Charities Bill 2013

No. , 2013

(Treasury)

A Bill for an Act to define charity and charitable purpose, and for related purposes
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A Bill for an Act to define charity and charitable purpose, and for related purposes

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the Charities Act 2013.

2 Commencement

This Act commences on 1 January 2014.
Part 1 Preliminary

Section 3

3 Definitions

(1) In this Act:

- **advancing** includes protecting, maintaining, supporting, researching and improving.

- **disqualifying purpose** has the meaning given by section 10.

- **entity** has the meaning given by the *Australian Charities and Not-for-profits Commission Act 2012*.

- **government entity** has the meaning given by section 4.

- **human rights** has the meaning given by the *Human Rights (Parliamentary Scrutiny) Act 2011*.

- **native title benefit** has the meaning given by subsection 8(2).

- **public benefit** has the meaning given by section 6.

- **purpose of advancing social or public welfare** has a meaning affected by section 13.

- **universal or common good** has a meaning affected by subsection 6(5).

(2) To avoid doubt, the definitions of terms in this section do not apply in any Act other than this Act.

4 Government entity

(1) In this Act:

- **government entity** means:

  (a) a government entity (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*); or

  (b) an entity:

    (i) established under a law by a State or a Territory; and

    (ii) of a kind prescribed under subsection (2); or

  (c) a foreign government agency (within the meaning of the *Income Tax Assessment Act 1997*).
(2) For the purposes of paragraph (b) of the definition of government entity in subsection (1), the Minister may, by legislative instrument, prescribe a kind of entity.
Part 2—Definition of charity

Division 1—Definition of charity

5 Definition of charity

In any Act:

charitable: an entity is charitable if the entity is a charity.

Example: A reference in an Act to a charitable trust is a reference to a trust that is a charity.

charity means an entity:

(a) that is a not-for-profit entity; and

(b) all of the purposes of which are:

(i) charitable purposes (see Part 3) that are for the public benefit (see Division 2 of this Part); or

(ii) purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes of the entity covered by subparagraph (i); and

Note 1: In determining the purposes of the entity, have regard to the entity’s governing rules, its activities and any other relevant matter.

Note 2: The requirement in subparagraph (b)(i) that a purpose be for the public benefit does not apply to certain entities (see section 9).

(c) none of the purposes of which are disqualifying purposes (see Division 3); and

(d) that is not an individual, a political party or a government entity.
Division 2—Purposes for the public benefit

6 Purposes for the public benefit

(1) A purpose that an entity has is for the public benefit if:

(a) the purpose is directed to the benefit of:

(i) the general public; or

(ii) a sufficient section of the general public; and

(b) the benefit is a universal or common good.

(2) For the purposes of this Act:

(a) disregard whether a benefit is tangible or intangible; and

(b) disregard any benefit that is not identifiable.

(3) For the purposes of this section, have regard to:

(a) any possible benefit from the purpose to:

(i) the founders, owners, members, trustees, employees,
    officers or agents of, or donors to, the entity; or

(ii) the associates (within the meaning of section 318 of the
    Income Tax Assessment Act 1936) (other than charities)
    of the founders, owners, members, trustees, employees,
    officers or agents of, or donors to, the entity; and

(b) any possible detriment from the purpose to the general
    public, a section of the general public, or a member of the
    general public.

(4) For the purposes of subparagraph (1)(a)(ii), in determining whether
the section of the general public to whose benefit the purpose is
directed is a sufficient section, compare:

(a) the numerical size of that section of the general public; and

(b) the numerical size of the section of the general public to
whom the purpose is relevant.

(5) Without limiting what is required for a benefit to be a universal or
common good, to be a universal or common good the benefit must
be of real overall value to the public.
Part 2  Definition of charity
Division 2  Purposes for the public benefit

Section 7

7 Certain purposes presumed to be for the public benefit

In the absence of evidence to the contrary, a purpose that an entity has is presumed to be for the public benefit, if the purpose is any of the following purposes:

(a) the purpose of relieving illness;
(b) the purpose of relieving the needs of the aged;
(c) the purpose of advancing education;
(d) the purpose of relieving poverty;
(e) the purpose of advancing religion.

Note 1: The purposes mentioned in the definition of charitable purpose in subsection 11(1) include the purposes mentioned in paragraphs (a) to (e) of this section. For example, the purpose of advancing social or public welfare (mentioned in paragraph (c) of the definition) includes the purpose of relieving poverty.

Note 2: If there is evidence to the contrary, the purpose is for the public benefit only if it meets the requirements of section 6 (purposes directed to the benefit of the general public etc.) or section 8 (certain Indigenous holding entities).

8 Purposes of native title holding entities that are directed to the benefit of Indigenous persons who are related

(1) A purpose that an entity has is treated as being for the public benefit if:
(a) the entity is an Indigenous holding entity (within the meaning of the Income Tax Assessment Act 1997) that receives native title benefits; and
(b) the purpose is directed to the benefit of Indigenous persons (within the meaning of that Act) only; and
(c) the purpose is not for the public benefit under this Division (disregarding this section) only because the individuals to whose benefit the purpose is directed are related to one another.

