



A Definition of Charity

SUBMISSION OF THE SALVATION ARMY

**Endorsed by the Australia Eastern Territory and Australia Southern
Territory**

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Opportunity to Contribute

The Salvation Army is pleased to have the opportunity to contribute to the consultation process on the definition of charity.

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.

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:

Human dignity	we affirm the worth and capacity of all people
Justice	we promote healthy and whole relationships, and good society
Hope	we work for reconciliation, healing and transformation for all people and creation
Compassion	we feel compelled to stand with and do something about another's suffering
Community	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 applies life changing approaches in its services with its commitment to developing the capacities of people in crisis, not just meeting their immediate needs.

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

Services of The Salvation Army

The types of services and welfare, which The Salvation Army provides to the local community, include but are not restricted to the following:

- Homelessness Shelters
- Residential Aged Care
- Community Aged Care
- Independent Retirement Living (The Salvation Army provides accommodation for aged persons, catering for their nursing and health care needs, and preventing their isolation and loneliness)
- Recovery Programs (alcohol, drug and gambling rehabilitation programs)
- Safe-housing for victims of violence
- Crisis Accommodation Centres
- Housing Provision
- Family Crisis Centres
- Family Counselling
- Crisis Telephoning Services
- Survivors of Suicide Groups
- Youth Crisis Centres
- Crisis Counselling (including grief counselling)
- Financial Counselling
- Marriage Enrichment
- Child Care
- Emergency Relief / Financial hardship
- Migrant Services
- Court Services and Chaplaincy

- Prisoner Support Services
- Suicide Prevention
- No Interest Loan Schemes
- Disaster Response and Disaster Recovery Services
- Employment Skills Training
- Youth Support and Residential Services
- Youth drop-in Centres
- Intellectual Disability Services
- Recreation programs for the elderly
- Salvos Stores (sale of donated goods available for the public)
- Employment Plus (placing long term unemployed into jobs)
- Worship and other church activities (provided by The Salvation Army throughout Australia as a part of the universal Christian Church)
- Red Shield Defence Services (philanthropic support offered to Australian Defence Services)
- Legal Services
- Chaplaincy Services
- Flying Padre Services

The Salvation Army's Submission

Discussion

The Salvation Army is a holistic organisation that provides significant and diverse services to the Australian public.

It conducts its social work and community development activities because of its commitment to the gospel of the Lord Jesus Christ. These are inextricably linked and cannot be separated. By way of formalising this concept, the objects of The Salvation Army are clearly documented in the UK Act 1980:

“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.”

The Salvation Army is charitable to its core.

The Salvation Army recognises the definitional basis of charities in Australia has been built on over 400 years of common law history and to date has not been enshrined in statute in Australia.

The Salvation Army acknowledges the work that has been undertaken in Australia with respect to the previous reviews and inquiries into the charitable sector over the recent decades.

The Consultation Paper refers specifically to the “*Charities Bill 2003, A Bill for an Act to define charities and charitable purpose, and for related purposes*”(Charities Bill 2003) as the proposed foundation for this current consultation. Since 2003 there have been several important developments in Australian charity case law and additional reviews into the charitable sector and its operations.

The Consultation Paper issues that The Salvation Army wish to comment on can be grouped into a number of categories:

- Charitable purposes
- Public benefit and associated test
- Political purposes and activities
- Entities, and specifically ‘infrastructure’ entities
- Australian Disaster Relief Funds

Charitable Purposes

The Charities Bill 2003 was an attempt to codify the definition of both a charity and a charitable purpose. It is noted the current consultation process is not revisiting the codification of what is a charity and a charitable purpose, rather it is to introduce a statutory definition of ‘charity’ for application across all Commonwealth laws.

In the drafting of the statutory definition of charity, The Salvation Army does not support the use of the phrase “exclusively charitable”.

The Charities Bill 2003 uses the phrase “dominant purpose” and the Australian Taxation Office (ATO) in Taxation Ruling *TR 2011/4 Income tax and fringe benefits tax: charities* (TR 2011/4) uses the phrase “its only, or its ‘main or predominant or dominant purpose””.

The Salvation Army recommends the proposed statutory definition of charity uses the current concept of dominant charitable purpose.

The Salvation Army recognises the importance and need of the flexibility that is gained in using terminology such as ‘dominant’ as opposed to ‘exclusively’ when considering the strict legal and literal interpretations that can arise when reviewing governing or constitutional documents. This is particularly relevant when considering older style constitutional documents that may have drafting styles that are listed as purposes when in fact what is intended is only a power of an organisation. It is also noted that organisations are established by Acts of Parliament, and these organisations have very little scope to change the Acts of Parliament to amend technical deficiencies that could otherwise result in an ‘exclusive’ definition not being met.

The Salvation Army recommends that in the legislative drafting process the statutory definition needs to be supported with appropriate identification of how incidental and ancillary purposes can be maintained to ensure the organisation can continue to be recognised as charitable.

The Consultation Paper refers to peak organisations and the concept of the charitable nature of these organisations. The Salvation Army is of the view the current case law on this matter provides sufficient guidance to ensure peak organisations can be charitable.

