

**CHURCH AND CHARITABLE PRIVATE HOSPITALS ASSOCIATION
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30 September 2003

Consultation on the Definition of a Charity
The Board of Taxation
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Thank you for the opportunity to submit a response to the exposure draft of the Charities Bill 2003.

I attach a submission from the Church and Charitable Hospitals Association (CCPHA) in accordance with the guidelines provided by the Board of Taxation.

Stephen Kerr
Executive Director and Company Secretary

CONSULTATION ON THE DEFINITION OF A CHARITY

**A submission in response to the
Charities Bill 2003 Exposure Draft (Cth)**

from the

Church and Charitable Private Hospitals Association

September 2003

The Board of Taxation at the request of the Treasurer has invited submissions from interested charitable organisations on the draft legislation (the *Charities Bill 2003*) and the Explanatory Material issued by the Treasurer in July 2003.

The following questions were provided by the Board of Taxation to guide submissions.

1. What is the name and contact details of your charitable organisation?

This submission is made on behalf of both the Church and Charitable Hospitals Association and its member hospitals. Where necessary, we have provided a response from the viewpoint of both the Association and also the individual member hospitals.

(a) The Church and Charitable Private Hospitals Association Limited (CCPHA) is an association of not-for-profit hospitals.

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(b) Member Hospitals:

- Sydney Adventist Hospital, Wahroonga, NSW
- Burnside War Memorial Hospital, SA
- Glenelg Community Hospital, SA
- The Bays Hospital Group, Mornington, Victoria
- Cabrini Hospital, Malvern, Victoria
- Epworth Hospital, Richmond, Victoria
- Freemasons Hospital, East Melbourne, Victoria
- St John of God Hospital, Ballarat, Victoria
- St John of God Hospital, Geelong, Victoria
- St John of God Hospital, Warrnambool, Victoria
- St Vincent's and Mercy Private Hospital, Fitzroy, Victoria

These hospitals provide over 2,500 acute hospital beds across Australia and include some of the most advanced surgical and medical units in the country.

2. *What is the dominant purpose of your charitable organisation?*

(a) The Church and Charitable Private Hospitals Association was formed in 1938 and is the oldest private hospital association in Australia.

The primary aims of our association are:

- To promote the public witness of charitable and religious sponsorship of health care facilities in the interest of better care to the whole person, and to the promotion of family centred health care.
- To work to secure and hold the right of religious and charitable bodies to own and operate Hospitals in a situation of freedom and autonomy of management, particularly in matters of principle and morality.
- To encourage and support Members in their efforts to provide excellence in care to patients, having regard to the not-for-profit nature of the Member Hospital, and recognition by Members of the need for charitable assistance to patients of modest means.
- To represent the special interest of Members in liaison and negotiations with governments and other health care associations.

In summary and according to the definitions in the *Charities Bill 2003*, the dominant purpose of the CCPHA is to support its members in their predominant charitable, public benefit purpose of the advancement of health.

(b) All member hospitals of the CCPHA have long established records in the advancement of health. This is their dominant purpose for continuation of service provision. They are not-for-profit organisations all formed with the primary purpose of providing health services for the entire community. Their ownership and governance is held either by religious or community organisations. They are each recognised as Public Benevolent Institutions by the Australian Tax Office.

3. *What are the principal reasons for CCPHA making a submission on the workability of the Charities Bill 2003?*

(a) CCPHA:

- CCPHA is a peak body of church and charitable, not-for-profit private hospitals in Australia and represents the interests of its member hospitals to government on issues such as this where any changes may affect our members or the Association.
- The treatment of peak bodies such as the CCPHA is not entirely clear under the Charities Bill 2003 as it could be construed that a central focus of such a peak body is to inform and influence Government, albeit in the interest of the advancement of health. This lack of clarity is an issue under current ATO administration, where the CCPHA has been granted income tax exempt status but has been rejected by the Commissioner of Taxation from the benefits of being a Public Benevolent Institution (e.g. FBT and deductibility of gifts). CCPHA seeks clarification in the draft Charities Bill that peak bodies whose dominant purpose is representing groups of charities are therefore serving the dominant purposes of their members.

- CCPHA was concerned, following the publication of the *Report on the Inquiry into the Definition of Charities and Related Organisations*, about the test of altruism. This concern is addressed below (at Question 8).

(b) Member hospitals:

Member hospitals of the CCPHA endorse this submission by the Association as representative of their own interest in the status of not-for-profit hospitals according to the definitions drafted in the *Charities Bill 2003*.

4. ***Is CCPHA currently endorsed with ATO as an Income Tax Exempt Charity (ITEC)? If yes, would CCPHA still be so entitled under the proposed legislation? If not entitled under the proposed law, why not? If unsure, say why.***

(a) The CCPHA is endorsed as an ITEC. It appears that the *Charities Bill 2003* would not adversely affect this status.

