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20 February 2108

Mt Murray Crowe
Individuals and Indirect Tax Division
Langton Crescent
Parkes ACT 2600

Dear Mr Crowe,

Please find attached my personal submission to the Treasury's Review of the Australian Charities and Not for Profit Commission (ACNC) Legislation.

As indicated in my initial response to the enquiry, it is strictly my personal views and does not reflect that of the Productivity Commission of which I am a Commissioner.

I understand that one of the purposes of the review is to examine the efficacy, or otherwise of the current Australian and Not for Profit Commission (ACNC) Legislation and does not deal with a range of administrative and closely related matters which no doubt other respondents will respond to. My submission is focused on the policy elements of the legislation that was introduced in 2012.

As pointed out in the document circulated by Treasury 'Charities and Not for Profit' organisations form a substantial part of the Australian economy and the communities and organisations that work within it.

On the bodies of data that is in the public domain it appears that there are a large number of organisations and individuals who carry out roles and functions and provide funding for 'charitable works'. Some of that funding does assist a wide range of people and organisations in unfortunate circumstances and which fall outside Commonwealth, States and local Government programmes to assist those in poor and unfortunate circumstances.

However, although the data is limited it would appear that there is a section of the community that uses financial or contributions in kind to minimise tax – especially States' based indirect taxes.

As a former Secretary of Premier and Cabinet in NSW and Victoria, I was aware of the problems confronting States', Treasuries and Departments of Finance in particular in collecting a wide range of indirect taxes.

I am aware also that 'charitable' donations and the assessment and collection of indirect taxes by the States are politically challenging.

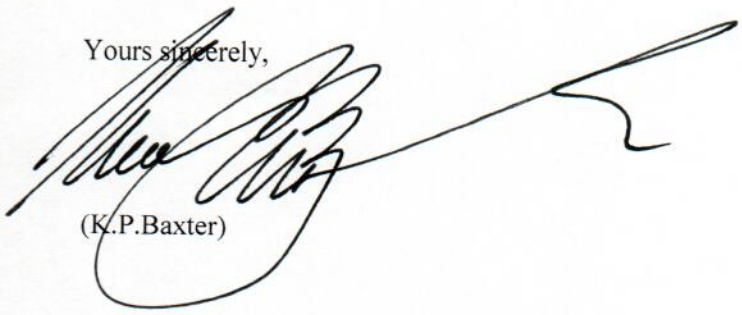
Over the last 38 years as well as being a senior public servant in both NSW and Victoria, I have been deeply involved with structural adjustment in the Australian pastoral and agricultural sectors as well as the economy more broadly. This submission deals with three organisations operating in two cases which are an integral part of the wheat and sugar industries.

The restructuring of the agricultural sectors is incomplete. There are two organisations in particular Queensland Sugar Ltd (QSL) and CBH (WA) which remain as legacies of failures to maximise returns to producers and ensure that there is competition in the sectors in which they operate and to encourage new investment and new entrants.

I suggest also that the current classification of CBH and QSL as 'charities' are legacies of mammalian like era of Australian agriculture. Both are sufficiently large in the sectors in which they operate to warrant far more critical scrutiny and the application of similar policies, rules and practices that apply to listed public and privately owned companies.

I would be more than happy to discuss the submission.

Yours sincerely,



(K.P.Baxter)

Submission to Commonwealth Treasury

'Review of Australian Charities and Not For Profits Commission (ACNC) Legislation.'

On 20th December 2017 the Commonwealth Treasury released the terms of reference for its review 'Australian Charities and Not-For-Profits Commission'.

The review that is being undertaken by the Treasury is the first five year review required by the Australian Charities and Not-For-Profits Commission Act 2012 and the Australian Charities and Not For Profits Commission (Consequential and Transitional) Act 2012.

It must be made very clear that this is a personal submission and not a formal submission by the Productivity Commission of which I am a part-time Commissioner.

The scope of the Review is very wide as the size and numbers of the charities and not for profit sector is very large and extremely diverse. It comprises a large number of organisations ranging in size from minute to very substantial. It ranges across an extraordinarily broad spectrum and size of organisations throughout Australia with some extending their operations overseas.

