

*Background Briefings*

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# Jurisdictions with Statutory Definitions of Charity

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*Myles McGregor-Lowndes, Professor, The Australian Centre  
for Philanthropy and Nonprofit Studies, Queensland  
University of Technology*



**The Pemsel Case**  
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"The law of charity is a moving subject"  
– Lord Wilberforce

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## About Us

Named after the 1891 House of Lords decision, *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531, which established the four principal common law heads of charity used in Canada and elsewhere, The Pemsel Case Foundation is mandated to undertake research, education and litigation interventions to help clarify and develop the law related to Canadian charities. The Pemsel Case Foundation is incorporated under the Alberta Societies Act and is a registered charity.



The Pemsel Case  
FOUNDATION

Suite 1150, 10060 Jasper Avenue,  
Edmonton, Alberta, T5J 3R8

[www.pemselfoundation.org](http://www.pemselfoundation.org)

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## Jurisdictions with Statutory Definitions of Charity

The legal regimes which have legislated the definition of charity in a number of common law countries are discussed below. The selection of countries examined is not exhaustive, but has been chosen as being broadly illustrative of current overseas practice. Extracts from relevant legislation are located at the end of this section.

### 1. Australia

The Charities Definition Inquiry (CDI)<sup>1</sup> had its genesis in significant tax reform at the turn of the century when Australia adopted a broad-based transaction tax (known as the Goods and Services Tax or GST) to replace a wholesale sales tax (WST) and some other state transaction taxes.<sup>2</sup> To secure the passage of the legislation, the government made various concessions, including a promise to hold an inquiry into the definition of charity that was used to exempt or preference certain nonprofit organisations. Nearly two years later an inquiry into definitional issues relating to charitable, religious and community service nonprofit organisations – the Inquiry into the Definition of Charities and Related Organisations (CDI Inquiry) – was held.<sup>3</sup> It was not a full independent Law Reform Commission brief as expected, but a relatively quick ‘committee’ inquiry headed by three prominent lawyers.

The Inquiry reported on 30 June 2001 to the Federal Treasurer. It made 27 recommendations, among which was the introduction of a statutory definition of charity with an independent administrative body for federal law. It recommended specifically that:

- The principles enabling charitable purposes be set out in legislation; and
- State and territory governments agree to adopt a nationally consistent definition.

In relation to widening the definition of charity it recommended that:

- Self-help groups that have open and non-discriminatory membership be regarded as meeting the public benefit test and thus be deemed charitable;
- Closed or contemplative religious orders also be regarded as meeting the public benefit test and thus be deemed charitable; and
- Care, support and protection of children be a charitable purpose.

It also recommended that the following matters should not be considered charitable:

- Sport and recreation, unless a charitable purpose was furthered by it;
- Bodies effectively controlled by government;
- Bodies that have purposes that promote a political party or a candidate for political office;
- Bodies where there is a relationship between beneficiaries and the donor such as family or employment relationship;
- Bodies that have illegal purposes or are contrary to public policy; and

<sup>1</sup> *Inquiry into the Definition of Charities and Related Organisations* (the CDI), established 18 September 2000: <http://www.cdi.gov.au/>

<sup>2</sup> *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

<sup>3</sup> The Hon John Howard MP, ‘Inquiry into Charitable and Related Organisations’ (Media Release, 18 September 2000), Pandora Archive, National Library of Australia [http://pandora.nla.gov.au/pan/10052/20010821-0000/www.pm.gov.au/news/media\\_releases/2000/media\\_release456.htm](http://pandora.nla.gov.au/pan/10052/20010821-0000/www.pm.gov.au/news/media_releases/2000/media_release456.htm).

- Bodies that have activities that are illegal, contrary to public policy or promote a political party or a candidate for political office.

After receiving the recommendations of the CDI Inquiry Report,<sup>4</sup> the federal government announced in 2003 that it intended to amend the definition of charity for all federal purposes including income tax exemption, and requested the Board of Taxation to prepare a report on a draft bill, which was released in May 2004.<sup>5</sup> The Board of Taxation is a body, independent of government, which reviews potential taxation legislation and advises the government on improving its design and effectiveness. The Board was to consult not about the announced policy of the government, but about its workability as enacted in the legislation. It found a number of possible defects in the legislation and reported widespread opposition amongst charities and their professional advisers.<sup>6</sup>

The Treasurer finally brought a much shorter and revised bill before Parliament to amend the definition of charity in a very limited way, ignoring most of the CDI recommendations. The bill contained a statutory extension to the common law definition of charity to include nonprofit child care available to the public, self-help groups with open non-discriminatory membership, and closed or contemplative religious orders that offer prayerful intervention for the public. The legislation applied from 1 July 2004.<sup>7</sup>

Many were disappointed with these minor amendments, and after a change of government, they attracted the attention of the new government with a reformist bent. The new Treasurer commissioned a research report from the Productivity Commission, another government funded, but independent, policy research body. In 2010, the Commission published a wide-ranging report on the charitable sector and made recommendations about the definition of charity, which revived the CDI report recommendations. Specifically the recommendations included:

- 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 eligibility for their jurisdictional concessions, and seek to harmonise tax concessional status definitions or classifications with the Commonwealth over time.<sup>8</sup>

This time the government acted upon the report and in 2012 a discussion paper on a statutory definition of charity was released by Treasury. In the same year, an independent commission known as the Australian Charities and Not-for-profits Commission (ACNC) was established by its own legislation to act as a one-stop registration gateway for charities accessing Commonwealth entitlements, including fiscal concessions. In 2013, a draft charity definition bill was released for

<sup>4</sup> I Sheppard, R Fitzgerald and D Gonski, *Report of the Inquiry into the Definition of Charities and Related Organisations* (2001) (CDI Report).

<sup>5</sup> Hon Peter Costello MP, Treasurer of Australia, 'Release of Charities Definition Exposure Draft' (Media Release, No 059, 22 July 2003).

<sup>6</sup> Board of Taxation, *Review of the Definition of a Charity*, <[http://www.taxboard.gov.au/content/content.aspx?doc=reviews\\_and\\_consultations/definition\\_of\\_a\\_charity/default.htm&pageid=007](http://www.taxboard.gov.au/content/content.aspx?doc=reviews_and_consultations/definition_of_a_charity/default.htm&pageid=007)>.

<sup>7</sup> *Extension of Charitable Purpose Act 2004* (Cth).

<sup>8</sup> Productivity Commission, *Contribution of the Not-for-Profit Sector: Research Report* (2010), xlvii.

comment, and then a bill was introduced into parliament. The Charities Bill 2013 and the Charities (Consequential Amendments and Transitional Provisions) Bill 2013 were passed in 2013 to come into force on 1 January 2014. This significant legislative reform has led to expansion and clarification of the definitions of charity, but the exact boundaries will be shaped by administrative practice and eventually through judicial review.

The statutory definition set out in the Charities Act 2013 (the Act) 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. It is expected that this will still allow further judicial development in the Commonwealth jurisdiction.

