



Charities (Consequential Amendments and Transitional Provisions) Act 2013

No. 96, 2013

**An Act to deal with consequential and transitional
matters arising from the enactment of the *Charities
Act 2013*, and for other purposes**

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

Contents

| | | |
|---|-------------------|-----------|
| 1 | Short title..... | 1 |
| 2 | Commencement..... | 2 |
| 3 | Schedule(s)..... | 3 |
| Schedule 1—Consequential amendments | | 4 |
| Part 1—Main amendments | | 4 |
| <i>Acts Interpretation Act 1901</i> | | 4 |
| <i>Age Discrimination Act 2004</i> | | 4 |
| <i>A New Tax System (Goods and Services Tax) Act 1999</i> | | 5 |
| <i>Australian Charities and Not-for-profits Commission Act 2012</i> | | 5 |
| <i>Criminal Code Act 1995</i> | | 7 |
| <i>Disability Discrimination Act 1992</i> | | 8 |
| <i>Fringe Benefits Tax Assessment Act 1986</i> | | 8 |
| <i>Income Tax Assessment Act 1936</i> | | 9 |
| <i>Income Tax Assessment Act 1997</i> | | 9 |
| <i>Racial Discrimination Act 1975</i> | | 11 |
| <i>Sex Discrimination Act 1984</i> | | 11 |
| <i>Social Security Act 1991</i> | | 12 |
| Part 2—Extension of Charitable Purpose Act 2004 | | 13 |
| Part 3—Charities Act 2013 | | 14 |
| Part 4—Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013 | | 15 |
| Schedule 2—Transitional provisions | | 16 |
| Part 1—Dictionary | | 16 |
| Part 2—Registration | | 17 |
| Division 1—Registered entities | | 17 |
| Division 2—Funds contributing to other funds | | 20 |
| Part 3—Purposes of registered charitable trusts | | 22 |
| Part 4—Charitable purposes | | 23 |



Charities (Consequential Amendments and Transitional Provisions) Act 2013

No. 96, 2013

An Act to deal with consequential and transitional matters arising from the enactment of the *Charities Act 2013*, and for other purposes

[Assented to 28 June 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Charities (Consequential Amendments and Transitional Provisions) Act 2013*.

Charities (Consequential Amendments and Transitional Provisions) Act 2013 No. 96, 2013

1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|--|-------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 28 June 2013 |
| 2. Schedule 1, Parts 1 and 2 | At the same time as the <i>Charities Act 2013</i> commences. | 1 January 2014 |
| 3. Schedule 1, Part 3 | The later of: (a) immediately after the commencement of the <i>Charities Act 2013</i> ; and (b) the time item 44 of Schedule 1 to the <i>Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013</i> commences. However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur. | Does not commence |
| 4. Schedule 1, Part 4 | Immediately after the time specified in the <i>Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2013</i> for the commencement of item 33 of Schedule 1 to that Act. However, the provision(s) do not commence at all if that item commences before the time the <i>Charities Act 2013</i> commences. | Does not commence |
| 5. Schedule 2 | At the same time as the <i>Charities Act 2013</i> commences. | 1 January 2014 |
| Note: | This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act. | |

-
- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Consequential amendments

Part 1—Main amendments

Acts Interpretation Act 1901

1 Section 2B

Insert:

charitable has the meaning given by Part 2 of the *Charities Act 2013*.

2 Section 2B

Insert:

charitable purpose has the meaning given by Part 3 of the *Charities Act 2013*.

3 Section 2B

Insert:

charity has the meaning given by Part 2 of the *Charities Act 2013*.

Age Discrimination Act 2004

4 Section 34

Repeal the section, substitute:

34 Charities

This Part does not:

- (a) affect a provision (whether made before or after the commencement of this Part) of the governing rules (within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*) of a registered charity, if the provision:
 - (i) confers benefits for charitable purposes; or
 - (ii) enables such benefits to be conferred; wholly or in part on persons of a particular age; or

(b) make unlawful any act done to give effect to such a provision.

A New Tax System (Goods and Services Tax) Act 1999

5 Section 195-1 (paragraph (b) of the definition of ACNC-registered religious institution)

Omit “item 3”, substitute “item 4”.

Australian Charities and Not-for-profits Commission Act 2012

6 Subsection 25-5(4) (note)

Omit “that is the relief of poverty, sickness or the needs of the aged”, substitute “of advancing social or public welfare”.

