



**S·A·R·R·A·H**  
Services for Australian  
Rural and Remote Allied Health

## **Response to a Consultation Paper**

**‘A Definition of Charity’**

**November 2011**

## **Background**

Services for Australian Rural and Remote Allied Health (SARRAH) welcomes the opportunity to respond to the consultation paper titled 'A Definition of Charity'. In developing this document SARRAH has taken into account the above mentioned consultation paper as prepared by The Treasury and Treasury's Not-For-Profit (NFP) Reform Factsheet 'Introducing a Statutory Definition of Charity'.

SARRAH supports the recommendation of the Productivity Commission Report that a statutory definition of a charity be legislated to provide greater certainty as to what is considered charitable and reduce the compliance burden that the NFP sector currently faces.

SARRAH is a NFP organisation, recognised as a national peak body representing rural and remote Allied Health Professionals working in both the public and private sector.

SARRAH advocates for and provides services to rural and remote Allied Health Professionals on a local, state and national level. As a consequence SARRAH is committed to supporting Allied Health Professionals who provide primary health care services to people residing in rural and remote Australian communities.

SARRAH maintains that every Australian should have access to equitable health services wherever they live and that Allied Health Professional services are basic and core to Australians' primary health care and wellbeing.

## **Responses to Consultation Questions**

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?

*SARRAH does not object to this amendment which replaces the 'dominant purpose that is charitable' to 'an exclusively charitable purpose'. However the amendment must allow NFP's to undertake other purposes, which would not be charitable, if they are incidental or ancillary to the charitable purpose.*

2. Does the decision by the New South Wales Administrative Tribunal provide sufficient clarification on when a peak body can be a charity or is further clarification required?

*SARRAH believes further clarification is required surrounding the issue of when a peak body can be deemed a charity. This would be useful particularly in respect to the defining of support services. For example, would membership of a charitable organisation or provision of financial support to a charitable organisation meet this criterion? How will it be determined that the amount of educational mentoring and support services provided by a peak body constitutes "enhancing the long term viability of charitable organisations"?*

3. Are any changes required to the Charities Bill 2003 to clarify the meaning of 'public' or 'sufficient section of the general community'?

*SARRAH supports the Charities Bill 2003 definition that a public benefit is 'one directed to the benefit of the general community or to a sufficient section of the general community'. However, SARRAH believes as per the 2010 Senate Inquiry the additional principle that 'there must be an identifiable benefit arising from the aims and activities of an entity' should be incorporated (this could replace 'has practical utility'). It is important to clarify that an entity is not for public benefit if it is set up to advance the interests of its members in their capacity as members, unless these benefits are incidental or ancillary to the purpose of benefiting the community.*

*SARRAH believes that the Charities Bill 2003 should be amended to clarify the meaning of 'sufficient section' to meet the Board of Taxation recommendation. That is "sufficient section" be defined as one which is not 'numerically negligible' compared to the size of that part of the community to whom the purpose would be relevant. This change is particularly important in reference to charities that operate in communities located in rural and remote Australia such as geographically isolated communities.*

4. Are changes to the Charities Bill 2003 necessary to ensure beneficiaries with family ties (such as native title holders) can receive benefits from charities?

*Yes. SARRAH supports changes to the Charities Bill 2003 to ensure that beneficiaries with family ties (such as native title holders) are not excluded from receiving benefits from charities in cases where entities meet the public benefit test.*

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.

*In accordance with our response to question 3, SARRAH agrees with the Board of Taxation suggestion that further clarifications be made in explanatory material.*

6. Would the approach taken by England and Wales of relying on the common law and providing guidance on the meaning of public benefit, be preferable on the grounds it provides greater flexibility.

*No. SARRAH believes that a statutory definition, with accompanying guidelines or explanatory material particularly referencing that any benefits that might arise to the public must not be outweighed by any significant detriment or harm, is the preferable approach.*

7. What are the issues with requiring an existing charity or an entity seeking approval as a charity to demonstrate that they are for public benefit?