The statutory definition moves from the four traditional *Pemsel* purposes to eleven categories of charitable purpose under the Act:

- advancing health;
- advancing education;
- advancing social or public welfare;
- advancing religion;
- advancing culture;
- promoting reconciliation, mutual respect and tolerance between groups of individuals in Australia;
- promoting or protecting human rights;
- advancing the security or safety of Australia or the Australian public;
- preventing or relieving the suffering of animals;
- advancing the natural environment;
- any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, the above purposes;
- promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, in furtherance or protection of one or more of the above purposes.<sup>9</sup>

As can be seen, the nomenclature of education and religion remain, while relief of poverty, sickness and the needs of the aged are captured under the headings of advancing health and advancing social or public welfare. The other eight categories capture the fourth head, purposes beneficial to the community, with an encompassing provision for beneficial purposes analogous to those stated. It is worth noting that the various purposes adopt different verbs: ‘advancing’, ‘promoting’, ‘promoting or opposing’, and ‘promoting or protecting’. The Act defines ‘advancing’ to include protecting, maintaining, supporting, researching and improving,<sup>10</sup> but the other terms are not defined. The dictionary and ordinary meanings of the words are very similar. As a matter of statutory interpretation, where the drafter could have used the same word but chose to use a different word, it can be inferred that the intention was to change the meaning.<sup>11</sup> If this is the case, it is unclear whether the meaning of ‘promoting’ will be wider or narrower than ‘advancing’.

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<sup>9</sup> *Charities Act 2013* (Cth) s 12.

<sup>10</sup> *Charities Act 2013* (Cth) s 3.

<sup>11</sup> *Scott v Commercial Hotel Merbein Pty Ltd* [1930] VLR 75; see DC Pearce and RS Geddes, *Statutory Interpretation in Australia*, (Lexis Nexis Butterworths, 8th ed, 2014) 150 ff.

### *Purposes for public benefit*

Certain purposes are presumed to be for the public benefit unless there is evidence to the contrary. These are: preventing and relieving sickness, disease or human suffering; advancing education; relieving the poverty, distress or disadvantage of individuals or families; caring for and supporting the aged or people with disabilities; and advancing religion.<sup>12</sup> These maintain the common law position, but the presumption is extended to the whole of the public benefit test, rather than merely a presumption that the purpose is beneficial. In line with the common law position, the presumption of public benefit is rebutted or overturned where there is evidence available to suggest that an entity does not in fact meet the public benefit test or an element of the test, so an organisation may be challenged to provide evidence demonstrating that its purpose is for a public benefit.

### *Indigenous Kinship Organisations*

Indigenous kinship organisations may fail the public benefit test under the common law because they direct benefits to persons who are related, so the Act has addressed this problem. For example, an organisation may hold, receive or manage money or non-cash benefits, including assets relating to native title or traditional indigenous rights of ownership, occupation, use or enjoyment of land. As traditional land ownership or usage involves persons who are related or otherwise connected in a way traditionally recognised by indigenous persons, the effect may be that these entities direct benefits only to such persons. Where the purpose of an organization that has land rights related assets would fail a public benefit test solely because the entity directs benefits to indigenous Australians who are related, the purpose is treated as being for the public benefit under the Act.<sup>13</sup>

The other aspects of the public benefit test, including the nature and purposes of the entity, the beneficiary class, other relationships between the beneficiaries and the number of beneficiaries, are still relevant when determining whether the entity is charitable.

### *Self-Help and Closed Religious Orders*

The public benefit test does not apply to open and non-discriminatory self-help groups, closed or contemplative religious orders or where the purpose is directed to one or more individuals in necessitous circumstances, as described in the ITAA 1997.<sup>14</sup> This continues the widening of the definition to these organisations under the *Extension of Charitable Purpose Act 2004*.

### *Poor Relations and Poor Employees*

The CDI report agreed<sup>15</sup> with the UK Goodman report of 1976<sup>16</sup> that the ‘poor relations’,<sup>17</sup> ‘poor employees’<sup>18</sup> and poor ‘association members’<sup>19</sup> exemption from the normal test of public benefit should be removed as being anomalous in contemporary Australia. The Act does not accommodate these anomalies. However, organisations that have a purpose of relieving poverty and were

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<sup>12</sup> *Charities Act 2013* (Cth) s 7.

<sup>13</sup> *Charities Act 2013* (Cth) s 9.

<sup>14</sup> *Charities Act 2013* (Cth) s 10.

<sup>15</sup> CDI Report at p 129.

<sup>16</sup> National Council of Social Service, *Charity Law and Voluntary Organisations: Report of an independent committee of inquiry to examine the effect of charity law and practice on voluntary organisations* (Bedford Square Press, 1976) (the Goodman Report).

<sup>17</sup> *Re Scarisbrick* [1951] 1 Ch 622.

<sup>18</sup> *Dingle v Turner* [1972] AC 601.

<sup>19</sup> *Armstrong v Attorney-General (NSW)* (1934) 34 SR (NSW) 54.

registered with the ACNC before the commencement of the Act will continue to be treated as being for the public benefit following the commencement of the Act.<sup>20</sup>

### *Disasters*

The common law limits charitable purpose to the relief of individual distress after a disaster.<sup>21</sup> The purpose of advancing social and community welfare includes the purpose of assisting rebuilding, repairing or securing assets after a disaster.<sup>22</sup> The effect of the provision is to extend charitable purposes to include re-establishing not-for-profit community assets after a disaster, independently of the relief of individual distress. Any benefits of a commercial or private nature must be only incidental or ancillary to re-establishing the community assets and the assets must not be government assets. Rebuilding may be in a different location and to a higher standard where necessary to mitigate future risk.

### *Promoting or protecting human rights*

It had not been clear in Australia that the purposes of promoting and protecting human rights were charitable, but it is now listed among the Act's charitable purposes. The purpose of promoting or protecting human rights refers to the rights and freedoms recognised or declared by the international instruments specified in the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia. The international instruments cover the elimination of racial discrimination and discrimination against women; economic, social and cultural rights; civil and political rights; conventions against torture and cruel, inhuman or degrading treatment or punishment; rights of the child; and rights of individuals with disabilities. Promoting or protecting human rights includes, without limitation:

- promoting human rights, at home or abroad;
- relieving victims of human rights abuse; and
- raising awareness of human rights issues.

### *Promoting or opposing a change in the law*

The High Court ruled in 2010 that the organisation Aid/Watch was not disqualified from charitable status by virtue of its main purposes, which included generating public debate about the effectiveness of the government's foreign aid.<sup>23</sup> The court decided that there is no general doctrine in Australia to exclude political objects from charitable purposes and that the English case of *McGovern v Attorney-General*<sup>24</sup> does not apply. The majority decision did issue a note of warning that disqualification of charitable purpose may still occur where a purpose does not contribute to the public welfare, probably by reason of the particular ends and means involved.<sup>25</sup> This was a significant expansion of the allowed charitable purposes as commonly understood in Australia, as the ATO had maintained that the *McGovern case* applied. Its public ruling on the definition of charity at the time noted:

An institution or fund is not charitable if its purpose is advocating a political party or cause, attempting to change the law or government policy, or propagating or promoting a particular point of view.<sup>26</sup>

<sup>20</sup> Charities (Consequential Amendments and Transitional Provisions) Bill 2013, Schedule 2, item 6.

<sup>21</sup> *Re Trust Deed relating to the Darwin Cyclone Tracy Relief Trust Fund* (1979) 39 FLR 260.

<sup>22</sup> *Charities Act 2013* (Cth) s 15(4).

