

To:

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

From:

Southern Communities Advocacy and Legal Education Service Inc (SCALES)  
Ground Floor, Lotteries House  
Civic Bvd  
Rockingham  
WA 6800

30 September 2003

Dear Sir or Madam

**Submission on the Charities Bill 2003 (Cth)**

Please accept this as a submission to inquiry by the Board of Taxation on the workability of the legislative definition of a charity proposed in the draft legislation.

SCALES is a community legal centre (CLC) based in Rockingham Western Australia and a legal clinic associated with Murdoch University School of Law. It is the only CLC between Fremantle and Bunbury and has a large geographic catchment area, including the Southern coastal metropolitan regions of Rockingham, Kwinana, and Mandurah. SCALES has two main purposes, and neither is dominant. Firstly, it provides a legal service in a range of legal fields, including criminal, tenancy, immigration, young people's issues, social security, debt issues, domestic violence and family law. Secondly, it provides clinical legal education to students of Murdoch University School of Law who participate in the programme by enrolling in general and advanced undergraduate units in clinical legal practice as part of their LLB. SCALES is one of only four Commonwealth funded law clinics attached to Australian law schools.

Generally, SCALES' clients come from disadvantaged backgrounds including low incomes, and this has a great effect on their need to access legal information. Many clients depend on Centrelink benefits, are in need of

housing assistance, have physical or mental disabilities, are unemployed, young, indigenous or migrants from non-English speaking backgrounds and are culturally diverse. For these clients, SCALES provides real and accessible solutions to their legal problems, often using ADR principles to resolve disputes and avoiding unnecessary litigation. Without our service, our clients would be required to seek legal advice elsewhere, outside the region. As many clients are unable to afford to pay private practitioners for legal assistance, a heavy burden would be placed on other agencies, such as other community legal centres, Legal Aid WA, the Aboriginal Legal Service, the Tenancy Advice Service and the Citizen's Advice Bureau.

SCALES is concerned about the impact the proposed *Charities Bill* would have on its operations.

The Bill provides that a charity:

- is an entity that is not-for-profit;
- has a charitable dominant purpose that is for the public benefit;
- does not engage in activities that do not further its dominant purpose;
- does not have a disqualifying purpose;
- does not engage in conduct that constitutes a serious offence; and
- is not an individual, a partnership, a political party, a superannuation fund or a government body.

An entity is a not-for-profit entity if it does not carry on its activities for the purpose of profit or gain and does not distribute its profits or assets (Part 2, section 5). An entity's purpose is for the public benefit if it is aimed at achieving a universal or common good, it has practical utility and is directed to the benefit of the general community or to a sufficient sector of the general community (Part 2, section 7). A charitable purpose includes the advancement of health, education, social or community welfare, religion, culture, the natural environment and any other purpose that is beneficial to the community (Part 3, section 10).

Part 2 section 8 of the Bill (which defines "disqualifying purposes") blurs the above provisions. Disqualifying purposes include the purpose of "attempting to change the law or government policy; if it is more than ancillary or incidental to the other purposes of the entity concerned".

SCALES believes that the phrase "more than ancillary and incidental" is ambiguous and confusing. We have a real fear that this phrase would give the Government unreasonable discretion including punitive power to regulate organisations that are critical of the Government. The perception could be that the Government is only prepared to fund organisations that do not criticise existing laws or policies, and this would create an oppressive and generally unhealthy social environment.

In many cases the advocacy work of charities such as SCALES is not merely *ancillary* or *incidental* to their dominant purpose, but is an integral part of providing legal assistance to disadvantaged members of the community. Attempts to distinguish between charitable purposes and advocacy for the disadvantaged will be problematic, particularly in cases where advocacy is a fundamental part of the assistance provided. The advocacy that SCALES undertakes is non-partisan, includes law reform activities, is not *ancillary* or *incidental*, but is an important part of SCALES' work.

