

Background Briefing

A Statutory Definition of Charity – Reports

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

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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.



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1. PREVIOUS REVIEWS OF THE DEFINITION OF CHARITY

There have been numerous reviews of ‘charities’ in the past fifty years, initiated by governments and by the charitable sector. Previous reviews have been concerned predominantly with the regulation of charities, but many have included a preliminary discussion of the appropriate definition of a charity. The following survey of earlier reviews is confined to their discussion of definitions.

Many of the conclusions reached in the various reviews have been included as appropriate in the discussion of the issues contained in the body of this Report. As a result, the following discussion does not include all the recommendations contained in the reviews but provides an overview of the different approaches taken in reviewing the definition of charity.

Nathan Report (1952)¹

The Nathan Committee was established to consider and report on changes in the law and practice relating to charitable trusts, other than taxation, in England and Wales. It arose from a concern that the rapid development of the welfare state in the post-war period required a rethink about the role of the charitable sector.

The Nathan Report recommended a re-wording of the ‘definition’ of charity to allow greater flexibility in interpretation. In particular, it proposed removing reference to the Preamble to the Statute of Elizabeth and instead creating a statutory ‘definition’ of charity based on Lord Macnaghten’s classification, but preserving the case law as it stood.² This recommendation was not adopted.

The recommendation arose from an examination of whether to introduce a statutory definition of charity. Legal witnesses considered that a statutory definition would be too rigid and unresponsive to changes in the structure of society. Charitable sector representatives complained of the archaic language of the Preamble and that it was unsuited to modern conditions while the ‘fourth head’ of ‘other purposes beneficial to the community’ was ambiguous and doubts were only resolved through expensive litigation.

The Report concluded that:

- judge-made law would fulfil the primary objective that the content of charity remain flexible;
- it was a ‘complete delusion’ to suppose that to start with a clean slate would reduce the number of difficult cases or the volume of litigation; and
- replacing the Statute of Elizabeth with a more modern classification might give more freedom to the judiciary in an age of rapid and continuous change to interpret ‘public benefit’ in light of the conditions of the day.

The Committee did not examine the question of the meaning of ‘public benefit’ in any detail. However, the Committee confirmed the common law principles that a trust whose beneficiaries have an employment relationship with the donor is not charitable and that the objects of a

¹ Report of the Committee on the Law and Practice relating to Charitable Trusts, December 1952, HMSO, London, Cmd 8710.

² At paragraph 140.

contemplative religious community are not regarded as legally charitable because the element of public benefit could not be established.

The Report also concluded that there was no case for alteration of the content of the legal meaning of charity as there was substantial agreement among witnesses that the scope of charity as laid down in the case law was neither too broad nor too narrow.

Newark Report (1956)³

This report was undertaken in Northern Ireland to consider three matters:

1. The powers and duties of the Ministry of Finance as successors to the Commissioners of Charitable Donations and Bequests in Ireland;
2. The Report of the Nathan Committee on Charitable Trusts in England and Wales (see above), and the White Paper outlining the UK government's policy on the Nathan Report;⁴ and
3. The reports of the inter-departmental Lowry Committee on educational endowments.

Paragraphs 15-21 of the Newark Report dealt with the definition of charity. No change in approach was recommended both because of the uniformity principle and because "a statutory definition would become merely a starting point for a fresh body of case law to develop" (paragraph 19). This differed from the Nathan Report. Although the Report recommended the establishment of a Charity Authority, it did not recommend the registration of charitable trusts, as had the Nathan Report. The Report recommended the establishment of 10 charity commissioners to form the Charity Authority which would take over the then role of the Ministry of Finance. Much of the report's commentary was taken up with this aspect of its recommendations.⁵

Goodman Report (1976)⁶

The National Council of Social Service in the UK conducted a conference in 1974 attended by voluntary organisations and interested parties to discuss 'the problems of the present law'. The level of disquiet aired at the conference led to the establishment of a review conducted by the voluntary sector to examine the effects of existing legislation and to suggest improvements to benefit the work and development of voluntary organisations.

