



Catholic Social Services
Australia

Catholic Social Services Australia

Response to the Exposure Draft
of the Charities Bill 2013,
related Bills and associated
Explanatory Memorandum

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Contact: Paul O'Callaghan
Executive Director
Catholic Social Services Australia
PO Box 326, Curtin ACT 2605
Telephone: 02 6285 1366

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Overview

Catholic Social Services Australia (CSSA) welcomes the opportunity to comment on the Exposure Draft of the Charities Bill 2013 and associated Bills.

CSSA appreciates that the Government has taken account of a number of concerns raised about the proposed statutory definition of charity and that these are reflected in the current Exposure Draft of the Charities Bill 2013 and associated Bills.

In framing a response, CSSA has paid particular attention to five matters - Presumption of Public Benefit; Purposes for Public Benefit; Definition of charitable purposes; Disqualifying purpose; and, charity 'infrastructure entities'.

CSSA is concerned that the Exposure Draft's treatment of these matters may not be entirely in keeping with established common law principles and/or require amendment to avoid any misinterpretation of intended meaning.

Catholic Social Services Australia

CSSA works towards a fairer, more inclusive Australian society that reflects and supports the dignity, equality and participation of all people. It is the national peak organisation representing 64 Catholic social service organisations. With a specific focus on poor and disadvantaged people, the CSSA network assists over a million people a year throughout rural, regional and metropolitan Australia.

Catholic Social Services Australia carries out its Mission by interacting with Catholic organisations, governments, other churches and all people of goodwill, to develop social welfare policies, programs and other strategic responses that enhance the human dignity of every person and work towards the economic, social and spiritual well-being of the Australian community.

Presumption of Public Benefit

Given the centrality of the presumption of public benefit in determining charitable status, CSSA believes that Section 7 – "Certain purposes presumed to be for the public benefit" should be amended to explicitly list those purposes as defined as charitable purposes under Part 3 of the Draft Bill, with the exclusion of section 11 (1) (k). These purposes would be entitled to a presumption of public benefit under the current common law definition and, as such, should also be listed among the "Certain purposes presumed to be for the public benefit".

Purposes for the public benefit

Clause 6(2)(b) of the Bill states that for the purposes of the legislation - "disregard any benefit that is not identifiable". CSSA believes these words should be deleted given that it is not clear how anyone could have knowledge of an unidentifiable benefit.

The Exposure Draft states at Clause 6(1):

“A purpose that an entity has is* for the **public benefit** if:

- (a) The purpose is directed to the benefit of:
 - (i) The general public; or
 - (ii) a sufficient section of the general public; and
- (b) the benefit is a universal or common good.

**this is as it appears in the Exposure Draft*

It seems inconsistent therefore that Clause 6 (3) b) states that for the purposes of this assessment of public benefit regard must be given to “a member of the general public”. This would infer that public benefit could be called to question should an individual member of the general public claim they are suffering some detriment and should be deleted.

Definition of charitable purposes

At point 1.89, the Explanatory Memorandum lists a range of activities that are deemed to ‘advance social or public welfare’. Whilst the list may not be intended to be exhaustive, the absence of a specific reference to care and support of families appears an aberration.

We recommend that “the provision of assistance and support for families experiencing crisis, turmoil or who are ‘at risk’” be added to the list of items deemed to advance social and community welfare in the EM at point 1.89.

We would also recommend that items under 1.92, 1.93. and 1.94 be brought in under 1.89 to reduce confusion.

Disqualifying purpose

While the intention of the action of a charity is in keeping with that organisation’s charitable purpose, it is possible that the way in which such an action or activity is perceived may be misconstrued as a “Disqualifying purpose” as defined by the Exposure Draft of the Charities Bill 2013 Division 3 (10).

CSSA concurs with the paragraph 1.79 of the EM, where it is stated that “Political parties are not charitable and a purpose of promoting or opposing a political party or a candidate for political office is not a charitable purpose” However, we do not believe that the Draft Bill appropriately reflects this intent. In our view, it has the potential to impinge on the charity’s capacity to fulfill its obligations with regard to its charitable purpose as defined at Section 11.

Further, CSSA believes that the distinction between ‘government policy’ and ‘public policy’ is not clear enough to provide adequate guidance as to whether or not ‘engaging in, or promoting, activities’ on a particular subject would be a ‘disqualifying purpose’.

Charity infrastructure entities

It is unclear how the proposed Statutory Definition of Charity may impact on the treatment of what is frequently referred to as “infrastructure entities”. These are entities created to support the purpose of charitable entities. They play a critical role in enhancing the operations of charities by providing services such as financial, legal, information technology and other support services.

The current charitable standing of these organisations is covered by the Australian Tax Office’s Tax Ruling 2005/22 and the 2011 Addendum. We believe that the Explanatory Material should explicitly address this matter. This would ensure that the valued role these organisations serve in supporting the purpose of charities is upheld.

Conclusion

CSSA appreciates the substantial effort made by the Government to obtain sector views on this important matter, including the current process.

We urge that CSSA’s recommended changes are reflected in a revised Bill, not least to pre-empt future misunderstandings about the intent of key sections of the Bill.