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SUBMISSION TO THE BOARD OF TAXATION
in the context of the
CONSULTATION ON THE DEFINITION OF A CHARITY

September 2003.

1. Introduction

The Refugee Council of Australia (RCOA) welcomes the opportunity to provide input into the inquiry being conducted by the Board of Taxation into the draft Charities Bill (2003).

The Refugee Council of Australia is the peak non-governmental agency in Australia concerned with issues relating to refugees and asylum seekers and represents over 90 organisational members and a similar number of individual members. The Council works to promote humane, flexible and legally defensible policy towards refugees, asylum seekers and displaced peoples by the Australian Government and the Australian community.

Our interest in the draft Bill relates both to our own position as a charitable entity and also that of our member organisations.

2. Key Concern About the Draft Bill

The Refugee Council's principal concern about the draft Bill relates to Section 8, i.e. that pertaining to Disqualifying Purposes, in particular to clauses 2(a) and (c).

In this regard we would like to make the following points:

- one of the cornerstones of a robust democracy is having a strong civil society. Anything that weakens the voice of the community will weaken democracy, not strengthen it;

- as is implied by the description of the Council's aims (above), advocacy – together with research, policy analysis and resourcing our sector - is one of the activities in which the Council engages. In many instances, however, activities that we see as advocacy have, in fact, been initiated by government agencies and are sometimes funded by them. A clear example of this is the annual submission the Council prepares for the Minister for Immigration on the size, composition and management of the humanitarian program. In this we are presenting the views of our constituency, some of which support existing polices and practices, others call for change ... and

over the years, a number of these suggestions have been adopted. The Minister for Immigration and his Department regularly refer to this submission as being of particular value to them in the formation of their plans for the coming year. The point here, and with many of the other activities in which the Refugee Council and other peaks engage, is that advocacy is not necessarily adversarial and that many government agencies rely heavily on this advice;

- it is true that there are occasions where the views of the community sector are not in accord with government and the advocacy might be seen as unwelcome. This does not mean, however, that the views of the community sector are invalid and that they do not have a legitimate right to express them. History is littered with instances of community advocacy resulting in changes to government policy which, with hindsight, are seen as positive developments;

- neither the Bill nor the Explanatory Memorandum make it clear who decides whether the advocacy in which any agency engages is "more than ancillary or incidental to the other purposes of the entity concerned" and on what basis is this decision made. This leaves the way open for a government to target agencies that are seen to be a threat - not because of any illegal or irrational activities or views but because they are represent the strongly held views of a significant section of the public that are contrary to those of the government;

- further to the above, the Refugee Council and many of its member organisations engage in a wide variety of activities, advocacy being one. In the absence of clarity about what constitutes something that is "more than ancillary or incidental", it places a burden on agencies to continually monitor activities, fearing that they might have to defend what they are doing at any time without a clear understanding of how they can do this.

Given the above, the Refugee Council recommends that Clause 8(2)(c) be removed and that 8(2)(a) be amended to omit "or cause".

3. Additional Views

The Refugee Council would also like to comment on a number of other issues relevant to the draft Bill:

3.1. The question of "altruism"

It is the understanding of the Council that the Tax Board is seeing the views of the community sector as to whether specific reference should be made to "altruism" in the Bill. While we do not see any reasons to oppose this addition, we do not see any real necessity for it to be inserted.

3.2. The issue of governance

The draft Bill makes no mention of which body will make the decisions about whether or not an agency qualifies as a charity.

The Council favours the establishment of an independent agency such as a Charities Commission for the following reasons:

- if the decision rested with the ATO, there is a perception of conflict of interest. The principal role of the ATO is to gather revenue for the government. Determining that an

agency is a charity means that that agency is exempt from paying tax, thus reducing the amount of money that the ATO will collect. It could thus be perceived that the ATO will have a vested interest in minimising the number of tax exempt entities in order to maximise its income;

- while conceding that independent commissions are still obliged to operate in accordance with the law which is made by government, having a separate statutory authority to oversee charitable status is at least one step removed from government and the agency can play a role in speaking out if there is any perceived abuse of power by government.

3.3. Issue of Partnership

The Explanatory Memorandum (at pp6-7) makes reference to consideration of receipt of government funding and the entering into partnership with government or other entities as being possible excluding factors for consideration as a charity.

It is important to note that increasingly welfare services are being outsourced to the community sector and that many NGOs receive varying amounts of project or core funding from the government. This does not make their purposes any less charitable, nor does it make them government entities, even in those occasions where the government has a role in determining their management structure.

3.4. Defining what is meant by "serious offence"

On face value it makes perfect sense not to reward an agency that has engaged in conduct that constitutes a serious criminal offence (Section 4d), however when you look more closely at this, it becomes intrinsically problematic:

- there is no clarity about what "engage in" means. Does it mean "is convicted of" or has been shown by an appropriate authority to have committed an offence?

- the Bill makes reference to "the entity" in relation to engaging in an offence. This would thus appear to exclude any offences committed by any person directly or indirectly associated with the entity;

- if this is not the case, who is to determine the level of association between the organisation and the person concerned. Does this, for instance, mean that if a member of an organisation is convicted of causing a public disturbance in the context of a demonstration that the organisation is held accountable?

- the recently introduced Anti-Terrorism Laws set out a number of "serious offences". If a person or organisation is questioned in the context of these laws (as could well happen to a number of Islamic agencies), will this compromise their legal status in any way?

The Council would recommend greater clarity in thew wording of this section so as to ensure that there is no likelihood for misinterpretation or unintended application.