

CHAPTER 13: ALTRUISTIC AND FOR THE PUBLIC BENEFIT

In this Chapter the Committee reviews the requirement that a charitable purpose be for the public benefit and concludes that it should remain an essential feature in determining charitable status.

The Committee considers that the public benefit element of charity would be enhanced if the concept of altruism were to be expressly required. Thus, to be regarded as charitable, an entity must have a dominant purpose which is altruistic and for the public benefit.

Current approach

The common law holds that ‘public benefit’ is an essential condition for determining charitable purpose.

For a purpose to be charitable, it must be of benefit to the public and fall within the spirit and intendment of the Statute of Elizabeth. Together these two conditions are seen as necessary and sufficient to establish that a particular purpose is charitable at law. (The requirement that purposes be within the spirit and intendment of the Statute of Elizabeth is discussed in Chapter 14).

The following summary of principles regarding the interpretation of ‘public benefit’ have been established through the common law:¹

- The object or purpose must be beneficial in itself, that is, it must be aimed at achieving a universal or common good; by definition, a purpose cannot be beneficial if it is harmful to the public.
- ‘Benefit’ is not limited to the delivery of material benefits, but can extend to include social, mental and spiritual benefits. However, it has been held by the courts that a basic requirement of a charitable gift is that it must be seen to have practical utility.

¹ Drawn from discussion in Picarda, H 1999, *The Law and Practice Relating to Charities*, 3rd edition, Butterworths, London, pp19-29; Ford, HAJ and Lee, WA 1990, *Principles of the Law of Trusts*, 2nd edition, The Law Book Company, Sydney, pp 829-833; and Dal Pont, G 2000, *Charity Law in Australia and New Zealand*, Oxford University Press, Melbourne, pp 13-22.

- The ‘public’ is taken to mean the general community or a ‘sufficient section of it’. This has been given clearer meaning through what has become known as the Compton/Oppenheim test², which indicates that the number of potential beneficiaries of a charity must not be numerically negligible, and there must be no personal relationship between the beneficiaries and any named person or persons.³

While the public benefit test applies across all four heads of charity, there is a general presumption that, *prima facie*, the element of public benefit is satisfied in the case of purposes falling under the first three heads of charity (‘relief of poverty’, ‘advancement of education’ and ‘advancement of religion’). For purposes falling under the fourth head (‘other purposes beneficial to the community’) the element of public benefit needs to be expressly demonstrated.

The normal rule is that every organisation claiming to be charitable under the fourth head must positively demonstrate public benefit. With regard to the first three heads, we can assume (subject to evidence to the contrary) that benefit will result from bodies for the relief of poverty or the advancement of education or religion.⁴

However, public benefit can still be found not to be present under the first three heads of charity. For example, in *Re Pinion* a gift of a studio and its contents to be set up as a museum was found to be not charitable because it was determined that the artworks in question lacked public utility and educative value.⁵

Another example relates to closed or contemplative religious orders. In *Gilmour v Coats* the House of Lords held that the purposes of a community of cloistered and contemplative nuns were not legally charitable.⁶ The Lords held that:

² Based on *Re Compton* [1945] 1 Ch 123 and *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297. While there has been some questioning of the absolute soundness of this test, it nevertheless appears to be generally accepted as the most complete test of the meaning of ‘the public’. See Ford and Lee, p 832.

³ A detailed discussion on this matter, including an analysis of problems associated with the application of the Compton/Oppenheim test, is provided in Chesterman, M 1979, *Charities, Trusts and Social Welfare*, Weidenfeld and Nicolson, London, pp 155-157.

⁴ Charity Commission for England and Wales, March 2001, *RR8 — The Public Character of Charity*, p 8, citing Lord Simonds in *National Anti-Vivisection Society v IRC* [1948] AC 31 at 56.

⁵ [1965] Ch 85, CA, discussed in Picarda, p 61.

⁶ [1949] AC 426.

