

## Book Reviews

### Law of Charity

Gino Dal Pont

Australia: LexisNexis Butterworths, 2010, pp 599, ISBN 9780409327298, \$259.00

Charity law is a subject often, if not always, confined to a mere chapter in major works on the law of trusts. One would often be left wanting in seeking an extensive treatment of the law of charity, as only the salient points on charitable trusts are presented within the limits and constraints in a dedicated text on trusts. The *Law of Charity* fills this lacuna. Dal Pont's work is a comprehensive exposition on charity law, addressing and analysing the finer details frequently omitted from texts on trusts. Even in its first edition, Dal Pont's *Law of Charity* is poised to be the authoritative text in Australia on this complex area of law.

Charity law can be a highly involved area of law for two significant reasons: (1) save for the exceptions of 'saving legislation' and the *cy-pres* doctrine, charity law adopts a strict approach as to whether or not a purpose is charitable, making identifying charitable purposes a vital and fraught issue; and (2) the changing landscape of political and business dynamics in which charity law operates renders some of its central concepts amorphous. These two issues can also be interrelated. For example, as charities increasingly seek to be self-sustaining through providing government-related services and/or business activities, the interactions between charity, business and politics need to be discussed, as do the divide between the public and private natures of a charitable purpose. The publication of the *Law of Charity*, as a dedicated work on the area, is significant because it addresses these issues in a level of detail that suits their complexity.

Dal Pont addresses the specifics of contemporary charity law in detail, covering the initial stages of establishing charities, through to their structures, the privileges they enjoy and how they are regulated.<sup>1</sup> There is recognition in the book that modern charity law is inextricably linked to its historical roots by the constant referral by the courts to the Preamble of

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<sup>1</sup> Commonly referred to as the 'four heads of charitable purpose', derived from the Preamble of the *Statute of Charitable Uses 1601*. See also, *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531.

the *Statute of Charitable Uses 1601*.<sup>2</sup> Without an appreciation for the continuing significance of its historical development, recurring and developing issues in charity law cannot be thoroughly analysed. Here the context of modern charity law is provided through Stefan Petrow's recount of the history of the law of charity in Australia and other common law jurisdictions.<sup>3</sup>

As would be expected from a dedicated text on charity law, the central components of charity law are discussed in detail. For instance, each aspect of the complex requirements of establishing a charitable purpose are individually scrutinised on the basis of the relevant case law. However, in addition to providing detailed coverage of the primary issues, specific aspects of charity law are also addressed, such as charitable exemptions from aircraft noise levies, and rights of exclusive dealing under the *Trade Practices Act 1974* (Cth).

Unsettled areas of charity law and potential reforms are not neglected in the *Law of Charity*. As well as assessing existing accountability and fundraising measures imposed on charities, with their attendant defects, other grey areas of charity law are highlighted such as threats to national security through fundraising by religious charities connected with Islamic extremism, and the legal requirements in recognising foreign charities. Suggested fiscal reforms and their consequent effects are examined, providing an analysis on the interaction between charities and business, and the impact of policy on that interaction. These discussions form arguably the most important part of Dal Pont's work, given the dire need of reform to relieve modern charity law of its perplexities and obsolete roots. The reader should note that, though only published in 2010, the *Law of Charity* came before some significant changes in the realm of charity law, in the form of both legislative instruments and case law.<sup>4</sup> Consideration of these changes alongside the thorough treatment provided by the book will give a more complete picture of charity law.

Though forming part of the LexisNexis's Practitioner Series, clarity in the writing, coupled with the logical structure of *Law of Charity* makes it accessible to laypersons. Anyone involved in, or contemplating taking up, the management of charities will do well to read Chapters 17 and 18 concerning the duties and powers of charitable trustees, and the regulation of charitable fundraising in individual states. The *Law of Charity* will also serve students well in their forays into this area of the law.

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<sup>2</sup> *Aid/Watch Incorporated v Federal Commissioner of Taxation* (2010) 241 CLR 539; *Tantau v MacFarlane* [2010] NSWSC 224 (25 March 2010).

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<sup>4</sup> For example, the Tax Laws Amendment (Political Contributions and Gifts) Bill 2008 (Cth); See *Tantau v MacFarlane* [2010] NSWSC 224 (25 March 2010).

Whilst it has an Australian focus, the significance and impact of *Law of Charity* will inevitably extend beyond Australian shores. This is increasingly inevitable given: (1) the growth of international philanthropy; and (2) charity law in common law jurisdictions remains deeply rooted in its historical source of English common law. It must also be borne in mind that the legal concept of charity is a fluid one. The burgeoning of funding for charities, and the attendant increase in the complexity of managing charities, necessitates analysis and reform to provide adequate measures to facilitate socially desirable charitable activities. Dal Pont's *Law of Charity* is a commendable step in this direction.

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