The Goodman Committee concluded that a statutory definition would require the courts to look only at the words of the definition and not to the cases lying behind its evolution. However, the Committee found that the Statute of Elizabeth used language inappropriate to contemporary concepts and required the courts to engage in 'mental gymnastics' in order to include some purposes as charitable.

The Committee concluded that the case law should stand but include a restatement that would provide courts with more freedom to reconsider the case law in the context of the new

³ Report of the Charity Committee on the Law and Practice relating to Charitable Trusts in Northern Ireland, HMSO, London, Cmd. 396.

⁴ *Response to the Nathan Report*, White Paper, HMSO, London, Cmd. 9538.

⁵ Author not stated, *The Newark Report on Charities*, 13 N. I. Legal Q. 187 (1958-1960)

⁶ National Council of Social Service 1976, *Charity Law and Voluntary Organisations*: Report of an independent committee of inquiry (Lord Goodman: Chairman) to examine the effect of charity law and practice on voluntary organisations, Bedford Square Press, London. (Goodman Report).

categorisation. The Report included an extensive list of objects deemed to be charitable, and suggested that these be established in substitution for the Preamble to the Statute of Elizabeth.

The Goodman Committee affirmed the importance of the 'public benefit' test and also recommended that amendments of a specific nature should be introduced where the existing case law was subject to criticism. These included:

- the exemption of 'poor relations' and 'poor employees' charities from the general public benefit test was anomalous, and such trusts should no longer be regarded as charitable;
- charities could benefit specific groups (defined by reference to locality, denomination or gender) provided that discrimination was not the motive. However, where the beneficiaries were defined by reference to race or colour, they should not be regarded as charitable;
- charities for people with special needs should continue to be regarded as charitable, provided the other requirements of charitable status were satisfied, even though the potential number of beneficiaries might be small; and
- a value judgement needed to be made in each case relating to contemplative religious communities in order to determine whether there was a benefit to the community as opposed to individuals.

The Committee rejected arguments to confine or expand the scope of charity. They rejected the argument that charity should be restricted to 'social welfare' functions and welcomed the move into charity of moral purposes beneficial to the community (such as the prevention of cruelty to animals), the preservation of the natural heritage and the provision of cultural and recreational facilities. The Report concluded that the promotion of the arts was undoubtedly of benefit to the community and that it should be recognised as a charitable activity in its own right, and not as a sub-category of education. They also rejected the argument that charity should be expanded to include all non-profit-distributing organisations, noting that this would have the effect of including political parties and pressure groups.

The Report also concluded that no distinction should be made between the activities of locally-based charities on the basis of whether they were carried out at home or abroad, i.e. any activity which was charitable at home should in principle also be considered charitable when carried out abroad.

Tasmanian Law Reform Commission (1984)⁷

The Report's consideration of definitional issues was limited to a consideration of whether to follow in the footsteps of Queensland, South Australia and Western Australia and make statutory provision for recreational charities along the lines of the (then) UK *Recreational Charities Act 1958*. The provisions of that Act dealt with village halls, community centres, women's institutes and other like organisations provided in the interests of social welfare.

The Report concluded that the limitation to social welfare was not necessary and recommended that 'it shall be deemed to be a charitable purpose to provide or to assist in the provision of facilities for recreation or other leisure time occupation'.

⁷ Law Reform Commission of Tasmania, 1984, *Report on Variations of Charitable Trusts*, Report No. 38.

The recommendation was adopted in the *Variation of Charitable Trusts Act 1994*.

Victorian Legal and Constitutional Committee (1989)⁸

The review arose in the context of an earlier review by the Victorian Government into the *Hospitals and Charities Act 1958* which had recommended that no attempt be made to define a charity. The terms of reference of the Legal and Constitutional Committee required it to inquire and report on the desirability of revising and simplifying the law relating to charitable trusts and whether a restatement of the law in a single statute written in plain English would be desirable.

The Committee rejected the option of legislating a list of charitable purposes (as had been recommended in the Goodman Report) as it was seen as running the risk of built-in obsolescence. Using broad categories (as suggested by the Nathan Committee) was also rejected as questions would continue to be raised about whether specific charitable purposes fell within them. It instead recommended that specific new purposes be added to the meaning of charity by legislation where there is evidence of a clear momentum of community support for their inclusion.

