



# Charities Bill 2003

## Submission to the Board of Taxation

Anglicare Australia  
Christ Church Community Centre  
14 Acland St  
St.Kilda, VIC 3182  
Contact: Tracey Matthews  
Ph: (03) 9534 8250  
Fax: (03) 9534 8278  
Mobile 0412 314 131  
Email: [tmatthews@anglicare.asn.au](mailto:tmatthews@anglicare.asn.au)

## **1 About Anglicare Australia**

Anglicare Australia is the national network of over 60 care and social justice agencies of the Anglican Church. Anglicare Australia is an officially recognised network of the Standing Committee of the General Synod of the Anglican Church of Australia. In this submission, the term Anglicare is used to refer to the network of organisations and Anglicare Australia is used to refer to the national association, incorporated in Victoria, and based in Melbourne. Anglicare Australia is currently endorsed as an income tax exempt charity.

Anglicare agencies are either legally part of a Diocese of the Anglican Church of Australia or are separately incorporated with constitutionally defined links to an Anglican Diocese or the General Synod of the Anglican Church. Anglicare agencies work both as diocesan or state wide community services agencies and local community based caring networks. There is close integration between the central professional agency and the local volunteer based community/parish caring outreach.

## **2. Dominant Purposes of Anglicare Australia**

The dominant purpose of Anglicare Australia is charitable. Anglicare agencies are charitable organisations under the common law definition because they are non-profit, provide a public benefit, and have a sole or dominant purpose that is charitable, which is the provision of relief of poverty, and other purposes beneficial to the community.

The dominant purpose of Anglicare Australia is defined in section 10 of the Charities Bill 2003 as “the advancement of social or community welfare”:

## **3. Workability of the Charities Bill 2003**

Anglicare Australia believes the following aspects of the Bill will significantly impact on the workability of the legislation.

### **3.1 Not for profit entities**

Section 5 (b) of the Bill states that a not for profit entity cannot distribute its profits or assets to particular persons, including its owners or members, either while it is operating or upon winding up. Anglicare Australia is concerned that the application of this section may

not be workable in the context of large complex charities. The term entity in this context is confusing when many large charitable organisations consist of a number of related parts which may or may not be considered entities.

*Anglicare Australia recommends that this section be reviewed and clarified in regard to the policy intent of this section.*

### **3.2 The charitable purposes test**

Anglicare Australia is concerned that the Bill appears to confuse charitable purpose with charitable activities. Section 4 (b) confirms that a charity must have a dominant purpose that is charitable, yet the example given in the explanatory material appears to assess charitable status by reference to organisational activities.

Section 6 (1) of the bill states that an entity has a dominant purpose that is charitable if:

- (a) it has one or more purposes that are charitable; and
- (b) any other purposes that it has are purposes that further or are in aid of, and are ancillary or incidental to, its purposes that are charitable.

*Example 1.1 in the Explanatory Material suggests that fundraising activities of the organisation are not considered charitable when viewed in isolation, however as they are incidental and conducted on a small scale to assist the wider purpose they are acceptable.*

We are concerned that charitable status may be determined based on the scale of certain activities, when in fact the dominant purpose test has been confirmed throughout the bill. To denote that the scale of fundraising activities may determine charitable status is a cause of great concern, particularly at a time when charitable organisations are forced to generate additional funds to support their charitable purposes. The nature and size of any additional activities should not be used to assess or determine charitable status if they are in aid of the organisations dominant charitable purpose.

### **3.3 Serious Offences**

Anglicare Australia is concerned about the implications and workability of section 4 (1) (e) of the bill. This section states;

- (1) A reference in any Act to a charity, to a charitable institution or to any other kind of charitable body, is a reference to any entity that:

(e) does not engage in, and has not engaged in, conduct (or an omission to engage in conduct) that constitutes a serious offence.

*A “serious offence” is defined in section 3(1) of the bill to mean an offence against a law of the Commonwealth, of a State or Territory, that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).*

We believe that the current wording will result in a range of unintended consequences and must be revised. For example non compliance with occupational health & safety or industrial relations legislation would constitute a serious offence; however it is unlikely that the law intends to disqualify organisations who may commit these types of offences. The bill also states that an entity that has previously engaged in conduct that constitutes a serious offence will not be entitled to charitable status. It appears that conviction of an offence is not necessary and therefore the determination of guilt in this instance is completely subjective and arbitrary. It appears this clause could ultimately place charitable organisations in a situation of double jeopardy.

*Anglicare Australia recommends that this section of the bill be redrafted to provide greater clarity about the policy intent of this clause and the particular circumstances to which it applies. This will ensure that the law can be applied in a fair and consistent manner and will not unnecessarily threaten the charitable status of many organisations.*

### **3.4 Dominant Purpose**

Section 6 (1) states that an entity has a dominant purpose that is charitable if and only if;

- (a) it has one or more purposes that are charitable; and
- (b) any other purposes that it has are purposes that further or are in aid of, and are ancillary or incidental to, its purposes that are charitable.

The terms ancillary and incidental are particularly ambiguous, subjective and open to wide interpretation. Lack of clarity in this context will affect the workability of the legislation and risk inconsistent, impartial and incorrect application of the law. The bill is intended to provide greater clarity; however such terms will surely lead to increased confusion and uncertainty for charities.

