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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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## **Charities Bill 2013**

**No.     , 2013**

*(Treasury)*

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



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

3     **Preamble**

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

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

10            Modern, comprehensive, statutory definitions of charity and  
11            charitable purpose, applying for the purposes of all Commonwealth  
12            law and ensuring continuity by utilising familiar concepts from the

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1 common law, will provide clarity and certainty as to the meaning  
2 of those concepts in contemporary Australia.

3 The Parliament of Australia enacts:

## 4 **Part 1—Preliminary**

5

### 6 **1 Short title**

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

### 8 **2 Commencement**

9 This Act commences on 1 January 2014.

### 10 **3 Definitions**

11 (1) In this Act:

12 *advancing* includes protecting, maintaining, supporting,  
13 researching and improving.

14 *disqualifying purpose* has the meaning given by section 11.

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

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

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

20 *Indigenous individual* means an individual who is:

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

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

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

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

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

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

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

#### 10        **4 Government entity**

11            (1) In this Act:

12            ***government entity*** means:

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

15            (b) an entity:

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

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

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

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

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

1 **Part 2—Definition of charity**

2 **Division 1—Definition of charity**

3 **5 Definition of *charity***

4 In any Act:

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

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

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

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

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

19 Note 2: The requirement in subparagraph (b)(i) that a purpose be for the  
20 public benefit does not apply to certain entities (see section 10).

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



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

2 **6 Purposes for the public benefit**

- 3 (1) A purpose that an entity has is for the *public benefit* if:  
4 (a) the achievement of the purpose would be of public benefit;  
5 and  
6 (b) the purpose is directed to a benefit that is available to the  
7 members of:  
8 (i) the general public; or  
9 (ii) a sufficient section of the general public.

10 *Achievement of purpose would be of public benefit*

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

19 *Benefit is widely available*

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

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- 1 (b) the relationships between the entities to whose benefit the  
2 purpose is directed.
- 3 (4) For the purposes of subparagraph (1)(b)(ii), in determining whether  
4 the section of the general public to whose benefit the purpose is  
5 directed is a sufficient section, have regard to all relevant matters,  
6 including comparing:
- 7 (a) the numerical size of that section of the general public; and  
8 (b) the numerical size of the section of the general public to  
9 whom the purpose is relevant.

10 **7 Certain purposes presumed to be for the public benefit**

11 In the absence of evidence to the contrary, a purpose that an entity  
12 has is presumed to satisfy the requirements of paragraphs 6(1)(a)  
13 and (b) (purposes for the public benefit), if the purpose is any of  
14 the following purposes:

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

24 Note 1: The purposes mentioned in the definition of *charitable purpose* in  
25 subsection 12(1) include the purposes mentioned in paragraphs (a) to  
26 (e) of this section. For example, the purpose of advancing social or  
27 public welfare (mentioned in paragraph (c) of the definition) includes  
28 the purpose of relieving the poverty, distress or disadvantage of  
29 individuals or families (see subsection 15(1)).

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

1 **8 Relief of necessitous circumstances**

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

7 **9 Purposes of entities that receive, hold or manage benefits that**  
8 **relate to native title etc.**

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

24 **10 When public benefit test does not apply**

25 *Open and non-discriminatory self-help groups*

- 26 (1) Disregard the requirement in subparagraph (b)(i) of the definition  
27 of **charity** in section 5 that a purpose of an entity be for the public  
28 benefit, if:
- 29 (a) the entity is an association of individuals that has an open and  
30 non-discriminatory membership; and
  - 31 (b) the entity is established for the purpose of assisting  
32 individuals affected by a particular disadvantage or  
33 discrimination, or by a need that is not being met; and

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- 1 (c) the entity is made up of, and controlled by, individuals who  
2 are affected by the disadvantage, discrimination or need; and  
3 (d) all of the entity's criteria for membership relate to its  
4 purpose; and  
5 (e) the entity's membership is open to any individual who  
6 satisfies the criteria.

7 *Closed or contemplative religious orders*

- 8 (2) Disregard the requirement in subparagraph (b)(i) of the definition  
9 of **charity** in section 5 that a purpose of an entity be for the public  
10 benefit, if the entity is a closed or contemplative religious order  
11 that regularly undertakes prayerful intervention at the request of  
12 members of the general public.

1 **Division 3—Disqualifying purpose**

2 **11 Disqualifying purpose**

3 In this Act:

4 ***disqualifying purpose*** means:

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

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

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

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

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

18 Note: The purpose of promoting or opposing a change to any matter  
19 established by law, policy or practice in the Commonwealth, a State, a  
20 Territory or another country may be a charitable purpose (see  
21 paragraph (1) of the definition of ***charitable purpose*** in  
22 subsection 12(1)).

