

THE STATE OF PLAY...

CHARITABLE LAW ISSUES



CHANGEMAKERS AUSTRALIA

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TASK

1. Review and summarise existing written material
2. Clarify the practical effects of the current legislation and processes.
3. Identify case histories which demonstrate those effects.
4. Identify key players in the philanthropic and community sectors who are working towards change in the area.
5. As much as possible, clarify the Federal Government's position on the issue.
6. Specifically identify issues affecting education.

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USEFUL DEFINITIONS ¹

CHARITABLE PURPOSE A charitable purpose is one which the law regards as charitable. The term 'charitable' has a technical legal meaning which is different from its everyday meaning. Charitable purposes are any of the following purposes

- the relief of poverty or sickness or the needs of the aged
- the advancement of education
- the advancement of religion
- the provision of child care services on a non-profit basis, and
- other purposes beneficial to the community.

CHARITABLE ACTIVITY An activity that supports a charitable purpose.

CHARITY A charity is an institution or fund established for a charitable purpose.

PUBLIC BENEVOLENT INSTITUTION (PBI) A public benevolent institution (PBI) is a non-profit institution organised for the *direct relief* of poverty, sickness, suffering distress, misfortune, disability or helplessness.

The characteristics of a PBI are:

- it is set up for needs that require benevolent relief
- it relieves those needs by directly providing services to people suffering them
- it is carried on for the public benefit
- it is non-profit
- it is an institution, and
- its dominant purpose is providing benevolent relief.

DEDUCTIBLE GIFT RECIPIENT (DGR) A DGR is an organisation that is entitled to receive income tax deductible gifts. All DGRs have to be endorsed by the Tax Office, unless they are listed by name in the income tax law.

KEY ISSUES SURROUNDING CURRENT AUSTRALIAN CHARITABLE LAW

The issues surrounding charitable law fall broadly into three categories:

1. Problems relating to the definitions of charity, public benefit, charitable purpose and charitable activities;
2. Problems associated with the process of getting and maintaining charitable, Public Benevolent Institution (PBI) and Deductible Gift Recipient (DGR) status;
3. Restrictions on the activities of charities, PBI and DGR status organisations.

¹ Australian Tax Office at <http://www.ato.gov.au/nonprofit/content.asp?doc=/content/34228.htm>



SUMMARY OF KEY POINTS

- For 400 years charitable law has been left to judges, through common law cases, rather than government legislation. The centuries of case law, that are used to define the concept of charity, have resulted in definitions which are confusing, inconsistent and out of step with contemporary values.
- Current mechanisms to review and update what is seen as charitable, and of public benefit, are inadequate.
- Australia has a two-pronged federal tax system in which charities are eligible for tax exemption while, in addition, PBIs are eligible to receive tax deductible donations. The most generous tax concessions – Deductible Gift Recipient (DGR) Status and Fringe Benefit Tax exemptions – relate to PBI rather than charitable status.
- Restrictions on PBI status exclude organisations whose main activity is prevention and promotion, policy development and advocacy, research and support for direct service providers, even when this is directed towards improving the circumstances of disadvantaged people.
- The need for charitable activities to benefit the wider public, as opposed to small groups or private individuals, creates difficulties for projects that target specific marginalised groups, particularly indigenous groups with blood ties.
- There are genuine and perceived legal constraints on lobbying and advocacy activities of charities. The law here is ambiguous and the limitations outlined by legal advisors can vary enormously.
- Another grey legal area surrounds what is deemed, under charitable law, to be an acceptable commercial activity for a charity.
- The Australian Tax Office is the federal gatekeeper that decides which organisations should be granted charitable status with all its taxation benefits. But charitable status has much broader implications than tax law; and charity law is only an incidental activity of the ATO.
- The regulatory environment for charities needs an overhaul. It currently involves duplication and is complex, inefficient, confusing, inconsistent and sometimes unfair. The procedural burden on charities is time and resource-consuming; and can be onerous for small organisations.



DEFINITIONS OF CHARITY AND CHARITABLE PURPOSE

WHAT IS CHARITY?

Charity is based on the concept of altruism for the public good. But it is not a concept that has been cemented by a set legal definition.

From a legal perspective, charity was first addressed in the Preamble to the Statue of Elizabeth in 1601. Since then the meaning of charity has been examined through 400 years of common law cases in countries – like Australia, the USA, Canada and New Zealand – which have inherited laws and legal principles from Great Britain. Critics believe the reliance on case law has caused many of the current problems.

The law relating to charities is not a unified coherent body of jurisprudence: the concept of a charity has eluded legislative and judicial definition for four centuries; few absolute and comprehensive rules exist to govern and distinguish their activities.(O'Halloran 2007)

The one unwavering requirement for a charity is that it must have a primary purpose that is charitable. But what exactly is a charitable purpose?

The basis of modern law is Pemsel's case which, in 1891,² established the four “heads” of charity.

They are:

- The relief of **poverty**
- The advancement of **education**
- The advancement of **religion**
- Other purposes seen as **beneficial to the community** which do not fit into the first three categories.

Charitable purposes must also be for the **public benefit**.

However there is a strong view that the first three heads – of poverty, education and religion – do not adequately cover what many people today would regard as core charitable activities while the fourth “catch-all” purpose, of being beneficial to the community, is so vague that it is of little use.

A 1995 industry commission inquiry recommended a review of the taxation status of charities.

In 2003, after another inquiry on charity definition, the Draft Charities Bill recommended modernising the definitions to make charitable purpose any of the following:

- (a) the advancement* of health;
- (b) the advancement of education;
- (c) the advancement of social or community welfare;
- (d) the advancement of religion;
- (e) the advancement of culture;
- (f) the advancement of the natural environment;

² *Income Tax Special Purposes Commissioners v Pemsel* [1891] All ER Rep 28; [1891] AC 531.



(g) any other purpose that is beneficial to the community;

(**advancement* includes protection, maintenance, support, research or improvement).

However the reforms were later abandoned by the Howard government in favor of some minor changes in legislation³.

The governments of common law countries have traditionally shied away from legislation, instead leaving charitable law to be developed by judges rather than politicians.

JUDGING CHARITABLE LAW

While *Pemsel's* four heads of charity have been seen more indicative than prescriptive, it is the fourth purpose, of being *beneficial to the community*, and the *public benefit* criteria which are considered to be the most open to judicial interpretation.

Some court decisions have broadened categories of charitable purpose. For example, in recent years “certain purposes related to human rights and environmental protection have come to be regarded as “charitable” through developments in case law and administrative practice, rather than through specific legislative changes” (NRNO 2007).

But, in his 2007 book, *Charity Law and Social Inclusion*, Kerry O’Halloran says “successive generations of the judiciary have left the concept of ‘charity’ inadequate and ill-fitted to the role of lynchpin in a modern legal framework for philanthropy.

