



BOARD OF TAXATION

**Submission
to
Consultation
On the
Definition of a Charity
Presented by
Scouts Australia
Western Australian Branch**

September 2003

SUBMISSION FROM SCOUTS AUSTRALIA – WA BRANCH IN ASSOCIATION WITH THE REPORT OF INQUIRY INTO THE DEFINITION OF CHARITIES AND RELATED ORGANISATIONS

The following is an extract, of the recent submission by SCOUTS AUSTRALIA, to the Federal Government Inquiry into Charitable and Related Organisations dated December 2000. It is provided to the Board of Taxation as both support and background explanation for this current submission made on behalf of the Western Australian Branch in the Consultation on the Definition of a Charity as proposed in the draft legislation (Charities Bill 2003).

INTRODUCTION

Education is a holistic process that has three dimensions – formal, informal and non-formal.

The generally accepted UNESCO definition of education shows three distinct types:

- **Formal Education:** a hierarchically structured, chronologically graded, education system running from primary through to tertiary institutions.
- **Informal Education:** a process whereby every individual acquires attitudes, values, skills and knowledge from daily experiences with family, friends, peer groups, the media and other influences and factors in the person's environment.
- **Non-Formal Education:** an organised educational activity outside the established formal education system that is intended to serve an identifiable learning clientele with identifiable learning objectives – often described as including “Life Skills” development.

Each of these three types of education plays a specific role that complements the other two and all are necessary to produce the qualities and attributes the community desires in young people.

Scouts Australia is totally committed to contributing to the personal development of young people through its non-formal education processes.

Scouts Australia is a provider of non-formal education and a “not-for-profit” organisation.

Scouts Australia is a “not-for-profit” organisation that enjoys income tax exemption and donations to the Association are tax deductible. Scouts Australia is a significant provider of non-formal education with approximately 18,000 adult volunteers and 72,000 young people involved in all forms of community service and activity as part of its youth program. The value to the Australian economy of the contribution by adult leaders alone is estimated to be between \$50 and \$100 million per annum. In addition there is an immeasurable amount of community service provided by both youth members and adults as an integral part of our youth program.

The “Aim” of Scouts worldwide is very similar to the definition of youth development agreed by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) at its meeting in March 2000. Further, the Council endorsed the concept of youth development as a positive approach to young people’s needs and acknowledged the role of non-formal education in the education of young people.

Scouting in Australia is predominantly a “community based” activity run in 2300 communities around Australia, by the communities for the communities. This has been the model for the past 96 years.

More recently, State Governments in Western Australia, Victoria, Queensland and South Australia have funded youth development activities within the school framework. A number of organisations are providers including Scouts and Guides, Red Cross, the Defence Force Cadets, SES, Police, Departments of Conservation and Land Management. These programs typify the recognition, in Australia, of the need to extend the formal education process and we are active participants in these. However, these “zero cost to the participant” (“school based”) programs compete with the Scout “community based” programs. There are also other significant equity issues, which are expanded on, in the main document.

Appropriate criteria for classification

Scouts Australia is concerned that it has been seen in the past by legislators and others as a provider of recreational activity alone. This misunderstanding may well have resulted in an inappropriate “categorisation” of our Organisation.

The “purpose of the activities carried out” by Scouting is youth development through non-formal education and the “nature of the activity” is in our view the means by which we achieve our purpose. For this reason we believe any definitional focus should be on the primary purpose of the organisation rather than on the means by which this is achieved. To do otherwise may result in the continuation of a lack of recognition of the Scouts’ true purpose by some organisations, legislators and members of the community.

Scouts Australia as an organisation is focussed on “prevention” type activity in contrast to the “deficit based models”. This claim is supported by the MCEETYA definition of youth development.

