



Australian Conservation Foundation

Submission on
Exposure Draft Charities Bill 2013
A Definition of 'Charity'

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Submission in relation to the Exposure Draft – Charities Bill 2013

Thank you for the opportunity to make a submission.

About ACF

ACF is a national, community-based environmental organisation that has been a strong voice for the environment for almost 50 years, promoting solutions through research, consultation, education and partnerships. ACF works with the community, business and government to protect, restore and sustain our environment. ACF responded to the Australian Government's earlier Consultation Paper on A Definition of Charity in October 2011.¹

Amendment to the Exposure Draft

ACF proposes the following amendments:

1. Section 5 Definition of *charity*

- 1.1 Section 5 (b) To more clearly express the common law position² on purposes and how the purpose is to be determined, delete "...all of..." after (b) and prior to the words "...the purposes..."
- 1.2 Section 5 (b) Note 1: Delete the comma after "...entity..." where it first appears and delete the words "..., its activities and any other relevant matter."

For example:

5 Definition of *charity*

In any Act:

charitable: an entity is ***charitable*** if the entity is a charity.

Example: A reference in an Act to a charitable trust is a reference to a trust that is a charity.

charity means an entity:

- (a) that is a not-for-profit entity; and
- (b) ~~all of~~ the purposes of which are:
 - (i) charitable purposes (see Part 3) that are for the public benefit (see Division 2 of this Part); or
 - (ii) purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes of the entity covered by subparagraph (i); and

Note 1: In determining the purposes of the entity, ~~have regard to the entity's governing rules, its activities and any other relevant matter.~~

Note 2: The requirement in subparagraph (b)(i) that a purpose be for the public benefit does not apply to certain entities (see section 9).

- (c) none of the purposes of which are disqualifying purposes (see Division 3); and
- (d) that is not an individual, a political party or a government entity.

¹ Its primary submission was "...in view of considerable advances in Australian case law as a result of recent judgments since the *Charities Bill 2003*, and in view of the potential disadvantages associated with a statutory definition the need for a statutory definition of charity may now be unnecessary."

² The common law position is summarised well in Not-for-profit Project, University of Melbourne "Submission to the Treasury, A Definition of Charity (Consultation Paper, October 2011) at p. 45 and in Income Tax and Fringe Benefits Tax: Charities (Taxation Ruling 2011/4) [32]-[33]

2. Division 3—Disqualifying purpose

2.1 Section 10 (a) Example delete the words “...safety of the general public and national security...” to separate the confusion between purposes and activities. If a charity’s activities affect the safety of the general public or national security existing Australian laws apply to those activities and are the appropriate means for prosecution and punishment. The Governance Standards empower the Australian Charities and Not-for-profits Commission (ACNC) to take action where activities seriously violate safety and security including, ultimately, a charity’s de-registration³.

2.2 Section 10 (b) Delete the sub-paragraph in its entirety. The paragraph does not correctly state the common law position established in *Aid/Watch*⁴. There is no rule against political purposes in Australian law. It is legitimate for a charity to identify, endorse or promote a candidate who supports the charity’s policy position. This is currently reflected well in the aforementioned TR 2011/4.⁵

For example:

Division 3

10 *Disqualifying purpose*

In this Act:

disqualifying purpose means:

- (a) the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy;~~or~~

Example: Public policy includes the rule of law, the constitutional system of government of the Commonwealth,~~the safety of the general public and national security.~~

Note: Activities are not contrary to public policy merely because they are contrary to government policy.

- ~~(b) the purpose of promoting or opposing a political party or a candidate for political office.~~

Note: The purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country may be a charitable purpose (see paragraph (l) of the definition of ***charitable purpose*** in subsection 11(1)).

³ *Australian Charities and Not-for-profits Commission Amendment Regulation 2013 (No. 1) Governance Standard 3 - Compliance with Australian laws* [45.15 (2) Note 3]

⁴ *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42 [48]

⁵ See for example, Example 12 at Paragraph [95]-[97].

3. Part 3—Definition of charitable purpose

Section 11 (1) (j) Insert 'or urban' to reflect the important inter-connection between sustainable urban environments and environmental purposes.

For example,

Section 11 Definition of *charitable purpose*

(1) In any Act:

charitable purpose means any of the following:

- (a) the purpose of advancing health;
- (b) the purpose of advancing education;
- (c) the purpose of advancing social or public welfare;
- (d) the purpose of advancing religion;
- (e) the purpose of advancing culture;
- (f) the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;
- (g) the purpose of promoting or protecting human rights;
- (h) the purpose of protecting the safety of the general public;
- (i) the purpose of preventing or relieving the suffering of animals;
- (j) the purpose of advancing the natural *or urban* environment;
- (k) any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j);
- (l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:
 - (i) in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or
 - (ii) in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.

(2) Paragraph (l) of the definition of *charitable purpose* in subsection (1) is the only paragraph of that definition that can apply to the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country.



**Sari Baird,
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