

THE RETURNED & SERVICES LEAGUE
OF AUSTRALIA LIMITED

NATIONAL HEADQUARTERS

A.C.N. 008 488 097

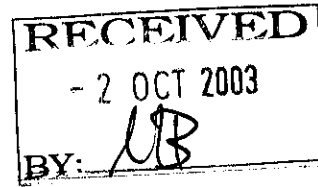


FOUNDED
IN 1916

P211

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30 September 2003

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



Dear Sir

In response to the Chairman's Press Release dated 22 July 2003, please find enclosed the Returned & Services League of Australia's (RSL) submission on the subject of the Board's current inquiry.

Yours sincerely

CHERYL CATES
Assistant National Secretary

Enclosure:

1. RSL's Submission

LEST WE FORGET



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THE PRICE OF LIBERTY IS ETERNAL VIGILANCE

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CONSULTATION ON THE DEFINITION OF A CHARITY

This submission by the Returned & Services League of Australia (RSL) is in response to the invitation by the Chairman of the Board of Taxation, Mr Richard Warburton, to interested charitable organisations to address the workability of the definition of a charity proposed in the exposure draft legislation, the *Charities Bill 2003*. The Chairman also invited comment on whether the public benefit test in the exposure draft should require the dominant purpose of a charitable entity to be altruistic, as recommended by the *Report of the Inquiry into the Definition of Charities and Related Organisations*.

The RSL has undergone a process of continuing evolution since it was formally established in June 1916 as the Returned Sailors and Soldiers Imperial League of Australia, by wounded and disabled servicemen who had returned from the Gallipoli campaign. They banded together to improve the ability of returned servicemen to influence Commonwealth policies and decisions. The issues which the founding fathers of the League set out to represent to Government were, firstly, *to fight for benefits, treatment and the welfare of veterans, ex-service and serving members of the Defence Force* and, secondly, *to preserve the health, well-being and security of Australia and the Australian way of life*.

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Welfare and the promotion of patriotic activities are issues that continue to remain the focus of the League and comprise the main thrust of this submission as it affects the interests of the League.

The importance of the welfare issue is amply demonstrated in the Objects of the League as set out in its Constitution where the first two objects are:

- (a) To assist and care for the sick, elderly and needy (among former and serving members of the Defence Force and their dependants) by providing, or assisting to provide, pensions, benefits, accommodation, medical treatment, rehabilitation and other forms of welfare; and*

- (b) To establish and accept trusts having for their object the welfare and benefit of any member of the League, its Branches or Sub-Branchees, or of any member or ex-member of the Australian Defence Force, or their dependants.*

The League, now renamed the Returned & Services League of Australia Limited, still has the largest and most representative membership of any ex-service association in Australia, although clearly the passage of time and the associated effects of ageing and infirmity have had a marked effect on both the physical profile of the League and membership numbers. Whereas membership at its peak in 1946 was just under 374,000 it is now 212,000. Over the past eight years, membership has declined by almost 9 percent.

Little wonder, then, that there is a major emphasis at all levels of the League on welfare and welfare-related activities. This is exemplified by the fact that, nationwide, the League maintains 15 Nursing Homes and 44 Hostels, contributing to the care and accommodation needs of over 3000 ex-service men and women in this way. It also maintains 50 unit locations with Retirement

Village/Self-Care Unit places for over 1000 people and is continuing to develop further locations. The League is also heavily involved in day-to-day welfare activities on behalf of its members as well as advocacy representation on pension entitlements and assessments. The League and its members provide very significant financial and non-financial support to ex-servicemen, serving members of the Australian Defence Force and their dependants and, further, in the conduct of patriotic activities, including the commemoration of ANZAC, Remembrance and Long Tan Days. Much if not all of this resource effort is provided by volunteers. **The League would strongly contend that the role of volunteers in the fulfilment of the objects of a charitable organisation is integral to the nature of a charity and should be specifically included, at least in the draft Explanatory Memorandum, as an important facet of what constitutes a Charity.**

As an extension of its activities, the League operates a number of welfare and welfare-related Trusts and also, importantly, provides comfort parcels twice a year (some 2,500 parcels) to all Defence Force and Australian Federal Police personnel serving overseas, including Afghanistan, Iraq, East Timor and the Solomons.

The League cannot envisage a time in the immediate to long-term future where the need for its involvement in welfare activities will diminish. On the contrary, with increasing age and infirmity challenging the health status of its members, it foresees ever-increasing pressures on its limited physical and financial resources to cope with the potential demand for welfare assistance. There will clearly be a proportion of the League membership who may be equipped to cater for their own needs or who may otherwise utilise the welfare services available to the public at large. Notwithstanding, this does not reduce the need for an

organisation such as the RSL to continue in its efforts to ensure that all of those things that are necessary to the welfare and betterment of veterans, the ex-service community, serving members of the Australian Defence Force and their dependants, are in fact done.