<sup>23</sup> *Aid/Watch Incorporated v Commissioner of Taxation* (2010) 241 CLR 539, [48].

<sup>24</sup> [1982] Ch 321.

<sup>25</sup> *Aid/Watch Incorporated v Commissioner of Taxation* (2010) 241 CLR 539, [49].

<sup>26</sup> Australian Taxation Office, *Income Tax and Fringe Benefits Tax: Charities*, Tax Ruling TR2005/21 (2005) 27, [102].



The new statutory definition of charitable purposes acknowledges this understanding with an express inclusion among charitable purposes of the ‘purpose of promoting or opposing a change to any matter established by law, policy or practice’ provided it is ‘in furtherance of’ the other charitable purposes listed.<sup>27</sup> This is arguably narrower than the High Court’s view which explained the basis of its decision:

The provisions of the Constitution mandate a system of representative and responsible government with a universal adult franchise, and s 128 establishes a system for amendment of the Constitution in which the proposed law to effect the amendment is to be submitted to the electors. Communication between electors and legislators and the officers of the executive, and between electors themselves, on matters of government and politics is ‘an indispensable incident’ of that constitutional system. While personal rights of action are not by these means bestowed upon individuals in the manner of the *Bivens* action known in the United States, the Constitution informs the development of the common law. Any burden which the common law places upon communication respecting matters of government and politics must be reasonably appropriate and adapted to serve a legitimate end in a manner which is compatible with the maintenance of that system of government.

The system of law which applies in Australia thus postulates for its operation the very ‘agitation’ for legislative and political changes ... it is the operation of these constitutional processes which contributes to the public welfare. A court administering a charitable trust for that purpose is not called upon to adjudicate the merits of any particular course of legislative or executive action or inaction which is the subject of advocacy or disputation within those processes.<sup>28</sup>

While the new legislative provision is clearly wider than the pre-Aid/Watch position of the ATO, arguably it fails to give full expression to the High Court’s view that public debate is ‘an indispensable incident’ of the Australian Constitution, and thereby narrows the future development of Commonwealth jurisprudence of this line of reasoning in respect of charitable purposes. Section 11 the Act still makes a purpose (not activity) of engaging in or promoting activities which are unlawful or contrary to public policy a disqualifying purpose. Public policy refers to matters such as the rule of law and system of government – it does not refer to government policies.

## 2. Overseas Definitions

The legal regimes in place in a number of other common law countries are discussed below. The selection of countries examined is not exhaustive, but has been chosen as being broadly illustrative of current overseas practice. Extracts from relevant legislation are located at the end of this section.

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<sup>27</sup> *Charities Act 2013* (Cth) s 12(1)(l).

<sup>28</sup> *Aid/Watch Incorporated v Commissioner of Taxation* (2010) 241 CLR 539, [44]–[45], references omitted.

### **Barbados**

In 1978 the Barbados Parliament, in light of the Goodman report<sup>29</sup> and as part of an attempt to attract the headquarters of major international charities to Barbados, passed the *Charities Act*.<sup>30</sup> The *Charities Act 1979* defines a charity in section 2 as ‘any institution (corporate or not) which is established for charitable objects or purposes, and which is intended to and does operate for the public benefit, and is subject to the control of the High Court in the exercise of its jurisdiction with respect to charities’.

Section 3 of the *Charities Act* sets out the types of objects which the law regards as charitable purposes. The statutory definition is not an exhaustive list of possible purposes. However, only those charities with objects which, in the opinion of the Registrar, fall within the ‘spirit of, and are analogous to’, the charitable purposes listed in the Act will be registered as charities under the Act. The term ‘charitable purposes’ is defined by means of a non-exhaustive list covering 26 main purposes and 14 amplifying sub-headings. ‘Public benefit’ is defined, in part, as a ‘benefit of a kind comprised within the scope of charitable purposes which is available to members of the public at large or to a section of the public ascertained by reference to some specified geographical area’.

### **Bermuda**

In Bermuda, the *Charities Act 2014*<sup>31</sup> applies. Section 2 of the Act defines a charity as an entity established in Bermuda for charitable purposes only. Charitable purposes are listed in section 4(1) in similar terms to those under the England and Wales legislation (see below), with amplifications in section 4(2). The public benefit requirement is outlined in section 5. Charities are regulated by a committee called the Charity Commissioners for Bermuda in conjunction with the Registrar of charities: sections 7 to 12.

### **Canada**

Like Australia, Canada is a federal state in which constitutional power over charities rests with the Provinces. However, the federal government’s jurisdiction with respect to income tax has ensured that the definition given to charities under the federal *Income Tax Act* is of considerable importance.

To be entitled to the privileges offered to charities under the *Income Tax Act*, a charitable entity must have the status of ‘registered charity’. However, that Act does not define ‘charity’. In deciding whether an organisation is entitled to registered status, the Canada Revenue Agency (CRA) relies on a reasonably traditional interpretation of the common law tests, as well as the Act’s particular rules on such things as political activities and unrelated and related business activities.<sup>32</sup>

‘Registered charity’ is defined as ‘a charitable organisation, private foundation or public foundation’ (or ‘a branch, section, congregation, parish, or other division’ of any of these), that is *resident* in Canada, that was *created or established* in Canada, and that is *registered* with the Minister of National Revenue.<sup>33</sup> Each of the three subdivisions of ‘registered charity’, namely ‘charitable organisation’, ‘private foundation’, and ‘public foundation’ are in turn separately defined and separately regulated under the Act.

<sup>29</sup> National Council of Social Service, *Charity Law and Voluntary Organisations*: Report of an independent committee of inquiry to examine the effect of charity law and practice on voluntary organisations (Bedford Square Press, 1976) (Goodman report).

<sup>30</sup> *Charities Act 1979*, Cap. 243 Barbados.

<sup>31</sup> See <http://www.bermudalaws.bm/Laws/Consolidated%20Laws/Charities%20Act%202014.pdf>.

<sup>32</sup> For examples see at: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/mdl/mdl-bjcts-eng.html>.

<sup>33</sup> *Income Tax Act*, (RSC 1985, c1 (5th Supp)), s 248(1).

For the most part, the Canadian provinces and territories have not defined ‘charity’ or ‘charitable purposes’ in legislation but left it to the courts to apply the common law. However, in some jurisdictions there are statutory definitions which, to varying degrees, expand or modify the common law definition.

In Alberta, the *Charitable Fund-raising Act*<sup>34</sup> extends the common law by defining ‘charitable purpose’ as including ‘a philanthropic, benevolent, educational, health, humane, religious, cultural, artistic or recreational purpose, so long as the purpose is not part of a business’.<sup>35</sup> Similarly, in Manitoba the *Charities Endorsement Act*<sup>36</sup> defines ‘charitable purpose’ as including ‘any charitable, benevolent, philanthropic, patriotic, athletic, artistic, or civic purpose that has as its object the promotion of a civic improvement or the provision of a public service’.<sup>37</sup> The Prince Edward Island *Charities Act*<sup>38</sup> defines ‘charity’ as meaning ‘any person, association, institute or organisation under whose auspices funds for benevolent, educational, cultural, charitable or religious purposes are to be raised’.<sup>39</sup> Under the Saskatchewan *Non-profit Corporations Act 1995*<sup>40</sup> a ‘charitable corporation’ means (in part) ‘a corporation incorporated or continued pursuant to this Act to carry on activities that are primarily for the benefit of the public’.<sup>41</sup> A generalised definition is also found in Ontario’s *Charities Accounting Act*<sup>42</sup> where a charitable corporation is defined as ‘any corporation incorporated for a religious, educational, charitable or public purpose’.

