

Advocacy Fact Sheet

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The charitable purpose of “advancing public debate” is set out in section 12(1)(l) of the [Charities Act 2013 \(Cth\)](#).

Some charities undertake public advocacy to work towards achieving their charitable purposes.

A charity can promote or oppose a change to any matter of law, policy or practice, as long as this advocacy furthers or aids another charitable purpose. However, a charity must not have a ‘disqualifying purpose’.

The two purposes which will disqualify an organisation from being a registered charity are:

- engaging in, or promoting, activities that are unlawful or contrary to public policy, and
- promoting or opposing a political party or candidate for political office.

Who is this information for?

This information may assist you if you:

- want to set up a charity that may be involved in advocacy or campaigning, or
- need to know what types of advocacy or campaigning your existing charity can undertake.

Relevant rules for being a charity

There are some rules for being a charity that are relevant to advocacy activity.

A registered charity must, among other things:

- have charitable purposes that are for the public benefit or purposes that are ‘incidental or ancillary to, and in furtherance or in aid of’ those charitable purposes;
- not have ‘disqualifying purposes’; and
- not be an individual (natural person), political party or government entity.

The law requires all of your organisation’s purposes to be charitable, except for purposes that are ‘incidental or ancillary to’ (that further or aid) the charitable purposes.

Your organisation may have more than one purpose, and many activities, and still be a charity, as long as these all further the charitable purpose.

Charitable purpose of advocacy

A charity can promote or oppose a change to any matter of law, policy or practice in furtherance or aid of another charitable purpose. The law, policy or practice being promoted or opposed can be in

anywhere in Australia or overseas.

Advocacy must further or aid another charitable purpose. However, your charity does not need to be eligible for or registered as having another charitable purpose to undertake advocacy in relation to that purpose.

The public benefit of advocacy is its contribution to public discussion, which informs the public and policy-makers. The methods of advocacy used and its aims must not be inconsistent with the rule of law and the established system of government.

Examples of advocacy that charities can undertake

A charity's advocacy work may include:

- making submissions or giving evidence in relation to existing or proposed laws, government policies or practices
- generating public debate about or seeking explanation of current or proposed laws, government policies or practices
- distributing information on, analysing or comparing party policies as they relate to a charity's purposes
- publishing research on current or proposed laws, government policies or practices
- directly promoting the charity's purpose, or the interests of their beneficiaries, to elected representatives and public officials, or
- hosting, promoting or participating in public debates on law or policy matters.

Public benefit and advocacy

Charities must operate for the public benefit, rather than the private benefit of responsible persons or members. If advocacy activities are directed at the general public, there is likely 'public' benefit, even if very few people directly benefit from that advocacy.

Disqualifying purposes – unlawful, contrary to public policy and political purposes

There are 'disqualifying purposes' which an organisation cannot have if it wants to be registered as a charity with the ACNC. These are the purposes of:

- engaging in, or promoting, activities that are unlawful
- engaging in, or promoting, activities that are contrary to public policy, or
- promoting or opposing a political party or candidate for political office.

Unlawful purposes

A charity cannot have a purpose of engaging in or promoting unlawful activity.

In order to determine the 'purpose' of a charity, the ACNC will look at the charity's governing rules, its activities, any material published by the charity, and any other relevant matter. A 'one-off' activity is unlikely to demonstrate a purpose of promoting or engaging in that activity.

The fact that persons associated with an organisation are involved in unlawful activities does not necessarily mean that the organisation has a disqualifying purpose.

Examples – unlikely to be unlawful purposes

A charity's employee steals money from the charity. It is unlikely to mean that the charity itself is either engaging in unlawful activities or has a purpose of promoting or engaging in these activities.

A charity whose charitable purpose is advancing social or public welfare, through the provision of services to and advocacy on behalf of victims of domestic or family violence, participates in a rally on this issue. During the rally, some volunteer members of the charity are arrested for public order offences. It is unlikely that the charity has a purpose of promoting or engaging in public order offences. It is therefore unlikely that the charity has an unlawful purpose.

If an organisation shows a pattern of unlawful activities undertaken on a regular basis, it is likely to show a purpose of engaging in unlawful activities. The nature of the unlawful activities may also be important in determining whether there is a disqualifying purpose.

