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Working Papers on Charity Law and Taxation

Number	Title	Author/s ISBN
CPNS 13	<p>The Advancement of Religion is Still a Valid Charitable Object in 2001</p> <p>Chief Justice Gleeson has suggested that religion continues to be relevant in Australian society because it provides a bridge between “private conscience” and “the general acceptance of values that sustains the law and social behaviour”. In this paper, the authors have endeavoured to explain why religious uses were historically approved and encouraged as a charitable object and have argued that those reasons remain valid in the 21st century. As a charitable object, it is proper that the advancement of religion continue to have the privileges enjoyed by legal charities.</p> <p>The belief that society can only be objectively fair if it equally devalues all religion in favour of an areligious secular value system is rejected as being clearly irrational. And it has been further argued that government policy has and must increase its role in identifying and celebrating the contribution that religious pluralism can make to the rule of law in Australia. As the Chief Justice points out, it is the general acceptance of values that sustains the law, and social behaviour. Religion can and does have a significant role in identifying and promoting values that advocate and encourage personal attitudes towards others and conduct between citizens which, even in a non-legal sense, is charitable.</p>	H.R. Sorensen & A.K. Thompson 1-86435-593-X
CPNS 12	<p>Charity Law in Fiji</p> <p>Very little has been written on charitable laws in Fiji to date. Most of the organisations in Fiji seek incorporation under the pre-independence legislation dealing with charities, the Charitable Trusts Act (Cap 67). This Act is the basis of this paper. The key provisions of the Act are discussed in this paper. Recently serious questions have been raised on the status of charitable bodies with the de-registration of one of the registered charities (the Citizens’ Constitutional Forum (CCF)) for political activity. This paper also provides an insight into the CCF ‘saga’, which goes to the ‘heart’ of the Act and examines the serious questions that are raised in interpreting the provisions in the Act. In the concluding part, various issues of reform in the charity sphere are also proposed.</p>	Chaitanya Lakshman 1-86435-592-1
CPNS 11	<p>Charity Law Review and Civil Society: Paving the Way from Alienation to Social Inclusion in Northern Ireland; the resonance with experience in Australia</p> <p>This paper considers the opportunity, presented by the forthcoming charity law review in Northern Ireland, for adjusting the charity law framework so as to focus charitable activity on the circumstances typical of societies in conflict or experiencing transition. This opportunity is one for broadening the definition of ‘charitable purpose’ to include activities directed towards forestalling alienation and facilitating social inclusion. It would include rehabilitating the victims of social confrontation and developing related services of advocacy, mediation and reconciliation. It argues that a creative response to this opportunity could address the current social inclusion agenda and thereby contribute to the consolidation of civil society in this jurisdiction. It suggests that the experience in Northern Ireland, as an exemplar of a society in transition, has a resonance with the experience in Australia. It further suggests that it could also have a relevance for approaching the management of tensions within or between nations where people may otherwise come to perceive themselves as alienated.</p>	Kerry O’Halloran 1-86435-588-3
CPNS 10	<p>Non-Governmental Organisations (NGOs) in Bangladesh: An Assessment of Their Legal Status</p> <p>Despite multiple efforts, the amount of poverty in Bangladesh has remained alarmingly high by any standard. Two salient characteristics of poverty alleviation in Bangladesh are: their poor accessibility for the ‘target’ population (the rural poor), and lack of co-ordination between government and the Non-Government Organisations. The moment the state alone is unable to combat poverty then the NGOs come into the picture to fill the void. First Britain as a colonial power, then the East Pakistan Government and the Government of Bangladesh have promulgated</p>	Mokbul Morshed Ahmad 1-86435-587-5

Number	Title	Author/s ISBN
	Ordinances and Regulations for the practical regulation of NGOs. The loopholes and flaws within the legal framework have given the NGOs opportunities to violate the Ordinances and Regulations. A better situation could be achieved by modifying and strictly implementing such state rules, ensuring accountability, effective state control, and meaningful NGO-State collaboration and co-operation.	
CPNS 9	<p>Current Status of Philanthropy in India</p> <p>The paper makes an attempt to provide an overview of philanthropy in India. On the one hand, it describes, though briefly, the historical growth of philanthropy and on the other hand it provides a contemporary picture as well. It also deals with the legal framework with which philanthropic institutions function in this country. Further, it provides a glimpse of the tax laws vis-à-vis donations (giving) and also discusses the legal status of the philanthropic institutions.</p>	Kumar Amarendra N. Singh 1-86435-586-7
CPNS 8	<p>Charity and Civil Society</p> <p>'Civil Society' has a long tradition in academic study (though part of the 'modern' world compared to the charity tradition) but it has no legal definition (though there are moves to create it, especially in the civil law jurisdictions, to overcome the division of foundation/association). It is promoted by apologists for the 'free world' as the free association of citizens serving their ends unconstrained by the State and therefore a necessary element in a free society. Charity by contrast is determined by an ultimately legal judgment of the public good and is the natural partner of government. I once wrote that 'charity is the realisation of the rhetoric of civil society'. Yet the contrast of civil society as a necessarily separate 'third' sector, set over against the 'public' sector controlled by the State, and charity cooperating with government, whether Crown and charitable trusts in 1601 or public authorities and charities under 21st century compacts, raises questions about the simple identification of civil society and charity. The aim of this paper is to examine these questions.</p>	Richard Fries 1-86435-585-9
CPNS 7	<p>The Definition of Charity and its Nexus with Tax Preference Issues</p> <p>Charity, since the Reformation, has been secularised to the extent that the continued use by the courts of analogies to a four hundred year old statute in order to determine charitable purpose with respect to tax exempt status, is giving rise to absurd situations. Tax exempt status is generally assigned by an agent of the government, for example the Inland Revenue Department in New Zealand, without any evaluation of the impact of the activities of the charitable organisation on social or economic policies.</p> <p>It is only when the activities of the charitable organisation are challenged in the courts, that the charitable organisation may lose its privileged position. From this brief analysis, it can be seen that the situation which is developing is a classic case of 'putting the cart before the horse'. A recent New Zealand case demonstrates the folly of assigning tax exempt status without first having examined the charitable purposes of the trust, and without having conjointly undertaken an evaluation of the social and economic impact of that charitable organisation. It is apparent that there is a need for substantial changes in charity law, with respect to charitable purpose and fiscal issues, in today's social and economic climate.</p>	Michael Gousmett 1-86435-584-0