7 Subsections 25-5(5) and (6)

Repeal the subsections, substitute:

(5) The table is as follows:

| Entitlement to registration | | |
|------------------------------------|-----------------------|---|
| Item | Column 1 | Column 2 |
| | Type of entity | Corresponding subtype of entity |
| 1 | Charity | Entity with a purpose to which paragraph (a) of the definition of <i>charitable purpose</i> in subsection 12(1) of the <i>Charities Act 2013</i> applies (advancing health) |
| 2 | | Entity with a purpose to which paragraph (b) of the definition of <i>charitable purpose</i> in subsection 12(1) of the <i>Charities Act 2013</i> applies (advancing education) |
| 3 | | Entity with a purpose to which paragraph (c) of the definition of <i>charitable purpose</i> in subsection 12(1) of the <i>Charities Act 2013</i> applies (advancing social or public welfare) |
| 4 | | Entity with a purpose to which paragraph (d) of the definition of <i>charitable purpose</i> in subsection 12(1) of the <i>Charities Act 2013</i> applies (advancing religion) |
| 5 | | Entity with a purpose to which paragraph (e) of the |

Schedule 1 Consequential amendments
Part 1 Main amendments

| Entitlement to registration | | |
|------------------------------------|-----------------------|---|
| Item | Column 1 | Column 2 |
| | Type of entity | Corresponding subtype of entity |
| | | definition of <i>charitable purpose</i> in subsection 12(1) of the <i>Charities Act 2013</i> applies (advancing culture) |
| 6 | | Entity with a purpose to which paragraph (f) of the definition of <i>charitable purpose</i> in subsection 12(1) of the <i>Charities Act 2013</i> applies (promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia) |
| 7 | | Entity with a purpose to which paragraph (g) of the definition of <i>charitable purpose</i> in subsection 12(1) of the <i>Charities Act 2013</i> applies (promoting or protecting human rights) |
| 8 | | Entity with a purpose to which paragraph (h) of the definition of <i>charitable purpose</i> in subsection 12(1) of the <i>Charities Act 2013</i> applies (advancing the security or safety of Australia or the Australian public) |
| 9 | | Entity with a purpose to which paragraph (i) of the definition of <i>charitable purpose</i> in subsection 12(1) of the <i>Charities Act 2013</i> applies (preventing or relieving the suffering of animals) |
| 10 | | Entity with a purpose to which paragraph (j) of the definition of <i>charitable purpose</i> in subsection 12(1) of the <i>Charities Act 2013</i> applies (advancing the natural environment) |
| 11 | | Entity with a purpose to which paragraph (k) of the definition of <i>charitable purpose</i> in subsection 12(1) of the <i>Charities Act 2013</i> applies (purposes beneficial to the general public and analogous to the other charitable purposes) |
| 12 | | Entity with a purpose to which paragraph (l) of the definition of <i>charitable purpose</i> in subsection 12(1) of the <i>Charities Act 2013</i> applies (advancing public debate) |
| 13 | | Institution whose principal activity is to promote the prevention or the control of diseases in human beings |
| 14 | | Public benevolent institution |

Note 1: For the definition of *charity*, see the *Charities Act 2013*.

6 *Charities (Consequential Amendments and Transitional Provisions) Act 2013* No. 96, 2013

Note 2: An entity commonly known as a health promotion charity could be an entity described in column 2 of item 13 of the table (institution whose principal activity is to promote the prevention or the control of diseases in human beings).

Trusts

- (6) Section 18 of the *Charities Act 2013* (Cy pres and similar schemes) applies:
- (a) for the purposes of this Act; or
 - (b) for the purposes of determining whether an entity meets the description of a type or subtype of entity in the table in subsection (5) of this section;
- in the same way as that section 18 applies for the purposes of that Act.

8 Subsection 60-95(2) (example)

Omit “relieve poverty”, substitute “advance social or public welfare”.

9 Paragraph 205-35(1)(b)

Omit “item 3 of the table in subsection 25-5(5) (Entity with a purpose that is the advancement of”, substitute “item 4 of the table in subsection 25-5(5) (Entity with a purpose of advancing”.

Criminal Code Act 1995

10 Section 268.46 of the *Criminal Code*

Before “A person”, insert “(1)”.

11 At the end of section 268.46 of the *Criminal Code*

Add:

- (2) The definitions of *charitable purpose* in subsection 12(1) of the *Charities Act 2013* and section 2B of the *Acts Interpretation Act 1901* do not apply to this section.

12 Section 268.80 of the *Criminal Code*

Before “A person”, insert “(1)”.

