



NSW Legislative Council Hansard

Charitable Trusts Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 16 November 2006.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [6.20 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Opera House gives so much to Sydney and Australia but it is surprisingly difficult for individuals and businesses to give something back to this great institution.

By amending the Charitable Trusts Act this Bill makes it easier for the community to support the Opera House.

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 themselves are exempt from income tax, and donations to charitable trusts are tax deductible.

The value of grants made by Australian charitable trusts cannot be accurately measured, as 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 PPFs established by 2004 held around \$300 million under investment for future distribution. The entire Australian philanthropic sector (made up of over 1200 trusts and foundations) is estimated to distribute up to \$500 million a year to charities.

A PPF 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 PPF can only give gifts to deductible gift recipients or DGRs. DGRs 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 effectively 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 only allowed tax exemptions where a PPF or an ancillary fund made gifts to DGRs that were charities. This meant that bodies such as the Sydney Opera House Trust and the Powerhouse Museum could not receive gifts from PPFs 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 PPF or an ancillary fund to donate to any DGR, regardless of whether the DGR is a charity.

However, the trust deeds of most PPFs 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, then 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 so as to reflect the new tax arrangements. This is frustrating for the trustees of a number of PPFs and ancillary funds who would like to be able to give to a wider range of DGRs including bodies such as the Opera House or the Powerhouse Museum.

This Bill will give trustees of existing and future PPFs and ancillary funds (referred to in the Bill as "prescribed trusts"), the power to give to any DGR recognised by the Commonwealth legislation. These 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', as the A TO 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 fund can give to a body that is not charitable at law, this will not affect its status as a charitable trust. This is important as these bodies must continue to remain subject to the Charitable Trusts Act 1993 and to the general charity law. The Supreme Court's supervisory role is also expressly preserved.

The bill also validates grants made by prescribed funds to DGRs before the commencement of the bill. This is important, as 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 PPFs and ancillary funds, while maintaining their charitable status. I would also like to stress that the Bill does not require the trustees of a PPF 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 we are addressing in this legislation is not unique to New South Wales. Victoria recently enacted similar legislation to address this 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 New South Wales.

I commend the bill to the house.