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To Whom It May Concern

### **Statutory Definition of Charity**

Netball Australia welcomes the Government's commitment to reform Australia's not-for-profit sector to deliver smarter regulation, reduce red tape and improve the transparency and accountability of the sector. The establishment of the Australian Charities and Not-for-profits Commission (ACNC) and the aim to harmonise the federal, state and territory laws relating to the not-for-profit sector should assist the reform agenda.

In 2011, netball in Australia (Netball Australia and the State/Territory Netball Associations) reviewed its strategic positioning. A new vision was endorsed "Netball is more than a game – we lead social change, strengthen and build capacity in communities and empower women and girls". The vision shifts the perception of netball as a sporting organisation to an agent for social change.

An important strategic aspiration centres on social responsibility and in particular netball's impact on the social, political, economic, education and health status of women and girls and vibrant relationships with community partners. Netball's repositioning maximises the social good and enhances netball's altruistic activities.

As Australia's leading female sport, netball strives to deliver fair, safe, inclusive, respectful and supportive environments for all Australians. We believe that netball offers the enjoyment of participation, a sense of belonging and life-long involvement – no matter whether that's as a player, coach, official, administrator, volunteer or fan.

Netball is ranked as the leading women's participation team sport and the top team based sport in Australia for 15 to 24 year olds. Over 1.2 million participants enjoy the game nationally and Australia has been dominant on the international stage since 1963. Netball Australia has more than 340,000 registered members; 5,000 clubs nationally; 730 associations; and eight member organisations.

Netball is the largest female community based sporting organisation in the world, with more than 70 nations playing and over 21 million participants world-wide. Netball can make a real difference in the lives of women and girls.

Netball Australia is a National Compact Partner and as such is committed to the National Compact's shared vision, purpose and principles.



## Overview

Sport is a central part of Australian Society.

Sport helps to create an inclusive society where all are valued, and have the opportunity to participate fully, regardless of factors such as age, gender, race, religion or disability.

The Australian Sports Commission in Australia's Winning Edge outlines that sport is not only good for our sense of national pride, it also contributes to other important Government objectives in areas such as participation, economic development, health, wellbeing and education.

Giving Australia has identified a growing proportion or rate of giving and increasing generosity in giving. This holds true for giving of money, and giving of time or volunteering and across giving by individuals and households as well as by business. The giving of money, goods and services to non-profit organisations by individuals and business is estimated by this research to total \$11 billion in a year. Sporting and recreation groups receive 3% of the total of all individual donations, about one in five of all hours volunteered and one in six of the dollar value of business giving.

Giving Australia and the Australian Bureau of Statistics notes that there are an estimated 700,000 not-for-profit organisations in Australia and about half are incorporated. About 35,000 employ staff and many depend on voluntary commitment. There are about 35,000 charities and approximately 20,000 organisations with Deductible Gift Recipient (DGR) status.

## Context

Netball was of the view that the statutory definition of charity would be based on the 2001 Report of the Inquiry into the Definition of Charities and Related Organisations. Suggestively in this Report, the Committee recommended that the encouragement of sport and recreation to advance health, education, social and community welfare, religion, culture or the environment be a charitable purpose. Notwithstanding in reading the Report, the case law distinction between mere sport - sport played for competitive reasons or for amusement - and sport to advance a recognised charitable purpose remained central.

By embracing the expanded range of charitable purposes and reconsidering the need from being exclusively charitable, the key for sport was the opportunity to partner with philanthropic entities as a way to address social need especially as sport is integral to healthy lifestyles, prevention of illness, wellbeing and social inclusion. This would strengthen the sector and provide opportunities to access the Australian Taxation Office's (ATO) tax concessions, if criteria were met.

DGR status would only be examined if the entity wanted to receive gifts from the public and or the entity wanted to attract funds from grant makers and philanthropic bodies which can only give to DGR entities.

The latter is the key for netball as many companies and foundations, due to ATO restrictions, require Notices of Endorsement from the ATO as a DGR or as a Tax Concession Charity as a precursor to apply for support from Private Ancillary Funds and Public Ancillary Funds.

## Interpretation

In discussions with Treasury, it is now apparent that the consultation processes have been to codify the existing common law of charity that have developed over time and not to expand the purposes per se.

Netball is disappointed that Treasury's Not-for Profit Reform Factsheet, provided as part of the current consultation, overtly notes that the statutory definition does not set out to extend the range of existing recognised categories of charitable purposes, for example, to include sport and recreation.

