



**Victorian Women's Refuges & Assoc.
Domestic Violence Services Inc.
(VWRADVS)**

Submission to the

**Board of Taxation
Consultation on the Definition of a Charity**

September 2003

Introduction:

Victorian Women's Refuges and Assoc. Domestic Violence Services Inc. (VWRADVS) support the need for a modern definition of charity to be incorporated into the relevant legislation. The draft Charities Bill 2003 codifies the existing common law meaning of a charity and aims to move beyond the outdated definitions that have been used in tax legislation to date. VWRADVS supports this general objective, and is supportive of the recommendations of the *Charities Definitions Inquiry* that formed the precursor to this draft legislation.

VWRADVS, however, has concerns regarding the workability of the draft Charities Bill 2003 in its current format. While VWRADVS supports the clarification of what constitutes charitable purposes, it has serious concerns about how the draft legislation seeks to qualify what determines charitable status. In particular, Section 8 of the draft Charities Bill 2003 is the cause of most concern for Victorian women's domestic violence services. If this section of the draft legislation is left unchanged, VWRADVS does not believe the legislative definition of a charity is workable.

VWRADVS has two key concerns regarding the workability of the draft Charities Bill 2003. Firstly, as mentioned, the current wording of Section 8 in the draft legislation will make it unworkable. The two key issues of wording contained within the legislation that the Board of Taxation seeks to consult on are interlinked. That is, the workability of the definition of charity in the draft Bill is interconnected with the provisions outlining the purposes of entities that will exclude or include them from gaining charitable status. Qualifications that determine exclusion from charitable status narrow the definition of charity contained in the legislation by default. Furthermore, in alignment with the *Charities Definition Inquiry*, VWRADVS believes that the workability of the legislation will be limited by not simultaneously addressing the need to modernise the definition of what constitutes Public Benevolent Institution status.

Secondly, the key body that has the authority to interpret the meaning of the terms and concepts defined in the legislation will also be affected by the workability of the draft Charities Bill. VWRADVS shares the concerns of the *Charities Definition Inquiry* and the Australian Council of Social Service (ACOSS) regarding the Australian Taxation Office (ATO) being the body that currently interprets the Bill, particularly in relation to its conflict of interest as a revenue collecting body.

Consultation with organisations that fall within the new definition of a charity

The Board of Taxation has made notification of its intention to consult with organisations that are likely to fall within the new definition of a charity. As a charity and an incorporated association for women's domestic violence services in Victoria, VWRADVS will be affected by changes to the legislation. So too will its member services.

VWRADVS represents a broad range of organisations that provide services to women and children experiencing family violence. These include refuges, domestic violence outreach services, family violence networkers, indigenous family violence services, and

statewide services – the Domestic Violence and Incest Resource Centre (DVIRC), Immigrant Women’s Domestic Violence Service (IWDVS), Women’s Domestic Violence Crisis Service (WDVCS) and Women’s Information Referral Exchange (WIRE). As a representative of these services, VWRADVS advocates for the right of women and children to live free of violence.

VWRADVS operates on a collective model and while it forms a separate incorporated association, its membership coordinates the activities of this advocacy body. As services that work with women and children in crisis on a daily basis, workers from these services are fully cognisant of the legal and social obstacles their clients confront in attempting to leave situations of family violence. Working in crisis means, however, that these services, and the workers within them, often do not have the resources or the time to inform government about the inadequacies or unworkable nature of certain policies. Nor do they have the resources to challenge legal barriers that force them to have to advocate for women on an individual basis on the same issues time after time. Concerns about how any questioning of government policy might affect their service agreements can also be an impediment to their involvement in trying to advocate for the benefit of women and children experiencing family violence.

For these reasons, these organisations came together over 20 years ago to develop an organisation that might enable them as a whole to try to advance the welfare of women and children experiencing family violence. This was charitable in its purpose. Not only would the elimination of family violence and abuse be of benefit to the women and children affected by this violence, it would be an achievement in advancement of social and community welfare.

The provisions contained within the draft legislation at Sub-Section 8(c) that that disqualify an entity if they attempt to change the law or government policy if it is more than ancillary or incidental to its purposes threaten to silence the efforts of these services. These organisations form a collective of women’s domestic violence services with the sole charitable purpose of advocating for the right of women and children to live free of violence through changes to relevant laws and government policy, and thereby advancing social and community welfare. With its present wording, the draft Charities Bill 2003 would cause considerable confusion within the sector about the extent to which they could undertake any work that might be construed as advocacy – ie, aimed at changing government policy or seeking law reform.

While many individual member services of VWRADVS qualify for status as a Public Benevolent Institution, as the collective of these members it is difficult to dissociate the work of the advocacy body from the work of the individual member services. VWRADVS is an extension of these services and is charitable in its purposes. Like its members (or on behalf of them), therefore, the organisation works to assist some of the most vulnerable groups in society – abused women and children.

VWRADVS believes, therefore, that it is critical to reassess definitions of PBI status in line with the reconsideration of the definitions of charity. Indeed, it is possible that an integration of the two could be achieved to remove the confusion that already exists in regard to what comprises the differences between a charity and a benevolent institution. Modernising the definition of a charity without modernising the definition of a benevolent institution will potentially create future complications in view of the lack of clarity around what constitutes benevolence.