The Salvation Army recommends the principles of the common law in this regard are encapsulated to ensure 'infrastructure entities' are afforded the same outcome as these entities are often established solely to provide support services to another charitable institution. This outcome could be achieved either by explicitly drafting infrastructure entities as being charitable in the statutory definition, or by explicitly including infrastructure entity examples in the Explanatory Material that is released with a Bill/Act to ensure these entities maintain their charitable nature in accordance with accepted charity law principles.

The Discussion Paper touches on the issue of the role of activities in developing a statutory definition of charity. It is noted that as the statutory definition is not a codification of what is a charity, it is appropriate that the accepted principles of what activities a charity can undertake are observed. In paragraph 95 of the Consultation Paper the following is stated:

"The Government has accepted that a charity can undertake activities that are unrelated, or not intrinsically charitable, so long as those activities are in furtherance or in aid of its charitable purpose."

The Salvation Army accepts the principle that activities need to be undertaken in the furtherance or in the aid of an organisation's charitable purpose. The Salvation Army does not believe this requires further clarification in a statutory definition of charity, rather this clarification role should fall to the proposed Australian Charities and Not-for-Profits Commission (ACNC).

Public benefit and public benefit test

Charities in Australia currently operate with the presumption of providing a public benefit if their charitable purpose falls within one of the first three 'heads' of charity.

The accepted 'heads' of charity are:

- The relief of poverty
- The advancement of religion
- The advancement of education
- A purpose that is beneficial to the community

If an organisation is charitable under the fourth 'head', the organisation must provide evidence that it provides a public benefit.

The Salvation Army does not support a change to the presumption of public benefit for charitable purposes that relate to the first three 'heads' of charity.

The Salvation Army also notes that if the 'heads' of charity are expanded in a statutory definition of charity, these new 'heads' should also be afforded the presumption of public benefit. The basis for this premise is that if there are additional charitable 'heads' that can be identified and qualified, then there must be a presumption that these purposes or 'heads' are for the public benefit, for without this nexus, the listed purpose would not be charitable in the first instance.

The Salvation Army recommends organisations should still need to satisfy a public benefit requirement if they are to be charitable under the 'catch all' purpose of being of general benefit to the community.

The Salvation Army is concerned however, that there is a risk of having a prescriptive public benefit test enshrined in legislation that will become inflexible and impose an additional layer of red tape and compliance for no additional benefit.

The Salvation Army recommends the public benefit test is developed and defined by the ACNC in its role of a regulator. It is appropriate the ACNC has the authority to determine what is for the public benefit and to ensure it can take action against organisations it believes are no longer operating for the public benefit.

In addition to this, The Salvation Army recommends that in the drafting of the statutory definition of charity and maintaining the presumption of public benefit, there needs to be appropriate powers granted to the ACNC to require organisations to prove public benefit if there are sufficient and valid concerns relating to an organisation's behaviour.

Political Purposes and activities

The Salvation Army supports the need for organisations such as ourselves to speak on behalf of those in the Australian public who may be marginalised and experience social exclusion. Often such people are intimidated by the formalities of governmental systems and procedures and/or are ill equipped to translate their information and experiences into prescribed presentation formats.

The Salvation Army is aware of the decision in the case commonly referred to as *Aid/Watch* and the confirmation that certain activities are not excluded from being charitable. Accordingly The Salvation Army recommends the statutory definition of charity will permit the principles developed from the *Aid/Watch* case be followed.

In the drafting of the statutory definition, The Salvation Army recommends the only disqualifying political purposes or activities are as follows:

- Endorsing the election of a political party; or
- Endorsing the election of a candidate for political office.

The Salvation Army makes reference to the role of the Electoral Commission in governing party political behaviour and believes the above limitation will ensure consistency in this regard.

In accepting that charities can participate in political advocacy, there will need to be appropriate guidance on what is acceptable behaviour. For example, assessing and comparing political parties and candidates during an election should be permissible, in contrast to the direct endorsement of a party or candidate should not be permissible.

There also needs to be protection from the reverse situation where a political party or candidate advocates strongly for a position held originally by a charity and suddenly this is seen as though the charity is actually supporting a political party.

These principles, and others, could be supported and provided via the Explanatory Material provided with the Bill/Act or as guidance from the ACNC.

Entities and infrastructure entities

The Salvation Army acknowledges there are many different entity types that can be utilised for the fulfilment of a charitable purpose.

The Salvation Army recommends sufficient flexibility is maintained to ensure charities can identify and utilise an entity structure that is most suitable for them at a given point in time.

As previously discussed, The Salvation Army recommends the statutory definition of charity is clearly extended to include entities that exist to support charitable organisations, in accordance with the accepted principle of peak bodies existing for a charitable purpose.

Australian Disaster Relief Funds

The Consultation Paper in paragraphs 145 to 152 discusses and identifies some issues being encountered by Australian Disaster Relief Funds (ADRF). The Salvation Army identifies with the issues being raised and supports the policy initiative of expanding the opportunities ADRFs have to collect and utilise the funds raised.

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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