

2 October 2003

Consultation on the Definition of a Charity  
The Board of Taxation  
C/- The Treasury  
Langton Crescent  
PARKES ACT 2600

To Whom it May Concern

## **Consultation on the Definition of a Charity Submission - Royal Agricultural Societies**

This submission is being entered on behalf of:

- Royal Agricultural Society of Western Australia Incorporated
- The Royal Agricultural Society of Victoria Limited
- Royal Agricultural and Horticultural Society of South Australia Incorporated

### **Background**

The nature and concept of a charity has been in existence for many hundreds of years, with the definition of a charity, throughout the world, being determined by many centuries of common law, which the Australian courts have adapted to the situations facing them.

The current status is that to assist organisations in determining their status as a charity, the Australian Taxation Office (“ATO”) has issued publications such as the ‘Charity Pack’ and the more recent ‘Income Tax Guide for Non-Profit Organisations’. These publications outline the definitions under case law as well as provide a list of twenty organisation types which includes examples of charities.

Currently, agricultural show societies are classified as a charity within the ‘industry, commerce and agriculture’ category of charities in the ATO’s Income Tax Guide for Non-Profit Organisations.

In September 2000 the Prime Minister released a terms of reference for an inquiry into the definition of charities and related organizations. Subsequent to this, the working party established for this review released a report in June 2001 detailing their findings. This report was titled “*Report of the Inquiry into the Definition of Charities and Related Organisations*”

It is the background provided in the Charities Definition Inquiry and following report that has culminated in the release of draft legislation in the Charities Bill 2003 (“Charities Bill”), that attempts to encompass a working legislative definition of charity.

The role of the Board of Taxation is, at the request of the Treasurer to engage in consultation with affected parties as to the workability of the proposed legislation, most noticeably the proposed definition of a charity.

The Board of Taxation is to consider views put forward and provide recommendations to the Government by 1 December 2003. Current expectations are that the legislation will be effective from 1 July 2004.

On behalf of the Royal Agricultural Society of Western Australia Incorporated, the Royal Agricultural Society of Victoria Limited and the Royal Agricultural and Horticultural Society of South Australia (“the Societies”) we are pleased to provide a submission regarding the proposed legislation including key comments on whether the public benefit test as detailed in the Charities Bill should require the dominant purpose of a charitable entity be altruistic.

## **Agricultural Societies**

### **Our Background**

The Royal Agricultural Societies have their backgrounds clearly linked to the land. Many of these Societies were established in the latter half of the 19<sup>th</sup> century or the early phases of the 20<sup>th</sup> century.

The dominant purposes of the Agricultural Societies is to promote, encourage and assist the development of:-

- agricultural, horticultural, viticultural, industrial, rural, technological, commercial and mineral sources of Australia and the relevant state including the education and cultural exchange intrastate, interstate and internationally.

While there are many events throughout the year that reflect this dominant purpose, the main community event that the Societies are involved in are their Royal Shows.

Each Royal Show, open to all members of the community, are held under the auspices of the relevant State’s Royal Agricultural Society Acts, for which each of the Societies is held responsible for.

The Societies which continually reinvests in themselves, must provide venues for the exhibition of and competitions relating to agricultural products and skills. Through the information provided, exhibitions and competitions, the shows actively promote the dominant purpose of the Society. Noted benefits are the increased understanding of the agricultural industry to the millions of annual show attendees.

Each Royal Show does not only benefit the community by the nature of the objectives it promotes, but they also provide further benefits to the community by facilitating the involvement in the Royal Shows by community organisations such as:

Red Cross	Boy Scouts and Girl Guides
Royal Institute for the Blind	Association for the Blind
Police & Citizens of the relevant State	Country Women's Associations
Machinery Preservation Societies	Vintage Tractor and Machinery Associations
Landcare Movements	Farmers Federations
Horticultural Societies	Rural Youth Organisations
RSPCA	Greening Australia
Sporting Groups	School Groups
Salvation Army	Hospitals
State Emergency Services	Country Fire Authority

### **Submission Recommendations**

The proposed legislative definition is very similar to the current common law interpretation. A charitable entity must:

- Be not-for profit;
- Have a dominant charitable purpose that is, with some exceptions, for the public benefit;
- Engage in activities that further, or are in aid of, its charitable purpose;
- Not have a disqualifying purpose;
- Not engage in activities or conduct that constitutes a serious offence; and
- Not be an individual, partnership, political party, superannuation fund or government body.

