



CHARITY ADVOCACY AND THE DRAFT TAX RULING

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CHANGEMAKERS AUSTRALIA

- Promotes social change philanthropy
- Focus on restrictions to advocacy under charity law over 2+ years
- Recently released report on barriers to advocacy under charity and tax law “Freedom to Speak – Capacity to Act”
- Now working to remove advocacy barriers



PRESENTATION OVERVIEW

- What were the restrictions on advocacy pre Aid/Watch?
- How did those restrictions impact upon charities?
- Does the draft Tax Ruling overcome the barriers to advocacy?
- What other advocacy barriers exist which need to be addressed?



ADVOCACY RESTRICTIONS - POLITICAL PURPOSES DOCTRINE

- Charities have always been allowed to undertake advocacy
- Key restriction stemmed from a 1917 court decision which said “political” was not “charitable”
- The notion of “political” activities mainly focused on law reform, but expanded to include a range of advocacy forms



POLITICAL ACTIVITY RESTRICTIONS PRE AID/WATCH

- Political activity had to be incidental or ancillary to the organisations charitable purpose
- Party political activity (endorsement or standing for election) not allowed

Means = activities Ends = objects

- Advocacy OK - where the “political” activity was a means to the ends
- Advocacy not OK - where the “political” activity was an end in itself



WHAT CHARITIES WERE ABLE TO DO, ACCORDING TO THE ATO

- participate in the election process and promote participation, so long as it is non partisan
- campaign on legislation and public policy
- represent individuals using the charity's services to government
- seek support from government for projects
- provide input into government processes
- engage in awareness raising and publicity campaigns



ADVOCACY RESTRICTIONS NOT JUST ABOUT THE LAW

- Charities have been attacked for doing advocacy
- During the Howard Government, a range of groups (particularly environmental) were attacked on the basis that they were doing too much advocacy to be eligible for charitable tax concessions
- Industry groups and others have followed this line
- Aid/Watch decision clarified the law – will attacks cease?



WHAT THE LAW MEANT FOR CHARITIES PARTICIPATING IN THE CHANGEMAKERS RESEARCH

- “Doing” charities – see advocacy as very important. Try to manage the risks by not doing too much and managing the language they use to describe their activities
- “Doing” charities report that constraints on philanthropic funds for advocacy a big problem
- “Funding” charities – have been very unclear about how the restrictions apply to philanthropics. Many don’t fund advocacy, or steer away from “risky” organisations and projects.



VARIOUS WAYS PHILANTHROPICS INTERVIEWED DEALT WITH POLITICAL ACTIVITY RESTRICTIONS

- Fund lobbying and law reform as part of wider project
- Ensure a wide mix of projects funded so that law reform and lobbying is ancillary
- Fund all the bits of the project which don't involve law reform and lobbying
- Don't fund projects which involve law reform and lobbying
- Provide a non-tied grant
- Frame activities in different ways and use language which doesn't seem 'political'. Don't mention "campaign"!



KEY BARRIERS IDENTIFIED BY THE RESEARCH

Barrier

- Distinction between “charitable” and “political”
- Lack of clarity – resulting in different interpretations
- Lack of fairness
- Advocacy resource constraints

Solved by Aid/Watch?

- √
- √
- √ and X. PBIs still face additional restrictions
- √ and X. DGR needs extension



WHAT DOES THE DRAFT TAX RULING DO?

- Charities can have “political objects” and still be charitable
- Charities can engage in “political activities”
- Party political no longer banned, but needs to be linked to charitable purpose
- New type of charity possible, which has a purpose of generating public debate in a charitable subject matter
- Political activities need to be legal and not contrary to public policy



CHANGEMAKERS RECOMMENDATIONS ON DRAFT TAX RULING

- Generally endorse the ATOs interpretation of the High Court decision on Aid/Watch
- Some minor changes recommended for clarity and to modernise the language
- No view taken on the interpretation of Word Investment decision in the Tax Ruling – but some of you might have a view to express



OTHER ISSUES WHICH HAVEN'T BEEN COVERED OFF?

- Grey area where charities engage in activities which walk a fine line in the law (ie civil disobedience)
- Any others?



REMOVING OTHER BARRIERS

- Extend DGR to all endorsed charities, in line with Productivity Commission recommendations
- Remove additional requirement that Public Benevolent Institutions only undertake advocacy which is minor in extent
- Educate charities – both doing and funding – about the law