The result can be seen in the endless lists and categories of purposes recognized as charitable, rather than in a coherent body of law, built around definitional statements and governed by clear principles. The evolution of charity law in a common law context is a victory of form over substance. (O’Halloran 2007)

Critics of the reliance on the courts say:

- **It has resulted in confusing and inconsistent interpretations** of what constitutes a charity, charitable purpose, and what charitable organisations or trusts are allowed to do.
- **Charitable law has ossified** as adverse publicity, financial costs and time have deterred many nonprofits from seeking guidance on charitable definitions in the courts. There have been few recent charitable law cases and not one superior court decision involving the High Court of Australia for more than 30 years.
- **Charitable law is out of step with contemporary opinion.** The National Roundtable of Nonprofit Organisations says: “a respectful body of opinion exists that the law lags behind public understanding of what should be regarded as *charitable*”. (NRNO 2007) This means newly-emerging “public good” organisations, that are charitable in nature, are denied charitable status while “entities, that were once considered charitable but may no longer be so, are likely to remain on the register” (ACOSS, VCOSS et al. 2006). For example the

³ The 2005 changes allowed self-help groups, closed religious orders and non-profit child care centres to be seen as charitable



promotion of civil and human rights and amateur sport are not considered charitable; but donations to wealthy private school building funds are tax deductible and gun clubs have charitable status. Also contentious is the broader issue of whether the charitable criteria of the advancement of religion is appropriate in a secular society; and whether religious groups should have DGR status when they are not engaged in charitable activities (Bachelard 2008; Renton 2008).

- **Charity classification structures are confusing and fail to take into account current trends.** In their 2006 *Charity Now* discussion paper, ACOSS, VCOSS and Jobs Australia say: “As a result of a too narrow an interpretation of charity in the 1960s and 1970s, other categories of organisation (such as Community Service Organisations) had to be created and added to legislation so that they were able to access, for example, income tax exemptions”. Now, Miles McGregor-Lowndes says: “the multi-tired definitional maze of charitable institutions, funds, public benevolent institutions, deductible gift recipients that only the most “life deprived lawyer or treasury official” can conceptually grasp... is at odds with the rest of the developed world (McGregor-Lowndes 2007).

O’Halloran, ACOSS, VCOSS, Jobs Australia and others argue for the establishment of a means -- possibly like the UK Charities Commission -- to bring greater consistency, clear guidelines, contemporary meaning and ongoing review to definitions of charitable purposes and public benefit.

HOW MUCH PUBLIC BENEFIT IS THERE?

The *Charity Now* paper says, “It is impossible to find any set of principles underpinning the legislation” that designates the large variety of tax concessions available from different levels of government.

Early last century Public Benevolent Institutions (PBIs) were introduced to give more tax advantages to the charities that helped the most disadvantaged, like the poor, sick and disabled.

The result is a two-pronged federal tax system in which charities are eligible for tax exemption while, in addition, PBIs are eligible to receive tax deductible donations. Some states also use the PBI definition for payroll and land tax. About one third of Australia’s 48,000 charities are also PBIs.

The most generous tax concessions – Deductible Gift Recipient (DGR) Status and Fringe Benefit Tax exemptions – relate to PBI rather than charitable status.

PROBLEMS OF PREVENTION

The *Charity Now* paper says the courts have restricted PBI status to organisations providing direct aid which, “on the face of it... excludes organisations whose main activity is prevention and promotion, policy development and advocacy, research and support for direct service providers, even when this is directed towards improving the circumstances of disadvantaged people”.

The greatest constraint on charitable activity is the restriction of gift deductibility to a small subset of charitable bodies (mainly PBIs) which focus on direct alms to the poor. It does not allow preventative



and development work to be encouraged by fiscal incentives and this is out of step with other jurisdictions such as the US, UK and Canada. (O'Halloran 2007)

The Association of Neighbourhood Houses and Learning Centres (ANHLC) has released a briefing paper that outlines a case to include the word *prevention* in PBI and DGR provisions of the tax act.

Kaz Mackay of the DGR Research and Advocacy Project says the contents of the briefing paper have in principle support from Robert Fitzgerald, who chaired the Definition of Charity Inquiry; Miles McGregor Lowndes from Queensland University of Technology (QUT); VCOSS; ACOSS; and the National Roundtable of Nonprofits. It has been presented to a senior advisor in the Federal Government.

Among the problems outlined in the paper are:

Failure to acknowledge *prevention* in the criteria means that noteworthy organisations, including Neighbourhood Houses, are denied access to... funding and the associated resources, causing them to remain largely reliant on government grants and individual fundraising efforts....

Furthermore, failing to acknowledge *prevention* in the criteria is a factor in triggering organisations to make changes to their constitutional documents which may be at odds to their philosophical commitment to make a difference through prevention (rather than direct welfare) in an attempt to have a more successful DGR outcome with the Australian Taxation Office. (Mackay 2008)

The paper, *Prevention is Better than Cure*, says that the lack of clarity around PBI definitions results in an ad hoc allocation of DGR endorsement with some Neighbourhood houses, for example, getting DGR endorsement on their first try while others have their applications rejected by the ATO many times.

PROBLEMS OF PUBLIC VERSUS PRIVATE BENEFIT

Another problem stems from the public benefit test. That is whether a charitable activity *confers benevolence upon an appreciable and needy section of the community*.⁴

The public benefit test is used to decide whether a benefit has a broad enough effect to be considered public, as opposed to the benefit being limited to a small group of private individuals.

The test particularly causes problems for charities with educational projects specifically targeted to groups of indigenous or other marginalised people, particularly those with blood ties.

O'Halloran says:

The public benefit test is more difficult to satisfy in application to trusts for the advancement of education than to trusts for the relief of poverty or for the advancement of religion. The difficulties are evident in both the 'public' and the 'benefit' strands of the test.

Whether or not education is perceived as public depends on a number of factors like class size, the restrictions being applied to those eligible to be educated; whether the type of education meets a

⁴ Lemm v Commissioner of Taxation (Cth)



criteria for “usefulness”; and how the knowledge is to be disseminated. One court ruling, and a subsequent Court of Appeal, stressed that “if the object be merely the increase of knowledge that is not in itself a charitable object unless it is combined with teaching or education”.

In England the courts have even gone beyond seeing education for groups of people with blood ties or a personal relationship to the donor as too private to be of public benefit. There the law has extended to educational trusts involving a “nexus of contract”. So educational trusts for the education of people or their relatives, who are in common employment, have been deemed not to be charitable (O’Halloran 2007).

One area where the law is often seen as out of step with contemporary opinion comes from the fact that for education to be charitable it does not have to be education for the disadvantaged. This has allowed schools like Eton in England to attract charitable status.