The ATO's role of interpreting an organisations eligibility to access a range of taxation concessions has been fraught with inconsistency to date. The ATO through their own submission to the Inquiry recognised the difficulty of their interpretative task in the absence of clearly defined guidelines. The inclusion of ambiguous terms in the proposed legislation such as "incidental" and "ancillary" will only create further confusion and anxiety.

*We recommend that the use of the terms ancillary and incidental be revised or clearly defined in the draft legislation.*

### **3.5 Disqualifying Purposes**

Section 8 2(c) states that the purpose of attempting to change the law or government policy will disqualify an organisation from charitable status. In many cases a change in law or government policy is needed to ensure that the advancement of charitable purposes can occur. To disqualify acts that seek to benefit those in need directly contradicts the spirit of the proposed legislation and in particular the recommendations of the inquiry.

The Charities Inquiry specifically recommended that charities should be permitted to engage in advocacy on behalf of those they benefit. Conduct of this kind should not deny them charitable status even if it involves advocating for a change in law or policy.

Submissions from both charities and governments have demonstrated that charities are increasingly asked to represent to governments the interests of those they seek to benefit and to contribute to the development and administration of government policies. The inquiry concluded that the definition of a charity should not prevent these developments as they represent an effective means of delivering outcomes for individuals, charities and governments.

The Commonwealth Department of Health and Aged Care in their submission to the Inquiry noted that government funding for peak bodies explicitly supports them to provide advice to the Commonwealth on major program areas. It submitted that 'Charitable organisations can make very worthwhile contributions to the development of policy through informed debate and the regular flow of feedback on needs and program effectiveness'. Environment Australia noted that environment groups contribute substantially to government environment policy initiatives. It added that: The contribution of these organisations is recognised and valued by the Commonwealth Government and, in recognition of this, a number of environmental organisations receive regular financial assistance from the government to assist with their administrative costs. In addition, a

mechanism has been developed for regular formal consultation between the peak environmental organisations and the government on matters of concern to the environment.

*Anglicare Australia strongly recommends that section 8 (2)(c) be removed entirely from the draft legislation.*

#### **4. Administrative Implications of the Charities Bill 2003**

It is difficult to determine whether the Charities Bill 2003 will impose additional administrative and compliance costs for charities. The government has not provided any details about how the Charities Bill will be implemented and in the absence of an independent charities body, this role will presumably be handled by the Australian Taxation Office (ATO).

The ATO have indicated that a number of additional amendments to tax legislation are currently being drafted to clarify the endorsement process for charities. It is difficult to understand why these amendments have not been open to public consultation or included with the release of the Charities Bill 2003. The absence of information about these additional amendments casts doubt on the workability of the Charities Bill. The devil is always in the detail and the full implications of legislation may not become apparent the legislation is administered.

#### **5. Public Benevolent Institutions**

The Bill itself has failed to include a number of key recommendations from the Report to the Charities Inquiry. In particular is the absence of a legislative definition of what is currently termed Public Benevolent Institution. This subset of charity has been of most concern to charitable organisations and the ATO as this class is entitled to the broadest range of taxation concessions.

The Committee in its report recommended that there be a subset of charity, to be known as Benevolent Charity that would replace Public Benevolent Institution. Benevolent Charities are entities that meet all the requirements to be a charity and whose dominant purpose is to benefit, directly or indirectly, those whose disadvantage prevents them from meeting their needs. The category of Benevolent Charity distinguishes charities whose

dominant purpose is to benefit the disadvantaged from other charities whose dominant purpose is to provide benefits to the community more broadly.

*Anglicare Australia strongly recommends that the Government legislate a definition of "Benevolent Charity" as outlined in the recommendations of the Charities Inquiry.*

## **6. Establishment of a Charities Commission**

The committee to the Inquiry into Charities recommended in its report that the Commonwealth seek the agreement of the States and Territories be sought to establish an independent administrative body to oversee charities and related entities. The committee expressed the view that clarity and consistency can be further enhanced if a common approach to defining charities and related entities were to be taken by all levels of government.

Anglicare Australia supports the establishment of an independent administrative body along the lines of the Charity Commission for England and Wales as a means for promoting charitable activity in Australia, registering and regulating charitable organisations and ensuring public accountability and transparency. The Australian public donates millions of dollars each year to charitable organisations and there should be a body to monitor charitable organisations and protect the public interest. This should be done from the perspective of maximising public participation and support rather than from the perspective of protecting government revenue. A Charities Commission could help protect the public reputation of honest charities from unscrupulous people and organisations.

## **Conclusion**

Anglicare Australia welcomes the Federal Government's commitment to legislate a definition of Charity that will provide clarity and certainty to charities. The recommendations of the Charities Inquiry are largely reflected in the Charities Bill 2003 and this is an excellent foundation on which to build. With the deletion of 8 2 (c) and the clarification identified in this submission, Anglicare Australia believes this draft Bill will assist in providing certainty to charities.

Unfortunately the bill has failed to address the need for a modernised legislative definition of Public Benevolent Institution as recommended in the report to the Inquiry. Anglicare Australia urges the Board of Taxation to recommend that the Commonwealth legislate a definition of “benevolent charity” as outlined in the report. The Bill gives effect to much of the Inquiry’s recommendations, however substantial redrafting must occur to clarify the meaning and intent of a number of sections.

The development of this draft legislation is necessary to provide much needed clarity and consistency for charities and those responsible for determining charitable status. The issues outlined in this submission must be addressed to ensure that the legislative definition of charity is both workable and reflects the complex needs of modern society.