



Surf Life Saving Australia Limited

**Charities Bill 2003
Exposure Draft**

Submission to the Board of Taxation

Consultation on the definition of a charity

September 2003

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1. Executive Summary

This submission is made to the Board of Taxation (the Board) on behalf of Surf Life Saving Australia Limited (SLSA), the 7 State Centres of Surf Life Saving Australia and the 280 surf life saving clubs around Australia. We will refer to all these entities collectively in this submission as “the organisation”.

Presently, the organisation is endorsed by the Australian Taxation Office (ATO) as an Income Tax Exempt Charity (ITEC), a Deductible Gift Recipient (DGR) and, by inference from its DGR endorsement, as a public benevolent institution (PBI). Accordingly, the organisation is taking a serious interest in the release by the Commonwealth Government of the Charities Bill 2003 Exposure Draft (the ED).

The organisation supports the Government’s initiative to legislate a definition of charity and charitable purpose. Generally speaking, but subject to the comments made in this submission, the organisation views the proposed contents of the ED as a sufficient and well structured approach to define charity.

While we are generally supportive of the ED’s contents, it is the interpretation of the contents by the Government agency administering the legislation that will be of greater concern to the organisation. The manner in which a Government agency chooses to interpret and apply legislation can have great practical impacts and costs on an entity. This can include anything from a change in interpretation of a piece of legislation through to associated administrative requirements it imposes. These things can change regularly, even though the piece of legislation itself remains unamended. While we recognise that it is not within the Board’s scope to canvass administrative issues, it is against the real practical background of application of law “at the coal face” that the organisation raises a number of issues for consideration in this submission. These issues are raised with the hope that the information will assist the Board frame a report to the Government which provides practical input on the application of the ED and therefore whether the ED is appropriate in its current form if the scope for an inappropriate interpretation is too great.

This submission is divided into two parts. Part A contains information about the organisation, its purpose, structure and activities. Part A also contains some information regarding the changing environment the organisation and other charities face which we thought would be useful to the Board to aid its understanding of the charitable sector. Part B of the submission comprises the organisation’s comments and concerns regarding the contents of the ED and associated issues.

1.1 Summary of key concerns and recommendations

A summary of our key concerns and recommendations in relation to the ED are as follows:

1. THAT the body administering the new legislation works closely with the charitable sector in developing interpretation of the new law. It is our recommendation that an independent consultative body consisting of representatives from the charitable sector be established to assist in the development of interpretative guidelines for application of the legislation. This is a critical point as it will also aid in the Government's stated purpose of achieving flexibility of the definition over time.
2. THAT the ED be amended to clarify the definition of "government body" to ensure that "a body controlled by Government" is not too broadly applied (see section 4.2.1 below).
3. THAT, further to 1 above, careful consideration be given to the application of the principles of "public benefit" and "dominant purpose" as these terms relate to charitable organisations which have a large range of activities including social and commercial activities (see sections 4.2.2 and 4.2.3 below).
4. THAT the inclusion of an "altruism" test in the definition of "public benefit" will have the effect of strengthening BUT narrowing the definition of charity. Any inclusion of an "altruism" test would need to be done on the basis of consistency with other aspects of the ED, including in particular the need for consistency with the "dominant purpose" test (see section 6.2 below).
5. THAT a new interpretative section should be added to the ED to enhance interpretation of the Bill, thereby leading to greater clarity and transparency.
6. THAT the body administering the new legislation produce a list of Commonwealth legislation that will interrelate with the ED.
7. THAT the definition of "dominant purpose" be clarified to state that multiple charitable purposes when taken together can form a "dominant purpose".
8. THAT the definition of "charitable purpose" be amended to include "**the advancement of** any other purpose that is beneficial to the community".
9. THAT there would be relatively significant initial administrative costs to implementing the new legislation. However, ongoing administrative costs should otherwise decrease provided the legislation and its application remains constant.
10. We support the proposed continuation of the endorsement process for charities. Further, we believe THAT the Government should widen this endorsement process to facilitate its application to relevant Commonwealth legislation. This would allow for consistency of the endorsement process with the proposed coverage of the ED.