The court can only act on *proof* of public benefit and not on belief; and the value of intercessory prayer was manifestly incapable of proof. The benefit to be derived by others from the example of pious lives was something too vague and intangible to satisfy the test of public benefit.⁷ (Author's emphasis)

It has further been held by the courts that the relief of poverty is so intrinsically of benefit to the public that there is no need to consider whether a 'sufficient section of the community' benefits.

In *Re Scarisbrick*, Jenkins LJ stated that:

...trusts for the relief of poverty have been held to be charitable even though they are limited in their application to some aggregate of individuals ascertained [by reference to some personal tie] and therefore not trusts of gifts for the benefit of the public or a section thereof. This exception operates whether the personal tie is one of blood (as in the numerous so-called 'poor relations' cases...) or of contact...or amongst employees of a particular company or their dependants.⁸

In *Dingle v Turner* a trust for the payment of pensions to poor employees of a particular company was held to be charitable.⁹ Ford and Lee note that 'The House of Lords decided that no test of public benefit is required where the trust is for the relief of poverty, even although the class of those to be benefited is not a section of the community'.¹⁰ Assistance to the poor can therefore involve beneficiaries who have a personal relationship with the benefactor. Thus gifts for the benefit of 'poor relations' and 'poor employees' can be regarded as charitable.

An essential attribute of charity is that it does not confer private advantage or benefit. In its simplest expression, this reinforces the 'not-for-profit' requirement which precludes any individual from receiving a financial gain from the activities of a charity — other than as a recipient of the services provided by the charity. This was discussed in Chapter 11.

The question of whether the accrual of private benefit invalidates a charitable purpose is frequently an issue for not-for-profit organisations which have a membership base.

⁷ Picarda, p 108. See also Dal Pont, pp 169-171.

⁸ [1951] 1 Ch 622 at 649, as discussed in Dal Pont, p 121.

⁹ [1972] AC 601.

¹⁰ Ford and Lee, p 831.

An association that exists mainly to advance the interests of, or otherwise benefit, its members cannot be said to be charitable, even if carrying out its objects results in benefit to the community.¹¹

Private benefits are allowed only where they are incidental to carrying out the charitable purpose. Dal Pont notes that the general principle dictates that the advancement of persons pursuing a profession is not a charitable purpose.¹² However, the courts have held that certain professional associations may nevertheless be regarded as charitable where the furthering of the members' interests can be seen as integral to the achievement of a charitable public benefit.

For example, the High Court found that the primary object of the Royal Australasian College of Surgeons was the advancement of the science of surgery, and that any benefit provided to its members through professional newsletters, conferences and a technical library was incidental to, and effectively an essential means of achieving, the primary object.¹³ The case did not deal with charity but with the expression 'scientific institution' used in Division 30 of the *Income Tax Assessment Act 1997*. The approach adopted by the court would seem nevertheless to be equally applicable to charities.

The membership criteria for joining a particular organisation may also be a relevant consideration in determining whether the element of public benefit is satisfied or not. In *Thompson v. Federal Commissioner of Taxation*¹⁴, the High Court held that a bequest to the William Thompson Masonic Schools, Baulkham Hills, lacked the 'public' element because the benefit was limited to members of the Masonic order who were admitted to membership of the organisation by the election of existing members, in accordance with the rules of the organisation.¹⁵

Dal Pont suggests the following as an appropriate test to be applied to an organisation's membership criteria to help determine whether it satisfies the public benefit test:

¹¹ Dal Pont, p 232.

¹² Dal Pont, p 233.

¹³ *Royal Australasian College of Surgeons v FC of T* (1943) 68 CLR 436, discussed in Australian Taxation Office (ATO), *Draft Taxation Ruling, Income tax and fringe benefits: charities*, TR 1999/D21, paras 107-109.

¹⁴ (1959) 102 CLR 315.

¹⁵ Dal Pont, p 19.

