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

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Dear Sir/Madam

Family and Relationship Services Australia (FRSA) welcomes the opportunity to respond to the exposure draft legislation for the statutory definition of charity developed as part of the not-for-profit reform. We have previously provided submissions to the Treasury on the Regulatory Impact Assessment of potential duplication of governance and reporting standards for charities regulated by the Australian Charities and Not-for-profits Commission (ACNC) and state/territory regulators.

We make this submission in relation to both the implications of the not-for-profit reform as they affect our organisation, a national peak body, as well as on behalf of our member organisations that provide services that work to strengthen the wellbeing, safety and resilience of families, children and communities. Our members are NFPs that are vibrant, diverse, innovative and resourceful and who are focussed on a mission to achieve social change through the provision of a broad range of family and relationship support services to the Australian community.

FRSA, and its members, have been a supportive of the establishment of the ACNC because of its potential to reduce the administrative burden on the NFP sector. FRSA supports the statutory definition of charity to the extent that the legislative definition achieves those same outcomes. In particular we support the definition to the extent that it will put the common law into a form that is accessible and easier for the sector to access and apply at a practical level of business administration. However, a key caveat to this support is that the legislation does not create a long period of uncertainty as the limits of the definition are tested either through administrative decision making or ultimately through the courts.

The other key area of concern would be whether in practice enough has been done with the draft legislation to ensure that, in codifying the common law to achieve transparency and certainty, the definition is still capable of being flexible and open to evolution. In this regard we note that it would be preferable to provide for the evolution through administrative decision making and not only through the courts or parliament. Relying on case law to evolve a definition implicitly requires a case to be taken to the courts. Given the costs of access to the courts it would seem perverse to require charitable organisations to undertake this process to ensure the ability of the definition to continue to reflect social mores.

While the Explanatory Material (EM) provides considerable further information, particularly in relation to the non-exhaustive nature of the categories, we submit that the more transparent approach consistent with a policy for a broad and evolving definition, would be to use language within the Act itself such as 'charitable purpose includes but is not limited to the following:...'. In particular reference to our status as a peak body, we would also note that it is not clear that peak bodies would necessarily accord with the definition prescribed by the legislation. This could create confusion for peak bodies established to support charitable organisations with an agreed charitable purpose. Again, while the EM clearly references peak bodies, it may not be decreasing the administrative burden for small organisations when such reliance is placed on the EM which will not be the first point of reference for organisations using the legislation.

Lastly, we note that it may have been helpful to provide clearer information about the Commonwealth acts which will be affected by the statutory definition. Again, we understand that this information is dealt with in part in the transitional and consequential amendments bill provided as part of the exposure draft process, but this is not particularly accessible for small organisations without access to legal advice or experience in dealing with legislative processes. The fact sheet provided with the draft bills and the EM is a very good example of the provision of information in an accessible way and we would encourage more timely provision of more information in this manner to allow for real and effective consultation to continue to occur.

Thank you for the opportunity to contribute to this consultation. It is critical that regulatory arrangements for charities promote mature relationships between government and providers and do not compromise the provision of vital services. For more information about FRSA's views on this issue, please feel free to contact me.

Yours sincerely



Steve Hackett  
Executive Director