



Not-for-profits deemed to have a political nature will be denied charitable tax status.

Photo: REUTERS

## Ruling threatens charities

**Marsha Jacobs**

The Australian Taxation Office has succeeded in stripping an activist organisation that monitors overseas aid of its charitable status, after the full Federal Court ruled that the organisation's main purpose was political.

In a case that has wide implications for charities, three judges have unanimously ruled that Aid/Watch should lose its charitable status, and with it the associated tax breaks. The ruling overturns a decision by the Administrative Appeals Tribunal.

Donations to Aid/Watch, and other charities deemed to have a political purpose, are not tax deductible. This means there is a major impact on the ability of the organisation to raise funds.

Aid/Watch spokesperson James Goodman said that since the ATO's ruling in 2006 that the organisation was not a charity, its budget had shrunk by two thirds to \$100,000 a year.

He said the decision would have the "chilling" effect of a lot of organisations pulling back on activities that could be interpreted as political. Leave to appeal to the High Court would be sought.

"This decision reflects a problem with the law as it stands – there is no legislation that defines what a charity is, and there needs to be; the government needs to define charity in legislation," he said.

There has been a long-running debate over defining the meaning of "charity" in legislation. The Howard government was forced to drop draft legislation designed to impose a narrower definition of charity.

Moores Legal partner Murray Baird said that even if a charity was defined in legislation, the Aid/Watch case would still come down to the issue of ends versus means.

"The Federal Court regarded Aid/Watch's political activities as an end in itself, not as a means," Mr Baird said.

He said the case would be

closely watched by other charities involved in overseas aid and development, and that the issue was ripe for further judicial consideration.

"Other charities do not need to be concerned as long as they keep their political activities to an ancillary or subsidiary role and that a charitable purpose is their main aim," Mr Baird said. "Too much politics, though, and it becomes an end in itself."

Last year a parliamentary inquiry recommended that the Henry review of taxation include an examination of tax measures affecting not-for-profit organisations, with a view to simplifying them, reducing confusion and the cost of compliance.

Aid/Watch was stripped of its charitable status of 12 years by the Tax Office in October 2006 on the grounds that it was a lobbying and advocacy organisation.

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