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PONC 87	A Canadian Charity tribunal - A Proposal for Implementation This paper is by a leading Canadian charity law expert. The paper explores the possibility of the creation of an independent body having as its primary role the right to determine which organisations will be recognised as charities.	Arthur B.C. Drache & Laird Hunter 1-86435-483-6
PONC 86	Charities, Public Benefit and the Canadian Income Tax System - A Proposal for Reform This paper is by a leading Canadian charity law expert. It reviews the present state of the law of Charity in Canada and examines some proposals for its reform.	Arthur B.C. Drache & F K Boyle 1-86435-482-8
PONC 85	Tax Concessions in Support of Charitable Giving – An International Comparison This paper compares tax deductibility for donations in Australia, United Kingdom, United States and Canada. It makes recommendations for improved tax environment for deductible gifts in Australia.	Greg Smith 1-86435-485-2
PONC 72	Does Charity Begin and End at Home for Tax Exemptions? This paper examines the Bill released by the Treasurer in 1997 that seeks to place restrictions on the activities of exempt organisations with overseas interests. The paper describes the current tax exemption provisions for nonprofit organisations, their history and scrutinises the proposed Bill.	Myles McGregor-Lowndes 1-86435-126-8
PONC 62	The Industry Commission's Final Report on The Taxation of Charities The Industry Commission (the Commission) has recently completed its wide-ranging final report on charitable organisations. This article discussed the Commission's final recommendations. Part of the Industry Commission's brief was to examine the appropriateness of the taxation treatment of charities (know in the report as "community social welfare organisations"(CSWOs).	Myles McGregor-Lowndes Sandra Rodman 1-86435-118-7
PONC 49	Retaining Charity Tax Exemptions C A Stitch in Time Saves Nine The draft report on charitable organisations by the Industry Commission recommends strongly that the Australian Tax Office institute a review of the tax exempt status of all charities. The paper describes a number of matters that such organisations should consider concerning their tax affairs in order to place themselves in the best position for a possible audit by the Australian Tax Office.	Sandra Rodman Myles McGregor-Lowndes 0-86856-997-6
PONC 48	The Industry Commission Inquiry into Charitable Organisations: The Draft Report, Implications for the Future of Community Services A considered analysis of the draft report on charitable organisations by the Industry Commission. The paper critically examines the processes of the Commission, the terms of reference and draws attention to matters not considered by the draft report.	John May 0-86856-996-8
PONC 47	Charities and the Industry Commission An overview of the taxation implications of the draft report on charitable organisations by the Industry Commission.	Sandra Rodman 0-86856-995-X
PONC 45	A Taxing Definition C A Comment on The Industry Commission's Draft Proposals for Defining Community Social Welfare Organisations An examination of the proposed Industry Commission draft report definition of CSWO for inclusion in section 78 ITAA. The paper draws attention to the consequences of linking the definition to the common law definition of charity.	Myles McGregor-Lowndes 0-86856-900-3
PONC 35	A Select and Annotated Bibliography of Nonprofit Taxation This paper was prepared to assist those who might be considering making a submission to the Industry Commission on the taxation of charities. It contains a core bibliography of tax material in Australia, England, Europe and America. Major Australian Taxation Inquiries are	Myles McGregor-Lowndes Sandra Carr 0-86856-890-2

Number	Title	Author/s ISBN
	also noted and annotated.	
PONC 34	<p>Charities Overview of Federal Taxation</p> <p>This paper is a concise introduction to the state of Commonwealth taxation of nonprofit organisations. It discusses exemption from taxation and income tax deduction of donations.</p>	<p>Richard Friend Mary Stephen</p> <p>0-86856-889-9</p>