



The Federation of Parents and Citizens' Associations of  
New South Wales

Submission to The Board Of Taxation

Response to Draft Charities Bill 2003

September 2003

# Preamble

The Federation is committed to a public education system open to all, irrespective of culture, gender, academic ability or socio-economic class. This system should aim, above all else, to empower students to control their lives and be contributing members of their society. This commitment is based on the belief that:

- all students have the capacity to learn
- the Government has the prime responsibility to provide a free and secular public education system
- schools should be structured to meet the need of each student respecting the knowledge, experiences and abilities they bring to school and building on that knowledge and those experiences and abilities to foster critical thinking and understanding of their world.

The Federation of Parents and Citizens' Associations of New South Wales was established in 1912 and is the state-level representative group of over 2200 Government school Parents and Citizens' associations.

## Back Ground

The Charity sector has been involved in a consultation process with the Federal Government for more than three years. The consultation has focused on codifying the contemporary definition of a charity for taxation purposes and clarifies existing case law. The *Charity Definitions Inquiry* has consulted widely with organisations throughout the sector, relevant government agencies and the office of the Treasurer. The result has been the *Draft Charities Bill 2003* which has been circulated for comment.

## Executive Summary

The P&C Federation welcomes the proposed new legislation as a broad representation of consensus between government and the charity sector. However sections of the Bill will lead to unnecessary, unworkable and counterproductive restrictions on advocacy. Section 8 of the proposed legislation does not reflect the recommendations that came out of the inquiry and may exclude organisations unfairly from lobbying government to change policy. Section 8 must not be included in this Bill which is, otherwise, a positive step forward for the sector.

In broad terms, the draft Charities Bill 2003 has some positive implications of the sector as a whole. It spells out clearly that "advancement of social or community welfare" is charitable activity and also includes some child care facilities under the same framework. As the peak body representing over 2200 parent organisations in public schools throughout NSW, the P&C Federation recognises that government must do all it can to make the administration of vital child care facilities easier. We also welcome the sections of the Bill which call for open membership and guard against the forms of discrimination which in the past have been a problem for the sector.

The P&C Federation welcomes the changes which will see altruism form an important part of the public benefit test which organisations will need to satisfy in order to qualify as charities for taxation purposes. The new Bill will ensure that simply because an organisation is not set up to make a profit, its private activities may in fact not be charitable if its actions are not altruistic. The P&C Federation welcomes this codification. For some time, the sector has had to tolerate private operators who, by the nature of their organisation exclude people. Many instances of exclusion have historically been based on sexual preference or religion but also particularly on monetary grounds. This unfortunate blight on the good work of Australian charities has been particularly apparent within the private school sector. Altruism is an appropriate and beneficial guideline for what should properly constitute a charity.

## Submission

The proposed legislation reflects well the consultation with the charity sector which has been on going for a number of years. There is one notable exception to this and it is unfortunate that one particular section of the Bill threatens to become a very large issue with for many organizations in the sector the sector. Clause 8 is unnecessary and unfair. Many organizations have viewed this part of the new bill as an attempt by the Federal Government to force the sector to be less rigorous and less confrontational to government in pursuing their goals. Many organisations view this section as an attempt at political interference designed to make life easier for governments.

A brief examination of section 8 proves very worrying for the P&C Federation and all similar groups. Significantly, this section of the Act was not a recommendation of the Inquiry. It also does not address any significant grey areas in common law. Other sections of the act guard against abuse and exploitation. Tests such as altruism mean that organisations whose purpose is primarily political will not qualify as a charity for tax purposes. Charities are already excluded from supporting an individual candidate in an election and can not act as political parties. This section is unnecessary because the potential for abuse is already offset by tests for public benefit.

The implications of section 8 could be very far reaching indeed. In this organisation, our dominant purpose is supporting and enhancing public education in NSW and facilitating parent and community involvement in the sector. From time to time, the P&C Federation finds it necessary to lobby government and propose alternative policy. This means, by necessity, we must engage with the political process. Obviously this is done within the limits of political neutrality and stops short of favoring one candidate or government over another. However as a group engaged in public education and established under the Education Act, we must by necessity participate in policy debate and seek the progressive reform our affiliates require.

The key problem with section 8 is one of interpretation. The definition of "ancillary or incidental" is unclear and therefore places significant discretionary powers in the hands of the courts to disqualify organisations on the basis that any lobbying undertaken by them is more than ancillary. The existing common law may tend towards a narrow interpretation. However, the clear intent of the Inquiry emphasises a broadening of definitions in this area. This interpretation is consistent with other sections of the act and therefore renders section 8 unnecessary.

The core definition is adequate in (1) c when it states that a charity is an organisation that "does not engage in activities that do not further, or are not in aid of its dominant purpose" which is charitable and for public benefit. The only organisations excluded from the public benefit test for the dominant purpose are closed or contemplative religious orders and open, non-discriminatory self-help groups. Operating under this framework, *disqualifying purposes* are already clearly codified without the need for (1) d in the core definition or section 8 in the body of the act.

Attempting to influence government policy will often be part of the P&C Federation's work but it is ancillary to our dominant purpose of support for public education. This situation is recognised by the public benefit and altruism tests of the proposed legislation therefore imposing the unnecessary restrictions under section 8 is internally inconsistent. A narrow ruling by the courts under section 8 would severely limit this organisation's ability to undertake our dominant purpose. The checks and balances are well established and more than adequate in other sections of the Act. The P&C Federation joins with the overwhelming majority of the charity sector in strongly calling for section 8 to be deleted from the Bill before it is put to parliament.

## Conclusion

The P&C Federation welcomes, in broad terms, the remaining sections of the Act. The current situation, where charities are defined under 500 year old British law and inconsistent common law is unsustainable. Codification is clearly required to clarify what tests should apply when an organisation claims to be a charity for tax purposes and what kinds of activities are deemed to be charitable. Particularly, the P&C Federation welcomes the idea that altruism and public benefit are central to the dominant purpose of charitable organisations. It is important to note that the Act provides for exclusions from this framework in very limited cases, for example closed religious orders. This means that except for those types of organisation specifically excluded from the relevant tests, all other applicants claiming to be charities will need to fulfill the altruism and public benefit tests. The P&C Federation believes that the strength of the act lies in this tightening of rules. The new legislation will guard against erroneous claims by organisations which are not altruist by nature and exclude people from participation. The Act gives a clear understanding at law and within the sector as to what constitutes a charity. It also provides a mechanism to enforce compliance which has been lacking to date.