



Aid for the Blind (Qld) Inc.

My Fingers Are My Eyes

APG : 8 November, 2011

The Manager,
Philanthropy and Exemptions Unit,
The Treasury
Langton Crescent
PARKES ACT 2600

Email: nfpreform@treasury.gov.au

Thank you for your invitation to address proposed changes to the definition of “charity”.

Aid for the Blind is a not for profit charitable organization incorporated under Queensland’s Associations Incorporations Act 1981 to the benefit of the vision impaired and blind persons.

We provide residential units for independent living as well as running a Computer Club for vision impaired and blind children to ensure they have peer matched skills.

We are a self funded organization, relying on the reduced rental from our units, and sales through our opportunity shops. As such we take a keen interest in the issue of financial return and “not for profit” questions.

Thank you for the invitation to address the issues raised in recent court and taxation decisions. We attach our submissions to this letter.

Yours sincerely,

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AID FOR THE BLIND (QLD) INC

Submissions regarding definition of “charity”

2.1.2 Dominant Purpose

1 “dominant purpose” or exclusively charitable purpose

We favour the dominant purpose for the reasons set out in your paragraph 56 relating to purpose or charity. The making of a profit in a commercial activity or arm of the charity enables the charity to operate for the benefit of its recipients. To have all stages as a charitable purpose (to the benefit of the selected group) might restrict the income generation from other groups in the charity.

2 NSW Admin Tribunal clarification regarding “peak body”

A peak body should still be treated as charitable or of public benefit where it controls or operates entities which are charitable. The proviso is that its control, supervision and any earning is to enable the lesser bodies to provide charitable services; and the peak body uses any earnings to serve that need including distributions to assist the charitable purpose

2.1.3 Charities Bill 2003

3 “public” or “sufficient section...” We find that most sections of the blind or vision impaired community select ourselves or similar purpose organizations for assistance. The fact that finances preclude us from assisting all persons does not and should not change our charitable purpose or classification. The fact that benefits accrue to our members (because all tenants are members as well as some general public being members eligible upon application) should not cause us to be treated as a restrictive system (Para 66, 67)

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4 “family ties” this is an issue which strictly read as truly familial or blood connected will not apply to many charities. The example of native title holders is one example but still goes beyond true familial/blood connections into a wider group. That group recognises various ties based on eg land connection, bonding or other relationship. It is, in our view, not a matter that requires changes to the Charities Bill.

Para 71 et al “public benefit”

5 “for the public benefit” raises again the issue of community as seen at 3 and 4 above (assuming benefit is for some good). If there is thought to be uncertainty, the English-Welsh approach should be preferred as it does not legislate and it does thereby have flexibility of approach and subsequent interpretation. The wording used gives a flexible interpretation and allows reference to aims and to private benefits without restricting the overall “charity” issue

6 England and Wales approach: see [5] above

Test of “public benefit”

7 demonstrate public benefit: Leave the position as it is.

Any other step overturns the established view of a presumption. This needs to be done by legislating. The question still remains of what the elements are for the issue of overturning the presumption should ATO or similar seek to do so. A major concern in either legislating or setting out a framework for establishing “public

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benefit” is the imposition on already established and unchallenged charities.

To set up a rule for future organisations only could then mean two separate tests. The problem for bureaucracy and for charity would be significant and should not be created.

8 ACNC roles: In light of the above submission, we only need to say that there is no role.

9 religion and education: Where a system is put in place as guidance or otherwise, that will come to represent the legal requirements. As such the system will come to overturn the presumption which currently exists. We believe there should be no new system.

Public benefit aspects can still be reviewed to overturn the presumption without establishing a system in lieu of the old law.

2.1.4 Charitable purpose

10 furtherance or in aid: Generally there will be a commercial arm which funds the charitable purpose, so is in furtherance or in aid of its charitable purpose. The commercial act would be bound to be lawful and income generating to “further” the charitable purpose. To be

otherwise would be to fail “in aid of” testing. Subject to that aspect there seems no issue with such a requirement.

11 clarify role of activities: The TR 2011/D2 seems to address this issue. Major inconsistent acts would disqualify charitable purpose. To further address or exemplify the issues would not advance the defining of charitable purpose but add argument to it.

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Political Activities

12 political activities: This organisation supports the view of the High Court as set out in paragraph 111. The issue will remain of whether such political activity falls within charitable grounds. Engagement in political activity seems prima facie to contradict charitable purpose and public benefit. However the legislating out of such activity again raises legislative controls and determinations of what is charity and public benefit, as set out in 5 and 7 above.

13 political parties/political activities: A charity may express an opinion, ergo support or oppose a candidate without breaching its charitable purpose or public benefit issue. However the actual going beyond that so as to engage in political activity as a main part of its purpose and activity would not be consistent with charitable purpose (either as its dominant or its sole purpose). Political activity in its wider sense (not just party politics) is not “charitable”; a charity may be established to maintain a public park for the benefit of the people, and as part of that may lobby the public and political parties for support. However having as its purpose “lobbying” breaches a charitable purpose.

Accordingly this question should be answered that there are issues with prohibiting charities from advocating a party or from supporting or opposing a candidate; the charity should be allowed to take the steps, so long as the charity does not have those steps as its dominant or sole purpose.

2.1.6 Type of entity

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14 what legal entity can operate a charity: For the sake of certainty “local government body” could be included; however it should not be necessary to include the Central Bayside (H. Ct) explanations where a related Tax Ruling also exists.

15 “government body” definition; this lacks the local government reference. Also Subpara (b) talks of control whereas the High Court in Central Bay talks not of control but of “similar purpose” (Para 39-41). As such the existing definition needs extending away from control.

2.2 Charitable Purposes

16 Appropriate lists: yes, these references are appropriate. To list exhaustively will be as restrictive as to not list or clarify at all.

17 Not applicable in view of our answer to 16 above

2.3 Other Issues

18 harmonised definition of charity: the most effective way to attain harmonisation is for the states and territories to give all rights to legislate about “charity” and “charitable purpose” to the Commonwealth, which takes consultation from those about a preferred or majority view. The Commonwealth can then be the sole legislative body through a designated Department, and all other bodies when meeting with that Department(e.g. all Attorneys-General) can review what updating might be required.

2.3.2 Australian Disaster Relief Funds

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19 Current problems and limitations: at present the ADRF can only come into being after a disaster, must be declared by a Government Minister and can only be expended in relation to that disaster.

Local Disaster Management Funds (in Qld for local governments to repair roads and infrastructure following disaster) is constrained similarly, down to a specific purpose.

To allow pre-disaster collection makes a problem after a disaster occurs to determine what portion of the collected funds can be designated to that disaster, and what actual purpose or event were the people donating to (and will this impact on tax deductibility of donation?)

2.3.3 Transitional

20 transitional issues: Transitional issues will arise in relation to any variation. For instance if a charity operated under certain constraints based on an earlier ruling or definition, how does it now go about with a wider range of “charitable interest”

Equally does a change in definition remove the charitable status and cause taxation problems and DGR?

Any rewording either by legislation or by explanatory notes will cause a flow-on effect widening or narrowing the charitable purpose and the legal implications (taxation). That needs to be decided, to either preserve the pre-existing position for existing charities or to give a transition period for each charity to assess and re-organise its affairs to comply. A benefit that accrues to an organisation as a result of rewording should be allowed to accrue without penalty.

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