



**ADCA**

Alcohol and other Drugs Council of Australia

## **Submission to draft *Charities Bill 2003***

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### **September 2003**

The following organisations have indicated their support for this submission:

**Alcohol Advisory Council Inc  
Alcohol, Tobacco and other Drugs Council of Tasmania (ATDC)  
Australian Injecting and Illicit Drug Users League (AIVL)  
NSW Network of Alcohol and other Drug Agencies (NADA)  
Victorian Alcohol and Drug Association (VAADA)  
West Australian Network of Alcohol and other Drug Agencies  
(WANADA)**

Alcohol and other Drugs Council of Australia  
[www.adca.org.au](http://www.adca.org.au)



## SUMMARY

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Three years ago the Federal Government decided to modernise the definition of 'charity' used in tax law. The current definition is based on common law that is around 500 years old. To undertake this process the Government established an Inquiry into the Definition of Charities and Related organisations in 2000. The Inquiry consulted widely with the charitable sector, including ADCA.

ADCA's submission at this time (ADCA 2001, pg 9) stated that,

*"a definition of charities should be based on the purpose of the activities not the nature of the activities. Any not-for-profit organisation whose aim it is to reduce the harm caused by alcohol and other drugs should be classified as a charity/benevolent organisation. It should not matter if its primary activity is treatment, prevention, research information services or being a peak body for the sector."*

The submission continued,

*"ADCA believes that organisations should be defined as charities and receive support based on that definition, on the basis of what they are attempting to achieve, and the evidence they can deliver. It should be based on outcomes and not on processes."*

The submission outlined that the alcohol and other drugs sector is facing both a demand and supply crises, in that demand for drug and alcohol services is increasing, there is a severe staffing crisis, and it is increasingly difficult to find people who are both qualified and willing to work for relatively low wages and recognition. For alcohol and drug agencies to be able to maintain their current level of services, it is important that they are able to maintain a "charitable" status for taxation purposes.

ADCA's position on charitable status has not changed since this time and the alcohol and other drugs sector continues to face both a demand and supply crisis. Overall ADCA is broadly supportive of the draft *Charities Bill 2003* but is disappointed that the Bill seeks to impose counter-productive restrictions on advocacy and lobbying work that is undertaken by charities. ADCA believes that Clause 8 on "Disqualifying purposes" should be removed from the draft bill.

## ALCOHOL AND OTHER DRUGS COUNCIL OF AUSTRALIA

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The Alcohol and other Drugs Council of Australia (ADCA) is the peak, national, non-government organisation representing the interests of the Australian alcohol and other drugs sector, providing a national voice for people working to reduce the harm caused by alcohol and other drugs.

ADCA works collaboratively with the government, non-government, business and community sectors to promote evidence-based, socially just, approaches aimed at preventing or reducing the health, economic and social harm caused by alcohol and other drugs to individuals, families, communities and the nation.

ADCA also houses a National Resource Centre, the information clearinghouse for the Australian alcohol and other drugs field. The clearinghouse specialises in the social, psychological, prevention and treatment aspects of alcohol and other drug-



related problems and provides information services to both the alcohol and other drugs sector and the wider community.

ADCA member organisations employ approximately 2500 people working directly within the alcohol and other drugs sector and include treatment and prevention agencies, law enforcement officers, research organisations and policy bodies. ADCA's membership includes: services, agencies and individual professionals and practitioners, as well as major university research centres; tertiary institutions that offer courses in addiction studies and other programs for alcohol and other drugs workers; officers of the law and criminal justice system; policy analysts; and administrators.

The collective wisdom and expertise of ADCA's broad and diverse membership is drawn upon through ADCA's structure, which provides mechanisms for obtaining input on key strategic issues from members in each Australian State and Territory, through their participation on ADCA's Reference Groups.

ADCA bases its work on the available evidence, drawn from research and practice, and ensures collaboration and cooperation with a wide range of partners. ADCA realises the importance of building effective partnerships both within and outside of the alcohol and other drugs sector.

