

10 October 2003

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

Dear Chairperson

**SUBMISSION TO THE BOARD OF TAXATION
ON THE CHARITIES BILL 2003**

This submission addresses issues arising from the exposure draft of the Charities Bill 2003 and the explanatory material accompanying the bill. This is a submission by the Registrar of Aboriginal Corporations which is an independent statutory office holder appointed by the Minister for Immigration and Multicultural and Indigenous Affairs.

The Registrar administers the *Aboriginal Councils and Associations Act 1976* ('the ACA Act'). The ACA Act is a vehicle for the incorporation of indigenous groups as independent legal entities. There are approximately 3,000 organisations incorporated under the legislation. The majority of ACA corporations operate as not-for-profit entities.

I welcome the proposed legislation because it provides greater certainty, transparency and clarity to organisations operating in the charitable sector. As well, this agency supports the principle in the inquiry report that the dominant purpose of a charity should be altruistic.

The Registrar's office has examined the bill and the explanatory material and concluded that overall the proposed legislation is not onerous and is of the view that it would assist ACA and other Indigenous corporations to qualify as charitable bodies. We note the proposed expansion of the common law definition to include self-help groups would benefit Indigenous organisations. Indeed, we note the expanded definition would assist Indigenous organisations whose dominant purposes are charitable to qualify as charitable entities under the definitional requirements outlined in sections 4(1) and 4(2) of the bill.

We note that Part 3 of the bill recognises the advancement of social or community welfare and the advancement of culture as categories for charitable purposes. The explanatory material mentions that social or community welfare extends to the provision of assistance and support for Indigenous people. Similarly, the explanatory material mentions that the advancement of culture extends to the promotion of Australian indigenous culture and customs. We believe this a positive outcome for Indigenous Australians.

We note that charitable organisations under the proposed legislation would not be disqualified from meeting the definition of a charity if they advocate a political party or cause, support a candidate for political office or attempt to change the law or government policy providing these purposes further or are in aid of and ancillary or incidental to the dominant purpose of the entity.

However, we suggest that the issue of a disqualifying purpose be re-considered and clarified in the bill and the explanatory material to prevent Indigenous organisations from not qualifying as charitable bodies under the proposed legislation simply because they are very intelligently working on systemic issues through apolitical law reform and/or policy reform agenda and other advocacy work. Working on systemic issues is being encouraged by all governments at this time and this approach holds the key to stemming demand for welfare services. Such work can be distinguished from organisations with linkages to political parties.

In line with the submission from the Australian Institute of Aboriginal and Torres Strait Islander Studies, we recommend that the issue of a disqualifying purpose requires greater clarification in the bill as well as the explanatory material. This could be achieved by amending the bill to provide that an organisation's statutory or constitutional functions are not the sole test in deciding whether the organisation is eligible for charitable status.

To explain, statutory Aboriginal land councils in the Northern Territory and legal entities such as native title representative bodies and prescribed bodies corporate as well as Aboriginal land trusts have been subject to varying interpretations by the Australian Taxation Office in relation to the meaning of a dominant purpose that is charitable.

For example, the Northern Land Council in *Northern Land Council v Cmmr of Taxes (NT)* successfully appealed against the decision of the Australian Taxation Office that it did not have charitable functions. At issue in this court case was whether the Land Council primarily had a statutory purpose or a charitable purpose. This decision of the courts is currently authoritative and reflects the common law position at present. The decision should be used to clarify in the bill recent confusion as to the correct interpretation of the dominant purpose test.

Finally, according to the explanatory material, a government body does not meet the definition of a charity, but it is not clear whether an Indigenous community organisation incorporated under the ACA Act and whose activities are normally wholly funded by government grants would be deemed to be a 'government body' for the purposes of the bill. If a corporation is subject to Ministerial direction, would this then preclude them from gaining charitable status? We recommend that this matter be clarified in the bill and the explanatory material.

Thank you for the opportunity to make this submission to the Board. Please contact Joe Mastrolembo on 02 6121 4396 if you require any clarification of the matters raised in this submission.

Yours faithfully

Laura Beacroft
Registrar