

# **PUBLIC CONSULTATION ON EXPOSURE DRAFT LEGISLATION FOR A STATUTORY DEFINITION OF CHARITY- 2013**

## **SUBMISSION FROM THE UNITING CHURCH IN AUSTRALIA DATED 1ST May 2013.**

### **INTRODUCTION**

**This submission is on behalf of the Uniting Church in Australia although UnitingCare Australia is making a separate submission on behalf of our Community services activities.**

**The Uniting Church is a diverse, generally unincorporated association whose activities are a wide array of different ways our members and the Church express their religious beliefs in thought, word and action. These include:**

- ✓ Religious: through congregations, faith communities, presbyteries, theological colleges, synods, the national Assembly, schools, our Uniting Aboriginal and Islander Christian Congress, ecumenical activities with local and international church partnerships, and through our relations with other faiths.**
- ✓ Educational: through schools, pre-schools, university colleges, as campuses of universities.**
- ✓ Public benevolence: through community service services such as Lifeline, aged care, suicide counselling, gambling and financial counselling, children, youth and young family support, support for the homeless and for people with drug addiction, disability, hospital and prison chaplaincy and other support to the troubled, under privileged and disadvantaged.**
- ✓ Overseas aid: through UnitingWorld Relief and Development and other support activities which are either or both financial and delivered through personal activity and volunteering.**
- ✓ Healthcare through hospitals, nursing homes and home support.**

- ✓ **Infrastructure activities which enable many of these activities to take place, including treasury and investment services, public fundraising, advocacy and back office services.**

**The Church has participated in many inquiries, provided responses to public discussions and made representations to various governments over many years. We are also recognised for our concerns for social justice, ethical standards and strong desires for reduction in red tape, a clear understanding of what is a charity, including the supporting infrastructure activities being recognised as charitable, and inclusive language for describing the sector structures such as recognition of the church statutory corporations and unincorporated associations as beneficiaries of government funding.**

**We are also concerned that the “in Australia” legislation to support overseas aid activities has yet to be passed. It is extremely important that overseas aid organisations are afforded charity status and their activities deemed to be for a charitable purpose.**

#### **EXPOSURE DRAFT- CHARITIES BILL 2013-05-01**

**Our overall concern is the many ambiguities because of no or inadequate definitions, conflicts between several clauses and also conflicts which have been raised in other “consultations”, correspondence and conversations which are not specifically resolved in the exposure draft. Accordingly we comment on the clauses of concern and correlate them with these issues in the expectation that they will be satisfactorily resolved before they possibly become legislation:-**

**Clause 5 (a) (ii) refers to “purposes that are incidental or ancillary to, and in furtherance or in aid of, (the charitable) purposes of the entity”. What these words do not specify is that a separate entity providing funding for the purposes of the primary agency that is the charity are themselves able to be classified as a charity in the category of the primary agency and receive the tax concessions of the primary entity, particularly income tax exemption and membership of a GST religious group such as the Uniting Church in Australia.**

**We also remind the drafters of Minister Shorten's comments endorsing the October 2011 discussion paper, section 95:**

**"The High Court clarified in the Word Investments decision that the activities undertaken by the entity need not be intrinsically charitable for the institution to be charitable. It was only necessary that the activities of the charity be in furtherance of the entity's charitable purpose. 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."**

**It would appear that the Government has reversed its decision to accept the High Court's finding in favour of raising taxation revenue which will subsequently be rebated to the charity, thereby interrupting the charity's cash flow for a revenue neutral outcome but still attracting extra red tape, not less red tape. Further, UnitingCare Australia's submission explores the taxation perspective of this in more detail.**

**Clause 6 has a number of unhelpful ambiguities, the first being sub-clause (2). In sub-clause (1), there is an attempt to define a "public benefit" but does not correlate that to other aspects of the exposure draft. There was once a willingness to presume there is a public benefit of each registered charity such that a definition was not required. Now sub-clause (2) neither adds precision to sub-clause (1) nor the application of this whole clause. Then Clause 7 applies that presumption to five "purposes" which are inconsistent with clause 11 which deals with the definition of "charitable purpose. Only two of the five areas in clause 7 (religion and education) are in the eleven charitable purposes! We cannot understand this disconnect.**

**Clause 6 (5) states that the "universal or common good" benefit "must be of real overall value to the public." This is open to interpretation as there is no definition of what "real overall value" or "the public" mean. We cannot support legislation that fails to remove ambiguity. Ambiguity can lead to litigation which is not what the sector needs.**

Clause 10 defines the “disqualifying purpose” which needs to be expanded by further examples to help interpretation. The only example states that “activities are not contrary to public policy, merely because they are contrary to government policy.” However, there have been historical times when the Church has felt concerned enough to confront unjust legislation, at times in the form of civil obedience such as damaging the environment , which by the exposure draft wording would classify this to be a “disqualifying purpose.” The clause is like a “gag clause” which we are sure is not the Government’s intent. Likewise, criticism of a political party’s policy is said in the clause to be a “disqualifying purpose”. Surely, all parties should be open to constructive criticism which is seen by the Church to be of the Gospel responsibility for upholding what we believe is a charitable purpose for “universal or common good” and/or “public benefit”.

#### **CONCLUSION:**

We appreciate that an attempt has been made to statutorily define “charity” and “charitable purpose”. However, the exposure draft fails to provide the desired definitional certainty. There is sufficient ambiguity to incite further litigation and extra red tape for the sector. We believe both of these outcomes are unacceptable to the Government and to the sector such that further drafting is essential before the bill can be presented to Parliament. Similarly, we are concerned that the areas of disqualifying purpose, inclusion of infrastructure entities as a charity, and the correlation of charity in clause 7 with charitable purposes in clause 11, each need more consideration and clarification.

We also wish to know whether the COAG has been consulted as there may be differences of opinion as the statutory definitions apply in areas such as payroll tax, council rating, land tax and stamp duty. There could well be continuing or even extra red tape if the statutory definitions are inconsistently applied.

We encourage the Government to continue with this project by satisfactorily addressing our issues and concerns and we are available for further conversation.

**Page 5**

**Yours faithfully,**

**Jim Mein AM, National Coordinator of the Uniting Church in  
Australia's Responses to the ACNC and Government**