

Submission

to the

Inquiry into the Definition of Charities

and Related Organisations

Group Training Australia Ltd
December 2000

Executive Summary

Group Training Australia (GTA) Ltd is lodging this submission on behalf of its members.

GTA is the national association for a network of over 120 not-for-profit Group Training Companies (GTCs) operating from over 200 locations across Australia.

GTCs employ apprentices and trainees and place them with host employers for varying periods until the apprentice or trainee has completed their contract of training. This network of companies collectively employs over 40,000 apprentices and trainees, or 15% of the national total, making it the largest employer of apprentices and trainees in Australia.

GTA State and Territory associations, as well as individual GTCs, their chairs or managers, may also lodge submissions to this inquiry to complement and strengthen the force of our arguments.

GTA is concerned about the lack of time in which to conduct extensive consultations with our members, and the community, before developing our response to the discussion paper issued by the Inquiry.

We are also concerned about the exclusion of legal and administrative treatment from the Terms of Reference.

Our submission includes a comprehensive overview of the concept and origins of Group Training and the changing operating circumstances that have forced many Group Training Companies to diversify in order to cross subsidise their core business from more profitable activities.

Essentially we suggest that:

1. the term not-for-profit itself is misunderstood by people who believe that companies so classified should generate no surpluses and accumulate no reserves and that any redefinition should seek to remedy this misunderstanding; and
2. a whole of organisation classification approach should remain for not-for-profit organisations that meet appropriate criteria of community service. Rather than a “one size fits all” approach it is suggested that there should be a process of “lifting of the corporate veil” to determine the underlying purpose of not-for-profit organisations i.e substance rather than form.

Introduction

Group Training Australia (GTA) Ltd is the national association for a network of over 120 not-for-profit Group Training Companies (GTCs) operating from over 200 locations across Australia.

Group Training Australia welcomes this opportunity to lodge this submission on behalf of its members, in response to the inquiry into the definition of charities and related organisations.

However, in opening, we would like to express our concern on two points.

First, we are disappointed at the relatively short period of time available to us to consult extensively with our members before presenting our submission. The final date for lodgement is 31 December 2000, which at this time of year, effectively means Friday 22 December, the last working day before Christmas. This has left little time for extensive consultation.

Second, we note that the scope of the inquiry is limited to “a consideration of the definitions that are used in legislative and administrative practice. The terms of reference do not require the committee to examine or provide options for the appropriate legislative and administrative treatment of charities and related organisations”.

The concern that we have with this approach is that we do not know what the tax consequences might be of any particular definition for which we might argue. That is possibly best left to legal academics and other experts.

We feel that we are better placed to inform you of the services we provide, the changing operating environment that our member companies have had to contend with, and what outcome we need from the inquiry to ensure that our members can continue to fulfil their charter.

If you are persuaded by our arguments, and those of the many other organisations that are likely to take a similar approach, we would expect that your recommendations will not be detrimental to our interests.

However, if there is one opinion that we might proffer on the subject of a definition it is this. The term not-for-profit is misunderstood, misleading and has bedeviled many organisations like the companies we represent. The term is commonly held to mean that any company that enjoys this status should, as a matter of principle, ensure that its income does not exceed its expenditure, nor should it accumulate any surpluses and hold funds in reserve.

In other words, surpluses are held to be profits, which are assumed to be the exclusive preserve of companies that are in business to make money and distribute those profits. This misconception shows a poor understanding of the principles of sound corporate governance and prudent financial management.

We regard our members as community service not-for-profit organisations with the emphasis on community service. They strive to generate surpluses, or make a profit if you will, as a matter of sound business practice and so that they might not only continue but also improve their services to the community.

This inquiry would do our sector a great service if any definition could lay to rest this misconception that not-for-profit means no surplus income.

The Concept of Group Training

GTCs employ apprentices and trainees and place them with host employers for varying periods until the apprentice or trainee has completed their contract of training. This network of companies collectively employs over 40,000 apprentices and trainees, or 15% of the national total, making it the largest employer of apprentices and trainees in Australia.

Our research indicates that over 50% of Group Training's host employers are small and micro businesses employing fewer than five (5) employees. Many of

these businesses would not be involved in employment based training if it were not for the services provided by Group Training.

The concept of Group Training began in the late 1970s in response to the needs of small employers in certain industries who were increasingly unable to commit to four year indentures. Group Training offered employers the opportunity to engage an apprentice knowing that, if they ran out of productive work, the GTC would find an alternative placement and the apprentice could continue their training.

Group Training also proved to be an effective mechanism for placing the increasing number of out-of-trade apprentices whose employers were adversely affected by the economic downturn in the early 1980s.

While the first GTCs were established to meet the needs of specific industries, such as automotive and building and construction, and were often set up by the industry association, an increasing number were established in regional Australia to serve the needs of local communities. Such companies would employ apprentices and trainees across a range of trades and occupations.

There are now GTCs serving most of regional Australia with most board members drawn from the local community and serving on a voluntary basis. Some boards are also bi-partite and include representatives of both employer and employee associations.

