

August 27, 2003

Consultation on the Definition of a Charity  
The Board Of Taxation  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir / Madam,

Australian Relief and Mercy Services Ltd would like to make the following brief submission with regards to the proposed Charities Bill 2003.

In recent media coverage the treasurer has made it clear that he wishes to codify the legal definition of what a charity is and does. We have no problem with this in principle, however, as this is likely to be benchmark legislation on which much commonwealth and state legislation will rely we feel that the approach to this needs to be thought through carefully as it will be hard to change any precedent set by the legislation.

ARMS would like to draw the Board's attention to two matters that are of concern to us. These are the issues of advocacy and the concept of altruism.

### **Advocacy**

Item 8.2 ( c ) of the proposed bill lists a disqualifying purpose as being;

*" the purpose of attempting to change the law or government policy"*

In our view this challenges the role of any charity to be involved in advocacy, and solidifies the view that charity is what you do, not what you say. This in our view shows a misunderstanding of the role of charities in the modern era, as what charities *say* is usually based on the experience and the outcomes of what they do. Therefore for charities to remain silent on issues that effect their client base is in fact for them to deny what they do.

Most of what charities do can be seen as levels of advocacy. We are advocates for people in need to our donor bases often launching specific appeals for specific needs. We are advocates to the Australian people when we raise awareness of the needs of those caught in a disaster situation. Advocacy is linked to the very heart of what we do and is often expressed through our fund raising and communication. With regards to government policy – it is a sad truth that sometimes government policy gets it wrong, or has a blind side that unintentionally disadvantages a certain group of people. We believe that it is part of the role and function of any charity to make known the short falls of any given policy or legislation that disadvantage or badly effect their clientele so that governments can act in a just and equitable manner. We believe that charities should not support political parties or endorse candidates standing for office, but we do believe that the advocacy offered by the charity is one of the safe guards that a government has in testing the fairness and effectiveness of policy and / or legislation as it is played out in the public domain.

We would also draw the Board's attention to the fact that in some cases charities are expected to be involved in political advocacy with foreign governments so as to effect positive change in that government's attitude towards various issues such as; child pornography, AIDS etc. Such advocacy needs to be extended to one's own government when the circumstances warrant it.

In a recent interview on ABC radio the Treasurer stated that one of the outcomes of this legislation was to not give a tax advantages to groups that were set up specifically to bring about political change but who had *no charitable base*. Whilst we can see the object of this goal and agree with it in principle we would also point out that organizations that have a charitable base on the basis of their function and experience have legitimate concerns that they need to bring to the government's attention and from time to time into the public domain. In these circumstances it is not inappropriate for charities to lobby to effect change. To disallow the charity sector the right to lobby, or to be an advocate for those whose plight needs to be addressed by changes in government policy or legislation takes away from the sector its traditional role of advocacy for the disadvantaged.

It is our belief that Item 8.2 ( c ) seeks to obtain the outcome discussed above, however, we would like to recommend that it be deleted from the legislation as it denies our sector its historical function of advocacy for the poor, distressed and disadvantaged. Furthermore, we would recommend that the legislation should recognize the legitimate role of advocacy in the charity sector.

## **Altruism**

In yesterday's meeting with the Tax Board the concept of *altruism* was discussed. It was there defined as "*the unselfish concern for the welfare of others.*"

At the meeting neither the Board representatives nor the legal counsel assisting them could tell us what was meant by this statement, or any implication it may have.

Whilst we would see our organization as being altruistic according to the above definition others may not. How do you measure *unselfish concern* ?

We believe that if this concept is introduced into the legislation without clear understanding of what the definition means that it will cause enormous problems in the years to come as the courts and government departments try to interpret the legislation. As this Act seems to be destined to be benchmark legislation that will form the basis of the definition of *charities* both in Commonwealth law and possibly in State law as well it seems to us that unless the concept of *altruism* is better defined, and that definition clearly recognized and understood by the charity sector then it should not be included in the legislation.

I remain yours sincerely

David Skeat  
National Director