



A DEFINITION OF CHARITY

Submission by the Uniting Church in Australia

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INTRODUCTION

The Uniting Church in Australia is heavily reliant on the efforts, commitment and support of volunteers to achieve its extensive activities which benefit Australian and overseas societies and their social needs and the fabric of societies it seeks to serve in ways consistent with the example and teachings of Jesus Christ, the acknowledged Head of our Church. It is this altruism, spiritual belief and practice which underpin our response to the Discussion Paper.

This submission is on behalf of the whole Uniting Church in Australia, and it is noted our community services arm, UnitingCare Australia, is also making a submission during this process, a copy of which is enclosed so that both can be read together.

EXECUTIVE SUMMARY OF OUR SUBMISSION

The Uniting Church in Australia welcomes the introduction of a modern definition of a "Charity" as the reliance on an out-dated Statute of Elizabeth of 1601 is less appropriate for the current context in which charities serve the community. Furthermore, the reliance on subsequent common law does not provide the not-for-profit sector with the definitional certainty we need with our very diverse structures of services.

The recommendations of the 2001 Committee of Inquiry into the Definition of Charities & Related Organisations were the most promising step toward a modern and more contextual definition but elements of the aborted Charities Bill of 2003 disappointed the expectations of the sector.

The current Federal Government's initiative to legislate a definition is vital. However, the Church believes that it should be against the backdrop of a comprehensive understanding of the sector which is not entirely evident from:

- (i) The apparent belief that each charity is a corporate entity (e.g. a company, an incorporated association or a trust) which is not so, particularly for the Uniting Church in Australia which is primarily an unincorporated series of entities which have been created by State and Territory legislation;

- (ii) The preliminary work on charts of account by the Australian Charities and Not-For-Profits Commission (ACNC) which erroneously presumes general uniformity in this diverse sector.
- (iii) The failure of this discussion paper to recognise charity infrastructure activities in the proposed definition of charity. The concern is relevant to the proposed Unrelated Business Income Tax and;
- (iv) Requiring charities to “remain responsible for self-assessing their eligibility” for charity status on an ongoing basis when seemingly competing government organisations are in interpretational conflict, which historically have been the States and Territories and the Australian Taxation Office.

The Uniting Church believes the discussion paper leaves the following operational and governance issues in an ambiguous or undefined state:

- (i) Whether, once legislated, the present and future Governments will embark on a legislatively prescribed consultation process for any legislative or regulatory changes before they are passed by Parliament and enacted. This is to ensure the Parliament’s understanding of the Sector’s diversity.
- (ii) There is inadequate explanation in the discussion paper on what “public benefit” means and how that term interacts with various forms of government funding, taxation treatment and concessions, and the definition of charity to be applied by the ACNC. This is particularly needed for certainty with the taxation self-assessment onus on charities.
- (iii) What does “dominant” mean in “dominant charitable purpose”? We specifically favour an appropriate word such as “primary” that does not require an exclusive or an ambiguous word such as dominant for charitable purpose in order to be classed as a charity.
- (iv) What does ‘political activities’ mean in the area of “disqualifying activities”.
- (v) The community, and in part, the sector’s misunderstanding about what “not-for-profit” means has not been dealt with. Some entities in the sector do not understand that achieving a profit or surplus is essential for survival. At times this has even been an issue for some bodies in all three levels of government in Australia.

Overall Comments

In considering the discussion paper overall, our executive summary is:-

A. We Favour

- The four pillars definitional approach (paragraph 19, page 3) or the six areas of advancement in paragraph 124 on page 20 of the Discussion Paper.

- Exemptions being granted to Churches whose existent structures include so many congregations, most of whose treasurers are by volunteers. To centralise the congregational back office activities will be both impossible and extremely costly to change, to consolidate for financial reporting purposes, and too decentralised to regiment to any exacting compliance requirements.
- Retention of presumption of benefit test for the first three pillars such that any public benefit test would only apply to fourth pillar.
- Charities not being disqualified for attempting to change the law or government policy, where such power is specific in constitutional document and connected to their charitable purposes. Similar consideration should be given to a party or cause which is consistent with their charitable purposes. In fact, we support the more detailed comments on pages 5 to 7 of UnitingCare Australia's submission on community services activities which also apply to other parts of the Uniting Church.

