



Submission on the
Exposure Draft, Charities Bill 2013 and Charities
(Consequential Amendments and Transitional
Provisions) Bill 2013

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About Mission Australia

Mission Australia is a large national, non-denominational Christian community service organisation that has been transforming the lives of Australians in need for more than 150 years. Our vision is to see a fairer Australia by eliminating disadvantage for vulnerable Australians. This aim is reflected in the breadth and diversity of our programs – from early learning and youth services, extensive family support and homelessness initiatives, employment and skills development, to provision of affordable housing.

In 2011-12 our 326 Community Services (including 28 Early Learning Services) assisted 110,389 individuals and 5,732 families. MA Housing also grew its housing management portfolio to 1,418 dwellings in the same year, substantially increasing the number of people we have been able to support into stable accommodation. Our Employment Solutions division, one of Australia's largest not-for-profit providers of government-funded employment services, offered ten programs that helped 165,000 individuals and assisted 15,850 people move into sustainable employment¹.

Our response

Mission Australia welcomes the opportunity to comment on the exposure draft of the *Charities Bill 2013* (Charities Bill) and the *Charities (Consequential Amendments and Transitional Provisions) Bill 2013* giving effect to the Government's commitment to enact a statutory definition of charity. We support and welcome the draft legislation to the extent that it reflects the common law and reflects the contemporary understanding of charity and charitable purpose.

As a national charity providing early learning, children and family, youth, homeless, housing and employment services consistent with our charitable purposes, we welcome the inclusion of section 11(1)(c) "the purpose of advancing social or public welfare" and section 11(1)(k) "any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j)" in the definition of charitable purpose in the Charities Bill. Mission Australia also welcomes the inclusion of the heads of charity for "relief of poverty", "relief of illness" and "relief of the needs of the aged" as purposes presumed to be for the public benefit in section 7 of the Charities Bill.

Acknowledging the clarity the Charities Bill provides in the definition of charity in Section 5, it is considered that the dual test of public benefit and charitable purpose requires an entity to cross reference between the two tests and rely heavily on the Explanatory Material circulated with the legislation. The Charities Bill is also confusing in that the inclusion of the purpose of advancing social or public welfare as a charitable purpose implies any charitable purposes fitting into this category would also satisfy the public benefit test under the description of advancing public welfare.

Mission Australia maintains the position put forward in its submission to the 2011 Consultation Paper *A definition of charity*. This submission provided that a statutory definition of charity should include charitable purposes for the provision of social and affordable housing, and early intervention and prevention programs in the prevention of poverty. With respect to the proposed Charities Bill, provision is sought for social and affordable housing, community development and child care services as purposes presumed to be for the public benefit. We consider that such activities are consistent with the common law and contemporary understanding of charitable purposes for providing benefit to the community and improving social welfare.

¹ Mission Australia (2012) *Annual Report 2012*. Mission Australia: Sydney.

Prevention of poverty

The Explanatory Material notes “The Charities Bill does not specify the prevention of poverty as a charitable purpose. However, where there is a strong, evident causal link, the charitable purpose of prevention of poverty is not precluded (para. 1.91).” We remain concerned that Mission Australia’s activities for early intervention and prevention programs with families, children and those at risk of homelessness and community development programs directed towards the prevention of poverty are not sufficiently specified in the Charities Bill. Instead these are described as not precluded within certain circumstances and in many cases falling within other categories of charitable purposes. Accordingly, section 7(d) should be expanded to provide the purpose of preventing and relieving poverty as a purpose presumed to be for the public benefit.

In our view the prevention of poverty should be expressly included and promoted by the provisions of the Charities Bill, in recognition of the critical support and benefit these services provide to the community. Expansion of the charitable purpose for prevention of poverty could provide greater certainty for community development programs providing assistance and support to Aboriginal and other disadvantaged communities in Australia, currently delivered by charitable organisations including Mission Australian. The draft legislation does not specifically include community development as a charitable purpose and we are otherwise left to rely on the Explanatory Material which broadly notes that community and economic development can be charitable purposes (para. 1.60).

The proposed expansion of the charitable purpose for the relief of poverty to encompass activities for the prevention of poverty is considered in keeping with the intent of the Charities Bill and the Explanatory Material, which notes the purposes for prevention of poverty falls within other categories of charitable purposes in many cases, including advancing social and public welfare (para. 1.91).

Provision of child care services

The Charities Bill states that the charitable purpose of advancing social or public welfare includes, in particular, the purpose of providing of child care services (section 13(1)). The Explanatory Material notes the inclusion of this provision to ensure that public not-for-profit child care continues to be charitable, in place of the *Extension of Charitable Purpose Act 2004* (para. 1.92 and 2.9).

Greater certainty is required for organisations providing child care services to ensure the definition of charity is met by providing child care services as being within the certain purposes presumed to be for the public benefit. This may be addressed by expanding the charitable purpose category for the relief of poverty, to the prevention and relief of poverty as above, to encompass poverty prevention services such as child care.

Provision of social and affordable housing

The Explanatory Material notes the proposed repeal of the *Extension of Charitable Purpose Act 2004* and provides that the Australian Government’s National Rental Affordability Scheme (NRAS) is not expressly included as charitable purpose in the Charities Bill. Instead the Explanatory Material refers to the *Word Investments* decision which provides that entities undertaking commercial activities can be charitable provided the activities aid or further the charitable purpose (para. 2.10).

In our view greater certainty should be given to housing associations, consistent with that previously secured by the 2004 statutory extension to the common law meaning of charity, and afforded to

child care services under the Charities Bill. This certainty is sought to ensure that the provision of social and affordable housing will continue to satisfy the test as a charitable purpose, in place of the proposed reliance on the charitable purpose for advancing social or public welfare.

Further certainty is sought for organisations providing social and affordable housing services, for example by expanding the charitable purpose category for the relief of poverty to the prevention and relief of poverty as above, for satisfaction of the public benefit test to ensure the definition of charity is met.

Recommendations

The Charities Bill could be improved to better represent the common law and contemporary understanding of charity by provision for:

- (i) The prevention and relief of poverty as a charitable purpose, and the prevention and relief of poverty as a certain purpose presumed to be for the public benefit.
- (ii) The provision of child care services as being within certain purposes presumed to be for the public benefit.
- (iii) The advancement of social and affordable housing as a charitable purpose, and being within certain purposes presumed to be for a public benefit.

Mission Australia generally supports and welcomes the draft legislation as reflecting existing common law and appreciates that it is not practical to specify in legislation all circumstances of charitable purpose and public benefit. Notwithstanding, interpretation of the draft legislation is considered to rely heavily on the Explanatory Material. The wording of the legislation should enable more consistent cross referencing between charitable purpose and public benefit. The express provision in the Charities Bill of the matters set out in our recommendation will improve the legislation to provide charitable organisations with greater certainty and better reflect the contemporary understanding of charity.