PART A: Background to SLSA

2. Who is SLSA?

2.1 Main purpose

SLSA provides and manages a total rescue service throughout Australia and is a recognised world authority on water and beach safety. Its main purpose and objective is captured in its statement of strategic intent (or mission statement):

SLSA Strategic Intent

SLSA's strategic intent is to work with the community and government to provide safe beaches and aquatic environments around Australia.

The main purpose of the organisation is also well captured in the introductory words of the objects clause of SLSA's constitution as follows:

“SLSA is a charitable community service based institution. The objects for which SLSA is established are to:

*(a) create a single uniform entity through and by which surf life saving and the preservation of life in the aquatic environment can be conducted, encouraged, promoted, advanced and administered:
.....”.*

Primary Service Areas

The primary services undertaken by the organisation are:

- Surf lifesaving and water safety services including on Australian beaches, and also aerial and surveillance services around Australia's coastlines;
- Surf lifesaver training and education, including education to the general public and in schools;
- Surf lifesaving sports and competitions;
- Leadership and personal development skills for our members.

Structure and Operations

SLSA is a not for profit company limited by guarantee. It functions as the national co-ordinating and policy setting body to ensure uniform delivery of services throughout

Australia. There are 7 state organisations (referred to as State Centres) that oversee and co-ordinate delivery of services in their respective states. In addition, there are 17 regional branches in New South Wales and Queensland that support the State Centres. At the “grass roots” level, the organisation has approximately 280 surf clubs around the country.

SLSA and all state, regional, and club entities are not for profit organisations and most, if not all entities, are registered with the ATO as ITECs and DGRs for the purposes of the *Income Tax Assessment Act 1997*.

All surf life saving services are provided through the clubs and/or state branches.

Rescue helicopter services are provided through separate legal entities, which are wholly owned by either the national organisation or the Queensland branch.

Clubs, State Centres and branches, in conjunction with the national organisation, arrange and deliver lifesaving services, lifesaver training, education and sporting competitions.

The Queensland state and club arrangements are more involved due to the existence of a large network of supporters clubs which are affiliated to a local surf club. There are 59 surf clubs in the state, with approximately 40 having affiliated supporters clubs. The supporter clubs, all of which are separately incorporated entities to the surf club, range in scope and size from sophisticated full time licensed club operations to part time small scale social clubs. Other points to note regarding the supporter clubs include:

- The key object of each supporter club is to raise funds on behalf of the affiliated surf club.
- To be a “voting member” in a supporters club, an individual must be a member of the affiliated surf club. Thereby, control of the supporters clubs effectively rests with the membership of the surf club who are also members of the supporter club.
- Supporter clubs are not endorsed as ITECs or DGRs, but are subject to the normal “concessional” taxation arrangements offered to clubs under the “mutuality” taxation principle.

Key operational statistics – 2002/03¹

- In excess of 106,970 members nationally, of which there are more than 50,000 active patrolling members (lifesavers).
- 9,488 rescues carried out (averages over 10,000 annually).
- Over 280 clubs.
- 163,786 prevention actions undertaken to avoid life threatening situations.
- 56 resuscitations
- First aid rendered on 16,776 occasions.

¹ Most recent published information.

- 1,835 accredited officials.
- 53,998 awards

2.2 Surf Life Saving at the “grass roots” – the local surf club

The cornerstone of the surf life saving movement is the local surf club. Exclusively a volunteer organisation, the typical surf club provides free of charge to the general community emergency services such as beach patrols, aquatic rescues and limited first aid treatment. This is the typical club’s “core business”, and it has been this way since inception of the organisation in 1906.

The services mentioned are provided on weekends and public holidays throughout “summer” (defined in most states as October to late April), and over a longer period in Queensland.

An average size surf club in the more densely populated areas of the New South Wales coast line would maintain approximately 12 patrols totaling 120 volunteers. These individuals would complete at least 50 hours of volunteer work each year.