It appears from reading the questions that are posed in items (1) to (9) in the invitation for public submissions that the focus is upon the operations of the ACNC per se. It does not not appear go into the fundamental, underlying aspects of charities and not for profit organisations. Items (4) to (5) touch upon some of the fundamental policy aspects which go to policy, purpose and appropriateness.

This submission does not deal with the charities at large. It focuses on several organisations operating in or related to the agricultural sector in Australia about which I have serious reservations for policy reasons as to why they should be classified as charities and avoid or minimize paying State taxes which competing 'non-charitable' organisations operating in the same fields would have to do.

Some of the observations about the three organisations Queensland Sugar Ltd (QSL); Grain Growers Ltd and CBH Group (Cooperative Bulk Handling Ltd) may have similarities also to a number of other organisations operating in other parts of the Australian economy. In spite of the very lengthy periods in the Australian and prior to that the English Courts there are many organisations that would not pass the 'pub test' as to what the person in the street regards as a charity.

The Treasury has identified 257,000 charitable and not for profit organisations operating in Australia. They range across a very broad spectrum of Australian society. In many cases they are important services providers in the economy as a whole or to particular socio – economic groups.

Included amongst the list of identified organisations are several medium to large size companies (in terms of flows of funds and commercial type operations) which are predominantly operating in the agricultural and agriculture related sectors.

This submission is a personal one and limited in its scope. It should be made very clear that this is not a formal submission by the Productivity Commission. It is based upon examining the principles relating to the purposes of the legislation and the implications it has for overall governments' policies in relation to taxation equity. The three specific organisations in the agricultural sector which, although not as large overall as some of 'charitable' organisations such as hospitals and religious institutions in other parts of the economy, have a total turnover in excess of $1 billion per annum and are substantial commercial entities. In two cases they rely on statutory powers and States' Governments' laws for their existence and operations.

The impetus for this submission arose out of the report in 2017 by the Productivity Commission into 'Regulation in the Australian Agricultural Sector'(1). It arises also from the periods I spent as Secretary of Premier and Cabinet in NSW and Victoria where the exemptions granted to 'charitable' organisations had a considerable medium to long term impact on States' taxes and budgets. Political pressures and the very broad spectrum covered by charities and not for profit organisations made and continues to make logical, sensible decisions about the budgetary impacts of these organisations very difficult and restricts the comprehensiveness and adequacy of States' taxation regimes. Treasuries supported by States' tax offices would attempt to put in place more comprehensively logical and equitable system or systems but usually, without fail, they were over-ridden or seriously modified by political considerations.

In terms of broader State taxes and the substantial landholdings and assets of many of the 'charities' and 'not for profits' they skew medium to long term State based taxation policies which in turn has an impact on overall taxation equity.

It arises also from the periods I spent as Secretary of Premier and Cabinet in NSW and Victoria where the exemptions granted to charitable and not for profit organisations had a considerable medium to long term impact on States' budgets. Political pressures from a very broad spectrum of charities, and not for profit organisations and their funders and financial backers made and continue to make logical, sensible decisions about the budgetary impacts of the 'concessions' provided to these organisations very difficult. States' Treasuries would attempt to put in place more equitable, logical policies and systems but they usually failed because they were over-ridden by political considerations.

There were three organisations referred to in the Productivity Commission Report on Regulation in the agricultural sector and they are:-

1. Queensland Sugar Ltd (Queensland) – commonly described as QSL,
2. Grain Growers Ltd (NSW) and
3. Bulk Handling Co-operative Ltd (Western Australia) – commonly described as CBH.

(1) 'Regulation of Australian Agricultural Sector' Productivity Commission (No 79, 15 November 2016).

My particular interest was drawn to these three organisations because over the last 45 years I have been deeply involved with significant Commonwealth and State Governments'policies, along with financial, structural and organizational changes in the Australian agricultural sector.

