



Changemakers Australia

Funding Advocacy for Social Change: Clarifying the Rules for Grantmakers

Table of Contents

Introduction	3
How do we define advocacy?	4
Is funding advocacy problematic?	4
When can charities engage in advocacy?	5
What kinds of advocacy can be funded?	6
- Representations to Government	7
- Participating in the Democratic Process	7
- Raising Public Awareness	7
Who can fund advocacy?	8
- Private Donors	8
- Foundations	8
- Tax Concession Charity Foundations	9
- Foundations with Deductible Gift Recipient Status	9
Where to from here?	10

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Introduction

Charitable organisations are best known for providing direct help to those in need, but equally important are their efforts to alleviate social problems through advocating for systemic change. This is usually in the form of lobbying governments or publicising the need for legislative change. It can also involve advocating for increased funding, or supporting research initiatives that delve into the causes of poverty, mental illness and other social issues. Increasingly, it may also involve advocacy to corporate organisations on such issues as climate change and the environment.

For example, a charitable organisation working with the homeless will often provide direct aid in the form of shelter, clothing and food. But, in order to meet its charitable purpose, the organisation may also decide to advocate for legislative change and programs that assist homeless people to build decent lives. Advocating for these systemic changes could, for example, provide opportunities for adequate and affordable housing; job training schemes, job placements and initiatives aimed at employee retention, and assistance with transportation.

Both modes of working are equally valid, but grantmakers often prefer to fund direct aid because the rules governing acceptable forms of advocacy may seem confusing, or even threatening, to those concerned about working within the constraints of current Australian charitable tax law. However, advocacy, in all its forms, is vital to a healthy society seeking to tackle its more intransigent problems. For that reason, this paper addresses some of the issues that concern those who wish to fund organisations advocating for a better world.

How do we define advocacy?

Advocacy, which in its broadest sense means 'active support of a cause', covers a wide range of activities. However, there are some generalisations we can make about the aims of advocacy. We can say that:

- advocacy aims to change minds in order to change actions
- advocacy gives a voice to those who need to be heard
- advocacy is at the heart of our democratic ideals.

How does advocacy achieve these objectives? In practice, advocacy means:

- advancing an idea that is not sufficiently in the public sphere
- arguing a position to clarify an advocate's views
- enriching the debate by allowing more voices to be heard, providing better information and encouraging more effective deliberations.ⁱ

Advocacy comes in many guises. It can range from organising local residents in response to a neighbourhood issue, running a public education campaign, providing in-depth research or, when asked, helping governments to draft public policy. It can also be about influencing decision-makers, either directly or indirectly, to modify existing programs or create new initiatives that lead to systemic change. Whichever way it's done, it's likely that at least some form of advocacy will be integral to the success of people aiming to bring about positive social change.

Is funding advocacy problematic?

Many grantmakers can only fund organisations with a charitable purpose, either because of charitable tax law or because of their structure (which provides them with both Deductible Gift Recipient (DGR) and Income Tax Exemption (ITEC) status).

It's clear from Australian Taxation Office (ATO) guidelines that grantmakers cannot fund those organisations (or projects) with a political purpose i.e. those whose **primary** purpose is to advocate for a political party or cause, to change the law or government policy, or to promote a particular point of view. (These are all defined as non-charitable purposes by the ATO.)

However, it's important to distinguish between organisations and projects with a **political purpose**, which definitely cannot be funded, and those undertaking **advocacy activities to support a charitable purpose**, which are permissible in many circumstances.

Many grantmakers shy away from funding advocacy for fear of losing their charitable tax status. However, Changemakers Australia believes that the laws surrounding what can legitimately be funded are less restrictive than many people assume.

Indeed, the Australian Taxation Office itself clearly states that:
*Charities can carry out political, lobbying and advocacy activities, where they are only carried out for the sake of, or in aid of, or in furtherance of the charitable purposes.*ⁱⁱ

Advocacy activities aimed at assisting individuals to receive their legal entitlements and which operate within current laws and government policies are clearly acceptable under charitable law. However, foundations and community organisations seeking to change the *system itself* through lobbying for law reform or new government policies need to be fully informed about the ATO guidelines and pay close attention to them.

This paper aims to give grantmakers a clearer idea of where the legal lines are drawn. However, Changemakers Australia does not purport to give legal advice for specific circumstances. For that, it is essential to consult a lawyer.

When can charities engage in advocacy?

In answering this question, it's important to distinguish first between an organisation's **charitable purpose** and the activities it undertakes to give effect to its charitable purpose.