### **England and Wales**

England and Wales have consolidated previous charity law into the *Charities Act 2011* which defines a charity in section 2(1) as ‘an institution which is established for charitable purposes only’. ‘Charitable purposes’ are defined in sub-sections 3(1) and 3(2).<sup>43</sup> Thirteen charitable purposes are listed in sub-section 3(1) with amplifications of some of these in sub-section 3(2):. The purposes have to be applied for the public benefit: section 2(1)(b).

However the *Charities Act* definition of charity does not apply for the purposes of other legislation if a different definition is stated to apply for those purposes: section 2(2). For example, section 202 of the *Corporation Tax Act 2010* defines ‘charity’ for the purpose of Part 6 Chapter 2 of that Act to mean:

- (a) a body of persons or trust established for charitable purposes only,
- (b) a scientific research association (as defined in section 469),
- (c) the Trustees of the National Heritage Memorial Fund,
- (d) the Historic Buildings and Monuments Commission for England, or
- (e) the National Endowment for Science, Technology and the Arts.

<sup>34</sup> *Charitable Fund-raising Act* (RSA 2000, c C-9)

<sup>35</sup> Section 1(1)(c) of the Act.

<sup>36</sup> *Charities Endorsement Act*, CCSM c C60

<sup>37</sup> Section 1(1) of the Act.

<sup>38</sup> *Charities Act*, RSPEI 1988, c C-4

<sup>39</sup> Section 1(b) of the Act.

<sup>40</sup> *Non-profit Corporations Act*, 1995, SS 1995, c N-4.2.

<sup>41</sup> Section 2(1) of the Act.

<sup>42</sup> *Charities Accounting Act*, RSO 1990, c C.10.

<sup>43</sup> See <http://www.legislation.gov.uk/ukpga/2011/25/section/3>.

In England and Wales the registration of charities is administered by the Charity Commission for England and Wales, an independent statutory authority.<sup>44</sup>

### **Hong Kong**

Hong Kong has no formal registration system for charitable organisations and no specific government authority has overall responsibility for charities. Moreover, it is not compulsory for charities to have their names placed on any lists. There are lists of charities in existing legislation, such as the list of charities exempted from tax under section 88 of the Inland Revenue Ordinance (Cap 112), but there is no comprehensive and conclusive listing of all the charities in Hong Kong.

In December 2013, the Law Reform Commission of Hong Kong published a report proposing that all charitable organisations that solicit cash or its equivalent from the public, or have sought tax exemption, should be required to register as a charity. It put forward 18 recommendations with the aim of improving the transparency and accountability of charities and thus providing better safeguards to the public.<sup>45</sup> The recommendations included a specifically formulated reporting standard, a statutory definition of ‘charitable purpose’, disclosure of certain documents including financial statements and reports of activities for tax-exempt charities, and further educational initiatives to broaden knowledge and awareness of the sector. The Law Reform Commission stated that the changes could be implemented by amending existing legislation, rather than through the creation of a new charity law.

However, the public consultation phase of the reform process resulted in many of the Law Reform Commission’s recommendations being sidelined. In particular, the recommendation for a centralised charity commission was removed from the Law Reform Commission’s final report due to the ‘apparent lack of general consensus among the public’. Currently, the report’s recommendations are listed as ‘partially implemented’ by the government. The response of the Home Affairs Bureau currently states:<sup>46</sup>

The recommendations of the LRC Report on charities are relevant to the purviews of various Government bureaux and departments. The Bureau has been coordinating Government responses to the recommendations. The Bureau has sought input from relevant bureaux and departments, and has held meetings to discuss the LRC Report. Noting that the recommendations would have significant implications on the operation of the charities in Hong Kong, the Bureau, together with relevant bureaux and departments, will continue to study the recommendations in more detail with a view to formulating Government responses.

### **Ireland**

In Ireland, charities are regulated by the *Charities Act 2009* which partially repeals the *Charities Act 1961*. In the 2009 Act, a ‘charitable trust’ is defined in section 2(1) as a trust established for charitable purposes only. ‘Charitable purposes’ are defined in section 3(1) in terms similar to the common law test for charitable purposes:

- (a) the prevention or relief of poverty or economic hardship;
- (b) the advancement of education;

<sup>44</sup> See <https://www.gov.uk/government/organisations/charity-commission>.

<sup>45</sup> See <http://www.hkreform.gov.hk/en/publications/rcharities.htm>.

<sup>46</sup> See <http://www.hkreform.gov.hk/en/implementation/index.htm#e>.

- (c) the advancement of religion;
- (d) any other purpose that is of benefit to the community.

There are 12 other purposes of benefit to the community listed in sub-section 3(11), and these are not exclusive. A public benefit test is provided in sub-section 3(2).<sup>47</sup>

Charities are regulated by the Charities Regulatory Authority (CRA). The CRA was established on 16 October 2014 under the *Charities Act 2009* as an independent statutory authority.<sup>48</sup>

### **Jamaica**

Jamaica's *Charities Act 2013* commenced operation in January 2014. Prior to this, recording of charitable status of organisations was piecemeal in Jamaica. Some information was kept by the Companies Office, some by the Department of Cooperative and Friendly Societies, and some by the Clerk of the Houses of Parliament. Therefore, the purpose of the Act is one of transparency and control: see section 5.

The Act established a Charities Authority, which is responsible for maintaining a register of all registered charitable organisations in Jamaica. The designated Charities Authority is the Department of Cooperatives and Friendly Societies (DCFS).<sup>49</sup> Most of the *Charities Act* deals with the operation of the Charities Authority and the registration and reporting requirements for charitable organisations in Jamaica. A Charities Appeal Tribunal is also established in Part VI and the Fourth Schedule.

Section 2 of the *Charities Act* streamlines definitions relating to charity. A 'charitable organisation' is defined as:

- (a) a charitable trust; or
- (b) any institution, whether incorporated or not, which is –
  - (i) established for a charitable purpose exclusively;
  - (ii) is intended to and does operate for the public benefit; and
  - (iii) has no part of its net income or assets enuring to the personal benefit of any governing board member or settler of the organisation, or any other private individual,
 but shall not include an excluded body.

An 'excluded body' includes a political party, a trade union, a representative body of employers, a chamber of commerce or similar body, and any body which pursues an illegal purpose, one prejudicial to public order and safety, or which is for the purpose of terrorism inside or outside Jamaica.

'Charitable purpose' is defined in section 2 by reference to section 3. Under sub-section 3(1) a charitable purpose is a purpose that is listed in the First Schedule to the Act and is for the public benefit. The list of charitable purposes is modelled on the list in the *Charities Act 2011* for England and Wales. Section 3 also deals with ancillary, subordinate or incidental purposes which are permitted if there is a main charitable purpose, and the incidental purposes are not themselves independent purposes of the registered organisation. Section 4 defines 'public benefit' as a benefit

<sup>47</sup> See <http://www.irishstatutebook.ie/eli/2009/act/6/section/3/enacted/en/html#sec3>.