The public benefit test can also be tricky when it comes to training courses.

O’Halloran cites the following potential pitfalls:

Public access - The training must allow for sufficient public access: the more tightly drawn the criteria for accessing the training, the greater the probability that the scheme will be insufficiently ‘public’ to qualify for charitable status. Limitations that restrict access to those of a certain age, to family, relatives or a particular locality will probably prevent the training scheme from being charitable.

Benefit - Not all training schemes will in law meet the ‘benefit’ test: the benefit quotient involved may be construed as bearing relatively little relationship to poverty. For example, funding the education of and assisting a person to be established in self-employment in a profession does not constitute the relief of poverty.

Profit - A training scheme must be wary of falling foul of the rule regarding profits. Many commercial and professional bodies establish training schemes as entry routes to their organisations. Regardless of how wide the public access or ... the benefit to the participants, however, such schemes will be denied charitable status if it can be shown that they would also benefit the providers.

Pure research - An organisation that restricts itself to conducting pure research ... will be denied charitable status. Activities must do more than simply increase the quantum of knowledge; they must also disseminate it through teaching. Researching the nature and extent of the disadvantage suffered by a group, profiling the causes and gathering the data necessary to identify the resources required to remedy the situation, will not be sufficient for an organisation to gain charitable status. (O’Halloran 2007)

CONSTRAINTS ON GIVING GRANTS

An added disadvantage for nonprofits deemed ineligible for DGR is that most philanthropic trusts and foundations can only give grants to organisations with DGR status.

Given the inappropriate restrictions on PBI status (i.e. that assistance must be direct) and the under-representation of community service and welfare organisations in the gift provisions of the tax act, the current definitions are a major impediment to foundations



who want to support a more progressive solution to social issues. (ACOSS, VCOSS et al. 2006)

For the above reasons ACOSS, VCOSS, Jobs Australia and others have suggested that it is even more important to redefine PBIs than charities, yet current mechanisms to review and update what is regarded as charitable and for the public benefit are inadequate.

Australia does not have anything similar to the United Kingdom Charities Commission which administratively updates the definitions even though English case law is well behind the times.



RESTRICTIONS OF THE ACTIVITIES OF CHARITIES

As said earlier, charities must have a charitable purpose. If they engage in activities not considered to be directly charitable, then those activities must be in line with, but only incidental to, the organisation's charitable mission.

ADVOCACY AND LOBBYING

In recent years there have been major constraints on what can be considered "political" activities of charities and other nonprofits.

There have been a number of reasons for this:

- Direct action by the conservative Howard government
- Interpretations of charitable law by government regulators, especially the Australian Tax Office
- Self-imposed constraints by nonprofit and philanthropic organisations fearful of overstepping their legal boundaries.

HOWARD GOVERNMENT ACTION

Between 2000 and 2002 Rose Melville of the University of Wollongong surveyed peak bodies, which she defined as *non-government organisations whose membership consists of smaller organisations of allied interests*.

Her research found that, under the Howard Government, nearly one third of peak organisations dealing with social welfare, health, the aged, those with non-English speaking backgrounds, disability, women and children lost funding.

The income of 100 (of the 142) peaks derived mainly from federal and/or state/territorial government funding. The fragility of this situation was made clear by government threats to this funding... Nearly 40% of the reasons given for these threats or funding loss were due to the peaks political activities and changes in funding guidelines. (Melville 2003).

Many contracts between nonprofits and the federal government contained so-called "gag clauses" which prevented those organisations from speaking out against the government and its policies.

Those that dared were often denigrated by conservative politicians, business people and think tanks, like the Institute of Public Affairs, as "special interests" or "elites".

In 2006 Joan Staples of the University of New South Wales wrote:

Comment on public policy or any attempt to influence public policy, ... is seen as interfering with the market or, as public choice theorists say 'the disruptive effects of the pursuit of self interest'



creating the pressure of ‘excessive expectations’ on the economy. So, NGOs are commended if they go about their activities filling in the gaps left by the withdrawal of government, but are criticised if they attempt to have any say in policy. (Staples 2006)

THE RUDD GOVERNMENT AND THE NONPROFIT SECTOR

In contrast, the Rudd Government has made it clear that it will restore the independence of the third sector and its right to advocate as part of the government’s social inclusion agenda.(Gillard and Wong 2007; Stephens 2007; Gillard 2008).

At its National Conference in 2007, the Australian Labor Party endorsed the following policy for the Community and Not for Profit Sectors:

163. Labor acknowledges the social economy in Australia and the vital contribution it makes to Australian life—economy, society and politics. Labor acknowledges that the social economy has been overlooked in the reforms of government and business that have transformed Australia over the past 25 years.

Labor acknowledges the important contributions of community organisations and the ‘not for profit’ sector to the Australian economy and to Australians’ quality of life. There are 700,000 non-profit organisations in Australia employing in excess of 600,000 people and contributing billions of dollars to the Australian economy.

164. Labor, in consultation with the sector, and State and Territory governments, will encourage the development of a national regulatory framework for ‘not for profit’ organisations that is fair, consistent and clear that:

- stimulates the establishment or further development of a broad range of community or ‘not for profit’ organisations;
- does not attempt to inhibit the public advocate role of the sector;
- encourages donor confidence;
- sets a reasonable standard for public disclosure; and
- establishes appropriate oversight of the sector.

165. Labor will work with social economy leaders to identify priorities for government action that will help the social economy grow, transform and once again become a powerhouse of social innovation (Australian Labor Party 2007).

Under its Social Inclusion policy, the Federal Government has appointed a Social Inclusion Board. (See Appendix Three for Board composition).

The Board, which will provide direct input into a Social Inclusion Unit in the Prime Minister’s Department, “will be required to consult widely and provide views and advice on various aspects of social inclusion, including who should be targeted, how this can be achieved, how communities will



be engaged and ongoing review of what is and what is not working. This consultation process will involve the community and not for profit sector, advisory groups and all levels of government” (Gillard and Wong 2007).

The National Roundtable of Nonprofit Organisations (NRNO) has met with, and is planning to meet, different government ministers.

The Chair of the NRNO Advisory Council, and research fellow at Melbourne University, Elizabeth Cham, says she is concerned that the Federal Government’s Social Inclusion Agenda could become too narrow and easily “become ghettoised into the poor and disadvantaged” when areas like sport are charitable.

She says the NRNO has three key aims:

- To educate the community and the sector itself about the nonprofit sector in Australia – its size and importance as a vital tool of democracy. Cham thinks there should be a Minister for the sector. The sector, she says, is in “a parlous state”. It has no voice, a complicated tax system and the sector’s work is underestimated even by the people who do that work.
- To modernise charitable law – including simplification and looking at how things should operate in the modern context. Cham favors better transparency and accountability in the philanthropic sector. She says the government could do a lot worse than adopt some of the recommendations that came out of the Charities Definition Inquiry.
- To look at different ways of financing the sector.

