



# Anglican Church of Australia

General Synod

9 December 2011

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

Dear Sir/Madam,

## **Submission to Treasury regarding A Definition of Charity – Consultation Paper October 2011**

I write to you in relation to the Definition of Charity – Consultation Paper of October 2011 on behalf of the Anglican Church of Australia (“ACA”).

### **Introduction**

This submission is made by the Standing Committee of the General Synod of the Anglican Church of Australia. The General Synod is the principal governing body of the National Church and is constituted under the Constitution of the Anglican Church of Australia and meets ordinarily every three years. The Standing Committee acts in the interim.

The Anglican Church of Australia is a community of Christians scattered across Australia. Our ambition is to serve Christ faithfully in the circumstances of our daily lives. The Church is organised into 23 dioceses grouped into 5 provinces or regions. As well as dioceses and parishes there are many different organisations in areas such as education, health, mission, social welfare and communications which are part of the Anglican Church.

Our welfare organisations include Anglicare, Samaritans and Anglican Retirement Villages. There are around 145 Anglican schools in Australia, providing for more than 105,000 children.

Anglicare Australia is a National Church Network that provides services to children, young people, families, refugees and migrants, indigenous Australians, older people, the homeless and unemployed Australians. The 43 Anglicare member agencies provided services to over 512,340 persons in 2029 locations in 2008-2009. The annual expenditure totaled \$624 million.

## **The Exposure Draft**

We have considered the Definition of Charity – Consultation Paper of October 2011 and have reviewed and contributed to the submission of the Anglican Church Diocese of Sydney (copy submitted by the Sydney Diocese separately).

The Anglican Church of Australia is in agreement with the submissions made by the Anglican Diocese of Sydney and supports the points raised in that submission, which are in summary:

1. We welcome the Government's commitment to reform the regulation of charities and support the policy aims of simplifying regulatory arrangements and red tape currently impairing the charitable sector and adopting reforms which are world best practice, as suitably adapted to the Australian regulatory and social environment, and which are proportionate and targeted to address the reform needs of the sector.
2. We do not consider that increasing public confidence in the sector and achieving more certainty about the meaning of charity can be justified as primary policy drivers for these reforms. Neither do we think that tax policy should drive the formulation of a statutory definition of charity.
3. We consider it would be a mistake to miss the opportunity for the expertise of the ACNC to be brought to bear on the formulation of a statutory definition of charity and accordingly recommend that the Government delay preparation and release of an exposure draft for legislation until the ACNC has had an opportunity to contribute.
4. We stress the importance of taking the Board of Taxation's concerns about the Charities Bill 2003 into account in formulating an appropriate definition.
5. We note the importance of ensuring that any statutory codification of the common law enables the body of case law developed by the courts over many years to continue to inform the meaning of charity. We also note the genuine anxiety within the sector over any proposal to replace the common law meaning of charity with a statutory definition and encourage the Government to carefully assess any departures from the common law meaning against the policy considerations referred to in (a) above.
6. We support the use of the expression 'dominant charitable purpose' in preference to the proposed 'exclusively charitable purpose' on the basis that the later expression does not logically accommodate incidental or ancillary purposes which are not charitable.

7. For the avoidance of doubt, we support the inclusion in any statutory definition of a provision which confirms that peak bodies would generally qualify as charities.
8. We support the extension of the existing heads of charitable purpose under the common law to include purposes which have been found to be charitable by the courts because they are for the public benefit. Such additional heads of charitable purpose should have the presumption of public benefit.
9. We submit that the purpose of specifying charitable purposes in legislation is to make it clear what purposes are widely considered as providing a public benefit thereby justifying the application of a presumption of public benefit. We consider that any removal of the public benefit presumption in respect of these purposes will give rise to a significant and unjustified administrative burden on the sector.
10. We address the desirability of retaining the public benefit presumption for charities for the advancement of religion or education, noting in particular that the presumption in respect of religious charities has enabled the courts to avoid making determinations that one religion provides more benefit than another. We also point to Australia's international human rights obligations concerning religious freedom as a basis for presuming that entities established for the advancement of religion are for the public benefit.
11. We recommend that, in view of the difficulties in articulating a test for public benefit, public benefit should be defined in negative terms, namely any benefit which is not a private benefit. This should be one of the factors relevant for deciding whether the public benefit presumption should be rebutted.
12. We accept the requirement that the activities of a charity be in furtherance or in aid of its charitable purposes but consider the inclusion of this requirement in the core definition of any statutory definition will confuse the distinction between activities and purposes.
13. We submit that an organisation's charitable status should usually be determined by reference to the purposes of the charity only and not the activities that it proposes to undertake. Any examination as to whether the activities of an organisation are being undertaken in furtherance of its charitable purpose go to the question of whether the organisation is fulfilling its charitable purpose and not whether it has a charitable purpose.
14. We submit that in light of the decision in *Aid/Watch*, any political activity by a charity should be permitted when done in furtherance of the charitable purpose of the organisation.
15. While we agree that any entity with an unlawful purpose should not be characterised as a charity, we do not consider that illegal activity of itself should be a basis for disqualifying an entity from being a charity. Any illegal activity should be penalised under relevant legislation and should not give rise to a double penalty of disqualification.
16. We consider that it would be necessary to consider transitional arrangements if any legislative definition of charity narrows the common law meaning of charity. In particular we consider that if, despite our submissions on this matter, the public benefit presumption were to be removed under a statutory definition it would be important to retain the public benefit presumption for

entities that are endorsed or registered as charities before the date the relevant legislation commences.

In regards to specific questions regarding the technical content of this submission can I ask that you contact the Diocesan Secretary of the Anglican Church Diocese of Sydney, Mr Robert Wicks, whose contact details are:

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We very much appreciate the opportunity to work with the Australian Government on improving the regulation of the charities and not-for-profit sector.

Yours sincerely,

**Martin Drevikovsky**  
**General Secretary**

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