



## **Definition of Charity Consultation**

**vicsport submission**

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## Introduction

As the peak body for sport and active recreation, **vicsport** represents the collective interests of Victoria's single largest community sector. With over 170 member groups, 11,000 clubs and associations, and 1.8 million participants, workers and volunteers, the community sport and active recreation sector makes a significant contribution to the social, physical, mental and economic wellbeing of our communities.

## Community Sport and Recreation and the importance of the definition of Charity

When considering the definition of charity and the potential impact it can have on the sport and active recreation sector it is important to recognise that whilst elite sportspeople and major television or spectator events are at the forefront of most people's consciousness regarding sport, the overwhelming majority of sport and recreation takes place in the community.

In Australia we have an extensive community sport and active recreation network. Over 12.2 million people aged over 15 participate at least once per week in physical activity for exercise, recreation and sport. In Victoria, we have a total of 1.3 million participants over the age of 15, and 1.77 million participants aged 5-14 years engaged in sport and active recreation pursuits. (ERASS, 2010)

A recent Community Sport Counts report indicates that 75% of all Victoria's sport and active recreation organisations are voluntary in nature, and around 80 to 90% of all activity is undertaken by volunteers. Australian Bureau of Statistics data indicates that with 1.14 million volunteers engaged on an ongoing basis, the sport and active recreation sector utilises the support of more volunteers than any other sector. This figure is greater than the combined education, training and youth sector (1.02 million), community and welfare sector (970 000) or the health sector (297 000). (National Centre for Culture and Recreation Statistics, 2005).

The World Health Organisation estimates throughout the world there are at least 1.9 million deaths among people aged 15 years and over which are directly attributable to physical inactivity. (World Health Organisation, 2007a) In 1991, Australia's first burden of disease study attributed 13,000 deaths per year to physical inactivity. (Mathers, Vos, & Stevenson, 1991) In addition,

physical inactivity was estimated to be responsible for 6.6% of the total burden of disease and injury in Australia in 2003.

In financial terms, the total costs attributable to the burden of lifestyle diseases in Australia are estimated to be \$3.7 billion annually; high costs for what are in many cases 'preventable' diseases. (Stephenson, Bauman, Armstrong, & Smith, 2004)

Realistically, the community sport and active recreation network is the only network capable of reaching every member of the community and providing physical activity opportunities at all levels. Conservative estimates indicate Australia would save \$8 million annually for every 1% increase in the proportion of Australians achieving a sufficient level of physical activity for health. (Stephenson, Bauman, Armstrong, & Smith, 2004) More needs to be done to support our vital grass-roots sports clubs and organisations if we are to make significant improvements to the health of all Australians.

If we are to maintain, or preferably increase current participation levels by offering more opportunities to those people not currently engaged, without compromising standards, more must be done to help alleviate costs to ensure additional barriers to participation are not being created, especially for those from lower socio-economic groups or families with less disposable income. Community sport and active recreation is at the forefront of the fight against lifestyle related diseases.

It is to these organisations that the definition of charity will have a significant impact. Being able to offer and deliver increased participation opportunities would be greatly enhanced by the community sport and active recreation sector accessing certain types of taxation concessions that are available to recognised charitable entities such as Public Benevolent Institutions, Health Promotion Charities, Charitable Institutions and Charitable Funds.

Extending the definition of charity (via the parameters outlined in the consultation paper) to include a broader range of community sport and active recreation organisations will be a dominant theme of this submission.

## Consultation Submission Themes

### Dominant Purpose

- 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.*

There are a number of significant issues in relation to including 'exclusive charitable purpose' into the statutory definition of charity. Given the difficulties that NFP organisations face in raising sufficient funds in order to continue

their work in supporting communities, organisations are forced into the situation of having to undertake commercial operations in order to fund their activities. If the term 'exclusively charitable' is included in the definition it will preclude the ability for many organisations to undertake commercial activity to support their operations.

One of the outcomes from having an exclusively charitable purpose would be to force many entities to spin off and separate their activities by way of creating a myriad network of Trusts and legal entities to bypass the 'exclusive' definition. This creates a layer of complexity and unnecessary bureaucratic administration on NFP organisations.

The dominant purpose test should be revised to 'one or more purposes that are charitable' as distinct from being 'exclusively charitable' as proposed. By including 'one or more purposes that are charitable' sporting organisations would be afforded a broader opportunity for recognition.

### **Public Benefit Test**

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

Consideration needs to be given when defining the meaning of 'public' and the benefit deriving to a 'sufficient section of the community'. How is the benefit defined and how broadly can the benefits of an organisations activities extending into the community be measured as sufficient?

