

30 September 2003

Ms Jane Schwager  
Chair,  
Charities Definition Working Group  
Board of Taxation  
C/- The Treasury  
Langton Cr  
Parkes ACT 2600

By email: [charitydefinition@taxboard.gov.au](mailto:charitydefinition@taxboard.gov.au)

Dear Ms Schwager,

Attached is the submission from the Community Housing Federation of Australia (CHFA) to the consultation on the draft Charities Definition Bill 2003.

The consultation process, with the opportunity to discuss aspects of the draft Bill with your committee has been most valued and appreciated. Please contact me on 02 6232 5043 should further details of this submission be required.

Yours sincerely

Carol Croce  
Executive Director  
Community Housing Federation of Australia

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**SUBMISSION to the Board of Taxation  
Consultation on the Definition of a Charity, 30 September, 2003**

**Community Housing Federation of Australia (CHFA)**

The Community Housing Federation of Australia (CHFA) is the national peak organisation representing the views of community housing providers in Australia.

Our purpose is to ensure community housing develops as a viable housing option, providing quality housing services to tenants.

We do this through research, public policy development, and advocacy of housing issues to governments and other key stakeholders. Most importantly, CHFA maintains links with and between housing providers across Australia, providing a voice for their interests at the national level.

Community housing providers are committed to the growth of secure, affordable, appropriate rental housing provided by not-for-profit community organisations on a basis which:

- Is respectful of tenants' rights;
- Provides opportunities for tenants to have control over their housing and environment through participation in management;
- Meets the needs of individuals and families;
- Is linked with the development of a community.

These principles underpin community housing and distinguish it from other forms of subsidised housing. Community housing provides more than just bricks and mortar. It provides links to local services and ties to the community.

The Community Housing Federation of Australia (CHFA) has a vision for community housing as an independent sector able to offer real choice to tenants on low incomes.

CHFA considers itself and its members to be charities, and it is understood that the draft Charities Bill 2003 (the draft Bill) is intended to codify existing Common Law so as to provide certainty and consistency of application in charity definition. CHFA is pleased to contribute to this process by providing its comments and recommendations regarding:

- The workability of the definition of a charity in the draft Bill
- Whether the public benefit test in the exposure draft should also require the dominant purpose of a charitable entity to be 'altruistic'.

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*Note:*

*All references to numbered sections are references to sections of the draft Charities Definition Bill 2003.*

## **1. Altruism**

The Board of Taxation characterises altruism as ‘a voluntarily assumed obligation towards the wellbeing of others and the community generally’. CHFA does not support the suggestion that the public benefit test should require the dominant purpose of a charity to be altruistic.

The draft Bill includes measures of outcomes outlined in section 10(1) as charitable purposes. The inclusion of an additional test for altruism in public benefit does not appear to provide additional clarity in charity definition. Altruism requires subjective measurement that needs to consider the motivations behind such a voluntarily assumed obligation to others. In today’s society, increased reliance is placed upon co-operative approaches to the provision of charity-based services such as community housing, through community involvement and self-reliance. It is possible that some interpretations of altruism would be at odds with these features.

## **2. Public Benefit**

It is noted that, under section 4(1)(b), the public benefit requirements outlined in section 7 do not apply to open and non-discriminatory self-help groups. Other small services, while not meeting the self-help requirements in section 9, may be established for charitable purposes, and for the public benefit. The exclusion of organisations in accordance with section 7(2) that are considered to be serving numbers of people that are ‘numerically negligible’ is of major concern to the community housing sector. Some community housing organisations serve relatively small numbers of people and may be affected by factors such as limited availability of housing stock and geographical limitations. Further clarification of the practical implications of section 7(2) for small community housing organisations is necessary.

## **3. Disqualifying purposes & advocacy**

It is accepted that advocacy on behalf of a political party or candidate for political office is a disqualifying purpose, however advocacy of a cause is an important and necessary role of Australian charities. For many years charities have provided advice and commentary to governments, contributing to the development of good public policy. In democratic and civil society, advocacy has assisted changes to laws and government policy, to the betterment of society.

Governments recognise the positive contributions provided by organised advocacy activities through the funding of peak bodies in important areas of

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the charitable sector. Advocacy of cause is an important tool that aids charitable purposes.

Removal of the words, “or cause” from section 8(2)(a) and removal of clause 8(2)(c) are recommended.

It is further recommended that the term “advancement” should be extended in clause 10(2) to include advocacy.

#### **4. Dominant, ancillary & incidental purposes**

Section 6(1) requires any other purposes of a charity to further or be in aid of the dominant purpose(s), and for these other purposes to be ancillary or incidental to the dominant purpose(s). These measures should be liberally applied, and clarification of this in the draft Bill would assist. Some form of measurement and limitation would be inappropriate, as the important issue here in that dominant purpose should be seen to reflect the required outcomes in social terms, will other activities being mechanisms in meeting these social outcomes. Community Housing Organisations consider a diversity of community building activities as supporting their core goals of providing affordable housing to low income groups, those requiring crisis accommodation and people from indigenous communities.

