

SUBMISSION

Charities Bill

Board of Taxation

Western Suburbs Legal Service Inc.

A. Introduction to Western Suburbs Legal Service Inc.

1. Western Suburbs Legal Service Inc. (the legal service) is a not-for-profit community organisation incorporated pursuant to the Associations Incorporation Act 1981 (Cth). The legal service holds charitable, deductible gift recipient (DGR) and public benevolent institution (PBI) status for the purposes of State and Federal tax laws.
2. The legal service has been operating for 25 years in the western suburbs of Melbourne offering free legal advice, advocacy and community legal education to and on behalf of members of this community.
3. The clientele of the legal service includes people from range of culturally and linguistically diverse backgrounds. The range of legal matters attended to by the legal service is vast. More than one thousand clients are seen each year, the far majority being in receipt of low incomes or government benefits.
4. Approximately 60% of the work carried out in the legal service is done so by volunteers. This incorporates the work of the voluntary Committee of Management, solicitors, administrative assistants and students. There is a very small paid workforce, all part-time employees. The legal service operates through funds received from Commonwealth, State and Local government, grants from philanthropic trusts and fundraising activities supported by organisations and individuals.

5. The mission of the legal service is to work towards a just and equitable legal system through:
- Providing readily accessible and timely legal advice in order to protect individual rights
 - The provision of innovative, responsive and challenging legal services to the western suburbs community of Melbourne with an emphasis on those communities who experience continued problems with the justice system for reasons including age, gender, ethnicity
 - Challenging existing legal structures and processes to make them more responsive to all users
 - Lobbying and working for progressive legal reform
 - Inspiring and drawing on the goodwill of private practitioners to provide voluntary and pro bono advice and assistance to disadvantaged members of the community.

6. The legal service works to achieve its mission through casework, community legal education projects, advocating for its community's concerns through law reform projects and campaigns, information dissemination, participating in community concerns with an emphasis on social justice principles and utilizing best practice models in all aspects of its work.

B. Concerns with the Workability of the Charities Bill 2003

7. The legal service only supports the codification of the common law definition of charity if it provides greater transparency, certainty and clarity for organisations in receipt of and seeking charitable status. The legal service believes that the Draft Bill does not provide for that.

Purpose and Activity

8. The Draft Bill seems to focus on what charities shouldn't do rather than what they should do to achieve their purpose. There is even uncertainty and inconsistency in the usage of the terms to define a charity, namely, 'purpose' and 'activity'.

Disqualifying Purpose

9. The Legal Service is most concerned about the inclusion of clause 8 *Disqualifying Purpose* in the Draft Bill, which does not exist in the common law. In particular, section (1) refers to 'engaging in activities that are unlawful' and section (2)(c) "attempting to change the law or government policy; if it is either on its own or when taken together ... more than ancillary or incidental to the other purposes of the entity'.
10. The Draft Bill invites many questions rather than seek to clarify the situation. For instance, does section (1) refer to an unlawful activity under State or Commonwealth law? What would be the standard of proof? Even if this is further clarified, will the charity be penalized twice, once for the unlawful activity and secondly for the breach of the Charities legislation? When would the unlawful activity need to have taken place, after the enactment of the Charities legislation or at a time prior, bringing in an aspect of retrospectivity, which also does not exist at common law.
11. The greatest concern is with section (2)(c) of this clause as it purports to disqualify organisations from having advocacy as part of their purpose. This is particularly so for community legal centres and many not-for-profit community groups as advocating for their clients in relation to government law and policy is fundamental to the service that is provided for and on behalf of their clients.
12. In the legal service's case, legal issues that arise directly from casework and community legal education activities form the basis of the service's very existence i.e. its purpose. The legal service was created in response to unmet legal need, inequitable access to justice, and protection of basic human rights for people

- in this community. It's activities over the years have directly reflected the issues that exist for members of the community. The legal service's purpose is to speak out on these issues as individuals and members of disadvantaged groups are frequently unable to do so.
13. Further to that, the requirement to determine if advocacy is 'ancillary or incidental to the other purposes of the entity concerned' negates the fundamental nature of advocacy to an organisation's very existence.
 14. Even if the legal service accepted the dominant / ancillary purpose dichotomy, the determination of 'ancillary or incidental' purpose would be problematic. Would it be determined on a percentage basis i.e. which purpose is more 'charitable' or would it be determined by recourse to the organisation's activities. The opportunity for confusion and uncertainty would be great.
 15. The legal service believes that advocating for and on behalf of it's clients is in itself a charitable purpose. To retain clause 8 as it stands would have the effect of discouraging advocacy.
 16. In addition, it would have the effect of curtailing the community sector's ability to give feedback to government on law and government policy, an activity the sector is frequently asked to do. The legal service contributes to many submissions to government, such as this one, either from the point of view of how government law or policy impacts on its own service and clients or as part of a broader community sector response.
 17. An alternate strategy would be to recognise that charities engage in advocacy which incorporates 'attempting to change the law or government policy', on behalf of their clients as being fundamental to their charitable purpose.

Impact of legislation

18. The impact of the Charities Bill, if enacted, on not-for-profit community organisations such as the legal service could be great. The legal service would be forced to monitor its purposes and / or activities more closely to ensure they do not fall outside the legislation. The level of scrutiny would be time consuming and costly and take valuable resources away from its purpose.
19. Should it be found that the legal service's advocacy role disqualified it from having charitable status, the financial impact would be great.
20. The Draft Bill is silent on the issue of Public Benevolent Institution (PBI) status. In most not-for-profit organisations, PBI and DGR status are closely related. The legal service relies on grants and donations for its very existence. Should it lose charitable status, it would not be able to apply for grants from philanthropic trusts as they require an applicant to have DGR status and in some cases PBI status as well. It would also not be able to offer tax deductibility to those businesses or individuals wishing to donate funds, thereby minimizing the number of donors prepared to assist.
21. Its current PBI status gives the legal service exemption from Fringe Benefits Tax. This enables the legal service to offer salary packaging to staff, a necessity in a sector that pays staff considerably less than their counterparts employed in the private and government sector. The loss of this facility could make it impossible to attract and keep experienced and qualified staff.

Regulation

22. The Draft Bill is silent on how the legislation, once enacted would be regulated. Would the Australian Taxation Office take on that role, of deciding to grant and remove an organisation's charitable status? Would there be the opportunity for independent review of an adverse decision by the regulating body?

23. The legal service envisages an increase in litigation if this Draft Bill were to be enacted. This would result in a situation that is far more constraining, costly and time consuming, a considerable and unnecessary change from the current situation that exists under common law.

Prepared by

Helen Yandell, Western Suburbs Legal Service Inc.

Helen_Yandell@fcl.fl.asn.au

26 September 2003