## **COMMENTS ON THE DRAFT CHARITIES BILL 2003**

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Overall the draft *Charities Bill 2003* does attempt to modernise the definition of charity in a number of positive ways and ADCA is supportive of these, in particular the bill modernises the definition by:

- clarifying the list of charitable purposes. In particular with reference to use of "advancement" of a particular cause (eg., advancement of health, advancement of social and community welfare etc) and recognition that 'advancement' includes activities such as protection, maintenance, support, research and improvement;
- acknowledging that child care services are charitable; and
- acknowledging that self help organisations may be charitable, (provided they are open and non-discriminatory in their membership).

ADCA is supportive of these measures to update and modernise the definition of charities.

However, ADCA believes that the Bill seeks to impose restrictions on the advocacy and lobbying activities of charities. In particular, Clause 8 of the draft Bill would exclude from charitable status organisations that have among their purposes:

- a) advocating a political party or cause
- b) supporting a candidate for political office
- c) attempting to change the law or Government policy

unless these purposes are no more than 'ancillary and incidental' to the other purposes of the organisation.

**These disqualifying purposes have a very real potential for a number of alcohol and other drug services, including ADCA, to lose their charitable status depending on the interpretation of the meaning of the words.**



## **ADVOCACY WORK BY CHARITIES AND DISQUALIFYING PURPOSES**

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The Australian Council on Social Service (ACOSS, 2003) submission to the draft *Charities Bill 2003* outlines how a narrow interpretation of Clause 8 would suggest that charities might be restricted in the resources they devote to advocacy, or that charities should be regulated in terms of the kind of advocacy they perform. At the very least, this would require intrusive and time-consuming regulation of the advocacy work of charities, and the resources devoted to it. Charities could, for example, be required to catalogue their advocacy activity and its cost in case their advocacy activities are audited by the Australian Taxation Office.

The ACOSS submission also states (ACOSS, 2003 pg 9),

*“if the restrictions on advocacy by charities in Clause 8 of the proposed Bill are narrowly interpreted, this would particularly affect the advocacy role of peak bodies and consumer organisations, because these bodies are more likely to specialise in policy development and advocacy work on behalf of their constituencies.”*

This would be applicable in the alcohol and other drugs sector in terms of the National Peak Body (ADCA), and the state peak bodies: the West Australian Network of Alcohol and other Drug Agencies (WANADA); the NSW Network of Alcohol and other Drug Agencies (NADA); the Victorian Alcohol and Drug Association (VAADA); and the Alcohol Tobacco and other Drugs Council (ATDC) Tasmania. It would also be applicable to peak consumer organisations like the Australian Injecting and Illicit Drug Users League (AIVL). The result would be a reduction in the efficiency and effectiveness of advocacy by these organisations, which would in turn reduce the effectiveness of public policy in addressing alcohol and other drug misuse in Australia.

## **THE IMPACT ON ALCOHOL AND OTHER DRUG ORGANISATIONS**

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The possible impact on individual organisations of the definition of a charity contained in this draft Bill depends on what advocacy work the organisation does and whether this work would be classed as “ancillary or incidental” to the dominant purpose.

ADCA believes fundamentally that non-partisan advocacy, that is an integral part of a strategy to promote our underlying dominant charitable purpose, should not be a disqualifying purpose under the act. I.e., advocacy should be viewed as a legitimate strategy to achieve a charitable purpose, such as reducing alcohol and other drug related harm. This is clearly reflected in ADCA's original submission which states,

*“Charities should be based on the purpose of the activities not the nature of the activities.”*

It is difficult to estimate the impact the proposed definition eg a ‘charity’ would have on individual AOD organisations, however most alcohol and other drug agencies rely on salary packaging to recruit and retain good staff, allowing organisations to offer comparable wages to, for example, the public sector. Any loss of charitable status, income exemptions or funding would further compromise the already over-stretched services and many would have to reduce staff numbers, resulting in a reduced ability to continue operation. There is no question that the demand for the services of alcohol and other drug agencies is not being



matched by the supply at this present time and that organisations are experiencing difficulty attracting and retaining staff. Any measure that may potentially decrease the ability of organisations to pay reasonable salaries would therefore have a major impact on the sector.

