

2010-2011-2012-2013

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CHARITIES BILL 2013

CHARITIES (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL
PROVISIONS) BILL 2013

EXPLANATORY MATERIAL

[Click here and insert the name of the Bill]

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Glossary

The following abbreviations and acronyms are used throughout this explanatory material.

<i>Abbreviation</i>	<i>Definition</i>
Aid/Watch	<i>Aid/Watch Incorporated v Federal Commissioner of Taxation</i> [2010] HCA 42; (2010) 241 CLR 539
ACNC	Australian Charities and Not-for-profits Commission
ACNC Act	<i>Australian Charities and Not-for-profits Commission Act 2012</i>
Charities Definition Inquiry report	2001 Report of the <i>Inquiry into the Definition of Charities and Related Organisations</i>
Central Bayside	<i>Central Bayside General Practice Association Ltd v. Commissioner of State Revenue</i> (2006) 228 CLR 168
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
Pemsel's case	<i>Commissioners for Special Purposes of Income Tax v Pemsel</i> [1891-1894] All ER Rep 28
Word Investments	<i>Federal Commissioner of Taxation v Word Investments Ltd</i> (2008) 236 CLR 204

General outline and financial impact

Definition of charity

The Charities Bill 2013 and the Charities (Consequential Amendments and Transitional Provisions) Bill 2013 introduce a definition of charity and charitable purpose for the purposes of all Commonwealth legislation.

The Government announced in the 2011-12 Budget that it would introduce a statutory definition of charity based on the *2001 Report of the Inquiry into the Definition of Charity and Related Organisations*, also taking into account later judicial decisions.

The meaning of charity and charitable purpose has not previously been comprehensively defined in statute for the purposes of Commonwealth law. The meaning has been determined based on over 400 years of common law. The statutory definition preserves the common law principles with minor modifications to provide greater clarity and certainty about the meaning of ‘charity’ and ‘charitable purpose’.

Date of effect: The definition applies from 1 January 2014.

Proposal announced: The introduction of a statutory definition of charity was announced by the then Assistant Treasurer and the then Minister for Human Services and Social Inclusion’s joint Media Release No. 077 of 10 May 2011.

Financial impact: Unquantifiable but expected to be small.

Compliance cost impact: The introduction of a statutory definition of charity may result in minor transitional costs for some entities. For example, some registered entities will need to revise their registration subtype with the Australian Charities and Not-for-profits Commission because the Bill lists more specific categories of charitable purposes.

Chapter 1

Definition of charity

Outline of chapter

1.1 The Charities Bill 2013 and the Charities (Consequential Amendments and Transitional Provisions) Bill 2013 introduce a definition of charity and charitable purpose for the purposes of all Commonwealth legislation.

1.2 The Government announced in the 2011-12 Budget that it would introduce a statutory definition of charity based on the *2001 Report of the Inquiry into the Definition of Charity and Related Organisations*, also taking into account later judicial decisions.

1.3 The meaning of charity and charitable purpose has not previously been comprehensively defined in statute for the purposes of Commonwealth law. The meaning has been determined based on over 400 years of common law. The statutory definition preserves the common law principles with minor modifications to provide greater clarity and certainty about the meaning of ‘charity’ and ‘charitable purpose’.

1.4 This Chapter explains the context of the statutory definition of charity, the elements of the definition, charitable purposes, and disqualifying purposes.

1.5 References in this Chapter to the ‘Bill’ are references to the Charities Bill 2013.

Context of reform

1.6 The meaning of charity and charitable purpose has not been comprehensively defined in for the purposes of Commonwealth law; rather the meaning has largely been determined from the common law.

1.7 The *Extension of Charitable Purpose Act 2004* extended the common law meaning for Commonwealth purposes to include child care, self-help bodies and closed religious orders.

1.8 The common law meaning has developed over 400 years, largely based on the Preamble to the Statute of Charitable Uses (known as the Statute of Elizabeth), enacted by the English Parliament in 1601.

Charitable purposes are commonly categorised, following the terminology of the *Commissioners for Special Purposes of Income Tax v Pemsel* [1891-1894] All ER Rep 28 (Pemsel case), as the four ‘heads of charity’:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; and
- other purposes beneficial to the community.

1.9 For a purpose to be charitable within the technical legal meaning of charitable under the common law (which overlaps but does not fully coincide with the popular or dictionary meaning), the purpose must be within the ‘spirit and intendment’ of the Statute of Elizabeth, and for the public benefit.

1.10 The development of the definition of charity and charitable purpose through case law based on the spirit and intendment of the Statute of Elizabeth has resulted in charity law that is in some areas unclear, inconsistent, or does not adequately address matters relevant to the contemporary Australian charity sector.

1.11 A statutory definition is intended to provide greater clarity and certainty for charities, the public and regulators in determining whether an entity is charitable and consequently reduce the need for costly litigation.

1.12 The statutory definition provides a framework for considering charity and charitable purposes. However, the definition retains the flexibility inherent in the common law that enables the courts, as well as Parliament, to continue to develop the definition and extend the definition to other charitable purposes beneficial to contemporary Australia. This will ensure that the definition remains appropriate and reflects modern society and community needs as they evolve.

1.13 The statutory definition applies to all Commonwealth legislation. It may provide a common framework which States and Territories may adopt over time, thereby further reducing complexity and compliance costs for Australian charities.

1.14 The Commissioner of the national regulator for the not-for-profit sector, the Australian Charities and Not-for-profits Commission (ACNC), has responsibility for administering this definition.

1.15 The Charities Bill is informed by the 2001 *Report of the Inquiry into the Definition of Charities and Related Organisations* (Charities

Definition Inquiry report), which expressed principles underlying charity and charitable purpose, and also takes into account subsequent judicial decisions and the definitions of charity legislated in comparable international jurisdictions.

1.16 Significant court decisions since the Charities Definition Inquiry report which have developed the meaning of charity include:

- *Aid/Watch Incorporated v Federal Commissioner of Taxation*, which extended the circumstances in which a charity may advance public debate;
- *Federal Commissioner of Taxation v Word Investments Ltd*, which found that activities undertaken by an entity need not be intrinsically charitable for the entity to be a charity; and
- *Central Bayside General Practice Association Ltd v Commissioner of State Revenue*, which developed the meaning of government control of an entity and clarified boundaries to the definition.

