



Submission by the Commission for
Christian World Service (CWS)

National Council of Churches in Australia

To the Board of Taxation

Regarding the Charities Bill 2003

September 2003

Christian World Service/ National Council of Churches in Australia welcomes the opportunity to submit to the Board of Taxation its views regarding the Charities Bill 2003, based on the experience and expertise we have gained from our work.

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Introduction

Christian World Service (CWS) is a Commission of the National Council of Churches in Australia (NCCA) which comprises fifteen member churches. As a part of the NCCA, CWS is a not for profit organisation realized as an expression of NCCA member churches acting collectively by ‘(coming) together to break down the structures which create poverty, oppression, injustice and division’¹.

CWS supports our overseas partners around the world striving for sustainable development for communities experiencing poverty and suffering. CWS also assists with emergency aid when needed because of natural and/or human disasters. Within the ambit of its Mission Statement, CWS’ programmatic focus on uprootedness – a predominant feature of situations facing a number of our partners overseas – carries into its ‘root causes’ educational and advocacy work in relation to refugees and asylum seekers in Australia. Similarly, CWS engagement with development internationally extends to supporting Indigenous concerns in Australia. To communicate and raise resources for our work, CWS conducts outreach, and fundraising programmes.

A significant aspect of CWS work is to act as a voice for our partners, in the light of the experience of ‘reality on the ground’. CWS partnerships in Africa, the Middle East, Asia and the Pacific operate at the grassroots level, and provide invaluable information and insights regarding issues at the local, regional and national levels. The experience gained from these relationships which CWS nurtures provides a framework for assessing national policies, and how they impact on the wellbeing of beneficiaries. A critique of government policy so informed would lead CWS on occasions to advocate for changes to laws and/or policies.

The place of CWS cannot be dissociated from the wider imperative of good relations between Australia and the world around. Australia, as a community, has long enjoyed a good standing within the world community. A significant reason for this has been the extensive and positive work of Australian churches around the world. CWS exemplifies this Australian contribution.

CWS Concerns with the Draft Charities Bill 2003

CWS supports the majority of the draft Charities Bill 2003², as the document clarifies current practice and codifies common law. It is hoped that clear legislation defining “charities” and “charitable purposes” will reduce inconsistencies in the application and interpretation of these terms.

¹ Christian World Service Mission Statement

² Charities Bill 2003; A Bill for an Act to define charities and charitable purpose, and for related purposes.

However, CWS would like to draw attention to the following aspects of this Draft Charities Bill:

- Section 8 in relation to disqualifying purposes.
- Section 4 (1) (e) in relation to conduct that constitutes a serious offence.

Section 8: Disqualifying purposes

Advocacy: General comments

The following general comments are made before responding to the specific subsections in this Section;

- It is of concern that advocacy is singled out for special attention in the Bill. In our view, this reflects a narrow and dated understanding of charity work as just ‘helping the poor’ materially, with advocacy only taking place from time to time. To rephrase well-known Brazilian Catholic bishop, Helder Camara, the Bill appears to state that helping the poor is considered praiseworthy but advocacy regarding why the poor are poor could well constitute a disqualifying purpose! Contemporary thinking, however, suggests that a holistic approach to sustainable and effective charity work implies capacity building, raising concerns about the situation facing the poor, advocating for changes in policy or law in response to such concerns, as well as ‘helping the poor’.
- This sector receives support not only from the government as a collective expression of the Australian people, but from individual Australians who are taxpayers. As a beneficiary of such support, the sector owes it to the community to share with it the learnings and insights gained from its work. This point is underlined by the UK Charities Commission’s guidelines³, for instance, which state that “by the very nature of the knowledge and social concern,...some charities are well placed to play a part in public debate on important issues of the day and to make an important contribution to the development of public policy”.
- The charity sector is a legitimate part of the Australian community, and as such should enjoy with that community the democratic right to propose and propound ideas. The ability to advocate ideas and points of view in a ‘marketplace of ideas’ is what sets Australia apart from many countries and societies in the world today. This ability goes to the very heart and nature of what constitutes a democratic society. No sector, which operates in the public space, should be limited in its ability to advocate ideas that are perceived to benefit its constituency.
- Advocacy and its outcomes enhance the ‘social capital’ of a nation, which encompasses factors that are more than and beyond those which are economic in nature. It is of concern, then, that a substantially non-economic aspect of our society, such as advocacy, is proposed to come under the purview solely of an economic body such as the Australian Taxation Office (ATO).

³ The UK Charities Commission guidelines: CC9 – Political Activities and Campaigning by Charities (Paragraph 17)

Specific responses

S 8(1): the purpose of engaging in activities that are unlawful

CWS submits that this disqualifying clause is too broadly worded and must be stated with more clarity if it is to provide guidance and certainty. A charity should not be disqualified simply because of a view formed that the charity has engaged in unlawful activity(ies). Would this provision include Summary Offences? How would acts of civil disobedience be considered in the context of an enlightened society? In any case, it would need to be established that the activities constituted a “purpose” before 8(1) would operate to disqualify the charity.

