



9 December 2011

Manager
Philanthropy and Exemptions Unit
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

A Definition of Charity

The Consumers Health Forum of Australia (CHF) welcomes the opportunity to provide comments on the Treasury's Consultation Paper on *A Definition of Charity*.

CHF is the national peak body representing the interests of Australian healthcare consumers. CHF works to achieve safe, quality, timely healthcare for all Australians, supported by accessible health information and systems.

CHF's submission supports the process for the development of a statutory definition of charity, and argues for some key inclusions in the definition, including:

- The definition should be based on an organisation having a dominant charitable purpose, rather than an exclusively charitable purpose
- Requirements that benefits must be delivered to a 'sufficient section of the community' must be carefully considered to ensure that organisations such as those providing support to people with rare diseases are not excluded
- The definition should be focused on an organisation's purpose, rather than its activities
- The definition must not prevent a charity from undertaking political activities.

CHF, and its members, look forward to ongoing involvement in the reform of the NFP sector. If you would like to discuss these comments further, please contact CHF Senior Policy Manager Ms Anna Wise.

Yours sincerely

Carol Bennett
CHIEF EXECUTIVE OFFICER



Submission to the Treasury on *A Definition of Charity*

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Introduction

The Consumers Health Forum of Australia (CHF) welcomes the opportunity to provide comments on the Treasury's Consultation Paper on *A Definition of Charity*.

CHF is the national peak body representing the interests of Australian healthcare consumers. CHF works to achieve safe, quality, timely healthcare for all Australians, supported by accessible health information and systems.

CHF is a not-for-profit (NFP) organisation, as are many of our members, and we therefore have a strong interest in NFP sector reform. CHF has previously provided input to the Productivity Commission's Draft *Research Report on the Contribution of the Not-for-Profit Sector* in December 2009, and to the Treasury's *Scoping Study for a National Not-for-Profit Regulator* in February 2011 and *Consultation Paper on Not-for-Profit Tax Concessions* in July 2011. CHF is also a signatory to the National Compact between the Australian Government and the NFP sector.

Many CHF members are also registered charities.

CHF has reviewed the submission of the Community Council for Australia (CCA), of which CHF is a member, in response to the Consultation Paper, and supports its recommendations. Some further comments are provided below in response to selected questions from the Consultation Paper.

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?

CHF does not support amending the definition to require that a charity has an exclusively charitable purpose. A charity's core aims and objectives may be charitable, but they may support that charitable purpose with activities that could not, in themselves, be viewed as charitable. If an exclusive purpose test is applied, the activities of a charitable organisation in support of their dominant purpose could render them ineligible for charitable status. A dominant purpose test will provide greater flexibility and better reflect the operations of many charities in undertaking activities that support their primary charitable purpose.

CHF therefore supports the inclusion of a 'dominant purpose' that is charitable in the definition of charity, consistent with the definition of 'dominant purpose' in the Charities Bill 2003: that an organisation has a dominant purpose that is charitable if it has one or more purposes that are charitable and any other purposes it has further or are in aid of, and are ancillary or incidental to, its charitable purposes.

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 New South Wales Administrative Tribunal decision, that an organisation which enhances the long term viability of charitable organisations by providing educational, mentoring and support services is itself a charitable organisation, indicated that a peak body need not deal directly with members of the public but that the degree of integration and commonality of purpose with its members determines its charitable status.

CHF considers that this decision provides sufficient clarification, but that consideration will need to be given to how a peak body's 'degree of integration and commonality of purpose' with its members will be assessed.

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

CHF is concerned that the definition of 'sufficient section of the general community' in the Charities Bill 2003 states that a purpose is not directed to the benefit of a 'sufficient section' if the people to whose benefit it is directed are 'numerically negligible'.

This is of particular concern to CHF because excluding organisations which direct their services to a group that is 'numerically negligible' risks excluding organisations which, for example, support people with rare diseases. Rare diseases are defined as those that affect less than one in 2000 people, but for many of these diseases the numbers are much smaller. Support groups exist in Australia for specific rare diseases with very low numbers, and some of these organisations have charitable status. These groups arguably have a charitable purpose, whether they support 1000 people, 100, or fewer than 10.

CHF would therefore support the changes recommended by the Board of Taxation in its review of the Charities Bill 2003 to clarify the meaning of 'sufficient section of the general community', with a definition of 'sufficient section' as one which is not 'numerically negligible' compared with the size of that part of the community to whom the purpose would be relevant.

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? 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?

CHF considers that there would be benefit in including a statutory definition of 'for the public benefit' in the legislation, to ensure there is clarity around what constitutes a public benefit. If the decision is made to rely on the common law and provide guidance on the meaning of public benefit, this guidance must be free from ambiguity. However, in either case, the definition or guidelines should be sufficiently flexible to capture the full spectrum of charitable activities. It must also incorporate indirect benefits, where the benefit extends beyond the immediate beneficiaries, as well as direct benefits.

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?

CHF supports the position outlined in the CCA submission, that most charities have a track record in meeting the public benefit so there is no need for undue or burdensome compliance to satisfy the regulator, but that they should report on the public benefit going forward. This appears to be the intention as outlined in the Consultation Paper, which states:

It is proposed that existing charities will not need to reapply for registration by the ACNC [Australian Charities and Not-for-profits Commission] but continue to self-assess eligibility against the statutory definition from the commencement date. Charities in existence at the commencement date will retain their registration as a charity but registration will be reviewed by the ACNC over time.

It is difficult, however, to comment at this stage on potential issues for entities seeking charitable status for the first time, as it is not clear from the Consultation Paper how this will be tested. According to the Consultation Paper,

The ACNC will determine what is needed to demonstrate whether an entity is operating for the public benefit. It would be expected that little will be required where the public benefit is self-evident and additional work will only be required where the ACNC has raised doubts about an entity's application or review.

