



**Multicultural Disability Advocacy
Association of NSW**

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Consultation on the Definition of a Charity
The Board of Taxation
charitydefinition@taxboard.gov.au

Dear members

The attached submission is made by the Multicultural Disability Advocacy Association of NSW (MDAA). It addresses the 8 questions posed by the Board's guide to preparing a submission. MDAA also endorses the general thrust of the recommendations made in ACROSS's submission to the Board for the reasons ACROSS gave.

I am happy to provide further details if you wish.

Yours sincerely

Maureen Kingshott
Assistant Director

Submission to the Board of Taxation Consultation on the Definition of a Charity

1 and 2. Name, contact details and dominant purpose

The Multicultural Disability Advocacy Association of NSW (MDAA):

- is the peak body in NSW for people from a non-English speaking background (NESB) with disability, their families and carers;
- is a community based, not-for-profit, non-government association run by a management committee elected annually by members;
- has offices in Sydney, Wollongong, Newcastle and Griffith;
- is a public benevolent institution (PBI), income tax exempt charitable entity (ITEC) and deductible gift recipient (DGR);
- receives the majority of its funding from the NSW and Commonwealth governments;
- was incorporated in 1995; and
- can be contacted by phone, email, fax, TTY or letter at the above address.

MDAA's main purpose is to promote, protect and secure the rights of people from a NESB with disability, their families and carers in NSW. To achieve this we provide a range of advocacy services, as outlined below. The members of MDAA are people from a NESB with disability, family members, carers, friends and organisations who support our aims. The majority of people on the management committee are people from different cultural backgrounds with different disabilities.

The range of advocacy services we provide includes:

Individual advocacy: Each year we assist over 200 people from a NESB with all types of disability, their families and carers to stand up for their rights, for example, when people have problems with housing, immigration, school, work, health and disability services.

Systemic advocacy: We work towards positive change in policies, procedures, practices and service delivery in government and non-government agencies.

Advocacy development: We work towards positive change in attitudes and increased awareness among communities, with a focus on disability and ethnic communities. We do this through our 'Advocacy in Action' project which provides training and support to people with disability, their families and carers in rural and regional NSW, regardless of cultural background or type of disability; community information days; and training for people with disability about their rights and specific issues that affect them.

Industry development: We work together with communities, private and government agencies towards greater knowledge and understanding about the issues facing people from a NESB with disability, their families and carers. We do this by developing resources and providing information, advice and hands-on support to agencies and through our Community Voices project. Community Voices are people from a NESB with disability, their families and friends who are trained in public speaking and willing to share their stories. We use the expertise and experiences of these Community Voices to educate and raise awareness about the diversity within the community.

Training and education: We provide training and education in cultural diversity and disability to government and non-government agencies. Our fee-for-service training and support service

'cultural abilities' provides tailored training and skills development, undertakes cultural competence audits, assists in the development of action plans and provides other services.

3. Concerns about the workability of the proposed definition of a charity

The current legal distinctions between the definitions of charity, ITEC, PBI and DGR are confusing. We understand that most charities can become endorsed as ITECs but fewer charities meet the more stringent definition of PBI which makes them eligible to apply for DGR status.

Whereas the draft Bill provides some clarity and transparency about what a charity is (or is not) it also introduces some uncertainty and ambiguities. The fact that the draft Bill remains silent about ITECs, PBIs and DGRs is a missed opportunity to provide greater clarity and transparency about all of these related entities in the same statute. This would address the current confusion about whether a PBI is or is not a type of charity and for what purposes, eg, for income or fringe benefits tax concessions.

The main concerns for MDAA are **clause 4(1) (b), (c), and (d)** and **clause 8(2)(c)** of the draft Bill which restrict the definition of a charity or charitable body as follows:

- the entity must have a dominant purpose that is charitable, ie, it must have one or more purposes that are charitable as defined within Part 3 of the draft Bill, and any other purpose must be incidental to the entity's dominant purpose;
- any activities undertaken must further or be in aid of the entity's dominant purpose; and
- the entity must not have a disqualifying purpose, which includes attempting to change the law or government policy, if that purpose is more than ancillary or incidental to the entity's other purposes.

