**[insert organisation name/logo]**

Legal Compliance Checklist

***🖌Note\****

*This is a suggested checklist of legal compliance. It does not cover operational or accounting compliance, and is not exhaustive.*

*This compliance checklist is based on a checklist by Freehills and has been adjusted for inclusion in the NADA Policy Toolkit (2010) reviewed by NADA and McCullough Robertson 2014 for inclusion in NADA Policy Toolkit 2nd ed.*

*\*Please delete note before finalising the checklist*

|  |  |
| --- | --- |
| **Checklist completed by:** | *Insert name and position title* |
| **Date:** | *Insert date* |
| **Actions to be completed by:** | *Insert date* |
| **Actions completed in full:** | *Insert date* |
| **Next checklist scheduled date:** | *Insert date* |

|  |  |  |
| --- | --- | --- |
| **Location of documents** | Yes / No | Action / Comment |
| Is there a place (folder, filing draw/cabinet) where official documents are kept? **[Insert location(s) details].** |  |  |

|  |  |  |
| --- | --- | --- |
| **Staff** | Yes / No | Action / Comment |
| Is there a staff member responsible for ensuring the organisation is compliant with relevant legislation?  **[Detail name and position].** |  |  |
| Have forms nominating the company secretary been lodged with ASIC (Form 484) or Registrar of Incorporated Associations within 28 days of their appointment?  **[Detail name and position].** |  |  |
| Who is the ATO contact person/public officer? Has the ATO been informed? (check ABN application and any subsequent changes)  **[Detail name and position].** |  |  |
| Is there a delegated staff member to manage the storage of the organisation’s official documents?  **[Detail name and position].** |  |  |
| Who are the bank signatories? **[List bank accounts and signatories including the gift fund (if the organisation is a deductable gift recipient (DRG)).]** |  |  |

| **Organisational structure** | Yes / No | Action / Comment |
| --- | --- | --- |
| What is the structure of the organisation (may be a trust with a company or incorporated association as trustee, you may need to note both):  a) company limited by guarantee? (referred to as **Co**)  b) incorporated association? (referred to as **Inc**)  c) trust? (referred to as **Tr**)  d) other – describe. |  |  |

|  |  |  |
| --- | --- | --- |
| **Numbers** | Yes / No | Action / Comment |
| Are you aware of the organisation’s:  **Co**: ACN or  **Inc**: registered number  **Inc**: (if registered on ASIC) ARB number?  **[Detail relevant number]** |  |  |
| Are you aware of what the organisation’s ABN is?  **[Detail number]** |  |  |
| **Co**: Is the company’s full name (including Limited or Ltd, if part of the name on the certificate of incorporation) and ACN or ABN on all public documents?  **Inc**: Is the association’s full name (including Inc), registered number and ABN on all public documents? (Letterhead, cheques, invoices, receipts, notices, purchase orders, agreements, contracts, fundraising brochures (ABN not required on business cards). |  |  |

| **Tax Status** | Yes / No | Action / Comment |
| --- | --- | --- |
| Tax status can be checked on the Australian Business Register (ABR) (www.abr.business.gov.au) and from the notices from the ATO. | | |
| **Income tax exemption**  Is the organisation endorsed as a tax concession charity (**TCC**) as a:   * Charitable institution? * Charitable fund? * Public benevolent institution? * Health promotion charity? |  |  |
| Is there another basis the organisation is income tax exempt e.g. State government entity, mutuality principle? |  |  |
| If the organisation invests in Australian shares, do you reclaim the franking credits?  If so, where are the copies of the returns kept? |  |  |
| **Fringe Benefits Tax (FBT)**  Do you provide fringe benefits to employees? |  |  |
| Are you entitled to an FBT:   * Rebate? * Capped exemption (only hospitals, PBI’s and health promotion charities)? |  |  |
| Is it clear where copies of the FBT returns are kept? |  |  |
| **Goods and Services Tax (GST)**  Are you registered for GST? (Only required if you provide goods or services of over $100,000.) |  |  |
| Is it clear who files GST/BAS returns and where are the copies kept? |  |  |
| Have you carefully considered the transactions you enter for GST consequences? |  |  |
| **Tax Deductible Gift Recipient (DGR)**  Are you endorsed as a DGR?  What category (from notice of endorsement)? |  |  |
| Do you do annual self reviews to ensure continuing compliance? |  |  |
| Are the self reviews filed with the notices of endorsement?  If not, where are they kept? |  |  |
| Do you issue receipts in the name and ABN of the DGR as shown on the endorsement notice? |  |  |
| Do you record the donations in a separate gift fund or public fund? |  |  |
| If the organisation is on the following registers, do you file returns and notices of changes?   * Register of Cultural Organisations * Register of Environmental Organisations * Register of Harm Prevention Charities. |  |  |
| **Tax Concession Charity (TCC)/DGR Notices**  Do you have a notice of endorsement as Tax concession Charity |  |  |
| Do you have a notice of endorsement as a deductible gift recipient (DGR) and a copy of documents provided to the ATO? |  |  |
| Have you received correspondence from the ATO? If correspondence is returned to the ATO unopened, the charity will be placed on ACNC’s list of missing charities and, if not contacted by the relevant charity, their registration will be revoked by the ATO.  If your application for endorsement has been refused by the ATO, have you received an explanation of their decision or requested a review? |  |  |
| If endorsed as a DGR on a register (e.g. Cultural Organisation, Environmental Organisation, Harm Prevention Charity or are a prescribed private fund), have you:   * provided the relevant register with statistical information annually disclosing gifts made to the public fund during that income year? * notified the ATO of any changes to the fund's constitution or other founding documents (including changes in the public fund management committee)? |  |  |

