



COMMUNITY EMPLOYERS WA

3 May 2013

Manager  
Philanthropy and Exemptions Unit  
Indirect Philanthropy and Resource Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir / Madam,

## **RE: Definition of Charity - Draft Charities Bill 2013 Legislation**

The purpose of this submission is to provide Community Employers WA's (CEWA) comments on the Draft Charities Bill 2013 legislation for the Definition of Charity.

CEWA is a registered Employer Organisation with the Industrial Relations Commission of Western Australia, and represents non-government, not-for-profit employers in the community services sector of Western Australia. CEWA now has 120 members comprising many of the largest and smaller Community Sector employers in WA, and continues to grow in numbers and influence.

CEWA is pleased that the sector has been consulted in relation to the draft legislation for the Definition of Charity. However, as previously stated with other recent Public Consultation papers, we continue to be **extremely concerned** at the very limited time given to respond to this draft paper. There are unprecedented changes being thrust upon the Sector and it takes time to consider their serious implications, to consult with the multitude of organisations which will be affected by these changes and to provide a meaningful and informed response. To expect the sector to do this within 4 weeks given their already excessive work-loads, is simply unreasonable. It does not reflect Best Practice for Engagement with the Sector (as the National Compact Consultation Paper is endeavouring to promote), and demonstrates a lack of understanding and respect for the views and opinions of those who have dedicated much of their professional lives to supporting people in need and working in the sector.

In future **we would strongly recommend a minimum 3 month consultation period be set and that Draft Legislation and Consultation Papers not be issued simultaneously** – over the past two weeks,

there have been three papers all requiring a detailed response ie. the AIS paper, the Code of Best Practice for Engagement with the not-for-profit sector and the Definition of Charity paper. Government Agencies need to consult with each other to improve the communication with the sector and the call for comment and input, particularly when such significant changes are proposed.

## **Draft Charities Bill 2013:**

CEWA believes that the Charities Bill 2013 is an important piece of legislation for the charitable and NFP sector. However concern has been expressed by a number of our members in relation to potential gaps in the legislation. For example, In Section 7 the Bill has adopted the approach of specifying *Certain purposes presumed to be for the public benefit*, yet this section doesn't include other broad *public benefit* areas such as *advancing health or advancing social or public welfare*. Whilst these are included in Section 11, it is unclear as to why some areas of public benefit are incorporated in one Section of the Bill and not the other. **We would thus suggest that this be reviewed and simplified.**

In Section 11, the *Definition of charitable purpose* lists 12 areas which are presumably outlined with the intent of providing greater clarity. Unfortunately the listing has also created much concern over purposes which may be perceived to be excluded by reason of not being specifically referred to in the legislation. Purposes which have not been included in the legislation include:

- Children and Youth Services
- Family Services
- Disability Services
- Mental Health Services
- Homeless Services
- Counselling Services
- Community component of Fitness and Recreation.

Whilst we note that some of these purposes (though not all) are mentioned in the Explanatory Material, it is unclear as to why these core purposes of charitable works for the public benefit have not been detailed in the definition. If they don't end up being included in the legislation, there is a real risk that organisations seeking to be defined as having a charitable purpose, will be forced to resort to Common Law principles and the court system. This will be expensive and time consuming for all involved. **We would thus recommend that the Definition of charitable purpose categories in the draft legislation also be reviewed and the inclusion of these areas be reconsidered.**

Section 11(k) of the draft legislation appears to be a 'catch all' statement which will presumably provide the opportunity to argue whether a purpose is *beneficial to the general public that may be reasonably regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j)*. We see the inclusion of this as a positive step to provide some flexibility in determining *a charitable purpose* and would recommend that those responsible for determining the applicability of the definition maintain an inclusive approach to applications made under this category and ensure transparency in the decision making process.

Section 1.27 of the Explanatory Material comments that *“an entity that accumulates most of its profits over a number of years will need to show that this accumulation is still consistent with an entity having a charitable purpose. Consideration that can influence whether such an entity continues to have a charitable purpose includes whether funds that are to be applied to its charitable purpose have been identified, and when and how they are to be applied.”* Our concern with this requirement is that there is the potential for additional administrative reporting requirements. It may create situations where the assessment by the regulatory body on the appropriateness or otherwise of a charity’s decisions on how to structure its financial position or apply funds, may have detrimental consequences for that Charity. This will potentially increase the risk of organisations moving away from being primarily Mission driven to being driven by financial and regulatory reporting requirements. It also brings into question the sovereignty of organisations and creates a higher level of potential scrutiny and oversight than currently exists for publicly listed companies.

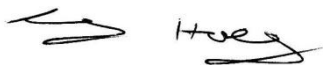
## Conclusion:

CEWA welcomes the progress with the Definition of Charity legislation, however notes that it should have been introduced well before now. Unfortunately, the disjointed sequencing of the rollout of the myriad of consultation papers and draft legislation across the sector, and the extremely short timeframe for consultation, have hampered the orderly consideration and debate of such changes.

CEWA recommends that the Definition be amended to include several areas which have not been incorporated into the legislation, and that a sustained focus be maintained on minimising the administrative and regulatory burden on the sector in implementing the legislation.

Finally, CEWA recommends that the ACNC continues to meet regularly with the sector across the country and at various levels within organisations where possible. If this is to be a true consultation and partnership approach, as this sector knows better than most, meaningful progress will only come through ongoing engagement and support.

Yours sincerely,



Chris Hall  
Co-Chair



Tony Pietropiccolo AM  
Co-Chair

Cc: Minister Julie Collins – Minister for Community Services

Cc: Shadow Minister Kevin Andrews – Shadow Minister for Families, Housing & Community Services