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PARKES ACT 2600

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9 December 2011

Dear Sir,

## Consultation Paper: Definition of a Charity

We appreciate the opportunity to comment on the Definition of a Charity Consultation Paper (the "CP") issued by Treasury.

Overall we support Treasury's proposals to address the development of a statutory definition of Charity. As noted in the CP, there have been recent developments overseas as well as developments in Australian case law. We believe harmonisation with overseas jurisdictions will provide greater certainty for entities in the charitable sector.

### Specific comments

Question	Response
Q1. Are there any issues with amending the 2003 definition to replace the 'dominant purpose' requirement with the requirement that a charity have an exclusively charitable purpose?	<p>Yes.</p> <p>As noted in the CP, amending the Charities Bill 2003 definition of "dominant purpose" to "exclusive purpose" would closer align the definition with overseas jurisdictions.</p> <p>However, an amendment to exclusive purpose should be accompanied by clarification that activities undertaken by an entity need not be intrinsically charitable in order for the entity itself to be charitable. This is discussed under Q10 below. That is, charities should be allowed to perform activities that are commercial in nature and generate profits, provided those profits are used to fund the entity's charitable purposes.</p>

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Question	Response
<p>Q.2 Does the decision by the New South Wales Administrative Tribunal provide sufficient clarification on the circumstances when a peak body can be a charity or is further clarification required?</p>	<p>No. As stated in the CP the decision indicates that “it is not necessary that a peak body deal directly with the public.....it is the <i>degree of integration</i> ....that determines its charitable status.”</p> <p>We suggest further clarification around the term “<i>degree of integration</i>” is required to determine how this might apply in practice.</p>
<p>Q.3 Are any changes required to the Charities Bill 2003 to clarify the meaning of ‘public’ or ‘sufficient section of the general community’?</p> <p>Q.5 Could the term ‘for the public benefit’ be further clarified, for example, by including additional principles outlined in ruling TR 2011/D2 or as contained in the Scottish, Ireland and Northern Ireland definitions or in the guidance material of the Charities Commission of England and Wales</p>	<p>Yes. We agree that the term for the “public benefit” could be further clarified.</p> <p>Consistent with overseas experience (paragraph 86) we believe that the removal of the presumption of public benefit test may be detrimental for some organisations that are currently considered charitable entities (e.g. schools). We agree with the CP’s proposal that the clarification applied in UK should also be incorporated in Australia.</p> <p>We also have concerns that some types of entities (for which there is currently a presumption of charitable status) may not meet the definition in paragraph 59 that public benefit must be “directed to the benefit of the general community or to a sufficient section of the general community”. We believe any proposed definition should clearly set out that entities that charge fees to deliver their services will not, by that fact alone, breach the condition for “public benefit”. Without such clarification it could be argued that the service is restricted to the section of the community that can afford to pay the fees.</p> <p>In relation to what would be considered “numerically negligible” as set out in paragraph 63, we suggest an example would help determine how this could apply in practice.</p> <p>Paragraph 76 refers to principles outlined in the Charities Commission of England and Wales which state that “benefits must not be unreasonably restricted; individuals in poverty must not be restricted from benefit”. We suggest that if these principles were adopted in Australia guidance would need to be developed to assist in their interpretation.</p> <p>Finally we do not consider that the public benefit test will be strengthened by requiring that the purpose of a charitable entity must be “altruistic”.</p>
<p>Q.7 What are the issues with requiring an existing charity or an entity seeking approval as a charity to demonstrate they are for the public benefit?</p>	<p>In our opinion there may be a significant additional time commitment for every entity to have to seek approval in the transition year and possibly a significant cost to administer this process. As an alternative we suggest that Government could consider consulting with peak bodies to determine a common approval process which could be applied consistently to groups of like entities. This could streamline the approval process by reducing costs for individual entities subject to the same approval process.</p>



Question	Response
<p>Q 10. Are there any issues with the requirement that the activities of a charity be in furtherance or in aid of its charitable purpose?</p> <p>Q 11. Should the role of activities in determining an entity's status as a charity be further clarified in the definition?</p>	<p>We do not believe the activities of the charity need to be intrinsically charitable in order for the entity itself to be charitable. We are supportive that the activities should be "in furtherance or in aid of" the entity's charitable purpose.</p> <p>This would help censure that entities that perform activities that are commercial in nature, but generate profits that are used to fund the entity's exclusive charitable purposes, will still be treated as charities.</p>
<p>Q16. Is the list of charitable purposes in the Charities Bill 2003 and the <i>Extension of Charitable Purposes Act 2004</i> an appropriate list of charitable purposes?</p>	<p>Whilst we consider the list a good starting point, we consider that there is value in providing greater detail as in the UK models.</p>

We would be pleased to discuss our comments with either yourself or other members of your team. If you wish to do so, please do not hesitate to contact myself on (03) 9671 7934 or Gaile Pearce on (02) 9322 7158.

Yours sincerely,



Heather Park

Partner

Deloitte Touche Tohmatsu