

30 April 2013

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The Manager
Philanthropy and Exemptions Unit
Indirect Philanthropy and Resource Tax Division
The Treasury
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by email: charities@treasury.gov.au

Dear Manager

Consultation on a Statutory Definition of Charity

Catholic Health Australia (CHA) offers its conditional endorsement of the exposure draft *Charities Bill 2013*, and in doing so, associates itself with the submission of the Australian Catholic Bishops Conference. CHA offers conditional endorsement in recognition the *Bill* mostly incorporates the three key proposals made in CHA's submission to Treasury on the *Bill's* drafting in December 2011. However, significant uncertainty that arises from the drafting of section 4(1)(b)(i) of the *Bill* requires resolution before the *Bill* should be presented to the Parliament.

The three key proposals CHA outlined in December 2011 were that the *Bill* should recognise:

1. charities often do and should be encouraged to have multiple purposes, with a dominant purpose being relevant to determining if the entity is properly designated as a charity;
2. the current common law and Taxation Ruling 2011/4 precedents that enable presumption of public benefit rather than a need to prove in an ongoing manner its existence; and
3. the current common law and *A New Tax System (Australian Business Number) Act (1999)* Cth approach to defining "government bodies" as exempt from charitable treatment.

The first two of these proposals are clearly recognised in section 7 of the *Bill*. Section 7 would presume public benefit rather than needing it to be proven in circumstances where a not-for-profit organisation has any or all of the following single or multiple purposes:

- s7(a) "relieving illness";
- s7(b) "relieving the needs of the aged";
- s7(e) "advancing religion".

On face value, the third proposal relating to exempting government bodies from charitable treatment has also been adopted by way of section 4(1)(a) of the *Bill*. However, the drafting of section 4(1)(b)(i) creates possibly unintended consequences that could enable a court to use either of two different definitions contained within the *Bill* in assessing an entity's charitable status. At issue is the status of those Catholic-owned and operated public hospitals that would be treated as charities by application of *A New Tax System (Australian Business Number) Act (1999) Cth*, but were also "established under a law by a State or Territory". Attempts to address this uncertainty appear to have been contemplated in section 4(2) by proposing to empower a Minister to prescribe an entity as a charity. With the charitable status of Catholic-owned and operated public hospitals currently certain, and it not appearing to be the intent of the *Bill* to alter their status, CHA submits the *Bill* should not be presented to the Parliament whilst the uncertainty arising from the current drafting of s4(1)(b)(i) exists.

I would welcome the opportunity to work with those drafting the *Bill* in an effort to resolve what CHA's believes is an unintended consequence of s4(1)(b)(i).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Martin Laverty', with a stylized flourish at the end.

Martin Laverty
Chief Executive Officer