

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

26 February 2014

Question: AET 3046

Topic: Legal positions compared with Australian Taxation office

Hansard Page: pg. 107, 26 February 2014

Senator BUSHBY asked:

CHAIR: Following on from some questions that I put to the ATO earlier, has the ACNC reversed any legal positions or strategies endorsed previously by the ATO on precedential questions of law?

Mr Locke: Certainly the ACNC and the ATO have regular meetings where we discuss contentious issues. There have been a small number of cases where we have disagreed with the position—

CHAIR: Could you take that on notice?

Mr Locke: We can certainly take it on notice.

CHAIR: That would be appreciated. How many organisations have had charitable endorsements revoked by the ACNC since its establishment, and how many have had applications for endorsement rejected? Are you able to compare those results to when the ATO had administrative responsibility in the area?

Mr Locke: I would have to take that on notice.

Answer:

The ACNC has not identified any circumstances where the ACNC has reversed any legal positions or strategies which had previously been endorsed by the ATO on precedential questions of law.

As both agencies rely on the same common law and statutory sources of law the legal positions are likely to be consistent. Application of the law to fact situations involves professional judgment and decision makers may reach different decisions from time to time.

The ATO and ACNC have communication arrangements to discuss any matters where a decision maker in respective agencies may have reached a different decision.

Both agencies are awaiting a decision of the Full Court of the Federal Court in the matter of The Hunger Project [The Hunger Project v Commissioner of Taxation [2013] FCA 693] which will give clarity on the law relating to Public Benevolent Institutions. Both agencies will be bound by the ultimate decision in that case.

As at 28 March 2014:

Organisations that have had charitable endorsements revoked by the ACNC:

- 481 organisations have been revoked.
- Another 1,075 organisations have been removed from the ACNC charity register due to opting out or no longer existing.

Organisations that have had applications for endorsement rejected:

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- 151 applications for charity registration have been refused.

The ACNC is not able to compare the above figures to when the ATO had responsibility for endorsing charities for Commonwealth taxation purposes.