In particular, in some cases, the wider policy implications that have influenced the categorization of some agricultural entities have flown from specific social policies eg. the acquisition of large rural holdings following World Wars I and II and the subdivision of land into 'soldier settler blocks'. Similarly, with the land subdivisions in the cane sugar growing areas, especially those that initially came into being as a result of the Queensland Government's legislation. In both cases the medium to long term impact of trying to reward Australian servicemen and women was thwarted by the smallness of the 'soldier settler blocks'. The inadequacy of equity and operating funds forced many of these people into charities, run principally at that stage by the Churches, and the States' departments which provided welfare services.

For a very significant number of reasons the legislatively based organisations were limited in their ability to deliver improving returns to the primary producers involved in these sectors. They did not quickly and sufficiently adapt to international markets' trends and in most cases failed to adapt their governance and financial reporting standards to meet increasingly higher expectations and legislative requirements for 'good governance' increasingly demanded by the Federal and States governments. In many instances they had to be bailed out by the States' Governments in particular. They also failed to convey accurate financial and performance data to the producers who were forced to use their monopoly services. In some cases, especially those producers who sold products only in Australia, the policies or lack of them led to serious market distortions, higher than warranted product prices and unresponsive reactions to changes in markets. In some instances in some of the States there were cases of corruption.

The major industries involved in deregulation were the wool, dairy, wheat and egg production industries. The organisations that dealt with them such as the Grain Elevators Boards of NSW and Victoria, the Australian Dairy Corporation and the States' Milk Marketing Boards, the Egg Marketing Boards, the Rice Marketing Board, the Barley Marketing Board and many smaller boards were often poorly governed, inadequately funded and subject to special interest group and political interference. Both the Grain Growers Ltd (NSW) and Bulk Handling Co-operative Ltd (Western Australia) were legacies of those market constraints. The Grain Elevators Boards of NSW and Victoria were privatized. However, some continued under a broad, legislative and regulatory umbrella. Amongst them was the sugar cane growing, transporting and milling sectors in Queensland and the northern rivers of NSW, which were heavily regulated.

The sugar industry had an especially long, volatile and at times very sordid history across the spectrum of growing, harvesting and milling of sugar cane. In it's very early stages 'blackbirding' was rife and South Pacific islanders (and later European immigrants) were employed in appalling conditions as the sugar cane growing and milling industry was established and expanded along the Queensland coast.

CSR Ltd initially, which had been deeply involved with the industry for over a century exited the sugar cane milling sector and ultimately the raw sugar market. It had been involved in Northern NSW and played major roles in sugar milling, domestic sugar production and marketing and export. CSR's port storages and export role was taken over by QSL.

In the post World War II period CSR Ltd was the major sugar cane miller and had legislative powers to monopolise the export of raw sugar for the industry. Contemporaneously, CSR was involved in vertical integration of the sugar industry. CSR also held a monopoly over domestic sales of processed raw sugar.

CSR Ltd was a listed public company and as such would have paid all the Federal and States' taxes required of a listed company although it is unclear if the CSR raw sugar division paid Queensland State Taxes. Also, as a listed public company CSR Ltd was subject to oversight by Federal Government organisations with responsibility for corporate governance and the operation of the corporations law in general.

The two other organisations were Grain Growers Ltd (NSW) which operated primarily in the wheat and related grains sector and Bulk Handling Co-operatives Ltd (Western Australia) which dominates the wheat storage, transporting and marketing of wheat and other grains in Western Australia.

All these industries in their own individual way and as part of their contributions to local communities and the States in which they operated were significant employers of labour in their early stages. In many cases the communities they served or acted for were small and operated remotely from larger country towns and cities. In the areas in which they operated, education and hospital services, in many cases, were provided by religious institutions or local community organisations – most of whom were tax exempt. There is a credible argument that the churches in particular provided schools, small hospitals and other services in regional areas, country towns and villages and thus saved capital and operational expenditures by the States.

Traditional charities evolved in many of the smaller towns and regional cities ultimately after World War I, the Great Depression and World War II with communities relying heavily upon volunteers operating under the aegis of organisations such as the Salvation Army, the RSL and the major religions and istitutions (eg. The Catholic, Anglican and other churches). In some cases generous benefactors contributed to facilities in rural communities and while not benefitting from States' tax exemption received Commonwealth Taxation concessions – especially after the abolition of death duties.