An organisation's charitable purpose is the organisation's reason for existing. The definition of the term 'charitable purpose' dates back some 400 years and has been refined over time by case law. In essence, though, a charitable organisation must have as its purpose or object the relief of poverty, sickness or distress; the advancement of education or religion; and other purposes beneficial to the community.

Purposes that the Australia Taxation Office **does not** deem charitable are:

- the conferring of private benefits
- the pursuit of sporting, recreational and social goals
- the pursuit of commercial aims
- the pursuit of governmental objectives
- aims that are politically motivated, illegal or against public policy
- aims that are vague or of insufficient value to the community.

Charitable activities, on the other hand, are the actions which further an organisation's charitable purpose. This is where advocacy comes in.

Under ATO rules, advocacy is an acceptable charitable activity so long as it meets three key criteria:

- It must **further an organisation's charitable purpose**.
- It must **not be the dominant purpose** of a charitable organisation.
- It must be **incidental** or **ancillary** to the charitable purposes of an organisation.

This effectively means that if the purpose of an institution or fund is charitable, the presence of political or lobbying programs and activities will not detract from this status, provided they are merely *incidental* to the charitable purpose. Unfortunately, there is no precise formula for determining how much advocacy is too much under Australian charitable law. While terms like 'ancillary' and 'incidental' may seem vague, reference to Australian Tax Office rulings and the outcomes of relevant court cases can be of assistance.

What kinds of advocacy can be funded?

The ATO has provided an information sheet entitled *Charities – political, lobbying and advocacy activities* (available online at: <http://ato.gov.au/nonprofit/content.asp?doc=/content/62779.htm>), which provides examples of the types of political, lobbying and advocacy activities that are permitted under Australian charitable law. The information sheet may be useful in reviewing the activities of grant applicants. The examples below, which set out activities that the ATO says 'are not inconsistent with' charitable purposes, are taken from this source. They are grouped here under broad categories of activity.

Law Reform

In carrying out their charitable purpose, some charities support or oppose changes to legislation and public policy. Examples of permissible activities include:

- *A church – as part of its mission in helping the homeless – organises a petition seeking additional safeguards for people using hostel accommodation, and presents the petition to parliament.*
- *An Indigenous charity – as part of its purpose of improving employment opportunities for Indigenous youth – lobbies a regional authority to establish training centres in areas with particular needs for Indigenous youth.*
- *A health promotion charity – as part of its purpose of reducing the incidence of a disease – opposes proposed legislation (that it thinks would discourage potential sufferers from seeking medical attention) by lobbying parliamentarians, issuing press releases and making its representatives available to media outlets.*

Representations to Government

Charities commonly help people in their dealings with government authorities. The ATO gives these examples of permissible activities in this sphere:

- *A religious charity – in carrying out its mission – represents the needs of a refugee family to a housing authority, so as to obtain more suitable accommodation for them.*

- *A society – in carrying out its purpose of helping people suffering a particular physical disability – helps them obtain government assistance by researching the available forms of assistance for their particular needs, preparing application forms, and attending meetings (as their representative) with government officials.*

Participating in the Democratic Process

Charities sometimes participate in aspects of the democratic process in carrying out their charitable purposes. According to the ATO, it would be permissible to carry out activities such as the following:

- *A health charity – in furtherance of its purpose of helping the sick and injured – analyses policy and legislative proposals, rates them in terms of how they will (in the charity's view) aid its purpose, emails the results to its subscribers, and posts them on its website. It does so in a non-partisan way*
- *A group of educational charities – as part of their purposes of advancing education for the public benefit – conduct non-partisan letter-box drops in several electorates urging voters to think of their children's education and future when casting their ballots.*

Raising Public Awareness

In carrying out their charitable purposes, some charities seek to raise public awareness or change social consciousness in relation to issues involving their purposes. Examples of activities that would be permissible in this regard are given as such:

- *An Indigenous charity – as part of its purpose of improving health among Indigenous people – organises a rally to draw public attention to Indigenous health issues.*
- *A welfare organisation – as part of its purpose of alleviating poverty – arranges for its supporters to hand out pamphlets and carry placards highlighting the plight of poor members of the community, and suggesting practical ways for people to contribute to solutions.*
- *A housing charity – as part of its purpose of improving access to long-term accommodation for people on lower incomes – contracts with a government authority to distribute information packages on housing assistance through its centres.*

Overall, it is clear from the ATO guidelines that grantmakers may support projects which engage in:

- research of the 'root cause' of a structural issue
- community education
- consciousness-raising in relation to structural issues affecting the community
- mobilising the community and building alliances
- assisting the community in understanding the democratic process involved in changing public policy or law.

Who can fund advocacy activities?

