeavours to be transparent, fair and accountable.

10.1 Reasons for removal

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

- no longer meeting the requirements of the ITAA; or
- not collecting and receiving 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; or
- conducting illegal activities.

10.2 Process of removal

There is a formal process for removing an institution and its public fund from the Register. Removal may be initiated by the institution or the Department.

If the institution wishes to be removed from the Register, it should provide an official letter to the Department, seeking its removal. This letter should be sent by registered post, email or other acceptable form of written communication (the Department can provide a template for this purpose). This letter should provide information advising why it should, or wishes to, be removed from the Register and request that the institution and its public fund be removed from the Register.

If the Department believes the institution meets any of the grounds outlined in 10.1 above, it will discuss this matter with the institution by phone or email and where necessary, the Department may follow up and send two letters by registered post, email or other acceptable form of written communication.

- The first letter will request a response to address the issues raised within three months. Institutions responding to this letter and indicating they should be removed from the Register will be required to provide an official letter seeking removal, as outlined in the paragraph above.
- If a satisfactory response is not received within three months of the date of the first letter, a second letter will be sent allowing a further three months to respond.
- If a response is not received to the second letter within that time, or if the response is unsatisfactory, the Department will recommend its removal from the Register for consideration by the Minister and the Treasurer.

The reassessment process outlined in section 9 of these Guidelines will be available to an institution where it objects to being removed from the Register.

11. Relevant legislation referred to in these Guidelines updated 31 May 2017

Income Tax Assessment Act 1997 (ITAA)

Subdivision 30-EA – Register of Harm Prevention Charities

Note: Asterisked terms – These are words that are defined in the ITAA 1997 dictionary and are provided at the end of this section.

** Minister refers to the responsible Treasury portfolio minister.

30-287 Establishing the register

The *Families Secretary must keep a register of *harm prevention charities.

30-288 Meaning of Harm Prevention Charity

A harm prevention charity is a charitable institution that:

- (a) Satisfies each requirement in sections 30-289 and 30-289A:
and
- (aa) is a *registered charity; and
- (b) is endorsed as exempt from income tax under Subdivision 50-B.

30-289 Principal activity – promoting the prevention or control of harm or abuse

- (1) 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.
- (2) It must maintain a public fund that meets the requirements of section 30-130.
- (4) It must have agreed to comply with any rules that the Minister** and the *Families Minister make to ensure that gifts made to the fund are used only for its principal activity.

30-289A Other requirements

No acting as a conduit

- (1) 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.

Surplus assets to be transferred on winding up

- (2) It must have rules 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 to be provided

- (3) It must have agreed to give the *Families Secretary, within a reasonable period after the end of each income year, statistical information about gifts made to the public fund during that income year.

30-289B What must be on the register

- (1) The *Families Secretary must enter on the register each *harm prevention charity, and the public fund it maintains, that he or she has been directed to enter by the Minister** and the *Families Minister.
- (2) The Minister** and the *Families Minister may so direct the Secretary only if the Minister has notified the Minister** that he or she is satisfied that an institution that an institution is a *harm prevention charity. The notification must be in writing.
- (3) The direction must be in writing and must specify the day on which the charity and public fund are to be entered on the register. The day must be the day on which the direction is given or a later day.
- (4) The Minister **and the *Families Minister must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction.

30-289C Removal from the register

- (1) The Minister** and the *Families Minister may direct the *Families Secretary to remove a *harm prevention charity, and the public fund it maintains, from the register.
- (2) The direction must be in writing and must specify the day on which the charity and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.

30-45 special conditions

4.1.4 The public fund must be a *registered charity or operated by a registered charity

Definitions of asterisked terms – from the ITAA 1997 dictionary section 995-1

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

- (a) Emotional abuse;
- (b) Sexual abuse;
- (c) Physical abuse;
- (d) Suicide;
- (e) Self-harm;
- (f) Substance abuse;
- (g) Harmful gambling.

Families Department – means the Department administered by the *Families Minister.

Families Minister – means the Minister administering the *Data-matching Program (Assistance and Tax) Act 1990*.

Families Secretary – means the Secretary of the *Families Department.

Harm prevention charity has the meaning given by section 30-288.

Registered Charity - means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act.