



Carers

**Submission on the
Draft Charities Bill**

September 2003

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Introduction

Carers Australia represents at a national level the needs and interests of 2.3 million unpaid carers who provide care and support for family members or friends with a disability, mental illness, chronic condition or who are frail aged. This submission also reflects the views and concerns of our member state and territory associations (as listed in Attachment 1).

Summary

The Charities Definition Inquiry was established by the Federal Government to modernise the definition of charity used in tax law. The Inquiry consulted widely with the charitable sector and delivered its report in June 2001.

In July 2003 a draft Charities Bill 2003 and Explanatory Material were issued with a request for the Board of Taxation to consult over wording of the Bill.

We broadly support the submission of ACOSS 'A charity by any other name', September 2003 and refer particularly to the detailed discussion of advocacy issues. This subject is also well covered in Chapter 26 of the Charities Definition Inquiry report, the conclusions of which we also support.

Our comments relate to the 'workability' of the definition particularly with regard to the advocacy role of organisations such as ours.

In representing the interests of carers we need to advocate on their behalf not only in interpretative administrative matters but also to rectify anomalies and perceived injustices which require systemic change. Both this and the development of carer-friendly legislative frameworks and programs clearly encompass 'changing the law or Government policy' or 'advocating a cause'. The Bill seeks to impose restrictions on such advocacy and lobbying activities with the potential to inhibit organisations such as ours in discharging our proper responsibilities or risk the loss of our charitable status.

As part of their representative role both Carers Australia and its member associations are frequently called upon by government – both Federal and state/territory – to sit on advisory and working groups to develop new policies and programs. This provides for a rather anomalous position in which Government appears to be seeking advocacy input from an organisation on one hand while threatening removal of charitable status for providing this same input under possibly different circumstances.

We submit that the consultation and advocacy processes are key elements of our democratic system which should not be inhibited. Indeed since Government funds many of our programs we would be remiss in our duty to Government as a stakeholder if we did not provide a strong and well-supported advocacy input.

Clause 8 of the draft Bill would have the effect of excluding from charitable status organisations which have among their purposes:

‘changing the law or Government Policy’, or

‘advocating a cause’;

unless these purposes are no more than ‘ancillary or incidental’ to the other purposes of the organisation.

This requirement introduces an aspect of doubt and confusion into the legislation which is not clarified by the Explanatory Material reference, item 1.54 which allows 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 of the charity’.

Clearly ‘from time to time’ will require significant interpretation just as ‘ancillary or incidental’, however it does suggest that ‘frequent’ or ‘regular’ representation to Government would not be regarded as ‘incidental’.

There are at least two different ways in which to interpret ‘ancillary or incidental’.

The Charity Definition Inquiry took the view that the advocacy work of charities should not be restricted, provided that it:

furtheres or aids the organisation’s dominant charitable purpose; does not promote a political party or candidate for political office.

If this interpretation is correct, then Clause 8 is unnecessary, except to restrict partisan political activity, since Clause 4 already states that a charity should not ‘engage in activities that do not further or are not in aid of its dominant purpose’.

On the other hand a narrow interpretation of Clause 8 would suggest that charities should restrict the resources which they devote to advocacy (as is the case in the United States and Canada) or that charities should be regulated in terms of the kind of advocacy performed (as in the United Kingdom). This approach would require time-consuming regulation of the advocacy work of charities and the resources devoted to it. Inevitably there would be an increased need for recording and costing advocacy activity in case this activity becomes subject to audit by the Australian Tax Office.

Such an approach would divert scarce resources into record-keeping and at worst could result in the loss of charitable status with its concomitant financial impact. In either case organisations such as Carers Australia would be inhibited in providing the services to their constituency which fulfil their dominant purpose.

A better approach, which would be less intrusive and burdensome for charities, would be to recognise that charities may engage in non-partisan advocacy which is an integral part of achieving the underlying dominant purpose.

In order to clarify this position we strongly recommend that Clause 8 of the draft Bill be redrafted consistent with the recommendations of the Charities Definition Inquiry (see Recommendation 1 below).

Carers Australia believes this recommended change is crucial to the ability of it and its member associations to effectively meet the ongoing needs of carers through representation and advocacy. If this change is effected, Carers Australia broadly supports the basic thrust of the Bill.

Other proposed changes to the draft Bill:

Carers Australia and its member associations implement a number of Government funded programs. These are covered by appropriate agreements and controls but the organisations retain their identity and control over their operations and activities. While this issue is addressed in items 1.18 through 1.24 of the Explanatory Material, it is suggested that the meaning of 'Government body' should be clarified in the draft Bill to ensure that public funding of an organisation pursuant to a Government program does not imply that it is a Government body.

Recommendation 1:

Clause 8 Disqualifying purposes

Clause 8 of the draft Bill should be replaced by a provision along the following lines:

A Charity may have public advocacy purposes (which could be described in the Explanatory Material as including 'attempts to change the law or government policy'), provided those purposes:

- (1) further, or aid, or are ancillary or incidental to, its dominant charitable purpose or purposes; and
- (2) do not promote a political party or a candidate for political office.

Recommendation 2:

Clause 4 Core definition

Clause 4 of the draft Bill should be amended as follows:

- (1) express paragraph 4(1)(c) in positive rather than negative terms. For example using words along the lines of:

'whose activities further, or are in aid of, its dominant purpose'

- (2) expand paragraph 4(1)(f) to clarify the meaning of 'government body' to ensure that:
 - an entity receiving public funding, and/or established under the auspice of a program
 - of public funding, is not deemed to be a government body.

Attachment 1

Carers Australia's membership:

Queensland Council of Carers
Carers NSW
Carers Victoria
Carers Tasmania
Carers Association of South Australia
Carers Western Australia
NT Carers Association
Carers ACT