

Submission – Consultation paper on the definition of a charity.

Specific Questions:

1. Are there any issues with amending the 2003 definition to replace the 'dominant purpose' requirement with the requirement that a charity have an exclusively charitable purpose?
3. Are any changes required to the Charities Bill 2003 to clarify the meaning of 'public' or 'sufficient section of the general community'?

The definition of charity being for the common good is good but it is qualified in point as being for a 'sufficient' section of the populace. There is no definition of what is 'sufficient' and hence is open to challenge on the meaning of the word which may be lucrative for the legal profession but is wasteful of resources.

The section needs to be qualified to ensure that there is complete equity of access to the benefits of the charity irrespective of religious or other affiliation, and of geographic location, and not subject to the whims of administrators of any charitable organisation. For charitable organisations that provide support for specific diseases and disabilities the definition should specify equity of access irrespective of geographical location (i.e. if the person seeking the benefit is required to be physically present then the cost of transport and accommodation for remote clients must be borne by the charity).

This would mean that a Charity based in Victoria providing a general benefit must provide services to people who might, say, reside in the Northern Territory. The exception would be for ADRF type charities which are clearly established as a response to local crises. Such charities must have a limited life, and when incorporated a pre – set date for dissolution, and final distribution of assets set into their constitution.

5. Could the term 'for the public benefit' be further clarified, for example, by including additional principles outlined in ruling TR 2011/D2 or as contained in the Scottish, Ireland and Northern Ireland definitions or in the guidance material of the Charities Commission of England and Wales?

In addition to the notes above the principles applied in the UK are NOT appropriate for Australia as they provide some ridiculous definitions.

For example they define religion as being a member of a group professing belief in any god(s), or being a member of a group that does not believe in a god. It also fails the test of being for the common good – promotion of religion is for expansion of the religion, a narrow sectional interest, and not for the overall improvement of the well being of members of our society.

If the groups in the UK had to resort to a definition that included any group promoting their beliefs as qualifying for a Charity clearly they have had to compromise between pressure groups. Surely the most equitable idea is to exclude all religion from the definition of a charity.

6. Would the approach taken by England and Wales of relying on the common law and providing guidance on the meaning of public benefit, be preferable on the grounds it provides greater flexibility?

Resorting to definition of law made by judges, particularly if there is a limited body of case law is

creating a future of challenges from any sectional group with enough money to manipulate government through the legal process. This is admitting defeat by current sectional interests and an abandonment of the principle of equity.

Simply being a religion does not define a charitable purpose. Though many religious organisations do engage in charitable activities, they also engage in marketing their belief system to non members in the community, and political lobbying neither of which are for the common good but are for promoting of a sectional interest only. If religious organisations which to engage in charitable activities it needs to be at arms length from the administration of the religion, and financially separate. The same should apply to educational, or health entities.

7. What are the issues with requiring an existing charity or an entity seeking approval as a charity to demonstrate they are for the public benefit?
8. What role should the ACNC have in providing assistance to charities in demonstrating this test, and also in ensuring charities demonstrate their continued meeting of this test?
9. What are the issues for entities established for the advancement of religion or education if the presumption of benefit is overturned?

The only way that this can be tested is by audit of the disbursements of the Charity, and its compliance with the criteria for disbursements published by the charity. If there are limited resources for administration this could be done randomly. The ACNC could be the administrative unit that oversees the reports and audits of registered charities.

Removal of charitable status will mean that religious and educational organisations will be required to pay GST and income tax on that part of their income used for marketing their beliefs and administration. This will mean a greater equity and fairness in Australia.

10. Are there any issues with the requirement that the activities of a charity be in furtherance or in aid of its charitable purpose?
11. Should the role of activities in determining an entity's status as a charity be further clarified in the definition?

The high court decision that use of charitable funds for political lobbying is a fair use does not seem consistent with the principles of free and fair elections. It means that taxpayer funds are used (through tax exemption etc) to possibly overturn their own electoral decisions – this needs to be specifically prohibited in the legislation.

Charities need to define a legal responsibility for misuse of of funds, and non compliance the criteria set for recognition as a charity. This means they need to have a defined executive, and a governing entity who can be held accountable. Hence charities that consist of a single clerk working in a parent organisation should no longer be permitted – the charity must be financially and organisationally distinct from the parent entity.

- Are there any issues with the suggested changes to the Charities Bill 2003 as outlined above to allow charities to engage in political activities?
13. Are there any issues with prohibiting charities from advocating a political party, or supporting or opposing a candidate for political office?

For the reasons outlined above a recognised charity should be absolutely prohibited from engaging in political activity without the written permission of every person who has donated money to that charity. Charities should be prohibited from refusing donations from persons who refuse to permit

political use of such donations. Failure to comply with the provisions should result in de-registration.

14. Is any further clarification required in the definition on the types of legal entity which can be used to operate a charity?

To be registered as a charity the entity should be incorporated with a board that meets regularly, and an executive. The method board appointment is to be published by the charity as are the annual financial statements, aims, disbursement criteria and other matter deemed to be in the public interest.

16. Is the list of charitable purposes in the Charities Bill 2003 and the *Extension of Charitable Purposes Act 2004* an appropriate list of charitable purposes?

17. If not, what other charitable purposes have strong public recognition as charitable which would improve clarity if listed?

As indicated above promotion of a religion is not in the general public interest and fails the primary test of a Charity – it should be excluded.

Promotion of animal welfare is also not equitable, many people do not waste money on companion animals, and many farming methods are interpreted as cruel by vegetarian animal liberationists. A charity for promotion of animal welfare could then be used to promote a limited belief about human nutrition, to the detriment of a large section of Australian society – this also should be excluded.

The tests to be applied should be equity, fairness and proven benefit. Entities which fail should be wound up and their assets distributed according to their published goals, and disbursement criteria.

Obviously these suggestions will not be welcomed by organisations currently reaping tax benefits (i.e. being subsidised by taxpayers such as myself) but the government now has the chance to stop supporting sectional interests and actually create a society that does not ape the British class system and enforce religious discrimination.

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