B. Charitable Infrastructure Activities

The inclusion of charitable infrastructure activities in the charitable institution category if their activities are integral to the entity's charitable activities and status. This would remove the activities from the Government's Unrelated Business Income Tax net.

C. We seek clarification or removal of ambiguities

- The term "entity" needs to be defined in the legislation which legislates what is a charity. The concern is that the use of this term from the Income Tax Assessment Act might become the implied definition which is derived for different purposes than those aspects raised in the Discussion Paper.
- In various parts of the paper, the word "activity" is used but it needs to be defined for the sake of providing certainty. Its uses include "disqualifying", "political", and "in furtherance of charitable purpose" which are used in different circumstances.
- Again for the provision of certainty, the words "general" in "general community" and "sufficient" (in paragraph 59 on page 9) should be clearly defined.

Other comments

- Church schools (Paragraphs 86 & 87) in Australia are awaiting the outcome of the "Gonski" Committee's Review of Government Funding of Australian Schools. A possible outcome is greater emphasis on all schools, irrespective as to whether they are Government, Catholic or Independent schools, targeting "educational disadvantage" and "community benefit." If the government does not accept the presumption of public benefit for the first three pillars of charity, the government should nonetheless treat non-government schools as charitable.

Specific Responses to “Issues Defining Charity” in the Discussion Paper

“Dominant purpose” (page 7)

The Uniting Church asserts that all of its activities are charitable as they are part of the Church's ministry. Thus we favour a definitional and/or legislative distinction between “charitable purpose” and “independent non-charitable purpose” such that a “charitable purpose” includes charitable infrastructure activities which enhance and enable the charity to achieve its charitable purposes.

The charitable infrastructure activities are integral to the charity's purposes e.g. fundraising from its membership and those communities aligned to the charity's purpose, treasury (optimising returns on capital of investments), risk management (insurance and other forms of risk mitigation), property management, and centralising management and administration (human relations or workers compensation advisory). In turn, cost recoveries by one part of a charity from another would not be deemed to be “independent non-charitable purposes” because the charity benefits by better management and measurement of each of its parts for the benefit of the whole charity.

“Peak Bodies” (Page 8)

Our response to “consultation question 2” is to support the peak bodies being classified as charity in their own right where they represent a group of charities to enhance the operations of the charitable bodies who are its members.

Furthermore, we support the determination in Social Ventures Australia Ltd. case and those principles apply to charitable infrastructure purposes. The statutory definition of charity should specifically include charitable infrastructure activities and peak bodies.

With question one of the “consultation questions” on page 8 of the discussion paper we do not support the concept of a charity needing to have “an exclusive charitable purpose. We strongly suggest the use of “primary” instead of “exclusive” or “dominant” should be used and that “primary” be clearly defined. “Primary” would still need to include the ancillary activities around the charity that enable the charity to achieve its primary purpose.

“For the public benefit” (Page 9)

We support the “presumption of public benefit” concept as it is hard for the sector to have certainty that they are operating for the “public benefit” with words such as “general community” or to a “sufficient general community” (Page 9, paragraph 59).

Paragraph 60 refers to “identifiable benefit arising from the aims and activities of an entity”. We suggest “entity” needs to be defined. The Uniting Church in Australia is a religious organisation made up of numerous entities, many of which reflect the nature of its activities (community services), schools, leadership and administration, theological colleges, treasury operations with additional fundraising capacity, congregations, presbyteries, overseas aid, etc.) as ways of supporting and benefitting local, regional, national and international communities as well as providing for better governance and management.

The Uniting Church, a religious institution, engages in many charitable purposes through these activity expressions. One could argue that the Church’s dominant purpose relates to religion and each of its activities is an expression of our Christian beliefs e.g. serving, teaching, stewarding and resourcing. Overall, the church through its many parts, does provide public benefit.

Additionally quarantining activities can prevent or at least hinder the Church as a whole achieving its charitable purposes.

Likewise, any legislation or regulation which penalises our structures will no doubt increase our compliance costs, and restrict our flexibility to restructure due to contextual or taxation changes.

We can support the premise in paragraph 65 (page 10) that advancing the benefits of individual members, financially, directly or indirectly, would disqualify the entity claiming to be charitable as the dominant purposes could be deemed to be for the profit of the members. However this should exclude peak bodies whose members are charities and charitable infrastructure entities.

