

CHARITY LAW AND ACCUMULATION

Much has been written in charity law on the type of benefits that charities can provide – charitable purposes – and towards whom such benefits must be directed – the public benefit question. Almost nothing has been written about when benefits must be provided. However, accumulation of assets by charities raises profound ethical, economic and social considerations that are highlighted by the present retreat of the welfare state and the impact of the global financial crisis and COVID-19. This book analyses the issues through a normative, doctrinal and comparative analysis of the legal constraints upon accumulation by charities. It reveals that the legal restraints contain significant gaps in relation to the intergenerational distribution of benefits and to the balance of decision-making between generations. In particular, the book asserts that there is room for law reform to better identify and incorporate principles of intergenerational justice into the regulation of charities.

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Charity Law and Accumulation

MAINTAINING AN INTERGENERATIONAL BALANCE

IAN MURRAY

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CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-1-108-49059-7 — Charity Law and Accumulation
Ian Murray
Frontmatter
[More Information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.

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www.cambridge.org

Information on this title: www.cambridge.org/9781108490597

DOI: 10.1017/9781108854283

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First published 2021

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

NAMES: Murray, Ian, 1970- author.

TITLE: Charity law and accumulation : maintaining an intergenerational balance / Ian Murray, University of Western Australia, Perth.

DESCRIPTION: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2021. | Includes index.

IDENTIFIERS: LCCN 2020036498 (print) | LCCN 2020036499 (ebook) | ISBN 9781108490597 (hardback) | ISBN 9781108796040 (paperback) | ISBN 9781108854283 (epub)

SUBJECTS: LCSH: Charity laws and legislation. | Charities. | Charitable uses, trusts, and foundations—Taxation—Law and legislation. | Nonprofit organizations—Taxation—Law and legislation. | Asset allocation.

CLASSIFICATION: LCC K797 .M87 2021 (print) | LCC K797 (ebook) | DDC 344.03/17—dc23

LC record available at <https://lcn.loc.gov/2020036498>

LC ebook record available at <https://lcn.loc.gov/2020036499>

ISBN 978-1-108-49059-7 Hardback

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Acknowledgements^{*}

I owe a deep debt to my wife Sarah, whose love, support and words of wisdom have enabled me to complete this book. I also dedicate the book to my daughter Charlotte and my son Kit who have grown up at the same time as the book. That Charlotte and Kit can now ask how it is going and when it will be finished, has consistently served as a useful prod. Thanks also to my parents, John and Irene, and parents-in-law, Tim and Jenny, for their understanding and the occasional additional prompt.

The book grew out of a PhD thesis for which I was blessed with my supervisors, Professors Gino Dal Pont and Don Chalmers. Gino and Don, right from the beginning, you made me feel very welcome. Gino's guidance has always been masterful, thought-provoking and remarkably swift. Don challenged me to think about how the work fits into the broader socio-political context, and for this, and for his insights into intergenerational justice, I am truly grateful. Indeed, I am thankful for the incredible level of assistance from the entire University of Tasmania Law School, including the provision of a McDougall Scholarship and pertinent comments at Law School presentations. In particular, I am grateful to Peter Lawrence, with whom an early discussion about intergenerational justice proved so fruitful, and Deborah Bowring, for going above and beyond in responding to my many library requests.

The UWA Law School has also been wonderfully helpful in providing me with the time and space to complete the book. Much of this is due to the support of Stuart Kaye, Erika Techera, and Natalie Skead as successive deans over the time of writing. Particular thanks also to Peter Creighton and Murray Wesson for fielding trusts and legal philosophy questions and to Tayu Wilker

^{*} The law in this book is current as of March 2020.

for much appreciated research assistance. I also acknowledge support from the Australian Government through an Australian Government Research Training Program Scholarship.