| **Fundraising** | Yes / No | Action / Comment |
| --- | --- | --- |
| Is the organisation registered for fundraising in NSW? |  |  |
| Is it clear where fundraising information and requirements kept? Is it clear who is responsible for compliance? |  |  |
| The *Charitable Fundraising Act 1991* requires that before an organisation may conduct charitable fundraising activities it is required to hold a licence to fundraise. Licences to fundraise are subject to conditions available at <http://www.olgr.nsw.gov.au/pdfs/Authority_conditions_fundraising.pdf>  Have you checked these licence conditions to ensure compliance? |  |  |
| Do you have businesses or professional fundraisers assisting you with fundraising?  If yes, check additional compliance requirements. |  |  |

| **Registers** | Yes / No | Action / Comment |
| --- | --- | --- |
| **Certificate**  The organisations certificates are up to date and filed appropriately?  **Co:** certificate of registration as a company  **or**  **Inc**: certificate of incorporation as an incorporated association. |  |  |
| If you have applied to change the company name by lodging a Form 205 with ASIC, have you received a new Certificate of registration on change of name? |  |  |
| **Constitution documents**  The organisation’s constitution documents are up to date and filed appropriately?  **Co**: Constitution (if an old company, called memorandum and articles of association)  **or**  **Inc**: statement of purposes and rules (check for both)  **or**  **Tr**: trust deed. |  |  |
| Have there been any amendments to the Constitution? /Are amendments required? |  |  |
| **Board of Directors**  Is the register of Board/Committee members up to date (Including name, address, contact details, date of appointment, and date of resignation)?  **Co:** register of directors  or  **Inc**: committee members  or  **Tr**: trustees |  |  |
| Is there an up to date register of conflict of interests? |  |  |
| Have you kept a signed and dated consent of each person who acts as director, company secretary or public officer of the company with the organisation’s records? |  |  |
| **Members**  Is there a current register of members (contact details, dates of appointment and cessation, details of any payments)? |  |  |
| **Auditors**   * A member of the company must give the company written notice of the nomination of the person/firm/company for appointment as auditor before the AGM meeting is convened (or otherwise in accordance with s328B of the Corporations Act).When appointing an auditor, did the person/ firm/company, prior to the appointment:   + provide to the directors or the company written consent to act as auditor; and   + did not withdraw the consent before the appointment. * Was the resolution of the members in the AGM or the board of directors of the company appointing the auditor, placed in the company’s minute book within one month of the passing of the resolution? |  |  |
| ASIC/Incorporated Associations Registrar notices and documentation | | |
| **Co**: An ASIC corporate key is provided when a company is registered. Have you kept this in a safe and secure place? It is used to view your company records, lodge forms for your company and receive annual statements online and in hard copy? |  |  |
| **Co and Inc**:  If there was a change of directors of a registered body, did you notify ASIC by lodging a Form 490 within 1 month of the change?  If there was a change of any officeholder (director, company secretary or alternate director) of an Australian company, did you notify ASIC by lodging a Form 484 within 28 days of the change? |  |  |
| **Co and Inc**:  If you are not a registered charity with the ACNC:   * When there was a change of registered office address of a registered Australian body, did you lodge a Form 489 with ASIC within seven days after the change? * When there was a change of registered office address of an Australian company, did you notify ASIC by lodging a Form 484 within 28 days after the change? |  |  |
| **Co and Inc**:  If a company (that is not a registered charity with the ACNC) is seeking to modify/repeal its constitution, or a provision of its constitution, did they do so by passing a special resolution with:   * at least 21 days notice (28 days for public listed companies); and * the agreement of a 75% majority of votes cast?   If a public company changes its constitution, was a Form 205 lodged with ASIC 14 days after passing of resolution?  *NB a proprietary company does not need to lodge a copy of its constitution.* |  |  |
| **Co**:  If you are a public, large proprietary, small proprietary foreign-controlled company, registered scheme or trust have you lodged a copy of your financial statements and reports (including Director’s report and Auditor’s report) annually accompanied by a form 388?  NB s 319 of *Corporations Act* requires these reports to be filed within three months after the end of the financial year.  **Inc**:  Companies that are registered with the ACNC do not need to lodge financial reports for years commencing on or after 1 July 2013 with ASIC. Instead, medium and large charities registered with the ACNC will be required to provide annual financial reports to the ACNC. |  |  |
| **Co**: Has the annual review statement (sent from ASIC on anniversary of incorporation date) been received? |  |  |

