



‘Prevention is better than cure....’

Why Australian DGR tax laws
should be amended

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Submission to:

Senate Standing Committee on Economics Inquiry into the
Disclosure Regimes for Charities and Not-for-Profit Organisations

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1. ENDORSEMENTS

This submission is endorsed by:

- Six state sector peak bodies representing over 1,000 independently incorporated Neighbourhood Houses and Learning Centres throughout Australia
- National Association of Community Development Organisations (NACDO)

In addition, a wide range of government and non government agencies and individuals support ANHLC's initiative in bringing this proposal before the Federal Government for its consideration, including:

- Robert Fitzgerald AM, Chairperson of the Inquiry into the Definition of Charities & Related Organisations (2001) and founding chair of the National Roundtable of Non-profit Organisations
- The Hon. Joan Kirner AM, Ambassador for Victorian Communities
- The Reichstein Foundation
- Melbourne Community Foundation
- Victorian Council for Social Services (VCOSS)
- Public Interest Law Clearinghouse (PILCH)
- Victorian Local Governance Association

2. ABOUT ANHLC

The Association of Neighbourhood Houses and Learning Centres (ANHLC) is the peak body for Victoria's 380 Neighbourhood Houses and Learning Centres .

The vision of the Association is of just and empowered local communities in which our member organisations provide opportunities for people's social inclusion and learning.

Neighbourhood Houses and Learning Centres provide a range of community support, adult education and learning activities, social support, community development & civic activities along with children's services. Programs and activities are developed in response to the needs and concerns of the residents in the locality in which they are based.

Neighbourhood Houses and Learning Centres are community managed non-profit organisations. Houses & Centres are managed by voluntary committees and operated by part-time staff and volunteers. Although the majority receive some government funding, most Houses/Centres also rely on a mix of funding from community support, fundraising and fee-for-service programs in order to operate.

3. INTRODUCTION

The Association of Neighbourhood Houses & Learning Centres (ANHLC) believes that there is an urgent need to review the Australian taxation laws in general and welcomes this opportunity to support the broader community sector's belief that the recommendations that emerged from the 2001 *'Inquiry into the Definition of Charities & Related Organisations'* remain relevant and necessary.

This submission, however, addresses the second point listed in the Terms of Reference of the Senate Inquiry Background Paper:-

“models of regulation and legal forms that would improve governance and management of charities and not-for-profit organisations and cater for emerging social enterprises”

and is aimed at a particular area of the tax law provisions called Deductible Gift Reciprocity (DGR), and seeks to outline a simple but effective strategy which will enable not-for-profit, third sector organisations which engage in **preventative** measures (as a means of addressing disadvantage) greater access to the burgeoning philanthropic and corporate sponsorship and gift giving and thereby strengthen their capacity to deliver programs and services across Australia.

This submission does not set out to provide evidence for why the “Neighbourhood House at the top of the hill” approach is better than the “ambulance at the bottom of the hill” as there is a wealth of contemporary research and data which proves the long term efficacy of this approach. This is reflected in local, state and federal government policy and planning, in particular the move towards establishing Community Development portfolios and departments and the recent establishment of the Federal Government's Social Inclusion agenda.

ANHLC has long been aware that significant sections of the not-for-profit sector have been severely disadvantaged by their inability to access philanthropic and corporate funding streams, brought about by their failure to qualify for as a DGR. It is worth noting here that at present, only 7% of Australian Neighbourhood Houses and Learning Centres, for example, have DGR endorsement. This failure to qualify is the result of their organisational focus on community development / community strengthening activities, rather than direct welfare support.

The amendment which ANHLC is proposing is a simple and effective solution to a complex problem, and affords the Australian government a valuable opportunity to bring its charity tax laws, at least in part, in line with contemporary charity tax law amendments internationally.

Please note that a briefing paper outlining the proposed amendment was submitted to the Federal Treasurer, Wayne Swan, with copies to the following:

- Prime Minister, the Hon. Kevin Rudd
- Minister for Social Inclusion, Julia Gillard
- Parliamentary Secretary for Social Inclusion, Ursula Stephens
- Minister for Finance, Lindsay Tanner
- Assistant Treasurer, Chris Bowen
- Minister for Family, Housing, Social Services & Indigenous Affairs, Jenny Macklin
- Commissioner of Taxation, Michael D'Ascenzo

4. DETAILS OF PROPOSED AMENDMENTS

The basis to our proposed amendment involves the inclusion of the word '**prevention**' in the definition of a Public Benevolent Institution (PBI) as it appears in the Australian Tax Office publication '*Giftpack for DGR & Donors*' under the category 'Welfare & Rights'.

A possible amendment is as follows:

"A Public Benevolent Institution is a non-profit institution organised for the direct relief **or prevention** of poverty, sickness, suffering, distress, misfortune, disability or helplessness".

Such an amendment will not mean a blanket endorsement for all non-profit organisations as applicants will still be assessed on a case by case basis depending on their ability to demonstrate their compliance with all other PBI criteria. This will afford the Federal Government with a measure of guarantee that the demand on Treasury for taxation benefits will be limited to non-profit organisations established for public benevolence and not for any other purpose.

