



CHARITABLE ADVOCACY ON TRIAL

Dr. James Goodman, AID/WATCH Management Committee Member

Last year the Rudd Government announced a new era of social inclusion, and a new Federal partnership with charities. Against the grain, the Australian Taxation Office is resorting to the Federal Court to establish a test case against charitable advocates. The ATO's case concerns AID/WATCH, a small charity that monitors Australia's international aid programs.

In October 2006 the ATO disqualified AID/WATCH as a charitable organisation. AID/WATCH appealed to the Administrative Appeals Tribunal and in July 2008 the AAT President, Justice Downes, overturned the ATO's decision. The ATO is now appealing to the Federal Court, treating this as a test case for the entire charitable sector.

The ATO insists that AID/WATCH is not a charity because its purpose is to monitor the aid program, not to deliver aid. The ATO argues that AID/WATCH tries to influence government aid programs, and this is likewise uncharitable. On both counts, the ATO is imposing a restrictive definition of charitable status, that is at odds with current realities.

Charities serve the public through a whole range of activities – and only partly through direct assistance. Charities are involved in the broad array of social life, and address causes as well symptoms of social problems. To do so they must be able to speak up without fear of penalty - they must be able to advocate.

The Human Rights Law Resource Centre, together with the National Association of Community Legal Centres, has taken-up the case. Their report to the March meeting of the United Nations Human Rights Commission, which is to assess Australian compliance with international human rights law, specifically cites the AIDWATCH case as a potential threat to freedom of expression.

ATO efforts at tightening the definition of charitable status arise from continuing legal uncertainty. The uncertainty stifles public debate, and should be addressed as part of the Government's social inclusion agenda.

There is a ready solution on the table and one that has wide support across the sector. In 2001 the Federal Treasury appointed a former judge, Ian Sheppard, to head an inquiry into the Definition of Charities. The Inquiry found that a gulf had opened up between a long-standing legal definition dating back to the reign of Elizabeth 1, and the practice of charities today.

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Recognising that charities do much more than distribute assistance, the Inquiry recommended that the legal definition of charitable purpose be updated and widened. The inquiry stated that the purpose of charities today is not limited to direct assistance, and instead encompasses 'protection, maintenance, support, research, improvement or enhancement' of public benefit. The inquiry also found that advocacy is an important element of charitable activity, provided it furthers these charitable purposes.

The AID/WATCH case demonstrates the urgent need for such legislation. If the Federal Government wants a genuine partnership with the charitable sector, it must update the ATO's definition of charitable status. As we move into a recession, and charitable advocacy becomes ever more important, this must happen sooner rather than later.

At Federal Parliament the Deputy Tax Commissioner has disclosed that the ATO investigated AID/WATCH following an 'intelligence lead'. He also indicated the ATO would initiate investigation of the groups involved in the Make Poverty History campaign. A freedom of Information request has been submitted to the ATO seeking access to any correspondence that reveals the source of ATO 'intelligence' on AID/WATCH.

For further information see:

Administrative Appeals Tribunal, Aid/Watch Incorporated and Commissioner of Taxation, Decision: <http://www.austlii.edu.au/au/cases/cth/aat/2008/652.html>

'Canberra's gagging us, say charities', Matt Wade, Sydney Morning Herald, May 30, 2007. <http://www.smh.com.au/news/national/canberras-gagging-us-say-charities/2007/05/29/1180205251558.html>

Charity in the 21st Century, Law Report, ANBC Radio National, interview about the case with Anne Gooley, Maurice Blackburn
Ltd: <http://www.abc.net.au/rn/lawreport/stories/2008/2321272.htm>

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