

Synopsis and core comments

The Australian Sports Foundation Ltd (ASF) is a not for profit company limited by guarantee that operates within the sport and community segment of the Australian not for profit sector. Its object is *to support the development of sport in Australia* and it is listed in the *Income Tax Assessment Act 1997* as a deductible gift recipient to undertake its work for the public benefit of Australians.

The ASF supports the not for profit reform agenda. In particular the intent to enable a statutory definition of charity that meets the needs of contemporary Australian society and reflects the diversity of organisations that operate for the public benefit is important. Equally, the intent to consult with states and territories to improve uniformity on this matter between jurisdictions is supported.

The submission provided by the Australian Sports Foundation Ltd (ASF) deals primarily with the fourth head of charity – “Other purposes beneficial to the community not falling under any of the preceding heads”. In particular, the ASF submission will focus on the planned ‘public benefit’ test as it may relate to determining if sport and sporting purposes are to be charitable.

Comment is offered on three aspects.

1. The opportunity to classify the work of the ASF as being for the public benefit and thereby determine the purpose of the ASF to be charitable.
 - **Noting that the consultation paper states that the intent is to draw on the recommendations of the *Inquiry into the Definition of Charities and Related Organisations* the ASF seeks recognition of its status as charitable taking due consideration of recommendation 19.**
 - **As a charity, this would open the door for a greater number of ancillary funds to be able to distribute funds to the ASF. The benefits for the development of Australian sport through an increased funding supply able to be issued by the ASF in the form of discretionary grants would be significant.**
 - **This in turn would further enhance the charitable status of the ASF and the extent of public benefit resulting from the services it provides.**
2. The determination of aspects of sport as a charitable purpose and the need to clearly create guidelines and an education strategy for its implementation and interpretation.
 - **The practical application of such a recommendation, if adopted and incorporated into the definition of charity would appear to be faced with discretionary difficulties.**
 - **It is also not clear on what will happen to the existing income tax exemption for sporting organisations in general, based on existing taxation law. For example, will this exemption be retained by those sporting bodies that are deemed not to have a charitable purpose, once the new definition of charity is established and enacted?**
 - **The ASF is of the view that any changes that may see sport or elements of it become charitable at law would need to be accompanied by clear and transparent guidance for interpretation and implementation, together with a carefully crafted education campaign to ensure the intent is readily understood by the sector.**

3. The ability of the ASF to assist with distribution of Australian Disaster Relief Funds.
 - **The ASF suggests that determination of the purpose of the ASF as charitable in consideration of its public benefit would resolve this and enable the flow of funds to emanate from collections agencies to the ASF and facilitate sport recovery.**
 - **Alternatively, the ASF suggests that consideration could be given by the Government to enacting a special authority to enable those organisations that are normally prevented from distributing to the ASF for the purpose of sport disaster recovery because of constituent documentation, legislation, or status as a deductible gift recipient, to do so in the interest of public good.**

Submission – re Consultation paper – “A statutory definition of charity”

The submission provided by the Australian Sports Foundation Ltd (ASF) deals primarily with the fourth head of charity – “Other purposes beneficial to the community not falling under any of the preceding heads”. In particular, the ASF submission will focus on the planned ‘public benefit’ test as it may relate to determining if sport and sporting purposes are to be charitable.

As a general introduction, sport is an integral part of Australian society and indeed is often regarded as the glue that holds the fabric of society together, particularly in rural and regional Australia. Within the not for profit sector, sport is a significant contributor in terms of employment, financial returns to their communities, volunteering opportunities, personal development and participation. Outcomes assist health and also the social cohesion within communities including the minimisation of anti-social behaviour.

Sport, as an industry, responds in times of adversity and disaster. Within contemporary Australian society sport is regarded as a positive public influence, providing community leadership, camaraderie, motivation and a sense of national, regional, local and personal belonging.

Within this framework, comment is offered on three aspects.

Firstly, a request that the purpose of the Australian Sports Foundation Ltd be regarded as “Charitable” as it is deemed to be of considerable public benefit.

