

Board of Taxation
Submission on the Draft Charities Bill

by the



Australian Pensioners' and Superannuants' League Qld Inc
September 2003

Introduction

The Australian Pensioners' and Superannuants' League Qld Inc. (the League) is a voluntary representative body providing support, advocacy and referral services for pensioners of all types and acting also as a lobby group on behalf of pensioners of all types and the elderly, working on behalf of pensioners and other low- or non-income earners for well over 50 years.

The League welcomes the opportunity to make a submission in response to the *Draft Charities Bill 2003*.

The Objects of the League are:

2. The objects for which the Affiliate is established are:-
 - (1) To further the objects of the Australian Pensioners' and Superannuants' League Queensland Incorporated (in these rules called the League);
 - (2) To raise funds by way of contributions from members, or by levies or by any other lawful means for the purpose of furthering the objectives of the League and Affiliates and bettering the members generally;
 - (3) To strive for an increase in pensions;
 - (4) To obtain travel concessions for all pensioners;
 - (5) To obtain exemption for all pensioners from all forms of taxation;
 - (6) To ensure that a strict supervision, by the authorities, is maintained over all homes or similar institutions, public or private, where pensioners reside;
 - (7) To take an active interest in all or any matters appertaining to the welfare and betterment of pensioners generally;
 - (8) To provide and maintain suitable homes with convalescent, medical, educational, vocational and recreational facilities and other amenities for the accommodation, care, benefit, welfare, relief, social comfort, companionship, restful respite and advancement of pensioners;
 - (9) To pursue the objects in a manner that is not for the purpose of gain for or profit to individual members and in a manner that is non-party political and non-sectarian.

Definition of a charity

The League does not have significant dispute with the *core definition of a charity* as set out in Part 2 - Charities 4 Core definition in the draft Bill as the Objects of the League fit neatly into that definition.

Nor does the League have any significant difference of opinion with the definition of *not-for profit entities*.

Dominant purpose, as defined, is an area where the League is also in agreement with the definition.

The definition of *public benefit* does give the League cause to ask the question "who defines 'public benefit'?"

Is social cohesion, resulting from the League's extensive branch network throughout Queensland, its advocacy on behalf of individuals who approach it for support and its pro-active attempts to help and support specific groups of disadvantaged and underprivileged people considered a 'public benefit' when that cohesion is assisting greatly in the reduction of social isolation?

The greatest disappointment for the League is the inclusion of item (c) in section 8 *Disqualifying purposes*.

The wording of this item "*the purpose of attempting to change the law or government policy*" would automatically exclude the majority of organisations working in the welfare sector, regardless of what government is in power.

It appears that the government is seeking to exclude from charitable status those policy and advocacy organisations that have as a dominant purpose (among others) social research, policy development, public education and reasoned advocacy that are critical to improving the quality of life of much larger numbers of people than those they can help directly.

Governments need to recognise and support these efforts rather than trying to exclude them on the basis that they are "attempting to change the law or government policy".

For a democratic society to remain strong and viable it needs to advance on the basis of continual policy review and amendment for the benefit of its citizens.

If implemented, this item will effectively intimidate many organisations into mute compliance with government rhetoric ... as it is undoubtedly designed to do.

Example

The League's national body, the Australian Pensioners & Superannuants Federation, was de-funded by government action in 1996 because as an organisation it dared to criticise government decisions and policies.

Item (c) cannot be described as anything other than political power play reminiscent of Nazi Germany or Stalinist Russia, and one that should never be tolerated in an open society such as Australia.

Other Considerations

The League is disappointed that the government has failed to address the problems with the current anomalies and inconsistencies associated with Public Benevolent Institution (PBI) status.

The League believes that the definitions applying to tax incentives for charitable giving - gift deductibility - are in urgent need of modernisation.

Many organisations, the League included, that should be considered worthy of this status have been, and will be denied PBI status on the grounds that they are not predominantly involved in direct service delivery.

The solution put by the Inquiry was to replace PBI status with a new classification of "Benevolent Charity" comprising charities whose dominant purpose is to assist the most disadvantaged in society. The Government's proposals to leave the current arrangements intact and provide exemptions for some health and harm prevention services will not address this problem in an equitable way.

The Australian Taxation Office has released a Tax Ruling on PBI status and is presently conducting audits to check whether existing PBI's still fall within the scope of this definition. Some could lose gift deductible status.

The changes, if legislated, could lead to the removal of a significant number of charities from the register with subsequent loss of income tax and GST exemption status and throw a greater cost burden onto government resources.

The Government appears not to be proceeding with the Inquiry's proposed reform of administrative arrangements for the registration of charities and the Taxation Office continues to decide which organisations qualify as charities for tax purposes.

The Inquiry proposed this role be handled by a separate body whose purpose is identifying charities rather than raising public revenue, with the favoured model being the Charities Commission of England and Wales.

Such a body would be able to keep abreast of trends in service delivery and community expectations. It would also help with the "fine tuning of the new legislative definition, develop administrative guidelines and help avoid litigation and inconsistent application of the new definition.

Insurance for Not-for-Profit Organisations

Whilst it is not within the scope of the draft Charities Bill, the League is concerned at the effect on community organisations and activities resulting from the inability to find a provider of Public Risk (liability) insurance cover either at an affordable cost or, in some cases at all.

We would like to see a national approach taken on this issue and for this matter to come within the legislation and scope of the national independent administrative body recommended in the *Report of the Inquiry into the Definition of Charities and Related Organisations*.

Conclusion

While social and economic disadvantage continue to be deeply embedded in the fabric of Australian society; it will remain difficult to get business support for philanthropic endeavours and there will be considerable difficulty in attracting resources to policy development, information, advisory and advocacy activities especially for consumer-based charities and volunteer organisations such as our own.

In its current form the legislation will have the effect of 'gagging' organisations that undertake important advocacy, by denying charitable status to organisations "attempting to change the law or Government policy", if it is "more than ancillary to or incidental to the other purposes of the entity".

If denied 'charitable status' donations to organisations will not be tax deductible and therefore it will make it difficult for organisations to attract alternative income sources to fund their work.

Organisations that cannot attract tax-deductible financial support, are reliant on limited and diminishing grant funding and/or our own restricted resources to undertake research and publication and to maintain our level of individual advocacy.

Those that retain their charitable status could face intrusive reporting requirements to "prove" that their advocacy work is merely "ancillary or incidental" to their other work.

What distinguishes charities from other organisations is that they are altruistic, non-profit bodies serving purposes that benefit the community. Provided they do not act illegally, or engage in *party* politics, Governments should avoid attempts to prescribe how they may or may not go about their work.

Also, we are increasingly aware of worthwhile projects and organisations, many in regional parts of Australia, that do not fall within the current definition of "charities", and in particular the definition used and applied by the ATO with regard to the distribution of funds as a IDGR.

We believe that definitions should be based on the purpose of the activities carried out by the organisation and that account should be taken of multiple purposes.

Recommendations

The League recommends that:

The Federal Government amend the draft legislation to remove provisions that needlessly curb the advocacy work of charities, specifically by removing item (c) from the definition of "Disqualifying purposes"; and

The Federal Government move to include in the legislation provision for establishment of an independent governing body whose purpose is identify charities, based on the UK Charities Commission of England and Wales model and that this body be given the additional role of regulating the insurance industry for the support and benefit of charities.

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