



## **Charities Bill 2013**

**SUBMISSION FROM THE SALVATION ARMY  
AUSTRALIA**

**May 2013**

## **The Salvation Army**

The Salvation Army is the most recognised charity in Australia. The Salvation Army's services are open to all, without discrimination. The foundation of The Salvation Army and its current ethos affirm its religious commitment and its social commitment as equal and indivisible. The Salvation Army describes this as a "holistic mission".

The Salvation Army is an evangelical part of the universal Christian Church. Its message is based on the Bible and its ministry is motivated by love of God. Its Mission is both spiritual and practical, encompassing the preaching of the Gospel of Jesus Christ and alleviating human suffering and distress without discrimination.

### **Opportunity to contribute**

The Salvation Army is pleased to have the opportunity to contribute in the consultation process on the Charities Bill 2013 whilst observing the limited time frame provided in which to provide feedback is concerning given the potential implications of this particular piece of legislation.

### **Objects of The Salvation Army**

"The objects of The Salvation Army shall be the advancement of the Christian religion....and, pursuant thereto, the advancement of education, the relief of poverty and other charitable objects beneficial to society or the community of mankind as a whole."

(Extract from Section 3, The Salvation Army Act UK, 1980)

This diverse mission is expressed in one of the earliest mottos of The Salvation Army "Heart to God, Hand to Man".

### **Values of The Salvation Army**

The Salvation Army values:

<b>Human dignity</b>	we affirm the worth and capacity of all people
<b>Justice</b>	we promote healthy and whole relationships, and good society
<b>Hope</b>	we work for reconciliation, healing and transformation for all people and creation
<b>Compassion</b>	we feel compelled to stand with and do something about another's suffering
<b>Community</b>	we build community and meet with God in our encounter with others

## **Attributes of The Salvation Army**

The Salvation Army is viewed by the community as highly committed, visible and trustworthy. The Salvation Army provides a seamless approach to welfare and community work with a network of people available to assist those seeking its services.

The Salvation Army is also seen as responding to current social needs with expertise and professionalism. The Salvation Army provides its services without discrimination and supports the most disadvantaged and marginalised in our society.

The Salvation Army introduces life changing approaches as it is committed to changing the lives of people in crisis and not just meeting their immediate needs.

The Salvation Army in Australia is a part of the worldwide Salvation Army church.

## **The Salvation Army's Submission**

### **Discussion**

The Salvation Army refers to its previous submission made in December 2011 in relation to the definition of charity.

It is noted elements of the submission made in December 2011 are reflected in the drafting of the Charities Bill 2013 ('the Bill'), however The Salvation Army wishes to outline some concerns it has with the Bill as it is currently drafted.

### *Charitable Purposes*

Section 11 of the Bill contains the definition of charitable purpose. It is noted there is a significant expansion of the explicit charitable purpose listing from the previous common law position of 'four heads of charity'.

The Salvation Army wishes to highlight the change in use of terminology within the definition of a charitable purpose. The new definition uses the phrase 'the purpose of advancing religion' (for example) and 'advancing' is now a defined term within the Bill. The current common law definition uses the phrase that a charitable purpose is for 'the advancement of religion' (for example). The Salvation Army is concerned that in defining 'advancing' to be:

*'includes protecting, maintaining, supporting, researching and improving'*<sup>1</sup>

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<sup>1</sup> Section 3 (1) of the Bill.

this imposes an explicit limitation on the expression of how a purpose can be fulfilled. The Salvation Army recommends that if the terminology of 'advancing' is to be used the definition must be amended to reflect the following:

*'advancing includes, but is not limited to protecting, maintaining, supporting, researching and improving'*

This change is important in ensuring charities retain the flexibility they need to advance their charitable purposes in means that are necessary for the context in which they operate at any given time.

#### *Public Benefit*

The Salvation Army notes the inclusion of Section 7 of the Bill which stipulates certain charitable purposes will be assumed to be for the public benefit.

Section 7 commences with the phrase '*In the absence of evidence to the contrary,*'. The Explanatory Memorandum to the Bill ('the EM') in paragraphs 1.66 and 1.67 and Note 2 of Section 7 of the Bill are the only references to this part of the Bill. The Salvation Army is concerned with the practical application of this phrase and how the presumption of public benefit really will operate.