If the purpose of the draft Bill is simply to codify the existing common law definition of a charity it clearly does not achieve this. We understand that the current situation is that the ATO requires only the dominant purpose to be charitable for an entity to meet the criteria for an ITEC; other activities that do not necessarily further the dominant purpose are acceptable; and attempts to change the law or government policy are not singled out as matters for particular concern. It appears that the main purpose of the draft Bill is to restrict the current definition of a charity to bring it closer to the requirements for PBIs. This will significantly increase taxation revenue by limiting income tax, GST and fringe benefits concessions currently available to charities. Another apparent purpose is to restrict the capacity of charities to challenge inequitable laws and government policies.

As indicated above MDAA's strategies for fulfilling our main purpose involve various forms of advocacy. For greater clarity and transparency we would prefer the definition of charity to include advocacy as a qualifying rather than disqualifying purpose. We are funded to provide individual and other advocacy for people from a NESB with disability. The systemic advocacy and industry development work we undertake are informed by our individual advocacy work and these activities further our main purpose of promoting, protecting and securing the rights of people from a NESB with disability.

In its current state the draft Bill could introduce some doubt about whether our systemic advocacy activities as a peak body are more than ancillary or incidental to our dominant purpose. This would depend on whether the restrictions on advocacy in the draft Bill were interpreted narrowly or broadly. We write submissions to parliamentary inquiries, lobby members of parliament, participate in government and non-government committees and form alliances with other organisations with a view to changing or influencing government policies or practices or existing laws that do not promote, protect or secure the rights of people from a NESB with disability. We undertake these activities as a way to further our dominant purpose.

This submission is an example. If the draft Bill were enacted unamended we do not know whether the ATO would regard our systemic activities in the same way or as ancillary or incidental to our dominant purpose. Would the ratio of staff working on systemic compared with individual advocacy be used as a measure for instance, or the amount of time spent on systemic issues?

We agree with ACOSS that the fundamental issue should not be how much advocacy a charity engages in but whether or not advocacy furthers or aids the organisation's dominant charitable purpose. For MDAA advocacy is a strategy to achieve a desired outcome: in all its various forms advocacy is a way of achieving our main purpose. For this reason we support ACOSS's approach and its recommendation to amend **clause 8** of the draft Bill to refer to advocacy purposes as a way of furthering a charity's dominant purpose. In our view the amendment should make it clear that such advocacy purposes do not include promoting a political party or candidate for political office in any circumstance.

We would also amend **clause 4(1)(c)** of the core definition to read more positively, for example: *'(c) engages in activities that further or aid its dominant purpose'*.

We would delete **clause 4(1)(d)** as it will be unnecessary to set out disqualifying purposes if clause 8 is amended as suggested above.

We would delete **clause 4(1)(e)** as it does not define a charity. If a charity engages in activities that constitute a serious offence the matter would be covered by the criminal law in any event.

We would amend **clause 4(1)(f)** to make it clear that the fact that an organisation receives government funding does not mean that it is a 'government body'. Although MDAA receives most of its funding from the state and federal governments it is not controlled by either.

Clauses 7(1)(c) and 7(2) refer to 'sufficient section of the general community' and 'numerically negligible'. It is not clear how these concepts will be determined. For example, from ABS and other official statistics MDAA estimates that there are over 343,000 people from a NESB with disability in NSW (5.5% of the population). This is not a 'negligible' number of people but it is not clear what is. Would 1% or .5% or .01% of the population or less be regarded as 'negligible'? The same issue arises in relation to 'sufficient section of the general community'. Who will determine what this means and how will they do this? The explanatory memorandum provides no guidance on these issues and we suggest that it should. Furthermore, we are also concerned that organisations providing assistance to small or emerging communities may be affected by the wording in this clause.

