



MYTH BUSTERS

MYTHS about CHARITABLE TRUSTS busted once and for all

Jason Masters, Emma Chinnery and Alana

Schwartz

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Broome

† +61 8 9426 6611 † + 61 8 9321 2002 e jacmac@jacmac.com.au
a level 17, 225 St Georges Terrace, Perth Western Australia 6000
GPO Box M971 Perth Western Australia 6843
www.jacmac.com.au

 **Jackson
McDonald**
Legal Depth | Breadth | Presence

Introduction

Presenters:

Jason Masters, Kuruma Marthudunera Limited

Emma Chinnery, Jackson McDonald

Alana Schwartz, Jackson McDonald

Session outline

1. Background – Charitable Trusts and the BMS
2. The law in 2018 – Myths Busted:
 - a. Charities making a profit
 - b. Keeping benefits for only common law holders
 - c. NANE tax treatment of native title benefits
 - d. Indigenous Disadvantage
3. Hot topics discussion:
 - a. Aboriginal economic development
 - b. Social Impact Investing
 - c. Home ownership for Traditional Owners
4. Joint Q&A

- Jot down any issues and queries on your table post-its during the session
- Add them to the carpark
- We'll work through them during Q&A

Reminder about session – the information covered is general. Trustees and charitable trusts should obtain appropriate advice on issues raised in this presentation, specific to their circumstances and plans

Charitable Trusts – the background and the BMS

- 1. A decade of developments**
 - a. The law and interpretation are always evolving

- a. Community understanding around charitable trusts**
 - a. Some communities may not be aware of broadened scope for charitable trusts

- b. Governing documents**
 - a. Trustees must follow the trust deed, even if it does not reflect most up to date law
 - b. Some BMS arrangements would benefit from review and restructure to maximise opportunities



Updates on the law in 2018

Busting Myths

MYTH

Aboriginal charities cannot undertake
commercial activities

- ✓ Charities can undertake commercial activities, **provided that** the profits are used to further the charity's purposes.

- ✓ Charitable trusts can:
 - undertake their own commercial activities (*must be in line with the powers of the trust deed*) OR
 - fund community corporations to undertake the commercial activities

MYTH

Aboriginal charitable trusts are not allowed to benefit just one particular native title group

The law in 2018 – Keeping benefits for TOs

Charity = Charitable Purpose + Public Benefit

- Previously – benefiting a specific native title group was not considered as benefiting the public generally
- Meant that charitable trusts needed to benefit a broader range of people (eg Aboriginal people across a region)
- Now – the Charities Act recognises that a charity can be for the benefit of a native title group

MYTH

Native title payments are only
tax exempt if they are paid
through a charitable entity

The law in 2018 – NANE tax measures

- Native title benefits are paid to recognise rights and interests of Aboriginal and Torres Strait Islander People as traditional custodians of their land and waters
- Native title benefits now considered **non-assessable non-exempt (NANE)** income and **not subject to income tax** when paid to certain eligible beneficiaries
- Means that a charitable trust is not necessarily required. Some direct benefits trusts have not yet been updated to maximise the NANE tax measures (eg changes to definition of beneficiaries and/or creating sub funds)
- *REMINDER* – income earned on investing NANE income is assessable for tax purposes

MYTH

Aboriginal Charitable trusts can only support
Aboriginal persons if they are in poverty

The law in 2018 – Indigenous Disadvantage

- “Indigenous Disadvantage” – recognised by the ACNC and Courts
- Addressing Indigenous Disadvantage = charitable purpose



Commissioner’s Interpretation Statement:

Indigenous charities

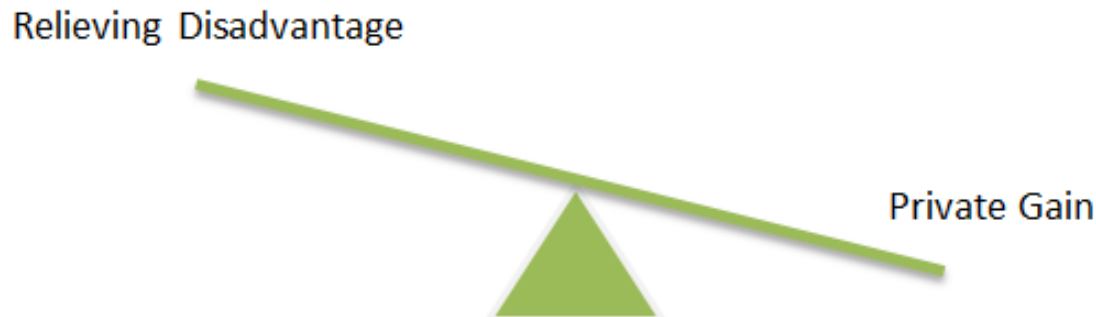
Commissioner’s Interpretation Statements help to guide charities, the public and ACNC staff on how we understand the law that applies to charities, including explaining the law made by judges (‘common law’) and parliament (legislation), as well as any legal issues that may arise.



Hot Topics Discussion

Aboriginal Economic Development

- Charitable Trusts can fund AED support programs **IF** the support relieves disadvantage and does not amount to a private gain.



- The trust rules and investment/distribution policy need to be broad enough to allow AED – they may need to be reviewed.

- Major challenge involves balancing:
 - AED interests and aspirations of the **community** as a whole

Versus

- AED interests and aspirations of **individuals** and families within that community

Real Example – AED Distribution

- The elders in a community have asked their Aboriginal charitable trust to help a **community member** purchase important equipment for their business – machinery costing \$30,000
- The business owner is seeking a **distribution** from the charitable trust's economic development bucket to fund the purchase

Tackling the Example

Consider:

- Will this distribution relieve disadvantage?
- Is there private profit for individuals or families?
- Does this type of distribution align with our strategy – is this where the community wants us to be heading?
- What does our distribution policy say?
- Competing needs from community – how do we decide who benefits first?
- How else could the trust achieve a similar result for beneficiaries/community in a different way?

Social Impact Investing

- Investing trust funds in investments that deliver social outcomes and impact, not just financial outcomes
- May be possible to accept a lower financial return to invest in projects benefiting community
- **Finding the balance** – between higher financial return vs higher community outcomes
- Investment policy and trust rules are critical
- Seek community involvement in developing investment policy (vision, strategy and values)
- Trustee must still exercise duties when choosing investments

Real Example – Social Impact Investing

- A Charitable trust has been asked to loan funds to a local gardening and home maintenance business
- The business provides **jobs and training for traditional owners** and provides affordable gardening services to the community
- The business owner will pay interest on the loan at slightly lower than the commercial rate

Tackling the Example

Consider:

- Is there private gain for individuals or families?
- If financial return on investment will be small, what is the social return and how can we measure it?
- Does this type of investment align with our strategy – is this where the community wants us to be heading?
- Does it fit with our risk profile?
- What does our investment policy and trust deed say?

Supporting Home Ownership

- Rental assistance is a common form of support.
- Some trusts are interested in going further – providing financial support towards home ownership.
- Ideas such as distributions for deposits, and loan opportunities
- ACNC guidance – “rent-to-buy” and “shared equity housing purchase schemes” could be possible as long as solely charitable purpose of the charity remains
- Grey unresolved area – the line is not certain.
- Issues around private gain for individuals, and whether the persons benefiting are in need.

Real Example – Home Ownership

- An Aboriginal charitable trust is considering a community home ownership project
- The trust would like to provide “low interest” loans of up to \$50,000 to TOs to fund deposits and support home ownership aspirations
- Loans and interest are only repayable on sale of the property

Tackling the Example

Consider:

- Is there private gain for individuals or families?
- Does this type of project align with our strategy – is this where the community wants us to be heading?
- Have we considered the long term costs of this program (eg staffing)?
- Community perception – how do we decide who benefits first?
- Is this the best way to help traditional owners from the trust's limited resources?
- Is this something that government should be assisting with?

The future

- For some communities charitable trusts may no longer be needed (with NANE being introduced). Especially if they have a community corporation and direct benefits trust
- Trusts may be able to invest in ways they have not previously considered (eg social impact investments)
- There needs to be further development and clarity around home ownership support and housing
- Trustees and advisory committees are continuing to test the boundaries with the regulators (ACNC)



Location and date

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