

Submission to the consultation on the *Draft Charities Bill 2003*.

CCF Australia Ltd

Background to the organisation: **CCF Australia, Ltd** (Christian Children's Fund) is a registered charity (Charitable Fundraising Number 12982) with Public Benevolent Institution status. Its mission is to promote the well-being of children and communities in developing countries. It is one of the larger Australia based non-government development organisations, with an income of A\$17 million in 2002-03 (over \$15 million of which was from donations from the public). Established in Australia in 1985, it is a member of an international network of development organisations which together work in over 50 countries around the world. CCF Australia has a small but growing advocacy program. CCF Australia is fully accredited by AusAID, is a member of the Australian Council for Overseas Aid (ACFOA) and a signatory to the ACFOA Code of Conduct.

CCF Australia welcomes the Australian Government's commitment to clarifying the definition of charities, which began with the *Inquiry into the Definition of Charities and Related Organisations* in 2001 and continues with the *Draft Charities Bill 2003*. As a signatory to the ACFOA (Australian Council for Overseas Aid) Code of Conduct, CCF Australia supports transparency and accountability in the charitable sector. A definition of charities which reflects the recommendations of the 2001 Inquiry will help to achieve that end.

CCF Australia considers, however, that some of the current *Draft Charities Bill 2003* does not adequately reflect the Inquiry's recommendations. The primary instance of this is in Section 8, Disqualifying Purposes, although there are several other areas of concern.

Disqualifying Purpose

Section 8 of the proposed bill states that:

"(1) The purpose of engaging in activities that are unlawful is a disqualifying purpose

(2) Any of these purposes is a disqualifying purpose:

- (a) the purpose of advocating a political party or cause;
- (b) the purpose of supporting a candidate for political office;
- (c) the purpose of attempting to change the law or government policy;

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."

This proposed wording is not in accord with the recommendations of the Charities Inquiry for a simple unambiguous statement of disqualifying purposes:

"... it is the Committee's view that some types of activities should disqualify an entity from charitable status. Charities should be prohibited from

engaging in activities that are illegal, contrary to public policy, or that promote a political party or a candidate for political office." (Ch 12, p 109)

The Draft Bill goes further than this by including advocacy of political causes and attempting to change law and policy as disqualifying purposes, and makes matters unclear by referring to 'ancillary or incidental' quantities of such activity as constituting a disqualifying purpose.

CCF Australia considers that the wording proposed in the Draft Bill is unfeasible on both administrative and operational grounds. On the administrative side, 'ancillary or incidental' levels of advocacy are not easily quantifiable. It would need to be determined whether budgetary, personnel or other indicators would be used, and to identify a maximum allowable level of advocacy. The administrative burden of tracking advocacy could be considerable, particularly as it is often integrated with other activities. The proposed wording also suggests that an organisation *could* support political parties or candidates to a certain level, which contradicts the recommendation of the Inquiry.

Operationally, CCF Australia contends that advocacy is not ancillary to its work, but is rather an integral and highly valuable part of it. It is now generally recognised that the benefits of direct program interventions are lessened and the prospects of sustainability diminished if government policies and programs do not complement the work of the project (see box).

Similarly, the proposed limits on advocacy contradict existing Australian Government policy and practice, as exemplified in the priority of 'Good Governance' and 'Strengthening Civil Society' in the aid program. AusAID often seeks input from NGOs on its policy and programs (notably in recent discussions on the new AusAID-NGO Cooperation Agreements). The high value that AusAID places on advocacy in development NGOs was evident in CCF Australia's 2003 Accreditation report:

Advocacy and HIV/AIDS policy in Africa

CCF's HIV/AIDS programs in Africa seek to promote community based care of those affected by HIV/AIDS and the active involvement and rehabilitation of HIV affected children (especially orphans).

Integral to this work is advocacy engagement with African Governments, particularly in relation to promotion of community care over the more costly and often inappropriate institutional care.

This direct attempt to change government policy has the potential to significantly improve the long term emotional and economic well-being of HIV affected children and communities.

"The recent appointment of an Advocacy Officer is an indication of the maturity of CCFA as a development organisation." (p 7)

There is no intrinsic difference between advocacy overseas and advocacy in Australia, so long as advocacy in Australia is founded on the experience and mandate of the organisation. For example, CCF Australia is involved in two sector wide campaigns, the 'Water Matters' campaign and the ACFOA Disability Working Group, which are making direct representations to the Australian Government and aim to influence government policy and programs. These representations are well received by AusAID as constructive and professional contributions to development.

