

BOARD OF TAXATION

CONSULTATION ON THE DEFINITION OF A CHARITY

1. What is the name and contact details of your charitable organisation?

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2. What is the dominant (main) purpose/s of your charitable organisation?

The Australian Caption Centre is a not-for-profit, Public Benevolent Institution that was set up in 1982. Our objectives are:

- (a) to establish and maintain an organisation for the provision and promotion of information services principally but not exclusively for the benefit of people who suffer disability for health, education, social, financial or similar reasons;
- (b) to establish and maintain an organisation for the promotion of a Caption Service principally but not exclusively for the benefit of persons with impaired hearing;
- (c) to provide Caption Services to the television industry and to any national or other television service or operation and also to provide film tape, disc or other reproducing medium in any caption form;

(Australian Caption Centre Constitution adopted Oct 2002)

We meet these objectives by ensuring that captioning is as widespread as possible through promoting captioning, providing an information service about captioning, developing new methodologies and technologies for captioning and running a caption production service mainly for Deaf and hearing impaired people via television stations, video distributors and other media. The Australian Caption Centre is Australia's largest captioning organisation, performing captioning work for the ABC, SBS, Nine and Ten networks. We also undertake a major role pioneering new technology and adapting technology to changes in the media. We also caption videos, television commercials, DVDs and can provide American Line 21 captions.

Captions are a recreation of a soundtrack in English in word form. They are similar to subtitles, except they include sound effects, colouring and positioning to provide a visual version of the total soundtrack. Captions appear on television in 'closed' format where they are decoded using a teletext television (via page 8-0-1), on video in both closed and 'open' formats (open captions are permanently on the picture and do not require any decoder to watch them).

Captions are used mainly by Deaf and hearing impaired people. The Australian Bureau of Statistics identified 1.7 million Australians with significant hearing loss in its 1995 study. Based on a 2001 SA Health Omnibus study, there are at least 750,000 people currently watching captioned television in Australia.

Captioning is a national service; consequently the Australian Caption Centre provides its information and other services on a national level. The Australian Caption Centre employs over 165 staff Australia-wide and has offices in Sydney (Head Office), Melbourne, Brisbane and Perth. News captioners are also located in television studios across the country.

We provide a free information service to the public, community organisations, industry and Government. This ranges from the freecall help line (1800 777 801), information kits about captioning, brochures, website (www.auscap.com.au), display stands and giving community talks across the country.

The Australian Caption Centre works closely with community organisations, particularly Deaf and hearing impaired organisations (who are the main users of captions), including Deafness Forum and Australian Association of the Deaf.

Running a captioning operation is crucial to our activities, including those concerned with informing people about captioning. Captioning is highly technical and in order to carry out an effective service, the Australian Caption Centre needs to be up-to-date with developments in this area. There are many opportunities for cost savings and efficiencies. To fulfil our mission we need to identify and encourage the proliferation of these. The best way of achieving this is to caption programs. Also – while the users of captioning undertake lobbying activities for more captioning – the Australian Caption Centre is needed by Government and other organisations to provide a perspective on practical ways to caption, cost impacts of different policy options, equipment and training needs. Again, this can only really be provided by an organisation that is undertaking captioning work.

The Australian Caption Centre was formed in 1982 with the assistance of a Government grant. Since then we have been mainly self-sufficient, generating revenue from providing the captioning service. In this sense the Australian Caption Centre is quite unusual in that it derives its main income from some of its benevolent work, rather than having a third-party income stream that is then used to fund its benevolent work.

The Australian Caption Centre has therefore, since its inception, successfully aimed towards self-sufficiency. Facilitating access for Deaf and hard-of-hearing people to audio/visual media is 'funded' by the respective industry paying for the captioning work to be done.

1. What are your principal reasons for making a submission on the workability of the Charities Bill 2003?

- To clarify that the overall purpose of the charity should be the issue that is evaluated and the sole basis for determining whether an organisation is undertaking charitable purposes or not.
- To clarify that charity can pursue purely commercial opportunities, but it should consider the most appropriate corporate structure to pursue that activity.

