

# *Good* *Shepherd*

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SUBMISSION TO THE  
BOARD OF TAXATION  
CONSULTATION ON THE DEFINITION OF A  
CHARITY

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## 1. GOOD SHEPHERD YOUTH AND FAMILY SERVICE BACKGROUND AND CAPACITY TO RESPOND

Good Shepherd Youth and Family Service is a small to medium community services organisation providing support to children and youth and their families. The organisation is auspiced by the Sisters of the Good Shepherd and is one of a number of their works around Australia. Good Shepherd Youth and Family Service operates from four locations in the metropolitan and outer metropolitan area of Melbourne; Collingwood, St. Kilda, Hastings and St. Albans

Good Shepherd Youth and Family Service is not for profit, is a Public Benevolent Institution and has Deductible Gift Recipient Status. The organisation is incorporated under the Victorian Associations Incorporation Act 1981.

Good Shepherd Youth and Family Service welcomes the opportunity to respond to the examination of the Charities Bill 2003 by the Board of Taxation.

We will make a response on the two terms of reference provided by the Treasurer-

- the workability of the definition of a charity proposed in the draft legislation (The Charities Bill 2003) and the Explanatory Material issued by the Treasurer on 22 July 2003; and
- whether the public benefit test in the exposure draft should also require the dominant purpose of a charitable entity to be altruistic, as recommended by the Report of the Inquiry into the definition of Charities and related Organisations.

In making our response we wish to express in the strongest of terms our frustration with

- the limited opportunity provided by these terms of reference to deal with some major concerns around the definition of charity posed by the proposed Bill
- the failure of the Government to use the opportunity presented by this Bill for reform of the charitable and not for profit sector and
- the failure of the Government to strengthen public confidence in the role of the charitable sector in a strong civil society. The Government has simultaneously embarked on initiatives with the clear agenda of diminishing public critique and debate of Government policy.

The Charities Bill 2003 must be seen in the context of long standing concern around the good functioning of the Australia's charitable sector. This includes the Industry Commission Report on Charitable Organisations in Australia

(1995)<sup>1</sup> and the Report of the Inquiry into the Definition of Charities and related Organisations. (2001)<sup>2</sup>.

## 2. THE PURPOSES AND ACTIVITIES OF GOOD SHEPHERD YOUTH AND FAMILY SERVICE

The purposes and activities are spelled out in the Constitution of Good Shepherd Youth and Family.

*“To provide direct and immediate support to sick, homeless or disadvantaged children and young people and their families, particularly low income and marginalised people suffering the effects of poverty, homelessness, abuse and unemployment by providing:*

- (i) financial relief for such children, young people and their families;*
- (ii) counselling, maintenance, residential care, training, support and care of the children and young people and their families including those with health problems of exposed to dangers arising from: drug addictions, sexual abuse, alcohol abuse. Prostitution, AIDS, sexually transmitted diseases and other significant health problems:*
- (iii) training of personnel to educate, counsel and care for the children and young people and their families.”*

Ancillary Purposes are to

- “*
- (i) work in partnership with children and young people and their families to promote and build a just society in accordance with the philosophy of the Sisters of the Good Shepherd;*
- (ii) promote the total development of children and young people and their families to:*
  - ensure that all such people have the opportunity to achieve their individual goals and aspirations;*
  - assist those people to exercise the right of control over their own lives;*
  - ensure that individuals have equity of access to the systems and structures and resources of our society:*
- (iii) exert an influential role within the Christian Church and within society to:*
  - develop a deep respect for the dignity and rights of each human person;*
  - to show an active concern for the establishment of the more just society;*

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<sup>1</sup> Industry Commission (June 1995). “Charitable Organisations in Australia”. Report No 45. Australian Government Publishing Service.

<sup>2</sup> Charities Definition Inquiry (2001) “Report of the Inquiry into Definition of Charities and Related Organisations”. Commonwealth of Australia.

- *to help remind the Church and society of their primary responsibility to the poor and marginalised people of our world.*<sup>3</sup>

The further powerful direction given to the work of Good Shepherd Youth and Family Service is derived from the Mission Statement (See Appendix 1), which is shared with some other works of the Sisters of the Good Shepherd. It will be noted that together the purposes and the Mission Statement provide a strong imperative to social action and advocacy alongside the provision of services. For Good Shepherd Youth and Family Service the two cannot be disentangled nor can the imperative to act be subsidiary to providing service. The obligation extends from the vision of the founding of the order of the Sisters of the Good Shepherd.