The spirit of the proposed amendments is in line with the recommendations that resulted from the *Inquiry into the Definition of Charity Australia*, conducted in 2001 by Justice Ian Sheppard, David Gonski and Robert Fitzgerald. Mr. Fitzgerald AM, the founding chair of the National Roundtable of Nonprofit Organisations, has given his support to the proposed amendments outlined in this paper.

In addition, the proposed amendments are in line with the recommendations that ACOSS outlined in their submission to the 2001 Inquiry.

Simple solution - long term benefits

ANHLC believes that the inclusion of **prevention** in the criteria will have a major impact on the capacity of eligible non-profit organisations to significantly increase their funding streams and strengthen their roles in providing programs and services which help to prevent disadvantage.

In fact, the extent to which organisations can access philanthropic and corporate giving and sponsorship as a result is almost incalculable, with many citing local businesses and industries ready and willing to support them, were it not for the lack of DGR endorsement.

5. RATIONALE

Research confirms that philanthropic and corporate giving has soared in recent decades, with a large percentage being directed towards welfare, education and international aid. Contemporary management theory suggests that corporate business strategies should address for social inequity and the environment, which results in concepts such as the triple and quadruple bottom lines. This leads to further increases in the pool of money available through philanthropy. It was estimated that donations to these sectors alone via philanthropy will exceed \$500 million dollars per annum by 2012 (Refer Goldman Sachs (JB Were) *'Philanthropy Focus—Promising Trends in Australian Philanthropy'*, April 2006).

However, failure to acknowledge **prevention** in the criteria means that worthy organisations, including Neighbourhood Houses, are denied access to this funding and the associated resources, causing them to remain largely reliant on government grants and individual fundraising efforts. These invariably fall well short of the actual funding required to maintain current levels of service provision, let alone meet the ever-increasing demand on those services. Furthermore, failure to acknowledge **prevention** in the criteria is a factor in triggering organisations to make changes to their constitutional documents which may be at odds with their philosophical commitment to **prevention**, rather than direct welfare, in an attempt to have a more successful DGR outcome with the Australian Tax Office.

It is worth noting that this situation, together with the lack of clarity around the PBI definitions generally, results in an ad hoc allocation of DGR endorsement by the Australian Tax Office, with some Neighbourhood Houses, for example, receiving DGR endorsement on their first attempt, while others (who provide identical programs and services) have their applications rejected numerous times. This creates unacceptable distortions and inequities.

The potential benefits of recognising **prevention** in the PBI tax laws can be summed up by the following long term social and economic impacts:

- increased capital investment from the corporate and philanthropic sectors
- less reliance by the sector on government grants and funding
- a dramatic increase in the number of community business partnerships
- greater understanding of community need and community strengthening strategies
- increased number of financial donations to the sector
- significant increase in the sector's capacity to provide community-responsive programs and activities at the local level; and
- stronger and healthier Australian communities

Case study

There are direct, positive and far-reaching consequences for local communities when their local Neighbourhood House is a DGR. An example of this is Langwarren Community Centre (Vic) which, with DGR endorsement, was able to apply to the Variety Club Victoria who supplied them with a low-step community bus. This much utilised bus has allowed children with physical disabilities to attend out-of-school care and to integrate with physically able children in wide range of programs and activities. To quote the co-ordinator: *"the difference to these kids' lives - and their parents - is immense. The parents get to go to work and earn a living and the kids get a chance to be a normal part of the community"*.

The only alternative for these families is costly institutionalised services not available in the local area. The culture of acceptance and "care for others" that integration of this kind fosters is immeasurable. This is social inclusion at its best.

6. Bringing Australian tax laws in line with international trends

The proposed amendments presents an opportunity for the Federal Government to bring the Australian charity-related tax laws into line with the UK, Canada and New Zealand, all of whom have revised their tax laws to reflect changing attitudes to the ways in which poverty and disadvantage should be addressed, in particular, adding the word **prevention** to the definition of charity or charity-related concepts.

Freehills Law Firm has offered to assist Government in the process of considering and documenting the inclusion of 'prevention' in the definition of PBI, including drafting and reviewing legislation or policy documents. Freehills has previously worked with Treasury and the ATO on legislative and policy changes affecting the charitable sector and has considerable experience with both the government and the neighbourhood house sector.

7. Conclusion

It is clear that it makes sound economic, social and moral sense to formally recognise **prevention** in the taxation laws. Greater funding and sponsorship to non-profit, third sector organisations such as Neighbourhood Houses will, in the long term, create a stronger, more dynamic and (perhaps more importantly) sustainable and resilient sector.

Just as importantly, ANHLC's proposed amendment will allow the Federal Government to show leadership in the area of much needed charity tax reform which align with their social inclusion policies and directions and the contemporary approaches to prevention of disadvantage in other Western countries.

Point 8 of the Senate Inquiry Background Paper states "*Despite the size of this sector, and its centrality to the well-being of society, its contribution often goes unrecognised.....*". Yet nowhere is this more evident than in the current DGR tax laws which discriminate against the very heart of that contribution, namely the **prevention** of disadvantage and social exclusion for all Australians.

Here is an opportunity to apply a simple solution to a complex problem which not only meets the needs of the not-for-profit sector, but which meets the needs of philanthropic and corporate donors who wish to support community development approaches to addressing disadvantage.