



MELBOURNE  
LAW  
SCHOOL

9<sup>th</sup> December, 2011

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

**Re: A Definition of Charity – Consultation Paper, October 2011**

This submission is made by the University of Melbourne researchers from the Agreements, Treaties and Negotiated Settlements (ATNS) project.

**About the ATNS**

The ATNS project is a University of Melbourne based research project consisting of a series of ARC Linkage grants and (currently) a team of inter-disciplinary researchers from Melbourne, Griffith and the Australian National Universities. The project, funded by a series of Australian Research Council Linkage grants since 2002, has focused on the incidence of agreement making with indigenous Australians as well as issues of agreement sustainability and, most recently, the institutional, legal and policy reforms required to reduce indigenous peoples' poverty and to promote economic development for sustainable indigenous communities. The object is to identify solutions for realising sustainable social and economic development for indigenous peoples based on social, policy, fiscal, procedural and legal models. There is particular emphasis on the impacts of large-scale resources projects and government policy and services on local communities. The [ATNS Database \(http://www.atns.net.au\)](http://www.atns.net.au) is an integral part of the project. The Database provides invaluable data for the analysis of the incidence, subject matter, content and form of these agreements.

In conjunction with its partners, the project personnel (see Appendix 1) have been actively engaged in identifying and critiquing the legal and structural impediments to indigenous Australians benefitting from the flow of direct and indirect benefits, primarily from, but not limited to, large scale resource projects. This has included convening a range of workshops on agreement structures and taxation issues, evaluating agreement implementation and outcomes through case studies, identifying the need to address the applicable taxation regimes as well as provide more varied choices for corporate structures that meet both cultural economic aspirations. Much of this work has been reported in submissions and representations to inquiries including the Taxation of native title benefits discussion paper as well as research publications, workshops and conferences.

**Background Comments**

As a result of our research on agreement making and implementation we make the following brief observations relevant to consideration of the definition of 'charity' in the context of indigenous Australians.

- There is considerable disparity in scale and complexity of agreements, the benefits that flow from them, the structures for managing benefits and the range of people and groups to whom benefits may flow. As a result, flexibility of management arrangements and simplicity of regulatory compliance are significant considerations. It is important that any definition of 'charity' and the compliance requirements be sufficiently flexible to take account of these variations in scale and related capacity.
- Benefits from agreements may have significant impact on economic activity and associated development and well being. This impact affects both the current generation as well as the long term economic benefit of future generations. Benefits from agreements will have impacts on both individual and communal economic well-being. As a result, the

structural and taxation arrangements for managing benefits should ensure that benefits flow to both current and future generations.

- The government has recently developed a comprehensive policy in relation to indigenous economic development. Any new definition of 'charity' should not only be consistent with government policy on indigenous economic development but support and facilitate the policy's strategic goals in order to assist functional and integrated action to support indigenous economic development.
- The legal regimes under which agreements are made and benefits flow vary as do the parties to such agreements. It is not possible to confine any arrangements to a single regime, for example, payments made under the provisions of the Native Title Act 1993 (Cth). Any definitional matters should take account of this diversity.

### **Response to Discussion Paper**

We have had the opportunity to read the Submission on the Consultation Paper of the Not-For-Profit Project dated 7 December 2011. We endorse this submission. We particularly draw attention to and endorse the comments on page 41-42 concerning the treatment of Indigenous Organisations and the more detailed test of 'section of the public' that takes account of the issues associated with native title holders or other indigenous community members who are related.

We have also had an opportunity to read, in draft, the Submission on the Consultation Paper from the Minerals Council of Australia and the National Native Title Council. We broadly endorse both the preliminary comments in the submission as well as its recommendations. We are strongly supportive of the proposed Indigenous Community Development Corporation which would address a range of the difficulties identified in our (and others') research. We also strongly endorse the approach to an expanded definition of 'charity' which would facilitate the provision of a broader range of services to indigenous Australians, however they constitute themselves, for both current and future generations.

We have been engaged in researching these structural and taxation issues for a number of years and our support of these submissions arises directly out of our research findings and the collaborative discussions that our project has facilitated.

Please contact me if you wish to discuss any issues further.

[Associate Professor Maureen Tehan](#)

The Melbourne Law School  
University of Melbourne  
Victoria Australia. 3010  
Tel: +61 3 83446205  
Email: [m.tehan@unimelb.edu.au](mailto:m.tehan@unimelb.edu.au)

## **Appendix 1**

### **Agreements Treaties and Negotiated Settlements Partners and Personnel**

#### **Chief Investigators**

- Professor Marcia Langton (School of Population Health, University of Melbourne)
- Assoc. Prof. Maureen Tehan (Melbourne Law School, University of Melbourne)
- Assoc. Prof. Miranda Stewart (Melbourne Law School, University of Melbourne)
- Professor Lee Godden (Melbourne Law School, University of Melbourne)
- Professor Ciaran O'Faircheallaigh (School of Politics & Public Policy, Griffith University)
- Professor John Taylor (Centre for Aboriginal Economic Policy Research, ANU)

#### **Partner Investigator**

- Dr Lisa Strelein (AIATSIS)

#### **Research Fellows**

- Ms Frances Morphy, (Senior Research Fellow, ANU)
- Ms Judy Longbottom (School of Population Health, University of Melbourne)

#### **Research Partners**

- The Department of Families, Housing, Community Services and Indigenous Affairs
- Rio Tinto Ltd
- Woodside Energy Ltd
- Santos Ltd
- Marnda Mia Central Negotiating Committee Pty Ltd

**This submission is made by the Chief Investigators on the ATNS Project at the University of Melbourne and does not necessarily represent the views of all Chief Investigators or the industry research partners on the project.**