

23 September 2003

The Secretary
Consultation on the Definition of a Charity
Board of Taxation
C/- The Treasury
LANKTON CRESCENT PARK ACT 2600

Dear Sir

CONSULTATION ON THE DEFINITION OF A CHARITY

This letter is a submission to the Board of Taxation in terms of the press release no. 12 from the Board of Taxation regarding consultation on the definition of a charity. I present this submission on behalf of the Presbyterian Church of Australia.

Generally the Presbyterian Church commends the draft Charity Bill 2003. In particular the Church agrees with the position adopted in that Bill, as referred to in Explanatory Memorandum ("EM") 1.8, that the definition of the charitable purpose of advancement of religion is to be found in the common law. We agree with a point made in EM 1.72, that the definition is evolutionary and that the courts are best placed to guide the current meaning from time to time.

I raise the following essentially in drafting points for your consideration:

Clause 4(1)(f)

Whilst EM 1.17 states that unincorporated associations meet the definition it might be desirable for there to be recognition of that fact. In the case of the Presbyterian Church of Australia it is a voluntary association of the 6 state churches. Each State church is itself a voluntary association of all its members.

Clause 5(b)

In the social welfare and similar operations of a church and its associated institutions, a church does provide relief in cash and kind to persons in need. For example some congregations of the Presbyterian Church provide to the minister of the Congregation funds which the minister can make available to parishioners or others who may face a particular financial problems. This kind of altruistic activity is very much part of the caring mission of Churches. When Christ was distributing the loaves and fishes did that constitute a distribution of assets? I suggest paragraph (b) be deleted, or significantly amended.

Clause 7(1)

I submit that the words 'and' be replaced by the words 'or'. Paragraph (c) is sufficient and we are concerned that a restrictive interpretation could limit what is currently understood to be for the public benefit.

Clause 8(2)

I suggest that the word 'also' be added after the words 'is' in the opening line.

Clause 10(1)

Perhaps the word 'or' should be added at the end of paragraph (f)?

Clause 10(1)(g)

Perhaps the word 'community' should be defined. EM 1.80-1.84 do not resolve the point.

I look forward to seeing a revised Charities Bill in due course.

Yours faithfully

Simon Fraser