



Submission to the Treasury

A Statutory Definition of Charity

May 2013

Introduction

This submission briefly outlines some of the key issues for Australia's not-for-profit sector in response to the release by Treasury of the 'Exposure Draft Charities Bill 2013', a bill seeking to establish a statutory definition of charity.

This submission has been prepared with the members of the Community Council for Australia (see Attachment 1 listing of CCA members) as well as other key organisations and individuals working in and with the not-for-profit sector.

It is important to note that this submission does not over-ride the policy positions outlined in the individual submissions from CCA members.

CCA has previously prepared a submission on the statutory definition of charity in response to the Treasury consultation paper in December 2011.

CCA makes three recommendations in this submission - all proposed changes to the Bill. These recommendations seek to; clearly establish the purpose of the Bill; increase understanding about the various lists and descriptions of charitable purpose in the Bill; and, ensure appropriate language is used to describe the purposes and activities of charities.

CCA believe there is still a great deal of work to be done to fully realise the potential benefits of having a clearer and more modern definition of charity. This work will largely be dependent on the capacity of the Australian Charities and Not-for-profit Commission (ACNC) and the Commonwealth government to drive consistency across governments and other regulators. At present there is both significant variation and significant duplication creating major barriers to effective practice, particularly for charities operating nationally.

The CCA welcomes this opportunity to comment on the Exposure Draft Charity Bill 2013. CCA is willing to engage in further discussion about any of the issues raised in this submission.

The Community Council for Australia

The Community Council for Australia is an independent, non-political member-based organisation dedicated to building thriving communities by enhancing the extraordinary work and effort undertaken within the not-for profit sector in Australia. CCA seeks to change the way governments, communities and the not-for-profit sector relate to one another. This includes establishing a regulatory environment that works for community organisations and not against them.

The mission of CCA is to lead by being an effective voice on common and shared issues affecting the contribution, performance and viability of not-for-profit organisations in Australia through:

- providing thought and action leadership
- influencing and shaping sector policy agendas
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- working in partnership with the government, the business sector, and the broader Australian community.

Policy Context

The not-for-profit sector contributes over \$43 billion to the economy, employs over one million Australians and involves over five million volunteers.

It is an unprecedented time of reform in the Australian not-for-profit sector. The signing of the first National Compact between government and the Australian not-for-profit sector just over two years ago, the establishment of an Office for the Not-for-Profit Sector within the Department of Prime Minister and Cabinet, the establishment of the Not-for-Profit Reform Council and the recent establishment of the new Australian Charities and Not-for-profits Commission (ACNC), all represent a new direction in the way government interacts with the not-for-profit sector.

The current definition of charity is complex, inconsistent between Australian jurisdictions and creates considerable uncertainty for the sector. The Productivity Commission identified 40 statutes across Australian jurisdictions which provide tax concessions to charitable organisations and 19 separate agencies that regularly make determinations of charitable status (*Productivity Commission Inquiry into the Contribution of the Not-for-profit Sector*). The resulting administrative and compliance burden for organisations operating across jurisdictions is onerous.

The definition of charity is based on over 400 years of common law. To set up a charity, organisations are required to satisfy the Australian Taxation Office (ATO) that they comply with laws first drafted over 400 years ago and which has been continuously refined by case law. If organisations are denied charitable status by the ATO and wish to challenge the ruling, this can end up in the courts at great cost to organisations and government.

Many things have changed in the last 400 years, not least the community understanding and expectation by communities and governments of what constitutes a charity. Likewise the broad policy context within which many charities operate has moved to a greater focus on prevention, early intervention, social inclusion, education, innovation and place-based programs and responses. It is now more readily acknowledged that promoting and supporting the not-for-profit sector is critical to building a more resilient and productive Australia.

The broader not-for-profit sector now works in a broader range of areas than ever before and continues to grow at about 7% per annum. It now works for a range of objectives covering environment, heritage, recreation, animal care, the arts and culture as well as social services, health and wellbeing.

