

Submission from World Vision of Australia

TO

The Board of Taxation

Consultation on the Definition of a Charity
on the provisions of the Charities Bill 2003

Introduction

- World Vision of Australia welcomes this opportunity to make a submission to the Board of Taxation's Consultation on the Charities Bill 2003. World Vision of Australia is a non-governmental organisation (NGO) and is part of a World Vision Partnership of Christian NGOs working in over 96 countries on development, relief and advocacy projects.
- It makes this "in principle" submission acknowledging that the purpose is to assist in defining charities for tax purposes.

World Vision of Australia addresses both of the terms of reference:

- 'Workability'

As to whether the proposed legislative definition provides greater clarity to World Vision of Australia; whether the new definition would impose any additional burden or restriction on the operation of charities; and whether the definition provides the flexibility to ensure it can adapt to the changing needs of society.

- 'Altruism'

Whether the "public benefit test" in the exposure draft should also require that the dominant purpose of a charity be "altruistic". The Board considers that this can be characterised as "a voluntary assumed obligation towards others or the community generally".

In addition to answering the eight specific questions listed in the Board of Taxation's "Guidance on Preparing a Submission" document about our organization, we address several other points which we believe are of significance regarding the legislation.

Answer to Question 1.

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Answer to Question 2.

The dominant purpose of World Vision of Australia is to work to reduce and eliminate poverty in the communities overseas and within Indigenous Australia with which it works, and to raise funds within Australia to support this purpose. World Vision of Australia believes that the reduction and elimination of poverty requires working to understand and address, through advocacy and other activities, the causes of global poverty and attempting to alter structures and systems that contribute to poverty.

Answer to Question 3.

World Vision of Australia's principal reasons for making a submission on the workability of the Charities Bill 2003 are:

- to comment on the proposed legislation and its impact on the work of World Vision of Australia and like charities;
- to ensure that such proposed legislation and its operation does not impede the future efficiency and effectiveness of World Vision of Australia's core and ancillary activities;
- to highlight the importance of advocacy in achieving poverty relief aims;
- to highlight World Vision of Australia's concerns that the proposed legislation has no guidelines or clear definition clarifying the boundaries as to what is and what will not be considered political lobbying, and whether this is ancillary or incidental. It is also not clear as to who will determine when and how the boundaries of purposes and political lobbying have been crossed;
- to advocate that the various stakeholders who partner and benefit from charitable activities should also be consulted in the legislation process.

World Vision of Australia recognises and supports the following initiatives that the Commonwealth Government has taken towards:

- achieving clarity and transparency on the definition of a charity and a charitable purpose and giving substance to the present charity definition;
- aiming for consistency of application and interpretation of the main purposes of charities;

- the provision of explanatory material and the invitation extended to charities for submissions and consultation to address issues on the proposed charity legislative and regulatory definition and its workability;
- attempting to ensure charities are not party political or supporting a particular candidate for political office (as occurs in the United Kingdom).

However, World Vision of Australia believes that some aspects and application of the proposed legislation could pose some challenges to World Vision of Australia and other charities. In particular, it is concerned that the requirement that “attempting to change the law or government policy” must be “ancillary or incidental to the dominant purpose of the entity” could be unduly restrictive on the operation of World Vision and other charities, in carrying out their dominant purpose.

Answer to Question 4.

World Vision of Australia has current ITEC Status and by nature of its current dominant activities, will continue to qualify as a bona fide charity as per the proposed definition of a charity under Charities Bill 2003.

Answer to Question 5.

Question 5 does not apply to World Vision of Australia as it is an endorsed ITEC.

Answer to Question 6.

The Charities Bill 2003 will not impose any administrative burden on World Vision of Australia. World Vision of Australia is compliant with all local and international taxation, legal, statutory and industry regulated and non- mandatory codes of conduct and best practice.

Answer to Question 7.

Our assessment is that while World Vision of Australia welcomes a clearer definition of a charity under the proposed legislation, any new legislation should allow for flexibility and adaptability to the changing nature and needs of society and the charities that service those needs. In best serving the needs of the disadvantaged and voiceless, charities need to be able to express concerns about future legislation and government policies and actions that will impact on the

communities with whom we work. The legislation in its current form does not allow this.

Answer to Question 8.

If the dominant purpose of a charitable entity was required to be altruistic, World Vision of Australia believes that this would not affect the status of the organisation as an ITEC. However we note that without a clear legal definition of altruism this is difficult to assess.

Additional comments: The following sets out some of the difficulties World Vision of Australia identifies with the proposed legislation - Charities Bill 2003.

The aim of the Charities Bill 2003

The Treasurer has stated that the main aim of the proposed legislation is to provide guidance and clarity as to which activities and purposes charities can be engaged in if they are to meet the definition of a charity.

The government has welcomed and encouraged submissions from the charitable sector regarding the proposed legislation. However it has not given a firm assurance that proposed legislation would not be used as an instrument for putting charities under an unacceptable and burdensome degree of governmental and judicial scrutiny, or to repress unfavourable criticism of government or alternative viewpoints. World Vision of Australia is concerned that in its present form, the legislation could be put to this use.