1.17 In addition to the Charities Definition Inquiry report, a range of later reports and inquiries have recommended a statutory definition. These include:

- the 2010 *Australia's Future Tax System Review*;
- the Productivity Commission's 2010 Research Report *Contribution of the Not-for-Profit Sector*;
- the Senate Economics Legislation Committee *Inquiry into the Tax Laws Amendment (Public Benefit Test) Bill 2010*; and
- the 2011 *Final Report of the Scoping Study for a National Not-for-profit Regulator*.

1.18 The Government has conducted public consultation on a discussion paper, *A Definition of Charity*, and has consulted closely with the not-for-profit sector in the development of the definition.

Summary of new law

1.19 The definition of charity and charitable purposes is based on common law principles with minor modifications to modernise and clarify

the common law. The core elements to be a charity are that an entity must be not-for-profit and have only charitable purposes (other than incidental or ancillary purposes that further or aid the charitable purpose) that are for the public benefit.

1.20 The categories of charitable purposes reflect purposes found by the courts to be charitable. In addition, the Bill incorporates purposes specified in the *Extension of Charitable Purpose Act 2004*, makes further minor extensions to charitable purposes, and modernises the language and categories.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<i>Definition</i>	
The Bill defines charity and charitable purpose.	The meaning of charity and charitable purpose is determined from the common law and the <i>Extension of Charitable Purpose Act 2004</i> .
<i>Not-for-profit and for the public benefit</i>	
An entity must be not-for-profit and have only charitable purposes that are for the public benefit. An entity may have incidental or ancillary purposes that further or aid the charitable purpose.	An entity must be not-for-profit and have only charitable purposes that are for the public benefit. An entity may have incidental or ancillary purposes that aid, or further, the charitable purpose.
<i>Charitable purposes</i>	
An entity must have only charitable purposes and must not have an independent, non-charitable purpose. An entity may have incidental or ancillary purposes that may be non-charitable when viewed in isolation but which aid or further the charitable purpose.	An entity must have only charitable purposes and must not have an independent, non-charitable purpose. An entity may have ancillary or incidental purposes that may be non-charitable when viewed in isolation but which aid or further the charitable purpose.
<i>Presumption of public benefit</i>	
The purposes of relieving poverty, illness and the needs of the aged, advancing education and advancing religion are presumed as being for the public benefit, not just presumed as beneficial, unless there is evidence to the contrary.	The purposes of relieving poverty, the needs of the aged and impotent, advancing education and advancing religion are presumed as beneficial, unless there is evidence to the contrary.

<i>New law</i>	<i>Current law</i>
<i>Related individuals</i>	
An entity that directs benefits to related individuals generally fails the public benefit test unless the relationship is incidental to the common characteristic which the charitable purpose addresses. However, where the particular native title legislation may have the effect of requiring indigenous holding entities to benefit only Indigenous individuals who are related, the 'related individuals' restriction in the public benefit test is turned off.	An entity that directs benefits to related individuals generally fails the public benefit test.
<i>Self-help groups and closed and contemplative religious orders</i>	
The public benefit test does not apply to open and non-discriminatory self-help groups and closed or contemplative religious orders.	The <i>Extension of Charitable Purpose Act 2004</i> excludes open and non-discriminatory self-help groups and closed or contemplative religious orders from the need to apply the public benefit test.
<i>Unlawful purpose</i>	
A purpose of engaging in, or promoting, activities which are unlawful or contrary to public policy is disqualifying. Public policy refers to such matters as the rule of law and system of government. It does not refer to government policies.	A purpose of engaging in, or promoting, activities which are unlawful or contrary to public policy is disqualifying.
<i>Party political purpose</i>	
A purpose of promoting or opposing a political party or candidate is disqualifying.	A purpose of promoting or opposing a political party or candidate is disqualifying.
<i>Charitable purposes</i>	
Categories of charitable purposes are: <ul style="list-style-type: none"> • advancing health; • advancing education; • advancing social or public welfare (including relief of poverty); • advancing religion; • advancing culture; • promoting reconciliation, mutual 	Charitable purposes established under the common law are <ul style="list-style-type: none"> • the relief of the needs of the poor, aged or impotent; • the advancement of education; • the advancement of religion; • other purposes the courts have found to be charitable as

<i>New law</i>	<i>Current law</i>
<p>respect and tolerance between groups of individuals in Australia;</p> <ul style="list-style-type: none"> • promoting or protecting human rights; • protecting the safety of the general public; • preventing or relieving the suffering of animals; • advancing the natural environment; • any other purpose beneficial to the general public that may be reasonably regarded as analogous to, or within the spirit of the above purposes; • promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, in furtherance or protection of one of more of the above purposes. <p>In addition, charitable purposes include caring for and protecting young people and providing child care services.</p>	<p>beneficial to the community; and</p> <ul style="list-style-type: none"> • purposes deemed charitable under the <i>Extension of Charitable Purposes Act 2004</i>.
<i>Charity-like government entities</i>	
Funding charity-like government entities does not prevent an entity from being charitable for the purposes of Commonwealth law.	Funding charity-like government entities prevents an entity from being a charity for the purposes of Commonwealth law.
<i>Assisting rebuilding after a disaster</i>	
Charitable purpose extends beyond the relief of individual distress after a disaster to include assisting rebuilding of a community within specified limits.	The common law limits charitable purpose to the relief of individual distress after a disaster.
<i>Additional charitable purposes</i>	
Additional purposes to be charitable must be beneficial to the public and analogous to, or in the spirit of, charitable purposes specified in the Act. The courts will continue to assess	Additional purposes to be charitable must be beneficial to the community and within the spirit and intendment of the Statute of Elizabeth or analogous to purposes set out in the Preamble to the Statute, or found by

<i>New law</i>	<i>Current law</i>
additional categories of charitable purposes within this framework. Parliament may separately add to the list of charitable purposes by making amendments to the definition.	the courts to be charitable.
<i>Cy-pres schemes</i>	
Cy-pres schemes that leave a valid charitable trust, recognised at state or territory level, will be recognised as having a charitable purpose under Commonwealth law.	Cy-pres schemes that leave a valid charitable trust, recognised at state or territory level, are not recognised as having a charitable purpose under Commonwealth law.