<sup>48</sup> See <https://www.charitiesregulatoryauthority.ie/>.

<sup>49</sup> See <http://dcfsjamaica.org/>.

available to the public at large, or to a section of the public ascertained by reference to a specified geographic area.

### **Jersey**

The *Charities (Jersey) Law 2014* (CJL)<sup>50</sup> was passed by the States Assembly (Jersey's legislature) on 18 July 2014. Jersey previously had no statute law specifically relating to charities, relying instead on the common law definition of charity in the Statute of Elizabeth 1601. Tax exemptions for charity were dealt with by the *Income Tax (Jersey) Law 1961*.

The CJL introduces a new definition of charitable purposes, a charity test and a registration process for charities. It complements existing legislation in the *Trusts (Jersey) Law 1984* and the *Foundations (Jersey) Law 2009*. The process of enacting the legislation, with full regulatory impact, is expected to take until 2018. The following definitions apply in the CJL:

- A 'charity' is an entity registered as a charity in Jersey;
- A 'Jersey charity' is a Jersey entity registered as a charity in Jersey;
- The term 'charitable' will not be able to be used when soliciting public donations unless the entity is a registered charity in Jersey;
- A 'non-Jersey charity', such as a UK charity, can be called a 'charity' in Jersey but cannot be registered in Jersey if it is registered, or exempt from registration, in the UK (and potentially in other jurisdictions). A non-Jersey charity will also be one which is:
  - entitled to be called a charity in the UK;
  - wholly or mainly managed or controlled outside Jersey;
  - not engaged in any activity in Jersey except fundraising activity.

The charitable purposes in the Jersey legislation are based on those of the *Charities and Trustee Investment (Scotland) Act 2005*. The States of Jersey will be able to add new charitable purposes in future by Regulation. A charity's purposes must all be charitable (listed in section 6) and provide a reasonable degree of public benefit in Jersey or elsewhere: section 5(1). However it is permitted to have incidental purposes or undertake activities which are incidental to its charitable purposes.

A public benefit is determined according to section 7, in light of the extent to which the benefit is limited to members of that entity or others, in comparison to the benefit to the public. Public benefit will not be presumed just because an entity has charitable purposes. A disbenefit to the public will occur where the benefit is restricted to a section of the public, or where there are restrictions on obtaining the alleged benefit.

### **New Zealand**

The applicable Act in New Zealand is the *Charities Act 2005*, as amended by the *Charities Amendment Act 2014*. The Act provides that 'charitable entity' means 'a society, an institution, or the trustees of a trust that is or are registered as a charitable entity under this Act': section 4(1). Charitable purposes are defined in sub-section 5(1) to reflect the common law definition:

In this Act, unless the context otherwise requires, **charitable purpose** includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.

<sup>50</sup> See <http://www.jerseylaw.je/Law/Display.aspx?url=%2Fflaw%2FLawsInForce%2Fhtm%2Fflawfiles%2F2014%2FL-41-2014.pdf>.

There is an amplification of this definition in sub-section 5(2A) to include ‘promotion of amateur sport’ as a charitable purpose ‘if it is the means by which a charitable purpose referred to in subsection (1) is pursued’.

Sub-section 5(2) provides for Maori charitable purposes:

However,—

- (a) the purpose of a trust, society, or institution is a charitable purpose under this Act if the purpose would satisfy the public benefit requirement apart from the fact that the beneficiaries of the trust, or the members of the society or institution, are related by blood; and
- (b) a marae has a charitable purpose if the physical structure of the marae is situated on land that is a Maori reservation referred to in *Te Ture Whenua Maori Act 1993* (Maori Land Act 1993) and the funds of the marae are not used for a purpose other than—
  - (i) the administration and maintenance of the land and of the physical structure of the marae:
  - (ii) a purpose that is a charitable purpose other than under this paragraph.

The previous New Zealand Charities Commission was disestablished as from 1 July 2012. Registration and control of charities is now dealt with by Charities Services, a part of the Department of Internal Affairs.<sup>51</sup>

### **Northern Ireland**

In Northern Ireland, the *Charities Act (Northern Ireland) 2008* (as amended by the *Charities Act (Northern Ireland) 2013*) applies. ‘Charity’ is defined in section 1 in similar terms to England and Wales, and ‘charitable purposes’ are defined in section 2 with a list of 12 purposes in sub-section 2(2),<sup>52</sup> amplified in sub-sections (3) and (4).<sup>53</sup>

The Act was amended by the *Charities Act 2013 (Northern Ireland)* in relation to the public benefit requirement: see amended section 3. Regulation of charities in Northern Ireland is undertaken by the Charity Commission for Northern Ireland.<sup>54</sup>

### **Scotland**

The applicable legislation in Scotland is the *Charities and Trustee Investment (Scotland) Act 2005* which contains a statutory definition of charity in section 7, with 16 charitable purposes listed in sub-section 7(2), with amplifications in sub-section 7(3).<sup>55</sup>

The registration of charities is dealt with by the Office of the Scottish Charity Regulator (OSCR), the activities of which are covered by the same Act: see section 1. The OSCR’s requirements for the registration of charities in Scotland are outlined on its website.<sup>56</sup>

### **South Africa**

<sup>51</sup> See <https://charities.govt.nz/>.

<sup>52</sup> Omitted from the list is the purpose of ‘the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services’ found in the England and Wales statute.

<sup>53</sup> See <http://www.legislation.gov.uk/nia/2008/12/section/2>.

<sup>54</sup> See <https://www.charitycommissionni.org.uk/>.

<sup>55</sup> See <http://www.legislation.gov.uk/asp/2005/10/section/7>.

<sup>56</sup> See <http://www.oscr.org.uk/>.

Reflecting its history, South Africa has inherited a legal system which is a combination of Roman-Dutch law and English common law.<sup>57</sup> It follows that South Africa has developed a law of charitable trusts which, while sharing elements with the English common law nations, is quite distinctive.

Nongovernmental organisations (NGOs) and community based organisations (CBOs) are collectively known as nonprofit organisations (NPOs).<sup>58</sup> The primary legislation is the *Nonprofit Organisations Act 1997*<sup>59</sup> (the NPO Act). An NPO is defined in section 1 of the NPO Act as a trust, company or other association of persons established for a public purpose and of which its income and property are not distributable to its members or office bearers except as reasonable compensation for services rendered. The legal framework for NPOs in South Africa consists of four tiers.<sup>60</sup> The first tier (*establishment*) allows for the establishment under statutory and common law of three forms of NPOs:

- Voluntary associations, established under common law;
- Nonprofit trusts, established under statutory law; and
- Nonprofit companies incorporated for a public benefit objective or an objective relating to one or more cultural or social activities, or communal or group interests, established under statutory law.

The second tier, voluntary registration, allows any of these organisational forms to apply for the status of a Registered Non-profit Organisation. Among other requirements, Registered Non-profit Organisations cannot distribute profits, and must meet certain governance criteria. The Register of Non-profit Organisations is a voluntary registration facility operated by the NPO Directorate, a part of the Department of Social Development.<sup>61</sup>

The third legislative tier (partial tax exemption) enables an NPO to apply for the status of 'Public Benefit Organisation' (PBO).<sup>62</sup> Among other requirements, the organisation's sole purpose must be to undertake one or more public benefit activities, carried out in a nonprofit manner and with an altruistic or philanthropic intent. PBOs are entitled to a broad range of fiscal benefits, including a partial income tax exemption, an exemption on donations tax, and for some, an exemption on transfer duty on immovable property.

