



CHARITIES BILL 2003
SUBMISSION TO THE BOARD OF TAXATION

THE SALVATION ARMY

Introduction

The Board of Taxation (“the Board”) has requested interested parties in the *Charities Bill 2003* to make submissions to the Board in respect of the terms of reference it received from the Federal Treasurer.

Specifically the Board invites submissions in respect of:

- The workability of the definition of a charity proposed in the draft legislation (the *Charities Bill 2003*) and Explanatory Material issued by the Treasurer on 22 July 2003; and
- Whether the public benefit test in the exposure draft should also 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*.

We note the Board also published a Guidance paper to provide a framework for submissions from interested parties.

The suggested information to be included in a submission is as follows:

1. What is the name and contact details of your charitable organisation?
2. What is the dominant (main) purpose/s of your charitable organisation?
3. With reference to the preamble on “workability”, do you have any concerns or issues that you wish to raise about the workability of the legislative definition of a charity proposed in the exposure draft Charities Bill 2003?
4. Would the Charities Bill 2003 impose any additional administrative burden on your charitable organisation? How? What additional compliance costs do you anticipate?
5. In your assessment, does the Charities Bill 2003 provide the flexibility to ensure the definition can adapt to the changing needs of society?
6. If the public benefit test were further strengthened by requiring the dominant purpose of a charitable entity to be *altruistic*, would this affect your organisation? If so, how?

1. What is the name and contact details of your charitable organisation?

The Salvation Army in Australia is represented by two "Territories". This submission has been submitted on behalf of The Salvation Army Australia Eastern Territory and The Salvation Army Australia Southern Territory (jointly referred to as "The Salvation Army").

The contact details are:

The Salvation Army Eastern Territory
Secretary for Business Administration
140 Elizabeth Street
Sydney NSW 2000

The Salvation Army Southern Territory
Secretary for Business Administration
5 Hamilton Street
Mont Albert VIC 3127

2. What is the dominant (main) purpose/s of your charitable organisation?

The dominant purpose of The Salvation Army is charitable being the result of The Salvation Army's dual charitable purposes of the advancement of religion and the advancement of social or community welfare.

Section 10 of the Bill lists the charitable purposes for the purposes of the Bill. The charitable purposes of The Salvation Army are:

- the advancement of religion; and
- the advancement of social or community welfare.

In respect of a "dominant purpose", Section 6 of the Bill is unclear in respect of whether or not it is necessary to identify one particular charitable purpose as being the "dominant" purpose.

Section 6 states:

- (1) *An entity has a dominant purpose that is charitable if and only if:*
- (a) *it has one or more purposes that are charitable; and*
 - (b) *any other purposes that it has are purposes that further or are in aid of, and are ancillary or incidental to, its purposes that are charitable.*

The Salvation Army believes the manner in which Section 6 is drafted provides confusion for organisations with dual charitable purposes. Further to this, The Salvation Army is unable to ascertain whether or not it is even required to make any additional distinction or categorisation.

3. With reference to the preamble on "workability", do you have any concerns or issues that you wish to raise about the workability of the legislative definition of a charity proposed in the exposure draft Charities Bill 2003?

The Salvation Army wishes to comment on several aspects of the Bill which it believes impact on the workability of the Bill.

The Salvation Army believes the workability of the Bill is hampered by the omission of a legislative definition of a "benevolent charity" as proposed by the Board in their findings in the original inquiry. The Salvation Army believes this impacts the

workability of the Bill by failing to provide a comprehensive legislative definition of all aspects of a charitable organisation.

(a) Definition of entity

An entity for the purposes of the Bill is defined to be:

- a body corporate
- any other unincorporated association or body of persons
- a trust

A body corporate is not defined, however it is assumed this term encompasses companies limited by guarantees or by shares.

The definition of “entity” for the purposes of the Bill narrowly focuses the Core Definition, contained in Section 4 of the Bill, to a stand alone entity. This definition may be suitable for small charities that possibly operate only in one geographically defined area and/or do not have complicated organisational structures.

For larger, national charitable organisations this definition of an entity poses some problems. The definition appears to lack the workability and flexibility to ensure that the legally identifiable parts of a large, holistic charitable organisation are considered as a part of the wider organisation and not as single, independent operating entities.

This lack of workability may have unintended future consequences for charities who are required, for example by external regulatory reasons, to incorporate a particular aspect of their current operations into separate “entities” which will then be assessed on a stand alone basis.

The Salvation Army submits to the Board that the definition of entity imposes on the workability of the Bill. This lack of workability and flexibility leads to potential consequences that may jeopardise a large charity’s holistic charitable nature.