Detailed explanation of new law

Definition of charity

1.21 The Bill establishes the requirements for an entity to satisfy the definition of a charity.

1.22 An entity is a charity if it satisfies the following criteria:

- it is not-for-profit;
- it has only charitable purposes (other than ancillary or incidental purposes that further or aid the charitable purpose) that are for the public benefit;
- it does not have disqualifying purposes; and
- it is not an individual, a political party or a government entity. [paragraphs 5(a) to (d)]

Not-for-profit

1.23 The term ‘not-for-profit’ currently takes its ordinary meaning. However, the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 inserts a definition of ‘not-for-profit’ in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997). The Explanatory Memorandum to the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 explains its meaning in detail. [Paragraph 5(a) and Schedule # of the *Consequential Amendments Bill*]

1.24 Broadly, to be not-for-profit, an entity must:

- not be carried on for the profit or gain of its owners or members while it is operating or upon winding up; and
- be prohibited from distributing its profits or assets to its owners or members unless the distribution is to another not-for-profit entity with a similar purpose, or it is genuine compensation for services provided to, or reasonable expenses incurred on behalf of, the entity.

1.25 Charities will not generally meet their charitable purpose if they distribute to an entity that is not a charity. However, the Bill allows for charitable funds to distribute to an entity that would be otherwise charitable except that it is a government entity (see paragraph 1.115)

1.26 An entity with a power to accumulate profits can still be charitable as long as the profits are being accumulated in order to augment the funds available to give effect to the entity's charitable purpose.

1.27 However, an entity that accumulates most of its profits over a number of years will need to show that this accumulation is still consistent with an entity having a charitable purpose. Considerations that can influence whether such an entity continues to have a charitable purpose include whether funds that are to be applied to its charitable purpose have been identified, and when and how they are to be applied.

Charitable purposes

1.28 To be a charity, an entity's purposes must be only charitable, other than incidental or ancillary purposes that further or aid the charitable purpose.

1.29 A charity cannot have an independent non-charitable purpose, regardless of how minor that purpose may be. However, an entity may have incidental or ancillary purposes that may be non-charitable when viewed in isolation but which further or aid the charitable purpose. These purposes must not be ends in themselves, but tend to assist, or naturally go with, the achievement of the charitable purpose. They must be for the sake of, in aid of, or in furtherance of, the accomplishment of the entity's charitable purpose.

1.30 A purpose is independent if it is an end in itself, or has substance in its own right, or is not intended to further a charitable purpose.

1.31 In determining or substantiating an entity's purpose, it is the substance and reality of the purpose that must be identified. An entity's purposes expressed in the governing rules, and its activities and the extent to which they further, or are in aid of, the entity's purpose, are factors to

be considered in determining the purpose of an entity. Other relevant factors may include elements of the governing documents such as powers, rules, not-for-profit and winding up clauses, clauses governing who can benefit and in what ways from the entity's activities, the entity's policies and plans, administration, finances, origins, history and control, and any legislation governing the entity's operation. [*Paragraph 5(b) Note 1*]

1.32 Where an entity has a non-charitable independent purpose, or its activities or other features demonstrate that it has a non-charitable independent purpose, the entity is not a charity.

1.33 If an entity's governing rules indicate that it does not have only charitable purposes (other than incidental or ancillary purposes that further or aid the charitable purpose), the entity cannot be charitable even if some of its activities are charitable in nature or charitable consequences may result from its activities.

1.34 An entity may engage in activities that are not intrinsically charitable provided the activities further or aid its charitable purpose. Such activities include those that are integral to the functioning of the entity itself, such as accounting or insurance, and activities that contribute to the achievement of the entity's charitable purpose, such as fundraising.

1.35 An entity is not a charity because it uses means similar to that of a charity. For example, if an entity disseminates information, this is not sufficient to show the purpose is educational.

1.36 An entity carrying on a business or commercial enterprise will not be charitable simply because it is controlled by another entity that is charitable. It is the purpose of the entity itself that must be charitable. Where an entity undertakes commercial activities, those activities must be only to further its charitable purpose. It may do this by providing funds to other institutions that advance that charitable purpose.

1.37 An entity that is a charity must continue to have only charitable purposes (other than incidental or ancillary purposes that further or aid the charitable purpose). For example, if an entity expands or evolves its operations in such a way that its purposes change or its business operations become an end in themselves, it may no longer have only charitable purposes.

Peak bodies

1.38 Where charities establish a peak or similar body to further their common charitable purposes, the same principles and considerations apply in determining the purpose of that entity as would apply to any entity.

1.39 An entity that has a charitable purpose may advance that purpose through activities that increase the effectiveness or enhance the long term viability of other charities. For example, a peak body that undertakes research, policy, advocacy, educational or other supporting activities to advance the effectiveness of its member charities may be a charitable entity. It is commonality of purpose with its members that determines whether it is a charity although the purpose may be pursued in different ways and, while it must also meet the public benefit test, it may not deal directly with the public. An entity that advances the charitable purpose of another entity must itself have only charitable purposes (other than incidental or ancillary purposes that further or aid the charitable purpose) and meet the other requirements to be a charity.

Type of entity that may be a charity

1.40 The term ‘entity’ takes its meaning from the *Australian Charities and Not-for-Profits Commission Act 2012*, being:

- an individual;
- a body corporate;
- a body politic;
- any other unincorporated association or body of persons; or
- a trust.

1.41 A charity must be an entity. However, it cannot be one of the following entity types: an individual, a political party or a government entity. [*paragraph 5(d)*]

1.42 The purposes of government in carrying out its functions and responsibilities are not charitable and a government entity cannot be a charity. However, the definition of a government entity has been uncertain in the common law, with various factors, particularly government control, being considered over time as determining factors.

1.43 To give greater certainty about what is a government entity, the Bill provides that the term has the same meaning as ‘government entity’ within the meaning of the *A New Tax System (Australian Business Number) Act 1999*. [*Subsection 4(1)*]

1.44 As state and territory laws describe ‘government entity’ in various ways, the Bill enables the Minister to prescribe additional classes of government entities to allow the Government to list the state and territory equivalents to Commonwealth concepts already incorporated into

the ABN definition and to allow those terms to be more easily kept up to date. [Subsection 4(2)]

1.45 The Bill includes a foreign government agency (within the meaning of the term in the ITAA 1997) within the meaning of government entity. [Paragraph 4(1)(c)]

Purposes for the public benefit

1.46 To be a charity, an entity's purpose or purposes must be for the public benefit. The public benefit is at the core of charity and charitable purposes. There are two aspects to the public benefit – there must be a benefit that is real and of value to the public, whether tangible or intangible, and that value or benefit must be available to the public. [Subsection 6(1)]

Benefit from the purpose

1.47 The purpose of an entity and the benefit it provides must be identifiable and real. The value or benefit must be of worth, advantage, utility, importance or significance. A purpose that is vague, uncertain or ambiguous, or is of indeterminable value for the public, is not charitable. A purpose that has insufficient value or the benefit to the public is too remote is not charitable. The description of benefit as a universal or common good broadly expresses the character of purposes identified as charitable under the common law. Although individuals may be the direct beneficiaries of a charitable purpose, the purpose contributes to the public wellbeing more generally and is consistent with common contemporary social values and community standards. [Subsection 6(1)]

1.48 Benefits are not restricted to material benefits. They may be tangible, such as accommodation provided by a hostel for the homeless, or intangible, such as the social, psychological or emotional benefits derived from a visitors program for aged persons or spiritual benefits derived from the activities of religious organisations. [Subsection 6(2)(a)]

1.49 Each purpose of an entity must be for the public benefit, only benefits arising from carrying out those purposes can be taken into consideration, and the beneficiaries must be appropriate to the purpose.

