

17 September 2003

Ref. No. rosslyn/policyissues/rm309af

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

Dear Board Members

Re: Charities Bill 2003

Youth Advocacy Centre

Established in 1981, Youth Advocacy Centre (YAC) is a community legal centre which offers legal and welfare assistance to young people between the ages of 10 and 16.

YAC's incorporation rules establish its objects as:

.... [to] provide assistance and relief to children in necessitous circumstance and in particular:

- a. To provide legal advice, referral and representation to young people, under 17 years of age, as appropriate with particular reference to the juvenile justice system.*
- b. To legally represent young people under 17 years of age in courts, tribunals or hearings and to advocate on their behalf.*
- c. To provide legal information, education and training to young people and those working with or supporting young people so that young people are better able to understand, use and benefit from the law and the legal system.*
- d. To alleviate social and legal problems by assisting, supporting and advocating for young people especially those who are in poverty, homeless, in family crisis or who are disadvantaged or disempowered in their contact with or access to systems such as the legal system, housing, income support and education.*
- e. To make local communities aware of the problems facing young people at risk and to promote community development strategies which encourage communities to take responsibility for their young people.*
- f. To undertake, sponsor and publicise critical research, policy development, and lobbying in relation to laws, and legal and social welfare systems and processes affecting young people.*

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- g. *To promote through advocacy and education the rights of young people including the comprehensive implementation throughout Queensland of international human rights standards including those in the United Nations Convention on the Rights of the Child.*
- h. *To effectively communicate to young people, those working with or supporting young people, and the community, information on the operation and role of the Youth Advocacy Centre.*
- i. *such other objects, as, in the opinion of the Committee from time to time, promote the interests of young people.*

YAC receives funding from Commonwealth Attorney General's Department, Legal Aid Queensland and Queensland Department of Families.

Concerns about the Charities Bill

The proposed legislation will have a significant impact on organisations such as YAC. The recommendations in the submission made on behalf of the Australian Council of Social Services dated September 2003 are supported by YAC.

A number of provisions in the Bill, either on their own or in conjunction with other provisions have the effect of rendering an entity as ineligible for "charity" status unless all of its purposes (and activities) are ancillary or incidental to its dominant charitable purpose.

For example, Section 8 of the Bill would exclude charitable status organisations that have among their purposes:

- "changing the law or Government policy", or
- "advocating a cause";

Unless these purposes are no more than "ancillary or incidental" to the other purposes of the organisation.

Paragraph 1.54 of the Explanatory Material notes:

"ordinarily, representing to government, from time to time, the interests of those the entity seeks to benefit would be seen as incidental and in aid of the dominant purpose of the charity."

However making "representations" to Government may comprise merely on element of a charity's legitimate law reform activities. In the event that representations to government are ignored, dismissed or not given due consideration, other methods of law reform activity are typically adopted. These include using print, broadcast and electronic media, attending public forums and test case litigation. The absence of any reference to these activities in the Explanatory Memorandum suggests that they may not be considered by the legislators to be "ancillary or incidental to" charitable purposes. If so the Charities Bill 2003 must be seen for what it is – an attempt to curtail the rights of charities to freely participate in democratic processes by being publicly critical of law or policy.

To shut out charitable institutions from law reform and policy debate threatens to weaken policy development in Australia. Charities positioned at the coalface of the community are often best placed to provide insight into the issues impacting on society especially disadvantaged groups.

Impacts on Funding, Recruitment and Delivery of Services

Disqualifying community legal centres from charitable status because of their law reform activities would have a significant effect on the ability of many community legal centres to continue operations. The benefits of charity status (and perhaps more importantly Public Benevolent Institution status) are heavily relied upon by community legal centres in order to maintain viable operations.

As it stands community legal centre workers are amongst the poorest paid in their respective fields. For example recent research reveals that community legal centre lawyers with substantial experience are receiving incomes commensurate with 1st and 2nd year solicitors employed in the private sector.

Any additional financial burdens placed upon community legal centres will impact upon the ability of centres to attract new staff, maintain staffing levels and in some small centres may force closure.

Should you have any queries in relation to our submission, please do not hesitate to contact me.

Yours faithfully

Roslyn Monro
Director