

24 September 2003

Your Ref:  
Our Ref: LRH LRH 460219.1

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

Dear Sir/Madam,

**Charities Bill 2003  
Exposure Draft**

We act for a number of charities and wish to make submissions regarding the effect of the Charities Bill 2003, Exposure Draft ("the Bill").

In our submission, if the Bill is enacted in its current form certain charitable organisations who should fall within the definition of "charity" will not. In particular we refer to charitable organisations which operate under the umbrella of a parent charity. As you may be aware many charitable organisations are structured so that there is a head or parent charity which controls several organisations which perform different and discreet charitable functions.

In some cases those "subsidiary" charities make a distribution of profit to their parent charity. Whilst the money is distributed out of the charitable subsidiary, the money made remains within the charitable group. No individual member of a charitable organisation can benefit under the arrangement.

Under the Bill this practice would disqualify these types of charitable organisations from obtaining charitable status. This is because of the core definition of charity in section 4 and the definition of a not-for-profit entity in section 5 of the Bill.

Section 4 of the Bill provides that:

- "(1) A reference in any Act to a charity, to a charitable institution or to any other kind of charitable body, is a reference to an entity that:
- (a) is a not-for-profit entity..."

Section 5 of the Bill provides that:

An entity is a not-for-profit entity if:

- (a) it does not, either while it is operating or upon winding up, carry on its activities for the purpose of profit or gain to particular persons, including its owners or members; and
- (b) it does not distribute its profits or assets to particular persons, including its owners or members, either while it is operating or upon winding up.

We respectfully submit that section 5(b) be amended to read as follows:

- (b) it does not distribute its profits or assets to particular persons, including its owners or members, either while it is operating or upon winding up unless its owner or member is a charity.

Such an amendment or an amendment of a similar kind will ensure that charities which are under the umbrella of other charitable organisations and which distribute profits to parent charities will not be excluded from the definition of charity.

These types of charitable organisations satisfy all of the other criteria set out in section 4 of the Bill. More over, these types of charitable organisations do not carry on their activities for the purposes of profit or gain.

Such organisations currently qualify for charitable status and, as it is the aim of the Bill to codify the current law rather than to change it, this anomaly should be addressed so that these types of charitable organisations are not disqualified from charitable status.

We would appreciate written acknowledgement of our submission.

If you wish to discuss this matter further please contact Leanne Hughson or Garry Sebo on the telephone numbers outlined above.

Yours faithfully,

**HALL & WILCOX**