The legal structures of Scouting in Australia

The Scout Association in each State and Territory is established as a body corporate of one sort or another. Accordingly, each is a legal entity independent of the National Association but subject to considerable amount of supervisory control by the National Association. The legal structures include the use of the Royal Charter, Letters Patent, and Acts of Incorporation. The National Organisation is incorporated by way of Royal Charter and it relates to the State organisations in much the same way, as does the Commonwealth to the States. The National Organisation is the body recognised by the World Organisation as the body responsible for Scouting in Australia.

The Funding of Scouting in Australia

The National Association of Scouts Australia is funded through membership fees from individual members (adults and youth members) and through the returns earned from investments of a number of trust funds. The Association enjoys community and corporate support through fund-raising, on a need basis, for particular programs and projects. No financial support is received by the National Association from the Commonwealth Government for operational funding of Scouts. At times the Association has received Commonwealth Government funding for specific projects, an example being funding received in 1995 for the production of a youth program resource kit known as “Reconciliation for Young Australians”.

In general, the State Associations are similarly funded, although some have trading activities including retail outlets selling uniforms and outdoor equipment and recycling depots. In all cases the “profit” from these activities is applied directly to reduce the cost of delivery of the Scout program to its youth members. Some of the States and Territories with smaller populations receive limited financial support from their State or Territory Governments.

We believe that in a modern social and economic environment, organisations such as Scouting should be seeking ways, other than through direct Government grants, to support conduct of their primary “purpose”. Where this involves a commercial venture, such activity should be recognised and supported through the appropriate legislative and administrative framework.

Additional Submission details:

- Education is a holistic process that has three dimensions – formal, informal and non-formal
- Support from the Ministerial Council on Education Employment, Training and Youth Affairs on youth development
- Scout programs complement the formal and informal education processes
- Scouts Australia’s Vision for all young people
- Adult Training and Development – a National role
- Scouting is successful at developing community leaders.

HISTORY

Scouting, as an informal/formal education charitable institution supporting a contributory Public Benefit and productive way of life through youth development, and has been contributing to the community wellbeing for some ninety seven (97) years.

Governance impacts and societal changes, in recent years, have resulted in a creeping loss of Scouting “Entity and Being”. This loss of Entity is being established via Governance impacts, due mainly to economic factors relating to constraints on the use of premises and public community facility fees and charges.

The loss of Being is occurring through societal changes in community values and attitudes coupled with the need for greater utilisation of public land and demography driven by an emerging new community and family structure biased towards leisure, sport and recreation.

CURRENT POSITION

Today, Scouts Australia is an Australian Tax Office Endorsed Not-for profit Entity that operates exclusively for the Public Benefit to: “Assist, Educate and Develop Young People.” However, in the Governance arena the Association, as a deductible Gift Recipient (DGR), is being linked to Sport and Recreation with the attendant loss of Entity and recognition of “Prevention” contribution to the public / community wellbeing.

The Federal Government Inquiry into Charities and Related Organisations adopted the principles to define a Charity as:

‘Dominant Purpose or purposes that are Charitable, (must be) Altruistic and for the Public Benefit.’ (and that) the Activities must Further or be in Aid of its Charitable Purpose or Purposes.

DEFINITION PUBLIC TEST

Inclusion of the word “Altruistic” in the public benefit test, as required to determine the dominant purpose of a charitable entity, is supported, encouraged and agreed for adoption.

Application, of the basis of “voluntarily assumed obligation towards the wellbeing of others in the community generally” within the test, shall give all statutory authorities the necessary provision to carry out performance of their obligations under various Governing Statutes and Regulations.

In practice the Bill will provision to:

- Define for the Public Record – that the “Purpose and Use” of an Endorsed Charity Occupier User of Interests in Crown Land is for “altruistic public benefit”.
- Link the Public Record with existing statutes and regulations in - “Protection of the Dominant Purpose or Purposes of the Occupier / User Entity in its Activities” as for “altruistic public benefit”.
- Re-Establish Entity - bring to focus, recognise and register in the policy the “Dominant Purpose or Purposes” of charitable institutions in their activities.
- Qualify and make certain – “Occupier Use and Management of any interest in land” is synonymous with the entity and its dominant activities.
- Give Direction - for the dispensation of property in the “Management of Community Accommodation” as may apply to any dispensed interest in land.