13 At the end of section 268.80 of the *Criminal Code*

Add:

- (2) The definitions of *charitable purpose* in subsection 12(1) of the *Charities Act 2013* and section 2B of the *Acts Interpretation Act 1901* do not apply to this section.

Disability Discrimination Act 1992

14 Section 49

Repeal the section, substitute:

49 Charities

This Part does not:

- (a) affect a provision (whether made before or after the commencement of this Part) of the governing rules (within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*) of a registered charity, if the provision:
 - (i) confers benefits for charitable purposes; or
 - (ii) enables such benefits to be conferred; wholly or in part on persons who have a disability or a particular disability; or
- (b) make unlawful any act done to give effect to such a provision.

Fringe Benefits Tax Assessment Act 1986

15 Subparagraph 58(1)(a)(iii)

Omit “item 3”, substitute “item 4”.

16 Subsection 136(1) (paragraph (b) of the definition of *registered health promotion charity*)

Omit “item 5”, substitute “item 13”.

17 Subsection 136(1) (paragraph (b) of the definition of *registered public benevolent institution*)

Omit “item 6”, substitute “item 14”.

18 Subsection 136(1) (paragraph (b) of the definition of *registered religious institution*)

Omit “item 3”, substitute “item 4”.

Income Tax Assessment Act 1936

19 Subsection 121F(1) (paragraph (aa) of the definition of *relevant exempting provision*)

Omit “50-20”.

20 Subsection 121F(1) (paragraph (cb) of the definition of *relevant exempting provision*)

Omit “and” (last occurring).

21 Subsection 128F(9) (paragraph (a) of the definition of *company*)

Repeal the paragraph, substitute:

(a) the trust is not a charity; and

22 Paragraph 272-90(7)(a) in Schedule 2F

Omit “, 50-10 or 50-20”, substitute “or 50-10”.

Income Tax Assessment Act 1997

23 Section 11-5 (table item headed “funds established by will or trust”)

Repeal the item.

24 Subsection 30-45(1) (table item 4.1.3, column headed “Fund, authority or institution”)

Omit “relief of persons in Australia who are in necessitous circumstances”, substitute “purpose of relieving the necessitous circumstances of one or more individuals who are in Australia”.

25 Section 30-315 (table item 79, column without a heading)

Omit “persons in”.

26 Subparagraph 43-55(1)(a)(i)

Omit “50-20,”.

27 Section 50-5 (note 1)

Omit “charitable institutions, funds and trusts”, substitute “charities”.

28 Section 50-20

Repeal the section.

29 Section 50-52 (heading)

Omit “items 1.1 and 4.1”, substitute “item 1.1”.

30 Subsection 50-52(1)

Omit “or 4.1”.

31 Section 50-100

Omit “charitable institutions and trusts funds for charitable purposes”, substitute “charities”.

32 Subsection 50-110(2)

Omit “or item 4.1 of the table in section 50-20”.

33 Paragraphs 50-110(5)(a), (b) and (c)

Repeal the paragraphs, substitute:

- (a) the entity must meet the relevant conditions referred to in the column headed “Special conditions” of item 1.1 of the table in section 50-5; or
- (b) both of the following conditions must be met:
 - (i) the entity must not have carried on any activities as a charity;
 - (ii) there must be reasonable grounds for believing that the entity will meet the relevant conditions referred to in the column headed “Special conditions” of item 1.1 of the table.

34 Subsection 207-115(2) (heading)

Omit “charitable or other institutions”, substitute “charities”.

35 Paragraph 207-115(2)(a)

Omit “or item 4.1 of the table in section 50-20”.

36 Subsection 995-1(1) (paragraph (b) of the definition of *registered health promotion charity*)

Omit “item 5”, substitute “item 13”.

37 Subsection 995-1(1) (paragraph (b) of the definition of *registered public benevolent institution*)

Omit “item 6”, substitute “item 14”.

Racial Discrimination Act 1975

38 Subsections 8(2) and (3)

Repeal the subsections, substitute:

Charities

- (2) This Part does not:
- (a) affect a provision (whether made before or after the commencement of this Part) of the governing rules (within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*) of a registered charity, if the provision:
 - (i) confers benefits for charitable purposes; or
 - (ii) enables such benefits to be conferred; on persons of a particular race, colour or national or ethnic origin; or
 - (b) make unlawful any act done to give effect to such a provision.