1.50 In determining public benefit, consideration must be given to any possible detriment which arises from the purpose, or would commonly arise, from carrying out of the purpose to the general public, a section of the general public or a member of the general public. Examples of detriment or harm include damage to mental or physical health, damage to the environment, encouraging violence or hatred towards others,

damaging community harmony, or engaging in illegal activities such as vandalism or restricting personal freedom. [*paragraph 6(3)(b)*]

Available to the public

1.51 The benefit of a charitable purpose does not have to be for all the general public in order to satisfy the public element. The benefit can be for a section of the public as long as that section is not negligible compared to the size of that part of the public to whom the purpose would be relevant. [*Subsection 6(4)*]

1.52 A sufficient section of the public may be a limited number of persons where the charitable purpose would be relevant to only a small group of people. For example, where an entity supports medical research into a very rare disease that affects only a few people in Australia, it may be for the public benefit if its purpose is directed to only those individuals suffering from the disease.

1.53 Limiting beneficiaries to groups with particular characteristics such as residents of a particular geographic area, the followers of a particular religion to which anyone can adhere, or sufferers of a particular disability or condition can be consistent with the public benefit test, provided such limitation is justified and reasonable having regard to the nature of the benefit.

1.54 Charging fees to members of the public for goods, services, or other benefits where the purpose is otherwise charitable is not inconsistent with a charitable purpose. While there must be a public benefit from the purpose, the benefit may be expressed in various ways and fees will be a merely another factor to be considered in applying the public benefit test.

Private benefit

1.55 An essential element of a charity is that it does not confer benefit other than to intended beneficiaries of the charitable purpose as members of the public.

1.56 In determining public benefit, regard must be had to any benefits to entities (including individuals) directly or indirectly associated with the entity. The greater the scope to provide private benefits, the greater the concern that the purpose is not to benefit the public but to provide those benefits. [*Paragraph 6(3)(a)*]

1.57 Where there are private benefits, these must be incidental, that is, a necessary minor result or by-product, or conferred as a necessary means, of carrying out the entity's charitable purpose, and be genuine and reasonable. Benefits or payments to officers, suppliers, and associates

must not exceed what is reasonable and appropriate. Pecuniary benefits received by individuals are also covered by the not-for-profit definition.

1.58 An entity that exists to advance the interests of members in their capacity as members cannot be charitable as it would not satisfy the public benefit test.

1.59 A purpose of providing benefits to members does not become charitable simply because the motivation of the entity has some social value or, as a consequence of its activities, some indirect value to the general public arises. For this reason, professional or occupational associations are unlikely to be charitable.

1.60 Similarly, community and economic development, and the advancement of industry, commerce or agriculture can be charitable purposes but particular care is needed where carrying out such purposes allows an entity to provide benefits to individual entities or members that cannot be considered incidental to the public benefit. If benefiting or advancing the interests of individual entities or advancing the commercial interests of a particular industry can be construed as a purpose, the entity cannot be charitable.

1.61 Placing limits on those who can benefit is generally incompatible with an intention of benefiting the public if the limits are by reference to some personal connection such as being members of a family or a group, which is based on personal or employment relationships to particular individuals, or on membership of bodies that can admit or exclude members of the public. Benefits in these cases are usually intended for people in their capacity as relatives, employees or members rather than as a section of the public and therefore do not meet the public benefit test.

1.62 A public benefit does not generally exist where there is a relationship between the donor entity and the beneficiaries such as a family or employment relationship.

Certain purposes presumed to be for public benefit

1.63 While all charitable purposes must be for the public benefit, under the common law a purpose that is for the relief of the needs of the poor, the aged and impotent, advancing education or advancing religion is presumed to be a purpose that benefits the public unless there is evidence to the contrary. Entities with other charitable purposes must positively establish that their charitable purposes are beneficial.

1.64 The Bill retains the presumption of benefit for these purposes, referring to relieving illness as a modern proxy for the relief of the

impotent. While the purposes of relieving poverty, illness and the needs of the aged are not separately listed as charitable purposes, the Bill notes that they are encompassed by the higher level descriptions of charitable purposes in section 11.

1.65 The Bill also extends the presumption to the whole of the public benefit test, rather than merely a presumption that the purpose is beneficial.

1.66 The presumption of public benefit will not continue to apply where there is evidence to the contrary. If the presumption of public benefit is rebutted, the entity must then affirmatively demonstrate that it is for the public benefit. [*Subsection 7 and Note*]

1.67 The presumption may also be challenged by anyone with relevant legal standing such as taxation authorities, other Government regulators and those entitled to receive distributions pursuant to a charitable trust. In these cases the challenge would be considered in the courts.

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

1.68 As explained in paragraphs 1.55 to 1.62, an entity that has a charitable purpose but provides benefits to individuals who are related may fail a public benefit test.

1.69 Generally where an entity provides benefits to Indigenous Australians the fact that the beneficiaries may be related is incidental to their need for the benefit being provided, for example, for education or health benefits, within a particular community or geographical area. The relationship between beneficiaries would therefore not usually cause the entity to fail the public benefit test.

1.70 However the Bill addresses a particular circumstance where under laws relevant to native title the relationship between beneficiaries may be central to the receipt of benefits. The relevant laws may have the effect of requiring an Indigenous holding entity to benefit only individuals that are related.

1.71 The Bill therefore ensures that an entity does not fail a public benefit test solely because the beneficiaries are related where the beneficiaries are Indigenous Australians and the entity is an Indigenous holding entity that receives native title benefits.

