



Statutory Definition of Charity

Exposure Draft

Charities Bill 2013

Submission by

Community Housing Federation of Australia

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1. Introduction

The Community Housing Federation of Australia (CHFA) is the national industry body representing community housing providers across the country. Our members are charitable organisations who have a keen interest in the new definition of charity and its potential impact on their business model and therefore their continuing ability to provide accommodation for disadvantaged households. CHFA provided a submission on the Treasury consultation paper *A Definition of Charity* and this submission builds on our comments and the positions articulated in that previous submission.

2. Overview

The exposure draft of the Charities Bill 2013 (the Bill) is an improvement on the provisions as proposed in the Treasury discussion paper on the definition of charity. Several of the concerns that CHFA articulated in our previous submission have been addressed and resolved, notably:

- the removal of the term ‘altruistic’ in place of ‘charitable’;
- clarification on what is meant by ‘relief of poverty’; and
- the distinction between ‘public policy’ and ‘government policy’, and the clarification of what are permissible advocacy activities.

However, CHFA believes further amendments are required concerning both the definition of housing and its categorisation for charitable purpose; disqualifying purposes; and Public Benevolent Institution (PBI) status.

3. Specific comments

3.1 Housing as a charitable purpose

We are disappointed that housing was not articulated as a specific charitable purpose in the Bill in Section 11 and instead is listed in the Explanatory Material as an example of allowable charitable purposes under the subcategory of ‘advancing social or public welfare’. As noted in our previous submission, housing is widely recognised and accepted as a basic human right that underpins the ability of people to obtain or benefit from other basic needs, such as health, education and well-being. This recognition is reflected in international and human rights law. The basic needs of health and education are correctly recognised as charitable purposes in the Bill and housing is a basic need of equal importance to those two acknowledged human rights and warrants housing as a distinct charitable purpose.

RECOMMENDATION: That housing is included as a specific charitable purpose in Section 11 of the Charities bill.

3.2 Definition of housing

We appreciate that a definition of housing has been developed and included as a charitable purpose under the subcategory of ‘advancing social or public welfare’. The definition is an improvement over the current ambiguity about the provision of accommodation as a charitable purpose.

However, the definition in the Explanatory Material has been changed from the definition of housing that was proposed by the Charities Definition Inquiry Committee in 2001. In their Report of the Inquiry into the Definition of Charities and Related Organisations, the Committee considered ‘the advancement of social and community welfare’ to include a number of purposes including this one on housing:

“the provision of housing and accommodation support for people with special needs or who are otherwise disadvantaged in terms of their access to housing”¹

The current exposure draft proposes a similar definition but with a significant difference:

“the provision of housing and accommodation support for people with special needs or who are otherwise *in a special disadvantage* in terms of their access to housing”(italics mine).

This new wording potentially limits the conditions that disadvantage peoples’ access to housing which would be recognised as meeting a charitable purpose as there is no clarification for what “special” means in this context. (NOTE: There is a general understanding and recognition of the meaning of ‘special needs’ and our concerns do not extend to use of the term ‘special’ in that context.) The use of ‘special disadvantage’ in the definition is unnecessary and should be removed.

RECOMMENDATION: That the charitable purpose relating to housing in the Explanatory Material be removed, and replaced with the charitable purpose definition of housing proposed by the CDI Committee in the Report on the Inquiry into the Definition into Charities and Related Organisations.

RECOMMEDNATION: That the definition of housing proposed by the CDI Committee be used to articulate housing as a charitable purpose in Section 11 of the Bill.

3.3 Disqualifying purposes and advocacy activities

In the Section on disqualifying purposes, we support the distinction in the Bill between ‘government policy’ and ‘public policy’ and by extension what advocacy activities are permissible. However, we still have some concerns around what kind of political engagement will be considered a disqualifying purpose.

If an entity spent a considerable amount of its time on advocacy such that it represented the bulk of their activities, could this be construed to be a *purpose* that is partisan the therefore a disqualifying purpose? As well, many organisations work with candidates and political appointees as part of their activities to further the charitable purpose of their organisation. Section 1.80 in the Explanatory Materials states, “An entity must not engage in partisan political activities that support or oppose a candidate or party for office or *other partisan political activities where this can be construed as a purpose*”. (italics mine). Could extensive advocacy activities or one involving candidates constitute partisan political activity and be seen as a disqualifying purpose?

¹ Report of the Inquiry into the Definition of Charities and Related Organisations, Australian Government, June 2001, page 172.

RECOMMEDNATION: That clarification be provided by means of an example in the Bill (or at the very least in the Explanatory Materials) of what kind of political engagement will be considered a disqualifying purpose.

3.4 Public Benevolent Institution (PBI) status

While the Bill does not explicitly codify the definition of Public Benevolent Institution (PBI) in the Bill, the concept of PBI still exists, i.e. PBI is a subcategory of charity and as long as an entity meets the requirements to be a charity they would meet the definition. For community housing providers, it would require organisations to meet the charitable purpose of ‘advancing social or public welfare’ where housing is further stipulated as a specific charitable purpose in the Explanatory Materials. But the question remains of how an entity *proves* public benefit where public benefit is not presumed.

Public benefit is presumed if the purpose of the entity is relieving poverty as it is one of the heads of charity. However, when one looks at the specific charitable purposes listed in Section 11 of the Bill, only ‘advancing religion’ and ‘advancing education’ are specifically cited. In the Explanatory Materials section on transitional amendments and provisions, there is a chart that shows that the existing subtype of ‘relief of poverty’ is replaced in the new Act either by ‘advancing health’ or ‘advancing social or public welfare’ (for community housing purposes, the last one is relevant). This latter purpose does not *assume* public benefit and therefore in order to achieve PBI status public benefit must be shown.

Most of the descriptive information on ‘advancing social or public welfare’ is in the Explanatory Materials rather than the Bill. Section 13 in the Bill describes the purposes under ‘advancing social or public welfare’ very broadly including examples, such as disaster relief, that clearly does not fit under the presumption of public benefit.

Our concern is that this *may* mean that community housing providers whose charitable purpose under existing common law was ‘relief of poverty’ and therefore attracted the *presumption* of public benefit might now need to prove or demonstrate public benefit under the charitable purpose of ‘advancing social or public welfare’. If that is an accurate interpretation, will it only apply to new applicants for PBI status or will existing entities that currently enjoy PBI status have to demonstrate public benefit? In either case, the law is unclear on the issue of how an entity demonstrates public benefit where it is not presumed.

This situation could be remedied by extending the presumption of public benefit to charitable purposes that are specifically articulated in the Bill. This removes the possibility of demonstrating public benefit in the absence of any determination of what constitutes public benefit. As well, it provides parity with other charitable organisations whose charitable purpose is currently presumed to provide a public benefit.

RECOMMEDNATION: That the presumption of public benefit be extended to all charitable purposes articulated in Section 11 (1), with the exception of (k).