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9 December 2011

The Manager  
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The Treasury  
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By email: [NFPReform@treasury.gov.au](mailto:NFPReform@treasury.gov.au)

**Submissions in response to Consultation Paper titled "A Definition of Charity"**  
**dated October 2011**  
**CAPE YORK LAND COUNCIL ABORIGINAL CORPORATION (CYLC)**  
**9 December 2011**

CYLC appreciates the opportunity to respond to the Consultation Paper ("the Paper").

We have not attempted to address each of the questions raised in the Paper, which go beyond our area of expertise and interest. Our submissions relate to issues associated with the difficulties which have commonly been experienced by native title groups in Cape York when establishing representative bodies and associated entities as part of native title claims and related processes.

We refer to:-

1. The submissions made by the National Native Title Council (NNTC) dated 8 July 2011, in response to the *Better Targeting of Not-For-Profit Tax Concessions Consultation Paper*.

Those submissions noted the many and varied difficulties in seeking to use charitable trusts for native title and related purposes, including the difficulty for native title groups in meeting the public benefit requirement, the desire to apply benefits to more than one purpose, and the problems associated with accumulation of funds for the benefit of future generations.

The NNTC submissions proposed a new Indigenous taxation and economic vehicle referred to as an “Indigenous Community Development Corporation” (ICDC) as an option for addressing the systemic and interrelated socio-economic challenges faced by Indigenous communities, and assisting them to reach individual and community economic independence.

CYLC strongly supports that proposal. We firmly believe that a vehicle specifically designed to meet the unique challenges faced by Indigenous communities (in Cape York and elsewhere), accompanied by a range of tax exemptions and concessions, is necessary to encourage and support those Indigenous communities in their efforts to achieve economic independence as well as preservation of traditional values.

We understand that development of such a vehicle will take time, and in the interim, we support the proposal to amend the definition of “charity” to clearly encompass native title groups.

2. The response to the Paper provided by Freehills. We support Freehills’ recommendations.

We note that the amendments proposed to address the family ties issue are unlikely to resolve the other difficulties identified in trying to fit Indigenous entities into the charitable framework. None of the PBCs established for the Cape York region to date have been set up as charities, at least in part due to doubts about whether payments received by PBCs, proposed uses of such payments and other activities likely to be undertaken by PBCs fit the requirements of a charity. (We note that all of the PBCs established for Cape York are not-for-profit entities, as is required by the relevant legislation).

The proposal to recognise entities established to receive and manage payments under the Native Title Act or similar State or Territory legislation as charitable is supported. However, it is not always clear whether payments are made pursuant to that legislation, and most if not all native title groups will still struggle to meet the public benefit requirement.

We therefore doubt that the proposals go far enough to meet the aspirations of most Cape York native title groups, particularly if the scope of purposes and activities of charities are tightened to exclusively, rather than dominantly, charitable.

We submit that a complementary approach would be to recognise the communal ownership of property held by or on behalf of Indigenous groups (which is an intrinsic part of the fabric of the traditional laws and customs of Aboriginal people, and a requirement under native title law) as “public” property, sufficient to meet the public benefit requirement. Dealings with the communal (or “public”) property would be a matter for the communal owners in accordance with their laws and customs, and may in appropriate circumstances include distribution to individuals.

Such an approach, particularly if accompanied by a list of charitable purposes which included a range of community and economic development purposes (including sport as recommended in the Freehills response) and confirmation that funds can be accumulated for the benefit of future generations, would constitute a practical recognition that Indigenous communities want to take responsibility for their own well-being. It would encourage a move away from the stereotypes often associated with the welfare of and charity for Indigenous people, where Indigenous corporations have been established as public benevolent institutions based on the state of disadvantage of the Aboriginal groups in the region. That approach potentially limits those organisations from engaging in a broader range of activities such as economic development - which has been broadly recognised in recent times as an essential element for improvement in the lives of Indigenous people.

We would be pleased to provide further information about particular Cape York examples if it would assist.

Yours sincerely  
**CAPE YORK LAND COUNCIL**

A handwritten signature in black ink, appearing to read 'Peter Callaghan', written over the printed name below.

**PETER CALLAGHAN**  
**CEO**