Attention is drawn to paragraph 1.66 of the EM which states:

*'If the presumption of public benefit is rebutted, the entity must affirmatively demonstrate that it is for the public benefit.'*

And the immediately following paragraph 1.67 of the EM which states:

*'The presumption may also be challenged by anyone with relevant legal standing such as taxation authorities, other Government regulators and those entitled to receive distributions pursuant to a charitable trust.'*

The Salvation Army is unclear who is being referred to in paragraph 1.66 that will be making the rebuttal that the public benefit is not being met given the wording of paragraph 1.67 which states '*the presumption **may also be challenged by***'. This terminology clearly indicates the potential claimants have no restriction and any body, person, or entity (however described) would believe they have the right to make the claim that the public benefit has not been met.

The Salvation Army recommends this phrase is entirely removed from the Bill to ensure the integrity of the presumption of public benefit is maintained.

In addition to the previously identified concern, The Salvation Army also observes that of the purposes the presumption of public benefit will be extended to, only the purpose of

advancing education and the purpose of advancing religion are explicitly listed in Section 11 as clearly identifiable charitable purposes.

The EM maintains the other purposes (including the relief of poverty) that will receive the presumption of public benefit will fall within one or more of the other listed charitable purposes contained in Section 11 of the Bill.

The concern with this structural change in the identification and listing of charitable purposes in Section 11 of the Bill is that there is no direct linkage within the Bill or the associated *Charities (Consequential Amendments and Transitional Provisions) Bill 2013* ('the Consequential Bill') to be registered/identified as having one of the specific charitable purposes afforded the presumption of public benefit in accordance with Section 7 of the Bill.

This is of significant concern to The Salvation Army as the lack of direct linkage of a legislative presumption of public benefit to the legislative registration and subsequent identification of the charitable entity will only lead to the need to prove public benefit at any given time. Further to this it is noted that in both the Bill and the Consequential Bill there is no direct reference to the presumption of public benefit being retained when an entity is registered as Item 14 (being a public benevolent institution) of Schedule 1 subsection (3) of the Consequential Bill<sup>2</sup>.

The Salvation Army recommends the relevant sections of the Bill relating to the presumption of public benefit are amended to ensure there is no potential for the presumption to be 'lost' when these purposes are subsumed within the '*higher level descriptions of charitable purposes*'<sup>3</sup>.

With respect to the actual public benefit test contained in Section 6 of the Bill, The Salvation Army is concerned with the use of certain terminology within this section.

For example, Section 6 (3)(a) and (b) start with the words '*any possible benefit*' and '*any possible detriment*' respectively. It is unclear how the use of the word 'possible' is to be construed within a legislative and practical context. This is especially relevant in determining whether there is a '*possible detriment to ... a member of the general public*'.<sup>4</sup> The drafting of this section of the Bill makes this test extremely subjective.

The Salvation Army also has concerns with the wording of Section 6 (2)(b) of the Bill and specifically the requirement to '*disregard any benefit that is not identifiable*'. The Salvation Army is unclear how this section is to operate and recommends that the entire subsection 6 (2) of the Bill is reworded to provide clarity on what is the intended operation of the law.

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<sup>2</sup> This subsection amends the Australian Charities and Not-for-profits Commission Act 2012 subsection 25-5(5) to reflect the new charitable purposes that can be registered with the Australian Charities and Not-for-profits Commission.

<sup>3</sup> Paragraph 1.64 of the EM states these other charitable purposes are encompassed within the higher level descriptions of charitable purposes.

<sup>4</sup> Section 6(3)(b) of the Bill.

### *Infrastructure entities*

The Salvation Army notes the Bill and the EM do not explicitly address the charitable organisations (commonly known as 'infrastructure entities') that have been established to serve/assist other charitable organisations, particularly within a 'group' of charities that operate together. The Salvation Army recommends this matter is addressed and that at a minimum very clear examples of these types of charitable entities are included in the EM to ensure they are able to continue to freely exist in the future.

### *Conclusion*

The process to arrive at an Exposure Draft Bill to define what is a charity has been lengthy as is evidenced from the fact the previous submissions to a consultation paper in this regard were made in December 2011.

The Salvation Army in this submission has highlighted some concerns it has with the current draft of the Bill. The Salvation Army believes that given the significance of this piece of legislation it is important that it is correct and if the Bill is to be introduced in to Parliament it is afforded the appropriate attention that such a significant piece of law deserves.

In light of the current concerns The Salvation Army has with the Bill, it is not possible for The Salvation Army to determine even if a revised Bill could be supported unless further consultation on any proposed changes is undertaken.

If you have any questions in relation to this submission or would like any further clarification, please do not hesitate to contact us.

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