- The Australian Sports Foundation Ltd was incorporated on 18 February 1986 as a company limited by guarantee. It was an initiative of the Australian government.
- Its purpose, as stated in the company Memorandum and Articles of Association is to ‘support the development of sport in Australia’.
- With effect from 18 February 1986, the ASF was listed as a deductible gift recipient in the *Income Tax Assessment Act 1997 (as amended)*, considering that sport could not be regarded as a charitable purpose at that time.
- The ASF was therefore created to benefit the generic development of Australian sport, with objectives designed to increase opportunities for Australians to participate in sport and/or excel in sports performance.
- The ASF continues to build awareness in the sports sector of the importance of partnerships involving sport, business and the broader community. Rather than working solely with sporting organisations, the ASF works with organisations that have a sporting objective associated with their incorporated status.
- To reinforce this, the work of the ASF has been named the *Sport Incentive Program*. Through contact with sporting clubs, associations, national bodies and schools, and through establishing links with local government, trusts, foundations and community bodies, the ASF works to promote understanding of the benefits of its tax deductible services and to develop a ‘self-determinant’ culture within organisations.
- The ASF is uniquely the only deductible gift recipient listed in the *Income Tax Assessment Act 1997* that has the ability to support the development of Australian sport in this manner.
- Since incorporation in 1986, the ASF has contributed approximately \$200m to the development of Australian sport in the form of discretionary grants to eligible organisations to enable them to achieve value-adding project outcomes. Currently there are nearly 580 fundraising projects registered with the ASF.
- All funds that make up discretionary grants issued by the ASF are received by the ASF in the form of philanthropic donations or distributions from ancillary funds.
- Arguably, the ASF is achieving a significant public benefit through the services it provides to Australian society and this purpose should be regarded as charitable.

- However, the consultation paper also refers to the core definition in the *Charities Bill 2003* of the definition of charity. Government bodies are excluded from having a charitable purpose under this Bill.
- The *Inquiry into the Definition of Charities and Related Organisations* in its published report in 2001 considered if Government bodies can be charities at Chapter 28 of its report. The chapter commented on the question of control to determine if a body is a government body and also if it is expressly designated as a government body by statute.
- While operating solely as a *Corporations Act 2001* company since 1986, changes to the *Commonwealth Authorities and Companies Act* in 2009 captured the ASF as a Commonwealth Company due the fact that its Memorandum and Articles of Association stipulate that the Minister for Sport must appoint the Board of Directors.
- It is not clear if the ASF as a recently defined Commonwealth Company meets the definition of a government body. It is not a Commonwealth Agency or Commonwealth Authority.
- This is the only element of control exercised over the ASF by Government as it is not expressly designated as government body by statute and it is not funded by government through appropriations or other means. It does receive support from government in the forms of resources provided free of charge.
- Recommendation 19 in Chapter 28 of the *Inquiry into the Definition of Charities and Related Organisations* said that the current exclusion of government bodies from charity is appropriate. However it added that further clarification of the rationale for not accepting government bodies as charities is needed.
- It is considered that the dominant purpose of the ASF when considering the public benefit test is charitable. This would have been the case without question until 2009. From 2009, the impact of amendments to the *Commonwealth Authorities and Companies Act* may confuse this interpretation based on recognition of an element of control by government over the operation of the ASF. However the ASF could not be seen to be carrying on the ordinary business of government and as stated earlier, it is not a department, agency or authority of government.
- **Noting that the consultation paper states that the intent is to draw on the recommendations of the *Inquiry into the Definition of Charities and Related Organisations* the ASF seeks recognition of its status as charitable taking due consideration of recommendation 19.**
- **As a charity, this would open the door for a greater number of ancillary funds to be able to distribute funds to the ASF. The benefits for the development of Australian sport through an increased funding supply able to be issued by the ASF in the form of discretionary grants would be significant.**
- **This in turn would further enhance the charitable status of the ASF and the extent of public benefit resulting from the services it provides.**

Secondly, a more general commentary is offered on the public benefit test to be applied to the fourth head of Charity, particularly is it relates to sporting purposes.

- The fourth head of charity is “Other purposes beneficial to the community not falling under any of the preceding heads”.
- Ruling TR 2011/D2 outlines purposes which under common law have been held not to be charitable. These include sporting, recreational or social.
- The consultation paper questions whether these purposes that have been found not to be charitable should now be listed as ‘disqualifying purposes’.
- The *Inquiry into the Definition of Charities and Related Organisations 2001*, recommended that the encouragement of sport for recreation for amusement or competition should not be

charitable. However the Inquiry recognised that such purposes may be charitable if connected with a recognised charitable purpose, such as education or health care.

