



5 December 2011.

The Manager
Philanthropy and Exemptions Unit
The Treasury
Langton Crescent
PARKES ACT 2600

Sir/Madam,

SUBMISSION RE CONSULTATION PAPER ON “ A DEFINITION OF CHARITY”

We are making this submission on behalf of Victory Life Centre Incorporated ABN. 55 230 472 293.
(Victory Life Centre)

This entity is the overarching entity for the following subsidiary entities:

- Victory Life Community Services Inc. ABN. 71 595 544 058;
- Victory Life International Bible Training Centre Inc. ABN. 46 422 028 898;
- Victory Life International Inc. ABN 26 293 682 263; and
- Margaret Court Television Inc. ABN. 44 816 131 642.

It also represents as a denomination the churches as per the attached list.

Briefly Victory Life Centre is a charitable institution endorsed with associated tax concessions. It is a religious denomination with some 4400 adherents and serves the community through religious church services, Christian education and community services for the under-privileged, youth, people with addictions and those requiring pastoral counselling.

Victory Life Community Services Inc. is also a charitable institution endorsed with the associated tax concessions and is also endorsed as a deductible gift recipient as a public benevolent institution.

The other three entities are also charitable institutions endorsed with the associated tax concessions.

The major source of income of the group is derived from tithes and Offerings contributed by the members and are not tax deductible for the donors . These tithes and offerings represent 91.5% of the gross income of the group and are not made to the DGR endorsed entity, Victory Life Community Services Inc.

The Board of Management of Victory Life Centre is deeply concerned about the direction Treasury appears to be pursuing as indicated in the “Consultation Paper”. A summary of these concerns is expressed below.

Statutory Definition of a charity:

It is our firm position that it is not necessary to introduce a statutory definition of a “charity”.

In our view it is not necessary to change something that has withstood the test of time and which does not lack in clarity anymore so than a statutory definition would (given that its meaning has been developed over hundreds of years). In our view the only likely effect of introducing a statutory definition would be:

- To allow the Government to more easily restrict the current concessions granted to religious and charitable institution that currently make these organisation viable;
- The creation of uncertainty through the introduction of new statutory terms, leading charities to litigation and heavy legal expenses to prove its status; and
- A restrictive framework that would not be able to evolve in the same way that the charities law has over time.

In our view there would be no evident advantage to anyone except perhaps the legal institutions.

As discussed, in our view it is not necessary to introduce a statutory definition, but if a statutory definition is to be introduced we are opposed to many of the proposed elements of the definition as discussed below.

Purposes and activities of a charity

Assuming a statutory definition of charity is to be introduced, we do not see any issues with adopting the current common law position that the purpose or purposes of a charity must be “exclusively charitable”. Our strong recommendation, however, would be to include a definition of “exclusively charitable” to make clear that purposes incidental or ancillary to the charitable purpose are not disqualifying.

As identified in the Consultation Paper, an important element of the charitable purposes of an entity are the activities undertaken by a charity to achieve its purpose. It is important that it is made clear that where a charity’s activities are in the furtherance of its charitable purposes, regardless of whether in fact the activities are themselves charitable, it should still be a charitable entity. For example, a church may run an op-shop or bookshop and this should not disqualify it from being a charity because it is not exclusively serving a charitable purpose directly, as the church benefits from the income derived by being able to implement further charitable activities.

Public Benefit

The Consultation Paper puts forward a number of options in respect of the “public benefit” test including from the Charities Bill 2003 and a 2010 Senate Inquiry.

In our view it is important that, whatever test is adopted, the relevant terms (e.g. “general community”, “sufficient section of the general community”, “public”, “significant section of the public”) be defined to ensure the test applies no more narrowly than the current common law. Further consideration should be given to how these terms could be defined and consultation should be made with the community to ensure there are no adverse outcomes for the charities sector.

Benefit:

Paragraph 74 of the Consultation Paper highlights an issue as to whether the meaning of benefit should include practical utility and that there may be concerns that entities that provide social, mental or spiritual benefits cannot meet this requirement, for example entities providing religious teachings or cultural benefits.

In our view any statutory definition should be clear that the meaning of benefit is not limited to material benefits and includes social, mental or spiritual benefits. This is currently clear under the common law and as such we would be in favour of adopting the approach taken by England and Wales as it provides greater flexibility.

Presumption of Public Benefit:

Notwithstanding our comments above on the “public benefit” test, we are strongly opposed to the introduction of a public benefit test for the first three heads of charity. At common law public benefit is presumed for the first three heads and this presumption has developed over hundreds of years. Any amendment to such an established principle could only be with the intention of depriving entities that are currently charities of the benefits they currently receive.

It is specifically acknowledged at paragraph 83 of the Consultation Paper that charities are currently required to review their activities and purposes to ensure that they remain charitable and to notify government authorities - if they are no longer charitable. In light of this it is difficult to see what benefit could be obtained from altering the current presumption of public benefit.

