



Submission to the Select Committee on Charity Fundraising in the 21st Century

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About Anglicare Australia

Anglicare Australia is a network of independent local, state, national and international organisations that are linked to the Anglican Church and are joined by values of service, innovation, leadership and the Christian faith that every individual has intrinsic value. With a joint budget of \$1.48 billion, a workforce of over 18,000 staff and more than 11,000 volunteers, the Anglicare Network contributes to more than 50 service areas in the community. Our services are delivered to more than one million Australians, in partnership with them, the communities in which they live, and other like-minded organisations in those areas.

Anglicare Australia has as its Mission “to engage with all Australians to create communities of resilience, hope and justice”. Our first strategic goal charges us with reaching this by “influencing social and economic policy across Australia...informed by research and the practical experience of the Anglicare Australia network”.

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Introduction

Anglicare Australia is pleased to contribute to the Select Committee on Charity Fundraising in the 21st Century.

We note there have been many thoughtful inquiries into the not-for-profit sector, tax deductible gift programs, advocacy and charities more generally. These have been conducted both within and independently of parliament. Indeed, our sector has been under constant review for several decades. Each of these processes has provided great insight into the value of the charity sector and the donations that partially support it.

Regrettably, recent years have seen a succession of inquiries and reviews focussed on constraining charity advocacy and directing charities on how to spend their donations. Our hope is that this Select Committee will focus on the positive role that charities play in public life, and how that role can be supported and resourced.

Anglicare Australia's submission focuses on the role that charities have played in improving policy development in Australia, and makes recommendations on how to remove obstacles to fundraise for this work. We would welcome the opportunity to further discuss these recommendations with the Select Committee.

The role of charities in policy development

The greatest asset for any charity seeking to fundraise is its reputation, and the trust that it enjoys within its community. Anglicare Australia notes that the Productivity Commission Report into the Contribution of the NFP Sector found that the community had a high degree of trust in the sector, while surveys consistently confirm that Australian charities are enjoy a much higher level of trust than governments and business.¹ Anglicare Australia's view is that the greatest threat to this trust comes not from the conduct of the sector itself, but from recent efforts to undermine charities and their role in public debate.

There is no legal basis for these attacks. In 2010, a landmark High Court judgement involving Aid/Watch found that charities could have a dominant purpose of influencing and engaging in public "'agitation' for legislative and political changes."² The decision applied the right to freedom of political communication in Australia, which the High Court had previously defined as a constitutional precondition for representative democracy. In the Aid/Watch case, the High Court found that "the generation by lawful means of public debate... itself is a purpose beneficial to the community."³ The pace, fragmentation and media management of political debate suggests that this role of charities in debate is more important now than when the High Court made that finding.

¹ Productivity Commission (2010) *Contribution of the Not-for-Profit Sector*. Research Report. Canberra. p2

² Aid/Watch Incorporated v Commissioner of Taxation [2010] HCA 42

³ Ibid.

Following this, the Charities Act 2013 recognised that charities can advance their purpose by engaging in public debate about public policies. Systemic advocacy is clearly recognised and protected under this definition.⁴ And while campaigning for or any party or candidate is rightly barred, charitable organisations are permitted to compare or rank the policies of both parties and candidates.⁵

At the heart of this existing legal framework is a recognition that advocacy is an essential, and often the most effective, means of achieving charitable purposes. For agencies in the Anglicare Australia Network, tackling poverty and inequality entails not only providing services to assist people at coalface of these issues, but also advocating for policy and legislative change to address the root causes. Our own experience is that donors *expect* charities to undertake advocacy on the issues that motivate them to donate.

Case study: Partners in Recovery

Anglicare Tasmania has been offering services for 35 years, as well as leading research, advocacy and campaign work in Tasmania through its Social Action Research Centre.

Anglicare Tasmania has been active in sector consultations on mental health, based on input from people with lived experience of mental illness. They have been integral in the development of the Partners in Recovery (PIR) Tasmania model. Under the model, anyone can be referred to be assessed for eligibility for help under PIR or the National Disability Support Scheme. If they are eligible, they are provided services and help to coordinate their care and navigate the system. Anglicare Tasmania is the PIR's lead agency in Tasmania.

When the PIR was launched in 2012, the model itself had been the culmination of years of advocacy from the sector following calls for better integrated care. PIR also recognises that people's frustrations with 'the system' are not limited to its failures to meet their own needs. PIR's workers are engaged in system reform activity as part of their work with individual people. The purpose is to identify systemic issues that will take time to resolve, and will involve working with others.