Take the example of sport and recreation. In a report on Social Capital and Social Wellbeing, the Australian Bureau of Statistics indicated participation in community sport and active recreation helps to develop the community networks and bonds important for social cohesion, it also provides individuals with a sense of belonging, support and social interaction. Some studies suggest a potential link between participation in sport and recreation and a reduction in crime and other anti-social activities. In addition, in both suburban and rural areas, sport, recreation and cultural activities provide a strong community focal point. (ABS, 2002).

Considering the extent of the benefits of sport and recreation to a broad range of the community it is difficult to define and adequately capture. For example a reduction in crime and anti-social behaviour provides wide ranging benefit to the community outside of the direct participant. The benefits must be viewed in their entirety to the 'general community' rather than the directed to a sufficient number of the community.

4. *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 North Ireland definitions or in the guidance material of the Charities Commission of England and Wales?*

The public benefit test should not be overly prescriptive as outlined in Tax Ruling 2011/D2. There should be a discretionary element in the application of organisations seeking charitable status.

**vicsport's** view is that there are potential inconsistencies within the application of charitable status to sport and recreational groups. For example Tax Ruling 2011 D/2 outlines that the raising of public money to construct squash courts within a school was deemed to be charitable, given the dominant charitable purpose of the school is education however the interpretation of the ruling would mean that a community based squash club seeking to raise public funds to construct squash courts (utilising deductible gift recipient status) would not be charitable even though it provides significant public benefit- i.e health and well being of participants, training of official and referees (education) or offering participation programs for people with a disability.

Tax Ruling 2011/D2 is not considered to be a comprehensive assessment of the significant public benefits derived from community sport and active recreation and should not be relied upon to define the term 'for the public benefit'. The ruling states that "social, recreational or sporting activity is not charitable, even if motivated by charitable sentiments or results in a benefit to the community". If this blanket statement is taken to be accurate it does not properly account for organisations such as The Australian Sports Foundation Ltd that for the past 25 years has utilised its deductible gift recipient status to provide over \$200mill to the development of Australian sport via discretionary grants to eligible organisations.

A broader and more considered view of 'public benefit' is required other than that provided in TR 2011/D2.

### **Charitable Purposes**

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?*

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



The draft Charities Bill of 2003 lists a number of charitable purposes that are highly relevant to sport and active recreation; they are the Advancement of Health and the Advancement of Social and Community Welfare. It is within these charitable purposes that the significant contribution community sport and active recreation makes to the health and well being of our communities needs to be clearly recognised and established.

### *Advancement of Health*

In Australia, we are fully aware of the threat our rapidly increasing incidence rates of lifestyle related diseases such as diabetes, cardiovascular disease, overweight and obesity pose to the health of our nation. In the word's of the previous Prime Minister John Howard "Australia is struggling as a nation with the challenge of obesity". (Howard, 2006)

The scope of the issue can be seen in all ages in our community. Between 1985 and 1995 the number of overweight 7–15 year olds almost doubled. The numbers of obese children has more than tripled. At the current rate, it is predicted that 65 per cent of young Australians will be overweight or obese by 2020. (Go for Your Life, 2007)

Being physically active can also improve mental wellbeing. Physical activity has been reported to help reduce anxiety; active people also report feeling less stressed or nervous. Physical exercise helps to counteract the withdrawal, inactivity and feelings of hopelessness that are a feature of depression as well as the duration and intensity of depressive episodes. Moods such as tension, fatigue and anger are all positively affected by exercise and exercising can improve the way people perceive their physical condition, athletic abilities and body image. (MHCA, 2005) (VicHealth, 2007)

Of these direct financial costs, the Federal Government is estimated to bear some \$1.4 billion. (Access Economics, 2006) It remains a dilemma for health practitioners why such a high financial and personal cost is tolerated in our community and by our governments when these illnesses and disease are preventable. Funding and support of strategies aimed at improving lifestyle and reducing risk factors is clearly an eminent approach and the community based sport and recreation organisations are key players in delivering these programs. Including sport and recreation as a defined public benefit under the Advancement of Health charitable purpose will demonstrate that the government is prepared to take a longer-term strategic approach to preventative health strategies.



