

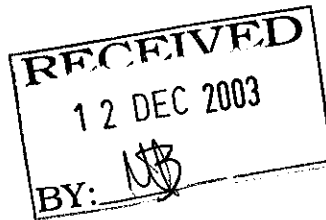


New South Wales
TREASURY

P255

Mr Richard Warburton
Chairman
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Our Reference: D40024
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11 DEC 2003

Dear Mr Warburton

Review of Charities Bill

I refer to the letter of 5 August from Ms Jane Schwager, Chair of the Charities Definition Working Group, seeking comments on the draft Charities Bill 2003 (the Bill).

I am advised that the Bill remains in the original draft form and that the Australian Government is still seeking comment on two particular issues. Firstly, the workability of the definition of 'charity' and, secondly, whether the public benefit test in the draft Bill should also require the dominant purpose of a charitable entity to be 'altruistic'.

The NSW Government has considered representations from various groups within the NSW community and wishes to provide the following comments.

In relation to the first issue, clarifying the definition of a charity is an important step in achieving greater consistency in the granting of various tax concessions to such institutions. It should also help to improve the understanding in the community of the eligibility criteria for charitable status.

Having said this, the NSW Government has serious concerns about the workability of the Australian Government's proposed legislative definition of a charity. Our principal concern is that the proposal is unduly restrictive and harsh.

I am concerned that the Bill seeks to exclude 'Government bodies' from the definition of a charity. Not only does the definition exclude many bodies established by Government, it also appears to leave out those bodies 'controlled' by Government.

Such changes would have significant implications for the NSW community by affecting the financial position of health bodies that operate under legislation such as the Garvan Institute and the Cancer Council. It would also affect schools, universities, museums, rural fire services, cultural trusts, artistic trusts and so on.

I am particularly concerned at any suggestion by the Commonwealth that bodies 'controlled' by Government should be excluded from the definition of a charity. At the very least this would result in substantial confusion and misunderstanding amongst entities as to their eligibility for charitable status, similar to the difficulties of interpretation currently experienced with the common law definition.

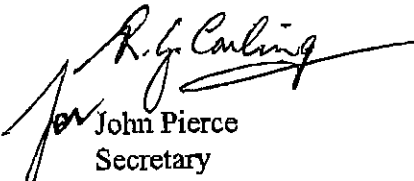
Additionally, bodies associated with Government that have Deductible Gift Recipient status rely on donations as a major source of funding. Tax deductions for donations are essential to enable these entities to attract donations from the public to advance issues that are in the public interest.

Finally, the NSW Government considers that the public benefit test in the Bill should not require the dominant purpose of a charitable entity to be 'altruistic'.

The proposed extension of the public benefit test adds an unnecessary degree of complexity and subjectivity to the Bill.

The opportunity to comment on the draft exposure Bill is appreciated.

Yours faithfully


for John Pierce
Secretary