Life Activities Clubs

Life Activities Clubs Victoria Inc

Registered Incorporated Association: A0054351A ABN: 85 104 164 408

Submission to: Treasury Consultation on 'A Definition of Charity'

Who we are

Life Activities Clubs Victoria Inc. (LACVI) represents a network of incorporated Life Activities Clubs throughout Victoria that are run by volunteers on a non-profit basis.

Life Activity Clubs provide people in retirement or approaching retirement (typically aged 50 and over) with opportunities to enjoy a full, satisfying and connected community life and maintain lifelong wellbeing.

There are currently 22 Life Activities Clubs in Victoria (17 within the Greater Melbourne metropolitan area and 5 in regional centres) with each Club offering its members a wide range of recreational and social activities that provide physical, mental and social stimulation. The activities provided for the 4000 club members are determined by the interests of the members of each club.

Brief history

Starting in 1971 as an Early Planning for Retirement Group in Camberwell, the Early Planning for Retirement Association (the forerunner of Life Activities Clubs Victoria Inc.) formed early in 1972 to improve the welfare of older Victorians. One of its aims was to promote the establishment of a network of groups with an emphasis at the time on providing financial literacy and assistance in the transition from work for the many workers experiencing forced early retirement.

As social and employment conditions changed and new regulatory regimes were adopted, the groups adapted their focus to social, physical and recreational activities. In 1995, the Early Planning for Retirement Groups were renamed Life Activities Clubs and the parent body was incorporated as the Life Planning Foundation of Australia Inc. to match the new focus. It retained its dominant purpose to improve the health and wellbeing of the senior sector in Victoria.

Following further evolution and adaptation, Life Activities Clubs Victoria Inc. replaced the former Life Planning Foundation of Australia in 2009.

Community benefits provided by clubs

Forty years of experience has demonstrated the value of Life Activities Clubs in the community. There is compelling evidence that maintaining a healthy mind and body, an active social life and making time for some recreation are all essential to an improved quality of life, as well as longevity. Social engagement, in particular, helps avoid depression and these become more important as we age.

As well as the personal benefits derived through ongoing participation in these activities, the community benefits are substantial. Longevity can be a two-edged sword if extending life entails extended periods of dependency on government and community services, adding significantly to health and aged care costs in particular.

Life Activities Clubs keep older people active and engaged, forming new life-long friendships and improving individuals' quality of life. They should be seen as an essential mechanism for deferring

the time when people become dependent on high levels of expensive public support. They are instrumental in extending active ageing and although they remain relevant to very old people (there are some Clubs with active members well into their 90s), Life Activities Clubs focus more on people who are approaching or in retirement who are still able to participate in physical and social activities without serious health or mobility constraints. We aim to keep them in this condition for as long as possible.

It is the availability of varied social and recreational activities within each Life Activities Club that make our organisation unique. In this sense, Life Activities Clubs are well-differentiated, but complementary to, other community groups such as U3A, Probus, Senior Citizen Clubs, Men's Sheds and the many other single purpose clubs that are universally recognised as providing public good and so, charitable in nature.

It is obvious that views differ widely across our membership and it is therefore not possible for any submission adequately to represent the breadth of opinion from such a diverse constituency. Having said that, the author of this submission is himself a senior, immersed in a range of seniors' organisations and having considerable experience analysing and interpreting his cohort's needs and aspirations. Against this background, the following comments are provided on the questions raised in your briefing document.

Preamble

Our organisation has never enjoyed charitable status. It has self-assessed itself as being income tax exempt (consistent with previous ATO assessments as to the status of our predecessor bodies), but has never aspired to DGR (or other privileged) status, notwithstanding its view that it is as justifiably a 'charity' as the great majority of other such organisations.

From a considerable breadth of experience across the organisation, it is our belief that the existing definition of a charity is almost entirely inappropriate and urgent change is required to redefine and expand the range of charitable institution warranting government recognition and public support.

We believe that the current definition of a charity is both too prescriptive and too restrictive. There are many organisations as worthy (and much more worthy in many cases) of charitable status as many automatically included under the existing regime. We regard LACVI as being at least as deserving as many existing charities and argue that a redefinition and refocusing of the criteria is essential to improve the equity of the system, irrespective of whether that results in our eligibility or not!