System reform works on those factors that influence a population's health and their ability to control their health – the 'social determinants' of health. PIR Tasmania collects information across Tasmania about the issues that communities are facing, and uses this information to undertake advocacy.

This case study shows of how advocacy can be embedded in service delivery, working hand in hand with government to shape and improve policy for the benefit of the community.

⁴ Maddison, S. and Carson, A. (2017) *Civil Voices*. University of Melbourne. p8

⁵ Ibid.

In recent years, and particularly since the 2016 federal election, a number of politicians have commented negatively on the participation of charities in public debate. They have frequently argued that civil society organisations and charities have a lesser ‘right’ to participate in debate than political parties and candidates.

This growing disdain for charity advocacy has garnered international attention. In 2016 the United Nations Special Rapporteur on the situation of human rights defenders, Michel Forst, conducted an official visit to Australia. He concluded his visit by expressing concerns about laws and policies that muzzle civil society, including charities:

“These laws have not only accentuated the disparity between Government’s declared commitments at international forums and their implementation within the country, but they have also aggravated the situation after the drastic defunding of peak bodies by the Government, following their advocacy or litigation on such topical issues as immigration, security, environment and land rights protection.”⁶

This hostility is both harmful and wrong in seeking to deny the right of the public to participate in civic debate. It also ignores the role of self-interested advocacy by far more powerful players in politics. Charities play a critical role in promoting the former, and counter-acting the latter. Anglicare Australia’s view is that this is the most valuable role performed by charities, and the one that ought to attract the most support. If charities did not play this role, and simply supplanted the work of government in providing services, the experiences of the most marginalised people would be lost from policy development and charities would become merely an arm of government instead.

There are many ways governments can assist charities to fund their policy work. For example, the report produced by Mr Forst and the Office of the United Nations High Commissioner for Human Rights recommends an end to arbitrary funding cuts to advocacy bodies and the removal of ‘gagging clauses’ from funding agreements.⁷ Anglicare Australia supports these recommendations and commends the report to the Select Committee.

Recommendation 1: Funding for advocacy

Anglicare Australia calls for an end to arbitrary funding cuts to advocacy bodies; the removal of ‘gagging clauses’ from funding agreements; and the adoption of the recommendations from the *Report of the Special Rapporteur on the situation of human rights defenders on his mission to Australia*.

⁶ Office of the United Nations High Commissioner for Human Rights (2016) *Australian Government must re-build trust of civil society – UN human rights expert*. Available online:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20693&LangID=E>

⁷ Office of the United Nations High Commissioner for Human Rights (2017) *Report of the Special Rapporteur on the situation of human rights defenders on his mission to Australia*. pp19-20. Available online:

https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Documents/A_HRC_37_51_Add_3_EN.docx

Expanding tax deductibility arrangements

In 2010, the Productivity Commission noted that Australian tax deductions appear to be generous, but in fact, the scope of organisations that are eligible for these deductions is narrow by international standards.⁸ The Commission went on to say that this distorts charitable giving to favour those who are eligible to be deductible gift recipients (DGR), which is less than half of all charities. Anglicare Australia shares the Commission's view that the definition of a public benevolent institution (PBI) is narrow, and that tax deductibility should be expanded:

*"The Commission believes that gift deductibility should be widened to include all tax endorsed charities in the interests of equity and simplicity. The use of PBI status is no longer an appropriate basis for determining DGR eligibility for charitable endeavour."*⁹

The Productivity Commission explores how this could be done, suggesting an incremental implementation with increased monitoring. Another suggestion was to offer auspicing arrangements so that more charities and donors can benefit from tax deductibility.

Recommendation 2: Expanding gift deductibility

Anglicare Australia recommends that the Select Committee explore the expansion of gift deductibility to all charities. In exploring this option, the Select Committee should review the Productivity Commission's *Contribution of the Not-for-Profit Sector* report, particularly Chapter 7 on Taxation, Philanthropy, and Access to Capital.

At a minimum, Anglicare Australia believes that DGR provisions should be reviewed and made consistent with charity law on advocacy, and the High Court precedents relating to freedom of political communication for charities. Aid/Watch has previously warned that any restriction on the ability of a charity to exercise its right to advocate – including as vested in DGR regulations – is potentially unconstitutional and could be subject to legal challenge.

