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# A common charity definition?

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# 1 Executive Summary

Charities play an essential role in the Australian community and are entitled to a range of benefits and taxation concessions because of their contribution to the public good. Usually, a prerequisite to accessing these benefits is a determination that an entity is indeed a 'charity'.

In addition to the common law definitions, the terms 'charity', 'charitable purpose' and 'charitable status' occur in 172 pieces of Commonwealth, State and Territory legislation,<sup>1</sup> including in a number of Acts unrelated to state revenue purposes. Of these Acts, 45 of them define the above terms.

Numerous inquiries and reviews have advocated for the harmonisation of charity regulation across Australia, based principally on the need to reduce the regulatory burden on charities, particularly for those that operate across State jurisdictions. One of the 'harmonisation' strategies recommended, has been for all jurisdictions to adopt a common charity definition.

This paper has a particular focus on the State revenue environment and suggests that the definition of charity be considered separately to its entitlement to concessions. It is posited that the first stage in revenue assessment is the determination of charitable status, and that the second stage is determining the particular tax benefits which accrue to particular types of charities. It is proposed that the first stage, the Charity Determination, be conducted by a central regulator using a common statutory definition of charity applicable in all Australian jurisdictions. The second stage, the Tax Assessment, will remain the province of the States. Whilst this paper argues that the central regulatory role be undertaken by the Australian Charities and Not-for-profits Commission (ACNC) for revenue purposes, it is recognised that the same model could be applied by the States whereby charity determinations are made centrally in relation to each Act where a legal outcome or benefit arises from being recognised as a charity.

Under the proposed model, charities will remain eligible for Commonwealth benefits under the existing arrangements. Therefore, the effect of the proposal would be to expand the application of the current charity determination undertaken by the ACNC beyond Commonwealth purposes to all Australian jurisdictions for organisational status purposes.

The paper goes into some depth to explore the revenue environment in each State jurisdiction in order to understand the breadth of complexity in having multiple definitions and applications. Whilst the model proposed will not address all complexities, it is argued that its implementation will have significant benefits for Australian charities, the wider community and also for all relevant local, state, territory and federal government agencies engaged in any form of charity regulation. Notwithstanding the State benefits, it is acknowledged that the recommendation has legislative, revenue and

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<sup>1</sup> Subsequent references to 'State' or 'States' includes all of the States and Territories: Australian Capital Territory (ACT), New South Wales (NSW), the Northern Territory (NT), Queensland (Qld), South Australia (SA), Tasmania (Tas), Victoria (Vic) and Western Australia (WA).

constitutional implications and that further engagement with the State governments and regulators, as well as the sector, is required to test and refine the application of this model.

The presentation of this paper is part of our ongoing consultation with the States through bilateral and multilateral engagement. In many respects, the current practice of the Offices of State Revenue (OSR) is consistent with the Tax Assessment process. However, the proposition of a central regulator in relation to the Charity Determination process requires further thought, negotiation and development. The ACNC understands this paper to be part of our ongoing discussion with the States and welcomes their contribution in order to clarify any issues or concerns and to work through the practical implications. The ACNC acknowledges contributors to this paper.\*

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\* Nicole Rowan, Suhanya Mendes, Angela Lee, Emma Chiu.

## 2 Introduction

### 2.1 The ACNC

The ACNC is the independent national regulator of charities for Commonwealth purposes. One of the principal roles of the ACNC is to provide a register of charities. The Charity Register (*'Register'*) is Australia's free, searchable online database of charities and contains information on more than 53,000 charities registered with the ACNC.<sup>2</sup>

The charities listed on the *Register* have met both the legal meaning of 'charity' according to the *Charities Act 2013* (Cth) (*'Charities Act'*) and all requirements under the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth) (*'ACNC Act'*). Registered charities have ongoing obligations to the ACNC, including keeping their information on the *Register* up-to-date.

Each charity's page on the *Register* contains important information about its operations, governance and beneficiaries. It also contains the charity's current governing documents, annual information reported to the ACNC and financial information and indicates if the charity is up-to-date with its reporting.<sup>3</sup> To date, the *Register* has been viewed over 1.5 million times,<sup>4</sup> demonstrating that the public see it as a valuable resource. The real-time publishing of information to the *Register* promotes transparency and accountability, and encourages public trust and confidence in the sector. Furthermore, it acts as a compliance tool, by identifying charities that are not up-to-date with their reporting.

In collecting a range of charity data, the ACNC also acts as a central repository for financial and current governance information about charities under a 'report-once, use-often' reporting framework. Under this framework, authorised government agencies can access ACNC charity data for the purpose of reducing red tape for charities. For example, when an ACNC registered charity applies to a State revenue office for a tax exemption, the State revenue office can confirm the entity's charity status for Commonwealth purposes and access governance documents and the most recent financial information from the ACNC *Register* or via the Charity Passport, which is described below. Effectively, this framework is designed to allow charities to provide information to one central regulator for all Commonwealth and State government purposes, instead of receiving multiple requests from multiple agencies for the same information. The ACNC also provides this public charity data to government

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<sup>2</sup> As of 30 June 2016 there were 53,935 charities registered with the ACNC.

<sup>3</sup> Some organisations may be exempt from some of these requirements – for example, 'basic religious charities' are exempt from providing financial information, 'small registered charities' are not required to submit annual financial reports and some organisations successfully apply to the ACNC to have information withheld from the Register.

<sup>4</sup> As of 30 June 2016.

agencies via the Charity Passport and, upon request and where possible, develops datasets to assist agencies with data matching, compliance and risk management.

The ACNC has a commitment to working with the charity sector and with Commonwealth and State government agencies in support of the third object of the *ACNC Act* at subsection 15-5(1)(c): ‘to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.’ From a long term perspective, this object is better realised in an environment where the definition of charity is consistent across all Australian jurisdictions.

This paper reflects the commitment of the ACNC to initiate and encourage dialogue that furthers alignment and harmonisation amongst the different State charity definitions and to work collaboratively towards this outcome whilst setting out a model for change. In this respect, it is consistent with the ACNC’s other objects,<sup>5</sup> for the ACNC to take a lead in developing and implementing a model that mitigates charity sector risks and vulnerabilities for all charity sector interest groups: the charities themselves, revenue agencies and the public, including beneficiaries.

## 2.2 Statutory definition

The *Charities Act* established a Commonwealth statutory definition of charity that was based on the common law. The definitions applied by the States are also based on the common law. However, there is a divergence to some extent from the Commonwealth definition through both common law and statutory developments in each jurisdiction (see Section 3 and Section 4).

Notwithstanding this divergence, it is submitted that the *Charities Act* is the logical starting point when considering the application of a common charity definition and that jurisdictional policy objectives can be addressed in the second stage of the proposed process.

## 2.3 Why does the Charity Definition matter

Recognition as a charity achieves multiple purposes:

1. It invokes in that organisation a particular place within the community that is not otherwise attached to other community organisations or not-for-profit bodies. The public perception of charities is that they can be trusted and are worthy of receiving individual, corporate and public money and other support. The first object of the *ACNC Act* compels the ACNC to work with the sector to protect public trust and confidence in the Australian not-for-profit sector.<sup>6</sup>

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<sup>5</sup> Object 1: to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; Object 2: to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector. See *ACNC Act* s 15-5(1).

<sup>6</sup> *ACNC Act* s15-5(1)(a).



2. Charity status is one of the gateways to Commonwealth and State tax and revenue concessions. At the Commonwealth level, it is the gateway for tax concessions such as income tax exemption and, at State level, various payroll, stamp duty, land tax and other registration and transfer exemptions and concessions may apply.
3. It ensures that the assets of an organisation are protected for a particular charitable purpose, during the life of the charity and upon its winding up.

Each factor is relevant to the others. For example, public trust and confidence in the sector supports the fundraising work of charities and generates the necessary income that enables them to undertake their work. Access to charitable status generally provides access to tax concessions thereby enabling entities to put their funds to operational activities and, in so doing, reinforces their capacity to deliver outcomes, which, when achieved, strengthens trust.

When one of the factors is weakened, other areas are generally affected. For example, if an organisation is seen to be using its assets for private or other non-charitable purposes, trust diminishes and giving decreases whilst regulatory agencies examine whether access to tax concessions should continue.

## 2.4 Issues

Charities make a significant contribution to the Australian society. For a number of reasons, including in recognition of their contribution to the public good, charities are entitled to legal and administrative benefits, including taxation concessions.<sup>7</sup>

However, determining whether an entity is a charity can be complex. Firstly, a decision in regards to whether an entity is a charity (or has a charitable purpose) is applied multiple times to each charity for different benefits or concessions, and is sometimes applied to particular transactions of an already recognised charity. Charities are increasingly operating across multiple jurisdictions: based on information collected by the ACNC, 28% of charities indicated that they had reporting obligations in more than one state or territory in 2013-2014.<sup>8</sup> If a charity has a website or social media presence, the reality is that it has both national and international exposure. This means that it may fundraise in jurisdictions beyond its operating locations. In the management of fundraising licences, at least two State jurisdictions assume that a charity is conducting fundraising nationally if that charity has a Facebook page. In this environment, repeating the process of achieving charity status in all required jurisdictions is time-consuming and costly.

Secondly, the charity status decision has different implications and is not an end in itself for all purposes. For example, a decision by the ACNC that an entity is a charity applies only for certain

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<sup>7</sup> See Ian Murray, 'The taming of the charitable shrew: State roll back of charity tax concessions' (2016) 27 *Public Law Review* 1. There are other reasons why charities receive legal and administrative benefits. For example, because charities do not produce what is regarded as assessable income. See Ole Gjems-Onstad, 'Tax Expenditure: A Criticism of the Concept as Applied to Nongovernmental Organizations' (1990) 19 *Nonprofit and Voluntary Sector Quarterly* 279; Richard Krever, 'Tax Deductions for Charitable Donations: A Tax Expenditure Analysis', in Richard Krever and Gretchen Kewley (eds) *Charities and Philanthropic Institutions: Reforming the Tax Subsidy and Regulatory Regimes* (Monash University, 1991) 1, 4.

<sup>8</sup> ACNC Annual Information Statement information, data extracted on 30 May 2016.

Commonwealth purposes, including for access to Commonwealth tax concessions. Decisions made by State government agencies are generally only a determination for the purposes relevant to the legislation managed by that agency or for the discrete application of one Act. Some of these charity status determinations are based on charity definitions contained within those State Acts. Further, whilst this paper does not go into detail, there are State Acts with charity definitions that are applied for purposes other than revenue collection (see Section 3.8 and Appendix 1).

These multiple decisions involve judgment and are made by different decision-makers in different jurisdictions, sometimes applying different definitions. This can and has led to different decisions being made from one jurisdiction to another and, owing to the divergence of definitions, within a single jurisdiction.

The definition of 'charity' has also been at the heart of legal disputes, with entities testing the boundaries of existing definitions in order to avail themselves of the recognised benefits. However, recognition as a charity is not the sole determinant of the legal and administrative benefits afforded to a charity: often additional conditions are set to control what type of charities will receive the benefits and the extent of those benefits. The existing State definitions and conditions are described in the Jurisdictional Analysis (Section 4) and have also been well articulated in recent work.<sup>9</sup>

## 2.5 Charity sector vulnerabilities

Inconsistency both in the charity definitions and their application has created a range of vulnerabilities that affect each of the charity sector interest groups:

1. In addition to the issue of divergent charity status both within and across jurisdictions, charities are vulnerable to developments in case law that may threaten their charity status. Moving to a common definition may initially pose the same threat. For example, it may be that some entities previously recognised as a charity in a particular State jurisdiction are not eligible under the Commonwealth statutory definition. A common definition will, however, address the issue of an entity being recognised as a charity in one jurisdiction but not another (or for one benefit and not another). More importantly, it establishes that charity determination occurs once for all applications, significantly reducing the regulatory burden on charities.
2. For revenue agencies, changes in the common law regarding the definition of 'charity' might lead to a loss of revenue. Alternatively, it may actually increase revenue if the Commonwealth definition is more restrictive than the State definition currently used.
3. Differing applications of the definition (in the second stage of the process proposed in this paper) may result in forum-shopping with charities moving their base to a jurisdiction that provides them with the optimum fiscal concessions. A common definition does not necessarily fully address this issue of preferential environments, as under the proposal, States have the ability to establish carve-outs and special conditions regarding the application of taxation concessions. However, it will address the issue of whether an entity is a charity in the first place.

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<sup>9</sup> See Andrew Lind and Nina Brewer, "More Bang for your Buck"? A State by State Review of duty, land tax and payroll tax exemptions available to Charities' (Corney & Lind Lawyers Pty Ltd, 2016).

4. A single definition and universal application of 'charity' status assists in maintenance of the special recognition provided to charities and the public trust that ensues. The public rely on appropriate revenue collections and on government agencies to manage both formal recognition of charities and the benefits that accrue to them. The public perception of charities contributing to the public good implies a level of trust in the work of all charities and the effectiveness of regulation. As above, this trust can be eroded where the public perceives a contradiction between the work of an organisation and its charitable status. This trust may also be eroded if an organisation is recognised as a charity in one jurisdiction but not another.

It is not possible to remove all vulnerabilities for each group. Indeed, the tension between the expectations and priorities of each group requires a certain level of policy flexibility without any one group compromising more significantly than another. This tension will continue even in the context of a common definition but, ideally, will operate in a stable environment.

## 2.6 Proposed model

A common definition of charity applied across all Australian jurisdictions will provide a uniform mechanism with which to assess the status of individual charities and to determine the make-up of the charity sector. It will provide greater certainty for the future management of revenue policy.

To enable policy flexibility, the paper proposes a two stage model whereby the ACNC would undertake pre-registration checks and make a determination based on the *Charities Act* on charitable status that the States would accept for all purposes (the Charity Determination stage). The second stage is dependent on the purpose that is being applied. In the revenue environment, the States will implement their own objectives through the use of carve-outs or special conditions, if required, and a charity's access to revenue concessions would be subject to these (the Tax Assessment stage).

To effect the first Charity Determination stage, it is proposed that State legislation refer to the entity's registration as a charity with the ACNC, as a pre-requisite to accessing State taxation concessions. The second stage rests with the States and enables regulatory jurisdiction over Tax Assessment (or other legal outcomes or benefits to be applied) at State level, via the application of carve-outs and special conditions.

Whilst recognising the reach of State legislation in relation to charities and that the principles may be applicable broadly, the focus of this paper will be on the State revenue environment.

## 2.7 Terminology

This paper makes a clear distinction in the administration of State revenue benefits between the Charity Determination process and the Tax Assessment process undertaken once an entity is found to meet the definition of a *charity*.

## 2.8 Charity Determination

It is well known that a uniform definition of *charity* or *charitable purpose* does not apply in all Australian jurisdictions. However, all revenue applications refer to the need to first establish that the applicant entity meets the definition of the particular term that has been used in revenue legislation. The term may be a charity, a charitable organisation, charitable purpose, or, as in the case of the Northern Territory, an 'exempt entity'.<sup>10</sup>

This process is referred to in this paper as the *Charity Determination*. In other literature, this process is referred to as the 'entity condition'.<sup>11</sup> Generally, the Charity Determination occurs within a two-staged process, with the Charity Determination being the first stage and a prerequisite to moving to the second *Tax Assessment* stage.

## 2.9 Tax Assessment

The Tax Assessment is the point where taxation exemptions and concessions are determined to be available to a particular entity. Whilst this process is generally distinct from definitional issues, it is dependent on an entity first qualifying at the Charity Determination stage.

The scope of the Tax Assessment stage extends to:

1. The availability of exemptions and concessions and the capacity to place limits on that, for example to exclude certain types of charities);
2. The type of benefit available, for example a full exemption or a concession based on a percentage; and
3. The use for which an asset is applied such as a charity using an asset for an 'unrelated' commercial purpose or the occupancy of certain premises.

The scope of application of taxation exemptions and concessions is currently within the sole remit of the States and the model proposed does not seek to change that. In fact, the retention of control over this space by the States is central to the effectiveness of the proposed two-stage process.

This paper will explore the adoption of a common definition of charity for Commonwealth and State purposes in accordance with the above model. Before we explore this approach in detail, however, the historical development of the charity definition is examined. Further, we explore the existing environment in the State jurisdictions and the stakeholder implications for charities firstly within this environment and, alternatively, within an environment where a common definition applies.

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<sup>10</sup> See *Stamp Duty Act* (NT) s 4F.

<sup>11</sup> See Lind and Brewer, above n 9.

## 3 Background

### 3.1 Charity law in context

The common law meaning of charity historically developed in the context of trusts law.<sup>12</sup> In more recent times, the law of charity has been applied in the context of the benefits provided to charities, particularly in regards to taxation concessions.

In fact in some jurisdictions and circumstances where the definition of charity is applied, the meaning of charity is closely linked to the fiscal benefits of charity status such that taxation concessions automatically follow from recognition as a charity.<sup>13</sup> In other applications of the definition of charity, additional criteria must be met before fiscal considerations will be granted.<sup>14</sup>

In this paper we advocate for a division of the *definition* of 'charity' from its *application* or implications. This approach was first put forward by Geoffrey Cross, later Lord Cross, in 1956 as follows:

The "best hope of bringing some order in the law of charity lies in separating the question whether a trust should be regarded as a charitable trust for the purpose of the general law of trusts from the question whether it should enjoy any special fiscal privileges. They are two quite different questions: yet as the law stands today an answer to one automatically answers the other."<sup>15</sup>

There are many benefits that flow from separating out the definition of charity from its application. These benefits are examined in Section 4 – Jurisdictional Analysis.

For this section, we focus on the definition issue and begin by explaining the historical evolution of the definition of charity.

### 3.2 Technical meaning

The common law established that the term 'charity' has a technical legal meaning that is different to its popular or dictionary definition.<sup>16</sup>

In most cases, the legal meaning of charity is broader than its popular meaning. It is the legal meaning and its implications for revenue that we are concerned with in this paper.

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<sup>12</sup> See G.E. Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 3, Matthew Harding et al, *Defining Charity – A Literature Review* (Melbourne University, 2011) 3 ('*Literature Review*').

<sup>13</sup> For example income tax exemption in New Zealand, albeit with some exclusions. See *Income Tax Act 2007* (NZ) CW 41(1)(a)(b), 42.

<sup>14</sup> For example, to access income tax exemption in Australia, a registered charity must meet the special conditions set out in the *Income Tax Assessment Act 1997* (Cth) ss 50-50, 50-52.

<sup>15</sup> Geoffrey Cross, 'Some Recent Developments in the Law of Charity' (1956) 72 *Law Quarterly Review* 187, 204, cited in *Literature Review*, above n 12, 19.

<sup>16</sup> Dal Pont, above n 12, 16-17.

### 3.3 Historical development

The Australian law of charity derives from English legislation dating back to the year 1601 - the Preamble to the Statute of Charitable Uses 1601, also known as the 'Statute of Elizabeth'.<sup>17</sup> The Statute of Charitable Uses was interpreted over time into a substantial body of case law.

In 1891, the English House of Lords delivered the landmark charity law decision of *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] 1 AC 531 ('*Pemsel*'). In his judgment in *Pemsel*, Lord Macnaghten classified charitable purposes into four main categories, referred to as 'heads of charity':

1. the relief of poverty;
2. the advancement of education;
3. the advancement of religion; and
4. other purposes beneficial to the community.

Following *Pemsel*, to qualify under the fourth head of charity, organisations were required to evidence a charitable purpose that was 'within the spirit and intendment' of the preamble to the Statute of Charitable Uses.

All charitable purposes were required to be for the public benefit, however the first three heads of charity (relief of poverty, advancing education and religion) were historically presumed to be for the public benefit.<sup>18</sup>

An important feature of charity law is that the concept of charity is not static but has evolved over time. This principle was recently articulated by the majority of the High Court of Australia in *Aid/Watch Incorporated v Federal Commissioner of Taxation* (2010) 241 CLR 539 ('*Aid/Watch*'):

Where statute picks up as a criterion for its operation a body of the general law, such as the equitable principles respecting charitable trusts, then, in the absence of a contrary indication in the statute, the statute speaks continuously to the present, and picks up the case law as it stands from time to time.<sup>19</sup>

The common law of charity has largely evolved through the interpretation of the fourth head of charity. Over time the fourth head has come to encompass purposes such as the advancement of culture, conservation of the environment and the promotion of human rights.

### 3.4 Australian developments

In 2001, the Australian Federal government commissioned an Inquiry into the Definition of Charities and Related Organisations ('*CDI Report*'). Whilst, the *CDI Report* recommended the introduction of a

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<sup>17</sup> 43 Eliz I, c 4.

<sup>18</sup> Dal Pont, above n 12, 38.

<sup>19</sup> *Aid/Watch Incorporated v Federal Commissioner of Taxation* (2010) 241 CLR 539 (*Aid/Watch*), 23.

statutory definition of charity, the government elected to retain the common law meaning of charity and introduced the *Extension of Charitable Purpose Act 2004* (Cth).

Recommendation 24 of the *CDI Report* was:

That the Government seek the agreement of all State and Territory Governments to the adoption nationally of the definitional framework for charities and related entities recommended in this Report.<sup>20</sup>

The *Extension of Charitable Purpose Act 2004* (Cth) deemed that:

1. the provision of child care services on a non-profit basis was a charitable purpose; and
2. open and non-discriminatory self-help groups and closed or contemplative religious orders were for the public benefit.<sup>21</sup>

### 3.5 Developments overseas

Meanwhile, the adoption of a statutory definition of charity gathered steam in a number of jurisdictions overseas.

A literature review entitled 'Defining Charity' and published in 2011 by the Not-for-profit Project of the University of Melbourne Law School,<sup>22</sup> states that between 1996 and 2005, the definition of charity was considered in England and Wales, Scotland, Ireland, New Zealand, Canada and South Africa.<sup>23</sup>

The *Literature Review* further states that:

As a result, although in 2001 only one jurisdiction was reported as having a statutory definition of charity, in 2011 there is legislation defining charitable purpose in England and Wales, Northern Ireland, Scotland, and Ireland. In South Africa, as a result of this debate the use of the term 'charity' was replaced in taxation legislation by the broader category of 'public benefit organisations'.

