



Charities Act 2013

No. 100, 2013

**An Act to define charity and charitable purpose,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

Part 1—Preliminary	2
1 Short title	2
2 Commencement	2
3 Definitions	2
4 <i>Government entity</i>	3
Part 2—Definition of charity	4
Division 1—Definition of charity	4
5 Definition of <i>charity</i>	4
Division 2—Purposes for the public benefit	5
6 Purposes for the public benefit	5
7 Certain purposes presumed to be for the public benefit	6
8 Relief of necessitous circumstances	7
9 Purposes of entities that receive, hold or manage benefits that relate to native title etc	7
10 When public benefit test does not apply	7
Division 3—Disqualifying purpose	9
11 <i>Disqualifying purpose</i>	9
Part 3—Definition of charitable purpose	10
Division 1—Definition of charitable purpose	10
12 Definition of <i>charitable purpose</i>	10
13 Funds that contribute to charity-like government entities	11
Division 2—Types of charitable purpose	12
14 <i>Purpose of advancing health</i>	12
15 <i>Purpose of advancing social or public welfare</i>	12
16 <i>Purpose of advancing culture</i>	13
17 <i>Purpose of advancing the security or safety of Australia or the Australian public</i>	13
Part 4—Miscellaneous	14
18 Cy pres and similar schemes	14



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No. 100, 2013

An Act to define charity and charitable purpose, and for related purposes

[Assented to 29 June 2013]

Preamble

The Parliament of Australia recognises the unique nature and diversity of charities and the distinctive and important role that they play in Australia.

Until now, the meaning of charity in Commonwealth law has largely been that of the common law, based on the preamble to the Statute of Charitable Uses 1601.

Charities Act 2013 No. 100, 2013 1

Section 1

Modern, comprehensive, statutory definitions of charity and charitable purpose, applying for the purposes of all Commonwealth law and ensuring continuity by utilising familiar concepts from the common law, will provide clarity and certainty as to the meaning of those concepts in contemporary Australia.

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.

3 Definitions

(1) In this Act:

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

disqualifying purpose has the meaning given by section 11.

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*.

Indigenous individual means an individual who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

public benefit, in relation to a purpose, has the meaning given by section 6.

purpose of advancing culture has a meaning affected by section 16.

purpose of advancing health has a meaning affected by section 14.

purpose of advancing social or public welfare has a meaning affected by section 15.

purpose of advancing the security or safety of Australia or the Australian public has a meaning affected by section 17.

- (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.

Example: The Minister may prescribe the State and Territory equivalents of the government entities covered by paragraph (c) of the definition of **government entity** in section 41 of the *A New Tax System (Australian Business Number) Act 1999* (Executive and Statutory Agencies).

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 10).

- (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 achievement of the purpose would be of public benefit; and
 - (b) the purpose is directed to a benefit that is available to the members of:
 - (i) the general public; or
 - (ii) a sufficient section of the general public.

Achievement of purpose would be of public benefit

- (2) For the purposes of paragraph (1)(a), have regard to all relevant matters, including:
- (a) benefits (whether tangible or intangible) (other than benefits that are not identifiable); and
 - (b) any possible, identifiable detriment from the achievement of the purpose to the members of:
 - (i) the general public; or
 - (ii) a section of the general public.

Benefit is widely available

- (3) For the purposes of paragraph (1)(b), have regard to all relevant matters, including:
- (a) any possible, identifiable benefit from the purpose that is available to any of the following entities that are not charities, but is not available to the members of the general public, or a sufficient section of the general public:
 - (i) the founders, owners, members, trustees, employees, officers or agents of, or donors to, the entity mentioned in subsection (1);
 - (ii) the associates (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the entities mentioned in subparagraph (i) of this paragraph; and

Part 2 Definition of charity

Division 2 Purposes for the public benefit

Section 7

- (b) the relationships between the entities to whose benefit the purpose is directed.
- (4) For the purposes of subparagraph (1)(b)(ii), in determining whether the section of the general public to whose benefit the purpose is directed is a sufficient section, have regard to all relevant matters, including comparing:
 - (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.

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 satisfy the requirements of paragraphs 6(1)(a) and (b) (purposes for the public benefit), if the purpose is any of the following purposes:

- (a) the purpose of preventing and relieving sickness, disease or human suffering;
- (b) the purpose of advancing education;
- (c) the purpose of relieving the poverty, distress or disadvantage of individuals or families;
- (d) the purpose of caring for and supporting:
 - (i) the aged; or
 - (ii) individuals with disabilities;
- (e) the purpose of advancing religion.