In most cases and over a very long period of time many of the benevolent organisations became recipients of financial support from the formal charitable organisations that evolved and became important parts of local communities. The Commonwealth and States' Governments supported the growth and operation of these organisations. Ultimately, the National and States' governments passed legislation and regulations establishing these bodies and totally or partly assisted funding them to meet particular short run needs arising from floods, bushfires or cyclones and in the longer term facilities that the State would otherwise have to provide.

Often on a longer term legislated basis these organisations received Governments support and became significant and dominant services suppliers. Certainly in the periods between WWI and WWII and during the 'Great Depression' many of these organisations were critical for the survival of rural communities.

In the aftermath of Word War II all the major agricultural industries were subject to either revocations of compulsory acquisition laws (enacted under Federal and wartime powers) and reviews by the Commonwealth Government (the wool, wheat, dairy and poultry industries). In many cases, the States based statutory marketing boards were phased out or abolished. Most of these boards were exempt from States' taxes. The States' Governments where legislation supported monopoly positions and determined the way in which the 'Boards' controlled the produce coming from the growers and the way in which they dealt with the consumers (local, national as well as international sales) was proving inefficient and slow to adapt to market demands and the introduction of new technology. As far as can be established the States based marketing boards and similar organisations did not pay States' taxes.

Monopoly or near monopoly control became part of the ethos of many rural communities, especially in cases where larger properties had been requisitioned and split up into small mainly uneconomic land holdings. As the raging debate on wool marketing erupted and the wool reserve prices scheme demonstrated there was fierce independence exhibited and pursued on one end of the spectrum and rigid, omnipresent control over production and marketing at the other end.

Amongst the drivers for major changes was the extensive evidence that regulatory regimes hindered adjustment to consumer demands in national and international markets, distorted investments on the production and distribution components of the industry very significantly.

In many cases the small 'soldier settler bocks' were uneconomic and drew heavily on governments' subventions and charitable organisations. Rarely were any of the States' based indirect taxes paid and insufficient profits were earned to pay income tax. In addition widespread concessions were given by the States on motor vehicle licences, payroll tax, land and local government rates and taxes etc.

It became obvious also that what were aimed originally at protecting primary producers hindered the effective functioning of the various markets up to the farm gate and thereafter also

constrained both physical assets values and financial capital flows adjustments that would enable primary producers to gain from innovations and investments in the supply chain. The most obvious example of this was the impact of State based death duties. The greatest beneficiaries were the Canberra lawyers that set up the companies that effectively were owned by graziers and farmers in the States where death duties were collected by the States. There was a secondary effect because it diminished the States' taxpaying base and in many cases skewed taxation policy.

It would appear from the limited information available that the creation of 'artificial' entities 'resident' in Canberra significantly reduced the States' taxation bases. The personal motives that underlaid tax minimization are understood but the wider, medium to longer term implications do not appear to have been well understood. As an example it was significant that the 'Sugar Industry Strategic Oversight Group' which reported in 2006 advising that its report should be implemented and claimed that….. "the industry should be better placed to achieve viability and sustainability and be a proud self-reliant industry without recourse to the taxpayers of Australia". (my emphasis). I submit that a broader base for State based indirect taxes is likely to have a more positive result in the medium to long term as against the current arrangements.

The history, structure and operations of QSL, Grain Growers Ltd and BCH reflect many of the origins of and developments in two key agricultural industries - wheat growing and sugar cane production and milling. Since WWII both have been very tightly controlled by legislation and regulations. The recent acrimonious debates that have taken and continue to take place in key parts of the sugar cane production, cane transporting and milling sectors and the continuation of Queensland Sugar Ltd reflect much of that history.

In the case of Grain Growers Ltd (NSW) the separation of Grain Growers Ltd from the 'breakaway' BRI (a research body) and Agricon (survey and forecasting company) brought Grain Growers Ltd into the category of what the legislation describes as a charitable organisation (and is similar to the classifications in other States).

In the case of Queensland Sugar the situation is more complex and steeped in an extraordinary confabulation of individuals, service providers, local and State backed administrative and regulatory agencies. The Queensland sugar industry has been subject to more reviews, enquiries, litigation and political attention and intervention than any other agricultural sector in Australia.

