

SUBMISSION MADE TO THE

**THE CONSULTATION ON THE DEFINITION OF A
CHARITY**

**MADE BY TANDARA LODGE COMMUNITY CARE INC
SHEFFIELD TASMANIA**

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EXECUTIVE SUMMARY:

MADE BY TANDARA COMMUNITY CARE
HOME INC SHEFFIELD, TASMANIA

The Municipality of Kentish is a unique position in terms of services offered to the community in the area of health and ageing. Its major town (Sheffield) is located 30 minutes out the Regional Centre of Devonport, but the region includes some of the remote regions of Tasmania (including Cradle Mountain). The region covers 1,100 sq kilometers with a population of 5,500 spread throughout the region. 60% of the population live outside the major towns of Sheffield, Railton and Wilmot.

Tandara is the sole provider of health services in the region, providing residential care, community care, primary health services, community housing and transport.

In its last submission on the definition of Charities one of the main points made was in respect to giving charitable status to organisations on the basis of their work in the community rather than their membership of a church or charitable group.

The draft of the Bill does address this but there are several areas, which are unclear about the relationship it may have with the government.

This relates to two areas. Firstly, the draft Bill implies that any charity cannot make an attempt to influence law or Government policy (Disqualifying purpose section 8 part 2).

If it is the intent of the Government to "silence" any charity from taking part in shaping or changing Government Policy or legislation, then this amounts to intimidation (for fear of it losing its charitable status). It also runs contrary Government's who constantly seek input from charities in areas where Government policy or legislation is under review or requires amendment.

The draft Bill requires further clarification to ensure charities are able to have input into policy and legislation, rather than exclude them from doing so.

Secondly, is whether a charity is part of the Government is also unclear under the definitions in the new Bill.

In the explanatory draft under section 1.2 – 1.21, the draft states "both Government funding and regulation may be considered to be factors that are relevant in determining the existence of government control", has implications where charities carry out work on behalf of the government, e.g., Aged Care, Child Care, Health services, etc. This area needs to be more clearly defined.

The implications for Government funding if charities were classified as being part of Government is substantial, as the current arrangements allow for low cost delivery of services, as opposed to a much higher cost if the charitable status was lost.

Apart from these two areas the Bill does clarify the role and duties of a charity. However, like most other Taxation law, it is my opinion that if the Bill is left as it is the definitions and whether an organisation is a charity, will be determined by the Courts, through challenges to the Bill. Therefore, it would be more appropriate to clarify the definitions now, rather than leave it to the Courts.

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POINTS OF DISCUSSION ON THE DRAFT AND EXPLANATORY NOTES:

Most of the comments centre around the Explanatory Material to the Bill, as the Bill itself is brief and needs further clarification.

Section 1.2 and 1.21 of the Explanatory Draft:

This explanation is not clear enough for many charities to be able determine if they are acting as a government agency. In the area of Aged Care and Health, where these are funded by the Government and are also regulated by the Government, then the explanation is not clear. It could be argued that many charities merely carry out work on behalf of the Government and therefore may lose their charitable status. Where the organisation has been created by the Government or is a statutory body there is no doubt, but the current explanation is unclear.

It is suggested that the Bill be amended to exclude organisations created by the Government or are statutory bodies, rather than leave the question open to be interpreted as being one or the other. A clear definition is required here.

Section 1.27 of the Explanatory Draft:

It is unclear as to what “reasonable payment of wages or allowances” means. Again, the Bill needs to be clarified and any ambiguity done away with. As many charities use modern management practices to deliver their charity work, they also employ professional people to carry out this work. There should be no doubt that payment of any wages or allowances are just that – wages and allowances and should in no way affect the charitable status of an organisation.

It is suggested that the Bill requires amendment to clarify the ability of charities to pay “market” rates of pays to their professional staff.

Section 1.50 of the Explanatory Draft:

This area requires a considerable amount of work to clarify the reason why an organisation may be disqualified. The explanatory notes does more to confuse this issue and the following points are made:

- 1 The introduction of any legislation is subject to review. No matter what experience the draftsman may have nearly every piece of legislation has its unintended consequences, and often the legislation requires amendment to address these consequences. The ability for a charity, whether singularly or as a group, to lobby the Government for changes when this occurs is fundamental to its right to operate.
- 2 Government Policy is constantly under review and policy is not produced in a vacuum. The parties that have an interest in a Policy area and may be affected by any changes in Government Policy are often asked by Governments for input into the process, which then lead to further refinements of the policy. This policy is then converted into legislation.

POINTS OF DISCUSSION ON THE DRAFT AND EXPLANATORY NOTES:

The current Bill and Explanatory notes are not satisfactory in determining when a Charity can make representations to Government to have either legislation or policy updated or changed. The emphasis is on whether this activity is “more than ancillary or incidental to its other purposes”.

This needs to be spelt out clearer and charities given the ability to pursue changes when required, rather than “threatening” to take away their charitable status, if they become involved in the process. If the Bill is designed to exclude those Associations who represent a group of charities from being charities themselves, then the Bill should state this, rather than the “backhanded” way the current Bill is suggesting.

It is therefore recommended that section 8 (2) (c) is removed from the Bill and in its place the following is inserted:

8 (2) (c) “the purpose of the organisation is solely to lobby for changes to legislation or Government Policy”.

This would mean that any organisation, which has its sole purpose for lobbying, would be excluded from having a charitable status. This would exclude all professional lobby groups and not leave a question mark over charities that do, from time to time, lobby governments for changes in laws or policies.

The current wording is far too “loose” and open to be interpreted and used by Governments who may wish to “pick” on a charity because the charity is pursuing changes to its laws or policies. The threat of this amounts to “bullying” from Governments who wish to silence any comments on its programs.

It is my belief, that taking away the free will for organisations in this way will lead to poor policy making and thereby poorer legislation.

Section 1.54 in the explanatory notes does not clarify this, and again leaves this whole question up in the air.

Similarly point 1.55 is somewhat bizarre in its comment and makes no sense in trying to “justify” why charities should not be involved in the lobby process. The comment does not make sense or explain why it is an important process in their roles in serving the public benefit. This comment indicates that charities should “shut up” in the best interest of the community in general.

Conclusion:

While the Bill is short and to the point there are some areas which require further clarification to ensure charities are able to operate in the areas of public benefit. With the changes noted above, there will be greater clarity for charities, but the Bill cannot and should not be used to silence critics of Government Policy or Legislation, rather the Bill should be used to further the benefit that charities provide to the Australian people.