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Dear Manager

A definition of charity – consultation paper October 2011

Thank you for the opportunity to provide feedback on the Treasury Consultation Paper 'A definition of charity' issued in October 2011.

1. In relation to Question 1 regarding issues with amending the 2003 definition, we consider the 2003 definition in the Charities Bill containing the dominant purpose requirement should not be replaced with an exclusive purpose requirement and that any definition, and administration of the definition (by the ATO, proposed Australian Charities and Not-for-profits Commission (**ACNC**) or otherwise) should clearly distinguish between 'purposes' and 'activities'.
2. In relation to peak bodies, we are of the view that if the dominant purpose, but not sole purpose, is to support charities, then it too should be a charity.
3. There needs to be changes to clarify the meaning of 'public' and 'sufficient section of the general community' and the public benefit requirement should not be limited by reference to numbers. This is to ensure that charities that have a purpose of providing benefits to persons who may happen to be a numerically small number are not disadvantaged.
4. In relation to the proposed legislation and definition, any definition should be flexible enough to cater for changes in society and other developments that may occur after the definition becomes law. We believe that the legislation itself should form the basis of any public benefit test.
5. In relation to a requirement that existing charities or entities seek approval, we would prefer that unless it can be clearly demonstrated that the current presumption of public benefit is being abused, that any new definition of charity retain the current presumption to avoid unnecessary compliance costs.
6. JewishCare is anticipating that the new ACNC would have a supportive, rather than confrontational, role in dealing with charities. This supportive role should include assisting charities in demonstrating any requirements, whether they be the public benefit requirement, non profit requirement or otherwise.
7. The issue with the requirement that the activities of a charity be in furtherance or in aid of its charitable purpose should be resolved by having the dominant purpose requirement, with appropriate provisions for ancillary or incidental purposes, adopted for the definition of charity. On the basis of the dominant purpose requirement and expanded list of charitable purposes, the activities of a charity should be in furtherance or in aid of its charitable purpose and charities should be free to adopt whatever activities they consider appropriate to achieve their purposes, and such activities need not be intrinsically charitable.

8. In relation to political activities, charities rely on the goodwill of local politicians to support the charity, advocate on their behalf in relation to funding and speak at functions. The legislation should be drafted so that this would not threaten a charity's charitable status.
9. Charities should be free to determine the structure that best suits their particular circumstances. Notwithstanding this, it may be useful for the ACNC to issue publications on the differences between the various structures and their advantages and disadvantages
10. We consider that the list of charitable purposes contained in the *Charities Act 2006* (England and Wales) would have strong public recognition as charitable also in Australia.
11. An appropriate definition of charity should be adopted in the Commonwealth legislation which can then be adopted by State and Territories would ensure consistency. For example, if a charity were registered with the ACNC, then this should be sufficient for it to be accepted as a charity for all other government purposes.
12. Charities endorsed by the ATO as tax concession charities should not need to reapply for registration by ACNC, but should be able to self assess compliance with any new definition of charity.

There is another important issue relevant to us. In relation to distributions by private ancillary funds¹, we consider that:

- 1 The *Income Tax Assessment Act 1997* and guidelines for private ancillary funds and public ancillary funds should be amended to allow private ancillary funds to distribute to public ancillary funds.
- 2 Any such distributions would not be able to be accumulated by the public ancillary fund and would need to be fully distributed to a 'doing charity' with deductible gift recipient endorsement under item 1 of the table in s30-15 of the ITAA 97 within an appropriate period (say by 30 June following the year in which the private ancillary fund distributes to the public ancillary fund).

We support the Government's policy that distributions should be made to 'doing charities' in a timely manner, and that any accumulation by a public ancillary fund would not be appropriate. However, the effect of the current implementation of that policy is that private ancillary funds are not able to utilise the skills and resources of a public ancillary fund.

I am available to discuss any section of this submission.

Yours sincerely



Claire Vernon
Chief Executive Officer
JewishCare
