30 April 2013

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

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”.

by email: charities@treasury.gov.au
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

Martin Laverty
Chief Executive Officer