

3 May 2013

Manager
Philanthropy and Exemptions Unit
Indirect Philanthropy and Resource Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir or Madam,

Submission on the exposure draft of the Charities Bill 2013

The Commission does not wish to make detailed comment on the text of the exposure draft of the *Charities Bill 2013*. However, we urge that Treasury, and in turn the Parliament, takes full account of the significant human rights implications of this legislation.

The Commission strongly supports the Treasury's aim of making clear in legislation that charities are not prevented from political advocacy regarding laws, policies and practices of Australian governments.

This is an important clarification of the law which engages the right to freedom of expression protected by the International Convention on Civil and Political Rights (ICCPR).

The UN Human Rights Committee has made clear that a critical element of the right to freedom of expression protected by article 19 of the ICCPR is the free communication of information and ideas about public and political issues.¹

Restrictions on the right to freedom of expression in the ICCPR are permitted in limited circumstances only. The UN Human Rights Committee has said that 'States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression.'²

The Commission considers that comments upon government policies and practices, and advocacy for change to law and policy, are beneficial to the community. Such comments therefore fall within the fourth 'head of charity' under the common law definition,³ while

¹ General Comment no. 25, CCPR/C/GC/34

² General Comment no. 25, para 23.

³ *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] All ER Rep 28; [1891] AC 531.

also falling within the freedom of political communication protected by article 19 of the ICCPR and the Australian Constitution.⁴

The domestic law in this regard was made clear in the High Court's decision in *Aid/Watch* in 2010.⁵ This case involved the charity Aid/Watch having its charitable status withdrawn by the ATO on the grounds that its political activities, including criticism of how Australia's international aid money was spent, prevented it from being considered a charitable institution. The High Court held that 'in Australia there is no general doctrine which excludes from charitable purposes 'political objects'', and that 'the generation by lawful means of public debate' is itself a purpose beneficial to the community.⁶ Aid/Watch was therefore considered a charity for the purposes of tax legislation.

The effect of the original ATO decision in *Aid/Watch* on other charities has been widely discussed. The Commission considers that it is important for charities to have legal certainty that such a situation will not arise again, that they will not be required to engage in costly litigation to defend their charitable status, and that they can advocate for change to law, policy and practice without fear.

Charities are often experts in areas of law and policy relevant to their particular concerns. The quality of public policy in Australia benefits from that expertise when charities are free to engage in political debate and advocacy.

Yours sincerely,

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⁴ *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1; *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106.

⁵ *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42.

⁶ *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42, 47-48.