Examples – likely to be unlawful purposes

A charity misleads the public about the type of services it offers so that it can attract more donations. This charity is likely to have a purpose of engaging in unlawful activities. However, if the charity inadvertently misleads the public about its services on a few occasions, but immediately changes its approach when it realises it has done so, is unlikely to have a purpose of engaging in unlawful activities.

A charity that has a charitable purpose of advancing social or public welfare by providing aged care and accommodation routinely refuses to provide these services to same-sex couples. Such a refusal amounts to unlawful discrimination, and a regular pattern of this behaviour or activity may disclose a purpose of engaging in unlawful activities.

Contrary to public policy

A charity cannot have a purpose of engaging in or promoting activity that is contrary to public policy. 'Public policy' includes things such as the rule of law, the constitutional system of government, the safety of the general public and national security.

Undertaking activities that are contrary to government policy will not necessarily be contrary to public policy or show a disqualifying purpose.

Example – unlikely to be contrary to public policy

A charity with a charitable purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia has a long-running campaign promoting a Bill of Rights as a way of achieving this purpose. This is contrary to government policy, but upholds public policy such as the rule of law and a constitutional system of government. Therefore it is not an activity that demonstrates a disqualifying purpose.

An organisation that show a pattern of engaging in or promoting activities that are contrary to public policy may demonstrate an unlawful purpose.

Example - like to be contray to public policy

A charity with the charitable purpose of advancing culture encourages new and emerging writers. In doing so, the charity regularly publishes material by new writers advocating anarchy and the end of democratic government. Such a pattern of conduct may demonstrate a purpose of promoting activities that are contrary to public policy.

Political purposes

An organisation may have a disqualifying purpose if its purpose is to promote a particular political party or a candidate for public office.

Some things that may show whether or not an organisation has a disqualifying political purpose include:

- the extent to which the organisation's promotion or opposition of a political party or candidate aligns with the purposes of the organisation
- whether the organisation promotes or opposes a party or candidate generally or in relation to specific policies that are relevant to its purpose
- the extent to which the organisation's resources are directed at promoting or opposing the party or candidate for political office
- the links between the between the organisation and the party or candidate, including members in common, campaigns and publications, and
- the extent to which the organisation's expressed view of a party or candidate is based on reasoned policy argument or research.

A charity can assess, compare or rank the policies of political parties or candidates in carrying out its charitable purpose. A charity may distribute information or advance public debate about the policies of political parties or candidates for political office, if it is furthering or aiding one of the charitable purposes set out in the Charities Act. This may be done by assessing, critiquing, comparing or ranking those policies.

A charity can:

- spend money to publicly express views on the policies of different political parties relevant to its charitable purpose
- spend money to publicly express views on issues, including during an election
- spend money on broadcasting on 'political matters', or
- conduct research in order to critique the policies of different political parties.

If a charity undertakes any activities in relation to an election, it must comply with all electoral laws, including disclosure requirements.

Examples – unlikely to show political purposes

A charity with the purpose of advancing social or public welfare produces and distributes flyers that compare the key features of the paid parental leave policies of various political parties. This activity would not amount to a disqualifying purpose.

The website of a charity with the purpose of advancing the natural environment states its policy on the development of renewable energy and compares it to the current policies of several political parties. This activity would not amount to a disqualifying purpose.

Political parties cannot be registered charities. Broadly, a political party is defined under electoral laws in Australia as an organisation or body that has a purpose of promoting an endorsed candidate for election to public office.

If an organisation's affiliation with a political party is so extensive as to suggest that it is a main purpose to elect the party or candidate, this is likely to show a disqualifying purpose.

Example – likely to show a political purpose

An organisation whose purpose is advancing culture regularly donates to a political party, and during a federal election publishes and distributes flyers urging support of a candidate from that political party as 'the only one with the education and breeding to properly support the arts'. The pattern of donations and the promotion of a particular candidate for political office is likely to demonstrate a disqualifying purpose of promoting a candidate for political office.

Related ACNC resources

- [Charities, elections and advocacy – what you need to know](#)
- [Legal meaning of charity](#)
- [Charitable purpose](#)

Other resources

- [Charities Act 2013 \(Cth\)](#)