2.3 Surf sport activities

From its inception in 1906 to the present day, surf sport has been a critical factor in the successful gaining and retention of members and in maintaining a high standard of fitness and training for surf lifesavers.

The organisation has over recent years devoted significant time and resources to developing a series of professional surf sport activities such as the National Surf League series and the National Surf Boat series and some state based events. .

All patrolling members who have passed their annual proficiency and complied with their patrol hours can participate in surf sports competition conducted by SLSA. The vast majority of SLSA’s surf sports are conducted at the club level by volunteers for the volunteer members. Large scale state and national Championships are also conducted. These events have no prize money, with the vast majority of athletes “amateurs”.

These activities were given additional focus approximately nine years ago with the incorporation of Surf Sports Australia Ltd (SSA). SSA is a wholly owned subsidiary company of SLSA and was established to develop and enhance high profile professional surf sports events for the organisation’s members. In implementing SSA, the organisation was of the view that sponsoring a series of national professional sporting events would help attract members and supporters (through increasing the organisation’s community profile), and also act as a critical support in keeping members skilled and healthy for their key lifesaving duties at their local surf club.

All profits made by SSA are paid to SLSA to assist it to fund its core objectives. In addition, SSA frequently provides equipment grants to SLSA and provides other funding to the State Centres.

Unlike other entities which make up the national organisation, SSA is not a not for profit entity and is not registered with the ATO as an ITEC or DGR.

3. The Changing Environment for Charities

The organisation thought it important to devote a section of this submission to the significant changes in the operating environment for charities. We feel this sets an important backdrop to the definition of a charity and the recognised need for that definition to be drafted so that it can adapt to changes over time.

As noted above, the organisation has been in existence since 1906. Since that time there have been enormous changes for the organisation from a societal as well as regulatory and operational perspectives. These changes have led to significant diversification in activities by the organisation in order to meet community expectations.

Key operational/environmental changes which have impacted the organisation in recent times are summarized in Table 1. The table includes a column which outlines the impact of the environmental change on the organisation.

Table 1: Environmental Changes impacting service delivery by the organisation

Environment Change	General Description of Change	Impact on the Organisation
<i>Retaining and attracting volunteers</i>	Societal change such as increasing working hours and greater entertainment opportunities have resulted in increased competition for the “volunteer hour”. In addition, greater demands placed on volunteers due to increasing regulation and greater community expectation has impacted volunteer numbers. The community and the members demand higher standards in training.	As a volunteer organisation, the ability to retain and recruit volunteers is fundamental to the ongoing viability of the organisation. The combined result of these factors is the need to develop and implement new and innovative methods of recruiting and retaining volunteers. Examples include the Surf sports programs outlined above, provision of standardised, nationally accredited training as part of the national training framework, as well as innovative fund raising and club activities to attract and retain members.
<i>Increasing infrastructure costs</i>	Ongoing improvements in the standard working environment and research and development into modern technology is a general feature of day to day life.	The need to constantly update to the latest technology and state of the art lifesaving equipment in a service as fundamental as life saving puts significant financial pressure on the organisation.
<i>Increased regulation</i>	The community expects governments at all levels to implement and monitor laws and regulations to ensure the general public are protected.	Increased government regulation which is aimed at delivering uniform quality service carries with it a significant cost in terms of procedure implementation and compliance – which means significant investment in training and equipment by the organisation.
<i>Higher community expectations</i>	As the economy grows and innovation leads to greater service levels, the community expects an increasing level and quality of service provision. In addition, where required or perceived standards are not met, there is an increasing potential for litigation.	The organisation faces great pressure to ensure standards are constantly and consistently improved. This in turn means greater financial pressures to ensure that volunteers are constantly trained and have access to the latest life saving equipment. Funds must also be committed to ensuring compliance with regulations and defending any litigation.

PART B: The Charities Bill 2003 Exposure Draft - the proposed definition

4. Workability of the proposed definition

This section of the submission comprises of two sub-sections. Firstly, in section 4.1 we outline some general comments on the ED. Then, in section 4.2 we outline some specific issues which we wish to raise regarding possible interpretations of the ED.

