

Friday, 14 May 2004

The Board of Taxation
C/- The Treasury
Langton Crescent
PARKES ACT 2600

SUBMISSION TO THE CONSULTATION ON THE DEFINITION OF A CHARITY

The NSW Jewish Board of Deputies is the official roof-body of the Jewish Community in New South Wales, with 66 major communal organisations as its constituents. It is recognised and acknowledged by the NSW State Government, its agencies, the media and other ethnic and religious groups as the representative body of the Jewish Community. It speaks on its behalf on all matters affecting the status, welfare and interest of New South Wales Jewry.

The objects of the New South Wales Jewish Board of Deputies appear in the Appendix to this submission. Its affiliates are listed at the foot of this page.

Introduction

The exposure draft of the Charities Bill 2003 takes a significant step forward in providing clarity and transparencies to charitable organisations within the Jewish community.

It is our submission that a number of further improvements can be made to the exposure draft to improve the clarity and transparency aspect, and also to ensure that the definition is

the best possible combination of flexibility and practicability. In that light, we make the following submissions.

Definition of “religion”

1. We submit that the definition of religion, while intended to be inclusive rather than exclusive could present difficulties depending on present and future interpretations. It is our view that there should be no definition of religion and that the common law approach, reflected in other Commonwealth legislation including revenue laws, should continue.
2. In *The Church of New Faith -v- Commissioner of Pay-Roll Tax* (1983) 154 CLR 120, the High Court (Murphy J excepted) confined the test of religion to theistic religions. The case concerned the acceptability of the Church of Scientology as a religion. Their Honours noted the difficulty of definition that was acknowledged some decades earlier by Latham CJ in the Jehovah Witnesses' case (1943) 67 CLR at 123 as follows:

“It would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherence of all the many and various religions which exist, or have existed, in the world.”

3. Even an inclusive definition runs the risk of being read *ejusdem generis*. Murphy J expressed the view that judges should not determine matters of religious doctrine and practice - 154 CLR at 150, and specifically referred to well researched writings on the topic of financial advantages of religion - 154 CLR at 162. Wilson and Deane JJ identified the inclusive factors that are reflected in the exposure draft but concluded along with the other Justices that the Church of Scientology had to be accepted as a religious institution in Victoria. Their Honours specifically refrained from addressing whether certain practices of the Church of Scientology violated the *Psychological Practices Act* and for that reason could not qualify as religious practices.

4. What is clear from the decision of the High Court is that there are far more dangers in adopting a definition of religion in a revenue law than there are in not adopting one.

Disqualifying purposes

5. Of significant concern to the Jewish community are the disqualifying purpose provisions in section 8. It is our view that many charities will need to make submissions from time to time to government in relation to law or government policy and that those submissions will be consistent with the charity's aims and purposes. For example, various Jewish charities will need to make submissions from time to time to health, food and safety regulators so that the provision of kosher food is not adversely affected by any law or government policy. There are times when laws relating to racial, gender and other forms of discrimination need to be the subject of submissions by religious and ethnic charities. It is respectfully submitted that sub-section 8(2)(c) and the words "or cause" in sub-section 8(2)(a) should be deleted from the Bill. It is our view that approaching government for purposes consistent with the goals and objects of a charity will inevitably be more than ancillary or incidental to the other purposes of the charity, and should be entirely permissible.
6. We also note that in paragraph 1.84 of the explanatory memorandum, the protection of civil and human rights is included in the purposes seen as beneficial to the community, among other clearly beneficial purposes. It is difficult to envisage the promotion and protection of civil and human rights without the prospect of approaches to government in relation to the content of law and government policy.

The public benefit test

7. In relation to the public benefit test in section 7, the term: "*sufficient section of the general community*" is likely to give rise to conflicting interpretations. Australian law, has now developed a view of what constitutes a "social group" within the

general community, and it is respectfully submitted that any definition of public benefit adopted should support rather than inhibit actions designed to protect any racial, religious, ethno-religious, ethnic or other social group within our community. This can be done by replacing the words: "*sufficient section of the general community*" with the words: "either (i) a *distinct racial, religious, ethno-religious, or ethnic group, or (ii) any other social group constituting a sufficient section of the general community.*" Thus, a racial, religious, ethno-religious, or ethnic group would automatically qualify without having to demonstrate that it was a sufficient section of the general community.