A barrier [to membership of an association] that a person can overcome by study or practical experience, such as admission to a profession, may not prevent the profession being a section of the public. Conversely a barrier the overcoming of which is dependent upon matters over which the person has no such control, such as admission to a society based on nationality or the votes of others, may operate to deny the 'public' element.¹⁶

In its most recent statement on 'the public character of charity' the Charity Commission for England and Wales makes two particular interpretations which are of interest to the Committee. It refers to 'benefit' as meaning that a charity must provide a 'recognisable advantage for people at a level which reflects their needs'. It also takes the view that 'benefit' means the net benefit to the public. It states that if the achievement of a given aim provides some degree of public benefit, but also (for whatever reason) causes harm to other members of the public to such an extent that the harm outweighs the benefits, then the purpose cannot be regarded as charitable.¹⁷

The courts' acceptance of what is of benefit to the public can also change over time. For example, in commenting on the changing standards of public benefit Lord Wright said that 'where a society has a religious object it may fail to satisfy the test [of public benefit] if it is unlawful, and the test may vary from generation to generation as the law successively grows more tolerant...'¹⁸

The Australian Taxation Office (ATO) understanding of public benefit is set out in the following paragraphs from its draft taxation ruling TR 1999/D21:

The benefits and values intended by charitable purposes are of worth, advantage, utility, importance or significance. They can be tangible, like the accommodation provided by a hostel for the homeless or intangible like the moral benefits derived from prevention of cruelty to animals.

The values or benefits are not limited to some finite or historical list. As new needs arise or community views change there can be an alteration in what purposes are charitable. In dealing with new issues, the courts have been open to developments in society and attitudes.

¹⁶ Dal Pont, p 20.

¹⁷ Charity Commission for England and Wales, March 2001, RR8 — *The Public Character of Charity*, pp 1-2.

¹⁸ In *National Anti-Vivisection Society v IRC* [1948] AC 31, HL at 42, discussed in Picarda, p 26.

However, while it is necessary that a charitable purpose is of benefit or value, not every benefit or value can ground a charitable purpose. That is, not every purpose of benefit to the community is necessarily charitable.

A charitable purpose must be for the benefit of the community. Charity is altruistic and intends social value or utility. The benefit need not be for the whole community; it may be for an appreciable section of the public. It must not be to provide merely private benefits. For a purpose of relieving poverty those to benefit need not be a section of the public.¹⁹

The ATO also notes that:

Where an organisation substantially limits itself to the provision of benefits to members, it is unlikely to satisfy the public benefit requirement. Where, however, an organisation is in fact providing benefits primarily to the community and not substantially to members alone, membership is unlikely to be a significant factor. If the only benefits to members are ancillary or incidental to a purpose of benefiting the community they do not jeopardise the charitable status of an organisation.²⁰

Views on the current approach

The concept of public benefit

The Ontario Law Reform Commission's 1996 report provided a conceptual analysis of issues relating to public benefit. The Commission argued that the phrase 'benefit to the public' is too vague and equivocal and suggested that its meaning could be clarified by reference to three critical elements of charity.²¹

¹⁹ TR 1999/D21, paras 30-32, 43.

²⁰ TR 1999/D21, paras 59-60.

²¹ Ontario Law Reform Commission, 1996, *Report on the Law of Charities*, Chapter 7. A copy of the report is reproduced on the Internet with the permission of the publishers at (<http://www.qut.edu.au/bus/ponc/charity>).

- The nature of the charitable purpose:
 - a charitable purpose should advance a recognised common or universal good. The Commission identified a number of ‘self-evident and underived human goods’ as defined by philosopher John Finnis, namely life, knowledge, play, aesthetic experience, friendship, religion, practical reasonableness and work.
- The practical utility of the charitable activity (its effect):
 - the interpretation of practical utility needs to be context specific but should not be restricted to material, economic or social benefits.
- The destination of the benefit:
 - the requirement that charitable benefits must be for ‘others’ (or as more commonly understood, for ‘strangers’) could be clarified by requiring there to be an ‘emotional and obligational distance’ between the donor and beneficiary. The Commission suggested that beneficiaries could therefore be defined as ‘persons who are remote in affection and to whom no moral or legal obligation is owed.’