There have been no less than 15 major reviews, reports and inquiries into the regulation and contribution of the sector since 1995. Many of these have recommended that a statutory definition of charity be introduced, including the Productivity Commission and the review of Australia's Future Tax System (2010). It is noted that the proposed Bill has also been informed by the 2001 Charities Definition Inquiry and the 2011 Treasury consultation on a statutory definition of charity.

Within this policy context, it is important that any new statutory definition is contemporary and relevant, and has a clear purpose to create clarity and consistency and reduce compliance costs for not-for-profit organisations working within Australian communities.

Recommendations

The Community Council for Australia (CCA) welcomes the commitment of the Australian Government to introduce a statutory definition of charity from 1 January 2014. The definition of charity is the gateway for not-for-profits to a range of benefits and concessions from government and funding organisations. Achieving charitable status also provides an important public commitment to fulfilling a purpose that benefits a community. The introduction of a statutory definition is a significant reform and has the potential to achieve a number of important objectives. CCA believe it would significantly enhance the proposed Bill to include a clear set of Objects outlining the purpose of the Bill. These Objects would largely reflect the purposes outlined in the Factsheet. Inclusion of this section will enable future interpretations of the definition of charity Bill to take into account the intended purpose. Having an Objects clause may be important in any future legal challenges. It may also provide comfort to existing charities that the purpose of the proposed Bill is not to remove any existing entitlements.

CCA recommends a new Objects section be included at the front of the proposed Bill outlining the following purposes of the Bill:

- ***reduce red tape for charities and entities seeking charitable status by providing a clear definitional framework;***
- ***put the common law into a form that is easier for the sector and the public to understand by replicating and modernising the existing common law definition;***
- ***expressly identify charitable purposes as determined through case law; and***
- ***support the Australian Charities and Not-for-profits Commission (ACNC) in its role to provide guidance and support for charities.***

A number of CCA members have expressed concern that the listing of specific eligible purposes ‘*certain purposes presumed to be for the public benefit*’ in Section 7, the overlapping listing of charitable purposes in Section 11, and the more detailed spelling out of ‘*purpose of advancing social or public welfare*’ (Section 13) may lead to some confusion about charitable purpose. For example, a charity offering support to mental health carers may not see the purpose of their organisation specifically listed in the charitable purposes outlined in the Bill. While in practice they may not conceive of their organisation as part of any health system, they are pursuing health and would fit under that definition despite not being specifically listed. To address this potential confusion, it is suggested that the wording of each of these sections be more explicit in outlining that none of these sections provides a definitive limit (or exclusive listing) of the way an eligible charitable purpose has to be described.

CCA recommends that the wording introducing sections 7, 11 and 13 be clarified to ensure charities are aware that the way they describe their purpose may be a subset of any one of the descriptors of charitable purpose within the Bill.

CCA has also received feedback that the wording in some sections of the Bill uses terms that are no longer widely applied within the charities sector. For instance, it is not considered appropriate to talk about providing care and protection for people with a disability.

CCA recommends a review of the language used in the Bill to ensure it reflects a contemporary understanding of charitable purposes and activities.

Implementation

One of the primary functions of a statutory definition of charity is to reduce uncertainty for NFPs applying for charitable status.

Once a statutory definition is established, there must be Commonwealth leadership to implement it across jurisdictions. The processes for determining charitable status vary significantly within Australia, with little coordination among agencies, and a high degree of both inconsistency and duplication.

The widening of charitable purposes introduced by the *Extension of Charitable Purposes Act 2004* has not been significantly adopted by any state jurisdiction to reform their definition of charity.

While the establishment of the ACNC has already led to a reduction in red tape through the cooperation of at least one State and one Territory, these are small steps in what must become a major move forward.

The charities sector itself can also drive the broader adoption and application of a new statutory definition of charity by both supporting the independent role of the ACNC and by ensuring all government departments and regulators across Australia are asked to explain why they require unique information or what is the purpose of collecting duplicate information.