Although the 2010 High Court case concerned tax exemptions under charitable status, it is also directly relevant to DGR status. The judgement suggests that organisations should not be discriminated simply because their principal purpose is policy development or the promotion of social change.

At present, PBIs are required to provide the 'direct' relief of poverty. Here, DGR discourages work that addresses the root causes of poverty – to paraphrase Community Council for Australia CEO David Crosbie, the organisation providing blankets to those who are homeless is a charity, while the organisation trying to understand and end homelessness is an agitator. Following the reasoning adopted by the High Court in the Aid/Watch case, this requirement under the PBI register undermines debate on 'legislative and political changes'.

⁸ Productivity Commission. p186.

⁹ Productivity Commission. p179.

Case Study: Breaking the cycle of homelessness

The Brotherhood of St Laurence, a member of the Anglicare Australia Network, conducts regular campaigns on issues crucial to the income and life opportunities of disadvantaged Australians and their communities. Its campaigns draw on evidence from its own research, the services it runs, and valuable insights from people experiencing disadvantage. In this way, the services it provides help to inform its advocacy. Housing and homelessness has been a focus of this work for many years, and the Brotherhood of St Laurence has been working with different levels of government to break the cycle of homelessness.

Earlier this year, insights provided by the Brotherhood of St Laurence helped shape the Victorian Premier's Homelessness and Rough Sleeping Action Plan. The plan was launched with the help of Brotherhood of Laurence's former Executive Director Tony Nicholson, working closely with other agencies.

The Plan has led to \$45 million worth of initiatives, including the establishment assertive outreach teams in areas of greatest need across Victoria, measures to tackle chronic homelessness, and further investments in social housing. The Plan also has a focus on tackling the causes of homelessness.

This case study illustrates how charities can use their experience of providing direct relief to tackle the causes of complex social problems. It also shows how advocacy be an asset to government in shaping policy development.

The PBI appears to be the only register that imposes this strict requirement to provide direct relief. For example the Overseas Aid Gift Deduction Scheme, administered by the Department of Foreign Affairs and Trade, offers tax deductibility to organisations working address the causes of poverty, through development assistance, as well as through direct relief.¹⁰ Under this program, development aid may flow to advocacy organisations, provided they are not agents of political parties.

Elsewhere the Register of Environmental Organisations, administered by the Department of Environment and Energy, extends tax deductibility to organisations whose work includes "the provision of information or education, or the carrying on of research."¹¹ In each of these cases, the government has recognised the benefits of research, advocacy and community work.

¹⁰ Department of Foreign Affairs and Trade (2016) *Overseas Aid Gift Deduction Scheme Guidelines*. Available online: <http://dfat.gov.au/about-us/publications/Documents/oagds-guidelines.pdf>

¹¹ Department of Environment (2003) *Register of Environmental Organisations: A Commonwealth Tax Deductibility Scheme for Environmental Organisations. Guidelines*. Available online: http://www.environment.gov.au/system/files/pages/53ca6702-48ad-414a-bf24-60e253d5ad0d/files/reo-guide-2003_0.pdf

Anglicare Australia hopes that this discrepancy will end. At present, it suggests that a charity should only be supported when it promotes civic debate somewhere else, such as the developing world, or when it's dutifully providing the services that people might otherwise expect from government.

Recommendation 3: Consistency between charity law and tax arrangements

Anglicare Australia recommends that DGR and PBI arrangements be reviewed to promote consistency with charity law, and with other tax deductibility schemes.

A charity's purpose vs a charity's activities

Under Australian charity law, it is the *purpose* of an organisation, not its *activities*, which is relevant to determining its eligibility for registration as a charity and for DGR status.

Anglicare Australia is concerned that the activities of charities are increasingly becoming conflated with their purpose. Multiple recent statements from senior members of government and media commentators highlight this misunderstanding. More troublingly, recent government-initiated inquiries such as the Treasury's 2017 consultation on Tax Deductible Gift Recipient Reform Opportunities and the House of Representatives Standing Committee on the Environment's 2016 Inquiry into the Register of Environmental Organisations have been premised specifically on activities, rather than purpose.

For example, a 2017 Treasury discussion paper on DGR reform said that "Scrutiny of an organisation's continued eligibility is appropriate as the scope of activities undertaken by an organisation can change over time, potentially making them ineligible for DGR status."¹² This is simply incorrect, as was noted by several subsequent submissions and legal analyses. It is a *change in purpose* that would lead to ineligibility.