This concept of altruism or ‘otherness’ was also raised by the Caroline Chisholm Centre for Health Ethics. Altruism was regarded as providing for those to whom one owes no duty or responsibility. For example, a person’s dependent family should be regarded as an extension of ‘self’ because of the duty that person has to care for their family. Thus in providing for one’s family one is not acting altruistically.

The Catholic Church in Australia noted that having regard to its origins in the word ‘caritas’, charity should be regarded as:

...a concrete commitment to the well-being of others that goes beyond emotion and is more properly seen as a voluntarily assumed duty of one human being to another, a duty owed to them for no reason other than by virtue of their human dignity.

The Church argued that the achievement of human dignity requires that individuals have the means of gaining access to ‘basic human goods’ that comprise human well-being, fulfilment and flourishing. The Church also defined basic human goods as those identified by John Finnis and referred to in the Ontario report.

The Anglican Church Diocese of Sydney submitted that no organisation can produce 'benevolent benefits' for the needy without the camaraderie and community building that involvement in the organisation brings.

However it must be acknowledged that there are intangible benefits involved — whether they be the personal health and fitness benefits of lifesavers, the networking opportunities for those involved in service clubs, and the support provided by Church fellowship.

The Church argued that definitions must not act to exclude organisations on the basis of intangible benefits gained by their participants as these are merely the by-product of the sense of community that is essential to the organisation's ability to provide beneficial services.

In 1998 the National Council of Voluntary Organisations (NCVO) in the UK established a Charity Law Reform Advisory Group to 'assess whether the law on charitable status should be amended to ensure a good fit with today's circumstances'. In February 2001 it released a report for consultation within the voluntary and charitable sector.²²

The primary recommendation of the Group was that the 'public benefit' test should be applied more strongly across all four heads of charity. The Group considered that the general presumption of public benefit under the first three heads of charity (ie for the relief of poverty, the advancement of education and the advancement of religion) should no longer apply, and that organisations or purposes falling under these three heads should be exposed to the same degree of scrutiny on their merits as already applies to purposes under the fourth head of charity, for 'other purposes beneficial to the community'.

Public benefit defined as the provision of 'public goods'

A number of submissions to the Inquiry put the view that the public benefit provided by charities could be defined in terms of their provision of 'public goods' or 'near public goods'.

The Chinese Australian Services Society Co-operative Ltd said that charities are important providers of 'public goods' and 'redistribution'. The Society added that a key characteristic of the public goods provided by government and charities is that they are privately unprofitable because it is difficult to exclude those who do not pay from receiving the benefits provided.

²² National Council of Voluntary Organisations 2001, *For the public benefit? A consultation document on charity law reform*, London.

The Queensland Hospitals Foundations argued that charities and related organisations provide ‘public goods and services’ that are rationed on the basis of need in accordance with public policy, and not by market forces.

The NSW Cancer Council argued that some of its services, such as education and cancer support services, could be offered on a private basis but this would threaten the equity of access to its services, and thus the continued provision of these services by the Council should be regarded as a ‘near public good’.

Religion and public benefit

A number of commentators have examined the question of the public benefit associated with the ‘advancement of religion’. The main point at issue is whether all religious purposes should be regarded as providing a public benefit, or whether some religious purposes may be considered not to be for the public benefit.

