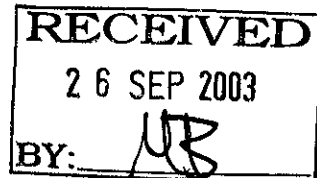


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**Volunteering Tasmania (Inc.)**  
ABN 36 610 934 969



24 September 2003

Consultation on the Definition of a Charity  
The Board of Taxation  
c/- The Treasury  
Langton Crescent  
Parkes  
ACT, 2600

Dear Sir/Madam,

Please find enclosed Volunteering Tasmania's submission to the Consultation of the Definition of a Charity currently being conducted by the Board of Taxation.

Yours sincerely,

Maxine Griffiths  
Chief Executive Officer

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## SUBMISSION TO THE BOARD OF TAXATION

### CONSULTATION ON THE DEFINITION OF A CHARITY

#### *Introduction*

Volunteering Tasmania is pleased to take up this opportunity to provide a submission to the Board of Taxation on the draft legislation relating to the definition of a charity (the Charities Bill 2003).

Volunteering Tasmania is classified as a charitable organisation by the Australian Taxation Office. We are recognised by the State Government as the peak body for volunteering issues in Tasmania. Although the tight timeline for this consultation process has prevented us from formally consulting with our membership on this specific issue, we are aware through our years of experience in working with the volunteering sector of how volunteer-involving organisations would be affected by this legislation. We therefore make this submission on behalf of ourselves and our membership, with specific regard to the impact this submission will have on volunteer-involving organisations and volunteer-based programs.

*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 of the Charities Bill 2003?*

- Education for organisations

The media speculation that has accompanied the release of the exposure draft regarding the impact of Clause 8 demonstrates the level of concern within the community around this Bill. There is further confusion over the status of this Bill with regard to PBI and DGR status – when in fact it does not touch on those issues. Unfortunately, it is the nature with any document released by government, be it a discussion paper, a report or a piece of draft legislation, that despite the best efforts of all concerned, the document often fails to reach all to whom it is targeted. Many of our members are comparatively tiny organisations with limited resources and little access to the networks through which they might access this and other information. Across our membership, there is great variation in processes, procedures and capacity to interpret documents. As a result, it is likely that many of our member organisations may not understand what is required of them by this Bill. Those elements of the Bill that are already confusing, such as the precise implications of Clause 8, may make it even more difficult for these organisations to accurately interpret the legislation for their particular circumstances.

Therefore, in order that charitable organisations can actually work with this Bill and any changes it puts in place, we have to ask what resources will be put into educating organisations regarding these changes? Presumably, in the case of audit by the ATO, ignorance will not be a defence. Will there be an amnesty for organisations that did not understand what new compliance procedures were required of them, or a period of leeway for organisations to prepare for audit? Will there be room for appeal of a decision, and what will be the processes involved? Neither the Bill nor the explanatory memo makes clear how this legislation will be interpreted or implemented, yet organisations need to know. (That there is a capacity for a range of interpretations, some damaging, is a cause for concern all by itself). How energetically will the information about the Bill be brought to the attention of organisations, particularly organisations that may not have access to particularly sophisticated information technology or be on the appropriate mailing list?

It is reasonable for our members to expect Volunteering Tasmania to be able to assist them in interpreting the legislation and supporting their compliance with it, but Volunteering Tasmania is, like many in the sector, not resourced to carry out a task requiring such time and expertise. Will peak bodies then be provided with the resources to assist their membership?

These are questions that go to the heart of workability, because the Bill will not be workable if organisations do not understand it. If it is not explained clearly and comprehensively to organisations of all shapes and sizes, confusion and anxiety within the sector, especially the voluntary sector, will be increased, not reduced. It would be helpful therefore, for the explanatory memo to contain more explicit indications for how the different elements of the Bill will be interpreted and applied so that organisations can have a clearer understanding of what they will be required to do.