While the issues raised in section 4.2 are interpretative and we recognise that the Board is primarily interested in the “workability” of the definition at a macro level, it is always important to recognise that how a law impacts an entity will in a significant way be determined by how the government administering body interprets and applies the law as it is written. From a tax compliance perspective, the issues we raise will be, we presume, ultimately dealt with at an administrative level by the ATO. We felt it critical to raise the issues within this submission to provide the Board with input from a practical perspective. Such input can in turn be used to assess whether the proposed definition in the ED is “workable”.

4.1 General Comment

In relation to the overall content and structure of the ED, the organisation makes the following general comments:

Clarity and transparency: The organisation supports the Government’s initiative to capture in legislation a definition of “charity” and “charitable purpose” for the purposes of all Commonwealth legislation. The organisation believes that reference to a single, exclusive definition makes for a greater ease in administrative operation by entities. The organisation is of the view that it will be much easier to refer to a single legislative reference on this issue rather than to a long history of common law. Accordingly, the organisation is of the view that the ED will lead to greater clarity and transparency in this area of operation.

Structure of the ED: The organisation views the definition of charity in the ED to be adequate and well structured, subject to the comments made below. There are a number of components which make up the definition and these are clearly outlined in the ED.

To aid in interpretation, and therefore practical workability, a recommendation is to add a new section to the ED devoted to a “legislative outline” of the Bill. This section would explain in plain language how the various sections of the Bill come together to provide the complete definition. This approach is often used in complex areas of the

Income Tax Assessment Act 1997 whereby a legislative Division is inserted before the operative provisions to explain the intended workings of the legislation.

Broad application of the ED: Sub-section 4(1) of the ED states:

“A reference in *any Act* to a charity, charitable institution,is a reference to an entity that:” (our emphasis).

While the ED Explanatory Material (EM) notes that the definition in the ED will apply to all Commonwealth legislation, it is our view that this point needs to be more clearly made and more guidance given on this issue. To assist in the practical workability of the ED, we recommend that the body administering the Bill produce a document which outlines which Commonwealth Acts make reference to “charity”, “charitable institution”, “any other kind or charitable body” and “charitable purpose”. This document could be assembled with the assistance of the independent consultative body discussed in section 6.3 below.

Dominant purpose: Section 4 of the ED requires that an entity must have a “dominant purpose” that is both “charitable” and for the “public benefit”. The term “dominant purpose” is then defined in section 6 of the ED. The definition contained in that section provides, amongst other things, that an entity will have a dominant purpose that is charitable or for the public benefit if “it has one or more purposes that are [charitable or for the public benefit];”. Paragraph 1.31 of the EM makes an important point in relation to this section, as follows:

“1.31 It may be that multiple charitable purposes for the public benefit, when taken together, form a dominant charitable purpose for the public benefit. Therefore, it is not necessary for an entity to show that a single purpose is their dominant purpose.”

We feel that this is an important point and, for the benefit of clarity, should be included in the *Charities Bill* itself.

Reference to charitable purpose: Sub-section 10(1) of the ED lists the purposes which are “charitable purposes”. With the exception of paragraph (g) of the sub-section (“any other purpose that is beneficial to the community”), all paragraphs refer to “**the advancement**” of the nominated purposes. The term “advancement” is defined in sub-section 10(2) to include protection, maintenance, support, research, and improvement.

The EM at paragraph 1.80 notes the importance of paragraph (g) in allowing for flexibility in the meaning of charity, and for the meaning of charity and charitable purpose to adapt to the ongoing changes in society.

Given the significance of the comments of the EM, which reflects that Government’s stated purpose of the definition of charity to “evolve” with society, we recommend that paragraph (g) of sub-section 10(1) be reworded to read:

(g) *the advancement* of any other purpose that is beneficial to the community.” (our emphasis).

In addition to implementing the Government's stated purpose, such an amendment will allow for greater consistency with the other limbs of the definition of charitable purpose.

