

APPENDIX 4

Summary of Recommendations of 2001 Inquiry

Principles to define a charity

Recommendation 1 (Chapter 11)

That the term `not-for-profit' be adopted in place of the term `non-profit' for the purposes of defining a charity.

Recommendation 2 (Chapter 11)

That the term `entity' be adopted to describe charities, and that the definition of `entity' include: a body corporate; a corporation sole; any association or body of persons whether incorporated or not; and a trust;

and exclude: an individual; a political party; a partnership; a superannuation fund; and the Commonwealth, a State, or a body controlled by the Commonwealth or a State.

Recommendation 3 (Chapter 12)

That a charity must have a dominant purpose or purposes that are charitable, altruistic and for the public benefit. If the entity has other purposes, those purposes must further, or be in aid of, the dominant purpose or purposes, or be ancillary or incidental to the dominant purpose or purposes.

Recommendation 4 (Chapter 12)

That an entity be denied charitable status if it has purposes that are illegal, are contrary to public policy, or promote a political party or a candidate for political office.

Recommendation 5 (Chapter 12)

That the activities of a charity must further, or be in aid of, its charitable purpose or purposes. Activities must not be illegal, contrary to public policy, or promote a political party or a candidate for political office.

Recommendation 6 (Chapter 13)

That the public benefit test, as currently applied under the common law, continue to be applied; that is, to be of public benefit a purpose must:

- be aimed at achieving a universal or common good;
- have practical utility; and
- be directed to the benefit of the general community or a `sufficient section of the community'.

Recommendation 7 (Chapter 13)

That the public benefit test be strengthened by requiring that the dominant purpose of a charitable entity must be altruistic.

Recommendation 8 (Chapter 13)

That self-help groups which have open and non-discriminatory membership be regarded as having met the public benefit test.

Recommendation 9 (Chapter 13)

That where closed or contemplative religious orders regularly undertake prayerful intervention at the request of the public, their purposes be held to have met the public benefit test.

Recommendation 10 (Chapter 13)

That public benefit does not exist where there is a relationship between the beneficiaries and the donor (including a family or employment relationship); and that this principle extend to purposes for the relief of poverty, which the common law currently regards as being exempt from the need to demonstrate public benefit.

Defining charitable purpose

Recommendation 11 (Chapter 14)

That there be no requirement that charitable purposes fall either within the 'spirit and intendment' of the Preamble to the Statute of Elizabeth or be analogous to one or more of its purposes.

Recommendation 12 (Chapter 16)

That the principles enabling charitable purposes to be identified be set out in legislation.

Recommendation 13 (Chapter 16)

The Committee has considered five options for defining charitable purpose as set out in Chapter 16. It concludes that three options are viable, but recommends the following preferred option (Option 5):

Charitable purposes shall be:

- the advancement* of health, which without limitation includes:
 - the prevention and relief of sickness, disease or of human suffering;
- the advancement* of education;
- the advancement* of social and community welfare, which without limitation includes:
 - the prevention and relief of poverty, distress or disadvantage of individuals or families;
 - the care, support and protection of the aged and people with a disability;
 - the care, support and protection of children and young people;

- the promotion of community development to enhance social and economic participation; and
- the care and support of members or former members of the armed forces and the civil defence forces and their families;
- the advancement* of religion;
- the advancement* of culture, which without limitation includes:
 - the promotion and fostering of culture; and
 - the care, preservation and protection of the Australian heritage;
- the advancement* of the natural environment; and
- other purposes beneficial to the community, which without limitation include:
 - the promotion and protection of civil and human rights; and
 - the prevention and relief of suffering of animals.

(* Advancement is taken to include protection, maintenance, support, research, improvement or enhancement.)

Recommendation 14 (Chapter 20)

That the definition of religion be based on the principles established in the *Scientology* case, namely:

- belief in a supernatural Being, Thing or Principle; and
- acceptance and observance of canons of conduct in order to give effect to that belief.

Application of the principles

Recommendation 15 (Chapter 24)

That the encouragement of sport and recreation for purposes of amusement or competition not be a charitable purpose, it being noted that the advancement of health, education, social and community welfare, religion, culture or the natural environment through the encouragement of sport and recreation would be considered a charitable purpose.

Recommendation 16 (Chapter 25)

That the care, support and protection of children and young people, including the provision of child care services, be considered a charitable purpose.

Recommendation 17 (Chapter 26)

That charities be permitted neither to have purposes that promote a political party or a candidate for political office, nor to undertake activities that promote a political party or a candidate for political office.

Recommendation 18 (Chapter 27)

That commercial purposes should not deny charitable status where such purposes further, or are in aid of, the dominant charitable purposes or where they are incidental or ancillary to the dominant charitable purposes.

Recommendation 19 (Chapter 28)

That the current approach of denying charitable status to government bodies be maintained. The Committee agrees with the principles set out in the *Fire Brigades* case and the *Mines Rescue* case for determining whether an entity is a government body, namely that the entity is constituted, funded and controlled by government.

Other categories in the framework

Recommendation 20 (Chapter 29)

That there be a definitional framework to distinguish altruistic entities from other not-for-profit entities.

Recommendation 21 (Chapter 29)

That in the recommended definitional framework, the category of public benevolent institution be replaced by a subset of charity to be known as Benevolent Charity, that is a charity whose dominant purpose is to benefit, directly or indirectly, those whose disadvantage prevents them from meeting their needs.

Recommendation 22 (Chapter 30)

That the framework recommended in this Report should not include the terms 'religious institution', 'scientific institution' and 'public educational institution', as altruistic entities with religious, scientific or public educational purposes and that are for the public benefit are covered by the categories in the recommended framework.

Recommendation 23 (Chapter 31)

That there be a category, known as 'Altruistic Community Organisations', that are entities that are not-for-profit and have a main purpose that is altruistic. That is, they can have secondary purposes that are not altruistic, and that do not further, or are not in aid of, or are not incidental or ancillary to, their main altruistic purpose.

Administering the definitions

Recommendation 24 (Chapter 32)

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

Recommendation 25 (Chapter 32)

That the Government seek the agreement of all State and Territory Governments to establish an independent administrative body for charities and related entities, and to the legislative changes necessary for its establishment.

Recommendation 26 (Chapter 32)

If an independent administrative body is not established:

- that the Government set up a permanent advisory panel, including members from the charitable and related sector, to advise the Australian Taxation Office on the administration of the definitions relating to charities and related entities, and to advise the Government on the definitions of charity and related terms; and
- that the endorsement processes currently undertaken by the Australian Taxation Office be extended to include the endorsement of charities and related entities in order to access all the taxation concessions to which they are variously entitled.

Recommendation 27 (Chapter 32)

That the Government commit to a comprehensive public information and education campaign to inform the charitable and related sector of any changes arising from its consideration of this Report.