



ABN 28 000 030 179

14 May 2004

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

Dear Sir

The Smith Family is pleased to respond to the invitation of the Board of Taxation to make a submission in relation to the workability of the draft Charities Bill 2003. The Board has sought submissions within a given framework, and our responses are set out below:

Organisation Details

The Smith Family, A.C.N 000 030 179

Registered Office: 16 Larkin Street Camperdown NSW 2050
Principal contact: Elaine Henry, Chief Executive Officer

The organisation is currently endorsed as an Income Tax Exempt Charity and as a Deductible Gift Recipient. Based on the definitions contained within the draft Charities Bill 2003, and to the extent that they simplify codify current practice, we do not see that The Smith Family's existing status would change if the legislation were to be passed into law.

Main Purposes of the Organisation

The Smith Family has a vision of a more caring and cohesive Australian society. Our mission is that, together with caring Australians, we will unlock opportunities for disadvantaged families to participate more fully in society. Our purpose is to facilitate full participation in lifelong learning, enable people to gain the knowledge, skills and confidence to exercise realistic life choices, provide practical assistance to help stabilise families in times of real need, offer all sections of the Australian community the opportunity to contribute and be involved, and promote social change through research, advocacy and innovation.

Principal Reasons for Making a Submission

While The Smith Family supports the general intention behind codifying a definition of charities in the Charities Bill 2003, the draft itself raises a number of issues which require some clarification. Principally these relate to the need to define clearly the meanings of several words in the Bill.

- Clause 6(2)(b) refers to purposes which are 'ancillary or incidental' to purposes that are for the public benefit. Neither of these words is defined in Clause 3(1). The words themselves, in this context, could be fairly broadly defined, so that, for example, an extensive fundraising program to support the achievement of the dominant purpose of an organisation would, despite its scope, be considered ancillary to that purpose.

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However, as the words are not defined, there is a concern about how they will be interpreted and by whom, and what might be the consequences of such interpretations. It is recommended, therefore, that these words be defined in Clause 3(1) in such a way that activities normally associated with the achievement of, or providing the ability to achieve an organisation's dominant purpose are included.

- Clause 8(2)(a) lists 'advocating a political party or cause' as a disqualifying purpose. This could be read in two ways – 'political party and political cause' or, in effect, 'cause or political party'. Our interpretation is that the exclusion should be read in the first way, and we recommend for clarity the inclusion of the word 'political' before the word 'cause'. This would be consistent with the view of the original Inquiry that advocacy in support of an organisation's dominant purpose should be permitted.
- Clause 8(2)(c) says that 'the purpose of attempting to change the law or government policy' is a disqualifying purpose where it is more than ancillary or incidental to the other purposes of the entity concerned. The lack of definitions for the words 'ancillary' and 'incidental' makes this Clause ambiguous. It is broadly the case in the charitable sector that organisations will seek to have the law or government policy changed for the benefit of their clients or as a means of achieving their dominant purpose. Their ability to continue to do this rests in part at least on the interpretation of those two words, and if the definitions were to be included in the Bill, then Clause 8(2)(c) would become redundant.

Further, Clause 8(2) links the disqualifying purposes to 'other purposes of the entity concerned' rather than the dominant purpose or purposes which are for the public benefit described in Clause 6(2)(b). This inconsistency should be addressed and the wordings standardised.

- Clause 10(2) lists the items which are included in the concept of advancement as protection, maintenance, support, research and improvement. For clarity we recommend that 'advocacy' be included in this list, as it is integral to the advancement of many if not all of the charitable purposes listed in Clause 10(1). This has the added benefit of avoiding the need for it to be defined in terms of whether it is ancillary or incidental.

Additional Administrative Burden

Taking the draft Bill at face value, there appear to be no additional administrative burdens on the organisation, given that it seeks to codify current common law definitions and presents no requirement for additional reporting or other changes to existing procedures. We would be concerned, however, if requirements were to be introduced for additional reporting. The sector is currently subject to various reporting requirements according to legal status, funding sources, geographical location, and so on. There is a need for some standardisation of reporting requirements for the sector which can be better addressed through an holistic approach rather than the imposition of another layer of reporting to meet another perceived need. The Smith Family would support efforts to achieve this in the future.

Adaptability of the Definition

In general terms the Core Definition in Clause 4 and the subsequent definitional clauses are considered broad-ranging enough to adapt to the changing needs of society, and no further amendments are recommended.

Altruism

The inclusion in the public benefit test of the requirement for an organisation to be altruistic (as presented in the Report of the *Inquiry into the Definition of Charities and Related Organisations*) would not affect The Smith Family. As an organisation which relies almost entirely on community support for its resources in one form or another, and one which is not specifically bound by public

policy in determining its own policies with regard to assisting the needy in our community, we believe that altruism is an important motivation for The Smith Family in carrying out its work. Indeed we believe that altruism is characteristic of most organisations in the community sector which would pass the public benefit test.

We thank the Board for the opportunity to submit our comments on the draft Bill, and would be happy to answer any queries which they may raise.

Yours faithfully

A handwritten signature in black ink, reading "Elaine Henry". The signature is written in a cursive style with a large initial 'E' and a trailing flourish.

Elaine Henry
Chief Executive Officer