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Submission to the Board of Taxation on the Charities Bill 2003

Information Requested by the Board of Taxation

1. What is the name and contact details of your charitable organisation?
The Human Rights Council of Australia Inc. Contact details above.
2. What is the dominant (main) purpose/s of your charitable organisation?
The Human Rights Council of Australia Inc is a private non-government organisation which promotes understanding of and respect for human rights for all persons without discrimination through adherence to the International Bill of Rights, and other human rights instruments, internationally and within Australia.
3. What are your principal reasons for making a submission on the workability of the charities bill 2003? [please keep your response to 3-4 main bullet points]
The proposed definition poses significant problems for the role of NGOs in a democratic society, and will have a particular impact on NGOs working on human rights issues.
4. Is your organisation currently endorsed with the Australian taxation office as an income tax exempt charity (itec)? If yes, do you assess that you would still be entitled to endorsement on the basis of the charities bill 2003? If not, why? If you are unsure, please explain why.
No.
5. If you are not an endorsed itec, are you entitled to exemption from income tax for any other reason? Do you think the charities bill 2003 would affect your entitlement to income tax exemption? If you are unsure, please explain why.
Yes. Yes, as outlined in the attached submission the HRCA would not meet the proposed definition of a charity.
6. -
7. In your assessment, does the charities bill 2003 provide the flexibility to ensure the definition can adapt to the changing needs of society?
No. Please see the attached submission.

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Submission to the Board of Taxation on the Charities Bill 2003

This submission has been prepared on behalf of the Human Rights Council of Australia Inc to provide our views on a critical provision of the proposed Charities Bill. As we are unable to address the full range of issues raised by the Bill we have focussed our submission on the workability of the definition of a charity proposed in the draft legislation, and on what we believe to be the most critical aspect of the Bill for the operation of all human rights organisations. This provision is that section of the Bill which provides that a charitable organisation may be “disqualified” from charitable status if it engages in activities which amount to lobbying for a change in government policy or a change in government law.

We begin our submission by outlining broadly the role of what is referred to as civil society. We do so to underline that such organisations – rather than being an object of concern from those responsible for implementing government programs – should be regarded as at the very heart of the kind of society that government is established to preserve and enhance.

I. The Relationship Between NGOs and the State

Civil Society

‘Civil society’ consists of a realm of activity “organised neither by the self-interest of the market nor by the coercive potential of the state”,¹ in which citizens can associate freely and engage in organising activities and affairs according to their individual interests. Examples of civil society groups include charities (including religious and educational bodies and organisations for the relief of poverty), clubs, development agencies, professional associations, cooperatives, foundations and lobby groups.

Non-Government Organisations

¹ Wolfe A (1997) ‘Is Civil Society Obsolete? Revisiting Predictions of the Decline of Civil Society’ *Brookings Review* 15(4) p9-13 at 13

Non-governmental organisations (NGOs) are one type of civil society organisation. NGOs are “noncommercial institutions outside of government that are private, non-profit organisations”.²

The scope of the work carried out within the NGO sector is as diverse as the methods and structures they employ to achieve their aims. NGOs have engineered global awareness and education campaigns on everything from human rights issues to world trade to environmental protection; their development work ranges from community forestry schemes in rural India to micro-credit projects in Vietnam; NGOs are also the world's primary providers of humanitarian aid. There are international NGOs that employ hundreds of people in dozens of countries and utilise the work of thousands of volunteers from across the globe, and there are also community NGOs composed of two or three people who run small-scale programs for their local communities.

Many NGOs are formed by groups of citizens in order to carry out activities determined by the collective will of their members in response to what they perceive to be the needs of the communities within which they operate. Some larger NGOs have evolved to form institutional structures to carry out these activities, such as boards of directors and paid staff.

NGOs are therefore autonomous organisations that operate outside the formal control of the state or the market. Whether or not an NGO is directly involved in political activities, by servicing the needs of a small or large constituency of members, NGOs often act as a “counterweight to state power, a catalyst to state action and a watchdog over state errors or omissions”.³

In a pluralist democracy, such voices are essential. They are part of the core fabric that enables our society to remain democratic. Any development which tends to silence or limit the ability of such organisations to pursue their work must be viewed with the greatest reservation.

II. Human Rights NGOs

It is in this general context that we find human rights NGOs. However there are additional special features of human rights NGOs that require consideration in assessing the appropriateness of the proposed impact of the above provision of the draft Charities Bill on their operation.

