

Our Ref: 04521

Consultation on the Definition of a Charity
The Board of Taxation
C/- The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

DRAFT COMMONWEALTH LEGISLATION – CHARITIES BILL 2003

The Fire and Emergency Services Authority of Western Australia (FESA), a statutory authority established under the *Fire and Emergency Services Authority of Western Australia Act 1998*, wishes to lodge the following submission in relation to the exposure draft of the above Bill and the accompanying Explanatory Material.

FESA supports the Bill 'in principle', but is concerned that it might have financial and other implications for Western Australia's fire and emergency services, specifically:

- FESA volunteer entities (volunteer fire brigades, Volunteer Marine Rescue Groups, State Emergency Service Units and FESA Units); and
- local governments' volunteer bush fire brigades.

Emergency services volunteer entities have traditionally been regarded as charitable organisations, and benefit financially from such status. To date, the Australian Taxation Office (ATO)'s determinations in relation to WA's fire and emergency services volunteers have been favourable. These determinations include the following:

- Prior to the introduction of A New Tax System, donations to volunteer brigades associated with the WA Fire Brigades Board and the Bush Fires Board and volunteer State Emergency Service Units were tax deductible to donors;
- Following the introduction of A New Tax System from 1 July 2000, ATO acknowledged that each individual volunteer emergency services unit will be accepted as an Income Tax Exempt Charity (ITEC) and Deductible Gift Recipient (DGR) whether located in rural or metropolitan areas. FESA has undertaken to complete and lodge the applications for ITEC and DGR endorsement for the eligible units (approximately 940); and
- Subject to meeting specific eligibility criteria, donations received by volunteer bush fire brigades are not subject to GST, and are excluded from the Business Activity Statement (BAS) G codes.

FESA is concerned that the proposed Bill may affect the above determinations – particularly if, by virtue of their relationship with FESA and/or local governments, the respective volunteer entities are held to be 'government bodies'.

The Bill specifically provides that:

- "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 is not an individual, a partnership, a political party, a superannuation fund or a government body" - section 4(1)(f), page 3, lines 5 to 19;

- “government body means (a) the Commonwealth, a State or a Territory; or (b) a body controlled by the Commonwealth, a State or a Territory;” – section 3(1), page 2, lines 10 to 13.

The Western Australian volunteer entities which FESA believes might potentially be considered to be ‘government bodies’ and might therefore be affected by the provisions of the *Charities Bill 2003* include the following:

- (i) 100 volunteer fire brigades established under section 26 of the *Fire Brigades Act 1942*;
- (ii) 74 State Emergency Service {SES} Units approved under section 18C of the *Fire and Emergency Services Authority of Western Australia Act 1998*, the ‘FESA Act’;
- (iii) 33 Volunteer Marine Rescue Services {VMRS} Groups approved under section 18H of the FESA Act;
- (iv) 10 FESA Units approved under section 18M of the FESA Act; and
- (v) 660 volunteer bush fire brigades established by local governments under section 41 of the *Bush Fires Act 1954*.

FESA has “general responsibility for” all SES Units, VMRS Groups and FESA Units, pursuant to sections 18A(e), 18F(d) and 18K(b) of the FESA Act.

Depending upon interpretation of the various provisions of the *Charities Bill 2003* and any associated amendments to the Taxation legislation, there might not be a negative effect on the ATO determinations referred to earlier. However, FESA is not confident of that outcome.

FESA has sought advice from the Western Australian Crown Solicitor’s Office (CSO) concerning this matter. The CSO’s advice has reinforced FESA’s concerns.

CSO advised that there are a number of uncertainties in relation to the provisions of the draft Bill, and how those provisions might be interpreted and applied. These include the following:

1. In the CDI’s Report, and in the Explanatory Material which accompanied the Bill’s Exposure Draft, particular significance was attached to two legal decisions which are to be used to assist in determining whether any particular entity is relevantly a government body or controlled by government. These decisions might not provide all of the necessary framework to enable a determination to be made in relation to status as a charity, a charitable institution or a charitable body.
2. Status as a public benevolent institution has traditionally been the criterion for deductibility in ATO legislation. The term ‘charity’ is not ordinarily a criterion for deductibility, so the *Charities Bill 2003* will not (in itself) affect the deductibility status enjoyed by many. However, it is clear that the intention is to amend ATO legislation so as to establish a definitional structure incorporating the term ‘charity’. The extent and implications of those changes is not presently known.
3. Another area of uncertainty created by the Bill is whether “the State” is intended to encompass local government. Any uncertainty here has particular implications for volunteer bush fire brigades established by local governments. If local governments are to be regarded as “the State”, then there is an argument that

bush fire brigades do fall within section 4(1)(f) of the Bill, i.e. they would not be regarded as a charity, a charitable institution or a charitable body.

4. Plainly, FESA has a measure of control over volunteer fire brigades, by virtue of FESA's specific functions and roles under of the *Fire Brigades Act 1942 and Fire Brigades Regulations 1943*. It can be argued that the nature and degree of FESA's control over volunteer brigades is not such as, under the draft Bill, would disentitle them from charitable status . However, there is a significant risk of them being so characterised.
5. While FESA has "general responsibility" for SES Units, VMRS Groups and FESA Units under the relevant sections of the FESA Act, it is unlikely that such groups would be regarded as "controlled" by FESA.

FESA is concerned that although the stated intention of the Bill is to formalise existing arrangements, there are a number of areas of uncertainty which are being left subject to interpretation.

In the event that an unfavourable interpretation was made which impacted negatively on the ATO determinations referred to earlier, it may well affect the support received by fire and emergency services from benefactors in their communities. The current level of such support is not known, so the potential impact of any changes to the ATO determinations cannot be accurately assessed.

Regardless of the financial issues, it is highly likely that any negative impact on the current ATO determinations will be seen by volunteers as a lack of support and recognition of the services that they provide to their respective communities. In view of the extremely important role that these volunteers undertake, the current levels of support and recognition must be maintained.

This is an issue which has potential implications for fire and emergency services across Australia. FESA has been provided with a copy of the submission made by the Australasian Fire Authorities Council, and fully endorses the comments and recommendations made.

FESA strongly urges the Commonwealth Government and the Board of Taxation to take any necessary measures to ensure that the financial wellbeing of fire and emergency services volunteers, and volunteerism itself, do not suffer as a result of the introduction of the proposed legislation.

Yours sincerely

BOB MITCHELL
FESA CHIEF EXECUTIVE OFFICER

30 September 2003