It is very difficult to sustain a case for Queensland Sugar being classified as a 'charity' in terms of what the person in the street would regard as a charity ie. a 'benevolent organization', while operating with the objectives of ultimately improving the delivered prices of sugar and the value of equity in sugar mills and cane farms. QSL is overwhelmingly a commercial organization . One of its primary objectives is to maximise the prices for raw sugar and ultimately the returns to the sugar cane millers and cane growers.

The key objectives of QSL and BCH is to maximise the returns to sugar millers (and in turn) sugar cane farmers and Western Australian wheatgrowers in the case of BCH. There is nothing wrong with these objectives. But there is no sound economic or logical reasons why these organisations should be exempt from various State's tax laws that the majority of businesses including other agricultural industries such as cattle raising, wool growing, wine grapes growing and dairying (among others) are required to pay.

QSL may technically meet the legal requirements of what constitutes a 'charity' under the Queensland tax laws as does BCH under Western Australian laws, but it is hard to classify either of them as what the person in the street would conceive as a 'charity'. Both when QSL's functions were managed by CSR Ltd and in its current role it is hard to classify it as a 'charity' – they both fail the 'pub test', and importantly cause unequal distribution of States based indirect taxes. While many producers dealing with QSL and BCH would complain loudly about having to pay States based taxes they effectively shift the States' tax burden to other groups of primary producers (and others) who do pay the States' taxes.

There is a serious policy inconsistency when one class of private sector businesses and individuals are paying income and other taxes while another section is not – especially States' based indirect taxes. Most individuals and companies gripe about paying taxes but recognize that the revenue goes towards funding a very wide range of services. In addition, healthy sustained profit results are more likely to maintain and improve performance and encourage innovation which in turn brings about improved operating systems and new investments.

This is not to say that BCH and QSL are not well run commercial style business organisations. They are. The CBH Group's letter of 29.10.2014(2) to the W.A's Standing Committee on Legislation makes the claim and heralds BCH's benefits to the WA Wheatgrowers, the Western Australian economy and Australia at large. What it does not say is that it has narrowed the WA tax base and probably increased costs to grain growers and other primary producers.

The geography of the Western Australian Wheat belt may mitigate against greater competition in the storage and transport of grain but there is no strong reason why it should not pay States' taxes. Likewise with QSL. As recent events in the international wheat trade demonstrate wheat prices will be determined by international competition (in the case of wheat coming to Indonesia and South East Asia from Black Sea Countries).

With the abolition of the Australian Wheat Board, wheat and other grains are marketed overseas (and domestically) by a diversity of companies ranging from large multi-nationals to smaller, specialist individual operators and growers in these States appear to have benefitted from vigorous competition.

The current structure of BCH entrenches an existing dominant position and limits exits from and entry into the growing industry and its support services which includes important parts of the supply chain. It lessens exposure of BCH to market competition. Similar arguments are being

used by BCH about the necessity of maintaining monopoly control. They are the same arguments that were used against deregulating the Grain Elevators Boards in NSW and Victoria along with a number of the smaller grains marketing organisations. In both NSW and Victoria the States opening up the storage, shipping and marketing has been beneficial to producers and buyers.

(2) CBH Group letter from General Manager – Grower and External Relations to the 'Standing Committee on Legislation'.

On an overall policy basis the use of contrived classifications of these bodies as 'charities' shifts the burden of taxation (in this case States' taxes) and that in turn means a smaller proportion of the community is funding a wider range of services, many of which would mainly be small private companies that would be regarded by the ordinary person in the street as charitable organisations. There are very strong equity arguments against selective taxing arrangements using indirect taxes which fall more heavily on low income groups or in some cases other groups in society which governments assess have the capacity to pay.

