

Our Ref: MRB/03
Your Ref:

15th September 2003

Mr Richard Warburton
Chairperson
Board of Taxation
c/- The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir,

Submission Consultation on the Definition of a Charity by Playgroup Association of Queensland

Introduction

Playgroup Queensland was delighted with the recommendation arising from the Inquiry into the Definition of Charities and Related Organisations, that not-for-profit entities with a dominate purpose of providing care, support and protection of children, should be regarded as charitable. Playgroup Queensland believes its objects mirror the purpose stated in this recommendation however the application of this recommendation in the new Bill is disappointing to Playgroup Queensland.

The Senate Committee went on to note that at present child care and playgroup services were non-charitable services however Playgroup Queensland brings to the Board's attention that whilst community based childcare is represented in the Bill, the position of playgroup services are not sufficiently clarified.

Playgroup Queensland establishes and supports 1200 Playgroups in metropolitan, regional and remote communities. Each Playgroup facilitates positive learning and social experiences for children and their families or carers. Playgroups also offer valuable support to parents, particularly to those who might otherwise find it difficult to make links with their local community.

Background

It is timely to be able to offer feedback with respect of the draft bill given the Association has recently been unsuccessful in application for endorsement as deductible gift status (DGR) exempt entity.

Playgroup Queensland's Board of Management was advised by the ATO that the Association's application for DGR exempt status was refused on the basis that the Association's principal objective, whilst socially commendable is different from the work of benevolent institutions as determined by the courts.

Playgroup Queensland has reviewed the Bill in the context of this experience. In reading the new Bill it is important to note Playgroup is neither considered community childcare by the Commonwealth nor considered a public benevolent institution based on the ATO's most recent ruling.

The Association contends that legislation does not remove the uncertainty or lack of transparency for Playgroup Queensland.

The Playgroup Association of Queensland submits that part 3 Section 11 point (b) be amended to take into account the Inquiries full recommendation and read:-

"(b) in particular, the provision of child care and or playgroup services."

The Impact of Charitable Status for Playgroups

Charitable status for Playgroup Queensland will greatly enhance the Association's capacity to better meet the needs of families and the wider community. Specifically charitable status will provide:-

- Important savings in taxes such as GST, stamp duty;
- Increased access to philanthropic trusts, improving our competitiveness in securing additional funding for projects in support of families;
- Salary packages will be able to be structured and made more attractive enabling Associations to attract a greater quality of staff; and
- Increased appeal of playgroups / Associations as recipients of corporate donations. As you are probably aware, many large corporations are unwilling to make donations to community groups which do *not* have tax deductibility status.

Unsuccessful Submission for DGR Exemption

The Playgroup Association of Queensland Inc. in May 2003 sought endorsement as a Deductible Gift Recipient with the Australian Tax Office (ATO). The Association, the peak body for Playgroups in Queensland sought endorsement on the basis that the Association is a public benevolent institution (PBI). This endorsement had the full support of the Minister for Children and Youth.

Playgroup Queensland's Board of Management was subsequently advised by the ATO that the Association's application for PBI status has been refused on the basis that the Association's principal objective, whilst socially commendable is different from the work of benevolent institutions as determined by the courts.

This application highlighted what the Senate Inquiry re-enforced that a need exists to legislate the definition of charity as the Playgroup movement was unable, despite a strong case, to find a niche in the current common law and court imposed view of charity.

As a not for profit the Association lacks the financial capacity to proceed to a right of review by the Administrative Appeals Tribunal with enquiries with the Association's legal representatives indicating a cost to the Association in the vicinity of \$40,000. In a twist of fate we were advised that some law firms often take on this type of matter as pro bono but only if the Association had deductible gift status so the relevant firm could claim a deduction for time spent on the matter.

Inconsistencies with Government Policy

The Prime Minister speaks frequently and with some passion of philanthropy and social capital building between business and community however Playgroup can not participate on a level playing field with other charities because it lacks DGR endorsement.

