



PEAKCARE QUEENSLAND INC

Submission to

**The Board of Taxation
Regarding the**

Draft Charities Bill 2003

September 2003

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Introduction

In 2000 the Federal Government established the Charities Definition Inquiry to investigate the options to modernise the definitions of charity used in tax law. The report of this inquiry was delivered in 2001, and its recommendations were broadly supported by the community services sector.

Earlier this year the Federal Treasurer released an exposure draft of the Charities Bill 2003 that seeks to define a charity for the purposes of all commonwealth legislation. The Treasurer asked the Board of Taxation to consult over the workability of this Bill and whether it needed to be amended to also require that charities have a dominant purpose that is altruistic.

PeakCare Queensland Inc. (PeakCare) welcomes the opportunity to provide feedback on behalf of its members. PeakCare broadly supports the submission made by the Australian Council of Social Service (ACOSS) and refers the Board of Taxation to this submission for further detail on aspects of the Bill not covered here.

PeakCare's submission is intended to complement that of ACOSS and focuses on an analysis of the workability of the Bill, especially in relation to the restriction on advocacy and lobbying. The submission argues that attempts to place restrictions on advocacy work by charities will be counter-productive and increase compliance costs. Thus, we recommend that the Bill be amended to allow non-partisan advocacy or lobbying that furthers or aids the charitable purpose of a charity.

About PeakCare Queensland

PeakCare is a peak body for the safety and well being of children, young people and the support of their families.

PeakCare's members include service providers and practitioners located across the child protection continuum of care. This continuum incorporates prevention, early intervention, out of home care and related support services.

Analysis of the Workability of the draft Bill

The draft Bill is a significant improvement on the existing arrangements and PeakCare welcomes the fact that it:

- acknowledges the charitable status of child care services;
- expands the list of charitable purposes to include the advancement of social or community welfare;
- acknowledges that non-discriminatory and open self-help organisations are charitable.

However, PeakCare is concerned by the extent to which the draft Bill seeks to restrict the lobbying and advocacy work of charities.

Restrictions on Advocacy by Charities

The Charities Bill 2003 seeks to deny charitable status to organisations that engage in lobbying or advocacy activities that are more than “ancillary or incidental” to their charitable purpose. PeakCare argues that this restriction rests on a vague and unclear definition and will impose greater administrative burdens on charities. Furthermore, we argue that non-partisan advocacy is a legitimate and crucial strategy that charities use to treat the underlying causes of hardship and disadvantage in peoples lives.

Clause 8 of the Bill would exclude from charitable status organisations that have the following purposes:

- advocating a political party or cause;
- supporting a candidate for political office;
- attempting to change the law or government policy;

if these, either individually or when taken together with one or both of the other purposes, are more than ancillary or incidental to the other purposes of the charity.

PeakCare’s concerns with this clause of the Bill are based on the fact that the term “ancillary or incidental” is vague and open to interpretation. Depending on the interpretation that is used the clause is either unnecessary or is counter-productive and will add a significant administrative burden to charities.

Ancillary or Incidental

As ACOSS has pointed out, the terms ‘ancillary or incidental’ can be interpreted in two distinct ways which, depending on the interpretation used, have different implications for the implementation of the legislation.

A liberal interpretation of ‘ancillary or incidental’ would emphasise the extent to which ‘ancillary or incidental’ advocacy and lobbying ‘help’ and ‘naturally appertains’ (see Macquarie Dictionary) to an organisation’s charitable purpose. In this sense, clause 8 is largely redundant. Clause 4 of the draft Bill already restricts the activities of charitable

organisations to those which “further or are in aid of” its charitable purposes. Under this interpretation the meaning of “ancillary or incidental” is very close to that of “furthers or aids” and thus clause 8 could be limited so that it only restricts partisan political advocacy.

However, the explanatory memorandum provided with the draft Bill would suggest that a tighter interpretation of ‘ancillary or incidental’ is intended. Under this interpretation organisations that engage in advocacy or lobbying activities that are more than a *minor* or *small* part of the organisations overall activities will be denied Charitable status. This begs the question, when does the amount of advocacy that an organisation engages in become more than minor or small?

