



A Definition of Charity – Consultation Paper

Submission to Treasury

Background to the Foundation

The Lord Mayor's Charitable Foundation was established in 1923 and incorporated by an Act of Parliament in 1930. Its original name was the Lord Mayor's Fund for Metropolitan Hospitals and Charities. The first donor was the then Lord Mayor, Lord John Swanson. The Foundation is Melbourne's largest community foundation with nearly \$100 million in corpus and 193 charitable fund accounts within the Foundation. The Foundation is a Public Ancillary Fund with charitable status. The Board of Management is a charitable institution, which acts as the trustee of the Public Ancillary Fund, amongst other charitable activities.

The Foundation makes grants in the areas of family, youth, health, ageing, homelessness, the arts education and the environment. These include both grants for direct relief and social change grants. Current priority areas are Homelessness, Youth and Ageing. The Foundation provides Signature grants for priority initiatives, Major Grants and General Grants. It has also recently introduced a proactive granting program.

In addition to grantmaking, the Foundation engages in public policy research and in community education through Forums, the commissioning of DVDs on particular charitable issues and through the media.

Scope of submission

This submission responds only to the consultation questions that are of particular concern or relevance to the Foundation.

Response to Consultation Questions

Consultation question

1. 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?

The Foundation supports the requirement that a charity have an exclusively charitable purpose. All activities should in some way support the charitable purpose. Activities would usually include service and program planning and delivery, generating income through fundraising and social enterprise, meeting compliance requirements, stakeholder engagement and so on.

Consultation question

5. Could the term ‘for the public benefit’ be further clarified, for example, by including additional principles outlined in ruling TR 2011/D2 or as contained in the Scottish, Ireland and Northern Ireland definitions or in the guidance material of the Charities Commission of England and Wales?

The explanation of Public Benefit set out in paragraphs 15 to 19 of Tax Ruling 2011/14 is a clear summary of the application of the public benefit rule.

15. A purpose is for the public benefit if:

- *It offers a benefit to the community that is real and of value, either tangible or intangible; and*
- *That benefit is available to the public.*

16. There is a rebuttable presumption of benefit to the community where the purpose comes within the first three heads of charity. Benefit to the community must be affirmatively established for purposes within the fourth head.

17. The benefit of a charitable purpose does not have to be for everyone in a community in order to satisfy the public element. It can be for a section of the community, as long as that section is appreciable.

18. The benefit of a charitable purpose does not have to satisfy the public element where the charitable purpose is the relief of poverty.

19. The notion of what is for the public benefit is not limited to a closed or historical list. As needs are satisfied, new needs arise or community views change, what constitutes a purpose that is for the public benefit can change as well. (TR 2011/14)

From the perspective of the Lord Mayor’s Charitable Foundation, paragraph 19 is an important point. A Foundation that is actively responding to the changing needs of the community must be able to stay abreast of the community’s changing social, cultural and environmental needs and aspirations. The Foundation has been operating since 1923 and notes that the ability to respond to change over time is critical.

Consultation questions

10. Are there any issues with the requirement that the activities of a charity be in furtherance or in aid of its charitable purpose?

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

The Foundation agrees that it is important to consider the activities of an organisation as well as the objects or purposes in its constituent document when considering an organisation’s charitable status.

Paragraphs 30 and 31 of Tax Ruling 2011/4 clarify the role of activities in determining an entity’s status as a charity very well.

30. *The enquiry as to purposes is a holistic one. It is the substance and reality of the institution's purpose that must be determined.*

31. *The objects or objectives in the constituent documents of an institution, and the activities by which these objects or objectives are achieved, are the main factors to be considered in determining the purpose of the institution. (TR 2011/14)*

Consultation question

12. Are there any issues with the suggested changes to the Charities Bill 2003 as outlined above to allow charities to engage in political activities?

The Foundation supports the inclusion of political activities within the definition of charitable activities where they:

1. are not party political; and
2. relate to improving public policy to better respond to community needs; and
3. relate to the charitable purposes and priorities of the charity undertaking the political activity.