Consultation questions

1. Are there any issues with amending the 2003 definition to replace the 'dominant purpose' requirement with the requirement that a charity have an exclusively charitable purpose?

Firstly, the proposal to remove the existing statutory inclusions, particularly those referring to poverty, education and religion, is strongly supported. Apart from definitional issues (such as which sects might be religious in nature, or by what level of economic convergence poverty might be defined), the existing inclusions seem patently absurd.

Very few educational institutions could be considered to be charitable under any definition and extending special concessions to an already extremely wealthy religious order is obviously counterintuitive unless that body can clearly establish that it uses its wealth to

pursue charitable purposes – such as selling its surfeit of property for the benefit of those in poverty. On the other hand, if some statutory inclusions are to be sustained, it is just as absurd to exclude institutions whose objectives might be to research the causes and cures of disease, to improve mental health, to promote peace and freedom from oppression and a host of other objectives widely accepted across the community as charitable.

If that thesis is accepted, there are a great many organisations in the community that would be widely accepted across the community as charitable. Certainly, some of these organisations would enjoy the support of only limited sectors of the community, and others operate with diametrically opposed objectives to their competitors' – although both viewpoints might enjoy wide (albeit minority) acceptance in the community.

In terms of the proposed definition, it is agreed that only Not-For-Profits should be classified as charities and that unincorporated entities, political parties, superannuation funds and government bodies should be excluded. Any alternative would appear to deny the entire purpose for which the definition is required.

The key issue would appear to be that the purposes should be beneficial to the community. Unless the organisation works for the benefit of the community, or a significant sector of it, it can hardly expect to be regarded as charitable. Moreover, a reasonable level of active pursuit of those purposes should be necessary. Obtaining benefits as a charity simply because some charitable clause is included in the organisation's written purposes could be seen as somewhat fraudulent unless those benefits are actively applied to the furtherance of that clause. (It is acknowledged that such an approach would exclude certain existing charities such as closed and contemplative religious orders: and we would support that exclusion.)

It is argued that having a dominantly charitable purpose is preferred over an exclusively charitable purpose. Many organisations may conduct activities that are secondary to their main purpose. They may be quite inconsequential activities, but it would seem counterproductive to exclude an organisation simply because once a year or so it undertook a minor activity that might be interpreted in a very narrow way as not directly supporting its otherwise exclusive purpose. The extension of this is that it should not be limited exclusively to activities that further or aid its dominant purpose. Rather minor incidental activities that are not inconsistent with its dominant purpose should not automatically exclude an organisation from being a charity. For example, a Not-For-Profit organisation with which I am associated recently hosted a function consistent with its dominant (charitable) purpose, but accidentally made a small surplus which it donated to another (currently legislatively-defined) charity, but one that did not actively pursue our dominant purpose. Clearly, such a charitable action should not define our organisation as uncharitable, or exclude it from being considered charitable. Some level of reasonableness should be applied that allows incidental deviations from the dominant purpose from time to time.

It is accepted that commission of a serious offence should be grounds for disqualification, but some definitional issues will no doubt arise. Is a peaceful demonstration in support of an organisation's objectives a serious offence (even if it might be seen as political in nature – and therefore odious to some)? On the other hand, a demonstration that seriously disrupted traffic or a public event, or action that threatened life and limb or damaged property, might well be grounds for disqualification.

2. Does the decision by the New South Wales Administrative Tribunal provide sufficient clarification on the circumstances when a peak body can be a charity or is further clarification required?

It is a matter of sheer wonderment that peak bodies could ever have been excluded from the definition of a charity. In our case, it is argued that even if some of our clubs were excluded (for reasons we would dispute in any event), the peak body should definitely be described as a charity. The reason for this relates to the objectives of the organisation and the reason for its existence.

Although some of our Clubs would (irrationally) have been excluded because they are largely social clubs, the reason they were established over the past 40 years, was for sound health and wellbeing reasons. There is ample rigorous scientific research demonstrating that remaining socially, physically and intellectually active as we age improves health, longevity and quality of life. Any amount of evidence can be educed for this. Maintaining such a lifestyle provides a significant social benefit for the people involved as well as a major economic benefit to the whole community in that older people keep contributing to society in numerous ways (employment, volunteerism, economic, etc.,) for several years longer AND shorten the period at the end of life during which health or other factors necessitate them becoming more dependent on government or society for some level of support.

