

Board of Taxation

Consultation on the Definition of a Charity

Submission from Group Training Australia Ltd

September 2003

1. Introduction

1.1 Group Training Australia (GTA) Ltd welcomes this opportunity to comment on the exposure draft of the Charities Bill 2003.

1.2 We note that the Board has requested that interested charitable organisations comment in particular on:

- the workability of the definition of a charity proposed in the draft legislation and Explanatory Material issued by the Treasurer on 22 July 2003; and
- whether the public benefit test in the exposure draft should also require the dominant purpose of a charitable entity to be altruistic, as recommended by the **Report of the Inquiry into the Definition of Charities and Related Organisations** (the Inquiry).

1.3 As the Board states in its **Guidance on Preparing a Submission** the consultation will focus on organisations intended to fall within the legislated definition of a charity and will deal mainly with the issues stated above.

1.4 As you would be aware from our submission to the Inquiry, GTA represents a national network of not-for-profit Group Training Organisations (GTOs). The core function of GTOs is to employ apprentices and trainees and hire them to host employers for varying periods of time until they have completed their contract of training. Many GTOs are also engaged in a range of other commercial activities, allied to employment and training, which provides income in support of their core function.

2. Current Tax Status of GTOs

2.1 All GTOs in our network are incorporated as not-for-profit organisations and we estimate that the bulk of these have applied for and been granted Income Tax Exempt Charity (ITEC) status by the ATO. Those that do not have ITEC status have presumably self assessed in accordance with ATO guidelines as eligible for income tax exemption. It may be that these organisations are self assessing as an income tax exempt not-for-profit body established for community service purposes and referred to as community service organisations. We note that the report of the Inquiry refers at Chapter 31, p 265, to a 1990 amendment to the Income tax Assessment Act to provide for such entities whose activities are not accepted as being charitable.

2.2 From what we can ascertain, the principal benefit of having ITEC status, as opposed to self assessing as income tax exempt, seems to be the certainty that comes with having had the ATO determine an organisation's tax status. Unless an organisation has been approved as a Public Benevolent Organisation (PBO) by the ATO, the tax advantages enjoyed by ITECs and self assessed income tax exempt entities appear to be the same.

2.3 We note that the 'Non-profit Organisations' section of the ATO web site provides a guide to assist not-for-profit entities to determine whether they might be exempt from income tax on the basis that they fall within the ATO

definition of a charity or within a category for which examples are given. These definitions and categories appear to have been developed over the years through case law.

2.4 It would seem that any organisation that is in doubt can have the matter resolved by applying to the ATO for a determination of its tax status.

2.5 On the basis that ITEC status has already been granted to many GTOs, we would assume that all GTOs incorporated as not-for-profit entities would be granted ITEC status upon application.

3. The Workability of the Definition of a Charity Proposed in the Draft Legislation

3.1 Our reading of the exposure draft of the Charities Bill leaves us wondering whether GTOs would continue to be defined as charities as we understand the proposed definition.

3.2 We assume that if this bill is enacted the ATO will be required to satisfy itself that all current ITECs still qualify under the statutory definition. It may be that in the minds of the ATO and parliamentary draftsman, the statutory definition is expected to cover all current cases, in which case we can be confident that there would be no change to the tax status of our members.

3.3 However, our reading of the exposure draft suggests that charity could be interpreted more narrowly than is currently the case, at least where Group Training Organisations are concerned.

3.4 The exposure draft defines a charity, inter alia, as an entity that has a dominant purpose that:

- (i) is charitable; and
- (ii) unless subsection 2 applies, is for the public benefit.

Dominant Purpose

3.5 An entity has a *dominant purpose* that is charitable if and only if:

- (i) it has one or more purposes that are charitable; and
- (ii) any other purposes that it has are purposes that further or are in aid of, and are ancillary or incidental to, its purposes that are charitable.

3.6 An entity has a *dominant purpose* that is for the public benefit if and only if:

- (i) it has one or more purposes that are for the public benefit; and
- (ii) any other purposes that it has are purposes that further or are in aid of, and are ancillary or incidental to, its purposes that are for the public benefit.

3.7 As we indicate above, and have elaborated on in considerably more detail in our submission to the Inquiry, many GTOs are involved in a range of commercial activities, largely allied to employment and training, which they undertake in support of their core function. Indeed, there is ample evidence that many could not conduct their core function without income derived from other sources.

3.8 Consequently, while there is no doubt that these other purposes, which might not in themselves qualify as charitable, are further to the dominant charitable purpose, it is not possible without further explication to say categorically that they are ancillary or incidental to the dominant charitable purpose. For example the ATO might decide that the concept of ancillary is determined by the relative dollar value of the various commercial functions.

3.9 This is an issue that we raised in our submission to the Inquiry and one about which we have major concerns. If GTOs are to fulfil their charter they need to remain financially viable. To do so, many of them need to be able to conduct ancillary activities on the same income tax exempt basis as their core function.

