



public interest
ADVOCACY CENTRE LTD

**Taxing Charity: a submission to the review
'Australia's future tax system'**

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the NSW Government Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

PIAC's work on charity law and taxation

PIAC has taken an active role in supporting the not-for-profit sector with the aim of:

- Enhancing the capacity of individuals and not-for-profit organisations to undertake advocacy and related activities on public interest issues.
- Enhancing community awareness of and engagement in government.
- Promoting and enhancing transparency and accountability in the exercise of government power.

In making this submission, PIAC draws on its experience in realising these goals through:

- Delivery of nationally accredited training in advocacy, assisting participants to effectively participate in democratic processes.
- As an industry partner with the Centre for Community Management (CACOM) at the University of Technology, Sydney in a research project funded by the Australian Research Council (ARC) Linkage Program. The research involved an in-depth study on trends in advocacy within the Australian community sector in the context of recent state government partnership agreements.
- As a partner with the Whitlam Institute and the Social Justice and Social Change Research Centre, University of Western Sydney in a project examining principles and contracts in the government/ non-government relationship.

- Recent experience defending its own claims for charitable and Public Benevolent Institute (PBI) status with the Australian Tax Office.
- Representing the clients of services provided by the not-for-profit sector.

PIAC welcomes the review of Australia's taxation system, and notes and supports the design principles outlined in the first chapter of the *Consultation paper Summary* - equity, efficiency, simplicity, sustainability and policy consistency.¹ It is important that governments have adequate revenue to fund the services needed and valued by the community, and that the taxation system be as fair, efficient and simple as possible.

PIAC notes the particular consideration the review panel is giving to the issues related to the definition, regulation and taxation status of charities and not-for-profit organisations. PIAC will limit its comments in this submission to these issues, as outlined in Chapter 7 of the Consultation Paper.²

Consultation Questions

Q7.1 What is the appropriate treatment for NFP organisations, including compliance obligations?

The not-for-profit sector in Australia is large and diverse, and is increasingly important to both governments and communities as a key provider of community services, sporting activity and representation of collective interests.

The not-for-profit sector is large, diverse and economically and socially highly significant, characterized by small to micro organisations, with many organisations heavily reliant on volunteer labour and other community and government support. Broad economic, social and political trends mean that the importance of the not-for-profit sector is growing.³

It is the essential that the contribution the not-for-profit sector makes to society and the economy be recognised and the urgent need for reform of the array of legislation and regulation that governs its existence must be prioritised.

Over the past 15 years there have been five major Commonwealth inquiries into charities and not-for-profit organisations.⁴ There have also been numerous academic research papers, journal articles and books and major reports by state governments. Very few of the recommendations of these inquiries and reports have

¹ Australian Government, *Australia's future tax system Consultation paper Summary* (2008) 12. <http://taxreview.treasury.gov.au/Content/Content.aspx?doc=html/pubs_reports.htm> at 23 April 2009.

² Australian Government, *Australia's future tax system Consultation paper* (2008) 161-168. <http://taxreview.treasury.gov.au/Content/Content.aspx?doc=html/pubs_reports.htm> at 23 April 2009.

³ The Allen Consulting Group, *Improving Not-for-Profit Law and Regulation Options Paper* (2005) <<http://www.allenconsult.com.au/publications/view.php?id=314>> at 27 April 2009.

⁴ The Industry Commission inquiry into Charitable Organisations in Australia (1995) <<http://www.pc.gov.au/ic/inquiry/45charit>>; Inquiry into the Definition of Charities and Related Organisations (2001). <<http://www.cdi.gov.au/html/report.htm>> at 23 April 2009; the Board of Taxation consultation on the draft Charities Bill 2003 (2003) <<http://www.taxboard.gov.au/content/charities.asp>>; the Treasury consultation on Financial Reporting by Unlisted Public Companies (2007) <<http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1269>>; and the recent Senate Inquiry into the Disclosure regimes for charities and not-for-profit organisations <http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/report/index.htm>.

been implemented. They represent a valuable body of knowledge and a considerable commitment of resources, both from government and the not-for-profit sector.