Note: An effect of the Acts and instruments mentioned in the definition of native title benefit in subsection (2) may be that particular Indigenous holding entities must benefit only individuals that are related to one another. Such a benefit might not meet the requirement in paragraph 6(1)(a) (purpose must be directed to the benefit of the general public, or a sufficient section of the general public).
EXPOSURE-DRAFT

Definition of charity Part 2
Purposes for the public benefit Division 2

Section 9

(2) In this Act:

native title benefit means an amount, or non-cash benefit (within the meaning of the Income Tax Assessment Act 1997), that:

(a) arises under:

(i) an agreement made under an Act of the Commonwealth, a State or a Territory, or under an instrument made under such an Act; or

(ii) an ancillary agreement to such an agreement;

to the extent that the amount or benefit relates to native title (within the meaning of the Native Title Act 1993); or

(b) is compensation determined in accordance with Division 5 of Part 2 of the Native Title Act 1993.

9 When public benefit test does not apply

Open and non-discriminatory self-help groups

(1) Disregard the requirement in subparagraph (b)(i) of the definition of charity in section 5 that a purpose of an entity be for the public benefit, if:

(a) the entity is an association of individuals that has an open and non-discriminatory membership; and

(b) the entity is established for the purpose of assisting individuals affected by a particular disadvantage or discrimination, or by a need that is not being met; and

(c) the entity is made up of, and controlled by, individuals who are affected by the disadvantage, discrimination or need; and

(d) all of the entity’s criteria for membership relate to its purpose; and

(e) the entity’s membership is open to any individual who satisfies the criteria.

Closed or contemplative religious orders

(2) Disregard the requirement in subparagraph (b)(i) of the definition of charity in section 5 that a purpose of an entity be for the public benefit, if the entity is a closed or contemplative religious order.
Part 2 Definition of charity
Division 2 Purposes for the public benefit

Section 9

that regularly undertakes prayerful intervention at the request of members of the general public.
Division 3—Disqualifying purpose

10 Disqualifying purpose

In this Act:

disqualifying purpose means:

(a) the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or

Example: Public policy includes the rule of law, the constitutional system of government of the Commonwealth, the safety of the general public and national security.

Note: Activities are not contrary to public policy merely because they are contrary to government policy.

(b) the purpose of promoting or opposing a political party or a candidate for political office.

Note: The purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country may be a charitable purpose (see paragraph (l) of the definition of charitable purpose in subsection 11(1)).
Part 3—Definition of charitable purpose

11 Definition of charitable purpose

(1) In any Act:

charitable purpose means any of the following:

(a) the purpose of advancing health;
(b) the purpose of advancing education;
(c) the purpose of advancing social or public welfare;
(d) the purpose of advancing religion;
(e) the purpose of advancing culture;
(f) the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;
(g) the purpose of promoting or protecting human rights;
(h) the purpose of protecting the safety of the general public;
(i) the purpose of preventing or relieving the suffering of animals;
(j) the purpose of advancing the natural environment;
(k) any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j);
(l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:

(i) in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or
(ii) in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.

(2) Paragraph (1) of the definition of charitable purpose in subsection (1) is the only paragraph of that definition that can apply to the purpose of promoting or opposing a change to any
Definition of charitable purpose

Part 3

Section 12

matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country.

12 Funding charity-like government entities

In determining whether a purpose that a fund has is a charitable purpose, treat an entity as not being a government entity, if:

(a) the purpose includes the purpose of providing money, property or benefits to the government entity, or for the establishment of the government entity; and

(b) the government entity would be a charity were it not a government entity.

13 Purpose of advancing social or public welfare

(1) Without limiting what constitutes the purpose of advancing social or public welfare, the purpose of advancing social or public welfare includes the purpose of caring for, supporting and protecting children and young people (and, in particular, providing child care services).

(2) Without limiting what constitutes the purpose of advancing social or public welfare, the purpose of advancing social or public welfare includes the purpose of assisting the rebuilding, repairing or securing of assets after a disaster if:

(a) the disaster developed rapidly and:

(i) resulted in the death, serious injury or other physical suffering of a large number of individuals; or

(ii) caused distress to a large number of individuals and resulted in widespread damage to property or the natural environment; and

(b) the rebuilding, repairing or securing is in furtherance or in aid of the purposes of one or more exempt entities (within the meaning of the Income Tax Assessment Act 1997); and

(c) the purpose of assisting is directed to providing benefits that are commercial or private only to an incidental and ancillary extent, if at all; and

(d) the assets are assets of entities that:

(i) are not government entities; or
Part 3 Definition of charitable purpose

Section 13

(ii) would be charities were they not government entities.
Part 4—Miscellaneous

14 Cy pres schemes

In determining the purposes of a trust, have regard to any scheme for the application of property cy pres that relates to the trust.

Note: Trust law may, in certain circumstances, allow the purposes of a trust to be altered to remove purposes that are not charitable purposes.