

## Statutory Definition of Charity

### Not-for-Profit Update

#### Introduction of the *Charities Act 2013* (Cth)

The *Charities Act 2013* (Cth) ("Act") received Royal Assent on 29 June 2013. The Act introduces a statutory definition of charity and is intended to apply across all Commonwealth legislation.

The statutory definition is part of the government's not-for-profit (NFP) reform agenda to strengthen and sustain the NFP sector.

#### Key Features

The definition provides that in order to be a charity, an entity must:

- be not for profit;
- have charitable purposes; and
- the charitable purposes must be for the public benefit.

A charity may have incidental or ancillary purposes which are not charitable but which further the charitable purposes.

The Act lists the categories of charitable purpose which include, among other things, advancing health and education and promoting and protecting human rights. The list is not intended to affect the charitable status of purposes already recognised under the common law.

A purpose is for the public benefit if it is directed at the general public or a sufficient section of the general public.

There is presumption of public benefit for the purposes of relieving poverty, advancing education, advancing religion and the relief of illness or the needs of the aged.

#### Who does this affect?

- Not-for-profit entities

#### Article Highlights

- The definition requires a charity to be not-for-profit and operate for charitable purposes which are for the public benefit.
- A purpose is for the public benefit if it is directed to the general public or a sufficient section of the general public.
- The Act codifies and does not change the common law approach to defining charities.
- The definition will take effect from 1 January 2014.



### Why a Statutory Definition?

The intention of a statutory definition is to provide clarity and certainty for charities and the public on what is a "charity" and "charitable purpose".

The reforms aim to:

- reduce red tape for charities and entities seeking charitable status by providing a clear definitional framework;
- put the common law into a form that is easier to understand by replicating and modernising the existing common law definition;
- expressly identify charitable purposes determined through case law; and
- support the ACNC in its role to provide guidance and support for charities.

The statutory definition does not set out to:

- change the charitable status of existing charities;
- affect the current taxation treatment of charities;
- restrict the flexibility of the common law to develop the definition and extend the definition to other charitable purpose; or
- extend the range of existing recognised categories of charitable purposes (for example, to include sport and recreation).

### Tax Consequences

A statutory definition will improve the NFP sectors understanding of, and access to charitable tax concessions.

The tax concessions for charities are currently being examined through a separate process by way of the NFP Sector Tax Concessions Working Group.

### Practical Impact

The ACNC will be responsible for administering the new statutory definition of charity.

The definition takes effect from **1 January 2014**. The ACNC will assist charities if their registration needs to be adjusted to come under a purpose now mentioned specifically in the legislation.

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