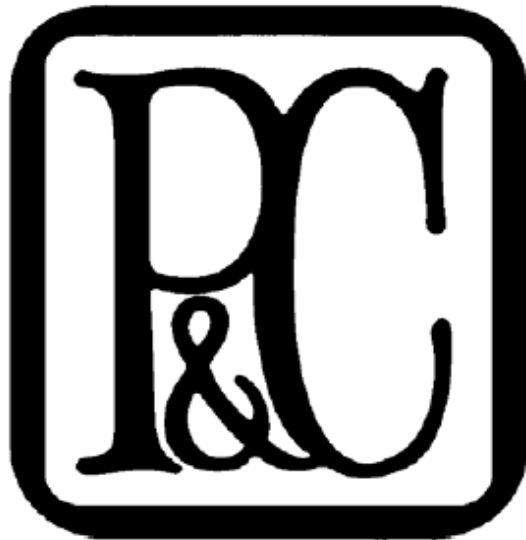


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Introducing a Statutory Definition of 'Charity'

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PREAMBLE¹

The Federation of Parents and Citizens' Associations of New South Wales (P&C Federation) is committed to a free public education system which is open to all people, irrespective of culture, gender, academic ability and socio-economic class and empowers students to control their own lives and be contributing members of society.

This commitment is based on the belief that:

- All students have the capacity to learn;
- The Government has prime responsibility to provide an education system open to all, which is free and secular;
- Schools should be structured to meet the needs of individual students and should respect the knowledge those students bring to school and build on that knowledge to foster their understanding about the world.

Parents as partners in the education process, have a right and a responsibility to play an active role in the education of their children. P&C Federation and its representatives share a responsibility of ensuring representative decision making for the benefit of all students.

INTRODUCTION

P&C Federation is thankful for this opportunity to participate in the consultation "A definition of Charity." P&C Federation is the peak body representing parents of children in government schools across NSW. Amongst some of the P&C Federation objectives; promoting Public Education, facilitating community involvement in public education, and co-operating with all/any agencies interested in furthering education and social inclusion.

Are there any issues with amending the 2003 definition to replace the 'dominant purpose' requirement that a charity have an exclusively charitable purpose?

The 2003 definition requires an entity to have a dominant purpose that is charitable and that, if the entity has one or more purposes, any other purposes of the entity further or are in aid of the dominant purpose. If there were to be amendments made to this definition and the 'dominant purpose' requirement be altered or defined, an issue is created. When defining the specifics of a 'dominant purpose', currently the definition is narrow and excludes many entities from having a 'charitable' status even though their 'dominant purpose' is charitable. E.g. A P&C Association whose objective or 'dominant purpose' is; to bring parents, citizens, students and teaching staff into close co-operation, and to assist in providing facilities and equipment for the school and in promoting the recreation and welfare of students at the school², are not necessarily classified as a charitable organisation. Their main purpose is the betterment of educational outcomes for all students and building strength and cohesiveness throughout the school community.

Further explanation or refinement of this requirement if made, may create an increase in the number of entities that could be excluded from being defined as 'charitable'. With even more stringent guidelines in place, how do organisations with a 'dominant purpose' that is charitable, become recognised as a charity?

¹ Federation of P&C Associations of NSW (2011) *P&C Handbook* (p1-2)

² Federation of P&C Associations of NSW (2011) *P&C Handbook* (p1-4)

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

The meaning of ‘public’ or ‘sufficient section of the general community’ is limited by numbers derived from the percentage of the community that *could* benefit versus the section that *is* benefitting. This definition requires a numerical amount or defined percentage to be measured in able to qualify within the guidelines. If this cannot be defined in numbers or percentages then it is deemed unable to be proven and cannot fall within the definition. The issues highlight how the measurement of impact is undertaken and the tools and resources that are required to be able to conduct such a measurement. Something that smaller entities typically, have little expertise or resources to undertake.

When communities raise funds for the betterment of the community, this should be seen as falling within the guidelines of ‘public’ or ‘sufficient section of the general community’. E.g. a P&C Association raising funds for the betterment of educational outcomes in the school and the community should be seen as falling within the guidelines.

In further clarifying the meanings, it must be taken into account the possible exclusion that may occur for smaller or isolated groups that receive assistance from organisations that presently fit within the guidelines.

Could the term ‘for the public benefit’ be further clarified?

The term ‘for the public benefit’ is tested by whether or not there is a benefit and whether or not that benefit is for the community. In clarification of the term there needs to be some flexibility built in, to ensure the term is not narrowed and made more restrictive than it currently is. It is also important that if a determination is made, avenues exist where challenges can be put forward and, if necessary further clarification can be given to allow entities to understand and comply and therefore potentially earn the stance.

Whilst the term may appear broad in essence, the way in which it is determined is often restrictive. It can be found that public benefit cannot be recorded in values that are measurable; a benefit to the community can come in many forms and can have differing impact on community members. Moving away from such a restrictive definition would enable flexibility and clarification of the term and allow for a greater range of suitable entities whom currently provide benefits to their communities, to fall within the guidelines.

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?