1.72 The Bill gives an Indigenous holding entity the meaning given in the ITAA 1997 and native title benefit the meaning of an amount or

non-cash benefit (within the meaning of the ITAA 1997) that arises under an agreement, or ancillary agreement, or instrument made under an Act of the Commonwealth, a State or Territory to the extent that the amount relates to native title or is compensation determined in accordance with Division 5 of Part 2 of the *Native Title Act 1993*. The meaning of native title benefits encompasses payments under an agreement made pursuant to legislation to the extent that the payment relates to native title as defined in the *Native Title Act 1993* and for purposes not limited to impairment or extinguishment of native title. [*Subsections 8(1) and (2)*]

1.73 The provision takes into account the nature of Indigenous community structures and familial links with particular geographical areas and turns off the 'related individuals' element of the public benefit test so that an entity may provide benefits within a particular community. However, other aspects of the public benefit test, including the nature of the entity, the activities it undertakes, the beneficiary class, the relationship between the beneficiaries and the number of beneficiaries, are still relevant when determining whether the entity is charitable.

When the public benefit test does not apply

1.74 The public benefit test does not apply in the case of open and non-discriminatory self-help groups and closed or contemplative religious orders that regularly undertake prayerful intervention at the request of members of the public. These entities were relieved from the public benefit test in the *Extension of Charitable Purpose Act 2004*. [*Section 9*]

1.75 Open and non-discriminatory self-help groups are often organised and managed by the same people that benefit from the group. For this reason, such groups would not typically be able to satisfy the public benefit test.

1.76 There has been some doubt under the common law about whether a closed or contemplative religious order fulfils the public benefit test and the Bill ensures such an entity does not fail a public benefit test.

1.77 Although open and non-discriminatory self-help groups and closed or contemplative religious orders will not be required to meet the public benefit test, it will still be necessary for the entity to satisfy the other requirements to be a charity, including having only charitable purposes.

Disqualifying purpose

1.78 The purpose of engaging in activities that are unlawful or contrary to the public policy is not a charitable purpose under the common

law and is a disqualifying purpose in the Bill. The Bill clarifies that the reference to public policy refers to matters such the rule of law, system of government of the Commonwealth, the safety of the general public and national security and that activities are not contrary to public policy merely because they are contrary to government policy. [*Paragraph 10(a) and Note*]

1.79 Political parties are not charitable and a purpose of promoting or opposing a political party or a candidate for political office is not a charitable purpose. However, the Bill notes that a purpose of promoting or opposing a change to any matters established by law, policy or practice in the Commonwealth, a State or Territory or another country may be a charitable purpose in certain circumstances as explained in paragraphs 112 to 114. [*Paragraph 10(b) and note*]

1.80 An entity must not engage in partisan political activities that support or oppose a candidate or party for office or other partisan political activities where this can be construed as a purpose. In addition, the electoral law has rules about activities that may be seen as election-related campaigning by organisations, including charities, and party political activities could put charities in conflict with, or allow them to circumvent, the strict regulation of political parties, elections, and funding and disclosure requirements and limitations in the *Commonwealth Electoral Act 1918*.

1.81 This does not mean that charities cannot engage in activities such as policy debates, advocacy or lobbying activities to further charitable purposes, or publishing comparisons of party policies and how they align with its charitable purpose.

Definition of charitable purposes

1.82 The Bill includes a non-exhaustive list of categories of charitable purposes that have significant recognition in the common law. The cases have been grouped into broad categories of purposes found charitable in the courts. Each case must depend on its own facts. The list is not intended to exclude other charitable purposes that the courts have found to be beneficial to the general public that do not readily lend themselves to grouping. See paragraph 1.108 for examples of other charitable purposes identified by the courts. [*Section 11*]

1.83 The categories of purposes are described below with some examples of specific purposes that are charitable.

Advancing health

1.84 Advancing health includes the prevention and relief of sickness, disease or human suffering through, for example:

- the care, treatment and rehabilitation by, for example, hospitals, alcohol and drug treatment centres, mental health institutions and community health services such as home nursing, alcohol and drug rehabilitation and patient transport services;
- the provision of public health services aimed at advancing the health of the general community or sections of the general community, such as health promotion, nutrition services, immunisation and screening for diseases; and
- Research related to the nature, prevention, diagnosis, treatment and incidence of disease and other health problems, research into health services, nutritional problems, pharmacology and similar services.

Advancing education

1.85 Advancing education includes:

- the provision of formal education through preschools, schools and tertiary education institutions, including the provision of building and related educational facilities;
- vocational training such as farming or technical training;
- research directed towards expanding human knowledge and made publicly available;
- less formal education aimed at the development of citizenship and core life skills;
- the support of education, such as through the provision of prizes and scholarships, noting the interaction with public benefit; and
- the provision and support of facilities and services integrally associated with the operation of education institutions, such as parent organisations.

1.86 The advancement of education can occur irrespective of the age of the beneficiaries.

1.87 The advancement of education does not include education in the sense that all experience is educative. Where the purpose of an entity is to promote a particular view, the purpose may not be charitable on the basis that it is not genuinely educational. Education does not have to be value free but the information presented should be based on evidence and reasonable analysis.

1.88 A purpose is not charitable where it lacks any educational merit. For example, if an entity is established as a museum and expert evidence indicates the quality of items is of little value so that the public would not receive any benefit from their exhibition, the purpose is not charitable.

Advancing social or public welfare

1.89 Advancing social and community welfare includes:

- the relief of poverty, distress or disadvantage;
- the care, support and protection of the aged including the provision of residential and non-residential care;
- the care, support and protection of people with a disability, including the provision of residential and non-residential care;
- the provision of assistance and support for Australia's disadvantaged Indigenous people, including advancement of economic opportunities in disadvantaged communities; and purposes aimed at reducing the disadvantage experienced by Indigenous peoples and enhancing their general wellbeing;
- alleviating disadvantage experienced by people with special needs, such as refugees;
- the provisions of assistance and support for people who are disadvantaged in the labour market;
- the provision of housing and accommodation support for people with special needs or who are otherwise in a special disadvantage in terms of their access to housing;
- the relief of distress caused by natural disasters and sudden catastrophes;
- international development assistance to address disadvantage, for example, through overseas aid;

- the care and support of members or former members of the defence forces and their families.

1.90 The persons to benefit under the relief of poverty need not be destitute or on the border of destitution. In Australia, those lacking the resources to obtain what is necessary for a modest standard of living in the Australian community may be accepted as suffering poverty. To relieve poverty implies that the people in question have a need attributable to their condition which requires alleviating, and which those people could not alleviate or would have difficulty in alleviating by themselves. The ways in which poverty can be relieved include providing money, accommodation, legal or medical aid.

