



HUMAN RIGHTS WA

Submission – Charities Bill 2003

Consultation on the Definition of a Charity by the Board of Taxation

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Human Rights WA (inc) is an unfunded centre. Membership is free. Donations cheerfully and gratefully accepted.

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Human Rights WA (Inc) is a community legal centre incorporated under the *Associations Incorporations Act 1987* (WA).

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We provide the following brief submission to outline our concerns about flaws in the draft *Charities Bill 2003*.

The objectives and work of HRWA

The objectives of Human Rights WA (HRWA) as outlined in our Constitution are to:

1. Undertake a human rights watch
2. Provide an information, coordination, and dissemination function and a networking function in the area of human rights.
3. Undertake work including policy, action, research and advocacy in the area of human rights.
4. Provide human rights education, information, training and consultancy services.
5. Resource and facilitate community based groups that deal with human rights or public interest issues.

HRWA is an activist community legal centre (CLC), and our work focuses on systemic advocacy, seeking positive change to law, policy and practice as they impact on human rights, particularly with reference to vulnerable, disenfranchised and marginalised groups in the community.

The vital importance of systemic advocacy

Systemic barriers, such as those resulting in indirect discrimination, have long been recognised in Australian legislation. For example, the *Equal Opportunity Act 1984* (WA) makes it unlawful to adopt or apply an apparently neutral rule, policy or practice which, in its effect, has an adverse impact on a particular group. The *Equal Opportunity Act* regards such practices as discriminatory, if they meet one of the grounds in one of the areas listed in the *Act*.

Changes to policy, practice, legislation and regulation that systemically discriminate against groups within the community can only be effectively achieved by systemic advocacy. Assisting clients only on an individual basis cannot lead to this sort of structural change.

Such work is currently frequently undertaken by non-profit organisations who lobby decision makers on behalf of their client group to change policies and practices; who speak out in the media and seek to hold government accountable for unfair and discriminatory legislation and policy; who organise campaigns to educate the public about inequities and human rights abuses; and who look for and facilitate test case work on issues of public interest. Many of these organisations have charitable or PBI status.

Structural change achieved through systemic advocacy is a highly effective, very efficient and a completely legitimate way to allocate scarce resources to advocate on behalf of vulnerable, disenfranchised and marginalised groups in the community.

Restrictions on systemic advocacy: gagging charities and NGO's

The draft *Charities Bill* attempts to impose unreasonable restrictions on the advocacy role of charities by potentially removing “charitable status” from those non-profit agencies that chose to work to change, remove or improve the laws and structures that create and maintain disadvantage and discrimination.

Section 8(2)(c) states that “the purpose of attempting to change the law or government policy” is a “disqualifying purpose” if it is “more than ancillary or incidental to the other purposes of the entity concerned.”

As described above, the work of many non-profit agencies is doing exactly this. Thus, advocating on behalf of a client group to change systemic and structural barriers may disqualify a non-profit agency from securing charitable status. This effectively gags these agencies from engaging in such crucial work. The gag occurs as some agencies rely on PBI and FTB to afford to recruit staff at a reasonable salary, retain those same staff, and seek grants from certain funding sources. Without this capacity to seek funds and pay staff, they are forced into a choice between staying open but silent, or operating a severely reduced service, if any at all.

This is not a choice that a healthy civil society with a responsive government would foist upon non-profit agencies that work on behalf of vulnerable and marginalised groups.

As Hunt et al observe:

“But more importantly, as an expression of the political health and development of a community, civil society is also the multi-faceted availability of different types of political expression, including non-government organizations, the media, trade unions, students groups, artists, intellectuals and others who make it their business to contribute to public debate.

Like human rights, the value of civil society is an important indicator of political development. It offers a broad contribution of ideas to public debate and discussion helps ensure that as complete as possible a range of options are available for consideration, that the government is held to be accountable for its decision making and that there is general public awareness of the values of government decisions. It represents, in a sense, a

society in discussion with itself and with its government. In most cases where civil society is active, the government is relatively responsiveⁱ

Internal contradictions and lack of clarity

The draft Bill has internal contradictions that make its interpretation and intention unclear.

At s.7(1), the *Bill* sets the meaning of “public benefit” purpose as

- (1) A purpose that an entity has is for the *public benefit* if and only if:
- (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

While section 8(2)(c) says

- (2) Any of these purposes is a *disqualifying purpose*:
- (c) the purpose of attempting to change the law or government policy;

if it is, either on its own or when taken together with one or both of the other of these purposes, more than ancillary or incidental to the other purposes of the entity concerned

Quite clearly, an entity can have a public benefit purpose as defined at s.7, by advocating for law reform for the benefit of the general community, while falling foul of the s.8 (2)(c) disqualifying purpose.

The interpretation of the *Bill* is made further uncertain by the use of the nebulous term “numerically negligible” at s.7(2) which states:

- (2) A purpose is not directed to the benefit of a sufficient section of the general community if the people to whose benefit it is directed are numerically negligible

Irrespective of how few people might be arbitrarily determined to be “numerically negligible”, the notion that small groups of people are not worth of protection, or that their protection is not in the public interest is dangerous and offensive.

Potentially “sections of the general community” such as refugees, prisoners, young offenders, and known victims of child sexual assaults by clerics could be determined to be “numerically negligible”.

It is precisely for these most vulnerable groups, that systemic advocacy is most important. How our society treats these most vulnerable is a measure of political health of a civil society. The public benefit of a healthy civil society is immeasurable.

ⁱ Hunt, J., Kingsbury, D., McKay, J. and Remenyi, J. (2003) Development Studies: A New Assessment, as yet unpublished for Palgrave Press.