

CONSULTATION PROCESS

Request for feedback and comments

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Consultation 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?

Response:

CVGT Australia doesn't agree with having an exclusively charitable purpose because we feel that changing to this will be extremely constraining on organisations as they try to further themselves for long term sustainability in an ever changing and demanding landscape.

It's not in the interests of the charitable sector to have everything that is performed to be exclusively charitable. To do so will stifle innovation and creativity that is required to sustain organisations for the long term, and will create a lack of surety of new ventures in the future.

Having dominant purpose will allow for circumstances to occur that may not currently fall within any standard definition (or known of at the time) and that, when attributed to a reasonability test may in fact turn out to be more aligned with the charitable function than some existing functions.

Moving to an exclusively charitable purpose we believe will mean that the legislation won't be able to keep pace with the changing world and what the community may require into the future from the charitable sector.

2. Does the decision by the New South Wales Administrative Tribunal provide sufficient clarification on the circumstances when a peak body can be a charity or is further clarification required?

Response:

CVGT Australia agree that the decision provides sufficient clarification, and that no further clarification is required.

3. Are any changes required to the Charities Bill 2003 to clarify the meaning of 'public' or 'sufficient section of the general community'?

Response:

CVGT Australia believe that the meaning is far too broad and subjective and that it should be left as per what the common law intended.

The senate definition may become an impost on small organisations and sporting groups to administer and could lead to many worthwhile organisations being excluded on technicalities rather than a common sense approach to the evaluation.

The meaning should not discriminate against members of the community just because they are deemed minor or negligible in number or size.

4. Are changes to the Charities Bill 2003 necessary to ensure beneficiaries with family ties (such as native title holders) can receive benefits from charities?

Response:

CVGT Australia believe that all members of the community should be treated equally, openly and fairly in this perspective (per the NZ example) however it should not only relate to ethnicity but all minority groups irrespective of their family ties.

We think that a full public benefit test would be too much of an administrative burden on small NFP organisations to be able to handle the public benefit test process, and may have a significant impact on “Rural Communities” and other small organisations and sporting groups, leading to a reduction in numbers of organisations and volunteers willing to assist them in the running of their operations.

This will add a significant cost to the government, as someone will need to fill this gap created and be employed to do what was previously voluntarily done by the organisations.

CVGT Australia disagree with having a “full” public benefit test for “all” situations.

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?

Response:

CVGT Australia believe that further clarification should be more in keeping with that outlined in the English and Wales guidance material.

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?

Response:

Yes, we believe that this would provide more flexibility and be more dynamic in meeting the diversity and changing landscape of the community as we know it today.

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?

Response:

CVGT Australia do not agree with this test however if it has to be implemented it needs to be determined in line with existing principles.

To create a feeling of certainty and clarity to the NFP and its operations going forward, this needs to be clarified at the beginning not continually during the life of the organisation.

If a NFP had to continually reaffirm its status, this would become an extremely difficult

process to administer and would result in many organisations not bothering to comply and just closing their doors, as primarily all those who are manned by volunteers would see no point in furthering a charitable undertaking if a percentage of that gained was being paid in government taxes and duties rather than reinvested into the operations.

This would also result in an unsustainable and autocratic exercise where every time the NFP sought new business opportunities to further its ultimate aims, it would have to continually reassess that opportunity and then decide whether it was still pragmatic to continue or not, to take up the business opportunity anyway.

This would become a waste of time, energy and resources being tied up in the administrative process and would therefore constrain growth and sustainability.

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?

Response:

CVGT Australia disagree with this test and the assertion of the ongoing continued meeting of “this test” as we see the consequence of such a process as becoming detrimental to the long term viability of many organisations and becoming an administrative burden.

We believe it will create a huge impost on organisations every time they look at changing anything, and don’t believe that the ACNC or any other body can be completely across such a diverse industry and all the potential variations to what is known now.

As it appears to be working at this point in time, with minimal disruption administratively to NFP organisations, why change the common law definition for the first 3 heads.

9. What are the issues for entities established for the advancement of religion or education if the presumption of benefit is overturned?

Response:

This could have massive implications to the sectors mentioned in terms of daily operations and has broader implications on society through the lack of services being provided, particularly in the education and training field, with it not being as accessible to those requiring the services and there becoming less operators in the areas, particularly in Rural and Remote communities.

Financially many organisations are already struggling in this area and if they were to be excluded, then they would be no longer viable and would close down.

10. Are there any issues with the requirement that the activities of a charity be in furtherance or in aid of its charitable purpose?

Response:

Yes, as this may prevent organisations from furthering their charitable purpose. Not all activities might be considered by some to be charitable but they may be integral in ensuring the health and well being of the organisation in terms of its stability and long term security.

11. Should the role of activities in determining an entity's status as a charity be further clarified in the definition?

Response:

No as we believe that including an activities condition in the statutory definition will constrain organisations from operating efficiently and effectively.

To administer operations down to the individual activity level would be an administrative burden that the majority of organisations couldn't cope with and where they could, all their time and energies would be consumed by the process rather than a focus on the real objective at the end, as to why they are doing the activity in the first place.

12. Are there any issues with the suggested changes to the Charities Bill 2003 as outlined above to allow charities to engage in political activities?

Response:

No. Charities should be able to engage in political activities if they chose to so long as it is in line with their purpose and is from an information to the public perspective only.

13. Are there any issues with prohibiting charities from advocating a political party, or supporting or opposing a candidate for political office?

Response:

Yes, don't believe it is appropriate as charities should be bi-partisan.

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

Response:

No, CVGT Australia don't believe so however the replacement of the definition of what is a government entity by that from the A New Tax System (Australian Business Number) Act 1999 is a sound one and will eliminate any subsequent conflict with this act in terms of the definition going forward.

15. In the light of the *Central Bayside* decision is the existing definition of 'government body' in the Charities Bill 2003 adequate?

Response:

No, it should adopt the definition as per that responded to in Q14.

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?

Response:

No

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

Response:

Assistance in finding employment and preparing people for employment as this is an intrinsic fabric of society which aids the public and provides benefits to the community and the individual themselves in terms of health and wellbeing. It also contributes to reducing the financial burden on the community and the individual then becomes a contributor to the community rather than a person who has to be supported by the community.

18. What changes are required to the Charities Bill 2003 and other Commonwealth, State and Territory laws to achieve a harmonised definition of charity?

Response:

CVGT Australia believe that there needs to be a single statutory definition of charity across all Commonwealth, State and Territory laws.

The definition of charity needs to be broadened to capture all known (existing) variations between commonwealth state and territories without then having to require amendments in the different legislations.

19. What are the current problems and limitations with ADRFs?

Response:

Not knowledgeable enough about these organisations to comment

20. Are there any other transitional issues with enacting a statutory definition of charity?

Response:

CVGT Australia believe that as part of the transitional assessment, recognition should be given to the last formal assessment of an organisation by the ATO and where the core aspects of NFP's still align to that assessment, that those aspects are recognised and aligned within the statutory definition of a charity.

it should be recognised for such organisations, that so long as the furtherance of their activities are still in keeping with that of the time when the assessment was made that they are still a charitable institution for purposes of the self assessment eligibility requirement.

