

SUBMISSION TO THE BOARD OF TAXATION
CONSULTATION ON THE DEFINITION OF A CHARITY
FROM CEREBRAL PALSY LEAGUE OF QUEENSLAND

ORGANISATION DETAILS

The following submission is being made by the Cerebral Palsy League of Queensland, which is a not for profit organisation and is structured as a company limited by guarantee and is governed by a Board of Directors. The League is defined as a Public Benevolent Institution and has endorsement as a deductible gift recipient and as an income exempt charitable entity. The League has made previous submissions to the Inquiry into the Definition of Charities and Related Organisations, the last being on 18 January 2001. The League supports the opportunity provided to make comment on the draft Bill and the Government's initiative in reforming and updating the definition of a charity to reflect the changing times and nature of our society.

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DOMINANT PURPOSE/S OF THE ORGANISATION

The League's Memorandum of Association (approved February 1993, amended 16 March 1998) states the dominant purpose as:

- (1) To provide services to people with cerebral palsy or related disabilities.
- (2) To advocate to Governments for appropriate policies and necessary resources to support the League provision of services to people with cerebral palsy or related disabilities.

WORKABILITY OF THE LEGISLATIVE DEFINITION OF A CHARITY

The following concerns are raised about the workability of this definition proposed in

exposure draft Charities Bill 2003.

- Clarity – Re Section 8 “Disqualifying Purposes”, 8(2) - The League recommends that 8(2)(c) be removed as it is open to discretion, with the term “more than ancillary or incidental to the other purposes of the entity concerned”, as ambiguous. The 2001 Report of the Charities Definition Inquiry recommended that a charity should be able to advocate on behalf of those it seeks to assist, or lobby for changes in law or policy that have direct effects on the charity’s dominant purpose, provided that it does not promote a political party or a candidate for political office. Government is aware that formation of good policy requires testing its policy blueprints against the experience of practitioners and listening to criticism of its policies. If the proposed Charities Bill inhibits Non-Government Organisations in offering this criticism, the quality of public policy will suffer.

Charities should be permitted to engage in advocacy on behalf of those they represent. If passed in its draft form, the legislation could deny charitable status to a number of existing charities and those wanting to retain their charitable status may face intrusive reporting requirements. An example, where, if this section of the legislation is enacted in its draft form, could affect disability organisations, is in regards to the Unmet Needs Campaign in Qld, where a variety of organisations were represented and provided resources to lobby government from the late 1990’s to present. These activities could have been seen to be more than “ancillary”.

- Clarity – Re Section 7(2) Public Benefit – “numerically negligible” - It is not clear from the wording as to how this is defined, measured and by whom. An example where a self help group in Australia may be impacted upon is where it represents a particular disability category, such as a rare syndrome globally, then becomes a “numerically negligible” group locally.

POTENTIAL ADMINISTRATIVE BURDEN AND COMPLIANCE COSTS

- Depending on the definition and how the ATO will determine this in practice, if charities need to prove the “more than ancillary and incidental” qualification, this could add to administrative and legal costs.
- It is recommended that no change be made to the current process of self regulatory status once the organisation has the endorsed status as an ITEC, and the new definition takes effect. This will keep administration costs to a minimum.

FLEXIBILITY OF THE DEFINITION TO ADAPT TO CHANGING NEEDS

This relates to Part 2, Section 4(c) of the draft Bill, “What is a Charity”. This section may have an impact in the future on the ability of the charity to engage in partnerships with other organisations, particularly for profit organisations. How is it determined as to what does not further or is not in aid of the entity’s dominant purpose? Wording of intent needs to be clearer to allow for flexibility in the changing environment, where charities do not have sufficient Government funding to meet high levels of need.

They are often being encouraged, even by Governments to enter partnerships with organisations in commercial activities and, to develop commercial activities themselves to complement and maintain the viability of other parts of the organisation that have little or no funding. An example here could be where there is an indirect marketing benefit for the charity by partnering with a for profit organisation, the latter making a more measurable gain. Would this be seen as benefiting the overall purpose of the charity or an activity?

PUBLIC BENEFIT TEST AND ALTRUISM

The recommendation is that the Draft Bill not be amended to include the “altruism” criteria. Our understanding is that the Board of Taxation considers altruism to be voluntary assumed obligation towards wellbeing of others or the community.

Altruism is a value statement, subjective and too difficult to define for an organisation as a whole. People could be more appropriately regarded as altruistic, but how is this determined and by whom for organisations? It could introduce more work and administrative costs for charities in trying to meet this criteria, as well as the other criteria detailed in the draft legislation. Added to this, is the increasing engagement of paid positions in human service organisations in comparison to volunteer involvement. Such a definition of altruism would then exclude many organisations who rely more heavily on paid staff than they do on volunteers to meet the purposes of the entity.