

**SUBMISSION TO THE BOARD OF TAXATION
ON THE EXPOSURE DRAFT – CHARITIES BILL 2003
FROM QUAKER SERVICE AUSTRALIA**

INTRODUCTION

Quaker Service Australia (QSA) is the service and overseas aid and development organisation of the Religious Society of Friends (Quakers) in Australia. Its statement of purpose is “to express in a practical way the concern of Australian Quakers for the building of a more peaceful, equitable, just and compassionate world. To this end QSA works with communities in need to improve their quality of life with projects which are economically and environmentally appropriate and sustainable”. QSA has been in existence since 1959, is registered as a charity, has PBI status and as such has a direct interest in the draft Charities Bill.

Representatives from QSA attended the consultation held by the Tax Board Consultative Committee in Sydney on 27th August. As suggested at that meeting, this submission attempts to outline our concerns with the draft legislation in the context of the Committee’s terms of reference. It will include examples to demonstrate points, as suggested by the Committee.

Our submission deals with both the general tenor of the draft Bill and some specific aspects of concern which have been raised by our legal advisor.

GENERAL

QSA supports the principle of clarifying the present position regarding what constitutes charities and charitable purposes. We believe that the recommendations of the Inquiry into the Definition of Charities and Related Organisations, June 2001 were well-considered and useful. We are concerned that so few of the Inquiry’s recommendations appear to have been used in the drafting of this Bill. Particularly, we are very concerned about the provisions of the Bill defining a charity including section 8 dealing with disqualifying purposes.

Given that the terms of reference for the Consultative Committee included questions of workability, clarity, certainty, transparency and flexibility, we will attempt to frame our concerns in relation to these issues. However, the legislation seems designed to deal with charities that operate within Australia, and so overseas aid and development agencies sit somewhat uncomfortably within its framework. Section 7 dealing with “public benefit” is one such example. Our work can be said to be aimed at achieving a universal or common good, but outside rather than within Australia. In attempting to achieve a universal or common good in a developing country, we may well urge change to Australian policy towards that country, or within another country.

East Timor’s recent history is one such example. Human rights violations were clearly being perpetrated there in the lead-up to the referendum of 1999, and immediately thereafter. In common with many other Australians, Quakers urged UN intervention as peacemakers and sought government support for this approach.

Another example here would be the case of Cambodia during the 1980s, where QSA worked for many years before government to government relations were restored in 1991. The fact that during those years the Australian Government funded NGOs to undertake work that today would be done using bilateral arrangements, supports the recognition of the value of such work, and the role which NGOs played. But it was not in accordance with official policy.

Similarly, during the Vietnam War Quakers worked with both the North and South Vietnamese people in an impartial way, as is our custom.

SPECIFICS

Workability and Clarity

We do not believe that the draft Charities Bill provides a workable framework which is in any way an improvement on the present situation. The requirements which must be complied with by an entity if it is to qualify as a charity are too rigid and may well result in unfair disqualification from charitable status. For example, it appears that an entity will lose charitable status if:

- It engages in any activities that do not further or are not in aid of its dominant purpose, however insignificant those activities may be. (Section 4(1)(c).
- It has engaged in conduct that constitutes a serious offence, however long ago and whether or not a change in management personnel or other circumstances make it no longer appropriate to prevent the entity from carrying on its work. (Section 4(1)(e).

- It is found to have a purpose, no matter how insignificant in comparison with the entity's dominant purpose, which is not charitable and is not in aid of or incidental to its purposes that are charitable. (Section 6(1)(b).
- It has a purpose, classified by section 8 as a disqualifying purpose, even though that purpose may be very minor when compared with the dominant purpose of the entity.

It is not clear whether there is any difference between "an activity" referred to in section 4(1)(c) and a "purpose" referred to in section 6(1)(b).

The fact that an entity could lose charitable status by reason of having at some time in the past undertaken some minor activity falling within section 4(1)(c) or failing to comply with section 6(1)(b) or constituting a disqualifying purpose under section 8 could be most unjust. The need to have regard to all past activities of the entity, however insignificant, when determining whether or not the entity is charitable, would be difficult and would give rise to uncertainty, clearly failing the "Clarity" test. If such disqualification requirements of the Bill remain in it, their application should not be automatic. Provision should be made for the seriousness and frequency of past infringements of the requirements and the likelihood of future repetition to be considered before a final decision is made to deprive an entity of its charitable status. There should also be a time limit on disqualification or provision for future review.

