

Index

- accountability, 220, 266, 279
 public/private hybrid nature of charities and, 11
- accumulation
 administrative retention of income
 distinguished from, 11, 74, 94, 106, 196
agency costs and, 17, 47, *see also* agency costs
 allocation efficiency and, 37
 decision-making about the timing of benefits and, 43
 definition of, 11–14
 direction to accumulate, 43, 70, 76, 79, 89, 137, 139–42, 145, 158, 252
 extent of, 31–5
 financial sustainability and, 35, 96
 implications arising from, 49
 independence and. *See* independence
 inflation and, 66, 74, 132, 140, 165
 intergenerational deferral of benefits and, 38
 power to accumulate, 45, 59–60, 75, 79, 89, 93, 140, 145
 reasons for, 35–8
- accumulation conditions, 56
 precedent, 61, 64, 69, 74, 79, 92–3
 subsequent, 75, 77, 79, 86, 93
- accumulation legal constraints, 19, *see also* *cy-près* schemes; duties of charity controllers; member action; perpetuities rules
 activity-based, 19, 24
 administrative schemes, 129, 131–5, 195, 228, 244, *see also* deviation, US doctrine of
 charity proceedings legislation, 130, 137
 charity validity and, 92
 external administration, 152, 195
 fundraising rules, 19, 24
 tax rules, 190, 195, 257, *see also* tax concessions
 trustee expediency, 147, 195, 227
- ACNC. *See* Australian Charities and Not-for-profits Commission
- administrative retention of income. *See* accumulation
- agency costs, 95, 106, 189, 257–71, 277
 definition of, 48
 foundations and, 258
 market mechanisms and, 48, 222, 257
 mission drift and, 14, 47
- ancillary funds . *see also* foundations guidelines, 184
- Australian Charities and Not-for-profits Commission, 24, 262–5, 268
- autonomy, 28, 46, 222
- basic structure of society, 207
 charity controller decision-making and, 219
 charity regulators and, 216
 implementation of intergenerational justice and, 40, 206
 minimum distribution rules and, 213
 tax and transfer system and, 211
- Canada Revenue Agency, 187, 267, 269
- charitable purposes, 23, 240
 accumulation and, 44, 156, 175, 228
 activities and, 22, 176, 182
 meaning of, 9
 production of public benefit and, 28, 115
 separate purpose of accumulation and, 88
- charities
 contribution of, 4–6, 28
 rationales for the existence of, 28

- charities (cont.)
 regulatory regimes for, 24, *see also* regulation
 of charities
 societal expectations and, 5, 141
 temporal duration of, 7, 23, 54, 85, 194, 225
- charity
 definition of, 9
 sector, 22–5
- Charity Commission for England and Wales,
 24, 123, 216, 245, 249, 262–8
- charity law, 25
 goals of, 25–30
 public policy and, 90
- charity, legal forms of, 96
 charitable incorporated organization, 103
 company limited by guarantee, 98
 incorporated association, 102
 incorporated society, 102
 non-profit corporation, 99
 not-for-profit corporation, 99
 trust, 97–8
 unincorporated association, 104
- coherence, of the law, 143
- CRA. *See* Canada Revenue Agency
- cy-près schemes, 137–46
 as donor intent respecting, 231
 as public benefit enhancing, 233
 bounds of, in relation to accumulation, 142
 cessation grounds and, 137, 141
 common law impossibility or
 impracticability grounds and, 138
 inexpediency grounds and, 45, 138, 141
 spirit of the gift and, 137, 246
 US unreasonableness of accumulation test
 and, 144
 wastefulness grounds and, 138, 244
- decision-making about the timing of benefits,
 distribution of, 43, 225–55, *see also*
 efficiency
 ‘fair shares’ principle and, 237, 241
 creator/donor intent and, 231, 241
 instrumental justification for charities and,
 240
 law reform and, 243–54, 280
 public benefit and, 233
 sufficientarian interpretations of, 238
 time period and, 243, 251–4
- deviation, US doctrine of, 132, 144
- disposition
 definition of, 77
 initial, 77–9
 subsequent, 83
- distributive justice, 171, 201, 205
 ‘difference principle’ and, 198
 definition of, 197
- duties of charity controllers, 95–127, 135, 152,
 181, 189, 194, 218, 248, 257, *see also*
 governance standards
 act honestly in good faith in the best interests
 of the company, duty to, 99, 103–5,
 116–17, 248
 care, duty of, 84, 98–9, 103–5, 111, 121
 discretionary powers and, 98, 102, 118
 distribute income within a reasonable
 period, duty to, 102, 123–4
 endowment, duty to retain, 102, 107–9
 exercise powers for a proper purpose, duty
 to, 98–9, 103, 105–6
 genuine consideration, duty to act upon.
See duty of genuine consideration
 impartiality, duty of, 101, 107, 116–23, 134
 property held for the general purposes of an
 incorporated charity and, 100
 relief from liability and, 108, 260
 duty of genuine consideration, 98, 100–1, 105,
 107, 109–16
 ‘nudging’ and, 222
 accountability and, 220
 capriciousness and, 98, 115
 law reform and, 218, 279
 relevant and irrelevant considerations and,
 110, 120
 Section 172(1) of the *Companies Act* (UK)
 and, 218
 social welfare functions and, 219
- efficiency
 cost–benefit analysis and, 203
 distribution of decision-making about the
 timing of benefits and, 235, 244
 intergenerational deferral of benefits and, 17,
 38
 intergenerational justice and, 202–5, 211
 Kaldor–Hicks, 39, 203
 of allocation, 37, 259
 Pareto improvement and, 203
 social return on investment and, 204
 social welfare functions and, 208
 tax concessions and, 169–70, 187
 total return investment and, 253
- endowed assets, 43, 84