The League notes with considerable concern the absence of any reference to **the promotion of patriotic activities** in both the draft legislation and the draft Explanatory Memorandum and **submits that Section 10(1) of the draft legislation be amended by adding a further subclause to that effect.**

An important part of the League's activities relates to the promotion of appropriate patriotic activity and feeling. It is reflected in the League's objects, both at a National and State Branch level and at the level of Sub-Branches. Included in the patriotic activities are the commemoration, promotion and conduct of ANZAC Day, Remembrance Day and other days of National significance relating to activities performed by servicemen in the defence of the country. These National days have long been acknowledged as part of the National ethos and they have been of special concern to the League, which has been instrumental in their promotion and retention. Such patriotic activities, together with other activities, set out in the National objects of the League and in particular objects (d), (e), (f) and (g), have always at common law been considered to be charitable activities under the head of patriotism. It is appropriate that the League continue to be granted charitable status, not only on the basis of its welfare activity, but also on the basis of its patriotic activity, which is important to the wellbeing of the Nation and very important to the preservation of the memory and the deeds of the Australian serviceman at war and their integration into the national character. It is submitted that such provision should be included in the draft legislation and that Section 10(1) be amended specifically to provide for the

carrying out of patriotic activities by ex-service organisations.

The League further notes that **patriotic activity has been omitted from the draft Explanatory Memorandum and**, while this omission may well be an oversight, it is one that the League submits **should be rectified as a matter of urgency.**

As already mentioned, the League has two primary objects, the welfare of ex-servicemen, serving members of the Australian Defence Force and their dependants and the promotion of patriotic activities, particularly in relation to commemoration, war memorials and the preservation of the good name and reputation of the Australian Defence Force. There is a strong public expectation that the League will carry out such patriotic activities and that it will be the organisation primarily responsible for the preservation of the memory of ex-service persons and the preservation of the spirit in the community represented by persons who served on behalf of the country as is embodied in what is described as the ANZAC spirit.

The League would see itself as fulfilling the requirements of a *charity* as described in the draft exposure legislation and draft Explanatory Memorandum (subject to the inclusion of a reference to the promotion of patriotic activities) and is in fact already classified as an Income Tax Exempt Charity on that basis.

The League notes particularly the flexibility afforded by Section 6 - Dominant purpose - as further expanded by para 1.15 of the Explanatory Memorandum, that gives opportunity for an entity to engage in activities that of themselves are neither charitable nor for the public benefit, provided these activities 'further or are in aid of, and are ancillary or incidental to' the dominant purposes of being

charitable and for the public benefit. At the same time, there continues to be a need for critical assessment of the extent to which the carrying out of non-dominant purpose activities impinge upon the dominant purposes of an entity.

On the general issue of 'workability', other than the above comments the League has no problems with the proposed draft legislation as far as it goes. It notes that the Board does not consider 'workability' to include the administrative arrangements required of the Government to implement the definition, yet a central issue that the *Report of the Inquiry into the Definition of Charities and Related Organisations* addressed was one of administration. The draft legislation is silent on this matter, despite the fact that the Committee (and, on the face of it, the ATO) recommended that an independent administrative body be established to determine the status of charities and related entities, with its decisions binding on the ATO. Nor, in the absence of such an independent body, is there any reference to the need for an appeals mechanism. For example, one of the *disqualifying purposes* listed at Section 8 of the draft legislation is '*the purpose of attempting to change the law or government policy*', albeit that it is tempered by the qualification that that purpose, either on its own or when taken together with other (similar) disqualifying purposes, is '*more than ancillary or incidental to the other (presumably dominant) purposes of the entity concerned*'. This qualification is further addressed in the draft Explanatory Memorandum, where it is accepted (para 1.54) that 'ordinarily, representing to Government from time to time, the interests of those the entity seeks to benefit would be seen as incidental and in aid of the dominant purpose of the charity'. The League assumes that this implies that, provided the charity can, if challenged, demonstrate (hopefully to an independent arbiter) the linkage between its dominant purposes and its lobbying activities, however aggressively or critically viewed by Government, those lobbying activities will

not be classed as a disqualifying purpose. It is to be hoped that the Board, even it maintains its current stance, will include some comment on this issue in its report to the Treasurer.

The Board has also been asked to consult on whether the public benefit test in the exposure draft should require the dominant purpose of a charitable entity to be altruistic, as recommended by the *Report of the Inquiry into the Definition of Charities and Related Organisations*. The Committee stated that the dominant purpose (public benefit) 'must be aimed at achieving a universal or common good, it must have practical utility and it must be for the benefit of the general community or a sufficient section of it'. The Committee went on to say that 'however, we are of the view that the public benefit 'test' should be strengthened by emphasising that a charity's dominant purpose must also be altruistic'. In its 'Frequently Asked Questions' paper, the Board has described 'altruism' as 'a voluntarily assumed obligation towards the wellbeing of others or the community generally'. Most, if not all charities seeking to satisfy the public benefit test would regard themselves as being altruistic, however defined, and would see little if any distinction between the above descriptions. It becomes a real question then, whether the addition of the 'altruism' term to the public benefit test is anything more than a semantic exercise.

As noted in the Frequently Asked Questions paper, the exposure draft legislation is silent on the definition of a 'public benevolent institution' (PBI), despite the fact that this was a major concern addressed in the *Report of the Inquiry into the Definition of Charities and Related Organisations*. That Committee sought to replace the current 'paternalistic and demeaning' requirement for PBI status with a more practical working requirement that would also reduce the confusion commonly associated with the present description.

There is a pressing need for clarification on this issue, without which the current draft legislation addresses the outline but only half the picture.

Should the Board think it necessary, the League could be represented at a Canberra or Melbourne hearing at a mutually convenient time. The initial contact at the League is Mr Derek Robson, National Secretary (phone number 02 62487199).