



EMBARGO 30 MAY

FROM THE CHAIR OF AIDWATCH

BACKGROUNDER

ATO decision has implications for all charities

AIDWATCH is an international environmental charitable organisation. We promote environmental sustainability, as defined by the United Nations as encompassing ecological, livelihood, financial, and community sustainability. AIDWATCH promotes sustainability in governmental and multilateral development policies and practices, including aid, debt and trade policy.

In pursuit of these objectives we engage in the following activities:

- i) We initiate, conduct and publish research into the impacts of development policies and practices.
- ii) We develop partnerships with communities in low-income countries, helping them in their dealings with governmental authorities.
- iii) We provide input into the carrying out of Australian Government aid, trade and debt policies and seek changes in these policies consistent with AidWatch objectives.
- iv) We produce and disseminate information to raise public awareness about development issues, both in Australia and internationally.
- v) We engage in public education and community outreach programs within Australia to increase public involvement in development issues.

In 2007 the Australian Tax Office revoked AIDWATCH's charity status. The ATO's decision, posted on this website, seriously threatens the public role of all Australian charities. This 'Backgrounder' offers some context to the decision and its implications.

Federal Inquiry 2001

In 2001 the Federal Government Inquiry into 'The Definition of Charities and Related Organizations' recommended that the definition of 'charitable purpose' be broadly defined in terms of public benefit, to include 'protection, maintenance, support, research, improvement or enhancement'. It stated that non-party political activity is acceptable for charities, provided it 'furthers or are in aid of, the charity's dominant charitable purpose'. The report is on the web at: www.cdi.gov.au

Charities Bill 2003

In 2003 the Federal Government referred its 'Draft Charities Bill' to the Federal Tax Board. The Bill explicitly banned charities from undertaking advocacy. Section 4 of the Bill disqualified charities if they had a 'purpose of attempting to change the law or government policy', if this was more than 'ancillary or incidental' to their other purposes. The Tax Board found that Section 4 had a very wide ambit, potentially applying to any

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activity of a charity. It stated the Bill had to be revised to allow charities to engage in advocacy. The Board's Report is on the web at: www.taxboard.gov.au In May 2004, in the face of overwhelming opposition from charities and churches the Federal Government shelved the Bill.

ATO Ruling 2005

In 2005 a similar limit on the public role of charities surfaced in a Tax Office Ruling. Despite the efforts of many organizations, including the 'National Roundtable of Nonprofit Organisations', the eventual ATO Rulings imposed new limits on charities. The key Ruling, cited in the AIDWATCH case, is Ruling 2005/21. As with the Charities Bill, this Ruling banned charities from having a purpose of 'promoting a particular point of view' (para 102).

Under the Ruling, though, political activities were acceptable, provided 'political activities are no more than ways of carrying out the charitable purposes' (para 112). This is defined as a clear principle: 'If a purpose is otherwise charitable its status is not affected by political or lobbying activities which are incidental to the charitable end' (para 121). Cases are cited to illustrate the principle, such as an agricultural charity, that 'in order to carry out its object' to promote agriculture was legitimately involved in 'watch and advise on legislation affecting agriculture' (para 122). In concluding the Ruling states a charitable organisation can 'participate in many ways in engagement with government, in presenting its views to the public, and in the democratic process', and still retain charitable status (para 127).

The Ruling, though, creates a loophole for the ATO. The Ruling allows the ATO to infer political purpose from an organisation's activities (para 26). Here, any activity taking a 'particular point of view' can be defined as shaping the organisation's purpose. The effect of this ban charities from speaking out. The Ruling can be accessed in full at: <http://law.ato.gov.au/>

ATO Decision on AIDWATCH, 2006

In October 2006 an ATO Decision removed charitable status from AIDWATCH. In its Decision the ATO recognised that AIDWATCH objectives, as stated in its constitution, are entirely charitable. They observed that these objectives were fulfilled by AID/WATCH through a range of different research and education activities, including through the provision of advice to governments in Australia and overseas. However the ATO cited three activities of the organisation that it believed were not consistent with charitable status.

These three 'political' activities were: (i) urging the public to write to the Government to put pressure on the Burmese regime; (ii) delivering an (ironic) 60th anniversary birthday cake to the World Bank; (iii) raising concerns about the developmental impacts of the US-Australia Free Trade Agreement. The ATO alleged the three activities sat outside the ATO definition of 'incidental' political activities for a charity, and removed charitable

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status from the organization effective from 2 October 2006.

ATO response to AIDWATCH appeal, 2007

ATO Decisions can be appealed and AIDWATCH arranged for a pro bono tax lawyer to submit an appeal on its behalf. Responding to the AIDWATCH appeal in April 2007 the ATO upheld its original decision to revoke charitable status.

The ATO defined any AIDWATCH activities that involve 'promoting a particular point of view', or seek to bring 'changes to Australian Government Policy', as 'political activities'. The ATO then infers the purpose of AIDWATCH from these 'political activities', thus ruling it as uncharitable. With this decision the ATO both deployed the widest possible definition of 'political activities', and dissolved the distinction between purposes and activities.

Incredibly, whenever AIDWATCH puts 'a point of view' it is ruled as being in breach of its charitable purpose. On this basis the ATO confirmed its decision that AIDWATCH 'has a political purpose and is not solely charitable'.

AIDWATCH Appeal to the AAT, 2007

AIDWATCH is a small charitable organisation with an income below \$100,000 per year. The removal of charitable status threatens the organisation's very existence. In view of this the organisation had no choice but to pursue an appeal to the Administrative Appeals Tribunal. This Appeal was submitted on 9 May 2007 and is listed for 5 July.

The basis for the appeal is that the ATO has incorrectly applied a very broad definition of 'political activities' to determine the purpose of AIDWATCH. In most definitions of charitable status, charities are prevented from undertaking party-political activities, not from speaking out. In addition we argue that the ATO has breached its own 2005 Ruling by confusing purposes with activities. We conclude that AIDWATCH is indeed a charity.

On its own website, the ATO spells out the criteria for charitable status. The ATO states: 'Charitable purposes are the relief of poverty, the relief of the needs of older people, the relief of sickness or distress, the advancement of religions, the advancement of education or other purposes beneficial to the community'. Our contention is that the purposes of AIDWATCH are directed to the 'relief of poverty', that they concern 'the advancement of education' and are otherwise 'beneficial to the community'.

AIDWATCH Appeal for Public Support

AIDWATCH is now seeking wider public support, including from the charitable sector, for our appeal. Our objective is to reverse the ATO Ruling, and to address the widening gulf between the legitimate public responsibility for charities to speak out, and what appear to be the intensifying efforts in Australia to silence the charitable sector. If you are able to assist us please contact the AIDWATCH office on 02 95578944.

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