Without Charitable status an organisation would need to “find” additional funding to meet wages, bills etc through for example public fundraising. This would detract staff time and resources from the core business of the organisation and ultimately reduce services to the public.

In summary, the loss of charitable status for organisations in the AOD sector would mean a severe limiting of their resources and their ability to provide services. This would be at the detriment of the health and welfare of the Australian community. The importance of the work done by the alcohol and other drugs sector can not be underestimated. The misuse of alcohol and other drugs is a major public health issue, with the total social cost of alcohol and other drug abuse in Australia being estimated at \$34billion for 1998-9 (Collins and Lapsley, 2003).

## **ANCILLARY OR INCIDENTAL TERMS AS PART OF CLAUSE 8**

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ADCA has strong concerns over the wording of “ancillary or incidental” in terms of a disqualifying purpose under Clause 8 of the Draft bill and the interpretation of the words in the bill.

The Explanatory Material for the draft bill (Board of Taxation, 2003a, pg 12) states,

*“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.”*

In a broad interpretation, advocacy work by the AOD sector should be seen as furthering or aiding the organisation’s dominant charitable purpose - to reduce AOD related harms. Also this advocacy work would not overtly seek to promote a political party or candidate for political office, but may from time to time commend one political party or candidates policies above another’s.

A narrow interpretation of these words however could see great restrictions placed on the alcohol and other drugs sector in terms of them undertaking advocacy/lobbying work to change government policy. This concern is echoed in the Answer provided for Question 10 in the Frequently Asked Questions document produced by the Board of Taxation that states:

*“engaging in advocacy or lobbying would only disqualify an entity from being treated as a charity if the advocacy and lobbying were more than ancillary or incidental to its other purposes” (Board of Taxation, 2003b).*

ADCA believes that advocacy and lobbying are an integral part of charitable work to reduce alcohol and other drug related harm in the community. Determining if this advocacy/lobbying was incidental/ancillary to the organisations dominant purpose appears to be a matter of interpretation (possibly against guidelines not yet developed) and will leave organisations extremely vulnerable.

## RECOMMENDATION

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ADCA recommends that Clause 8 of the draft *Charities Bill 2003* be removed so as to make it clear that advocacy by a charity, where its purpose is to promote an underlying charitable cause, **NOT** be a matter that would exclude an organisation from being recognised as a charity. ADCA believes that the Core definition of a charity (minus section d on disqualifying purposes) already provides enough details as to what a charity is.

If this crucial change is made, ADCA otherwise broadly supports the Bill's basic aims.

## ANSWERS TO THE BOARD OF TAXATION CONSULTATION QUESTIONS

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### 1. What is the name and contact details of your charitable organisation?

Alcohol and other Drugs Council of Australia (ADCA)  
PO Box 269 Woden, ACT 2606  
Ph: (02) 6281 0686 Fax: (02) 6281 0995  
Email: [adca@adca.org.au](mailto:adca@adca.org.au)  
Website: [www.adca.org.au](http://www.adca.org.au)

Contact Person for this submission: Ms Sarah Ward, Policy/Project Officer

### 2. What is the dominant (main) purpose/s of your charitable organisation?

ADCA works collaboratively with the government, non-government, business and community sectors to promote evidence-based, socially just, approaches aimed at preventing or reducing the health, economic and social harm caused by alcohol and other drugs to individuals, families, communities and the nation. Providing a national voice for our members.

