

Our ref Corres GRE.037

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

Dear Sir

**PROPOSED CHARITIES ACT**

The South West Aboriginal Land and Sea Council, (SWALSC) is a body corporate registered under the Aboriginal Councils and Associations Act 1976, and has been granted recognition as a representative body (NTRB) under the Native Title Act..

Under its constitution SWALSC has the following objects and functions.

**6 OBJECTS**

*The Objects of the Land Council are to provide direct relief to all Nyungah Peoples from poverty, suffering, destitution, misfortune, distress and helplessness caused directly or indirectly by their involvement with the laws of the Commonwealth or States of Australia and all matters ancillary thereto including, but without limiting the generality of the foregoing, the provision of services and advocacy directed towards:*

- (a) securing land;*
- (b) protecting the spiritual and physical connection to land of members and their extended families in accordance with their traditions, laws and customs;*
- (c) supporting the maintenance, development and advancement of Nyungah culture, language and society; and*
- (d) promoting Aboriginal reconciliation as a basic tenet of Australian society.*

**7 FUNCTIONS**

*7.1 The functions of the Land Council are to do such things as are necessary and convenient for the purpose of attaining its Objects, including, but not limited to:*

- (a) facilitating the policy development, land acquisition, land management, heritage protection and development of Nyungah Peoples;*

- (b) *facilitating and providing within the policy framework of the Land Council research and development services including legal, historical, archaeological, anthropological and ethnographic services for purposes including the preparation and making of claims by individuals or groups of Nyungah Peoples for determination of Native Title or for compensation for acts affecting Native Title;*
- (c) *facilitating dispute resolution over land, heritage and related matters;*
- (d) *facilitating negotiation and liaison with Nyungah Peoples, governments and non-government agencies on all matters including issues relating to land, heritage and Native Title and compensation for acts affecting Native Title;*
- (e) *acquiring, holding and managing all manner of assets for the economic, environmental, social and cultural benefit of Nyungah Peoples.*

7.2 *Should the Land Council enjoy representative body status pursuant to Section 202 of the Native Title Act 1993 (Cth) (“NTA”), it shall also carry out the functions required of representative bodies pursuant to the NTA.*

The objects and functions of SWALSC are predominantly charitable under common law, as the beneficiaries of those objects and functions are the dispossessed Aboriginal people (Traditional Aboriginal Owners) of the geographic area of operation of SWALSC.

However, the Commissioner of Taxation has ruled that SWALSC is neither a Deductible Gift Recipient nor an Income Tax Exempt Charity for the purposes of the Income Tax Assessment Act, a decision based in part of the statutory roles imposed on SWALSC (and all bodies recognized by that Act as representative bodies) by the Native Title Act.

That decision, which is currently under challenge, is based on the interpretation by the Commissioner of the common law definitions of Charitable purpose, and in my opinion the proposed Bill will merely supply a new basis for interpretation.

There is very little legal dissent to the recognition of dispossessed Aboriginal people as a class of disadvantaged Australians, but your Bill does not contain any reference to the Aboriginal people at all, and most importantly, it fails to identify the relief of their plight as either a Charitable purpose or a public benefit.

This omission leaves Aboriginal people at risk of an adverse ruling or interpretation that could originate from the various tests applied to the new statutory definition.

Those risks are

- That a charity for the benefit of Aboriginal people or a grouping (geographic or cultural) of Aboriginal people is not for the public benefit [Bill 4(1)(b)(ii)];
- That the representation duties of a NTRB will be interpreted as a disqualifying activity [Bill 4(1)(c)] or disqualifying purpose [Bill 4(1)(d)];
- That the numbers of Aboriginal people making up an NTRB are numerically negligible [Bill 7(2)];
- That representations to Government to remove oppressive legislation or to change policies or influence the decision making of government departments will be held to be more than ancillary and therefore a disqualifying purpose Bill 8(2)(b)(ii)];
- That the membership requirements will be held to be closed and discriminatory [Bill 9(a)]
- That the acceptance of membership and election to office by the less disadvantaged Aboriginal people will be ruled as disqualifying membership [Bill 9(c);
- That the notion of Altruism (if introduced) could be applied to disqualify Aboriginal organizations, as in the main they are small, community based “self help” organizations;

The lack of recognition in the Bill for the relief of Aboriginal people as charitable purpose or a public benefit leaves them again at the mercy of the interpretation of the law, and the lack of that recognition defeats the purpose of creating a statutory definition to replace the common law rules.

In our submission the Bill ought to be amended:

- To include the Advancement of Aboriginal people as a charitable purpose;
- To add to Section 7 (Public Benefit) a provision that the Aboriginal people (by any grouping of family or regional membership) comprise a sufficient section of the general community for recognition as a public benefit;
- That any attempt by Aboriginal entities to change the law or government policy is not a disqualifying purpose.

SWALSC supports the submission made by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS).

Yours sincerely



**DARRYL PEARCE**  
**CEO**