



## **Board of Taxation**

# **Consultation into the definition of a charity**

**Submission by Multiple Sclerosis Australia**

**September, 2003**

## **Multiple Sclerosis Australia**

Multiple Sclerosis Australia (MS Australia) is the peak body of the MS Societies in the States and Territories, and provides a national focus for people living with MS across Australia.

*MS Australia strives for a world without multiple sclerosis through quality research, and for service excellence to people with multiple sclerosis and their carers.*

Multiple Sclerosis Australia's mission is to make a commitment to:

- Enhance the quality of life of people with MS and reduce the impact of MS on the families and carers of those with multiple sclerosis
- Promote, initiate and fund scientific and other research to find a cure or improved treatments for MS
- Maintain and increase its role as a leading not-for-profit organisation and a preferred charity in Australia for community and corporate support.

## **Impact of Diagnosis of MS on people**

The onset of disability from a chronic illness has an impact that goes well beyond a person's health status and has a significant impact on their lifestyles and futures.

Being diagnosed and adjusting to a condition such as MS with no cure can be a devastating experience. A condition where there is gradual but inevitable loss can have dramatic consequences on the amenity of life enjoyed by an individual and their family.

A number of elements of adjusting to chronic illness are critical to how the individual and those around them maintain their life, including family, friends and employers.

MS is a complex condition that compromises both the health and social dimensions of life. As well as the onset of disability and increased dependency on the health system, people experience financial insecurity, marginalisation or loss in employment changed family roles and expectations as well as social isolation.

Much of the work that the MS Societies do with people revolves around direct support, provision of clinical services, housing and information about adjusting to life with a progressive illness.

This work is about working with individuals and families to maintain a good quality of life, and also promote their interests, including research, employment and community care.

As a leader in the not for profit sector, MS Australia is vitally interested in the development of the sector, and supports review of the legislative framework governing charitable organisations.

The Exposure Draft of the Charities Bill 2003 does in fact largely provide the clarity that the *Report of the Inquiry into the Definition of Charities and Related Organisations* recommends.

MS Australia takes the view that the community support of charitable not for profit organisations is becoming more crucial as time goes on. The work of the charitable sector is underrated by much of the community, but as the 4<sup>th</sup> sector of the economy provides over \$1b worth of services.

The Government's own initiative to promote philanthropy and community business partnerships requires a solid, trustworthy and transparent charitable sector. The legislation will provide a framework for the future of this sector in Australia.

## **Definitions in the Draft Bill**

### **Charitable purposes**

MS Australia is involved in work with individuals and various sections of the community that fall into the charitable purposes sections of the Exposure Draft (Part 3 section 10) including the advancement of health and the advancement of social and community welfare.

MS Australia believes the list of Charitable purposes list in Part 3, Section 10 is complete enough to cover most endeavours of the charitable not for profit sector.

### **Public Benefit**

MS Australia generally supports the Public Benefit definitions in Part 2 Section 6, however the exclusion of a charitable purpose if it is only beneficial to a 'numerically negligible' group of people would appear to create a disadvantage to small organisations working with a genuinely small group of needy people.

A number of organisations are involved with MS Australia who represent rare but devastating neurological conditions, who would be disadvantaged in access to public and philanthropic support if they did not achieve charitable status under the public benefit test (or as a non discriminatory self help group).

### **Disqualifying purposes**

MS Australia is concerned that the 'disqualifying purposes' of the Exposure Draft Bill that relate to the work of not for profit agencies in public policy are not well enough defined so as to deliver the true intention of the legislation.

While understanding that the Draft Bill seeks to qualify the public policy work done by charities, it does not adequately define 'advocacy', or even what form 'representations to Government' means. Nor does it define any distinction between charitable involvement issues at Federal, State or Local Government level.

MS Australia and the MS Societies certainly work in the public policy arena to meet its mission and to best meet the broad needs of people living with MS. This is a clear role of our organisation in meeting our mission.

The wording of disqualifying criteria 2© (S2, Part 8) seems to categorise all policy work into as political, which miscasts the ways of working of not for profit charities. The policy process involves a range of communication channels including government departments, other charities, governments and oppositions as well as individuals and families.

Social change needs more than politics, so the work of not for profit organisations working to achieve outcomes for their client group need to take a broad community approach with policy work. Most not for profit charities are involved in some form of social policy work that is part of the 'policy process', but not necessarily the 'political' process.

MS Australia does not advocate a political party or (political) cause, or support individuals for political office, but does use opportunities in the policy process to further the interests of people living with MS. This is the case with many not for profit agencies.

In fact many of the great moves forward in public policy have been generated by the experience and the work of the not for profit charitable sector. These have sometimes created change in public policy, and sometimes they have been done in partnership with Government.