Consultation question

13. Are there any issues with prohibiting charities from advocating a political party, or supporting or opposing a candidate for political office?

The Foundation does not support charities advocating for a particular political party or candidate in an election. However, the Foundation does support charities advocating for a social justice issue, such as overcoming homelessness or the rights of people with disabilities, and working to achieve positive social change through policy reform.

Consultation question

15. In the light of the Central Bayside decision is the existing definition of 'government body' in the Charities Bill 2003 adequate?

The issue of whether an entity is a government body or controlled by government is currently of material importance in determining eligibility to charitable status. However, this has practical unintended consequences, which need to be addressed by clarifying this area in the legislative definition.

This exclusion of organisations that are charitable but for their connection with government from being regarded as charitable under Commonwealth law causes confusion and frustration in the community and by donors to public charitable foundations (i.e. community foundations, including the Lord Mayor's Charitable Foundation). Examples of organisations that could be charitable but for their connection with government include: state schools, public hospitals, community halls/centres, public art galleries, public museums, public libraries, and others. This affects these organisations' ability to receive funding from charitable foundations. The status of public hospitals is of particular concern to the Foundation as this was one of the areas of charitable support that led to the establishment of the Foundation in 1923.

The second reading speech to the House of Assembly provides useful information about the original intent of the Fund, known in 1923 as the Lord Mayor's Fund for Metropolitan Hospitals and Charities and then incorporated as the Lord Mayor's Fund in 1930. Hospitals were intended to be included within the definition of charity.

One of the main objects of the Bill is to make provision so that members of the legal profession may, with confidence, advise their clients to include in their wills, legacies or contributions to the fund for distribution to hospitals and charities either in the whole or by means of investment, the interest obtained in the latter case to be distributed amongst the various charities. (page 4778, Hansard, House of Assembly, Lord Mayor's Fund Bill, Second Reading.)

Currently under some State Acts, trusts are given the power to "opt in" to make grants to non-charitable entities which are Item 1 Deductible Grant Recipients. In Victoria there is an additional requirement that the entity would be charitable but for its connection with government.

These provisions cause considerable confusion and complexity for the boards of the trustees of charitable trusts both in understanding the divergence between Commonwealth and State laws and in the complexity of the application. In addition, it necessitates a Charitable Fund being endorsed as an Income Tax Exempt Fund for Commonwealth Purposes. This is not easily understood by donors wishing to support a charitable fund.

There is a further concern once the Australian Charities and Not for profit Commission (ACNC) commences its Register of Charities as those Fund which have opted in and been designated as Income Tax Exempt Funds will not appear on the Register of Charities, unless this type of fund is specifically included in the proposed list of charitable purposes. Not appearing on the Register could become a serious credibility issue and marketing disadvantage for those Funds raising money from the public.

Public hospitals (usually known as health services) in Victoria are governed by Boards of Directors, who are people of community responsibility and expertise, appointed by the Minister for Health following a public advertising and appointment process. The Boards of public hospitals (health services) are responsible for the control of the health service, including developing budgets and strategic plans, monitoring performance, appointing the CEO, stakeholder engagement and ensuring legal and financial compliance. This governance model is different from other states and territories and means that Victorian public hospitals (health services) are not controlled by government as in other Australian jurisdictions and should be charitable entities in their own right.

The complex issues created by the divergence in State and Commonwealth laws and the confusion surrounding entities 'controlled by government' could be simplified by:

1. allowing a government body to be a charity, specifically including public hospitals, provided it is charitable but for its connection with government; and
2. inserting in the proposed list of charitable purposes:
 - a) providing money, property or benefits to government bodies, including public hospitals, which would be charitable but for their connection with government; and
 - b) providing money, property or benefits to Item 1 DGRs which are income tax exempt bodies even if they are not charitable.

Consultation questions

16. 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?

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

The Lord Mayor's Charitable Foundation supports the following list of charitable purposes, allowing for additional charitable purposes that may arise under the fourth head of charity as community needs and aspirations change.

