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Submission
by the Australian Reproductive Health Alliance
to the
Board of Taxation
on the Definition of a Charity

September 25, 2003



**integrity • values •
accountability**

1. The Mission Statement of the Australian Reproductive Health Alliance and work currently undertaken.

- 1.1 a) To promote public support, both within Australia and internationally, for the improvement in the well-being and status of women and the development of reproductive health in families and individuals by means including—
- the production of educational materials;
 - the organisation of seminars and workshops;
 - the preparation of briefing materials for members of the press;
 - networking with parliamentarians, government departments and other interested parties as required;
 - the support and promotion of alliances of opinion makers with comparable aims and objectives.
- b) To promote knowledge, education and research relating to the development of family planning and other reproductive health services, paying particular attention to the needs of Indigenous People, both within Australia and internationally.
- c) Where appropriate, to identify and support specific development projects which promote reproductive health, and enhance the status of women and girls, either working independently or with partner organisations.
- d) To promote, maintain and extend the interest of ARHA members in a broad range of issues concerning reproductive health and its role in development.
- 1.2 In order to undertake its mission, ARHA undertakes specific project work in the Pacific, including training of midwives, working with men (through seminars and other fora on male responsibility in sexual and reproductive health matters, working with women on empowerment, reproductive health and rights. At the moment, ARHA concentrates its development assistance work in the Pacific region. Other projects have involved ARHA in partnership with Family Planning WA, in a peer education program for indigenous youth in Western Australia. The demand for this type of work is increasing and is limited only by our access to funding.
- 1.3 ARHA also acts as the secretariat of the All Party Parliamentary Group on Population and Development (see leaflet at appendix 1). This Group meets regularly to discuss progress towards meeting the aims of the Cairo Program of Action (POA), which was endorsed by the Australian Government at the International Conference on Population and Development held in Cairo in 1994 and was also re-endorsed at follow up conferences held in the Hague and also New York in 1999. The Parliamentary Group also belongs to a world wide network of similar organisations with the objective of furthering the POA, through means of educating Parliamentarians, conducting seminars, and attending relevant international meetings. The Group has also been involved in three study tours in developing countries to gain understanding of the issues at a grass roots level.
- 1.4 Education of young people is also high on the agenda of ARHA and to this end two or three Youth Conferences are held across Australia each year, bringing together young people from the ages of 15 – 17 to learn about the links between population, development and environment. A curriculum kit has been developed and sent to many high schools in Australia for use

within the school setting. A youth web site is currently under development, which aims to make this information available to young people in a user friendly manner.

- 1.5 At the request of UNFPA, ARHA is involved in the annual launch of the State of the World Population Report, usually in the Federal Parliament. This document focuses on one of the themes of the POA each year and besides the launch, UNFPA personnel are involved in information seminars for AusAID and the ANU.
- 1.6 ARHA works in close collaboration with other organisation on projects and seminars. These organisations include Sexual Health and Family Planning Australia, and also environmental groups. Workshops are held regularly to bring together groups with similar objectives to coordinate their work around population, development, the environment, sexual and reproductive health and rights and the empowerment of women.
- 1.7 ARHA also works in close collaboration with international organisations having similar aims and regularly takes part in international meetings held by organisations such as UNFPA and the Asian Forum for Parliamentarians on Population and Development. We also work with like minded organisations in both Europe and Asia. ARHA has non government organisation partners in developing countries across the Pacific.
- 1.8 ARHA is a not-for-profit incorporated association, with a membership of approximately 300 individuals and organisations and it is controlled by an annually elected Committee drawn from its membership. At the current time, ARHA does have tax exempt status, but does not have tax deductibility for donations. Any change in ARHA's tax exempt status would make us ineligible for funding from our major donors, The David and Lucile Packard Foundation, the William and Flora Hewlett Foundation and UNFPA. At the present time, ARHA does not receive funding directly from the Australian Government but this may change as we expand our role in the Pacific.

2. Comments on the Proposed Legislation.

- 2.1 It is understood that the legislative approach which is to be proposed follows similar legislation in the UK. That is a charity must be not-for-profit, with a dominant charitable purpose, that is with a few exceptions, for the public good.
- 2.2 It is also understood that the proposed legislation would disqualify organisations which are in fact advocacy or lobby groups but are posing as charities in order to benefit from the tax concessions. This stated objective seems fair enough. Furthermore, the government claims that the existing practice whereby genuine charities can engage in lobbying as long as it is not their sole or dominant purpose would continue.
- 2.3 As we see it, the problem arises with the wording in this definition. It has always been considered by NGOs that it is a vital part of their role to speak up for the disadvantaged in whatever community they serve. In fact, ARHA considers that it is an absolutely integral part of the work of charitable organisations to lobby long and loud for the rights of the people they serve if it appears that a specific piece of legislation, rule or policy

proposed by governments at any level would impact adversely on their client group. This is a civilised way of Governments and NGOs engaging in a constructive and democratic dialogue regarding policy or legislative directions. In fact, it should be considered part of the backbone of a free and open society,

- 2.4 In the past, there has been a history of governments deliberately funding peak NGO bodies (such as the Australian Council of Social Services and the Australian Council for Overseas Aid to name but two) so that they can engage with a representative group which is serving the needs of its member organisations but also the vast numbers of disadvantaged people they serve. It has been seen as an effective and efficient way for different sectors to interact with government so that legislation or policy does not inadvertently impact on the most disadvantaged groups.