(b) Member hospitals are endorsed as ITECs and would not anticipate any change of this status under the proposed legislation.

5. ***If not an endorsed ITEC, is CCPHA exempt from income tax for any other reason? Would the Charities Bill 2003 affect CCPHA's entitlement to income tax exemption?***

[not applicable]

6. ***Would the Charities Bill 2003 impose any extra administrative burden on CCPHA? How? What compliance costs would CCPHA anticipate?***

(a) It appears that the proposed legislation would not add to the administrative work of CCPHA.

(b) It appears that the definitions in the *Charities Bill 2003* would not impose any additional administrative burden on our members. It is not clear what administrative requirements could be imposed by government following enactment, for example under the taxation system. The Board in its guidance notes has excluded this aspect from the present consultation.

7. ***Does the Charities Bill 2003 provide the flexibility to ensure the definition can adapt to the changing needs of society?***

(a) The treatment of peak bodies that represent charities has been discussed above (Question 3) and the CCPHA believes that the *Charities Bill 2003* needs to address this issue.

(b) From the point of view of our member hospitals, the inclusion under "charitable purpose" of "other purposes beneficial to the community" appears to offer the flexibility to adapt to social change.

8. ***If the public benefit test were further strengthened by requiring the dominant purpose of a charitable entity also to be altruistic, would this affect CCPHA? If so, how?***

The Board of Taxation's guidance on this aspect of the present consultation considers that "altruism can be characterised as 'a voluntarily assumed obligation towards the wellbeing of others or the community generally', as presented in the *Report of the Inquiry into the Definition of Charities and Related Organisations*."

The Treasurer has not offered any explanatory material concerning the test of altruism, therefore we must rely on the discussion of altruism in the *Report*.

... the Committee considers that in order to provide greater clarity to charities and the wider community, the public benefit test for charitable purposes should more explicitly embrace the concept of altruism.

An organisation may provide a benefit to the public without necessarily acting altruistically. For example, mutual organisations which provide health care services exclusively for paid-up members are providing a public benefit (improved health in the community), but they are not acting altruistically. Similarly, a for-profit company which operates a store selling fresh food to the community at large could be seen as providing a public benefit, but its overriding purpose is to generate profits for its owners . . .

The Committee considered whether a measure of voluntary effort should be regarded as necessary in the conduct of a charitable entity as a means of confirming the altruistic nature of the entity . . . Most charities involve some level of voluntary input, such as volunteers providing services, helping to raise funds, or acting as board members in a voluntary capacity . . .

However, charities vary greatly in the level of voluntary effort involved in their operations . . . Bearing in mind that the level of volunteer contribution towards the work of any particular charity can vary according to a wide range of factors, the Committee considers it is inappropriate to set a particular level of voluntary effort as the benchmark for being regarded as a charity. This would be artificial and administratively cumbersome and, by imposing targets on the goodwill of individuals, it may have the effect of reducing the level of contribution by volunteers.

Overall, the Committee considers that while the concept of altruism needs to be emphasised, it is not necessary to define the term any more precisely for the purposes of clarifying public benefit. In our view the concept of altruism is sufficiently understood within the community." (p.124).

It is not clear why the Treasurer has raised the question of including altruism in the definition when it is not included in the draft Bill. Therefore we do not have the benefit of seeing how altruism might be defined nor any explanatory notes as to its interpretation.

Perhaps the reason for the omission of altruism from the draft legislation is that the Committee after extensive consideration did not define altruism, saying it is "sufficiently understood within the community". CCPHA wonders to which "community" the Committee was referring, as in our opinion altruism is not a term in common usage. Nor do the two examples used by the Committee (cited above) provide much guidance. Was the Committee suggesting that not-for-profit Health Benefits Organisations would not be treated as charities if altruism was

included in the public benefit definition? Yet under the Charities Bill 2003, Health Benefits Organisations would appear to qualify as charities. The second example is of little value as the organisation is for profit.

The CCPHA strongly opposes any inclusion of altruism in the definition of a charity in the *Charities Bill 2003* without further clarification as to how this may be applied and which charities it may affect.

(b) The member hospitals of CCPHA are concerned at the test of altruism for the reasons given above.

Secondly, Member hospitals support the Committee's conclusions regarding voluntary effort being an essential but unquantifiable qualification in any test of altruism. Member hospitals "voluntarily assume obligation towards the wellbeing of others . . ." however cannot possibly provide health assistance without levying fees, even though not for profit. Member hospitals nevertheless provide many services that are unpaid through volunteer auxiliaries, waiving of fees and facilitating of charitable projects.

30 September 2003