The Committee recommended that:

- any additional purpose which was declared charitable should be obliged to satisfy the common law requirement of public benefit; and
- any proposal for an ad hoc addition to the meaning of 'charitable' be raised at the Standing Committee of Attorneys-General to achieve national uniformity.

The Committee affirmed the importance of the 'public benefit' test. The test was strongly supported in submissions, with most expressing satisfaction with the flexibility available and with the ability of the courts to continue to interpret the existing criteria flexibly.

UK White Paper (1989)⁹

The White Paper was released as the Government's response to the Woodfield Report of July 1987. The Woodfield Report was commissioned by the Home Secretary and the Economic Secretary to the Treasury to carry out an efficiency scrutiny of the supervision of charities. The Woodfield Report assumed that there was to be no change in the law relating to the definition of charitable status. However, in responding to the Report, the Government decided to address the issue.

The White Paper concluded that a codification of the definition of a charity would 'put at risk the flexibility of the present law which is both its greatest strength and its most valuable feature'.¹⁰ They also commented that there was no reason to expect that a new body of law would be any less complex than the old.

The White Paper also considered two particular issues arising in charity law, namely religion and political activities. The Government noted that the question had been raised from time to time as to whether trusts supporting certain religious groups should be entitled to charitable status. It noted in particular concerns that some groups exert undesirable influence over young persons and

⁸ Legal and Constitutional Committee, Victoria, May 1989, Report to the Parliament on the Law Relating to Charitable Trusts.

⁹ *Charities: A Framework for the Future*, May 1989, White Paper prepared by the Secretary of State for the Home Department, Cmd 694, (UK White Paper).

¹⁰ UK White Paper, p. 6.

disrupt family life ('cults'). The White Paper concluded there was generally little difficulty in establishing that the 'objects' of a particular movement were working to the public benefit. However, the actual conduct and behaviour of adherents to a movement could often be regarded as contrary to public policy and therefore not benefiting the public. The Government concluded that, as the Charity Commissioners already had the power to remove an organisation from the charity register when its conduct was not in accord with its objectives, there was no need to strengthen the law.

Ontario Law Reform Commission (1996)¹¹

The terms of reference asked the Ontario Law Reform Commission (OLRC) to examine the status, the legal form, the sources and the uses of revenue of charitable organisations and the form of appropriate government supervision, and to make recommendations about the appropriate laws to govern charities in modern times. The approach adopted by the OLRC was to determine a 'real' definition of charity as a basis upon which to critique the 'definition' given by the common law. They recommended that the common law be retained, with any deficiencies addressed by administrators and courts seeking to reform it incrementally.

The OLRC considered the phrase 'benefit to the public' to be too vague and equivocal as it is used to address three critical elements of charity:

- the nature of the charitable purpose (the good being pursued);
- the practical utility of the charitable activity (the effect); and
- the destination of the benefit (other persons).

They argued that the nature of the charitable purpose should advance a recognised common or universal good. The OLRC drew on the approach of philosopher John Finnis to list common or universal goods, namely life, knowledge, play, aesthetic experience, friendship, religion, practical reasonableness and work. They then examined the 'four heads' under Lord Macnaghten's classification against the list of 'goods' and isolated a number of problems.

- The goods of play, practical reasonableness, friendship and aesthetic experience do not have a specific mention, and this has led to confusion about their status and distortions in the content of the head of 'education' where they are usually addressed.
- 'Life' and 'work' were also seen as playing a more prominent role in the future (through issues such as concern with the environment and projects to address unemployment) and the OLRC argued that they should be recognised as valid charitable purposes.

However, they concluded that 'little serious harm' has been caused by the current classification and that the law has 'sufficient internal resources' to continue to develop in the right direction.

The OLRC considered that practical utility would always be a context-specific question but that the tests should not be restricted to material, economic or social benefits. They also considered that the destination of the benefit could be clarified by requiring that there be an 'emotional and obligational distance' between the donor and the beneficiary. They accepted part of the current approach (as set out in the Compton/Oppenheim test) that there cannot be a personal relationship between the beneficiary and a named person or persons, but rejected the second part of the test that the size of the class of beneficiaries is relevant.