3. Problems with the definitions within the legislation.

- 3.1 ARHA urges the Government to revise the draft Charities Bill to create a modern charity law in line with the recommendations of its own Committee of Inquiry. The bill should recognise that lobbying and advocacy to improve or change Government policies certainly do contribute to charitable purposes such as relieving poverty, improving health and education.
- 3.2 The advocacy purposes of charities should not be restricted as long as they further or aid the dominant charitable purpose of the organisation, or are incidental to that purpose, are not party political and do not support candidates for public office.
- 3.3 The Government's own Inquiry into Charity Definitions recommended that:-
"Charities should be permitted to engage in advocacy on behalf of those they benefit. Conduct of this kind should not deny them charitable status even if it involves advocating for a change in law or policy. Submissions from both charities and governments have demonstrated that charities are increasingly asked to represent to governments the interests of those they seek to benefit and to contribute to the development and administration of government policies. The committee considers that the definition of a charity should not prevent these developments as they represent an effective means of delivering outcomes for individuals, charities and governments." **ARHA strongly supports this statement and asks that it be reflected in changes to the legislation.**
- 3.4 The problem with the bill before us arises with the wording. Disqualifying purposes are illegal activities, advocating a political party or cause, supporting a candidate for political office and attempting to change the law or government policy. With the exception of illegal activities, the purpose would be a disqualifying purpose if it, either on its own or when taken together with one or both of the other of these purposes, is more than ancillary or incidental to other purposes of the entity concerned.
- 3.5 It does not take much imagination to see how open to interpretation 'political cause'. 'ancillary' and 'incidental' would be. As stated above charities necessarily lobby/advocate for change via both public statements and submissions to parliamentary inquiries. For example, charities would be amongst the most likely entities to make submissions to the Senate poverty inquiry.
- 3.6 Similar legislation in the UK and USA has been used to deny some

organisations charitable status. In the USA for example, charities are audited to determine the proportion of their budgets given over to advocacy.

- 3.7 In the UK however, the guidelines of the Charity Commission allows a charity to seek to influence government or public opinion based on research and direct experience on issues either relating to the achievement of the charity's purpose or the well being of the charitable sector. There is no attempt in the UK to define the proportion of spending limitations on these activities, only that they are not to be for party political purposes. ARHA considers this approach to be a viable one in that rather than trying to set annual limits on funding for advocacy, it recognises that the need for advocacy will wax and wane over the years. When new policies or legislation are up for consideration and change, obviously charities might feel the need for greater activity than at other times when the policy area of concern is in a stable situation.
- 3.8 Reason for concern about this issue is compounded by the recent announcement that the government has hired the Institute of Public Affairs to conduct an 'audit' of charities, welfare and aid groups with a view to introducing new rules governing their funding – e.g. disclosure of membership to prove that they are legitimate representatives of community groups.
- 3.9 While charities should always be open to scrutiny regarding their accountability both in a financial sense and to the membership they purport to serve, it seems incongruous that the IPA has been selected to undertake this 'audit' as that organisation has already expressed publicly its strong criticism of NGOs and their lack of accountability. ARHA would question the impartiality of this organisation to undertake the 'audit' given that it seems to have already prejudged the matter. ARHA has not been able to find out much information about the funding sources and support of the IPA and therefore has the gravest doubts regarding the IPA's suitability to undertake this work.
- 3.10 The basis of any change in definitions of charitable organisations should be that such definitions are not open to any governments being able to manipulate the wording to "punish" NGOs which may be felt to be less than supportive of that government's position. This would not only be grossly unfair to any NGO concerned, but in the longer term, would damage the government itself as it would be perceived to be operating in a non-democratic manner.

4. Final Comments.

- 4.1 If the government of the day feels that the adoption of the recommendation of the Committee of Inquiry on this issue will open the door for other organisations to gain charitable status, it should be remembered that the draft Charities Bill contains other stringent tests, For example, according to the draft Charities Bill Part 2 (Section 4,5,6, and 7) a charity must be not for profit, have a dominant purpose that is charitable , and this purpose must be for the public benefit defined as:
 - a) it is aimed at achieving a universal or common good; and
 - b) it has practical utility; and

- c) it is directed to the benefit of the general community or to a sufficient section of the general community,
- 4.2 It would seem that 4.1 above is clear and can be interpreted in an impartial manner by officials determining the status of any new NGO attempting to claim tax exempt status.
- 4.3 ARHA strongly believes that the wording proposed in the Bill creates a totally unacceptable potential for punitive government action. As mentioned in 3.3 above, the Charity Definition Inquiry included a recommendation that 'charities should be permitted to engage in advocacy on behalf of those they represent' and this should have formed the basis of the legislative definitions.
- 4.4 Charitable organisations (not-for-profit, benefiting the community) are an important component of a healthy democracy and their work legitimately includes humanitarian help, policy development and advocacy. To attempt to limit the work of NGOs in legitimate advocacy will, in the long term, do a great disservice to those in the global community who are in the most disadvantaged position. Furthermore, in the opinion of ARHA, such limitations on the advocacy work of NGOs will weaken the democratic strength of our society as a whole. At times, NGOs and Governments can be at loggerheads over particular policy or legislative directions and this can be uncomfortable for both parties but in the overall picture, such discomfort often produces compromises on both sides which can make policy and legislation fairer for all concerned.

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