It should be noted by the Board that many corporations have established Foundations to support the community but a cornerstone of these foundations is DGR status meaning a large percentage of not-for-profit agencies including Playgroups are precluded for funding opportunities and therefore disadvantaged.

The Treasurer announced with considerable fanfare the Commonwealth's efforts in securing charitable status for community childcare services but Playgroups are not mentioned in any context and are viewed by many in government and in current ATO Rulings as not being child care as a formal curriculum is not in place and parents remain with their children during activities offered.

The Commonwealth Department of Family and Community Services provide part funding to the Association, have a significant early intervention policy and seek from funding recipients measures decrease reliance upon government funding.

The Association is widely recognised as providing a low cost early intervention strategies that actively engages families yet our endeavours to strengthen this early intervention focus by securing funding external of government is significantly deflated as the Playgroup Association of Queensland can not obtain DGR status and therefore corporations are unwilling to provide philanthropic funds.

Process of Assessment and Endorsement of a Charity

Playgroup Associations can not gain any solace in achieving DGR status whilst the current model of ATO investigating the merits of any case for DGR status continues. It is the Association's contention that the system of assessment to determine if an organisation is a charity is unclear particularly if the ATO will substitute the common law definition for Part 2 of the Bill particularly

where part 2 fails to provide a clear in a definition of community based childcare or nominate playgroup specifically.

The Playgroup Association of Queensland submits that a need is evident for an independent body to review charitable applications. It is impossible to imagine the ATO as body responsible for collecting revenue looking favourably upon any application which removes income from the revenue stream.

Our most recent experience with the process of assessment would show that the only basis on which the ATO could determine if the Association was a PBI was reliance upon the common law definition and a review of the submission made by the Association (particularly this organisations Constitution) to determine if objectives were aligned with PBI requirements and the common law definition.

Staff from the Association enquired as to the process of deliberations and were advised that no attempts were made to contact beneficiaries of the service, other stakeholders the Association partners, to review literature on the benefits of Playgroup and play in early intervention, indeed the person making the assessment had never visited or been a part of Playgroup and therefore understood very little of the benefits to parents and children.

The establishment of an independent Charities Commissioner is supported and the removal of assessments for charitable status from the ATO is sought.

A level Playing Field

The Australian Research Alliance for Children and Youth was granted DGR status in 2003. Whilst the Alliance is still in its infancy the Association was both glad and yet deflated that the Alliance had gained charitable status, whilst the Playgroup movement had failed in its endeavours despite providing 30 years of service to families.

The work of the Alliance is commendable and will promote a positive forum to assist children in future generations but why is this new Alliance's work considered any more worthy or for the public good when compared to the Playgroup Associations. This is a question that remains largely unanswered in the mind of Playgroup's Board of Management and demonstrates that the playing field for not for profits is far from level when research is granted greater relevancy than practice.

There are numerous other examples of community organisations holding charitable status that do not differ from those operated by Playgroup Queensland in both the intent and the actual delivery of services. These include the Police Citizens Youth Club movement, Guides and Scouts. It would appear that that some time in the past these groups had gained the confidence of government to be listed by name in the income tax law.

Interestingly a significantly number of traditional charities such as Mission Australia, Red Cross and The Benevolent Society to name a few conduct Playgroups as a service for families and in one recent example came to the Playgroup Association seeking free membership for families given the service was charitable. The Association granted free membership and absorbed the costs.

The Playgroup Association therefore in summary recommends:-

1. That part 3 Section 11 point (b) of the Draft Bill be amended to take into account the Inquiries full recommendation and read:-

“(b) in particular, the provision of child care and or playgroup services.”, and

2. The establishment of an independent Charities Commissioner is supported with the removal of charitable assessments from the ATO be included in the Bill.

The Playgroup Association of Queensland is grateful for the opportunity to make a submission. Should you seek further information please contact Mark Brooke at any time.

Yours truly,

Mark Brooke
Chief Executive Officer
Playgroup Queensland