

The Cancer Council South Australia

SUBMISSION TO THE BOARD OF TAXATION
ON THE DRAFT CHARITIES BILL, 2003

OVERVIEW:

The Cancer Council South Australia welcomes the opportunity to respond to the consultation on the draft Charities Bill, 2003.

The Bill is the result of the Federal Government's commitment to modernise the definitions of charity as used in taxation law. The initial consultation process resulted in the Report of the Inquiry into the Definition of Charities and Related Organisations (June 2001).

The advocacy role of charities has always been an important strategy to pursue social justice objectives. The report on Charitable Organisations in Australia released by the Industry Commission in 1995 noted "*Advocacy, however, can be a source of tension between governments and the (Charitable) sector.*" It did also state that "*Advocacy is a strategy that can be used to enhance policy development.*"

This advocacy role is jeopardised by *Clause 8 (2) (c)* of the Charities Bill, 2003. The ability of charities to advocate on behalf of their stakeholders to change or amend legislation is limited to the extent that it no longer can be part of the strategy to promote the purpose of the charity.

THE ACTIVITIES OF THE CANCER COUNCIL SOUTH AUSTRALIA:

The Cancer Council South Australia is community based and tries to meet the needs of people affected by cancer and their carers, the cancer research community volunteers and the paid staff, the public generally and special groups, particularly those of cultural and linguistic diversity and Aboriginal and Torres Strait Islanders. The Cancer Council South Australia is a company funded by the community and conducts its affairs in a legal, professional, ethical and accountable way.

In meeting its objectives it applies several guiding principles:

- Advocacy for and with people affected by cancer
- Leadership in the community sector
- Accountability to the community
- Integrity and high ethical principles
- Continuous improvement of service provision
- Evidence based, cost effective approach to program development
- Consultation with community and professional groups
- Partnerships and strategic alliances with relevant agencies
- Fundraising based on community involvement and corporate image
- Support for staff and volunteers.

Five overlapping strategic objectives are specified which set directions for the next three (3) year period:

- Advocate for and provide leadership in cancer control
- Facilitate education and awareness about cancer and its control
- Provide support and information for people affected by cancer
- Encourage and fund high quality research into all aspects of cancer control
- Develop policy and programs based on evidence.

RECOMMENDATIONS FOR AMENDMENT TO THE CHARITIES BILL, 2003

Clause 8, 'Disqualifying purposes' is too all encompassing. The intention of the clause appears to be related particularly to political parties. These parties do not engage in genuine charitable activities. In an attempt to disqualify them from the definition of a charity, and preclude them from charitable purposes, the clause adversely affects charities engaged in advocacy and lobbying of government to effect change.

Clause 8 (2) (a) proposes that advocating for a cause is a disqualifying purpose. *Clause 8 (2) (c)* proposes that the purpose of attempting to change the law or government policy is also a disqualifying purpose. The draft then attempts to soften the two clauses by stating that it is only a disqualifying purpose *"If it is, either on its own or when taken together with one or both of the other of these purposes, more than ancillary or incidental to the other purposes of the entity concerned."* *Clause 8* therefore appears to be at cross-purposes with the Charity Definition Inquiry's recommendation that the advocacy undertaken by charities was acceptable as long as it was not in aid of a political party and furthered or aided the organisation's dominant charitable purpose. Any legislation which is open to narrow or restrictive interpretation, such as the use of terms ancillary and incidental, could prove detrimental to the charity sector. This would make the Bill unworkable in its present form.

OPTIONS AVAILABLE:

As a member of The Cancer Council Australia, we endorse the contents of their submission.

Their suggested options for amendment to the draft Bill are in accord with this organisation's deliberations in relation to *Clause 8 (2) (c)*:

1. Delete *Clause 8 (2) (c)*.
2. Amend *Clause 8 (2) (c)* to read:

"Attempting to change the law or government policy, if it is not pursuant to the entity's charitable and/or public benefit objectives, or on behalf of those (all or a particular group) they benefit."

In relation to *Clause 8 (2) (a)* we would suggest that the words "or cause" be deleted.

The suggested changes to *Clause 8 (2) (c)* would also necessitate deletion or redrafting of the existing statement which makes this purpose a disqualifying purpose if it is *"more than ancillary or incidental to the other purposes of the entity."*

COMPLIANCE COSTS:

If the proposed changes outlined are accepted, there does not appear to be any additional costs which would be imposed on this organisation.

ALTRUISM:

The Report of the Charities Definition Inquiry defined altruism as “*unselfish concern for the welfare of others*” or “*regard for others as a principle for action.*” The key elements of the definitions were unselfishness and concern for others. The Report then states “*In the context of charity, altruism can be characterised as a voluntarily assumed obligation towards the wellbeing of others or the community generally.*”

As The Cancer Council South Australia was founded to undertake all levels of cancer control in South Australia it would meet the definition of altruism. However, it supports the notion that the dominant purpose for an entity must be for the public benefit if that entity is to fulfil the definition of a charity.

SUBMITTED BY:

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