1.91 The Bill does not specify the prevention of poverty as a charitable purpose. However where there is a strong, evident causal link, the charitable purpose of prevention of poverty is not precluded. Purposes that may be described as the prevention of poverty in many cases are already charitable purposes under other categories such as the provision of support and assistance for people who are disadvantaged in the labour market.

1.92 Advancing social or community welfare includes the purpose of caring for, supporting and protecting children and young people and, in particular, providing child-care services. This purpose was included in the *Extension of Charitable Purpose Act 2004*. [*Subsection 13(1)*]

1.93 Advancing social and community welfare also includes the purpose of assisting rebuilding, repairing or securing assets after a disaster, in furtherance of the purposes of exempt entities within the meaning of the ITAA 1997. The effect of the provision is to extend charitable purposes to include re-establishing not-for-profit community assets after a disaster, independently of the relief of individual distress. Any benefits of a commercial or private nature must be only incidental or ancillary to re-establishing the community assets and the assets must not be government assets. Rebuilding may be in a different location and to a higher standard where necessary to mitigate future risk. [*Subsection 13(2)*]

1.94 The Bill describes a disaster in the terms used in the ITAA 1997 relating to the declaration of a disaster for the purposes of Australian Disaster Relief Funds. [*Paragraph 13 (2(a))*]

Advancing religion

1.95 Advancing religion involves the promotion of spiritual teaching and the observances that serve to promote and manifest it. The purpose must be directly and immediately religious and involve various ways of advancing religion, including providing and maintaining facilities for

worship; supporting religious clergy; missionary bodies; and religious associations.

1.96 It is not enough that a purpose arises out of or has a connection with a faith, a church or a denomination. If the purpose is not directly or immediately religious it is not charitable. For example, social, recreational or sporting entities are not charitable even if membership is limited to followers of a particular religion.

1.97 It is also not enough that an entity does something merely in the name of religion for it to be a charity advancing religion. A purpose expressed as advancing religion cannot be used as a means of promoting or expressing aims or opinions that are not charitable and would not be for charitable purposes if expressed by a non-religious organisation.

Advancing culture

1.98 Advancing culture increases the public appreciation of arts, music or literature, national identity and heritage and includes:

- the promotion and fostering of culture;
- the care, preservation and protection of the Australian heritage;
- the promotion of and participation in the arts, including literature, music, the performing arts and visual arts;
- the establishment and maintenance of public museums (including botanical or zoological gardens), libraries and art galleries, and moveable cultural heritage;
- the promotion of Australian Indigenous culture and customs;
- the promotion of the culture and customs of various language and ethnic groups; and
- the protection and preservation of national monuments, areas of national interest and national heritage sites and buildings.

Promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia

1.99 The promotion of reconciliation, mutual respect and tolerance between individuals in Australia includes:

- promoting harmony and understanding and the lessening of conflict between people from different races, religions or belief systems;
- eliminating discrimination, for example on grounds of age, gender or sexual orientation, and promoting equality and diversity;
- promoting restorative justice and other forms of conflict resolution or reconciliation; and
- mediating, conciliating and reconciling persons, organisations, authorities or groups involved or likely to become involved in dispute or conflict.

Promoting or protecting human rights

1.100 The purpose of promoting or protecting human rights refers to the rights and freedoms recognised or declared by the international instruments specified in the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

1.101 The international instruments cover the elimination of racial discrimination and discrimination against women, economic, social and cultural rights, civil and political rights, conventions against torture and cruel, inhuman or degrading treatment or punishment, rights of the child and of individuals with disabilities. Charitable purposes include:

- promotion of human rights, at home or abroad,
- relieving victims of human rights abuse; and
- raising awareness of human rights issues.

Protecting the safety of the general public

1.102 The purpose of protecting the safety of the general public includes:

- providing safe houses;
- promoting Neighbourhood Watch or similar schemes;
- establishing and supporting volunteer fire brigades and volunteer emergency services organisations;

- liaising with the police on addressing the causes of crime in an area;
- providing a conciliation service; and
- providing advice and support to victims and offenders.

Preventing or relieving the suffering of animals

1.103 The purpose of preventing or relieving the suffering of animals must help animals or promote humane feelings in people by caring for or preventing cruelty towards animals. The purpose includes:

- promoting benevolence and preventing or suppressing cruelty to animals;
- providing animal sanctuaries;
- providing veterinary care and treatment; and
- caring for, and re-homing, animals that are abandoned mistreated or lost.

Advancing the natural environment

1.104 Advancing the natural environment includes:

- preserving native flora and fauna;
- rescuing and caring for native animals;
- preserving or rehabilitating habitats;
- promoting sustainable development and biodiversity; and
- protecting, preserving, caring for, and educating the community about, the environment.

1.105 It is not enough for an entity to carry out activities in the name of advancing the natural environment. The benefit must be identifiable and of sufficient value. It cannot be incidental to a non-charitable purpose. For example, an entity that provides recreational experience in a natural environment is unlikely to have a charitable purpose of advancing the environment where the educational benefit is relatively minor or incidental to the recreational experience.

Any other purposes beneficial to the public that may reasonably be regarded as analogous to, or within the spirit of, any of the preceding purposes

1.106 This provision encompasses other purposes which the courts have found to be charitable, including for scientific and scholarly research, promoting industry, commerce and agriculture in certain circumstances (see paragraphs 1.55 to 1.62 about private benefit), and for a locality or neighbourhood, such as the beautification of a township.

1.107 The provision also allows for the meaning of charitable purpose to develop through court decisions or by Parliament, in accordance with contemporary Australian society's needs and expectations.

1.108 The provision for the extension of charitable purposes on the basis that they are analogous to, or within, the spirit of the established purposes is consistent with the provisions for the extension of charitable purposes in comparable international legislation.

1.109 The meaning of charity is not determined by state or territory law. Where state or territory legislation extends charitable status to various purposes, those purposes are not accepted as charitable for Commonwealth purposes. For example, while some States have enacted legislation that extends charitable status to the provision of recreational facilities, for Commonwealth purposes, recreational purposes are not charitable.

1.110 A purpose that is essentially social, recreation or sporting is not charitable regardless of motivation or the benefits to the general public that can result.

1.111 While social, sport and recreational purposes are not charitable purposes, social, recreational or sporting activities that are incidental to charitable purpose and further or aid the purpose, such as health or education, do not necessarily prevent that purpose from being charitable.

