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CHARITIES BILL 2013 – A BILL TO DEFINE CHARITY AND CHARITABLE PURPOSES

ECH Inc. is one of Australia's largest and most experienced providers of residential and community aged care and housing options for older people. We provide services both in South Australia and the Northern Territory and are registered as a charity with the Australian Charities and Not-for-profits Commission.

ECH has supported the introduction of a statutory definition of charity and charitable purposes as we agree that their meaning can be confusing for the public. We particularly support measures that will act to harmonise Commonwealth and State and Territory legislation and reduce administrative costs for charities.

We note that the new law 'makes further minor extensions to charitable purposes and modernises the language and categories.' In this regard, we were pleased to see that 'the purposes of relieving ... the needs of the aged' are presumed as being for the public benefit, not simply beneficial. Similarly, we welcome the specific reference to aged care as 'advancing social or public welfare' under the Definition of Charitable Purposes, as well as 'the provision of housing and accommodation support for people with special needs ...'. ECH is South Australia's largest non-government provider of housing for older people, with more than 1,650 residents accommodated on more than 90 sites and we have previously expressed a view that such housing should be regarded as charitable in its own right.

Not-for-profit status

The Explanatory Material to the Bill refers, at paragraph 1.26 on page 15, to entities with the power to accumulate profits still being able to be charitable. We agree that the profits must be accumulated 'to augment the funds available to give effect the entity's charitable purpose'. However, we are concerned by the fact that, and the potential manner in which, an entity might be required to identify the funds and to show when and how they are to be applied to its charitable purpose.

ECH provides an array of care, services and housing for older people. We are a large organisation with a multi-million dollar turnover that includes a significant proportion of government funding. To fund all of our activities however, we must also rely on

investments and other sources of income in order to pursue and fulfil our mission. For example, we self-fund trials and pilot projects; and aged care and ageing-related research projects, one of which is a longitudinal study that could extend over 10 years.

We are concerned that if we established a corpus for example, from which we could draw funds from time to time to finance our charitable activities, we may not always be able to show exactly when and how the funds are to be applied. The corpus, and any derived income, would only ever be used in furtherance of our charitable purposes but would represent an accumulation of funds over a number of years. We would therefore want to be reassured that such a strategy would not breach the charitable provisions.

Charitable purposes

Paragraph 1.34 on page 16 of the Explanatory Material provides that:

An entity may engage in activities that are not intrinsically charitable provided the activities further or aid its charitable purpose.

The examples include integral activities such as accounting; and contributory activities like fundraising. As mentioned above, ECH commissions research into aged care and ageing topics and we firmly believe that such research furthers or aids our charitable purpose. We would therefore wish to see research accepted as a charitable purpose in the circumstances.

Terminology

Once the Bill has been passed, ECH will review its constitution and other governance documentation to ensure their use of terminology is consistent with the new legislation.

I would be pleased to discuss or provide further comment on any of the above matters.

A handwritten signature in black ink, appearing to read 'Rob Hankins', with a long horizontal flourish extending to the right.

ROB HANKINS
Chief Executive – ECH Inc.