

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

from

The Western Australian Council of Social Service (WACOSS)

Background

The Western Australian Council of Social Service Inc (WACOSS) is the peak body of the community services sector in WA.

WACOSS and its members aim to improve the quality of life of people disadvantaged by the inequities of our society through:

Improving community services by exchanging ideas, information, skills and resources, creating a strong united and informed voice capable of advocating for the social needs of all Western Australians.

A continual consultation process with members, their clients, the general public and other professional organisations enables WACOSS to identify and endeavour to address social inequities within the community. This is achieved by:

- Contributing to the development of social policy;
- Promoting the provision of social services;
- Raising awareness of social issues in the community;
- Facilitating coordination and cooperation amongst social service agencies across the State; and
- Providing a range of services to member and non-member agencies.

WACOSS also provides government with feedback on policies and programs to ensure that they are relevant and offers an alternative avenue through which government can discuss sector issues with service providers and consumers.

WACOSS is part of a national network consisting of ACOSS and the State and Territory Councils of Social Service, who assist low income and disadvantaged people, Australia wide.

WACOSS supports more than 350 member agencies and individuals in the provision social and community services to disadvantaged people and low-income earners across Western Australia. In this capacity WACOSS works with and represents a range of agencies including:

- Emergency relief agencies;
- Financial counsellors;
- Neighbourhood centres;
- Community legal centres;
- Large church-based welfare organisations;
- Disability service organisations; and

- Housing and crisis accommodations services.

The Western Australian Council Office of Social Services (WACOSS) has considered the implications of the Bill and makes the following submission.

WACOSS supports the submission of the Australian Council of Social Security in its entirety and, makes the comment on the following key issues:

1 The Public Advocacy/Lobbying role of charity groups.

The Bill does attempt to bring a substandard body of relevant case form concerning charities to be enshrined into the law by way of enactment. The Bills intent resolves a number of uncertainties in relation to charity law. However, the major concern of WACOSS relates to clause 8, “Disqualifying Purpose,” which in its current form limit the scope of Public Advocacy/Lobbying by charity groups. The limitations will be experienced by service providers and organisation such as WACOSS a Peak body which represents the interest of service providers and their client base to government and private sector organisations. In this regard Public Advocacy/Lobbying is a key and necessary role of many charities and Public Advocacy Lobbyists in Western Australia for issues in relation to poverty, health, education and the environment. It is a primary function for WACOSS and charity organisations to lobby Federal State and Local Government as well as private sector organisations on these matters.

2 Codification of existing law.

One of the purposes of Clause 8 of the draft Bill is to “codify existing law”. It is acknowledged that the “existing law” and in particular Common Law has created ambiguity within the charity sector and is outdated. The Bill does attempt to address this by enshrining case law into the proposed legislation thus eliminating many ambiguities. In addition the proposed draft Bill also provides flexibility to the court system to interpret issues into the future having regard to current trends in society. WACOSS is concerned that the current wording of clause 8 does identify advocacy as a “*disqualifying purpose*” where it is more than ancillary or incidental “*to the dominant charitable purpose (s) of an organisation*”. The words *ancillary* and *incidental* have been regularly quoted in the Courts in regard to the advocacy/lobbying roles of charities. However, due to the nature of those decisions there has been little clarity in this regard. If the Bill were to be passed in its current form it would appear to be reliant on tax rulings and guidelines drafted by the Australian Taxation Office (ATO) which may then give effect to the apparent proposals to restrict the role of advocacy for charity organisations. This would be unworkable if a narrowed interpretation of clause 8 were to be adopted by the ATO or the Courts. In this regard as stated in the submission of ACOSS there are three fundamental shortcomings in relation to clause 8 of the draft Bill:

- (a) Advocacy purposes do appear to be introduced into the Bill in a negative way as, *disqualifying purpose*;
- (b) Advocacy purposes generally appear to be unnecessarily singled out for special treatment and regulation; and

- (c) Advocacy purposes are limited by the requirement that they be no more than *ancillary* or *incidental*.

The confusion that will be generated by the present wording and the potential for narrow interpretation of clause 8 in this regard creates negative impositions on the charitable sector in that:

- (a) It will significantly reduce the effectiveness of many charities and peak bodies in the fulfilment of one of their key roles in the advocacy/lobbying of governments and private sector organisations;
- (b) It will significantly increase administrative and compliance costs;
- (c) It will lead to a very cautious approach and confusion among charities as to their role in terms of engaging in advocacy/lobbying subject to the prospect of losing their charitable status;
- (d) There will be disparity created within the charity sector in that some organisations may be treated different to others; and
- (e) Overwhelmingly it will create more controversy and future litigation in the courts.

3 **Dominant purpose.**

WACOS is concerned that the current wording of clause 6, *dominant purpose*, is lacking in definition. There also appears to be no means by which the *dominant* purpose as provided for in clause 6 is interpreted in any way by any organisation. A major concern relates to charitable organisation which in many instances have established trading arms to generate profits in order to survive and meet service demands. The lack of clarity in this regard

may create confusion within the sector in relation to the dominant purpose of the organisation is if indeed thought prejudice one organisation over another.

4 **Lack of clarity/certainty of the draft Bill.**

WACOSS also raises the following concerns in relation to the an apparent lack of certainty and clarity in draft Bill:

(a) Clause 8(2) (a)

The wording of this clause does not in any way define “cause”. Most charitable organisations are engaged in a cause in support of their roles as such. The issue arises where the lack of definition of cause may lead to a *disqualifying purpose*

(b) Clause 8(2) (b)

It has been a standard process of WACOSS to report on the relevant Government Ministers at election time on matters of social importance. WACOSS is concerned that the wording of this provision in the draft Bill will restrict this important public function.

5 **Administration/flexibility.**

The draft Bill and its reporting requirements have the potential to place an unnecessary “bureaucratic, administrative burden” on charitable organisations which will be required to keep records to ensure compliance with the Act in terms of the information of the terms *ancillary* and *dominant*. Charitable organisations have limited in resources. Additional administrative functions in this regard will only impede the provision of services to those

within those organisations. This in turn will place most organisations in a position that resources will have to be reallocated to accommodate this task.