Cham is in favor of an inquiry, like the Ralph inquiry into the financial sector, which could help streamline procedures for the nonprofit sector.

NOT GAGGING ON THE CLAUSES

The Rudd Government has started reviewing government-NGO contracts with the aim of removing gag clauses from them.

Within the government there is an acknowledgement that the insertion of gag clauses has become a systemic problem within government departments. That, and the lack of consistency between departments, will take much effort and time to redress. Exemplar clauses, making it clear that it is a desirable outcome to have nonprofits advocating, are being developed.

The Federal Government is well-aware of work being done by The Whitlam Institute, at the University of Western Sydney, which is currently conducting a project called *Purchasing, Partnerships & Social Contracts: Giving effect to Government-NGO relationships*. The project aims to research relationships between the government and NGOs and to devise new forms of government contracts. (The Whitlam Institute 2008).

The Whitlam Institute’s work appears to follow on from an Australian Research Council funded project on the relationship between governments and NGOs and the development and impact of compacts, like the *Working Together* compact in NSW.



The ARC-funded project, under the direction of Jenny Onyx and Bronwen Dalton of the University of Technology Sydney, with partners Rose Melville from the University of Queensland and John Casey, formerly from Charles Sturt University had industry partners of the Public Interest Clearing House (PIAC) and the Council of Social Services of NSW (NCOSS).

Its research, which was completed in March this year, included:

1. A review and content analysis of compacts.
2. An in-depth case study on the implementation of the NSW compact.
3. Paired case studies across NSW and Queensland looking at various human services, housing and environmental civil society organisations.
4. Development of a generic set of performance indicators or an evaluation framework for use in government/third party sector policy negotiations. year.

The Federal Government has announced its intention to negotiate a Compact with the nonprofit sector. It is worth noting that the ARC-funded research did identify a number of problems with government compacts: in particular the NSW government largely ignoring the compact it spent years developing with the nonprofit sector. (PIAC Bulletin November 2007)

RUDD GOVERNMENT ACTION ON CHARITABLE LAW

Issues relating to charitable law are largely being handled by the Office of Senator Ursula Stephens, who is Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion.

It appears that the Federal Government is prepared to look closely at the issue of lobbying and advocacy as a priority. In some ways it is considered a much easier issue to resolve than an examination of the definitions associated with charity and public benefit.

On Thursday, May 15, 2008, the Australian Financial Review ran an Australian Associated Press report that said:

The Rudd government has promised to review the complex law governing the tax deductible status of charities. Assistant Treasurer Chris Bowen promised the review after two government MPs criticised the hurdles facing organisations trying to ensure donors gain a tax break on donations.

No formal review has been announced. The AAP report was based on comments made by Chris Bowen in summing up a speech to a tax bill – comments which indicate the subject is on both the backbenchers' and ministerial radars.

Bowen said:

I particularly thank the honourable member for Lindsay who always makes a very well-considered contribution to tax law amendment bills based on his considerable experience in this area. He has correctly identified many of the issues that go to the complexity of getting status under the tax act for charities and benevolent institutions in this country whether it be deductible gift recipient status or PBI status or the other capacities to be recognised under the tax act. He has correctly identified the difficulties in operating under the Statute of Elizabeth which has been in operation some 400



years, and charities have changed just a little in those 400 years. It is something that is exercising the mind of the government and something the government will be turning its mind to in a more detailed way during this term.

Phil Lynch, CEO of the Human Rights Law Resource Centre, has raised, with the Commonwealth Attorney-General, the issue of amending the Income Tax Assessment Act (ITAA) to include 'the promotion and protection of human rights' as a charitable purpose.

The UK Government recently amended its *Charities Act 2006* to include 'the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity' as a charitable purpose. Lynch says this has significantly enhanced the ability of organisations such as Human Rights Watch and Amnesty International to raise funds and undertake activities in the UK.

An amendment of the ITAA would significantly increase the ability and capacity of NGOs in Australia to raise funds and undertake a range of activities to promote human rights.

Lynch says the lawyers, Blake Dawson, have been asked to look at the issue further, perhaps with a view to the centre making a more expansive submission.

GENUINE AND PERCEIVED LEGAL CONSTRAINTS

A major constraint on charities lobbying and advocacy is a longstanding one caused by the ambiguity of what is allowable under charitable law.

Some of the limitations, such as lobbying to elect a political party or candidate, are clearly not permitted. However there are a number of grey areas which the Changemakers' paper, *Funding Advocacy for Social Change: Clarifying the Rules for Grantmakers* (Falkiner-Rose 2007) seeks to clarify⁵.

O'Halloran says the traditional common law constraint on advocacy and political activity as a charitable purpose has "become a serious obstacle to effective philanthropic intervention in a modern social inclusion context".

Modern society has come to rely upon multimedia representation of issues, which makes it particularly difficult when organisations, specifically set up to address some aspect of social disadvantage, cannot use the media to campaign for the changes in policy or law they believe would alleviate that disadvantage. (O'Halloran 2007)

A case involving the Australian Conservation Foundation and the Victorian Civil and Administrative Tribunal in 2002 was significant in that it acknowledged the role of political activities by charities.

According to the ACF and its lawyers, Arnold Bloch Liebler, the Tribunal recognised:

⁵ (For a detailed explanation of the rules governing this area see the Changemakers paper at <http://www.probonoaustralia.com.au/news/items/2007/12/183316-upload-00001.pdf>.)



In modern society the activities of government and charities are 'bound to intersect' and 'that it cannot be said that a charity ceases to be a charity if its activities are predominantly said in some unspecified sense to be 'political'. The case accepts that in this day and age, when government policies, decisions and legislation regulate almost every aspect of every day life, in order to effectively implement change, interaction by charities with government is necessary. (Thompson and Kerr 2002)

The Charities Definition Inquiry in 2001 recommended that charities be allowed to engage in advocacy in support of their primary purpose.

It recommended that activities "must not be illegal, contrary to public policy, or promote a political party or a candidate for political office".(Charities Definition Inquiry 2003)⁶

In a 2005 tax ruling the ATO affirmed the right of charities to engage in policy advocacy as part of pursuing their charitable purpose.

But that year the federal Environment Minister, Ian Campbell, sent a letter to 317 environment groups, warning that they risked losing their charity status if they engaged in political activity – an action that was perceived as a threat by many organisations(Newmatilda.com 2005).

The letter stated that the environment groups' DGR status was dependent on them working "on the conservation of the natural environment and not for any other purpose, such as political activity".