(b) Not-for-profit entity

Section 5 of the Bill disallows not-for-profit entities the ability to transfer profits or assets between “owners or members” of the not-for-profit entity.

Further to previous comments, The Salvation Army is concerned with the “entity” concept contained in the Bill, especially in the context of large complex charitable organisations which may consist of numerous entities.

The Salvation Army recommends Section 5 of the Bill to be redrafted to allow profits and/or assets to be attributable to other charitable entities and an entity should only lose its entitlement to be classified as a not-for-profit entity if profits and/or assets are distributed to entities which are for-profit.

The Salvation Army believes that should Section 5 be redrafted to allow this to occur, the Bill will have greater workability and flexibility.

In addition, The Salvation Army is concerned with the issue of “winding up” an entity. The Salvation Army’s concern is for entities which are brought into existence as a result of an Act of Parliament in a respective State or Territory. These Acts of Parliament do not address the issue of “winding up” or dissolution.

The Salvation Army requests the Board to seek confirmation from the Government that, the fact an Act of Parliament which brought an (otherwise charitable) entity into existence fails to contain a wind up or dissolution clause, would not result in that entity being at risk of failing the not-for-profit test in Section 5 of the Bill.

(c) Classification of activities and purposes

The Salvation Army is concerned with the possibility that activities of a charitable organisation may be inappropriately classified as purposes of the organisation and consequently, the charitable status of the organisation may be jeopardised.

Specifically, this concern is highlighted by the example used in the Explanatory Material, Example 1.1:

An organisation operates a community centre providing care for the homeless. The centre provides food, accommodation and health care. In addition, the centre organises sporting activities for recreational purposes on an occasional basis for their clients. This organisation is funded through the sale of donated clothing.

This organisation would be considered to have a dominant charitable purpose. The dominant purpose includes both the advancement of social and community welfare, and the advancement of health. Both the sporting activities and the fundraising activities of the organisation would not be considered charitable when viewed in isolation. They are, however, both incidental and in aid of the dominant purpose as they are conducted on a small scale to assist with the wider purpose of the entity.

In this example, the organisation has been determined to be charitable with two charitable purposes. The organisation also undertakes two additional activities such as sporting events for clients and fundraising activities via the sale of donated clothing.

The confusion which arises in this example is in the interpretation and classification of the activities of the organisation and the subsequent statement in reference to the size of the activities.

Firstly, the example states the sporting and fundraising activities are not charitable.

The Salvation Army believes this determination is unnecessary as the sporting and fundraising activities in this scenario are not “purposes” of the organisation and therefore do not require a determination on whether or not the “charitable purpose” test is satisfied.

Secondly, the example then determines that the activities are incidental to and are in aid of the dominant purpose of the organisation **as they are conducted on a small scale** to assist with the wider purpose of the entity.

The Salvation Army is of the understanding that specific activities of an organisation are to be assessed under Section 4(1)(c) of the Bill. This section of the Bill states:

(1) A reference in any Act to a charity, to a charitable institution or to any other kind of charitable body, is a reference to an entity that:

- ...
- (c) *does not engage in activities that do not further, or are not in aid of its dominant purpose;*

The Salvation Army contends that Section 4(1)(c) does not require an assessment on the size of an activity to determine whether or not the activity is being undertaken in the furtherance of, or in aid of the charitable purposes of the organisation. Rather, it only needs to be shown that specific activities *are* in the furtherance of or in aid of the dominant charitable purposes of the organisation.

The Salvation Army is extremely concerned with the principle arising from the interpretation of the Bill pursuant to Example 1.1. The principle The Salvation Army is concerned with is the principle of investigating the “size” of an activity as a factor when determining whether or not the activity is in the furtherance of, or in aid of the dominant purpose of an organisation.

The Salvation Army is concerned with how this principle may affect The Salvation Army.

The relevant example is in respect of The Salvation Army’s Red Shield Appeal. The Red Shield Appeal is the main fundraising appeal for The Salvation Army in Australia. The funds raised as a result of the Red Shield Appeal are used in the furtherance of the welfare activities of The Salvation Army. The funds received as a result of the Red Shield Appeal are an essential component of the delivery of our welfare services to the needy people of Australia. It would be incorrect to state this appeal is undertaken on a “small scale”.

The Salvation Army believes that, pursuant to Section 4(1)(c) of the Bill, the size of the Red Shield Appeal is not a necessary factor when determining whether or not the activity is in the furtherance of, or in aid of the dominant purpose of The Salvation Army. The Salvation Army believes the Red Shield Appeal is an integral part of the delivery of welfare services and therefore satisfies the requirements in Section 4(1)(c) of the Bill.

