



**AUSTRALIA**

Submission

To

The Board of Taxation

Consultation on the Definition of a Charity

Authorised by:

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Endorsed by: Women's Economic Think Tank; Victorian Immigrant and Refugee Women's Coalition; National Union of Students Women's Department; Women's Electoral Lobby.

The Secretary  
Consultation on the Definition of a Charity  
The Board of Taxation  
c/- The Treasury  
Langton Crescent  
Parkes ACT 2600

Dear Madam/Sir,

The Young Women's Christian Association (YWCA) of Australia welcomes the opportunity to participate in the consultations into the definition of a charity and the workability of the proposed *Charities Bill 2003*.

We have outlined our concerns about the workability of the proposed legislation in our submission particularly in relation to clause 8(2)(c) and recommend that it be removed from the draft.

We would also draw your attention to the taxation and financial issues raised in the submission made by the YWCA of Sydney with regards to workability and sustainability of organisations like the YWCA and the charitable work that we undertake. We are also concerned that women are not seen as a specific category suitable for charitable purposes, given the continuing disadvantage most face in many areas.

Our submission was also developed in consultation with a number of the organisations who participate in the WomenSpeak Network, the Australian Forum of Youth Organisations, the Australian Youth Affairs Coalition and our local associations.

We would welcome the opportunity to present further evidence during your inquiry. Should you require any further information please contact Erica Lewis, National Policy and Research Officer, on 02 6230 5150 or [ygals@ywca.org.au](mailto:ygals@ywca.org.au)

Yours sincerely,

Robin Low  
Co-President  
YWCA of Australia

10<sup>th</sup> October 2003

## About the YWCA of Australia

1. The YWCA of Australia is a women's membership organisation nourished by its roots in the Christian faith and sustained by the richness of many beliefs and values. Strengthened by diversity the YWCA draws together members who strive to create opportunities for growth, leadership and empowerment of women in order to attain a common vision: peace, justice, freedom and dignity for all people.
2. The YWCA is a global organisation represented in more than 122 countries, with a global outreach of 25 million worldwide. In Australia, the YWCA is represented in over 35 locations in all States and Territories, and currently delivers services to more than a quarter of a million women, men and children each year, throughout rural, regional and metropolitan Australia. The YWCAs of Australia provide youth services; training opportunities; childcare; health services; housing services and support; emergency accommodation and travel accommodation. The YWCA in Australia has been providing community services for over 100 years.
3. The local associations of the YWCA of Australia are the: YWCA of Adelaide; YWCA of Albury/Wodonga; YWCA of Brisbane; YWCA of Broken Hill; YWCA of Canberra; YWCA of Darwin; YWCA of Newcastle; YWCA of Perth; YWCA of Port Pirie; YWCA of Rockhampton; YWCA of Sydney; YWCA of Tasmania; YWCA of Toowoomba; YWCA of Townsville; and the YWCA of Victoria.
4. Each of the local associations is a separate legal entity. We share a common vision as outlined in paragraph 1. The work of local associations varies widely from multi-million dollar not-for-profit community welfare organisations with significant work in service delivery to associations who focus on the aspects of fellowship and self-development fundamental to the YWCA and its history.
5. The YWCA of Australia as the national body for the YWCAs in Australia has a slightly different set of objects than many of our local associations reflecting our role. The current constitution sets out our objects as:

The objects of the Association are:

- (a) To participate in the work of the World Young Women's Christian Association and to provide a link between it and the Young Women's Christian Association throughout Australia.
- (b) To support, promote and co-ordinate new and established Young Women's Christian Associations and groups throughout Australia to assist them to support each other.
- (c) To express and promote the position and thought of Young Women's Christian's Associations throughout Australia on a national basis.

