

**Request for feedback and comments, by 9 December 2011 on the Consultation Paper
of October 2011 on**

“A Definition of Charity”

re “exclusively charitable purpose”

- *“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?”*
- *“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?”*

Organisations purporting to represent specific interest groups sometimes seem self appointed “*peak bodies*”, in that their memberships are not necessarily representative of, or even a significant proportion of the entire population of those whose interests they purport to represent. Assuming grandiose names to enhance their credibility or appeal they seem instead to be more vehicles for the politically ambitious.

It might thus be of considerable benefit for media commentators, potential donors, volunteers and even ordinary members of the public to be able to readily access an internet site offering access to the register of “*registered charities*”, ordered according to their ‘*exclusively dominant purpose*’, giving details of (say) –

- ✓ membership,
- ✓ achievement measures, and
- ✓ administrative costs as a percentage of income.

re types of legal entities for charities

- *“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?”*
- *“What role should the ACNC have in providing assistance to charities in demonstrating this test, and also in ensuring charities demonstrate their continued meeting of this test?”*
- *“Is any further clarification required in the definition on the types of legal entity which can be used to operate a charity?”*
- *“In the light of the Central Bayside decision is the existing definition of ‘government body’ in the Charities Bill 2003 adequate?”*

Can an organisation be truly *“public”* when it prescribes conditions restricting eligibility for membership, and/or entitlement to access the benefits it provides? Does an organisation become *“private”* once it confines eligibility for membership to specific race, sex, political party, ideology, or religion? Does confining eligibility to (say) residents of a particular geographical area make a body so *“exclusive”* that it cannot be considered *“public”*? Do exorbitant membership fees, or prerequisites of nomination and seconding which can be invoked to exclude potential new members make an organisation *“private”*, rather than *“public”*?

The machinery already exists within each State or Territory for organisations to obtain *“Incorporation”*, for which the requirements seem aimed at ensuring protection of the public interest. Surely the cooperation of those State and Territory governments is pre-requisite to success of this proposal? Could not therefore, *“Incorporation”* within the relevant State or Territory suffice to demonstrate that an organisation is for the public benefit?

Although TR 2011/D2 states that the charging of fees to members is unlikely, of itself; to prevent a purpose from being charitable, do members discounts for (say) charges (eg rental or hire of assets) make that organisation so *“exclusive”* that it becomes something less than *“public”*?

re “political activities”

- *“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 a political party, or supporting or opposing a candidate for political office?”*
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Yes. For a charity to ask political candidates where they stand on issues relevant to that charities *“dominant purpose”*, and publish replies would surely not make the organisation any the less charitable?

re Charitable purpose activities

- *“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?”*

Yes. Must membership promotion, or fund raising activities be so confined? Sometimes it is necessary to pursue interim objects as means to achieve the ultimately charitable object.

Often euphemisms, and even deliberately confusing misnomers need to be employed to describe some activities employed in furtherance or aid of a charitable purpose to avoid repelling those whose participation is being sought.

For example, socialisation is demonstrably effective in reducing the risks of depression, addiction, illness, crime and violence known to be partly attributable to isolation. However, if the vehicle for stimulating such social inclusion is so titled as to suggest it is for the benefit of potential crooks, drunks addicts, suicides and misfits, it is unlikely to appeal to those it is established to help. In such cases it is essential to adopt a disguise, and call it instead something like a “Mens Shed”, or “Black Dogs Kennel”.

What is charity?

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

There is considerable political significance to the differences between altruism and selfishness.

It seems no accident that governments of all hues and political persuasions all around the world seem to have shied away from attempting to define what constitutes a charity. Perhaps it is a bit like “*truth*”? –

“What is truth?” said jesting Pilate, and would not stay for an answer.”