One consequence of this extensive debate is that there is a surprisingly substantial literature on the apparently narrow question of the definition of 'charity'. This literature takes two principal forms: 1) public policy reports, whether produced by governmental agencies, commissioned by government from independent committees, produced on the initiative of third sector organisations, or produced by academics; and 2) academic commentary. In particular, the definitional debate has been extensively considered in the various jurisdictions of the United Kingdom.<sup>24</sup>

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<sup>20</sup> The Australian Government the Treasury, *Report of the Inquiry into the Definition of Charities and Related Organisations* (2001) 18 ('*CDI Report*').

<sup>21</sup> *Extension of Charitable Purpose Act 2004* (Cth) ss 4-5.

<sup>22</sup> *Literature Review*, above n 12.

<sup>23</sup> *Ibid* 4.

<sup>24</sup> *Ibid*.

### 3.6 The *Charities Act 2013* (Cth)

The Australian government announced in the 2011-12 federal budget that it would introduce a statutory definition of charity for Commonwealth purposes. The definition was to be based on the 2001 *CDI Report* and was to take into account recent judicial decisions.<sup>25</sup>

The Government's media release introducing the initiative stated that:

The Government will also commence discussions with the states and territories with the aim of ensuring a coordinated approach to resolving these issues is adopted. Further, any change to the GST base will also require the unanimous support of the state and territory governments.<sup>26</sup>

In 2011, the Government released a consultation paper on the definition of charity and over 200 submissions were received.<sup>27</sup>

Exposure draft legislation introducing a statutory definition of charity was released for public consultation in 2013.<sup>28</sup>

In 2013 the Australian Parliament enacted the *Charities Act*.

The *Charities Act* took effect on 1 January 2014 and defines the terms 'charity' and 'charitable purpose' for Commonwealth purposes as follows:

"**charity**" means an entity:

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

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

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

- (c) none of the purposes of which are disqualifying purposes (see Division 3); and

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<sup>25</sup> The Treasury (Cth), 'Making it easier for charities to help those who need it' (Joint media release with Bill Shorten MP and Tanya Plibersek MP, No.077, 10 May 2011) <<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/077.htm&pageID=003&min=brs&Year=&DocType=>>.

<sup>26</sup> Ibid.

<sup>27</sup> The Treasury, Government of Australia, *A definition of charity* <<http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2011/A-definition-of-charity>>.

<sup>28</sup> The Treasury (Cth), 'Public consultation on a statutory definition of charity' (Joint media release with David Bradbury MP and Mark Butler MP, No.045, 8 April 2013) <<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2013/045.htm&pageID=003&min=djba&Year=&DocType=>>.



(d) that is not an individual, a political party or a government entity.<sup>29</sup>

“**charitable purpose**” means any of the following:

- (a) the purpose of advancing health;
- (b) the purpose of advancing education;
- (c) the purpose of advancing social or public welfare;
- (d) the purpose of advancing religion;
- (e) the purpose of advancing culture;
- (f) the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;
- (g) the purpose of promoting or protecting human rights;
- (h) the purpose of advancing the security or safety of Australia or the Australian public;
- (i) the purpose of preventing or relieving the suffering of animals;
- (j) the purpose of advancing the natural environment;
- (k) any other 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);

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

- (l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:
  - (i) in the case of promoting a change--the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or
  - (ii) in the case of opposing a change--the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.<sup>30</sup>

The charitable purposes set out in section 12 of the Act reflect the first three historic heads of charities, and list a collection of others.

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<sup>29</sup> *Charities Act 2013* (Cth) s 5.

<sup>30</sup> *Charity Act* s 12.

The following provisions of the *Charities Act* are also relevant to the definition of charity:

1. section 6 – the meaning of ‘public benefit’;
2. sections 7 – 10 on the presumption of public benefit;
3. section 11 regarding the meaning of ‘disqualifying purpose’; and
4. sections 14 – 17 concerning the meaning of specific charitable purposes.

The Explanatory Memorandum introducing the *Charities Act* sets out the government’s legislative intent as follows:

The meaning of charity and charitable purpose has not previously been comprehensively defined in statute for the purposes of Commonwealth law. The meaning has been largely determined based on over 400 years of common law. The statutory definition generally preserves the common law principles by introducing a statutory framework based on those principles but incorporating minor modifications to modernise and provide greater clarity and certainty about the meaning of charity and charitable purpose.<sup>31</sup>

The charitable purposes listed in the Bill have been derived from principles from the common law. While those principles may be expressed using a different form of words in order to use a clearer or simpler style of expression, this is not to be taken to mean that a different idea is intended to be expressed by those different words.

The common law remains relevant in interpreting the charitable purposes, including their meaning and scope.<sup>32</sup>

### 3.7 The ACNC Act

The *ACNC Act* establishes the ACNC as the national regulator of charities for Commonwealth purposes.

One of the ACNC’s functions is to register charities. Organisations apply to the ACNC to be registered as a charity<sup>33</sup> and they can apply to be registered under one or more subtypes of charity.<sup>34</sup>

There are 14 charity subtypes – 12 of the 14 subtypes directly correspond to the 12 ‘heads’ of charitable purpose in section 12 of the *Charities Act*. The remaining two subtypes are for two deductible gift recipient categories - public benevolent institutions and health promotion charities.

In assessing applications for registration as a charity or a charity subtype, the ACNC applies the *Charities Act*.

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<sup>31</sup> Explanatory Memorandum, Charities Bill 2013 (Cth) 3 [1.40] – [1.42] (*‘Charities Bill EM’*).

<sup>32</sup> *Ibid* 23 [1.115 – 1.116].

<sup>33</sup> *ACNC Act* s 25-5(1).

<sup>34</sup> *Ibid* s.25-5(2).

### 3.8 Common definition of charity in Australia

Various bodies have advocated for a common definition of charity in Australia across Commonwealth and State jurisdictions (also see Section 5.2).

The National Roundtable of Non-profit Organisations (NRNO) investigated all Commonwealth, State and Territory legislation dealing with charities. It made the following finding which was presented in its submission to a Senate Committee inquiry in 2007:

There are 15 Commonwealth Acts and 163 State and Territory Acts under which entitlement to a benefit or some other legal outcome turns on the charitable purpose or status of an organisation.<sup>35</sup>

Subsequent to the NRNO investigation in 2007, the *Charities Act* and the *Charities (Consequential Amendments and Transitional Provisions) Act 2013* (Cth) were enacted. The second piece of legislation amended Commonwealth legislation to ensure that the terms 'charity' and 'charitable purpose' were used consistently across all Commonwealth laws.<sup>36</sup>

A reviewed and updated version of this list is attached as Appendix 1 to this paper. This review has disclosed that there continues to be 172 Acts under which entitlement to a benefit or legal outcome turns on the charitable purpose or status of an organisation. Forty-five of these Acts set out a definition to determine whether an entity is a charity or charitable organisation. Of these 45 Acts, 34 are relevant to State revenue collection. The remaining 11 are for purposes other than revenue collection. For example, the ACT and NSW respective Adoption Acts define charitable organisations for the purposes of delineating which organisations can be adoption service providers. Further, the NSW *Fisheries Management Act 1994* defines 'charitable purpose' as 'any benevolent, philanthropic or patriotic purpose' in order to allow the donation of fish to a charitable institution. Other definitions are contained in local government, gambling, road safety and transport Acts and for purposes relevant to the operation of those Acts.

The Productivity Commission in its research report on the *Contribution of the Not-for-profit Sector*, published in 2010, made the following recommendations:

Recommendation 7.1:

The Australian Government should adopt a statutory definition of charitable purposes in accordance with the recommendations of the 2001 Inquiry into the Definition of Charities and Related Organisations.

Recommendation 7.2:

State and territory governments should recognise the tax concession status endorsement of not-for-profit organisations at the Commonwealth level. Given the disparities between eligibility for tax concessions across jurisdictions, state and territory governments should utilise such Commonwealth endorsements in determining

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<sup>35</sup> National Roundtable of Non-profit Organisations, 'The assessment of charitable status in Australia' (2007) 1 <<http://www.aph.gov.au/DocumentStore.ashx?id=f44ac555-e5a8-4503-a6f9-ee34b7bdf800>>.

<sup>36</sup> *Charities (Consequential Amendments and Transitional Provisions) Act 2013* (Cth) Schedule 1.

eligibility for their jurisdictional concessions, and seek to harmonise tax concessional status definitions or classifications with the Commonwealth over time.<sup>37</sup>

The Final Report of the Not-for-profit Sector Tax Concession Working Group published in May 2013 also commented on this issue recognising the potential for a reduction in the regulatory burden, as follows:

The Working Group considers that harmonisation by Commonwealth, State, and Territory governments would result in a significant reduction in compliance costs for the NFP sector. This proposal falls outside the Working Group's Terms of Reference. However, this is clearly an area where adopting a national approach would lead to a reduction in complexity and lower administrative costs.<sup>38</sup>

Finally the Explanatory Memorandum to the *Charities Act* states at paragraph 1.10:

The statutory definition applies to all Commonwealth legislation. It may provide a common framework which States and Territories may adopt over time, thereby further reducing complexity and compliance costs for Australian charities.<sup>39</sup>

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<sup>37</sup> Productivity Commission, *Contribution of the Not-for-Profit Sector* (2010) XLV – XLVI ('*Productivity Commission Report*').

<sup>38</sup> The Australian Government the Treasury, *Not-for-profit Sector Tax Concession Working Group – Final Report* (2013) 61 <<http://www.treasury.gov.au/~media/Treasury/Access%20to%20Information/Disclosure%20Log/2014/1447/Downloads/PDF/NFP%20Sector%20WG%20Final%20Report.ashx>>.

<sup>39</sup> *Charities Bill EM*, above n 31.

## 4 Jurisdictional Analysis

The various tax concessions available to charities are determined by reference to the States' legislation providing the tax concession (which will be different for each type of concession). In regards to charity definitions, some Acts specify particular definitions, which are also informed by the common law.

This chapter reviews each piece of State legislation that provides taxation concessions to charities, including duties, land tax, payroll tax and motor vehicle registration (collectively, the Revenue Acts of each State). Reference is also made to selected other State Acts with 'charity' or 'charitable purpose' definitions, which, in many circumstances, have alternate definitions from those in the Revenue Acts.

We appreciate that readers of this paper may have insight into the nuances of the operation of various pieces of legislation cited. We would be pleased to receive any insights from operational experience that may inform us as to how these provisions operate.

### 4.1 Australian Capital Territory (ACT)

#### 4.1.1 Summary:

In summary, there are limited exemptions to duty and land tax available to charities in the ACT.<sup>40</sup> The *Land Tax Act 2004* (ACT) does not provide any broad exemptions for charities, although it does provide specific exemptions for religious institutions and non-profit community housing. However, the *Duties Act 1999* (ACT) and the *Payroll Tax Act 2011* (ACT) do provide exemptions for 'charitable organisations.'

Both the *Duties Act 1999* (ACT) and the *Payroll Tax Act 2011* (ACT) refer to the *Taxation Administration Act 1999* (ACT) for the definition of 'charitable organisations', which includes 'organisation[s] carried on for a religious, educational, benevolent or charitable purpose'<sup>41</sup> but excludes organisations that secure private benefits (such as financial benefits) to their members.<sup>42</sup> This has been a result of recent amendments made in the *Revenue (Charitable Organisations) Legislation Amendment Act 2015* (ACT), and can be understood as a positive step towards harmonising the charity definition within the ACT.

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<sup>40</sup> See Lind and Brewer, above n 9, 19, 26.

<sup>41</sup> *Taxation Administration Act 1999* (ACT) s 18.

<sup>42</sup> See Lind and Brewer, above n 9, 33; Murray, above n 7, 64.

Regulator	Act	Reason for interaction
ACT Revenue Office	<i>Duties Act 1999</i>	To access stamp duty concessions
	<i>Payroll Tax Act 2011</i>	To access payroll tax concessions
	<i>Land Tax Act 2004</i>	To apply exemption from land tax.
ACNC	<i>Australian Charities and Not-for-profits Commission Act 2012 (Cth)</i>	To apply to be a registered entity (charity), currently only entities meeting definition of 'charity' in the <i>Charities Act</i> are able to be registered as a charity
	<i>Charities Act 2013 (Cth)</i>	
Office of Regulatory Services (ACT)	<i>Charitable Collections Act 2003</i>	To apply for registration as a charity for fundraising purposes
ATO	<i>Income Tax Assessment Act 1997 (Cth)</i>	- Application for endorsement as a tax concession charity
	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>	- Application for endorsement as a DGR
	<i>Fringe Benefits Tax Assessment Act 1986 (Cth)</i>	(usually forwarded by ACNC)

#### 4.1.2 ACT Revenue Acts and the concepts for charities:

Following the enactment of the *Revenue (Charitable Organisations) Legislation Amendment Act 2015* (ACT), the ACT has adopted a consolidated definition of 'charitable organisations' for all Revenue Acts under the *Taxation Administration Act 1999* ('ACT TAA'). Section 18B of part 3A of the ACT TAA defines the concept of a 'charitable organisation' by reference to its purpose. The purposes recognised as 'charitable' within the ACT TAA includes 'religious, educational, benevolent or charitable' purposes.<sup>43</sup>

Inclusive in the amendments made in the *Revenue (Charitable Organisations) Legislation Amendment Act 2015* (ACT) was the specification of organisations which are excluded from being a 'charitable organisation' under the ACT TAA. These include organisations that have a purpose of 'securing pecuniary benefits to its members'<sup>44</sup> or are deemed to be an 'excluded organisation' under section 18C of the ACT TAA. Organisations that are explicitly defined as being an 'excluded organisation' include:

1. political parties;
2. industrial organisations;

<sup>43</sup> *Taxation Administration Act 1999* (ACT) s 18B.

<sup>44</sup> *Ibid.*

3. professional organisations;
4. organisations that promote trade, industry or commerce; or
5. classes of organisation prescribed by regulation.

To assist in the interpretation of these amendments, the ACT Revenue Office issued the *Revenue Circular GEN010 – Charitable Organisations*.<sup>45</sup> The Circular states that if an organisation has a purpose, whether it is incidental or ancillary, which relates to political parties, organisations that promote trade, industry and commerce or professional organisations, the organisation will be excluded.<sup>46</sup> As the Explanatory Statement for *Revenue (Charitable Organisations) Legislation Amendment Bill 2015 (ACT)* stated, the amendments sought to limit the use of tax concessions to organisations that ‘served a wider community benefit.’<sup>47</sup> This suggests a policy objective of limiting the common law definition of charity for ACT revenue purposes. In practice it could exclude charities registered with the ACNC (such as professional organisations) from accessing ACT revenue concessions.

While a professional organisation or an organisation that promotes trade, industry or commerce may be an ‘excluded organisation’, it can apply to the Commissioner for ACT Revenue to be recognised as a ‘beneficial organisation’ so it can access concessions.<sup>48</sup> To meet the requirements of a ‘beneficial organisation’, the Commissioner must be satisfied that the organisation has:

1. a predominant purpose to advance religion, advance education, relieve poverty, or otherwise benefit the community (i.e. meet one of the four common law heads of charity);
2. objects and activities of the organisation that make it an excluded organisation are not significant in relation to the purpose of the organisation when considered as a whole; and
3. the purpose of the organisation is to benefit the general community.<sup>49</sup>

Political parties and industrial organisations are not entitled to make an application to be considered a ‘beneficial organisation.’ This signifies a policy objective regarding the taxation treatment of activities of political parties and industrial organisations.

#### 4.1.3 The term ‘charity’ in the ACT Collections law (not relevant to the Revenue Acts)

The *Charitable Collections Act 2003 (ACT)* is used by the ACT to regulate fundraising activities. It states that collections must be done for a ‘charitable purpose’, which includes ‘any benevolent, philanthropic or patriotic purpose’. This definition is different to the charitable purpose definitions

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<sup>45</sup> ACT Revenue Office, *Charitable Organisations*, GEN010, 25 November 2015.

<sup>46</sup> *Ibid.*

<sup>47</sup> Explanatory Statement, *Revenue (Charitable Organisations) Legislation Amendment Bill 2015 (ACT)*.

<sup>48</sup> ACT Revenue Office, above n 44, 4.

<sup>49</sup> *Ibid.*

applicable to the Revenue Acts and may be broader than the common law and *Charities Act* definitions of charitable purpose.<sup>50</sup>

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<sup>50</sup> Ibid.



## 4.2 Northern Territory (NT)<sup>51</sup>

### 4.2.1 Summary:

Recent changes were introduced to the taxation concession system in relation to the *Payroll Tax Act* (NT) following the enactment of the *Revenue and Other Legislation Amendment Act 2015* (NT). These changes highlight an emerging concern within the NT Government about the widening definition of ‘charity’.<sup>52</sup> As a result, a new category of ‘excluded entities’<sup>53</sup> has been created and can be understood as restricting the types of organisations that can access taxation concessions in the NT.<sup>54</sup>

Regulator	Act	Reason for interaction
Department of Treasury and Finance	<i>Stamp Duties Act</i>	To access stamp duty concessions
	<i>Payroll Tax Act</i>	To access payroll tax concessions
ACNC	<i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth) <i>Charities Act 2013</i> (Cth)	To apply to be a registered entity (charity), currently only entities meeting definition of ‘charity’ in <i>Charities Act</i> are able to be registered entity
ATO	<i>Income Tax Assessment Act 1997</i> (Cth)	- Application for endorsement as a tax concession charity
	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)	-Application for endorsement as a DGR
	<i>Fringe Benefits Tax Assessment Act 1986</i> (Cth)	(usually forwarded by ACNC)

### 4.2.2 NT Revenue Acts and the concepts for charities:

For duties, the NT has exemption provisions which require applicants to be an ‘exempt entity’ and to prove that the property is used solely by them for an ‘exempt use’.<sup>55</sup>

In this regard, the NT applies the two step process recommended in this paper - the first requirement is that the applicant must be an ‘exempt entity’ (a Charity Determination process) and the second requirement is that the use of the property must be for an ‘exempt use’ (a Tax Assessment process).

<sup>51</sup> Note that the NT Government does not regulate fundraising so there is no comparison to charity concepts in non-revenue Acts.

<sup>52</sup> Northern Territory Government, *Budget Paper No 2: Budget Strategy and Outlook 2015-2016* (2015) 36.

<sup>53</sup> *Payroll Tax Act* (NT) s 48A(3).

<sup>54</sup> Murray, above n 7, 54.

<sup>55</sup> *Stamp Duty Act* (NT) s 4F.

Under section 4F(1) of the *Stamp Duty Act* (NT), an 'exempt entity' is considered to be:

1. a public hospital;
2. a public benevolent institution;
3. a religious institution;
4. a public education institution;
5. a council, society, organisation or other body established or carried on exclusively or principally for the promotion of the interests of a school (other than a school carried on for profit); or
6. a non-profit organisation having as its sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose.

The terms used here, are generally consistent with the traditional four heads of charity, but they may be broader in some respects.

Section 4F(2) of the *Stamp Duty Act* (NT) defines 'exempt use' very broadly, to include any purpose which is not a commercial activity. For many organisations therefore, access to benefits primarily rests on meeting the first step, of being an 'exempt entity' as long as they are not engaged in commercial operations.

The *Payroll Tax Act* (NT) has exemptions for charities and relies on the concept of 'charitable activities' to define which type of wages would attract the exemption.<sup>56</sup> Section 48C of the *Payroll Tax Act* (NT) defines 'charitable activities' as 'work that is predominantly of a religious, charitable, benevolent, philanthropic or patriotic nature'.<sup>57</sup>

A number of entities were explicitly excluded from accessing payroll tax exemption with the introduction of the *Revenue and Other Legislation Amendment Act 2015* (NT). 'Excluded entities' were defined as follows:

1. schools
2. educational institutions
3. educational companies
4. political parties
5. industrial associations
6. professional associations; or
7. a trade, industry or commerce entity.<sup>58</sup>

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<sup>56</sup> *Payroll Tax Act* (NT) s 48C.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid* s 48A(3).

For wages paid by a school or college, exemption from payroll tax may be available under section 49 and Schedule 2, clause 16 of the *Payroll Tax Act* (NT). For the other 'excluded entities', the Commissioner may override their exclusion if they are able to satisfied that the excluding feature is not significant when the entity is considered as a whole, and that the entity's purpose is beneficial to the community in general rather than to a particular class of persons (such as its members).<sup>59</sup>

The NT does not levy land tax.

In assessing the concept of charities between the *ACNC Act* and the Revenue Acts of the NT, there are two points of divergence to highlight:

1. First, the NT Revenue Acts specifically include organisations with a 'philanthropic' or 'patriotic' purpose which is broader than the traditional common law concepts of charitable purpose.
2. Second, the *Payroll Tax Act* (NT) specifically refers to schools and educational institutions as 'exempt entities' that are therefore not eligible for payroll tax exemption as a charity. Schools and colleges may qualify for exemption under another section of the Act.

However, the policy objective of restricting the application of the exemption could be achieved by retaining the *Charities Act* definition of charity and excluding access to payroll tax exemption in the *Payroll Tax Act* (NT) instead.

The Northern Territory does not regulate charitable fundraising at present.

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<sup>59</sup> Ibid s 48E.

## 4.3 New South Wales (NSW)

### 4.3.1 Summary:

In summary, concessions for charities vary across the NSW Revenue Acts. The *Duties Act 1997* (NSW) and the *Land Tax Management Act 1956* (NSW) both define eligible charities by reference to charitable purpose, albeit through the use of different definitions.<sup>60</sup> On the other hand, the *Payroll Tax Act 2007* (NSW) adopts the common law definition.<sup>61</sup> The resulting effect of this disparity is that, in practice, the Revenue office will apply different considerations to charity concessions based on the type of concession that is sought.