- To reinforce the idea that the dominant purpose is to support a charitable purpose
- To reinforce the idea that making a profit (surplus) does not inherently disqualify an organisation from altruistic, charitable or public benevolent purpose.

2. Is your organisation currently endorsed with the Australian Taxation Office as an Income Tax Exempt Charity (ITEC)? If yes, do you assess that you would still be entitled to endorsement on the basis of the Charities Bill 2003? If not, why? If you are unsure, please explain why.

No, it is not an ITEC.

3. If you are not an endorsed ITEC, are you entitled to exemption from income tax for any other reason? Do you think that the Charities Bill 2003 would affect your entitlement to income tax exemption? If you are unsure, please explain why.

The Australian Caption Centre is a public benevolent institution and is entitled to income tax exemption on this basis.

Although the Charities Bill 2003 is not specifically about PBIs, it does reflect the general approach taken by the Government towards the not-for-profit sector as a whole, particularly with regards to treatment of income sources and structuring of activities. Whilst the Bill does refer to a “dominant” purpose and other activities being ancillary to or supporting that dominant purpose, it is still not clear exactly how this will be applied in practical terms. The Australian Caption Centre is concerned that its model for sound management and self-sufficiency could be undermined by an attempt to categorise each of its activities as “ancillary/supporting” or “altruistic”. The important issue is that of the overall purpose of the organisation, which is altruistic, not wealth generation.

4. Would the Charities Bill 2003 impose any additional administrative burden on your charitable organisation? How? What additional compliance costs do you anticipate?

None.

5. In your assessment, does the Charities Bill 2003 provide the flexibility to ensure the definition can adapt to the changing needs of society?

The main thrust of the Bill is to define a “dominant” purpose for a charity and then it describes other activities as being “ancillary or supportive”. Whilst the Australian Caption Centre is pleased that a strict, inflexible numerical definition of “dominance” is not included (which would be very inflexible), there is still some concern that the interpretation of the dominant purpose term is very wide.

For example, the Australian Caption Centre has a very clear charitable dominant purpose, but a number of the activities that it undertakes to achieve these purpose have commercial competitors and there is always the possibility that it could be interpreted that these activities are not charitable because a commercial entity is attempting to also undertake them (but with completely different motives and outcomes).

The Australian Caption Centre does “fit” the traditional model of a charity generating/receiving funds from one source and then applying those funds to a separate altruistic purpose (such as raising money through donations and then funding programs from that). The income-generating activities that the Australian Caption Centre undertakes are altruistic in themselves because of both the nature of the activities and the approach that the organisation takes.

The mistake that is often made is that because some charities/Public Benevolent Institutions operate like businesses, they are assumed to be the same as businesses.

Many organisations, including charities and Public Benevolent Institutions use the practices of businesses to operate efficiently. Boards impose income targets, surplus requirements and other measures of efficiency. That is because they are good, proven methods of ensuring that an organisation is running effectively and using its resources properly. Similarly, a well-run organisation is more likely to attract good quality staff and have stronger relationships with its stakeholders (including its clients, government, community and supporters).

The key issue is “What is the underlying purpose of the organisation?” In the case of charities/Public Benevolent Institutions that purpose is quite different from that of for-profit organisations.

6. If the public benefit test were further strengthened by requiring the dominant purpose of a charitable entity to also be *altruistic*, would this affect your organisation? If so, how?

It could be argued that the charitable purposes listed in Part 3 of the Bill inherently include a notion of altruism. The main issue would be in how altruism is ultimately defined.

This flows back to the dominant purpose argument and the approach taken by the organisation, particularly if it is contrasted to a commercial competitor. The following table illustrates a number of activities undertaken by the Australian Caption Centre in its day-to-day operations and shows how a commercial competitor would engage in different behaviour because it is trying to create wealth for its shareholders as its dominant purpose.

