

PARLIAMENT OF VICTORIA

**Charities Amendment (Charitable Purpose)
Bill 2018**

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PARLIAMENT OF VICTORIA

Introduced in the Council by Fiona Patten

Charities Amendment (Charitable Purpose) Bill 2018

A Bill for an Act to amend the **Charities Act 1978** to exclude the advancement of religion as a charitable purpose, to amend the **Duties Act 2000**, the **Land Tax Act 2005** and the **Payroll Tax Act 2007** and for other purposes.

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- 5
- (a) to amend the **Charities Act 1978** to exclude the advancement of religion as a charitable purpose; and
 - (b) to amend the tax exemptions provided in relation to religious institutions under the **Duties Act 2000**, the **Land Tax Act 2005** and the **Payroll Tax Act 2007**; and
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- 5 (c) to amend the **Land Tax Act 2005** to exempt religious institutions from the liability to pay land tax in relation to a place used exclusively as a place of public worship; and
- (d) to make other amendments.

2 Commencement

- 10 (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2019, it comes into operation on that day.

Part 2—Amendment of Charities Act 1978

3 Definitions

In section 1A of the **Charities Act 1978** insert the following definitions—

5 "**charitable purpose** has the meaning given by section 1C;

charity has the meaning given by section 1B;

disqualifying purpose means any of the following purposes—

- 10 (a) engaging in, or promoting, activities that are unlawful or contrary to the rule of law, the constitutional system of government of Victoria, the safety of the general public, or national security;
- 15 or
- (b) promoting or opposing a political party or a candidate for political office;"

4 New sections 1B to 1F inserted

20 After section 1A of the **Charities Act 1978** insert—

"1B Determining whether an entity is a *charity*

- (1) An entity is a *charity* if—
- (a) it is a not-for-profit entity; and
- (b) its principal purposes are—
- 25 (i) charitable purposes, including incidental purposes, subject to subsection (4); and
- (ii) for the public benefit, subject to section 1D; and
- 30 (c) none of its purposes are disqualifying purposes; and

(d) it is not an individual, a political party or a government entity (except as provided in section 7K).

(2) In this section—

5 *incidental purposes* means purposes that are incidental or ancillary to, and for the advancement of, or in aid of, charitable purposes.

10 (3) In determining the purposes of an entity, regard must be had to the entity's governing rules, its activities and any other relevant matter.

15 (4) An entity is a charity despite having a principal purpose relating to the advancement of religion if its other principal purposes are charitable purposes.

1C What is a charitable purpose?

20 (1) A *charitable purpose* is any of the following purposes, whether directed to Victoria or elsewhere—

(a) advancing health, including but not limited to the purpose of preventing and relieving sickness, disease or human suffering;

25 (b) advancing education;

(c) advancing social or public welfare, including but not limited to the following purposes—

30 (i) relieving the poverty, distress or disadvantage of individuals or families;

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- (ii) caring for and supporting the aged;
 - (iii) caring for and supporting individuals with disabilities;
 - (iv) caring for, supporting and protecting children and young individuals (and, in particular, providing child care services);
 - (v) assisting the rebuilding, repairing or securing of assets after a disaster in accordance with subsection (2);
 - (d) advancing culture, including but not limited to the following purposes—
 - (i) promoting or fostering culture;
 - (ii) caring for, preserving and protecting Australian heritage;
 - (e) promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Victoria;
 - (f) promoting or protecting human rights;
 - (g) preventing or relieving the suffering of animals;
 - (h) advancing the natural environment;
 - (i) any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes referred to in paragraphs (a) to (h);
 - (j) promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if—
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- (i) in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes referred to in paragraphs (a) to (i); or
- 10
- (ii) in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes referred to in those paragraphs.
- (2) Assisting the rebuilding, repairing or securing of assets after a disaster is a charitable purpose if—
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- (a) the disaster developed rapidly and resulted in the death, serious injury or other physical suffering of a large number of individuals, or caused distress to a large number of individuals and resulted in widespread damage to property or the natural environment; and
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- (b) the rebuilding, repairing or securing is in furtherance or in aid of the purposes of one or more exempt entities, within the meaning of the Income Tax Assessment Act 1997 of the Commonwealth; and
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- (c) the purpose of assisting is directed to providing benefits that are commercial or private only to an incidental and ancillary extent, if at all; and
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- (d) the assets are assets of entities that—
 - (i) are not government entities; or
 - (ii) would be charities but for a connection to government.

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Note

Government is defined in section 7K.

- (3) The advancement of religion is not a charitable purpose.

1D Public benefit test

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- (1) A charitable purpose of an entity is for the public benefit if—

- (a) the achievement of the purpose would be of public benefit; and

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- (b) the purpose is directed to a benefit that is available to members of—

- (i) the general public; or

- (ii) a sufficient section of the general public.

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- (2) In determining whether the achievement of the purpose would be of public benefit, regard must be had to all relevant matters, including any identifiable benefit (whether tangible or intangible) and any identifiable detriment—

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- (a) that would result from achieving the purpose; and

- (b) that would affect members of—

- (i) the general public; or

- (ii) a section of the general public.