1 **Part 3—Definition of charitable purpose**

2 **Division 1—Definition of charitable purpose**

3 **12 Definition of *charitable purpose***

4 (1) In any Act:

5 *charitable purpose* means any of the following:

- 6 (a) the purpose of advancing health;
- 7 (b) the purpose of advancing education;
- 8 (c) the purpose of advancing social or public welfare;
- 9 (d) the purpose of advancing religion;
- 10 (e) the purpose of advancing culture;
- 11 (f) the purpose of promoting reconciliation, mutual respect and
- 12 tolerance between groups of individuals that are in Australia;
- 13 (g) the purpose of promoting or protecting human rights;
- 14 (h) the purpose of advancing the security or safety of Australia
- 15 or the Australian public;
- 16 (i) the purpose of preventing or relieving the suffering of
- 17 animals;
- 18 (j) the purpose of advancing the natural environment;
- 19 (k) any other purpose beneficial to the general public that may
- 20 reasonably be regarded as analogous to, or within the spirit
- 21 of, any of the purposes mentioned in paragraphs (a) to (j);

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

- 27 (l) the purpose of promoting or opposing a change to any matter
- 28 established by law, policy or practice in the Commonwealth,
- 29 a State, a Territory or another country, if:
  - 30 (i) in the case of promoting a change—the change is in
  - 31 furtherance or in aid of one or more of the purposes
  - 32 mentioned in paragraphs (a) to (k); or

- 1 (ii) in the case of opposing a change—the change is in  
2 opposition to, or in hindrance of, one or more of the  
3 purposes mentioned in those paragraphs.
- 4 (2) Paragraph (1) of the definition of *charitable purpose* in  
5 subsection (1) is the only paragraph of that definition that can  
6 apply to the purpose of promoting or opposing a change to any  
7 matter established by law, policy or practice in the  
8 Commonwealth, a State, a Territory or another country.
- 9 (3) For the purposes of this section, it does not matter whether a  
10 purpose is directed to something in Australia or overseas.

11 **13 Funds that contribute to charity-like government entities**

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

1 **Division 2—Types of charitable purpose**

2 **14 Purpose of advancing health**

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

6 **15 Purpose of advancing social or public welfare**

7 (1) Without limiting what constitutes the purpose of advancing social  
8 or public welfare, the ***purpose of advancing social or public***  
9 ***welfare*** includes the purpose of relieving the poverty, distress or  
10 disadvantage of individuals or families.

11 (2) Without limiting what constitutes the purpose of advancing social  
12 or public welfare, the ***purpose of advancing social or public***  
13 ***welfare*** includes the purpose of caring for and supporting:

- 14 (a) the aged; or  
15 (b) individuals with disabilities.

16 (3) Without limiting what constitutes the purpose of advancing social  
17 or public welfare, the ***purpose of advancing social or public***  
18 ***welfare*** includes the purpose of caring for, supporting and  
19 protecting children and young individuals (and, in particular,  
20 providing child care services).

21 (4) Without limiting what constitutes the purpose of advancing social  
22 or public welfare, the ***purpose of advancing social or public***  
23 ***welfare*** includes the purpose of assisting the rebuilding, repairing  
24 or securing of assets after a disaster if:

- 25 (a) the disaster developed rapidly and:  
26 (i) resulted in the death, serious injury or other physical  
27 suffering of a large number of individuals; or  
28 (ii) caused distress to a large number of individuals and  
29 resulted in widespread damage to property or the natural  
30 environment; and



- 1 (b) the rebuilding, repairing or securing is in furtherance or in aid  
2 of the purposes of one or more exempt entities (within the  
3 meaning of the *Income Tax Assessment Act 1997*); and  
4 (c) the purpose of assisting is directed to providing benefits that  
5 are commercial or private only to an incidental and ancillary  
6 extent, if at all; and  
7 (d) the assets are assets of entities that:  
8 (i) are not government entities; or  
9 (ii) would be charities were they not government entities.

10 **16 Purpose of advancing culture**

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

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

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

1 **Part 4—Miscellaneous**  
2

3 **18 Cy pres and similar schemes**

4 In determining the purposes of a trust, have regard to:  
5 (a) any scheme for the application of property cy pres that relates  
6 to the trust; or  
7 (b) any similar scheme that relates to the trust;  
8 whether under equity or any other law of a State or Territory that  
9 relates to charitable trusts.

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