

CHAPTER 1: BACKGROUND TO THE INQUIRY

The Inquiry into the Definition of Charities and Related Organisations¹ was established by the Prime Minister on 18 September 2000. In announcing the Inquiry, the Prime Minister spoke of the vital role such organisations play in our community and of the need to ensure that the legislative and administrative frameworks they operate in are appropriate to the modern social and economic environment. He went on to note that ‘the common law definition of a charity, which is based on a legal concept dating back to 1601, has resulted in a number of legal definitions and often gives rise to legal disputes’.²

These concerns are reflected in the Inquiry’s terms of reference which in paragraph 4 direct the Committee to:

provide options for enhancing the clarity and consistency of the existing definitions in Commonwealth law and administrative practice with respect to charities, religious and community service not-for-profit organisations. These should lead to legislative and administrative frameworks at the Commonwealth level that are appropriate for, and adapted to, the social and economic environment of Australia.

The terms of reference also ask the Inquiry to examine the continuing relevance of the definition of public benevolent institution. The Committee intends to deal both with our understanding of the current meaning of public benevolent institution and with the question of whether the concept of public benevolent institution should be retained.

This Inquiry is the first in Australia at the Federal level to address specifically the definition of a charity. The definition of a charity has been considered in Victoria and Tasmania as part of reviews of the law relating to charitable trusts.³ The possibility of defining charity has also been considered in other common law countries, again as part of wider reviews of the law applying to

1 Charities, religious institutions, not-for-profit community service organisations and public benevolent institutions.

2 The Hon John Howard MP, Prime Minister, 18 September 2000, *Inquiry into Charitable and Related Organisations*, Press Release.

3 Law Reform Commission of Tasmania 1984, *Report on Variations of Charitable Trusts*, Report No 38; Legal and Constitutional Committee, Victoria May 1989, *Report to the Parliament on the Law Relating to Charitable Trusts*.

charities. Since the Nathan Report in the UK in 1952,⁴ undertaken in response to the rapid rise of the post-war welfare state and the role of charities in that new order, there has been a steady stream of reviews. They have been undertaken in the UK, Canada and New Zealand by governments and by the charitable and related sector. (These reviews are examined at Appendix F.) The reviews argued overwhelmingly for a retention of the common law approach to determining charity, with varying degrees of peripheral change.

There are also a number of reviews and inquiries occurring concurrently with this Inquiry. In June this year the New Zealand Government released a discussion document that sets out options for updating the definition of 'charitable purpose'.⁵ The Scottish Charity Law Review Commission in May this year released its report on the law related to charities in Scotland, including an examination of the definition of a charity.⁶ The Charity Commission for England and Wales has embarked on a review of the register of charities to determine whether there is scope to develop further the boundaries of charity and whether those organisations currently benefiting from charitable status should continue to do so. In Canada the Voluntary Sector Initiative (VSI) is a joint initiative between the voluntary sector and the Government. Under the VSI a series of 'joint tables' and working groups are examining a range of issues to enhance the relationship between the sector and the Government.

The current Inquiry is to some extent ploughing over well-tilled soil. This has been of some assistance to the Committee's consideration of the issues before it. The issue that was before those earlier reviews is the same as the one before this Inquiry. Put simply, it is whether the current common law approach to 'defining' a charity can be improved to better serve the interests of charities, government and the public. The Committee is of the view that it can.

The Inquiry's processes

The Chairman of the Inquiry is the Hon I F Sheppard AO QC and the members are Mr Robert Fitzgerald AM and Mr David Gonski. The Committee met formally on 11 occasions. The Inquiry has been supported by a Secretariat drawn from a number of Commonwealth agencies and located in the Commonwealth Treasury. Membership of the Secretariat included

4 *Report of the Committee on the Law and Practice Relating to Charitable Trusts* December 1952, HMSO, London, Cmd 8710 (the Nathan Report).

5 *Tax and Charities* June 2001, Inland Revenue Department, New Zealand.

6 *CharityScotland* May 2001, The Report of the Scottish Charity Law Review Commission.

Ms Christine Barron of the Department of the Treasury (Secretary), Mr Peter Frazer of the Department of Family and Community Services, Mr David Crockart of the Department of the Treasury and Ms Giuseppina Sottile from the Australian Taxation Office. The Secretariat has also received assistance from Mr Adam Kirk of the Australian Government Solicitor, Ms Julie Johnston, now with the Australian Bureau of Statistics, and Mr John Church, a Director of Baptist Community Services — NSW & ACT. The Committee wishes to record its thanks to its Secretariat for the substantial contribution it has made in providing research material and in valuable contributions to the Committee's discussions and thinking and by the preparation of drafts of various parts of this Report.

The Committee would also like to thank Wentworth Associates for making available access to its facilities and support staff for the conduct of the Committee's meetings.

The Committee is very grateful for the assistance provided to the Inquiry by members of charitable and related organisations. In response to the Issues Paper released by the Inquiry on 10 November 2000, the Committee received 373 submissions. A list of the submissions is at Appendix A. The submissions were very thoughtful and considered and provided substantial assistance to the Committee in its consideration of the issues before it.

As well as seeking submissions, the Inquiry also conducted a number of consultations in Brisbane, Canberra, Melbourne, Perth and Sydney. Numbers at each meeting were limited to approximately a dozen participants with representatives invited from large and small organisations from across the charitable and related sector. The limited numbers at each of the meetings allowed the Committee to discuss very difficult issues at some length, while still being able to hear and respond to a diverse range of views.

On 8 March 2001 the Treasurer announced that he had agreed to the Inquiry's request for the reporting date for the Inquiry to be extended from 31 March 2001 to 30 June 2001. In agreeing to the request he noted that the Government 'is keen to ensure that the Committee has adequate time to fully consider all the issues involved in this important Inquiry'.⁷

⁷ The Hon. Peter Costello MP, Treasurer, 8 March 2001, *Reporting Date Extended for Charities Inquiry*, Press Release No 012.