### **Administration of the tests in the Draft Bill**

In a press release on 30 July 2003, the Treasurer said that the intent of the Charities Legislation is not to restrict criticism of public policy by charities, and that there is no change to current practice in this area.

The difficulty arises in codifying this practice. The Draft Bill does not indicate how the policy work of charities will be measured or interpreted as 'ancillary' or 'incidental' to the other purposes of any organisation.

Is a single intervention into policy to be judged on the same criteria as a long-term policy campaign? Can public education or community awareness (critical to every charity) constitute a disqualifying purpose?

The Draft Bill also does not indicate what recording and reporting requirements will be required by either the Australian Taxation Office or the charitable organisation, or what standards and auditing arrangements will be established.

It would appear that a huge administrative and legal burden will result in both government and the community if the Draft Bill goes through unchanged. The cost of organisational reporting and legal clarification on definitions will certainly outweigh any practical benefit in pursuing these points.

Public confidence, expectation and goodwill for the work of charities are central to the life of the Australian community. People support charities fundamentally to support change and social improvement, eradication of disease and equalisation of opportunity.

We would like to see greater public discussion of the disqualifying criteria proposals before they are given further consideration. It is important that the Federal Government is itself reflecting the will of the community in regard to these proposals.

## **Advocacy for people with disabilities**

The Draft Bill as it is written is at odds with the provisions of the Disability Service Act (1986) that mandates both individual and systemic (group) advocacy. Advocacy is a shared responsibility of the Commonwealth and State and Territory Government through the Commonwealth State/Territory Disability Agreement. The Draft Bill is likely to compromise work that the Federal Government supports and funds in the disability field.

The Federal Government has consistently promoted advocacy for people with disabilities over the last 20 years. In the introduction to an Office of Disability Discussion Paper on the National Advocacy program, the value of the work of advocacy was acknowledged:

*'There is little doubt that advocacy has made a contribution to the improved conditions and community acceptance of people with disabilities. The range of approaches and techniques utilised by advocacy services is witness to the range of issues faced by people with disabilities...Advocacy services have taken significant action at a systemic level.'*

*(National Disability Advocacy Program Review, Discussion Paper, Office of Disability, May 1997, pp1, 2)*

While MS Societies do not receive advocacy funding through the CSTDA, each organisation as well as MS Australia is involved in the work of disability organisations the work of these organisations, as this work is of direct interest to people with a disability related to MS.

Minister Warren Truss, in a media statement in July 1999 releasing the final review report of the National Disability Advocacy Program, announced that:

*'The Commonwealth Government supports advocacy services for people with disabilities and believes that consumer-based advocacy is important in facilitating access and choice for people with disabilities, their families and carers.'*

MS Australia values the work of advocacy services, but believes that it also has a role in the disability and health sectors to contribute to specific policy work in areas that affect people living with MS. The kind of change that is needed to further the participation in the economic and social life in Australia by people with MS cannot be achieved by individual casework alone. There is clearly a need for public policy engagement to encourage positive change.

Indeed many of the improvements that have been made at the Federal level in disability in recent years have been the result of inclusive policy processes that have had contributions from charitable organisations. Governments make good policy by having close ties to the community, and with the not for profit sector.

It is important that avenues of positive change are not blocked by restricting the role of charitable organisations in the public debate. This will risk weakening the community ties with Government.

Advocacy in the disability sector is perhaps more about the engagement of individuals and families as it is with policy work and liaison with governments and bureaucracies.

## **The Philanthropic Sector**

Many not for profit charities receive support from philanthropic trusts and foundations that have an interest in their area of activity. Some of these are interested in areas of work listed in Part 3 section 10, (Charitable Purposes), and regularly fund charities to undertake projects consistent with their trust deeds.

These philanthropic organisations often require charitable status (Tax exempt, probate duty exempt etc) to be able to transact this work, some of which is aimed at social change/policy work.

In the light of the Prime Minister's aim to increase the amount of philanthropy in Australia, it is important to look at the potential consequences of the disqualifying criteria on the philanthropic sector.

It would be an unfortunate result of this legislation if the disqualifying criteria proposed in the Section 2 part 8 of the Bill (attempting to change the law or Government Policy) also effectively 'disqualify' trusts and foundations legal ability to support the charitable sector, particularly to undertake social change projects.

## **Conclusion**

MS Australia generally supports the thrust of the Exposure Draft Charities Bill 2003 but would seek to review the disqualifying criteria definitions (clearly the most controversial in the Draft Bill), to reflect the sentiment of the Treasurer, and to remove the ambiguity, administrative burden and potential negative consequences.

MS Australia is keen to participate in any further consideration of the proposals in the Draft Bill.

## **For contact**

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