- Advocacy

Tasmania is a small state, with a small population and limited resources available. For this reason, community organisations here lack the capacity of larger states to specialise. Many organisations perform a range of functions, including service provision, policy development and advocacy on behalf of clients, members or consumers. As in any field of work, issues arising frequently determine the priorities of the organisation from day to day, week to week, year to year. For organisations that do advocacy in addition to other activities, such as direct service provision, advocacy forms an inconsistent part of their workload, dependent on the issues of the day or the purposes of the organisation. Some years, organisations may do very little advocacy work; other years, thanks to the emergence of a particular issue or a particular incident, they may do a great deal. It is legitimate to ask whether any audit process by the ATO will take into account this variation across time?

This focus on the question advocacy is reasonable. Many community organisations engage in lobbying and advocacy from time to time, in response to issues arising within their field of expertise. While the sector has been assured by the Treasurer that the current Bill is not intended to change the status quo, the wording of Clause 8 raises significant concern for how lobbying and advocacy work will be treated by the ATO. Neither the Bill nor the explanatory memo clarifies how "advocacy" will be defined by the Bill. Yet advocacy can be and frequently is a vital and important part of charities' work. It is no different from a range of other activities a charity might engage in, in that it is undertaken to aid and further the charity's dominant purpose.

*For example, a charity whose purpose lies in ensuring provision of housing services to low-income earners may, as part of its work, facilitate the access of its clients to public housing. However, it may also have a role in advocating to government on behalf of low-income earners for the expansion of public housing stock in its area. This advocacy may be substantial – it may even dominate much of the agencies work. And it is critical in furthering the purpose of that agency: to ensure the provision of housing services to its client group.*

Volunteering Tasmania believes that community organisations, like any other voice in society, have a democratic right to have a say without fear of penalty. In fact, the very ethics and principles of volunteering for which Volunteering Tasmania stands for are based on the premise that involving people within their communities on a voluntary basis to make a difference is a positive, enabling and powerful force for change. Many volunteers, especially young people, are motivated to join volunteer groups in order to work together for change within a particular area. The idea that regular lobbying or advocacy is a disqualifying purpose undermines and erodes what we stand for.

The rationale given in the explanatory memo for Clause 8 is that it is important that charitable organisations remain independent of political processes. Making support of a political party or candidate – that is, partisan advocacy – a disqualifying purpose is clearly consistent with this and is also reasonable. Yet it is hard to see how the day-to-day advocacy engaged in by charities, advocacy essential to the furthering of their charitable aim, fits in to this rationale. In fact, it is frequently recognised by government that having that independent community input into the

policy process through consultation with the community sector makes for good policy development.

The inclusion of advocating a "political ... cause" is also of concern since many of the issues addressed by community services, including services among our membership, such as unemployment, housing provision, health and welfare, disability and legal rights, are inevitably political issues. Yet this does not mean that work done by organisations on these issues is not independent of political processes: it is.

Including attempting to change the law or government policy or support of a "political ... cause", (if that is interpreted as being any cause that has a political dimension rather than a partisan political cause), as disqualifying purposes is unnecessary, as the stated goal of ensuring independence from political processes would be achieved through the disqualification of organisations that advocate on party political lines or in support of a particular candidate. Having this unnecessary clause in the Bill will impact on workability as organisations are forced to re-evaluate their workloads and priorities to ensure they meet the requirements, even when it is totally unclear at this stage how those requirements will be interpreted and enforced. It will lead to increased administrative burden, as organisations have to add to the record-keeping they already do, in case of an audit based on their lobbying activities. And it will ultimately affect the efficacy of organisations and service provision as it prevents charities from engaging in an activity vital to the furtherance of their charitable purpose.

For Volunteering Tasmania's part, as a peak body, we consider it a fundamental part of our role to advocate for the principles and ethics of volunteering, and we are recognised by the State Government to have valuable input to make on Government policy around volunteering. To this end, the State Government and Volunteering Tasmania have recently signed a three year partnership agreement. We see our advocacy as in no way a conflict with our status as a charity and a service provider, yet we see it as just as important for volunteering in Tasmania as our service provision. We fail to see the sense in how lobbying government around policies that impact upon volunteering, and advocating on behalf of volunteer rights and good volunteer management practices, conflicts with our status as a charity.