Definition of charity

The Board of Taxation has been requested to consult on whether the public benefit test should require the dominant purpose of a charitable entity to be altruistic.

VWRADVS believes if the term 'altruistic' were to be included as defining the 'dominant purpose' of a charitable entity, there would need to be clarification regarding what that term meant. Broadly defined as 'a voluntarily assumed obligation towards the wellbeing of others or the community generally', VWRADVS supports this forming the basis of the dominant purpose for a charity. This definition in itself, however, is open to definition and would require clarification. VWRADVS would hope to be consulted on any clarification of this term if it were to be introduced into the draft legislation.

A draft section of how an 'altruistic' dominant purpose would be incorporated into the legislation would have been beneficial to this consultation process. The draft legislation already contains provision for the public benefit test to determine that the purpose of a charitable entity must be 'aimed at achieving a universal or common good' and to be 'directed to the benefit of the general community'. The legislation further defines 'dominant purpose' and clarifies that an entity must have a dominant purpose that is charitable and for the public benefit.

If the term 'altruistic' were to be included as defining the dominant purpose of a charity, VWRADVS would oppose any efforts to use this definition to limit legitimate charitable activity – including advocacy on behalf of its service-user group. To be concerned for the welfare of others in an altruistic way should not exclude advocating on their behalf to benefit their welfare.

Section 8 – purposes disqualifying associations from charitable status

The qualification of purposes that are more than ancillary or incidental in Section 8 of the draft Charities Bill 2003 have the subsequent affect of limiting the definition of charity contained within the legislation. Where the 'dominant' purpose of an organisation is to challenge government policy or seek legal changes, under the proposed legislation this organisation would potentially not be granted charitable status. In turn, this might lead to litigation – particularly because the Section of the legislation is not clear. While the intention of this section of the Bill may not be to silence dissent, the consequences of its inclusion may well have the affect of limiting freedom of speech.

In order for a government to achieve effective policy development, it is important for departments of that government to be kept informed of the workability of the policy and where policies are not effective. Community organisations that work with government policies at a grassroots level possess a working knowledge of those policies. Through research and effective representation, advocacy bodies provide the medium through which community organisations on the ground can alert governments to problems in its policies or the need for new policies to be considered. These problems may arise over time, with changes to the demographic affected by the policies, or in the early stages of implementing policies. Where governments are willing to listen to advocacy bodies, this information is extremely valuable to the government and its policy development. Introducing a provision in the draft Charities Bill that will potentially destroy this

relationship between governments and advocacy bodies will lead to ineffectual policies and disillusionment with government.

For a small, under-resourced peak body such as VWRADVS, currently in the process of developing relations with government, losing its charitable status (and the subsequent affect on any tax benefits associated with that status) would ultimately affect the women and children experiencing family violence that it advocates on behalf of.

VWRADVS therefore supports a variation of the ACOSS recommendation that Section 8 be replaced with a provision similar to the following:

'A charity may have public advocacy purposes (which could be described in the explanatory material as including "attempts to change the law or government policy"), provided these purposes:

- (1) further, or aid, its dominant charitable purpose or purposes; and*
- (2) do not promote a political party or a candidate for political office, unless such purposes are ancillary or incidental to its dominant charitable purpose or purposes.'*

Administering the legislation

Interpreting the legislation, and administering who is eligible to receive charitable status needs to rest with a body that has no conflict of interest. The key role of the Australian Tax Office is to collect tax revenue. Its expertise does not rest with the interpretation of what does or does not constitute a charity or benevolent institution.

For these reasons, VWRADVS supports the recommendation of the *Charity Definitions Inquiry* to introduce a Charity Commission that would specialise in determining charitable status and regulating charities that fall under that definition. Such a Commission has existed previously in Victoria, and current discussions reveal the need for a regulatory body for charities and therefore point to the importance of establishing a body of this nature on a national scale.

Summary

VWRADVS believes that in its current form the definition of charity is not workable. It will potentially cause confusion in the minds of member services regarding whether the activities of their service (particularly in association with VWRADVS) are 'ancillary or incidental' and therefore disqualify their charitable status.

Secondly, as it presently stands, the draft Charities Bill 2003 could lead to an unnecessary focus on when a charity surpasses 'ancillary or incidental' levels of advocacy. This uncertainty could potentially affect the extent to which a service might advocate on behalf of its clients or involve itself in the activities of VWRADVS. Women's domestic violence services could become concerned by how much time is spent on what might be deemed 'attempting to change the law or government policy' rather than focusing on what they need to achieve in order to pursue their services' objectives. These objectives are to empower the women and children they assist to live free of abuse and violence. VWRADVS has concerns about how the administering body would regulate the new legislation and how it would quantify 'ancillary or incidental' activities. How would these

activities be documented without imposing additional administrative tasks on organisations with charitable status?

Finally, in view of the concerns raised in the above submission, VWRADVS is not convinced that the definitions of charity contained in the draft Charities Bill 2003 has the flexibility to adapt to the changing needs of society. Without the capacity for charitable organisations to attempt to influence government policy changes or to push for law reform to the extent they deem necessary, how will governments be kept informed of what's occurring at a grassroots level? The draft legislation has the potential to silence organisations that might otherwise provide valuable insights and knowledge to governments. VWRADVS recommends the draft legislation be changed to avoid silencing charities.

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On Behalf of
Victorian Women's Refuges & Assoc. Domestic Violence Services
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