

TREASURY'S NOT-FOR-PROFIT REFORM FACTSHEET

STATUTORY DEFINITION OF CHARITY

AT A GLANCE - STATUTORY DEFINITION OF CHARITY

The draft statutory definition is part of the Government's Not-for-profit (NFP) reform agenda to strengthen and sustain the NFP sector. It takes into account submissions in response to the Government's public consultation paper on A Definition of Charity released in October 2011.

The Government recognises the invaluable contribution that charities make to the Australian community.

The intention of a statutory definition is to provide clarity and certainty for charities and the public on what is 'charity' and 'charitable purpose'.

A statutory definition sets out to:

- 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.

The statutory definition does not set out to:

- change the charitable status of existing charities;
- affect the taxation treatment of charities;
- restrict the flexibility inherent in the common law that enables the courts, as well as Parliament, to continue to develop the definition and extend the definition to other charitable purposes; nor
- extend the range of existing recognised categories of charitable purposes, for example, to include sport and recreation.

Charities will not need to re-register when the definition takes effect from 1 January 2014. The ACNC will assist charities if their registration needs to be adjusted to come under a purpose now mentioned specifically in the legislation.

WHY A STATUTORY DEFINITION?

The meaning of charity and charitable purpose has not been previously comprehensively defined for the purposes of Commonwealth law. It has been administered on the basis of principles derived from the common law.

The common law meaning has developed over 400 years, largely based on the Preamble to an English Statute in 1601. The development of the definition of charity and charitable purpose through case law since that time has resulted in charity law that is in some areas unclear, inconsistent, or does not adequately address matters relevant to the contemporary Australian charity sector.

The need for a statutory definition of charity and charitable purpose was first recommended in the report on the 2001 Inquiry into the Definition of Charities and Related Organisations (2001 Inquiry) and commented on further by the Senate Standing Committee on Economics in its 2008 report, *Disclosure Regimes for Charities and Not-for-Profit Organisations*. The Productivity Commission subsequently recommended in its 2010 report, *Contribution of the Not-for-Profit Sector*, the introduction of a statutory definition in accordance with the recommendations of the 2001 Inquiry.

A modernised statutory definition is intended to provide greater clarity and certainty for charities, the public and regulators in determining whether an entity is charitable. It is therefore also central to improving the sector's understanding of, and its access to, charitable tax concessions.

Importantly, the draft definition retains the flexibility inherent in the common law that enables the courts, as well as Parliament, to continue to develop the definition and extend the definition to other charitable purposes beneficial to contemporary Australia. This will ensure that the definition remains appropriate and reflects modern society and community needs as they evolve over time.

NFP Reform Agenda

The Government greatly respects and values the work that is undertaken by the NFP sector. It has been implementing a significant reform agenda, announced in the 2011-12 Budget, to support the ongoing growth of an independent, robust and vibrant sector. The first stage of the reforms was the establishment of the ACNC. The ACNC is now in operation and its role will include the administration of the new statutory definition of charity. The tax concessions for which charities are eligible are being examined through a separate process by way of the NFP Sector Tax Concessions Working Group.

KEY FEATURES OF THE DRAFT LAW

- To be a charity an entity must be not for profit, and all charitable purposes must be for the public benefit.
- A charity may have incidental or ancillary purposes (such as fundraising) that may not be charitable in themselves but which aid or further the charitable purposes.
- The Bill retains the presumption of public benefit for the purposes of relieving poverty, advancing education and advancing religion and also specifies the relief of illness and the relief of the needs of the aged to more fully reflect the common law.
- The public benefit provided by a charity may be tangible or intangible.
- An entity with a purpose to promote change to government laws and policy can be charitable, where the purpose is to further or protect one or more charitable purposes.
- Categories of charitable purposes listed in the Bill are:
 - advancing health, education, social or public welfare, religion, culture, and the natural environment
 - promoting and protecting human rights, preventing or relieving the suffering of animals, and protecting the safety of the general public.
- Specifying these categories does not affect the charitable status of purposes recognised under the common law that are not listed.

- Disaster relief and other charitable funds can now assist in rebuilding the assets of not-for-profit entities after a disaster.
- Funds that donate to charity-like government entities will not lose their charitable status under Commonwealth laws.
- The meaning of Government entity is clarified to assist in distinguishing charities from government entities.

WHAT DOES MY CHARITY NEED TO DO?

- Nothing will change for you when the statutory definition starts on 1 January 2014.
- The ACNC will develop guidelines and will help any charities that will eventually need to be registered under a newly specified category.
- Assuming the legislation passes in the Winter sittings of Parliament, there will be time for the ACNC to provide further details between the passage of the legislation and its commencement on 1 January 2014.

NEXT STEPS

- Public consultation on the exposure Bills will close on 3 May 2013.
- The Government will consider any changes that are need to be made to the Bills.
- It is the intention to progress the legislation in the Winter sittings.
- The statutory definition will commence from 1 January 2014.

FURTHER INFORMATION

- The Charities Bill 2013 and the Charities (Consequential Amendments and Transitional Provisions) Bill 2013, explanatory material and information on how to make a submission are at www.treasury.gov.au.
- The ACNC website is at acnc.gov.au.