Group Training Companies have strong connections with communities, whether it be within a particular region or, in the case of industry specific companies, with most of the key stakeholders dealing with employment and training issues within that industry. Whether industry specific or regional in focus, they are usually involved in more than just the core function of placing young people into positions with host employers.

For example, most are now involved with schools in anything from providing careers advice to students, to managing and co-ordinating work placements for the increasing numbers of students undertaking vocational courses in years 11-

12, to employing students as school based apprentices and trainees. Their involvement in creating pathways from school to work for young people places them at the forefront of efforts by governments to improve school to work transitions for young people.

Many GTCs provide community services using the skills and manpower of their apprentices and trainees. This might involve assisting the elderly or disabled with repairs and maintenance to their homes or project work in local clubs, parks and gardens. They also work closely with local councils, business chambers, and welfare organisations to enhance the lives of members of those communities and maximise the well-being of the community as a whole.

In addition to the convenience and flexibility they provide to host employers, GTCs also provide their apprentices and trainees with pastoral care at a critical time of their lives. Not only does the GTC field officer manage the training function and resolve conflict that might arise in the workplace. He or she may also find themselves dealing with personal crises as diverse as:

- homelessness
- suicide
- drug addiction; and
- relationship problems

Some GTCs have established foundations to assist young people in some aspect of their employment and training. Many disadvantaged young people, such as people with disabilities and Indigenous Australians, would not have obtained their trade qualifications had it not been for a GTC finding a position and supporting them through the duration of their indenture.

These activities have been well documented over the years. Enclosed is a copy of a publication funded in 1997 by the Australian National Training Authority Group Training Success Stories: Access and Equity at Work which provides some idea of the scope of Group Training's involvement with community work and the disadvantaged.

The Growth of Group Training

The growth of Group Training was assisted during the 1980s and early 90s by the financial support of the ACTU-Lend Lease Foundation, which promoted the concept and facilitated the establishment of new companies.

Group Training subsequently attracted the support of governments, which could see the benefit they provided to young people seeking employment in the trades and the important contribution they made to national skills formation. In recognition of their efforts, not-for-profit GTCs started to receive government grants in the early 1980s to assist them with their operating costs.

As the number of GTCs grew, there followed a series of tax decisions, which were somewhat ad hoc, to provide them with various forms of tax relief. This included exemption from company tax, sales tax and in some cases, but relatively few, recognition as a public benevolent institution (PBI).

This last concession, which was granted to some and denied to others, gave some companies very significant benefits. It does, however, appear to have been applied inconsistently, which is curious in view of the fact that all GTCs share a common purpose and have the same core function.

Most GTCs are incorporated under State/ Territory associations incorporation legislation, which provided a convenient and simple form of incorporation for not-for-profit companies. Some are also incorporated as companies limited by guarantee and their constitutions reflect their not-for-profit objectives with the standard clauses precluding distribution of dividends to members and providing for the transfer of assets to another not-for-profit organisation with similar objectives in the event of their winding up.

Changing Operating Environment

The environment in which Group Training Companies operate has changed dramatically since they were first established. GTCs have had to meet the challenges of a changed operating environment in order to survive.

Government support for Group Training has been diminishing for some time. In the early 1990s, the federal government moved to phase out operating support but subsequently rescinded this decision as a counter cyclical response to the recession of those years.

Even though most GTCs continue to receive operating support, the amount has not maintained its value in real terms. The quantum of funds available for operating support has not kept pace with the growth in the numbers of apprentices and trainees employed by GTCs, causing a diminution of the value of the support in per capita terms.

This reduction in the value of operating support is coupled with reductions in other funding, such as the value of employer incentives paid by the Commonwealth, and an increase in the costs of doing business, particularly those associated with occupational health and safety and the costs of workers compensation premiums.

The net result is that charge-out rates for apprentices and trainees have had to be increased to make up for this loss of operating support. At the same time companies have had to squeeze margins to ensure that they remain competitive and an attractive business proposition to host employers. The employment of apprentices and trainees is the first thing that host employers will dispense with if they need to cut costs.

This precarious funding situation has meant that GTCs have been forced, and indeed have been encouraged by government, to look elsewhere for alternative sources of funding that would enable them to become more self-supporting.

Consequently, many GTCs have expanded their operations and are now involved in the provision of a range of other services from which additional income is derived. These activities may include, but are not limited to:

- operating training facilities
- providing employment placement services, either independently or under contract from the Commonwealth as part of the outsourcing of the functions of the former Commonwealth Employment Service (CES)
- providing training and employment services under contract from State/Territory governments; and
- providing traditional labour hire services

Group Training Companies have been assisted in securing some of these alternative sources of income by a number of government reforms that have created commercial opportunities for both for-profit and not-for-profit companies in the non-government sector. In particular, these reforms include:

- opening up the training market to enable private training providers to compete with TAFE
- outsourcing a range of employment placement services, previously carried out by the former CES.