Conclusion

In embarking on the establishment of a statutory definition of charity, the Government is endeavouring to achieve what previous Governments have been unable to achieve, and take a significant step on the reform journey.

A sensible definition should not enable all not-for-profits to be charities, but ensure that any benefits or concessions are targeted to genuine charitable organisations working for the public benefit.

It is important that the new definition of charity fits with contemporary public policy and community expectations of charities.

The primary rationale for a statutory definition should be to simplify the registration process for eligible charities and build community confidence in the charitable sector through greater support for charities and streamlined processes. This includes a genuine commitment to streamline definitions of charities used by differing regulators across Australian jurisdictions.

In administering a statutory definition of charity, the ACNC must have the independence to determine charitable status, as recommended by the Productivity Commission. This will provide greater certainty to the sector and the community, and simplify the registration process for not-for-profit organisations. This is one of the fundamental policy goals of the not-for-profit reform agenda.

CCA welcome the proposed Bill and believe that, with some minor changes and the inclusion of a clear Objects clause, this Bill will enhance the charities sector across Australia, and thereby strengthen our communities.

Current Membership – Community Council for Australia (April 2013)

Attachment 1

Organisation

Access Australia's National Infertility Network Ltd.
Access Community Group
Alcohol and Other Drugs Council of Australia
Alcohol Tobacco and Other Drugs Association ACT
ANEX
Associations Forum Pty Ltd
Australian Council for International Development
Australian Healthcare and Hospitals Association
Australian Indigenous Leadership Centre
Australian Institute of Superannuation Trustees
Australian Major Performing Arts Group
Church Communities Australia
Connecting Up Australia
Consumers Health Forum of Australia

Drug Arm

Foundation for Alcohol Research and Education
Foundation for Young Australians
Fundraising Institute of Australia
Goodstart Early Learning

Good Beginnings Australia

HammondCare

HETA Incorporated
Hillsong Church
Illawarra Retirement Trust
Lifeline Australia
Maroba Lodge Ltd
Melbourne Citymission
Missions Interlink

Mission Australia

Musica Viva Australia

Opportunity International Australia
Philanthropy Australia
Principals Australia Institute
Pro Bono Australia

RSPCA Australia

Services for Australian Rural and Remote Allied Health
St John Ambulance Australia
Social Ventures Australia

Surf Lifesaving Australia

The ANZCA Foundation
The Australian Charities Fund

The Benevolent Society

The Big Issue

The Centre for Social Impact

The Smith Family

The Ted Noffs Foundation
Volunteering Australia Inc

Wesley Mission

WorkVentures Ltd

World Vision Australia

YMCA Australia
Workplace Giving Australia

CEO/Director

Sandra Dill
Samantha Hill
David Templeman
Carrie Fowlie
John Ryan
John Peacock
Marc Purcell
Prue Power
Rachelle Towart
Fiona Reynolds
Bethwyn Serow
Chris Voll
Anne Gawen
Carol Bennett
Dr Dennis Young (Director)
Michael Thorn
Jan Owen
Rob Edwards
Julia Davison
Jayne Meyer-Tucker (Director)
Stephen Judd (Director)
Sue Lea
George Aghajanian
Nieves Murray
Dr Maggie Jamieson
Viv Allanson
Rev. Ric Holland
Pam Thyer
Toby Hall (Director)
Mary Jo Capps (Director)
Rob Dunn
Deborah Seifert
Heather Parkes
Karen Mahlab (Assoc. Member)
Heather Neil (Director)
Rod Wellington
Peter LeCornu
Michael Traill
Brett Williamson (Director)
Ian Higgins
Edward Kerr
Anne Hollonds (Director)
Steven Persson (Director)
Andrew Young
Lisa O'Brien (Director)
Wesley Noffs
Cary Pedicini
Keith Garner (Director)
Arsenio Alegre
Tim Costello (Chair)
Ron Mell
Peter Walkemeyer