



5 December 2011

Manager  
Philanthropy and Exemptions Unit  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir/Madam

## Response to A Definition of Charity Consultation Paper

Greenfleet welcomes the opportunity to respond to the Definition of Charity Consultation Paper. Greenfleet is a registered charity and Australia's largest proponent of biodiverse carbon forestry, having established 450 forests and planted over 7 million native trees since 1997 as a real and tangible action that mitigates climate change and that helps create greater resilience to climate change. Much of this work has been conducted in National Parks creating additional public value.

Greenfleet believes that aspects of the charitable sector can be improved to ensure greater efficiency across the sector, in particular, streamlining fund raising compliance obligations which appear to be duplicated across states. Our concern is that the public value created by charitable organizations such as Greenfleet by restoring cleared landscape may be overlooked in the reforms. Our hope is that the value of the work done, which is encouraged by the community and organizational supporters as evidenced by their contributions, is recognized.

Please feel free to contact me at [sara.gipton@greenfleet.com.au](mailto:sara.gipton@greenfleet.com.au) or on 03 9642 0570.

Yours sincerely

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Greenfleet Australia (ABN 22 095 044 465) as corporate trustee on behalf of the Greenfleet Trust (ABN 86 693 237 685)

Greenfleet's response to the Definition of Charity Consultation Paper has been prepared by Greenfleet management and it addresses each of the chapters of the Paper in sequence.

No response is provided on issues where Greenfleet does not hold a firm view on the topic discussed. The absence of a comment on any issue should not be interpreted as endorsement or otherwise for that particular issue.

Greenfleet's detailed response to the Definition of Charity Consultation Paper is:

## 1. CONSULTATION QUESTIONS:

### ***1. 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?***

Greenfleet Australia is a company limited by guarantee and is the trustee of the Greenfleet Trust which is the Deductible Gift Recipient entity operating under a charitable trust.

The Greenfleet Trust is a charitable trust has a charitable purpose (ie environmental protection and enhancement). We note that we conduct our operations in a 'business like' manner to ensure that the mission of the organization is best served by the efficient and effective use of our donors' funds. We would like assurance that being 'business like' in delivery and fulfillment of a charitable purpose does not pollute the test as proposed which appears to be dependent upon how narrowly 'exclusive' is read. Furthermore, if the change of the definition violates or causes any uncertainty in relation to the trust then we strongly oppose such a proposition. In our view the dominant purpose requirement is satisfactory and workable in its current format.

### ***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?***

We provide no response to this question.

### ***3. Are any changes required to the Charities Bill 2003 to clarify the meaning of 'public' or 'sufficient section of the general community'?***

Greenfleet has a strong concerns that if an amendment, such as that proposed by the 2010 Senate Inquiry, was adopted adding the clause 'detriment or harm' that this could potentially be used by any group or individual that feels aggrieved as a means to severely undermine a charity's work and reputation, possibly leading it into time-consuming and costly litigation to defend its existence.

We are not clear how to define 'detriment or harm' and who is the arbiter of the definition. We do not believe that on balance, the addition of this subsection creates clarity in the legislation and there recommend that no such amendment is included.

In particular, the notion that benefits must be 'balanced' against the detriment or harm allows for personal and/or political views to be utilised to overturn the public good. This is particularly relevant to environmental charities and specifically those that address or educate on actions surrounding climate change.

**4. Are changes to the Charities Bill 2003 necessary to ensure beneficiaries with family ties (such as native title holders) can receive benefits from charities?**

Greenfleet supports the concept that familial ties on native land title should not be a barrier to receiving benefits from charities however, we believe that such benefits should be subject to independent oversight by the local indigenous community as a whole.

**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?**

Greenfleet believes that all charities should be, by definition for public benefit (ie no private benefit derived by beneficiaries or shareholders), however this purpose should take into consideration our response at question 3 regarding possible interpretations of 'detriment or harm'.

As an environmental charity, we recommend that organizations working to advance environmental protection and improvement are explicitly recognized under the legislation or guidance materials.

**6. Would the approach taken by England and Wales of relying on the common law and providing guidance on the meaning of public benefit, be preferable on the grounds it provides greater flexibility?**

Greenfleet prefers the English and Welsh method of the two options given. It is less prescriptive while still providing guidelines and would prevent the legislation becoming dated as definitions of public value evolve over time.

**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?**

None, as long as it applies to all purposes under the legislation including the first three types of purposes as outlined in paragraph 19 should not be excluded from this process. there should be no 'self-evident' clause or assumption.

