

**Consultation on the Definition of a Charity
Submission to the Board of Taxation on the Charities Bill 2003**

The National Heart Foundation of Australia welcomes the opportunity to comment on the draft legislation of the Charities Bill 2003, its workability and the requirement as to whether the public benefit test should require the dominant purpose of a charitable entity to be altruistic.

As expressed in our submission to the Inquiry into the Definition of Charities and Related Organisations, the NHFA has a keen interest in the workability of such legislation. Generally, we see the Charities Bill 2003 as an opportunity to clarify the definition as a charity and decrease ambiguity and uncertainty amongst bona fide charitable organisations.

To this end the NHFA submission follows the Board of Taxation's guidance paper and will answer questions posed by the Board.

1. *What is the name of your charitable organisation? What are your contact details?*

National Heart Foundation of Australia

Level 4, 407 Elizabeth Street,
Surry Hills, NSW 2010

ABN 98 008 419 761

2. *What is the dominant (main) purpose/s of your charitable organisation?*

Stated briefly, the mission of the NHFA is to reduce the suffering and death from heart, stroke and blood vessel disease in Australia. However, in particular, cardiovascular disease most affects those who are socio-economically disadvantaged and is the major cause of their ill health. Because of this, and the focus of the NHFA's activities, the NHFA provides "direct relief for the benefit of disadvantaged sections of the Australian community".

One example of this from the Western Australian Division is in response to mounting evidence about the disproportionate burden of cardiovascular disease faced by Aboriginal people, the National Heart Foundation's WA Division nominated Aboriginal Health a priority in 1995. The Division began incorporating Aboriginal health messages and activities in mainstream programs and has subsequently developed partnership programs with the Perth Aboriginal Medical Services, the Department of Health's Office of Aboriginal Health and Maar Mooditj Aboriginal Training College. The largest of these collaborative projects has been the development of a nationally accredited Aboriginal Health Worker Training Course in Heart Health. Since 1999 three courses have been delivered to 28 Aboriginal Health Workers in Perth, Albany and Bunbury. These have built knowledge, skills and capacity in Aboriginal Community Controlled Health Organisations for preventing and better managing

heart disease with Aboriginal people. This program is nationally accredited and the NHFA is examining opportunities for national implementation of its Aboriginal Health Worker Training initiative.

3. *With reference to the preamble on 'workability', do you have any concerns or issues that you wish to raise about the workability of the legislative definition of a charity proposed in the exposure draft Charities Bill 2003? [Please make your response under 3-4 main bullet points if possible]*

The NHFA believes that, whilst the Bill's stated purpose is to provide greater clarity and transparency to charitable organisations, there exists areas in need of clarity within the Exposure Draft.

- The disqualifying purpose of "attempting to change the law or government policy" where the purpose is more than ancillary or incidental to the entity's other purposes, when read with paragraph 1.55 of the Explanatory Material "...the independence of charities from Government and from political processes is an important component of their role in serving the public benefit" and the Treasurer's press release no. 66, 2003 stating "Charities have never been penalised for speaking out on public policy. To suggest that the Government has proposed this is false", is in need of clarification.

How is ancillary or incidental defined?

Is a strong need for ongoing evidence based advocacy to influence policy, identified as both a charitable purpose and in the public benefit (both dominant in defining a charity), to be considered a disqualifying purpose?

- Paragraph 1.36 "A benefit must have a practical utility. Benefits are not restricted to material benefits...".

What is a 'practical' utility?

4. *Is your organisation currently endorsed with the Australian Taxation Office as an ITEC? If yes, do you assess that you would still be entitled to endorsement on the basis of the Charities Bill 2003?*

The NHFA is a federated entity comprising a National body and Divisions in Queensland, New South Wales, Victoria, Tasmania and the Australian Capital Territory (public companies limited by guarantee) and South Australia, Western Australia, Northern Territory (incorporated associations). The National Heart Foundation of Australia and each State and Territory Division, has been separately endorsed by the Australian Taxation Office as an Income Tax Exempt Charity and as a Deductible Gift Recipient.

As it stands the Charities Bill 2003 will have little, if any impact on the NHFA. From the explanatory notes of the Exposure Draft the NHFA currently meets all criteria set out in the Bill ie. definitions of a charity (Part 2) and charitable purpose (Part 3).

5. *Would the Charities Bill 2003 impose any additional administrative burden on your charitable organisation? How? What additional compliance costs do you anticipate?*

There would be no additional administrative burden or compliance costs on the NHFA.

6. *In your assessment, does the Charities Bill 2003 provide the flexibility to ensure the definition can adapt to the changing needs of society?*

Flexibility depends, to a large extent, on the ability to advocate for, enhance and promote public policy. To this end we believe that the disqualifying purpose of 'attempting to change the law or government policy' may hinder the Bill's flexibility.

The ability of public health, wellbeing and evidence based research to guide public health policy is critical to the mission of the NHFA and should determine policy direction.

For example, in its Supportive Environments for Physical Activity (SEPA) Program, dialogue with government has resulted in a collaboration led by the Victorian Department of Justice and Department of Sustainability & Environment, to provide a reference document to the Victorian Planning Provisions. Planning principles consistent with the creation of urban environments that support public health messages regarding physical activity represents an important plank in any comprehensive approach to increasing population physical activity levels, and hence achieving the cardiovascular health goals of the Heart Foundation

7. *If the public benefit test were further strengthened by requiring the dominant purpose of a charitable entity to also be altruistic, would this affect your organisation? If so, how?*

Strengthening of the public benefit test to include altruism or a voluntarily assumed obligation towards the wellbeing of others or the community generally as a dominant purpose would have little affect on the NHFA.

Summary

Whilst the Charities Bill 2003 is a major step towards providing greater clarity and transparency to charitable organisations, the terms 'ancillary' and 'incidental' are of concern, particularly where a charitable organisation is to be allowed the flexibility to adapt to changing needs of society.

If an organisation's dominant purpose is both charitable and for the public benefit the NHFA believes Part 2, subsection 8(2)(c) to be both ancillary and /or incidental to the charitable end.

Recommendation 17 of the Report of the Inquiry into the Definition of Charities and Related Organisations states "That charities be permitted neither to have purposes that promote a political party or a candidate for political office, nor to undertake activities that promote a political party or a candidate for political office" (as per Part 2, subsection 8(2) (a & b) of the Bill).

By including Part 2, subsection (2)(c), the Bill disregards the Committee's conclusion in the Report (p218) that "Any non party-political activities of a charity should not affect its charitable status provided it acts in good faith and its activities are not illegal or against public policy".