ADCA also houses a National Resource Centre, the information clearinghouse for the Australian alcohol and other drugs field. The clearinghouse specialises in the social, psychological, prevention and treatment aspects of alcohol and other drug-related problems and provides information services to both the alcohol and other drugs sector and the wider community.

### 3. What are your principal reasons for making a submission on the workability of the Charities Bills 2003?

ADCA believes that Clause 8 of the draft *Charities Bill 2003* should be removed as it sets out to restrict advocacy work done by charities and work that is integral to promoting their cause, in this case, to reduce alcohol and other drug related harm. ADCA also believes that the Core definition (minus section d on disqualifying purposes) already provides enough details and clarity as to what a charity is.

### 4. Is your organisation currently endorsed with the Australian Taxation Office as an Income Tax Exempt Charity (ITEC)? If yes, do you assess that you would still be entitled to endorsement on the basis of the Charities Bill 2003? If not, why? If you are unsure, please explain why.



Yes the Alcohol and other Drugs Council of Australia is currently an ITEC. We are unsure of the status of other alcohol and other drug agencies around Australia.

ADCA may still be entitled to endorsement if the Charities Bill is passed. This will depend on the interpretation of the words "ancillary and incidental" in Clause 8 of the draft bill and if Clause 8 is maintained in the draft bill then it will be more difficult for ADCA, and the state/territory AOD peak bodies, to maintain their charitable status.

**5. If you are not an endorsed ITEC, are you entitled to exemption from income tax for any other reason? Do you think the Charities Bill 2003 would affect your entitlement to income tax exemption? If you are unsure please explain why.**

Again some alcohol and other drug organisations may be entitled to exemption from income tax for other reasons. If their advocacy/lobbying work was deemed to be more than incidental/ancillary to their dominant purpose under the proposed bill they may lose their charitable status as a result have to reduce staff numbers (or salaries) thus impacting on their ability to attract and retain staff and resulting in a reduction in services to the public.

**6. Would the Charities Bill 2003 impose any additional administrative burden on your charitable organisation? How? What additional compliance costs do you anticipate?**

The Charities Bill may impose additional administrative burden if the organisation is asked to keep account of its advocacy/lobbying work and supply these to the tax office or some other appointed department. This would be a very time consuming exercise to account for something that is integral to all the work that ADCA does. It would be difficult to estimate/cost ie would it be staff time? budget allowances? the number of meetings with other agencies or politicians? outlines in the organisations strategic objectives? It is difficult to see how this would/could be quantified. However, if ADCA weren't required to keep such accounts we may still be forced to do so, so as to have some data available should the issue of whether our activities are 'incidental' ever arise.

If ADCA lost its charitable status due to the interpretation of Clause 8 it would severely affect the services that ADCA would be able to offer. The organisation would need to lose at least 2 staff members, probably 1 officer from the National Resource Centre and 1 policy officer. Seeing as the policy team is currently only made up of 3 people, one of which is the CEO, our ability to effectively run the policy activities of a National Peak body would be very limited.

**7. In your assessment does the Charities Bill 2003 provide the flexibility to ensure the definition can adapt to the changing needs of society?**

ADCA believes that the Core Definition of Charities (Clause 4) would provide flexibility through the use of the word "Advancement" and that the scope that this word has been given in the Explanatory Material to include:

- Advancement of health
- Advancement of education
- Advancement of social and community welfare
- Advancement of religion
- Advancement of culture
- Advancement of the natural environment
- And other purposes beneficial to the community

would allow the definition to adapt to the changing needs of society.





However, ADCA believes that section d of the core definition should be removed, regarding disqualifying purposes. A Charity is clearly outlined by this definition without the need for any disqualifying purposes.

**8. If the public benefit test were further strengthened by requiring the dominant purpose of a charitable entity to also be altruistic, would this affect your organisation? If so, how?**

ADCA is happy for the public benefit test to be further strengthened by the purpose of being “altruistic” and does not believe that it would affect our organisation or the alcohol and other drugs sector a great deal.

## REFERENCES

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