

Email: legacycouncil@bigpond.com

28 August 2003

Ms Jane Schwager
Chair, Charities Definition Working Group
The Board of Taxation
Langton Crescent
PARKES ACT 2600

Dear Ms Schwager

In response to your letter of 5 August, 2003, inviting submissions on ‘workability’ and ‘altruism’, we make the following comments on behalf of the forty-nine Legacy Clubs throughout Australia, concerning several potential problems we see in the exposure draft of the Charities Bill 2003.

The principal problem is presented by the fourth ‘disqualifying purpose’ (Clause 8(2)(c)). Although this ‘disqualifying purpose’ is modified by the explanatory text, we doubt that the latter makes it sufficiently clear that ‘attempting to change the law or government policy’ is not precluded – as has been demonstrated by complaints in the media about the provision. There is the additional problem of determining what might be acceptable in “attempting to change the law or government policy”.

As you may know, Legacy Clubs provide assistance and benefits for the widows and other dependants of veterans – including children and disabled adults. The draft legislation does not affect Legacy Clubs’ present status as charities, nor their ability to deliver assistance to their constituents within existing parameters.

However, from Legacy’s point of view the draft legislation’s ‘workability’ is diminished in that even though it is qualified, the ‘disqualifying purpose’ in Clause 8(2)(c) has created some uncertainty as to the legitimacy of such efforts to remove anomalies in current legislation/assistance, and to improve the lot of our beneficiaries.

In our view, the position of charities in respect of “attempting to change the law or government policy” would be much clearer if it were to be stated more directly. Perhaps, more along the lines of that in the Report of the Inquiry into the Definition of Charities and Related Organisations that concluded, inter alia, that a charity should be able to advocate on behalf of those it seeks to assist, or lobby for changes in law or policy that have direct effects on the charity’s dominant purpose, provided that it does not promote a political party or candidate for political office.

Legacy strongly believes that the draft legislation should be amended along the above lines.

The second major potential “workability” problem is the failure of the draft legislation to address, specifically, the case of entities whose “dominant purpose” or “public benefit” are not so obvious and may not precisely fit the legislative definition of “charity”, exactly. Legacy Co-ordinating Council is such an entity, coordinating the policy and roles of all Legacy Clubs, as well as assisting them to give them effect – but not directly engaged in delivering specific benefits. Council also has the main responsibility, on behalf of the whole of Legacy, for interacting with Government and non-government bodies at the national level.

In respect of bodies such as Legacy Co-ordinating Council, the Commissioner of Taxation has ruled (TR2003/5 – Income Tax and Fringe Benefits Tax: Public Benevolent Institutions) that entities that provide coordination of services and support without any direct services will be accepted as Public Benevolent Institutions, provided that they satisfy certain requirements – that this Council can be interpreted to meet. While this ruling may be regarded as generally satisfactory, the terminology is different (benevolent vice benefit and institution vice entity). Concerning the matter of “altruism” we suggest that, to avoid any misunderstanding, it would be prudent to make specific provision in the new legislation for an entity such as ours to be accepted as having a ‘dominant purpose’ and to be acknowledged as of “public benefit” equating to “altruism”.

We thank you for the opportunity of making these submissions and would be pleased to make further submissions should the need arise.

Yours sincerely

R H (Ray) Ward
Chairman

cc The Hon Peter Costello MP
Treasurer