



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**THE SENATE**

**TAXATION LAWS  
AMENDMENT BILL (NO. 7) 2003**

**Consideration of House of  
Representatives Message**

**SPEECH**

**Tuesday, 22 June 2004**

BY AUTHORITY OF THE SENATE

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## SPEECH

**Date** Tuesday, 22 June 2004  
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**Questioner**  
**Speaker** Cherry, Sen John

**Source** Senate  
**Proof** No  
**Responder**  
**Question No.**

**Senator CHERRY** (Queensland) (12.32 pm)—It is appropriate that I foreshadow that the Democrats will be moving amendment (2) on sheet 4278 in this committee stage. As Senator Murray indicated before we adjourned last night, the Democrats want to insist on the amendments which the Senate has made in respect of the schedule dealing with gift deductible recipients. He also indicated that we will be opposing the amendment moved by Senator Sherry in respect of the Constitution Education Fund. The amendment I am foreshadowing is to add nine councils of social service to the list of gift deductible entities.

The reason why we are doing this is that we need to make a point to the government over the course of the next couple of days that the government's response in respect of the whole issue of definition of charities has been quite inadequate. One of the other bills on the list for debate today is the Extension of Charitable Purpose Bill 2004. This bill is all that is left of the government's response to the charities definition inquiry, which reported in 2000. That inquiry, the chamber may recall, was formed as a result of discussions between the Treasurer and the Democrats about the need to properly define what a charity was and to ensure that the 400-year-old definition of 'charity' was brought up to date.

One of the areas that pretty much the entire charitable sector disagreed on was the appropriate definition of a charity for the purposes of political activity or lobbying. It is worth noting just how out of touch the government has become on this issue. Indeed, in terms of its original draft charities bill, which came out of part of its response to the charities definition inquiry, the government has thought to curtail the activities that a charity could engage in in lobbying, research and advocacy activities. It was part of what had been a consistent view by government over many years that it did not regard advocacy and research as a legitimate charitable purpose.

The particular approach the government adopted was in complete contrast to a more modern understanding of what was a charity for the purposes of tax law. In fact, it is worth noting that the charities definition inquiry, which was headed by Justice Shepherd, made it quite clear when it said:

The Committee recommends that charities should be permitted to engage in advocacy on behalf of those they benefit. Conduct of this kind should not deny them charitable status even if it involves advocating for a change in law or policy. Submission from both charities and governments have demonstrated that charities are increasingly asked to represent to governments the interests of those they seek to benefit and to contribute to the development and administration of government policies. The Committee considers that the definition of a charity should not prevent these developments as they represent an effective means of delivering outcomes for individuals, charities and governments.

That was its recommendation, and it is most unfortunate that the government chose not to follow that recommendation through. It is not just that but, in dropping its own charities bill, which was announced in the budget, now there will be no reform at all in this area and charities will be required to continue to rely on an inadequate and ad hoc approach by the Australian Taxation Office.

The Democrats are seeking to move to add to the list of gift deductible entities the most important advocates on behalf of the poor in this country, which is the Australian Council of Social Service and its constituent bodies. It is, in our view, absolutely disappointing that the government has for so long sought to resist the recognition of ACOSS and its constituent bodies as charities and as gift deductible entities. I think it is perfectly reasonable and totally consistent with the view taken by the charities definition inquiry that this parliament should recognise the fact that the work that the Australian Council of Social Service does, and its various constituent bodies, is of a charitable nature. It is work that is for the advocacy of the most poor and disadvantaged in our society. Our parliament should recognise that. It should recognise that those purposes are worth promoting. If the bulk of its expenditure ends up coming back in terms of lobbying on behalf of those people into this place, then that too is worth promoting, because I think we need to be reminded in this place, time and time again, of our responsibilities to ensure that policy is in line with advantaging the poorest and most disadvantaged in our society.

I should also point out that the government's view on advocacy and research is increasingly out of line with what is coming out of the courts. It is worth noting, for example, the case in October 2002 in the Victorian

Civil and Administrative Tribunal dealing with the tax status of the Australian Conservation Foundation, where Mr Gibson determined that the Australian Conservation Foundation was a charity for the purposes of Victorian taxation law. He made it clear that it is time for governments to come up to speed on these particular issues. He said:

It will I think be obvious that it cannot be said that a charity ceases to be a charity if its activities are predominantly said in some unspecified sense to be "political". But if the central object of an organisation is to procure a change in the law, at least in a field that is not otherwise charitable, then this object does not fall within any of the four headings of charity that the law recognises and accordingly the organisation cannot be seen as charitable.

He made it quite clear that the evidence showed that because the purposes of the ACF were consistent with national legislation in terms of protecting the environment, obviously it was an organisation which was pursuing purposes which were charitable. I think that approach could certainly be said to apply to ACOSS.

The Democrats commend this amendment to the chamber because we think it is important that this chamber completes the work that the government has failed to carry through, which is to start bringing our definition of 'charity' up to date with what it needs to be in the 21st century. We are currently operating off a definition of 'charity' which is now some 400 years old. It is time to recognise that times have moved on, the courts have moved on and the whole nature of the work that charities are doing has moved on. Certainly it is time for the government to recognise that its long and consistent campaign to downgrade the importance of research and advocacy in promoting the needs of the poor and disadvantaged in our society needs to end. We need to ensure that the Australian Council of Social Service and its very important work on behalf of the poor and disadvantaged is recognised and that Australians who make contributions towards its work are in themselves recognised through it having deductible gift recipient status.