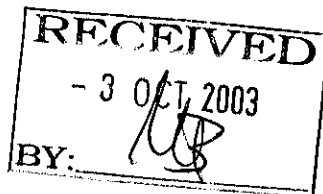


30 September 2003

caxton legal centre inc.

unlocking the law

The Board of Taxation
C/- The Treasury
Langton Crescent
Parkes ACT 2600



Dear Board Members

Charities Bill 2003

Introduction

This submission identifies significant flaws in the proposed laws and highlights the need for key modifications to ensure the 'workability' of the Charities Bill 2003.

This submission is made on behalf of the Caxton Legal Centre Inc and has also been endorsed by the Queensland Association of Independent Legal Services (QAILS). The recommendations in the submissions made on behalf of the Australian Council of Social Services and the Federation of Community Legal Centres (Victoria) Inc are also broadly supported.

An executive summary in point form is attached.

Caxton Legal Centre Inc

Established in 1976, Caxton Legal Centre Inc (Caxton) is Queensland's oldest community legal centre. Caxton's mission statement is to 'open the doors of justice by unlocking the law'. Each year Caxton provides free legal services to about 15,000 clients.

Caxton's incorporation rules establish its objects as:

To provide legal and social welfare services to low income and disadvantaged persons in need of relief from poverty, distress, misfortune, destitution and helplessness and to educate such people in legal, social welfare and related matters.

In furtherance of these objects Caxton:

- provides free legal advice and conducts casework;
- provides community legal education;
- publishes the *Queensland Law Handbook* and other publications; and
- undertakes law reform activities including submissions, lobbying and test case litigation.

Caxton is primarily jointly funded by the Commonwealth Attorney General's Department and Legal Aid Queensland. Caxton also relies on funding from

qldn 57 035 448 677

28 heal st new farm qld 4005
ph: 07 3254 1811 fax: 07 3254 1356 email: caxton@lrnnet.org.au web: www.caxton.org.au

the Queensland Department of Families Youth and Community Care and from self generated income including client donations.

Concerns about the Charities Bill

Dominant and Disqualifying Purposes

A number of provisions in the Bill, either on their own or in conjunction with other provisions have the effect of rendering an entity as ineligible for "charity" status unless all of its purposes (and activities) are ancillary or incidental to its dominant charitable purpose.

Section 4 requires a charity to have a *dominant purpose* that is charitable and for the public benefit. Section 4 requires that a charity not engage in activities that do not further or are not in aid of its dominant purpose. Section 4 also requires the charity not to have a *disqualifying purpose*.

Section 6 precludes entities from charitable status if they have other purposes unless they are further to or in aid of and are ancillary or incidental to its purposes that are charitable.

Section 8(2)(c) of the Charities Bill would disqualify an entity that has amongst its purposes a purpose of "attempting to change the law or government policy", unless that purpose is "ancillary or incidental" to the other purposes of the entity.

There are several serious problems with the policy apparent in section 8 of the Bill.

Curtailing the rights of charities to freely participate in a democracy

Paragraph 1.54 of the Explanatory Material notes:

"ordinarily, representing to Government, from time to time, the interests of those the entity seeks to benefit would be seen as incidental and in aid of the dominant purpose of the charity".

However making "representations" to Government may comprise merely one element of a charity's legitimate law reform activities. Sometimes representations made to Government are for whatever reason ignored or dismissed without due consideration or are at odds with Government policy. On such occasions those engaged in law reform may typically adopt other methods such as making representations to the public and to non government entities, for example by utilising print, broadcast and electronic media, convening public forums and conducting test case litigation. The absence of any reference to these activities in the Explanatory Material suggests that they may not be considered by the legislators to be "ancillary or incidental to" charitable purposes. If so the Charities Bill 2003 must be seen for what it is - an attempt to curtail the rights of charities, often the very organisations best

placed to voice informed community concerns, to freely participate in democratic processes by being publicly critical of law or policy.

As a matter of policy, the proposed law represents an unacceptable curtailment of one of the key elements to any democracy, namely the freedom of speech. Whilst sound policy grounds (see below) may be invoked for justifying the disqualification of entities concerned with political parties or causes and support for political candidates (ss8(2)(a) and (b)), there are no such arguments available to warrant the effective gagging of charities.

Uncertainty

Contrary to the stated intention in the Explanatory Material, the Bill does not achieve its aim of clarity.

It would be a matter of interpretation by the Courts as to whether the proposed laws would in practice limit the scope of charities' law reform activities to merely providing representations to government.

The meaning of "ancillary or incidental to"

In the Collins English Dictionary (4th Ed), *ancillary* is defined as "subsidiary" which is in turn defined as "serving to aid or supplement". *Incidental* is defined as "found in connection (with)" and "related (to)".

There would be good grounds for arguing that "full campaigning activities" serve to aid dominant charitable purposes provided that the activities are directed toward achieving reforms which further the dominant purpose of the charity.

However an alternative narrow interpretation of section 8(2)(c) may mean that charities must limit their law reform and advocacy roles to comprise only a minor part of their activities.

For example the objects of Caxton outlined above do not include "law reform". However a significant portion of Caxton's efforts are focused toward achieving law reform. Paragraph 1.32 of the Explanatory Material suggests that the dominant purpose of an entity may be ascertained not merely by the constituent documents but also by the activities of the entity. Therefore if the *Charities Bill 2003* is passed in its present form it would be unclear as to whether Caxton would retain its charitable status. This is because it may be arguable as to whether Caxton's law reform activities are ancillary or incidental to its other purposes.

