



DANA Disability Advocacy
Network Australia

Submission

Response to the Statutory Definition of Charity Proposed in the Charities Bill 2013.

For further information please contact:

Andrea Simmons
Chief Executive Officer
Disability Advocacy Network Australia (DANA) Ltd

Telephone: (02) 6175 1300
Email: Andrea.Simmons@dana.org.au

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Key Recommendations

1. That the National Charities and Not for Profit Commission (NCNC) maintain discretionary power to enforce the statutory definition of charity in a pragmatic manner, reflecting the needs and conditions of the time.
2. That the Bill Explanatory memoranda also make explicit the material contained in the notes to s10(a) and (b) to avoid any doubt as to the intention of the legislature to permit organisations falling within the definition of charity to engage in advocacy and political discourse in support of their charitable purposes.

About Disability Advocacy Network Australia (DANA) Ltd

Disability Advocacy Network Australia (DANA) is the national peak body for almost 70 disability advocacy organisations across Australia. Our goal is to advance the rights and interests of people with disability by supporting our members in their targeted advocacy as well as engaging in systemic advocacy on a national level to further these objectives.

Comments on the Statutory Definition of Charity

Benefits of a Statutory Definition

DANA supports the introduction of a nationally consistent statutory definition of charity which would minimise the unnecessary confusion and administrative burdens that arise from inconsistent interpretations of common law across different Australian jurisdictions.

We support the decision to allow the NCNC's discretion in enforcing the statutory definition, provided that definitions are sufficiently broad and the Commission is able to pragmatically apply the law in response to changing conditions. Charities and not-for-profit entities are subject to the same dynamic operating environment as other entities in the Australian economy. A static statutory definition of charity may therefore be counterproductive by restricting how organisations can evolve their activities to best serve their charitable purpose. Flexibility is important to ensure that the statutory definition is able to continue

delivering its desired outcomes into the future, as both the environment and the activities that charities engage in evolve. Therefore, we are encouraged by the inclusion of clause s11(k) which allows the bill to be extended to organisations whose activities are ‘regarded as analogous to, or within the spirit 19 of, any of the purposes mentioned in paragraphs (a) to (j)’.

Definitions Offered.

DANA believes that a statutory definition of charity should reflect the full spectrum of charitable and not-for-profit activities in the Australian community. The Disability Services and Advocacy Sector is characterised by many organisations that undertake a diverse range of functions and activities to pursue a common purpose of advancing conditions for people with disabilities in Australia. Therefore, DANA welcomes the broad definition of ‘advancing’ put forward in s 3(1) which covers all activities defined as ‘protecting, maintaining, supporting, researching and improving’ conditions related to their principle purpose.

Furthermore, we welcome the diverse definitions of charitable purpose offered in s 11(1) of the bill, including the recognition of the purpose of promoting and protecting human rights and of advocating for change in legislation, policy or practice for a charitable purpose. We believe that this reflects a strong attempt to recognise the spectrum of legitimate charitable activities occurring in Australia.

Recognition of Peak bodies

As a peak organisation DANA recognises the important role these bodies have in the effective delivery of charitable and not-for-profit outcomes. The bill states a ‘charity is an entity, all of the purposes of which are, purposes that are incidental or ancillary to, and in furtherance or in aid of, purposes of the entity covered by subparagraph (i)’ s 5(a)(ii). With the guidance of Explanatory Material Charities Bill 2013 17-18[1.38]-[1.39] we interpret this clause to include peak bodies involved in the advancement of charitable purposes, including indirectly, by providing invaluable support to member organisations. We believe that the inclusion of peak bodies is an important element to ensure that a statutory definition of charity delivers its desired outcomes, and support the NCNC’s decision to recognise their contribution.

Rights of Charities to Advocate and Engage with the Political Process

A statutory definition of charity must not compromise the right of charities to advocate in the public benefit or engage with the political process.

DANA has concerns that s 11(l) of the bill, identifying 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’ provided that promoting or opposing change is in the

interests of one or more of the charitable purposes outlines in paragraphs (a) to (k) of the Section as a charitable purpose, may be interpreted by some organisations as being in conflict with s 10(b), which disqualifies activities that may support a political party or candidate from being in the public benefit.

In order to ensure that organisations do not feel hesitant to engage in advocacy activities which would further their charitable purpose, due to fears that this would compromise their charitable status DANA recommends that the brief statement on this matter contained in the Explanatory Material Charities Bill 2013 be made more prominent and explicit.