### 3. THE WORKABILITY OF THE DEFINITION OF CHARITY IN THE CHARITIES BILL 2003

The Board of Taxation has provided a definition on workability to guide submissions. Good Shepherd Youth and Family Service will respond to issues of whether the proposed legislation provides greater clarity and transparency to the organisation, the administrative burden created by the legislation, the flexibility afforded by the definition and the adequacy of extant administrative arrangements.

#### 3.1 Clarity and transparency

The proposed legislation does not provide clarity and transparency for Good Shepherd Youth and Family Service. The Exposure Draft while providing greater clarity for some organisations, which currently lie outside the charities provisions, such as self-help groups, in fact, creates confusion for Good Shepherd Youth and Family Service. While past reviews have urged the codification of the common law understanding of “charity” little is achieved if that codification creates further uncertainty for agencies such as Good Shepherd Youth and Family Service. The uncertainty is derived from the way in which dominant and ancillary purposes may be interpreted in relation to disqualifying purposes.

Section 4(1) c requires that an entity

*“does not engage in activities that do not further, or are not in aid of, its dominant purpose: **and** does not have a disqualifying purpose”.*

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<sup>3</sup> Good Shepherd Youth and Family Service Inc. Constitution and Rules

Good Shepherd Youth and Family Service has as its dominant purpose the

*“ direct and immediate support to sick, homeless or disadvantaged children and young people and their families, particularly low income and marginalised people suffering the effects of poverty, homelessness, abuse and unemployment”.*

We have also a very strong role in advocacy for the poor and marginalised groups mentioned above. This is reflected in an active social policy unit funded from donation and in the broad range of advocacy activities undertaken by workers at every level of the organisation. These activities are spelled out as ancillary purposes in the Good Shepherd Youth and Family Service Constitution but the proposed legislation leaves doubt as to whether **they would be seen as legitimately in support of the dominant purpose.**

This is because regardless of the dominant purpose under the proposed legislation it is possible that advocacy of this kind could be seen to be a **disqualifying purpose** under Section 8 (2) (a)

*“the purpose of advocating a political party or cause”*

and/or Section 8(2) (c)

*“the purpose of attempting to change the law or government policy”*

This could place the charitable status of Good Shepherd Youth and Family Service at risk. Much of the activity of Good Shepherd Youth and Family Service is aimed at removing the unjust and marginalizing impacts of Government policy and legislation on children youth and their families or of ensuring that proposals for policy change take consideration of those groups.

Good Shepherd Youth and Family Services recommends that lack of clarity and transparency in the exposure draft be dealt with by removing Section 8(2) (c) from the list of disqualifying clauses and part of Section 8 (2) (a) relating to reference to political causes.

We note that the Report of the Committee of Inquiry into Charitable Definition did not recommend ‘attempting to change the law or government policy’ as a purpose which should constitute disqualification.

Failure to remove and amend these clauses would in the view of Good Shepherd Youth and Family Service place the worth of the legislation as a whole at question and we would form the conclusion that at this point in time it would not be appropriate to codify the principles around charities and charitable purposes.

### 3.2 Administrative Burden Created by the Legislation

Good Shepherd Youth and Family Service is concerned at the potential administrative burden created by the draft legislation. This arises not so much from specific administrative requirements laid down in the draft but from the emphasis on the assessment of activities in order to assist in defining whether an organisation is charitable.

We point to the Submission of the Australian Catholic Church Tax working Party Submission to the Inquiry into the Definition of Charities and Related Organisations<sup>4</sup>, which concluded that

*“if an organisation is identified as having a charitable purpose, then the activities carried out by that organisation are essentially charitable.”*  
(Australian Catholic Church Tax Working Party 2001:13)

The Catholic Church presents two organisations with very similar activities that are defined not by their activities but by their purposes- both are health care providers but one is set up to make a profit and the other is set up so that ‘others may flourish’. The Church rejected the validity of the distinction between “core and “non-core activities” as a means of defining a charity. Indeed the layered process of definition proposed in this draft (core definition, dominant purpose and disqualifying purpose) supported by the assessment of activities will create the need for extensive administrative effort by organisations such as Good Shepherd Youth and Family Service.

Given that the draft legislation utilizes the assessment of activities to define charitable status, prudent governance of an organisation would demand that review and assessment of activities of an organisation could be expected from time to time. In the absence of a Charities Commission as recommended by the Inquiry into the Definition of Charities and related Organisations (Report of the Inquiry into the Definition of Charities and related Organisations 2001:294) it could be anticipated that this would be undertaken by the Australian Tax Office.