#### **5. Charitable purposes**

While section 10(1)(c) includes the advancement of social or community welfare as a charitable purpose, and it is expected that the services provided by Community Housing Organisations would fall under this category, it is contended that the advancement of housing is an important head of charity, and should be included under section 10(1) in its own right.

As are the cases for education and health, housing is a critical social need, where the disadvantaged in society are impacted by poverty as a result of the high cost of housing, despite it being a basic social need.

The link between housing costs and poverty is emphasised by the findings of Winter & Donald [2001], that the bottom 20% of households by income spend 64% of household income on housing cost.

Failure to specifically identify the advancement of housing as a charitable purpose devalues the importance of the increasing housing stress being felt by sections of Australian society.

#### **6. Unlawful purposes, serious offences**

The requirement that charities cannot have engaged in conduct constituting a serious offence (section 4(1)(e)) and the inclusion of unlawful activities as disqualifying purposes needs careful review and some alteration.

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Where such issues involve conduct that may threaten a charity's viability or public confidence in the organisation or charities generally, steps need to be available to regulators to enable these issues to be addressed. They should not however impact upon the definition of a charity, but rather the benefits, such as tax concessions attached to charity status.

In other cases such as occupational health and safety breaches, penalties should be applied under the relevant legislation. Loss of charity status (which would appear to have the effect of being irreversible under section 4(1)(e)) may be inappropriate to the offence and compounding other penalties being suffered. There would not seem to be opportunity for discretion to be applied by the Australian Taxation Office in the administration of section 4(1)(e).

The removal of references to serious offences and unlawful behaviour should be removed from the draft Bill.

## **7. Not-for-profit entities**

The focus in the draft Bill upon entity as defined under the Income Tax Assessment Act 1997 raises some difficulties when applied to charitable bodies. Charitable bodies may include groups of entities that are separated for legal or other purposes.

The determination of dominant purposes should not be made in relation to entities in isolation. Activities or ancillary purposes of entities are required to be assessed as furthering or being in aid of charitable purposes with reference to the whole charitable body or group.

The above principle is important in the assessment of the activities of peak bodies such as CHFA as being charitable. While peak bodies or federations of state bodies may have primary responsibility for issues such as co-ordination, education, advocacy and fundraising, activities surrounding these issues are aimed at the furtherance of the dominant and charitable purposes of members, and the separation by way of legal entity should not negatively impact upon charity status.

Further clarification in the draft Bill, surrounding these important issues is necessary.

## **8. Gain or profit – distribution of profits & assets**

The core definition (section 4(1)(a)) refers to an entity that is a not for profit entity. The definition of 'not-for-profit entity' in section 5 does not make mention of certain situations that may be consistent with the not-for-profit principle. These include:

- Where members are also employees or suppliers of goods and/or services independent of their memberships.
- Where members are also beneficiaries of the charity.

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- Where members are also charities, including members of peak or other co-ordinating bodies.

Community housing involves various models, with respect for tenants' rights and some levels of control by tenants, over activities being important ingredients. It is common for housing tenants to also be members of community housing organisations.

These variations are often complex in operation but serve the critical needs for housing and the relief from poverty associated therewith.

## **9. Government bodies**

Paragraph 1.17 of the explanatory material (EM) to the draft Bill, makes mention of the exclusion of government bodies as charities. The EM further explains what may be considered to represent a government body.

In support of government grants, and for commercial security for lessors, governments often lease housing stock for sub-lease to community organisations. Such arrangements are not considered within the realms of government control that would cause the CHO to be a 'government entity'.

Reference is made under paragraph 1.23 of the EM to 'government function' and this is not considered applicable to community housing. While governments provide public housing, so do private enterprises, and these private enterprises would not be considered as functions of government.

## **10. Business & community partnerships**

The increasing complexity of social needs and scarcity of financial resources for community services has led to the requirement for a pluralist setting for service delivery, with governments encouraging partnerships between commercial organisations and charities for community-based projects. This is particularly evident in the community housing sector.

Flexibility in charities definition, resulting in GST and other tax treatments that better meet the needs of contemporary business and community partnership models is necessary. The Federal Government may need to consider further review of charity law in this regard.

## **11. Charities Commission**

The establishment of a Charities Commission, with independent responsibility for the administration of charities is recommended. This would be seen as a step towards improved transparency and better practice, and the removal of the conflicts of interest (both actual and perceived) that exists with the current role of the Australian Taxation Office in charity administration.

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