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

- Administrative burden

Volunteering Tasmania is concerned that this Bill will impose an additional and significant administrative burden on organisations. This will be particularly true for smaller organisations, many of which are either entirely volunteer-dependent, or have very little allocated administrative support time and resources. These organisations have particular issues relating to administration generally that additional compliance requirements would only aggravate.

For example, volunteer-involving organisations often face difficulties when volunteers leave the organisation, particularly if the volunteer is a long-term volunteer. They can lose a significant amount of organisational history and information in one blow. While this loss of organisational memory happens in any organisation when a staff member leaves, for very small volunteer-dependent organisations, that might not have comprehensive training regimes in place for new staff, or adequate handover procedures, the problem is more acute. Volunteer changeover, particularly at a Board level, can also result in shifting priorities for the organisation, which go to the heart of the issue of variation in workload over time raised above.

Regardless of the results of any audit by the ATO on this issue, organisations will see it as a policing process. They will feel obliged, out of fear of losing charitable status, to keep additional records on their activities. They may even feel obliged to curtail some activities that will not necessarily exclude them from charitable status out of concern that they might. (See our concerns raised above about the need for education around this issue).

For a large organisation with a well-resourced administration division, this may not be an issue. For a small organisation with perhaps only 10 hours a week of paid administrative support, or perhaps no paid support at all, it will be an intolerable burden, particularly when their

administrative resources are already stretched. Volunteering Tasmania has received much anecdotal evidence from our membership of paid administrative staff forced to do unpaid overtime in order to get through the administrative load they already face. This is particularly true for organisations that are required by funding and service agreements to provide extensive data on service provision and outcomes, such as the Minimum Data Set information required through the Home and Community Care program.

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

- Government bodies

Current trends indicate that increasingly, the obligations of service provision will be transferred from government to the community sector, with particular reliance on the role of volunteers in delivering health, welfare, housing, social support, emergency relief, home care and other services directly to clients. In order to fund the increased resources and infrastructure need to effectively provide these services, the community sector is forced into competition for government funding. In this climate the government clearly has the upper hand in determining priorities, and organisations are often forced to adapt their strategic planning to cater for this. It does not seem that this will change in the future, and it may even intensify.

In this context, Volunteering Tasmania would be concerned about the future impact of Clause 4 in the exposure draft of the Bill, which excludes government bodies from having charitable status. The explanatory memo is not always clear on this, and frequently qualifies its statements. While a conventional interpretation of what constitutes a government body, as is generally suggested by the explanatory memo, would not cause difficulties, a narrower interpretation, also possible under the explanatory memo's definition, that excluded organisations that received significant proportions of government funding and were under service agreements that dictated aspects of organisations' work plan, would be of far greater concern. Volunteering Tasmania receives funding from the Commonwealth Government through the Department of Family and Community Services to coordinate the Voluntary Work Initiative, under which certain recipients of Centrelink benefits can meet their mutual obligation requirements through participation in voluntary work. Despite our role as a provider of this service, we are most definitely an organisation that operates entirely independently of government with regard to our internal policy and peak body functions.

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

- Implications of including altruism

Volunteering Tasmania considers that its purpose of providing leadership in relation to volunteering for the non-profit sector is in line with the given characterisation of "a voluntarily assumed obligation towards the wellbeing of others or the community generally". Volunteering is a positive force within communities, contributing to community capacity, social capital and community cohesiveness. On an individual level, the capacity of volunteers to touch the lives of others is well known. Volunteering has also been shown to be good for individual wellbeing, providing a person with a sense of purpose, social networks and valuable skills.

Volunteering Tasmania's member organisations all involve volunteers in their work, therefore indirectly contributing to the effects described above. Yet we are unsure how the inclusion of altruism in the public benefit test would influence the interpretation of that test, and how it might then impact upon our member organisations that are charities. We feel more information on the likely impact of the inclusion of "altruism" in the public benefit test would be appropriate.