4.2 *Specific Interpretative Issues*

4.2.1 Relationship with Government

Sub-section 4(1)(f) of the ED applies such that an entity which is a "government body" cannot be a charity. The term "government body" is defined in section 3 of the ED. This definition states, inter alia:

"government body means:

- (a); or
 - (b) a body *controlled* by the Commonwealth, a State or a Territory: or"
- (our emphasis).

Paragraphs 1.18 to 1.24 of the EM discuss the concept of "government control" for the purposes of this component of the core definition. This is an area of great concern to the organisation given the increasing extent of government involvement within various areas of the organisation. In particular, the increasing recognition by government of surf life saving as an "emergency service" has brought a new dimension to the involvement by government in the core activities of the organisation. Amongst other things, this has meant recognition in some Australian states of surf life saving in the respective pieces of emergency services legislation and has also formalized in a new way the manner and mechanics of government funding to the organisation. For example, in South Australia the South Australian Government is negotiating with the South Australian State Centre to provide funding to that State Centre from collections made by the Government under that State's emergency services levy.

The organisation is keen to stress that the "government control" element of the definition of charity not be interpreted so broadly that formal government recognition and funding along the lines mentioned above would be sufficient to exclude the organisation from the definition of charity on the basis it would be considered a "government body". In particular, the organisation is concerned about the contents of paragraph 1.20 of the EM regarding funding through a government imposed levy and the "carrying on of activities at the government's instruction".

In support of the organisation's view that it is not controlled by Government and therefore not a government body, the following points (in reference to comments made at paragraph 1.22 of the EM) are made in relation to the organisations operations at present:

- Government does not have the ability to approve appointments or remove appointments to and from Boards of Management of the organisation;
- Government does not have the ability to overturn divisions of Boards of Management of the organisation;
- Government does not have the ability to approve the work programs of the organisation.

More importantly, it is critical to note:

- the key operations of the organisation have not changed as a result of the increased involvement of by Government – this is not a situation of new or increased Government regulation which has led to the introduction of new services;
- the organisation has, for 97 years, and will continue to offer its (largely volunteer) life saving and associated services irrespective of whether the Government formally recognises the organisation and increases the level of funding to it or not;
- the methods of service delivery are typically unaltered as a result of the new arrangements with Government compared to the service delivery provided before;
- typically, Governments only provide partial funding for the life saving activities of the organisation;
- typically, Governments could change their mind at any time regarding the extent of recognition and level of funding delivered.

In conclusion, we recommend that the ED be amended to exclude as a “government body” those types of entities which fall within the broad parameters of the points outlined above. Alternatively, that the Government body administering the ED when it becomes law must ensure that the law be applied to ensure that bodies who have arrangements with Government on the terms outlined above not be excluded from being a charity.

4.2.2 Surf Club memberships – relationship to “public benefit”

The definition of “public benefit” in section 7 of the ED requires that a purpose is only for the public benefit if, amongst other things, it is directed to the general community or to a sufficient section of the general community. Paragraph 1.38 of the EM elaborates on this requirement by stating that any private benefits to members must be incidental to carrying out the charitable purpose. The EM goes on to state that there can be provision of private benefits to members, but that the provision of these benefits must be incidental to the overall purpose of the entity.

As outlined in Part A of this submission, the existence and nature of the national club structure of the organisation is absolutely critical to the delivery of core services by the organisation. The organisation is concerned that the interpretation of the “public benefit” limb of the definition be carefully considered when it comes time to applying the legislation. The organisation recognises that there are benefits offered that attract

members to join a surf club. It is the existence of these benefits (eg access to club gyms, supporter clubs and other facilities) that in some instances are important considerations of individuals in their decision to join a club. However, it is critical to note the following:

- in the majority (if not all) cases, members will join a surf club for the primary purpose of directly or indirectly supporting the core life saving activities of the club;
- without the ability to offer the incidental benefits of membership, most clubs would not be able to sustain a critical mass of people or funding to continue the core operations of the club.

In summary, we therefore recommend that the body given responsibility to administer the Bill when it becomes law give reference to the above issues in determining whether the “public benefit” test is met.