QSA has an overall purpose, as stated in the introduction of this submission, and the ways in which we pursue this purpose vary depending on the countries in which we work and the projects which we support. The terminology in the draft Bill seems confusing and will result in time and effort being devoted (certainly within the ATO) to interpretation of "purpose", "dominant purpose" "ancillary purpose" and other activities. The stated aim of the Inquiry into Charities was to codify and clarify the present position. We do not believe that the draft Bill achieves the first in a way that is comprehensible to the lay public, and thus it fails to achieve the second.

Certainty and Flexibility

Section 4(1)(e) denies charitable status to an entity that has engaged in conduct that constitutes a serious offence. The wording of the definition of "serious offence" in section 3 seems to include as a serious offence conduct that may be an indictable offence, even though there has as yet been no conviction. That could give rise to a grave injustice.

We have referred above to our uncertainty as to whether some activities of Quaker Service Australia could be considered as disqualifying it from charitable status under, inter alia, Section 6(1)(b) (as a non charitable purpose that does not further or is not in aid of or ancillary or incidental to purposes that are

charitable) or under Section 8 (2) (as a purpose that advocates a cause or attempts to change the law or government policy). These provisions of the Bill are of vital concern to us.

Over the years QSA has engaged in campaigns such as the international Ban the Landmines Campaign, which are additional to our normal work. We consider these campaigns most significant in helping us to achieve our aim of bringing about a more just, equitable, compassionate and peaceful world. We urge you to provide a clear and unambiguous definition of a charity that would clearly recognise such activities as furthering or being in aid of our charitable purposes.

In common with many overseas aid and development agencies, we engage in advocacy from time to time. It may take the form of involvement in the international Jubilee Campaign, aimed at reducing the debt of developing countries, or our current support for the UN Millennium Development Goals. The way in which we approach such a campaign may well include urging policy change on our elected representatives. This we regard as our democratic right but it appears to be in conflict with Section 8 (2) (c) of the draft Bill. It is this provision of the legislation to which we have the strongest objection. As proposed at the consultation on 27th August, item (c) of subsection (2) of section 8 and the words “or cause” in item (a) of the same subsection should be removed from the final legislation.

Therefore, we do not believe that the legislation in its present form provides sufficient flexibility for ourselves, among other organisations, to continue with our work, nor certainty for our status as a charitable institution.

Transparency

Australian aid and development agencies who receive federal funding through AusAID are required to work within certain parameters when using these monies. Central tenets of AusAID’s work are poverty reduction and good governance. These tenets imply redistribution of resources in the countries in which we work, and refusal to engage in corrupt practices within those countries. They assume advocating policy change to assist the poorest and most marginal of the population, and avoiding corrupt practices where these may have been endemic. To achieve these aims frequently requires changes to law or policy in those countries. Section 8 (2) (c) would seem to prevent this type of work. Another reason for its removal.

As pointed out in the Introduction of this submission, our Statement of Purpose includes a commitment to a more “equitable and just world”. “Equitable” implies that we work towards a redistribution of resources to the benefit of the most disadvantaged peoples and that this will involve advocating for poverty reduction overseas and increased levels of foreign aid at home. If we were to comply with the legislation in its current form, we would have to change our Statement of

Purpose, which has been agreed by Quakers Australia-wide, and has guided our work historically.

SUMMARY

Quakers, together with many other organisations, have a long and honourable history of working with those in need and advocating for those who are unable to speak for themselves. We strongly oppose any legislation that would seek to limit such work. We urge that the draft Bill be redrafted to reflect more accurately the recommendations of the Inquiry into Charities report, and the concerns of those organisations which the legislation most directly affects. Particularly we urge that the role of advocacy be recognised as a legitimate activity for such organisations in a democratic country.

HEATHER SAVILLE
CONVENOR
QUAKER SERVICE AUSTRALIA
MANAGEMENT COMMITTEE

16th September 2003