The alternative income stream provided by these commercial activities has effectively enabled many GTCs to cross subsidise their core function from which little or no income is derived. This contention is supported by research conducted over recent years and reported in:

1. A Best Kept Secret: Report on the Role and Effectiveness of Group Training Companies, House of Representatives Standing Committee on Employment, Education and Training, March 1995, page 9, para 2.15
2. Australian National Training Authority: Group Training Funding Model, KPMG Management Consulting, November 1997, page 68

While this diversification into other related commercial activities has its origins in the need to secure alternative sources of revenue, it is arguably also being sustained by factors other than pure financial need.

In particular, many GTC managers believe that there are also strategic considerations involved in assessing the need to diversify beyond the core function of Group Training. The opening up of markets that were formerly the preserve of the public sector has seen a proliferation of new service providers enter these markets, not always with positive consequences, other than to save governments money, at least in the short term.

There is a view held by many in the Group Training network that it is increasingly unwise for a Group Training Company not to tender for the provision of some of the other employment and training services that are on offer. The concern stems from the possibility that a GTC may find itself surrounded by a range of new service providers who do not necessarily work in partnership with the GTC and who may actively work against its interests.

These conflicts and tensions in the market place have often been cited by GTA during bi-lateral discussions with government.

Community Service Not-For-Profit

With the introduction of the New Tax System on 1 July 2000, all Group Training Companies are now being notified by the ATO of their status as Income Tax Exempt Charitable Entities (ITEC). Those that had full PBI status continue to enjoy this benefit.

With the introduction of the GST, GTCs enjoy input tax credits like any other business. However, with the abolition of sales tax, from which GTCs were exempt, GTCs have lost a benefit which has been estimated to have been in the order of about \$7m per annum. This benefit contributed to Group Training's ability to meet the resourcing costs associated with the provision of pastoral care.

This benefit has not been enjoyed by for-profit labour hire firms but then they were unlikely to provide the level of pastoral care, or have the community involvement, of a Group Training Company.

Having lost this benefit with the abolition of sales tax, GTCs will have an even greater need to cross subsidise their Group Training operations from surpluses generated from other commercial activities, if they are to fulfil their charter.

This is where the definition of not-for-profit will become critical. GTCs have diversified because it has become difficult to generate sufficient revenue from core business activity and conduct it to the standard that stakeholders, not the least of which is government, expect of them.

GTCs have been able to run these other business units at a profit, if we can use that expression, for the purpose of enabling them to carry out the business of Group Training. They are doubly served by the fact that much of this ancillary commercial activity fits neatly with core business and facilitates the concept of a 'one-stop shop' service.

Moreover, as the legal employer of the apprentices and trainees, carrying out the business of Group Training means complying with laws that require the directors to ensure, inter alia, that the company's finances are in good order. Sound financial management means ensuring that the company has the reserves to meet a range of contingencies, which in the case of a GTC would particularly include:

- funds to cover advance pays and holiday pays over the Christmas/ New Year period for upwards of 1,000 apprentices and trainees which is not recouped until host employers pay invoices anything up to 60 days later; and
- funds to cover down time when apprentices and trainees are returned by one host employer and cannot readily be found alternative employment with another, a phenomenon which is increasingly prevalent in the building trades or any other particularly cyclical industry

These reserves are accumulated surpluses by another name and can only be generated from profitable commercial activities.

Whole of Organisation or Activity Based Assessment

The issues paper canvasses the common law interpretation of the definition of community service not-for-profit organisations and raises the possibility of an activities-based approach.

Although this no doubt derives some validity from Activity Based Costing as a means of cost control in an industrial/administrative setting it is suggested that the more general application of such a principle requires some very serious examination. In effect it is suggested that the focus shift from the purpose for which an organisation exists to the specific activities undertaken in fulfilment of that purpose. Underpinning such a suggestion is the ability to “firewall” individual activities from each other, account for them separately and have them subjected to different legal and administrative treatments, whatever they may be.

Group Training organisations do not have the capacity to operate in such a way. The purpose for which they exist, the delivery of core group training functions, is the singular focus of their activities, all of which are subordinated to the achievement of that purpose. It is not possible to think of their other ancillary activities as being anything other than supports to the main game. These activities do not have their own separate existence and any return on performance is applied to the total organisation.

In addition the managerial and administrative arrangements that would attach to the approval, ongoing conduct and reporting requirements that would inevitably be required would only serve to further divert precious resources away from the principal role of being a community service organisation.

Consequently, this Association has to strongly support the continuation of the notion of a whole of organisation assessment and point out that the removal or denial of benefits as presently understood to apply to not-for-profit organisations on this basis would drastically affect the viability of Group Training organisations.

This applies not only to commonly accepted benefits such as income tax exemption and FBT rebate but also to specific requirements of not-for-profit status that attach to Commonwealth /State Government funding support to group training organisations and possibly also to approval to operate as a group training organisation under the legislation of some State and Territory governments.

Conclusion

GTA Ltd thanks the Committee for the opportunity to make this submission to the Inquiry and looks forward to its recommendations.

GTA Ltd will be pleased to provide the Inquiry with any additional information it might need to assist in its deliberations.

END

**Group Training Australia Ltd
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