A good deal of the current confusion surrounding "political" activities allowable under charitable law stems from the breadth of legal advice which is based on a disparate body of case law. Anecdotal evidence points to a wide range of legal advice given -- from the most conservative to much more liberal interpretations of the law – and the fear of some nonprofits and grantmakers of overstepping the mark in the absence of hard and fast rules.

One system that appears worth examination is that used in the United States where charities can opt to work under a system that clearly defines the proportions of a charity's activities that can be devoted to advocacy and lobbying. (For a fuller explanation please see the one from Tabitha Lovett of the Public Interest Legal Clearing House (PILCH) as Appendix One at the end of this paper.

COMMERCIAL ACTIVITIES

As more charities try to do more with fewer resources, business activities have become increasingly important as a source of funding. Also, as social entrepreneurship plays a bigger role, the commerciality of schemes can cause a problem.

Community development schemes or social enterprises for example, often have a commercial undertaking.

This is a particular area of vulnerability for organisations engaged in schemes to reduce pockets of unemployment. Not only is there a danger of breaching the public benefit test by focusing on a closely defined number of people and thus being more 'private' than 'public', but also such schemes

⁶ For a summary of the Charities Definition Inquiry recommendations see appendix Two or go to http://www.cdi.gov.au/report/pdf/6_Rec.pdf



tend to involve investments, small businesses and a degree of individual gain. Such activities can be fatal to charitable status. (O'Halloran 2007)

However, late last year the lawyers, DLA Phillips Fox, said a ruling by the Full Bench of the Federal Court on November 14, 2007 “affirmed that a charity raising money through a business venture could still be considered a charity for tax purposes, as long as the only purpose for making a profit is a charitable purpose”.

DLA said the case involving the Commissioner of Taxation and an evangelical missionary organisation, Word Investments Pty Ltd, was reassuring for entrepreneurial charities as it recognised the increasing need for charities to expand beyond traditional fundraising methods.

“It clearly affirms that charities can undertake business activities while maintaining a tax exemption and also provides clear requirements for such a charity”, DLA said. (Patrick 2007)



PROBLEMS OF DECISIONS AND PROCESS

WHY THE TAX OFFICE IS THE MAIN WATCHDOG

Charitable law exists to support the right of people to give money for public benefit and to protect the value of that gift.

A donor receives tax benefits in return for altruistically giving money for the public good.

A charity channels the donor's gift to the recipient and, in return for complementing or supplementing government services, it gets tax breaks too.

For its part, the government wants good value in return for the tax it is giving up so it usually has its tax collection arm decide who should get charitable status and, therefore, charitable tax benefits.

However ACOSS, VCOSS and Jobs Australia say that having the Australian Tax Office, whose main purpose is tax revenue collection, as the federal gatekeeper is a problem.

The ATO, they say, "has some expertise in charity law, since at the federal level this is mainly tax law. However, charitable status has broader implications than tax law (especially with regard to the status of charitable trusts), and charity law is only an incidental part of the ATO's activity".

In Australia, problems in dealing with Commonwealth law and federal gatekeepers are worsened by the fact that each state and territory has its own legislation and regulators.

In its 2007 *Assessment of Charitable Status in Australia*, the National Roundtable of Nonprofit Organisations identified 15 Commonwealth Acts and 163 State and Territory Acts "under which entitlement to a benefit or some other legal outcome turns on the charitable purpose or status of an organisation".

It also found:

- 19 Commonwealth, State and Territory governmental entities are regularly involved in determining the charitable status of organisations, and a further 74 entities may be called on to make such determinations from time to time.
- The processes for determining the charitable status of organisations vary significantly between government agencies, with little coordination among agencies within and among jurisdictions, and a high degree of inconsistency and duplication.
- These processes impose substantial unnecessary administrative burdens on charities and the relevant regulators.

The Roundtable outlines the degree of duplication with the example of a single charity, with national operations, having to have its charitable status assessed many times, following a different process each time.



Even if it has been endorsed as a charity and qualified for tax relief at a Commonwealth level, it must re-establish its charitable status to the satisfaction of each state and territory revenue office to access exemptions from state and territory taxes such as pay-roll tax, land tax and stamp duty – wholly aside from the particular additional statutory criteria required to access those entitlements (NRNO 2007)

But duplication is not the only problem: being subjected to a review of charitable status can consume a lot of money and hundreds of hours of a nonprofit organisation's time. It is a burden that can be particularly onerous for small organisations.

AUSTRALIAN TAX OFFICE REVIEWS

In February 2006 The Public Interest Advocacy Centre (PIAC) in Sydney was notified that the Australian Tax Office was going to review its DGR status – a review PIAC believes was sparked when it wanted to change its constitution to allow three year terms for board members.

The CEO of PIAC, Robin Banks, says that with the notification of the ATO review came a request for “an enormous amount of paperwork” which included measuring the activities of every one of its 30 staff members over a period of time.

Banks says PIAC immediately provided as much information as it could and then set about getting as much of the rest of the requested information as possible.

However, in early June 2006, a PIAC staff member looked at the Australian Tax Office website and discovered that the organisation's DGR status had been revoked a month earlier. The ATO told PIAC it had notified it of the revocation by mail but PIAC had not received the letter. By the time PIAC knew it had lost DGR status half of the two months allowed for an appeal had already lapsed.

The ATO said the revocation of the DGR status was based on the fact that PIAC did not do enough direct service delivery.

As well as conducting training around advocacy skills, direct litigation and legal reform work, the centre does run the NSW Homeless People's Legal Service which is run by PILCH, a service of PIAC. However the ATO said PIAC was *managing* the delivery of services, not actually *doing* the direct service.

In spite of that the appeal to the ATO was knocked back on different grounds: PIAC had the objective of law reform work in its constitution which was not a charitable objective. It was a decision with potential ramifications for all community legal centres.

PIAC appealed to the Administrative Appeals Tribunal. The week the ATO was due to put its submissions to the tribunal it contacted PIAC and said it would overturn its ruling and pay the costs. The case was settled in October 2007 – almost 18 months after the initial review notice.

Robin Banks says the Tribunal's order just says the objection was “held up in full” but it gives no details. Without a legal ruling there is no legal precedent to firmly establish law reform as a charitable objective.



In contrast a ruling by the Victorian Civil and Administrative Tribunal decided in 2002 that the Australian Conservation Foundation was exempt from state payroll tax because it was a “charitable body”. It was the first judicial pronouncement on whether an organisation, with a fundamental purpose to protect the environment, fell within the traditional definition of a charity. (Thompson and Kerr 2002)

Under the current system organisations, that have their charitable tax status challenged; have, according to Robin Banks, three options: try and survive without being able to receive tax deductible donations; fight it in the courts; or restructure the organisation and then reapply for DGR status.