Regulator	Act	Reason for interaction
Office of State Revenue	<i>Duties Act 1997</i>	To access stamp duty concessions
	<i>Payroll Tax Act 2007</i>	To access payroll tax concessions
	<i>Land Tax Management Act 1956</i>	To apply for exemption from land tax
NSW Fair Trading	<i>Charitable Fundraising Act 1991</i>	To apply for registration as a charity for fundraising purposes
ACNC	<i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth)	To apply to be a registered entity (charity), currently only entities meeting definition of 'charity' in <i>Charities Act</i> are able to be registered entity
	<i>Charities Act 2013</i> (Cth)	
ATO	<i>Income Tax Assessment Act 1997</i> (Cth)	- Application for endorsement as a tax concession charity
	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)	- Application for endorsement as a DGR
	<i>Fringe Benefits Tax Assessment Act 1986</i> (Cth)	(both usually forwarded by ACNC)

### 4.3.2 The New South Wales Revenue Acts and the concepts for charities:

There is significant variation in the terms used to refer to charities across the NSW Revenue Acts.

The *Duties Act 1997* (NSW) uses the phrase 'exempt charitable or benevolent bodies' to refer to entities that are exempt from transfer duties on certain transactions.<sup>62</sup> The definition of 'exempt

<sup>60</sup> See *Duties Act 1997* (NSW) s 275; *Land Tax Management Act 1956* (NSW) s 10.

<sup>61</sup> See *Payroll Tax Act 2007* (NSW) s 48.

<sup>62</sup> *Duties Act 1997* (NSW) s 275.

charitable or benevolent body' is set out in section 275(3) of the *Duties Act 1997* (NSW) and is defined as an entity that operates:

1. Wholly or predominantly for the relief of poverty or promotion of education in Australia;
2. With a primary object to promote the interests of Aborigines.

This definition is more restrictive than the common law definition of charitable purpose for the following reasons:

1. It excludes charities for the advancement of religion;
2. It excludes charities that advance education or relieve poverty outside Australia; and
3. It excludes a range of other purposes that have been recognised over time under the fourth head of charity (e.g. conservation of the environment).

While the previous *Stamp Duties Act 1920* (NSW) included religious entities within the meaning of the defined term used, 'charitable organisation',<sup>63</sup> the exclusion of religious entities from the current *Duties Act 1997* is unique.

Land tax exemptions apply a slightly different definition which is generally limited to 'charitable bodies' and the concept of 'benevolent bodies' does not appear.<sup>64</sup> Under section 10(1) of the *Land Tax Management Act 1956* (NSW), exemptions to land tax may apply to a wide range of entities, including charities. For example, land used solely as a police station can be exempt from land tax.<sup>65</sup> In a sense, while it does not utilise the concept of 'benevolent bodies', the *Land Tax Management Act 1956* (NSW) encapsulates it through listing individual categories of entities that would be considered benevolent and represents the evolving nature of the term.

The *Land Tax Management Act 1956* (NSW) also aligns with the traditional common law interpretation of 'charitable purpose' to determine eligible purposes for land tax exemptions. This includes allowing land used by or in trust for a religious, charitable or educational purpose, as long as it is not for a pecuniary profit, to be eligible for land tax exemption.<sup>66</sup> The inclusion of 'religious purpose' is an important point of differentiation to the requirements set out in the *Duties Act 1997*.<sup>67</sup>

The *Payroll Tax Act 2007* (NSW) states the kinds of institutions that may claim an exemption.<sup>68</sup> These include the following entities:

1. A religious institution;
2. A public benevolent institution; or,

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<sup>63</sup> See definitions in *Stamp Duties Act 1920* (NSW) s 98.

<sup>64</sup> *Land Tax Management Act 1956* (NSW) s 10.

<sup>65</sup> *Ibid* ss 10(f1), 10(k), 10(q).

<sup>66</sup> *Ibid* ss 10(d), 10(q).

<sup>67</sup> See *Duties Act 1997* (NSW) s 275.

<sup>68</sup> *Payroll Tax Act 2007* (NSW) s 48.

3. A non-profit organisation having as its sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose (but not including a school, an educational institution, and educational company or an instrumentality of the State).

In this respect, it does not seek to define 'charitable' or 'benevolent' and, therefore, relies on common law definitions for these terms.

In addition, the *Payroll Tax Act 2007* (NSW) places restraints around the types of wages eligible for exemption. Only specific wages that are payable for work with a connection to the 'religious, charitable, benevolent, philanthropic or patriotic purposes of the institution or body' to a 'person engaged exclusively in that kind of work' may be considered.<sup>69</sup>

#### 4.3.3 The term 'charity' in the NSW Collections law (not relevant to the Revenue Acts)

The *Charitable Fundraising Act 1991* (NSW) is administered by NSW Fair Trading and allows charities to register for fundraising activities. The Act does not define the term 'charity', but organisations are required to have a 'charitable purpose' in order to fundraise. The term 'charitable purpose' is not defined and therefore takes its meaning from the common law.<sup>70</sup> The NSW Fair Trading website provides guidance on the four traditional heads of 'charitable purpose' and the requirement that they be for the public benefit:

1. the relief of financial hardship;
2. the advancement of education;
3. the advancement of religion; or,
4. other charitable purposes for the benefit of the community.<sup>71</sup>

Exemptions to register as a fundraiser under this Act are limited to religious bodies or organisations.<sup>72</sup>

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<sup>69</sup> *Payroll Tax Act 2007* (NSW) s 48(2).

<sup>70</sup> NSW Fair Trading, Government of New South Wales, *Charitable Purpose* <[http://www.fairtrading.nsw.gov.au/ftw/Cooperatives\\_and\\_associations/Charitable\\_fundraising/Charitable\\_purpose.page?>](http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Charitable_fundraising/Charitable_purpose.page?>).

<sup>71</sup> *Ibid.*

<sup>72</sup> *Charitable Fundraising Act 1991* (NSW) s 7(1).

## 4.4 Queensland (Qld)

### 4.4.1 Summary:

The Queensland Revenue Acts uniformly use the term ‘charitable institution’ to describe the charities that are entitled to various concessions.<sup>73</sup> The concept of ‘charitable institution’ as defined in the *Taxation Administration Act 2001* (Qld) (*‘Qld TAA’*) does not appear in other Queensland Acts - registration under the *Qld TAA* does not appear to have consequences beyond the Acts dealing with revenue concessions.<sup>74</sup> Nevertheless, the consistent use of ‘charitable institution’ within the Revenue Acts represents a level of harmonisation in the Queensland revenue context.

Regulator	Act	Reason for interaction
Office of State Revenue	<i>Taxation Administration Act 2001</i>	To apply for registration as a charitable institution
	<i>Duties Act 2001</i>	
	<i>Payroll Tax Act 1971</i>	To access stamp duty concessions
	<i>Land Tax Act 2010</i>	To access payroll tax concessions To apply exemption from land tax.
ACNC	<i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth) <i>Charities Act 2013</i> (Cth)	To apply to be a registered entity (charity), currently only entities meeting definition of ‘charity’ in <i>Charities Act</i> are able to be registered entity
Office of Fair Trading	<i>Collections Act 1966</i>	To apply for registration as a charity for fundraising purposes
ATO	<i>Income Tax Assessment Act 1997</i> (Cth)	- Application for endorsement as a tax concession charity
	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)	- Application for endorsement as a DGR (both usually forwarded by ACNC)
	<i>Fringe Benefits Tax Assessment Act 1986</i> (Cth)	

<sup>73</sup> The *Duties Act 2001* (Qld), *Payroll Act 1971* (Qld) and *Land Tax Act 2010* (Qld) provide exemptions on duties, payroll tax and land taxes for at least some charitable institutions.

<sup>74</sup> There are two other Acts that refer to the concept of ‘charitable institution’: *Supreme Court of Queensland Act 1991* (Qld) s 22, imposes restrictions on judges holding ‘public office’, including an appointment in relation to a charitable institution; *Acquisition of Land Act 1967* (Qld) Schedule 1 – Part 13, allows land to be taken by the Crown for purposes relating to a charitable institution.

#### 4.4.2 The Queensland Revenue Acts and the concept of ‘charitable institution’:<sup>75</sup>

Charities, or trustees of a charity, apply to be registered as a ‘charitable institution’ under Part 11A of the *Qld TAA*. Sections 149C(2) – 149C(4) list the types of ‘charitable institutions’ which the Commissioner may register. The list includes types of organisations (e.g. a kindergarten, a religious body, a public benevolent institution), or organisations with a specific principal object or pursuit. The examination of an entity’s principal object or pursuit, however, is not necessary with religious bodies and universities (or university colleges).<sup>76</sup>

There is no reference to ‘charity’ or ‘registered charity’ in the Revenue Acts. Whether or not an institution is eligible to be a ‘charitable institution’ is separate from the references to ‘charity’ or related terms in other Acts.

Some differences between the Queensland and the Commonwealth include the following:

1. A charity must be an institution or the trustee of an institution to be registered in Queensland, whereas the range of entity types that can be registered in the Commonwealth is wider. Trustees of a university or university college, however, cannot register under the *Taxation Administration Act 2001* (Qld).<sup>77</sup>
2. The ‘not-for-profit’ requirement applies to all charities at the Commonwealth level, but there are some exceptions in Queensland as the principal object or pursuit of a charitable institution may either be charitable or promoting the public good.
3. There is no specific requirement that charities not be political/government.

#### 4.4.3 The term ‘charity’ in the Qld Collections law (not relevant to the Revenue Acts)

The *Collections Act 1966* (Qld Collections Act) also introduces a scheme for registration of charities under that Act. Charities are divided into two classes: exempted charities and non-exempted charities, with the exemption relating to their reporting requirements. For the purposes of the Act, ‘charity’ is defined as any association established for a charitable purpose, determined by the Minister to be a charity, or named in a regulation, but subject to exceptions.<sup>78</sup>

The Qld Collections Act is administered by the Office of Fair Trading and deals primarily with the regulation of fundraising activities. The Qld Collections Act does not refer to the term ‘charitable institution’.

The *Motor Accident Insurance Act 1994* also refers to a ‘registered charity’, and states that ‘registered charity’ means: a charity registered under the *Collections Act 1966*.<sup>79</sup> There are many other

<sup>75</sup> Includes *Duties Act 2001* (Qld), *Payroll Act 1971* (Qld) and *Land Tax Act 2010* (Qld).

<sup>76</sup> *Taxation Administration Act 2001* (Qld) s 149C(5).

<sup>77</sup> *Ibid* s 194c.

<sup>78</sup> *Collections Act 1966* (Qld) s 5.

<sup>79</sup> *Motor Accident Insurance Act 1994* (Qld) s 96(2)(a)(ii).



references to concepts of 'charity', 'charitable purposes' and 'charitable benefits' in other Qld legislation, either referring directly to the Collections Act or not referring to any specific definition.

The *Trusts Act 1973* (Qld) section 103(2) provides that '[n]otwithstanding any rule of law to the contrary, it shall be deemed always to have been charitable to provide, or to assist in the provision of, facilities for recreation or other leisuretime occupation, if the facilities are provided in the interests of social welfare.' In this context, 'social welfare' is defined at section 103(3), inter alia, as facilities provided 'with the object of improving the conditions of life'.

## 4.5 South Australia (SA)

### 4.5.1 Summary:

The SA Revenue Acts do not adopt a common definition of 'charity' but they all, in general, refer to the common law understanding of the term. Recent amendments from the *Amendment and Repeal (Budget 2015) Act 2015 (SA)*, however, highlight growing concerns regarding the term. The amendments from this Act have sought to differentiate between 'charitable' and 'commercial' activities for stamp duty concessions.

Regulator	Act	Reason for interaction
Revenue SA	<i>Stamp Duties Act 1923</i>	To access stamp duty concessions
	<i>Payroll Tax Act 2009</i>	To access payroll tax concessions
	<i>Land Tax Act 1936</i>	To apply exemption from land tax.
ACNC	<i>Australian Charities and Not-for-profits Commission Act 2012 (Cth)</i>	To apply to be a registered entity (charity), currently only entities meeting definition of 'charity' in <i>Charities Act</i> are able to be registered entity
	<i>Charities Act 2013 (Cth)</i>	
Consumer and Business Services SA	<i>Collections for Charitable Purposes Act 1939</i>	To apply for registration as a charity for fundraising purposes
ATO	<i>Income Tax Assessment Act 1997 (Cth)</i>	- Application for endorsement as a tax concession charity
	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>	- Application for endorsement as a DGR
	<i>Fringe Benefits Tax Assessment Act 1986 (Cth)</i>	(both usually forwarded by ACNC)

### 4.5.2 SA Revenue Acts and the concepts for charities:

Recent changes to the *Stamp Duties Act 1923 (SA)* were made by the *Statute Amendment and Repeal (Budget 2015) Act 2015 (SA)*. The effect of these changes has limited concessions available for charities through excluding activities done for commercial purposes from conveyance duty concessions.<sup>80</sup>

The *Stamp Duties Act 1923 (SA)* section 71(5)(j) now refers to a 'wholly... charitable or religious purpose' as a condition to access this exemption. These changes mean that while the *Stamp Duties*

<sup>80</sup> Murray, above n 7, 27.

*Act 1923 (SA)* relies on the general common law meaning of 'charitable purpose', it has restricted the acceptable activities a charity may engage in by excluding activities done for commercial purposes from duty concessions.

While the legislation provides no definitions, the Stamp Duty Document Guide states that a charitable purpose can include relief of the aged, impotent and poor; advancement of education; advancement of religion; or other purposes beneficial to the community (which is drawn from the common law definition).<sup>81</sup> This is consistent with the four heads of charity.

Under the *Land Tax Act 1936 (SA)* section 4, an activity test is applied to determine applications for land tax exemption. Whilst this is in effect a Tax Assessment, it has parallels to the definition question. Exemptions may be granted where the land is used for religious, poverty relief ('supplying to necessitous or helpless persons of living accommodation, food, clothing or medical treatment') or educational purposes. The Commissioner may also deem land that is established for a 'charitable, educational, benevolent, religious or philanthropic purpose' (even if it is not deemed charitable within the meaning of any rule of law) as eligible for an exemption. These terms are not defined in the legislation and therefore take their meaning from the common law.

Payroll tax exemptions in SA are similar to those in Tasmania, Victoria and New South Wales, where wages paid in relation to activities done for commercial purposes are ineligible.<sup>82</sup> The *Payroll Tax Act 2009 (SA)* does not define the terms 'charity' or 'public benevolent institution' (PBI), and their meanings are therefore derived from the common law.

The SA Payroll Tax Guide provides further guidance. It states that a charity is a non-profit organization, for the public benefit and one or more of the following purposes, again consistent with the four heads of charity:

1. Relief of poverty or sickness or the needs of the aged;
2. Advancement of education;
3. Advancement of religion; or
4. Other purposes beneficial to the community.<sup>83</sup>

In the same guidance, a PBI is defined as a non-profit organisation set up for the:

1. Relief of sickness, suffering, distress, misfortune, destitution or helplessness; or
2. benefit of members of a community or of a particular locality, who are suffering from a particular disadvantage.

It includes non-profit health service providers, councils and non-profit child care centers.

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<sup>81</sup> Revenue SA, *Stamp Duty Document Guide – To Religious/Charitable Body (Sec 71(5)(j))* (2015) <[https://www.revenuesa.sa.gov.au/revnet/helpfiles/land\\_religcharitpurp.pdf](https://www.revenuesa.sa.gov.au/revnet/helpfiles/land_religcharitpurp.pdf)>.

<sup>82</sup> *Payroll Tax Act 2009 (SA)* s 48.

<sup>83</sup> Revenue SA, *Payroll Tax Guide to Legislation 2015-16* (2015) 7 <[https://www.revenuesa.sa.gov.au/services-and-information/publications/guides-to-legislation/G2L\\_PRT\\_2015-16.pdf](https://www.revenuesa.sa.gov.au/services-and-information/publications/guides-to-legislation/G2L_PRT_2015-16.pdf)>.

While the Revenue Acts do not define 'charitable or religious purpose', the Collections Act does, for the purposes of regulating fundraising activities.

#### 4.5.3 The term 'charity' in the SA Collections law (not relevant to the Revenue Acts)

Under the *Collections for Charitable Purposes Act 1939 (SA)*, the concept of 'charitable purpose' appears to be strongly linked to the alleviation of poverty and distress and is defined as meaning, inter alia:

- (a) the affording of relief to diseased, disabled, sick, infirm, incurable, poor, destitute, helpless, or unemployed persons, or to the dependents of any such persons;
- (b) the relief of distress occasioned by war, whether occasioned in South Australia or elsewhere;
- (e) the affording of relief, assistance, or support to persons who are or have been members of the armed forces of Australia or to the dependents of any such persons;
- (f) the provision of welfare services for animals.<sup>84</sup>

The recently enacted *Statutes Amendment (Commonwealth Registered Entities) Act 2016 (SA)* has made amendments that will come into effect from 1 January 2017 and, relevantly will add a charitable purpose being 'the provision of, or assistance or support to the provision of, health services (within the meaning of the *Health Care Act 2008*) (SA) or research in the field of health or such health services'.

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<sup>84</sup> *Collections for Charitable Purposes Act 1939 (SA)* s 4.

## 4.6 Tasmania (Tas)

### 4.6.1 Summary:

The Tasmanian Revenue Acts, in general, adopt a similar definition for charities, requiring charities to have either a 'charitable, religious or educational' purpose. It is important to note that a distinction is made between 'charitable', 'religious' and 'educational' purposes.

The exemptions that charities can access, as a result, are fairly consistent under the *Payroll Tax Act 2008* (Tas) and *Land Tax Act* (2000) (Tas). The only exception is that under the *Duties Act 2001* (Tas) restrictions are placed, not on the definition of charity, but rather on the type of transaction. This has the effect of limiting the scope of its application in the charity sector. This is an example of the existing application of the two-stage Charity Determination and the Tax Assessment processes.

Regulator	Act	Reason for interaction
State Revenue Office	<i>Duties Act 2001</i>	To access stamp duty concessions
	<i>Payroll Tax Act 2008</i>	To access payroll tax concessions
	<i>Land Tax Act 2000</i>	To apply exemption from land tax.
ACNC	<i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth)	To apply to be a registered entity (charity), currently only entities meeting definition of 'charity' in <i>Charities Act</i> are able to be registered entity
	<i>Charities Act 2013</i> (Cth)	
Office of Consumer Affairs and Fair Trading	<i>Collection for Charities Act 2001</i>	To apply for registration as a charity for fundraising purposes
ATO	<i>Income Tax Assessment Act 1997</i> (Cth)	- Application for endorsement as a tax concession charity
	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)	- Application for endorsement as a DGR
	<i>Fringe Benefits Tax Assessment Act 1986</i> (Cth)	(both usually forwarded by ACNC)

### 4.6.2 Tasmanian Revenue Acts and the concepts for charities:

Under the *Duties Act 2001* (Tas), transactions that are considered to be 'solely in furtherance of a charitable, religious or educational purpose' will attract an exemption. The term 'charitable, religious or educational purpose' is not defined and we were not able to locate guidance published by the Tasmanian Revenue Office in relation to the phrase.

An exemption from property transfer duty is only available when the transaction is for no consideration, that is, when a gift is made.<sup>85</sup> The property is also subject to a use-test whereby the property must be 'used solely in furtherance of any charitable, religious or educational purpose, or to or in favour of any corporation/association that is incorporated for such a purpose.'<sup>86</sup>

The *Land Tax Act 2000* (Tas) also limits the land tax exemptions to a similar scope as that found in the *Duties Act 2001* (Tas) so that only land used for a religious, charitable or education purpose is eligible for land tax exemption. A two-step process is used to determine exemptions whereby the land must be owned by, in trust for, or vested in one of the following entities:

1. a religious denomination or religious society;
2. charitable institution; or,
3. the entity which has either ownership, management or control of an educational institution.<sup>87</sup>

It is important to note that for 'charitable institutions' to qualify, they are also required to be exempt from income tax under the *Income Tax Assessment Act 1997* (Cth), which suggests some level of alignment with the definition of charity between the jurisdictions.<sup>88</sup>

A further step is to assess whether the entity is using the land for its applicable purpose (i.e. a charitable institution would use the land for the charitable purpose and an educational institution would use it for solely for not-profit educational purposes).<sup>89</sup> This implies that there are strict expectations on what purposes particular entities may use their land for and potential cross over may not be recognised.

The legislation provides definition on what constitutes a religious purpose as the following is specifically required for an exemption to apply:

1. support of the aged or infirm clergy or ministers, or their spouses, widows, widowers or dependent children;
2. a place of worship; or
3. a place of residence for clergy, ministers or members of the religious order.<sup>90</sup>

Payroll tax exemptions utilise similar concepts to that found in NSW and Victoria and expand upon what is found in the *Duties Act 2001* (Tas) and the *Land Tax Act 2000* (Tas). To access exemptions under the *Payroll Tax Act 2008* (Tas), the wages must be paid by:

1. a religious institution;
2. a public benevolent institution; or

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<sup>85</sup> *Duties Act 2001* (Tas) s 53(n).

<sup>86</sup> Lind and Brewer, above n 9, 15.

<sup>87</sup> *Land Tax Act 2000* (Tas) s18.

<sup>88</sup> *Ibid* s18 (d(i)).

<sup>89</sup> *Ibid* s18.

<sup>90</sup> *Ibid* s18(b).

3. a non-profit organisation having their sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose (but not including a school, education institution or educational company).

The entity cannot be an instrumentality of the State.

As in NSW, SA and Victoria, the wages must be paid to a person who is exclusively engaged in the work for the purpose described above.

#### 4.6.3 The term 'charity' in the Tas Collections law (not relevant to the Revenue Acts)

Under the *Collections for Charities Act 2001* (Tas), charities need to apply for permission to raise funds from the public for a charitable purpose. These include:

1. unincorporated associations;
2. corporations with a principal office outside Tasmania;
3. organisations incorporated outside Tasmania.<sup>91</sup>

Organisations that are only incorporated in Tasmania, and corporations with a principal office in Tasmania, do not need to apply for approval to raise funds.

A 'charitable purpose' includes any benevolent, philanthropic or patriotic purpose, the protection of environment or animal welfare, and the provision of help, aid, relief, housing, education to any person or animal in distress. The definition does not reference religious organisations specifically.

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<sup>91</sup> *Collections for Charities Act 2001* (Tas) s 5(2).

## 4.7 Victoria (Vic)

### 4.7.1 Summary:

In summary, the Victorian Revenue Acts vary in their application of concessions or exemptions to the charity sector. This can be observed when comparing the different definitions used by each Revenue Act, which all vary slightly from the other. For example, while land tax requires exclusively a 'charitable purpose', duty exemptions require a 'religious, charitable or educational purpose.'<sup>92</sup> These slight differences may not have significant impact in practice, however, further harmonisation would ensure greater clarity and consistency for all stakeholders.