ENTITY POSITION

The adopted principles and its definition of a charity, need to recognition the Scout Association “Prevention” Education and Youth Development Programs, where application of the Principles in conjunction with Scout Association Land Use and Dominant Purpose in its Activities (CHARITABLE, BENEVOLENT and EDUCATIONAL) having an “ALTRUISTIC PUBLIC BENEFIT”.

This Altruistic Public Benefit as applied in the Principles, Mission, Aims and Methods, of its programmes is based upon a:

- ‘PREVENTION’ EDUCATION AND YOUTH DEVELOPMENT PROGRAMS

AND

- “TO PROMOTE & ADVANCE THE OBJECTS & PURPOSES - MISSION, AIM & PRINCIPLES OF SCOUTING LAWFUL & PURSUANT TO THE ASSOCIATION ROYAL CHARTER AND CONSTITUTION”.

Inclusion of the Principle ‘Altruistic’ in the Public Benefit Test will provision recognition of the Scouting Entity as a Community Facility User with:

- Dominant Purpose or Purposes that are Charitable -
 - Scout Mission : To contribute to the education of young people, to help build a better world, where people are fulfilled as individuals and play a constructive role in society, through a value system based on “The Promise and Law”.
 - Scout Mission : Involving young people through their formative years in a non-formal education process.
 - Scout Mission : Assisting young people to establish a value system based upon spiritual, social and personal principles as expressed in the Promise and Law.
- Altruistic in that -
 - Scout Principles : Scouts should serve God, act in consideration of the needs of others and develop and use their abilities to the betterment of themselves and their families and the community in which they live.

APPLIED MANAGEMENT ORDER

The Management Order definition for accommodation and interests in Crown Land Title and Community Facility of The Scout Association of Australia, WA Branch, is proposed to be:

In conjunction with the application of Principles to define a Charity Land Use as for “ALTRUISTIC PUBLIC BENEFIT” in which the dominant purpose or purposes of its activities are; CHARITABLE, BENEVOLENT and EDUCATIONAL.

Our 'PREVENTION' EDUCATION AND YOUTH DEVELOPMENT PROGRAMS are carried out "to promote and advance the objects and purposes – Mission, Aim and Principles of Scouting Lawful and Pursuant to the Association Royal Charter and Constitution".

CURRENT CIRCUMSTANCE

A review of Interests in Crown Land as held by Scouts Australia WA Branch, established the Reserved Land Public Purpose and Designated Purpose or Purposes of the Premises Use to be out of line with the Dominant Purpose or Purposes of the Association's activities as a "Not-For Profit Charitable Institution".

The analysis disclosed the Reserves Public Purpose and Designated Purpose or Purposes, have become constrictive and restrictive in light of the requirement for a greater utilisation of Crown Lands under the Local Government Act 1995 and the Land Administration Act 1997. In most instances the Designated Use applied to Scouts accommodation is now non-compliant under Local Authorities Town Planning Scheme Zonings and Land Use Classes.

An example is a Reserve, as a "HALL SITE" in Bentley WA where the Designated Purpose and Use is:

"A Hall for the Purposes, Functions and Activities of the Scout Association of Australia".

Passing of a Bill to facilitate the definition of charity will establish provisions to enable the distinction to be made, within all levels of Government, in standardising Vested, Granted or Transferred Public Purpose Crown Land Interests, together defining the Dominant Purpose or Purposes of the Occupier User. Such enactment would enable existing and future applied Public Purposes Interests in Community Facilities to be managed for Purposes Ancillary or Beneficial to that Purpose. Reference Sect 46. (2) of the Land Administration Act 1997.

"The Minister may, with the consent of the management body of a reserve and of the holders of any interests within the reserve, by order, vary any condition to which the care, control and management of the reserve is subject".