As aforementioned the benefit to a community can come in varying forms, and may impact each member of the community in a unique way. A problem exists in the measurement of public benefit, especially for non tangible benefits. A broader and more flexible definition and determination of the term needs to be undertaken to ensure fairness and equity in the process. When requiring existing charities to demonstrate their purpose is for the public benefit both tangible and non tangible benefits need to be examined. The approval process needs to be fair and equitable and allow those existing as a charity to be able to demonstrate their purpose. While the term may be broad in definition the determination process needs to be flexible and take into account the entity’s ability, or lack of, to be able to measure such benefit in the community.

There should never be a simple ‘yes’ or ‘no’ answer. It is also important that if a determination is made, avenues exist where challenges can be put forward and, if necessary further clarification can be given to earn the stance.

What role should the Australian Charities and Not-for-profits Commission (ACNC) have in providing assistance to charities in demonstrating this test, and also in ensuring charities demonstrate their continued meeting of the test?

Australian Charities and Not-for-profits Commission (ACNC) should be seen as the first stop for charities or entities when they are seeking information on definitions, compliance and relevant processes. They should be able to provide up to date information, fact sheets and resources for charities to keep current with statutory and legislative changes and information that is needed for the charity to function in their roles. The ACNC should be the place each and every charity uses as their main resource in ensuring their activities remain within the boundaries of the definitions and processes of determination.

Should the role of activities in determining an entity's status as a charity be further clarified in the definition?

The activities of an entity are currently used to define whether or not the entity is charitable, if the dominant purpose of the entity is seen to be for charity but, the activities undertaken are in contrast to this purpose the entity is not considered a charity.

The activities that are undertaken by an entity should be considered in more detail to reflect the purpose of the entity. If an organisation which is solely based around the betterment of education for a school and the benefit of the community is undertaking activities that do not fit within the boundaries but ultimately aid in the in the dominant purpose of the entity. This should be seen as fitting within the definition as long as the dominant purpose is seen to be charitable. The activities undertaken can often prove an entity could be eligible for charitable status when their dominant purpose may be determined as not charitable. Some of the activities that currently exclude an entity from being charitable include lobbying activities. When the activities ultimately aid in the betterment and benefit of the community, the dominant purpose is seen to be charitable the entity should be seen to fulfil the requirements of eligibility.

Where entities invest in communities, profits and benefits are apparent whether measurable or intangible. Is an activity whose main purpose is to further education for public purpose considered an 'approved' activity? A P&C Association that has a dominant objective of betterment of educational outcomes in schools, for students, and the community, and undertakes activities to further this purpose should be seen as a meeting the criteria. Entities such as these, aims to further education for the public purpose, improving educational outcomes for students and by undertaking activities to further these aims actually save government funds by up skilling communities and building social cohesion.

In further clarifying the definition, a narrowed and less flexible definition could be determined thus excluding many more organisations that are currently determined not eligible for the status. In making changes to the definitions a flexible approach needs to be undertaken and once again a process can be put in place where challenges can presented and, if necessary further clarification can be given to earn the stance.

Is the list of charitable purposes in the Charities Bill 2003 and the extension of Charitable Purposes Act 2004 an appropriate list of charitable purposes?

The list as it stands is very restrictive and narrow, there needs to be an alteration that allows for a broader list and a wider range of definition for charitable purposes, the purposes whilst seeming broad do not allow for flexibility and demonstration of the charitable purpose of the entity.

If not, what other charitable purposes have strong public recognition as charitable which would improve clarity if listed?

The charitable purposes listed could be improved by further clarification and allowance of more flexible demonstration methods to prove the purpose of the entity. P&C associations whilst existing for the betterment of educational outcomes in schools for students and the community do not fall within the definition of 'purposes' for the advancement of education. P&C Associations giving to the school community emphasises the benefits of giving without receiving for the benefit of a great number of people. The definition of purpose needs to incorporate the great many entities, which provide aid in form of funds or support, without expectation of returns, to benefit communities or the public.

What changes are required to the Charities Bill 2003 and other Commonwealth, State and Territory laws to achieve a harmonised definition of charity?

A harmonised definition of charity would rely solely on consistency and equity throughout all defining documentation and laws, as well as all organisations and their determinations for granting charity status. Without cohesion throughout the system there are many roadblocks to be faced and avenues that may indeed lead to dead ends after significant amounts of time and resources have been expended. The issue lies within information dissemination and having well defined, consistent and unambiguous resources from all sources.

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

Enacting a definition of charity could in fact create a range of opportunities for entities that are currently not considered charitable because of some undefined disqualifying factors in the current process.

There needs to be clear and transparent guidelines and consistent and equitable determinations made regardless of previous applications. Each entity should be able to be re-evaluated once the definition is enacted regardless of previous rejection or disqualifying factors. The definitions of purpose and activities need to be broader and allow for inclusion and not exclusion.

Conclusion

The Federation of Parents and Citizens' Associations of New South Wales would like to see equity and consistency in regulatory framework and charity structure. It is important to recognise the aims, purposes and activities and how they work towards the charitable purpose of an entity when making a determination. P&C Federation believes that a better system can be achieved through cohesiveness, consistency equity and clarity.

P&C Federation would like to thank the Treasury for the opportunity to contribute to this review. We look forward to hearing the results and welcome any further discussion this may evoke.