AidWatch, which had its DGR status revoked in 2007 because its activities were not viewed as being in line with its stated charitable purpose, is currently appealing the ATO’s decision.

THE NEED FOR STREAMLINING AND SIMPLIFICATION

ACOSS, VCOSS and Jobs Australia say the regulatory environment is complex, inefficient, confusing, contradictory, unfair and in need of an overhaul.

The federal government is understood to be looking at streamlining at least some of the processes as part of its review of regulations affecting small business.

Kerry O’Halloran says that, “At the very least, existing obstructions should be removed. The resulting public benefit dividend in both the domestic and international arenas would be considerable”.



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APPENDICES

APPENDIX ONE

From an email from Tabitha Lovett, PILCH, to Christa Momot and Leslie Falkiner-Rose, April 30, 2008, during Tabitha's trip to the USA on a Churchill Fellowship.

"The non-profits in the US definitely benefit from having the option to elect to come within the 501(h) expenditure test (by filling out the IRS Form 5768) rather than being assessed under the 'insubstantial part test' and it would be good for Changemakers to advocate for the Government to consider introducing similar provisions.

... I've set out the formula for calculating the lobbying limits below and a quick summary of how the test works in practice ...

Under the 501(h) expenditure test, organisations count only their lobbying expenditures (i.e. costs) so, if an activity does not cost the organisation any money (such as using volunteers), that activity does not count against the organisation's lobbying limits. Even if an activity meets the definition of lobbying, it may cost the organisation very little money (such as sending emails).

The insubstantial part test, on the other hand, looks at an organisation's activities, rather than expenditures. In essence, any lobbying communication/activity done on behalf of the organisation counts against the organisation's limits. And similar to the situation in Australia there are no clear definitions of lobbying under the insubstantial part test, nor is there a threshold of what constitutes "substantial."

Under the 501(h) expenditure test, an organisation's overall lobbying limit is determined on the basis of its exempt purpose expenditures. For most organisations, this is generally the amount of their annual expenditures. The following chart is used to determine the overall lobbying limit.

Annual Expenditures	Overall Lobbying Limit
\$500,000 or less	20%
\$500,000 to \$1 million	\$100,000 plus 15% of excess over \$500,000
\$1 million to \$1.5 million	\$175,000 plus 10% of excess over \$1 million
\$1.5 million to \$17 million	\$225,000 plus 5% of excess over \$1.5 million
Over \$17 million	\$1,000,000

Once an organisation determines its overall lobbying limit, it can use the entire amount on direct lobbying or 75% on direct lobbying and 25% on grassroots lobbying.

Direct lobbying is defined as any communication, with a legislator, expressing a view about specific legislation. Grassroots lobbying is defined as any communication with the general public, expressing a view about specific legislation, with a call to action. A 'call to action' refers to four different ways the organisation asks the public to respond to its message:

- (1) asking the public to contact their legislators or staffers;
- (2) providing the address, phone number, website, or other contact information for the legislators;
- (3) providing a mechanism to contact legislators such as a tear off postcard, petition, letter, or email link to send a message directly to the legislators; or
- (4) listing the recipient's legislator, the names of legislators voting on a bill, or those undecided or opposed to organisation's view on the legislation.

An organisation that has made the 501(h) election can never spend more than 25% of their overall lobbying limit on grassroots lobbying.

Therefore, a 501(c)(3), that has applied for the 501(h) election, with an annual budget of \$500,000, would have an overall lobbying limit of \$100,000 and a grassroots lobbying limit of \$25,000 - which is pretty substantial given you only have to count direct costs (not volunteering) and a non-profit would rarely reach those limits.



APPENDIX TWO

CHARITIES DEFINITIONS INQUIRY SUMMARY OF RECOMMENDATIONS

Principles to define a charity

Recommendation 1 (Chapter 11) That the term ‘not-for-profit’ be adopted in place of the term ‘non-profit’ for the purposes of defining a charity.

Recommendation 2 (Chapter 11) That the term ‘entity’ be adopted to describe charities, and that the definition of ‘entity’ include: a body corporate; a corporation sole; any association or body of persons whether incorporated or not; and a trust; and exclude: an individual; a political party; a partnership; a superannuation fund; and the Commonwealth, a State, or a body controlled by the Commonwealth or a State.

Recommendation 3 (Chapter 12) That a charity must have a dominant purpose or purposes that are charitable, altruistic and for the public benefit. If the entity has other purposes, those purposes must further, or be in aid of, the dominant purpose or purposes, or be ancillary or incidental to the dominant purpose or purposes.

Recommendation 4 (Chapter 12) That an entity be denied charitable status if it has purposes that are illegal, are contrary to public policy, or promote a political party or a candidate for political office.

Recommendation 5 (Chapter 12) That the activities of a charity must further, or be in aid of, its charitable purpose or purposes. Activities must not be illegal, contrary to public policy, or promote a political party or a candidate for political office. Report of the Charities Definition Inquiry 14

Recommendation 6 (Chapter 13) That the public benefit test, as currently applied under the common law, continue to be applied; that is, to be of public benefit a purpose must:

- be aimed at achieving a universal or common good;
- have practical utility; and
- be directed to the benefit of the general community or a ‘sufficient section of the community’.

Recommendation 7 (Chapter 13) That the public benefit test be strengthened by requiring that the dominant purpose of a charitable entity must be altruistic.

Recommendation 8 (Chapter 13) That self-help groups which have open and non-discriminatory membership be regarded as having met the public benefit test.

Recommendation 9 (Chapter 13) That where closed or contemplative religious orders regularly undertake prayerful intervention at the request of the public, their purposes be held to have met the public benefit test.

Recommendation 10 (Chapter 13) That public benefit does not exist where there is a relationship between the beneficiaries and the donor (including a family or employment relationship); and that this principle extend to purposes for the relief of poverty, which the common law currently regards as being exempt from the need to demonstrate public benefit.

Defining charitable purpose

Recommendation 11 (Chapter 14) That there be no requirement that charitable purposes fall either within the ‘spirit and intendment’ of the Preamble to the Statute of Elizabeth or be analogous to one or more of its purposes. Summary of Recommendations 15

Recommendation 12 (Chapter 16) That the principles enabling charitable purposes to be identified be set out in legislation.



Recommendation 13 (Chapter 16) The Committee has considered five options for defining charitable purpose as set out in Chapter 16. It concludes that three options are viable, but recommends the following preferred option (Option 5) Charitable purposes shall be:

- the advancement* of health, which without limitation includes:
 - the prevention and relief of sickness, disease or of human suffering;
- the advancement* of education;
- the advancement* of social and community welfare, which without limitation includes:
 - the prevention and relief of poverty, distress or disadvantage of individuals or families;
 - the care, support and protection of the aged and people with a disability;
 - the care, support and protection of children and young people;
 - the promotion of community development to enhance social and economic participation; and
 - the care and support of members or former members of the armed forces and the civil defence forces and their families;
- the advancement* of religion;
- the advancement* of culture, which without limitation includes:
 - the promotion and fostering of culture; and
 - the care, preservation and protection of the Australian heritage;
- the advancement* of the natural environment; and Report of the Charities Definition Inquiry 16
- other purposes beneficial to the community, which without limitation include:
 - the promotion and protection of civil and human rights; and
 - the prevention and relief of suffering of animals.