Such a proclamation on the part of Government will clear the way, for many so called exclusive occupiers and users of Reserved Land, to align with the Government initiative for greater utilisation of Crown Lands and enable such parties to offer optimum use of the Premises in the mutual interests of State and the Community at large.

In the case of Accommodation, applied in provision of the Scout 'Prevention' Education and Youth Development Programs, the opportunity is established to care for, control and manage the Premises in the broadest manner consistent with the Permitted Use as applies under the relative Local Authority Town Planning Schemes.

“Public Benefit” is via mission and application of principles -

Scout Aim: “The Aim of Scouting is to encourage the physical, intellectual, emotional, social and spiritual development of young people so that they may take a constructive place in society as a member of their local, national and international community.

Scout Mission: Using a specific method that makes each individual the principal agent in his or her development as a self reliant, supportive and committed person. As such, the Association as a self help group, has open and non-discriminatory membership.

Scout Methods: Voluntary membership of a uniformed group, which, guided by adults is increasingly self governing in its successive age groups;
Encouragement of activities in small groups;
The provision of opportunities for leadership and responsibilities;
Learning by doing;
An award scheme that encourages participation in the full range of activities and provides recognition of individual achievements.

ENTITY PROTECTION ACTION

Scouts Australia Entity definition can then be registered as “A Community Facility Occupier / User”, with defined Reserved Land Public Purposes as “ALTRUISTIC PUBLIC BENEFIT”, and Designated Purpose or Purposes as “‘PREVENTION’ EDUCATION AND YOUTH DEVELOPMENT PROGRAMS”.

Where:

- (i) any Interest in land as required and being Altruistic exclusively for the Public Benefit as Interests applied in ‘Prevention’ Education and Youth Development Programs and which purpose and use is synonymous with exempt dispositions of property as Charitable, Benevolent and Educational under the Local Government Act 1995 section 3.58 Regulations Part 6.30.1(b), and
- (ii) any such use of the Interest in Land as held will not prevent the Exempt Disposition of the Property being used for the broader based community benefit as Religious, Cultural, Recreational, Sporting or Like Nature. Reference Sect 46. (2) of the Land Administration Act 1997.

RECOMMENDATION

It is recommended that when considering the definition of charities and the legislative and administrative framework in which they operate:

- The inclusion of the word “Altruistic” is the public benefit test, as required to determine the dominant purpose of a Charitable Entity. This is supported, encouraged and agreed for adoption.
 - In general, inclusion of the word “Altruistic” in the definition of Charity will provision for the recognition of all involvements and activities, including accommodation as occupied and managed, for presentation of the Scout ‘Prevention’ Education and Youth Development Programs.
 - Will provide a clear interpretation and definition for Local Government officers and elected representatives in any Government Regulations and requiring a decision involving activities and actions about providing for the “Disposition of Property”.
 - Where, the “Disposition of Property” requires the application of the Principles of Charity in support of qualifying, the Dominant Activity of the occupier of premises is synonymous with the “Use of the land”.
- a) Application on the basis of “voluntarily assumed obligation towards the wellbeing of others in the community generally” within the test, shall give all Statutory Authorities the necessary provision to carry out performance of their obligations under various Governing Statutes and Regulations.
- b) In practice the Bill will provision to:
- **Define for the Public Record** - that the “Purpose and Use” of an Endorsed Charity Occupier User of Interests in Crown Land is for “Altruistic Public Benefit”.
 - **Link the Public Record with existing Statutes and Regulations in** - “Protection of the Dominant Purpose or Purposes of the Occupier / User Entity in its Activities” as for “Altruistic Public Benefit”.
 - **Re-Establish Entity** - Bring to focus, recognise and register in Policy the “Dominant Purpose or Purposes” of Charitable Institutions in their Activities.
 - **Qualify and make Certain** – “Occupier Use and Management of any Interest in Land” is synonymous with the Entity and its Dominant Activities.
 - **Give Direction** - for the Dispensation of Property in the “Management of Community Accommodation” as may apply to any dispensed Interest in Land.