There has been a very long list of court cases in the English and Australian courts over charities and closely related matters – especially where the dividing line is between an organisation (or person) which demonstrates benevolence to the poor and helpless and organisations which are "bequests, foundations or institutions for the benefit of others especially the poor or helpless" (Oxford English Dictionary definition of charitable) and 'the private or public relief of unfortunate or needy persons; or organisations involved in fund raising activities etc. a charitable motive" (Macquarie Dictionary definition of charitable). These are the concepts that the person in the street conceive as constituting a 'charity'. Over the centuries charities have largely been the Churches, benevolent bodies and other similar organisations providing health, education and family support services for the unwell, the unemployed and those in generally poor or unfortunate condition in society.

However, the issue of what contributes a charity has occupied the English and Australian courts for a very lengthy period of time. Forty four cases were cited by Black J in the Grain Growers Case. Reading the detailed judgement of Justice Black (and a number of cases in Australia and English courts) it is almost possible to see Justice Black (in Grain Growers Ltd v Chief Commissioner of State Revenue:[2015] NSW sc 95 (Supreme Court of NSW, July 2015)(3) wrestling with the ethical, moral and legal dilemmas arising from previous court decisions and interpretation of some of the laws which have been drafted and subsequently amended to accommodate particular needs of persons in distress but also people and organisations which have sought to maximise financial and commercial benefits (especially where valuable assets are involved) to minimise tax contributions to the State and maximise value which might be extracted at a later date.

Regarding some of the cases in the late C19th and early parts of the 20th century it becomes pretty clear that one of the main purposes for the establishment of 'charities' was to avoid the death duties, land taxes and other taxes raised by the States' Governments. It was certainly the case in Australia where very considerable efforts went into avoiding land tax and death duties. It was not until the Queensland Government started the roll in 1978 by abolishing death duties that many of the 'tax haven' companies and individuals returned to the States that had eliminated death duties.

(3) Black J in Grain Growers Ltd vs Chief Commissioner of State Revenue NSW [2015] NSWSC (14 July2015) 925

At the time death duty taxes were abolished, there was a view that as the States needed more revenue other indirect taxes would be introduced or current State based taxes increased. Death duties have not returned (and for political reasons are unlikely to ever do so) but the range and value of other indirect taxes have increased and are likely to continue to do so.

There are grounds for the proposition that the current range of indirect taxes, as they are currently imposed by the States', disproportionally impact on low income persons and the lifting of exemptions for taxes such as those not currently paid by BCH / Grain Growers and QSL (and some other organisations) would rebalance the equity of Australian indirect tax regimes (and in some cases probably reduce the overall levels of State based indirect taxes).

Justice Black raised the question as to whether or not Grain Growers "had a charitable purpose as its sole or dominant purpose". He then referred to the long standing English case, 'Commissioners for Special Purposes of Income Tax v Pemsel [1891] UK HL1 [1891] AC 531 et seq. known by lawyers as 'Pemsel'. Although decided 120 years ago is still taken as providing the supporting arguments for the applications and exemptions from existing taxation laws (other than income tax laws).

It was conceded in the 'Grain Growers' case that 'CGL'was a not for profit organization as defined in the Payroll Tax Act. A similar view has been adopted in the cases of Queensland Sugar and BCH.

Graingrowers argued, in actuality and by inference as BCH and QSL have also argued, that their activities are for "other purposes beneficial to the community" over and beyond

(i) trusts for the relief of poverty,
(ii) trusts for the advancement of education,
(iii) trusts for the advancement of religion, and
(iv) trusts for other purposes beneficial to the community not falling under any of the preceding.

The three organisations have relied on (iv) above to support their claims as being for charitable purposes. In the Western Australian instance (iv) is part of the legislation. However within the overall concept of what constitutes 'a charity' is stretching credibility.

The Australian courts have gone on to use the preamble to the Statute of Elizabeth 1601 and Lord MacNaghten's language in the Pemsel Case, both of which arose in very different socio-economic climates to those of the 21st century. Simultaneously, more and more applications are being made for classifications as charities and exemptions are sought from States' based taxes.

Australian (and other governments) have been under continuing and increasing political pressure to succumb to widening the meaning of 'charitable' and the vocal claims of a wide range of commercial, society and special interest groups clamor for special treatment and especially exemption from State taxes in order to pursue their aims.