Australian Caption Centre	Commercial Competitor
Reduce the cost of captioning over time to reduce potential barriers to captioning to make it more accessible, even in niches where it has a monopoly.	Attempt to protect high prices, particularly in areas where there is little competition in order to maximise profits.
Seek out new areas, such as hospitals,	Ignore niches that are not profitable or do

education and cinema where there is little or no captioning and develop captioning initiatives in these areas, often with little or no commercial return.	not block competition from establishing.
Maintain quality of product as a fundamental need of the consumers of captioning, even in the environment of reducing prices.	Deliver minimum acceptable quality and engage in activities to “push” the quality standards lower where there is the potential for cost savings and profits.
Engage in major training and development of staff and technology to maintain quality and seek cost savings so that prices can be reduced.	Look to others to engage in major training and train only where necessary.
Seek cost savings so that prices can be reduced to make captioning more financially attractive and widespread.	Seek cost savings to improve margins and maximise shareholder return.
Promote the use of captioning to encourage its use, even when competitors are supplying those services.	Promote the company and its services and do not promote any competitors.
Work cooperatively with other captioning organisations to ensure quality standards are maintained and to share research and knowledge to make captioning more accessible.	Guard all research and knowledge as commercially confidential and minimise any advantages that competitors can gain.
Seek to ensure that everything is captioned, even if there is no commercial margin or return.	Only operate in profitable niches or to gain competitive advantage.

The major concern for the Australian Caption Centre in its day-to-day operations would be that the Australian Caption Centre charges for its services, although it engages in highly altruistic behaviour through:

The other problem with bringing altruism into the definition is that it tends to limit charities from pursuing opportunities that are not altruistic in nature, but would benefit the charity as an organisation and ultimately lead to further altruistic outcomes (particularly if the opportunity assured the long-term future of the charity existing as an entity).

Working in the high-tech, ever-changing world of electronic media, and faced with an expanding aged population, the Australian Caption Centre needs the flexibility to respond to changing circumstances. Definitions based on the nature of individual activities would restrict this flexibility. The nature of our benevolent work and the environment that we operate in is much more complex than that, yet our definitional approach can still hold true.

For example, captioning is a highly technical specialist industry with a small number of organisations providing captioning services around the world (with a mix of not-for-profit and commercial operations). Captioning is supplied to Deaf and hearing impaired consumers via commercial entities such as television stations, video distributors and advertising agencies. As captioning is part of the final presentation of the product it is not isolated from other parts of that product. For example, the Australian Caption Centre already engages in supplying Internet transcripts of programs utilising the caption information. Similarly as captioning often involves working with the final version of the product, it is a logical point to engage in data protection, backup, archiving services. In fact, in some cases the clients of a

captioning service expect some of these ancillary “products” as part of the overall product “package” and the Australian Caption Centre would be unable to successfully operate in the market without offering those services.

Some of these derivative products are very lucrative and attract considerable commercial interest. Just because the Australian Caption Centre is a PBI should not exclude it from exploiting these opportunities. In fact, we actively pursue them as potentially high-yielding revenue sources. Ultimately, however the purpose of the Australian Caption Centre does not change. It is still operating to carry out a benevolent purpose, not to create shareholder wealth.

The Australian Caption Centre has explored setting up for-profit subsidiaries to cover some of these opportunities and modified its constitution accordingly. However, the reasoning behind this is from practical investment terms, not some attempt to separate “commercial” from “altruistic”.

Under its not-for-profit structure it cannot offer equity-sharing arrangements with a for-profit partner, but it seems absurd to throw away the opportunity because of a corporate structure and taxation issue, particularly if that opportunity could generate significant revenue to fund its benevolent activities. By setting up a tax-paying subsidiary, the Australian Caption Centre can take on equity partners and pay dividends to all of the shareholders, including the Australian Caption Centre. Such dividends will then be utilised for furthering the aims of the PBI.

Our argument that a Public Benevolent Institution has public benevolence as its overriding purpose, in the same way that a for-profit organisation has wealth creation as its overriding purpose. This ultimate purpose should be the basis for the definition still holds true in the above case as the hypothetical commercial subsidiary is treated as a wealth creation vehicle and is taxed accordingly.