In making the following observations we however take this opportunity to congratulate the drafters of the Bill on their identification of human rights work (the promotion of civil and political rights) as fundamentally charitable in nature. We support this conclusion and hope that it will be carried forward in future developments in respect of the Bill.

² Williams A (1990) ‘A Growing Role for NGOs in Development’ *Finance and Development* 27(4) p31-33

³ C. Ritchie, ‘The Relation Between the State and NGOs’, *Transnational Association*, 4, 1994, p210; See also J. A. Camilleri & J. Falk, *The End of Sovereignty? The Politics of a Shrinking and Fragmenting World* (Haunts, Edward Elgar, 1992), p209.

The character and role of human rights NGOs is best captured by the United Nations **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms** (copy attached) adopted by the United Nations General Assembly in 1998. This declaration, the adoption of which was prominently supported by Australia, expresses the global consensus on what is the role of ‘human rights defenders’ (including organisations for the purpose of protection of human rights). It was adopted on the 50th anniversary of the adoption of the founding document of global human rights – the Universal Declaration of Human Rights.

The provisions of the Declaration on the Rights of Human Rights Defenders may thus be taken as definitional of the character and nature of human rights work. Critically the Declaration addresses those very matters that would result in loss of charitable status for human rights organisations, were the approach proposed by the Bill adopted.

Thus article 8 of the Declaration states:

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

This presents a considerable difficulty from the point of view of the frame of reference underlying the Charities Bill. In other words the conduct of activities involving lobbying and efforts to change the law ***to achieve the protection and promotion of human rights*** are essential to any organisation worthy the name of ‘human rights’. We believe it is essential that the draft Bill be amended to make clear that no human rights organisation should lose charitable status because of activities which are inherent to its mandate as a human rights NGO. For example, the views of organisations like the Human Rights Council are often sought by Government bodies and Parliamentary Committees. The proposed definition does not make it clear whether by providing these views an organisation might imperil its charitable/financial status.

More broadly, in pursuit of our mandate we have a broader concern about the effect of this provision of the Bill. Fundamental human rights include:

- a. freedom of association
- b. freedom of expression
- c. the right of every citizen to participate in the processes of governance

These freedoms are universal in character applying to all, including Australians.

There can be no doubt that a provision which threatens the status of charitable organisations that advocate for change to protect and promote human rights, in effect financially penalises the exercise of fundamental human rights - both freedom of association and freedom of expression. Moreover it strikes at the right of every citizen to take part in the processes of governance – carried out on his or her behalf.

Thus what any citizen may do in a free democracy – that is lobby for good law and good government policy – should not be denied to citizens because they choose to do this as members of charities.

The idea that a *means* of pursuing a charitable object (given that those means are both lawful and upheld by the values of our society), should result in the loss of charitable status, is on its face an approach inimical to the best interests of charitable work and the healthy future development of our society as a democracy. In essence it discriminates against citizens organised in charitable organisations by denying them the exercise of the lawful freedoms available to all citizens – whether as individuals – or organised in any innumerable ways in business, educational institutions and community organisations to achieve shared goals.

For this reason we believe that no charity should be subject to such a requirement and strongly recommend its deletion from the draft Bill.

Attachment: UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Distr.
GENERAL
A/RES/53/144
8 March 1999

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

General Assembly resolution 53/144

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Taking note of Commission on Human Rights resolution 1998/7 of 3 April 1998, See *Official Records of the Economic and Social Council, 1998, Supplement No. 3 (E/1998/23)*, chap. II, sect. A. in which the Commission approved the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms,

Taking note also of Economic and Social Council resolution 1998/33 of 30 July 1998, in which the Council recommended the draft declaration to the General Assembly for adoption,

Conscious of the importance of the adoption of the draft declaration in the context of the fiftieth anniversary of the Universal Declaration of Human Rights, Resolution 217 A (III).

1. *Adopts* the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, annexed to the present resolution;
2. *Invites* Governments, agencies and organizations of the United Nations system and intergovernmental and non-governmental organizations to intensify their efforts to disseminate the Declaration and to promote universal respect and understanding thereof, and requests the Secretary-General to include the text of the Declaration in the next edition of *Human Rights: A Compilation of International Instruments*.

*85th plenary meeting
9 December 1998*

ANNEX
**Declaration on the Right and Responsibility of Individuals, Groups and Organs
of Society to Promote and Protect Universally Recognized Human Rights and
Fundamental Freedoms**

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights² and the International Covenants on Human Rights Resolution 2200 A (XXI), annex. as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to

promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares:

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights,² the International Covenants on Human Rights³ and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without

undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the

competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, *inter alia*:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.