



National  
Native Title  
Council

3 May 2013

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of  
Change*

ABN 32 122 833 158

638 Queensberry Street  
North Melbourne 3051  
PO Box 431  
North Melbourne 3051

Tel: +613 9326 7822  
Fax: +613 9326 4075

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

**Via Email:** [charities@treasury.gov.au](mailto:charities@treasury.gov.au)

Dear Sir / Madam

**Re: Exposure Draft – Statutory Definition of Charity**

The National Native Title Council (NNTC) welcomes the opportunity to provide comments on the Exposure Draft legislation introducing a definition of Charity and charitable purpose.

The National Native Title Council is the peak body of Native Title Representative Bodies (NTRBs) and Native Title Service Providers (NTSPs) from around Australia being formally incorporated in November 2006. The objects of the National Native Title Council are, amongst other things, to provide a national voice for NTRBs/NTSPs on matters of national significance affecting the native title rights of Aboriginal and Torres Strait Islander people.

All NTRBs and NTSPs, as well as the NNTC, have been endorsed with DGR status as Public Benevolent Institutions. This endorsement clearly defines these organisations as having charitable status under the current law.

The NNTC supports the need to better codify such a complex area and believes the Charities Bill 2013 will provide certainty to the native title sector. The NNTC particularly welcomes the recognition in the Bill of the unique situation that arises for corporations holding or receiving native title benefits. The NNTC therefore fully supports the solution developed in the Bill as it clearly enables corporations to meet the public benefit test and gives sufficient breadth to undertake their functions and deliver benefits to their beneficiaries.

The NNTC would however, like to make the following points:

- Indigenous groups more often than not have multiple purposes and it is therefore important to allow them sufficient ability to ensure that the charitable status is not compromised, given that indigenous holding entities are often seeking to assist their members through multiple, integrated ways. The NNTC seeks assurance that the Bill will in no way hinder the flexibility of NTRBs and NTSPs, or other native title corporations to deliver on the unique needs of their constituents.

- The nature of the Not-for-profit and charitable sector often means that they need to raise revenue, and increasingly funding from agencies and philanthropic organisations will not include overheads, thus requiring the charities to raise revenue through alternative means including the delivery of services. The NNTC therefore seeks assurances that Indigenous groups will not be penalized under the legislation for those funds raised to assist in administration costs that are not covered using their usual funding arrangements.
- The NNTC is concerned that a traditional owner entity may not meet the public benefit test, even despite removing the kinship test, including for example sections 6(3), 6(4) or 6(5). A possible solution to this would be to incorporate a definition within section 9 to enable those entities to actively advance the welfare of their members. We consider that this would better reflect the policy intent of the legislation to enable entities to carry out an activity that is charitable in purpose, but is not necessarily of public interest.
- The NNTC also believes that the legislation could make specific reference to the various state and territory legislation that have been developed throughout the country, including but not limited to the Traditional Owner Settlement Act. This will also be the case for future State based legislation such as the settlement of native title in the South West of Western Australia.

Finally, the NNTC has done a significant amount of work on developing the Indigenous Communities Development Corporation (ICDC). The ICDC is a new category of entity for tax purposes as an alternative entity for use when considering appropriate structures for the management of payments and benefits negotiated by Indigenous communities and groups, whether these benefits come from the public or private sector including agreements centred on the statutory entitlements of native title holders. The ICDC is currently being considered by a Treasury Working Group with a report to be presented by July 2013. The NNTC considers that the definitions outlined in the Charities Bill should allow for the incorporation of the ICDC once it has been fully developed.

I trust that the above comments are useful for your purposes, however if you have any queries or require any further information please do not hesitate to contact me at your convenience.

Yours sincerely



Brian Wyatt  
Chief Executive Officer