Our objective (as the peak body for 20-odd Clubs in Victoria) is to facilitate and maintain the viability of those Clubs (and develop new ones) as a means of improving the quality of life of seniors and reduce the potential burden of those people on expensive income support, health services, aged care and accommodation, transport and a raft of other issues. The facilitation and provision of social, physical and intellectual activities is clearly charitable in that it benefits a large sector of the community, it ensures that people remain active and contributing to society for years longer than they otherwise would, and it defers and shortens the period during which they would otherwise be dependent on high-cost government and community services. It is hard to imagine that such a beneficial community program could be considered not to be charitable – particularly when compared with some of the existing statutory inclusions.

3. Are any changes required to the Charities Bill 2003 to clarify the meaning of ‘public’ or ‘sufficient section of the general community’?

One matter of concern is that the Discussion Paper does not appear to address the meaning of the term ‘charitable’. To be a charity, an organisation needs to have purposes that are charitable, but the definition of what that entails appears to have been overlooked. It is suggested that without this, none of the rest of the arguments make much sense.

As a general statement, we would support most of the discussion under this section, but have some minor issues that trouble us.

In paragraph 65, there is an inference that our clubs would be excluded because individual members receive a benefit from their membership so the clubs themselves should be excluded from charitable status. But the reason the Clubs exist is at least very largely to provide the public benefits outlined above. Under one view of this situation, the fact that members receive a personal benefit might be seen as incidental. The provision of activities that provide personal enjoyment is the incentive for members to become and remain engaged with the club – but the reason the club exists is to keep people active and

engaged so that the public benefits outlined earlier are actually achieved by government and the community at large. To exclude clubs from charitable status simply because they provide services that people enjoy would appear to be self-defeating and care should be taken not to allow this to occur.

On the other hand, one interpretation of paragraph 66 *et seq* might be that affluent families could be considered a charity if they defined their purposes to include remediation of poverty (however defined) of other family members. Clearly this is not intended and should be avoided.

4. Are changes to the Charities Bill 2003 necessary to ensure beneficiaries with family ties (such as native title holders) can receive benefits from charities?

It is of concern that issues of Native Title are used as an example for the relief of poverty. Relief of Poverty and Native Title issues would simply appear to be incompatible. Huge sums of money change hands for the rights to enter onto, mine, or otherwise deal with native title holdings and any automatic link between such holdings and poverty would appear to be a contradiction in terms. While holders of native title should not be automatically excluded, they should be tested as rigorously as anyone else on the extent of their poverty and/or any efforts to relieve poverty.

5. Could the term 'for the public benefit' be further clarified, for example, by including additional principles outlined in ruling TR 2011/D2 or as contained in the Scottish, Ireland and Northern Ireland definitions or in the guidance material of the Charities Commission of England and Wales?

Some flexibility should be provided so inclusion of examples may be helpful, although prescriptive or proscriptive provisions would not. With respect to the need to demonstrate a public benefit, it is noted that in the case of our organisation, individual members may receive individual benefits, but that should not in any sense detract from our charitable status. The purposes of our organisation – and its member clubs – are largely to facilitate or provide a public benefit to the entire community. The provision of activities that maintain older people's independence, that keep them fitter, happier and contributing to the community for longer – and thereby reducing the public cost of providing higher cost services to more people for longer periods. That is clearly a public benefit, irrespective of the individual benefits enjoyed by individual members.

It is noted that several examples are mentioned in paragraph 76. These examples generally appear to be valid, but attention is drawn to the use of the term 'identifiable benefit or benefits'. We would have no difficulty with this providing *identifiable* is not construed to mean *quantifiable*. In the Aged Care sector, it is very easy to count and cost the number of Meals on Wheels delivered by a community service, but much more difficult to quantify the savings achieved and the ongoing benefits arising from each suicide or incident of depression avoided as a result of providing the services we provide. One such unquantified benefit may well be the cost savings arising from 5 years' supply of Meals on Wheels avoided as a result of an individual maintaining his or her independence for such a period.

6. Would the approach taken by England and Wales of relying on the common law and providing guidance on the meaning of public benefit, be preferable on the grounds it provides greater flexibility?

See response to Question 5. As a general principle, we argue that too narrow a view of what constitutes a public benefit is likely to be unfair and prove counterproductive.

7. What are the issues with requiring an existing charity or an entity seeking approval as a charity to demonstrate they are for the public benefit?

