

Free Kick for Charities

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ARNOLD Block Liebler recently made a submission to the Board Of Taxation on the *Charities Bill 2003* on behalf of the Australian Conservation Foundation, Friends of the Earth, Greenpeace, the Wilderness Society and a host of other 'environmental charities'. It is consistent with that of the Australian Council of Social Services. They could be summed up thus—charities are good, leave them alone, and do not ask them to account for their tax-supported activities.

The IPA, which also made a submission, begs to differ. Charities have changed the way they do business. The work of charities is more political than was once the case, indeed the very notion of a charity is problematic. None of this would matter if charity status did not carry certain tax-assisted privileges. As it does, there is a need to scrutinize, if not delimit, the activities of charities. The combination of public assistance and a liberal attitude to the nature of charity work is best balanced by disclosure by charities to donors of two key concepts: the efficiency of the charity and the nature of the work undertaken in the name of the charity.

As it stands, the *Charities Bill* bans 'partisan' lobbying and restricts 'non-partisan' lobbying by charities. ABL and ACOSS argue that a charity is defined by reference to its purposes and not by its activities. At present, a charity cannot have illegal or political purposes. The common law recognizes that a charity may engage in activities which can be broadly called 'political', such as advocating for change, so long as that is not the purpose for which the charity is established or its dominant activity.

It is ... a matter of necessity for charities not only to undertake advocacy activities but also to be able to have as a 'purpose' the purpose of systemic advocacy for change, to enable them to address the very causes of the problems which they seek to address.

These views come as no surprise to those familiar with the sector. For example, the Queensland Conservation Council boasts 60 representatives sitting as environmental consultants on committees throughout the State. Welfare charities used to help the poor, now they want to overcome inequality. Russell Rollason of Anglicare said recently, 'Is the role of charities and churches simply to apply band aids to the victims of our competitive society or should charities actively contribute to a fairer more just Australia?' Why not just run for Parliament Russell!

Charities are in there boots and all, but is the electorate comfortable with paying charities to lobby? Some countries place limitations on the resources devoted to lobbying, others on the nature of the lobbying activity. Australian charities want none of this. Moreover, to the extent they accept any regulation, they argue for a Charities Commission, as in the UK. They would hope to capture such a commission, turning it into an advocacy body, like the Human Rights and Equal Opportunity Commission, not a regulator, like the Australian Competition and Consumer Commission.

LOBBYING BY CHARITIES

There is an assumption in the public support of charities: that a donor understands the purpose of the char-

ity. When the charity's methods are direct—giving aid to the poor, planting trees, and writing letters to foreign governments on behalf of political prisoners—the task of informing the donor is not great, because the purpose is unambiguous. As the methods and definition of charities have widened, the assumption of donor knowledge may not hold. The charity no longer gives direct aid to the poor, it wants to use the tax system to achieve equality. Does lobbying to create more generous unemployment benefits or a more progressive tax system constitute charity for the poor, or is it the pursuit of an egalitarian ideology? Is lobbying to tax hydrocarbons a public benefit or the pursuit of an environmental ideology based on assumptions of resource depletion? Is lobbying for an International Criminal Court the pursuit of human rights, or the pursuit of an anti-nation-state ideology?

Lobbying is activity to change policies in favour of the view of charities, which means almost invariably that more public resources should be devoted to their favourite cause. Charity work is no longer unambiguously good, or for the public benefit. It may be altruistic, but increasingly it is embedded in a political framework that seeks to use public power for system change. These methods are unambiguously political in nature. Arguably, it is also at odds with the donating public's expectations of the charities.

If the government decided that lobbying by charities should not be publicly assisted, then it should be disallowed altogether, the breach of which should cause the loss of charity status. Whether charities would

cease to lobby with the loss of such support is moot, but they would likely suffer the loss of donor support for their charitable purposes—a matter of real concern to them and to government. Clearly, the risk in losing donor support for charitable works is a high price to pay for banning lobbying. Moreover, in the areas defined as publicly beneficial, there is useful public policy work undertaken by charities. Charities clearly have a public lobbying role to play. Indeed, they are encouraged, paid in some instances, by government to do so.

For some charities, for example, the Red Cross, taking a politically partisan position would run a considerable risk of losing support among its donors, not to mention those political parties whom it did not support. For other charities, however, for example, environmental groups with well established links with the Greens party, the risk to the donor base is much lower. In either case, *provided the donors are kept well informed*, the behaviour of the executive of the group will be judged by the donors. The weakness in this analysis is that charities are not membership organizations. Typically, like political parties, but unlike employer or employee associations, they only ‘represent’ interests in a nominal sense. Donors are not members and have no voice, but they have the power of spending their donor dollar elsewhere.

A recent review of the UK charities legal framework (Home Office, 2003) recommended that the UK Charity Commission ‘should emphasize that trustees have the freedom to pursue whatever activities they judge to be in the best interests of the charity’. How are they to do so? What is their guide? The problem, analogous to charitable trusts, is that with the reinterpretation of the purpose of trusts and charities over time, they can stray a long way from their original purpose. While purposes are rarely immutable—they are adjusted as

significant events determine—there is often a tension between the original and new purposes. The best way to determine whether the purposes are still acceptable is to have the donors make a judgement. Some ownership in the charity rests in the donor.

The political parties receive considerable taxpayer assistance to conduct their public election activities. In return, the parties must account for such expenditure, including the disclosure of donations and donors.

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Lobbying by charities, even in a non-partisan way, may or may not determine the fate of politicians who decide policy, but it does seek to determine the menu of policies from which politicians choose. Tax-assisted lobbying carries some obligations, and obligations mean scrutiny in the fulfilment of those obligations.

PROPOSED APPROACH

The fundamental issue should be not *how much* lobbying a charity engages in, but whether or not lobbying furthers or aids the organization’s dominant charitable pur-

pose. The issue is who is to decide these questions. The answer lies in providing the donors with sufficient information. The donors consist of individuals and the government, on behalf of the taxpayer. Rather than set limits on lobbying, the Bill should ensure that each charity supplies information about its activities, and make this information accessible to all donors.

The key pieces of information are: the percentage of funds devoted to raising funds, a measure of the efficiency of the organization, and the percentage of funds expended by whatever methods, including lobbying. This may involve extra work in terms of keeping good records, but no more so than any well-managed organization. An exemption could be granted to the smaller organizations that would find such an exercise a significant burden.

The IPA is aware, as is the sector, that the ATO is not presently resourced to scrutinize the activities of charities. Once a charity is accepted, it is rarely investigated. This does not mean that the ATO is unable to conduct an audit from time to time, in order to send a signal to the sector about what is and what is not acceptable behaviour.

The resources for scrutiny could be vastly expanded if charities were required to make certain disclosures to the public, or to the government, who could make these available to the public. The strengths of this approach are that the donor market, and not the government alone, would share the scrutiny load. Second, although there would have to be agreed standards of disclosure and definitions of activities to be costed, the government is less likely to need to specify an acceptable activity and an acceptable level of expenditure.

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