


10 July 2013



Charities Update



“Charity Defined”.



The Federal Government passed its Charities Bill into law on 29 June 2013 and is due to take effect from 1 January 2014.

A charity is defined as a “not for profit” entity where all of its purposes are charitable purposes for the public benefit or purposes that are incidental or auxiliary to and in furtherance of or in aid of the charitable purposes of the entity.

The following activities have been defined to be charitable:

- the advancement of health or the prevention or relieving of sickness, disease or human suffering;
- the advancement of education;
- relieving poverty, distress or disadvantage of individuals or families;
- the care and support for the aged or individuals with disabilities;
- social or public welfare;
- the advancement of religion (including closed or contemplative religious orders qualify if the order regularly undertakes prayerful intervention at the request of members of the general public);

- the advancement of culture;
- reconciliation and tolerance between groups;
- protecting human rights;
- advancement of security or safety;
- preventing suffering of animals;
- organisations managing benefits relating to Native Title;
- self help groups for individuals with particular disadvantages or that face discrimination provided membership is open and non discriminatory to all individuals affected; and
- advancing the natural environment.

The following cannot be Charities:

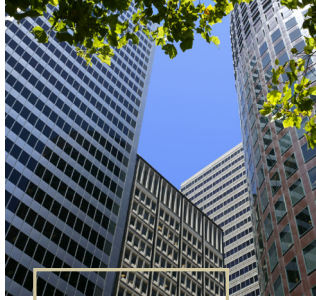
1. individuals or government entities;
2. political parties or organisations promotion of a political party or candidate; or
3. organisations promoting activities that are unlawful or contrary to public policy.

Commercial Activities of Charities

Whilst the Act provides little insight into commercial activities the Explanatory Memorandum addresses the issues in some details. In summary:

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- The nature of the activities must be looked at on a “case by case” basis and a simple “look through” approach is not to be applied.
- A charity can undertake commercial or business like activities but the purpose of the organisation must be charitable. For example where the purpose of the business is to provide training opportunities for disadvantaged persons.
- If the purpose of an entity is to generate a surplus then it will not be charitable.
- A commercial entity is not charitable merely because it is controlled or owned by a charitable entity.
- A charity can hold investments to generate market returns to be used for their charitable purposes without affecting their status.
- A charity can carry out incidental or auxiliary purposes which may be non charitable such as accounting or insurance functions or fund raising purposes. These activities are not the end themselves but are necessary to further, aid or assist with the achievement of the charitable purpose.
- An organisation with a purpose for furthering charitable works via carry on a commercial enterprise to generate funds is charitable.
- If a charity were to establish a wholly owned commercial,

investment or service entity to provide support to the charity, then the entity must have its own charitable purpose to be a charity.

It is expected this definition will be adopted by the Australian Charities and Not for Profit Commission (**ACNC**) and the Tax Office in determining which organisation are charitable. It will therefore have impacts on public benevolent institution status, income tax exemption status and deductible gift recipient status for all charities and in particular those with commercial arms.



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This update is intended to provide a general summary only and should not be relied on as a substitute for legal advice.