

Hello

I refer to the call for submissions commenting on the draft legislation and explanatory material relating to a Statutory Definition of Charity. The Australian Sports Foundation Ltd (ASF) was one of the over 200 organisations that originally contributed a submission to the Government in 2011 as part of the consultation process on the definition of charity.

The ASF submission relates primarily to the impact of the proposed legislation on distributions to deductible gift recipients (DGRs) by private and public ancillary funds (PAFs and PuAFs).

I refer specifically to clauses 1.115 and 2.23 to 2.28. After legislation is introduced on 1 January 2014, the residual arrangement relating to whether state or commonwealth law takes precedence seems unclear to me. The focus for a charitable fund retaining charitable status and hence income tax exemption seems to rest on whether or not it distributes to a DGR that were it not a Government health related entity for example, would be a charity. This seems to ignore a number of listed or approved DGRs that currently receive distributions from charitable PAFs/PuAFs and are neither charitable or Government health related entities. Schools as an example of this.

Another case in point – the ASF. The ASF was an initiative of the Government in 1986. It is a DGR, listed in the ITAA 1997, incorporated in the ACT, operating nationally, and clearly its purpose is now affirmed as legally non charitable (based on clause 1.110 in the explanatory material that states that ‘a purpose that is essentially social, recreation or sporting is not charitable regardless of motivation or the benefits to the general public that can result.’). The ASF is income tax exempt as a result of a clause in the enabling legislation (the Australian Sports Commission Act 1989 as amended). The ASF receives approximately ¼ of its \$20m donation/distribution income per financial year from PAFs/PuAFs. Presumably they include a mixture of charitable and non charitable funds. The ASF is neither a charity or an entity that were it not a health related government entity would be charitable. The ASF is concerned that the proposed legislation will penalise charitable funds that wish to distribute to the ASF. This in turn has the potential to limit the scope of the effectiveness of the ASF, considering that distributions from PAFs/PuAFs constitute a significant proportion of philanthropic income.

Further to this, my reading of clause 2.23 in the draft legislation is that repealing income tax exemption for non charitable PAFs/PuAFs that distribute to non charitable DGRs is a penalty and a disincentive for the sector. Again, the ASF is concerned that the proposed legislation will penalise non charitable funds that wish to distribute to the ASF. This in turn has the potential to limit the scope of the effectiveness of the ASF, considering that distributions from PAFs/PuAFs constitute a significant proportion of philanthropic income.

I am unsure how these aspects of the proposed legislation relate to state laws (for example, Queensland and New South Wales) where PAFs/PuAFs can distribute to eligible deductible gift recipients like the ASF.

Then there are Treasury approved exceptions to existing state laws. There is a Victorian domiciled PAF/PuAF that was established within the past five or six years specifically to receive philanthropic support from its community and support its community sport by distributing to the ASF. The fund has an authority in its written ATO/Treasury approval noting and confirming that it will distribute to the ASF. I am uncertain if the PAF is charitable but this Commonwealth approval to distribute to the ASF would appear to be at odds with Victorian state law.

My concerns on this matter do not relate to the way in which the ASF is directly impacted on by this proposed legislation. The ASF remains external to the definition of charity and the current work of the ACNC.

However there may be an indirect impact should the willingness of PAFs/PuAFs to distribute to the ASF diminish after the introduction of the proposed legislation. My concerns relate to ensuring clarity for the burgeoning number of PAFs/PuAFs and their ability to continue to distribute to non charitable DGRs like the ASF and the consequences of doing so, if any. Distributions from PAFs/PuAFs are a significant and growing source of income for the ASF which in turn enables us to meet Government expectation and provide greater services and benefits in support of the development of Australian sport. Any lack of clarity or confusion could potentially spook this important segment of the NFP sector and jeopardise what is an important and growing income stream for the work of the ASF and other non charitable DGRs. While simplification via new legislation is generally a good thing, I feel this draft legislation has created questions and uncertainty particularly where charitable and non charitable organisations within the sector interact for mutual community benefit.

Thank you for the opportunity to provide a submission on the proposed legislation. The ASF would appreciate these matters being taken into consideration when finalising the legislation.

Kind regards

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