As they are, neither the draft Bill nor the explanatory memorandum provide any clear answers to this question. In its attempt to provide some clarity here, the explanatory memorandum for the draft Bill suggests that,

“...representing to Government, from time to time, the interests of those the entity seeks to benefit would be seen as incidental and in aid of the dominant purpose of the charity.”

(page 12).

This example does not increase the clarity of the Bill but again begs the question, how much is “from time to time” and many times is too many? It can be argued that it would be quite simple to arbitrarily set limits on the amount of lobbying that a charity can undertake. However, the experience of the USA & Canada¹ would suggest otherwise. In particular, ACOSS points out that the USA has implemented similar legislation by:

- setting an arbitrary maximum amount (usually 10%) of an organisations budget which can be spent on advocacy;
- requiring organisations to account for their advocacy activities by dividing their expenditures between advocacy related costs and other costs;
- developing a series of elaborate formulae that are used to determine the proportion of the annual budget that can be spent on advocacy and

¹See ACOSS's Submission for further detail

East Lakes Community Services Inc. (ELCS) is a non-profit community managed organisation that provides a range of services in its region. ELCS employs over 100 staff and has a total annual budget of between \$4.5 & \$5 million. Among its range of services that rely predominantly on government funding are the following:

- family support & community development;
- shared family care (foster care);
- respite care for the aged and people with a disability;
- contact service; and
- outside school hours care

ELCS also manages a number of self-funded community enterprises that operate on a fee-for-service basis. These are:

- Software development & IT support service;
- Auto mechanic;
- Landscaping and garden maintenance;
- Psychological assessment & intervention service.

Additionally, ELCS often receives one-off funding from a variety of government agencies to carry-out time limited projects.

Staff at all levels of ELCS are involved in a range of activities that to varying degrees seek to advocate a cause, or change government policy. These include, but are not limited to:

- representing the organisation on various government advisory boards;
- sitting on the boards of and attending the meetings of state and federal Peak bodies;
- preparing submissions for various government inquiries;
- writing letters to Members of Parliament & Ministers regarding government policy or legislation;
- inviting MP's, the media and the public to events held at the service;
- occasionally hosting public meetings on a variety of issues;
- attending local community cabinet meetings;
- participating in advocacy campaigns coordinated by organisations;

- organising and attending events related to particular weeks that seek to advocate a particular cause – e.g. Child Protection Week & Foster Care Week.
- Holding fund-raising drives & campaigns.

Table 1

- lobbying activity without losing charitable status or incurring a penalty;
- applying special rules for different types of lobbying and advocacy
- applying special rules for organisations that are part of affiliated groups (similar to Peak bodies in Australia) that jointly engage in lobbying.

To avoid inconsistent application of the definition and to ensure that all charities are treated fairly, such requirements may need to be developed in Australia. Thus it is clear that in its current form the draft Bill will impose greater extra compliance costs on charities.

An Example: East Lakes Community Services

To explain this point further consider the example of East Lakes Community Services Inc² (table 1, right). The lobbying and advocacy activities described are typical of many of PeakCare's members, large and small.

This simple example raises a number of questions which will likely require relatively complex rulings by the Tax Office, as with the USA and Canada. For instance:

- Is a response to a request for advice (via submissions or sitting on committees for instance) from Government or a Peak Body considered an attempt to change government policy?
- Is educating the local community, the media parliamentarians about an issue effecting the service's users equivalent to “advocating a cause”?
- Will organisations be expected to count the time spent at meetings discussing strategies to change government policy as opposed to other agenda items?

The example of ELCS also raises some questions about the treatment of fund raising activities under the Bill.