¹¹ Ontario Law Reform Commission, 1996, *Report on the Law of Charities*

Overall, the OLRC found that the common law has provided appropriate flexibility and a statutory definition would be just as likely to hinder judicial decision making as help it. They also recommended that contemporary decision-makers should not feel unduly bound by particular decisions of past decision-makers but should seek to reform particular aspects of the common law.

In particular, they regarded as anomalous that trusts for 'poor relations' and 'poor employees' were treated as valid charitable trusts and recommended that they lose any favourable tax treatment (but retain their charitable status for the purpose of trust law). The OLRC also considered as 'bizarre' that closed or contemplative religious orders were found by English courts not to have practical utility and so were not charitable. They concluded that if it is valid to support the material and social infrastructure of religion then it is valid to support the worshipping practices of an authentic religion.

Deakin Report (1996)¹²

Although this report commissioned in the UK by the National Council of Voluntary Organisations (NCVO) considered the voluntary sector as a whole, the dominant focus of the Deakin Commission was on the charitable sector. Supporting the retention of the common law concept of charity and of charitable status, the Deakin Commission favoured retaining a legal test of charitable status based on an organisation's purposes, rather than its actual activities. It called for an enlargement of the definition of charity by substituting a requirement of public benefit for the *Pemsel* classification of charity. This effectively reversed the then rule that for a purpose which benefits the public to be charitable it must benefit the public in a way contemplated by the terms or spirit of the preamble to the Statute of Charitable Uses 1601 as expounded in the case law.

The Deakin Commission further proposed that the test of public benefit be modified so that it would suffice that a sufficiently important section of the public benefited. The Commission, however, did not elaborate on what would constitute a requisite section of the public and whether the law as it then stood would otherwise apply. In particular it did not make clear how such sections of the public would be distinguished from private or sectional interests, which the Commission considered beyond the meaning of charity.

Kemp Report (1997)¹³

The Kemp Commission was set up in 1995 by the Scottish Council of Voluntary Organisations (SCVO) to conduct an independent inquiry into the future of the voluntary sector in Scotland. The report identified the key factors in Scotland's institutional environment determining the prospects for the growth of a vigorous, independent voluntary sector in Scotland. Its recommendations related primarily to the establishment of a new regulatory framework, including creation of a Scottish Charity Registrar and Charity Review Tribunal.

The Kemp report argued for a new legal definition based on the concept of public benefit, but not narrowly codified, with a new classification reflecting the current range of charitable activity. This conclusion was similar to the Deakin Report's conclusions.

¹² National Council of Voluntary Organisations, 1996, Meeting the Challenge of Change: Voluntary Action into the 21st Century. The Report of the Commission on the Future of the Voluntary Sector (The Deakin Report)

¹³ Scottish Council of Voluntary Organisations, 1997, *Head and Heart: The Report of the Commission on the Future of the Voluntary Sector in Scotland*.

Broadbent Report (1999)¹⁴

The review was undertaken by an independent Panel appointed by the Voluntary Sector Roundtable, a peak body representing Canada's voluntary organisations. The brief was to examine ways to enhance the effectiveness and credibility of the voluntary sector in light of significant changes in its operating environment. Although primarily focused on actions that could be taken by the sector itself, the review canvassed some issues within the province of government.

The Broadbent report addressed the definition of charity as part of discussing which organisations have, or in their view should have, access to taxation concessions. They argued that the current common law definition that led to the determination of which organisations could access taxation concessions did not accord with contemporary Canadian values. There was also a concern that the onus was on the organisations to challenge Revenue Canada in the courts.

They did not recommend a change to the definition of charity, but argued instead that the tax law should be amended to include categories of 'public benefit' organisations.

NCVO Report (2001)¹⁵

The NCVO established a Charity Law Reform Group to assess whether the law on charitable status should be amended to reflect modern circumstances. Overall, the group found that the legal treatment of charity does protect and promote charitable activity. They concluded that simplifying the law ran the risk of reducing flexibility.

