



**Australian Federation of Homelessness Organisations**

## Submission to the Board of Taxation

Consultation on the definition of  
a charity

30 September 2003



Australian  
Federation of Homelessness  
Organisations

The Australian Federation of Homelessness Organisations (AFHO) is the national homelessness peak organisation that works to address and prevent homelessness in Australia.

AFHO develops and analyses policy, consults with and represents services for homeless people, advocates for homeless people and provides information about homelessness.

AFHO seeks to collaborate with services for homeless people, government, and the broader community to achieve its objectives.

AFHO federates three founding members representing services for homeless people at the national level – the Council for Homeless Persons Australia (CHPA), the National Youth Coalition for Housing (NYCH), and the Women’s Services Network (WESNET).

Single men and women, families, young people and women and children escaping domestic and family violence are all represented through the founding members of AFHO.

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## Recommendations

### Recommendation 1

That “the provision of housing and accommodation support for people with special needs or who are otherwise disadvantaged in terms of their access to housing” should be included in the purpose category “advancement of social and community welfare”. This could be done either by amending clause 11 of the *Charities Bill 2003* or by including the provision on housing in the explanatory memorandum to the *Charities Bill 2003*.

### Recommendation 2

That the approach to the issues of disqualifying purposes and advocacy, as illustrated by clause 8 of the *Charities Bill 2003*, be rejected and clause 8 be deleted; that the legislation adopt the approach of the Charities Definition Inquiry in their Recommendations 4, 5 and 17<sup>1</sup>.

### Recommendation 3

That the public benefit test in the *Charities Bill 2003* should require the dominant purpose of a charitable entity to be altruistic.

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<sup>1</sup> The Inquiry proposed:

**(Recommendation 4)** That an entity be denied charitable status if it has purposes that are illegal, are contrary to public policy, or promote a political party or a candidate for political office

**(Recommendation 5)** That the purposes of a charity must further, or be in aid of, its charitable purpose or purposes. Activities must not be illegal, contrary to public policy, or promote a political party or a candidate for political office

**(Recommendation 17)** That charities be permitted neither to have purposes that promote a political party or a candidate for political office, nor to undertake activities that promote a political party or a candidate for political office.

## Introduction

AFHO representatives attended the Canberra consultation organised by the Board of Taxation on Monday 8 September 2003.

At that meeting the chair of the Charities Working Group, Ms Jane Schwager, outlined the terms of reference for the consultation on the definition of a charity; these terms will form the basis for the Working Group report to the Treasurer.

We have used these terms as headings for our submission, with one exception:

- the workability and flexibility of the definition
- the public advocacy role of charities
- dominant purpose—altruism
- administrative burden.

The exception is the public advocacy role of charities; AFHO believes that this issue is sufficiently important to justify separate treatment.

## Workability and flexibility of the definition

AFHO would welcome any attempt to codify and modernise the definition of charities that would “provide greater certainty, transparency, and clarity to organisations operating in the charitable sector while still providing the flexibility needed to ensure the definition can adapt to the changing needs of society”<sup>2</sup>.

The Commonwealth’s draft *Charities Bill 2003* only partially meets these requirements.

Traditionally Australian courts have used the four heads of charity classification used by Lord Macnaghten<sup>3</sup>:

- the relief of poverty
- the advancement of education
- the advancement of religion
- other purposes beneficial to the community.

The Charities Bill does modernise, and clarify, the definition in several ways:

- the list of charitable purposes is extended to include the advancement of social or community welfare and the advancement of the natural environment
- the inclusion of child care services under the umbrella of services that advance social or community welfare
- the extension of the definition to include open and non-discriminatory self-help groups.

These extensions not only modernise the definition but also make it more flexible for future needs.

AFHO believes that the definition should also be extended by a reference to housing. The Charities Definition Inquiry<sup>4</sup> stated that “the provision of housing and

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<sup>2</sup> Board of Taxation 2003, *Consultation on the definition of a charity; frequently asked questions*, BoT, Canberra.

<sup>3</sup> *Income Tax Special Purposes Commissioners v Pemsel* [1891] All ER Rep 28; [1891] AC 531

<sup>4</sup> Charities Definition Inquiry 2001, *Inquiry into the definition of charities and related organisations*, chapter 19, CDI, Canberra

accommodation support for people with special needs or who are otherwise disadvantaged in terms of their access to housing” should be included in the purpose category “advancement of social and community welfare”.