Fund Raising & Advocacy

Historically charities in Australia have received only part of their funding from governments, and have been required to look elsewhere for resources. One way that charities do this is by promoting the value of their work to the wider public and seeking donations. It could be argued that in many cases such fund-raising activities seek to “advocate a cause”. For example, a number of charities publicly promote the value of (for instance) protecting the natural environment. In so doing they advocate the ‘worthiness’ of donating money to them so that they can:

- provide services to local communities to help them protect the environment
- raise awareness about environmental issues and in so doing influence the actions and decisions of government and industry

A number of PeakCare’s members that are charities providing services to children and families use similar strategies to raise donations from the public. As it currently stands it is

²The name has been changed to protect confidentiality

unclear whether such activities are considered to be “advocating a cause”. If such fund-raising activities are considered ‘disqualifying purposes’, then aside from the compliance issues described above Charities will also face restrictions on their ability to seek public support by way of donations and voluntary effort. This will in turn reduce their capacity to provide services that benefit the public.

As the example of ELCS shows, advocacy and lobbying takes many forms within human services organisations and is an integral part of their efforts to meet the needs of service users. Some advocacy strategies are pro-active attempts to influence public and government opinion whilst others are reactive responses to changes in policy or requests from government. At other times, staff may be involved in activities that have a number of purposes, of which seeking a change to government policy is just one aspect. The draft Bill provides little guidance on what is and isn’t considered advocacy or the amount of advocacy permitted.

This lack of clarity can only be overcome by either removing the restriction altogether or setting arbitrary limits on the amount of advocacy and lobbying that charities can undertake (as has happened overseas). In the latter case, it is clear, given the example of ELCS, that the draft Bill will impose greater compliance costs on Charities and may have unintended consequences on the fund-raising abilities of Charities.

Analysis of the Bill’s Principles

One of the basic principles underlying clause 8 of the draft Bill is the view that charities should focus more on providing direct relief to individuals and communities, and less on advocating for government or community action to prevent disadvantage or hardship from occurring in the first place.

PeakCare argues that this is a counter-productive principle that will reduce the ability of charities to provide benefits to the Australian public.

The Value of Advocacy & Lobbying

Charitable organisations and their Peak Bodies that work with individuals, families and communities that are experiencing hardship or who are marginalised and disadvantaged, are in a strong position to educate governments and the community about the legislation, policies and practices that can alleviate and even prevent the problems experienced by this group. The draft Bill will restrict this ability and reduce the opportunities available to users of charitable services to raise their issues with policy makers and the community generally.

Children that have been abused or neglected, the unemployed, families living in poverty and other disadvantaged Australians have a reduced capacity to advocate collectively for actions or legislation that will meet their needs. Charities however are able to provide an avenue through which the needs and interests of disadvantaged Australians can be articulated to governments and the wider public. Such activity is of benefit to the general public as it

ensures that policy makers are better able to consider the impact of legislation, policies and other actions on all sections of the public. In this sense advocacy and lobbying are clearly activities that can *further or aid* the charitable purposes of a charity.

As it presently stands, the draft Bill will reduce the capacity of charities to lobby or advocate on behalf of their service users. This in turn will reduce the ability of Governments to gain information about the impacts of legislation and policies on disadvantaged and marginalised Australians.

Recommendation

PeakCare recommends that the draft Bill be amended so that it does not impose restrictions on the amount of advocacy and lobbying that charities can engage in. In particular, we recommend that clause 8 of the draft bill be amended so that it reads as follows:

“A charity may have public advocacy purposes, provided those purposes:

- *further, or aid its dominant charitable purpose(s);*
- *do not promote a political party or a candidate for political office”*

Conclusion

PeakCare welcomes the opportunity to provide feedback on the exposure draft of the Charities Bill 2003. This submission has focused on the workability of the draft Bill, and in particular on the clauses restricting the lobbying and advocacy work of charities. PeakCare broadly supports the submission made by the Australian Council of Social Service and refers the Board of Taxation to this submission for advice regarding other aspects of the Bill.

PeakCare has argued that the implementation of the draft Bill, as it stands, will increase compliance and administrative costs for Charities and reduce their ability to meet the needs of disadvantaged or marginalised Australians. Presently the Bill does not clarify the amount of advocacy or lobbying that will disqualify a charity. It also does not make it clear what activities fall in the realm of advocacy and lobbying. PeakCare argues that rather than attempting to do this, by specifying an arbitrary amount in either legislation or policy, that the Bill should allow Charities to engage in lobbying and advocacy provided that such activities:

- further, or aid their charitable purpose(s); and
- are non-partisan