

EXPOSURE-DRAFT

2010-2011-2012-2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Charities Bill 2013

No. , 2013

(Treasury)

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

EXPOSURE-DRAFT

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	1
3 Definitions	2
4 <i>Government entity</i>	2
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 Purposes of native title holding entities that are directed to the benefit of Indigenous persons who are related	6
9 When public benefit test does not apply	7
Division 3—Disqualifying purpose	9
10 <i>Disqualifying purpose</i>	9
Part 3—Definition of charitable purpose	10
11 Definition of <i>charitable purpose</i>	10
12 Funding charity-like government entities	11
13 <i>Purpose of advancing social or public welfare</i>	11
Part 4—Miscellaneous	13
14 Cy pres schemes	13

EXPOSURE-DRAFT

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

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Act may be cited as the *Charities Act 2013*.

8 **2 Commencement**

9 This Act commences on 1 January 2014.

EXPOSURE-DRAFT

EXPOSURE-DRAFT

Part 1 Preliminary

Section 3

1 **3 Definitions**

2 (1) In this Act:

3 *advancing* includes protecting, maintaining, supporting,
4 researching and improving.

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

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

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

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

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

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

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

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

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

19 **4 Government entity**

20 (1) In this Act:

21 *government entity* means:

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

24 (b) an entity:

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

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

27 (c) a foreign government agency (within the meaning of the
28 *Income Tax Assessment Act 1997*).

EXPOSURE-DRAFT

Preliminary **Part 1**

Section 4

- 1 (2) For the purposes of paragraph (b) of the definition of ***government***
2 ***entity*** in subsection (1), the Minister may, by legislative
3 instrument, prescribe a kind of entity.

EXPOSURE-DRAFT

Part 2 Definition of charity

Division 1 Definition of charity

Section 5

1 **Part 2—Definition of charity**

2 **Division 1—Definition of charity**

3 **5 Definition of *charity***

4 In any Act:

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

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

8 ***charity*** means an entity:

- 9 (a) that is a not-for-profit entity; and
10 (b) all of the purposes of which are:
11 (i) charitable purposes (see Part 3) that are for the public
12 benefit (see Division 2 of this Part); or
13 (ii) purposes that are incidental or ancillary to, and in
14 furtherance or in aid of, purposes of the entity covered
15 by subparagraph (i); and

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

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

- 21 (c) none of the purposes of which are disqualifying purposes (see
22 Division 3); and
23 (d) that is not an individual, a political party or a government
24 entity.
-

EXPOSURE-DRAFT

1 **Division 2—Purposes for the public benefit**

2 **6 Purposes for the public benefit**

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

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

5 (i) the general public; or

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

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

8 (2) For the purposes of this Act:

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

10 (b) disregard any benefit that is not identifiable.

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

12 (a) any possible benefit from the purpose to:

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

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

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

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

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

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

28 (5) Without limiting what is required for a benefit to be a universal or
29 common good, to be a *universal or common good* the benefit must
30 be of real overall value to the public.

EXPOSURE-DRAFT

Part 2 Definition of charity

Division 2 Purposes for the public benefit

Section 7

1 **7 Certain purposes presumed to be for the public benefit**

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

- 5 (a) the purpose of relieving illness;
- 6 (b) the purpose of relieving the needs of the aged;
- 7 (c) the purpose of advancing education;
- 8 (d) the purpose of relieving poverty;
- 9 (e) the purpose of advancing religion.

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

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

19 **8 Purposes of native title holding entities that are directed to the** 20 **benefit of Indigenous persons who are related**

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

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

EXPOSURE-DRAFT

1

(2) In this Act:

2

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

3

4

(a) arises under:

5

(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

6

7

8

(ii) an ancillary agreement to such an agreement;

9

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

10

11

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

12

13

9 When public benefit test does not apply

14

Open and non-discriminatory self-help groups

15

(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:

16

17

18

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

19

20

(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

21

22

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

23

24

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

25

26

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

27

28

29

Closed or contemplative religious orders

30

(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

31

32

EXPOSURE-DRAFT

Part 2 Definition of charity

Division 2 Purposes for the public benefit

Section 9

1 that regularly undertakes prayerful intervention at the request of
2 members of the general public.

EXPOSURE-DRAFT

EXPOSURE-DRAFT

Definition of charity **Part 2**
Disqualifying purpose **Division 3**

Section 10

1 **Division 3—Disqualifying purpose**

2 **10 Disqualifying purpose**

3 In this Act:

4 ***disqualifying purpose*** means:

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

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

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

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

14 Note: The purpose of promoting or opposing a change to any matter
15 established by law, policy or practice in the Commonwealth, a State, a
16 Territory or another country may be a charitable purpose (see
17 paragraph (1) of the definition of ***charitable purpose*** in
18 subsection 11(1)).

EXPOSURE-DRAFT

Part 3 Definition of charitable purpose

Section 11

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

EXPOSURE-DRAFT

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

3 **12 Funding charity-like government entities**

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

- 6 (a) the purpose includes the purpose of providing money,
7 property or benefits to the government entity, or for the
8 establishment of the government entity; and
9 (b) the government entity would be a charity were it not a
10 government entity.

11 **13 Purpose of advancing social or public welfare**

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

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

- 21 (a) the disaster developed rapidly and:
22 (i) resulted in the death, serious injury or other physical
23 suffering of a large number of individuals; or
24 (ii) caused distress to a large number of individuals and
25 resulted in widespread damage to property or the natural
26 environment; and
27 (b) the rebuilding, repairing or securing is in furtherance or in aid
28 of the purposes of one or more exempt entities (within the
29 meaning of the *Income Tax Assessment Act 1997*); and
30 (c) the purpose of assisting is directed to providing benefits that
31 are commercial or private only to an incidental and ancillary
32 extent, if at all; and
33 (d) the assets are assets of entities that:
34 (i) are not government entities; or
-

EXPOSURE-DRAFT

Part 3 Definition of charitable purpose

Section 13

1

(ii) would be charities were they not government entities.

1 **Part 4—Miscellaneous**
2

3 **14 Cy pres schemes**

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

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