Regulator	Act	Reason for interaction
State Revenue Office	<i>Duties Act 2000</i>	To access stamp duty concessions
	<i>Payroll Tax Act 2007</i>	To access payroll tax concessions
	<i>Land Tax Act 2005</i>	To apply exemption from land tax.
ACNC	<i>Australian Charities and Not-for-profits Commission Act 2012 (Cth)</i> <i>Charities Act 2013 (Cth)</i>	To apply to be a registered entity (charity), currently only entities meeting definition of 'charity' in <i>Charities Act</i> are able to be registered entity
Consumer Affairs Victoria	<i>Fundraising Act 1998</i>	To apply for registration as a charity for fundraising purposes
ATO	<i>Income Tax Assessment Act 1997 (Cth)</i>	- Application for endorsement as a tax concession charity
	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>	- Application for endorsement as a DGR
	<i>Fringe Benefits Tax Assessment Act 1986 (Cth)</i>	(both usually forwarded by ACNC)

### 4.7.2 Victorian Revenue Acts and the concepts for charities:

In Victoria, there is no consistent term used across the Revenue Acts to describe the entities that are able to access charity tax concessions, as summarised below:

<sup>92</sup> *Land Tax Act 2005 (Vic)* ss 71, 74; *Duties Act 2000 (Vic)* s 38.



Revenue Act	Description of those entitled
<i>Land Tax Act 2005</i>	Land used by a charitable institution exclusively for charitable purposes, or owned by a charitable institution for future use.
<i>Duties Act 2000</i>	No duty for establishment of a trust or transfer over property held for a religious, charitable or educational purpose or a corporation/body of persons established for these purposes.
<i>Payroll Tax Act 2007</i>	Wages are exempt wages if they are paid or payable by a religious institution, a PBI or a non-profit organisation having wholly charitable, benevolent, philanthropic or patriotic purposes (but not including a school, an educational institution, an educational company or an instrumentality of the State).

In general, an organisation with wholly charitable purposes would generally be entitled to the various concessions available in these Acts as long as they also meet their use test (such as the one found in the *Payroll Tax Act 2007 (Vic)*)<sup>93</sup>. The *Payroll Tax Act 2007 (Vic)*, however, explicitly excludes some types of institutions, such as schools, educational institutions and State instrumentalities, effectively creating a carve-out in the Tax Assessment process.

Under the *Payroll Tax Act 2007 (Vic)*, there is also the condition that exempt wages are wages that are 'to be paid to a person engaged exclusively in work of a kind ordinarily performed in connection with the requisite purposes of that institution or organisation.'<sup>94</sup> This means that if the wages were for a person who engaged exclusively in 'religious, charitable, benevolent, philanthropic or patriotic' work then it would be exempt for payroll tax, and all other work conducted by the same charity would not attract the exemption.<sup>95</sup> Similar provisions exist in the payroll tax Acts in NSW, South Australia and Tasmania.

For the purpose of land tax, *Revenue Ruling LTA004 – Land used exclusively for Charitable Purposes* states that the question of whether an organisation is charitable is determined in accordance with common law principles.<sup>96</sup> The Victorian State Revenue Office (Vic SRO) website further expands on this to say that a charitable body is one with an objective that is exclusively for charitable purposes, no private benefit can be conferred to owners, officers or members, and there can be no distribution of assets to members in the event of a winding-up.<sup>97</sup> Consequently, the land generally needs to be used for the purposes of the charity and not for any other reason. Charitable purposes are defined as relieving poverty, advancement of education, advancement of religion and/or other purposes beneficial to the community, that is, the four heads of charity.

<sup>93</sup> *Payroll Tax Act 2007 (Vic)* s 48.

<sup>94</sup> State Revenue Office Victoria, *Exemptions for wages paid by non-profit organisations and religious and public benevolent institutions*, PTX 2/12, June 2012.

<sup>95</sup> *Ibid.*

<sup>96</sup> State Revenue Office Victoria, *Land used exclusively for charitable purposes*, LTA004, October 2007.

<sup>97</sup> State Revenue Office Victoria, Government of Victoria, *Charitable institutions and land tax*, <<http://www.sro.vic.gov.au/node/1461>>.

For the purposes of duties exemption, the Vic SRO website says this is determined by examining the stated purposes and actual activities of the organisation.<sup>98</sup> Two elements must be satisfied: the purpose must fall within one of the four accepted (*Pemsel*) heads of charity, and the purposes of the organisation must be for the benefit of the public in general or an appreciable section of it.

As for payroll tax and land tax, the Charity Determination is made by reference to the common law.<sup>99</sup>

#### 4.7.3 The term 'charity' in the Vic Collections law (not relevant to the Revenue Acts)

The *Fundraising Act 1998* (Vic) is administered by Consumer Affairs Victoria and allows charities to register as a fundraiser. The term 'charity' is not defined in this Act, however guidelines make reference to charities as examples of entities that would register for a fundraising licence.<sup>100</sup> A number of organisations may be exempt from registering, including universities, public health services and registered political parties.<sup>101</sup>

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<sup>98</sup> State Revenue Office Victoria, Government of Victoria, *Charities and friendly societies duty exemption* <<http://www.sro.vic.gov.au/node/1405>>.

<sup>99</sup> A previous ruling (PTA-009) explained the meaning of the term 'exclusively' but this ruling has now ceased.

<sup>100</sup> Consumer Affairs Victoria, Government of Victoria, *Fundraising Registration Guidelines*, <<http://www.gazette.vic.gov.au/gazette/Gazettes2009/GG2009S248.pdf#page=1>>.

<sup>101</sup> *Fundraising Act 1998* (Vic) ss 16, 16A.

## 4.8 Western Australia (WA)

### 4.8.1 Summary:

At present, a WA charity may need to interact with at least four different government agencies at the State or Federal level. Further, exemptions under the taxation Acts in WA are separate and so a charity will need to separately apply for exemptions under the respective Acts. An exemption from payroll tax is granted based on one application, however exemptions from duties and land tax will need to be applied for transaction.

Regulator	Act	Reason for interaction
Office of State Revenue	<i>Duties Act 2008</i>	To access exemptions from duties, including transfer duty and vehicle licence duty
	<i>Payroll Tax Act 2002</i>	To apply for from payroll tax exemption
	<i>Land Tax Assessment Act 2002</i>	To apply for from land tax exemption
ACNC	<i>Australian Charities and Not-for-profits Commission Act 2012 (Cth)</i> <i>Charities Act 2013 (Cth)</i>	To apply to be a registered entity (charity). Currently only entities meeting definition of 'charity' in <i>Charities Act</i> are able to be a registered entity
Consumer Protection Department of Commerce	<i>Charitable Collections Act 1946</i>	To apply for a licence for fundraising purposes
ATO	<i>Income Tax Assessment Act 1997 (Cth)</i>	- Application for endorsement as a tax concession charity
	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>	- Application for endorsement as a Deductible Gift Recipient
	<i>Fringe Benefits Tax Assessment Act 1986 (Cth)</i>	(both usually forwarded by ACNC)

### 4.8.2 The WA Revenue Acts and the concept of charitable exemptions

The WA Revenue Acts each provide an exemption from tax for certain charitable bodies, institutions or purposes. However, following the legislative changes in 2015, each of the taxation Acts prohibits an exemption from being available to a 'relevant body'.<sup>102</sup> The 'relevant body' provision seeks to place restrictions on entities that may be considered as providing benefits to only

<sup>102</sup> *Duties Act 2008 (WA)* ss 95, 96A.

members or a sub-section of the community, rather than the general community. This includes political parties, industrial associations and professional associations.<sup>103</sup> A 'relevant body', however, can apply for a 'beneficial body determination' to access the tax concessions available to charities.<sup>104</sup>

The *Duties Act 2008 (WA)* also contains charitable exemptions from vehicle licence duty, however, these are not subject to the relevant body provisions.

The *Taxation Administration Act 2003 ('WA TAA')* provides the administrative framework for the taxation Acts and deals with matters such as the issue of assessments, reassessments and objections.

In WA, individual applications for exemption must be made by a taxpayer for each tax liability. This means that the entity must meet both the Charity Determination and the Tax Assessment requirements in relation to each transaction.

In comparison to the *ACNC Act*, where there is a requirement for the entity to be a not-for-profit,<sup>105</sup> the Revenue Acts for WA do not have the same specified need for the body to be a not-for-profit. However, as the charitable exemptions are applied on the basis of common law, the body must generally have not-for-profit and winding up clauses in the constitution or memorandum of association which demonstrate the public (as opposed to private) element and are compliant with the following:

1. Its income and property are used solely for promoting its objects; and
2. No part of its income or property is to be distributed, paid or transferred by way of bonus, dividend or other similar payment to its members.

On dissolution, assets must be transferred to another not-for-profit or to an institution the Commissioner is satisfied has a principal object or purpose of fulfilling a charitable object or promoting the public good.

### **Transfer duty**

The *Duties Act 2008 (WA)* provides an exemption from transfer duty for a dutiable transaction that has been entered into or occurred for charitable or similar public purposes. However, the exemption does not apply if the person liable to pay duty on the transaction is, or is related to, a 'relevant body' unless a 'beneficial body determination' is in force for that relevant body. The phrase 'charitable or similar public purposes' is not defined in the *Duties Act 2008 (WA)*.

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<sup>103</sup> Ibid s 96A.

<sup>104</sup> Ibid s 96B.

<sup>105</sup> *ACNC Act* s 5a.

### Landholder duty

A landholder acquisition is exempt if a hypothetical transfer of the landholder's land to the acquirer would be exempt under section 95 because it occurs for charitable purposes. The relevant body restrictions apply to landholder acquisitions.<sup>106</sup>

### Vehicle licence duty

Duty is not chargeable on the grant or transfer of a licence to a deal to be loaned by the dealer to:

1. a *charitable organisation* to be used solely for providing assistance to underprivileged or disadvantaged persons or for providing emergency assistance;
2. a school for use solely in driver education; or
3. an individual solely for a philanthropic purpose approved by the Commissioner.<sup>107</sup>

There is no relevant body restriction for this exemption.

The term 'charitable organisation' is defined to mean a charitable institution or public benevolent institution endorsed by the Commissioner of Taxation of the Commonwealth under the *Income Tax Assessment Act 1997* (Cth) as a deductible gift recipient or as exempt from income tax.<sup>108</sup>

### Land Tax

Land is exempt if it is owned by, vested in or held in trust for a *public charitable or benevolent institution* and is used solely for the public charitable or benevolent purposes for which the institution was established. *Public charitable or benevolent institution* is defined only to exclude a *relevant body* unless a *beneficial body determination* is in force in respect of that relevant body.

'Use' in this context is defined to mean active use and so land that is leased to produce income used to further the charity's purposes will not qualify for exemption from land tax.

### Payroll Tax

A 'charitable body or organisation' is exempt from liability to payroll tax if the Commissioner has given the body or organisation an exemption or it is a 'relevant body' in respect of which a 'beneficial body determination' is in force.<sup>109</sup> In this regard, the Charity Determination excludes a *relevant body*, but there are no other Tax Assessment processes.

A 'charitable body or organisation' is defined to mean a body or organisation established or carried on for charitable purposes except a body or organisation whose sole or principal purpose is the

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<sup>106</sup> *Duties Act 2008* (WA) s 168.

<sup>107</sup> *Ibid* s 247.

<sup>108</sup> *Ibid* s 228.

<sup>109</sup> *Pay-roll Tax Assessment Act 2002* (WA) s 41.

provision of tertiary education; or a college or other vocational education and training institution under the *Vocational Education and Training Act 1996 (WA)*.<sup>110</sup>

The *Pay-roll Tax Assessment Act 2002 (WA)* also specifies particular wages which may be exempt from pay-roll tax, including wages paid or payable to public benevolent institution for work of a public benevolent nature, religious institution for religious work or to a public hospital for related work.<sup>111</sup> This is not an exhaustive list.

### Charitable purpose

The term 'charitable purpose' is not defined in the *Duties Act 2008 (WA)* or the *Pay-roll Tax Assessment Act 2002 (WA)* and is therefore to be given its technical legal meaning in the common law.<sup>112</sup> Similarly, a body will be a 'public charitable or benevolent institution' for the purposes of the LTA Act when it has a charitable purpose.<sup>113</sup>

### Relevant body provisions and beneficial body determinations

In response to the decision in the *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146 ('*CCIWA*'),<sup>114</sup> the taxation Acts were amended on 10 March 2015 to remove entitlement to the charitable exemptions from certain fourth head charities that promote trade, industry or commerce and bodies that are professional associations.

A charitable exemption from duties, land tax or payroll tax cannot be granted to a taxpayer that is a 'relevant body' unless a 'beneficial body determination' is in force for that relevant body. *Relevant body* is defined to include professional associations, bodies that promote trade, industry or commerce where the body's main purposes do not fall under one of the first three heads of charity, and bodies related to other types of relevant bodies.

Certain relevant bodies can apply to the Minister for a determination that the body is a beneficial body for the purposes of the taxation Acts. The Minister can make a 'beneficial body determination' only if the Minister is of the opinion that it is in the public interest to do so. A 'beneficial body determination' reinstates the body's entitlement to the charitable exemptions, but is not a review of the Commissioner's decision that the body is a relevant body.

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<sup>110</sup> Ibid Glossary.

<sup>111</sup> Ibid s 40.

<sup>112</sup> *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146 [13] (Chaney J), quoting *Central Bayside General Practice Association Ltd v Commissioner of State Revenue* (2006) 228 CLR 168 [18] (Gleeson CJ, Heydon and Crennan JJ) ('*CCIWA*')

<sup>113</sup> Office of State Revenue, *Charitable Exemptions*, DA/PT/LT 18.0, 3 June 2015.

<sup>114</sup> *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue*, above n 112.

#### 4.8.3 The term 'charitable purpose' in the *Charitable Collections Act 1946* (not relevant to the taxation Acts)

The *Charitable Collections Act 1946* (WA) requires that a person must hold the relevant licence to, inter alia, collect any money or goods for any charitable purpose.<sup>115</sup>

Any club or organisation that collects money or goods 'for charitable purposes' must apply to the Department of Commerce for a licence to do so.

Under the *Charitable Collections Act 1946* (WA), the phrase 'charitable purpose' means:<sup>116</sup>

- a. the affording of relief to diseased, sick, infirm, incurable, poor, destitute, helpless or unemployed persons, or to the dependants of any such persons;
- b. the relief of distress occasioned by war, whether occasioned in Western Australia or elsewhere;
- c. the supply of equipment to any of His Majesty's naval, military, or air forces, including the supply of ambulances, hospitals and hospital ships;
- d. the supply of comforts or conveniences to members of the said forces;
- e. the affording of relief, assistance or support to persons who are or have been members of the said forces or to the dependants of any such persons;
- f. the support of hospitals, infant health centres, kindergartens and other activities of a social welfare or public character;
- g. any other benevolent, philanthropic or patriotic purpose.

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<sup>115</sup> *Charitable Collections Act* (1946) s 6.

<sup>116</sup> *Ibid* s 5.

## 4.9 Issues arising from the Jurisdictional Analysis

As above, special rules apply in each State in respect of charities. Charities may qualify for exemption from State taxes – payroll tax, land tax and stamp duties – and specific provisions may apply to govern the fundraising activities of charities. In addition to those examined above, the concept of charity or charitable purpose is also applicable in a plethora of other State statutes, including Acts concerning associations, equal opportunity, local governments, trusts and veterans' affairs to name a few. Eleven of those Acts are unrelated to State revenue purposes but also provide a definition of charity or charitable purpose.

Whether a special rule applies would depend (in part) on whether the relevant entity or transaction falls within the concept of charity for the purposes of the rule, as examined above. Whilst many of the provisions rely (to varying extents) on the common law definition of charitable purpose, there is limited consistency across the States, or even within a State, in the definition of charity. Put another way, an entity may qualify for, say, payroll tax exemption in one State, but not for registration as a charity for fundraising purposes in that same State, or for payroll tax exemption in another State.

Further, although there have been a number of amendments to relevant State legislation since the *Charities Act* commenced on 1 January 2014, the definitions of 'charity' and 'charitable purpose' in the *Charities Act* have not been adopted by any State.

The variations in the application of the definition of charity both across States and within a State might be best illustrated by way of examples. As this paper focusses primarily of the definition of charity in revenue statute, the availability of payroll tax exemptions in all States is examined, particularly in light of the inconsistency in rules applied across the States.

### 4.9.1 Payroll Tax

In NSW, wages may be exempt if they are paid or payable by a non-profit organisation having as its sole or dominant purpose a charitable purpose, for work of a kind ordinarily performed in connection with the charitable purposes of the body to a person engaged exclusively in that kind of work.<sup>117</sup> The term 'charitable purpose' is not defined and therefore takes its meaning from common law. The provisions are similar in South Australia,<sup>118</sup> Tasmania<sup>119</sup> and Victoria.<sup>120</sup>

While 'charitable purpose' has not been defined, the amendments to the payroll tax acts of NSW, South Australia, Tasmania and Victoria have been made to exclude activities by charities that are undertaken for commercial purposes. This distinction between different categories of wages was made in Victoria to restrict the scope of payroll tax exemptions following the High Court decisions on the *Word Investments* case where the common law definition of 'charitable organisation' was found to

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<sup>117</sup> *Payroll Tax Act 2007* (NSW) s 48.

<sup>118</sup> *Payroll Tax Act 2009* (SA) s 48.

<sup>119</sup> *Payroll Tax Act 2008* (Tas) s 48.

<sup>120</sup> *Payroll Tax Act 2007* (Vic) s 48.



include activities done for commercial purposes.<sup>121</sup> The others States have followed in a similar approach, which can be seen by the wording used in their respective payroll tax Acts.<sup>122</sup>

In Western Australia, substantial amendments were made to the payroll tax legislation in 2015 ('*2015 WA amendments*'). Prior to the *2015 WA amendments*, wages may have been exempt from payroll tax if they were paid or payable by a 'charitable body or organisation',<sup>123</sup> being a body or organisation established or carried on for charitable purposes.<sup>124</sup> The term 'charitable purposes' was, however, not defined.

Since the *2015 WA amendments*, a 'relevant body', which includes an industrial association, professional association or body that promotes trade, industry or commerce, cannot be exempt from payroll tax,<sup>125</sup> unless exemption is granted by way of a 'beneficial body determination' by the Minister with the Treasurer's concurrence.<sup>126</sup>

In the Northern Territory, an exclusion similar to WA's 'relevant body' exclusion applies.<sup>127</sup> In addition, the focus of the rules for payroll tax exemption is on the entity's activities. In particular, wages may be exempt from payroll tax if they are paid or payable by a non-profit entity that directly carries out work that is predominantly of a charitable nature ('*charitable activities*'), for work in carrying on these *charitable activities*.<sup>128</sup> However, the exemption may not apply if the entity gives money to another entity to carry out the charitable activities, or to the extent the wages are paid for work done for commercial purposes.<sup>129</sup>

In contrast, in the ACT, payroll tax exemption does not depend upon the nature of the work for which the wages are paid. Rather, the legislation looks solely at the nature of the entity paying the wages. In particular, wages may be exempt from payroll tax if they are paid or payable by a 'charitable organisation', which includes 'an organisation carried on for a ... charitable purpose'. However, as in WA, the ACT specifically excludes a political party, industrial organisation, professional organisation or organisation that promotes trade, industry or commerce.<sup>130</sup>

In Queensland, wages may be exempt from payroll tax if they are paid or payable by a 'charitable institution' for work for a 'qualifying exempt purpose'.<sup>131</sup> An entity may be a 'charitable institution' if 'its principal object or pursuit ... is fulfilling a charitable object or promoting the public good'.<sup>132</sup> Work may

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<sup>121</sup> Victorian Government, *State Taxation Acts Further Amendment Bill 2011 – Explanatory Memorandum* (Vic) 3.

<sup>122</sup> *State Revenue Legislation Amendment Act 2008* (NSW) Schedule 5, S 1; *Payroll Tax Act 2008* (Tas) s 48; *Payroll Tax Act 2009* (SA) s 48.

<sup>123</sup> *Pay-roll Tax Assessment Act 2002* (WA) s40.

<sup>124</sup> See the definition of 'charitable body or organisation' in the glossary of the *Pay-roll Tax Assessment Act 2002* (WA).

<sup>125</sup> *Pay-roll Tax Assessment Act 2002* (WA) s 41, 42A.

<sup>126</sup> *Ibid* ss 41, 42C.

<sup>127</sup> *Payroll Tax Act* (NT) s 48A.

<sup>128</sup> *Ibid* s 48C.

<sup>129</sup> *Ibid* ss 48C(3), 48C(4).

<sup>130</sup> *Payroll Tax Act 2011* (ACT) Schedule 2 Items 2.12-2.13; *Taxation Administration Act 1999* (ACT) ss 18B, 18C.

<sup>131</sup> *Payroll Tax Act 1971* (Qld) s 14.

<sup>132</sup> *Taxation Administration Act 2001* (Qld) s 149C.

be for a 'qualifying exempt purpose' if it is for a charitable purpose or the promotion of the public good.<sup>133</sup>

To continue the illustration by way of example, even though the defined term 'charitable institution' is used in Queensland revenue legislation, the term is *not* used in Queensland fundraising legislation, i.e. principally the *Collections Act 1966* (Qld). In fact, terms found within the meaning of 'charitable institution' under the *Taxation Administration Act 2001* (Qld), i.e. 'charitable object' or 'public good', are also not used in the *Collections Act*. Rather, 'charity' and 'charitable purpose' are defined terms that are used in the *Collections Act*.<sup>134</sup>

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<sup>133</sup> *Payroll Tax Act 1971* (Qld) s 14.

<sup>134</sup> *Collections Act 1966* (Qld) ss 5, 9, 19.

## 5 Value

The preceding section documented the range of definitions, applications and legislative strategies that the States have employed to address competing policy priorities. This next section examines recent common law developments in relation to the meaning of charity, and considers the arguments for change from a broader industry and specific stakeholder perspective.

