



The Exchange Project

**Submission
in response to request for feedback –
A Definition of Charity**

Authorised by Geoff Freeman, Director
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The Exchange Project
ACN: 152 88 732
Elwood. Vic. 3184
Mobile: 0402 262 261

A Definition of Charity

The Exchange Project is pleased to respond to the consultation paper on a definition of charity.

WHO WE ARE

The Exchange Project is a newly established nonprofit organisation that specialises in helping small to medium non-government organisations shape their own futures and achieve long term sustainability. Our purpose is to generate ideas, insights and management expertise to help build the strategic and organisational capacity of nonprofit organisations.

Central to The Exchange Project is a virtual clearing house that will collect, store and disseminate information and resources useful to nonprofits. The clearing house will also act as an intermediary that connects nonprofits seeking solutions to problems with a community of 'problem solvers' all of whom have specialised knowledge and skills spanning the full range of management disciplines. In addition, nonprofits will be able to link with volunteer and pro bono support through a facilitated search process.

COMMENTS/ISSUES

1. *Clause 57 – Peak bodies*

- The Exchange Project endorses the 2003 decision of the New South Wales Administrative Decisions Tribunal that '... a body which enhanced the long term viability of charitable organisations by providing educational mentoring and support services was itself a charitable institution'. In relation to this matter, two issues are relevant.
- First, not all organisations that provide educational mentoring and support services to charitable organisations are 'peak bodies'. According to the 1995 Industry Commission report into charitable organisations in Australia, a peak body is 'a representative organisation that provides information dissemination services, membership support, coordination, advocacy and representation, and research and policy development services for member and other interested parties'. The representative nature of a peak body distinguishes it from other bodies that do not perform representative function on behalf of members, but nevertheless undertake most other functions normally associated with peak bodies. An example is Riding for the Disabled Association Australia which is a national office or secretariat that has its own legal structure and that plays a supportive and educational role for its state associates who provide a service directly to the public. These bodies are akin to peak bodies and in our view should be regarded similarly.
- The second issue concerns the term 'the degree of integration and commonality of purpose'. The Exchange Project is of the opinion that this term needs to be clarified and its meaning elaborated, perhaps with examples, to help bodies such as the one mentioned above to present a case for classification as a charity.

2. *Clauses 71 to 77 - Benefit*

- The Exchange Project believes that a strong case can be made for further clarifying the term 'for the public benefit'. The additional principles and guidance material on the meaning of public benefit suggested in paragraph 77, would help the boards of nonprofit organisations make a more informed decision regarding the charitable status of their organisation than would otherwise be the case. We believe there are many nonprofit organisations that are not taking advantage of a charitable status but would most likely qualify if assisted to do so by a public benefit test that is supplemented by further clarification and explanatory material. This, of course, assumes that such material will strike the right balance between providing clear instruction and guidance and preserving optimal definitional flexibility.

3. *Clauses 102 to 104 – Political advocacy*

- The Exchange Project is of the view that an organisation whose primary purpose is to advocate for a political cause, should be deemed charitable by legislation providing, of course, its cause-related activities are legal.
- Furthermore, an organisation that engages legally in activities that seek to change a law or a government policy should not disqualify it from holding a charitable status, even if such activities are more than 'ancillary or incidental' to the organisation's purpose.
- Endeavouring to change or influence government policy or laws by legal means, including by public demonstration, community activism or other forms of legitimate political dissent, are time-honoured customs of a healthy democracy and the pursuance of civil society. To this end, The Exchange Project strongly believes that cause-related activities should be nurtured as a means to encourage governments, society and individuals to reflect on the morality of their actions and decisions.
- The Exchange Project does agree, however, that advancing a political cause by means of advocating a political party or candidate should not be deemed as legitimate charitable activity. Any organisation that engages in such activity, no matter what its purpose or benefit to the public, we believe should be disqualified from a charitable status.

4. *Clauses 105 to 106 – The Aid/Watch decision*

- The Exchange Project agrees with the High Court's *Aid/Watch* decision that 'the generation of public debate by lawful means, concerning matters arising under one of the established heads of charity, is itself an activity beneficial to the community'. We also support the notion that a charitable organisation should be able to engage in political activity that is relevant to, or consistent with, its stated purpose.

5. *Clause 111 - Revising the 2003 definition*

- In relation to the above comment, The Exchange Project recommends that the ACNC should clarify the meaning of political activity by providing explanatory material about what is and what is not acceptable. And further, that such clarification includes how charitable organisations can engage with political parties and individual politicians and candidates to further their cause whilst still maintaining party political impartiality.

6. *Clauses 132 to 134 – Charitable purposes*

- The Charity Commission that registers and regulates charities in England and Wales includes in its definition of charitable purpose, two purposes not included in ruling TR 2011/D2:
 - advancement of amateur sport; and
 - the advancement of art, heritage and science.
- The Exchange Project considers that these purposes should be deemed charitable and included in the list of charitable purposes in the Charities Bill 2003 and the *Extension of Charitable Purposes Act 2004*. It is our view that a compelling argument could be mounted that the ‘advancement of art, heritage and science’ properly falls within the TR 2011/D2’s ruling on charitable purposes, namely ‘the advancement of education’.
- In addition, both of the above mentioned purposes currently listed as ‘disqualifying purposes’ warrant inclusion in our view by virtue of the intrinsic benefits they bestow on the community. There is much evidence to suggest that the behavioural patterns of our population are changing with many Australians experiencing obesity, literacy and numeracy challenges, and becoming increasingly disconnected from one another. The Exchange Project believes that social structures such as amateur sporting clubs, art and heritage societies and scientific associations help bring people together to create a happy, well-educated and healthy society.