The fourth legislative tier (donor deductibility status) allows PBOs to apply for the right to receive tax-deductible donations: on tax deductibility.<sup>63</sup>

### ***United States of America***

In the United States, as in Australia and Canada, the individual States retain constitutional responsibility with respect to the regulation of charities and other nonprofit organisations. However under the federal Internal Revenue Code (the Code), tax exempt status is available for many types of organisations, including those organisations described in section 501(c)(3), which are commonly referred to under the general heading of 'charitable organisations'. The exempt purposes set out in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. As to purposes which are charitable, the term 'charitable' is used in

<sup>57</sup> See <http://www.icnl.org/research/monitor/southafrica.html>.

<sup>58</sup> NPOs are also referred to as Civil Society Organisations (CSOs).

<sup>59</sup> *Nonprofit Organisations Act 1997* (No. 71 of 1997): <http://www.icnl.org/research/library/files/South%20Africa/npo.pdf>.

<sup>60</sup> See Council on Foundations <http://www.cof.org/content/south-africa#Types>.

<sup>61</sup> See <http://www.dsd.gov.za/npo/>.

<sup>62</sup> *Income Tax Act, 1962* (No. 58 of 1962) (as amended).

<sup>63</sup> See <http://www.sars.gov.za>.



its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighbourhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.<sup>64</sup>

There is also a plethora of State legislation regulating charities in the US. Many State laws rely upon a modified common law definition of charity or adopt the definition contained in section 501(c)(3) of the Code (or some modification of it and the common law).<sup>65</sup> In addition, many States have adopted the *Model Act concerning the Solicitation of Funds for Charitable Purposes* (the Model Act).<sup>66</sup> The Model Act contains a very broad definition of ‘charitable organisation’ and ‘charitable purpose’. It provides in section 1(a) that ‘charitable organisation’ means:

- (1) Any purpose described in Internal Revenue Code section 501(c)(3); or
- (2) Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary objective, or an objective that benefits law enforcement personnel, firefighters, or other persons who protect the public safety.

It has been suggested by some commentators that the ‘definition’ of charity is not a contentious issue in the United States, primarily because of the broad definition given to charitable purposes by the Code, and the wide view taken of the common law definition of ‘charitable’ by the Internal Revenue Service.<sup>67</sup>

## ATTACHMENTS (EXTRACTS FROM LEGISLATION)

### Attachment E.1 Barbados — Extracts from legislation

*The Laws of Barbados, Volume VIII, Title XVIII, Chapter 243, Charities*

...

2. For the purposes of this Act

...

‘charity’ means any institution, corporate or not, which is established for charitable objects or purposes, is intended to and does operate for the public benefit, and is subject to the control of the court in the exercise of its jurisdiction with respect to charities;

‘charitable objects’ has the same meaning as ‘charitable purposes’ as defined by section 3, and *vice versa*;

...

<sup>64</sup> See [https://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Purposes-Internal-Revenue-Code-Section-501\(c\)\(3\)](https://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Purposes-Internal-Revenue-Code-Section-501(c)(3)).

<sup>65</sup> List, with links to State legislation: [http://www.lionsclubs.org/resources/EN/pdfs/nonprofit\\_reg\\_state.pdf](http://www.lionsclubs.org/resources/EN/pdfs/nonprofit_reg_state.pdf).

<sup>66</sup> National Association of Attorneys General, [A Model Act Concerning the Solicitation of Funds for Charitable Purposes](#) (1986).

<sup>67</sup> ABC Drache and FK Boyle, *Charities, Public Benefit and the Canadian Income Tax System* (Kahanoff Foundation Non-Profit Sector Research Initiative, 1998).

3. For the purposes of this Act, the expression 'charitable purposes' includes the following purposes, namely:

- (a) the relief and prevention of poverty, howsoever caused;
- (b) the relief and prevention of sickness and disability, both physical and mental, including:
  - (i) the provision and staffing of hospitals, nursing and convalescent homes and clinics;
  - (ii) the promotion of medical research;
  - (iii) the provision of advice, treatment or comfort; and
  - (iv) the establishment of homes, workshops or other centres for the disabled or the mentally or physically handicapped or any other disadvantaged or needy persons;
- (c) the relief of the suffering and distress or disability caused by old age, including the provision of homes for the care and maintenance of the old, and of housing for old people adapted to their special needs;
- (d) the relief of distress caused by natural disasters or sudden catastrophes;
- (e) the advancement of education, including:
  - (i) the improvement of knowledge and its public dissemination in a way not constituting propaganda;
  - (ii) the provision of schools, colleges, universities and other like institutions;
  - (iii) the establishment in such institutions of professorships, fellowships, lectureships and other teaching and research posts;
  - (iv) the provision in such institutions of scholarships, bursaries, prizes and other awards,
  - (v) the provision both within and without such institutions of physical training and sport for young persons; and
  - (vi) the education of the public generally, including those not engaged in full-time study at such institution;
- (f) the promotion and publication of research with a view to increasing the common stock of knowledge;
- (g) the advancement of science and all recognised branches of learning and the establishment and maintenance of institutions therefor, including the support and maintenance of learned societies;
- (h) the cultivation of public taste in aesthetic matters, including art, music, literature and fine craftsmanship, and the establishment and development of facilities for their practice;
- (i) the provision and maintenance of museums and art galleries;
- (j) the advancement of religion and the encouragement of belief in, and reverence for, a divine power, and of the practice of worship of that power, including:
  - (i) the organisation and carrying out of religious instruction and pastoral and missionary work in Barbados and overseas;
  - (ii) the provision and maintenance of buildings for worship and other religious uses;
  - (iii) the payment of stipends to and the provision of houses for ministers of religion, their widows and dependent children; and
  - (iv) other purposes tending to promote the moral or spiritual welfare of the community;

- (k) the advancement of ethical and moral teachings and studies;
- (l) the provision of social welfare services for those in need of them;
- (m) the provision of housing for those in special need;
- (n) the promotion and improvement of the national heritage, whether physical, environmental, artistic, cultural or otherwise;
- (o) without prejudice to the operation of paragraph (e) (v), the promotion of sport and recreation, including the provision of facilities for recreation or other leisure-time occupations with the object of improving the conditions of life for those who have need of such facilities;
- (p) the welfare of children, including prevention of cruelty to them;
- (q) the promotion of the social welfare of the family, including the provision of facilities for family planning;
- (r) the welfare of animals, including prevention of cruelty to them;
- (s) the rehabilitation and resettlement of persons who have need of such services;
- (t) the establishment in life of young people;
- (u) the promotion and encouragement of projects for community development;
- (v) the establishment of organisations to assist members of the community with special needs such as one-parent families, single persons with dependants, battered spouses, specially gifted children and minority groups;
- (w) the provision of public work for the benefit of the community and the protection of the lives and property of the community;
- (x) the advancement and improvement of the standards of efficiency of industry, commerce and agriculture;
- (y) the maintenance and improvement of the efficiency of the armed forces and the Police Force and their welfare; and
- (z) any purpose within the spirit of, and analogous to, the foregoing.

