



Australian Federation of AIDS Organisations (AFAO)

**A definition of Charity:
Consultation Paper**

Submission to Treasury

9 December 2011

About AFAO

The Australian Federation of AIDS Organisations (AFAO) is the national federation for the HIV community response. AFAO's members are the AIDS Councils in each state and territory; the National Association of People Living with HIV/AIDS (NAPWA); the Australian Injecting & Illicit Drug Users League (AIVL); the Anwernekenhe Aboriginal and Torres Strait Islander HIV/AIDS Alliance (ANA); and Scarlet Alliance, Australian Sex Workers Association. AFAO advocates for its member organisations, promotes medical and social research into HIV and its effects, develops and formulates policy on HIV issues, and provides HIV policy advice to Commonwealth, state and territory governments.

Our perspective on this Inquiry

AFAO is pleased to provide comments on Treasury's "A definition of Charity: Consultation Paper" (Charity Consultation Paper). The Charity Consultation Paper provides AFAO an opportunity to identify key issues in relation to the definition of charity such as the role of advocacy and political activity, which is pivotal to ensuring the continued effective community response to HIV.

Our comments below relate to the Charity Consultation Paper's questions which are of particularly significance for AFAO, and the HIV response more broadly.

Peak Bodies

The Charity Consultation Paper states that the Board of Taxation recommended that the workability of the Bill could be improved by clarifying whether or not peak bodies could be charitable.¹ In 2003, the New South Wales Administrative Decisions Tribunal held that a body which enhanced the long term viability of charitable organisations by providing educational mentoring and support services was itself a charitable institution. This decision indicates that while it is not necessary that a peak body deal directly with members of the public, it is the degree of integration and commonality of purpose with its members that determines its charitable status.

In response to question 2, "Does the decision by the New South Wales Administrative Tribunal provide sufficient clarification on the circumstances when a peak body can be a charity or is further clarification required?" AFAO supports enshrining in legislation the position expressed in the NSW Administrative Tribunal decisions that peak bodies can be considered charitable organisations.

Public Benefit

Any definition of charity must capture the notion of serving a public interest. However, it is crucial that the definition covers the public interest where applying to smaller segments of the public. AFAO is keen to ensure that any definition of 'public' is broad enough to incorporate disadvantaged and/or marginalised groups, regardless of size, including communities affected and living with HIV.

¹ Page 8, available at: <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2161>

We note the Charity Consultation Paper makes brief reference to the issue of harm, quoting the 2010 Senate Inquiry proposal for the public benefit test to include that “the benefit must be balanced against any detriment or harm”. Charitable organisations, as part of civil society, should promote civil harmony and not engage in activities which may incite hatred and invite vilification. Part of the role of the proposed Australian Charities and Not-for-profits Commission, as regulator, should be to monitor this.

Political Advocacy

Political advocacy is a very important part of the activities of AFAO and its membership. The ability of communities affected by HIV to advocate on laws and policies that may directly or indirectly impact them has been pivotal to Australia’s success in responding to HIV.

AFAO welcomes the 2010 Aid/Watch decision handed down by the High Court which held that the generation of public debate by lawful means, concerning matters arising under one of the established heads of charity, is itself an activity beneficial to the community. It also decided that there is no general doctrine in Australia that excludes political purposes from being charitable.

AFAO supports the proposal to enshrine the rights of charities to engage in political advocacy which attempt to change law or government policy. It is also important to ensure that activities which are not party political but relate to collecting and disseminating information in relation to elections or referenda are also protected. Providing information to constituents about political parties’ policy platforms in relation to key issues, such as HIV prevention for example, is important for AFAO and its members.

Conclusion

It is very important that there is a clear framework for both the public and regulatory agencies for recognising entities as charitable. AFAO believes that there should be legal recognition that peak bodies may be charitable organisations. We also strongly support the enshrinement of the rights of charitable entities to engage in political advocacy, such as attempts to change law or government policy.