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Practice Group(s):

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A Statutory Definition of Charity

By Adam Levine

The Government has Passed the Charities Act – Finally a Statutory Definition of Charity

Following public consultation in 2011 and earlier this year, the Federal Government passed the *Charities Act 2013* (Act) and related legislation on 27 June 2013.

The key purpose of the Act is to set out a single national definition of charity. The Act and related legislation form part of the government's reform agenda for the not-for-profit sector, which includes the establishment of the Australian Charities and Not-for-profits Commission (ACNC), Australia's first independent charities regulator.

The ACNC Governance Standards for charities were also passed as regulations by Parliament on 27 June and will apply to charities (other than basic religious charities) from 1 July 2013. These standards are intended to promote a minimum standard of governance for registered charities. More information about them is available from the ACNC website: www.acnc.gov.au

Definition of Charity

The former definition of charity is based on a statute from the 1600s which has been interpreted by the courts over time. This has led to considerable confusion and uncertainty in the charity sector, so the passing of the Act is a welcome step.

The definition of charity is that an entity must be:

- not-for-profit
- have only charitable purposes that are for the public benefit.

The statutory definition of charity will start on 1 January 2014.

More detail about this definition is included below.

Charitable Purposes

Categories of charitable purposes listed in the Act are:

- advancing health, education, social or public welfare, religion, culture and the natural environment
- promoting reconciliation, respect and tolerance between individuals, promoting or protecting human rights, protecting the safety of the general public, and preventing or relieving the suffering of animals
- any other purpose beneficial to the general public that is analogous to the above purposes

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- promoting a change to any matter established by law, policy or practice where the change will aid one of the above purposes, or opposing such a change where the change will oppose or hinder one of the above purposes.

An entity may have incidental or ancillary purposes that aid the charitable purpose, but it must not have an independent, non-charitable purpose.

The list of charitable purposes in the Act does not exclude charitable purposes identified by courts prior to the commencement of the statutory definition. However, once the Act becomes law, the courts will not be able to create new charitable purposes; only charitable purposes listed in the Act will qualify.

If an entity has either of the following purposes, it is disqualified from meeting the definition of charity:

- engaging in or promoting activities that are unlawful or contrary to public policy
- promoting or opposing a political party or a political candidate. This does not apply to advancing debate about or critiquing the policies of political parties or candidates.

Public Benefit

According to the Act, an entity's purposes will be of 'public benefit' if:

- achieving those purposes would be of public benefit (taking into account any possible detriment to the general public) and
- the benefit (tangible or intangible) is available to the general public, or a sufficient section of the general public.

This definition of public benefit is consistent with common law principles.

Certain purposes are presumed to be of public benefit, including relieving sickness and human suffering, advancing education or religion, relieving poverty, and supporting the aged and individuals with disabilities.

Entities that hold or manage benefits that relate to either native title or indigenous land rights, for the benefit of indigenous individuals, will be considered as having a purpose for the public benefit.

Next Steps

For existing charities, nothing will change when the statutory definition of charity starts on 1 January 2014.

ACNC will develop a statement outlining its approach to the definition of charity, charitable purposes and the different types of charities. The statement will be released for comment prior to being finalised.

Charities (other than basic religious charities) are expected to comply with the ACNC Governance Standards from 1 July this year. The ACNC is developing guidance about complying with the Governance Standards, and recommends that charities wait for this guidance before taking action. This will prevent any unnecessary time or expense being incurred while undertaking compliance activities. The ACNC has indicated that for the first two years after 1 July, its compliance focus will be directed towards serious breaches of Governance Standards (such as gross financial negligence), and it expects most well-run charities will be largely compliant with the Governance Standards.

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Further information is available at www.acnc.gov.au or please contact K&L Gates if your charity requires assistance.

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