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

A Submission by Stephen Sandilands for and on Behalf of the Cornelia de Lange Syndrome Australasia Inc.

In Respect of the Consultation Paper – A Definition of Charity

## PREAMBLE

Cornelia de Lange Syndrome Australasia is a charitable tax exempt and incorporated body registered in New South Wales under current legislation. The organization had its genesis in September 1993, out of a small support group seeking to progress its activities, support and services to families and those affected by this genetic syndrome as well as health professionals with an interest in the syndrome, on a wider and national basis.

Since that small beginning the organization has grown to an active financial membership of around 80, but reaches out to over 130 families Australia wide as well as New Zealand, supports fledgling sister organisations in less well funded and less well developed regional nations as well as some Baltic nations, and of course providing information and support to health professionals with an interest in the syndrome at state and national levels.

Potential changes to charitable definitions and associated guidelines, legislation and terms of significant concern and should not be considered lightly or rushed into as even a change of definition to the meaning of “charitable organisation” has great potential to have long-lasting impacts of major consequence and detriment to smaller charitable support organisations, as well as those with various disabilities and others who access or utilize such groups and services.

## DEFINITION

Defining a charity should not be viewed as simplistically as “any purpose that is beneficial to the community”, despite the seeming good intention of such an ideal.

Such defining has the potential to oversimplify and in fact end up covering a wide range of issues which it could well be argued (and no doubt legal sources would easily come up with suitable precedents to support their suppositions and cases) might well include support and services provided by both government and private organisations. Such activities could be seen to include education, health, superannuation, environmental, transport, culture, arts, sport, law enforcement, etc. All have the potential to be seen or argued as having some benefit to our society as well as being generally viewed as core values and services of our society.

The point of this is that all such activities do in fact provide a benefit in many different ways to the community, yet clearly not all should be considered as charitable and it should not be the intent and purpose of any changes to existing legislation to make that so.

## STATUTE OF ELIZABETH

We concur with moving away from the concept of Statute of Elizabeth and its many issues as well as the perception imposed by such statute of philanthropic good works, to something broader and fitting in concept with the overall virtues culture including our multi-culturist society and visions of the broader Australian community and its diverse needs, but would recommend that there be clear protections and guidelines (enforceable) to ensure clear pre-determined sets of values, visions, objectives, aims and outcomes and strictly adhered to, are met and are of such a nature that as at present they can be audited and validated.

Any such move will still broaden the range of organisations meeting or potentially meeting “in the public benefit” requirements, but must still continue to focus on the major or total part of such work conducted by the said organisation being wholly for the specified purposes and targets.

However definitions and any guidelines or regulations should be clear, unambiguous and not open to more literal or liberal interpretations thereby minimizing further attempts to expand the intent of the legislation and charitable works beyond what is really intended. This will assist to avoid confusion, ambiguity and challenges to the legal process.

## AUSTRALIAN TAXATION OFFICE and DETERMINATIONS

At the same time it should not fall to the ATO to determine what is “in the public benefit”. The ATO has a long and unenviable history of making rulings and decisions and then overturning them at a later date, often with far reaching and disastrous consequences for individuals concerned as well as having many legal appeals on rulings unnecessarily waste the time of the courts and judicial processes.

The Aid Watch vs Taxation Commissioner, mentioned in the Consultation paper under Disqualifying Activities at 2.1.5 (paras 99-111), clearly highlights the above concern.

Any determinations should be strictly according to the clear definitions, guidelines, legislation and regulations by an independent government body, free of political bias and interference from other government departments and should not be open to challenge by the ATO. Removing any potential challenge by the ATO would be seen as a trade off in line with removing legal challenges by disaffected bodies who may not be successful in being recognised as meeting the requirements for a charitable organisation.

Further, a role is required to ensure organisations considered as charitable, continue to adhere to and prioritise the objectives under which they were granted such status in the first place. I am not certain of how this may be implemented or achieved, but appropriate checks and balances are required to preserve the integrity of those seeking to do the correct thing and be compliant, as well as preserving the integrity of the whole charitable system and process.

## DISQUALIFYING PURPOSES

Under Section 2.1 – Core Definition, of the Consultation Paper, the 2003 Charities Bill – broad elements are detailed in Item 45 (page 6).