- 5
- (3) In determining whether a purpose is directed to a benefit that is available to members of the general public or a sufficient section of the general public, regard must be had to all relevant matters, including—
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- (a) any possible, identifiable benefit from the purpose that is available to any of the following entities that are not charities, but is not available to members of the general public, or a sufficient section of the general public—
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- (i) the founders, owners, members, trustees, employees, officers or agents of, or donors to, the entity referred to in subsection (1);
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- (ii) the associates, within the meaning of section 318 of the Income Tax Assessment Act 1936 of the Commonwealth, of the entities referred to in subparagraph (i); and
- (b) the relationships between the entities to whose benefit the purpose is directed.
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- (4) In determining whether the section of the general public to whose benefit the purpose is directed is a sufficient section, regard must be had to all relevant matters, including the comparison of the numerical size of that section of the general public with the numerical size of the section of the general public to whom the purpose is relevant.
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1E Purposes that are taken to satisfy the public benefit test

- 5 (1) Despite the requirement in section 1D(1)(b), the public benefit test is satisfied by receiving, holding or managing an amount or non-cash benefit, within the meaning of the Income Tax Assessment Act 1997 of the Commonwealth, for the benefit of Indigenous individuals in relation to—
- 10 (a) native title, within the meaning of the Native Title Act 1993 of the Commonwealth; or
- 15 (b) traditional Indigenous rights of ownership, occupation, use or enjoyment of land.
- (2) The following purposes are presumed, in the absence of evidence to the contrary, to satisfy the public benefit test—
- 20 (a) preventing and relieving sickness, disease or human suffering;
- (b) advancing education;
- (c) relieving the poverty, distress or disadvantage of individuals or families;
- 25 (d) caring for and supporting—
- (i) the aged; or
- (ii) individuals with disabilities.
- (3) The purpose that an entity has is not required to be for the public benefit if—
- 30 (a) the entity is an association of individuals that has an open and non-discriminatory membership; and

- 5 (b) the entity is established for the purpose of assisting individuals affected by a particular disadvantage or discrimination, or by a need that is not being met; and
- (c) the entity is made up of, and controlled by, individuals who are affected by the disadvantage, discrimination or need; and
- 10 (d) all of the entity's criteria for membership relate to its purpose; and
- (e) the entity's membership is open to any individual who satisfies the criteria.

1F Application of definitions

- 15 (1) The definitions of *charitable purpose*, *charity* and *disqualifying purpose* apply for the purposes of this Act and any other Act.
- (2) Despite subsection (1), those definitions do not apply—
- 20 (a) to the **Religious and Successory Trusts Act 1958**; and
- (b) to any prescribed Act or provision of an Act."

5 New section 7AB inserted

25 After section 7A of the **Charities Act 1978** insert—

"7AB Effect of Charities Amendment (Charitable Purpose) Act 2018

30 Nothing in this Part is affected by the commencement of the **Charities Amendment (Charitable Purpose) Act 2018** and this Part continues to operate despite that commencement as if that Act had not been enacted."

6 New Part III inserted

After Part II of the **Charities Act 1978** insert—

"Part III—General

18 Regulations

- 5 (1) The Governor in Council may make regulations for or with respect to any matter or thing that is required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.
- 10 (2) Regulations made under this Act—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances."

Part 3—Amendment of Duties Act 2000

7 Definitions

In section 3(1) of the **Duties Act 2000** insert the following definitions—

5 "*charitable purpose* has the same meaning as in the **Charities Act 1978**;

 "*charity* has the same meaning as in the **Charities Act 1978**;"

8 Exemptions from duty under section 37

10 (1) For section 38(3)(a) of the **Duties Act 2000** substitute—

 "(a) a charitable purpose or an educational purpose; or".

15 (2) In section 38(3)(b) of the **Duties Act 2000**, for "religious, charitable or educational purpose" substitute "charitable purpose or an educational purpose".

9 Charities and friendly societies

20 (1) For section 45(a) of the **Duties Act 2000** substitute—

 "(a) a charitable purpose or an educational purpose; or".

25 (2) In section 45(b) of the **Duties Act 2000**, for "religious, charitable or educational purpose" substitute "charitable purpose or an educational purpose".

10 Government or charitable vehicle used to convey incapacitated person

30 For section 233D(1)(a) of the **Duties Act 2000** substitute—

 "(a) a charitable or benevolent institution; or".

Part 4—Amendment of Land Tax Act 2005

11 Definitions

In section 3(1) of the **Land Tax Act 2005** insert the following definitions—

5 "**charitable institution** means a corporation or body of persons that is a charity;

charitable purpose has the same meaning as in the **Charities Act 1978**;

10 **charitable trust** means a trust created for a charitable purpose;

charity has the same meaning as in the **Charities Act 1978**;

15 **place of public worship** means a building or place that is open to the public for attendance and used for the purpose of religious worship by a religious group;

20 **religious institution** means a not-for-profit institution that advances or promotes religious purposes and the beliefs and practices of its members constitutes a religion;".

12 New section 91A inserted

After section 91 of the **Land Tax Act 2005** insert—

25 "**91A Exempt taxpayers—places of worship**

 A taxpayer is exempt from the liability to pay land tax if the taxpayer is a religious institution and the liability to pay land tax relates to a place used exclusively as a place of public worship."

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Part 5—Amendment of Payroll Tax Act 2007

13 Definitions

In section 3 of the **Payroll Tax Act 2007** insert the following definition—

5 "*charitable* has the same meaning as *charitable purpose* in the **Charities Act 1978**;"

14 Non-profit organisations

(1) Section 48(1)(a)(i) of the **Payroll Tax Act 2007** is repealed.

10 (2) For section 48(1)(b) of the **Payroll Tax Act 2007** substitute—

15 "(b) to a person engaged exclusively in work of a charitable, benevolent, philanthropic or patriotic nature for the institution or non-profit organisation (but not including work relating to the advancement of religion)."

Part 6—Repeal of amending Act

15 Repeal of amending Act

This Act is **repealed** on 1 July 2020.

Note

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The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.