



**SUBMISSION TO THE BOARD OF TAXATION:**

**CONSULTATION ON THE DEFINITION OF  
A CHARITY**

**Aged and Community Services Australia**

## **INTRODUCTION**

Aged and Community Services Australia (ACSA) is pleased to make this submission to the Board of Taxation on the draft *Charities Bill*.

In commenting on the draft we are conscious of the fact that it is not yet clear what the practical implications of this Bill would be. It is not clear precisely how the Bill would interact with the administration of the taxation system or what the outcome might be, in the end, for the tax status of existing, or prospective, charities. Neither do we have much information about how the various tests of charitable status implied in the draft Bill would be applied.

Our comments on this draft must therefore be qualified. Support for elements in the draft Bill cannot be taken as support for any possible interpretation of them. Similarly, criticism of the possible implications of particular clauses may not be directed at the Government's intent. However where the draft Bill is capable of misconstruction, or where its intent is not clear, the Bill should be modified to reduce this uncertainty. Reduction of uncertainty is one of the stated objectives of the draft Bill.

It is already clear from the reaction to the announcement of the draft Bill that there is contention around the implications of, for example, Clause 8 *Disqualifying Purposes*. What the Bill appears to mean is qualified by the Explanatory Material, though it remains ambiguous in our view. On top of this the Treasurer has made statements about his intentions in introducing the Bill which create more possible interpretations.

ACSA believes that the current draft could be further enhanced in the interests of clarity, reducing ambiguity and giving full effect to the Treasurer's stated purpose in introducing this draft Bill. In summary ACSA believes that amendments in the following areas are required:

- The definition of 'Public Benefit'
- The treatment of 'Disqualifying Purposes'
- The definition of the 'advancement of social and community welfare'.

## **COMMENTS ON THE DRAFT BILL**

### **1) Definition of 'Public benefit'**

ACSA is concerned that this test may be misapplied. Many of our members provide a range of accommodation options to older people including some which act to cross-subsidise housing provided to disadvantaged people. This is in line with their overall charitable purpose. ACSA believes that it would be consistent with the overall thrust of the draft Bill if this point were to be specifically addressed in the Explanatory Material to require the public benefit test to take account of all of the activities of the entity.

## **2) Disqualifying Purposes**

As the Board of Taxation would be aware, this draft clause has been the subject of some criticism and some variable interpretation of its intent since the draft Bill was released. To better give effect to the Treasurer's statements that Clause 8 is not intended to penalise charities who comment on, or criticise the policies of the government of the day, this matter should be dealt with in the Bill itself. Ideally a positive statement to the effect that advocacy on behalf of people who would be the subject of 'charitable purpose', as outlined in the Explanatory Material, should be included in the Bill itself rather than being dealt with in the Explanatory Material alone.

Alternatively clause 8 (2) (c) should be deleted from the draft Bill. There is a strong case for saying that Clause 6 already deals with entities whose main purpose is attempting to change the law or government policy in the absence of a dominant charitable purpose.

## **3) Charitable Purposes**

ACSA believes that the charitable purpose at Clause 10 (1) (c) 'the advancement of social or community welfare' should explicitly include the provision of housing and accommodation support for people with special needs or who are otherwise disadvantaged in their access to housing. This should be added to the list of points at 1.67 in the Explanatory Material. We note that the GST Act makes provision for the charitable supply of housing, under s38-250 for example, which would support this.

## **CONCLUSION**

The appropriate test for this draft Bill is whether or not it supports the provision of services to people who are, for one reason or another, disadvantaged. If it does this, without increasing compliance costs and without damaging the fabric of our society by, for example, stifling debate and comment, it will have succeeded. If it cannot achieve these ends, the draft Bill should not be proceeded with.

In ACSA's view, subject to the three issues outlined above and the qualification expressed in the introduction to this submission, the draft Bill does appear likely to meet these tests.

## **OTHER MATTERS**

You have sought other information to assist the Board frame its recommendations to government. ACSA's responses are as follows:

ACSA, like the great majority of our members, is a Public Benevolent Institution and is registered as a Deductible Gift Recipient. We are an Income Tax Exempt Charity. We do not believe our status would change as a result of the draft Bill.

It is unclear whether any additional administrative burden or compliance costs would be incurred since administrative procedures have not been communicated. If any quantification of, for example, 'dominant purpose' or 'ancillary' were to be required in the future this would impose a significant compliance burden, on ACSA and on our members.

With the modifications suggested elsewhere in our submission, the proposed definition of a charity would seem to be reasonably well able to adapt to the changing needs of society.

Strengthening the dominant purpose to include altruism would not on the face of it affect ACSA.

## **ABOUT ACSA**

Aged and Community Services Australia (ACSA) is the national 'peak body' for the charitable, not-for-profit providers of aged and community care services. Approximately 1400 organisations belong to ACSA through our six state-based associations. Collectively they provide approximately two-thirds of government-funded residential aged care services, well over half of federal and state-funded community care services for older people and people with a disability and a substantial amount of specialised housing designed to meet the needs of older people, including those who may be financially disadvantaged.

The dominant purposes of ACSA are specified in our constitution as follows:

### **ACSA's OBJECT**

*The object of the Association is to act as the national peak body of church, charitable and community providers of aged care services and for the purposes of achieving that object:*

*To influence and develop philosophies, policies and programmes for the care and well-being of aged and disabled persons in Australia.*

*To promote the work of, and encourage cooperation between, members and to facilitate effective action at the Commonwealth level.*

*To provide a focus for the exchange of information and ideas to assist Members in fulfilling their role.*

*To promote the provision of appropriate community care for aged and disabled persons, including residential and domiciliary services.*

*To promote the role of not-for-profit agencies in research and as service providers for aged and disabled persons in Australia.*

*To encourage and assist with the development of educational programmes aimed at improving standards of care of aged and disabled persons in Australia.*

*To encourage cooperation between members on industrial relations issues and, when appropriate, to represent members and their member organisations in industrial negotiations.*

*To carry out other activities that are incidental to, and consistent with, these objects.*