

NSW VOLUNTEER RESCUE ASSOCIATION

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30 September 2003

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

Dear Sir/Madam,

The NSW Volunteer Rescue Association Inc. (VRA) appreciates the opportunity to comment on the draft *Charities Bill 2003*. The VRA is an affiliation of 75 non-government volunteer emergency organisations. Our primary roles involve motor vehicle rescue, maritime search and rescue, ski patrols, wilderness and cave search and rescue, aerial patrols and communications groups.

The VRA supports the draft *Charities Bill*. The codification of the definition of a charity in the draft *Charities Bill 2003* and the expansion of the definition of a charity to encompass certain child care organisations, self-help bodies and closed or contemplative religious orders is consistent with the community's expectations of a charity.

The *Charities Bill 2003* incorporates the major findings of the Charitable Definitions Inquiry, the Government's response to the Inquiry (Treasurer's Press Release No. 59 of 22 July 2003) and the recent Taxation Ruling TR 2003/05.

The only areas of concern are:

- At first glance, the clause on "Disqualifying Purposes" caused some concern. While it is not our primary function to lobby Government to change legislation, we believe we should suggest and support changes to improve the delivery of rescue services. However, the Treasurer's response to concerns expressed in the media has allayed our concerns. The layout of the clause does not strongly associate with the subsequent qualifying words "*if it is, either on its own or when taken together with one or both of the other of these purposes, more than ancillary or incidental to the other of the entity concerned*" with Clause 8 (2) (c). Maybe a simple change in layout would remove any potential for misunderstanding.
- We are concerned at the current activity by Government emergency service organisations seeking charity status. Unfortunately, in recent times a few Government operated emergency services have been granted Public Benevolent Institution status, despite the level of government control throughout the service. This trend causes our organisation considerable concern as it places at risk one of the foundations of the concept of a charity and charitable cause.

One of the “platinum principles” of our legal system (and other Common Law systems elsewhere dating back to the statute of Elizabeth in 1600) is that Government controlled identities cannot be a charity.

Given the level of Government control down to local unit level, we are unable to see how these entities can be classified as Public Benevolent Institutions. However, the services see the involvement of volunteers as justifying an application for charity status, in some cases suggesting volunteers would be disadvantaged if charity status is not granted. Volunteers should not gain benefit from charity status – only the charitable cause should benefit. Government services already have Income Taxation exemption. If a case exists for further concessions, other exemptions may be possible through amendments to the Income Taxation Act without impacting on the definition of a charity.

The Government agencies are established under legislation to perform a function on behalf of the Government. They are managed down to local units under Ministerial or Departmental control. As such they would not be eligible to charity status and Public Benevolent Institution status. This principle has been confirmed in the Fire Brigades case¹, the Mines Rescue case² and more recently in the Ambulance case³ in August 2002. We understand the latter case is the subject of an appeal.

The Government services are funded through Commonwealth, State and Local government budgets as well as mandatory levies. This funding base covers all core business requirements such as salaries, accommodation, equipment, vehicles, uniforms, personal protective equipment, volunteer out of pocket expenses, training, media units, etc.

The community does not expect or perceive a Government agency/controlled entity to be a charity. Unlike a true charity, Government agencies/controlled entities do not depend on the community’s goodwill and charity to exist. Should Government controlled entities be granted charity status, the community could lose faith in the concept of charities resulting in an adverse impact on the fundraising base for true charities. This would be an enormous loss to the community. . Like many charities, the VRA receives funds through Government grants, but none of these enables control over the VRA or its affiliates.

We believe the draft legislation to be workable in its present format. We do not foresee any significant increase in our workload arising from the legislation. The VRA would already meet the “altruistic test”

Yours sincerely

R.G. Gill ESM
President

Notes:

1. Metropolitan Fire Brigades Board v Federal Commissioner of Taxation, Federal Court of Australia. Wilcox, Spencer and Pincus JJ. 20 November, 6 December 1990 - Brisbane.
2. Mines Rescue Board of New South Wales v Federal Commissioner of Taxation, Federal Court of Australia. Nicholson, Lehane and Golberg JJ. 14, 22 August 2000 - Sydney.
3. Ambulance Service of New South Wales v Deputy Commissioner of Taxation, Federal Court of Australia. Allsop J. 16 August 2002.