### 5.1 Hotspots

As noted in Section 3 and Section 4, the common law definition of charity moves with the times. With many State revenue statutes relying on the common law definition of charity to determine access to exemptions, the types of entities that are entitled to exemptions are also changing as case law develops.

#### 5.1.1 Member organisations

An aspect of the developments that has attracted much attention from State governments is in respect of the fourth head of charity. In particular, a line of authority has developed in support of the proposition that member organisations, including professional bodies and chambers of commerce, can be charitable where providing private benefits are a means to achieving the organisation's purposes of providing public benefits.

As a general principle, an association that exists mainly to advance the interests of, or otherwise benefit, its members would not be charitable, even if carrying out its objects results in benefit to the community.<sup>135</sup> However, 'purposes of an association that are otherwise charitable do not lose that status just because, as an incidental consequence of its activities, there may enure to private individuals benefits of a non-charitable nature'.<sup>136</sup> As Atkin LJ explained in *Inland Revenue Commissioners v Yorkshire Agricultural Society* [1928] 1 KB 611:

There can be no doubt that a society formed for the purpose merely of benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated or having their aesthetic tastes improved or whatever the object may be, would not be for a charitable purpose, and if it were a substantial part of the object that it should benefit its members I should think that it would not be established for a charitable purpose only. But, on the other hand, if the benefit given to its members is only given to them with a view of giving encouragement and carrying out the main purpose which is a charitable purpose, then I think the mere fact that the members are benefited in the course of promoting the charitable purpose would not prevent the society being established for charitable purposes only.<sup>137</sup>

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<sup>135</sup> See for example *General Nursing Council for England and Wales v St Marylebone Borough Council* [1959] AC 540.

<sup>136</sup> Dal Pont, above n 12, 325-326.

<sup>137</sup> At 631, cited with approval by Mansfield and McKerracher JJ in *Commissioner of Taxation v Co-operative Bulk Handling Limited* (2010) 189 FCR 322 at [100].

An early case in this line of authority was the 1890 House of Lords decision in *The Commissioners of Inland Revenue v James Forrest* (1890) 15 App Cas 334. Lord Macnaghten held:

... the question at issue may be stated shortly. Is the property of the Institution of Civil Engineers legally appropriated and applied for the promotion of the science of civil engineering, or is it legally appropriated and applied for the benefit of civil engineers in order to enable them to practise their profession to greater advantage? It cannot I think be doubted that the institution has raised the standard of the profession, and that to a civil engineer it is of advantage and probably of pecuniary advantage to be a member. But is that result the purpose of the society, or is it an incidental, though an important and perhaps a necessary consequence of the way in which the institution does its work in the pursuit of science?

...

The action of the society may incidentally benefit the profession to which its members belong – I have no doubt that is so – but I agree with the Master of the Rolls in thinking that “that which this society does is something higher and larger than the mere education of students and others for the profession of civil engineer.”<sup>138</sup>

In 1943, the High Court of Australia considered whether the Royal Australasian College of Surgeons was a scientific institution in *Royal Australasian College of Surgeons v Federal Commissioner of Taxation* (1943) 68 CLR 436. Starke J noted that the substantial question was whether the College was a body for the advancement of professional objects and interests or for ‘something higher and larger’, namely, the promotion of science in the advancement of surgical knowledge and practice. The Court held that the College was a scientific institution and Stake J concluded that:

The activities of the College may benefit its fellows, but the facts related speak for themselves and establish that the College is doing “something higher and larger” than the mere promotion of professional interests. It is actively engaged in the promotion and advancement of science in the advancement of surgical knowledge and practice. And that, I think, is the main and prevailing and the characteristic nature of the activities of the College.<sup>139</sup>

In 1952, the House of Lords decided *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631. Lord Morton held:

I think that the promotion of the interests of practising surgeons is “an incidental, though an important and perhaps a necessary consequence” of the work of the college in carrying out its main object, the promotion and encouragement of the study and practice of the art and science of surgery.<sup>140</sup>

Lord Reid held:

... all the indications in the charters point to the object of the college being the advancement of the knowledge and skill necessary for successful surgery and not the advancement of the professional position of its individual members.

...

I think that promoting the practice of surgery is a different thing from promoting the interests of those who practise surgery.<sup>141</sup>

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<sup>138</sup> Ibid 354-6, emphasis added.

<sup>139</sup> *Royal Australasian College of Surgeons v Federal Commissioner of Taxation* (1943) 68 CLR 436, 449.

<sup>140</sup> *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] AC 631, 659.

<sup>141</sup> Ibid 661-662.

More recent cases suggest the courts are prepared to accept that it is often inevitable that individual members of a charitable organisation obtain private benefits. For example, in *Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation* (2005) 142 FCR 371, Heerey J held:

Once it is accepted that assistance to business and industry can provide a public benefit of the kind which the law recognises as charitable, a proposition which does not seem to be in dispute in the present case, I do not see how the fact that individual businesses may benefit can be a disqualifying factor. On the contrary, if business in general is assisted, it seems inevitable that some firms at least will become profitable, or more profitable, as a result of that assistance. There would be no point in the exercise if this were not the case. It would be an odd result if an institution established to benefit business could only qualify as a charity if the recipients of its benefits made losses or did no more than break even.<sup>142</sup>

In *Commissioner of Taxation v Triton Foundation* (2005) 147 FCR 362, Kenny J held:

The assistance given to inventors, though of direct benefit to them, was concomitant or ancillary to its principal object. This assistance, which was intended to enable Triton to “showcase” inventors and their inventions, complemented Triton's other activities, also directed to promoting and publicising an innovative and entrepreneurial commercial approach in Australia. Triton offered its services for the benefit of the public or a sector of the public, as opposed to individual members of the community. The authorities confirm that, in these circumstances, the fact that individuals (here inventors) may benefit from Triton's activities does not detract from its charitable status...<sup>143</sup>

In *Victorian Women Lawyers' Association Inc v Federal Commissioner of Taxation* (2008) 170 FCR 318, French J (as he then was) said:

For an association to be characterised as a charitable institution it must exist for a public benefit as distinct from the creation of private benefits. The fourth class of charitable trust in *Pemsel* brings in the public benefit requirement through the words “beneficial to the community”. As Kenny J said in *The Triton Foundation*:

The public may, however, include a section of the public.

An association may have a public benefit purpose although some of its subsidiary or ancillary functions may benefit particular persons such as members of a profession.<sup>144</sup>

French J held that the Victorian Women Lawyers' Association Inc was a charitable institution despite the benefits, ‘including the social and networking functions’,<sup>145</sup> available for members.

The provision of member services by member organisations has been held to be a means to a charitable end. In *CC/WA*, President Chaney J held:

There can be no doubt that service provision to members has played a major part in the planning and activities of CCI ... In my view, however, the focus on building the membership base and achieving a strong financial position, which necessarily required the development of the service activities of the organisation, must be seen in the context of a view that strength through membership numbers and resources better enables the achievement of the primary object

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<sup>142</sup> *Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation* (2005) 142 FCR 371, 56.

<sup>143</sup> *Commissioner of Taxation v Triton Foundation* (2005) 147 FCR 362, 37.

<sup>144</sup> *Victorian Women Lawyers' Association Inc v Federal Commissioner of Taxation* (2008) 170 FCR 318, 133 (citations omitted).

<sup>145</sup> *Ibid* 149.

of the organisation, namely the promotion of trade commerce and industry and the development generally.

...

In my view, provision of services to members is ancillary to, and possibly a necessary part of, fostering trade and commerce generally for the benefit of the wider community.<sup>146</sup>

The line of authority outlined above caused concern among some State governments about the breadth of the term 'charity' as it has developed at common law. In particular, there was a concern that entities that have not historically been regarded as charitable were now able to access revenue concessions.<sup>147</sup>

In fact, it was in response to *CC/WA* that in 2015, the WA government was the first state in Australia to introduce changes to its revenue legislation to disentitle member organisations such as professional associations and bodies that promote trade, industry or commerce ('relevant bodies') from revenue concessions, unless the entity regains access to the concessions by way of ministerial determination ('beneficial body determination').<sup>148</sup> Since then, both the NT and ACT governments have adopted a similar mechanism to restrict revenue concessions.<sup>149</sup>

In *Law Institute of Victoria v Commissioner of State Revenue* 2015 ATC 20-538, the Supreme Court of Victoria considered whether the Law Institute of Victoria was entitled to payroll tax exemption. The relevant test was whether the Institute had 'as its ... dominant purpose a charitable ... purpose'.<sup>150</sup> The Court held that it did not.

### 5.1.2 Activities for commercial purposes

In *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204 ('*Word Investments*'), the High Court considered whether Word Investments was a charitable institution under the *Income Tax Assessment Act 1997* (Cth). Word Investments carried out activities for commercial purposes in order to raise money to give to an associated entity, which was an income tax exempt charity. The plurality held:

The activities of Word in raising funds by commercial means are not intrinsically charitable, but they are charitable in character because they were carried out in furtherance of a charitable purpose.

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<sup>146</sup> *Chamber of Commerce and Industry of Western Australia v Commissioner of State Revenue*, above n 112, 98-99.

<sup>147</sup> See, for example, the Explanatory Memorandum to the *Taxation Legislation Amendment Bill 2014* (WA) ('*WA EM*') 1; Northern Territory Government, *Budget Paper no 2: Budget Strategy and Outlook 2015-2016* (2015) ('*NT Budget Paper*') 36.

<sup>148</sup> See the *WA EM*, above n 147, 1; *Taxation legislation Amendment Act (No 2) 2015* (WA) ('*WA Amendment Act*').

<sup>149</sup> See the *Revenue and Other Legislation Amendment Act 2015* (NT) ('*NT Amendment Act*'); *Revenue (Charitable Organisations) Legislation Amendment Act 2015* (ACT) ('*ACT Amendment Act*'). The concept of a relevant body under the *WA Amendment Act* is referred to as an **excluded entity** under the *NT Amendment Act* and an **excluded organisation** under the *ACT Amendment Act*. Also, the Explanatory Statement to the *Revenue (Charitable Organisations) Legislation Amendment Bill 2015* (ACT) ('*ACT EM*') refers to the High Court's decision in *Aid/Watch* as 'call[ing] into question whether an organisation could be charitable in spite of its engagement in political advocacy. Before *Aid/Watch*, it was generally accepted that political activities disqualified an organisation from charitable status' (*ACT EM*, 2).

<sup>150</sup> *Law Institute of Victoria v Commissioner of State Revenue* 2015 ATC 20-538, 8-9, sets out two versions of the *Payroll Tax Act 2007* (Vic).

... Word is not a company with both charitable and non-charitable purposes which carried on commercial businesses and incidentally conferred benefits on charity; Word is a company having purposes which are solely charitable and which carried on commercial businesses only in order to effectuate those purposes.<sup>151</sup>

The *Word Investments* decision raised concerns that the definition of charity has been expanded. For example, in Victoria in 2011, payroll tax legislation was amended to limit the exemption to wages paid or payable 'to a person engaged exclusively in work of a ... charitable ... nature for the ... non-profit organisation'.<sup>152</sup> As the explanatory memorandum explained, the amendment was to overcome *Word Investments*, which 'has expanded the common law definition of charitable organisation to include organisations that conduct predominantly commercial activities to fund their charitable objects or donate their profits to another charity'.<sup>153</sup>

More recently, the NT payroll tax legislation was amended to exclude 'any commercial work, or work performed in competition with the private sector' from the exemption. In order to qualify for the exemption,<sup>154</sup> the wages need to be paid or payable by a non-profit entity that directly carries out work that is predominantly of a charitable nature (*charitable activities*), for work in carrying on these *charitable activities*.<sup>155</sup> In addition, the exemption may not apply if the entity gives money to another entity to carry out the *charitable activities*.<sup>156</sup>

Amendments have also been made in SA revenue legislation concerning activities for commercial or business purposes. In particular, in 2015, the *Stamp Duties Act 1923* (SA) was amended so that a transfer of property to a body established wholly for charitable purposes would be exempt from stamp duty, but only 'where the Commissioner is satisfied that the property will not be used (wholly or predominantly) for commercial or business purposes'.<sup>157</sup>

There is no equivalent provision focusing on activities done for commercial purposes at the Commonwealth level.<sup>158</sup>

### 5.1.3 Legislative change

In response to what is perceived to be a broadening of the common law definition of charity, the *WA Amendment Act*<sup>159</sup> has pre-emptively excluded 'trade unions and political parties', which 'do not currently fall within the common law definition of a charity', from entitlement to revenue concessions 'in the event of any future expansion of the definition of charity to these classes of organisation'.<sup>160</sup> In

<sup>151</sup> *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204, 26-27 ('*Word Investments*').

<sup>152</sup> *State Taxation Acts Further Amendment Act 2011* (Vic) s 3.

<sup>153</sup> Explanatory Memorandum to the *State Taxation Acts Further Amendment Bill 2011* (Vic) 3, emphasis omitted.

<sup>154</sup> *NT Budget Paper*, above n 147, 36; *Payroll Tax Act* (NT) s 48C(4).

<sup>155</sup> *Payroll Tax Act* (NT) s 48C, as amended by *NT Amendment Act*, above n 149, s 17.

<sup>156</sup> *Payroll Tax Act* (NT) s 48C(3), cf. *Word Investments*.

<sup>157</sup> *Stamp Duties Act 1923* (SA) s 71(5)(j), as amended by *Statutes Amendment and Repeal (Budget 2015) Act 2015* (SA) s 44(1).

<sup>158</sup> However, for completeness, see *Charities Act* s15(4)(c) regarding disaster relief. See also *Charities Bill EM*, above n 31, 13 [1.40].

<sup>159</sup> See above n 148.

<sup>160</sup> *WA EM*, above n 147, 1. See also *Pay-roll Tax Assessment Act 2002* (WA) s 42A.

addition, a regulation-making power has been introduced to 'allow the Government to quickly respond to any continued expansion of the 'fourth limb' charity category to other types of organisations for which a State tax exemption is considered inappropriate'.<sup>161</sup>

A similar approach has been adopted in the NT and the ACT.<sup>162</sup> It is acknowledged in the *ACT EM* that the amendments include provisions 'to provide certainty for the future'.<sup>163</sup>

A political party cannot be a charity under the *Charities Act*,<sup>164</sup> but otherwise this approach has not been adopted at the Commonwealth level.

#### 5.1.4 Other areas of differences

The *Charities Act* sets out 12 purposes under the definition of 'charitable purpose'.<sup>165</sup> When compared with the four heads of charity at common law, the Commonwealth definition may at first glance seem much more extensive than that under common law. However, the purposes set out in the *Charities Act* may fall within one or more of the four heads of charity, e.g. the purpose of advancing health<sup>166</sup> may fall within the first, second and/or fourth heads of charity under the common law definition.

That said, there are some differences between the Commonwealth definition of charity and the common law definitions. For example, the Commonwealth definition has been extended to include child care services<sup>167</sup> and rebuilding, repairing or securing assets after a disaster (independently of the relief of individual distress).<sup>168</sup> Further, entities that provide benefits to Indigenous Australians (including in respect of native title) do not fail the public benefit test solely because the beneficiaries are related,<sup>169</sup> and that test does not apply in respect of open and non-discriminatory self-help groups and closed or contemplative religious orders.<sup>170</sup>

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<sup>161</sup> *WA EM*, above n147, 2. See also *Pay-roll Tax Assessment Act 2002 (WA)* s 42A.

<sup>162</sup> *NT Amendment Act*, above n 149, s 17; *ACT Amendment Act*, above n 149, s 16. Both the ACT and the NT have excluded political parties and industrial associations. However, only the ACT (but not the NT) has introduced the regulation-making power.

<sup>163</sup> *ACT EM*, above n 149, 3.

<sup>164</sup> *Charities Act* s 5(d), s 11(b).

<sup>165</sup> *Ibid* s 12(1).

<sup>166</sup> *Ibid* s 12(1)(a).

<sup>167</sup> *Ibid* s15(3). See also *Charities Bill EM*, above n 31, 25 [1.126].

<sup>168</sup> *Ibid* s 15(4). See also *Charities Bill EM*, above n 31, 25 [1.127]-[1.128].

<sup>169</sup> *Ibid* s 9. See also *Charities Bill EM*, above n 31, 20 [1.89]-[1.92].

<sup>170</sup> *Ibid* s 10. See also *Charities Bill EM*, above n 31, 20 [1.95].



## 5.2 Arguments for change

In this paper, particularly at Section 3, reference has been made to a number of the inquiries and reports which have been conducted in Australia in relation to regulation of the not-for-profit sector and the definition of 'charity'. In this section we discuss these inquiries and their recommendations in greater detail.

### 5.2.1 Report of the Inquiry into the Definition of Charities and Related Organisations (2001) ('*CDI Report*')

In 2000, the then Treasurer commissioned a Committee to engage in the first Australian public inquiry at the Federal level to address the issues surrounding the definition of a charity.<sup>171</sup> The response was substantial, with the sector expressing concerns with the administrative arrangements. In the words of the Committee of the *CDI Report*, '[it was] clear that for many in the charitable sector one of the main problems with the current definitions is how they are administered.'<sup>172</sup>

In relation to the Commonwealth and State administrative arrangements, the Committee found that inconsistent approaches to decision making and lack of co-ordination between the different levels of government was creating great administrative burdens for the charity sector.<sup>173</sup> The Committee's recommendation to address these concerns was for the Commonwealth government to adopt a clear and consistent definition of charity and to implement that definition in a new administrative framework that would ensure better decision making practices.<sup>174</sup> While the Committee was only tasked to assess the definitional issues at a Federal level, the Report clearly stated that without harmonisation between the different levels of Government, 'there would be added confusion within the sector and the community, and the administrative burden on charities and related entities could conceivably worsen.'<sup>175</sup>

### 5.2.2 Inquiry into the Disclosure regimes for charities and not-for-profit organisations (2008)

The 2008 Senate Inquiry into the Disclosure regimes of charities and not-for-profit organisations<sup>176</sup> was not specifically tasked with examining the definition of charity, however noted its support for the recommendations from the 2001 *CDI Report* that sought to harmonise definitions used in the sector. The 2008 Senate Inquiry report stated 'the issue of disclosure regimes cannot be considered in isolation to the definitions used in the sector.'<sup>177</sup> The Committee found that action was clearly needed

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<sup>171</sup> *CDI Report*, above n 20.

<sup>172</sup> *Ibid* 286.

<sup>173</sup> *Ibid* 287.

<sup>174</sup> *Ibid* 290.

<sup>175</sup> *Ibid*.

<sup>176</sup> Standing Committee on Economics, Parliament of Australia, *Disclosure regimes for charities and not-for-profit organisations* (2008) <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Completed\\_inquiries/2008-10/charities\\_08/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/2008-10/charities_08/index)>.

<sup>177</sup> *Ibid* 9.

in relation to the 'implementation of statutory definitions and ... ongoing clarification of these terms for the Sector.'<sup>178</sup> This position is consistent with the above recommendation, from the 2001 *CDI Report*, which seeks to first address the charity definition variations, before any action is taken to harmonise revenue activities across jurisdictions.

The 2008 Senate Inquiry also raised concerns on the state of the taxation system, finding it to be 'confusing' and 'difficult... to understand', with some tax concessions appearing to 'represent historical accidents rather than any rational plan.'<sup>179</sup> This was partly attributed to the fact that multiple regulators exist in the sector which can 'risk the efficiency and effectiveness of the work of these organisations.'<sup>180</sup> Recommendations from the 2008 Senate Inquiry included increased centralisation of regulatory practices for the sector, including the adoption of common terminology, alignment of legal structures and, for fundraising, the referral of powers from state and territories to the Commonwealth.<sup>181</sup>

### 5.2.3 Productivity Commission Research Report – Contribution of the Not-for-profit Sector (2010) (*'Productivity Commission Report'*)

In 2009, the Productivity Commission was requested to research the contributions of the not-for-profit sector and analyse any barriers that would hinder its contribution to Australian society. One of the many areas examined by the Productivity Commission was the taxation and regulatory system which governed the sector. In its findings, it found that the current system was 'complex, inefficient and inequitable, imposing substantial administrative costs.'<sup>182</sup> Additionally, it recognised there was 'scope to streamline... both within and between jurisdictions.'<sup>183</sup>

The recommendations that stemmed from the *Productivity Commission Report* are consistent with that proposed by this paper. First, the Productivity Commission pointed to the 2001 *CDI Report* and stated that the 'arguments and conclusions [from that Inquiry] remain valid.'<sup>184</sup> Specifically it stated that the adoption of a 'statutory definition of charitable purpose' as recommended by the 2001 *CDI Report* would address the complex and inconsistent endorsement process experienced by charities.<sup>185</sup>

As an option to 'streamline tax concession arrangements', the *Productivity Commission Report* also recommended that jurisdictions should adopt a system where a Commonwealth endorsement would 'pre-qualify' the entity for consideration to eligible concessions at the State level.<sup>186</sup> This paper's proposed model, where a central regulator makes the Charity Determination, is consistent with this recommendation. The *Productivity Commission Report* noted that a 'pre-qualification' system would

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<sup>178</sup> Ibid 86.

<sup>179</sup> Ibid 93.

<sup>180</sup> Ibid 48.

<sup>181</sup> Ibid 1-3.

<sup>182</sup> Productivity Commission, above n 37, 155.

<sup>183</sup> Ibid.

<sup>184</sup> Ibid 164.

<sup>185</sup> Ibid 168.

<sup>186</sup> Ibid 165-166.

not seek to impose a single concession rate across jurisdictions and that it is important that individual jurisdictions remain free to implement their policy decisions for revenue purposes.<sup>187</sup> This model is reflected in the proposed two-stage process, with the first being the Charity Determination undertaken by the ACNC and the second stage enabling States the option to utilise carve-outs or special conditions to structure the concessions provided to charities.