CHF does not foresee major issues for entities seeking charitable status, but would urge the ACNC to ensure that the public benefit test does not involve undue compliance costs. Guidance should also be provided to organisations seeking charitable status to ensure that the process is clear. Additional consultation with the sector by the ACNC may be required before processes for assessing the public benefit are finalised.

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

CHF supports the position outlined in the CCA submission, that the main focus of a statutory definition of charity should be on the purpose of an organisation, rather than its activities. This is consistent with Taxation Ruling 2011/4, which states, 'Where the constituent documents of an institution indicate it has been established solely for a charitable purpose, it can be charitable even if its activities are not intrinsically charitable'. This can include activities that are profit generating: 'A charitable institution that endeavours to make a profit from its activities can still be charitable if its profit making goal is only in aid of its charitable purpose'.

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

CHF supports the proposed changes to the Charities Bill 2003, as outlined in the Consultation Paper, that would allow charities to engage in political activities that attempt to change the law or government policies. These are important changes that will allow charities to advocate for changes to public policy and legislation that are in the interests of marginalised groups or causes.

CHF is not opposed to prohibiting charities from advocating for a political party or supporting or opposing a candidate for political office. However, we argue that a distinction must be observed between these activities and activities that might involve supporting or endorsing the policy platform of a particular party or candidate where that policy platform is in the interests of a charity's constituents. Likewise, charities must have the freedom to be able to criticise policy platforms that are not in the interests of their constituents.

Is the list of charitable purposes in the Charities Bill 2003 and the Extension of Charitable Purpose Act 2004 an appropriate list of charitable purposes? If not, what other charitable purposes have strong public recognition as charitable which would improve clarity if listed?

On the whole, CHF supports the list of charitable purposes as outlined in the Charities Bill 2003 and the *Extension of Charitable Purposes Act 2004*. We particularly welcome the inclusion of 'the advancement of health' in this list. We also strongly support the inclusion of a category of charitable status that includes '*any other purpose that is beneficial to the community*', as this increases the flexibility of the definition.

CHF notes that the Consultation Paper identifies the need to clarify whether the definition of 'advancement' should be clarified to reflect that the current law includes 'prevention'. CHF argues that this would be an important inclusion, particularly in relation to health. We note that the definition used in England and Wales contains clarification that '*the advancement of health*' includes *the prevention or relief of sickness, disease or human suffering*'. Similar definitions appear in the Scotland and Northern Ireland legislation. CHF considers that clarification of this kind would be an appropriate inclusion in the Australian definition of charity.

CHF notes that sporting, recreational or social purposes are excluded from the listing of charitable purposes in the Consultation Paper. CHF considers that these purposes may, in some circumstances, be charitable, and deliver public benefit through the advancement of health and social inclusion. CHF argues that consideration should be given to the inclusion of these purposes in the list of charitable purposes in the definition of charity, or to recognition that they could be viewed as falling under '*any other purpose that is beneficial to the community*'. Further consideration of the inclusion of these purposes in the definition is required.

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

CHF supports the CCA's arguments recommendations in relation to transition arrangements:

- That the ACNC have greater independence to regulate the sector, including assessing eligibility for tax concessions
- That there is Commonwealth leadership and commitment to introduce the statutory definition across jurisdictions to reduce compliance costs to the sector and governments
- That compliance costs and burden be minimised wherever possible in introducing a statutory definition of charity, and that only those not-for-profits who seek charitable status are required to report to the regulator
- That a reasonable transition period exists for charities to report on their status that is commensurate with charities' capacity
- That an education campaign for the sector is developed to accompany the establishment of a statutory definition of charity.

Conclusion

CHF welcomes the opportunity to provide comments on the Treasury's Consultation Paper on *A Definition of Charity*, particularly in the context of ongoing reform of the not-for-profit sector.

Our submission supports the process for the development of a statutory definition of charity, and argues for some key inclusions in the definition, including:

- The definition should be based on an organisation having a dominant charitable purpose, rather than an exclusively charitable purpose
- Requirements that benefits must be delivered to a 'sufficient section of the community' must be carefully considered to ensure that organisations such as those providing support to people with rare diseases are not excluded
- The definition should be focused on an organisation's purpose, rather than its activities
- The definition must not prevent a charity from undertaking political activities.

The development of a statutory definition of charity has the potential to provide greater clarity, increase harmonisation between jurisdictions and build community confidence in the charitable sector. Ideally this will occur without an increased administrative burden on charitable organisations.

CHF and its members look forward to ongoing involvement in the development of a definition of charity, and the reform of the not-for-profit sector more broadly.



The Consumers Health Forum of Australia (CHF) is the national peak body representing the interests of Australian healthcare consumers. CHF works to achieve safe, quality, timely healthcare for all Australians, supported by accessible health information and systems.

CHF does this by:

1. advocating for appropriate and equitable healthcare
2. undertaking consumer-based research and developing a strong consumer knowledge base
3. identifying key issues in safety and quality of health services for consumers
4. raising the health literacy of consumers, health professionals and stakeholders
5. providing a strong national voice for health consumers and supporting consumer participation in health policy and program decision making

CHF values:

- our members' knowledge, experience and involvement
- development of an integrated healthcare system that values the consumer experience
- prevention and early intervention
- collaborative integrated healthcare
- working in partnership

CHF member organisations reach millions of Australian health consumers across a wide range of health interests and health system experiences. CHF policy is developed through consultation with members, ensuring that CHF maintains a broad, representative, health consumer perspective.

CHF is committed to being an active advocate in the ongoing development of Australian health policy and practice.