With reference to the above draft definition, including the defined terms we have reflected against the current interpretation that has been established under common law. We note the intention of the definition is not to restrict the definition of charity however to expand it.

### **Old Versus New**

With reference to existing common law and the proposed legislative definition we believe that the three key tests of

- Not for profit
- Dominant charitable purpose; and
- Public benefit

are sufficiently well defined that would enable entities to consider their charitable status.

We do note that the proposed definition of charitable purpose reads as follows:-

*A reference in any Act to a charitable purpose is a reference to any of the following purposes:*

- (a) the advancement of health;*

- (b) *the advancement of education;*
- (c) *the advancement of social or community welfare;*
- (d) *the advancement of religion;*
- (e) *the advancement of culture;*
- (f) *the advancement of the natural environment;*
- (g) *any other purpose that is beneficial to the community.*

and recognize that this may be a consolidation of the boundaries of activities that could constitute a charitable purpose and upon review believe that the Societies would qualify under (b), (c) or (g). This is supported in *Commissioners of Inland Revenue v Yorkshire Agricultural Society (1928) IKB 611*, the court stated that ‘agriculture is an industry not merely beneficial to the community, but vital to its welfare’.

### ***Is there flexibility in the Charities 2003 Bill to ensure the definition can adapt to changing needs of society?***

It is the Societies’ belief that it is important to ensure organisations which meet all the requirements of a ‘charity’ should be included within the definition, even if its charitable purpose does not fit directly within one of the specific categories mentioned in the definition of “charitable purpose”

Under current ATO publications there are twenty different groups to which an entity’s charitable purpose can belong. Under the proposed legislative definition of a charitable purpose, there are only six specific groups mentioned, with a seventh being a general group. This last category is extremely important as it ensures all entities meeting the requirements of a charity are given the correct status.

### ***Additional administrative burdens***

The Societies believe there will be no additional administrative burden, as the legislative definition will not change their status as a charity. It has also been stated that organisations currently endorsed as an income tax exempt charity will not be required to renew their endorsed status with the ATO when the new definition takes effect. Therefore, there are no additional administrative or compliance costs anticipated.

### ***Dominant Purpose is altruistic***

The *Report of the Inquiry into the Definition of Charities and Related Organisations*, released in June 2001 makes a recommendation that the public benefit test be strengthened by requiring the dominant purpose of a charity be altruistic.

With reference to the report, page 124 “*In the context of a charity, altruism can also be characterized as a voluntary assumed obligation towards the wellbeing of others or the community generally.*”

As a result of this the committee then considered whether the use of volunteers (and considered benchmarking to have an actual measurement of use) by a charity should be seen as necessary to

confirm the altruistic nature of the entity under the public benefit test i.e whether or not this had to be a key factor of an entity before it could be considered as a charity.

The Societies find the reference to the dominant purpose to include altruism somewhat confusing. When we refer to altruism we analyse the definition and apply it to our role – which could be interpreted as our voluntary assumed obligation towards the wellbeing of others or the community generally, which may not be all that different to our dominant charitable purpose.

The confusing matter is the altruistic nature of the charities activities provided for the public benefit and attempting to link the role of volunteers (inputs) that are commonly used by charities to the activities of the charities (outputs). We find it difficult that such a measurement, if it were to be used reflects accurately when trying to determine whether the activities undertaken by the charity are for the public benefit.

It is well noted that we rely on substantial volunteer input to ensure that the events that we propose can actually eventuate. By having a quantitative test such as the use of and number of volunteers involved as a further definitional step in the public benefit test we believe does not accurately reflect on the nature of altruism that applies to a charity and places further restrictions on charities satisfying the legislative definition.

We also believe that this would introduce substantial administrative requirements for charities to continually demonstrate that they satisfy the altruism component of the public benefit test particularly with regards to the tests imposed by the authorities on how to measure.

As the objective of the draft legislative definition is to encourage and not restrict, we do not believe that the inclusion of the concept of altruism is supporting these objectives. We also note that so long as the dominant purpose is charitable and the public benefit test is satisfied as currently defined under the draft legislation then this is a workable outcome.

## **Summary**

The Royal Agricultural Societies support the Board of Taxation in their current role of seeking input and submissions commenting on the draft definition of a charity as per the Charities Bill.

In the main the Societies support the draft definition and find it unnecessary to further strengthen the public benefit test by including the altruism test.

Should you have any further queries regarding this submission please contact Gavin Shanhun on 08 9429 2209 in the first instance.

Yours faithfully

Tasso Papaelias  
Partner – Taxation