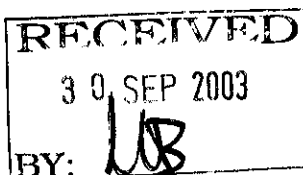


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30 September 2003

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Consultation on the Definition of Charity
Board of Taxation
Fax (02) 6263 4471

Dear Board

This letter is a submission to your inquiry concerning the Charities Bill 2003. There are significant problems with the legislation that were not adequately addressed in the Report of the Charities Definition Inquiry.

1. The idea that 400 years of precedent stands behind charity law is misleading. Tax exemptions for charitable organisations depends on the 1891 Pemsel case (Commissioners for Special Purposes of Income Tax v Pemsel [1891] AC531) which was a split decision of the Privy Council. The dissenting opinions in that case should give the Government pause for thought as the justifications for the tax exemptions for approved charitable organisations are now undated and unreasonable.

2. The 'dominant purpose' paradigm of charity law is a weak criterion. It is tantamount to mere good intentions and once tax exempt status is achieved there are insufficient state or federal regulatory policies in place to demonstrate transparency and accountability to the public. 'Not for profit' organisations may not distribute dividends to shareholders but the relatively opaque advantages to office holders of many charitable organisations could act as an adequate substitute. Also, organisations should be judged on what they *do*, not what they say they are going to do.

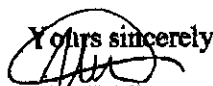
3. Extending tax advantages to self-help bodies that supposedly have open and non-discriminatory membership could open a Pandora's Box for cultic organisations in Australia. Certainly it is true these organisations encourage membership and they are non-discriminatory: they will take what will be tax exempt dollars from *anyone* who can be persuaded to donate them. This is very naive policy that assumes all self-help bodies have good intentions. There is a significant body of literature in Australia to demonstrate that is not the case including the Human Rights and Equal Opportunity Commission's Report, Article 18 to which the Government has not adequately responded.

4. Exemptions for closed or contemplative religious orders that offer prayerful intervention for the public breaches Article 2 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief appended to the HREOC Act 1986 by the Parliament in 1993. Article 2 proscribes

any distinction, exclusion, restriction or preference based on religion or belief.

No other organisations in Australia receive a tax preference for contemplation or wishful thinking. This is clearly a preference based on supernatural beliefs. We advise that we will be making a complaint to HREOC concerning this legislation requesting them to Report this breach of the Declaration by the Government's legislation to the Attorney-General to be tabled in Parliament.

Yours sincerely



Max Wallace
Public Officer