I have also benefited from productive discussions with the participants at several conferences: notably, various Charity Law Association of Australia and New Zealand conferences, the ANU National Law Reform Conference and Melbourne Law School's Obligations conference. In particular, comments and questions from Matthew Harding, Pauline Ridge, Matthew Turnour, and Chris Kelly have insightfully informed my thinking. Thanks also to Murray Baird of the Australian Charities and Not-for-profits Commission, and to Professor Adam Parachin of Western University, Dr Oonagh Breen of University College Dublin, Professor Myles McGregor-Lowndes of QUT and Dr Michael Booth of QUT. Indeed, Professors Matthew Harding and Adam Parachin have kindly provided detailed written comments on an earlier iteration of this work.

The McDougall Scholarship and UWA's sabbatical support enabled me to undertake research visits to the United States and the United Kingdom, which provided critical comparative perspectives as well as interaction with a number of very generous scholars. Particular thanks go to Professor Debra Morris, Dr Jennifer Sigafos, Dr John Picton and Brian Thompson at the University of Liverpool for their inspirational approach to charity law and their infectious love of their city. Professor Jonathan Garton kindly shared his thoughts on charity regulation. Tony Johnson at HMRC and Debbie Nunn and Adrian Broomfield at the Charity Commission were incredibly considerate in updating an antipodean on the regulatory approach in the United Kingdom.

In the United States, Professors David Yermack, Harvey Dale and Jill Manny not only hosted me at New York University but also provided numerous insights into philanthropy and accumulation over some very enjoyable lunches. Professor Mark Sidel of Wisconsin-Madison University has answered numerous questions and provided insightful guidance on the book-writing process. Professor Michael Klausner of Stanford Law School helped firm up my interest in intergenerational justice. Thanks to Professor Robert Sitkoff, Professor Daniel Halperin and Senior Researcher Marion Fremont-Smith of Harvard University for stimulating discussions and insights into charity accumulation and US regulation. Professor Cindy Lott of Columbia University, Professor James Fishman of Pace Law School, and Professor Roger Colinvaux of Columbus Law School generously provided their time and thoughts. Gordon Clay of the House/Senate Joint Committee on Taxation, Ruth Madrigal of Treasury, and Karin Kunstler-Goldman of the New York State Attorney-General's Charities Bureau provided invaluable insight into the

regulators' and legislators' perspectives of US charity regulation. Professor Evelyn Brody of the Chicago-Kent College of Law added art and architecture to her penetrating charity law discourse, and I also owe Professor Brody a special thanks for arranging illuminating meetings with Professor Weisbrod of Northwestern University, the late Professor Woods Bowman and Therese Harris of the Illinois Attorney-General's Charitable Trusts Bureau.

Finally, thanks are due to LexisNexis, the Sydney Law Review and Australian National University Press for permitting me to use the following material:

- The majority of Chapter 3 has previously been published as two linked, articles: Ian Murray, 'Accumulation in Charitable Trusts: Australian Common Law Perpetuities Rules' (2015) 9(1) *Journal of Equity* 30–65; and Ian Murray, 'Accumulation in Charitable Trusts: Australian Statutory Perpetuities Rules' (2014) 8(2) *Journal of Equity* 163–95. The material has been updated and has been broadened beyond charitable trusts as well as to include more material from New Zealand, Canada, the United States, and the United Kingdom.
- The majority of Chapter 6 has been published as Ian Murray, 'Charity Accumulation: Interrogating the Conventional View on Tax Restraints' (2015) 37(4) *Sydney Law Review* 541–68. The discussion has been updated and broadened to include more material from New Zealand, Canada, the United States and the United Kingdom.
- A portion of Chapter 7 (predominantly contained in Section 7.3.1) has been published as Ian Murray, 'Nudging Charities to Balance the Needs of the Present Against Those of the Future' in Ron Levy, Molly O'Brien, Simon Rice, Pauline Ridge and Margaret Thornton (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (Australian National University Press, 2017) 347–56. The material has been substantively developed and elaborated in this book.