“Benefit” (Page 11, paragraph 73)

Should the word “altruistic” be included in any statutory provision, it will need definition and presumably be related to the charitable purpose. This word can also relate to its members, donors, supporters and staff to explain why they are involved e.g. desire to make a difference to society/community.

Paragraph 74’s reference to “practical utility” is another expression open to interpretation e.g. what does practical mean? to what degree” and so on.

“Activities to be in furtherance of charitable purpose” (Page 15)

Our main concern is paragraph 97’s reference to “undertakes activities that are inconsistent with its charitable purpose”. We argue that charitable infrastructure activities are integral to achieving the charitable purpose because they enable the funding and effective delivery of services and administration. We would seek a definition of “inconsistent”, and the inclusion of infrastructure activities which are integral to the charitable purpose which makes them “related”.

“Political Advocacy” (Page 16)

We agree that endorsing a candidate for political office should be a disqualifying activity, but “advocating a political party or cause” and “attempting to change the law or government policy “ are not “disqualifying activity” as they are acceptable advocacy which is important to achieving the charity’s Charitable purpose. The latter two acceptable are also consistent with our Christian beliefs about advocating to correct social injustices.

Furthermore, we would support the comments in paragraph 108 to 110 especially as charities should be able to engage with political parties, particularly on policy matters.

Illegal Activities (Page 18)

We are concerned about the nature and range of penalties and whether a large and diverse organisation could be subjected to de-registration and/or loss of taxation and related concessions for a misdemeanour in one area of its activities.

A potential risk or example might be in aged care. The failure of one centre in a large and diverse group to fully comply with requirements risks sanctions by Government on the whole retirement living group’s care, denying the whole group’s recurrent government subsidies for a period of time and jeopardising all residents in our care.

We urge the Government to be careful in how it structures its penalties.

Type of Entity (Page 19)

The Charities Bill 2003 refers to “charity cannot be an individual, a political entity, a superannuation fund or a government body” and government body “to include a body controlled by the government or foreign country”. This has provided some ambiguity because the definition of charity was understandable as it referred to purposes, but the definition of a government body also erroneously could be seen to include entities incorporated as companies limited by guarantee and Pty Ltd infrastructure entities, and incorporated associations. This is because companies and associations are overseen by government departments and instrumentalities who can control by compliance through state and regulation. This ambiguity needs to be removed.

Charitable Purpose (page 19 to 21)

The Church understands the need to define “advancement” with the presumption of public benefit and “disqualifying purposes” but it concurs with the six areas of “advancement” as listed in paragraph 124 on pages 119-120. We also agree with the four points in paragraph 126 with a definition of the protection and safety of the general public.

State and Territory Issues (Page 21)

Harmonisation of all legislation, Federal, State, Territory and Local Government definitions of charity would definitely help achieve a level playing field for what is a charity. However, there is also the very critical issue of the plethora of legislation with which charities must comply. Compliance is a forever increasing burden for the Not-for-profit sector.

Australian Disaster Relief Funds (Page 23)

The Church's main concerns from our many disaster support experiences are:-

- The narrow definition of what is acceptable for financial and other support which has limited us primarily helping individuals generally, rather than specific hardships, such as fence-rebuilding and surveying for farms ravaged by floods being denied as appropriate use of tax claimable donations; and
- The limitation for funds being received being only used for one disaster does not allow accumulation of funds prior to a disaster so that the response time is otherwise longer but need can be immediate.

We support further reforms in this area.

Conclusion

The Uniting Church in Australia supports the introduction of a statutory definition of a charity but seeks the elimination of all potential ambiguities, the achievement of legislative harmonisation for charities, definitional and flexibility for structures or charitable organisations. Additionally, we are concerned with the Government's apparent intention to overlook treating critical charity infrastructure organisations as being integral and therefore charitable where they support and help fund the charity and its charitable purpose.

Our purposes as a Church following the imperatives of Christ's ministry are to be charitable as we endeavour to make a positive difference for the public benefit. Thus to restrict our ministry will have an impact on society and its social fabric. Also, our reliance on volunteerism is an asset we cannot afford to lose.

We are happy to discuss our comments and concerns with the Minister and Treasury if so desired.