Promoting or opposing a change to matters established by law, policy or practice in relation to another charitable purpose

1.112 A purpose of generating public debate with a view to influencing legislation, government activities or government policy in furtherance or protection of one or more existing charitable purposes, and consistent with those purposes, would be charitable as long as the means used and the ends to be achieved are not inconsistent with the rule of law and the established system of government, for example, the use of bribery to achieve an end or promotion of anarchy. [*Subsection 11(1)(l)*]

1.113 A 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 is not an independent a charitable purpose.

1.114 Where an entity has such a purpose, the purpose will be identified under this category separately from any charitable purpose the entity may have. *[Subsection 11(2)]*

Funding charity-like government entities

1.115 Charitable funds, such as private and public ancillary funds, lose their charitable status under Commonwealth law if they distribute to an entity that is not a charity. Some government entities, such as certain public health services, would be a charity except for their being a government entity. Under some state laws, charitable funds are able to donate to charity-like government entities and maintain their charitable status. The Bill makes similar provision to allow charitable funds, which retain their charitable status under state laws, to also retain their charitable status for the purposes of Commonwealth law where they provide benefits to an entity that would be a charity except that it is a government entity. *[Section 12]*

Miscellaneous

Cy-pres schemes

1.116 States and Territories regulate the operation of trusts in their jurisdiction through trust legislation. These jurisdictions have legislation which may sever any non-charitable purposes from a mixed purpose trust to leave a valid charitable trust in respect of charitable purposes only. The process by which the courts do this is known as a cy-pres scheme.

1.117 In determining whether an entity that is subject to a cy-pres scheme is a charity for Commonwealth law purposes, the most recent court order concerning the scope of its charitable purpose should be taken into account. The intention is that if a mixed purpose trust is subject to a cy-pres scheme at state law to ensure that it is charitable, the entity may be charitable for Commonwealth law purposes. *[Section 14]*

Chapter 2

Transitional and consequential amendments

Outline of chapter

2.1 This Chapter explains the amendments to Commonwealth legislation by the Charities (Consequential Amendments and Transitional Provisions) Bill 2013 as a consequence of the introduction of a statutory definition of charity in the Charities Bill 2013.

2.2 This Chapter covers:

- the repeal of existing legislation addressing some aspects of charitable purpose that has been included in the Charities Bill 2013;
- changes required to give effect to the expanded number of categories of charitable purpose, including transitional arrangements for streamlining registration of the new subtypes of entities with the Australian Charities and Not-for-profits Commission (ACNC); and
- consequential changes as a result of the amendments in the Charities Bill 2013 to enable charities to provide funds to entities that are connected to government without losing charitable status.

2.3 References in this Chapter to the ‘Consequential Amendments Bill’ are references to the Charities (Consequential Amendments and Transitional Provisions) Bill 2013.

Context of amendments

2.4 The Charities Bill 2013 defines charity and charitable purpose for the purposes of Commonwealth laws. Consequential amendments are needed to Commonwealth legislation that refers to these concepts in different terms.

Summary of new law

2.5 As a result of the introduction of a definition of charity and charitable purpose in the Charities Bill 2013, a number of consequential amendments to Commonwealth legislation and transitional arrangements are required.

2.6 The key features of the Consequential Amendments Bill are to:

- repeal the *Extension of Charitable Purpose Act 2004*, recognising that the Charities Bill 2013 provides that charitable purpose includes child care and open and non-discriminatory self-help groups and closed or contemplative religious orders;
- amend the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) to reflect the new characterisation of charitable purpose that have been included in the Charities Bill 2013 resulting in changes to applications for registration and sub-types of charities that are registered;
- repeal the income tax exemption available to non-charitable public and private ancillary funds that provide money, property and benefits to deductible gift recipients that are income tax exempt. This recognises that the Charities Bill 2013 extends charitable purposes to funds that provide money, property and benefits to entities that would be charitable if they were not government entities.

Detailed explanation of new law

Previous legislation- charitable purposes

2.7 The Consequential Amendments Bill repeals the *Extension of Charitable Purpose Act 2004*. This Act provided a statutory extension to the common law meaning of ‘charity’ for the purposes of all Commonwealth legislation. [Schedule 1, Part 2 of the *Consequential Amendments Bill*]

2.8 The *Extension of Charitable Purpose Act 2004* ensured that:

- organisations providing child care to the public on a not-for-profit basis;
- self-help bodies with open and non-discriminatory membership; and

- closed or contemplative religious orders that offer prayerful intervention at the request of the public,

were treated as charities for the purposes of Commonwealth legislation.

2.9 The repeal of the *Extension of Charitable Purpose Act 2004* allows the Charities Bill 2013 to deal comprehensively with the meaning of charity and charitable purpose. Accordingly, the Charities Bill 2013 ensures that public not-for-profit child care, open and non-discriminatory self-help bodies and closed or contemplative religious orders offering prayerful intervention at the request of the public continue to be charitable.

2.10 The national rental affordability scheme has not been included as a charitable purpose in the Charities Bill 2013. This reflects that, following the decision of the High Court of Australia in *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204, entities can be charitable despite undertaking commercial activities provided the activities are in aid of, or further their charitable purpose.

Registration of charity sub-types

Expanded categories of subtypes of entity

2.11 The Charities Bill 2013 expands the number of categories of charitable purpose from four to 12. Public benevolent institutions and health promotion institutions also continue to qualify for a separate sub-type of entity registration.

2.12 As a result of the expanded number of categories of charitable purposes, amendments are made to the ACNC Act to reflect that there are 14 subtypes of entity, rather than the existing six categories. [*Schedule 1, Part 1, item 3 of the Consequential Amendments Bill*]

2.13 Transitional provisions are also included in the Consequential Amendments Bill to address the need to revise existing subtypes of entity registration and to deal with applications for registration from the commencement of the legislation to the new subtypes of entity registration with the ACNC.

2.14 The transitional arrangements apply to entities that on the day before the legislation commences:

- are registered with the ACNC as one or more of the existing six subtypes of entity; or

- have outstanding applications for registration with the ACNC as one or more of the existing six subtypes of entity.

Registration – old subtypes equivalent to new subtypes

2.15 There are five existing subtypes of entity that are treated as having a corresponding new subtype of entity from the commencement of the legislation. These are:

Table 2.1 Transitional arrangements for corresponding subtype of entity registration

Existing subtype of entity on 31 December 2013	New subtype of entity from 1 January 2014
Advancing education	Advancing education
Advancing religion	Advancing religion
Health promotion institution	Health promotion institution
Public benevolent institution	Public benevolent institution
Provision of child care services	Advancing social or public welfare

[Schedule 2, subitem 2(3) of the Consequential Amendments Bill]

2.16 The transitional amendments ensure that on the day before the commencement of the legislation, entities with one or more of the above five existing subtypes of entity registration, and applications for such registration, are automatically transitioned into the new category of subtype. *[Schedule 2, subitems 2(1) and (2) of the Consequential Amendments Bill]*

Registration – old subtypes possibly equivalent to new subtypes

2.17 In contrast, entities that are registered or have an application for registration pending on the day before the commencement of the legislation for a subtype of entity for the relief of poverty, sickness or the needs of the aged, or other purposes beneficial to the community may qualify under a number of different new categories of charitable purpose.