- (d) To unite all members of the Young Women's Christian Associations in the fellowship of the Association.
- (e) To do all such things as may be incidental to the attainment of such objects.<sup>1</sup>
6. The YWCA of Australia is currently considered to be a charity and to be a public benevolent institution.<sup>2</sup>

### **What is the dominant (main) purpose/s of your charitable organisation?**

7. The current work of the YWCA of Australia is in line with its objects as listed in paragraph 5. We provide a link to the World YWCA for our local associations and facilitate information sharing and the co-ordination of activities across local associations.
8. For example in July 2003 the YWCA of Australia was the host organisation for the World Council of the World YWCA in Brisbane which saw 1100 women from over 100 hundred countries come together to share program knowledge and build the World YWCA movement to better serve the women we work for by building safer and more sustainable communities. We are currently co-ordinating the national activities for the global Week Without Violence Campaign.
9. We run a national program called Encore. Encore is an exercise program designed specifically for women who have experienced breast cancer surgery at any time in their lives. Based around floor and pool exercises and relaxation techniques, it assists the many women who experience numbness, pins and needles, loss of mobility, and discomfort in their upper bodies as a result of surgery. Encore can help relieve these problems through gentle stretching exercises and hydrotherapy in a non-medical setting. Encore is currently delivered in approximately 35 locations across Australia and funded through a combination of corporate sponsorship (AVON is the major sponsor) and NSW State Government funding. Many other organisations, such as Women's Health Centres, are partners in the delivery of this program in regional areas.
10. We are also contracted by the Commonwealth Office of the Status of Women to facilitate a network of women's organisations called the *WomenSpeak Network*. The contract requires that we:
- Work collaboratively to provide informed and representative written advice to government on policy issues, development and implementation relevant to the diverse views and circumstances of women;
  - Represent the diverse views of women through consultation with the women's sector, their own constituencies and other groups and organisations relevant to women's concerns;

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<sup>1</sup> Section 4.1 of the YWCA of Australia Constitution.

<sup>2</sup> ABN 33 963 895 259 – advice from Australian Taxation Office 25/10/02.

- Act as a conduit for the exchange of information between Government and the women's sector;
- Undertake specific policy analysis and research on priority areas of organisational expertise and concern; and
- Undertake and maintain effective governance structures to fulfil the roles and responsibilities of national secretariats.

**Do you have any concerns or issues that you wish to raise about the workability of the legislative definition of a charity proposed in the exposure draft Charities Bill 2003?**

12. The YWCA of Australia joins with a range of not-for-profit and non-government organisations in its concerns about the definition of a charity proposed in this legislation.
13. Primarily we are concerned that the proposed construction of the disqualifying purposes will not provide 'greater clarity and transparency'<sup>3</sup> to either the YWCA of Australia or to a range of other non-government organisations.
14. We believe that the proposed disqualifying purposes clause specifically 8(2)(c) misunderstands the role of advocacy in progressing the causes listed in 10(1) as charitable purposes. It should be questioned why providing shelter to one person for one night would be considered a charitable activity whereas advocating for more social security payments to include rent assistance would not be unless you were a service delivery organisation working with homeless people, when both are directed at providing housing for the homeless.
15. Further the disqualifying purpose is very unclear and provides much scope for interpretation. The notes provided in the explanatory memorandum would seem to indicate different positions. The explanatory memorandum stipulates that with the exception of illegal purposes, disqualifying purposes apply where "they are more than ancillary or incidental to the other purposes of the entity [charity] concerned. It is possible, therefore, for the entity to have purposes of these types, though they must further or be in aid of, and be ancillary or incidental to the dominant purpose of the entity".
16. The explanatory notes go on, "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, the independence of charities from Government and from political processes is an important component of their role in serving the public benefit"<sup>4</sup>. This statement is at odds with government strategy which at a state/territory/federal level is to fund organisations, including those with charitable purposes and status to make representations to Government on a regular basis both based

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<sup>3</sup> <http://www.taxboard.gov.au/content/downloads/Making%20a%20Submission%202.rtf> 7/10/03

<sup>4</sup> [http://www.taxboard.gov.au/content/downloads/charities\\_exposure\\_draft.rtf](http://www.taxboard.gov.au/content/downloads/charities_exposure_draft.rtf), 1.53 – 1.55, p11.

directly out of the knowledge they gain through their service delivery work, but also arising more broadly from their membership and expertise. Some agencies are also required to act as advocates by being contracted by government to respond to inquiries. Our concern is that agencies might misread the legislation and avoid proposing legislative change for fear of losing its charitable status.