#### 5.2.4 Report on Australia's Future Tax System (2010)

As part of the 2009 Report on Australia's Future Tax System, the taxation concession system was assessed and deemed to be 'complex, and... not fully reflect[ing] current community values about the merit and social worth of the activities it subsidises.'<sup>188</sup> In response, the Report recommended the implementation of a national charities commission (which has occurred through the ACNC), streamlining tax concessions and codifying a modernised definition of 'charity'.<sup>189</sup> Without these measures, the Report raised their concerns that the 'inconsistent and opaque'<sup>190</sup> regulatory framework in place would 'impose significant compliance costs'<sup>191</sup> and 'deter [charities] from undertaking legitimate fundraising activities'.<sup>192</sup>

In broad terms, the Report's findings were that in establishing a common definition, it would contribute to a framework that could address the level of confusion and complexity in the current tax system for charities. While the structure of a streamlined tax concession system was not examined, the Report advocated that reforms should align with the principle of a 'simple and transparent' system.<sup>193</sup>

#### 5.2.5 Inquiry into Tax Laws Amendment (Public Benefit Test) Bill 2010

The 2010 Senate Committee was established to assess the benefits of the *Tax Laws Amendment (Public Benefit Test) Bill 2010* and reiterated the concerns previously highlighted in past inquiries and reviews into the not-for-profit and charity sector (including the above). The view from the Committee was that the 'taxation and regulatory arrangements of the not-for-profit sector... is in need of urgent reform' and again highlighted issues with inconsistency and complexity.<sup>194</sup>

The Committee came to the conclusion that it was necessary to amend legislation governing not-for-profit entities and include a common definition to be adopted through the Council of Australian Governments<sup>195</sup> and that the 'complex array of state and territory regulatory bodies' needed

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<sup>187</sup> Ibid 168.

<sup>188</sup> The Australian Government the Treasury, *Australia's Future Tax System – Final Report: part 2 – Detailed Analysis – Volume 1* (2010) 205 <[http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/pubs\\_reports.htm](http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/pubs_reports.htm)>.

<sup>189</sup> Ibid 211.

<sup>190</sup> Ibid 208.

<sup>191</sup> Ibid 207.

<sup>192</sup> Ibid 205.

<sup>193</sup> Ibid 206.

<sup>194</sup> Senate Economics Legislation Committee (2010) *Tax Laws Amendment (Public Benefit Test) Bill 2010*, 35. <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Completed\\_inquiries/2008-10/public\\_benefit\\_test\\_10/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/2008-10/public_benefit_test_10/index)>.

<sup>195</sup> Ibid 3.

replacement to streamline processes and reduce compliance costs.<sup>196</sup> This paper supports the assertion that ‘streamlining’ the Charity Determination process would greatly benefit charities operating across Australia.<sup>197</sup>

### 5.2.6 Cutting Red Tape: Options to align state, territory and Commonwealth charity regulation, Deloitte Access Economics, February 2016 (*Cutting Red Tape Report*)

Under Option 1 of the *Cutting Red Tape Report* commissioned by the ACNC, Deloitte proposed that ‘for every state and territory that requires an organisation to prove charitable status or purpose to receive a taxation concession, registration with the ACNC would satisfy this criterion.’<sup>198</sup> Deloitte notes that ‘one of the main regulatory impediments to gaining state taxation concessions is in relation to the lack of a standard definition outlining the types of organisations who are eligible for concessions.’<sup>199</sup>

As explained in the Report, under this model, when administering any application for a tax concession or exemption, it would mean that each ‘jurisdiction implicitly accepts the ACNC definition as meeting the eligibility requirements of a charity’.<sup>200</sup> Deloitte specifically recommended this option rather than the option of changing all State legislation so that it was uniform.

The Cutting Red Tape report noted that ‘[c]harities will continue to ensure and demonstrate that they are eligible for a concession according to the other requirements.’<sup>201</sup> These ‘other requirements’ would include those matters considered at the Tax Assessment stage, such as carve-outs or special conditions set out in revenue legislation.

## 5.3 Stakeholder impact

This section considers the impact on stakeholders if a common charity definition was implemented as proposed. These stakeholders include charities, especially those that might be subject to a change of status, Commonwealth and State regulators and the public, as both donors and beneficiaries of charity services.

### 5.3.1 Charities

There are a number of concerns for charities in the current environment where multiple definitions apply, both within and across jurisdictions. In addition to causing confusion and inconsistency, the requirement to repeatedly prove charity status places a significant regulatory burden on charities.

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<sup>196</sup> Ibid 41.

<sup>197</sup> Ibid.

<sup>198</sup> Deloitte Access Economics, *Australian Charities and Not-for-Profits Commission – Cutting Red Tape: Options to align state, territory and Commonwealth charity regulation* (2016) 35 (*Cutting Red Tape Report*).

<sup>199</sup> Ibid 3.

<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

The Jurisdictional Analysis (section 4) demonstrates the complexity in definitions and access to concessions across each States' own Revenue Acts and across the jurisdictions. The *Cutting Red Tape Report* also examined the 'differences in the eligibility requirements for state taxation concessions' and found that it can result in an entity being 'eligible for a concession in one jurisdiction, but not in another.'<sup>202</sup> It referred to a case study example where an entity was recognised as a charity in one state, and therefore able to fundraise, but not in another state, and therefore unable to fundraise, until that state's legislation was changed.<sup>203</sup>

The *Cutting Red Tape Report* also identified a number of regulatory barriers posed by the variance in the definition of charity and charitable purpose.<sup>204</sup> It was noted that even if a charity is registered with the ACNC, it must still 're-establish its charitable status to the satisfaction of each state and territory revenue office ... [in addition] to other statutory criteria required to access those entitlements.' Further, the Report found that '[a]ll charities are affected, either on a small scale due to the discrepancy between state and Commonwealth definitions or, more significantly, for charities that operate in a number of jurisdictions.'

Based on the proposed model, Charity Determination by a central body (such as the ACNC) will significantly reduce the regulatory considerations and processes required to be undertaken. Charities will still need to consider what concessions and exemptions are provided and what the application process is in each State.

As indicated in Section 5.2 - Arguments for Change, consistency in charity status is an important step towards greater harmonisation. When State legislators only have to compare and consider the range of tax concessions and specific carve-outs, special conditions or limits, there is greater scope for discussions and negotiations towards uniformity. The pathway to mutual recognition of charities that fundraise across multiple State jurisdictions is also enhanced if charitable status is regulated centrally at Commonwealth level. For example, registration in one jurisdiction and reporting on Australian wide fundraising is more easily achieved when all jurisdictions recognise that entity as a charity, by virtue of the central determination process.

From this as a starting point, jurisdictions can consider harmonisation of licencing, compliance, co-operation, data sharing and other alignment matters in the awareness that the question of whether an entity is they are charitable has been settled.

Charities will no doubt be concerned about whether any changes to the Charity Determination process will affect their status. In introducing new legislation, at least WA and the ACT have effectively revoked the charity status of some entities for State purposes. Anecdotal experience from those jurisdictions is that of those whose charitable status was revoked, a small number have re-applied under the *beneficial body determination* provisions. Expansion in relation to the interpretation of the statutory definition may result in some previously registered charities losing charity status. However, the number of charities that this would likely affect is low.

In addition, as outlined in Section 4.2, the WA, ACT and NT introduced legislation to guard against further expansion of the definition of charity by pre-emptively excluding certain entities including trade

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<sup>202</sup> Ibid 23 [2.2.1].

<sup>203</sup> Ibid 21 [2.1.1.1].

<sup>204</sup> Ibid 25-27 [2.2.1].

unions and political parties. These types of clauses would need to be reviewed as to how they would operate in the context of a common definition but are generally consistent with the Tax Assessment process recommended. It is possible that those types of entities currently excluded from accessing certain tax concessions, would continue to be excluded at the Tax Assessment stage, rather than the Charity Determination stage.

### 5.3.2 Commonwealth and State Regulators

Moving to a model whereby the Charity Determination is made by the ACNC, will not necessarily impact on the degree of control of, or the financial outcomes from, State revenue collection. This is because each State will retain their own legislative and regulatory power to exclude particular charities or particular activities or to apply additional conditions. As stated in the Cutting Red Tape Report, 'there would be scope to tailor the tests for state taxation eligibility by state and territory, as per their requirements'.<sup>205</sup> Moreover, the States retain the control over the range of concessions and exceptions and any additional thresholds. For example, 'the wage thresholds for payroll tax payments would continue to be set by state and territory bodies'<sup>206</sup> and the 'level of concession received would continue to be determined'<sup>207</sup> by the States.

A common charity definition applied at Commonwealth level will provide greater certainty for the future management of revenue policy and significantly lessen the requirement for reactive policy development at State level. Section 3 and 5.1 examined the definitional shifts arising through case law developments, and the respective responses by State regulators. Currently, whilst a case may be determined in one jurisdiction and in relation to that State's common law definition as developed over time, the other States consider and respond to those decisions even though case law has developed differently in those States. These responses are predominantly based on the potential revenue implications. For example, when the ACT legislated to tighten the definition of charity, it acknowledged that the *CC/WA* and the *Aid/Watch* case presented a risk to the ACT's tax revenue and noted that it was 'more at risk relative to other jurisdictions, [because] the ACT's economy is smaller and a higher proportion of political and peak professional bodies operate in the ACT.'<sup>208</sup>

The Commonwealth has a role in recognising the need to address the complexities created by multiple definitions in a federated space. At the same time, a likely outcome from application of the proposed model is a concentration of legal questions at the Commonwealth, rather than the States level. Consequently, government legal costs arising from administrative and judicial review of charity status will shift from the States to the Commonwealth.

Staff resourcing implications are difficult to ascertain at State level. It is not a given that exiting the Charity Determination process will reduce States' staffing requirements. Recently, many State regulators have increased their use of the ACNC's charity data in assessment processes, as an alternative to requesting the same data from the charities themselves. In these situations, anecdotal evidence suggests that it frees regulators to undertake better qualitative and risk assessment

<sup>205</sup> Deloitte Access Economics, above n 198, 37 [3.1.8].

<sup>206</sup> Ibid 37 [3.1.8].

<sup>207</sup> Ibid.

<sup>208</sup> Explanatory Statement, *Revenue (Charitable Organisations) Legislation Amendment Bill 2015* (ACT) <[http://www.legislation.act.gov.au/es/db\\_52960/20151029-62220/pdf/db\\_52960.pdf](http://www.legislation.act.gov.au/es/db_52960/20151029-62220/pdf/db_52960.pdf)>.

practices. The current legislative changes to the South Australian *Collections for Charitable Purposes Act 1939* and the *Associations Incorporation Act 1985*, whilst reducing the administration burden for charities and removing obligations to report to the South Australian regulator, enables greater capacity to 'address concerns about potential misuse of funds collected for charitable purposes' and 'improved information gathering power.'<sup>209</sup>

For the ACNC, as the national charity regulator, greater importance will be placed on the charity registration process and, as above, the capacity to support administrative and judicial review. The registration considerations that may require greater attention include acceptance of self-nominated subtypes by each applicant (and in relation to existing charities registered). When a charity is registered, it may be registered under one or more 'subtypes' of charity. These subtypes largely reflect the charity's charitable purpose, such as 'advancing education' or 'advancing health'. The *ACNC Act* sets out 14 categories or 'subtypes' of charity which the ACNC can register. These include the 12 charitable purposes as set out in the *Charities Act*, as well as two deductible gift recipient categories for public benevolent institutions and health promotion charities. Each subtype has a specific meaning under the law, and to be eligible to be registered with a subtype, the *charity's objects and its activities* must be directed specifically towards achieving the charitable purpose described in that particular subtype.<sup>210</sup> The subtype, therefore, offers a potential framework for States in considering carve-outs, conditions or limits.

A further consideration for the ACNC is access of the States to the full and complete list of registered charities, which States may rely on under the proposed model. Currently, once a charity applies to have any information withheld from public view (a withholding request), all of its information is withheld and it effectively does not appear on either the public register or datasets produced for Government agencies, until such time as a decision is made in regards to the withholding request. This is so even if the charity has been through the Registration process and received charity status. The model proposed would require a change to legislation, policy and procedure to ensure that on any given day all regulators could confidently confirm the charity status of any entity.

### 5.3.3 Public

The public is a key stakeholder in charity regulation and management. The public provide significant support to charities through donations of their time, skills and money. Importantly, the 'public' also includes the beneficiaries of charity work. Australia's charities are rightly recognised by the community for the vital contribution that they make to the Australian society. One of the ways that this recognition occurs is through the provision of tax concessions. As such, the public is a significant stakeholder in charity regulation. It is essential that they are able to support charities with trust and confidence. As charities increasingly operate online and across jurisdictional borders, consistency and co-operation between national and State regulatory regimes is important to give the public confidence that the national regulatory regime is robust.

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<sup>209</sup> South Australian Parliament, Second Reading, 3 December 2015, *Statutes Amendment (Commonwealth Registered Entities) Bill 2016*.

<sup>210</sup> See the ACNC website for details of the charity subtype and its relationship with an entities charitable purpose: <[http://www.acnc.gov.au/ACNC/Register\\_my\\_charity/Who\\_can\\_register/Typ\\_char/ACNC/Reg/TypesCharPurp.aspx](http://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/Typ_char/ACNC/Reg/TypesCharPurp.aspx)>.

Charities want to spend their resources on their mission, not on regulation and the public, as taxpayers, donors and beneficiaries, has an expectation that they should be able to do so. Consistency and clarity in national charity regulation makes it easier for charities to understand their regulatory and reporting requirements, and to comply with them, minimising burden. With less focus dedicated towards reporting, charities are able to dedicate their resources to the beneficiaries, to building capacity and in pursuing innovative ways of fulfilling their charitable purpose.



## 6 A proposed common definition

The use of multiple definitions of charity and charitable purpose is problematic for the charity sector and for regulators.

Currently, an approach used in some jurisdictions is to couple charity status with the revenue exemptions that flow to charities. In this environment, individual jurisdictions amend the definition of 'charity' in their revenue legislation so that only organisations that meet the amended definition qualify for taxation concessions. This approach, however, results in the issues identified earlier in this paper: the definition (and terminology) used in each piece of legislation is different within and across jurisdictions, resulting in inconsistency and regulatory burden.

The approach being advocated in response is to separate the concepts of Charity Determination and Tax Assessment. This involves adopting a common definition of charity across all Australian jurisdictions and using revenue legislation to modify the application of taxation concessions in each jurisdiction as required. In this model, the revenue legislation may state that particular types of charities are not eligible for a particular taxation concession (carve-outs) or that they must meet additional conditions to qualify for the concession (special conditions).

This involves recognition and adoption of the following two stages:

1. Charity Determination – determining whether the entity meets the common definition of charity (consistent for all purposes where charity status is required).
2. Tax Assessment – assessing carve-outs or special conditions as set out in State revenue legislation (applicable in the revenue environment).

The response advocated in this paper is that the decision regarding whether an entity is a charity would be made by the Commonwealth regulator, the ACNC. This Charity Determination would apply to every situation in which charity status is relevant (including non-revenue matters) and would achieve a level of harmonisation in all Australian jurisdictions. This model could alternatively be applied at State level where one State regulator makes the Charity Determination that is applicable to all legislation within that State where charity status is relevant (see Appendix 1). However, a state by state application does not address the issue of charities operating and fundraising across jurisdictions, which is why a national response is proposed.

Our proposal enables each jurisdiction to have flexibility in relation to the legal outcomes that flow from the Charity Determination stage. In regards to the revenue environment, it is recognised that each Australian jurisdiction has its own policy considerations and requirements with regards to revenue collection. This includes the range of applicable exemptions that are based on assessed needs and the considerations of whether and what particular charities ought to be granted taxation concessions and the extent of those concessions.

In this way, the approach recommended is able to manage the competing priorities between a flexible response that creates a pathway to harmonisation and the States' jurisdiction to retain crucial revenue control.

## 6.1 Charity Determination

For the purposes of undertaking a Charity Determination and applying a common definition of 'charity' across the Commonwealth and States, the Commonwealth statutory definition, under the *Charities Act*, would be applied as a starting point.

Each entity seeking recognition as a charity would apply to the ACNC for charitable status. If the application were successful, all Commonwealth and State government agencies would recognise the charitable status of that entity. This would be so, irrespective of the particular legal outcome or benefit that turns on this status.

In the revenue environment, the next stage would be the Tax Assessment process, which would be subject to the particular carve-outs and special conditions described below. In applications beyond the revenue environment, it would mean that all current legislation under which entitlement to a benefit or legal outcome relies on the charitable purpose or status of an organisation (see Appendix 1) would defer to this Charity Determination made by the ACNC. Agencies with responsibility for that legislation would no longer make their own charity determination. They would, however, still have responsibility to apply the benefit or legal outcome arising.

This model is consistent with the concept of the 'report once, use often' framework as recommended by the Productivity Commission<sup>211</sup> and as currently used by the ACNC in regards to information and data provided to the ACNC (see Section 2.1). The model is consistent with the current operations of the ACNC,<sup>212</sup> and similar to the model used at the state level in Queensland.<sup>213</sup>

The key advantage of this model is that it reduces duplication: once an entity is registered as a charity, it can access various revenue concessions and potentially other benefits or statuses, for example in relation to fundraising, without the need to establish its charitable status on each occasion. By streamlining the process, both the entities and their regulating authorities can save time and costs, in respect of preparing and assessing applications, as well as dealing with any disputes that may arise as to the charitable status of an applicant.

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<sup>211</sup> See recommendation 5.3 in Productivity Commission, above n 37, XLII.

<sup>212</sup> *ACNC Act* Chapter 2.

<sup>213</sup> *Taxation Administration Act 2001* (Qld) Part 11A.

## 6.2 Tax Assessment

The Jurisdictional Analysis (Section 4) and Hot Spots (Section 5.1) identify that there are a number of contexts in which the States may seek to modify the application of State taxation concessions from the common definition. These can be classified as either ‘carve-outs’ (exceptions to the common definition of charity for revenue application purposes) or ‘special conditions’ (additional conditions that must be met before a taxation concession or exemption is granted).

### 6.2.1 Carve-outs

We have identified three circumstances in which a carve-out might be required for State taxation purposes.

1. Firstly, in relation to whether certain taxation concessions apply to particular types of charities. For example, State taxation legislation could provide that professional associations will not be eligible for particular State taxation concessions.
2. Secondly, through establishing that certain taxation concessions or exemptions do not apply to charities that pursue a particular purpose. For example, currently charities for the advancement of religion do not have access to a transfer duty exemption under section 275 of the *Duties Act 1997* (NSW).<sup>214</sup> Under this model, the revenue authority would accept the ACNC’s determination as a charity, but if the entity’s subtype correlates with the excluded charitable purpose, the entity will not have access to the particular concession.
3. Finally, excluding access to certain or all concessions based on whether an organisation is undertaking particular activities. For example, many jurisdictions currently provide that charities engaged in activities done for commercial purposes are not eligible for certain taxation concessions.

### 6.2.2 Special Conditions

The ability to set special conditions provides the States with an additional level of flexibility to control the scope of the concessions, even under a common definition regime. In practice, a special condition could require an additional assessment to be made before access to a taxation concession is granted. For example, to access exemption from transfer duty in the Northern Territory, the property must be *used* solely by an exempt entity for an ‘*exempt use*’. The term ‘*exempt use*’ is defined in section 4F(2) of the *Stamp Duty Act* (NT) as being a ‘*use for purposes other than the carrying on of a commercial activity by or on behalf of the entity*’. Under this proposal, the NT revenue authority would assess whether the property had been used solely for an exempt use.

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<sup>214</sup> Note that duty exemptions may be available in legislation.

Under this recommended approach, the States maintain control over revenue concessions with the use of carve-outs or special conditions. This means, for example, that the WA government could continue to exclude professional associations from payroll tax exemption. Similarly, any restrictions in respect of commercial activity can be imposed by way of carve-outs.<sup>215</sup> Further, a State may use regulation-making powers to restrict individual entities from certain revenue concessions.<sup>216</sup> The States would be able to create and amend these carve-outs and special conditions as they deem necessary or desirable under existing legislative or regulation amendment processes. In addition to maintaining control over the types of charities that can access particular revenue concessions, each State would continue to determine other aspects of its concessions, including the types of concessions and any applicable thresholds and tax rates.

Registration with the ACNC would continue to be voluntary, but it would be a prerequisite to accessing the revenue concessions in the relevant jurisdiction or jurisdictions subject to that decision-making process. Similarly, a registered charity may still need to submit individual applications for each revenue concession, for example, if special conditions apply.

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<sup>215</sup> Such as those introduced under the *NT Amendment Act*, above n 149.

<sup>216</sup> Such as those introduced under the *WA Amendment Act*, above n 148; *ACT Amendment Act*, above n 149.

## 7 Conclusion

The model whereby the ACNC would undertake the Charity Determination is recommended for all instances where charity status is required in relation to all Australian jurisdictions. The ACNC is well-placed to undertake the Charity Determination process for these purposes. The ACNC already collects, assesses and maintains information relating to charities for Commonwealth purposes. Furthermore under the *ACNC Act*, the ACNC regulates registered charities and ensures that they meet their obligations to maintain eligibility. The 'report once, use often' framework enables one regulator to take responsibility for charity registration and reporting, and an extension of this framework in respect of State revenue concessions should be a positive step for the sector.

It is envisaged that substantial time and costs savings can be achieved for both the charity sector and the revenue authorities in respect of the application and assessment process, as well as the resolution of disputes. Access to State revenue concessions could be significantly streamlined, minimising duplicative processes and ultimately ensuring that the charities are able to direct their resources to their charitable purpose.

# **Appendix 1- National Roundtable of Non-profit Organisations – Annexure 1 - Reviewed and revised**

As part of the analysis undertaken for this Paper, the ACNC reviewed a list of legislation prepared by the National Roundtable of Non-profit Organisations (NRNO) in 2007.<sup>217</sup> This list in the NRNO document included legislation in which some legal outcome turned on interpretation of the words ‘charity’ and/or ‘charitable’. As part of the review, legislation which has been repealed has been removed, legislation that has been introduced since 2007 has been included and further details have been added (including the Section, the Charity reference and whether the legislation has State Revenue implications). Further analysis was undertaken to identify whether the legislation set out a definition or referred either generally to ‘charity’ or ‘charitable purpose’ or to a source of the that definition.

The ACNC identified a total of 172 pieces of current Commonwealth, State and Territory legislation where a legal outcome or benefit turns on an entity being a charity. Of these, 45 Acts define the terms ‘charity’ or ‘charitable purpose’ (and these have been shaded light grey in the table). Of those that have a definition, 34 Acts were found to be relevant to State revenue collection, meaning 11 Acts define ‘charity’ or ‘charitable purpose’ for purposes other than State revenue.