8. Very often benefits for a particular segment of the community flow onto other segments. On more than one occasion activities led by the Jewish community in opposing racially or ethnically discriminatory acts and policies have benefited other ethnic communities and the activities of the New South Wales Jewish Board of Deputies have been warmly welcomed by our many friends in other ethnic communities. We respectfully submit that the definition of public benefit be broadened as set out above.
9. In relation to self help groups, many of them discriminate on the basis of gender, disability or racial, religious, ethno-religious, ethnic or other social grouping (among other bases). This allows their work to be focussed and effective. They specifically exist so that persons of like mind or culture or with a similar disability can gather together for mutual benefit. We respectfully submit that sub-section 4(2) should be amended so that the reference to being "*non discriminatory*" is clarified to provide that the group not engage in any discrimination that is contrary to Commonwealth anti discrimination legislation but otherwise be permitted to discriminate as to who is to be helped.

Inclusiveness and workability

10. While this Bill does not deal with Deductible Gift Recipient status, its workability and effectiveness for the community depends upon qualifying Charities being eligible Deductible Gift Recipients, subject only to meeting the usual requirements

of having have an Australian business number, maintaining a gift fund, and thereupon being endorsed as a DGR by the ATO. (Usual operational compliance would also of course be required.) We submit that a "Charity" should be a stand-alone category in the DGR table. Otherwise there will be an unnecessary and inappropriate gap between being a charity and being able to fully operate as one.

11. We note the use of inclusive definition provisions throughout the Act, and respectfully submit that the Act should explicitly exclude the *ejusdem generis* rule in the definitional provisions so that, for example, whereas the advancement of social or community welfare now includes child care, it should not be taken to exclude protection of the aged or protection of other vulnerable groups.
12. Finally, in regard to section 10, we would submit that a minor clarification is required to clearly cover organisations with multiple charitable purposes. The first sentence of sub-section 10(1) should read:

"A reference in any act for a charitable purpose is a reference to any one or more of the following purposes."

David D. Knoll
Vice-President

Appendix

The Board acts as the central authority and official spokesperson of the Jewish Community of New South Wales on lay matters and questions and is organised to foster the unity of that Jewish Community, strive for the fulfilment of its aspirations and ensure the continuity and development of its religious, spiritual, cultural and social heritage and, to that end, its Aims and Objectives are:

1. To secure and safeguard the religious, political, economic, civil and cultural rights, status and interest of Jews resident in NSW.
2. To encourage and assist the creative development of Jewish social, religious and cultural life in NSW.
3. To intensify the bonds of NSW Jewry with Israel as a central creative force in Jewish life and to strengthen the ties of solidarity with Israel in the Community.
4. To promote unity of endeavour and action within the Jewish community of NSW.
5. To represent and act on behalf of its constituent bodies and the Jews resident in NSW before any government or other authority on any matter or question affecting Jews in NSW in a lay capacity.
6. To use its influence and to intervene whenever deemed necessary and desirable in favour of Jews in other States or Countries.
7. To alleviate the consequences of and to afford relief from calamities affecting Jews anywhere in the world and to act in association with other bodies for the rescue, resettlement and rehabilitation of Jewish victims of persecution.
8. To associate with and participate in any social, cultural, philanthropic, charitable or other public movement.
9. To promote understanding and goodwill between Jews and citizens of other faiths.
10. To take any lawful action in any matter affecting the Jewish Community of NSW.
11. To take note of and to study problems relating to the religious, social, economic and cultural life of Jews in any part of the world and to seek, and where possible, to take active steps towards a solution of such problems.
12. To publish and promote the publication of newspapers, pamphlets, periodicals and other literature and to use other forms of publicity to carry out these aims and objectives or any of them.
13. To administer any relief or other fund which may be received in trust or otherwise for any of these aims and objectives.
14. To raise monies for and to apply same in carrying out any of these aims and objectives.
15. To cooperate with any organisation having aims or objectives similar to these aims and objectives.
16. To promote and become a member of an association, federation or union of Jewish Boards of Deputies or Jewish Advisory Boards extending within or beyond the Commonwealth of Australia.
17. To act in conjunction with other bodies already in existence to provide facilities for and to assist generally Jewish education in this State.
18. To assist in the promotion and maintenance of the NSW Jewish War Memorial Centre hereafter called the "War Memorial" and to use its influence to obtain the active participation of its officers, members and others in any body incorporated for such purpose.