



**MISSIONS INTERLINK -  
and -  
AUSTRALIAN EVANGELICAL ALLIANCE -**

**Joint submission to the Treasury re: -  
Consultation paper for a statutory definition of charity -**

9 December 2011



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**Submission re: Consultation paper for a statutory definition of charity**

Dear Sir/Madam

Missions Interlink and the Australian Evangelical Alliance welcome the opportunity to respond to the Treasury's consultation paper on the proposed introduction of a statutory definition of 'charity'.

While we commend the Government in seeking to provide greater certainty and clarity as to what is considered charitable, we have concerns that some of the proposals in the consultation paper may in fact be difficult and costly to administer, reduce clarity and lead to controversial determinations.

**Missions Interlink**

Missions Interlink is a network of 167 Australian mission organisations that exists to link, support and train those who are involved in cross-cultural missions. Missions Interlink is not a mission agency and it doesn't send anyone overseas. It is the peak body representing cross-cultural mission organisations within Australia. All of Missions Interlink's Members are currently Tax Concession Charities and some are public benevolent institutions with DGR status.

**Australian Evangelical Alliance**

The Australian Evangelical Alliance (EA) is a fellowship of well over 600 Australian churches, organisations and individuals. Its mission is to serve the Australian Christian community as a catalyst for Christian unity, co-operation and mission.

**Summary**

Our specific concerns in the consultation paper are with the following issues:

- The replacement of 'Dominant' with 'Exclusive' in relation to charitable purposes and activities.
- The removal of a presumption of public benefit for religious organisations.
- Insufficient clarity in how the ACNC will administer the public benefit test.
- Transitional arrangements for existing charities.

We do, however, endorse the clarity provided regarding the charitable status of peak bodies.

## **Replacement of ‘Dominant’ with ‘Exclusive’ in relation to charitable purposes and activities (Questions 1, 10 & 11)**

We do not agree with the proposal that the purposes of a charity must be exclusively charitable rather than having a dominant purpose that is charitable.

The Consultation Paper recognises that exclusively charitable purposes would not exclude a charity from having incidental ‘non-charitable’ activities. However, decisions by the ACNC regarding whether or not activities or purposes are ‘incidental’ or ‘non-charitable’ could be difficult to determine and lead to controversy.

Many charities currently have their purposes defined very broadly in their constitutions and generally no distinction is made between the primary purpose and the accompanying incidental or facilitating purposes. Replacing ‘dominant’ with ‘exclusive’ will require many existing charities to revise their constitutions with no resulting benefit. It could also unnecessarily restrict what a charity could do, exposing their governing board to be accused of acting ‘ultra vires’ their constitution.

## **Peak bodies as Charities (Question 2)**

We support the option discussed in the Consultation Paper that the charitable status of peak bodies should be clarified within the statutory definition. We endorse the concept that ‘a body which enhance(s) the long term viability of charitable organisations by providing educational mentoring and support services (is) itself a charitable institution’.

## **The meaning of ‘sufficient section of the general community’ (Question 3)**

We have concerns that an entity meeting the statutory definition of a ‘charity’ must have a purpose that is directed to the benefit of a significant group of people and precludes a purpose that will benefit a group that is numerically negligible. The exception ‘unless the limits are incompatible with the nature of the benefit’ does not completely allay our concerns and further clarification is needed within the definition.

Our concern relates to ambiguities around the definitions of a ‘sufficient section’ and ‘numerically negligible’, making determination of charity status difficult in some instances, as it is unclear how many people a charity should be seeking to benefit. This could potentially remove charity status from entities that target the needs of a small group, for example assisting a small number of people who are members of a remote aboriginal community, or providing clean water and other community infrastructure improvements to a remote people group which consists of only a small number of families.

The ‘In Australia’ exposure draft also cited a religious organisation with 500 participants as an organisation that did not benefit a sufficient section of the community and was therefore not entitled to charitable status. If the ACNC were to follow this lead, then a large majority of Australian churches would not qualify for charitable status. Surely this is not the intention of Treasury or the Australian Government?

## **Public Benefit - further clarification (Question 5)**

If the presumption of Public Benefit is removed for religious organizations then there needs to be clear public guidance about how such an organisation sufficiently meets the benefits test. In order to avoid controversy about determinations by the ACNC, additional clarification is needed to demonstrate that it is the benefit, rather than the methods or opinions, of the organisation that is being examined.

## **The removal of Presumption of Public Benefit (Questions 7 & 9)**

We do not accept that the removal of presumption of public benefit from charities established for the advancement of education and religion is justified, because no evidence has been provided to:

- a) Show that the current system hasn't worked well or that there has been widespread abuse of charitable status by such organisations.
- b) Support the claim that overseas experience demonstrates that the removal of a presumption of public benefit has not caused significant issues.

We believe that:

- a) - Removing the presumption of public benefit will significantly increase the compliance burden for both the ACNC and charitable organisations because the sector is so diverse and complex. The cost of additional administration required as a result of this change is a very poor use of resources.
- b) - The compliance burden will be magnified if charitable organisations are required to demonstrate their public benefit on a regular basis as part of an ACNC review (eg annually or every five years).
- c) - Requiring the ACNC to review every educational and religious charity numbering in the hundreds of thousands, to ensure that they are operating for the public benefit, will be a very costly and time-consuming activity that cannot be justified by the low level of risk involved.
- d) - Determinations of public benefit by the ACNC could be difficult and controversial. It is clear from recent public discussions that what is for the 'public benefit' and what is not, is very much in the eye of the beholder. Controversial decisions by the ACNC may harm relationships between the Government and the charitable sector and in the end result in a reduction of public benefit.

In view of a lack of evidence that there has been widespread abuse of charitable status by educational and religious organisations that have not been operating for the public benefit, we propose that:

- a) - The presumption of public benefit for educational and religious charities should be retained.
- b) - The ACNC should have sufficient powers and resources to investigate cases of charitable organisations that appear to not operate for public benefit, and/or to investigate classes or categories of charitable organisations that are found to be at high risk of not being for the public benefit.
- c) - If a presumption of public benefit is to be retained at all, it should apply equally across all charitable purposes except the residual category.

### **Role of ACNC (Question 8)**

The ACNC will need to provide clear guidance on the criteria used to determine public benefit in order to reduce ambiguity and controversy. Resources should be targeted on requiring additional information from organisations where there is a perceived risk that they do not meet charity requirements.

In most cases, decisions made by the ACNC will be straight forward, so it would be better to target resources to entities where there is some ambiguity surrounding public benefit. In these cases the ACNC could request further proof.

### **Transitional issues (Question 20)**

There may be some currently approved charities that will not, in their present form, meet the revised definition of 'charity'. Therefore, we suggest that there should be a transition period to allow such organisations to carry out whatever changes are required for them to comply with the new definition, or to restructure their affairs so that they do not operate as charities. Their ability to do this will depend on adequate guidelines being provided by the ACNC. We also believe that such organisations should have access to (non-financial) assistance to undertake these tasks from the ACNC on a 'without prejudice' basis. Those who cannot change their entity to meet the new criteria because of constitutional or other reasons should be allowed to retain their charity status in perpetuity.

We propose that the legislation should provide a two-year transition period from the date it receives royal assent to allow for an orderly development and restructuring of the charitable sector.



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