Good Shepherd Youth and Family Service is concerned at the vast amount of administrative time and the resources (such as a workflow data base) that would be required to document in an ongoing way the content and activities of each worker and programme in order to substantiate that the activities were substantially directed toward the dominant purpose.

We recommend that the amendments to Section 8 proposed above would go some way to addressing issues of administrative complexity and costs.

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<sup>4</sup> Australian Catholic Church Tax Working Party (January 2001) “Submission to the Inquiry into the Definition of Charities and Related Organisations

### 3.3 Flexibility Afforded by the Draft Legislation

The uncertainties created by the exposure draft do not lead to greater flexibility for organisations. This is the consequence of

- the layered definitional requirements of charity which is more restrictive than the current common law arrangements
- the fact that the legislation will still require considerable interpretation by the ATO especially in the assessment of dominant and ancillary purposes and activities
- the introduction of the disqualification arising from clause (8) (1) which addresses unlawful activities.

All constrain non-profit organisations such as Good Shepherd Youth and Family Service in that administrative and governance activities will be greater in order to secure and ensure the clear status of the organisation in an ongoing way.

### 3.4 Administration of the Legislation - Our Concerns

The exposure draft does not address some core concerns around the administration of the definition of charity and the various entitlements that come with that definition. We have already expressed our support for the separation of the entity responsible for approving charitable status from the entity responsible for revenue raising.

During the Charities Inquiry the charitable sector expressed concern about the

- inappropriateness of revenue agencies at the Commonwealth and State level being responsible for assessment of charitable status.
- the inconsistency of decision making by the ATO and
- the inconsistencies of definition across Commonwealth law and practice and between Commonwealth and State.

Good Shepherd notes that the exposure draft addresses some, but not all of the inconsistencies in Commonwealth law and practice but fails to address the other key concerns. In our view the draft legislation is a lost opportunity to address these issues. The partial response imposes greater administrative costs for the agency and does not deal with the concerns around Tax Office administration of charitable status.

## 4. ALTRUISM AS A FEATURE OF DOMINANT PURPOSE

Assuming that the codification of charity definition will proceed despite the deficits of the draft legislation then the core definition of charity should be strengthened by the addition of a requirement that the charity should be altruistic.

This is consistent with the recommendation of the Charities Definition Inquiry that

*“That the public benefit test, as currently applied under the common law, continue to be applied; that is, to be of public benefit a purpose must:*

- *be aimed at achieving a universal or common good;*
- *have practical utility; and*
- *be directed to the benefit of the general community or ‘a sufficient section of the community’.*

*However the Committee considers that in order to provide a greater clarity to charities and the wider community, the public benefit test for charitable purposes should more explicitly embrace the concept of altruism.” (2001:124)*

The Australian Catholic Church while opposed to the codification of the definition of charity supported the importance of the legal definition of charitable organisation having some correspondence to the real definition of charity.

*“It is well known that the origin of the word charity is “caritas”, meaning love. In the Christian tradition, this refers both to God’s love for humankind and the love that Christians, following the example of Christ have for one another and for other human beings.....it is a concrete commitment to the well-being of others that goes beyond emotion and is more properly seen as a voluntarily assumed duty of one human being to another, a duty owed to them for not other reason other than by virtue of their human dignity. (Australian Catholic Church Tax Working Party :2001:7)*

## Summary

The selective inclusion for the draft legislation of aspects of the recommendations of the Inquiry into Charitable Status is to be regretted. A comprehensive regulatory regime was proposed through the Inquiry’s recommendations and the partial approach creates more uncertainty and greater costs for organisations. Good Shepherd believes that there is urgent need for legislation particularly to address Public Benevolent Institution Status and the issue of administration of status through the formation of a separate entity such as a Charities Commission or Charities Board. The draft is silent on both of these matters.



*Good  Shepherd*

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**MISSION STATEMENT**

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We are Good Shepherd. Our mission is shaped by our inheritance of the vision, courage and audacity of St. Mary Euphrasia Pelletier and the Good Shepherd tradition she began. Ours is a vision of promoting a world of justice and peaceful co-existence. Ours is the courage to embrace wholeheartedly innovative and creative ways of enabling people of all cultural, religious and social backgrounds to enjoy the fullness of life, which is the right of every human being. Ours is the inheritance to boldly challenge those structures and beliefs that diminish human dignity. We work to ensure the value of every human being, the communities that enable us all to thrive and the integrity of the environment that guarantees both.