(* Advancement is taken to include protection, maintenance, support, research, improvement or enhancement.)

Recommendation 14 (Chapter 20) That the definition of religion be based on the principles established in the *Scientology* case, namely:

- belief in a supernatural Being, Thing or Principle; and
- acceptance and observance of canons of conduct in order to give effect to that belief.

Application of the principles

Recommendation 15 (Chapter 24) That the encouragement of sport and recreation for purposes of amusement or competition not be a charitable purpose, it being noted that the advancement of health, education, social and community welfare, religion, culture or the natural environment through the encouragement of sport and recreation would be considered a charitable purpose.

Recommendation 16 (Chapter 25) That the care, support and protection of children and young people, including the provision of child care services, be considered a charitable purpose.

Recommendation 17 (Chapter 26) That charities be permitted neither to have purposes that promote a political party or a candidate for political office, nor to undertake activities that promote a political party or a candidate for political office. Summary of Recommendations 17

Recommendation 18 (Chapter 27) That commercial purposes should not deny charitable status where such purposes further, or are in aid of, the dominant charitable purposes or where they are incidental or ancillary to the dominant charitable purposes.

Recommendation 19 (Chapter 28) That the current approach of denying charitable status to government bodies be maintained. The Committee agrees with the principles set out in the *Fire Brigades* case and the *Mines Rescue* case for determining whether an entity is a government body, namely that the entity is constituted, funded and controlled by government.



Other categories in the framework

Recommendation 20 (Chapter 29) That there be a definitional framework to distinguish altruistic entities from other not-for-profit entities.

Recommendation 21 (Chapter 29) That in the recommended definitional framework, the category of public benevolent institution be replaced by a subset of charity to be known as Benevolent Charity, that is a charity whose dominant purpose is to benefit, directly or indirectly, those whose disadvantage prevents them from meeting their needs.

Recommendation 22 (Chapter 30) That the framework recommended in this Report should not include the terms ‘religious institution’, ‘scientific institution’ and ‘public educational institution’, as altruistic entities with religious, scientific or public educational purposes and that are for the public benefit are covered by the categories in the recommended framework.

Recommendation 23 (Chapter 31) That there be a category, known as ‘Altruistic Community Organisations’, that are entities that are not-for-profit and have a main purpose that is altruistic. That is, they can have secondary purposes that are not altruistic, and that do not further, or are not in aid of, or are not incidental or ancillary to, their main altruistic purpose. Report of the Charities Definition Inquiry

Administering the definitions

Recommendation 24 (Chapter 32) That the Government seek the agreement of all State and Territory Governments to the adoption nationally of the definitional framework for charities and related entities recommended in this Report.

Recommendation 25 (Chapter 32) That the Government seek the agreement of all State and Territory Governments to establish an independent administrative body for charities and related entities, and to the legislative changes necessary for its establishment.

Recommendation 26 (Chapter 32) If an independent administrative body is not established:

- that the Government set up a permanent advisory panel, including members from the charitable and related sector, to advise the Australian Taxation Office on the administration of the definitions relating to charities and related entities, and to advise the Government on the definitions of charity and related terms; and
- that the endorsement processes currently undertaken by the Australian Taxation Office be extended to include the endorsement of charities and related entities in order to access all the taxation concessions to which they are variously entitled.

Recommendation 27 (Chapter 32) That the Government commit to a comprehensive public information and education campaign to inform the charitable and related sector of any changes arising from its consideration of this Report



APPENDIX THREE

MEDIA RELEASE

Joint Media Release with Deputy Prime Minister, the Hon Julia Gillard MP - Australia Social Inclusion Board 21 May 2008

Prime Minister and the Deputy Prime Minister will today attend the first meeting of the new Australian Social Inclusion Board.

Every Australian should have an opportunity to be a full participant in the life of the nation. Unfortunately, too many Australians remain locked out of the benefits of work, education, community engagement and access to basic services.

This social exclusion is a significant barrier to sustained prosperity and restricts Australia's future economic growth.

Promoting social inclusion requires a new way of governing. Australia must rethink how policy and programs across portfolios and levels of government can work together to combat economic and social disadvantage.

The Australian Social Inclusion Board which brings together leaders from around the country, will be instrumental in meeting this challenge.

Tackling disadvantage involves generating effective, practical solutions at the level of government, local communities, of service providers, employers and of families and individuals themselves.

The Australian Social Inclusion Board will consult widely and provide views and advice to the Government.

The Board will be asked to focus on the most disadvantaged geographic areas and communities in the nation.

In doing so the Board will be asked to make recommendations on policy that could change the lifetime circumstances of jobless families and children at risk.

The Rudd Government has already begun work on a number of priorities which are important to the social inclusion agenda, including work on homelessness, a disability and mental health employment strategy, closing the gap for Indigenous Australians and universal access to pre-school.

AUSTRALIAN SOCIAL INCLUSION BOARD MEMBERS

Ms Patricia Faulkner (Chair)

Patricia Faulkner leads KPMG's Global Healthcare practice and is also the National Partner-in-Charge for Health, advising both State and Federal Government departments and agencies. From 2000 to 2007, Patricia was the Secretary of the Department of Human Services in Victoria. She has held various board appointments over the years and is currently a board member of the Jesuit Social Services and the Melbourne International Arts Festival. Patricia held senior and chief executive roles in the Victorian Government during the 1980s and early 1990s, including Director of Consumer Affairs, Director of Occupational Health and Safety, and Director of Employment. In 1995-96, she chaired the Economic Planning Advisory Commission inquiry into the Future of Childcare in Australia.



Monsignor David Cappelletti (Vice Chair)

Monsignor David Cappelletti is a Catholic Priest and is currently the Vicar General of the Archdiocese of Adelaide, making him the deputy to the Archbishop of Adelaide. In May 2006, Premier Mike Rann appointed him to the position of Commissioner for Social Inclusion, in order to strengthen his ability to influence the development and implementation of social policy. Monsignor Cappelletti continues as Chair of the Social Inclusion Board – a role he has held since March 2002 – and is a member of the Economic Development Board of South Australia. Monsignor Cappelletti is a qualified social worker and a former National Director of the Australian Catholic Social Welfare Commission. He has made major contributions to national debates in social policy development and has been directly involved in national strategic planning and implementation of social programs.