4.2.3 Diversification in activity – relationship to dominant purpose

As outlined in section 3 above, it has been necessary for the organisation to grow and diversify its funding base in recent times in order to maintain funding levels to meet the increasing standards and expectations in relation to its core services. This has led in many cases to an increase in the type and number of “commercial” activities whose profits go to funding the core activities.

The EM acknowledges on several occasions that commercial and incidental activities will not of themselves preclude eligibility for charitable status according to the definition proposed (refer paragraphs 1.26 and 1.38 as examples). The organisation is concerned however for the potential for the meaning of “dominant purpose” to be interpreted in a way that will harm organisations that have “commercial” activities on a relatively large scale. Indeed, it is possible that the extent and “profile” of commercial activities (eg some of the sporting activities mentioned above) could be sufficient to “cloud” or “mask” the core activities that the commercial activities are there to support. As we have already stated earlier in this submission, in today’s world of “competitiveness for the charity dollar”, it is critical that the organisation maintain and diversify its funding base in order to sustain funding for its core activities and grow the membership base in order to do deliver the core services.

We recommend that the body given responsibility to administer the Bill give careful consideration to the issues noted above in applying the “dominant purpose” test. Issues such as objectives stated in constituent documents and tracing of “commercially generated” funds back to these core objectives cannot be over emphasised, irrespective of the scale or “prominence” of some support activities.

5. Administrative Issues

In this section of the submission, we have divided discussion regarding the administrative costs of implementing and administering the ED into two areas, namely (i) initial administrative issues; and (ii) ongoing administrative issues. We outline our comments on these areas below.

5.1 Initial administrative issues

The organisation is of the view that there would be a significant administrative cost involved in the initial implementation of the new legislation across its national organisation. These costs would relate to:

- obtaining advice regarding the final form of the legislation to gain an understanding of how it would apply to the organisation;
- disseminating this information to the State Centres, Branches and Clubs and providing them with sufficient assistance to ensure all entities are in a position to make an assessment of their status;
- if necessary, reviewing and obtaining advice regarding any explanatory material regarding the legislation such as ATO rulings, and liaison with the ATO to provide necessary feedback; and
- updating procedures and amending procedures manuals as applicable.

It is important to note that these activities would have to be undertaken across all entities that make up the organisation nationwide. This would not be an insignificant task.

The organisation estimates that the dollar cost involved in this would be \$25,000-\$50,000 not allowing for the opportunity cost of lost time by staff involved in undertaking the above activities.

5.2 Ongoing administrative issues

It is more difficult to be definite in this area in terms of compliance issues and associated costs. To a large extent, the level of activity and cost in this area will be governed by the extent of regulation by the ATO and other governing bodies and the extent of promulgation of explanatory and other materials regarding the ongoing administration of the law.

In view of this, the organisation simply makes the following general comments regarding administrative costs on an ongoing basis:

- To the extent to which the ED does lead to a clarification and simplification of the definition of charity, there should be a lesser compliance cost for the

organisation than under the existing regime as it is operating in a more certain environment.

- Compliance costs will increase where there is either regular amendment to the law or regular changes to interpretation of the law. Hence there is a need to arrive at a clear and well publicised application of the law. This could be achieved through use of the consultative body suggested in section 6.3 below.

6. Other Issues

6.1 Flexibility of the Definition

By nature, legislation is typically inflexible given the intrinsically “fixed” nature of the written word. However, in our view, there is the capacity for this legislation to be flexible in three ways:

- Active and ongoing amendment to the legislation as necessary to keep pace with changes in the operating environment;
- The inclusion of “any other purpose that is beneficial to the community” in the definition of “charitable purpose” (however, see the discussion at section 4.1 above regarding this clause); and
- Flexibility in approach that the Government body administering the legislation takes in interpreting and applying the legislation to relevant entities.

Given the typically long lead time and other legislative, political and administrative impediments to amending legislation, and the intrinsically inflexible nature of legislation contrasted against the Government’s clear intent to make this legislation as flexible as possible, this adds to the importance of a relatively broad and flexible approach to the interpretation of the legislation by the administering body. This point has already been made in section 4 above and we discuss it again in section 6.3 below in the context of the need for an independent consultative body to guide the application of the law.