However there should not need to be a reliance on the Courts to provide certainty to all concerned when the opportunity exists now to remove any uncertainty. The *Charities Bill 2003* should be amended to clarify and confirm that law reform and/or advocacy activities of charities are permitted provided that the activities are in aid of the charities' dominant purpose.

Weakening Policy Debate and Development

To shut out charitable institutions from law reform and policy debate threatens to weaken policy development in Australia. Charities, positioned at the coalface of the community are often best placed to provide insight into the issues impacting on society especially disadvantaged groups.

Inconsistency

The proposed laws would be at odds with the practice of Government to engage charities in policy development and law reform. In fact Caxton is currently contracted by the Commonwealth Department of the Attorney General to undertake law reform activities, including test case litigation and like many other charities is prevailed upon regularly by government departments and agencies to provide critical input into law and policy proposals. This submission itself serves as an example of this.

If the proposed law is enacted Caxton may be faced with the predicament of breaching its funding agreement in order to retain its charitable status.

Impacts on Funding, Recruitment and Delivery of Services

Disqualifying community legal centres from charitable status because of their law reform activities would have a significant effect on the ability of many community legal centres to continue operations. The benefits of charity status (and perhaps more importantly Public Benevolent Institution status) are heavily relied upon by community legal centres in order to maintain viable operations.

As it stands community legal centre workers are amongst the poorest paid in their respective fields. For example recent research reveals that community legal centre lawyers with substantial experience are receiving incomes in the range of \$45,000 – \$55,000, a rate commensurate with 1st and 2nd year solicitors employed in the private sector.

Any additional financial burdens placed upon community legal centres will impact upon the ability of centres to attract new staff, maintain staffing levels and in some small centres may force closure.

Political Parties and Candidates

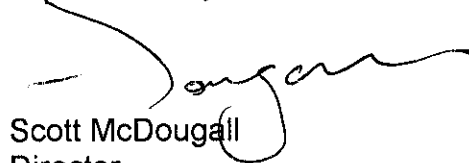
There are sound reasons for disqualifying entities concerned with advocating for a political party or cause and/or supporting a political candidate. In this regard the proposals and reasoning put forward by ACOSS (pages 18 and 19 and Recommendation 1) are supported as providing a fair, clear and workable means of excluding entities that are engaged in partisan advocacy as opposed to charitable activities.

Public Benefit – Numerically Negligible Sections of the Community

Section 7 of the Charities Bill 2003 requires a purpose to be directed to the benefit of the general community or to a sufficient section of the general community. Section 7(2) goes further to specify that such a section must not be "numerically negligible". It would be a matter of interpretation to determine the meaning of this provision and once again it is difficult to ascertain any sound policy grounds upon which to base such a law.

Indeed in some cases the fact that a section of the community is "numerically negligible" may itself perpetuate vulnerability and disadvantage and give cause to the need for charitable relief. For example indigenous Australians comprise roughly 2% of the population. It is unclear whether organisations established solely for the benefit of indigenous people would be precluded by section 7 from attaining charitable status.

Yours faithfully



Scott McDougall
Director

Executive Summary

This submission explains our concerns about the Charities Bill and recommends changes to ensure the 'workability' of the legislation. A significant concern is that Caxton Legal Centre may lose its charitable status if its law reform activities are not merely ancillary or incidental to its dominant charitable purpose.

The tables below summarise our concerns and recommendations.

Relevant sections of Charities Bill 2003: ss 4, 6, 7 & 8 - dominant and disqualifying purposes

Entity not eligible for charity status if:

- dominant purpose is not charitable and for public benefit – s4
- purpose does not benefit all or sufficient section of general community (must not be numerically negligible) – s7
- activities do not further or aid dominant charitable purpose – s4
- purposes do not further or aid and are not ancillary or incidental to dominant purpose – s6
- any disqualifying purpose – s4
- a purpose of attempting to change the law or government policy, unless ancillary or incidental to other purposes (eg representations to government) – s8(2)(c) & para 1.54 Explanatory Material notes

Concern	Possible consequences
Curtailing the rights of charities to freely participate in a democracy	<ul style="list-style-type: none"> • Representations to government – <ul style="list-style-type: none"> ◦ may be one of many law reform activities undertaken by a charity ◦ may not be effective ◦ may need to be supported by representations to the public and non government entities using media, attending public forums or conducting test case litigation • Legitimate law reform activities (other than representations to government) may not be considered ancillary or incidental to charitable purposes • Entity may not be eligible for charity status and effectively curtails its democratic rights
Uncertainty	<ul style="list-style-type: none"> • Not clear how Courts would interpret "representations to government" and how charities' law reform activities would be limited • Not clear what "ancillary or incidental to" means • May mean charities must limit law reform and advocacy activities to a minor component • Curtails charities' democratic rights
Inconsistency with Caxton's funding contract with Commonwealth AG	<ul style="list-style-type: none"> • Caxton is contracted by Commonwealth AG to undertake law reform activities provide input into law and policy proposals • Caxton may be in breach of it funding contract under the proposed law
Weakening policy debate and development	<ul style="list-style-type: none"> • Curtailing charities' rights to participate in law reform and policy debate threatens to weaken policy development in Australia
Adverse effect on funding, recruitment and service delivery	<ul style="list-style-type: none"> • Loss of charity status and associated benefits will adversely affect – <ul style="list-style-type: none"> ◦ financial viability of community legal centres ◦ centres' ability to maintain and attract quality staff ◦ overall quality of service delivery

Defining public benefit by numbers	<ul style="list-style-type: none">• a section of the community which is disadvantaged and vulnerable may be denied charitable relief because it is "numerically negligible" eg indigenous Australians
---	---