



16 December 2011

The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: NFPReform@treasury.gov.au

Re: Consultation Paper – A Definition of Charity

Life Without Barriers (LWB) appreciates the opportunity to provide a submission with reference to the Consultation Paper on the Definition of Charity.

LWB is a not-for-profit, non-government organisation committed to challenging systemic disadvantage and supporting vulnerable and marginalised people to reach their full potential.

The organisation offers a range of programs and services to support disadvantaged people and communities including:

- **Family Support and Out-of-Home Care;** we provide safe, stable and loving homes to vulnerable children and young people who cannot live with their families.
- **Disability Services;** We work with people with a disability, their families and carers to break down social exclusion to engage meaningfully with their communities.
- **Homelessness;** We work assertively to form relationships with people who are homeless, and leverage these relationships to link people with housing, health, education and employment and turn their lives around.
- **Mental Health;** We work with people with a mental illness to promote and foster their recovery and to lead full and happy lives.
- **Youth Justice;** We support young people and their family to break the offending cycles and become valued members of their community.
- **Refugee and Asylum Seeker support;** We provide support and protection to children and young people who arrive in Australia seeking asylum without a parent or guardian.

LWB supports almost 5000 people with high and complex needs. Our services are delivered across urban, regional and rural centres in every state and territory in Australia as well as through areas of New Zealand.

The introduction of a statutory definition of a charity

LWB supports the introduction of a new statutory definition of a 'Charity' to clearly illustrate the attributes which define a 'charity' and a 'charitable purpose.'

The definition of a 'charity' as proposed in the Charities Bill 2003 is considered a good starting point for a more refined definition. This change is a positive move to better meet the needs of contemporary Australian society and better reflect the diversity of organisations which operate for the public benefit.

Whilst the definition supposes various amendments to the current classification of a charity, the use of the Charities Bill 2003 is a sound foundation for a single definition of a charity. This will aid in overcoming the complexity and ambiguousness that has been recognised within the current definition of a charity, based on over 400 years of common law.

The key issues brought about through this modification are explored in this submission.

Dominant or exclusive charitable purpose

LWB supports the proposed alteration to the Charities Bill 2003 definition to require that the purpose or purposes of a charity are exclusively charitable. LWB views this change as a positive move.

Public Benefit

In articulating the description of 'public benefit', it is believed that Australia should follow the lead of The Charities Commission for England and Wales. Extensive guidance on the meaning of public benefit is considered to be necessary to minimise complexity and ambiguity.

Furthermore, LWB supports the change to remove the presumption of public benefit. In the 2005 modification of the New Zealand definition of a charity, the majority of organisations were easily transitioned whilst a small percentage of organisations found challenges in attaining charitable status. The 2008 New Zealand Charities Commission Annual Report identified that between 1 February 2007 when the Register opened, and 30 June 2008 when income tax laws changed, the Commission received 21,943 properly completed applications from charities and a further 3,979 "incomplete" applications. The

Commission had registered 8,218 charities by 30 June 2008. During that same period, only a small number of applications were declined, some were withdrawn by applicants, and eight charitable entities were deregistered at their own request.¹

It is believed that there are not any great issues with removing the presumption of public benefit for organisations that are operating in the true sense of those words. This is regarded as a fair process which would essentially place greater responsibility on all charities to positively demonstrate that they are operating for the public benefit. This will provide greater transparency and accountability across the sector.

The role of the Australian Charities and Not-for-Profits Commission (ACNC) in this instance would be to provide support for organisation seeking charitable status including defining the meaning of public benefit and examples for organisations to consider. It is important that this definition is accessible in simple, plain English terms to ensure all Australian organisations are able to identify the purposes for which they can be considered a 'charity'. The determination of charitable status by the ACNC based on the new definition of a charity is considered to be the pivotal role and responsibility of this independent regulator.

Distinction between charitable purposes and activities

The distinction between charitable purposes and activities and the extent to which charities may engage in business activities is important.

Expected reforms that require not-for-profit entities to pay income tax on profits from their unrelated commercial activities that are not directed back to their altruistic purpose are being pursued separately by Treasury.²

Disqualifying activities

LWB believes that charities should be able to debate political activities, such as attempting to influence government policy, activities or legislation, as opposed to engaging in party political activities. It is believed that if policy and practice will lead to enhanced outcomes for the people and communities supported by a charity, then that organisation should be able to advocate through political activity.

¹ NZ Charities Commission (2008) Annual Report, online:

<http://www.charities.govt.nz/assets/Uploads/docs/public-reports/annual-report-2008.pdf> pg. 6-7

² The Hon Bill Shorten, (23 September 2011) Address to the Australian Charity Law Association Annual Conferences, Assistant Treasurer, Minister for Financial Services and Superannuation, online:

<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=speeches/2011/029.htm&pageID=005&min=brs&Year=&DocType>

This is consistent with the *AID/Watch* decision which held that the generation of public debate by lawful means for charitable purposes does not affect an entity's status as charitable.

Commonwealth definition for states and territories

Although an entity may qualify as a charity under the proposed statutory definition of charity for Commonwealth legislative purposes, in certain instances the same entity may not qualify as a charity under relevant state and territory charity laws.

An entity should be assessed as being charitable for all purposes by a single agency such as the ACNC. This is expected to provide greater consistency for charities operating across Australia.

Across the country, whether State, Territory or Federal, it is necessary to ensure an agreement on a single definition. The ACNC will be the agency that recommends what those definitions should be. LWB believes that consultation with the states and territories will be important in devising the proposed statutory definition of charity. The inconsistency across Commonwealth and State and Territory legislation is a necessary barrier to overcome through this process.

As a not-for-profit operating in over 82 locations across Australia, LWB supports the notion that a single national definition will facilitate charities navigation of state and federal regulations with greater ease.

Transitional Issues

It is important in undertaking this process of introducing a statutory definition of a charity that Australia learns from other countries which have already undertaken a similar implementation process. In particular, special notice should be paid to the New Zealand Charity Commissions as to what worked well and what did not.

It is also believed that existing charities that have been endorsed by the ATO prior to the commencement date should retain their charitable status from the commencement date and not need to reapply for registration by the ACNC. It is however imperative that at a future date, all charity registrations should be reviewed by the ACNC. It is believed that setting this timeframe will be fundamental to ensuring that this action occurs for all organisations operating for charitable purposes.

For any questions regarding this submission, please contact Kylie Gwynne, Director Strategy and Change, on kylie.gwynne@lwb.org.au.

Kind Regards,

A handwritten signature in blue ink that reads "Claire Robbs". The signature is written in a cursive, flowing style.

Claire Robbs
Chief Executive