They recommended a strengthened public benefit test to apply to all charitable purposes. Under the then approach, there was a general presumption that charitable purposes falling under the heads of 'relief of poverty', 'advancement of education' and 'advancement of religion' prima facie provided a benefit to the public. The group recommended that all charitable purposes be exposed to the degree of scrutiny applied to charitable purposes falling under the head of 'other purposes beneficial to the community' where the element of public benefit needed to be expressly demonstrated.

Scottish Charity Law Review Commission (2001)¹⁶

The establishment of the Scottish Parliament and the Scottish Executive led to the review of the regulation and support of charities in Scotland and the basis for charity in Scottish society. Scottish trust law differs from English law, but to access taxation concessions charities in Scotland are assessed by Inland Revenue against the English common law meaning of charity.

¹⁴ Voluntary Sector Roundtable, Panel on Accountability and Governance in the Voluntary Sector, February 1999, *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector*. See at: http://www.ecgi.org/codes/documents/broadbent_report_1999_en.pdf

¹⁵ National Council of Voluntary Organisations 2001, *For the public benefit? A consultation document on charity law reform*, London.

¹⁶ *Charity Scotland*, May 2001, Report of the Scottish Charity Law Review Commission (McFadden Report): see at <http://www.gov.scot/Resource/Doc/1136/0010187.pdf>

The Scottish Charity Law Review Commission recommended principles to be used as the basis of determining eligibility for status as a Scottish charity. They proposed that a Scottish charity be an organisation:

- whose overriding purpose is for the public benefit;
- which is non-profit-distributing;
- which is independent; and
- which is non-party political.

They proposed that a Scottish charity should pursue only charitable objects (although incidental private benefit would be allowed) and to meet the public benefit test an organisation should have as its purpose the relief of need, or the sustenance or enhancement of the lives of people in the community in which they live.

The Commission recommended that self-help organisations could qualify as Scottish charities if their membership was open on objective public benefit criteria and the organisation's governance reflected the public benefit culture. They also recommended that an organisation established by local or central government not be accorded Scottish charity status if the constitution of the organisation allowed more than one third of the trustees to be directly or indirectly appointed by the establishing organisation.

Sheppard Inquiry into the Definition of Charities and Related Organisations 2001 (Australia)

The Charities Definition Inquiry (CDI)¹⁷ 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.¹⁸ 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.¹⁹ 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
- Agreement of state and territory governments to adopt a nationally consistent definition.

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

- Self-help groups which have open and non-discriminatory membership be regarded as meeting the public benefit test and thus charitable;

¹⁷ *Inquiry into the Definition of Charities and Related Organisations*, established 18 September 2000: <http://www.cdi.gov.au/>

¹⁸ A New Tax System (Goods and Services Tax) Act 1999 (Cth).

¹⁹ 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.

- Closed or contemplative religious orders also be regarded as meeting the public benefit test and thus 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
- 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,²⁰ 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 2004.²¹ 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 advisors.²²

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 to the public. The legislation applied from 1 July 2004.²³

Law Society of Ireland (2002)²⁴

This report recommended the streamlining of the definition of the term 'charity' in Ireland as follows (recommendations 8-10, at page 85):

8 We recommend that new guidelines should be put forward in relation to the definition of charity which would aid the body charged with making the decision (be it the courts, the Revenue Commissioners, or a new statutory body established for this purpose such as the proposed Charities Office).

9 We recommend that these guidelines should take a statutory form, but would not necessarily constitute a statutory definition in that they would facilitate the decision making body in exercising its discretion in each case.

²⁰ I Sheppard, R Fitzgerald and D Gonski, Report of the Inquiry into the Definition of Charities and Related Organisations (2001).

²¹ Hon Peter Costello MP, Treasurer of Australia, 'Release of Charities Definition Exposure Draft' (Media Release, No 059, 22 July 2003).

²² 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>.

²³ Extension of Charitable Purpose Act 2004 (Cth).

²⁴ *Charity Law: The Case for Reform*, Law Society of Ireland Law Reform Committee, July 2002: .

