



Anglican Church Diocese of Sydney

Level 2, St Andrew's House

SYDNEY SQUARE NSW 2000

Phone: 9265 1671

Email: rjw@sydney.anglican.asn.au

Submission to the Treasury regarding the *Exposure Draft for a Statutory Definition of Charity*

By the Standing Committee of the Synod of the Anglican Church Diocese of Sydney

1 Introduction

- (a) The name of our organisation is the Anglican Church Diocese of Sydney. This submission is made by the Standing Committee of the Synod of the Diocese.
- (b) We welcome the opportunity to make some brief submissions on the *Exposure Draft for a Statutory Definition of Charity* (the Bill) and associated Explanatory Material.
- (c) Our contact details are –

Mr Robert Wicks
Diocesan Secretary
Anglican Church Offices
PO Box Q190
QVB POST OFFICE NSW 1230
Phone: (02) 9265 1671
Email: rjw@sydney.anglican.asn.au

2 Determining the purposes of an entity

- (a) We consider that paragraph 1.31 of the Explanatory Material could be improved if further explanation is given about the significance of the activities of an entity in determining its charitable purposes.
- (b) To this end, the following adaption of the explanation given in the 2001 Report of the Inquiry into the Definition of Charities and Related Organisations (at page 108) would usefully be included after the second sentence in paragraph 1.31 –

“It is appropriate to consider an entity’s activities in order to substantiate – that is, to confirm or corroborate or demonstrate – the entity’s charitable purposes. It is not the nature of the activity that is relevant, but its role in supporting the charitable purpose.”

3 Purposes for the public benefit

- (a) We note that paragraph (a) in subsection 6(3) of the Bill requires that in determining whether a purpose of an entity is for the public benefit, regard must be given to any private benefit provided to certain categories of person associated with the entity.
- (b) In order to clarify the capacity in which such persons receive any private benefit, we consider it would be helpful to include the following as a rider to paragraph (a) –

“which is not also available to the general public or a sufficient section of the general public, and”

4 Presumption of public benefit

- (a) We support the presumption of public benefit being retained for the purposes referred to in section 7.
- (b) It would be helpful if the Explanatory Material provided further explanation as to the relationship between the purposes presumed to be for the public benefit under section 7 and the registration of a charity with that purpose as the corresponding sub-type of entity on the ACNC Register.

5 Understanding charitable purpose by reference to the common law

- (a) It is important to ensure that the meaning of the various charitable purposes listed in subsection 11(1) of the Bill continue to be understood by reference to the common law as developed both before and after the commencement of the statutory definition. The explanation given at paragraph 1.12 of the Explanatory Material that the common law will continue to have a role in developing and extending the statutory definition does not make it clear that the common law developed prior to the statutory definition will also have ongoing relevance for the purposes of understanding those parts of the definition which reflect the common law.
- (b) We therefore consider it would be appropriate to include a new subsection 11(3) in or to the following effect –
 - “(3) The scope and nature of the charitable purposes mentioned in subclause (1) are to be understood by reference to the general law as developed by the courts.”
- (c) Such a provision would provide greater certainty in relation to this aspect of the statutory definition and would address the inevitable sensitivities that will arise in the way the various charitable purposes referred to in section 11(1) are explained in the Explanatory Material.
- (d) There are other examples where legislation refers directly to the common (or general) law in framing its scope of application. For example, section 179(1) of the Corporations Act which effectively preserves the concurrent application of directors’ duties under the general law. For example, section 25-5(6) of the Australian Charities and Not-for-profits Commission Act 2012 (ACNC Act).

6 Purpose of promoting law, policy etc

- (a) We support the ability of charities to promote or oppose changes to law, policy or practice in the manner currently set out in paragraph (l) of subsection 11(1) of the Bill.
- (b) However such a purpose is not an independent or stand alone purpose since it can only be pursued in furtherance or aid of (or in opposition to or hindrance of) one or more of the purposes mentioned in paragraphs (a) to (k) of subsection 11(1).
- (c) We consider it preferable to deal with such a purpose wholly within subsection 11(2) with a provision along the following lines –
 - “(2) The definition of **charitable purpose** in subsection (1) also includes the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, but only if:
 - (a) in the case promoting a change – the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k) of subsection (1); or
 - (b) in the case of opposing a change – the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.”

- (d) If subsection 11(2) was redrafted in this way, item 12 (advancing public debate) should be omitted as a stand alone basis for sub-type registration from the table to be included in subsection 25-5(5) of the ACNC Act.
-

7 Further discussion

We would be happy to discuss the matters raised in this submission further.

1 May 2013