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ACNC	Australian Charities and Not-for-profits Commission
<i>ACNC Act</i>	<i>Australian Charities and Not-for-profits Commission Act 2012 (Cth)</i>
<i>ACNC Regulation</i>	<i>Australian Charities and Not-for-profits Commission Regulation 2013 (Cth)</i>
ALI Restatement of Charity Law (Draft 1)	American Law Institute, <i>Restatement of the Law of Charitable Nonprofit Organizations</i> (Tentative Draft No 1, 2016)
ALI Restatement of Charity Law (Draft 2)	American Law Institute, <i>Restatement of the Law of Charitable Nonprofit Organizations</i> (Tentative Draft No 2, 2017)
ALI Restatement of Charity Law (Draft 3)	American Law Institute, <i>Restatement of the Law of Charitable Nonprofit Organizations</i> (Tentative Draft No 3, 2019)
<i>Anheier</i>	Helmut Anheier, <i>Nonprofit Organizations: Theory, Management, Policy</i> (Routledge, 2nd ed, 2014)
ASIC	Australian Securities and Investments Commission
<i>Associations Act (ACT)</i>	<i>Associations Incorporation Act 1991 (ACT)</i>
<i>Associations Act (NSW)</i>	<i>Associations Incorporation Act 2009 (NSW)</i>
<i>Associations Act (NT)</i>	<i>Associations Act 2003 (NT)</i>
<i>Associations Act (Qld)</i>	<i>Associations Incorporation Act 1981 (Qld)</i>
<i>Associations Act (SA)</i>	<i>Associations Incorporation Act 1985 (SA)</i>
<i>Associations Act (Tas)</i>	<i>Associations Incorporation Act 1964 (Tas)</i>
<i>Associations Act (Vic)</i>	<i>Associations Incorporation Reform Act 2012 (Vic)</i>

<i>Associations Act</i> (WA)	<i>Associations Incorporation Act 2015</i> (WA)
ATO	Australian Taxation Office
<i>Auerbach</i>	Bruce Auerbach, <i>Unto the Thousandth Generation: Conceptualising Intergenerational Justice</i> (Peter Lang, 1995)
<i>Australian Charities Report 2015</i>	Natasha Cortis et al., 'Australian Charities Report 2015' (Report, CSI and Social Policy Research Centre, UNSW, December 2016)
<i>Australian Charities Report 2017</i>	ACNC, <i>Australian Charities Report 2017</i> (ACNC, May 2019)
<i>Barker, Gousmett and Lord</i>	Susan Barker, Michael Gousmett, and Ken Lord, <i>The Law and Practice of Charities in New Zealand</i> (LexisNexis, 2013)
<i>Bourgeois' Charitable Organizations</i>	Donald J Bourgeois, <i>The Law of Charitable and Not-for-Profit Organizations</i> (LexisNexis, 5th ed, 2016)
CAMAC	Corporations and Markets Advisory Committee
<i>Catalyst for Change</i>	Canada, Senate, Report of the Special Senate Committee on the Charitable Sector, <i>Catalyst for Change: A Roadmap to a Stronger Charitable Sector</i> (June 2019)
<i>Chan's Public-Private</i>	Kathryn Chan, <i>The Public-Private Nature of Charity Law</i> (Hart Publishing, Oxford, 2016)
<i>Chargeable Gains Act</i> (UK)	<i>Taxation of Chargeable Gains Act 1992</i> (UK) c 12
<i>Charities Act</i> (Aus)	<i>Charities Act 2013</i> (Cth)
<i>Charities Act</i> (NZ)	<i>Charities Act 2005</i> (NZ)
<i>Charities Act</i> (UK)	<i>Charities Act 2011</i> (UK) c 25
Charity Commission	Charity Commission for England and Wales
CIO	Charitable incorporated organisation
<i>Companies Act</i> (UK)	<i>Companies Act 2006</i> (UK) c46
<i>Contribution of the NFP Sector</i>	Productivity Commission (Cth), 'Contribution of the Not-for-Profit Sector' (Research Report, January 2010)
<i>Corporation Tax Act</i> (UK)	<i>Corporation Tax Act 2010</i> (UK) c 4
<i>Corporations Act</i> (Aus)	<i>Corporations Act 2001</i> (Cth)
CPPPN	Commission on Private Philanthropy and Public Needs
<i>Dal Pont's Law of Associations</i>	G Dal Pont, <i>Law of Associations</i> (LexisNexis Butterworths, 2018)

