



A Statutory Definition of Charity

**Exposure draft
Charities Bill 2013**

**Submission by UnitingCare Australia
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1. Executive summary

UnitingCare Australia is the Uniting Church's national body supporting community services and advocacy for children, young people, families, people with disabilities and older people. The Uniting Church's commitment to community services is an expression of the Christian vision of inclusion and equality of opportunity for all people and communities regardless of age, gender, sexuality, ability, class, colour, creed or cultural origin.

This submission provides our assessment of the Exposure draft of the Charities Bill 2013 and associated Bills, building on the comments we made in our December 2011 submission to the consultation on 'A Definition of Charity'¹.

We believe that the Exposure draft of the Charities Bill 2013 and associated Bills, while sound in structure and purpose, needs to be amended so as to provide greater clarity and certainty in the following key areas: the disqualifying purpose; application of the presumption of public benefit; and the treatment of "infrastructure" entities which support charities in fulfilling their purpose and mission.

¹ http://www.unitingcare.org.au/images/stories/submissions/2011/111200_sub_definition_of_a_charity.pdf accessed 19 April 2013.

2. Introduction

UnitingCare Australia represents the network of UnitingCare community services operating nationally across more than 1300 sites in metropolitan, rural and remote Australia. Our network is one of the largest providers of community services in Australia and we make a strong contribution to the Australian economy by providing services to over 2 million people each year, with an annual turnover in excess of \$2 billion, employing 35,000 staff and 24,000 volunteers nationally. We employ a holistic approach to supporting individuals and communities to access the resources and opportunities needed to live a decent life. We partner with governments, other organisations, communities and people of goodwill.

The Exposure draft Charities Bill 2013 (draft Bill) and accompanying Explanatory material states that 'the definition of charity and charitable practice is based on common law principles with minor modifications to modernise and clarify the common law'. As stated in our December 2011 submission to the consultation on 'A Definition of Charity'², UnitingCare Australia supports the introduction of a statutory definition of charity which addresses the actual weakness of the current arrangements whilst preserving its strengths; and does not result in an increase in administrative or regulatory burden on the sector.

Accordingly we welcome this opportunity to comment on the draft Bill and accompanying Explanatory material.

3. Overall assessment of the Exposure draft

In undertaking our assessment of the draft Bill we have been mindful of the Government's commitment for a statutory definition to:

- reduce red tape for charities and entities seeking charitable status by providing a clear definitional framework;
- put the common law into a form that is easier for the sector and the public to understand by replicating and modernising the existing common law definition;
- expressly identify charitable purpose as determined through case law; and
- support the ACNC in its role to provide guidance and support to charities³.

It is our view that further work is required to provide greater clarity and certainty in the following key areas: the disqualifying purpose; application of the presumption of public benefit; and the treatment of "infrastructure" entities which support charities in fulfilling their purpose and mission.

² Ibid
³

http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2013/A%20statutory%20definition%20of%20charity/Key%20Documents/PDF/Factsheet_Statutory_Definition_of_Charity.ashx accessed 22 April 2013

4. Specific comments on the Exposure draft

4.1 Disqualifying purpose

Feedback we have received suggests that *Division 3-10(b)* moves beyond common law and may be contrary to public policy and common practice. Many charities work with political appointees and candidates as an important mechanism to further their own mission/purpose. We are concerned that the existing wording of the draft Bill could leave any such action as being open to interpretation and be construed as a disqualifying purpose.

Although the Explanatory material acknowledges that charities may engage in activity to support or oppose a change to matters established by law, policy or practice in the Commonwealth, a State or Territory or another country, feedback from across our network suggested that it is not sufficiently clear as to what constitutes activity for a disqualifying purpose.

Therefore we suggested an example of political engagement activity deemed to be of disqualifying purpose be included at *Division 3-10(b)* or, at the very least, in the Explanatory material.

4.2 Charity infrastructure entities

In our response to the December 2011 submission to the consultation on 'A Definition of Charity' we identified the absence of any discussion on how the proposed Statutory definition of Charity would impact on the treatment of what we call charity "infrastructure" entities which are entities created for the sole purpose of supporting the mission of the charitable entity. These "infrastructure" entities play a critical role in many Church-based charities through the provision of financial, legal and other support services.

UnitingCare Australia believes that, like peak bodies, these entities should be considered as bodies which enhance the long-term viability of charitable organisations through the provision of services that a contemporary charitable entity needs to function effectively. The current charitable standing of these entities is through the *Tax Ruling 2005/22*. It is our view that the Explanatory material should be amended to refer to the essential elements of *TR 2005/22* to give greater certainty to the future treatment of "infrastructure" entities.

4.3 Presumption of Public Benefit

While we welcome the preservation of the principle that certain purposes are entitled to a presumption of public benefit, we believe that there is potential for confusion in its application under the draft Bill. The draft Bill states:

7. Certain purposes presumed to be for the public benefit

In the absence of evidence to the contrary, a purpose that an entity has is presumed to be for the public benefit, if the purpose is any of the following purposes:

- (a) the purpose of relieving illness;*
- (b) the purpose of relieving the needs of the aged;*
- (c) the purpose of advancing education;*
- (d) the purpose of relieving poverty;*
- (e) the purpose of advancing religion.*

However, *Section 11* of the draft Bill only recognises advancing religion and advancing education as explicit charitable purposes. The Explanatory material at *Table 2.2 Transitional arrangements for potentially corresponding subtypes of entity registration* indicates that the subtypes of relief of poverty, sickness or the needs of the aged will translate to either Advancing health or Advancing social or public welfare. These charitable purposes appear not to automatically attract the presumption of public benefit. Indeed, under *Section 13* of the draft Bill *Advancing social or public welfare* has a much broader remit than the relief of poverty, including the rebuilding, repairing or securing of assets after a disaster, which while charitable, would not attract the presumption of public benefit.

The implications of this are that entities that, through their purpose, would have been entitled to a presumption of public benefit under the current common law definition may now, through this legislation, be required to demonstrate public benefit. This is not in keeping with the intent of the legislation. It is our view that it would be simpler and fairer to extend the presumption to all charitable purposes, except *Division 3, Section 11-1(k)* of the draft Bill.

5. Conclusion

The Charities Bill 2013 is an important piece of legislation for the charitable and NFP sector. UnitingCare Australia has long held the view that the introduction of a statutory definition of charity needs to address the actual weakness of the current arrangements whilst preserving its strengths; and that it should not result in an increase in administrative or regulatory burden on the sector.