Anglicare Australia supports this approach to judging eligibility, and notes that it has emerged as the best way of determining charity eligibility after multiple reviews. The reason for this is simple – what defines a charity is its mission, and whether it exists to promote a public good. The activities used to advance that mission can and should change over time. Moves to limit a charity's activities would inhibit their ability to advance their purpose.

Anglicare Australia is concerned, for example, by the investigation into Catholic Education Melbourne's role in the recent Batman by-election. Catholic Education Melbourne is entitled as a charity to engage in pre-election debate by ranking the policies of parties, provided they do not endorse a candidate and disclose their activities. Whatever the outcome of the investigation, we believe it could impact their donor base. It is also likely to deter other charities from speaking up in an election period.

¹² The Treasury (2017) *Tax Deductible Gift Recipient Reform Opportunities: Discussion Paper*. p2. Available online: https://static.treasury.gov.au/uploads/sites/1/2017/09/C2017-T187220-DGR_discussion_paper.docx

Case Study: Extending out-of-home care

Anglicare Victoria exists to protect the vulnerable Victorians in our community, both by providing services and by conducting advocacy on their behalf. As a major provider of out-of-home care and housing services in Victoria, it felt the impact of large numbers of homeless young people coming from out-of-home care.

To tackle this problem, Anglicare Victoria launched the HomeStretch campaign. The campaign speaks out to state governments for young people in the out-of-home care system. Its key aim is to provide the option for young people to have continued access to care support until the age of 21, instead of having to leave at 18.

The HomeStretch campaign has shown how extending access to post-care services benefits the wider community. It commissioned modelling from Deloitte Access Economics showing a financial return to government of between \$1.40 and \$2.69 for every dollar spent in the continuation of care until age 21.

As a result of its campaigning activities, HomeStretch secured a commitment from the then-Tasmanian Government and Opposition to extend care to 21 years. This was the campaign's first major success, and it is now working on securing similar commitments ahead of the Victorian election.

This case study illustrates how charities can engage with the political process, including during an election period, to advance their charitable purpose and deliver results for the communities they serve, without taking a party political position.

The Charities Act is clear about which purposes are charitable and which purposes disqualify an entity from being charitable. It is only where the purpose of a charity changes, or if the charity ceases to pursue that purpose, that its eligibility for charitable or DGR status should be called into question. The Select Committee must reaffirm its commitment to this principle.

Recommendation 4: Ending the confusion about charitable purpose vs activities

Anglicare Australia calls on the Select Committee to reaffirm its commitment to judging a charity's eligibility on the basis of its purpose. Anglicare Australia also calls on the Select Committee to investigate ways to end the confusion – and in some cases, deliberate conflation – between a charity's purpose and the activities it pursues. This conflation poses a direct threat to the donor base and reputation of many parts of the charity sector.

Conclusion

Anglicare Australia's argument rests on the importance of charity advocacy, and the role it plays in empowering marginalised people to participate in policy development. Australians rely on our sector more than ever for help, and governments rely on us more than ever to deliver their policies. Our role in the civic conversation leads to better policy.

While recent commentary has sought to position public funding and tax deductibility as 'gifts' from the government, these arrangements are analogous to the benefits enjoyed by other sectors. Businesses have a clear self-interest in their advocacy, but their spending on lobbying and government relations can be written off as a legitimate cost. Membership fees that companies pay to their own advocacy bodies are tax deductible. Even donations to political parties, from both businesses and individuals, can be taken from pre-tax income. These arrangements have received far less scrutiny in recent years than charitable tax deductions.

Anglicare Australia believes that the government has an obligation to invest in advocacy that is not self-interested, and to encourage the community to do the same. Charity advocacy has proven to be one of the few ways we can balance the coordinated, self-interested, and privileged forces that drive decision making and policy in Australia. It is in public interest to fund and protect it.

Next steps

Anglicare Australia is pleased to contribute to the Select Committee on Charity Fundraising in the 21st Century. Our hope is that the Select Committee will recognise the need to offer tangible incentives to donate to organisations with a charitable purpose, including advocacy. Indeed, our view is that the best use of tax deductible donations is in the support of advocacy by charities and community sector organisations.

We encourage the Select Committee to explore:

- Funding for advocacy
- Expanding gift deductibility
- Consistency between charity law and tax arrangements
- Ending the confusion about charitable purposes

We would welcome the opportunity to further discuss these recommendations with the Select Committee, to elaborate on the case studies we've provided, or to give evidence at a hearing.