As has already been mentioned, we argue that there should be no automatic inclusions and that all organisations should be required to demonstrate a public benefit before being accorded charitable status. Some existing automatic inclusions (such as certain private schools) could hardly be considered as charities in that they do not support equality or inclusivity and may actually promote community dysfunction and other problems that arise from a two-tiered society. It might also be argued that others, such as some religious orders, should similarly be excluded on the grounds that they breed dissention and exclusivity that is more in the nature of a societal problem than a public benefit. Moreover, many of the statutory charities that do deliver a public benefit do so incidental, perhaps accidental, to their main purposes, e.g., most private schools. At present, it appears that in many cases, the organisations that benefit the most from their status as charities are often those that are least deserving.

There would appear to be no good reason to require some organisations that potentially deliver more or more valuable public benefits to follow a different, sometimes difficult, process in attempting to demonstrate their charitable attributes, while others are included without the need for any due process at all. Exactly the same criteria should be applied to all organisations seeking to establish their charitable status, although the standard of proof or extent of public benefit could be made more proportional to the anticipated benefit a charity might expect to gain from its status.

8. What role should the ACNC have in providing assistance to charities in demonstrating this test, and also in ensuring charities demonstrate their continued meeting of this test?

The ACNC should have some level of discretion or flexibility in determining which organisations should be regarded as charities and which should not. Consistent guidelines to assist the ACNC and applicant organisations could be developed over time and the ACNC could and should provide some level of assistance to organisations, especially smaller, poorly resourced ones, in identifying purposes and programs that might justify their charitable status.

Permanent charitable status should not be assumed for any organisation and a review at, say, lustral intervals should be carried out by the ACNC to ensure the continuing active pursuit of the purposes on which charitable status was justified.

9. What are the issues for entities established for the advancement of religion or education if the presumption of benefit is overturned?

Any issues for these organisations should be minimal. There is no reason why they should face any different issues from those encountered by other organisations. Given that they have enjoyed a privileged position for many years, any cost incurred in establishing their continued eligibility should be easily borne.

10. Are there any issues with the requirement that the activities of a charity be in furtherance or in aid of its charitable purpose?

Little to add to the matters discussed in previous questions. We would generally agree with the matters outlined and in particular support the discussion in paragraph 97.

11. Should the role of activities in determining an entity's status as a charity be further clarified in the definition?

As indicated in other places, we argue that the motivation behind and the nature and extent of the activities carried out by an organisation are more important than the wording of its purposes and should be the key determinants of its charitable status.

12. Are there any issues with the suggested changes to the Charities Bill 2003 as outlined above to allow charities to engage in political activities?

Without question, no organisation accepting the benefits of being classified as a charity should pursue political (or other) action that is not lawful. On the other hand, it is almost routine for charities to pursue action that could be construed as political to change the law or government policy.

In our case, we argue that prevention is better than cure and given that it is not possible to 'cure' ageing (only ameliorate some of its symptoms) more resources should be invested in measures designed to prevent or defer the onset of those deleterious symptoms. To this end, we have written letters and made representations at various fora with a view to influencing government policy to direct more funding to causes similar to our own. Such letter-writing could (quite accurately) be construed as action designed to change government policy, but without additional funding, our ability to deliver the desired level of public benefit would be significantly constrained.

Many organisations encourage their members to submit letters, forms, petitions, etc., to their local member or to a Minister to demonstrate support for a change in policy or law and in most cases, such action, albeit 'political', is entirely legitimate. Indeed, in many cases, such lawful action would be seen as an essential activity of organisations delivering public benefits.

Having said that, action that results in significant (even relatively minor) disruption or risk to the public or public processes might well be grounds for exclusion from charitable status. Guidelines could be developed by the ACNC that limits the nature or extent of attempts at political influence without risking exclusion, but a sensible approach must be taken to allow legitimate indirect low-key activities designed to influence public policy in support of the purposes of a charity. These guidelines may or may not proscribe some of the activities described as party political and again, we would urge caution in excluding more organisations than necessary on the grounds of attempts to influence public policy. If the only means by which public policy can be changed (or undesirable changes avoided) is by a level of lawful political action, whether in support of or against the *status quo*, action in support of a demonstrable public benefit should not necessarily be grounds for excluding a charity.