4. 'Public benefit' includes benefit of a kind comprised within the scope of charitable purposes which is available to members of the public at large or to a section of the public ascertained by reference to some specified geographical area, but does not include such a benefit if the persons for whom it is intended to be available are to be ascertained by reference to their relationship with some body or other person, whether that relationship is one of blood, status, contract or otherwise.

## **Attachment E.2 England and Wales — Extracts from legislation**

### ***Charities Act 2011***

#### Section 1

#### **Meaning of "charity"**

- (1) For the purposes of the law of England and Wales, "charity" means an institution which—
- (a) is established for charitable purposes only, and
  - (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.
- (2) The definition of "charity" in subsection (1) does not apply for the purposes of an enactment if a different definition of that term applies for those purposes by virtue of that or any other enactment.

### Section 3

#### Descriptions of purposes

(1) A purpose falls within this subsection if it falls within any of the following descriptions of purposes—

- (a) the prevention or relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of citizenship or community development;
- (f) the advancement of the arts, culture, heritage or science;
- (g) the advancement of amateur sport;
- (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;
- (m) any other purposes—
  - (i) that are not within paragraphs (a) to (l) but are recognised as charitable purposes by virtue of section 5 (recreational and similar trusts, etc.) or under the old law,
  - (ii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of paragraphs (a) to (l) or sub-paragraph (i), or
  - (iii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised, under the law relating to charities in England and Wales, as falling within sub-paragraph (ii) or this sub-paragraph.

(2) In subsection (1)—

- (a) in paragraph (c), “religion” includes—
  - (i) a religion which involves belief in more than one god, and
  - (ii) a religion which does not involve belief in a god,
- (b) in paragraph (d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering,
- (c) paragraph (e) includes—
  - (i) rural or urban regeneration, and
  - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities,
- (d) in paragraph (g), “sport” means sports or games which promote health by involving physical or mental skill or exertion,
- (e) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph, and
- (f) in paragraph (l), “fire and rescue services” means services provided by fire and rescue authorities under Part 2 of the Fire and Rescue Services Act 2004.

(3) Where any of the terms used in any of paragraphs (a) to (l) of subsection (1), or in subsection (2), has a particular meaning under the law relating to charities in England and Wales, the term is to be taken as having the same meaning where it appears in that provision.

(4) In subsection (1)(m)(i), “the old law” means the law relating to charities in England and Wales as in force immediately before 1 April 2008.

### **Corporation Tax Act 2010**

#### **202 “Charity”**

In this Chapter “charity” means—

- (a) a body of persons or trust established for charitable purposes only,
- (b) a scientific research association (as defined in section 469),
- (c) the Trustees of the National Heritage Memorial Fund,
- (d) the Historic Buildings and Monuments Commission for England, or
- (e) the National Endowment for Science, Technology and the Arts.

### **Attachment E.3 Ireland – Extract from legislation**

#### **Charities Act 2009**

##### Section 3 Charitable purposes

(1) For the purposes of this Act each of the following shall, subject to subsection (2), be a charitable purpose:

- (a) the prevention or relief of poverty or economic hardship;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) any other purpose that is of benefit to the community.

(2) A purpose shall not be a charitable purpose unless it is of public benefit.

(3) Subject to *subsection (4)*, a gift shall not be of public benefit unless—

- (a) it is intended to benefit the public or a section of the public, and
- (b) in a case where it confers a benefit on a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit.

(4) It shall be presumed, unless the contrary is proved, that a gift for the advancement of religion is of public benefit.

(5) The Authority shall not make a determination that a gift for the advancement of religion is not of public benefit without the consent of the Attorney General.

(6) A charitable gift for the purpose of the advancement of religion shall have effect, and the terms upon which it is given shall be construed, in accordance with the laws, canons, ordinances and tenets of the religion concerned.

(7) In determining whether a gift is of public benefit or not, account shall be taken of—

- (a) any limitation imposed by the donor of the gift on the class of persons who may benefit from the gift and whether or not such limitation is justified and reasonable, having regard to the nature of the purpose of the gift, and
  - (b) the amount of any charge payable for any service provided in furtherance of the purpose for which the gift is given and whether it is likely to limit the number of persons or classes of person who will benefit from the gift.
- (8) A limitation referred to in *subsection (7)* shall not be justified and reasonable if all of the intended beneficiaries of the gift or a significant number of them have a personal connection with the donor of the gift.
- (9) There shall be no appeal to the Tribunal from a determination of the Authority to which *subsection (5)* applies.
- (10) For the purposes of this section, a gift is not a gift for the advancement of religion if it is made to or for the benefit of an organisation or cult—
- (a) the principal object of which is the making of profit, or
  - (b) that employs oppressive psychological manipulation—
    - (i) of its followers, or
    - (ii) for the purpose of gaining new followers.
- (11) In this section “ purpose that is of benefit to the community ” includes—
- (a) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability,
  - (b) the advancement of community development, including rural or urban regeneration,
  - (c) the promotion of civic responsibility or voluntary work,
  - (d) the promotion of health, including the prevention or relief of sickness, disease or human suffering,
  - (e) the advancement of conflict resolution or reconciliation,
  - (f) the promotion of religious or racial harmony and harmonious community relations,
  - (g) the protection of the natural environment,
  - (h) the advancement of environmental sustainability,
  - (i) the advancement of the efficient and effective use of the property of charitable organisations,
  - (j) the prevention or relief of suffering of animals,
  - (k) the advancement of the arts, culture, heritage or sciences, and
  - (l) the integration of those who are disadvantaged, and the promotion of their full participation, in society.

#### **Attachment E.4 New Zealand — Extracts from legislation**

##### ***Charities Act 2005 (NZ)***

###### Section 4(1)

**charitable entity** means a society, an institution, or the trustees of a trust that is or are registered as a charitable entity under this Act

###### Section 5 Meaning of charitable purpose and effect of ancillary non-charitable purpose

(1) In this Act, unless the context otherwise requires, charitable purpose includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.

(2) However,—

- (a) the purpose of a trust, society, or institution is a charitable purpose under this Act if the purpose would satisfy the public benefit requirement apart from the fact that the beneficiaries of the trust, or the members of the society or institution, are related by blood; and
- (b) a marae has a charitable purpose if the physical structure of the marae is situated on land that is a Maori reservation referred to in [Te Ture Whenua Maori Act 1993 \(Maori Land Act 1993\)](#) and the funds of the marae are not used for a purpose other than—
  - (i) the administration and maintenance of the land and of the physical structure of the marae:
  - (ii) a purpose that is a charitable purpose other than under this paragraph.

(2A) The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose referred to in subsection (1) is pursued.

(3) To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.

(4) For the purposes of subsection (3), a non-charitable purpose is ancillary to a charitable purpose of the trust, society, or institution if the non-charitable purpose is—

- (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society, or institution; and
- (b) not an independent purpose of the trust, society, or institution.

## **Attachment E.5 Northern Ireland – Extracts from legislation**

### ***Charities Act (Northern Ireland) 2008***

#### **Meaning of “charity”**

1—(1) For the purposes of the law of Northern Ireland, “charity” means an institution which—

- (c) (a) is established for charitable purposes only, and
- (d) (b) falls to be subject to the control of the Court in the exercise of its jurisdiction with respect to charities.

