

Submission to the Board of Taxation on the Draft Charities Bill, 2003

30 September, 2003

ANTaR Association Inc. Qld, Sea of Hands
10/27 Cordelia St
South Brisbane,
PH 07 38449800

Thank you for your invitation to make a submission to the Board on this draft bill.

ANTaR Qld, is a not-for-profit entity, with a primary purpose to help heal current social divisions and work towards substantive equality for indigenous people that recognises the special place of indigenous cultures and society.

We are making this submission on the workability of the Charities Bill 2003 because we believe that the widest possible range of organisations and individuals should be canvassed for their unique perspectives on this issue.

We are concerned that several key recommendations of the Report of the Charities Definition Inquiry that will affect the status and work of many of these groups, have not been included in the draft bill.

This submission is supported by ANTaR's national association, Australians for Native Title and Reconciliation (ANTaR) Inc.

The remainder of this submission sets out our concerns and comments in the form of a number of recommendations.

We urge that the following recommendations be considered:

Recommendation 1: Clause 8, Disqualifying purposes.

That pt (2) (c) be removed and replaced with a provision that would allow for the very necessary purpose of public advocacy that is so fundamental to most altruistic entities, provided the purpose of this advocacy furthers or aids, or is ancillary or incidental to, the entity's dominant charitable purpose or purposes.

Clause 8 seeks to inappropriately restrict the scope of public advocacy by charities by excluding organizations that engage in the disqualifying purposes of "attempting to change the law or government policy" or "advocating a cause" unless such purposes are "ancillary or incidental" to the organisation's overall purposes. But how is "ancillary and incidental" to be interpreted – on the basis of the *quantity* or *kind* of advocacy? This is a recipe for confusion and error in interpretation on a central matter that the bill is supposed to clarify. It is also a recipe for an unnecessary waste of resources, particularly the precious

resources of charities, in the regulation and audit of such activities.

A more appropriate solution, recommended by the Charity Definitions Inquiry, is to single out partisan political purposes as disqualifying, and to recognize that advocacy is a legitimate activity provided that it *furtheres or is in aid of, the charity's dominant charitable purposes*.

Good policy is not developed in a vacuum, and the need for a strengthening of public policy development should continue to include effective advocacy on the part of charities to aid Parliaments and bureaucracies in achieving good policy.

If there is a narrow interpretation of the restrictions on advocacy by charities, as proposed in Clause 8, then the bodies that specialise in policy development and advocacy work on behalf of their constituents will be affected. This would result in a reduction in the efficiency and effectiveness of advocacy by charities, which would in turn reduce the effectiveness of public policy in addressing such problems as poverty, unemployment, illness and disability. A downward spiral.

Recommendation 2: Clause 4, Core definition.

That Clause 4 be amended to;

1. include that the dominant purpose of a charity should be altruistic;
2. remove the double negative from 4(1) (c) and express in a more positive manner;
3. remove paragraph 4 (1) (e), which is dealt with by other legislation (criminal law, for instance) and is not relevant to the definition of charity;
4. clarify the meaning of "Government body" to make it clear that the receipt of public funding alone, does not make you a government body;
5. make it clear that a body may have more than one dominant charitable purpose.

Clause 4 of the draft Bill provides a core definition of charity that is generally satisfactory, but which should be amended as recommended above to improve its clarity and workability. In this we support the analysis and recommendations of the submission to the Board of Taxation by ACOSS.

Recommendation 3: Clause 10, Charitable purposes.

That the explanatory notes make clear that the "advancement of social and community welfare" includes

- "the provision of housing and accommodation support for people with special needs or who are otherwise disadvantaged in terms of their access to housing".

The Explanatory Material used for this clause provides guidance to the ATO and the courts to the broad meaning of the seven purposes listed as charitable. We welcome the inclusion of child care in this material. We would welcome the inclusion of special housing and accommodation needs in this material as a purpose consistent with the "advancement of social and community welfare".

Recommendation 4:

We recommend Clause 10 be amended to add the word "similar" to the phrase "other purposes beneficial to the community", whilst maintaining the proposed examples, including "the promotion and protection of civil and human rights" and "the promotion of reconciliation, mutual respect, and tolerance between various groups of people within Australia," that appear in the explanatory material.

We welcome the examples of purposes referred to above which are provided in the explanatory material, as fundamental to any modern definition of charity.

The addition of the word “similar” is intended to provide broad guidance in determining new charitable purposes.

Recommendation 5:

We recommend that the Government institute a second round of reform in regard to charities, consistent with the recommendations of the Charity Definition Inquiry. This should include:

- Legislative modernisation of the definition of Public Benevolent Institution;
- the establishment of a Charity Commission as the "gate-keeper" of charitable status for federal legislative purposes.

The original intention of the government, signalled by the initial name of the inquiry “Definitions of Charities and Related Organisations”, recognised the need to also work on the Public Benevolent Institution a (PBI) status of charitable organisations, amongst other things. Many organisations widely considered worthy of this PBI status (for example, peak bodies,) are denied this status on the grounds that they are not predominantly involved in direct service delivery. That they do other, essential and worthwhile work that directly affects the efficient running of many charities and organisations that are in the front line of service seems to be ignored.

The solution put by the inquiry to replace PBI status with a new classification of “Benevolent Charity”, comprising charities whose dominant purpose is to assist the most disadvantaged in society, is deserving of more consideration.

Conclusion

ANTaR Qld currently operates on a budget generated from our membership, donations and grants from ANTaR national office. All our staff and management committee members are volunteers. We do not have ITEC or PBI status, and are not required to be registered for GST.

We worry that some of the provisions in this draft Bill, particularly those relating to advocacy, may impede our chances of gaining a more beneficial status. An important component of our work is advocacy, sometimes aimed at changing government policy, for the just needs of our client base. We are also concerned that other worthy organizations, both currently recognized as charities or seeking such status in the future, may be unfairly denied charity status as a result of unreasonable and unnecessary restrictions on advocacy activities in the draft Bill.

Finally, any changes that add to our workload, whilst not giving us anything in return, such as unnecessary compliance requirements, are a handicap to our ability to function efficiently and to provide vital services to the community.

Yours sincerely
Melody Cooper

For ANTaR Qld