PROPOSED CHARITABLE PURPOSES

- the advancement of education including scholarships, sharing of best practice, enhancing buildings, libraries, including IT, and enhancing education outcomes;
- the advancement of religion;
- the advancement of health and the saving of lives, which includes the prevention and relief of sickness, disease, disability or human suffering, and providing health and community services information;
- the advancement of social or community welfare, which includes:
 - the prevention and relief of poverty, distress or disadvantage of individuals or families;
 - the care, protection and support of those in need by reason of youth, age, ill health, disability, financial hardship or other disadvantage; and
 - public policy and social research work advocating for policy or legislative change aimed at overcoming inequity and disadvantage within the community.
- the advancement of community development, which includes:
 - retraining, finding employment, providing work experience, skills development, business incubation in disadvantaged areas or for people who have or are likely to experience difficulty in obtaining and maintaining employment;
 - providing facilities for community meetings and holding community events;
 - improving community facilities and access, including community transport;
 - supporting not-for-profit community groups with open entry requirements, including clubs and interest groups, which help in reducing social isolation or promote a sense of community; and
 - supporting the capacity of charities to better achieve their charitable purposes through training, mentoring, innovative finance options, provision of equipment and IT, management support, back office efficiencies and other support.
- preservation or restoration of the natural and built environment, including community gardens, erecting statues, providing historical information;
- the advancement of the arts, culture, and heritage, including the built environment;
- the advancement of science for the public benefit;

- the advancement of amateur sport, which includes the provision of open membership sporting or recreational activities or facilities with either the object of improving life opportunities of people who are disadvantaged or of improving the physical health of the community or a large section of the community;
- the advancement of human rights, which includes the promotion and advancement of conflict resolution or reconciliation, and the promotion of equality, diversity and religious or racial harmony;
- the advancement of animal welfare;
- the advancement of the natural environment, which includes the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment;
- the advancement of volunteering;
- the advancement of philanthropy;
- activities or organisations that but for their connection with Government would be charitable;
- providing money, property or benefits to Item 1 Deductible Gift Recipients which are income tax exempt bodies even if they are not charitable within Commonwealth law;
- the promotion of the efficiency of the police, fire and rescue services or ambulance services; and
- any other purpose that is beneficial to the community.

The majority of organisations that would benefit from an expanded list of charitable purposes are currently entitled to tax exemption, which means that there would be little revenue loss to government.

Additional comments are made in relation to Charitable Sport and Public Policy work as these are of particular interest to the Foundation.

SPORT

The Lord Mayor's Charitable Foundation supports the inclusion of sport as a charitable activity on several conditions. Sporting clubs across Australia play a very important role in both *promoting a healthy lifestyle, improving life chances* and *building community* through participation in sport. Sporting clubs play a critical role in enhancing social cohesion through providing opportunities to break down cultural and social barriers and build understanding.

The support of sport as a charitable purpose could be restricted to sports which are:

- capable of improving and promoting health and wellbeing by involving physical or mental skill or exertion;
- open to all, regardless of ability; and

- affordable for the majority of the community.

Open membership provides public benefit through encouraging community participation in sport. Consistent with this would be the provision and support of community sporting facilities.

PUBLIC POLICY

The Foundation supports research and advocacy work that leads to changes in public policy that deliver more equitable outcomes for disadvantaged people being regarded as a charitable activity. The Foundation itself is working particularly on issues surrounding homelessness, ageing and youth and is using this work to enhance its grantmaking and community education work.

Consultation question

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

A single statutory definition of charity that would apply at both Commonwealth and State or Territory law would improve the effectiveness of the charitable sector. Clarity around the charitable status of entities that are charitable but for their connection with government, including public hospitals, would overcome a great deal of confusion for donors and grant recipients.

Consultation question

19. What are the current problems and limitations with ADRFs?

Communities affected by a disaster and donors to disaster relief appeals do not understand why charities and charitable foundations who have received money to benefit these communities cannot then fund what the community needs and wants. This is often because community assets are owned by local government. These issues severely hamper the community's access to funding and also severely limit the ability of community and other foundations wishing to support disaster recovery.

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