- administrative schemes and, 133, 246
- agency costs and, 258
- cy-près schemes and, 140, 246
- duty of impartiality and, 122
- duty to retain endowment and, 107
- genuine consideration and, 120
- trustee expediency provisions and, 146
- US unreasonableness of accumulation test and, 145
- vesting and, 71
- enforcement, 259–70, *see also* regulation of charities
 - administrative costs and, 260–4
 - compliance actions, range and proportionality, 181–2, 185, 263, 267
 - evidentiary assumptions and, 261, 264
 - institutional restrictions and, 262–3, 267–8
 - political influence and, 262, 266–7
 - procedural advantages and, 263, 267
 - procedural burdens and, 260
 - resourcing and, 262, 266–8
- foundations, 23, 34, 85, 258
 - private, 185, 215, 236
 - private ancillary funds, 183
 - public ancillary funds, 183
- freedom of alienation, 45
 - donor intent and, 143, 231
 - incentives for giving and, 236
 - time period of protection for, 74, 251–4
- freedom of association, 46, 143
- freedom of disposition. *See* freedom of alienation
- fundraising, 19, 24, 32
 - as a market mechanism of control, 258
- generation
 - definition of, 41
 - future, 14, 120, 209
 - intergenerational and, 14, 41
 - intergenerational reciprocity and, 41, 199
 - intragenerational and, 210
- generational neutrality
 - administrative schemes and, 132
 - cy-près schemes and, 140–1
 - definition of, 112
 - duty to act upon genuine consideration and, 112, 121
 - duty to retain endowment and, 108
 - minimum distribution rules and, 214
- governance standards, 220, 264
- standard 1, compliance with charitable purposes and NFP character, 264
- standard 5, duties of responsible persons, 100, 264
- incorporated charities. *See also* duties of charity controllers
 - charity proceedings legislation and, 130
 - cy-près or administrative scheme jurisdiction and, 130
 - freedom of association and, 46, 143
 - supervisory jurisdiction and, 101, 129
 - tax concessions and, 179
- independence
 - detriments of, 38, 47
 - from the state, 27, 29, 168, 190, 215, 217, 255
 - tax concessions and, 171
 - through accumulation, 37
- information asymmetry, 30, 258
 - charitable purposes and, 29
 - not-for-profit sector and, 27
- intergenerational distribution
 - of benefits, 17, 38, 193–224
 - of decision-making about benefits, 17, 43, 225–56
- intergenerational justice
 - ‘just savings’ principle, distinguished from, 198
 - communitarian interpretation of, 201
 - definition of, 197
 - equality and, 199
 - implementation of, 205–23, 243–54, *see also* basic structure of society; social welfare functions
 - intergenerational equity and, 42
 - prioritarian interpretation of, 199
 - redistribution of resources and, 197
 - sufficientarian interpretation of, 200
 - distributive justice and, 201
 - sustainability and, 201
 - utilitarian interpretation of, 200
- Internal Revenue Service, 185, 267, 269
- IRS. *See* Internal Revenue Service
- justice, 197, *see also* intergenerational justice; distributive justice
- maladministration test, 172–7, *see also* tax concessions
 - charitable institutions and, 179–81