Law reform activities have been and remain part of the funding agreement between SCALES and the Commonwealth Government, including the new three-year agreement recently approved. The current Joint Review of the community legal centres in Western Australia, involving both State and Commonwealth Governments, identified law reform as a 'core' activity. Like other community legal centres, SCALES has a community development role that includes identifying the legal needs of community members and lobbying governments and other authorities for law reform and improvements in policies and procedures. In addition, SCALES has the additional role of educating law students towards identifying problems and difficulties people in the community experience in accessing justice, and developing law reform strategies to advocate for appropriate changes.

SCALES asserts that advocacy for change in policy or law is an important element of our democracy. We believe governments should not be opposed to this advocacy, as organisations like SCALES, which work closely with the poor and disadvantaged, have a unique insight into their problems that Governments should value. Without the advocacy of organisations such as SCALES, governments would be denied an understanding of the ways in which law and government policy affects marginalised members of the community.

Indeed, the Report on the Inquiry into the Definition of Charities recognised this, and concluded that charities should be permitted to engage in advocacy on behalf of their clients. The Inquiry recognised that the activities of charities may be direct (such as providing soup to the homeless, or legal advice to the unemployed) or through policy development or advocacy (such as advocating for the disadvantaged on housing, social security, immigration and family law matters). Given that the reason for codifying the definition of a charity was to resolve inconsistencies and ambiguity in the common law definition of a charity, we believe strongly that clause 8 should be redrafted in terms of the Charities Definition Inquiry, and support Recommendation 1 in the submission by ACOSS on that point.

Under the current provisions in the Bill, it is conceivable that a government may consider that SCALES' advocacy on behalf of community members exceeds what it considered to be *ancillary* or *incidental* to these purposes. In that case, SCALES could lose its charitable status, with the consequential loss of tax benefits associated with it. These benefits are restricted to those charities that assist the most disadvantaged people in society and include exemptions to fringe benefits tax, and tax deductibility of donations made to SCALES.

Like other Community Legal Centres, SCALES benefits from tax-deductible donations and would be more dependent on government funding without them. It is anticipated that SCALES will receive \$2000 this financial year in direct donations from clients and former clients, as well as supporters in the community. This is a significant amount of money to our organisation, and ensures that we can better serve our clients. Deductible gift recipient (DGR) status has another effect as well. DGR status encourages donations as it provides a tax incentive for the donor and its removal would serve as a disincentive.

SCALES may also lose its Fringe benefit tax exemption, which enables employees to elect to have salary packaging. This would be a significant reduction in staff conditions and would make it harder to recruit and retain staff who in many cases are already, we argue, working at levels beyond ordinary requirements.

We are concerned that if the disqualifying purpose provision was interpreted narrowly, charities would be required to restrict their advocacy activities. The current form of the Bill may impose a heavy administrative burden on organisations like SCALES which would be forced to monitor the resources they dedicate to advocacy to avoid losing their charitable status. We are concerned that it may be necessary for charities to undertake an ongoing, time-consuming audit of their work to ensure they are not "doing too much advocacy". We are concerned that charities may be required to prove that their advocacy work is merely ancillary or incidental to their other work or to self-regulate their activities closely to ensure that they did not lose their charity status. All of these measures would consume valuable resources that would be better utilised serving those in need.

Despite our above reservations, SCALES welcomes the attempt to codify the law of charities. SCALES submits that the Bill contains a number of provisions that will have a positive impact on charities in Australia. In particular, SCALES applauds the inclusion in the Bill the advancement of social and community welfare (Part 3, section 10(1)(c)) and other purposes beneficial to the community (including the promotion and protection of civil and human rights) (Part 3, section 10(1)(g)) as charitable purposes.

As the recipient of the HREOC Award for Human Rights in Law in 2002, SCALES is in a good position to submit that advocacy for law reform is crucial to the practice of law at the community sector level. SCALES believes that charities should not be precluded from participating in advocacy for changes in law or public policy. The Bill should reflect advocacy as an integral part of a charity's work. Advocacy should not disqualify an organisation from charity status.

For the reasons stated above, we submit further that the Bill should include in the purposes of "advancement of social and community welfare" (Part 3, section 10) the provision of legal services to the disadvantaged.

Yours sincerely

Southern Communities Advocacy,  
Legal and Education Service Inc.  
per Dr Colin James  
Acting Director