The effect of the proposed legislation on the advocacy activities of charities

- Advocacy can be defined as speaking with or on behalf of the poor who do not have the opportunities or access to the people and institutions with power over their circumstances. In achieving its dominant purpose of poverty relief, World Vision of Australia seeks to uncover and present the

realities of poverty and the needs and concerns of people oppressed by injustice, and seeks to change their circumstances. This is carried out through a variety of activities, including by engaging with the Australian government on its policies, actions and programs as they impact on the poor in developing countries and in Australia. This activity cannot easily be categorised as a “dominant”, “ancillary” or “incidental” purpose or sub-purpose as it is intrinsically and organically connected with many of our activities.

- We are concerned that the proposed legislation could potentially undermine these advocacy activities, by allowing them only if they are “ancillary or incidental to the dominant purpose of the charity”. This draws an arbitrary distinction between advocacy and non-advocacy activities, even when these are directed towards the same purposes. It is also unclear how “ancillary or incidental” will be defined and so there is the potential that the legislation may constrain World Vision or other charities in carrying out advocacy activities, thus hindering their overall operation.
- The proposed legislation could discourage charities from participating in debate on government policy and legislation, even where this is relevant to their dominant purpose. We note that the government agency AusAID requires the non-government organisations it funds to encourage and build capacity in policy engagement, a requirement that is potentially at odds with the proposed legislation.
- The proposed legislation could have concerning implications if the ability of charities to represent the disadvantaged is restricted. Government policies affecting standard and quality of life of the marginalised and disadvantaged should be open to free community debate and discussion, particularly by those charities that represent these groups. Many of the benefits and liberties the community enjoys today are a result of past representations and involvement of non-governmental stakeholders and civil society in the legislation, government or international action processes.

- We would advocate that alternative channels, guidelines and procedures be available to allow charities to comment on government law or policy.
- In sum, we consider that any constraints placed on the advocacy or lobbying activities by charities will only be an impediment to effective achievement of the dominant purposes of many charities. There is a need to explore measures other than the level of lobbying an organisation carries out, in determining whether it meets the definition of a charity.

Administrative issues

- Guidelines and rulings to determine “dominant and ancillary” purposes will mean more administrative functions for the ATO in implementing, monitoring and evaluating the activities of charities. If financial benchmarks (such as those used in Canada and the United States) are used, then there will be additional annual audit burdens for the ATO.

Disqualifying purpose – Clause 8

- The proposed legislation does not clearly explain what constitutes an “ancillary” or “incidental “ purpose.
- It is unclear how a charity will be able to ensure that it has not crossed the blurred line between engaging in lobbying against the introduction of appropriate regulations that diverge from ‘primary’ purpose or other purposes taken together of the charity.
- It is also unclear whether there will be any guidelines as to the level and extent the charity can involve itself in lobbying, and the types of lobbying (if any) that would be allowed.
- It is not clear who decides when and how a charity has digressed from its supposed primary purpose and should be disqualified.

- These factors mean that some existing charities, for whom advocacy or lobbying is a significant part of their activities, could lose their charitable status as a result of the legislation.

Public benefit test

World Vision of Australia has the following concerns about the definition of a public benefit:

- “Universal or common good” as defined in the legislation is subjective. If this definition were interpreted narrowly in opposition to what a charity considers good in connection with its purposes and activities, this could restrict its work.
- We are concerned as to how the requirement for “practical utility “ will apply with regard to advocacy activities. The benefits of advocacy activities to the charity and its target communities are real but often difficult to measure, particularly where charities work in national or international coalitions on a particular issue and may contribute jointly to an outcome over several years.

Consultation processes

The proposed legislation has been not developed in a multi-stakeholder manner. It lacks credibility because its implementation will apparently be monitored without the involvement of other important stakeholders such as consumers and communities that are affected by the proposed legislation.

Extra-territorial legislation

World Vision of Australia serves a wide “community “and vast area internationally.

Extra territorial legislation holds important implications for Australian charities and the way in which they conduct their business activities locally and abroad.

Australian and International legislation have to be considered and basic human rights upheld.

- Given the trends developing in other parts of the world (for example, in the United Kingdom and Canada), it is clear that current proposed legislation in Australia which covers charities needs to evolve through consultation with charities and in the context of any extra territorial jurisdiction. This is especially important now, as the world is faced with new challenges. This is an era of corporate and economic globalisation.
- Will there be any flexibility in the application of the proposed legislation that could affect the primary and subsidiary activities and the future existence of some charities?
- The proposed legislation should recognise the present context of globalisation of trade flows and communications as well as of increased vigilance of charities and consumer associations.
- It is increasingly in the interest of charities and the beneficiaries it serves to undertake, to adopt and implement publicity campaigns to preserve its purpose, ethos and existence.