

Submission to the Consultation on the Definition of a Charity

by Union Aid Abroad – APHEDA



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Introduction

Union Aid Abroad – APHEDA was established in 1984 by the ACTU as a means for Australian workers, through their unions, to directly assist international development by supporting projects for workers in developing countries.

Our international program has developed from a rights based approach supporting vocational skills training, education, health and capacity building programs in many areas. Union Aid Abroad has developed projects and partners in many countries in South East Asia, the Pacific, Middle East, Southern Africa and the Caribbean.

Our international program places emphasis on training those who will be able to train others including teachers, nurses, union organisers, community health workers and agricultural workers, and people suffering discrimination including women, indigenous people, refugees and people with disabilities.

Union Aid Abroad – APHEDA is a signatory to the ACFOA Code of Conduct and is fully accredited with the Australian government aid agency, AusAID.

Exposure Draft of Charities Bill 2003

As an international aid agency and a registered charity with Deductible Gift Recipient status, Union Aid Abroad – APHEDA has a keen interest in the proposed Charities Bill 2003. Whilst we commend efforts to define a Charity, we believe that it is essential that such definitions do not limit the scope of the work that organisations can carry out.

In particular, it is our strongest belief that the role of a charitable institution is not only to provide assistance to peoples in need but to actively campaign for changes to existing societal conditions that bring about that need. Campaigning for change must not be limited to those areas that fall outside of the scope of government policy and/or laws.

It is with this belief in mind that we address Part 2, section 8, subsection 2 (a), (b) & (c) and call upon a redrafting in line with the Report of the Inquiry into the Definition of Charities and Related Organisations.

In the interests of clarity, workability and transparency we have addressed Part 2, section 4, subsection 1 (e) and call for a clarification to ensure that the courts of Australia are the only institution able to find a person or organisation guilty of a serious offence.

In the interests of clarity Union Aid Abroad recommends a clarification of the term 'numerically negligible' in Part 2, Section 7, subsection 2.

Areas of Key Concern to Union Aid Abroad - APHEDA

Part 2 – Charities, Section 4, subsection 1(e).

Current text:

“does not engage in, and has not engaged in, conduct (or an omission to engage in conduct) that constitutes a serious offence”

Union Aid Abroad-APHEDA’s concerns are in the areas of transparency and clarity.

Clarity

It is unclear who will interpret this definition, and the scope of its implementation.

a) Interpretation

Australia is a democratic state and as such relies on the concept of innocent until proven guilty to ensure credibility of the legal system. As Section 2, paragraph ^4 subsection 1 e is currently written organisations will be punished on the basis of accusation rather than being found guilty of a serious offence.

b) Scope

It is unclear whether the new law is national in scope or if it would have international jurisdiction. If it carried international jurisdiction would campaigning for democracy in Burma or Zimbabwe or for the release of Aung San Suu Kyi be a problem? Would the campaign for independence in East Timor have been affected?

Transparency

Our concern is that this subsection removes the power for declaring an organisation/individual guilty of a serious offence from the judiciary and puts it into the hands of an employee. This clause seems entirely undemocratic and leads to a lack of transparency in the process of deciding who is and who isn’t worthy of having their charitable status revoked.

<p>Suggested amendment to Part 2 – Charities section 4 subsection 1(e): delete existing text and insert: “<i>has not been found guilty of a serious offence in an Australian court of law</i>”.</p>
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Part 2 - Charities, section 7 subsection 2.

Current text:

“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.”

Union Aid Abroad – APHEDA’s concerns are in the areas of clarity, workability and transparency.

The term “numerically negligible” is vague and raises issues of clarity, transparency and workability. Where efforts are focussed on one person or a small group of people such as training projects overseas or medical charities where the victims of disease are a small percentage of the population the work is still for the public benefit and charitable.

Suggested amendment to Part 2 - Charities, section 7 subsection 2.

That the term numerically negligible be further defined.

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Part 2 – Charities, Section 8, subsection 2

Current text

- (2) Any of these purposes is a ***disqualifying purpose***:
(a) the purpose of advocating a political party or cause
(b) the purpose of supporting a candidate for political office
(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.

Union Aid Abroad's concerns are in the areas of workability and flexibility to adapt for changing needs.

It is the fundamental role of charitable institutions to campaign for change in areas of government policy and the law as well as to project a political cause where it directly impacts upon the rights of their constituents. An example of this relevant to Union Aid Abroad -APHEDA is the campaign for democracy and human rights in Burma.

Suggested amendment to Part 2 – Charities, Section 8, subsection 2

Insert the words 'where it constitutes the dominant purpose of the organisation

delete the words 'or cause' from subsection 2a, completely remove subsection 2c and remove the following text inclusive of if it is....entity concerned.

For clarity the amended section would now read:

- (2) Any of these is a disqualifying purpose *where it constitutes the dominant purpose of the organisation*:
(a) the purpose of advocating a political party
(b) the purpose of supporting a candidate for political office