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<sup>217</sup> National Roundtable of Non-profit Organisations, above n 35, 17-20.

Jurisdiction	Act	Section	Charity reference	State Revenue implications
Commonwealth	<i>A New Tax System (Goods and Services Tax) Act 1999</i>	Subdivision 38-G, 40-F, 63, 157, 176-1, 195-1	The application of GST on transactions and accounting standards may be affected by an entity's registration under the ACNC Act as a charity.	N
Commonwealth	<i>Age Discrimination Act 2004</i>	Section 5, 34	Refers to ACNC Act to determine 'registered charities' in exemption provisions.	N
Commonwealth	<i>Aircraft Noise Levy Act 1995</i>	Section 5	Refers to ACNC Act to determine 'registered charities' in exemption provisions.	N
Commonwealth	<i>Acts Interpretation Act 1901</i>	Section 2B	Refers to definition for 'charitable', 'charitable purpose' and 'charity' from Charities Act.	N
Commonwealth	<i>Criminal Code Act 1995</i>	Section 268.46, 268.80	Specifically does not use the definition of 'charitable purpose' in the Charities Act and the Acts Interpretation Act in relation to war crimes.	N
Commonwealth	<i>Social Security Act 1991</i>	Section 23, 32, 35, 1157J	Refers to 'ACNC type of entity', 'registered charity', 'registered public benevolent institution', 'registered religious institution' in the ACNC Act to approve disability care services and apply pensions and benefits	N
Commonwealth	<i>Corporations Act 2001</i>	Part 1.6	Refers to registration under the ACNC Act to determine applicable provisions for body corporates.	N
Commonwealth	<i>Disability Discrimination Act 1992</i>	Section 4, 25, 49	Refers to ACNC Act to determine 'registered charities' in exemption provisions.	N
Commonwealth	<i>Fringe Benefits Tax Assessment Act 1986</i>	Section 58, 65J	Refers to Income Tax Assessment Act to identify eligible entities – 'registered charity', 'registered health promotion charity', 'registered public benevolent institution' and 'registered religious institution'.	N
Commonwealth	<i>Income Tax Assessment Act 1936</i>	Section 121ELA	Refers to Income Tax Assessment Act to apply exemptions for overseas charitable institutions.	N
Commonwealth	<i>Income Tax Assessment Act 1997</i>	Section 30-15, 50.5, Subdivision 30-B	Refers to registration under the ACNC Act to apply provisions.	N
Commonwealth	<i>Native Title Act 1993</i>	Section 249A	Refers to permissible purposes for land used including 'community, religious, educational, charitable or sporting purposes'.	N
Commonwealth	<i>Racial Discrimination Act 1975</i>	Section 3	Refers to ACNC Act to determine 'registered charities' in exemption provisions.	N
Commonwealth	<i>Sex Discrimination Act 1984</i>	Section 4, 24, 36	Refers to ACNC Act to determine 'registered charities' in exemption provisions.	N
Commonwealth	<i>Competition and Consumer Act 2010</i>	Section 4, 151BC	Refers to ACNC Act to determine 'registered charities' in exemption provisions, but also refers to an undefined 'charitable purpose' to relation to exemptions for goods and services.	N
ACT	<i>Adoption Act 1993</i>	Part 6, Section 81, 82  Dictionary	Charitable organisation defined as 'a body carried on for a charitable, benevolent, philanthropic or religious purpose, other than a body carried on for the financial benefit of its members' and used for determining service providers.	N

Jurisdiction	Act	Section	Charity reference	State Revenue implications
ACT	<i>Charitable Collections Act 2003</i>	Part 2, Section 7  Schedule 1, dictionary	Collections covered by this Act must be conducted for a charitable purpose.  Charitable purpose defined as 'any benevolent, philanthropic or patriotic purpose'.	N
ACT	<i>Civil Law (Wrongs) Act 2002</i>	Part 2.2, Section 6, 7, 11A	A 'community organisation' is a 'corporation that directs or coordinates' volunteers for 'community work'.  The term 'charitable purpose' is used in the Act to define, in part, 'community work' and 'donor'.	N
ACT	<i>Cooperatives Act 2002</i>	Part 10, Division 10.4, Section 273	Enables the disposal of surplus funds for a 'charitable purpose'.	N
ACT	<i>Duties Act 1999</i>	Section 232	'Charitable organisations' (including 'beneficial organisations') are exempt from duty. Refers to definitions in the Taxation Administration Act.	Y
ACT	<i>Gaming Machine Act 2004</i>	Part 12, Section 164	Definition of 'charitable organisation' was omitted by amendment. Refers to 'charitable and social welfare' as an area where community contributions may be made but does not define.	N
ACT	<i>Payroll Tax Act 2011</i>	Part 4, Division 4.1, Section 48  Schedule 2, Part 2.2	Exempts wages paid or payable by 'Charitable Organisations' as per the definition in the Taxation Administration Act. However, excludes organisations with an educational purpose (with the only exception being schools or colleges providing education at or below secondary level education).	Y
ACT	<i>Rates Act 2004</i>	Section 8	'Charitable Organisations' is as defined in the Tax Administration Act. Exempt charitable purposes include 'religious, educational, benevolent or charitable'. 'Community purpose' specifically excludes community housing purposes.	Y
ACT	<i>Taxation Administration Act 1999</i>	Part 3A	'Charitable Organisation' defined as entity with 'religious, educational, benevolent or charitable purpose' but excludes those that are 'securing pecuniary benefits for its members' or any 'excluded organisations'. An excluded organisation is: a political party; industrial organisation; professional organisations; trade, industry or commerce promoting organisation or a prescribed call of organisation.  'Beneficial Organisation Determination' can be granted to 'excluded organisations' if they have a 'predominant purpose' to advance religion, education, relieve poverty or benefit the community and, as a whole, benefit the general community rather than a class of people. Political parties and industrial organisations cannot be considered for a beneficial organisation determination.	Y
ACT	<i>Unlawful Gambling Act 2009</i>	Section 11, 15, Dictionary	References to the definition of 'charitable organisation' found in the Duties Act.  Allows a 'charitable organisation' to apply to conduct a game. The 'charitable organisation' must satisfy a range of requirements including that it is a 'suitable organisation' to hold a game and the game will raise funds for a 'stated charitable purpose'.	N



Jurisdiction	Act	Section	Charity reference	State Revenue implications
ACT	<i>Cemeteries and Crematoria Act 2003</i>	Section 10	Recognises a 'perpetual care trust' as a 'charitable trust established for public charitable purposes and is not for profit'.	N
ACT	<i>Perpetuities and Accumulations Act 1985</i>	Section 16	Exemption of rule against perpetuities in relation to gifts from one charity to another.	N
ACT	<i>Food Act 2001</i>	Section 7A	Exempts community organisations conducted by volunteers who raise funds for: <ul style="list-style-type: none"> <li>a) Religious, educational, charitable or benevolent purposes</li> <li>b) Advancing literature, science or arts</li> <li>c) Caring, treating or assisting people with a physical or mental disability or condition purposes</li> <li>d) Sport, recreation or amusement</li> <li>e) Conserving resources or protecting the environment</li> <li>f) Historical or cultural heritage purposes</li> <li>g) Political purpose</li> <li>h) Promoting interests of a local community.</li> </ul>	N
ACT	<i>Discrimination Act 1991</i>	Section 26	Exempts the provision of accommodation by a 'charitable or voluntary body' for a relevant class of people.	N
Tas	<i>Adoption Act 1988</i>	Part 2, Division 1, Part 10	Defines a 'welfare organisation' as one where the primary or principal purpose is 'religious, charitable, benevolent, philanthropic, or welfare' and excludes organisations that have a purpose of 'trading or securing a pecuniary profit for its members.'	N
Tas	<i>Anti-Discrimination Act 1998</i>	Part 5, Division 1, Section 23	'Charities' are exempt from this Act if they provide 'charitable benefits' to persons with a prescribed attribute.	N
Tas	<i>Associations Incorporation Act 1964</i>	Section 2	One of the defining attributes of an 'association' is that it is carried on for a 'religious, educational, benevolent or charitable purpose'.	N
Tas	<i>Children, Young Persons and their Families Act 1997</i>	Section 93(5(a)), 94	Exemptions to penalties for children engaged in public entertainment or trading in public places if the proceeds are 'devoted to the benefit of a school or to a charitable purpose'.	N

Jurisdiction	Act	Section	Charity reference	State Revenue implications
Tas	<i>Civil Liability Act 2002</i>	Section 35F  Section 44	<p>Protection of food donors from a civil liability if food is donated 'in good faith for a charitable or benevolent purpose' and where other food handling requirements are met.</p> <p>Defines a community organisation as a 'State Service Agency or statutory authority', an incorporated association, council, body corporate or an entity that organises community work by volunteers.</p> <p>Community work is defined by:</p> <ul style="list-style-type: none"> <li>i) Religious, educational, charitable or benevolent purposes</li> <li>j) Advancing literature, science or arts purposes</li> <li>k) Sport, recreation or amusement purposes</li> <li>l) Caring, treating or assisting people with a physical or mental disability or condition purposes</li> <li>m) Conserving or protecting the environment purposes</li> <li>n) Historical or cultural heritage purposes</li> <li>o) Community, social or cultural centre purposes</li> <li>p) Promoting interests of a local community</li> <li>q) Political purpose.</li> </ul>	N
Tas	<i>Collections for Charities Act 2001</i>	Section 3	A 'charitable purpose' is defined as a 'benevolent, philanthropic or patriotic purpose and any purpose for the protection of the environment or the welfare of animals'.	N
Tas	<i>Duties Act 2001</i>	Section 53(n)	<p>Exemption of duties for transaction for no consideration that is solely for 'charitable, religious or educational' purposes.</p> <p>Under 'motor vehicle registration' provisions, a 'charity' is defined as 'an institution that is a religious, scientific, charitable or public education institution exempted by section 23 of the <i>Income Tax Assessment Act 1936</i>'.</p>	Y
Tas	<i>Gaming Control Act 1993</i>	Section 3	<p>A 'charitable purpose' is defined as:</p> <ul style="list-style-type: none"> <li>a) Religious</li> <li>b) Educational</li> <li>c) Benevolent</li> <li>d) Welfare</li> <li>e) Providing medical treatment or attention</li> <li>f) Advancing literature, art or science</li> <li>g) Establishing, managing or beautifying a community centre or park or other community places</li> <li>h) Recreational or sporting.</li> </ul> <p>A 'not-for-profit organisation' is one that is formed or is primarily for 'charitable purposes' and not for 'trading or securing profit for its members or another body'.</p>	N

Jurisdiction	Act	Section	Charity reference	State Revenue implications
Tas	<i>Industrial Relations Act 1984</i>	Section 80(3)	An 'institution' is defined as an entity that is 'conducted in good faith for religious or charitable purposes'.	N
Tas	<i>Land Tax Act 2000</i>	Section 3 Section 18	'Charitable Institution' is defined as 'solely for charitable purposes and not for profit or gain'.  Exemption to land tax for trust land where the land it owned by a: 1. religious entity with a religious, charitable or education purpose, including support for its members 2. charitable institution with a solely charitable purpose 3. educational institution with a non-profit educational purpose.	Y
Tas	<i>Parliamentary (Disclosure of Interests) Act 1996</i>	Section 11(a)	Exemptions to public disclosure by a Member for any interest or position held in a corporation formed to provide recreation or amusement, promote commerce, industry, art, science, religion or charity, or for any other community purpose.	N
Tas	<i>Property Agents and Land Transactions Act 2005</i>	Section 33(3)	Exemption to auctioneer or agent representation requirements if gross proceeds of a public auction is for a 'charitable purpose'.	N
Tas	<i>Public Trusts Act 1882</i>	Section 3	Defines trusts that may be registered under this Act as 'trusts for public, religious, educational or charitable purposes'.	N
Tas	<i>State Loans and Loan Guarantees Act 1976</i>	Section 2	Application of Act to 'any association, society, or other body carried on for a charitable purpose'. 'Other purpose' which may be considered include 'provision of hospitals or similar institutions', 'cultural or educational', 'sporting or recreational' or 'provision of agricultural shows'.	N
Tas	<i>Supreme Court Rules 2000</i>	Section 89, 90, 767	Used in relation to the administration of charitable trusts or a valid gift to a charity.	N
Tas	<i>Tasmanian Community Fund Act 2005</i>	Section 7(2)	Allows grants to be made for community purposes which include, charitable, sporting or recreational, cultural or arts, educational or religious purposes.	N
Tas	<i>Variation of Trusts Act 1994</i>	Section 4	Specifies that a gift of property to provide for sport, recreation or other leisure activities will be considered as a 'gift for charitable purposes'.	N
Tas	<i>Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010</i>	Section 3	Defines a 'special-interest vehicle' as one used for events with a charitable purpose.  Exemption from motor vehicle tax is applied to entities endorsed by the ATO as a charitable or benevolent institution.	Y
Tas	<i>Local Government Act 1993</i>	Section 87	Exempts rates from 'land or part of land owned and occupied exclusively for charitable purposes'.	N
Tas	<i>Food Act 2003</i>	Section 6	The handling of food intended for sale or the sale of food for a 'charitable or community nature' is recognised as a 'food business'.	N
Tas	<i>Legal Profession Act 2007</i>	Section 218	A 'community legal centre' is partially defined as an organisation that is 'funded or expected to be funded to a significant level by donations or by grants from government, charitable or other organisations'.	N

Jurisdiction	Act	Section	Charity reference	State Revenue implications
Tas	<i>Payroll Tax Act 2008</i>	Section 48	Exempts wages from payroll tax for non-profit organisations if they are paid or payable for a religious institution, public benevolent institution or an non-government organisation with a sole or dominant purpose a 'charitable, benevolent, philanthropic or patriotic purpose'. Doesn't include schools or educational institutions.  Exempt wages must be 'for work of a kind ordinarily performed in connection with the religious, charitable, benevolent, philanthropic or patriotic purposes of the institution or body'.	Y
NSW	<i>Adoption Act 2000</i>	Chapter 3, Part 2, Section 12  Dictionary	Allows 'charitable or non profit organisations' to apply to be an adoption service provider.  A 'charitable organisation' is a non-profit organisation with a primary or principal religious, charitable, benevolent or philanthropic purpose, a hospital (but not a statutory health corporation or affiliated health organisation) that does not provide profit or gain to its members, or an organisation recognised in the Charitable Fundraising Act.	N
NSW	<i>Anti-Discrimination Act 1977</i>	Section 55(2)	A 'charitable benefit' is defined as 'purposes that are exclusively charitable according to the law in force in any part of Australia'.	N
NSW	<i>Charitable Fundraising Act 1991</i>	Section 4	'Charitable purpose' is defined as 'any benevolent, philanthropic or patriotic purpose'.	N
NSW	<i>Charitable Trusts Act 1993</i>	Section 3	A 'charitable trust' is defined as 'established for charitable purposes'	N
NSW	<i>Co-operatives (Adoption of National Law) Act 2012</i>	Section 356	Enables co-operatives to apply part of their surplus for a 'charitable purpose'.	N
NSW	<i>Dormant Funds Act 1942</i>	Section 2	'Charitable purpose' is defined as 'any benevolent, philanthropic or patriotic purpose'.	Y
NSW	<i>Duties Act 1997</i>	Section 259  Section 275, 275A	Exemption from duty on insurance taken out for a non-profit organisation with a 'charitable, benevolent, philanthropic or patriotic purpose' or an institution with a predominant purpose of relieving poverty, promoting education, support of military personnel and their dependents or other patriotic objects.  Duty exemptions for land transfers for 'charitable or benevolent bodies' which is defined as an entity that is used predominantly for relief of poverty or promoting education in Australia, or promotes the interests of Aborigines.	Y
NSW	<i>Fisheries Management Act 1994</i>	Section 37A  Section 274	Permits may be issued to authorise the sale of fish for a charitable purpose.  'Charitable purpose' is defined as 'any benevolent, philanthropic or patriotic purpose'.  Enables Fisheries officers to donate fish or other perishable things that cannot lawfully be sold to a charitable institution.	N

Jurisdiction	Act	Section	Charity reference	State Revenue implications
NSW	<i>Gambling (Two-up) Act 1998</i>	Section 4	‘Charitable purpose’ is defined as ‘any benevolent, philanthropic or patriotic purpose’.  Permits a game of two-up to be conducted by a club where the payments or other benefits are disposed of for a charity or a charitable purpose.	N
NSW	<i>Insurance Protection Tax Act 2001</i>	Section 3	‘Exempt insurance’ includes insurance taken out by a non-profit organisation with a charitable, benevolent, philanthropic or patriotic purpose, or by a society or institution with a predominant purpose of relieving poverty, promoting education, support of military personnel and their dependents or other patriotic objects.	N
NSW	<i>Land Tax Management Act 1956</i>	Section 10	Land exempt from tax includes land owned by a charitable body, a religious society with a religious, charitable or educational purpose and not for pecuniary profit, Aboriginal Land Councils, etc.  A ‘charitable body’ is defined as a ‘body corporate, society, institution or other body carried on solely for charitable or education purposes and not for pecuniary profit’.	Y
NSW	<i>Local Government Act 1993</i>	Section 556, 558, 559	Exempts rates on land that belongs to a public benevolent institution or public charity and is used for the purposes of the institution or charity.	N
NSW	<i>Lotteries and Art Unions Act 1901</i>	Section 4, 5	Permits lotteries to be conducted by certain charities and non-profit organisations for a charitable purpose.	N
NSW	<i>Pawnbrokers and Second-hand Dealers Act 1996</i>	Section 4	Exempts second-hand goods dealt with for a fundraising appeal authorised under the Charitable Fundraising Act.	N
NSW	<i>Payroll Tax Act 2007</i>	Section 48	Exempts payroll tax to wages paid by a religious institution, public benevolent institution or a non-profit organisation with a sole or dominant purpose being charitable, benevolent, philanthropic or patriotic (but not including a school or educational institution).	Y
NSW	<i>Prevention of Cruelty to Animals Act 1979</i>	Section 4	‘Charitable organisation’ means the RSPCA NSW and any organisation with an object to promote the welfare and prevent cruelty to animals, is non-profit and has a charitable, benevolent, philanthropic or patriotic purpose.	N
NSW	<i>Property, Stock and Business Agents Act 2002</i>	Section 5	Exempt sales made by auction from a fundraising appeal within the meaning of the Charitable Fundraising Act.	N
NSW	<i>Transport Administration Act 1988</i>	Section 106A	Enables grants to be made to ‘eligible charitable organisations’ as determined by the Minister.	N
NSW	<i>Water Management Act 2000</i>	Schedule 4	Land exempt from charges including land that belongs to a public hospital, public benevolent institution or public charity and is used for hospital, institution or charity purposes.	Y
NSW	<i>Workers Compensation Act 1987</i>	Section 175F	Exclusion provision applied to employers who are a non-profit organisation with an object for charitable, benevolent, philanthropic or patriotic purpose as long as it is not in direct competition with a for-profit organisation.	N

Jurisdiction	Act	Section	Charity reference	State Revenue implications
NSW	<i>Sydney Water Act 1994</i>	Schedule 2	Exemption to service charges for land which belongs to a public benevolent institution, public charity or where it is used or occupied by the institution or charity for its purposes.	N
NSW	<i>Civil Liability Act 2002</i>	Section 60	Defines 'community work' as work which is not for private financial gain and is for a 'charitable, benevolent, philanthropic, sporting, educational or cultural purpose'.	N
NSW	<i>Motor Vehicles Taxation Act 1988</i>	Section 3	Exempts tax on vehicles if it is used for a 'non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose'.	Y
Vic	<i>Charities Act 1978</i>	Section 8	'Charity' is defined as an 'institution which is established for purposes which according to the law of Victoria are charitable'.	N
Vic	<i>Congestion Levy Act 2005</i>	Section 18	Exempts parking spaces owned by 'councils, charities, etc.' which encompasses religious bodies, charitable or public benevolent institutions, hospitals, universities, libraries or museums.	N
Vic	<i>Duties Act 2000</i>	Section 38, 45, 56, 233D	Exemptions to duty declaration of trust over property held on trust solely for 'religious, charitable or educational purpose[s]'.  No duty is charged for transfers of property for a 'religious, charitable or educational purpose', or a corporation or body of persons established for these purposes.  Exempt duties for transfer of farms to a 'charitable institution' which means 'a corporation or body of persons associated for charitable purposes.'  Exemption of duties for certain vehicles used by a 'charitable, benevolent or religious institution'.	Y
Vic	<i>Environment Protection Act 1970</i>	Section 24, 45M	Exemption of fees for a body with a 'public, charitable or philanthropic purpose' and 'is not conducted for profit' and its operations are financed mainly by monies raised from the public.  'Advertising material' includes material issued for a 'charitable purpose'.	Y
Vic	<i>Equal Opportunity Act 2010</i>	Section 80	'Charitable benefits' is defined as 'exclusively charitable according to Victorian law'.	N
Vic	<i>Gambling Regulation Act 2003</i>	Section 1.3, 8.3.3	'Community purpose' is 'a philanthropic or benevolent purpose, including the promotion of art, culture, science, religion, education or charity (including patriotic funds or the Australian Red Cross Society)'.  A 'community or charitable organisation' is one that is conducted in good faith for a 'community purpose' (as described above) but also includes sporting or recreational bodies or a political party.	Y
Vic	<i>Housing Act 1983</i>	Section 31	Funds for rental housing assistance may be provided to 'voluntary, non-profit, charitable bodies'.	N
Vic	<i>Land Tax Act 2005</i>	Section 37, 71, 74	Land owned by a 'charitable institution' and used for a 'charitable purpose' may be exempt from land tax.	Y