Further, at paragraph 79 of the Consultation Paper it states that it can often be administratively difficult and costly for a government authority to rebut the presumption of public benefit. While this may be the case, surely a government authority is in a far better position to do this than the alternative of pushing the administration and cost onto the charitable entity. Any additional monetary and time cost to a charity is likely to be significant as the charities sector is already poorly funded and primarily relies on donations.

It is also submitted in the Consultation Paper that a reformed public benefit test would increase public confidence in the charities sector and public support for the granting of tax concessions to charities. In our view there are no issues in terms of the current level of public confidence and support in this regard so we do not believe this statement is correct.

In any event, if the presumption of public benefit is to be removed, further consideration and consultation needs to be given to what information the ACNC would require. It is not satisfactory to merely state “- some charities may incur some minor initial compliance cost in demonstrating that they are providing a public benefit”, when it is not clear what information will be required (i.e. the Consultation Paper states: “The ACNC will determine what is needed to demonstrate whether an entity is operating for the public benefit”).

Charitable Religious organisations:

Paragraph 89 of the Consultation Paper provides that while the 2010 Senate Inquiry recognised that charities play an important role in the community and the economy, there is concern in the community about the activities of some religious groups (cult like organisation) on the grounds that they may cause detriment or harm to their members.

In our view, while it is recognised that cults do arise and may be granted charitable status and that these need to be monitored and controlled, this needs to be very carefully implemented. Some argue that religion per se is harmful and many atheists are in fact arguing that religion should be banned or restricted. A change in public perceptions could easily decide that a Christian Church causes harm to the community whereas other religious groups are not.

Churches and religious organisations provide a very large amount of charitable benefits in the community and any restrictions on legitimate organisations accessing the concessions available to charities would result in greater poverty and mental health situations not being met in the community.

As previously highlighted, we have concerns that the removal of the public benefit presumption for the first three heads of charity would likely lead to increased compliance costs for charitable organisations. As acknowledged in paragraph 91 of the Consultation Paper, this appears to be a general concern of religious entities and contradicts the assertions made by the Consultation Paper in paragraph 83, it is not appropriate to merely state, - as has been done in paragraph 92, that overseas experience will assist religious entities in determining the impact that the public benefit test will have on them. This would require a religious entity to research overseas experiences which would in turn increase its compliance costs. Any amendment to the current position regarding charities must be done at no additional compliance burden or cost to the charities. Alternatively the Government must be up-front with regard to additional costs.

Political advocacy and party political activities

While we generally agree with the comments in paragraph 102 through to 114 of the Consultation Paper that a charity should not generally be able to engage in political activities, but should be able to participate in activities which attempt to change the law or government policy, we question how this interacts with “party political activities”.

For example, would there be an issue in “supporting” a candidate who may be defending churches, religious organisations or other charitable organisations which are likely to be affected by Government decisions or actions?

What is the definition of the word “support”? It is understood that a charity cannot give financial support to a political candidate but that is not specified in the paper. Would a charity which verbally supports a candidate who clearly stands for moral and religious principles against other who would erode those standards be disqualified?

Further thought should be given to these issues.

Charitable purposes:

In our view the inclusion of the words “insufficient value to the community” in the list of disqualifying purposes in paragraph 132 is broad, vague and in our opinion is very dangerous. This would provide no greater level of certainty to charities than is currently the case as it would leave an open discretion to the relevant regulatory body to either approve or not approve an organisation as a charity. A charity’s only recourse would be to the courts which would be administratively burdensome and expensive.

General Comments:

The above represents a selection of comments on what is presented as a Consultation Paper. It is respectfully submitted that on studying this paper one cannot escape the impression that this paper was produced simply as a formality. It was not widely distributed as one would have expected when such important issues are being considered. Presumably it was the intention to restrict comment and criticism. In addition the paper was published on 28 October 2011 giving a meagre five weeks to study and respond properly

We have inquired very widely amongst many religious groups and a very small minority were even aware of the existence of this Paper.

Victory Life Centre as a denomination, represents a large group of religious organisations not only in Australia but also overseas, which organisations we feel it is important to support in various ways from time to time.

In our considered opinion there currently are sufficient checks and balances to make the issue of formulating a new definition unnecessary and we strongly recommend that the idea be withdrawn.

We believe that the creation of the ACNC will cause enough upheaval without redefining what constitutes a charity.

In submitting this document we are registering our opposition to the approach advocated in the Consultation Paper and trust that you will give our submission due consideration.

For an on behalf of:
Victory Life Centre Incorporated and Associated Entities:

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Rev. Dr Margaret Court O.A., MBE
President

.....
Robert Leslie Greaves AM
Secretary

Attachment: List of Affiliated Churches

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