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

Charities Bill 2003

People with Disability Australia Incorporated (PWD) is a national non-government disability rights and advocacy organisation. Its primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWD also has a large associate membership of other individuals and organisations committed to the disability rights movement. PWD was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own. PWD has a cross-disability focus – we represent the interests of people with all kinds of disability. PWD is a non-profit, non-government organisation. Our vision is of a socially just, accessible and inclusive community, in which the human rights, citizenship, contribution and potential of people with disability are respected and celebrated.

PWD agrees with the main thrust of the Charities Bill as it is broadly consistent with the Charity Definition Inquiry's recommendations to modernise and clarify the definition of charity for Federal Government purposes. Generally the Bill provides a workable framework for the Australian Taxation Office, charities, and the courts to identify which organisations are charities for taxation and other purposes.

PWD does however believe that some amendments to Clauses 8 and 4 and minor changes to the explanatory material for Clause 10 would further improve the workability of the Bill.

Clause 8 seeks to limit the scope of *public advocacy* by charities. Thousands of charities regularly engage in public advocacy and lobbying to further charitable purposes such as relieving poverty, protecting the environment, or in the case of PWD the right of people with disability to fully participate in society. In our case this activity includes lobbying Governments and other political parties and candidates, researching issues of concern in these areas and developing public policy proposals, and raising these issues in debate in the mass media.

PWD believes that **Clause 8** of the Draft Bill should be replaced by a provision along the following lines:

"A Charity may have public advocacy purposes (which could be described in the explanatory material as including "attempts to change the law or government policy"), provided those purposes:

- (1) further, or aid, or are ancillary or incidental to, its dominant charitable purpose or purposes; and*
- (2) do not promote a political party or a candidate for political office, unless such purposes are ancillary or incidental to its dominant charitable purpose or purposes."*

PWD believes that **Clause 4** of the Draft Bill should be amended as follows:

- (1) to indicate that the dominant purpose of a charity should be altruistic;
- (2) to express paragraph 4 (1) (c) in the positive rather than the negative. For example using words along these lines:
"whose activities further, or are in aid of, its dominant purpose"
- (3) to delete paragraph 4 (1) (e) which refers to *unlawful conduct*, since this is relevant to the administration of other legislation (such as the criminal law), rather than the definition of charity;
- (4) to clarify the meaning of "Government body" to make it clear that the fact that a body receives public funding, and/or is established under the aegis of a program of public funding, does not imply that it is a Government body
- (5) to make it clear that a charity may have more than one dominant charitable purpose (as outlined later on in Clause 6).

PWD believes that the Explanatory Material should make clear that the "advancement of social and community welfare" in **Clause 10** includes:

"the provision of housing and accommodation support for people with special needs or who are otherwise disadvantaged in terms of their access to housing.", and that consideration should be given to amending **Clause 10** to add the word "*similar*" to the phrase "*other purposes beneficial to the community*", while retaining the proposed examples of such purposes in the Explanatory Material.¹

Yours sincerely

PHILLIP FRENCH
Executive Director

¹ These include "*the promotion and protection of civil and human rights*" and "*the promotion of reconciliation, mutual respect, and tolerance between various groups of people within Australia*".