These views are supported by the findings of the Charity Inquiry:

"The Committee recommends that charities should be permitted to engage in advocacy on behalf of those they benefit. Conduct of this kind should not deny them charitable status even if it involves advocating for a change in law or policy. Submissions from both charities and governments have

demonstrated that charities are increasingly asked to represent to governments the interests of those they seek to benefit and to contribute to the development and administration of government policies. The Committee considers that the definition of a charity should not prevent these developments as they represent an effective means of delivering outcomes for individuals, charities and governments." (Ch 26, p. 217)

CCF Australia proposes the following wording for Section 8 as better reflecting the recommendation of the Inquiry. This wording was developed by a group of Sydney based NGOs during a consultation with representatives of the Working Party on the Draft Bill on 27 August:

"8 Disqualifying purposes

- (1) The purpose of engaging in activities that are unlawful is a disqualifying purpose.
- (2) The entity cannot have a dominant purpose:
 - (a) of advocating a political party;
 - (b) of supporting a candidate for political office."

Serious Offence

Section 4 (1) (e) states that organisations will not meet the definition of a charity if they engage in conduct which "constitutes a serious offence". CCF Australia fully supports the intent that charities should be law abiding entities, but notes that the clause as proposed has a number of potential shortcomings:

- The term 'serious offence' is not clear. Advice from the Working Party on the Draft Bill was that this refers to an indictable offence, however this information is not contained in either the Draft Bill or Explanatory Notes.
- It is not specified the provision would be enforced – by the ATO or the judicial system.
- It does not specify any limits to vicarious liability. This is a concern for organisations which make extensive use of volunteers, but may also be a factor for organisations like CCF Australia which get funding through child sponsorship. As an organisation CCF Australia is wholly committed to child protection and has extensive policies and procedures designed to act on this, particularly in the management of sponsor visits to children and the like. Should a sponsor commit an offence against children involved in CCF's programs (despite CCF fully adhering to its child protection policies), it may be that the organisation's charitable status would be withdrawn under this clause.

CCF Australia proposes that 4 (1) (e) either be deleted or substantially revised to clarify the conditions in which it would come into effect and how decisions would be made.

Inflexibility

The Draft Bill is inflexible in its definition of charities in general, particularly in view of the current wording of Section 8. However the Explanatory Notes do contain explicit recognition that religions bodies are dynamic and will continue to respond to the changing needs of society (Par. 1.72). There should be a similar reference to charities in general, while the Bill itself should better cater the changing roles

expected of charitable institutions by the public and by government by better reflecting the diverse roles of charities as defined in the Inquiry report.

Altruism

The Terms of Reference for this consultation on the Draft Bill require some consideration of the concept of altruism. CCF Australia agrees with the general consensus apparent in the 27 August consultations that it is not necessary to refer to altruism, as the underlying concepts are adequately covered in the Draft Bill's description of 'Charitable Purpose'.

Moreover there are potential weaknesses inherent in the term:

- It is ambiguous.
- One possible aspect of the term canvassed at the consultation was voluntarism. While voluntarism is the keystone of charitable work, most charities necessarily have a core of paid staff for a range of administrative and specialised functions (as recognised in the Explanatory Notes). Introducing the concept of altruism could create expectations that all charitable work should be voluntary.

Numerically Negligible

Section 7 (1) (2) states that an organisation is not a charity if it aims to benefit a 'numerically negligible' number of people. Again this is an ambiguous term, and from a human rights perspective there is no such thing as a 'negligible' number of people. The clause may also affect organisations which deal with individuals on a case by case basis.

The definition of public benefit and the types of organisation that qualify as charities are adequately addressed in the remainder of Section 7 and also in Section 4 (2) and should eliminate the need to include this reference.

Charitable Purpose

CCF Australia suggests that the advancement of Human Rights should be included in the list of purposes under 10 (1). Par. 1.84 of the Explanatory Notes state that human rights is considered as an 'other purpose' under 10 (1) (g), however particularly in international development the advancement of human rights is at least as important as any of the items covered under 10 (1) (a) through (f).

In summary, while CCF Australia fully supports the overall intent of the Bill, there are a number of areas which are unclear, and Section 8 requires substantial revision. As the purpose of the Bill is to resolve long standing uncertainty in the definition of charities, it is important that these points be resolved.

Should you wish to discuss any of the above points further, please contact **James Cox, 02 8281 3110** or **jcox@ccfa.org.au**.