This could be done by either amending clause 11 of the Bill or by including the provision on housing in the explanatory memorandum to the Bill.

AFHO believes that the issue of access to housing is of sufficient importance to warrant the amendment of clause 11. In most sets of poverty indicators access to housing is a key indicator and this should be reflected in an amended clause 11.

Unfortunately, in AFHO’s opinion, these positive measures are well-nigh nullified by the imposition of restrictive measures on the advocacy and lobbying activities of charities. This is discussed in the next section.

### **The public advocacy role of charities**

The draft Bill attempts to impose restrictions on the advocacy and lobbying activities of charitable organisations, by the use of disqualifying purposes in clause 8. The ACOSS submission<sup>5</sup> discusses, at length, the disadvantages of such an approach as well as the (negative) impact on the workability of the definition. AFHO does not intend to repeat these arguments here but states its support for the ACOSS arguments.

The Charities Definition Inquiry<sup>6</sup> makes the following statement about charities and advocacy which clearly articulates AFHO’s view on this matter. We cannot better their words.

“The Committee recommends that charities should be permitted to engage in advocacy on behalf of those they benefit. Conduct of this kind should not deny them charitable status even if it involves advocating for a change in law or policy. Submissions from both charities and governments have demonstrated that charities are increasingly asked to represent to governments the interests of those they seek to benefit and to contribute to the development and administration of government policies. The Committee considers that the definition of a charity should not prevent these developments as they represent an effective means of delivering outcomes for individuals, charities and governments.”

The Charities Definition Inquiry<sup>7</sup>, in its recommendations 4, 5 and 17, advocates an approach that precludes the need for a clause 8 and AFHO believes that any legislation should follow the Inquiry’s approach.

The Inquiry proposed:

- **(Recommendation 4)** That an entity be denied charitable status if it has purposes that are illegal, are contrary to public policy, or promote a political party or a candidate for political office
- **(Recommendation 5)** That the purposes of a charity must further, or be in aid of, its charitable purpose or purposes. Activities must not be illegal, contrary to public policy, or promote a political party or a candidate for political office

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<sup>5</sup> ACOSS 2003, *A charity by any other name...*, Submission to the Board of Taxation on the draft Charities Bill 2003, ACOSS, Sydney, pp7 - 18

<sup>6</sup> Charities Definition Inquiry, chapter 26

<sup>7</sup> Charities Definition Inquiry, Summary of recommendations

- **(Recommendation 17)** That charities be permitted neither to have purposes that promote a political party or a candidate for political office, nor to undertake activities that promote a political party or a candidate for political office.

### **Dominant purpose—altruism**

The Charities Definition Inquiry<sup>8</sup> characterises altruism as “a voluntarily assumed obligation towards the wellbeing of others or the community generally”.

AFHO supports this definition and believes that the inclusion of altruism as the dominant purpose of a charitable entity would provide greater clarity to charities and the greater community and would enhance the public benefit element.

This “voluntarily assumed obligation” is a basic and distinguishing feature of charitable organisations, as opposed to those organisations that work in the direct interest of the people that control the organisations. Obviously there is nothing wrong or unlawful about these organisations but they should not be eligible for “charitable” status.

Again, the Charities definition Inquiry<sup>9</sup> has provided an excellent discussion on this particular issue and AFHO need not repeat that discussion.

### **Administrative burden**

AFHO has been asked to consider the administrative burden associated with any proposed legislation.

In general terms the greater the clarity, transparency and certainty delivered by any proposed legislation, then the less impact there will be in administrative terms.

For example, if the legislation goes ahead with clause 8 in its current form, this will add to the administrative burden for charitable organisations—due to the uncertainty surrounding the interpretation of this clause. There is also the likelihood of much greater activity by the Australian Tax Office around the definition of charities and that will also add to the administrative burden.

AFHO is strongly of the opinion that if the legislation goes ahead in its current form then the surrounding uncertainty will lead to a greater administrative burden for charitable organisations.

AFHO’s opinion is that the deletion of clause 8 will add to the certainty of the legislation.

In addition, the amendment of clause 11 will create greater certainty among housing-delivery organisations and is supported by AFHO.

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<sup>8</sup> Charities Definition Inquiry, chapter 13

<sup>9</sup> Charities Definition Inquiry, chapter 13