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Manager  
Philanthropy and Exemptions Unit  
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The Treasury  
Langton Crescent  
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To the Manager:

On behalf of the Australian Christian Lobby I am pleased to present our submission to the Treasury in response to the Treasury's Consultation Paper *A Definition of Charity*.

Yours sincerely,

**Lyle Shelton**

**Chief of Staff**

## **Introduction**

The Australian Christian Lobby welcomes this opportunity to comment on the Treasury's Consultation Paper *A Definition of Charity*.

Charities make an invaluable contribution to society, providing basic services to society's neediest and most vulnerable members. Tax exemption for charities stretches back for hundreds of years and in many cases is the difference between whether a charitable organisation is or is not financially viable.

ACL welcomes a statutory definition of charity in the hope that it will provide greater certainty for charitable and not-for-profit organisations.

However, ACL believes that the full ramifications of any such definition ought to be fully considered. Placing any further burden on charities in a difficult economic climate would not be a welcome development. In a society in which we are increasingly more aware and less tolerant of poverty, charities provide an invaluable and often under-appreciated service, both domestically and internationally. They remove a huge burden from the State by caring for the most dependent and vulnerable sections of society within Australia. They also operate abroad in ways which the State could not reasonably be expected to do so, penetrating deep into suffering communities within countries which are comparatively far less wealthy than Australia.

Changes to the law concerning charities should provide more clarity and certainty for these organisations. They should remove financial and administrative burdens without adding to them.

ACL urges the Treasury to take this approach to any attempt to define charity and in any consideration of changes to the law.

Three concerns about the Consultation Paper are raised below.

### **The independent regulator**

ACL welcomes the announcement of the independent Australian Charities and Not-for-profit Commission (ACNC). ACL questions the decision to have the Australian Taxation Office (ATO) continue to determine whether an entity meets "special conditions". With its purpose of revenue collection, the ATO lacks independence. It seems the ACNC should be able to determine whether "special conditions" are met while determining the charity status of an entity.

### **Dominant purpose/exclusively charitable purpose**

ACL is concerned that there may be some confusion around the phrases "dominant purpose" and "exclusively charitable purpose".

The common law currently allows a charity to have incidental or ancillary purposes which are non-charitable. The common law also allows for activities which are not intrinsically charitable provided they further the charitable purposes of an organisation.

The Consultation Paper does not propose a change to either of these common law principles.<sup>1</sup> However, it proposes the use of the term “exclusively charitable purpose”, even though it allows for purposes which are “incidental or ancillary to the charitable purpose”.<sup>2</sup>

The use of the term “exclusively charitable purpose” would thus seem to be misleading. ACL believes the use of the term “dominant purpose” is a more accurate requirement for a charity.

### **Removing presumption of public benefit**

The Consultation Paper proposes that the common law presumption of public benefit for charities that are for the relief of poverty or for the advancement of education or religion be overturned.

ACL is concerned that overturning this presumption unnecessarily places an added burden on charities. For hundreds of years such charities have been presumed to be for the public benefit. The inherent nature of these organisations should allow a presumption that they are operating for the benefit of society.

ACL believes that the onus should be on the Government to prove that such an organisation does not operate for the public benefit. In such a case, the status of charity could be removed. However, the common law presumption of public benefit should remain for these three types of organisation.

### **Recommendations**

In light of these considerations, the Australian Christian Lobby recommends that:

- Treasury consider fully the implications for charities of any statutory definition of charity. Anything which increases the burden on charities should be avoided;
- the Australian Charities and Not-for-profit Commission, and not the Australian Taxation Office, be responsible for determining whether an entity meets any “special conditions”;
- the phrase “dominant purpose” continue to be used, rather than the less accurate “exclusively charitable purpose”;
- there continue to be a presumption of public benefit for charities which are for the relief of poverty, the advancement of education, or the advancement of religion.

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<sup>1</sup> Treasury (October 2011), *A Definition of Charity*, Consultation Paper, [http://www.treasury.gov.au/documents/2161/PDF/definition\\_v6.pdf](http://www.treasury.gov.au/documents/2161/PDF/definition_v6.pdf), p 8, para [54]; p 15, para [95].

<sup>2</sup> Treasury (October 2011), *A Definition of Charity*, Consultation Paper, [http://www.treasury.gov.au/documents/2161/PDF/definition\\_v6.pdf](http://www.treasury.gov.au/documents/2161/PDF/definition_v6.pdf), p 8, [54].