

9 December 2011

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

Dear Sir/Madam

Anglicare Australia welcomes the decision to develop a statutory definition of charities. Anglicare Australia members offer services of public benefit to vulnerable people of all ages across Australia. Most of our 43 members are charities and rely on this status for considerable taxation relief and, even more importantly, the trust and respect of the community.

As the discussion paper note the new definition should form an “appropriate Australia definition for our modern, social and economic environment”. As such the definition needs to recognise, that fortunately, much of the work of charities is now around prevention, education and early intervention.

It also needs to recognise the place of advocacy in a modern democracy and the Australian Government is to be praised for acknowledging this through both actions and proposed reform.

Further this piece of reform should be noted as part of a larger reform of arrangements for and of the charitable (and wider not-for profit) sector and should support the principles of other areas of reform; that is it should generally clarify and make easier the environment for charities and the understanding of charities of the general public.

We have noted our response to particular questions below, they are numbered according to the number in the discussion paper, we have not answered every question.

Responses to Consultation questions

Question 1

In exchanging the term “dominant purpose” for a requirement of an exclusively charitable purpose recognition must be made of those activities which support the charitable purpose but may not be charitable in itself eg Op Shops.

The definition should provide for maximum flexibility for how organisations may raise money for their purpose (within ethical and legal considerations of course) so as not to stifle innovation or future directions.

Question 2

The view that bodies engaged increasing the viability of charitable institutions through education and support is a useful measure for determining the eligibility of a peak body.

Question 3

We support the idea of judging “sufficient” by numbers as a proportion of the community that could reasonably be expected to benefit from the purpose. The community that could reasonably be expected to benefit must be geographical and well as demographical.

Question 5

It would seem beneficial to codify the fact that “practical utility” can be understood to include social, mental of spiritual benefits. It is further useful to note that the benefit must relate to the stated aims of the entity.

Question 7

The impost upon the Regulator and the uncertainty for existing charities do not make seeking approval in any way acceptable. Good practise should seek to work directly with an entity which is believed to be in contravention rather than make a blanket ruling which captures everyone.

The carrying over of the Presumption of Public Benefit is absolutely vital to this piece of reform working and to its support and position in the raft of other reforms for the not-for-profit sector. Requiring all charities to undergo a demonstration test would be inefficient and talk to the sector (and public) of mistrust.

Question 8

Assuming that there is not a requirement for all Charities to undergo the demonstration test (see Question 7 response) then the ACNC’s role would be one of encouragement to new applicants and to one of regulation and advice for improvement on those existing which do not meet the requirements and then action to remove their charitable status.

Question 9

Again we would implore that the presumption of Benefits test be carried over and the ATO exercise the courage to tackle those that do not meet it. The public benefit test (that benefit must outweigh any harm) can then be applied in the same way for all charities.

Question 10 & 11

We would support numerous other submissions and current general practice by recommending that the outcome of an activity (that is its purpose) be used as a measure rather than the action itself (that is the output).

Question 12

We support the extension of the provisions to include political activity for all the reasons described in the paper. We also support the exploration or wording that allows for a general cause (eg alleviation of poverty) to be pursued through political channels.

Question 13

If the above has occurred then there would seem to be little difficulty with prohibiting charities from advocating specifically for or against political parties or candidates.

Question 16 & 17

Whilst the list seems adequate where extended to include those items currently included under the “any other purpose” head it would seem useful to include these in their own right and still retain the any other purpose head for flexibility.

Further to our comments earlier it may be useful to define advancement to include prevention and maintenance.

Question 18

In simplifying the regulatory environment for all charities a harmonised definition is preferable however this may prove difficult at least in the short term.

Question 19

When disaster occurs a prompt and efficient response not only alleviates the immediate suffering but also helps with recovery. The level trust and confidence that individuals hold in the ability of the community to respond to the disaster affects life for many months and even years to come.

It is vital then that the treatment of ADRFs enable their quick response and do not detract from the amount of effort that can be put into disaster relief.

Question 20

Whether the presumption of public benefit is overturned or not will have significant impact on the requirements during the transition. The capacity of the ACNC to deal with the demonstration requirement all at once would severely limit this. A rolling review with notice given the financial year before hand would enable organisations to prepare and enact any necessary business to meet and evidence the requirements.

Yours sincerely

Signed by

Kasy Chambers
Executive Director