In the health, education and care for the homeless and generally underprivileged persons in society, many of the 'charitable' organisations carry out functions that would otherwise have to be provided by the State with the assets used to be funded by the State's' and local governments and their agencies. There are credible arguments for supporting services providers in areas which most citizens would regard as 'charitable' or 'near charitable' functions (using the ordinary person's view of what constitutes a 'charity' or is for a 'charitable purpose').

While it is not especially relevant in this particular submission there is little doubt that many donors are financially supportive of 'charitable' organisations and would continue to do so regardless of whether or not such donations were treated as tax deductions. However, it is also likely there would be a reduction in donations if the tax exemptions were removed.

The briefing note from Treasury which outlined the terms of reference for this enquiry indicates that:-

(i) Charities spent a total of $6.7 billion annually on grants of which 75% was spent within Australia
(ii) 1% of charities accounted for 54.9% of the sectors total revenue of $142.8 billion,
(iii) 49.5% of charities operated without paid staff and children (6-14 years) and youth (15-24 years) were amongst the largest recipients in these groups

The overwhelming number of these classes of organisations would be staffed by volunteers, would operate outside industrial awards or written employer / employee agreements and in many cases there would be no provision for annual leave, sick leave, long service payment or other arrangements which are common-place or are in most cases legal requirements under industrial awards or determinations.

It is highly likely that the community at large has no understanding of the considerable drain of potential revenue by the operations of QSL and BCH and to a lesser extent Grain Growers (possibly along with similar organisations in the secondary and tertiary sectors of the Australian

economy). Without trawling through the list of registered charitable organisations it is possible that there is moderate number of quasi – commercial organisations akin to QSL, BCH and GG. However, they are probably much smaller and are "under the radar". Organisations such as Sanitarium Health Food Company with 1000 employees, which manufactures a wide range of food products operates as a charity and as with BCH and QSL is exempt from company income tax and other taxes. Sanitarium's profits are transferred to the Seventh Day Adventist Church in Australia and the funds are used for educational and health services and community programs to improve the health and wellbeing of the community. In addition to the community programs, it has a large hospital in Sydney and several hospitals in PNG and the Pacific Islands – the latter, at least, would fall into the category of what the community would regard as charities.

The letter which Co-operative Bulk Handling Ltd (trading as BCH Group) wrote to the Western Australian Standing Committee on Legislation (28th October 2014 – copy attached) demonstrates the vigour with which what is basically a strong, vertically integrated commercial organization will argue for it's continuance as a charity. The loss of revenue to the State of W.A is probably about $52m annually (depending upon the size and value of the wheat crop) – not an insubstantial amount.

In the case of QSL, Grain Growers and BCH the overwhelming numbers of full and part time staff would be covered by either industrial awards, Fair Work Commission agreements or some other formal arrangement that could be formally determined by a State tribunal.

In addition QSL and BCH have a long history of operating as fully commercial organisations. Until the separation within GGL, some of the employees were working on a minimal wage with non cash contributions (such as free travel and other benefits).

It is presumed that as a consequence of amendments to the Grain Growers constitution the 'industry good functions' which are regarded as being for 'charitable purpose' have been separated from BRI and Agricon which are commercial trading organisations and will be paying State taxes.

Without going into the detail of Black J's decision the ultimate result was that part of GG's operations that were commercial in nature were subject to tax and those which were not were needed to distinguish "between the parts of Graingrowers activities that were charitable and those that were not".

As is evidenced in the report (no 26) of the Standing Committee on Legislation – Taxation Legislation in the Western Australian Parliament (Nov 2014)(4), the W.A Standing Committee on Legislation is probably the most recent exegesis on charity law and in particular what are described as 'fourth limb' charities (ie. Those whose "other purposes considered beneficial to the community").

The situation would appear to be different in the cases of QSL and BCH.

Note: the four that categories that encompass organisations promoting and supporting charities are those that are for:-:

- relief of poverty
- the advancement of education
- the advancement of religion, and
- other purposes considered beneficial to the community

The last category appears to be a vague catchall that conveniently accommodates 'political pressures'. It has extraordinarily wide scope.

(4) p5,1.21 W.A Report 26, Standing Committee on Legislation: Taxation Legislation Amendment Bill 2014.

