



Brotherhood  
of St Laurence

Working for an Australia free of poverty

# *Submission to the Board of Taxation*

Regarding the Charities Bill 2003

Brotherhood of St Laurence  
September 2003

This paper represents the Brotherhood of St Laurence's submission to the consultation being conducted by the Board of Taxation on the exposure draft of the Charities Bill 2003. The consultation focuses specifically on the 'workability' of the legislative definition of a charity proposed in the Bill, and whether the dominant purpose of a charitable entity should be altruistic.

## **The Brotherhood of St Laurence**

The Brotherhood of St Laurence is a Melbourne-based community organisation that has been working to reduce poverty in Australia since the 1930s. Our vision is 'an Australia free of poverty'. We aim to work with others to create:

- an inclusive society in which everyone is treated with dignity and respect
- a compassionate and just society which challenges inequity
- connected communities in which we share responsibility for each other
- a sustainable society for our generation and future generations.

The Brotherhood of St Laurence (BSL) is incorporated under the *Brotherhood of St Laurence (Incorporation) Act 1971* of the Victorian Parliament and is domiciled in Australia.

The Constitution of the BSL in part states:

2. The objects of the Brotherhood and for which the Brotherhood is established are:
  - (a) the relief of those who are poor, aged or infirm;
  - (b) the undertaking of works for the support aid and help of young persons employed in trade and industry;
  - (c) the undertaking carrying on or carrying out of any other charitable work or purpose.

The current service areas include:

- aged care (community care services, day care, independent living units, residential care – low and high care)
- child and family services
- disability support services
- employment services
- income support and asset building programs
- public tenant support services
- refugee services
- social policy and research.

The BSL has had a major advocacy focus since its inception in the early 1930s. We have always believed that our charitable work must include twin strategies of working directly with poor and disadvantaged people and engaging in advocacy to draw public and government attention to the plight of the disadvantaged. We have been conscious that our direct work alone can never be enough to counter poverty, and that the general community and government in particular has a key responsibility to prevent and reduce poverty.

This philosophy is also based on the understanding that, as a direct provider working with disadvantaged people, the BSL is in a position to understand their concerns and experiences, and to bring these to the attention of government. We are able to reflect on the effectiveness of government policy by drawing on the experience of service users, both anecdotally and more systematically through research. We believe that we have an important responsibility to inform governments about the impact of policies in order to ensure that policies are effective and to assist in improving them.

With the increased contracting out of government programs across many areas of the human services system, this role in monitoring and reflecting on policy impacts has become more important. The BSL is regularly invited to contribute to departmental policy processes precisely because of our direct service and research experience with disadvantaged people and our ability to reflect on policy as a result. The aim, which we share with government, is to ensure that policy and services are as effective as possible.

## **Workability of the definition of charity**

We support the intention to codify the definition of charity to provide greater certainty for charities and ensure that the public can have confidence that organisations calling themselves charities meet certain requirements or standards.

The bill has some significant flaws which render it unworkable. However, if these concerns were addressed as suggested below, we believe the bill would provide a succinct and relevant definition which the BSL would support.

### **1. Inconsistencies between clauses 6,8 & 10**

The definition of a charity is unclear and, in our view, unworkable due to the major contradiction between clauses 6, 8 and 10. As discussed above, the dominant purpose of the BSL is to work towards 'an Australia free of poverty,' an aim which clearly fits within the definition of a charitable purpose referred to in clause 6 and explicated in clause 10. As the explanatory material points out, the advancement of social or community welfare includes 'the prevention and relief of poverty'.

The definition of 'advancement' in 10 (2) refers to 'protection, maintenance, support, research and improvement'. Governments have a major responsibility for the prevention of poverty through social and economic policies (such as employment, social security, education and housing) and in the relief of poverty by funding services for those in need. The BSL, along with many other charities, provide services funded by state and federal governments.

In our view, any attempts to advance the aim of prevention of poverty must therefore include addressing the effectiveness of government policy and service provision. In particular, 'research and improvement' implies a role in contributing to the improvement of government policy. Indeed, the BSL is often asked by governments to contribute to policy discussions for this purpose. We see this as a fundamental aspect of our work, since we cannot possibly hope to achieve 'an Australia free of poverty' from our direct service provision alone.

