



## Changemakers Australia's submission to the Australia's Future Tax System Review

### The Mission of Changemakers Australia (CmA)

CmA is an incorporated national organisation which aims to support the growth of social change philanthropy in Australia.

Our mission is to encourage and resource people and organisations in the philanthropic world and beyond to focus on social and economic justice, equality for all, and environmental sustainability.

Social change philanthropy directs its support to activities that address the underlying causes of social ills, such as poverty, inequality, abuse of human rights and environmental degradation.

### Current obstacles to achieving the CmA mission

The law relating to charities places restrictions upon Not for Profit organisations (NFPs) whose main (or more than incidental or ancillary) purpose or activity is advocacy that supports or opposes a change to the law or public policy (that is, "advocacy for public policy reform").

In order for NFP organisations to effectively address the underlying causes of social ills, such as poverty, inequality, abuse of human rights and environmental degradation, they must have the capacity to pursue public policy reform.

However, by doing so, NFP organisations may no longer be considered as charities under the legislation, potentially losing access to a range of taxation concessions, as well as to some philanthropic funding.

Currently two major legal and/or administrative impediments limit advocacy for public policy reform:

- 1) The current definition of 'charity'. Organisations advocating public policy reform may not be given the status of a charity because their purpose or activities may be considered to be political on the grounds that they seek to change legislation or government policy or to promote a view on social or political issues.
- 2) The current definition of Public Benevolent Institutions (PBIs), one of the major categories of organisations eligible to receive tax deductible gifts under income tax law, requires an organisation to be providing 'direct relief' and advocacy is not considered to meet that requirement.

There are three consequences of these limitations for organisations advocating public policy reform:

- 1) Such organisations are unlikely to obtain the taxation benefits associated with Tax Concession Charity (TCC) and/or Deductible Gift Recipient (DGR) status.
- 2) Such organisations are excluded from receiving philanthropic funding from trusts or foundations which require grant recipients to have TCC and/or DGR status as well as receiving funding from individuals who seek a tax deduction for their gift.
- 3) Even where an NFP has charitable status, philanthropic trusts and foundations are reluctant to fund advocacy for public policy reform for fear of losing their own charitable status.

### **Overcoming the current obstacles**

CmA believes that NFP organisations with a dominant purpose that is charitable, altruistic and for the public benefit should be able to engage partly or entirely in advocacy for public policy reform in

support of that purpose, while at the same time (a) meeting the requirements of a charity and (b) being able to qualify as a PBI.

In addition, CmA believes that the definition of “charitable purposes” should be expanded to specifically include a category for the promotion and protection of civil and human rights.

The wording of the policies set out below is drawn from the recommendations of the June 2001, Report of the Inquiry into the Definition of Charities and Related Organisations (the CDI). However, it is different in one significant respect. In the definition of “charitable purposes” the CDI defined “advancement” as including: “...protection, maintenance, support, research, improvement or enhancement.” It is CmA’s view that it is necessary to make it clear beyond doubt that advocacy for public policy reform is included in the meaning of “advancement”. CmA’s policy therefore adds to the words used by the CDI the words: “prevention and promotion, ... policy development and advocacy – including that aimed at changing a law or public policy”.

The additional wording is, in CmA’s view, consistent with the CDI’s position that: “Non party-political purposes or activities such as advocating on behalf of their causes or needs, contributing to the development or implementation of public policy, entering into the public debate, or seeking to change a particular law or public policy, should be assessed against the same principles as other purposes and activities.”

The CmA agrees that charities must not be party political in that they have purposes that promote a political party or a candidate for political office.

## Recommendations for reform

CmA's position is that the Australian government should reform the law relating to charity to reflect the following policies.

### ***What is a charity?***

A charity is an entity that has a dominant purpose or purposes that are (a) charitable, (b) altruistic and (c) for the public benefit. If the entity has other purposes, those purposes must further, or be in aid of, the dominant purpose or purposes, or be ancillary or incidental to the dominant purpose or purposes.

### ***(a) Defining charitable purposes***

The principles identifying charitable purposes should be set out in legislation. In doing so the law should be modernised by no longer requiring that charitable purposes fall either within the 'spirit and intendment' of the Preamble to the Statute of Elizabeth or be analogous to one or more of its purposes.

### ***What are charitable purposes?***

Charitable purposes should be defined as:

- the advancement\* of health, which without limitation includes:
  - the prevention and relief of sickness, disease or of human suffering;
- the advancement\* of education;
- the advancement\* of social and community welfare, which without limitation includes:
  - the prevention and relief of poverty, distress or disadvantage of individuals or families;
  - the care, support and protection of the aged and people with a disability;
  - the care, support and protection of children and young people;
  - the promotion of community development to enhance social and economic participation; and
  - the care and support of members or former members of the armed forces and the civil defence forces and their families;
- the advancement\* of religion;
- the advancement\* of culture, which without limitation includes:
  - the promotion and fostering of culture; and
  - the care, preservation and protection of the Australian heritage;
- the advancement\* of the natural environment; and
- other purposes beneficial to the community, which without limitation include:
  - the promotion and protection of civil and human rights; and
  - the prevention and relief of suffering of animals.

(\* Advancement is taken to include prevention and promotion, maintenance, policy development and advocacy – including that aimed at changing a law or public policy, support, research, improvement or enhancement.)

### ***What purposes should be excluded?***

An entity should be denied charitable status if it has purposes that promote a political party or a candidate for political office. An entity should also be denied charitable status if it has purposes, or engages in activities, that are illegal.

### ***(b)The requirement that a charity be altruistic***

The public benefit test should be strengthened by requiring that the dominant purpose of a charitable entity must be altruistic.

### ***(c)What constitutes “the public benefit”?***

The public benefit test, as currently applied under the common law, should continue to be applied; that is, to be of public benefit a purpose must:

- be aimed at achieving a universal or common good;
  - have practical utility; and
  - be directed to the benefit of the general community or a ‘sufficient section of the community’.
- Self-help groups which have open and non-discriminatory membership should be regarded as having met the public benefit test.

## **A new three-tier definitional framework for entities**

- Altruistic Community Organisation

There should be a category, known as ‘Altruistic Community Organisations’, that are entities that are not-for-profit and have a main purpose that is altruistic. That is, they can have secondary purposes that are not altruistic, and that do not further, or are not in aid of, or are not incidental or ancillary to, their main altruistic purpose.

These organisations are not eligible for the tax concessions (income tax exemption or deductibility) associated with being a charity.

- Charity

These should be entities with a dominant purpose that is not only altruistic but also charitable and for the public benefit.

These organisations would be eligible for Tax Concession Charity status (income tax exemption).

- Benevolent charity

In the recommended definitional framework, the category of public benevolent institution should be replaced by a subset of charity to be known as Benevolent Charity. This would include those charities whose dominant purpose is to benefit, directly or indirectly, those whose disadvantage prevents them from meeting their needs. The taxation benefits of FBT exemptions and DGR status should be restricted to this tier.

These organisations would be eligible for income tax exemptions, FBT exemptions and be eligible to receive tax deductible gifts.

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