*SARRAH does not believe that there will be any significant issues as long as the definition of public benefit is clearly defined and explanatory material is readily available. However, additional financial costs may be incurred by an entity in the application process but these would be offset by the benefit of being awarded charitable status.*

8. What role should the ACNC have in providing assistance to charities in demonstrating this test, and also in ensuring charities demonstrate their continued meeting of this test?

*SARRAH believes that the primary role of the ACNC is to determine and clearly document what is required to demonstrate whether an entity is operating for the public benefit. The ACNC should provide guidance and relevant information to enable existing charities or entities seeking approval as a charity to firstly determine and then demonstrate that they are for public benefit. The ACNC will need to develop a review process for approved charities to demonstrate that they continue to meet the public benefit test. This review process must have established timeframes which may be formulated taking into account the head (type) of charity, length of time as an approved charity and size of charity.*

9. What are the issues for entities established for the advancement of religion or education if the presumption of benefit is overturned?

*SARRAH believes these entities should be required to prove that they are established for the public benefit and state what this is. Some issues may arise for these entities if significant compliance costs are incurred or they are unable to clearly demonstrate public benefit.*

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

*No. SARRAH does not have an issue 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?

*SARRAH believes that further clarification of the role of activities in determining an entity's status as a charity would be useful, in both the definition and explanatory material. Specific information on what activities may be considered as inconsistent with charitable purpose is essential. With respect to 'activities that may be inconsistent with charitable purpose but are isolated or insignificant', a clear definition of what is considered as 'isolated or insignificant' must be developed.*

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?

*SARRAH agrees with these changes to allow charitable institutions to engage in political activities of the type which is attempting to change the law or government policy providing that it falls within the existing heads of charity and is in furtherance and in aid of its charitable purposes. In addition, the term 'political activities' must be clearly defined. The ACNC should issue guidance on acceptable political activities and examples of how charities can engage with political parties.*

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

*No, subject to the matters raised at question 12 being clearly articulated. SARRAH supports charities being prohibited from engaging in party political activities such as advocating a political party and supporting or opposing a candidate for political office.*

14. Is any further clarification required in the definition on the types of legal entity which can be used to operate a charity?

*No. SARRAH believes the current definition is appropriate.*

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

*No. SARRAH supports further clarification particularly with reference to the inclusion of local government and defining 'controlled by government'. Many NFP's and charitable institutions may receive substantial government funding at some point and a clear differentiation between 'influence' and 'control' must be developed.*

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?

*Yes.*

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

*Not applicable.*

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

*SARRAH agrees that a statutory definition of charity for Commonwealth purposes is essential as a harmonized definition able to be referenced by all levels of government. Once such a statutory definition exists it must then be applied to all relevant and existing legislation such as the Charities Bill 2003 and other Commonwealth, State and Territory Laws as applicable. A single statutory definition of charity across the Commonwealth, State and Territory jurisdictions would ensure that entities could be assessed as charitable by one organisation (the ACNC) providing national consistency and a reduction in administrative processes. SARRAH notes that some components of State or Territory legislation may require additional charity inclusions to the harmonized definition of charity, until such time as the legislation can be reviewed and amended.*

19. What are the current problems and limitations with ADRF's?

*SARRAH notes that the current legislative arrangements are very limiting in that ADRF's must establish and expend funds in relation to one disaster. For example, they are*

*unable to collect funds prior to a disaster occurring or hold funds from one disaster to another. The current lack of flexibility in how disaster funds can be applied limits the ability of ADRF's to actually expend funds for appropriate disaster relief activities. SARRAH believes it is beneficial to review the existing arrangements for ADRF's as part of the process of defining charity and consider the advantages of permanently establishing a head ADRF body (per state and territory responsibility) that is able to raise and retain funds for disaster relief with an increased scope of allowable activities. Standardising the approach for Commonwealth disaster-response tax concessions is essential.*

20. Are there any other transitional issues with enacting a statutory definition of charity?

*SARRAH acknowledges that there will be transitional issues with enacting a statutory definition of charity. It is essential that existing charities initially retain their charitable status and right to self-assess eligibility until their registration is reviewed by the ACNC. The ACNC will need to develop an assessment guide and timeframe applicable to all existing charities at the commencement date of the new definition.*