Jurisdiction	Act	Section	Charity reference	State Revenue implications
Vic	<i>Local Government Act 1989</i>	Section 76AA, 154	A 'not-for-profit organisation' is defined as one which 'operates exclusively for a charitable, civil or other social purpose' and does not provide any profits to its members.  Exempts land rates for land used for a charitable purpose.	N
Vic	<i>Payroll Tax Act 2007</i>	Section 48	Exempt wages for 'non-profit organisations' which are defined as religious institutions, public benevolent institutions or non-government organisations with a 'whole or dominant' charitable, benevolent, philanthropic or patriotic purpose.	Y
Vic	<i>Property Law Act 1958</i>	Section 163, 171	Disposition by Will to a 'charity'.  Settling beneficial interests of represented patients in relation to income for 'charitable purposes'.	N
Vic	<i>Road Safety (Vehicles) Regulations 2009</i>	Section 5  Schedule 3	'Charitable body' is defined as having a 'principal purpose' of providing 'assistance to the community or animals for reasons other than profit'.  Exemption of fees to charitable, benevolent or religious institutions when a vehicle is used principally in connection with the management or business of the institution.	Y
Vic	<i>Transport (Compliance and Miscellaneous) Act 1983</i>	Section 87	'Charitable arrangement' is defined as being part of 'charitable or benevolent work' or 'work for the relief or welfare of members of the public' and exempts these vehicles from licensing provisions on commercial vehicles.	Y
Vic	<i>Veterans Act 2005</i>	Section 23	A 'patriotic fund' is not limited to only 'patriotic' purposes and may extend to 'general charitable intentions' without impacting their status as a 'patriotic fund'.	N
Vic	<i>Wrongs Act 1958</i>	Section 31F	Protects food donors where they have acted in 'good faith for a charitable or benevolent purpose'.  'Community work' is defined as: <ul style="list-style-type: none"> <li>a) Religious, educational, charitable or benevolent purposes</li> <li>b) Advancing literature, science or arts purposes</li> <li>c) Sport, recreation or amusement purposes</li> <li>d) Caring, treating or assisting people with a physical or mental disability or condition purposes</li> <li>e) Conserving or protecting the environment purposes</li> <li>f) Historical or cultural heritage purposes</li> <li>g) Community, social or cultural centre purposes</li> <li>h) Promoting interests of a local community</li> <li>i) Political purpose.</li> </ul>	N
Vic	<i>Racing Act 1958</i>	Section 3	'Charitable purpose' is defined as aiding an institution or benevolent society within the meaning of the <i>Hospitals and Charities Act 1958</i> , aiding in funds to a public authority in Victoria engaged in research to prevent or cure disease in humans, or providing charitable relief (within the meaning of that Act) to diseased infirm incurable poor or destitute people.	N

Jurisdiction	Act	Section	Charity reference	State Revenue implications
Vic	<i>Australian Consumer Law and Fair Trading Act 2012</i>	Section 86	Exemptions for 'community purpose' which is defined as 'a philanthropic or benevolent purpose (including the promotion of art, culture, science, religion, education, medicine or charity)' or 'a sporting or recreational purpose'.	N
Qld	<i>Acquisition of Land Act 1967</i>	Schedule 1, Part 13	'A charity, charitable institution, public benevolent institution, charitable fund and income tax exempt fund' are recognised as a 'non-profit or not-for-profit organisation'.	N
Qld	<i>Anti-Discrimination Act 1991</i>	Section 110	Exemptions apply for 'charitable benefits' and any discriminatory acts that may be occur due to the provision of these benefits.	N
Qld	<i>Building and Construction Industry (Portable Long Service Leave) Act 1991</i>	Section 79	Exempts payable levies for voluntary building and construction work that is carried out for a 'charitable purpose'.	Y
Qld	<i>Charitable and Non-Profit Gaming Act 1999</i>	Section 10	'Charitable purpose' is defined by the 'purpose of helping individuals' which includes help due to a person's disability, age, sickness, infirmity, bereavement, poverty, unemployment, property being damaged by natural disaster and the dependants of such people.	N
Qld	<i>Charitable Funds Act 1958</i>	Section 2	'Charitable purpose' includes 'every purpose which in accordance with the law of England is a charitable purpose'. This includes 'the supply of help, aid, relief, assistance or support to persons in distress', 'education or instruction and the reformation, employment or care' of people, a public purpose which is of general interest to the community or a benevolent or philanthropic purpose.	N
Qld	<i>Civil Liability Act 2003</i>	Section 38	'Community work' is defined as 'charitable, benevolent, philanthropic, sporting, recreational, political, educational or cultural purpose'.	N
Qld	<i>Collections Act 1966</i>	Section 5	'Charitable purpose' can mean 'charitable' according to Qld law, the supply of help, aid, relief or support, education or instruction, housing assistance to people in distress.	N
Qld	<i>Co-operatives Act 1997</i>	Section 265	Enables cooperatives to apply part of their yearly surplus to a 'charitable purpose'.	N
Qld	<i>Duties Act 2001</i>	Section 415	Exemption from duties on the acquisition of property by 'charitable institution' where they have one of the following purposes: religious, public benevolent, educational, conducting a kindergarten or preschool, caring for sick or aged, relief of poverty, promotion of the public good.	Y
Qld	<i>Food Act 2006</i>	Schedule 3	A 'non-profit organisation' is defined as engaging in activities for a charitable, cultural, educational, political, social welfare, sporting or recreational purpose.	N
Qld	<i>Gaming Machine Act 1991</i>	Section 305	Requires financial contributions be made for the community benefit for 'charitable, sporting, recreational and other community associations and initiatives'.	N
Qld	<i>Introduction Agents Act 2001</i>	Section 12	'Community purpose' includes 'a philanthropic or benevolent purpose, including the promotion of art, culture, science, religion, education, medicine or charity' or a 'sporting or recreational purpose'	N
Qld	<i>Land Act 1994</i>	Schedule 1B	Concessional arrangements may be made for 'charitable, sporting or recreational organisations'.	N



Jurisdiction	Act	Section	Charity reference	State Revenue implications
Qld	<i>Land Tax Act 2010</i>	Division 2, Section 46, 47	‘Charitable institutions’ may be exempt from land tax if the land is used for an ‘exempt purpose’ within a certain time frame known as the ‘requirement period’.  ‘Charitable institution’ is defined in the Taxation Administration Act.	Y
Qld	<i>Local Government Act 2009</i>	Section 93	Exemption to land rates where a regulation is in place to exempt ‘religious, charitable, educational or other public purposes’.	N
Qld	<i>Payroll Tax Act 1971</i>	Section 14	Exemption from payroll tax for a ‘charitable institution’ where the wages are directed to the work of a ‘qualifying exempt purpose’ meaning ‘religious, public benevolent, education, conducting a kindergarten, care of people in need due to illness or age, poverty relief, care of children, other charitable or promotion of the public good, or providing residence to members of a religious order’.  ‘Charitable institution’ is defined in the Taxation Administration Act.	Y
Qld	<i>Property Law Act 1974</i>	Section 214	Enables a ‘disposition in favour of a charity’ for a rule against perpetuities in the case of an unborn husband or wife.	N
Qld	<i>Residential Tenancies and Rooming Accommodation Act 2008</i>	Section 393	Enables property to be donated to a charity if the market value is less than the amount specified by regulation.	N
Qld	<i>Retirement Villages Act 1999</i>	Section 116	Exemptions apply for operators that are established for a ‘religious, charitable or community purpose’ and have a good standing.	N
Qld	<i>Second-hand Dealers and Pawnbrokers Act 2003</i>	Section 6	Exemptions to licenses for a charity registered under the Collections Act, or a ‘charity, religious denomination or an organisation formed for a community purpose’ within the meaning of Collections Act.	N
Qld	<i>Summary Offences Act 2005</i>	Section 6	Exempts registered charities under the Collection Act allowing them to solicit donations in a public place for the charity.	N
Qld	<i>Trading (Allowable Hours) Act 1990</i>	Section 19	Exemptions for a bazaar, fair or sale of work for ‘religious, charitable, education or other purpose from which no private profit is to be derived’ from trading hour restrictions.	N
Qld	<i>Transport Operations (Passenger Transport) Act 1994</i>	Schedule 3	A ‘community transport service’ is one that is subsidised by public money or a charity and provide for the benefit of a particular group.	N
Qld	<i>Trusts Act 1973</i>	Part 8, Section 103	The ‘meaning of charity’ is defined within common law definition but in addition it adds: the provision of facilities for recreation or leisure in the interests of social welfare (i.e. improve the condition of life) and is in general for the public benefit.	N
Qld	<i>Taxation Administration Act 2001</i>	Part 11A	An entity may be registered as a ‘charitable institution’ if it is a one of a number of institutions that cover religious, educational, charitable and care or relief organisations or institutions. In addition, if an institution has a principal object or pursuit of fulfilling a charitable object or promoting the public good (but not leisure, recreational, social or sporting).	Y

Jurisdiction	Act	Section	Charity reference	State Revenue implications
WA	<i>Associations Incorporation Act 2015</i>	Section 4	Associations eligible for incorporation includes one which is formed and carried on for 'a religious, educational, charitable or benevolent purpose'. In addition, other eligible purposes include those related to the arts, medical, recreation, community work, environmental, educational, political or professional associations.	N
WA	<i>Auction Sales Act 1973</i>	Section 5	Exemptions for bazaar or sale of gifts where the profits are devoted for 'charitable, educational or church purposes'.	N
WA	<i>Charitable Collections Act 1946</i>	Section 5	'Charitable purpose' is defined as providing relief due to illness or poverty, relief of distress due to war, supplying equipment and other supplies to army forces, support to members or dependents of army officers, support of hospitals, infant health centres, kindergartens or other social welfare activities, and any other benevolent, philanthropic or patriotic purpose.	N
WA	<i>Charitable Trusts Act 1962</i>	Section 4, 5	'Charitable purpose' means every charitable purpose under WA law. Providing recreational or leisure facilities in the interests of social welfare is considered to be 'charitable'.  In general, being 'charitable' also requires it to be 'for the public benefit'.	N
WA	<i>Co-operatives Act 2009</i>	Section 238	Requires co-operatives to pursue a charitable purpose only and apply its income in promoting those purposes.	N
WA	<i>Equal Opportunity Act 1984</i>	Section 4	'Charitable benefits' is defined as benefits that have an 'exclusively charitable' purpose according to the law in WA.	N
WA	<i>Gaming and Wagering Commission Act 1987</i>	Section 94	'Charitable organisation' is defined as having an object, or one of its principal objects, as raising money for charitable purposes or for the promotion and advancement of social welfare, including public recreation or sport.	N
WA	<i>Hospital and Health Services Act 1927</i>	Section 2	Defines a 'private non-profit hospital' as one that is 'maintained by a religious or charitable organisation' and is not for the purpose of private gain.	N
WA	<i>Land Tax Assessment Act 2002</i>	Section 37	A 'public charitable or benevolent institution' does not include a 'relevant body' unless they have a 'beneficial body determination'. A 'relevant body' is a political party, industrial association, professional association, or a body that promotes trade, industry or commerce and does not have a charitable purpose.	Y
WA	<i>Local Government Act 1995</i>	Section 6.26	Exemptions to land rates for land used 'exclusively for charitable purposes'. Occasional land use that isn't of a charitable, benevolent, religious or public nature is permitted.	N
WA	<i>Lotteries Commission Act 1990</i>	Section 19	An 'approved purpose' for the purposes of this Act includes a 'benevolent or charitable purpose'.	N
WA	<i>Pay-roll Tax Assessment Act 2002</i>	Section 41, Glossary	Exemption to payroll tax is available for a 'charitable body or organisation' which is defined as being established or carried on for a 'charitable purpose' but does not include an entity that provides tertiary education or one that provides education under the <i>Vocational Education and Training Act 1996</i> .	Y

Jurisdiction	Act	Section	Charity reference	State Revenue implications
WA	<i>Police Act 1892</i>	Section 39E	A 'charitable organisation' is defined as: <ul style="list-style-type: none"> <li>• A public benevolent or religious institution</li> <li>• A public or non-profit hospital</li> <li>• A university</li> <li>• A college or school, including one run by the government, that is non-profit</li> <li>• A trust with a charitable purpose</li> <li>• An institution established for a charitable purpose</li> <li>• A society, institution or organisation operating for the purpose of raising money or promoting the interests of a charitable organisation.</li> </ul>	N
WA	<i>Port Authorities Act 1999</i>	Section 35	Allows a port authority to make gifts for 'charitable purposes of for other purposes of benefit to the community or a section of the community'.	N
WA	<i>Property Law Act 1969</i>	Section 111	Exemption of rule against perpetuities in relation to gifts from one charity to another.	N
WA	<i>Public Transport Authority Act 2003</i>	Section 12	Allows the Public Transport Authority to make a 'gift for a charitable purpose or any other purpose of benefit to the community or a section of the community'.	N
WA	<i>Racing and Wagering Western Australia Act 2003</i>	Section 30	Allows the RWWA to make a 'gift for a charitable purpose or any other purpose of benefit to the community or a section of the community'.	N
WA	<i>Retail Trading Hours Act 1987</i>	Section 4	Exemption to the restrictions to trading hours for 'a bazaar or fair' where the proceeds are for 'religious, charitable or public purposes'.	N
WA	<i>Stamp Act 1921</i>	Section 76B	'Charitable organisation' is defined as a 'charitable institution or public benevolent institution' which is recognised under the Commonwealth <i>Income Tax Assessment Act 1997</i> as a DRG or exempt from income tax.	Y
WA	<i>Volunteers and Food and Other Donors (Protection from Liability) Act 2002</i>	Section 3	'Community work' means work by a community organisation for the following purposes: <ol style="list-style-type: none"> <li>a) Religious, educational, charitable or benevolent purposes</li> <li>b) Advancing literature, science or arts purposes</li> <li>c) Sport, recreation or amusement purposes</li> <li>d) Caring, treating or assisting people with a physical or mental disability or condition purposes</li> <li>e) Conserving or protecting the environment purposes</li> <li>f) Historical or cultural heritage purposes</li> <li>g) Community, social or cultural centre purposes</li> <li>h) Promoting interests of a local community</li> <li>i) Political purpose.</li> </ol>	
WA	<i>Water Corporation Act 1995</i>	Section 29	Allows a corporation to make a 'gift for a charitable purpose or any other purpose of benefit to the community or a section of the community'.	N
SA	<i>Associations Incorporation Act 1985</i>	Section 18	An eligible purpose for incorporating an association includes 'a religious, educational, charitable or benevolent purpose'.	N

Jurisdiction	Act	Section	Charity reference	State Revenue implications
SA	<i>Health Practitioner Regulation National Law (South Australia) Act 2010</i>	Section 26	A 'charitable organisation that is a beneficiary of a trust' is not sufficient to be regarded as occupying a 'position of authority'.	N
SA	<i>Collections for Charitable Purposes Act 1939</i>	Section 4	'Charitable purpose' means providing relief for people due to illness, poverty, unemployment or their dependents, or relief for distress due to war, or relief, assistance or support for people or dependents of people in the armed forces of Australia, or welfare services for animals.	N
SA	<i>Emergency Services Funding Act 1998</i>	Section 33	A remission of levies may be made of a 'charitable organisation'.	N
SA	<i>Employment Agents Registration Act 1993</i>	Section 3	An 'employment agent' does not include a 'charitable or benevolent organisation' which engages in the procurement for work or employment for others on a non-profit basis.	N
SA	<i>Equal Opportunity Act 1984</i>	Section 45, 64	Exempts 'a charitable instrument' that confers benefits based on a person's sex, gender or sexuality, or race, or disability, or age group, or marital status, carers or to pregnant women.	N
SA	<i>Fair Work Act 1994</i>	Section 114	Exemptions for charitable organisations where the objects of the organisation are 'charitable, religious or non-profit making' and it is in the public interest for the exemption to be applied.	N
SA	<i>Land Tax Act 1936</i>	Section 4	Land exempt to land tax includes land owned by an association that is for a 'charitable, educational, benevolent, religious or philanthropic purpose (whether or not the purpose is charitable within the meaning of any rule of law)' and the land is or is intended for use with these purposes and where the income from land use is used for advancing these purposes.	Y
SA	<i>Law of Property Act 1936</i>	Section 62	Excludes provisions relating to a court order for vesting of interests where a trust has 'wholly charitable' purpose.	N
SA	<i>Local Government Act 1999</i>	Section 239	By-laws for road use may be made for 'soliciting for religious or charitable purposes'.	N
SA	<i>Public Trustee Act 1995</i>	Section 13	Court fees may be exempt for a property that is held in trust for a 'public or charitable purpose'.	N
SA	<i>Retirement Villages Act 1987</i>	Section 4	Exemptions to provisions within the Act may be granted to specified 'religious or charitable organisations or religious or charitable organisations of a specified class'.	N
SA	<i>Roads (Opening and Closing) Act 1991</i>	Section 17	Where there is an order for a road closure, the land subject to the road closure may be sold or transferred for use by a 'public, charitable or beneficial community purpose'.	N
SA	<i>Shop Trading Hours Act 1977</i>	Section 6	Exemptions to the Act for any shop conducted for a period not exceeding one week and where the proceeds are devoted to a 'charitable, religious or benevolent purpose'.	N
SA	<i>Stamp Duties Act 1923</i>	Section 71, Schedule 2, Part 1	Exemption to conveyancing provisions for the transfer for property to a body established 'wholly for charitable or religious purposes' and where the property won't be largely used for commercial or business purposes.  An exemption to fees payable for registration of a motor vehicle for an income tax exempt charity (under the Commonwealth <i>Income Tax Assessment Act 1997</i> ) which is a disability service provider.	Y

Jurisdiction	Act	Section	Charity reference	State Revenue implications
SA	<i>Statistics Act 1935</i>	Schedule	Allows statistics to be collected for 'education, hospitals, charitable and religious institutions and social services generally'.	N
SA	<i>Survey Act 1992</i>	Section 4	A 'charitable organisation that is a beneficiary of a trust' is not a sufficient reason to be regarded as occupying a 'position of authority' in the trust.	N
SA	<i>Trustee Act 1936</i>	Section 69A, 69C, 69D	If a charitable trust's property is used partly for non-charitable purposes and invalid, this will affect their status as a 'charitable trust'. Recognises a trust that provides recreational facilities for the public benefit as a 'charitable trust'.  A trust may still be 'charitable' despite a connection to government.	N
SA	<i>Veterinary Practice Act 2003</i>	Section 3	A 'charitable organisation that is a beneficiary of a trust' is not a sufficient reason to be regarded as occupying a 'position of authority' in the trust.	N
SA	<i>Volunteers Protection Act 2001</i>	Section 3	'Community work' means work by a community organisation for the following purposes: a) Religious, educational, charitable or benevolent purposes b) Advancing literature, science or arts purposes c) Caring, treating or assisting people with a physical or mental disability or condition purposes d) Sport, recreation or amusement purposes e) Conserving or protecting the environment purposes f) Historical or cultural heritage purposes g) Political purpose h) Promoting interests of a local community.	N
SA	<i>Payroll Tax Act 2009</i>	Section 48	Exempts wages from payroll tax for non-profit organisations if they are paid to a religious institution, a PBI or a non-profit organisation with a sole or dominant purpose a charitable purpose (but not including a school).	Y
NT	<i>Anti-Discrimination Act</i>	Section 52	Exemptions for people including discriminatory provisions within a will, deed or instrument for 'charitable benefits' which is defined as exclusively charitable purposes according to the law in force in any part of Australia.	N
NT	<i>Associations Act</i>	Section 4	Specifies that an association, society, institution or body formed or carried on for 'a religious, educational, benevolent or charitable purpose' will be recognised as an association.	N
NT	<i>Co-operatives (National Uniform Legislation) Act</i>	Section 356	Enables co-operatives to apply part of their surplus for a 'charitable purpose'.	N
NT	<i>Northern Territory Rates Act</i>	Section 24	Exemptions to land rates for 'land used for a non-commercial purpose by a public benevolent institution or a public charity'.	Y
NT	<i>Law of Property Act</i>	Section 183, 188	Enables a disposition in favour of a charity for a rule against perpetuities in the case of an unborn husband or wife.  Exemption of rule against perpetuities in relation to gifts from one charity to another.	N

Jurisdiction	Act	Section	Charity reference	State Revenue implications
NT	<i>Personal Injuries (Liabilities &amp; Damages) Act</i>	Section 7, 7A	Protection of food donors from a civil liability if food is donated 'in good faith for a charitable or benevolent purpose' and where other food handling requirements are met.  Community work is defined by: a) Religious, educational, charitable or benevolent purposes b) Advancing literature, science or arts purposes c) Sport, recreation or amusement purposes d) Conserving or protecting the environment purposes e) Community, social or cultural centre purposes f) Promoting interests of a local community g) Political purpose.	N
NT	<i>Special Purposes Leases Act</i>	Section 11	Exemption to re-appraisal of rent for land leased with the purpose of being used solely as a church, mosque or synagogue, or a residence for members of a religious order or a charitable institution. An ancillary purpose will also be accepted for exemption.	N
NT	<i>Wills Act</i>	Section 20	Application for leave of Court will required to reference any gift for a body, 'whether charitable or otherwise, or for a charitable purpose' that is reasonably expected to be given.	N
NT	<i>Health Services Act 2014</i>	Section 9	Provides recognition of 'certain non-profit, charitable or other non-government organisation and institutions' as part of the Public Health System if they control institutions or provide health services that 'significantly contribute' to the system.	N
NT	<i>Residential Tenancies Act</i>	Section 6	Exempts agreements made for premises that provide for 'homeless, unemployed or disadvantaged persons for charitable purposes' or for emergency accommodation.	N
NT	<i>Stamp Duty Act</i>	Section 4F	Exemptions to stamp duties apply for an 'exempt entity' which includes public hospitals, PBIs, religious institutions, public education institutions, an entity promoting the interests of a non-profit school and non-profit organisation with a 'charitable, benevolent, philanthropic or patriotic purpose'.	Y
NT	<i>Caravan Parks Act</i>	Section 10	Exemptions apply for agreements where the caravan or caravan sit is used for homeless, unemployed or disadvantaged persons for a charitable purpose or for an emergency accommodation.	N
NT	<i>Animal Welfare Act</i>	Section 68F	If the Authority is to deal with 'an animal or thing', they may give it to a 'charitable organisation'.	N
NT	<i>Legal Profession Act</i>	Section 227	One of the many factors that a body corporate must comply with to be recognised as a 'complying community legal centre' is that funded significantly by donations or grants from government, charitable or other organisations.	N

