



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

Response to “A Definition of Charity”

Introduction

This submission has been prepared by St John Ambulance Australia (St John) in response to the Treasury Consultation Paper of October 2011 “A Definition of Charity”. St John strongly supports a statutory definition of charity believing this will increase uniformity across all levels of government; provide a strong framework for the new Australian Charities and Not-for-profits commission and lead to increased understanding and support from the community as to what constitutes a charity. St John welcomes the opportunity to make a submission and has chosen to address some of the key questions raised in the consultation paper.

St John Ambulance Australia

St John Ambulance Australia (St John) is a large Australian charity and makes a significant contribution to Australian society by providing first aid services at events and emergencies, first aid training, youth development, various community care programs, a national public access defibrillation program and Ophthalmic programs. St John is largely self-funding, with government contracts limited to provision of ambulance services in Western Australia and Northern Territory, some community services programs and specific project grants.

St John is one the world’s oldest health charities, as well as providing First Aid; it empowers the community by teaching first aid as well as providing first aid kits to enable people to perform life-saving first aid.

St John Ambulance Australia in Australia consists of 9 separate organisations (Associations or companies limited by guarantee). The 8 State/Territory organisations (one in each State or Territory) are responsible for delivering the wide range of charitable services provided by St John. The 9th organisation, referred to as the National Office, is responsible for ensuring the St John name and reputation is protected as well as providing a wide range of services to the State/Territory St John organisations. All 9 St John organisations are currently registered as charities.

St John Ambulance Australia **National Office**

PO Box 3895, Manuka ACT 2603 (Unit 8/18 National Circuit, Barton ACT 2600)

T 02 6295 3777 | F 02 6239 6321 | E ceo@stjohn.org.au | www.stjohn.org.au

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?

St John agrees with the premise that a charity must have a dominant charitable purpose or purposes. The proposal to change “dominant” to “exclusive” may lead to unintended consequences, particularly where a charity may undertake activities that are in the public interest but do not meet the criteria for charitable purpose. In the Charities Bill 2003 (1.31) it was noted that there may be multiple charitable purposes for the public benefit, that when taken together form a dominant charitable purpose. It was noted that it wasn’t necessary for an entity to show that a single purpose is their dominant purpose. By having a dominant purpose rather than an exclusively charitable purpose it may provide greater flexibility whilst still restricting the definition of charities.

It is critical that there is a distinction made between the purpose of a charity and its activities. As evidenced in recent court decisions a charity may have a range of activities that are used to further their charitable purposes and this should not impact on their charitable status. St John strongly agrees with the position indicated in the latest ATO Tax Ruling 2011/14 which provides that if a charity has a charitable purpose it may use commercial activities to fund this charitable purpose.

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

St John Ambulance Australia agrees with the decision of the New South Wales Administrative Tribunal that a peak body can be a charity however we would like further clarification as to what constitutes a peak body.

St John in Australia is a Federated Organisation with the National Office being the peak body of the organisation. The National Office has a focus on providing support services to the States and Territories. The National Office ensures that valuable information is shared across St John Australia wide in order to facilitate the adoption of best practices in the area of first aid practice, first aid training and associated activities. St John forms part of Australia’s emergency response network and the National Office coordinates action where State and Territory borders need to be crossed. The National Office also represents St John nationally. The National office also manages membership and awards for its volunteers and develops links with St John establishments worldwide.

Any definition of a charity should cover arrangements like the St John National Office as the role of the St John National Office is important to the states and territories in carrying out their charitable works. We are aware that several other major charities have very similar arrangements with national offices and State/Territory offices. We request that the drafting of legislation, regulations and other interpretations by the ACNC do not disadvantage charities like St John because they choose a particularly structural arrangement that currently suits their needs. Some of the criteria could include the role played in the sharing of information and adoption of best practices, co-ordination between the state and territory bodies, the representation of states and territories nationally and delivering services to state and territories.

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?

St John agrees that a charity should have to demonstrate that they operate for the public benefit and believe a public benefit test be established as part of the statutory definition of charity. As the term “public benefit” is a fundamental part of the definition of Charity the term should be appropriately clarified.

The definition provided in TR2011/4 does clarify that a purpose is for a public benefit if it offers a benefit to the community that is real and of value. It also offers guidance and illustrations as to what is for the Public Benefit. However it should also be noted that the public benefit test should take into account the sparse Australian geographic region.

It would be useful to incorporate the principles used in the overseas definitions and guidance material into a statutory definition of “Public Benefit”, and also used for a “Public Benefits Test” A public benefits test will be important in verifying charitable status and will also lead to increased community confidence regarding the sector.

The “public benefit” test must only apply to the purpose or purposes of a charity and not to each and every activity undertaken by that organisation. It is quite possible that an individual activity of a charity may only have benefits for a small group of individuals, which by itself might not meet the “public benefit” test.

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

There has been great discussion in the sector for over ten years that there is a need for a Statutory Definition of Charity rather than relying on the Common Law. It seems logical that if we are having a statutory definition of charity we should also have a clear definition on what a public benefit is. We understand that there has been mixed views on the success of the public benefit test in England and Wales and we would support a statutory definition similar to the Public Benefit Test as evidenced in the Ireland Charities ACT 2009. As St John is a health and education organisation one of our main public benefits is relating to the relief of human suffering. We note in the Ireland Act the importance that is placed on the importance of health, both in the area of prevention and in the relief of suffering, and that is included in their definition of a Public Benefit.

One of the goals of St John is to “Make First Aid a part of everybody’s life” and St John runs a number of first aid courses with the ultimate aim of saving lives and reducing human suffering. Our goal is to strengthen community resilience through both our commercial enterprises, our community programs and our volunteers at community events as well as the development of youth. As St John is self-funded it needs to charge a fee for these courses, similar to many other charities which also need to charge fees for their services, as noted in the Charities Commission of England and Wales. We believe that further clarity is needed to ensure that charities are able to charge fees.

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?

St John agrees that “attempting to change the law or government policy (paragraph c)” should not be included in the Bill as a disqualifying activity because it is vital that charities are able to contribute to public debate about laws and government policies. Charities frequently provide a unique perspective to such public debate, based on their experience.

We also agree that it is important to keep “advocating a political party or cause (paragraph a)” and “supporting a candidate for political office (paragraph b)” as disqualifying activities in order to maintain the public confidence in the role of Charities in our community. St John believes that charities should not be seen to be involved in political parties in such ways.

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?

St John agrees that the list of charitable purposes is an appropriate list and applaud the inclusion of the advancement of health. St John believes that its charitable purpose is covered by at least “advancement of Health” and “advancement of education”. St John agrees that it is important to expand the Pemsel Heads of charity, and we agree that it is also useful to include the list of “other purposes beneficial to the community” in the list to allow for flexibility. As the charity would still need to prove a public benefit we believe that this would still maintain confidence in the charity sector whilst still providing guidelines for the ACNC when determining charitable status. St John agrees that the term “advancement” should be taken to include “prevention”. The meeting of society’s needs by charities frequently requires an emphasis on prevention and also includes strengthening community resilience.

Conclusion

St John welcomes the opportunity to contribute to the development of a definition of charity and look forward to the next steps in developing a definition. I am happy to discuss any aspect of this submission.



Peter LeCornu
Chief Executive Officer
St John Ambulance Australia

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