6.2 Public benefit and “altruism”

In principle, the organisation has no difficulty in supporting the consolidation of the concept of “altruism” into the “public benefit” test. Similarly, we would support in principle the Board’s definition of altruism as “a voluntarily assumed obligation towards the wellbeing of others in the community”.

However, in supporting the principle, we offer the following qualifications:

Strengthened public benefit test: We note that the Board has stated that the aim of including the concept of altruism in the public benefit test is not to expand or narrow the definition of charity, rather to “clarify and illuminate” the meaning of public benefit. Our view is that the inclusion of altruism in the public benefit test would potentially narrow the application of the Bill. We note that the *Report of the Inquiry into the Definition of Charities and Related Organisations* released by the Government in August 2001 (“the Charities Report”) refers to the inclusion of altruism in the public benefit test as “strengthening” the public benefit test (refer Recommendation 7 of the Charities Report). Further, we note that the Charities Report gives an example on page 124 of an organisation providing a benefit to the public without necessarily acting altruistically. **Accordingly, we believe that the inclusion of altruism in the public benefit test could potentially lead to a narrowing of the definition of “charity”. However, we have no objection to an appropriate narrowing of the definition in this way provided the following issues are taken into consideration in its application.**

Application of “dominant purpose”: If the concept of altruism were to be included in the definition of public benefit, the organisation would only support its inclusion on the basis that the application of the “public benefit” test, inclusive of the altruistic element, continues to operate on the basis that it is the entity’s **dominant purpose** that must be for the public benefit. That is, ancillary and incidental activities which may not be offered altruistically will not otherwise affect an entity’s charitable status.

Impact on membership based organisations: Following on from the point made above, given that the organisation is fundamentally a membership based organisation, it would be reluctant to see, and would strongly oppose, application of the altruism concept within the Bill on the basis that the range of services offered to members (which may not be viewed as offered “altruistically”) would exclude the organisation as being a charitable entity. We stress again that member services such as use of club facilities on a fee for service basis are ancillary and incidental to the core charitable purpose. Furthermore, as explained earlier, it is critical that clubs are able to offer these member services in order to attract members who provide the human and financial resources to carry out the life saving activities.

6.3 Independent consultative body

We note that Recommendation 25 of the Charities Report is to establish an independent administrative body for charities. Furthermore, Recommendation 26 of the Charities Report suggested that, if the independent administrative body was not established, then the Government establish a permanent advisory panel to advise the ATO on the administration of definitions related to charities and related entities.

To our knowledge, there has been no statement from the Government on these particular recommendations. Given the administrative issues which arise with the implementation of new legislation and the ongoing interpretative and compliance issues in relation to the ED that we have noted above, we are strongly of the view that the Government does need to establish an independent advisory/consultative body that

would work with the ATO and other relevant arms of Commonwealth Government to ensure appropriate and practical application of the legislation. The need for such a body is particularly reinforced by the issues raised in section 4 and section 6.2 above.

6.4 Endorsement process for charities

We note from The Treasurer's Press Release No. 49 of 2002 (29 August 2002) that the Government intends that, from 1 July 2004 (the same proposed operative date of the ED), all charities will be required to be endorsed by the ATO in order to access relevant tax concessions. The organisation supports this approach. Given that entities like to operate in a certain environment, and the stated aim of the ED is to provide clarity to charitable entities, the organisation views favourably the continuation of the endorsement process. However, in the same way that the definitions set down in the ED will apply for the purposes of all Commonwealth legislation, we would like to see this endorsement process taken one step further by having such an endorsement apply for the purposes of all Commonwealth legislation. That way, a single endorsement, administered by the ATO would "secure" a charitable entity's position and provide a "reference point" for the purposes of all Commonwealth legislation.

7. Contact Details

The organisation's contact details are provided below. Please note that this submission has been prepared with the assistance of an independent taxation consulting firm. Contact details for this firm are also provided below and questions regarding the contents of this submission should in the first instance be directed to this firm.

7.1 Organisation contact details

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