



National Legal Aid Secretariat  
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Consultation on the Definition of a Charity,  
The Board of Taxation,  
C/- The Treasury,  
Langton Crescent,  
PARKES ACT 2600

Dear Sir/Madam,

**1. What is the name of your charitable organization? What are the contact details?**

This submission is made on behalf of all Australian Legal Aid Commissions. The names and contact details of the individual Commissions are as follows:

**LEGAL AID COMMISSION OF NSW**

Director - Mr Bill Grant (02) 9219 5925  
323 Castlereagh Street  
SYDNEY NSW 2000  
PO Box K847 HAYMARKET NSW 2000

**VICTORIA LEGAL AID**

Director - Mr Tony Parsons (03) 9269 0244  
350 Queen Street  
MELBOURNE VIC 3000

**LEGAL AID COMMISSION OF WA**

Director - Mr George Turnbull (08) 9261 6220  
5th Floor 55 St George's Terrace  
PERTH WA 6000  
GPO Box L916 PERTH WA 6001

**LEGAL AID QUEENSLAND**

Director - Mr John Hodgins (07) 3238 3442  
44 Herschel Street  
BRISBANE QLD 4000  
GPO Box 9898 BRISBANE QLD 4001

**LEGAL AID COMMISSION ACT**

Director - Mr Chris Staniforth (02) 6243 3455  
4 Mort Street  
CANBERRA 2600  
GPO Box 512 CANBERRA ACT 2601

**LEGAL AID COMMISSION OF TASMANIA**

Director - Mr Norman Reaburn (03) 62 338547  
1st Floor T&G Building  
123 Collins Street  
**HOBART** TAS 7000  
GPO Box 9898 HOBART TAS 7001

**LEGAL SERVICES COMMISSION OF SA**

Director - Mr Hamish Gilmore (08) 84633596  
82 Wakefield Street  
ADELAIDE SA 5000  
GPO Box 1718 ADELAIDE SA 5001

**NT LEGAL AID COMMISSION**

Director - Ms Suzan Cox (08) 89 993011  
6th Floor National Mutual Centre  
9-11 Cavenagh Street  
DARWIN NT 0800  
Locked Bag 11 DARWIN NT 0801

**2. What is the dominant purpose of your charitable organisation?**

The dominant purpose of all Legal Aid Commissions is to provide for the public good by the provision of legal assistance to financially disadvantaged persons. All Commissions have a legislative provision to this effect.

Services provided by Legal Aid Commissions to the public include:

- legal representation (subject to a means and merits test)
- legal advice/information
- community legal education.

Nationally, services were provided by Legal Aid Commissions to over ½ million Australians in the last financial year.

**3. With reference to the preamble on workability, do you have any concerns or issues that you wish to raise about the workability of the legislative definition of a charity proposed in the exposure draft Charities Bill 2003?**

Legal Aid Commissions generally support the legislative definition of a charity proposed in the exposure draft Charities Bill 2003.

However, Commissions have some concerns about the workability of the definition of “government body” for the following reasons:

- the definition may not alleviate the need for judicial decisions on whether a particular body is or is not a government body for the purposes of determining whether such a body is a charity or not
- Commissions may be required to continually seek clarification on whether each Commission is or is not a “government body” over time when there are changes to Commission legislation or administrative or funding arrangements
- Depending on the interpretation of this provision by the ATO, there may be inconsistencies between the treatment of particular Legal Aid Commissions even though the dominant purpose and the fundamental operation of all Legal Aid Commissions remains consistent

All Legal Aid Commissions have Public Benevolent Institution status and all currently have charitable status for the purpose of GST legislation. Commissions welcome the comments in the material circulated with the exposure draft Charities Bill by the Board of Taxation to the effect that all PBIs fall within the current common law meaning of charities and the new definition is not intended to have a different application to PBIs. Similar comments that provide reassurance to Commissions are to the effect that the Government wants to ensure that the new legislative definition of a charity does not unintentionally affect charities’ entitlements.

Commissions are concerned therefore that the definition of “government body” should ensure that the status of Commissions as charities is assured for both the present and the future. The current definition does not make absolutely clear that this will be the situation.

All Legal Aid Commissions are established pursuant to State and Territory legislation. All Commissions receive funding from both Commonwealth and State/Territory governments as well as some self-generated funding through contributions levied upon clients. All Commissions provide legal services through both employed staff and through payments to private legal practitioners. All Commissions operate under guidelines imposed by the Commonwealth government which set broad priorities and certain restrictions on the type of matters for which Commissions can provide assistance. Most Commissions operate under similar guidelines imposed by their respective State/Territory Governments.

All Commissions are governed by an independent Board or a Commission however the composition and appointment of the members of those Boards vary from Commission to Commission. In the case of most Commissions, members are appointed by the relevant State/Territory Attorney-General, with corresponding powers of removal. Similarly, the Directors of some Commissions are appointed by the State/Territory Attorney-General, while others are appointed by the Board or Commission.

In the case of all Commissions, there is no power in governing legislation for a Minister to direct the Commission regarding the provision of legal assistance to any particular person. Some Commissions have governing legislative provisions which ensure the Commission can provide services which may be against the interests of the relevant State/Territory government, for example, in the provision of legal representation to defend criminal prosecutions. Even those without such legislation, have a responsibility to provide legal aid in criminal matters.

The Charities Bill presents an opportunity for the Commonwealth government to clarify the definition of government control, for example, by including in the bill, the criteria outlined at page 6 of the Explanatory Material to the Charities Bill, ie.,

- powers invested in a Minister to approve appointments to a management board;
- powers invested in a Minister to remove appointments from the management board (or to dissolve the board);
- powers invested in a Minister to overturn decisions of the management board, or to instruct the management board;
- powers invested in a Minister to approve the work program of the entity; and
- the ability of a management board to exercise the powers of government, such as the power to make by-laws and to impose penalties for breaches of those by-laws.

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

If Commissions were to lose their status as charities as a result of any change in the way “government control” is interpreted, the costs to Commissions would be well in excess of \$5 million nationally in terms of loss of FBT exempt benefits currently paid to Commission staff. Commissions would be required to find these funds from existing resources with a resultant reduction in services to clients.

The only other concern Legal Aid Commissions have in this regard is whether there will be additional administrative burdens imposed if it is necessary to continually seek clarification as to whether the charitable status of Commissions will continue or not, on the basis of whether they are government bodies or not, as outlined above.

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

The definition is flexible enough to adapt to the changing needs of society. The concern of Legal Aid Commissions is that the definition is so flexible as to allow changes in Government policy to affect the interpretation of the legislation, which could work to the detriment of Commissions, for example, if the definition of

government bodies is interpreted differently from the clear intention of the current Government.

**6. 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 organization? If so, how?**

While the activities carried out by Legal Aid Commissions are clearly altruistic, Commissions have some concerns about the specific characterization of 'altruism' proposed by the Board of Taxation, ie., "The Board considers that 'altruism' can be characterized as a 'voluntarily assumed obligation towards the wellbeing of others or the community generally'. As organizations established under legislation, where the altruistic purpose of the organization is incorporated into legislation, Commissions may have difficulty establishing that the altruistic purpose of Commissions has been 'voluntarily assumed'. Such a test may exclude Commissions from the public benefit test.

If you require any further information, please contact me on 03 62338547.

Yours sincerely,

Norman Reaburn