The Explanatory Material states that:

*1.110 A purpose that is essentially social, recreation or sporting is not charitable regardless of motivation or the benefits to the general public that can result.*

*1.111 While social, sport and recreational purposes are not charitable purposes, social, recreational or sporting activities that are incidental to charitable purpose and further or aid the purpose, such as health or education, do not necessarily prevent that purpose from being charitable.*

Netball is a not-for-profit entity that under the proposed *Charities Bill (2013)* provides public benefits for charitable purposes such as advancing health; social welfare or public welfare; promoting reconciliation, mutual respect and tolerance between groups of individuals in Australia; and promoting or protecting human rights.

Netball's interpretation based on the Explanatory Material would be that to meet the definition of charity, the objective(s) must exclusively be charitable for the public benefit and any netball or sporting related activities must be ancillary or incidental. As such, whilst some of netball's activities are of themselves charitable, the broader purposes are essentially sporting.

Netball Australia notes that the ATO will accept the ACNC's determination of an entity's charitable status, but will at the same time continue to administer federal tax concessions and determine whether any additional conditions in the tax law are satisfied. These being income tax exemption, goods and services tax charity concessions, fringe benefits tax (FBT) rebate, and FBT exemption.

It is assumed that the ACNC will manage the sub-type entity registration of charity type such as charitable fund, charitable institution, public benevolent institution, and health promotion charity and that the ATO will continue to group non-profit organisations as (1) registered charities based on ACNC status, (2) income tax exempt funds, and (3) other non-profit organisations.

These role and responsibility differentiations between the ATO and ACNC seem counterproductive.

Netball understands that the value of tax concessions available to the not-for-profit sector has been valued in the order of \$4 billion and that any proposed changes to the statutory definition of charity that would have resultant budget costs need to identify any offsetting savings. Notwithstanding, the issue of DGR status and the encouragement of community, philanthropic and corporate support for the work done by sporting organisations is a key matter. Increasing such financial contributions via offering a taxation concession would cost the government money; however this could reduce the government's burden on funding such operations and or result in co-investment opportunities.

Further, if structured in concert with the removal or reduction in tax concessions that give private or organisational benefit rather than broader social and community benefit; there should be no (or limited) negative impact to net government revenue.

## Key Considerations

Netball Australia acknowledges that the not-for-profit sector encompasses a diversity of entities and activities. The Australian Bureau of Statistics reported that in 2005-06, there were an estimated 9,256 organisations providing sports and physical recreation services, of which 3,649 were not-for-profits. Sporting teams and recreation clubs represented around half of these not-for-profits. Almost 182,000 volunteers were involved in sports and physical recreation activities; some of the largest volunteer rates in Australia.

Netball understands that an entity does not need to be recognised as a “charity” under the current and proposed application of charity to apply for DGR. If sport and recreation is excluded under the statutory definition of charity, consideration could be given to amending the *Income Tax Assessment Act 1997* to extend the DGR sport and recreation groups from scouts, guides, the Australian Sports Foundation, Amy Gillett Foundation and the Bradman Memorial Fund to other entities.

If the above suggestion is not feasible, netball suggests other systems and ideas put forward throughout current Not-For-Profit Reform consultations could be beneficial if they gave the same taxation benefit results and philanthropic opportunities without the recipient organisation having to have DGR and or Tax Concession Charity status; however such a system would need to be simple so as not to dissuade contributions from corporate, community and philanthropic sectors.

## Conclusions

Netball would like to reiterate our earlier position that sport and recreation be included in the definition list of charitable purposes and that 1.110 is removed and 1.111 amended accordingly.

If the draft *Charities Bill 2013* is introduced as drafted, consideration is needed to determine how the sport and recreation sector can avail itself of philanthropic opportunities under the current ATO and ACNC frameworks.

Netball strongly encourages Treasury, if it has not done so, to engage with the Australian Sports Commission and the Australian Department of Regional Australia, Local Government, Arts and Sport regarding the Not-For-Profit Sector Reforms.

Netball appreciates the opportunity to provide its Submission and looks forward to ongoing involvement.

If you require further information, please contact me on phone (03) 8621 8600, or email [infonet@netball.asn.au](mailto:infonet@netball.asn.au).

Yours sincerely

*By email*

Nadine Cohen  
Head of Strategy & Government Liaison

3 May 2013

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The Treasury