Bradshaw argues that, although technically the public benefit element must be satisfied, in practice it is present in charities for the advancement of religion by virtue of their dominant purpose:

For the most part religious bodies either desire to spread their beliefs or provide religious ordinances that the public may participate in or at least observe. Since all religions are to be deemed equal in the eyes of the law, and as the advancement of religion is a charitable object, it must be assumed that this action in spreading their views or even merely making available to the public their ordinances of worship, satisfies the requirement of the necessary public element.²³

Bradshaw goes on to draw on the findings in *Gilmour v Coats* in questioning whether the public element is satisfied in organisations, such as contemplative religious orders, that keep their observances to themselves.²⁴

On the question of contemplative orders, Dal Pont states that the reasoning in *Gilmour v Coats* ‘is unlikely to find favour in modern Australian and New Zealand courts’.²⁵ Dal Pont cites Reynolds JA as stating ‘this doctrine that religious activities are subject to proof that they are for the public benefit could give rise to great problems in that it might lead to the scrutiny by the courts of the public benefit of religious practices’.²⁶

²³ Bradshaw, FM 1983, *The Law of Charitable Trusts in Australia*, Butterworths, Sydney, p 62.

²⁴ [1949] AC 426, discussed in Bradshaw, p 63.

²⁵ Dal Pont, p 171.

²⁶ *Joyce v Ashfield Municipal Council* [1975] 1 NSWLR 744 at 750, as cited in Dal Pont, p 171.

The Nathan Committee in 1952 heard arguments from the Catholic Church, in response to *Gilmour v Coats*, that the ‘advancement of religion’ should be seen as being achieved by whatever means the particular religion believes and teaches are appropriate means for advancing religion. The Nathan Committee however rejected this view, arguing that it was counter to the fundamental principle of the common law that Parliament or the courts alone should decide what is or is not charitable.²⁷

The Goodman Committee in 1976 also considered this question. It concluded that a value judgement has to be made in each case as to whether the activities of a closed contemplative order provide a benefit to the community. The Committee also noted that many immigrant communities bring with them a tradition of strict religious observance, and to deny them the facilities for this could have serious social consequences for them.²⁸

Self-help organisations

Submissions to the Inquiry expressed a high degree of support for self-help organisations to be explicitly recognised as charitable. A common view was that there is a need for greater certainty about the status of such organisations, particularly in terms of whether they are clearly regarded as providing a public benefit or whether this is outweighed by the private benefit accruing to members of self-help groups.

Submissions strongly emphasised that the work of self-help organisations supports the contemporary focus on early intervention and preventative strategies supported by Australian governments in the area of social policy. The effectiveness of these strategies relies to a high degree on the development of customised solutions to problems at the local level, which requires flexibility and innovation.

Complementing the above views, many submissions also emphasised that self-help groups are at the forefront in embracing and promoting a rights based approach to the delivery of assistance to individuals, which focuses on empowering people to take greater responsibility for addressing their own needs. This approach is seen as far more effective in achieving outcomes for individuals than the passive assistance provided under the ‘traditional’ concept of charity.

²⁷ *Report of the Committee on the Law and Practice relating to Charitable Trusts*, 1952, HMSO, London, Cmd 8710 (Nathan Report), p 34.

²⁸ 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), pp 24-25.

ACOSS identified the need to reconcile two competing objectives, namely:

- to exclude organisations that exist only to assist their particular signed-up members, rather than the public or a general class of people (such as those experiencing a particular disease or disability); and
- to recognise and support self-help organisations whose purposes are otherwise charitable.

ACOSS suggested that one way of reconciling these objectives would be to extend the existing common law principle under which charities for the relief of poverty are exempted from any other consideration of public benefit. The suggestion is that this principle could be restated to recognise that self-help and community development activities are appropriate in the relief of poverty (broadly defined as including illness and incapacity).

Self-help groups deny the notion inherent in many programs that people are not able to speak or act for themselves, and that they need special assistance because of some failure as individuals. By placing emphasis on the value of their own life experiences, members of self-help groups affirm their own expertise as legitimate and essential, not only in supporting each other, but also to advocate for themselves and take action to change the circumstances which put them into the position of victims in the first place.