### *Advancement of Social and Community Welfare*

In regards to the charitable purpose of the Advancement of Social and Community Welfare, the links between participation in sport and social and political trust and levels of social engagement are strong, sport can be a useful tool in building stronger community networks. (Delaney & Keaney, 2005)

The contribution sport makes to the community is recognised internationally. One-time United Nations Secretary-General Kofi Annan articulated the multi faceted influence sport can have. He spoke of its universal values and ability to bridge social, cultural and religious divides. He went on to describe the contribution to personal development and growth and its value to the wellbeing of whole communities and countries. (United Nations, 2006)

Of particular importance is the fact organised sport is a feature of the lives of many thousands of young people growing up in Australia. Involvement in sport and active recreation offers young people opportunities to form lasting friendships and learn social values and organisational skills that will serve them well in other areas of their lives. (VicHealth, 1999)

Sport and active recreation activities are also well recognised as being vital elements of rural community structure. For many regional communities, local sporting events provide a rare opportunity for locals to gather, or in the case of larger events against regional rivals, for neighbouring townships to interact. These gatherings are about people and communities coming together; to play, to talk and to share stories. (Driscoll & Wood, 1999)

Community-based sporting organisations provide the structures for addressing many of the social issues facing Australia. Issues such as racial vilification, equity, diversity, access for people with a disability, Indigenous Australians, new arrivals, cultural and linguistically diverse populations, older aged participants and young people for example are all being addressed by community clubs, organisations and associations in a positive manner.

Community sport and active recreation provides many opportunities for members of our society to meet, interact, develop and grow. Young people, people from culturally and linguistically diverse backgrounds and indigenous Australians face additional challenges in their developmental pathway that makes them vulnerable to social and structural disconnection. In these cases sport and recreation can provide an increased range of opportunities to connect with the community. (Department for Victorian Communities, 2004)

### *Recent Additions to Charitable Purpose*

It is noted that the 2003 draft Charities Bill included the Advancement of Culture and Advancement of the Natural Environment as new charitable

purposes. In particular the advancement of culture had not previously been recognised as a distinct area of charitable endeavour however the courts have accepted that purposes directed towards increasing the public appreciation of art, music and literature are charitable. The creation of this category also went on to recognise the role that culture plays in determining a national identity and enriching the lives of individuals and of society as a whole.

**vicsport** encourage such inclusions as culture into the charitable space and argue that if a charitable purpose were ever to be considered as shaping a national identity and enriching the lives of individuals and society then sport and active recreation certainly fit and model this requirement.

### **Australian Disaster Relief Funds**

*19. What are the current problems and limitations with Australian Disaster Relief Funds (ADRF's).*

Following the devastating 2009 Victorian Bushfires **vicsport** liaised with 38 sporting clubs that had been impacted by the fires. Damage estimates were collated and following consultation with the Victorian Bushfire Appeal Fund (VBAF) made a submission to the fund for \$5.39mill in relief funding for the clubs.

This application was approved in principle by the Fund however could not proceed as the purpose was not consistent with charitable law which at the time only allowed for funding to Individuals suffering distress. The law was subsequently changed to include the purpose of rebuilding community infrastructure however the revised law still excludes funding from being made directly to community groups such as sporting clubs. There are a number of significant issues relating to this:

- During the extensive fund raising process the Red Cross, State and Federal Governments (who created the Fund) did not make the public aware that there were limitations regarding how monies raised could be spent within the community. The Fund should have disclosed that the only individuals suffering distress could be supported and that organisations were not eligible to receive assistance. Why was information regarding the Funds limitations not made available to the public?
- Sporting clubs impacted by the bushfire received wide spread media attention and were highlighted and focused on by the Fund when documenting the degree of impact across communities. Full disclosure on how funds could be used would have given donors the capacity to



seek other ways in which to provide support to community groups they had an interest in supporting.

- Over \$20 mill was donated to the Fund from the AFL and Cricket Australia, this excludes money donated from countless other sporting and recreational clubs who contributed to the Fund. We comfortably assert that donating sporting bodies and many individuals operated under the incorrect assumption that some of their donations would be available to sporting groups and other community organisations requesting assistance. If sporting groups are to be excluded from accessing donated funds are donors ,who expected that some their money would be available to clubs, entitled to request a return of part, or all, of their donation?
- When donating in future charitable causes or relief efforts all donors should carefully consider where their money can and will be allocated so that it is consistent with the donors wishes. The best avenue to support may not be through charitable funds.

The potential use of ADRF funding should be extended to provide more flexibility and increase the scope of allowable activities to include the funding of any project that will help to recover and rebuild the community prior to the disaster occurring.

## Summary

The vital role the sport and active recreation sector plays in promoting healthy and vibrant communities needs to be better understood and more widely recognised by governments. As has been demonstrated in this submission, sport and active recreation plays a much broader role than just providing physical activity opportunities. It weaves the social fabric on which our communities are built, promotes health and wellbeing, reduces the economic impact of lifestyle related diseases (which alone demand significant proportions of the State and Federal health budgets). Community sport and active recreation requires greater recognition and support from all levels of government, including recognising sport and recreation within the statutory definition of charity.



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