



*everyone's family*

**The Smith Family's submission on the  
Commonwealth Government's Consultation Paper  
*A definition of charity***

**December 2011**

**Contact person:**

Anne Hampshire  
Head, Research and Advocacy  
Level 9, 117 Clarence St  
Sydney NSW 2000  
Ph: 02 9085 7249  
Email: [anne.hampshire@thesmithfamily.com.au](mailto:anne.hampshire@thesmithfamily.com.au)

The Smith Family consents to this submission being published in full on the Treasury website.

## Background on The Smith Family

The Smith Family is a national, independent children's charity committed to increasing the educational participation and achievement of Australian children and young people in need. The Smith Family provides holistic and long term support from pre-school, through primary and secondary school and on to tertiary studies. In 2010-11, The Smith Family supported over 44,000 children, young people and parents/carers through its suite of *Learning for life* programs, including around 33,000 on an educational scholarship. A further 73,000 children, young people and parents/carers participated in programs facilitated by The Smith Family, such as the Commonwealth Government's *Communities for Children* initiative.

The Smith Family has a strong focus on sustainability and, as such, has aimed to ensure its income is drawn from a range of sources. In 2010-11, The Smith Family's annual income was just over \$68.5 million. Just under a quarter of this was sourced from Government funding, over 60% came from fundraising (donations and corporate support) and bequests, around 8% came from the VIEWS (Voice, Interests and Education of Women) Clubs of Australia and just over 3% came from The Smith Family's commercial enterprise.

## Introduction and context

The Smith Family welcomes the *Definition of Charity* Consultation Paper. The paper affirms the critical role the charitable and not-for-profit sector plays in the economic and social wellbeing of individual Australians and the nation as a whole. The sector is now working across an increasingly broad range of areas and is growing at 7% per annum. This is in part because of the increasing service delivery role being asked of the sector by governments at all levels.

The Smith Family notes that the past decade has seen a significant number of reviews and inquiries regarding the charities and not-for-profit sector, and this has involved substantial input and effort from a diverse range of stakeholders. The Smith Family believes it is now appropriate that action be taken that builds on some of this significant body of work. Fundamental to reforms in the sector should be the principles of:

- Transparency and public accountability.
- Certainty, consistency and workable compliance regimes.
- and
- Maximising the contribution of the charities and not-for-profit sector to the Australian community.

## Defining a charity and a public benefit test

The core issue in defining a charity is establishing whether an organisation's *purpose* – as distinct from its *activities* - is charitable. The Smith Family would argue that any definition of 'charity' should focus on an organisation's purpose - **why** it exists, - rather than its activities, which is the **how**, or the means, by which it operates. Charities should also be able to have more than one charitable purpose.

Having established an organisation's charitable purpose, a charity should then be able to undertake any legal activity if it serves to support the achievement of its purpose. The last decade or so has seen considerable developments in the area of social enterprises and charities establishing commercial or business endeavours to support their charitable purpose. The former has included explicit support and encouragement from governments, both at the Commonwealth and State/Territory level. The Smith Family strongly supports the current legislation which has been confirmed by the Australian Taxation Office Ruling 2011/14 that allows charities to conduct activities that generate a profit, if such activities are carried on to forward the organisation's charitable

purpose. Such activities can serve to strengthen the sustainability of the charity and leave them less vulnerable to changes in their ability to raise funds from other sources, including both government and private/corporate funding. Reducing charities' financial vulnerability strengthens their capacity to continue to realise their charitable purpose which in turn benefits the community.

The considerable change which has occurred over the last decade or so and the emergence of new forms of financing of the sector are likely to continue. As the sector continues to evolve and develop, it is important that the definition of a charity be able to accommodate such evolution. The definition of a charity should not be so prescriptive as to require regular updating of the legislation which governs the definition. An important principle should be that the definition is able to stand the test of time. As with other legislation, administrative rulings and guidelines can complement the definition enshrined in legislation and if required, provide further guidance in a range of areas.

