Consultation Paper - A Definition of Charity

22 November 2011

The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent PARKES ACT 2600

Email: NFPReform@treasury.gov.au

Submission from OUR COMMUNITY AND THE OUR COMMUNTIY FOUNDATION in response to the Consultation Paper on the Definition of Charity

First, it is only proper to congratulate this government for seizing the opportunity that its predecessors fumbled – the move to a statutory definition of charity. The absence of any such definition has for many small Australian not-for-profits made a nightmare out of the process of seeking the tax advantages that charitable status confers (as well as the accompanying perceptions of greater 'legitimacy' that such status often conveys).

The qualities to be looked for in any scheme of reform are

- Simplicity
- Consistency
- Public benefit.

For all these reasons, it is necessary to make a clean break with four hundred years of quibbling over the terms of the Statute of Elizabeth

Our Community
51 Stanley Street
West Melbourne 3003
Victoria Australia

PO Box 354
North Melbourne 3051
Victoria Australia
ABN 24 094 608 705

Telephone: 03 9320 6800
Fax: 03 9326 6859
Email: service@ourcommunity.com.au
Web: www.ourcommunity.com.au

Mr Denis Moriarty
Managing Director
Ms Carol Schwartz AM
Chair

and to move to a clear statement that meets the needs of the community sector in its totality.

While Our Community and the Our Community Foundation appreciate that the government might not wish to restart the process from the beginning, and while we concede that the definition proposed by the Inquiry is a considerable advance on the existing situation, we respectfully suggest that the best course would be to further modify the definition as below:

- ~~the advancement of health;~~
- ~~the advancement of education;~~
- ~~the advancement of social or community welfare;~~
- ~~the advancement of religion;~~
- ~~the advancement of culture;~~
- ~~the advancement of the natural environment; and~~
- Any ~~other~~ purpose that is beneficial to the community.

That is, we suggest striking out all bar one of the definitional clauses and instating the all-encompassing: “Any purpose that is beneficial to the community”. If the individually listed items are in fact beneficial to the community then they would be satisfactorily covered by the general principle, and if they are not then they should not be included.

The debate should now surely be over the real matters at issue – the definitions of ‘benefit’ and ‘public’. These potentially slippery concepts are central to the health and wellbeing of our communities, and decisions on what they are to cover cannot be avoided (though they can be camouflaged, hidden, or denied).

The difficulties imposed by any set of specific inclusions (and, therefore, general exclusions) are best illustrated by the example of amateur sports, where successive governments, recognising that

- sport did not fall under the Pemsel headings, and sporting organisations were thus not eligible for charitable status, but that
- Australians who gave to these causes strongly believed that the donations should have tax recognition,

took steps to get around this situation by providing a specific quasi-governmental agency to effectively "launder" the money: the Australian Sports Foundation (ASF).

This is not just the case in sports. The government has also established at least three additional bodies – the Australian Business Arts Foundation (AbaF), the Foundation for Rural and Regional Renewal (FRRR), and AusAID's Overseas Aid Gift Deduction Scheme (OAGDS) – to allow Australians to make tax-deductible donations to non-tax-deductible causes. All these bodies allow projects to register with them; if the project is approved as falling within the terms of the Foundation's aims, then donations to it are tax deductible despite the actual project not being a DGR in itself.

If the government thinks that donations to these causes are in the public benefit, it should change the definition of charity to make this clear. If it does not, it should not provide them with opportunities to evade the rules. One of the tests of the effectiveness of the new scheme will be whether these evasions will continue to be necessary.

Our Community believes that amateur sports organisations are for the public benefit. We believe that, in view of public concerns about increases in the rate of obesity and diabetes, the encouragement of amateur sports organisations should be a high public priority. As such:

- Northern NSW Football Ltd v Chief Commissioner of State Revenue [2011] NSWCA 51 and the Bicycle case in Victoria should be reversed through legislation.

This would overcome the ridiculous situation whereby one may gain a tax deduction for donating to, say, Diabetes Australia (working for those with diabetes), but not for donating to a community-based

amateur sports group that will assist your health and potentially prevent you from getting diabetes in the first place. We believe that the preventative path is just as worthy of a tax-deductible donation, if not more so.

A further complication has to do with the fact that 'charity' is not the only term in the law of charities that requires statutory definition. Some tax concessions – in particular, the right to deduct your donations from your taxable income – rest not on the definition of a charity but on the definition of a Public Benevolent Institution, which provides a whole new set of opportunities for the ATO to make objections. It is of vital importance that this further hurdle be removed and that the definition of 'charity' be the only requirement for DGR certification.

It should be noted, too, that merely **belonging** to community groups – any community group – has been shown to contribute to health.

> *"Controlling for your blood chemistry, age, gender, whether or not you jog, and for all other risk factors, your chances of dying over the course of the next year are cut in half by joining one group, and cut to a quarter by joining two groups."*[1]

This should surely mean that the onus of proving that the work of such a group is **not** for the public benefit should rest on the ATO.

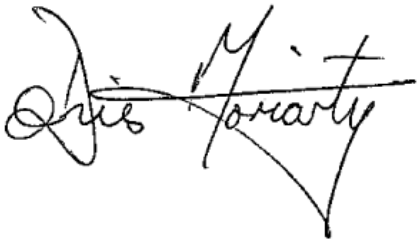
The present situation, and the present ATO position, is based on the outmoded view that the type specimen of philanthropy is Lady Bountiful giving soup to the deserving poor. Any organisation that approaches this end of the spectrum ("the direct relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness") is favoured, and any organisation that attempts to address the **fundamental causes** of these problems is penalised.

This is inconsistent with the government's own policies and needs to be addressed as a matter of urgency. This barrier, too, must be removed

[1] Putnam, R., 2001, Social Capital Measurement and Consequences, Canadian Journal of Policy Research , 2(1):41-51

to allow systemic and advocacy-based solutions to compete for funds on an equal footing.

The primary necessity is for the government to see that its position on the law of charities should be driven by its policy on the not-for-profit sector, not by its tax policy.



Denis Moriarty
Group Managing Director