

CHARITABLE TRUSTS AMENDMENT BILL 2010

Introduction and First Reading

Bill introduced, on motion by **Hon Michael Mischin (Parliamentary Secretary)**, and read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [3.21 pm]: I move —

That the bill be now read a second time.

The Charitable Trusts Amendment Bill 2010 will amend the Charitable Trusts Act 1962 to make it easier for the community to support bodies such as the State Library and the state's museums and art galleries through charitable trusts.

Charitable trusts are the legal vehicles that allow individuals, families and corporations to make philanthropic donations. Charitable trusts have a range of tax benefits under commonwealth income tax law. The trusts are exempt from income tax and donations made to charitable trusts are tax deductible. The number of charitable trusts, particularly a class of private charitable trusts called private ancillary funds, is steadily increasing. Prior to 1 October 2009, PAFs were known as prescribed private funds. In 2004 there were about 220 PAFs. The number of PAFs is now approaching 500.

The value of grants made by Australian charitable trusts cannot be accurately measured because there is no public reporting requirement and such figures are not collected by the Australian Bureau of Statistics. However, it is estimated that the 220 PAFs established up to 2004 held around \$300 million under investment for future distribution. The entire Australian philanthropic sector made up of more than 1 200 trusts and foundations is estimated to distribute up to \$500 million a year to charities. A PAF is established in accordance with commonwealth tax legislation. It is a charitable trust to which businesses, families and individuals can make tax deductible donations. The PAF can give gifts only to deductible gift recipients. The deductible gift recipients are listed in the Income Tax Assessment Act 1997. Generally, DGRs have charitable purposes and functions or perform work that is of benefit to the public.

Ancillary funds are another class of charitable trusts that are active in the philanthropic area. They were first established in the 1960s. An ancillary fund is a type of public philanthropic trust fund that actively acts as a conduit or intermediary between members of the public who make tax deductible donations to it and DGRs to whom, in its discretion, it passes on the funds or makes donations from time to time. However, an ancillary fund is not permitted to carry on any direct charitable activities. The Income Tax Assessment Act 1997 originally allowed tax exemptions only when a PAF or an ancillary fund made gifts to DGRs that were charities. This meant that bodies such as the State Library and the state's museums and art galleries could not receive gifts from PAFs or ancillary funds because they are not charities at law due to their connection with government.

In 2005 the commonwealth amended the Income Tax Assessment Act 1997 to allow a PAF or an ancillary fund to donate to any DGR, regardless of whether the DGR is a charity. However, the trust deeds of most PAFs and ancillary funds do not allow the trustees to donate to bodies that are not charitable at law. If the trustees make grants to bodies that are not considered charitable at law, the trustees are technically in breach of their trust deeds. Trustees are generally unable to alter the trust deeds to widen the list of potential donees to reflect the new tax arrangements. This is frustrating for the trustees of a number of PAFs and ancillary funds who would like to be able to give to a wider range of DGRs, including bodies such as the State Library and the state's museums and art galleries.

This bill will give trustees of existing and future PAFs and ancillary funds referred to in the bill as "prescribed trusts" the power to give to any DGR recognised by the commonwealth legislation. The DGRs are referred to in the bill as "eligible recipients". The bill will allow the trust instruments of new prescribed trusts to contain a power to give to eligible recipients. The bill also expands the distribution power of existing prescribed trusts to give to DGRs. However, it does not authorise a prescribed trust to make grants that are inconsistent with specific prohibitions in their trust deeds on the making of grants to certain kinds of bodies. Before trustees of existing prescribed trusts can exercise the additional powers given in the bill, the trustees will have to execute a deed declaring that the new law will apply to it. This should ensure that trustees consider the tax and legal implications of "opting in" to the new provisions. The bill prescribes the form of such a deed to ensure the decision of the trustees is recorded with certainty.

The prescribed form will also help trustees with the administrative aspects of "opting in" because the Australian Taxation Office will require documentation of the decision of the trustees. The deed, or a certified copy, will need to be kept with the records of the trust. The bill makes it clear that even though a prescribed trust can give to a body that is not charitable at law, this will not affect its status as a charitable trust. This is important because

these bodies must continue to remain subject to the Charitable Trusts Act 1962 and to the general charity law. The Supreme Court's supervisory role is also expressly preserved.

The bill also validates grants made by prescribed trusts to DGRs before the commencement of the bill. This is important because some trustees may have inadvertently breached their trust deeds by making donations to DGRs that are not charities such as arts institutions. I stress that the bill will not change the legal meaning of "charities" or "charitable at law" for any purpose other than to extend the distribution powers of PAFs and ancillary funds while maintaining their charitable status. I also stress that the bill does not require the trustees of a PAF or an ancillary fund to adopt the additional power, to include the power in new trust deeds, or to give to any particular DGR.

The problem that is being addressed in this legislation is not unique to Western Australia. New South Wales, Victoria and Queensland have enacted similar legislation to address the problem. This legislation will be important for the many organisations in this state that rely on donations to carry out their activities. It reflects the government's commitment to facilitating philanthropy in Western Australia.

I commend the bill to the house.

Debate adjourned, pursuant to standing orders.