4. Is MDAA endorsed by the ATO as an ITEC?

As indicated above MDAA is endorsed by the ATO as an ITEC. If the definition of charity includes a clause to the effect that 'the purpose of attempting to change the law or government policy' is a disqualifying purpose, our ITEC status may be in doubt because our status as a charity may be in doubt. We would still fulfil all the other requirements for an ITEC.

Losing our ITEC status would mean that we would have to pay 30% income tax on any unspent funds as we assume the ATO regards unspent funds as 'profit'. If we carried forward the unspent funds to the next year and spent them all that year we would not be able to recover any of the tax paid. We could only recover tax paid in earlier years in a year where we overspent, or made a 'loss'. As we do our best to avoid overspending it is unlikely that we would ever be able to recover any income tax paid. In practical terms this means MDAA would not be able to provide services to as many people from a NESB with disability, their families and carers as we do now. As mentioned earlier the problems we assist consumers to resolve relate to

accommodation, immigration, school, work, health and disability services. Some of the people we assist now would definitely miss out.

5. If you are not an endorsed ITEC.....

This question does not apply to MDAA as we are an endorsed ITEC.

6. Would the Charities Bill 2003 impose any additional administrative burden and compliance costs on MDAA?

It is difficult to estimate additional administrative burdens and compliance costs without knowing what the ATO has in mind for ensuring compliance and how it intends to measure whether our advocacy activities are ancillary to our dominant purpose. If the amendments we have suggested are accepted we do not foresee any additional administrative or compliance costs. If the draft Bill were passed unamended and if we lost ITEC status as a consequence of a narrow interpretation of the restrictions on advocacy, we could also lose our PBI status. We would then lose the fringe benefits tax concessions available to PBIs and this would have a significant effect on our capacity to attract high quality staff.

7. Flexibility of the proposed definition to adapt to the changing needs of society

By introducing advocacy as a disqualifying purpose the draft Bill fails to recognise that one of the necessary activities of charities today is to seek changes to laws or government policies or practices that affect people in a negative way. If governments were providing all the required services there would be no need for charities: it is often the gaps in services that charities need to lobby for. This advocacy is undertaken in pursuit of the charities' dominant purposes of benefiting the disadvantaged members of the communities they serve. The fact that MDAA is government funded to provide systemic as well as individual advocacy and is recognised as an ITEC, GDR and PBI is an example of this.

Charities need the flexibility to meet changing social circumstances and needs. The Charities Bill should set out principles that allow this evolutionary process and do not restrict it unnecessarily. **Clause 10(1)** is a good example of this as it allows courts the flexibility to keep charitable purposes up to date. We agree with ACOSS, however, that the reference to clause 10(1)(c) in the explanatory memorandum should include a reference to the provision of housing for people disadvantaged in the housing market. Accommodation issues appear consistently year after year at the top of the list of issues MDAA deals with. In our experience in dealing with accommodation issues, people from a NESB with disability have two basic needs: secure, safe, affordable accommodation and access to a range of support services (including disability support services) provided in culturally appropriate ways. Any non-profit organisation set up mainly to provide housing should come within the definition of charity in our view.

We also agree with ACOSS that there are difficulties in leaving the administration of charity law to the ATO as it is only an incidental part of the ATO's activities. Because the ATO's main purpose is revenue collection and because it is dependent on the courts for any substantive advances in charity law it is not realistic to expect the ATO to administer charity law flexibly. For these reasons we agree with ACOSS's recommendation that a separate body, akin to the English Charity Commission, would allow for greater flexibility in updating guidelines and definitions of a charity, in accordance with the principles set out in the Charities Bill.

8. Effect of requiring the dominant purpose to be altruistic

This would not affect MDAA as our main purpose is already altruistic.