(Ross House Association)

The Physical Disability Council of Australia said that more and more people with disabilities are now demanding that organisations offer self-help, empowerment, advocacy and mentoring skills to their members. The Council claimed that existing definitions enable organisations that offer a traditional form of 'service' to receive various benefits, but the same benefits are denied to organisations that work to empower people to take greater responsibility for developing their own solutions to meet their needs.

Consistent with these views, Community Aid Abroad-Oxfam Australia noted that:

...unless poor people control their own development they are doomed to welfare dependency and continuing poverty. Eradicating poverty on a sustainable basis requires programs that strongly involve the beneficiaries in decision making and implementation.

The Scottish Charity Law Review Commission noted that it is increasingly being recognised that users of an organisation can play a useful role in its governance, and argued that it would be wrong to withhold charitable status from an organisation just because some users are involved in governing it. The Commission recommended that self-help organisations which confer a public benefit should qualify as a charity provided their membership criteria are open and objective, and provided their governance arrangements reflect the ‘public benefit culture’. On the latter point the Commission was concerned to ensure that mutual organisations cannot be recognised as charities.²⁹

Public benefit in a wider sense

Many submissions emphasised the need to embrace a wider concept of public benefit than the provision of support and assistance to the disadvantaged, or the pursuit of objects within the traditional meaning of charity. In particular, there was considerable support for the explicit recognition of the intrinsic public benefit generated by activities that build social capital and serve to enhance community development and community capacity building outcomes.

Within Indigenous Australia, rebuilding the social institutions that underwrite healthy, balanced communities is the key to breaking the cycle of disadvantage.

The scale and nature of challenges in Indigenous communities requires proactive, creative initiatives that build social capital and leverage financial resources. Unfortunately though under current definitions, ‘charity’ is confined to consequences after the fact. Prevention is better than cure — yet the medicine cabinet remains locked under a legal definition that belongs in another century and another world.

(Lumbu Indigenous Community Foundation)

Professor Patrick Parkinson expressed the view that the purpose of defining charities and other not-for-profit organisations must be seen in nation-building terms, as all such organisations play a vital role in building communities and encouraging connectedness. He added:

Organisations of this kind are mediating structures between the individual and the state. They offer alternative sources of meaning and

²⁹ *CharityScotland*, May 2001, Report of the Scottish Charity Law Review Commission, p 15.

belonging which are essential to the continuation of a vibrant democracy and a healthy, caring community.

The Police & Community Youth Clubs NSW and the Queensland Police Citizens Youth Welfare Association supported the development of a modern definition of charity:

which replaces the outmoded 19th century notion of the deserving poor and the 20th century notion of residual welfare with a positive, developmental and inclusive definition that promotes and sustains community altruism through well managed not-for-profit organisations whose purpose is to build social capital, to achieve public good, and to work with government, the community, business and other stakeholders in the relief of the consequences of poverty.

'Poor relations' and 'poor employees' cases

The Goodman Report considered that the common law exemption from the public benefit test in the case of 'poor relations' and 'poor employees' charities was anomalous and that such purposes should no longer be regarded as charitable.³⁰ It took this view on the basis that altruism is an essential element of charity and that charity and the private profit of the donor were mutually exclusive.³¹ This recommendation was not acted upon.

Dal Pont notes that 'two main justifications have been given for this favourable treatment [that gifts for the relief of poverty do not have to satisfy the public benefit test], although neither denies that, to a large degree, the legal position is anomalous'. He refers to a number of judicial comments, including Jenkins LJ that 'This exception cannot be accounted for by reference to any principle' and Harman LJ that 'the poverty cases stick out like a sore thumb from the general rule'.³²

Committee's conclusions

The Committee considers that the element of public benefit remains fundamental to the concept of charity and that the framework for determining public benefit, as enunciated by the common law, continues to be appropriate. To be of public benefit a charitable purpose must:

³⁰ Goodman Report, pp 17-18.

³¹ Goodman Report, p 13.

