

Consultation on the Definition of a Charity  
The Board of Taxation  
C/- The Treasury  
Langton Crescent  
Parkes ACT 2600

Dear Sirs

Charities Definition Submission

Alzheimer's Australia is the national peak body for people affected by dementia, providing support and assistance through information, support, advocacy and education services. We welcome the opportunity to comment on the draft Charities Bill 2003.

Many of the reforms encompassed in the bill are worthwhile. We think that it is commendable that the Government intends to give effect to the recommendations of its recent report on Charities Definitions and explicitly recognise the “advancement of health” as a charitable purpose.

The report on Charities goes further and argues that included amongst the “...purposes that should fall within the head of a charity ...[include] the provision of information, advice and advocacy on health policy” Alzheimer’s Australia entirely supports this sensible recommendation as being in step with the way in which peak organisations such as ours represent the views of consumers.

Unfortunately this recommendation is not taken up in the legislation. Our concern centres on the concept of a disqualifying purpose and in particular section 8.2c of the exposure draft. That clause identifies “the purpose of attempting to change the law or government policy” as a disqualifying purpose if it is more than ancillary or incidental to the other purposes of the entity.

While we note that the Tax Board seeks to limit its investigation to questions about the workability of the proposed legislation we feel that the important questions of principle raised in this clause are sufficiently important enough to demand comment.

Clause 8.2c is open to many objections. On a philosophic basis:

a) Charities have a long tradition of advocating on behalf of the people whom they represent and to whom they provide services. There has long been public acceptance of this role and attempts to restrict this activity are difficult to understand. It is curious, given that the proposed clause goes against a recommendation of the Government's own enquiry, that no clear evidence has been provided to explain for this change of approach.

The Treasurer's statement in his Press Release No. 66, 2003, that "the Charities Bill 2003 Exposure Draft, sets no barriers on criticism of public policy by recognised charities" is at odds with the what is likely to be the effect of the suggested clause.

b) It seems wrong to place obstacles in the way of charities providing feedback to the government on the practical effects of government policy in areas where they are active, which would be the practical effect of this legislation. Such feedback ought to be encouraged as leading to better policy.

On a practical level the legislation fails to address any of the important process questions and no details are provided elsewhere. As a result many critical details which might impact on the workability of the legislation remain unclear.

a) It is difficult to determine what kind of activities would be caught up within the ambit of this clause. Would for example responding to a Government invitation to comment on draft legislation or sitting on a Government advisory committee or responding to an enquiry from the media be seen as "attempting to change the law or Government policy"? Without some clarity as to what activities might be considered to fall within this heading it is difficult to see how an organisation could determine what its obligations are.

Given these uncertainties charities are likely to feel constrained from engaging in a range of work which they currently do. It is possible that Charities would seek indemnities from Government against a loss of charitable status before providing the Government with advice on particular matters. This seems most odd when some peak organisations, including Alzheimer's Australia, are specifically funded by the Government to contribute to policy development.

b) As currently written there is no guidance to determine to what extent it would be permissible for an organisation to advocate for a change in Government policy before such advocacy was "more than ancillary" to other purposes. Is the benchmark 10%, 20% or 30% of an organisation's effort?

c) No details are provided on how this activity should be measured and how would it be reported upon? Presumably it is intended that the reports would be provided to the Taxation Department on the basis of %s of funds expended? This would require additional and potentially onerous record keeping.

- d) It is not clear how an organisation would be able to defend its position if the Tax Office challenged its status. Would it be up to the Tax Office to show that the organisation failed to meet the test in 8.2.c or would it be up to the organisation to show that it hadn't failed to meet the test?
- e) If a charity had its status challenged as a result of activities in a given period would such a challenge affect its tax status during the period in question, potentially leaving cash strapped charities in a position where they could accumulate significant retrospective tax debts?
- f) If an entity had its charitable status withdrawn how would it re-acquire such status in the future?

In the first instance enquires about this submission should be directed to David Turner on 02 6254 4233. (email [turner@alzheimers.org.au](mailto:turner@alzheimers.org.au))

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