Public Benefit Test

3.10 We are confident that a Group Training Organisation would meet the public benefit test, which it is proposed be defined as an entity whose purpose:

- (i) is aimed at achieving a universal or common good;
- (ii) has practical utility; and
- (iii) is directed to the benefit of the general community or to a sufficient section of the general community.

3.11 We note that the Board has requested that interested parties give consideration to the proposition that the public benefit test in the exposure draft should also require the dominant purpose of a charitable entity to be altruistic as recommended in the report of the Inquiry.

3.12 We assume that, if accepted, this would mean that the definition of an entity that has a dominant purpose that is charitable, as outlined in paragraph 3.5 above, would include a third condition relating to the concept of altruism.

3.13 This is a difficult characteristic to define and to apply to the many organisations, including our own, that are currently deemed charitable. In one sense, it would generally be presumed to be an inherent characteristic of any charitable entity.

3.14 The Board has suggested that altruism can be characterised as 'a voluntarily assumed obligation towards the well being of others or the community generally'. We are not sure what to make of this and particularly of the significance of the word 'voluntarily'. If it is intended to imply selflessness or volunteering then it would surely no longer apply to many, if

not most charities, including GTOs, which are required to employ professional staff at market rates of pay in order to carry out their functions. It may be that it denotes some other quality that is intended to set some organisations apart from others for the purposes of determination of charitable status.

3.15 We note that the report of the Inquiry, again at Chapter 31, recommends the creation of a category of organisation known as ‘altruistic community organisation’, though we cannot be certain that it is from this recommendation that the board is taking its cue on this concept.

3.16 Chapter 31 talks of altruistic community organisations having a main purpose that is altruistic and which would by definition include all charities.

3.17 However, it goes on to suggest that ‘altruistic community organisations’ would be wider and include other entities which are not charities either because the purposes of those other entities, while altruistic are not charitable, or because they have secondary non-altruistic purposes.

3.18 Our concern about this second qualification is whether it signals a desire in reality to strengthen the dominant purpose test, such that many entities would fail the definition of charity on the basis of their ancillary activities but still be classified as an altruistic community organisation on the basis of their main purpose.

3.19 As we have indicated, we are a little confused by the proposition of altruism and whether it would be applied to the public benefit test as suggested in the Board’s consultation paper, or to the dominant purpose test as seems to be the reasoning behind recommendation 23 of Chapter 31 of the report of the Inquiry.

Charitable Purpose

3.20 When we examine the definitions of charitable purpose in the exposure draft and more particularly the notes in the explanatory material, we have some concern.

3.21 The core function of a GTO is the recruitment, placement and support of apprentices and trainees throughout the duration of their training contract. The GTO brokers the placement with employers who would otherwise often not be willing to engage in employment based training without the service provided by the GTO. GTOs have therefore become critical to national skills formation, to the career prospects of many job seekers and to the economic and social welfare of the communities they serve.

3.22 Given these functions, we would argue that their charitable purpose is one or more of the following categories listed in the exposure draft:

- (i) the advancement of education;
- (ii) the advancement of social or community welfare; or
- (iii) any other purpose that is beneficial to the community.

3.23 As we have indicated, it may be that the ATO would agree with this reasoning, even though there appears to be some difference between the proposed legislated definitions and categories, and those on which we assume GTOs are currently being classified as income tax exempt charities.

3.24 That said, we would take the 'advancement of education' in the proposed new definition to include 'vocational education and training' and we would propose that it encompass the employment function of GTOs, as employment is a sine qua non of an apprenticeship or traineeship. In other words you cannot be trained in this fashion unless you are first in employment.

3.25 If this definition cannot accommodate the charitable purpose of a GTO, the 'advancement of social and community welfare' is arguably sufficient and indeed appears to be closest to the category on which the ATO currently relies in according ITEC status to GTOs.

3.26 The explanatory notes for the 'advancement of social and community welfare' category are broad ranging, as you might expect of such a category. However, the notes include the provision of services to people who are disadvantaged in the labour market and the promotion of community development to enhance social and economic participation, such as to give us confidence that this would be the most appropriate classification.

3.27 The notes to the category of 'any other purpose that is beneficial to the community' would not appear to support our case but might yet be open to further elaboration.

4. Conclusion

4.1 We are most concerned to ensure that Group Training Organisations can continue to fulfil their charter with as much support from government as they have enjoyed to date. This support includes their current tax advantages such as income tax exemption on their dominant and ancillary functions and various benefits in areas such as fringe benefits tax concessions. Any loss of these benefits will be to the detriment of national skills formation and the career prospects of school leavers and other young people.

4.2 If they were to lose their current charitable status because of a narrowing of the definition of charitable purpose, or the imposition of an altruism test, there would be less concern so long as their current income tax benefits and concessions are still available to them by means of some alternate tax classification. This might be as an altruistic service organisation or as a community service organisation, should this concept survive.

4.3 As we indicated at the outset, we are currently not aware that having ITEC status makes any appreciable difference in terms of tax treatment, compared to self assessing as an income tax exempt entity on some other basis.

4.4 We look forward to a favourable conclusion to your deliberations.

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