³² Dal Pont, p 121, citing Jenkins LJ in *Re Scarisbrick* [1951] 1 Ch 622 at 649 and Harman LJ in *Inland Revenue Commissioners v Educational Grants Association Ltd* [1967] 2 All ER 893 at 898.

- be aimed at achieving a universal or common good;
- have practical utility, which may be broader than material benefits; and
- be directed to the benefit of the general community or a 'sufficient section of it'.

Recommendation 6

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'.*

However the Committee considers that in order to provide greater clarity to charities and the wider community, the public benefit test for charitable purposes should more explicitly embrace the concept of altruism.

An organisation may provide a benefit to the public without necessarily acting altruistically. For example, mutual organisations which provide health care services exclusively for paid-up members are providing a public benefit (improved health in the community), but they are not acting altruistically. Similarly, a for-profit company which operates a store selling fresh food to the community at large could be seen as providing a public benefit, but its overriding purpose is to generate profits for its owners.

In its simple dictionary meaning, altruism may be defined as 'unselfish concern for the welfare of others' or 'regard for others as a principle for action'.³³ The key elements of these definitions are unselfishness and concern for others. In the context of charity, altruism can also be characterised as a voluntarily assumed obligation towards the wellbeing of others or the community generally.

The Committee considered whether a measure of voluntary effort should be regarded as necessary in the conduct of a charitable entity as a means of confirming the altruistic nature of the entity.

³³ *Webster's New World Dictionary*, Compact School and Office edition, 1972, The World Publishing Company, Cleveland; and Moore B (ed) 1997, *The Australian Concise Oxford Dictionary of Current English*, 3rd edition, Oxford University Press, Melbourne.

Most charities involve some level of voluntary input, such as volunteers providing services, helping to raise funds, or acting as board members in a voluntary capacity. The Committee acknowledges the significant contribution of volunteers towards the work of charities and endorses the range of government and community initiatives aimed at recognising the value of volunteer effort and increasing the role of volunteers.

However, charities vary greatly in the level of voluntary effort involved in their operations. Some may rely almost entirely on the services of volunteers, while others, in moving to a more business-like approach to the generation of funds and internal administration, may make less use of volunteers. Bearing in mind that the level of volunteer contribution towards the work of any particular charity can vary according to a wide range of factors, the Committee considers it is inappropriate to set a particular level of voluntary effort as the benchmark for being regarded as a charity. This would be artificial and administratively cumbersome and, by imposing targets on the goodwill of individuals, it may have the effect of reducing the level of contribution by volunteers.

Overall, the Committee considers that while the concept of altruism needs to be emphasised, it is not necessary to define the term any more precisely for the purposes of clarifying public benefit. In our view the concept of altruism is sufficiently understood within the community.

Recommendation 7

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

The Committee sees a need to clarify the application of its recommended principles to Australian-based charities which provide services in other countries.

The definitional principles we are recommending are not intended to differentiate on the basis of the location of the beneficiary. In our view, public benefit is a universal concept and cannot be contained within the boundaries of any country. Thus, we see no need to differentiate between the domestic and overseas operations of Australian charities for the purposes of the public benefit test.

Implications of the strengthened public benefit test

If the strengthened public benefit test (which includes altruism) is adopted it will clarify the determination of charitable purpose. To facilitate this, the Committee offers the following views as to how such provisions might apply.

Self-help groups

The Committee notes that a wide range of organisations employ self-help approaches to achieve their purpose, and that this is consistent with contemporary trends in social and welfare policy and practice.

In seeking to define self-help groups, the Committee refers to the description provided by the Ross House Association in its submission:

Self-help groups are made up of, and controlled by, people who are directly affected by the particular disadvantage, discrimination or unmet need which draws the members together. They are groups of people who work to support each other, and thereby find for themselves the solutions which suit their needs. The support gained from the groups enables people to speak for themselves in the wider community.

