

The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

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**DEFINITION OF A CHARITY CONSULTATION
from the
CHURCH OF SCIENTOLOGY AUSTRALIA**

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?

Amending the 2003 definition to require that a charity have an exclusively charitable purpose could unfairly disqualify many entities from meeting the core definition. It would be better to clarify this as suggested by including that any other purpose, which if viewed in isolation, would not be charitable, could only be incidental or ancillary to the charitable purpose.

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?

The decision by the New South Wales Administrative Tribunal is considered adequate.

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

The meaning of ‘public’ or ‘sufficient section of the general community’ needs to be changed so that it does not discriminate due to the size of the entity or religious affiliation of members.

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?

This is not applicable to our organisation.

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 England and Wales?

The presumption of public benefit in respect of religious organisations should be retained as per the Charities Act 2009 (Ireland) and for reasons outlined in question 9.

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?

The approach taken by England & Wales of relying on common law on the meaning of public benefit is preferable provided it does not unduly disadvantage any charity, does not try and weigh benefit against harm and retains the presumption of a public benefit for the advancement of religions.

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?

The greatest issues are for religion:

- ***The first point is “who decides?” Spiritual activities do not present a benefit when judged from an atheistic viewpoint, one religion’s beliefs do not present a benefit when judged from the viewpoint of another religion i.e. Buddhist beliefs do not present a benefit when judged from a Christian viewpoint. The presumption of benefit is essential to avoid this as neither the ACNC or the Parliament are qualified to make judgment on this issue.***
- ***The second issue follows from the above point. Benefits should be defined as both tangible and intangible as by its own definition, spiritual belief and values are intangible.***
- ***On a more general note, it is worth considering what the presumption of public benefit in the advancement of religion really means and why it was granted and has remained a key element of the charitable definition for four centuries. In the English case of Holmes v HM Attorney General (1981) The Times 12 February Mr Justice Walton posits: “It has long been settled that the law presumes that it is better for a man to have a religion – a set of beliefs which take him outside his own petty cares and lead him to think of others – rather than to have no religion at all”.***

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?

The ACNC should have full responsibility for educating the various charities across Australia in any and all changes that are made to the current law that they were created under. The ACNC would have the role to inform charities and fully educate them on all changes in law and procedure through training and comprehensive advice and clear guidelines. This must be done in a gradual manner and with benevolence. As always with new regulations there is confusion and a period of fluctuation as changes are introduced. Ignorance about any one given charity or sector could result in damage and additional costs for charities. Many of these charitable organisations are small and unable to bear undue compliance costs while carrying out valuable work to contribute to their communities. There is a concern that the ACNC could become a purely regulatory and enforcement body rather than an advisory committee.

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

There are a number of issues for religious entities if the presumption of benefit is overturned. These are:

Who would be qualified to assess whether a religion was of a benefit or not? The proposal to remove the presumption of benefit for the advancement of religions infers that there is some belief that some religions are of a benefit and some are not. This belief does not forward religious freedom and liberty in Australia. The removal of the presumption of benefit would open the door to intolerable religious discrimination.

One man's religious belief could be blasphemous to another man. An atheist would be unlikely see a benefit in religion. An apostate would say that their former religion had no benefit when thousands of followers would disagree. A minor religion could be denied charitable status simply because it is not liked by the assessing body or because it is not understood or 'popular'.

In the 'Church of the New Faith v Victorian Commission of Payroll Commissioner' Justice Murphy stated 'the policy of the law is 'one in all in''. The Advancement of Religion is a public benefit for all religions and their communities.

Who decides and what constitutes an "identifiable benefit"? How is that benefit to be measured? Benefits should be defined as both tangible and intangible as by its own definition spiritual belief and values are intangible.

The amount of spiritual benefits and knowledge gained from religious teachings by a member of a religion cannot be evaluated by an external body. A person who has improved himself morally is a benefit to his family, friend, work place and the community in general – but how is this assessed?

A requirement that the public benefit is weighed against detriment and harm is again open to intolerable religious discrimination and bigotry. The belief of one religion may well be that their way to salvation is the only way. With that viewpoint any other religion is of detriment to salvation. An atheist may hold that any and all religions are of detriment.

A ‘complainant’ or ‘victim’ (or any number thereof) can make any number of allegations against a religious entity without any of it being proven as true and this can be perceived as a ‘detriment’. Is detriment or harm to be proven in a court for it to be valid? Again the danger is “who decides?”

Similarly how is ‘detriment’ and ‘harm’ measured? Most importantly what objective criteria will form the basis of determining when any public benefit the charity provided outweighs any “harm” it causes.

