

SUBMISSION TO THE BOARD OF TAXATION ON THE DRAFT CHARITIES BILL

1. Introduction

The Queensland Council of Social Service (QCOSS) is Queensland's peak community sector body advocating on behalf of low income and disadvantaged communities supporting individuals and organisations within the community sector. QCOSS works to eliminate inequity and disadvantage through a range of activities including advocacy, policy analysis and development, networking and liaising with government and key decision-makers on a range of issues relating to poverty and disadvantage.

QCOSS is part of a network of Councils of Social Service from all other states and territories, represented at the national level by the Australian Council of Social Service (ACOSS). QCOSS refers you to the more detailed submission by ACOSS and we support their recommendations. QCOSS has a membership of more than seven hundred organisations with whom we consulted in the course of this submission. We also hosted a consultation for our membership with representatives of the Board of Taxation in Brisbane in September.

In line with advice from the Board of Taxation this submission briefly responds to the issues of workability in the draft Bill.

2. Disqualifying purpose

Clause 8 of the draft Bill would exclude from charitable status organisations that have among their purposes:

- Changing the law or Government policy; or
- Advocating a cause;

unless these purposes are no more than "ancillary or incidental" to the other purposes of the organisation.

Most organisations providing direct assistance to poor and disadvantaged citizens also advocate for better program and policy responses, and do not see these activities separately. Assistance and advocacy are two means by which a charity achieves its purpose.

QCOSS supports the notion (recommended by the Charity Definitions Inquiry) that the advocacy work of organisations should not exclude them from charitable status providing such advocacy furthers the organisation's dominant charitable purpose and does not promote a political party or candidate for office. QCOSS recommends that clause 8 be re-drafted to reflect this position.

QCOSS submits that the current formulation is unworkable because:

- Many charities see their work in providing assistance to disadvantaged people and advocating for better policy responses, as simply different means to achieve their overall purpose. The assistance and advocacy work of organisations are intertwined and inseparable, and therefore it is not possible to determine whether they are ancillary or incidental;

- The term “ancillary or incidental” is not clearly defined, making interpretation more difficult;
- Measuring the extent to which policy advocacy is ancillary or incidental to an organisation’s purpose is very difficult. At the very least it requires intrusive and time-consuming regulation of the advocacy work of charities, and the resources devoted to it. Charities could, for example, be required to catalogue their advocacy activity and its cost, in case the Australian Taxation Office audits their advocacy activities;
- The Australian Taxation Office (ATO) is not the correct body to determine whether organisations’ advocacy activities are more than “incidental or ancillary”. The ATO is a tax specialist, not a specialist agency which understands the activities and operations of charities. Further, as a revenue raising body the ATO has a conflict of interest in terms of its role in maximising government revenue. We propose that a separate Federal Charity Commission be established to regulate access to charitable and PBI status.

3. Other Issues of Concern

QCOSS also believes the workability of the Bill would be improved by:

- Indicating that the dominant purpose of a charity should be altruistic;
- Further clarification that the meaning of “Government body” does not include organisations that are solely funded by Government programs;
- Deleting the reference to unlawful activities or conduct since this is relevant to the criminal law rather than a definition of charity; and
- Making it clear that the “advancement of social and community welfare” in clause 11 includes assisting people who are disadvantaged in terms of their access to housing;
- Addressing issues relating to PBI status in this Bill or subsequent legislative reform.