Greater clarification and examples of disqualifying purposes is required in line with concerns addressed earlier in relation to ensuring legitimate organisations are protected.

In relation to Section 2.1.1. - Not For Profit (page 7) it is strongly recommended that greater clarity and guidance notes be provided into the overall context of “not for profit” and how and when this applies as well as clearer guidance on the issue of generating a profit, especially as most organisations with small selfless volunteer hands-on work forces would not be conversant with the legislation and are largely based and focused on delivering the activities and resources of the organisation.

Any amendment or change of legislation and definition to support the outcome of the Aid Watch case outcome and further enshrine those values within the activities of charitable organisations is to be commended with the proviso that the majority or significant part of an organisations funds and resources are not allocated to such activity, thereby detracting from its core purpose, aims and reason for being in the first place.

In our changing and diverse culture it should be seen as a basic right to pursue our interest, charitable objectives and aims by pursuing or promoting awareness among our politicians, potential candidates, government and the media. As such advocating and support of political parties or candidates should be accepted as a given right. However it is recommended that the line be drawn at funding of candidates and political candidates by such organisations. Donations or funding can be made on an individual basis but should not come from organisation funds per se.

It is especially important that government grants to organisations NEVER be allowed to be utilized for such purposes. This would totally defeat the whole process of seeking grants from government bodies in the first place.

## GOVERNMENT APPROACH

Successive governments in recent decades and even more so in the last decade (current) have openly pushed and looked to charitable organisations (including Judeo / Christian organisations) to shoulder the load and provide services to the broader community, especially in times of major events, relief and disasters, at local, state and national levels.

This in itself indicates that government is unable to provide those services of its own accord and therefore provides clear recognition of the role and services provided by such organisations.

Tax deductibility in such scenarios is critical to the services that can be provided but in such cases is not really the carrot that drives Australians to contribute at such times.

## STATE AND NATIONAL REQUIREMENTS

One of the major issues facing smaller organisations (as was faced with our organisation) is the initial issue of variance between states on the way they conduct incorporation as well as administer and interpret what is charitable for their various state and territory regimes. Charitable and tax exempt status needs to be simplified at a

national level so that the same laws and guidelines apply equally everywhere within the Commonwealth of Australia. Such a step would be a significant move forward and make it easier for smaller bodies who are seeking to be recognised nationally to progress more easily through the incorporation to charitable and tax exempt status.

## ACTIVITIES TO BE IN FURTHERANCE OF CHARITABLE PURPOSE

As defined in Section 2.1.4 (page 15 of the Consultation Paper) and based on High Court clarifications, the view expressed at Para 95 appears to be sound. However it is again necessary to ensure adequate protections as well as clarification, to ensure that those activities are not consuming a significant (a percentage could be determined as an appropriate level) or major part of their funds or fund raising and especially those funds donated or collected for “specific roles / tasks” or collected for a specific purpose such as flood relief, welfare packages, etc. are not diverted to the broader role identified in Para 95.

Paras 124 – 125 (page 20) indicates that charitable purposes cites advancement of religion and advancement of culture.

In our rapidly and ever-changing world and in our own multi-cultural society it is time that was given some significant clarification, especially in view of some groups supporting terrorist organisations in overseas countries and others such as Scientology having a clear credibility issue as well as being of dubious and questionable value within our society.

At the same time we should carefully consider what part or parts of mainstream religious organisations are conferred with charitable status. Given the vast holdings and reserves of various natures including treasures that are held by such bodies, one needs to carefully examine their overall role.

What is really required in the interests of such bodies is for them to begin co-operating among themselves initially and develop networks and systems that will assist in prevention of duplication/competition of process and service as well as reducing the impact of unscrupulous persons accessing multiple organisations for multiple benefits, to the detriment of those genuinely deserving.

Other overseas religious groups holding charitable status have bought up large tracts of arable farming land within Australia and farm it for profit and tax exempt, whilst using volunteer labour and not paying wages or workers’ compensation benefits (although being nonprofit by determination) competing directly with farmers who are required to

pay such benefits and taxation. This type of occurrence is an abuse of the charitable status and process and has already occurred on numerous occasions in NSW.

