



30 September 2003

Board of Taxation

Dear Sir/Madam,

Draft Bill on Definition of Charities

We would like to comment on the draft Charities Bill especially regarding advocacy and business activities of charities.

Background

The Australian Breastfeeding (formerly Nursing Mothers') Association was established in 1964 to support and encourage breastfeeding mothers and promote skilled and loving mothering, while creating in the community an awareness of the importance of human milk. The Association is one of Australia's largest women's non-profit organisations, with about 11,600 members. We employ a small number of staff at head office in Melbourne; with most activities conducted by 1,300 volunteer breastfeeding counsellors and 300 volunteer community educators across Australia. Structurally, the Association has Branches in each state with around 355 local Groups spread throughout the nation. It operates as a limited liability company.

Over 120,000 Australians have become members of the association since its inception and many more have benefited from access to our free Breastfeeding Helpline, our breastfeeding literature, and community education events such as breastfeeding classes and school visits. Our volunteer counsellors respond to around 200,000 calls a year from mothers seeking help and support for breastfeeding.

The Association has a wholly owned proprietary company, Mothers' Direct. Mothers' Direct is our vehicle for marketing and retailing of a number of exclusive products related directly to our purpose, such as books and booklets on breastfeeding management, our babysling ('Mei Tai'), the well known recipe book 'NMAA Cooks', 'Supply Line' (a

specialised lactation aid for assisting breastmilk supply), our 'Puddle Suit', and other products associated with breastfeeding and parenting such as lambskins, breastpumps and the Merrily Merrily songbook.

The Australian Breastfeeding Association is a public company limited by guarantee. As Nursing Mothers' Association of Australia, the Association was granted gift deductible status in 1984. It is also income tax exempt.

Mothers Direct, formerly 'Merrily Merrily', is a wholly owned subsidiary of the Association, established in 1989 and granted tax-exempt status by the ATO shortly thereafter.

Issues of concern to the Australian Breastfeeding Association

We agree it is important to set down a definition of a charity that provides greater certainty along with flexibility to adapt to the changing needs of society.

We welcome the Government's policy of retaining the existing tax treatment of charities and their business income, but are concerned that there remains some ambiguity about the permissible extent of charities' advocacy activities.

Advocacy by charities

We understand that section 8 on 'disqualifying purposes' is intended to follow the definition developed by common law, while providing greater clarity and transparency about advocacy activities of charities.

However, the wording of this section may create some uncertainty about where charities advocacy activity may disqualify them from charitable status. This is because of the practical difficulty of determining whether a purpose of 'attempting to change the law or government policy' is or is not 'more than ancillary or incidental to the other purposes of the entity concerned'. Some greater clarity is provided by the Explanatory Material for the Bill (para 1.54), where it is stated that

'ordinarily, representing to Government, from time to time, the interests of those the entity seeks to benefit would be seen as incidental and in aid of the dominant purpose of the charity'

However, in line with the approach taken by the Charities Definition Inquiry, we see it as desirable to allow considerable scope in the definition for advocacy by charities so long as it is not politically partisan.

The Association's volunteers are mainly involved in provision of services to mothers and families. However, in recent years we have been increasingly asked, and expected, to provide input into government policymaking, and have sought to bring to bear what influence we can to shape government policies that impact on breastfeeding such as on baby food advertising and labelling regulations and health, family and labour market policy.

We believe that because of the unique expertise and grass roots perspective that we have, our advocacy is a socially valuable activity that contributes positively to public

policy formulation, and should not be discouraged by any uncertainty or lack of clarity about the permissible extent of advocacy activities of charities.

It is important to note in this regard that the Association's Code of Ethics, which every one of our Counsellors, Community Educators and office bearers must adhere to, includes a statement barring any party political activity. It is also noteworthy that our constitution also bars political activity by our volunteers in their capacity as Association representatives unless such activity is directed at furthering its aims and objectives.

Business Activities of Charities

We welcome the Government's acknowledgement of the legitimate need for charities to participate in commercial activities, and at the same time recognise the need to prevent abuse of tax concessions for charities and non-profit organisations.

We support the approach taken by the Charities Definition Inquiry and agreed by the Government that where commercial activity furthers or is in aid of the dominant charitable purpose or is incidental or ancillary to the dominant charitable purpose, this activity should not result in denial of charitable status.

The example of the Association's business activities provides a pertinent illustration of the situation for charities involved in business activities. In the late 1980s, the Association decided to focus and streamline its retailing activities by creating a separate trading company to market and retail the Association's specialist breastfeeding and parenting products and services. It was felt this arrangement would result in more efficient and businesslike trading, less risk to the Association, and improved financial information and management. The new subsidiary company was granted tax-exempt status by the ATO.

While our trading company, 'Mothers' Direct' has run profitably in some years, this has not always been the case. Nevertheless, the Association maintained its commitment to this retailing activity because of the important service provided to breastfeeding mothers and parents, by supplying products or services that in many cases cannot be obtained elsewhere, and which in some cases were not available to families until our Association began providing them. Examples include lactation aids such as the Supply Line, our breastfeeding publications and the 'Mei Tai' babysling.

Although these activities are clearly directly related to our charitable purpose, of supporting and encouraging mothers to breastfeed, promoting skilled and loving mothering and raising awareness about the importance of human milk, we have recently been troubled by considerable uncertainty and confusion about the income tax exempt status of Mothers' Direct. This arose as a result of an unexpected determination by the ATO regarding the income tax status of Mothers' Direct.

While this situation has now been satisfactorily resolved, the Association for a period of several months faced the prospect of a substantial, retrospectively applied taxation liability with adverse implications for our ability to deliver charitable services.

We note that concerns were raised with the Charities Definition Inquiry about inconsistency in ATO decision-making and differences in interpretation of the common law on applications for endorsement as charities or gift deductible organisations (p. 280). We understand and commend ATO initiatives to improve consistency of decision making and agree with the Inquiry's recommendations to improve ATO internal procedures and specialist expertise, and thereby the sector's confidence in the system.

Based on our experience with Mothers' Direct, we consider that achieving more consistent and transparent decision making by the ATO on charitable status would contribute significantly to reducing charities' administrative and compliance costs, as intended by the proposed legislation.

As ABA is endorsed as a DGR and ITEC, we do not foresee major additional administrative or compliance costs arising from the new requirement to gain endorsement to access GST and FBT concessions.

As noted above we have some concerns that sections of the proposed legislation relating to advocacy may be interpreted too inflexibly and create ongoing uncertainty for charities. However, we welcome the more flexible definition of charitable purpose with regard to public self help groups, and believe this will allow for the definition of a charity to adapt to changes in society.

With regard to the altruistic addition to the public benefit test, we would support this addition insofar as it helps clarify the difference between charities and for example professional associations intended primary to benefit their members. We note however, that membership subscriptions are the main income source for our organisation, and funds our charitable activities. It is necessary to promote the benefits of membership to maintain this subscription income, even though the purpose of the Association is altruistic, and its activities are aimed at benefiting the public.

If the altruistic criteria is added, it is therefore important to ensure that such marketing of the benefits of membership would not be misinterpreted by the ATO in a manner, which threatened the charitable status of organisations relying on subscription income to finance their charitable activities.

Please do not hesitate to contact me on **03 9885 0855** if you would like further information about the Australian Breastfeeding Association or this submission.

Yours sincerely

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