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<i>Dal Pont's Law of Charity</i>	G Dal Pont, <i>Law of Charity</i> (LexisNexis Butterworths, 2nd ed, 2017)
<i>De-Shalit</i>	Avner de-Shalit, <i>Why Posterity Matters: Environmental Policies and Future Generations</i> (Routledge, 1995)
<i>Economic Analysis of Law</i>	Richard Posner, <i>Economic Analysis of Law</i> (Wolters Kluwer, 9th ed, 2014)
FCT	Commissioner of Taxation or Federal Commissioner of Taxation
<i>Fishman, Schwarz, and Mayer</i>	James J Fishman, Stephen Schwarz, and Lloyd Hitoshi Mayer, <i>Nonprofit Organizations: Cases and Materials</i> (Foundation Press, 5th ed, 2015)
<i>Garton's Public Benefit</i>	Jonathan Garton, <i>Public Benefit in Charity Law</i> (Oxford University Press, 2013)
<i>Gosseries and Meyer</i>	Axel Gosseries and Lukas Meyer (eds), <i>Intergenerational Justice</i> (Oxford University Press, 2009)
<i>Governing Nonprofit Organizations</i>	Marion Fremont-Smith, <i>Governing Nonprofit Organizations: Federal and State Law and Regulation</i> (Harvard University Press, 2008)
<i>Harding's Charity Law</i>	Matthew Harding, <i>Charity Law and the Liberal State</i> (Cambridge University Press, 2014)
HMRC	Her Majesty's Revenue & Customs
<i>Industry Commission Report 1995</i>	W Scales, R Mauldon, and M McGovern, 'Charitable Organisations in Australia' (Report No 45, Industry Commission, 16 June 1995)
IRS	Internal Revenue Service
<i>ITA (Ca)</i>	<i>Income Tax Act</i> , RSC 1985, c 1
<i>ITA (NZ)</i>	<i>Income Tax Act 2007</i> (NZ)
<i>ITA (UK)</i>	<i>Income Tax Act 2007</i> (UK) c 3
<i>ITAA97</i>	<i>Income Tax Assessment Act 1997</i> (Cth)
<i>Jacobs' Law of Trusts</i>	J Heydon and M Leeming, <i>Jacobs' Law of Trusts in Australia</i> (LexisNexis, 8th ed, 2016)
<i>Kessler, Wong, and Birkbeck</i>	James Kessler, Etienne Wong, and Ross Birkbeck, <i>Taxation of Charities & Non-profit Organisations</i> (Key Haven Publications, 12th ed, 2019)
<i>Laslett and Fishkin</i>	Peter Laslett and James Fishkin (eds), <i>Justice Between Age Groups and Generations</i> (Yale University Press, 1992)

