



## National Council of the YMCAs of Australia

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Incorporating the Australian YMCA Youth Trust ABN 70 763 747 412

P187

### FAX COVER SHEET

ATTENTION:	Consultation on the Definition of a Charity
COMPANY:	Board of Taxation
FAX NUMBER:	02 6263 4471
SUBJECT:	Consultation on the Definition of a Charity
FROM:	Tina Fairley
DATE:	30 September 2003
PAGES INCLUDING THIS COVER PAGE:	4

Please find attached Submission from the National Council of the YMCAs of Australia.

Regards,

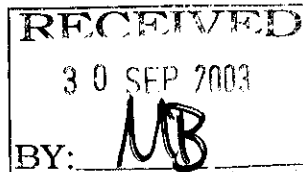
*Tina Fairley*

*Tina Fairley*

**PA to the Chief Executive Officer**

National Council of the YMCAs of Australia

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September 30, 2003

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

Dear Sir,

**RE: Consultation on the Definition of a Charity**

The National Council of the YMCAs of Australia applauds the federal government for seeking to address many of the recommendations of the Inquiry into the Definition of Charities and Related Organisations in its proposed *Charities Bill 2003*. In so doing, the Council notes the value, for Australian Taxation Office and not-for-profit sector purposes, of codifying the common law understanding of a charity and welcomes the detailed attention the draft legislation gives to explicating the relationship(s) between a charity's overall, dominant purpose and commercial activities it may pursue.

More specifically, the National Council of the YMCAs of Australia offers the following comments in response to the exposure draft of the *Charities Bill 2003*.

1. The Council supports the intention to codify common law understandings by introducing legislation that provides a 'core' definition of charitable institutions/ bodies which clearly and simply specifies their defining features.
2. Further to this, the Council supports the operational definitions of a 'not-for-profit entity', 'dominant [charitable] purpose' and 'dominant purpose [for the public benefit]' set out in the draft legislation.
3. Whilst supportive of the public benefit principles listed in Section 7 (1) of the draft legislation, the Council is concerned at the potential deleterious limitations subsection (2) may prescribe. The major issue at stake, obviously, is the determination of what constitutes a 'numerically negligible' number of people. How do the legislators conceptualise this? Who will make determinations? What if, to all intents and purposes, the number of people who will benefit is numerically negligible (as is the case with Australian Motor Neurone Disease sufferers) but the impact of their condition or situation is enormous at the individual and family levels?
4. The Council welcomes the proposed expansion of the concept of a charitable group to include self-help groups and acknowledges the legislators' efforts to attempt to provide an adequate 'controlling' framework by prescribing in the legislation that they be 'open and non-discriminatory'.



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body  
mind  
spirit

The YMCAs of Australia work to  
provide a safe environment for all people to  
grow, learn, and thrive.

The Council sees, however, that subsection 9(b) is potentially problematic in the sense that all humans have needs and the subsection does not recognise that some of these are more basic, or more worthy of support, than others (eg. food, shelter, affiliation versus power and status).

Further to this, the Council considers that it will be difficult to monitor the membership criteria and boundaries of self-help groups and monitor/ regulate their activities, especially where they are not incorporated. Once passed, it might be expected that the legislation may give rise to considerable growth in the number of self-help groups operating throughout Australia and that some of these, though inadequately or even inappropriately focused, will nonetheless fit the requirements of the Bill and thus be legitimised as charities. The draft legislation makes no reference to who will determine whether the membership criteria of self-help groups are truly reflective of their purposes, that their models of management and governance structures are appropriate and that the benefits provided are open to the public/ a class of the public.

The above comments should not be interpreted as reflecting a lack of support for, or trust in, the validity and role of self-help groups on the part of the National Council of the YMCAs of Australia. The Council however, as per its submission and further consultation with the Charities Inquiry, remains firmly of the opinion that a regulatory or 'peak' body, other than the Australian Tax Office, needs to be established to oversight the operations of charities and related entities. The intention to encompass self-help groups in the *Charities Bill 2003* in this context, simply serves to reinforce our view that Recommendation 25 of the Report of the Inquiry into the Definition of Charities and Related Organisations should be implemented by the federal government, in consultation with the not-for-profit sector and the ATO, in the near future.

5. The Council applauds the proposed clarification and extension of 'charitable purpose' to include the advancement of social or community welfare (and the inclusion of not-for-profit child-care services within this), as well as the natural environment.

In recognising the inherent value of developing and working within prevention, intervention and capacity building frameworks at the individual and group (eg. peers, family and community) levels, the proposed legislation reflects the pro-active and self-community reliant philosophy that underpins the mission, values and strategies of many successful not-for-profit organisations.

6. Whilst the direct relief of poverty, distress and disadvantage must always remain a critically important, charitable activity, the Council believes that the move within the context of the proposed legislation to acknowledge the importance of prevention and



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body  
mind  
spirit

The YMCAs of Australia work together  
to be a part of your life. We  
provide opportunities for all people to  
grow in body, mind and spirit.

intervention must be complemented by a review of the definition and related tax rulings of Public Benevolent Institutions.

The Council is disappointed that issues relating to PBI status have been ignored/ apparently glossed over. Recommendation 21 of the Charities Inquiry was that 'the category of public benevolent institution be replaced by a subset of charity to be known as Benevolent Charity, that is a charity whose dominant purpose is to benefit directly or indirectly, those whose disadvantage prevents them from meeting their needs'. Accepting that charities with PBI status of 'Benevolent Charities' can and should work indirectly as well as directly to address disadvantage would represent a major step forward ...interestingly, entirely consistent with forming purpose of the YMCA Movement during the industrial revolution (to pro-actively work to prevent, to intervene ... so that they would not fall into the traps or fall through the cracks etc!!

If you would like to discuss these issues further I can be contacted on 0418 891 531.

Yours sincerely,



Ms Caz Bosch  
President



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