- **The practical application of such a recommendation, if adopted and incorporated into the definition of charity would appear to be faced with discretionary difficulties.**
- For example, a rowing club associated with an educational institution (school or university) would appear to be able to be determined as having a charitable purpose if the recommendations of the *Inquiry into the Definition of Charities and Related Organisations 2001* are incorporated in the definition of charity. The same club, on a stand-alone basis would not.
- A community group may be incorporated as a club for competing in a basketball competition. Following the recommendations of the *Inquiry*, this club may not be determined to be charitable. The same club may also conduct programs to introduce new participants to the sport (healthy outcomes), train and develop officials in the region (educational purposes) or for athletes with a disability. All of these activities could be regarded as of significant public benefit and be charitable. Discretion in determining the principle activity of the club would be required to assess its status as a charity.
- I note that New Zealand case law is seeing an increasing number of clubs, sporting organisations and institutions have charitable status determined on appeal in similar circumstances to the one above.
- The Crawford Committee review of Sport conducted in 2008 had a term of reference (no. 5) relating to tax incentives to encourage increased participation in sport and more funding for sport. Of the 85 public responses to this term of reference, a majority called for changes to taxation law so that participating in sport could be offset by the ability to claim membership as a personal deductible expense.
- There appears to be a degree of confusion in the sport and community sector about exactly what charitable status for sport may mean. For example, some organisations have mused that that charitable status would give automatic approval for participants to claim personal deductible expenses for membership and participation costs. Others have suggested that this would give them approval as a deductible gift recipient and therefore enable the collection of tax deductible gifts.
- The majority of sporting and community organisations are volunteer based and a number are not incorporated. Composition of committees and boards change frequently at season's end.
- **It is also not clear on what will happen to the existing income tax exemption for sporting organisations in general, based on existing taxation law. For example, will this exemption be retained by those sporting bodies that are deemed not to have a charitable purpose, once the new definition of charity is established and enacted?**
- **The ASF is of the view that any changes that may see sport or elements of it become charitable at law would need to be accompanied by clear and transparent guidance for interpretation and implementation, together with a carefully crafted education campaign to ensure the intent is readily understood by the sector.**

Thirdly, the ASF would like to offer comment on section 2.3.2 of the consultation paper, relating to Australian Disaster Relief Funds.

- In times of disasters, a number of organisations are activated to provide assistance. These include local emergency services, media, government, charities, collections agencies, deductible gift recipients and the philanthropic sector.
- The immediacy is to establish programs and mechanisms that can provide relief from the disaster.
- The recovery phase, which may occur after relief efforts and trauma management have become established form a longer term strategy to renew the infrastructure of affected communities.

- This includes sporting facilities and as most disasters are localised, the effect on communities of the destruction of sport infrastructure can have a devastating social, emotional and physical effect.
- Australians have shown incredible generosity in times of disaster and the system of collection of support including donations appears well structured.
- The ASF is concerned that it has appeared that some difficulties have existed in distributing funds collected for the recovery of sporting facilities and equipment.
- Charities that find themselves the custodians of donated funds following a disaster, may have difficulty in providing support for sport recovery as sport is currently not a charitable purpose. This may be due to their constituent documentation, legislation, or their status as a deductible gift recipient.
- The ASF is ideally placed as the only organisation with DGR status specifically with the charter of supporting the development (recovery) of Australian sport.
- As per the dot point at the top of this page, some organisations holding contributions collected for sport recovery, are unable due to their respective status to distribute to the ASF and thereby start the recovery flow of funds to where it is needed.
- **The ASF suggests that determination of the purpose of the ASF as charitable in consideration of its public benefit would resolve this and enable the flow of funds to emanate from collections agencies to the ASF and facilitate sport recovery.**
- **Alternatively, the ASF suggests that consideration could be given by the Government to enacting a special authority to enable those organisations that are normally prevented from distributing to the ASF for the purpose of sport disaster recovery because of constituent documentation, legislation, or status as a deductible gift recipient, to do so in the interest of public good.**

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