## AID OVERSEAS

This takes many forms and the Australian public as a whole as well as governments legitimately acting on behalf of the public, contribute in significant degree. This whole issue needs careful consideration and also need to be considered in the context of the preceding section of this submission, to ensure that smaller organisations who also provide support to their counterpart organisations in less developed or less well funded countries are not unduly restricted.

Without being racist it is noted that time and time again when disaster or emergency relief operations are required, the Australian giving spirit shines through in such a way that Australia is the envy throughout the world. This is a reputation we should not take lightly, nor allow it to be sullied in any way.

When disasters occur around the globe and nationally, Australia on a per capita basis leads the world in contributing and providing aid. Unfortunately many nations, some with organisations within our own country, are conspicuously absent at such times. Some of those organisations would seek to raise funds within Australia for other purposes and such activity must not be allowed to be considered under the guise of charitable activity or be allowed to be tax exempt.

## VOLUNTEERS

Australia has an unparalleled reputation around the world and is the envy of most developed countries, let alone developing nations, in its approach and provision of both volunteer and additional services and the use of volunteers within our local and wider communities.

However, volunteering has taken on a much wider approach over the last decade compared to previous. Traditionally one was familiar with St John Ambulance, Surf Life Saving, Bush Fire Brigades, Sea Rescue Groups, SES, etc., whereas one now sees volunteers operating in many other institutions include hospitals, airports, major sporting events, etc.

Many of these groups would be viewed, and rightly should be viewed, as potentially charitable works, although some clearly should not be considered for such recognition and especially for potential tax exempt status.

The status and ratification of such important groups with important roles within the community should not be downplayed or diminished by way of competing with other groups which under current laws may have no legal or moral right to claim such status.

Conceivably a person who volunteers to tend several persons gardens could be construed as being or providing a benefit to the community and therefore become a charitable or tax exempt body. Such a scenario would again impact on taxable revenues available to the government for distribution through due process to the broader community.

## SPORTING BODIES

As alluded to in this submission there clearly is a role for amateur and grass roots level bodies to be considered as being in the public interest or benefit and therefore may be considered as being worth of such charitable status.

However elite sporting bodies who may otherwise seek to meet the definition of a “charitable body” or of being or providing a benefit to the public or the community” may be well likely to take advantage of such changes. This would have an ongoing and seriously deleterious impact on the whole of donations and community funding. Many overseas scenarios have been alluded to in the Consultation paper. However it is worthy of note that in the USA major sporting teams with multi-million dollar budgets and owned by billionaires and companies are considered to be in the public or community interest and therefore the taxpayer is required to fund billion dollar stadiums for those teams. Such teams include the Detroit Lions owned by Ford Motor Co and another team owned by Kraft.

Such high impact and majority funding cannot be allowed to become the preserve of elite sporting teams operated as business entities here in Australia. Appropriate safeguards are required to ensure this does not occur.

## EDUCATIONS INSTITUTIONS

The majority of our higher learning institutions are incredibly wealthy and possess large holdings both land and business and hold tax exempt or charitable status so that they may attract endowments.

In recent years however some institutions have not spent all their funding allocations, yet still cry poor. It is interesting to note that research results in a company being formed, the shares held by universities are tax free but those allocated to individuals concerned with such activity in the first place are taxable. Hence a company may well be set up on a 50/50 basis with the university, but in short space of time, the university will hold more than 50% due to buy back arrangements on shares as individuals seek to satisfy their tax obligations. This is an inequitable situation and cannot be allowed to continue.

## CONCERNS

Oversimplification of the definition and human logic associated with such defining may well leave it open to business enterprises to seek and lawfully claim both charitable and tax exempt status.

If one was to oversimplify the defining process in relation to “charity” then the future of charities could easily include such groups as elite highly profitable sporting organisations run and in any sense of the word operating as highly profitable businesses, developing fund raising approaches utilizing professional full time fund raisers competing for limited public funds and donations. This would see professional fund raising taken to a new level and would most likely culminate in a significant reduction in funding being directed to smaller support organisations and grass roots bodies. This would of course result in the demise of many of those smaller organisations of which a huge number are run by dedicated volunteers and support staff and rely on small amounts of funding and donations as well as goodwill from local businesses to stay afloat and viable. Were they profit oriented businesses or larger organisations they could not operate with such austerity measures in place.