- maladministration test (cont.)
 governing rules condition distinguished
 from, 178–9
- member action, 152–6
 amendment of the constitution and, 155
 oppression and, 153
 winding up and, 154
- minimum distribution rules, 183–7
 as quasi-wealth taxes, 160
 as safe harbour rules, 222
 disbursement quota and, 186
 distribution of decision-making about
 benefits and, 274
 excise taxes and, 185
 intermediate sanctions and, 187
 penalties and, 185
 rate of, 184–6
 scope of, 213
 spending focus and, 184
 university endowment excise tax and, 187
- mission drift. *See* agency costs
- non-profit. *See* not-for-profit
- not-for-profit
 definition of, 8
- perpetual
 accumulation, 43, 64, 68, 72, 83, 145
 charitable trusts, 24, 54, 65–6, 70–1, 132, 140
 charities, 83, 126, 225
- perpetuities rules
 abolition of, 56–60
 accumulation of income, rule against, 54
 common law accumulation rule, 60–76
 indestructible trusts, rule against, 54
 reformed statutory accumulation rules,
 76–87
 remoteness of vesting, rule against, 54
 Thellusson legislation, 55, 63, 227
- pluralism, 27, 37, 190, 193, 215, 217
- private goods, 27–8
- property, in relation to which an interest must
 vest, 63, 78
 future income as it arises, 64
 right to future income, 63
 trust capital, 63
- public benefit
 accumulation and, 90
 as a goal of charity law, 25, 28, 233
 definition of charity and, 10
 efficiency and, 37–8
 meaning of, 169, 234
 measurement of, 204, 234, 241
 production of goods and, 28, 168
 social welfare and, 235
 tax concessions and, 169, 171
 public goods, 26, 28, 170
 public trust and confidence, 25
 accumulation risks for, 91, 218
 as a goal of charity law, 30
- regulation of charities, 24, *see also* enforcement
 Attorneys-General and, 129, 135, 150–2,
 260–2, 269
 charity commissions and, 24, 100, 151,
 262–7
 charity registers and, 24, 263
 compliance versus support,
 265, 265
 coordination and, 268–70
 information gaps and, 221, 259
 information gathering, 184, 267
 information gathering and, 261–2, *see also*
 reporting
 tax authorities and, 267
- reporting
 agency costs and, 221, 263
 compliance costs and, 222
 of reserves, 221, 259
 privacy and, 221
- reserves
 definitions of, 12
 levels of, 31–4
 policies, 126, 221
- social welfare functions
 environmental regulation and, 208
 healthcare and, 208
 intergenerational justice and, 208,
 211
 meaning of, 208
 taxation reforms and, 208
 utilities and, 208–10
- state
 decision-making about the intergenerational
 distribution of decision-making power,
 229, 244, 249
 decision-making and charity independence,
 212, 215, 217
 decision-making and charity pluralism, 213,
 215, 217
 social cooperation and the, 235

- tax concessions. *See also* maladministration
test; minimum distribution rules
application-for-purposes test and, 161, 181
conceptualization of, 168
donations and, 183, 185–6
excessive accumulation and, 168
general versus specific-purpose
accumulation and, 167
governing rules condition and, 178–9
- Internal Revenue Code* unreasonableness
test and, 168
of charity law, 25, 160
operational test and, 161, 182
process benefits and, 170
rationales for, 169–71
subsidy theory and, 169
- vested interest, deferral by accumulation, 64