The Salvation Army submits to the Board that as a result of the Explanatory Material to the Bill being confusing and appearing to be inconsistent with the legislation contained in the Bill, the workability of the Bill is materially reduced.

The Salvation Army suggests the Example 1.1 in the Explanatory Material be redrafted to ensure the activities of the respective charitable organisation are assessed purely against the requirements contained in Section 4(1)(c) of the Bill.

(d) Serious Offences

The Salvation Army is concerned with the implications of Section 4(1)(e) of the Bill. This section of the Bill states:

- (1) *A reference in any Act to a charity, to a charitable institution or to any other kind of charitable body, is a reference to an entity that:*

- ...
- (e) *does not engage in, and has not engaged in, conduct (or an omission to engage in conduct) that constitutes a serious offence;*

A serious offence is defined as:

“an offence against a law of the Commonwealth, of a State or of a Territory, that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).”

The section, as drafted, contains extreme consequences. There is no provision for a review of circumstances, or provision for a reinstatement of the charitable organisation after any penalty or closure to the issue is finalised.

The Salvation Army notes Section 4(1)(e) will disqualify an entity from being charitable even in circumstances where a serious offence was committed prior to the enactment of the Bill, and further to this, it appears an organisation does not even need to be convicted of the offence to contravene this section.

The Salvation Army is concerned with the implications to a charitable entity if an employee/officer of the organisation is found to have committed a serious offence. Will the actions of an employee be reflected as actions of the charitable entity?

The implications and consequences of this section are of major concern to The Salvation Army.

The Salvation Army submits this section of the Bill needs to be redrafted to ensure that at a minimum, a charity that is able to show good reasons why that organisation should retain its charitable status notwithstanding a serious offence being committed, can retain its charitable status.

(e) Disqualifying Purposes

Section 8 of the Bill states the categories of purposes of an organisation that will disqualify an organisation from being a charitable organisation.

Section 8(2) of the Bill operates when one of the listed disqualifying purposes are *“more than ancillary or incidental to the other purposes of the entity concerned.”*

As discussed previously in respect of dominant purposes, The Salvation Army is concerned with the manner in which activities and purposes can be mistakenly categorised.

For example, Section 8(2)(c) states that a disqualifying purpose will be a purpose of attempting to change the law or government policy. The Salvation Army is concerned that organisations which undertake series of activities which are intentionally aimed at changing laws or government policies will have these activities reclassified to be “purposes” of the organisation and possibly be in breach of the ambiguous and subjective “ancillary or incidental” clause.

The Salvation Army recommends Section 8(2)(c) be removed.

4. Would the Charities Bill 2003 impose any additional administrative burden on your charitable organisation? How? What additional compliance costs do you anticipate?

The Salvation Army is uncertain of the extent of any future administrative burden or compliance costs as a result of the Bill. This is as a result of no additional

information being released in respect to how the proposed definition of a charity will be incorporated in existing legislation. The particular area of concern is in respect of the new endorsement procedures announced by last year by the Federal Treasurer to take effect from 1 July 2004.

The administrative and compliance costs arising as a result of the Bill would have been easier to quantify if additional information was publicly released in respect of the new proposed endorsement procedures.

The Salvation Army submits that any increase in administrative or compliance costs incurred as a result of this Bill will result in funds being redirected from the delivery of essential services. This is a major concern of The Salvation Army.

5. In your assessment, does the Charities Bill 2003 provide the flexibility to ensure the definition can adapt to the changing needs of society?

Purposes beneficial to the community

The inclusion in Section 10(g) of a charitable purpose that is “any other purpose that is beneficial to the community” provides flexibility for future interpretation of charitable purposes. The Salvation Army is however concerned with who will be the “interpreter” of the Bill once the Bill is enacted.

The Salvation Army is concerned that the future flexibility of the Bill will be hampered if the authorised body for interpretation of the Bill is the Australian Taxation Office. The Salvation Army is concerned the Australian Taxation Office may form limited views of what constitutes “beneficial to the community” as a result of their chief role in regulating and collecting taxes for the Australian Government.

The Salvation Army believes the future of the charitable sector in Australia would be better served and regulated by an authorised body separate from the Australian Taxation Office as recommended in the Board’s original findings.

6. If the public benefit test were further strengthened by requiring the dominant purpose of a charitable entity to be *altruistic*, would this affect your organisation? If so, how?

The Salvation Army does not recommend an additional requirement of “altruism” to be inserted in the Bill.

The Salvation Army believes the inclusion of the altruism requirement would become subject to numerous interpretation issues. Principally this is as the term is capable of being interpreted from a subjective, personal and cultural background.

Signed:

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The Salvation Army Australia
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