However, clause 8 states that a disqualifying purpose (purposes or activities which would prevent an entity being defined as a charity) includes advocating a cause (8 (a)), and attempting to change government policy (8 (c)), if these are 'more than ancillary or incidental' to the other purposes. This clause contradicts other elements of the definition of charities outlined above, and it is also inconsistent with the current operation and activities of many charities who believe that influencing government policy is an important contribution to meeting their charitable aims.

The inclusion of this disqualifying clause (8(c)) also contradicts the recommendations of the Inquiry into the Definition of Charities and Related Organisations.

## **2. Inconsistency with the intention of the Act**

Item 1.55 of the explanatory material suggests that ‘the independence of charities from Government and from political processes is an important component of their role in serving the public benefit’. This is given as the rationale for the inclusion of clause 8.

We agree that charities should not be engaged in advocating for a political party or supporting candidates for office. However, as argued above, we believe that government policy should be based on evidence. Attempting to change government policy may not necessarily be part of a political process, but clause 8 (c) appears to suggest that all attempts to change policy are political acts. We believe this is inaccurate and that the bill is therefore inconsistent with the intention spelt out in the explanatory material.

## **3. Distinction between ancillary and dominant purposes**

The explanatory material suggests in 1.54 that ‘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’. However there is no explication of the meaning of ‘from time to time’, which means that this term, and therefore the relationship of advocacy to other activities, will remain confusing and problematic.

The degree to which the purpose of influencing government policy is central or ancillary to the other purposes is not straightforward and raises the prospect of extensive legal deliberation to clarify this point.

## **4. Definition of public benefit**

Clause 7 (1) (c) states that for an entity to be considered for the public benefit, it must be directed to the benefit of the general community or to a sufficient section of the general community. While we agree with the overall intention of this clause, we are concerned that the term ‘sufficient section of the general community’ is not defined and may be open to inconsistent interpretations. Some BSL programs provide a benefit to a limited number of people from a defined target group due to special needs or resource constraints, and we are concerned that this would not be regarded as a ‘sufficient section’.

## **Altruism**

The Board of Taxation was also asked to consult on whether the public benefit test in the Charities Bill should require the dominant purpose of a charitable entity to be altruistic. At the public consultation, the Board suggested that altruism was defined as ‘unselfish concern for the welfare of others’.

We do not think that inserting a clause requiring the dominant purpose of a charitable entity to be altruistic is necessary or desirable. The definition of a charity would not be strengthened by such a clause and inclusion may contradict the provisions for self-help groups listed in clause 2 (a).

## **Consequences for the BSL**

If the Bill is enacted in its current form, we foresee a number of negative consequences for the BSL. The most important is that we may be involved in extensive deliberations by the body responsible for overseeing the Act in order to determine whether we meet the test to be regarded as a charity under the legislation. Since we believe various clauses of the Bill are inconsistent, this may be a time consuming and expensive process, and will require diversion of resources from other more pressing areas.

The Bill is intended to clarify the legal status of charities, not complicate it. We believe better drafting of the legislation as outlined below would provide greater clarity and workability and obviate the need for extended legal deliberations which could ensue if the current Bill was enacted.

## **Recommendation**

We recommend that, in order to make the Act a workable and realistic definition, clause 8 (2) (c) should be deleted and the clause rewritten:

- (2) Any of these purposes is a disqualifying purpose:
  - (a) the purpose of advocating a political party;
  - (b) the purpose of supporting a candidate for political office.

## **Conclusion**

The BSL supports the attempt to codify the definition of charities, and generally, the Bill provides a useful step in this direction. The major flaw is that it unnecessarily excludes the purpose of changing government policy or law from the legitimate activities of charities. This is misplaced, and ignores the important contribution of charities to improving policy and services for disadvantaged people. It is also inconsistent with other aspects of the Bill which we believe renders the Bill unworkable. This could easily be remedied by removing the reference to changing government policy or law in clause 8(c).