

SUBMISSION OF
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS
TO
BOARD OF TAXATION
REGARDING
THE DEFINITION OF A CHARITY

Introduction

1. It is noted that the Board invites submissions on:
 - X the workability of the definition of a charity proposed in the draft legislation (the Charities Bill 2003) and Explanatory Material issued by the Treasurer on 22 July 2003; and
 - X whether the public benefit test in the exposure draft should also require the dominant purpose of a charitable entity to be altruistic, as recommended by the *Report of the Inquiry into the Definition of Charities and Related Organisations*.
2. This submission is limited to the first issue - the “workability” of the definition of charity as currently proposed.
3. The part of the core definition (Clause 4 of the draft Bill) with which this submission is concerned is Subclause 4(1)(a), namely-
 - “(1) A reference in any Act to a charity, to a charitable institution or to any other kind of charitable body, is a reference to an entity that:
 - (a) is a not-for-profit entity;”

Not-for-profit entities

4. Clause 5 of the Bill defines the not-for-profit entity in this way:
 - “(An entity is a not-for-profit entity if:
 - (a) it does not, either while it is operating or upon winding up, carry on its activities for the purposes of profit or gain to particular persons, including its owners or members; and
 - (b) it does not distribute its profits or assets to particular persons, including its owners or members, either while it is operating or upon winding up.”
5. Paragraph (b) of Clause 5, as expressed, is wider than paragraph (a). Paragraph (b) denies not-for-profit status to an entity which “distribute[s] its profits or assets to particular

persons, including its owners or members, either while it is operating or upon winding up” whether or not it carries on its activities for the purposes of profit or gain to particular persons, including its owners or members. In other words an entity which qualifies as not-for-profit under paragraph (a) may be disqualified by paragraph (b).

6. Further difficulty with the clarity and transparency (as expressed) of paragraph (b) is caused by the absence of definitions for all or any of the terms “particular persons”, “owners” and “members”.

7. The Explanatory Material gives the following explanation, at para 1.25, of Clause 5(b) of the Bill-

“An entity is a not-for-profit entity if it ... does not distribute its profits or assets to its owners or members, or to any other person, either while it is operating or upon winding up.”

Plainly para 1.25 equates the “particular persons” of Clause 5 with “any other person” - thus the criteria for identifying who qualifies as “particular persons” is left at large. That uncertainty necessarily impacts upon the “workability” of the definition.

8. If an otherwise charitable institution as part of carrying on a stated “charitable purpose” (as defined by Clause 10 of the Bill) determines to and consistently distributes part of its profits or assets to certain charities established for the same charitable purpose as that carried out by the charitable institution, do those charities constitute “particular persons”?

9. “Advancement of religion” (Clause 10(1)(d) of the Bill) would include financial support for missionary activities and missionaries. A religious organisation ordinarily provides financial or in-kind assistance to persons in necessitous circumstances - which would fall within “advancement of social and community welfare” described by Clauses 10(1)(c) and 11 of the Bill.

10. Any organisation through which a religious society engages in “advancement of religion” or “advancement of social and community welfare” invariably comprises “members” of that society - members of the society who have the day to day control of the organisation might also, depending on the nature of the operating organisation, be taken to be “owners”.

11. It would seem then that arguably, any distribution by a religious organisation to a “member” or “owner” would exclude the organisation as a not-for-profit entity (see Clause 5)

notwithstanding that distribution would otherwise properly fall within say, Clause 10(1)(c) or (d). It is not unlikely that there will be instances where distributions for “advancement of religion” or “advancement of social and community welfare” may be warranted and the proposed recipient is a “member” or “owner” of the religious organisation.

Submission

12. We do not believe it was intended that an entity be denied not-for-profit status merely because distributions which otherwise meet charity criteria, are made to a person who happens to be a “member” or “owner” - provided the entity does not carry on its activities for the purposes of profit or gain to that “member” or “owner”. This belief seems consistent with the following comment made at para 1.26 of the Explanatory Material:

“The term not-for-profit does not imply that a charitable entity will not generate a profit. Activities, such as commercial activities, may be undertaken with the purpose of generating a profit, without this effecting [sic] the charitable status of the entity, *provided that the profits are directed towards the charitable purpose of the entity....*” (Emphasis added.)

10. The issue raised by this Submission might be met by adding an express qualification to the phrase “particular persons, including its owners or members,” in Clause 5(b). Our Submission is that the provision be amended so that Clause 5 reads as follows:

- “An entity is a not-for-profit entity if:
- (a) it does not, either while it is operating or upon winding up, carry on its activities for the purposes of profit or gain to particular persons, including its owners or members; and
 - (b) it does not distribute its profits or assets to the particular persons, including its owners or members, referred to in paragraph (a) hereof either while it is operating or upon winding up.”

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