A typical example of a self-help group is one which is formed by people who are directly or indirectly affected by a disease or disability, including family and carers. Another example is a Community Centre or Neighbourhood House which through mutual support assists people seeking to overcome some form of economic or personal disadvantage. Typically these organisations are aimed at promoting social inclusion at a local community level, which is achieved through providing low cost opportunities for participants to gain support and information, build networks, share resources and learn new skills.

The Committee acknowledges that self-help approaches are very effective in achieving better outcomes for those in need. As many submissions have noted, empowerment is an important factor and contributes to better outcomes than the passive model of providing assistance.

The main issue before the Committee is not whether self-help groups are worthy of support, but whether they are charitable. This can be determined in large part by reference to the 'altruism' element of the public benefit test. There may be self-help groups which are clearly not altruistic. For example, a public speaking club may help to improve the self-esteem and promote the social inclusion of its members, but the main objective of most people joining the club is to gain a benefit for themselves. As such, it lacks an altruistic character. A group with limited membership, such as a group of disabled people who come together to establish communal housing and support for themselves, may not

be considered altruistic even though the individual members may provide considerable help for others in their group.

However, the fact that members of a self-help organisation gain a personal benefit should not be necessarily a disqualifying factor. What needs to be considered is whether the dominant purpose is to achieve a benefit for any person who satisfies the target group criteria. If that is the case, the self-help approach can be regarded as no more than the chosen means for achieving the dominant purpose. For example, in the case of the group of disabled people mentioned above, if the group were set up to try to achieve the same benefits for any person with similar needs (as opposed to a restricted number of members), it would be more likely to be regarded as altruistic.

The organisation's membership provisions are therefore a key consideration in determining whether a self-help group satisfies the public benefit test. In the Committee's view, the existing common law requirement is a satisfactory test, that is:

- that the membership criteria must be related to the purpose of the organisation; and
- that membership of the organisation must be open without qualification to any person who satisfies these criteria.

Recommendation 8

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

Closed or contemplative religious orders

The Committee considers that the current common law interpretation that closed or contemplative religious orders do not provide a public benefit needs to be reviewed against the requirement of altruism.

On this basis, it is possible to distinguish closed or contemplative orders that have a public interface from those that undertake meditation or contemplation on their own behalf. Those orders with a public interface offer prayerful intervention to any members of the faith community who seek it.

In these cases, members of the faith community believe that such contemplative orders are pursuing a beneficial purpose on the public's behalf. The fact that there is no restriction imposed on the general public's opportunity to ask the members of the order to pray on their behalf is sufficient to meet the public benefit test.

Recommendation 9

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.

Mutual and membership based organisations

The adoption of an 'altruism' element within the public benefit test provides greater certainty in determining the status of a range of not-for-profit organisations which have a membership base.

By definition, mutual organisations are established for the benefit of their members. The members make a contribution to join the organisation for the clear purpose of achieving a personal benefit at a future date. The motivation for establishing or joining such an organisation is not altruistic.

Similarly, in the case of other not-for-profit organisations which are not mutual bodies, if the dominant purpose of the organisation is to further the interests of its members, even though some element of public benefit may be claimed, the entity is not altruistic.

On this basis, the Committee agrees with the existing interpretations by the ATO that organisations such as trade unions, employer organisations, professional associations generally and mutual health organisations are not charitable.

'Poor relations' and 'poor employees'

The Committee agrees with the views of the Goodman Committee in 1976 that the common law exemption from the normal tests for public benefit in the case of 'poor relations' and 'poor employees' is anomalous. We also note that at least two judges have questioned the existing principles in this area.

With the adoption of a strengthened public benefit test incorporating the element of altruism, the anomaly becomes more apparent. On the basis that a member of one's family is an extension of 'self' the provision of a benefit to one's own family cannot be regarded as altruistic. Similarly, the provision of a benefit to one's employees cannot be regarded as altruistic because it can be seen as falling within the scope of the employer's duty or responsibility towards the employee.

Recommendation 10

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.

