

23 April 2013

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

By email: charities@treasury.gov.au

Dear Sir/Madam

Exposure Draft on the Statutory Definition of Charity
Submission from eleven Victorian Public Health Services and Public Hospitals

I attach a submission from eleven Victorian public health services and public hospitals in response to the Exposure Draft on a Statutory Definition of Charity released on 8 April 2013.

The eleven Victorian public health services and public hospitals are very appreciative of the fact that the Assistant Treasurer the Hon David Bradbury MP made time to meet in person with a delegation representing them prior to the release of the Exposure Draft.

They also appreciate the fact that the Minister and Treasury officials have taken into account their concerns in drafting the Exposure Draft. I refer in particular to clause 12 of the Exposure Draft and the reference in paragraph 1.115 of the Explanatory Material to the fact that

“Some government entities, **such as certain public health services**, would be a charity except for their being a government entity” (my emphasis).

We are grateful that clause 12 has been included in the Exposure Draft to allow funds with a charitable purpose to continue to donate to a government entity that “would be a charity were it not a government entity” without losing their charitable status under Commonwealth law.

The Exposure Draft addresses the major financial problem faced by Victorian public health services and public hospitals since the loss of their charitable status following the review by the Board of Taxation in 2003. As we have pointed out, this has resulted in millions of dollars in lost revenue from private charitable trusts and corporate donors.

The Commonwealth and Victorian governments have had to shoulder a greater financial burden to fund the health services as a result of the loss of these private donations.

As a result of the Exposure Draft we are hopeful that this problem can be overcome with no loss of revenue for the Commonwealth and an increase in revenue for public health services and public hospitals from private charitable trusts that are now free to resume their philanthropic support.

Yours faithfully



**Bill O'Shea
General Counsel
Alfred Health**

for and on behalf of:

**Alfred Health
Melbourne Health
Austin Health
Eastern Health
The Royal Women's Hospital
Monash Health
Peninsula Health
Peter MacCallum Cancer Institute
Barwon Health
Western District Health Service
Forensicare**

**Submission to Philanthropy and Exemptions Unit
Independent Philanthropy and Resource Tax Division
The Treasury**

Exposure Draft on the Statutory Definition of Charity

Submission from the following eleven Victorian public health services and public hospitals:

**Alfred Health
Melbourne Health
Peninsula Health
Eastern Health
Austin Health
Monash Health
The Royal Women's Hospital
Peter MacCallum Cancer Institute
Barwon Health
Western District Health Service
Forensicare**



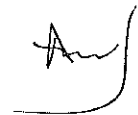
**Andrew Way
Chief Executive
Alfred Health**



**Diane Gill
Acting Chief Executive
Melbourne Health**



**Dr Sherene Devanesen
Chief Executive
Peninsula Health**



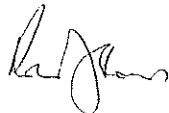
**Alan Lilly
Chief Executive
Eastern Health**



**Dr Brendan Murphy
Chief Executive
Austin Health**



**Lisa Dunlop
Acting Chief Executive
The Royal Women's Hospital**



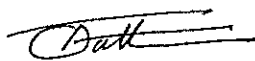
**Prof RJS Thomas OAM
Chief Executive
Peter MacCallum
Cancer Institute**



**Jim Fletcher
Chief Executive
Western District Health
Service**



**Paul Cohen
Acting Chief Executive
Barwon Health**



**Tom Dalton
Chief Executive
Forensicare**



**Shelly Park
Chief Executive
Monash Health**

23 April 2013

Introduction

The eleven Victorian public health services and public hospitals that have collaborated on this submission are very appreciative of the fact that the Minister and Treasury officials have taken into account their concerns in drafting the Exposure Draft. Clause 12 of the Exposure Draft and the reference in paragraph 1.115 of the Explanatory Material to the fact that

“Some government entities, **such as certain public health services**, would be a charity except for their being a government entity” (my emphasis).

We are grateful that clause 12 has been included in the Exposure Draft to allow funds with a charitable purpose to continue to donate to a government entity that “would be a charity were it not a government entity” without losing their charitable status under Commonwealth law.

In our view, the Exposure Draft addresses the major financial problem faced by Victorian public health services and public hospitals since the loss of their charitable status following the review by the Board of Taxation in 2003. We are hopeful that this problem can be overcome with no loss of revenue for the Commonwealth and an increase in revenue for public health services and public hospitals from private charitable trusts that are now free to resume their philanthropic support.

Major issue for Victorian public health services and public hospitals: certainty that they fall within clause 12 of the Bill

Clause 4 of the Exposure Draft defines a “government entity” as follows:

4 Government entity

(1) In this Act:

government entity means:

- (a) a government entity (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*); or
- (b) an entity:
 - (i) established under a law by a State or a Territory; and
 - (ii) of a kind prescribed under subsection (2); or
- (c) a foreign government agency (within the meaning of the *Income Tax Assessment Act 1997*).

(2) For the purposes of paragraph (b) of the definition of **government entity** in subsection (1), the Minister may, by legislative instrument, prescribe a kind of entity.

Victorian public health services and public hospitals accept that they are government entities within the above definition. They are established as bodies corporate under the *Health Services Act 1988 (Vic)* and accordingly are established under a law of the State of Victoria as described in sub-clause 4(1)(b)(i).

The concern for Victorian public health services and public hospitals is that there is no indication in the Exposure Draft that the Minister will, by legislative instrument:

- (a) prescribe them as a government entity as required to satisfy clause 4(1)(b)(ii); and
- (b) prescribe a schedule of government entities that would be charitable were they not a government entity to meet the requirement of clause 12 (b) of the Exposure Draft.

Given the reference to public health services in paragraph 1.115 of the Explanatory Material to the Exposure Draft (as quoted in the Introduction to this submission), Victorian public health services and public hospitals would be justified in assuming that the Minister regards them both as government entities and entities that would be charitable were they not government entities. However the position remains uncertain without a clear statement in the legislation.

We expect charitable philanthropic funds will require certainty that if they decide to donate to a Victorian public health service or public hospital, the government entity falls within the exemption in clause 12. This should not be left to the uncertainty of the common law on a case by case basis through interpretation in the courts. The risk to charitable trusts of losing their charitable status is too great and is likely to result in them taking the safer course of action and deciding not to donate to government entities that are not included in a prescribed schedule.

An alternative to the prescribing of government entities by the Minister would be to establish an opt-in system as in the *Charities Act 1978 (Vic)*.

Conclusion

The Victorian public health services and public hospitals favour the approach set out in the Exposure Draft to allow charitable trusts to donate to government entities that would be charitable were they not government entities provided they are clearly named in a schedule as government entities to which clause 12 applies.

Victorian public health services and public hospitals seek an assurance from the Minister that:

- (i) they will be prescribed as government entities in a subsequent legislative instrument;**
- (ii) the Bill will include a schedule for the prescribing of government entities that would be charitable were they not government entities or such a schedule would be included in a legislative instrument; and**
- (iii) all Victorian public health services and public hospitals will be included in that schedule.**