

8 September 2003

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

Dear Ms Schwager

Exposure Draft & Explanatory Material - Charities Bill 2003

Thank you for your 5 August letter with attached paperwork advising of the consultation process associated with the Charities Bill 2003. The Australian Council of National Trusts (ACNT) appreciates being given the opportunity to provide comment. By way of clarification I should add that the submission detailed below represents the collective views of the eight state & territory National Trusts organizations.

As requested in your covering letter the ACNT response will in the first instance respond to the questions raised in your sheet – *Guidance on Preparing a Submission*.

1. The Australian National Trust movement is made up of the eight state & territory National Trust organizations all of which are fully autonomous entities in their own right. The eight Trusts make up the membership of the ACNT. The ACNT exists to represent interests of the National Trust and the conservation of our heritage generally in the Federal arena. Contact details are provided as Attachment. 1
2. All Australian National Trusts, including the ACNT, exist to ensure that the nation's heritage is conserved while fostering public appreciation, understanding and knowledge of that heritage. In furthering this objective, the National Trust not only owns/manages heritage properties and collections for the public benefit but by necessity is actively involved in advocacy activities aimed at protecting the nation's heritage. To further illustrate the dominant purpose(s) of the National Trust part of the Memorandum and Articles of Association of the ACNT are provided as Attachment 2.
3. The principal reason for making a submission is to highlight concerns about particular matters within the Bill namely:

- The inclusion of “attempting to change the law or government policy” as a disqualifying purpose;
- The suggestion that such a purpose will be a disqualifying purpose if it is deemed to be “more than ancillary or incidental to the other purposes of the entity concerned.”

In fulfilling its charter the National Trust has, by necessity, had to adopt on occasions a vociferous advocacy role. The organisation considers that advocacy is an integral component of its role and not something that is ancillary or incidental. It could be argued that there is almost a community expectation that the organization will speak out on heritage matters.

The National Trust believes that a more realistic definition of a charity is one that recognises advocacy by charities as a function like any other. The Bill in its current form not only threatens the advocacy function but may well prove counter productive. Numerous examples exist where advocacy by charities has resulted in improved legislation or policy outcomes.

On a more practical level there is a concern that it may prove very difficult to interpret what was considered ancillary or incidental. This could create substantial future legal problems.

4. All National Trust entities are endorsed with the Australian Taxation Office. The ACNT believes that the organizations would still be entitled to endorsement on the basis of the Charities Bill 2003.

5. Not relevant.

6. It is not believed that the Charities Bill will not impose an additional administrative burden on the National Trust entities.

7. The ACNT considers that the Bill will be useful in clarifying matters notwithstanding our earlier concerns highlighted above. The ACNT considers the definition of charitable purposes as proposed in the Bill is sound. The addition of distinct areas covering advancement of culture and natural environment along with ‘purposes beneficial to the community’ greatly enhance the current position and it is believed provide the necessary flexibility that is sought to cater for changing needs. In the explanatory material the ‘advancement of culture’ explains that it includes the protection and preservation of national monuments, areas of national interest and national heritage sites/buildings. It is felt protection and preservation should extend to all listed sites/buildings not just national places. It would be useful for Bill to clarify that this is what is intended.

8. The ACNT supports the strengthening of the public benefit test by requiring the dominant purpose of a charitable entity to also be altruistic. It is believed that this would not affect the National Trust organizations.

Conclusion

The Australian Council of National Trusts believes that it would be a retrograde step to ignore the recommendation of the Definition of Charity inquiry, which suggested that the restrictions on charities involvement in influencing government policy and law reform be changed.

The recommendation by the inquiry recognised that the democratic process which allowed charities the opportunity to comment and influence government was an important one. Aside from the important principle of free speech, charitable involvement in the process has invariably led to better legislative and policy outcomes for government. It is in government's own best interests if it accommodates the recommendation of the inquiry and does away with the proposed restrictions in the Bill that threaten the opportunity for charitable organizations, including the National Trusts, to pursue its important advocacy role,

Yours faithfully

Alan Graham
Executive officer
Australian Council of National Trusts