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Submission to Federal Treasury on the definition of a charity Consultation paper from Palmerston Association Inc WA

Introduction

Palmerston Association is very pleased to be able to comment on the consultation paper – the Definition of a Charity and as a member of the Western Australian Council of Social Services supports the broad thrust of the submission prepared by that organisation.

However, the Board and management of Palmerston Association see this aspect of the Federal Government's NFP reform agenda as major national reform and one which will have a significant impact on the NFP sector. Therefore at its Board meeting in November 2011, the Board resolved to make a brief submission to the Treasury outlining several matters of concern.

Overall, the policy direction being suggested in the document is supported. The major areas on which Palmerston wishes to comment relate to the definition of charitable purpose, the importance of PBI status and political advocacy.

The purpose and functions of Palmerston Association

Serving the community for over 30 years, Palmerston Association is one of the largest specialist non-government providers of alcohol and substance use education and counselling in Western Australia, operating from nine offices in Western Australia, including the South Metro Community Drug Service (SMCDS), Great Southern Community Drug Service Team (GSCDST), Palmerston Perth and Palmerston Farm (a therapeutic community south of Perth).

Core services include:

- early intervention supporting individuals, families and the community
- counselling and group work for people experiencing alcohol or other drug problems

- family support for those experiencing difficulties with a family member's drug use
- groups specifically designed for women, men, young people, parents or families
- education and training for other service providers, client groups, and the general community
- support and consultation to the local community and organisations such as schools, community groups, other service providers and private enterprise
- outreach counselling for youth

Our vision is to be recognised as the employer and partner of choice in the Alcohol and Other Drugs sector, offering best practice, flexible services throughout Western Australia, and as a leading advocate for harm minimisation policy reform.

Our purpose is to assist and support individuals, families and communities across Western Australia, by reducing the harm of alcohol and other drug use through counselling, therapies and education.

As an incorporated association under the WA Associations Incorporations Act, our objects as stated in the Constitution are

- Palmerston is established for the purpose of providing services to prevent or reduce the harm related to addictive behaviours for the individual, the extended family and the community.
- Palmerston may cooperate with any person or body having similar objects or objects of a charitable nature consistent with the attainment of the provisions of these objectives.
- The property and income of Palmerston shall be applied solely towards the promotion of the objects and no part of that property or income is payable or capable of being distributed, directly or indirectly to members except in good faith in the promotion of those objects.

Importance of simplifying the regulatory environment

The current reform agenda has been heralded as bringing about a reduction in red tape for the NFP sector. Therefore the ultimate framework needs to ensure that this is the outcome. It is critical that the final legislation delivers clarity, certainty and ideally produce one regulatory body, a model wherein the Australian Charities and not for profit Commission (ACNC) has the legislative task of determining what and who is a charity and the ATO determines the taxation treatment within the regulatory framework of the ACNC. It is appropriate that the ACNC determines the PBI status of organisations. Thus the ATO would complement the decision making powers of the ACNC but not be the decision maker on who is accorded charitable and PBI status.

Dominant purpose

Over recent years, NFPs have been encouraged to embark on social entrepreneurial activities in order to increase their revenue base. Initiatives such as op shops, business enterprises and 'commercial' arms of NFPs have emerged as part of the charitable landscape. Thus some NFP activities may be seen as not having an exclusively charitable purpose, at least not prime facie. Where profits generated through social enterprises are reinvested in charitable activities, this needs to be acknowledged explicitly in the legislation as a legitimate activity of an NFP.

Public Benefit Test

The importance of PBI status to a NFP organisation is significant, not the least of which is the capacity it gives to offer salary sacrificing as a means of offsetting the significant disparity in wages between NFP organisations and Government salaries and therefore the capacity of NFPs to attract workers to the sector. This disparity is unlikely to disappear with the impending Fair Work Australia pay equity case. Therefore the removal of the presumption of public benefit has the potential to add to the administrative burden of NFPs and if the status is lost, it puts a further impost on charitable organisations.

Political Advocacy

The proposed 2003 amendments disqualifying political activity reflect the former government's rhetoric and agenda. There is no evidence to support the need to disqualify such activity and the suggested changes to the Charities Bill 2003 are worthy of consideration. However, NFPs play a very useful role during election campaigns in helping to make sense of the policies of political parties and assessing the relative strengths of these policies. This could be seen as advocating for a political party and yet is a legitimate activity. The legislation should protect the capacity of NFPs to comment on and rank the merits of political party policies or even recommend one party over another when those policies are in the domain of the NFPs .

Charitable purposes

When determining the scope of definitions of charitable entities, all care needs taken to ensure that any such definition is free of political bias or government ideology. Take for example a drug rehabilitation organisation that operates from a harm minimisation basis. If the Government policy and strategy is a zero tolerance (or just say no) approach this could put the organisation at odds with that policy. At the extreme, therefore, a Government may view that organisation as not providing a public benefit, and whilst this is clearly political interference, it could seriously jeopardise the viability of organisations.

Palmerston Association understands that existing charities and those with PBI status will remain as such and will not need to reapply for recognition as a charity.

Palmerston Association looks forward to the legislation coming before Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sheila McHale', written in a cursive style.

Sheila McHale

Chief Executive Officer
Palmerston Association Inc.