Sex Discrimination Act 1984

39 Section 36

Repeal the section, substitute:

36 Charities

Divisions 1 and 2 do not:

- (a) affect a provision (whether made before or after the commencement of this Part) of the governing rules (within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*) of a registered charity, if the provision:
 - (i) confers benefits for charitable purposes; or
 - (ii) enables such benefits to be conferred; wholly or in part on persons of a class identified by reference to any one or more of the grounds of discrimination referred to in this Act; or
- (b) make unlawful any act done to give effect to such a provision.

Social Security Act 1991

40 Subsection 23(1) (paragraph (b) of the definition of *registered public benevolent institution*)

Omit “item 6”, substitute “item 14”.

41 Subsection 23(1) (paragraph (b) of the definition of *registered religious institution*)

Omit “item 3”, substitute “item 4”.

42 Subparagraph 1157J(1)(a)(iii)

Omit “item 3”, substitute “item 4”.

Part 2—Extension of Charitable Purpose Act 2004

43 The whole of the Act

Repeal the Act.

Part 3—Charities Act 2013

44 Subsection 3(1)

Insert:

not-for-profit entity has the meaning given by the *Income Tax Assessment Act 1997*.

**Part 4—Tax Laws Amendment (Special Conditions
for Not-for-profit Concessions) Act 2013**

45 Items 33 and 40 of Schedule 1

Repeal the items.

**46 Schedule 1 (heading relating to the *Extension of
Charitable Purpose Act 2004*)**

Repeal the heading.

47 Item 67 of Schedule 1

Repeal the item.

Schedule 2—Transitional provisions

Part 1—Dictionary

1 Dictionary

In this Schedule:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012*.

approved form has the meaning given by the ACNC Act.

commencement day means the day on which this Schedule commences.

endorsed as a contributing fund means endorsed under Subdivision 50-B of the *Income Tax Assessment Act 1997* as exempt from income tax because of being covered by item 4.1 of the table in section 50-20 of that Act (Funds contributing to other funds).

Part 2—Registration

Division 1—Registered entities

2 Registration—old subtypes equivalent to new subtypes

Registration

- (1) The Commissioner of the ACNC is treated as having registered an entity under Division 30 of the ACNC Act on the commencement day as the subtype of entity mentioned in column 2 of an item of the table in subitem (3) if, on the day before the commencement day, the entity is registered as the subtype of entity mentioned in column 1 of that item.

Applications for registration

- (2) An application for registration under Division 30 of the ACNC Act as the subtype of entity mentioned in column 1 of an item of the table in subitem (3) is treated, from the commencement day, as being an application for registration as the subtype of entity mentioned in column 2 of that item, if:
- (a) the application was made before the commencement day; and
 - (b) on the day before the commencement day, the Commissioner of the ACNC had neither registered the applicant nor refused the application.

Table

- (3) The table is as follows:

| Corresponding subtypes | | |
|-------------------------------|--|--|
| Item | Column 1 | Column 2 |
| | Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as in force on the day before the commencement day: | Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as amended by this Act: |
| 1 | item 2 (education) | item 2 (education) |
| 2 | item 3 (religion) | item 4 (religion) |

| Corresponding subtypes | | |
|-------------------------------|--|--|
| Item | Column 1 | Column 2 |
| | Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as in force on the day before the commencement day: | Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as amended by this Act: |
| 3 | item 5 (prevention or the control of diseases in human beings) | item 13 (prevention or the control of diseases in human beings) |
| 4 | item 6 (public benevolent institution) | item 14 (public benevolent institution) |
| 5 | item 7 (child care services) | item 3 (social or public welfare) |

3 Registration—old subtypes possibly equivalent to new subtypes

Registration

- (1) The Commissioner of the ACNC is treated as having registered an entity under Division 30 of the ACNC Act on the commencement day as the subtype of entity mentioned in column 2 of an item of the table in subitem (3) if:
- (a) on the day before the commencement day, the entity is registered as the subtype of entity mentioned in column 1 of that item; and
 - (b) the entity notifies the Commissioner that, on the commencement day, the entity meets the description of the subtype of entity mentioned in column 2 of that item.

Applications for registration

- (2) An application for registration under Division 30 of the ACNC Act as the subtype of entity mentioned in column 1 of an item of the table in subitem (3) is treated, from the commencement day, as being an application for registration as the subtype of entity mentioned in column 2 of that item, if:
- (a) the application was made before the commencement day; and

- (b) on the day before the commencement day, the Commissioner of the ACNC had neither registered the applicant nor refused the application; and
- (c) the applicant requests the Commissioner to treat the application as being an application for registration as the subtype of entity mentioned in column 2 of that item.