(2) The definition of “charity” in subsection (1) does not apply for the purposes of a statutory provision if a different definition of that term applies for those purposes by virtue of that or any other statutory provision.

(3) A charity shall be deemed for the purposes of this Act to have a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between capital and income, and in this Act “permanent endowment” means, in relation to any charity, property held subject to a restriction on its being expended for the purposes of the charity.

(4) The Commission may direct that for all or any of the purposes of this Act an institution established for any special purposes of or in connection with a charity (being charitable purposes) shall be treated as forming part of that charity or as forming a distinct charity.

(5) The Commission may direct that for all or any of the purposes of this Act two or more charities having the same charity trustees shall be treated as a single charity.

### **Meaning of “charitable purpose”**

2—(1) For the purposes of the law of Northern Ireland, a charitable purpose is a purpose which—

- (a) falls within subsection (2), and
- (b) is for the benefit (see section 3).

(2) A purpose falls within this subsection if it falls within any of the following descriptions of purposes—

- (a) the prevention or relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of citizenship or community development;
- (f) the advancement of the arts, culture, heritage or science;
- (g) the advancement of amateur sport;
- (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) any other purposes within subsection (4).

(3) In subsection (2)—

- (a) in paragraph (c) “religion” includes—
  - (i) a religion which involves belief in one god or more than one god, and
  - (ii) any analogous philosophical belief (whether or not involving belief in a god);
- (b) in paragraph (d) “the advancement of health” includes the prevention or relief of sickness, disease or human suffering;
- (c) paragraph (e) includes—
  - (i) rural or urban regeneration, and
  - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;
- (d) in paragraph (g) “sport” means sports or games which promote health by involving physical or mental skill or exertion;
- (e) paragraph (h) includes the advancement of peace and good community relations; and
- (f) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph.

(4) The purposes within this subsection (see subsection (2)(l)) are—



- (a) any purposes not within paragraphs (a) to (k) of subsection (2) but recognised as charitable purposes under existing charity law or by virtue of section 1 of the Recreational Charities Act (Northern Ireland) 1958 (c. 16);
- (b) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of those paragraphs or paragraph (a) above; and
- (c) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised under charity law as falling within paragraph (b) above or this paragraph.

(5) Where any of the terms used in any of paragraphs (a) to (k) of subsection (2), or in subsection (3), has a particular meaning under charity law, the term is to be taken as having the same meaning where it appears in that provision.

(6) Any reference in any statutory provision or document (in whatever terms)—

- (a) to charitable purposes, or
  - (b) to institutions having purposes that are charitable under charity law,
- is to be construed in accordance with subsection (1).

(7) Subsection (6)—

- (a) applies whether the statutory provision or document was passed or made before or after the passing of this Act, but
- (b) does not apply where the context otherwise requires.

(8) In this section—

“charity law” means the law relating to charities in Northern Ireland; and

“existing charity law” means charity law as in operation immediately before the day on which this section comes into operation.

***From the Charities Act (Northern Ireland) 2013 :***

1—(1) For section 3 of the 2008 Act (the “public benefit” test) there shall be substituted the following section—

“3 The public benefit requirement

(1) In this Act “the public benefit requirement” means the requirement in section 2(1)(b) that a purpose falling within section 2(2) must be for the public benefit if it is to be a charitable purpose.

(2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 2(2), it is not to be presumed that a purpose of a particular description is for the public benefit.

(3) In this Act any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in Northern Ireland.

(4) Subsection (3) is subject to subsection (2).”

(2) This section shall be deemed always to have had effect.

## **Attachment E.6 Scotland – Extract from legislation**

### ***Charities and Trustee Investments (Scotland) Act 2005***

#### **Section 7 The charity test**

(1) A body meets the charity test if—

- (a) its purposes consist only of one or more of the charitable purposes, and
- (b) it provides (or, in the case of an applicant, provides or intends to provide) public benefit in Scotland or elsewhere.

(2) The charitable purposes are—

- (a) the prevention or relief of poverty,
- (b) the advancement of education,
- (c) the advancement of religion,
- (d) the advancement of health,
- (e) the saving of lives,
- (f) the advancement of citizenship or community development,
- (g) the advancement of the arts, heritage, culture or science,
- (h) the advancement of public participation in sport,
- (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,
- (j) the advancement of human rights, conflict resolution or reconciliation,
- (k) the promotion of religious or racial harmony,
- (l) the promotion of equality and diversity,
- (m) the advancement of environmental protection or improvement,
- (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,
- (o) the advancement of animal welfare,
- (p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

(3) In subsection (2)—

- (a) in paragraph (d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering,
- (b) paragraph (f) includes—
  - (i) rural or urban regeneration, and
  - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities,
- (c) in paragraph (h), “sport” means sport which involves physical skill and exertion,
- (d) paragraph (i) applies only in relation to recreational facilities or activities which are—
  - (i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or

- (ii) available to members of the public at large or to male or female members of the public at large,
- (e) paragraph (n) includes relief given by the provision of accommodation or care, and
- (f) for the purposes of paragraph (p), the advancement of any philosophical belief (whether or not involving belief in a god) is analogous to the purpose set out in paragraph (c).

(4) A body which falls within paragraphs (a) and (b) of subsection (1) does not, despite that subsection, meet the charity test if—

- (a) its constitution allows it to distribute or otherwise apply any of its property (on being wound up or at any other time) for a purpose which is not a charitable purpose,
- (b) its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities, or
- (c) it is, or one of its purposes is to advance, a political party.

(5) The Scottish Ministers may by order disapply either or both of paragraphs (a) and (b) of subsection (4) in relation to any body or type of body specified in the order.

#### **Attachment E.7 South Africa — Extract from legislation**

##### ***Income Tax Act 1962***

Public benefit organisations

30. (1) For the purposes of this Act —

‘public benefit activity’ means —

- (a) any activity determined by the Minister in terms of subsection (2); and
- (b) the providing of funds to —
  - (i) any public benefit organisation which has been approved in terms of this section;
  - (ii) any institution, board or body contemplated in section 10(1)(cA)(i), of which at least 75 per cent of its resources are applied in the furtherance of a public benefit activity contemplated in paragraph (a); or
  - (iii) any association of persons carrying on one or more such public benefit activity in the Republic:

‘public benefit organisation’ means any organisation of a public character —

- (a) which is a company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or a trust or an association of persons; and
- (b) of which the sole object is —
  - (i) subject to the provisions of subsection (3)(b)(iv), to carry on one or more public benefit activities in a non-profit manner;
  - (ii) to carry out all such activities (or substantially the whole thereof) in the Republic, unless the Minister, having regard to the circumstances of the case, directs otherwise.

- (2) (a) The Minister shall, by notice in the Gazette, determine any activity which is of a philanthropic and benevolent nature, having regard to the needs, interests and well-being of the general public for the purposes of this section.
- (b) A copy of the notice contemplated in paragraph (a) shall be laid upon the Table in Parliament as soon as practicable.



# The Pemsel Case

## FOUNDATION

Suite 1150, 10060 Jasper Avenue,  
Edmonton, Alberta, T5J 3R8

[www.pemselfoundation.org](http://www.pemselfoundation.org)