



Submission to the Productivity Commission Study on the Contribution of the Not for Profit Sector.

Changemakers Australia (CmA)

CmA is an incorporated national organisation which aims to support the growth of social change philanthropy in Australia.

Our mission is to encourage and resource people and organisations in the philanthropic world and beyond to focus on social and economic justice, equality for all, and environmental sustainability.

Social change philanthropy directs its support to activities that address the underlying causes of social ills, such as poverty, inequality, abuse of human rights and environmental degradation.

Focus of the CmA submission

CmA's submission relates specifically to two aspects of the Commission's Scope of Study. These are:

- Unnecessary burdens or impediments to the efficient and effective operation of community organisations
- The extent to which tax deductibility influences both decisions to donate and the overall pool of philanthropic funds.

Unnecessary burdens or impediments

The law relating to charities places restrictions upon Not for Profit organisations (NFPs) whose main (or more than incidental or ancillary) purpose or activity is advocacy that supports or opposes a change to the law or public policy (that is, "advocacy for public policy reform").

In order for NFP organisations to effectively address the underlying causes of social ills, such as poverty, inequality, abuse of human rights and environmental degradation, they must have the capacity to pursue public policy reform.

However, by doing so, NFP organisations may no longer be considered as charities under the legislation, potentially losing access to a range of taxation concessions, as well as to some philanthropic funding.

Currently two major legal and/or administrative impediments limit advocacy for public policy reform:

- 1) The current definition of 'charity'. Organisations advocating public policy reform may not be given the status of a charity because their purpose or activities may be

considered to be political on the grounds that they seek to change legislation or government policy or to promote a view on social or political issues.

- 2) The current definition of Public Benevolent Institutions (PBIs), one of the major categories of organisations eligible to receive tax deductible gifts under income tax law, requires an organisation to be providing 'direct relief' and advocacy is not considered to meet that requirement.

Tax deductibility

There are three consequences of the burdens and impediments outlined above for organisations advocating public policy reform:

- 1) Such organisations are unlikely to obtain the taxation benefits associated with Tax Concession Charity (TCC) and/or Deductible Gift Recipient (DGR) status.
- 2) Such organisations are excluded from receiving philanthropic funding from trusts or foundations which require grant recipients to have TCC and/or DGR status as well as receiving funding from individuals who seek a tax deduction for their gift.
- 3) Even where an NFP has charitable status, philanthropic trusts and foundations are reluctant to fund advocacy for public policy reform for fear of losing their own charitable status.

Whether or not these consequences of the impediments created by taxation laws reduce the overall pool of philanthropic funds is not possible to say. However, it can be safely asserted that they affect decisions to donate in terms of the direction of the donations.

Why NFP engagement in public policy reform activity is important.

Decisions not to direct philanthropic funds to organisations that engage in public policy reform activities or decisions by NFPs not to engage in such activities have significant negative consequences that inhibit achievement of the goal of social inclusion.

The Terms of Reference of this study state that "The Government is committed to finding the best solutions to problems of social exclusion by ensuring the not-for-profit, private and government sectors work together effectively, and by using evidence-based programs and policies." Taxation laws that prevent or inhibit organisations from pursuing evidence-based reforms or by working across sectors on the grounds that they may be seen as engaging in activities that imperil their funding directly obstruct the goal of finding those solutions.

The work of NFPs in all areas of charitable activity is widely recognised as an essential part of service provision in Australia. For the most part the focus is on those activities of NFPs that provide direct relief. However, it is important that this work is complemented by activities that address those factors that generate the need for relief.

For example, an organisation that is engaged in providing support for the homeless will be best placed to identify and gather evidence on the factors that contribute to the homelessness experienced by those whom they help. These factors may include aspects of the law or a lack of coordination between services or program eligibility criteria or so on. All of these factors may be generically described as aspects of public policy.

Such an organisation can continue to provide the services to the homeless indefinitely or it can seek to reduce the incidence of homelessness by advocating for reforms to those elements of public policy that contribute to it.

It is self evident that the goal of social inclusion and the goal of enhancing the economic, social, and health well being of an individual is better achieved by preventing that person from becoming homeless rather than by responding to their immediate needs when they become homeless. This can be achieved by allowing NFPs to engage in public policy reform activities in pursuance of their charitable purpose.

To prevent or to place such levels of uncertainty in the minds of NFPs that they are in practice prevented from advocating for public policy reform is to deny them opportunities for leveraging on the funds that they receive. For example, a program that diverts people from homelessness will generate benefits not only in terms of the individuals' quality of life and capacity for inclusion but will also leverage on the cost of the program to deliver returns in savings on emergency relief, health services, policing etc.