The potential for the demise of smaller support and charitable organisations currently operating under charitable status is significant and the impact of this occurring in the broader community cannot and should not be underestimated. They fulfill a significant and important role in educating, raising awareness and providing support to a diverse range of groups within the community, many of whom are disadvantaged in one way or another as well as providing services through a broader community network. At the same time they provide an important avenue and a voice at the grass roots and local community levels for seeking improvements and reforms through formal government processes.

Any moves to simplify / change definitions and clarification of what sort organisation or body with its aims and objectives must be proceeded with caution to ensure truly legitimate organisations and bodies with charitable status are properly protected and



preserved within the Australian framework and current culture, otherwise there is likely to be a significantly increased demand on government services which are already under strain, and have difficulty meeting and responding to differing needs as well understanding all the diverse issues that can be presented, many of which are more appropriately dealt with through specific disability and interest groups.

This is especially critical from both a perspective of recognition within the community as well as recognizing the broader ramifications attached to such organisations which are clearly associated with both charitable and tax exempt status. There is a need to ensure that such changes do not open the floodgates (so to speak) to organisations like elite sporting clubs (AFL, NRL, NBL, etc.) that are run as multi-million dollar businesses with matching budgets, or regular businesses seeking a quick way to minimize or reduce overall taxable exposure by making part of their business exempt and thereby having an impact on revenue potential through the Australian Taxation Office, with ongoing ramifications at both national and state level for distribution of government funds.

In like manner many smaller amateur sporting organisations and groups are likely to be affected by such potential changes. At present they can worthily be considered as providing similar avenues of support as do charitable groups such as disability groups, just with slightly different focus, more on health and fostering greater involvement, both of which have long term as well as immediate benefits within the community as a whole.

## RECOMMENDATIONS

It is recommended that changes to the charitable definitions and processes be proceeded with cautiously and that a simple unambiguous definition be developed which will reflect our changing and diverse society and its broader needs and not just adopt the typical philanthropic view.

Accordingly the follow are put forward:

1. Consider redefining the terms of charitable and not for profit and loosening up the activities as detailed earlier in this submission especially the definition of activities.
2. Ensuring appropriate safeguards, and the long-term ongoing viability of smaller legitimate NFP / Charitable bodies and further clarifying their role and necessity in Australian society.

3. Acknowledging the vital and important roles such organisations play in contributing to the health and betterment of our society and the role they play in providing services in the gaps and situations not adequately addressed or serviced by governments.
4. Restricting potential access to such tax exempt status / charitable recognition in respect of major business and elite sporting organisations run as wealthy businesses. This requires urgent consideration to ensure funding is not deprived from smaller bodies end up consuming the major part of available funding.
5. Ensure appropriate compliance checks and balances are maintained to ensure correct utilization of monies and funds by such recognised bodies, especially in relation to grants and funding supplied for specified purposes.
6. Deal with the need for uniform charitable and tax exempt legislation and process across all jurisdictions, state and national to make the whole process easier and clearer to understand. This could also include standardizing incorporation processes and requirements across the same jurisdictions.
7. Give due consideration to legitimate use of funding /support to overseas counterpart organisations and also take appropriate steps to ensure organisations are not funding unauthorized or illegal activities from Australian funding, donations, collects or whatever process under the guise of charitable works or tax exempt status.
8. Review and take action to revoke, remove / change the status of bodies in known cases where overseas charitable exempt bodies directly compete with Australian producers yet pay no tax, wages, benefits, etc. to voluntary work forces and thereby really do not contribute to society but detract from it by virtue on creating an unequal playing field.
9. Proceed with changes relating to disqualifying activities as detailed in this submission

It is humbly requested that this submission be given consideration with the view to protecting clearly recognised institutions, bodies and organisations that greatly contribute to and enhance the fabric of the broader Australian community and culture, yet ensuring that they are not disadvantaged by such changes and at the same time that overall taxable revenue available to the government of which amounts are distributed to such organisations as grants, are not impacted by virtue of possible applications for such status by bodies or organisations which would otherwise not be eligible and which in their own right are clearly wealthy beyond the needs of such status.

Respectfully

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