



St Vincent de Paul Society
NATIONAL COUNCIL *good works*

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Submission to Treasury on a Statutory Definition of Charity

The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 148 countries around the world. In Australia, we operate in every state and territory, with more than 50,000 members, volunteers, and employees. Our vision is to offer ‘a hand up’ to those who are marginalised by structures of exclusion and injustice.

The work of the Society is primarily in provision of services, which are run through state-based programs in every state and territory. The Society’s programs target (among other groups) people who are homeless and insecurely housed, migrants and refugees, people living with mental illness or physical disability, and people experiencing poverty. The Society also engages in significant advocacy for those we serve, at both state and national level.

On 8 April 2013, the Treasury commenced public consultation on a Bill creating a statutory definition of charity. The Society has previously made a submission on the same issue.¹ The Society’s member states and territories and National Council have consulted, and the Society welcomes the opportunity to contribute the current submission.

1. The work of the entities comprising the Society

The Society’s driving mission is to live the gospel message by serving Christ in the poor with love, respect, justice, hope and joy, and by working to shape a more just and compassionate society. Our vision is to be a caring Catholic charity offering “a hand up” to people in need.²

The Society comprises a federated group of not-for-profit entities around Australia, which provide a very wide range of services to disadvantaged people. This includes:

- 1) **Housing** services to those experiencing housing deprivation. This covers a very wide variety of programs, including food, information, and company for rough-sleepers; case management for people transitioning out of homelessness; mid-term youth housing; and long-term accommodation for families;
- 2) **Providing goods**, including food supplies, clothing, household goods, bill and rent support, and money, as well as budgeting help. Many goods are free, others we offer at affordable prices through our shops;
- 3) **Counselling**, and an emergency help line to offer immediate support and information to anyone seeking it;
- 4) **Friendship** services, including home visitation, prisoner visitation, and various other peer/ mentor programs;

¹ See treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2011/A%20Definition%20of%20Charity/Submissions/PDF/St%20Vincent%20de%20Paul.ashx.

² See vinnies.org.au/mission-and-vision-national?link=212.

- 5) **Education** programs, which we both provide and support in a variety of contexts, including scholarships and homework centres;
- 6) Volunteering and **employment** services; and
- 7) **Advocacy** across all of the above areas.

In addition to general programs and work, the Society also runs many programs which target *particular* disadvantaged groups. Such programs may cut across many aspects of the disadvantaged person's life (social, financial, housing, and educational), including services for:

- 1) **People living with mental illness**, including targeted gambling and addiction services, and tailored housing services;
- 2) **Refugees and Indigenous Australians**, to whom we provide particular household and educational support;
- 3) **Survivors of natural disaster**, for whom the Society runs specific appeals;
- 4) **Older Australians**, who are helped by retirement housing services the Society provides, as well as aging-in-place assistance (home modification);
- 5) **Survivors of family violence**, who receive specialised services, as well as some women-specific programs; and
- 6) **People living with a disability**, who benefit from specialised further education and training programs we run, and special employment opportunities.

2. The proposed definition of charity

As per section 5 of the Bill:

charity means an entity:

- (a) that is a not-for-profit entity; and
- (b) all of the purposes of which are:
 - (i) charitable purposes (see Part 3) that are for the public benefit (see Division 2 of this Part) ...

As such, there are three criteria to be a charity under the Bill: the entity must be not-for-profit; all its purposes must be charitable; and all its purposes must be for the public benefit.

Charitable purposes

Under proposed Part 3, s 11, charitable purposes include, relevantly for the Society, the advancement of:

- (a) Health, including mental health;³

³ Explanatory Memorandum, 25.

- (b) Education;
- (c) Social or public welfare, including:⁴
 - General relief of poverty, distress, and disadvantage;
 - Assistance to specific groups of people experiencing disadvantage, including:
 - The aged;
 - Indigenous people;
 - People living with disabilities;
 - Refugees;
 - People experiencing housing deprivation; and
 - People who are disadvantaged in the labour market;
 - Assisting after a disaster; and
 - International aid;
- (f) Reconciliation, mutual respect and tolerance between groups of individuals that are in Australia, including promoting restorative justice, and ending discrimination;
- (g) Human rights;
- (k) Any other purpose beneficial to the general public that is within the spirit of any of the purposes mentioned above; and
- (l) Advocating for or against a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:
 - in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned above; or
 - in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned above.

Public benefit

In addition to its purposes being charitable, an entity’s purposes must all be for the “public benefit” to qualify as a charity. What the “public benefit” is has been defined under the Bill.

