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CONSULTATION ON THE DEFINITION OF A CHARITY

Exposure Draft – Charities Bill 2003

The draft of the Charities Bill drawn up by the Board of Taxation contains five major weaknesses.

- 1) It conceives the purpose of charity as having a mainstream, instead of a residual function in society.
- 2) It focuses on broad, universal categories of social services and provisions, instead of focusing on the relatively exceptional needs of particular groups and individuals.
- 3) It fails to view charity as preferably a temporary, although high impact, intervention intended to empower recipients by removing or substantially reducing a severely adverse situation or condition.
- 4) It neglects to emphasize the essential role of altruism as a motivating and operating factor in truly charitable behaviour.
- 5) It fails to distinguish between acts of charity which are altruistic, unremunerated and free-of-charge, (i.e. actions specifically for the benefit of others); the work of voluntary, not-for-profit community associations or cooperatives formed by people who share common interests and pursue mutual goals; and the activities of wage-paying service organizations and groups (businesses).

There is an urgent need to re-evaluate what the term 'charity' should mean in the 21st century. We should reject medieval and regressive ideas that the basic entitlements of citizens (such as health, education, the natural environment, etc.) belong in the 'charity' sector. The term 'charity', therefore, should never be applied to provisions and services needed by the general public under normal circumstances. These general services should be provided through a government / private enterprise / community partnership, with the government portion being determined by the Australian community at large, since it is they who bear the cost by means of public revenue.

The current Exposure Draft fails to differentiate between the services and provisions that are properly the responsibility of government; those that comprise business or private enterprise; those that are provided by voluntary community associations; and acts of true charity.

The blurring of these significant differences benefits those in the private sector who would take for their own the provision of government services without the concomitant demands of transparency, public accountability, universality, and non-discrimination which characterize provisions set in place to serve a pluralist and diverse society. It also satisfies the desire of those in the private sector to gain the certainties connected with providing essential services and so avoid the risks associated with true private enterprise.

The blurring of the boundaries between different sectors permits so-called charitable activity to become an asset rich industry which employs an army of workers (in addition to volunteers) and occupies a market niche protected from normal competition. We are now witnessing the situation where those who draw their income from organizations calling themselves charities need the existence of the charity industry more than a nation as affluent as Australia should need the provision of charity.

In a compassionate and egalitarian society which distributes its wealth and benefits in a just, responsive and caring manner, charity that involves significantly more than private acts of generosity and kindness should only be needed in exceptional circumstances. These are circumstances where the assistance required can be expected to be unusual in kind, narrowly focused and frequently of relatively short duration. But where human needs are widespread and long-term, basic public (government) services and facilities should be established and subsequently enhanced by private enterprise and community self-help / common interest associations. All of these are normal features of socially and culturally advanced, modern nations where the four distinct sectors identified in this submission exist as co-partners, complimenting and balancing one another.

The Definition of Charity

Only when the role of charity is defined with greater specificity than in the Exposure Draft can it demand the respect it is due. Only then should it be supported at the highest level in order that it may function swiftly, smoothly and effectively to remove, or at least alleviate, conditions causing distress and need.

Currently the entities entitled by law to claim charity status include those that are as disparate in function as guide dog associations and Sunday schools; citizens advice bureaus and scouts/guides clubs; women's refuges and surf lifesaving clubs; opera companies and agricultural show societies; public libraries and grammar schools; Aboriginal and Islander legal services and Landcare groups. The disparate nature of these entities points to the looseness of the current definition of what constitutes a charity. Although the members of all these groups would undoubtedly claim that a public benefit was being served by them, this yardstick is clearly inadequate.

For example, the standard for assessing a charity that allows providers to draw their income from it must inevitably fail to satisfy the elementary test for altruism (action for the benefit of others, not self) that should be applied to all charities. The standard currently being used is one where the employees of entities such as churches, schools run by religious denominations, universities, Bible colleges and seminaries, kindergartens, industry training

organizations, specialized accommodation services, etc., not only make a living from delivering these services, but in most cases they also apply charges and/or fees. Entities such as these constitute what is referred to here as the 'charity industry'.

Since the concept of charity proposed in this submission is essentially one of relatively small-scale localized action, the proscription of remuneration is quite practicable; but in cases of large international organizations such as Amnesty International, the United Nations Association, Oxfam, Greenpeace, etc., the sanction on remuneration could be overcome through partnerships with private enterprise. In these partnerships the wages and accommodation of key coordinating personnel could be carried by philanthropic companies who should be rewarded with generous tax incentives.

It is the position of this submission that the current standard for determining what should be the essential criteria for accrediting a charity needs a thorough revision, for it is only when a service is altruistic, voluntary, alleviating a specific difficulty or problem situation, and free of cost to recipients that the entity providing it should be classified as a charity.

Conclusion

When charity is rigorously defined in the manner suggested here, the degree to which it is needed in a society is the test of the social and cultural health of that society. Indeed, inclusive, accessible and broadly based government services set in place to serve the general public should be sufficient to meet essential needs when complimented by a wide range of community groups and the offerings of private enterprise. For this reason, when these sectors are working well in partnership there should be little need for actual charity.

However, when a society is not functioning well, the call on charity becomes urgent and constant – as it is at this time. Despite the rise of a 'charity industry', we see no end to calls for greater assistance. Charity which claims to be enhancing society with its activities but is actually damaging society as it undermines public (government) services and deflects funds from true charities and voluntary community associations, is in reality signaling a failure in national leadership and community cohesion.

A society, therefore, that cannot see that a rapidly expanding 'charity' sector, heavily reliant on government funding, is a sign of an ailing society will not be able to solve its community problems, and will continue to exacerbate the situation. The solution will only be found in the correct balance and harmonious partnership between the public; private; charitable; and self-help/mutual interest/community development sectors of our largely fortunate and asset rich Australian nation.

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