**8. What role should the ACNC have in providing assistance to charities in demonstrating this test, and also in ensuring charities demonstrate their continued meeting of this test?**

The ACNC should provide guidance as required to address common issues and questions raised by organisations seeking to meet this test. The funding for this advice should be ongoing as more complex questions regarding charitable status and purpose will arise over time.

**9. What are the issues for entities established for the advancement of religion or education if the presumption of benefit is overturned?**

Greenfleet has no comment on this issue.

**10. Are there any issues with the requirement that the activities of a charity be in furtherance or in aid of its charitable purpose?**

Greenfleet believes that ‘dominant purpose’ is an adequate term, due to the potential for differing interpretations of ‘exclusively charitable purpose’ limiting the ability for a charity to undertake activities that support the charitable purpose but may not be considered ‘exclusively charitable’ in and of themselves. This is particularly true where organisations provide services which generate a public good.

As an example, the sale of carbon offsets (which could be considered a commercial activity) supports Greenfleet’s environmental purposes by funding the planting of biodiverse, native carbon forests around Australia. The resulting carbon forests provide a general public benefit through the mitigation of climate change, providing habitat for wildlife and improving soil and water quality across our degraded landscapes. These co benefits contribute to Australia’s capacity to adapt to climate change as well.

While Greenfleet strongly believes that the above is in furtherance of the organisation’s charitable purpose, the commercial sale of a financial product (the carbon credit<sup>1</sup>) when considered in isolation may not be deemed charitable activity.

**11. Should the role of activities in determining an entity’s status as a charity be further clarified in the definition?**

Greenfleet believes no change is required in this area. As stated above, our activities fulfill a charitable purpose but are conducted in a business like manner. The efficient and effective operation of the charity should not prohibit it fulfilling its charitable purpose.

**12. Are there any issues with the suggested changes to the Charities Bill 2003 as outlined above to allow charities to engage in political activities?**

No response is provided.

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<sup>1</sup>Australian Carbon Credit Units (ACCUs) which are carbon credits generated under the Australian Government’s Carbon Farming Initiative are deemed to be financial products, and as such their creation and trade is subject to Australian Financial Services legislation. However, in the past, Government Administrative schemes such as Greenhouse Friendly acted as the regulator of the carbon market in Australia.

**13. Are there any issues with prohibiting charities from advocating a political party, or supporting or opposing a candidate for political office?**

Charities should have the same rights as any other organisation to support or oppose any other organisation, political party or candidate. To prohibit charities from stating a preference has the ability to stymie discussion and prevent public debate. Environmental issues have historically proven to attract strong political support or opposition, hence the need to engage in honest and open discussion of the issues and facts. In fact, charitable organisations can remain independent and trusted voices in a democratic society and should remain free to speak when political decisions detrimentally impact the creation of public good.

**14. Is any further clarification required in the definition on the types of legal entity which can be used to operate a charity?**

Greenfleet considers the current definition of legal entity which can be used to operate a charity to be adequate.

**15. In the light of the Central Bayside decision is the existing definition of ‘government body’ in the Charities Bill 2003 adequate?**

Greenfleet has no comment on this question.

**16. Is the list of charitable purposes in the Charities Bill 2003 and the Extension of Charitable Purposes Act 2004 an appropriate list of charitable purposes?**

Greenfleet considers the current list appropriate.

**17. If not, what other charitable purposes have strong public recognition as charitable which would improve clarity if listed?**

No response is provided.

**18. What changes are required to the Charities Bill 2003 and other Commonwealth, State and Territory laws to achieve a harmonised definition of charity?**

Greenfleet operates nationally and therefore must provide returns to the Registrar of Environmental Organizations (Commonwealth Department) and also provide much the same information to fund raising authorities across the states. This is an administrative burden and an inefficient use of our precious resources.

We recommend that a single national administrator is responsible for all returns and compliance obligations by the charitable sector however it must retain appropriate authority and governance in the sector.

**19. What are the current problems and limitations with ADRFs?**

Greenfleet believes that the scope of allowable activities for ADRFs should be increased to provide charitable status to rehabilitate landscape, waterways, and other natural environments.

**20. Are there any other transitional issues with enacting a statutory definition of charity?**

We are pleased that the existing status of charities is recognized without the need for re-registration. We understand that there will be ongoing review but are unclear whether the regulator will conduct routine reviews over time (ie a standard review every 5 years) or whether a review will be conducted on a more ad hoc basis.