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<i>Law Commission on Charity Technical Issues</i>	Law Commission (UK), <i>Technical Issues in Charity Law</i> , Report No 375 (September 2017)
<i>Lewin on Trusts</i>	Lynton Tucker et al., <i>Lewin on Trusts</i> (Thomson Reuters, 19th ed, 2015)
<i>McGregor-Lowndes and Wyatt</i>	Myles McGregor-Lowndes and Bob Wyatt (eds), <i>Regulating Charities: The Inside Story</i> (Routledge, 2017)
<i>Meagher, Gummow, & Lehane's Equity</i>	J Heydon, M Leeming, and P Turner, <i>Meagher, Gummow & Lehane's Equity: Doctrines & Remedies</i> (LexisNexis Butterworths, 5th ed, 2015)
<i>Model Nonprofit Corporation Act 3d</i>	American Bar Association, <i>Model Nonprofit Corporation Act 3d</i> (2008)
<i>Morris and Leach</i>	J Morris and W Leach, <i>The Rule Against Perpetuities</i> (Stevens & Sons, 2nd ed, 1962)
<i>Mulheron</i>	Rachael Mulheron, <i>The Modern Cy-près Doctrine</i> (UCL Press, 2006)
NCVO	National Council for Voluntary Organisations
NFP	Not-for-profit
NZ	New Zealand
<i>O'Halloran</i>	Kerry O'Halloran, <i>Charity Law and Social Inclusion: An International Study</i> (Routledge, 2007)
<i>PAF Guidelines</i>	<i>Taxation Administration (Private Ancillary Fund) Guidelines 2019</i> (Cth)
<i>Picarda</i>	Hubert Picarda, <i>The Law and Practice Relating to Charities</i> (Bloomsbury Professional, 4th ed, as amended by the 1st Supplement, 2014)
<i>Poirier</i>	Donald Poirier, <i>Charity Law in New Zealand</i> (Department of Internal Affairs, 2013)
<i>Powell and Steinberg</i>	Walter Powell and Richard Steinberg (eds), <i>The Nonprofit Sector: A Research Handbook</i> (Yale University Press, 2nd ed, 2006)
<i>PuAF Guidelines</i>	<i>Public Ancillary Fund Guidelines 2011</i> (Cth)
<i>Rawls' Justice</i>	John Rawls, <i>Justice as Fairness: A Restatement</i> (Harvard University Press, 2001)
<i>Rawls' Theory</i>	John Rawls, <i>A Theory of Justice: Revised Edition</i> (Harvard University Press, 1999)
<i>Reiter's Duties</i>	Barry Reiter, <i>Directors' Duties in Canada</i> (LexisNexis, 2016)

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<i>Re Tanner's Will</i>	<i>Re Tanner's Will</i> (Unreported, Supreme Court of Queensland, Shepherdson J, 24 June 1983)
<i>Revised Model Nonprofit Corporation Act</i>	American Bar Association, <i>Revised Model Nonprofit Corporation Act</i> (1987)
<i>Scoping Study Consultation Paper</i>	Treasury (Cth), 'Scoping Study for a National Not-for-profit Regulator' (Consultation Paper, January 2011)
<i>Scoping Study Final Report</i>	Treasury (Cth), 'Scoping Study for a National Not-for-profit Regulator' (Final Report, April 2011)
<i>Scott and Ascher on Trusts</i>	M Ascher, A Scott and W Fratcher, <i>Scott and Ascher on Trusts</i> (Aspen Publishers, 5th ed, 2006)
<i>Simes and Smith</i>	John Borron, Edwin Hood and Julie Cheslik, Westlaw, <i>Simes and Smith, The Law of Future Interests</i> (at December 2016)
SROI	Social Return on Investment
<i>Thomas on Powers</i>	Geraint Thomas, <i>Thomas on Powers</i> (Oxford University Press, 2nd ed, 2012)
<i>Thompson's Intergenerational Justice</i>	Janna Thompson, <i>Intergenerational Justice: Rights and Responsibilities in an Intergenerational Polity</i> (Routledge, 2009)
TR 2015/1	ATO, <i>Income Tax: Special Conditions for Various Entities Whose Ordinary and Statutory Income is Exempt</i> , TR 2015/1, 25 February 2015
<i>Tremmel</i>	Joerg Tremmel (ed), <i>Handbook of Intergenerational Justice</i> (Edward Elgar, 2006)
<i>Tudor on Charities</i>	William Henderson and Jonathan Fowles, <i>Tudor on Charities</i> (Thomson Reuters, 10th ed, 2015)
UPMIFA	National Conference of Commissioners on Uniform State Laws, <i>Uniform Prudent Management of Institutional Funds Act</i> (2006)
UK	United Kingdom
US	United States
<i>Waters' Law of Trusts</i>	D Waters, M Gillen, and L Smith (eds), <i>Waters' Law of Trusts in Canada</i> (Carswell, 4th ed, 2012)
<i>Word Investments</i>	<i>Commissioner of Taxation v Word Investments Ltd</i> (2008) 236 CLR 204