A 'public benefit' requirement is an important component of a charity, with a relatively simple definition included in the legislation and complemented by guidelines from the ACNC being preferable to complex or multi-part definitions. The need for a charity to provide a public benefit 'directed to the benefit of the general community or to a sufficient section of the community' may well be sufficient in the legislation with ACNC guidelines providing specific examples of particular categories of charity which satisfy the requirements. Charities tend to target particular sections of the 'public' rather than the whole community and both the legislation and guidelines need to reflect this. The Smith Family for example, targets its support to financially disadvantaged children, young people and their families. A charity should be of 'public benefit' to an appreciable section of the community, but a public benefit test should also take into account Australia's geographically dispersed population, the needs of smaller subgroups of the population and not negatively impact on Native Title holders who are from the same family.

### **Early intervention and prevention**

The Smith Family has a strong focus on early intervention and prevention given the significant economic and social benefits which follow such an approach. This approach is now widely endorsed by research as well as policy developments across all jurisdictions, both within Australia and internationally. The Smith Family would therefore urge that consideration be given to inclusion of 'early intervention' and 'prevention' for certain types of charitable purposes within the definition of 'charity'. This would be in line with the recommendations regarding charitable purpose from the 2001 Charities Inquiry.

### **Advocacy**

The Smith Family's vision is *A better future for young Australians in need*. The work The Smith Family does on the ground supporting over 117,000 children and young people annually is a very important component in achieving this vision. However, given the significant number of young Australians in need – close to 606,000 dependent children and young people live in jobless families (ABS, 2011) – and the role that government policy has on the wellbeing of children and young people, The Smith Family sees advocacy as a core activity which is directly linked to its charitable purpose.

Advocacy is a core feature of a democratic society and advocacy by organisations like The Smith Family provide a public voice for those who are marginalised. This advocacy has a key public policy focus which is acknowledged by governments who seek advice from such organisations on a regular basis. Such advocacy should therefore not be seen in any way as a disqualifying purpose for those seeking charitable status, as was made clear by the *Aid Watch* matter. The Smith Family therefore supports a refined test which enables advocacy to be carried out by charities when it supports the organisation's charitable purpose.

### **The role of the Australian Charities and Not for Profit Commission**

The Smith Family welcomes the establishment of an Australian Charities and Not for Profit Commission (ACNC) and looks forward to being involved in the consultation process regarding it. The ACNC should play a key role in ensuring consistent and clear guidelines and a one stop shop/single portal across the multiple areas which impact on the operations of charities and not-for-profits in Australia. This includes across the diverse areas of Commonwealth government jurisdiction, including the Australian Taxation Office, as well as over time, the states and territories. As indicated above, the ACNC should play an important role in the 'public benefit' test. The ACNC could also play an important role regarding matters such as how fundraising ratios are calculated and reported. Such ratios are particularly important with regards to transparency and public accountability and providing clear guidance to the sector and broader community regarding them would make a significant contribution.

### **A leadership role for the Commonwealth**

The Smith Family, like a significant number of charities, operates nationally, and has a presence in every state and territory. As such, it is subject to the funding, regulatory and policy requirements of multiple regimes both within and across jurisdictions. The development of single definition of charity for the purposes of Commonwealth laws should limit some of the current complexity, however further work is required in order to reduce compliance requirements and maximize the efficiency of the sector. Critical to this will be the Commonwealth taking a leadership role with the other States and Territories. The harmonisation of the various definitions used across jurisdictions would significantly contribute to reducing the administrative and compliance burden on charities.

### **Transitional and educational arrangements**

The Smith Family notes that the new statutory definition will be introduced from July 2013. There are currently a significant number and range of inquiries and activities underway which are of central interest to the charities and not-for-profit sector. The Smith Family would therefore urge that a key part of the transitional arrangements be an educational campaign which aims to bring together the diverse range of initiatives which are impacting on the sector. Such a campaign should include those in the sector, those in related areas such as the legal and financial sectors that support them, as well as the wider community. Efforts to enhance coordination of the range of inquiries and activities which are currently impacting on the sector, and which will continue to do so for some time, would be well received.

### **References**

Australian Bureau of Statistics. (2011). *Labour force, Australia: Labour force status and other characteristics of families*.