Recommendation: S 8 (1) - CWS maintains that, as written, this subsection does not provide clarity, certainty or flexibility. As in S (4) (e), CWS recommends such matters should be dealt with under the judicial system and that S 8 (1) be deleted or rewritten to reflect the above considerations.

S 8(2) (a): the purpose of advocating a political party or cause

CWS endorses the exclusion relating to supporting a political party.

However we express concern regarding placing limits on the advocacy of a ‘cause’ which is not initially political but could eventually become so. Given the nature of CWS partnerships that are bound up with the issues of our partners, CWS would need to engage in advocacy for a whole array of ‘causes’, for example peace issues and processes, human rights, the environment, global debt, and so on. CWS believes that these ‘causes’ are not political in the strict sense; they express the analyses by people represented by churches, fellowships groups, councils of churches, beneficiaries, etc. If any of these causes is adopted by a political party as part of its political platform, and was then adjudged political for this reason, the Bill would render a body such as CWS unable to carry out one of its basic and important functions.

Recommendation: S 8 (2) (a) - CWS views the exclusion relating to a ‘political cause’ as simplistically stated, and hence is unworkable. CWS recommends that S 8 (2) (a) read as “the purpose of advocating a political party”.

S 8(2) (b): the purpose of supporting a political candidate for political office

CWS has no difficulty in endorsing this exclusion.

S 8(2) (c): the purpose of attempting to change the law or government policy

In a democratic society such as Australia, this subsection appears to be a very strange and indefensible one. CWS takes the view that the law or a government policy should reflect evolving human considerations, and, hence, should not be inflexible. It should be beyond dispute that a law or policy needs to be changed if experience or new learnings indicate that that law or policy as constituted did not serve the community. As stated earlier, in the light of invaluable knowledge gained through partnerships on the ground, the charity sector could be considered to be the Government’s ‘eyes and ears’ and is uniquely placed to observe and provide feedback on the effects of its laws and policies, to reflect on and critique government policy, and if appropriate, proceed

to advocate for a change in law or government policy in view of a better outcome for the community.

This line of reasoning is echoed by the original Charities Definition Inquiry⁴ as the following lines show:

“advocating on behalf of those the charity seeks to assist, or lobbying for changes in law or policy that have direct effects on the charity’s dominant purpose, are consistent with furthering a charity’s dominant purpose. We therefore recommend that such purposes should not deny charitable status provided they do not promote a political party or a candidate for political office.”

Recommendation: S 8 (2) (c) - CWS believes that this section would render the Bill unworkable, and reduce the clarity that the Bill would otherwise provide. CWS, along with other charities, would find their charitable status considerably less certain than before the introduction of the Bill. CWS recommends that the S 8 (2) (c) be deleted.

Some examples of CWS advocacy for changes in law or policy:

The following are some examples of advocacy carried out by CWS for changes to a law and/or policy in the interests of a public benefit.

The Campaign to End Child Prostitution in Asian Tourism (ECPAT):

In the 1990’s, CWS was a founding organization and a key advocate of this campaign in Australia. It was strongly urged by Churches in the Asian region – CWS partners – who were appalled by the brazenness and extent of child prostitution in their midst. Given that large numbers of clients of this unfortunate trade were Australians, CWS and a number of agencies in Australia – contrary to the prevailing legal policy and position - advocated that Australians who engaged in sex with children overseas should not go scot free in Australia on the grounds that the acts were committed outside the boundaries of Australia. As a result of such advocacy, the legal and policy situation in Australia were changed when in 1994 the Australian parliament adopted the Child Sex law empowering Australian courts to try Australians **in** Australia for child sex crimes overseas. Such an outcome was accepted and perceived as a public benefit by the vast number of Australians who were sympathetic towards and/or had advocated for a change in the law.

The Jubilee Australia Campaign:

CWS has been closely involved with this campaign from its beginning in 1997, and has hosted it since 2001. As part of a worldwide movement, its purpose is to create awareness in the Australian and global community of the destructive impact of debt in countries already devastated by poverty. While the Australian Government supports the World Bank’s HIPC (Heavily Indebted Poor Countries) initiative, the Jubilee

⁴ Report of the Inquiry into the Definition of Charities and Related Organisations, June 2001 – Overview. (www.cdi.gov.au/report/cdi_overview.htm)

Australia Campaign is educating the public and the political community about issues of debt in the third world. Jubilee Australia advocates for a change in policy of Australian and other first world governments in view of cancelling or ameliorating, as appropriate, the debt of selected third world countries. Jubilee carries out this work with community support for its legitimacy and public benefit values.

The Landmines debate:

Alongside other agencies, CWS has been part of the international landmines debate, particularly aware of the effects of landmines on our partner communities, as in Cambodia, and in the developing world generally. It was argued that the destructive effects of landmines on the wellbeing of communities far outweighed the argument put forward by the armed forces and other voices, that landmines were an important part of a military strategy. CWS and other agencies actively engaged in community education and advocacy to change Australian government policy. In 1997 Australia became a signatory to the 'Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their destruction'. From the groundswell of public support received, it was clear that this advocacy work was in the community interest, and it would have been a dereliction of duty not to have taken such a stand.