Table

(3) The table is as follows:

| Corresponding subtypes | | |
|-------------------------------|--|--|
| Item | Column 1 | Column 2 |
| | Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as in force on the day before the commencement day: | Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as amended by this Act: |
| 1 | item 1 (relief of poverty, sickness or the needs of the aged) | item 1 (health) |
| 2 | item 1 (relief of poverty, sickness or the needs of the aged) | item 3 (social or public welfare) |
| 3 | item 4 (another purpose that is beneficial to the community) | item 1 (health) |
| 4 | item 4 (another purpose that is beneficial to the community) | item 3 (social or public welfare) |
| 5 | item 4 (another purpose that is beneficial to the community) | item 5 (culture) |
| 6 | item 4 (another purpose that is beneficial to the community) | item 6 (reconciliation, mutual respect and tolerance between groups of individuals that are in Australia) |
| 7 | item 4 (another purpose that is beneficial to the community) | item 7 (human rights) |
| 8 | item 4 (another purpose that is beneficial to the community) | item 8 (advancing the security or safety of Australia or the Australian public) |
| 9 | item 4 (another purpose that is beneficial to the community) | item 9 (preventing or relieving the suffering of animals) |

Schedule 2 Transitional provisions

Part 2 Registration

Corresponding subtypes

| Item | Column 1 | Column 2 |
|------|---|---|
| | Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as in force on the day before the commencement day: | Subtype of entity mentioned in column 2 of the following item of the table in subsection 25-5(5) of the ACNC Act, as amended by this Act: |
| 10 | item 4 (another purpose that is beneficial to the community) | item 10 (natural environment) |
| 11 | item 4 (another purpose that is beneficial to the community) | item 11 (purposes beneficial to the general public and analogous to the other charitable purposes) |
| 12 | item 4 (another purpose that is beneficial to the community) | item 12 (advancing public debate) |

Notices and requests

- (4) A notice given under paragraph (1)(b), or a request made under paragraph (2)(c), must be:
- (a) in the approved form; and
 - (b) given to the Commissioner during the period of 18 months starting on the commencement day.

Note: Subdivision 175-B of the ACNC Act imposes an administrative penalty if the notice or request contains a statement that is false or misleading in a material particular.

Division 2—Funds contributing to other funds

4 Funds contributing to other funds

- (1) This item applies to a fund that, on the day before the commencement day, is endorsed as a contributing fund.
 - (2) The Commissioner of Taxation is treated as having endorsed the fund under Subdivision 50-B of the *Income Tax Assessment Act 1997* on the commencement day as exempt from income tax because the fund is covered by item 1.1 of the table in section 50-5 of that Act (registered charity).
 - (3) The Commissioner of the ACNC is treated as having registered the fund on the commencement day under Division 30 of the ACNC Act as the
-

type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act (charity).

- (4) The purpose the fund has, on the day before the commencement day, is treated as being a charitable purpose during the period:
- (a) starting on the commencement day; and
 - (b) ending on the day (if any) the fund ceases to be entitled to be endorsed as a contributing fund (disregarding the amendments made by Schedule 1 to this Act).

5 Opt-out

If, during the period of 12 months starting on the commencement day, a fund notifies the Commissioner of the ACNC, in the approved form, that the fund does not want item 4 to apply to the fund:

- (a) item 4 does not apply, and is taken never to have applied, to the fund; and
- (b) the Commissioner of Taxation is treated as having revoked, on the day before the commencement day, the entity's endorsement mentioned in paragraph 426-5(h) in Schedule 1 to the *Taxation Administration Act 1953*.

Part 3—Purposes of registered charitable trusts

6 Purpose of relief of poverty treated as being for public benefit

For the purposes of the *Charities Act 2013*, a purpose that a trust has on the day before the commencement day is treated, from the commencement day, as being for the public benefit, if:

- (a) the purpose is the relief of poverty; and
- (b) on the day before the commencement day, the trust is registered under the ACNC Act as the subtype of entity mentioned in column 2 of item 1 of the table in subsection 25-5(5) of that Act, as in force on the day before the commencement day.

Part 4—Charitable purposes

7 Charitable purposes

For the purposes of paragraph (k) of the definition of *charitable purpose* in subsection 12(1) of the *Charities Act 2013*, a purpose:

- (a) that, on the day before the commencement day, was a charitable purpose; and
- (b) to which paragraphs (a) to (j) and (l) of that definition do not apply;

is treated as being a 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) of that definition.

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

(151/13)