There seems to be no rational basis for the current complexity of regulation. As the National Roundtable of Nonprofit Organisations pointed out in 2004:

... it is in tax law that the greatest confusion is to be found. There are a great variety of concessions given by different levels of government, each to a variety of non-government organisations. It is impossible to find any set of principles underpinning the legislation that designates these concessions. There are no clear links between the concessions provided and public disclosure requirements. Not surprisingly, in such an environment regulation is confusing, contradictory and often unfair.⁵

The taxation treatment of not-for-profit organisations cannot be separated from not-for-profit regulation more broadly.

PIAC recommends that this Inquiry build on the findings and recommendations of the previous inquiries and urge the Federal Government to take action. In particular, PIAC is concerned that the uncertainty around advocacy activity by not-for-profit organisations be positively resolved. While directly assisting those in hardship is important, PIAC's experience indicates that addressing the underlying systemic issues is essential.

PIAC submits that implementing the recommendations of the 2001 Charities Definition Inquiry, and the recent Senate Inquiry should be prioritised.

Recommendation

That the findings and recommendations of the previous government inquiries into the not-for-profit sector be considered, and in particular that the recommendations of the 2001 Charities Definition Inquiry, and the recent Senate Inquiry be implemented without delay.

Q7.2 Given the impact of the tax concessions for NFP organisations on competition, compliance costs and equity, would alternative arrangements (such as the provision of direct funding) be a more efficient way of assisting these organisations to further their philanthropic and community-based activities?

There is consensus that the current system of tax arrangements is complex and difficult to administer. Evidence presented to the recent Senate Inquiry from parties as diverse as academics, sector managers and even the Australian Taxation Office illustrated this once again.⁶ It does not follow, however, that removing tax concessions and increasing direct funding is an appropriate solution.

⁵ Nonprofit Roundtable, *Nonprofit Regulation Reform Program* (2004) <http://www.nonprofitroundtable.org.au/Content/NavigationMenu2/PolicyRegulatoryReform/documents2/Reg_Reform-Statement.pdf> at 17 April 2009.

⁶ Senate Inquiry into the Disclosure regimes for charities and not-for-profit organisations (2008), see for example the hearing on 29 October 2008 <http://www.aph.gov.au/Senate/committee/economics_ctte/charities_08/hearings/index.htm> at 28 April 2009.

The strength of the not-for-profit sector comes from its independence, its diversity and its community support. Voluntary contributions, both of money and of time, create social capital and promote social inclusion. The not-for-profit sector has earned community support through the essential contribution it makes to society and the economy. Support is growing, as is need. Recent analysis by the Australian Centre for Philanthropy and Nonprofit Studies indicates that the growth in tax deductible giving in Australia far exceeds inflation, that the average gift deduction is increasing, and that a greater percentage of an individual's taxable income is being gifted.⁷ Community support is recognised by governments in the tax concessions available to individuals and to not-for-profit organisations.

PIAC is concerned that a move to replace tax concessions with direct funding might reduce impact on community support, as well as reducing the independence of the sector and increasing its dependence on government. The need for efficiency needs to be balanced with the broader community benefit of wide participation in altruistic purposes.

Recommendation

That the importance of community support and the need for a strong and independent not-for-profit sector be considered in reviewing the efficiency of tax concessions to not-for-profit organisations.

Conclusion

It is PIAC's view that thorough reform of the taxation and regulation of charities and not-for-profit organisations is needed. The not-for-profit sector contributes to society, is increasingly called on to deliver government services, develop policy solutions, to provide centres of connectedness for citizens

There are many problems with current situation. It is complex, inconsistent, poorly targeted. Implementing the recommendations of the 2001 Charities Definition Inquiry, and the recent Senate Inquiry should be prioritised.

⁷ The Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, *CPNS Current Issues Information Sheet 2009/1 Tax Deductible Giving in 2006-2007* (2009).