13. Are there any issues with prohibiting charities from advocating a political party, or supporting or opposing a candidate for political office?

See comments immediately above. Although action that is unlawful (or that supports an illegal activity) should rightfully be eschewed, some level of political action might be justified in pursuit of a significant public benefit.

14. Is any further clarification required in the definition on the types of legal entity which can be used to operate a charity?

We would generally support the discussion in this section, but believe that only incorporated entities, or established consortia of incorporated charities, should be accorded charitable status.

Government bodies, including those in local government, already enjoy many benefits and it would appear to be unnecessary to classify them as charities so their exclusion is supported. As to what constitutes a government entity, it might be argued that any entity effectively controlled by any government or any government entity should be considered to be a government entity.

15. In the light of the *Central Bayside* decision is the existing definition of 'government body' in the Charities Bill 2003 adequate?

Government bodies, including those in local government, already enjoy many benefits and it would appear to be unnecessary to classify them as charities so their exclusion is supported. As to what constitutes a government entity, it might be argued that any entity effectively controlled by any government or any government entity should be considered to be a government entity.

16. Is the list of charitable purposes in the Charities Bill 2003 and the *Extension of Charitable Purposes Act 2004* an appropriate list of charitable purposes?

It is not feasible to define a comprehensive list of purposes that might be viewed as charitable. Equally, it is not feasible to ask Parliament to redefine any such list every time a proposed new or amended inclusion or exclusion is identified. A preferred method to maintain such a list on a current basis might be to prescribe it so the relevant Minister can make changes by regulation, or the ACNC could be empowered to keep it current.

This is, however, still a poor substitute for the maintenance of a list of approved charities, probably by the ACNC, based on somewhat flexible criteria allowing some small room for discretion. This would be particularly relevant in the event that it was decided to withdraw charitable status for any particular organisation, avoiding the necessity of changing the Act or Regulations to reflect what might be quite a fine distinction in some cases.

Certainly, prevention should be included as a charitable purpose. Prevention is always better than cure and it might be assumed that every charity would, and should, have a prevention strategy as well as other activities to remediate the adverse effects of whatever its focus might be.

It is of concern that statutory exclusions exist and are still proposed for future legislation. Although it is noted that the reason for doing something might feature in specific decisions concerning charitable status, it would still appear to be far too restrictive. In our case, our focus for the past 40 years has been on improving the health and welfare of seniors: a public benefit beyond dispute. Equally beyond dispute is the incontrovertible scientific evidence that a significant element of any such strategy must include the provision of physical, social and recreational programs, without which the plight of this constituency cannot be substantially improved. Given this, despite our dominant purpose being for the public benefit and meeting all the other criteria that might be applied, we risk being

excluded on the grounds of an unreasonable statutory disqualification. This is clearly inequitable and it is difficult to see how any blanket disqualification based on the nature of an activity could be justified. Surely, it is much more appropriate to consider the motive and rationale for carrying out that activity.

17. If not, what other charitable purposes have strong public recognition as charitable which would improve clarity if listed?

Given that we do not support the listing of charitable purposes, as opposed to charitable organisations, we have nothing to offer on this point.

18. What changes are required to the Charities Bill 2003 and other Commonwealth, State and Territory laws to achieve a harmonised definition of charity?

We do not feel suitably qualified to comment of specific changes that may or may not be necessary to various items of Commonwealth or State legislation, but we acknowledge a strong need for consistency and certainty across all jurisdictions. Moreover, harmonisation of provisions should be monitored on an ongoing basis to avoid subsequent changes to one piece of legislation in one jurisdiction corrupting the situation in place in all other jurisdictions.

19. What are the current problems and limitations with ADRFs?

We do not work in this area and do not feel qualified to offer informed comment.

20. Are there any other transitional issues with enacting a statutory definition of charity?

We have argued for the rescission of the statutory heads of charitable purposes because we believe all charities and aspiring charities should be subject to identical criteria. We acknowledge, however, that precipitous withdrawal of charitable status for organisations currently approved or registered could cause confusion and hardship so a transitional period of, say, a year could be provided, during which all organisations with statutory status could be afforded the opportunity to establish and demonstrate their true status.

A significant communication and education program would also be necessary, probably spanning at least a similar period, to allow other organisations that may qualify under the new regime to consider their position and seek registration as charities.

Lindsay Doig
President
28 November 2011