10 Having considered the reviews conducted in other jurisdictions, we recommend that the basic proposal put forward by the Charities Definitional Inquiry in Australia be considered here as a good basis from which to adapt a new definition for charity, specific to the needs of this jurisdiction.

The detailed conclusions of the Committee informed the thinking of the government as it moved towards the drafting of the Charities Bill 2007, now the Charities Act 2009. Part of the government response was located in the Department of Community, Rural and Gaeltacht Affairs' Consultation Paper in 2004.²⁵ In this consultation paper, the overall policy aim of the new charities legislation was stated to be to introduce an integrated system of registration and regulation (including regulation of charitable fund-raising) as well as supervision and support of registered charities. The aims of the legislation were:

- (a) give clear statutory guidance regarding the *definition of charity*, thereby bringing the definition of charitable purposes into line with a modern perspective of what constitutes charity and protecting against abuse of charitable status;
- (b) require a *register of charities* to be established, so that information on charities would be readily available to the public, thereby promoting transparency, confidence and public oversight;
- (c) put in place an appropriate *regulatory framework* for registered charities, thereby securing accountability and protecting against fraud.

Review of charities administration and legislation in Northern Ireland (2005)²⁶

This review led to a statutory definition of charity being adopted in Northern Ireland. The meaning of "charity" included the 12 charitable purposes proposed for England and Wales in the (then) Charities Bill 2005, plus two additional purposes specific to Northern Ireland. These were the promotion of peace and the promotion of good community relations (Now subsumed into the purpose of the promotion of citizenship and community development).

There was no presumption of public benefit. To meet the public benefit test, the organisation must:

- Have only purposes which are charitable and
- Provide (or intend to provide) public benefit (in Northern Ireland or elsewhere)

An organisation would not meet the test if its constitution allowed it to distribute or transfer property for a purpose which was not charitable, or it was, or one of its purposes was, to advance a political party.

This definition was adopted into the current Charities Act (Northern Ireland) 2008.²⁷

Calman Commission (2009)²⁸

This Commission on Scottish Devolution recommended a UK-wide definition of charity be adopted.²⁹ However, this has never been adopted.

²⁵ Department of Community, Rural and Gaeltacht Affairs, *Establishing a Modern Statutory Framework for Charities*, December 2003.

²⁶ Department of Social Development, Voluntary and Community Unit, Charities Branch, *Review of Charities Administration and Legislation in Northern Ireland*, 2005.

²⁷ <http://www.legislation.gov.uk/nia/2008/12/section/2>

²⁸ The Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century* (Final Report), June 2009.

²⁹ At page 169.

Productivity Commission – Contribution of the Not-for profit sector: Research Report 2010 (Australia)

Many were disappointed with the minor amendments made after the CDI in Australia, and after a change of government, the amendments 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 nonprofit 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.³⁰

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 2013 a draft bill was released for 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. An independent commission known as the Australian Charities and Not-for-profits Commission (ACNC) was established by its own legislation in 2012 to act as a one-stop registration gateway for charities accessing Commonwealth entitlements including fiscal concessions. 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.

Trusted and Independent: giving charity back to charities - Review of the Charities Act 2006 (Hodgson Report) (UK) (2012)³¹

The Hodgson Report recommended no change to the existing statutory definition of charity which had commenced in England and Wales in the Charities Act 2006 (now replaced by the Charities Act 2011). This involved pursuing a listed charitable purpose and operating for the public benefit. The regulation of charities was a devolved matter for Scotland and Northern Ireland, so there were separate definitions of charity in those jurisdictions, although not for tax purposes because tax law applied UK-wide.

³⁰ Productivity Commission, Contribution of the Not-for-Profit Sector: Research Report (2010), xlvi.

³¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79275/Charities-Act-Review-2006-report-Hodgson.pdf

Lord Hodgson rejected a statutory test for public benefit,³² and did not recommend an expansion of the existing list of charitable purposes.³³ On the issue of a UK-wide definition of charity, he agreed with submissions that did not favour such a move despite its obvious administrative efficiency.³⁴

³² At 4.5-4.14

³³ At 4.15-4.16

³⁴ At 4.17-4.18



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