

Submission by the NT Council of Social Service to the Consultation on the Definition of a Charity

1. Introduction

The NT Council of Social Service (NTCOSS) believes that the Draft Charities Bill 2003, while introducing a number of positive changes to the existing Bill has overlooked some key opportunities for modernising the Bill and in some cases has introduced some new uncertainties and administrative difficulties which will make the Bill potentially unworkable.

NTCOSS' Submission is brief and addresses: -

- Point 3 “With reference to the preamble on workability (Above) do you have any concerns or issues that you wish to raise about the workability of the legislative definition of a charity proposed in the exposure draft Charities Bill 2003.
- Point 5. In your assessment does the Charities Bill 2003 provide the flexibility to ensure the definition can adapt to changing needs of society?
- Point 6. The question of requiring the dominant purpose of the organisation to be altruistic.

As NTCOSS is as an organisation that represents and speaks on behalf of Non Government Organisations in the NT this Submission raises issues in relation to NGOs in the NT in general.

2. Positives

The draft Bill modernises the definition of a charity in a number of positive ways: -

- It clarifies the list of charitable purposes to include “advancement of social or community welfare” and the natural environment”
- It acknowledges that child care services are charitable
- It acknowledges that self help organisations may be charitable, provided they are open and non discriminatory in their membership.

3. Concerns

3.1 Disqualifying Purpose?

Advocacy - Attempting to Change the Law or Government Policy.

Concern exists within the Non Government Sector around the definition of “disqualifying purposes” In particular – 1.50 “attempting to change the law and or government policy”, and also advocating a cause. This clause is not consistent with and is in fact a narrower interpretation than the Report of the Government Inquiry into the Definition of Charities and Related Organisations and the Treasurers Press release 2002. The Report of the Inquiry into the Definition of Charities and Related Organisations noted that undertaking advocacy work and lobbying to have a law or Government policy changed is often consistent with and a necessary part of the work of charitable organisations and in fact systemic change is often what is needed to ensure that charitable goals are met.

The Inquiry Committee recommended “ That a distinction be drawn between purposes that advance a political party or candidate for political office which will deny charitable status and non political purposes, that will not affect charitable status

provided they further or are in aid of, the charity's dominant purpose." NTCOSS endorses this position.

Advocacy is often seen as being a key part of a number of charitable organisations work and is seen as furthering the charitable goal i.e. alleviating poverty, protecting the needs of people with disability etc. In fact major changes re charitable goals occur through systemic changes and are seen as being necessary adjuncts to individual advocacy / service support work.

It is considered that this clause is not needed and is inconsistent with modern interpretations and common understandings of the role of a charitable organisation. The Bill already states that a charity should not engage in activities that do not further or are not in aid of its dominant purpose. There is no need to single out "non partisan advocacy" for special treatment because all the activities of a charity should further or aid a charitable purpose. As such this clause is not necessary. This is the same basic test applied to all other purposes and activities of charities.

There is a potential that a number of existing charitable organisations, including church organisations eg Salvation Army, Anglicare and St Vincent De Paul to name a few, could lose their charitable status if this clause is maintained.

Concern also exists in relation to how this clause could be interpreted. Who determines and how is more than ancillary to its dominant purpose determined? It is open to subjective interpretation, or else to a very literal interpretation without real understanding of what makes up the dominant charitable purpose of an organisation. It could result in an increased workload for the ATO in determining and monitoring compliance as well as for the charitable organisation. Would reports need to be kept on the time and type of activity undertaken? Will this require extensive and intrusive auditing by the ATO to ensure compliance to this clause eg measuring what proportion of their time or funds organisations spend on lobbying? There is little guidance to the courts on how this should be interpreted, and as such the bill is unworkable. It will hamper rather than assist the ATOs gatekeeping role in determining which organisations are charities for taxation purposes. It will also lead to unfairness with organisations potentially being judged and hence treated differently, lead to confusion amongst charities as to how far they can engage in advocacy activities, significantly increase administrative burdens and compliance cost and could lead to unnecessary litigation. It could also reduce the effectiveness of many charitable organisations in being able to undertake their charitable purposes.

NTCOSS believes that a charity should be able to undertake public advocacy provided those purposes further or aid or are ancillary or incidental to its dominant charitable purpose. It is also to be noted that Government Bodies often fund organisations specifically to provide it with independent advice, advocacy re social / environment issues and others which could be seen as furthering charitable goals. Peak bodies and consumer bodies are often funded to provide this advice. It seems inconsistent with Government's desired purpose for this advice (often seen as being an efficient and effective way to gain such advice) to then exclude these organisations from gaining charitable status if in fact their dominant business is to further charitable goals.

Serious Offence.

Concern exist around 1.51 Any purpose of engaging illegal activities is a disqualifying purpose. A literal interpretation of this could mean that the current governing board of a charity could be penalised for activities carried out by its predecessors. There are other more appropriate laws such as the criminal law that deal with this.

3.2 Need for an Independent Body to Determine Charitable Status

The Inquiry into Definitions of Charities and Other Related Organisations as well as the ATO itself recommended that there should be an independent body to determine charitable status eg a Charitable Commission. It appears that the Government is not considering this option. The establishment of an independent body with expertise in chartable organisations is more likely to result in a fair and reasonable interpretation of what is charitable and would ensure more consistency in approach. This in turn should reduce litigation and unnecessary administrative workload for the ATO. The ATO of its own admission does not have the expertise to undertake this work. Great concern arises in relation to the disqualifying clause and how ATO would interpret and deal with advocacy as a potential disqualifier.

3.3 Public Benevolent Institutions

A missed opportunity has arisen by the failure of the Government to review the Public Benevolent Act and to include this Act in the one Bill with the definition of Charitable Organisation. More confusion and unfairness arises with the Public Benevolent Act than with the Charities Act. It is in even more need of modernisation. The Government should undertake a second round of legislative reform, which modernises the legislative definition of Public Benevolent Institution.

3.4 Other

Definition of Government Body –There is a need to clarify the meaning of Government Body to make it clear that it does not include bodies that receive public funding/ or bodies that that are established under the aegis of a program of public funding.

Partnerships –There is a need to clarify this clause, so that it does not exclude from charitable status bodies/ projects that go into partnership arrangements and joint ventures. Partnership and joint venture arrangements are often entered into to enable greater efficiency and effectiveness as well as to maximise expertise.

4. To Strengthen the Dominant Purpose of a Charity to be Altruistic

Altruism is an old fashion word and hence is not consistent with modernising the Act. Its usage will add nothing to the definition and will in fact add further layers of confusion.