Proposals to overcome the impediments

CmA believes that NFP organisations with a dominant purpose that is charitable, altruistic and for the public benefit should be able to engage partly or entirely in advocacy for public policy reform in support of that purpose, while at the same time (a) meeting the requirements of a charity and (b) being able to qualify as a Public Benevolent Institution (PBI).

In addition, CmA believes that the definition of “charitable purposes” should be expanded to specifically include a category for the promotion and protection of civil and human rights.

The wording of the policies set out below is drawn from the recommendations of the June 2001, Report of the Inquiry into the Definition of Charities and Related Organisations (the CDI). However, it is different in one significant respect. In the definition of “charitable purposes” the CDI defined “advancement” as including: “...protection, maintenance, support, research, improvement or enhancement.” It is CmA’s view that it is necessary to make it clear beyond doubt that advocacy for public policy reform is included in the meaning of “advancement”. CmA’s policy therefore adds to the words used by the CDI the words: “prevention and promotion, ... policy development and advocacy – including that aimed at changing a law or public policy”.

The additional wording is, in CmA’s view, consistent with the CDI’s position that: “Non party-political purposes or activities such as advocating on behalf of their causes or needs, contributing to the development or implementation of public policy, entering into the public debate, or seeking to change a particular law or public policy, should be assessed against the same principles as other purposes and activities.”

The CmA agrees that charities must not be party political in that they have purposes that promote a political party or a candidate for political office.

Recommendations for reform

CmA's position is that the Australian government should reform the law relating to charity to reflect the following policies.

What is a charity?

A charity is an entity that has a dominant purpose or purposes that are (a) charitable, (b) altruistic and (c) for the public benefit. If the entity has other purposes, those purposes must further, or be in aid of, the dominant purpose or purposes, or be ancillary or incidental to the dominant purpose or purposes.

(a) Defining charitable purposes

The principles identifying charitable purposes should be set out in legislation. In doing so the law should be modernised by no longer requiring that charitable purposes fall either within the 'spirit and intendment' of the Preamble to the Statute of Elizabeth or be analogous to one or more of its purposes.

What are charitable purposes?

Charitable purposes should be defined as:

- the advancement* of health, which without limitation includes:
 - the prevention and relief of sickness, disease or of human suffering;
- the advancement* of education;
- the advancement* of social and community welfare, which without limitation includes:
 - the prevention and relief of poverty, distress or disadvantage of individuals or families;
 - the care, support and protection of the aged and people with a disability;
 - the care, support and protection of children and young people;
 - the promotion of community development to enhance social and economic participation;and
- the care and support of members or former members of the armed forces and the civil defence forces and their families;
- the advancement* of religion;
- the advancement* of culture, which without limitation includes:
 - the promotion and fostering of culture; and
 - the care, preservation and protection of the Australian heritage;
- the advancement* of the natural environment; and
- other purposes beneficial to the community, which without limitation include:
 - the promotion and protection of civil and human rights; and
 - the prevention and relief of suffering of animals.

(* Advancement is taken to include prevention and promotion, maintenance, policy development and advocacy – including that aimed at changing a law or public policy, support, research, improvement or enhancement.)

What purposes should be excluded?

An entity should be denied charitable status if it has purposes that promote a political party or a candidate for political office. An entity should also be denied charitable status if it has purposes, or engages in activities, that are illegal.

(b) The requirement that a charity be altruistic

The public benefit test should be strengthened by requiring that the dominant purpose of a charitable entity must be altruistic.

(c) What constitutes "the public benefit"?

The public benefit test, as currently applied under the common law, should continue to be

applied; that is, to be of public benefit a purpose must:

- be aimed at achieving a universal or common good;
- have practical utility; and
- be directed to the benefit of the general community or a 'sufficient section of the community'.

Self-help groups which have open and non-discriminatory membership should be regarded as having met the public benefit test.

A new three-tier definitional framework for entities

- Altruistic Community Organisation

There should be a category, known as 'Altruistic Community Organisations', that are entities that are not-for-profit and have a main purpose that is altruistic. That is, they can have secondary purposes that are not altruistic, and that do not further, or are not in aid of, or are not incidental or ancillary to, their main altruistic purpose.

These organisations are not eligible for the tax concessions (income tax exemption or deductibility) associated with being a charity.

- Charity

These should be entities with a dominant purpose that is not only altruistic but also charitable and for the public benefit.

These organisations would be eligible for Tax Concession Charity status (income tax exemption).

- Benevolent charity

In the recommended definitional framework, the category of public benevolent institution should be replaced by a subset of charity to be known as Benevolent Charity. This would include those charities whose dominant purpose is to benefit, directly or indirectly, those whose disadvantage prevents them from meeting their needs. The taxation benefits of FBT exemptions and DGR status should be restricted to this tier.

These organisations would be eligible for income tax exemptions, FBT exemptions and be eligible to receive tax deductible gifts.

Julian Gardner
Management Committee Member
Changemakers Australia