

Our Ref: QM:Charity.dec2011

Reply to: Head Office
 Bentleigh Branch
 Cranbourne Branch
 Rosebud Branch

Your Ref:



9 December 2011

The Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

By Email: NFPReform@treasury.gov.au

Dear Sir or Madam,

**RE: A Definition of Charity
Consultation Paper October 2011**

Peninsula Community Legal Centre (PCLC) is a not-for-profit organisation that has been providing free legal services to its community for over 30 years, with a mission "To empower and support disadvantaged community members of the South East and Westernport Region to use the law and legal system to protect and advance their rights and broaden their awareness of their rights and responsibilities."

PCLC's staff and volunteers provide clients with free and accessible legal services, particularly the most disadvantaged and marginalised members of our community who may otherwise be unable to access legal assistance. PCLC's client's life circumstances can be severely affected by their legal problems and they are often not able to access other legal services. Being able to obtain free legal assistance can often help our clients move on with their lives and become active participants in their local communities.

PCLC also has a strong commitment to empowering the broader community through community development and community legal education activities, which are viewed as a core function of the Centre. The Legal Centre is viewed by the local community as its key legal resource, through organising and participating in forums about legal issues, providing customised workshops and reporting on policy issues that affect the community, including through local media. Across the community, PCLC endeavours to improve understanding of legal issues through its education activities, as well as supporting community groups and participating in relevant law reform activities.

In particular PCLC provides support to not-for-profit groups through provision of advice pertaining to legal structures; assistance in obtaining legal status through incorporation; and workshops to assist in understanding legal requirements, governance and taxation implications. PCLC is itself a not-for-profit organisation and has attained 'charitable' status under the common law definition of charity. PCLC is therefore well placed to contribute to the discussion concerning the introduction of a statutory definition of 'charity' and supports the notion of the introduction of such a statutory definition.

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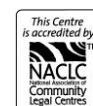
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**We gratefully acknowledge
the financial assistance of:**

- Commonwealth Attorney-General's Department
- Department of Justice (Vic)
- Consumer Affairs Victoria
- Victoria Legal Aid
- City of Casey
- City of Glen Eira
- City of Kingston
- Frankston City Council
- Mornington Peninsula Shire

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Definition of Charity

At present the common law definition of charity is reliant upon the four categories expounded in Pemsel's case¹, namely:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; and
- other purposes beneficial to the community not falling under any of the preceding heads.

The public benefit requirement requires the purported charity to prove that its purpose is for the public benefit. PCLC agrees with the rationale contained in the consultation paper², that a statutory definition would create more clear and consistent principles for not for profit organisations to work with and therefore reduce confusion and the capacity for legal disputes to ensue.

PCLC generally supports the meaning of 'charity' and 'charitable purposes' as enunciated in the *Charities Act 2006* of England and Wales. For convenience a copy of the relevant sections are annexed hereto. The statutory definition in this case maintains a public benefit test, which PCLC considers to be central to the determination of charity, and also includes several examples of what will constitute 'charitable purposes'. Integral to the definition is that the list of examples is not exhaustive and therefore does not exclude not for profits which do not neatly fit within a prescribed definition, but may be nevertheless existing for 'charitable purposes'.

PCLC considers it imperative that the definition allow a degree of flexibility in the determination of the meaning of 'public benefit' in order to accommodate the diversity of the not for profit sector. Given the time required to amend legislation, it is important to introduce legislation which is robust and capable of adapting to changes within the community, without the continual need to recourse to legislative change. In the diverse not for profit sector it is foreseeable that what the public consider to be a 'charitable' organisation will continue to expand in the future.

Disqualifying Activities

The 2003 Charities Bill provided that political advocacy was a disqualifying activity if its purpose was more than 'ancillary or incidental' to the usual functioning of the organisation. This reflected the common law position prior to the decision by the High Court in *Aid/Watch*. In *Aid/Watch* the High Court held that the generation of public debate by lawful means, concerning matters arising under one of the established heads of charity, is itself an activity beneficial to the community and that there is no general doctrine in Australia that excludes political purposes from being charitable.

The suggestion within the Consultation Paper which provides for the Charities Bill definition to be altered to remove activities of the type which are attempting to change the law or government policy from being disqualifying activities is supported by PCLC. The definition should also provide that a charity can engage in such political activities but must nevertheless have a purpose that falls within an existing head of charity. This will enable charities to engage in political activities, so long as those activities are in furtherance of their charitable purposes.

¹ *Commissioners for Special Purposes of Income Tax v Pemsel* [1891-1894] All ER Rep 28

² Commonwealth of Australia, *A definition of Charity*, Consultation Paper, October 2011, p.4



Peninsula Community
Legal Centre inc

In addition, PCLC supports the modification of the definition to prevent a charity from engaging in party political activities even if the activity is ancillary or incidental to its charitable purpose. This would see the incorporation of a feature included in overseas jurisdictions such as England, Scotland and Canada.

PCLC thanks you for the opportunity to provide input and looks forward to involvement in the future stages in the development of a statutory definition of charity.

Yours faithfully,

HELEN CONSTAS
CHIEF EXECUTIVE OFFICER
PENINSULA COMMUNITY LEGAL CENTRE INC.

Enc.0