In both cases BCH and QSL effectively operate monopoly organisations or quasi-monopolies that are certainly market dominant. In the case of BCH the monopoly or near monopoly situation is helped by the fact that it would be physically and financially challenging to establish a network of grain silos, railway sidings and road access points and bulk terminals that would provide active competition and provide WA wheatgrowers with a choice of services providers.

In the letter to the W.A Parliament's Standing Committee on Leglisaltion CBH argued " CBH's Co-operative structure allows the organization to take a longer term view when making investment decisions and without the constraints of short term profit imperatives faced by listed companies"

In the case of QSL its position is continually being eroded by a series of policy decisions and the Queensland government's allowing increased competition from the private sector organisations that have acquired a number of the sugar mills.

Ever since the Queensland sugar cane growing, milling, storage and marketing of prices (both domestically and internationally) were rigidly controlled from the allocation of cane assignments to the delivery of cane to the sugar cane mills there have been controls on the amount of sugar cane which could be grown, overtime those rights accumulated value and for a long time there was a complex legal and administrative structure limiting entry into and out of the cane growing sector. That value accretion was captured in the value of cane assignments whose transfer was determined through a very intensive, legalistic process. The flow on effects transferred to the sugar export market which was controlled by the monopoly CSR Ltd.

There have been numerous Federal and State (Queensland) Government enquiries into the operation of the sugar industry. There is a significant body of data and credible evidence to demonstrate that the inflexibilities, rigidities and investment constraints imposed by 'the system' impacted adversely on cane growers, core transport operations (mainly tramways) that picked up

cut cane out of the cane fields and transported them to the sugar mills and ultimately to the domestic and international sugar/sweetener markets.

International developments such as national subsidies and other assistance measures in major cane or sugar beet growing countries (eg. USA, Brazil, Cuba) and in particular the expansion of sugar beet production in the EEC and parts of Central Europe and growing sugar cane production in countries such as India, Thailand, Philippines and parts of Africa have had and are continuing to have an impact.

The point that arises from the long standing historical government support arrangements in the Australian agricultural sector is that they have entrenched monopolies or quasi-monopolies that have slowed down adjustments to meet external changes in the domestic and international markets, stultified asset values, (especially land) and delayed adjustment and reconstruction when needed.

One, but not always the only consequence has been that when an industry or a group of producers in an industry gets into trouble, non-operational elements seriously delay if not impede structural adjustments and initiate demands for federal and or States and local governments' assistance. Usually, concomitantly with demands for financial assistance of one kind or another is involved a demand for concessions which includes payroll tax, land tax, reductions in vehicle licensing fees and so on. On a one off basis such actions may be seen as short term and temporary but in addition to the consequential impact on local government and States' governments revenues it has an impact on the federal tax revenues, ironically by individuals seeking what would have previously been called 'poor relief' (but now dressed up in less deprecating terms)

If serious 'poor' relief is required in the community it is probably more effective for financial or similar assistance to be provided by what traditionally has been regarded as 'a charity' eg. Salvation Army etc.

Government welfare programs, for justifiable accountability and transparency reasons are bureaucratic.

The impediments to change in the agricultural sector are amply illustrated by the histories of the States' based marketing boards most of which did not pay State based taxes. These included the sugar, rice, wine grapes and some of the smaller grain boards such as the Barley Marketing Board in South Australia.

In spite of all the concessional arrangements and the tax exemptions they lacked the legal, financial and commercial capacities to anticipate and bring about changes that in the medium to long run that would have delivered greater industry and personal value than hanging on to contrived structures and financial measures that superficially suggest benefit to producers (and maybe consumers) but in reality were restraints on innovation and commercial mobility.

As the CBH Group letter to the WA Standing Committee on Legislation in response to proposed changes to the WA taxation Legislation Amendment Bill 2014. (a copy of which is attached) contains comments that can be made about Queensland's Sugar marketing organisations - Queensland Sugar Ltd.

My submission is that the State based exemptions from State based taxes should be removed and the definition of what constitutes the definition of a charity to be confined to those who are 'poor and helpless'.

K.P Baxter

Sydney – 22nd February 2018