17. Even those of our local associations who have significant work in service delivery and undertake systemic advocacy following on from the knowledge that they gain from the services they deliver have questions about the workability of the definition. Please refer to the submission made to the Board of Taxation by the YWCA of Sydney for a more detailed discussion of one local association's concerns.
18. Secondly we are concerned that there may be unintended consequences flowing from this legislation were it passed as written in the exposure draft. The emphasis on service delivery may make it difficult for those federal bodies who co-ordinate advocacy but do not provide any services to be seen as charities.
19. As we have described the structure of the YWCA of Australia you will see that our objects call on us to *'to express and promote the position and thought of Young Women's Christian's Associations throughout Australia on a national basis'*<sup>5</sup>. Much of this work takes the form of advocacy to the Commonwealth Government on matters of policy or process and while the knowledge may be derived from local associations service delivery work, it is not gained from the YWCA of Australia's service delivery work.
20. Surely it cannot be the intention of the legislation to effectively bar federated national organisations whose local affiliates undertake service delivery work from access to charity status?
21. If this were to be the case it would make it significantly more expensive for the YWCA of Australia to undertake work that supports the development of service standards or encourages local associations to share program ideas and development or to undertake the advocacy foreseen in the proposed definition.
22. Further it would be at odds with the work that the Commonwealth Government has undertaken to develop corporate philanthropy in Australia. From the work that YWCAs in Australia have undertaken in developing relationships with corporate partners we know that tax deductibility for those donations is an important part of the decision making process and that a number of a local corporate sponsors are interested in developing national programs and would prefer to see that money given to the national organisation for disbursement for local program delivery, but would not do it if the national organisation was no longer a deductible gift recipient. This issue being tied up not only with charity status but also with being a PBI.

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<sup>5</sup> YWCA of Australia Constitution s4.1(c)

23. **Recommendation:** We would recommend that clause 8(2)(c) be removed from the legislation because of its unclear definition and lack of workability. The core definition in clause 4(1)(c) already requires that a charity ‘does not engage in activities that do not further, or are not in aid of, its dominant purpose’ thus rendering 8(2)(c) unnecessary.

**Would the Charities Bill 2003 impose any additional administrative burden on your charitable organisation? How? What additional compliance costs do you anticipate?**

24. Insufficient information about the operation and monitoring of a new definition is included within the draft exposure legislation to allow us to comment with any clarity on this topic.
25. We would warn against the creation of a regime that created additional administrative burdens or requirements to audit and acquit money spent on advocacy separately.

**Does the Charities Bill 2003 provide the flexibility to ensure the definition can adapt to the changing needs of society?**

26. We welcome the expansion of charitable purposes to include ‘culture’, ‘the natural environment’ and ‘child care services’. However, the codifying of these definitions does change the process of possible change of interpretations, so ways of reviewing the legislation should be considered as part of its implementation.
27. We believe the categories in the legislation defining charitable purpose are broad enough to provide flexibility in future years.

**If the public benefit test were further strengthened by requiring the dominant purpose of a charitable entity to also be altruistic, would this affect your organisation? If so, how?**

Given the definition of altruistic provided in the *Report of the Inquiry into the Definition of Charities and Related Organisations*, ‘a voluntarily assumed obligation towards the wellbeing of others or the community in general’<sup>6</sup> we would not see that as presenting an hurdle to the work of the YWCA as charitable institution.

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<sup>6</sup> <http://www.taxboard.gov.au/content/downloads/Making%20a%20Submission%202.rtf>