In addition to some purposes meeting the definition of “public benefit” under the Bill, certain purposes are statutorily *presumed* to be for the public benefit. These purposes cover all activities relieving illness (including mental illness), meeting the needs of the aged, relieving poverty, advancing education, and advancing religion.⁵

The Society is pleased that presumption of public benefit for these activities has been maintained, in line with our previous submission.

⁴ Explanatory Memorandum, 26.

⁵ Exposure Draft, s 7.

3. How the definition applies to us

All of the Society's entities are charities under the law as it now is. Given the stated object of the Bill to articulate the common law, rather than to change it, our assumption is that all of our entities will remain charities under the proposed Bill.

It is clear that, in any case, each of the Society's entities easily meets the new, statutory criteria for "charity". All our entities are not-for-profit, and all operate for a number of the listed charitable purposes, including relief of poverty, promotion of human rights, assistance with mental health, services to refugees, and help for people disadvantaged in the labour market. All entities also operate for one or more presumed public benefits: relieving illness (including mental illness), meeting the needs of the aged, relieving poverty, and advancing education.

There are two areas of the Society's work that were of particular concern to us in our previous submission, which we will now discuss.

Vinnies Centres

We, along with others, were concerned that an "exclusive charitable purpose" test might rule out entities carrying on a business, where any monetary profits were fed back to the charity. Vinnies Centres (also known as stores or shops) seek to provide low-cost goods to disadvantaged people, provide volunteering and employment opportunities for the unemployed and underemployed, and raise funds for other Society programs.

The proposed legislation does not exclude such entities from being charities. Although "all" purposes of an entity must be charitable, and for the public benefit, under the new legislation a charitable purpose can legitimately be furthered by providing funds to other institutions that advance that charitable purpose.⁶ Thus, Vinnies Centres will be considered to have charitable purposes, as any profit from the 'business' goes solely to funding other programs with charitable purposes.

The National Office, and other advocacy

Advocacy plays a very large part in the work of many charities, including peak bodies. The Society's National Office has been given the responsibility of advocating on behalf of the Society. Other entities within the Society advocate from time to time.

However, there were concerns raised in our last submission at the suggestion to remove advocacy work from the definition of a "public benefit". The Society argued that the

⁶ Explanatory Memorandum, 17 [1.36].

Aid/ Watch case⁷ lends support to our belief that advocacy advancing charitable purposes for public benefit, even if that advocacy is for a “political object” such as legislative reform, should fit fairly and squarely within any definition of charity.

It is pleasing to see proposed subsection 11(1)(l), which states that it is a charitable purpose to promote [oppose] a change to any law, policy or practice, here or overseas, if the change is in furtherance of [in opposition to] one or more of the other charitable purposes.

All of the Society’s advocacy is rooted within the charitable purposes of advancing health, education, social and public welfare, alleviating poverty, providing assistance to particular disadvantaged groups, and promoting tolerance and human rights. As such, there is no doubt that our advocacy work will continue to qualify our entities for charitable status.

4. Sufficient section of the general public (section 6(4))

All of the Society’s services fall within one or more of the presumptions for public benefit (relieving illness, the needs of the aged, or poverty, or advancing education). As such, the more complex test for public benefit will not apply to us. However, we had previously opposed one element of that test: that requiring that the public benefit be directed to a ‘sufficient number of people in the general community’.

We are pleased that this has been replaced with the requirement that the purpose be directed to a ‘sufficient section’ of the public calculated by reference to the number of people to whom the purpose is relevant.⁸ This seems to avoid the risk we raised in our last submission: that the requirement had the potential to create a bias against smaller, local, community-based entities with a smaller reach, or against entities with a focus on a small number of disadvantaged people (for example those with highly complex needs).

We take the revised section, along with the explanatory memorandum, to mean that limiting the benefit to a very small group of individuals will not negate the public nature of the benefit, so long as the limitation is “justified and reasonable having regard to the nature of the benefit”.⁹ this would include limiting a homelessness service to rough-sleepers within a particular park, or limiting a mental health service to females aged 25-40 who are exiting prison. Moreover, none of these benefits would be seen as “private” (and therefore not public), as services are provided to members of the public (albeit those fulfilling certain conditions of disadvantage), rather than a private or exclusive group.

⁷ *Aid/ Watch Incorporated v Commissioner of Taxation* [2010] HCA 42.

⁸ Exposure Draft, s 6(4). In line with the Board of Taxation review of the 2003 Charities Bill.

⁹ Explanatory Memorandum, 20.