

## PRODUCTIVITY COMMISSION

### PHILANTHROPY INQUIRY

These comments relate to the taxation treatment of animal welfare charities.

In earlier times, a trust for the welfare of animals was only regarded as a charitable trust under the general law if it was directed towards the benefit of society rather than towards the benefit of the animals concerned. In essence, the animals had to be useful animals, so that a trust for their welfare was a trust for the public good.

Over time, the interests of the animals themselves came to be recognised, and now in Australia any institution which has been established for “the purpose of preventing or relieving the suffering of animals” meets the criteria for registration as a charity under section 12(1) of the *Charities Act 2013*. This looks like a simple and sensible development, and an improvement, of the older notion of an animal welfare charity under the general law.

It might have been thought, having regard to the desirability of there being general consistency in the way all charities are treated, that a charity established for this purpose might be entitled to be endorsed as a deductible gift recipient for the purposes of the *Income Tax Assessment Act 1997*, but instead of this, different criteria have been adopted, and these are set out in item 4.1.6 of the table in section 30.45 (1) of the Act. That item identifies, as an institution which qualifies for endorsement as a deductible gift recipient:

an institution whose principal activity is one of both of the following:

- (a) providing short-term direct care to animals (but not only native wildlife) that have been lost or mistreated or are without owners;
- (b) rehabilitating orphaned, sick or injured animals (but not only native wildlife) that have been lost or mistreated or are without owners;

Whoever put this item together does not seem to have even read it through to see whether it makes sense. There is nothing, for example, in the introductory words “providing short-term direct care to animals” in paragraph (a) to suggest that the “animals” referred to there might be just wild animals or “wildlife”, which

would be necessary if the parenthetical words “but not only native wildlife” are to have something to qualify. Not only that, but the paragraph goes on to say that the animals have to have been “lost or mistreated” or be “without owners”, so that it looks very much as if they are not wild animals at all. Indeed the only purpose the parenthetical words serve is to make the reader wonder whether he or she has misread or misunderstood the earlier words, and whether they should go back and re-read the paragraph.

And also, one might ask in relation to paragraph (b), why can't one of these charitable institutions rehabilitate orphaned, sick or injured animals which have not been lost or mistreated or which do have owners? All this looks to have been put together without much thought being given to what exactly is trying to be achieved.

Somebody needs to look at this very clumsy drafting and poor policy development and to tidy it all up, and the easiest and most obvious way to do this is just to bring the relevant provisions in the *Income Tax Assessment Act* into line with the corresponding simpler and more sensible provisions in the *Charities Act*.

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