

SUBMISSION TO BOARD OF TAXATION ON PROPOSED CHARITIES BILL 2003

Background

The Melbourne Community Foundation (MCF), established in 1997, is an independent, not-for-profit foundation with a tax-deductible fund and a non tax deductible extension fund. It encourages and enables individuals, families, corporations and charitable organisations to establish funds that will benefit the community.

The Foundation particularly appeals to donors who want to be personally involved in their philanthropic activity and explore ways in which their money can be applied more creatively.

The MCF currently has 55 funds, with \$12 million under management. It provides a range of investment and administrative services to donors, as well as a donor education and grantmaking advice and support role.

The MCF's mission is to "generate and distribute philanthropic resources to address emerging social issues and meet the needs of our communities".

Report of the Inquiry into the Definition of Charities and Related Organisations

The MCF supports the need for reform of the legislative definitions of charities. The existing provisions, stemming from the Statute of Elizabeth, are inadequate and inappropriate for the range of activities undertaken by organisations working to address disadvantage and build stronger, more resilient communities in our modern, complex society.

It also supports, in principle, the intention of the Bill to codify a more contemporary definition of charity and charitable purpose, rather than to retain the current case law approach. Enshrining this in legislation ensures a more open and transparent public debate and policy making process through government, rather than limiting the debate about interpretations of charitable purpose to the courts. The experience to date would suggest that allowing the definition of charity to evolve through common law has not worked well or kept pace with changing social conditions and understanding since the Statute of Elizabeth was introduced in 1601.

Charities Bill 2003

The MCF recognises that the draft Bill does modernise the definition of charity in a number of positive ways, including:

- Acknowledging that childcare services are charitable, as are self help services, as long as they are open and non-discriminatory in their membership.
- Expanding the list of charitable purposes to include "advancement of social or community welfare" and the "natural environment".

However, the Bill does seek to impose a number of restrictions on the activities of charities which will continue to inhibit their capacity to work most effectively for disadvantaged groups in the community.

Advocacy by Charities

Many of the projects and organisations supported by MCF donors undertake a range of activities in working to address disadvantage and increase opportunities for all.

This includes direct service provision, as well as preventative programs of community education and information provision, self-help support, public policy development, consumer rights and legislative reform advocacy, co-ordination and action based research.

In order that organisations are able to work most effectively for disadvantaged groups, it is recommended that Clause 8 of the draft Bill be amended to recognise that charities can engage in public advocacy as long as it is an integral part of a strategy to promote the underlying dominant charitable purpose, such as addressing homelessness, relieving poverty, increasing opportunities for people with disabilities to participate in community life or protecting the environment.

This would be far clearer and less intrusive for charitable organisations and simpler for the ATO to interpret than the current draft which restricts charitable organisations from advocating a cause or seeking to change the law or government policy unless it is no more than “ancillary or incidental” to the other purposes of the organisation. The term “ancillary or incidental” is ambiguous and not clearly defined. It is likely to present major difficulties in administrative interpretation.

Under the recommended approach, the advocacy activities of charitable organisations would be seen as one of a number of activities undertaken to achieve their charitable purposes, rather than a purpose in itself.

Unlawful activities or conduct

The MCF believes that the draft Bill should delete references to charitable organisations not engaging in unlawful activities or conduct, as this is relevant to the administration of other legislation, such as criminal law, rather than to the definition of charity.

Public Benevolent Institution

As a Foundation whose philanthropic giving is primarily undertaken through its tax deductible fund which can only support charitable organisations with tax-deductible status, the MCF believes there is an urgent need to modernise the definition of Public Benevolent Institution.

The draft bill does not address PBI status. However, the Charities Definitions Inquiry was given a mandate to examine definitions closely related to charity, and the MCF strongly supports the recommendation of the Inquiry into the Definition of Charities and Related Organisations “*that in the recommended definitional framework, the category of public benevolent institution be replaced by a subset of charity to be known as Benevolent Charity, that is a charity whose dominant purpose is to benefit,*

directly or indirectly, those whose disadvantage prevents them from meeting their needs.' (p. 258)

As outlined in the section above, direct service provision is only one way in which charitable organisations work to improve the circumstances of, and opportunities for, disadvantaged people in our society.

Currently, in order to acquire tax deductibility status, charitable organisations must meet the rigid definition of what constitutes a Public Benevolent Institution. Under this definition, a PBI is an organisation that provides direct material assistance to the poor, destitute, disabled and otherwise distressed who are unable to care for themselves. This approach is based on pre-nineteenth century notions of charity which, in the absence of a state role in welfare provision, relied predominantly on individual benevolence and church support, and reinforces the polarisation of society into the 'haves' and 'have nots'.

It anchors social welfare initiatives in an outdated, paternalistic and essentially reactive mode. It is anachronistic to the contemporary practice of community service provision, which aims not only to provide immediate relief to people's material disadvantage, but to provide opportunities for them to participate in and influence the decisions that affect their lives.

Such restrictive definitions largely deem ineligible for trust funding those organisations which provide less direct but equally significant forms of relief through preventative programs of community education and information provision, self-help support, public policy development, consumer rights and legislative reform advocacy, co-ordination and action based research.

The net effect of this has been the favorable treatment of the long established and more traditional charities, rather than those organisations working in more innovative ways to address current social problems. There are many examples which clearly illustrate how indirect activity of the types outlined above provide a more effective long term strategy for addressing issues of disadvantage and social exclusion, as opposed to direct aid which only alleviates the immediate circumstance of the affected person or group.

The MCF would argue that it is in the public interest for community resources to be directed to preventative approaches and community building processes. There are no justifiable policy reasons to distinguish between direct and indirect forms of relief of poverty, hardship and disadvantage. Preventative services can often be more efficient and cost effective (for example, successful anti-drug, family violence and AIDS education strategies compared to the costly drain on community resources, to say nothing of individual suffering, of the full consequences of these and other social ills). Advocacy and campaigning to reform discriminatory policy and legislation can address the systemic causes of social and economic disadvantage and inequity. The indirect activities of coordination and consultation by peak bodies creates a more informed, efficient and better-networked community sector which is then able to work more effectively with, and on behalf of, disadvantaged groups.

Modernisation of the definition of Public Benevolent Institution should undertaken urgently, in conjunction with consideration of the current draft Bill, or as part of a second round of legislative reform in regard to charities.

Recommendations

1. That the definition of charity be extended to include categories of self-help, childcare, human rights and advancement of the natural environment, as proposed in the draft Bill.
2. That Clause 8 of the draft Bill be amended to recognise that a charitable organisation can engage in public advocacy as long as it furthers or aids its dominant charitable purpose/s.
3. That references to engaging in, or having engaged in conduct that constitutes a serious offence or in activities that are unlawful, be deleted from the core definition in Clause 4 and the disqualifying purposes in Clause 8, on the grounds that it is relevant to the administration of other legislation, rather than the definition of charity.
4. That the Board recommend to the Government that there is an urgent need for legislative modernisation of the definition of Public Benevolent Institution, along the lines recommended in the Charity Definitions Inquiry.