The overseas aid debate:

As a member of The Australian Council for Overseas Aid (ACFOA), CWS continues to educate and advocate for changes to the Australian government's policies on a number of overseas aid-related issues. One such issue is Australia's Overseas Development Assistance (ODA): CWS argues that, in the interests of progressive and responsible humanitarianism, Australia's official overseas aid commitment should increase from the present level of 0.23% of the federal budget to at least 0.4%, and, eventually, to a level of 0.7%. The Government advocates that the present level of ODA is sufficient.

Refugees and asylum seekers:

As a result of our close relationship with refugees in Australia, and our knowledge of their situation, CWS, along with other Non-Government Organisations, has attempted to raise awareness, and, as appropriate, critique government policy in relation to refugee and asylum seeker issues. Moved by humanitarian and moral grounds, community and government attention has been drawn to the plight of children in detention, acceptance of minimum standards in detention centres, inappropriate management of detention centres, the Pacific Solution etc. Some changes to policy have occurred in these areas. While the government may not have been eager to receive the critique, changes have been advocated to enhance the community benefit. The broader point is that such advocacy is carried out in the interests of a humane Australia. This is acceptable in a democratic society.

Based on the feedback and support received from its constituency, and other related sectors, CWS concludes that the kind of advocacy described above has advanced Australia both at home and internationally.

8 (2): “Any of these purposes is a disqualifying purpose 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 purpose of the entity concerned”

We make the following points:

- Charity work would remain incomplete and superficial if, as the poor are assisted, attention is not also drawn to factors and policies which impact negatively on their quality of life. In this light, the work of advocacy is not a discrete dimension, separate from the work of charity, and which only occurs from time to time. As it is integrally intertwined with the work of charity, advocacy cannot be artificially measured up so that it could be deemed ancillary or more than ancillary to the dominant cause of an organisation.
- If advocacy was to be deemed as ancillary or not ancillary, who would do the measuring? What would the yardstick(s) be? And if such a regime was to be put in place, administering it would be an added burden on the NGO, distracting it away from the goals of the organisation, and resulting in wastage of vital resources.
- Allowing such a provision to stay cannot but give the impression that, despite the democratic nature of a society such as Australia, the intention appears to be to weaken the voice and presence of NGO’s. Such an outcome would be assured if NGO’s are disqualified on the grounds proposed and, in turn, lose their Deductable Gift Recipient (DGR) status. Without DGR status, the number of donors would certainly fall, and the resources available for philanthropic causes would decrease. This provision leaves wide open the possibility for common law to then reflect the negative attitude in some quarters towards NGO’s which are engaged in advocacy. CWS feels strongly that such consequences in no way advance the common good.
- It is worth remarking that such a provision was not suggested in the 2001 Report of the Inquiry into the Definition of Charities and related Organisations.

Recommendation: S 8 (2) - CWS asserts that, given that advocacy has become an intrinsic part of charity work, retaining this qualification would be drastic and anachronistic. It would be inflexible as it does not reflect changing needs and expectations in society. It appears to be driven by a certain agenda. It would impose additional and administration burdens on the charity. It would make the Bill unworkable. CWS requests that this qualification be deleted.

Section 4: Conduct that constitutes a Serious Offence

While generally the provisions under **Section 4 – Core definition** help clarify the definition of a charity, we have concerns regarding S 4(1)(e) which relates to conduct that constitutes a serious offence. The wording is vague, and appears not to grant a ‘presumption of innocence’ to the charity.

The following points need to be considered:

- A charity should not be penalised for being perceived to be linked with offensive conduct arising from circumstances beyond the control of the agency.
- Is the whole charity to be penalised following individual misconduct, which could arise even if the charity has taken steps to establish reasonable procedures and codes of conduct to prevent such conduct?
- Disqualification, which may occur as a result of offensive conduct, appears to be in this sub-section of a permanent nature.
- The draft Charities Bill's role should be limited to defining the characteristics of a charitable organisation. Whether an organisation has committed a serious or unlawful offence and is in breach of any law of the Australian Commonwealth, states or territories, can be determined under the oversight of other more appropriate legislation within the judicial system.

Recommendation: S 4 (1) (e) - CWS holds that the area under consideration in this subsection be delegated to the judicial system. CWS suggests that S 4 (1) (e) be deleted.

Recommendations

CWS recommends that:

- S 8 (1) be deleted or rewritten
- S 8 (2) (a) be rewritten to exclude the words "or cause"
- S 8 (2) (c) be deleted
- The qualification at the end of S 8 (2) be deleted
- S 4 (1) (e) be deleted
- In the light of advocacy being intrinsic to the work of charity as argued in this submission, and with common law already providing an understanding of charity as more than relief, CWS recommends that S 10 includes "Advocacy" as a charitable purpose