

**AV-CC**

**Australian Vice-Chancellors' Committee**

*the council of Australia's university presidents*

(A.C.N. 008 502 930 – A.B.N. 53 008 502 930)

**Ref: I-03-01**

6 October 2003

Ms Jane Schwager  
Chair  
Charities Definition Working Group  
The Board of Taxation  
c/o The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Ms Schwager

**The exposure draft of the *Charities Bill 2003***

Thank you for the invitation to the Australian Vice-Chancellors' Committee (AVCC) to make a submission to the Board concerning its consultations on the workability of the proposed definition of a charity in the *Charities Bill 2003*.

I attach the submission of the AVCC for your consideration. The AVCC proposes two amendments to the Bill and a further clarification to the explanatory material that would clarify the provisions of the Bill and ensure a workable definition of a charity.

Yours sincerely



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**Australian Vice-Chancellors' Committee***the council of Australia's university presidents*

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**Submission to the Board of Taxation concerning the exposure draft of  
the *Charities Bill 2003***

The Australian Vice-Chancellors' Committee (AVCC), the council of Australia's university presidents, is the peak organisation representing Australian universities nationally and internationally. It seeks to advance higher education through voluntary, cooperative and coordinated action. The Committee is non-partisan and exists exclusively for educational purposes. Its continuing aim is to serve the best interests of the universities and, through them, the nation.

Australia's universities are all recognised as charities under existing law while also having specific access as universities to exemption from income tax and gift deductible status. The AVCC itself in its role in the advancement of education is recognised as a charity but has not sought gift deductible status although its constitution provides for the receipt of gifts to support its services to universities.

In making this submission the AVCC considers the potential impact of the Bill on universities, university related bodies and the AVCC itself.

Broadly the *Charities Bill 2003* sets out a clear basis for determining the charitable status of organisations for use for Commonwealth legislation that gives particular advantages to charities. Against the criteria set down at in Section 4 universities are confident they would continue to be considered charities but there are some concerns, which we set out below, where improvements and clarifications are needed to ensure that there is no question about the ongoing charitable status of universities and related organisations.

In terms of the AVCC itself, the Bill may act to remove its status as a charitable body that supports the advancement of education due to its role in working with Governments of all perspectives to ensure the most effective Government higher education policy.

**Criteria 4(1)(a) "is a not-for-profit entity"**

Section 5 provides that an entity must not carry on activities for the purposes of profit or gain to be 'not-for-profit'. Paragraph 1.26 of the explanatory material makes clear that charities can engage in commercial activities that generate a profit where the profits are directed to the charitable activity of the entity. This is true of universities' activities and recognises that various commercially focused operations are encouraged by Government as part of using universities to stimulate economic development locally, nationally and internationally.

Universities also own subordinate bodies that conduct commercial activities for the benefit of the university. The AVCC is concerned that such university controlled entities might not be regarded as charities under the proposed definition through conducting activities to generate profit or gain for the university. At present these bodies are generally income tax exempt.

The AVCC therefore recommends that the Bill be amended to clarify that wholly owned subordinate entities of a charity are also a charity. We suggest that a new paragraph to section 5 to provide: *an entity is not disqualified from being a not-for-profit entity under the provisions of this section by reason only that: (a) it carries on its activities for the purposes of*

*profit or gain to the charitable body or charitable bodies that wholly own that entity or (b) distributes its profits or assets to the charitable body or charitable bodies that wholly own that entity.*

Even with this provision problems will remain concerning ventures among universities and for-profit organisations, operations that are strongly encouraged by the Commonwealth. The definition of charities and Australia's taxation laws need to be able to cope with such structures such that university activity is not unnecessarily taxed and that private bodies are not able to avoid taxation on gains from their joint activity with universities.

#### **Criteria 4(1)(d) “does not have a disqualifying purpose”**

The AVCC has serious concerns about the inclusion of “attempting to change the law or government policy” (para 8(2)(c)) as a disqualifying purpose if such activity is more than ancillary or incidental to the other purposes of the entity.

The capacity of charities to advance the purposes set down at paragraphs 10(1)(a)-(g) is a key area where the existing case law definition of charity is insufficient. Advancement of education will involve effective engagement with Government to ensure its policies work to achieve the best educational outcomes for all Australians. This activity is not politically partisan – education bodies work with all Governments to improve existing policies with the objective of advancing education.

The provision could impact on the AVCC itself, since for universities such activity would be ancillary or incidental to universities' main purposes.

The AVCC works to advance education through a range of means including reflecting university concerns and aspirations to Government to help it develop new policies suitable for future education. Over the past year the AVCC has constructively assisted the Commonwealth develop its higher education reforms. It would be change of policy for the AVCC to lose its status as a charity, inconsistent with the Government's stated intentions.

Therefore the AVCC believes that para 8(2)(c) should be deleted or amended to limit it to such activities *which are not directly connected to the dominant purpose of the entity*.

#### **Criteria 4(1)(f) “is not an individual, a partnership, a political party, a superannuation fund or a government body”**

Universities, while established by Acts of Parliament both State and Commonwealth, have long been regarded as charities and hence not as Government bodies. There is some concern that some might interpret the capacity of Ministers under the various establishment Acts to appoint some people to the Governing councils of universities, and in some cases to direct the council in particular circumstances, as creating Government control of a university.

It would be useful for the explanatory material to indicate that the fact that an entity is established by parliament does not mean that it is a Government body.

#### **Should the dominant purpose of a charity be ‘altruistic’**

The Inquiry that considered the definition of a charity for the Government considered but did not recommend a tighter definition of charity that included altruism. The AVCC does not believe that inclusion of altruism would improve the definition of a charity. Universities do

have an “obligation towards the wellbeing of others or the community generally” but considers adding this to the definition would more likely cause uncertainty about the status of organisations rather than clarity.