| **Board of Directors** | Yes / No | Action / Comment |
| --- | --- | --- |
| **Appointment of Board of Directors**  Is there a documented procedure for appointment/electing Directors? |  |  |
| **Board policy and procedures**  Is there a current Board of Directors Policy and Procedure, including delegations, responsibilities and orientation to the Board? |  |  |
| **Contact Details**  Are contact details documented?  Are individual length of term and time for review/rotations documented? |  |  |
| **Board Meetings**  Have the below been considered?   * Standing agenda items * Timeline of Board meetings and issues to be dealt with. |  |  |
| **Minutes**  Have minutes of Board meetings been endorsed by Chair/President? |  |  |
| **Register of Interests**  Have conflict of interests declared or standing been documented? |  |  |
| **Delegations**  Have delegations been made to subcommittees or executives? |  |  |
| **Board of Director Subcommittees**  Are functions and roles of all subcommittees of the Board clearly established? |  |  |
| **Planning**  Annual planner/timeline includes the below?   * Strategic review and business plan deadlines * Strategy day for board and/or executives * Executive performance review * Budget setting * Board review * AGM plan and timeline * Annual reporting requirements * Fundraising submissions/events/reporting * Review of tax status * Review of compliance check |  |  |

| **Annual General Meeting (AGM)** | Yes / No | Action / Comment |
| --- | --- | --- |
| Do you know what needs to be included in the AGM?  Have all relevant stakeholders been notified of the AGM?  Do you have a timeline to ensure deadlines are met?  Has the Board considered the content of the annual report and who it may be sent to?  Is there a process in place for the recording of minutes?  Do Board Directors check the annual financial statements?  Do the accounts need to be audited? **Co**: Yes.**Inc**: check requirements and fundraising requirements.**Tr**: check deed or register requirements. |  |  |

|  |  |  |
| --- | --- | --- |
| **Constitutional compliance** | Yes / No | Action / Comment |
| **Confirm sections contained in Constitution include:**   * Objects * Appointment of members * AGM requirements * Quorum of AGM * Appointment/composition of Board * Quorum of Board |  |  |

| **Employees and volunteers** | Yes / No | Action / Comment |
| --- | --- | --- |
| **Employees**  Is employee documentation completed including the below?   * Employment agreement/contract * Job descriptions * Performance indicators and/or expectations * Regular reviews of performance * PAYG, FBT, superannuation, WorkCover * WHS policy and training * Discrimination policy and training * Evidence of professional registration * Evidence of drivers’ license |  |  |
| **Volunteers**  Has documentation been completed including the below?   * Job/task description and training * Clear expectations provided and documented * Regular reviews undertaken * Volunteer insurance * WHS policy and training * Discrimination policy and training * Evidence of professional registration * Evidence of drivers’ license |  |  |

| **Risk Management** | Yes / No | Action / Comment |
| --- | --- | --- |
| Note: this checklist does not address operational risks. | | |
| **Insurances**  Has insurance cover been reviewed to ensure adequate coverage?   * Directors and officers liability (D&O) insurance * Public liability * Professional indemnity * Other operational insurances **[insert detail]** |  |  |
| **Financial**  Regular review of:   * Reporting lines * Qualifications of those reporting * Separation of powers to minimise fraud (i.e. approvals/ signatories) * Bookkeeping and accounting processes |  |  |
| Are accounts reviewed and discussed at every Board meeting? |  |  |
| Are financial delegations documented and adhered to? |  |  |