2.18 Accordingly the transitional provisions provide for registration and applications for registration for the relief of poverty, sickness or the needs of the aged, or other purposes beneficial to the community to correspond to the following new subtype of entity registration on the commencement day:

Table 2.2 Transitional arrangements for potentially corresponding subtypes of entity registration

Existing subtype of entity from 31 December 2013	New subtype of entity from 1 January 2014
Relief of poverty, sickness or the needs of the aged	Advancing health Advancing social or public welfare
Other purposes beneficial to the community	Advancing social or public welfare Advancing culture Advancing reconciliation, mutual respect and tolerance between groups of individuals that are in Australia Promoting or protecting human rights Protecting the safety of the general public Preventing or relieving the suffering of animals Advancing the natural environment Purposes beneficial to the general public Promoting or opposing a change to law, policy or practice in Australia or overseas.

[Schedule 2, item 3 of the Consequential Amendments Bill]

2.19 Entities that on the day before the legislation commences:

- are registered or have applied for subtype registration that has not yet been determined by the ACNC; and
- are registered or have applied for registration as the existing subtypes of the relief of poverty, sickness or the needs of the aged and, other purposes beneficial to the community;

may advise the ACNC which new category of subtype of entity that they should be registered under. *[Schedule 2, subitems 3(1) & (2)]*

2.20 Entities have 18 months from the commencement of the legislation to make a request in the approved form to the Commissioner of the ACNC under the transitional provision. *[Schedule 2, subitem 3(4) of the Consequential Amendments Bill]*

2.21 In addition, an entity can revise an application for registration or seek registration under a different subtype of entity at any time. The purpose of the transitional provisions is to streamline the transition of

existing subtype registrations and outstanding applications for subtype registrations on the day before commencement of the legislation.

2.22 The Consequential Amendments Bill contains a dictionary of terms to ensure that terms used in the transitional provisions in the Bill are consistent with the ACNC Act. These include:

- adopting the meaning of the ACNC Act;
- adopting the meaning of approved form from the ACNC Act; and
- clarifying the meaning of commencement as the day that the transitional provisions commence.

[Schedule 2, item 1 of the Consequential Amendments Bill]

Repeal of income tax exemption: private and public ancillary funds

2.23 The income tax exemption in section 50-20 of the *Income Tax Assessment Act 1997* that applies to non-charitable public and private ancillary funds which provide money, property and benefits to income tax exempt deductible gift recipients, is repealed.

2.24 The income tax exemption was provided to public and private ancillary funds to allow them to contribute to deductible gift recipients whether or not they were charitable, for example, entities that would be charities if they were not government entities.

2.25 The Charities Bill 2013 allows ancillary funds to retain charitable status where they contribute to an entity that would be charitable if it were not a government entity. This enables such entities to retain their charitable status and therefore removes the need for a specific income tax exemption to be available.

2.26 A number of consequential changes are required to the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to reflect this change. *[Schedule 1, items 10 to 26 of the Consequential Amendments Bill]*

Transitional arrangements for endorsement of funds that contribute to charity-like government entities

2.27 The Bill ensures that existing 4.1 type income tax exempt funds that are endorsed by the Commissioner of Taxation are treated as registered charities following these amendments. *[Schedule 2, item 4 of the Consequential Amendments Bill]*

2.28 These income tax exempt funds are provided with an opt out provision, should they not wish to be treated as a charity. [*Schedule 2, item 5 of the Consequential Amendments Bill*]

Minor consequential changes

2.29 A number of minor changes are made to the *A New Tax System (Goods and Services Tax) Act 1999*, the ACNC Act, the *Fringe Benefits Tax Assessment Act 1986* and the *Income Tax Assessment Act 1997*, to recognise that:

- the existing four categories of charitable purpose have been expanded to 12 categories of charitable purpose; and
- the relief of poverty, sickness or the needs of the aged now forms part of the charitable purpose of advancing social or public welfare.

[*Schedule 1, items 1, 2, 4, 5, 6, 7, 8, 9, 25, and 26, of the Consequential Amendments Bill*]

2.30 Amendments are made to the *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013* if enacted. Further information about the transitional arrangements is below. [*Schedule 1, items 29, 30 and 31*]

2.31 Amendment is also made to the *Income Tax Assessment Act 1997* to ensure that entities which fall within the scope of the ACNC are not exempt from income tax unless the entity is registered under the ACNC Act. [*Schedule 3 of the Consequential Amendments Bill*]

Cy-près scheme

2.32 The Charities Bill 2013 allows cy-près schemes to be taken account of in determining charity status under Commonwealth law. This amendment extends that treatment to the ACNC Act (see Chapter 1). This ensures that, consistent with the Charities Bill 2013, if a cy-près applies:

- non-charitable purposes of a mixed purpose trust are disregarded in determining if it is charitable; and
- the Charities Bill 2013 and the ACNC Act apply consistently to such trusts. [*Schedule 1, item 3 of the Consequential Amendments Bill, subsection 25-5(6)*].

Application and transitional provisions

2.33 The Consequential Amendments Bill generally applies from 1 January 2014, being the date that the Charities Bill 2013 commences. *[clause 2 of the Consequential Amendments Bill]*

2.34 However, the inclusion of the definition of not-for-profit entity, which will be included in the income tax law by the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 is contingent on the commencement of the Charities Bill 2013 and the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012. If the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 does not commence then the meaning of not-for-profit entity takes its ordinary meaning. *[Schedule 1, item 28 of the Consequential Amendments Bill]*

2.35 Similarly, consequential amendments in the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 are redundant if amendments in the Consequential Amendments Bill have already taken effect. This reflects that both Bills make conflicting amendments to the same provisions.

2.36 Accordingly, the amendments to section 50-20 and subsection 50-110(5) of the *Income Tax Assessment Act 1997* in the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 do not take effect if the Consequential Amendments Bill commences prior to that Bill.

2.37 The amendments in Schedule 3 commence on 3 December 2012, which was the day the ACNC Act commenced. These amendments are required to ensure that the ACNC Act operates in accordance with its policy intent.