Ms Elleni Beredeh-Samuel

Ms Elleni Beredeh-Samuel was born in Ethiopia. She has focused her life's work on strengthening education, training and employment for culturally and linguistically diverse communities in Australia. Elleni is now the Community Engagement Coordinator at Victoria University. Her dynamic leadership has resulted in new solutions for community to access and participate in society. She has brokered partnerships with international and local community organisations, as well as local, State and Federal government departments. Elleni is the first African Commissioner for the Victorian Multicultural Commission. She is on the Board of Directors of the Royal Women's Hospital and chairs the Community and SBS Community Advisory Committees.

Dr Ngjare Brown

Dr Ngjare Brown is an Aboriginal woman from the south coast of NSW and one of the first half-dozen identified Aboriginal medical graduates in Australia. She has a clinical background in acute care and primary health, as well as experience in medical education, policy and research. Her past positions include Indigenous Health Advisor to the Federal AMA and Foundation CEO of the Australian Indigenous Doctors' Association. Ngjare is currently undertaking doctoral studies in human rights, human rights law and public health and holds joint placements in the Child Health Division at the Menzies School of Health Research and the Telethon Institute for Child Health Research.

Dr Ron Edwards

Dr Ron Edwards is a founding board member of the Graham (Polly) Farmer Foundation supporting Indigenous youth. He was awarded a Doctorate in Education (UWA 2006) which investigated the factors that can promote social inclusion within society, particularly in an educational context. Ron has been actively involved in programs that seek to enhance social inclusion amongst Indigenous, homeless and disabled people, as well as in the establishment of low fee Anglican schools. He was a Member of the House of Representatives from 1983-1993 and now works as a project consultant in the private sector.

Mr Eddie McGuire

Mr Eddie McGuire is host of some of Australia's most popular television shows. Eddie became President of the Collingwood football club in October 1998. He also established – and is Chairman of the Trevor Barker Foundation and works for many other charitable organisations, including the Brainstorm Appeal, the Alfred Hospital Foundation, the Leukaemia Research Fund, the Burnet Research Institute, and the Alannah and Madeline Foundation.

Dr John Falzon

Dr John Falzon, a sociologist working in the area of social justice and social change, is Chief Executive Officer of the St Vincent de Paul Society National Council. He has written and spoken widely on the structural causes of marginalisation and inequality in Australia and has long been involved in advocacy campaigns for a fairer and more inclusive Australia, especially in regard to welfare legislation, housing justice, homelessness and poverty.



John has worked in academia, in research and advocacy with civil society organisations, and in community development in large public housing estates.

Mr Ahmed Fahour

Mr Ahmed Fahour joined the National Australia Bank in September 2004 as an Executive Director and Chief Executive Officer Australia. Ahmed is responsible for managing the Australian and Asian region which includes retail, business and corporate banking. He also oversees MLC, which includes retail investments, insurance and wholesale superannuation. Ahmed holds a Bachelor of Economics from La Trobe University and a MBA from the University of Melbourne. He won a number of prizes during both degrees. He is a Senior Fellow of the Financial Services Institute of Australasia and was appointed by the Premier of Victoria as Business Ambassador in Melbourne's North in Victoria. Ahmed is Melbourne-based and is married with four children. He has an active interest in sports and working on developing social cohesion in Australia.

Professor Tony Vinson

Emeritus Professor (UNSW) and Honorary Professor (University of Sydney) Tony Vinson has worked with disadvantaged communities to strengthen the problem solving capacities of individuals and groups. Since the mid-1960s, he has researched the priority needs of communities and has taught social workers and trainee doctors how to work effectively with them. Tony has extensive experience researching social disadvantage, which culminated in his book *Dropping Off the Edge* (2007), on the distribution of social disadvantage in Australia. He has direct involvement in community development projects, was Chair of the Independent Inquiry into NSW Public Education in 2002, a Foundation Director of the NSW Bureau of Crime Statistics in the 1970s, and one-time Head of the NSW Department of Corrective Services.

Ms Linda White

Ms Linda White is the Assistant National Secretary of the Australian Services Union, the largest union working in the social and community services sector. Linda is also a Vice President of the Australian Council of Trade Unions. She has been at the forefront of the union's work nationally and is involved in the enhancement of skills in the sector through her role as chairman of the review of the Community Services Training package for the Community Services and Health Industry Skills Council. She is a solicitor of over 20 years' standing and has worked with clients and trade unions for over ten years at Maurice Blackburn & Co.

Ms Kerry Graham

Ms Kerry Graham has committed herself to addressing the disadvantage and exclusion experienced by parts of our community. She has worked with Indigenous Australians, children and young people, as well as homeless, mentally unwell and dually diagnosed people. Her experience includes working as a solicitor with Aboriginal Legal Services and she was the founding lawyer of the NSW Youth Drug and Alcohol Court for which she received the National Children's and Youth Law Centre award. Kerry is the CEO of the Inspire Foundation, a national non-profit organisation which creates opportunities for young people.

Mr Tony Nicholson

Mr Tony Nicholson has dedicated almost 28 years to improving conditions for those living on or close to the edges of society. A feature of his work has been his ability to collaborate with colleague social justice organisations, governments and business to achieve reform in public policy and service delivery to the benefit of disadvantaged Australians. Tony spent 14 years as Chief Executive Officer of Hanover Welfare Services, a Melbourne-based organisation in the field of homelessness. Tony is currently Executive Director of the Brotherhood of St Laurence in Melbourne, an agency at the forefront of knowledge development and practice of a genuinely Australian approach to social inclusion.



Dr Chris Sarra

Dr Chris Sarra hails from Bundaberg in Queensland. The youngest of 10 children, Chris experienced first-hand many of the issues faced by Indigenous students throughout their schooling. Chris has had an extensive and noted career in education, with a focus on the pursuit of improved outcomes for Indigenous children. In the late 1990s, Chris took on the challenges of Indigenous education as the principal of Cherbourg State School in Queensland. Under Chris' leadership, the school became nationally acclaimed for its pursuit of the Strong and Smart philosophy. Chris is now the Executive Director of the Indigenous Education Leadership Institute.

Professor Fiona Stanley

Professor Fiona Stanley is the Founding Director of the Telethon Institute for Child Health Research, Chair of the Australian Research Alliance for Children and Youth, and Professor, School of Paediatrics and Child Health, at the University of Western Australia. Fiona has spent her career researching the causes of major childhood illnesses and strategies to enhance health and well-being in populations. She sits on the Prime Minister's Science, Engineering and Innovation Council, as well as the Australian Statistics Advisory Council. For her research on behalf of Australia's children, she was named Australian of the Year in 2003 and in 2006 she was made a UNICEF Australia Ambassador for Early Childhood Development.

