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From: Joe Foley [<mailto:joevfoley@yahoo.com.au>]

Sent: Thursday, 13 March 2008 1:39 PM

To: AASB Mailbox

Subject: ITC 14 Not-for-Profit Entities [SEC=AUTO-UNCLASSIFIED]

Sirs,

I have worked primarily in commercial enterprises, but I have had some voluntary experience with Not-for-Profit organisations, and am currently employed by one.

1. At a CPA group meeting recently, there was a consensus that best practice would be that interpretations under various legislations came to the same conclusion as to whether an organisation met the parameters of being a Not-for-Profit organisation.

The most comprehensive coverage of the law is probably Taxation. Various Acts provide concessions to PUBLIC BENEVOLENT INSTITUTIONS.

Perhaps this is the most relevant platform on which to construct definitions for more general use.

2. My preference for a definition is along the lines of the New Zealand approach.

Philosophically, a benefit is provided to the general community directly and/or indirectly by some people banding together for an activity.

If the purpose of their co-operation is THEIR..... FINANCIAL benefit, it is not for public benevolence.

However, if the activity is for social, cultural, educational, religious, sporting or charitable purposes AND the members can never benefit financially, it should be regarded as being for public benevolence.

3. Consequently, a critical element is the wording of the entity's founding documents.

These must state the purpose AND must prohibit financial benefit to members while the organisation exists and also on termination.

4. I do not agree that the other elements described in the New Zealand proposal consistently define a public benefit entity.

4 a. The nature of the benefit is fraught with ambiguity and value judgements.

Many, if not most, benefits are available from commercial organisations as well as from public benefit organisations and from government services direct.

Health, housing, education, culture, sports, social and other benefits are all available at various levels from all three types of organisation.

Sometimes, the funding is from a government department on contract to another type of organisation. Thus, e.g. kindergarten funding could be to a public listed company, an individual teacher, a local government or a community organisation.

The 'benefits' are similar.

4 b. The quantum of surplus is irrelevant.

Public benevolent organisations fund themselves. They do not issue a prospectus for capital raising. Their surplus from one year forms the capital for investment in further and/or better services in future years.

A charity kitchen requires equipment, and possibly transport. It can only purchase such capital items from financial surpluses.

A sports club requires equipment, and possibly buildings and land. Surpluses provide the funding for present investment, replacement and expansion.

Even on a minor level, organisations require office equipment so as to prepare and store the legally required records. Surpluses provide the funding.

4 c. The nature of the equity interest will be set out in the founding documents.

The critical thing is that any equity goes in, cannot receive a financial return, and cannot be returned directly or indirectly to the contributor.

4 d. The nature of funding runs up against the same problems as quantum of surplus.

A kindergarten funded as a government agency meets the same standards as one funded by government payment under contract. And so would one funded purely by fees.

Some government contracts provide only a portion of operating costs. The organisation is required to perpetually raise the balance elsewhere.

Many government contracts provide only operating costs. Capital items must be provided from other funds.

Most charitable trusts will only fund capital items for new projects. Replacement of existing equipment is not possible as an 'operating cost', nor from this source.

And some organisations (such as my present employer) operate solely on revenue from provision of services. In the past, we received capital grants from government (and others) to build accommodation. Now, we rent to the eligible target group at or below the level required to maintain our status as a 'public benevolent institution'.

One could think of many activities such as this, but the most publicly recognisable would be Op Shops. They retail goods.

5. I trust that these comments are helpful in your deliberations.

My qualification is FCPA. I have been a member since 1966.

Sincerely,

Joe Foley
Melbourne