Note 1: The purposes mentioned in the definition of *charitable purpose* in subsection 12(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 the poverty, distress or disadvantage of individuals or families (see subsection 15(1)).

Note 2: If there is evidence to the contrary, the purpose is for the public benefit only if it meets the requirements of paragraphs 6(1)(a) and (b) or section 9 (entities that receive, hold or manage benefits that relate to native title etc.). See also section 8.

8 Relief of necessitous circumstances

Disregard the requirement in paragraph 6(1)(b) that a purpose be directed to a benefit that is available to the members of the general public, or of a sufficient section of the general public, if the purpose is the purpose of relieving the necessitous circumstances of one or more individuals who are in Australia.

9 Purposes of entities that receive, hold or manage benefits that relate to native title etc.

- (1) This section applies to a purpose that an entity has if:
 - (a) the purpose is directed to the benefit of Indigenous individuals only; and
 - (b) the purpose is not for the public benefit under this Division (disregarding this section) only because of the relationships between the Indigenous individuals to whose benefit the purpose is directed.
- (2) The purpose is treated as being for the public benefit if the entity receives, holds or manages an amount, or non-cash benefit (within the meaning of the *Income Tax Assessment Act 1997*), that relates to:
 - (a) native title (within the meaning of the *Native Title Act 1993*);
or
 - (b) traditional Indigenous rights of ownership, occupation, use or enjoyment of land.

10 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

Part 2 Definition of charity

Division 2 Purposes for the public benefit

Section 10

- (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 that regularly undertakes prayerful intervention at the request of members of the general public.

Division 3—Disqualifying purpose

11 *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.

Example: Paragraph (b) does not apply to the purpose of distributing information, or advancing debate, about the policies of political parties or candidates for political office (such as by assessing, critiquing, comparing or ranking those policies).

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 (1) of the definition of *charitable purpose* in subsection 12(1)).

Part 3—Definition of charitable purpose

Division 1—Definition of charitable purpose

12 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 advancing the security or safety of Australia or the Australian 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);

Note: In the case of a purpose that was a charitable purpose before the commencement of this Act and to which the other paragraphs of this definition do not apply, see item 7 of Schedule 2 to the *Charities (Consequential Amendments and Transitional Provisions) Act 2013*.

- (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 matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country.
- (3) For the purposes of this section, it does not matter whether a purpose is directed to something in Australia or overseas.

13 Funds that contribute to charity-like government entities

- (1) This section applies to a purpose that a fund (the *contributing fund*) has, if:
 - (a) the purpose includes the purpose of providing money, property or benefits:
 - (i) to a government entity; or
 - (ii) for the establishment of a government entity; and
 - (b) the government entity would be a charity were it not a government entity.
- (2) For the purpose of determining whether the purpose that the contributing fund has is a charitable purpose, treat the government entity as not being a government entity.

Division 2—Types of charitable purpose

14 *Purpose of advancing health*

Without limiting what constitutes the purpose of advancing health, the *purpose of advancing health* includes the purpose of preventing and relieving sickness, disease or human suffering.

15 *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 relieving the poverty, distress or disadvantage of individuals or families.
- (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 caring for and supporting:
 - (a) the aged; or
 - (b) individuals with disabilities.
- (3) 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 individuals (and, in particular, providing child care services).
- (4) 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
 - (ii) would be charities were they not government entities.

16 Purpose of advancing culture

- (1) Without limiting what constitutes the purpose of advancing culture, the ***purpose of advancing culture*** includes the purpose of promoting or fostering culture.
- (2) Without limiting what constitutes the purpose of advancing culture, the ***purpose of advancing culture*** includes the purpose of caring for, preserving and protecting Australian heritage.

17 Purpose of advancing the security or safety of Australia or the Australian public

Without limiting what constitutes the purpose of advancing the security or safety of Australia or the Australian public, the ***purpose of advancing the security or safety of Australia or the Australian public*** includes the purpose of promoting the efficiency of the Australian Defence Force.

Part 4—Miscellaneous

18 Cy pres and similar schemes

In determining the purposes of a trust, have regard to:

- (a) any scheme for the application of property cy pres that relates to the trust; or
- (b) any similar scheme that relates to the trust;

whether under equity or any other law of a State or Territory that relates to charitable trusts.

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

*[Minister's second reading speech made in—
House of Representatives on 29 May 2013
Senate on 19 June 2013]*

(152/13)