The advancement of religion has always been held to be of a public benefit (refer to the answer to Question 7). This is still true today as reported by the Australian Bureau of Statistics regarding volunteerism (4102.0 - Australian Social Trends, 2004) as follows:

- I. *“In 2001, 74% of Australians aged 18 years and over reported affiliating with a religion. In the following year, 23% reported participating in church or religious activities over a three month period. Affiliating with a religion and participating in its group activities is one of the ways by which people develop social networks and bind into communities. Religious beliefs and values may also influence people's behaviour and decisions in many areas of life. For example, they may motivate people to perform unpaid voluntary work, which complements government funded services. Consequently, as well as reflecting shifts in the nature and cultural foundations of Australian society, changes in religious affiliation and activity may have implications for both the level of civic engagement and the provision of community services in Australia. “*

- II. *“Some religions encourage adherents to be charitable to those in need. Thus, having a particular religious affiliation may predispose a person to do unpaid voluntary work. In 2000, while 18% of volunteers cited a desire for social contact as a reason for volunteering, 12% of volunteers were motivated to volunteer by religious belief.*

Of the 23% of Australian adults who had participated in church or religious activities within the three months prior to interview in 2002, just over a half (52%) had also done unpaid voluntary work for an organisation within the previous 12 months. In comparison, less than a third (29%) of adults who had not

participated in church or religious activities had done such voluntary work.

There was a clear difference in the likelihood of having done unpaid voluntary work for a religious organisation between adults who had participated in church or religious activities and those who had not. Of those who had participated in church or religious activities, 30% had also done some unpaid voluntary work for a religious organisation within the 12 months prior to interview, compared with just 1% of those who had not participated in church or religious activities.”

One example of a public benefit of our religion is that the parishioners of the Church of Scientology and their families are generally drug-free and as such they do not get involved in illegal-drug taking, drug addiction and the subsequent drug-related crime and health problems and the resultant large cost to the community (i.e. tax payer) financially.

In addition to reducing the burden to the community by having it parishioners drug-free, the Scientology parishioners volunteer their time to educate others in the community about the negative effects of drugs and have a positive influence on many non-Scientology teenagers to say no to drugs and prevent drug abuse. Other religions have similar moral beliefs and there are many other examples that could be cited. These benefits stem directly from a religious / moral belief of a Church extending to its parishioners. While this position is not only affiliated with religion, it is an example from our religious community. This again saves the tax payer as they are not funding the services to address the considerable harm that drugs cause.

Who will judge, on what criteria, the weight of this public benefit?

Finally, in paragraph 89 of the Consultation Paper there is a mention of ‘cult like organisations’. However, it is difficult to determine what is a ‘cult’ and bono fide religions might be unfairly tarnished. Religions have always been subject to the extensive existing criminal codes and other laws which are very adequate to police wrong-doing. Religious organisations should not be singled out when it should be a concern for all groups seeking to achieve charitable status.

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

We agree with the requirement that the activities of a charity should 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?

Yes, the definition should be wide enough to ensure a charity is not disqualified unfairly as the activities of charities can often be broad and remain in furtherance of a charitable purpose.

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?

We have no issues with the suggested changes to allow charities to engage in political activities so long as it remains an ancillary activity.

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

We have no issues with prohibiting charities from advocating a political party or supporting a candidate for political office provided this too remains an ancillary activity.

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

No further clarification is required in the definition on the types of legal entities which can be used to operate a charity.

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

It is out of our scope to comment on the Central Bayside decision.

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?

The list of charitable purposes is in our opinion broad enough to ensure no charitable purposes are excluded. However the extent of this list should not be taken as a reason to overturn the presumption of benefit for religion, education and relief of poverty.

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

Not applicable

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

The Charities Bill 2003 was rejected for a multitude of reasons. What is required is a new Bill that is unique to Australia in its approach. The UK Charities Commission and its public benefits issues are based on a school system that does not exist in Australia.

New Zealand has successfully created a Charities Commission in a similar environment and there are decisions and initiatives that can be learned from there.

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

Our church has assisted in many Disaster Relief Activities without having sought DGR status. Due to the increase in the number and severity of the natural disasters over the last decade, we support greater flexibility to minimise any hindrance to the response time for urgent relief efforts. There is a need for speed in the distribution of these funds and this should be facilitated.

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

Charities in existence at the commencement date should have a period of three years to conform with the statutory definition of charity, should any changes be needed. The ACNC should be responsible for informing any affected organisations at an early instance and for educating and assisting them in the change process.

Yours Faithfully,

Board of Directors,
Church of Scientology Australia