

## **Submission to Treasury Consultation Paper *A Definition of Charity***

**December 2011**

### **Introduction**

Mission Australia welcomes the opportunity to comment on the Treasury Consultation Paper on possible approaches to give effect to the Government's commitment to introduce a statutory definition of charity.

As a Christian community service organisation and charity that has been transforming the lives of Australians in need for more than 150 years, we believe a statutory definition of charity that reflects modern society and community needs is appropriate and will provide increased certainty and consistency to the charitable sector.

At a time when governments are reaching limits to their capacity to provide a range of social, welfare and community services, the not-for-profit sector and charities are increasingly being called on to meet the gap in need. At the same time, charities are partnering with government, social investors and the private sector in meeting their charitable purposes including through the operation of social enterprises and the provision of social housing, and early intervention and prevention services.

It is important therefore that a statutory definition of charity accommodates new and legitimate financing and delivery models that enable charities to continue to meet their charitable purposes and build social and community capital in response to contemporary need.

### **Principles**

In moving from a common law to a statutory definition of charity, Mission Australia would wish to see a do no harm approach with minimum disruption to existing charities. A statutory definition should align as closely as possible with common law and reflect the *Word Investments*, *Aid/Watch* and *Central Bayside* decisions of the High Court. Subject to the above, we believe the following core principles contained in the Charities Bill 2003 are appropriate to a statutory definition.

- the entity must be a not-for-profit entity;
- have a dominant purpose that is charitable;
- be for the public benefit;
- not engage in activities that do not further or are not in aid of its dominant purpose;
- not have a disqualifying purpose;

- not engage in conduct that constitutes a serious offence; and
- is not an individual, partnership, a political party, a superannuation fund or a government body.

### **Charitable purpose**

Mission Australia supports “charitable purpose” as a main focus for a statutory definition. We support the principle that “activity” should support “charitable purpose”. However, this principle is a fundamental issue of governance for charity boards and should appropriately be monitored by regulatory powers of the Australian Charities and Not for Profits Commission (ACNC). The reporting mechanisms and information available on the common portal proposed for ACNC should be sufficient to determine if a charity’s activities are not in the furtherance its charitable purposes and warrant disqualification.

### **Public Benefit**

Mission Australia supports the public benefit provisions contained in the Charities Bill 2003 as a starting point for a statutory definition of charity. We would want enabling legislation to accommodate a contemporary and evolving understanding of public benefit to include, for example, early intervention and prevention programs. As a community housing provider we would wish the provision of social and affordable housing, either through charity management or ownership, recognised in a statutory definition.

However, Mission Australia would not support the removal of the presumption of public benefit for the first three heads of charity. We see no advantage in setting aside existing common law practice and foresee additional administrative burdens for charities under these heads should the presumption of public benefit be removed. We believe that the current provision where the onus is on the ATO to demonstrate that a charity does not provide a public benefit should continue to apply and could be incorporated into the powers of the ACNC.

### **Advocacy**

Mission Australia would wish to see a statutory definition of charity incorporate the principles established in the *Aid/Watch* decision that generation of public debate by lawful means, concerning matters arising under one of the established heads of charity, is itself an activity beneficial to the community. We would therefore support changes to the Charities Bill 2003 to remove attempting to change the law or government policy as a disqualifying activity.

As a faith informed organisation assisting families, children, young people, homeless and unemployed, Mission Australia advocates for policy change on behalf of our disadvantaged clients, consistent with our charitable purpose. Ministers and politicians regularly visit our services and programs, and on occasion make policy announcements, both outside and during election periods. Similarly we issue

statements commenting on, and at times welcome and advocate government and opposition policy initiatives that we deem would directly benefit our client groups, again, consistent with our purposes. A statutory definition of charity should not disqualify charities from undertaking such legitimate activities in furtherance of their purposes as distinct from advocating a political party or supporting a candidate for political office.

### **Type of entity**

Mission Australia provides services to government under contract including delivery of employment services under Job Services Australia. We provide these services to people in need consistent with our charitable purposes. Mission Australia would wish a statutory definition of charity to reflect a clear definition of 'government body' clarified in the *Central Bayside* decision to ensure provision of services under contract to government are treated as legitimate activities for charities to undertake.

### **Conclusion**

While supporting the Government's initiative to introduce a statutory definition of charity, Mission Australia would wish to see legislation that aligns as closely as possible with common law and reflects relevant High Court decisions. Such legislation should not impose additional administrative and proof burdens on the charitable sector. Specifically, as a faith informed organisation that has been operating under our charitable purposes for more than 150 years, we would not support the removal of the presumption of public benefit for the existing three heads of charity. Finally, a statutory definition of charity needs to accommodate legitimate advocacy activities in support of charitable purposes and recognise early intervention, prevention and the provision of affordable and social housing as a public benefit.