Even if advocacy activities appear permissible, can every foundation or private donor fund them? Both the long and short answer to that question is 'it depends' – that is it depends upon the grantmaker's charitable tax status and the criteria in a foundation's trust deed.

1. Private Donors

Private donors do not have restrictive trust deeds nor do they need to comply with ATO rules. If they are not seeking a tax deduction, there are no restrictions on the organisations or activities that private donors can support. **They can fund all types of advocacy and should be encouraged to do so!**

In many cases, private donors who do seek a tax deduction will also be able to support advocacy projects or activities. However, they should be aware that ATO regulations require a charitable organisation with Deductible Gift Recipient (DGR) status to ensure that advocacy project or activity for which they are seeking funding is **within and incidental to** its principal purposes. The ATO examples given above may be instructive in reviewing this.

2. Foundations

It's important for foundations to be clear on their charitable tax status as there are two relevant categories:

- foundations which are only endorsed as a Tax Concession Charity (TCC), (i.e. do not also have DGR status) which must, in legal terms, make grants only for charitable purposes and activities; and,
- foundations which are endorsed as a Deductible Gift Recipient (DGR), i.e. which are able to receive tax-deductible donations and are also endorsed as a TCC or an Income Tax Exempt Fund (ITEF).

Tax Concession Charity (TCC) Foundations

TCC status means these foundations, which are established under bequests or trust deeds, do not pay income and other taxes. However, they do not have DGR status, so donations to TCC foundations are not tax deductible.

TCC foundations have specific charitable purposes which are set out in their constitutions or trust deeds. A TCC foundation can give grants to organisations with or without DGR status so long as the grants are in line with the foundation's charitable purpose. For example, a foundation established for the purpose of relieving poverty cannot fund animal welfare.

Foundations with Deductible Gift Recipient Status

Donations to these foundations – which are Prescribed Private Funds (PPFs) and Public Ancillary Funds (PAFs) – are fully tax deductible. But, unlike TCC foundations, these foundations can only give to organisations with DGR status (as outlined in subdivision 30 – B of the *Income Tax Assessment Act 1997*).

The safest route for PPFs and PAFs is to give an unrestricted grant to an organisation with DGR status. A list of organisations with DGR status is provided by the Federal Government at: <http://www.abr.business.gov.au>

However, many grantmakers receive applications for specific projects that promote law reform or changes to government policy. If there is a concern about whether such projects can be funded, it would be wise to seek legal advice.

Notwithstanding this situation, there are a number of advocacy projects and activities for which grantmaking may be acceptable. These could include raising public awareness and community education (as long as it is not politically biased), research, community mobilisation, and capacity-building specifically to undertake advocacy where they are within the DGR status organisation's principal purposes (for DGR foundations); and where they are also consistent with the organisation's charitable purposes and within the ATO guidelines (for TCC foundations).

Where to from here?

Grantmakers need to decide their approach to the advocacy issue, preferably with legal advice. Funding advocacy is vital to the development or refinement of public policy that will enable charitable organisations to work more effectively with their target groups. It can also make governments more accountable to the common good and allow under-represented constituencies a voice in the political process. This is also increasingly applicable to corporations as well.

As a well-known supporter of advocacy initiatives stated:

It could be argued that not funding advocacy may actually constitute a neglect of an important responsibility of social change philanthropy: to stimulate public awareness and debate of the issues that affect people's well being.ⁱⁱⁱ

In light of this, you may wish to consider the role that your organisation takes in funding advocacy. It may be instructive to answer the following questions:

- Are you doing as much as you can to support advocacy as part of your charitable purpose or have you simply put it in the 'too-hard basket'?
- If you have decided that advocacy is important, what are the best ways for your organisation to support it?
- How explicit are your funding guidelines? For example, will you consider grant applications that include advocacy or lobbying? Or would you prefer grant applications that involve policy analysis or public education?
- Have you audited your own grants to make sure they fit within the ATO guidelines?
- Would clear legal advice assist you to define your options?

We hope that this paper has helped clarify some of the issues surrounding the funding of advocacy in Australia. You can gain a more in-depth understanding of the issues concerned by accessing Australian Taxation Office publications or by contacting Changemakers Australia.

ⁱ Proscio, T. 2005. *Advocacy Funding: The Philanthropy of Changing Minds*. Grantcraft. <http://www.grantcraft.org>

ⁱⁱ Australian Taxation Office, 2005. *Charities - Political, Lobbying and Advocacy Activities*. http://www.ato.gov.au/print.asp?doc=/content/62779.htm&page=7#P114_10273

ⁱⁱⁱ Proscio, T. 2005. *Advocacy Funding: The Philanthropy of Changing Minds*. Grantcraft. <http://www.grantcraft.org>