

Submission by the
Australian Reproductive Health Alliance Inc.
to the
**Inquiry into the Definition of
Charities and Related Organisations**
19 January 2001

Introduction

The Australian Reproductive Health Alliance Inc. (ARHA) welcomes this inquiry as important and long overdue, and would be pleased to provide to the inquiry any further information or assistance that it would find helpful.

ARHA congratulates the inquiry staff on making available promptly on the inquiry's Website all written submissions as they were lodged. This has greatly assisted ARHA (and no doubt many other submitters) to avoid re-stating in detail arguments already well articulated in other submissions.

Main points

ARHA's main points are as follows -

- definitions referring to benefit to 'the public', 'the community' etc must extend **beyond Australia**, so that benefits overseas (eg in poor/disadvantaged/developing nations) are clearly covered. Similarly, organisations whose work takes place overseas (as well as in Australia) must not be excluded. ARHA is concerned, for instance, that an ATO internal memo may have required that to be eligible for Public Benevolent Institution (PBI) status, **all** of an organisation's activities must be in Australia and **none** overseas.
- work which is designed to strategically address the **underlying causes** – rather than merely band-aid the symptoms – of disadvantage/problems must be fully covered by definitions. (As *The Smith Family* submission put it "... social policy has to promote employment and healthy living, rather than just cope with joblessness and ill health".)
- **advocacy** (and education/awareness/capacity building/research work) must be covered. This point, and the previous point, has been made in many submissions to the inquiry and ARHA strongly supports this.
- as one submission has highlighted, the Industry Commission found that the common law definition of a charity or Public Benefit Institution (PBI) is **biased against preventative and advocacy organisations** – an appalling state of affairs

- the **purpose/goal** of an organisation's work – rather than the nature of the activities by which it pursues that purpose/goal – should be the relevant test, so that innovation is encouraged and organisations are free to trial new/better/more relevant/more creative/more cost-effective ways or providing benefit. Many submitters have made this point.
- for the same reasons as the above four points, the existing focus on '**direct**' relief or provision of benefits is counter-productive, antiquated and should be removed, since it impedes both the cost-effectiveness and the depth of benefit accruing to the public by penalising work which addresses underlying causes and prevention, rather than band-aiding. Many submitters have made this point.
- the Prime Minister has said he wishes to encourage greater **corporate philanthropy** in Australia. Tax deductibility for donations is a vital means to this. Australia's level of corporate (and individual) philanthropy seems to be far lower than that of the US, presumably in large part because the tax benefits available to corporations under Australian tax law are low compared to the US. Eligibility for **Deductible Gift Recipient** (DGR) status (under Australian law) needs to be widened. Although beyond the inquiry's current terms of reference, ARHA suggests the inquiry recommend exploration of how further tax incentives for corporate (and individual) philanthropy might be achieved eg by allowing corporations and individuals who are due to pay tax to the ATO to pay that sum instead to an approved organisation whose work is designed to benefit the public. (ARHA recommends that US tax laws may provide ideas as to how this might be achieved in Australia.)
- the current definition of Public Benevolent Institution (PBI) requires benefit to 'a **section or class of the public**' and requires that relief be offered to '**every member**' of that section/class. The logic of this would appear to be linked to the direct-handouts model of charitable work which, as many submitters have pointed out, is anachronistic in the 21st Century.
- as several submissions have pointed out, **ecological sustainability** – including maintenance of biodiversity and the natural world – is clearly a 'benefit to public/society' and should entitle non-profit organisations pursuing that goal to the full range of tax benefits presently inherent in charity/PBI status. To that end, it is essential that organisations working to address the **underlying causes** of ecological decline – not merely remediation or band-aiding work once the damage has occurred – be covered. As an example, ARHA's goal of maximising reproductive health – in particular its sub-goal of enabling people to **control their own fertility** – is clearly a contributor to slowing human population growth and thus to ecological sustainability.

Two case studies

To demonstrate the benefits that would flow – including to the Australian Government’s budget – from adopting some of the above points, ARHA offers the following to examples of work that it would consider **should** receive full the tax benefits (including DGI status) obtainable from charity/PBI status but whose eligibility on **existing** definitions may be in doubt.

Case Study No. 1 - Preventing unintended pregnancies

Research in developed nations, collated by the New Zealand Ministry of Health for the (then) NZ Minister of Health, Jenny Shipley, shows that governments save ten times what they spend on subsidising contraception, because of reduced demand for (government-subsidised) maternity wards, surgical abortions, and child support payments. In the case of the UK, for example, for every one British pound spent by government domestically on making contraction more affordable for UK residents, eleven British pounds of government expenditure is saved.

Research by the Australian Bureau of Statistics (as set out in, for example, *Fertility in Australia*) shows a positive correlation between smaller family size and greater attainment on education, training, employment and wages. In other words, all other things being equal, those men and women who delay childbearing, space their children, and have fewer children overall are more able to invest in their own education and training and to secure paid work at good salaries. This can deliver life-long benefits to the parents and their children, as well as saving taxpayers and governments on welfare payments.

Clearly, efforts by non-government non-profit organisations aimed at preventing unintended pregnancies are far more cost-effective – providing vastly more public benefit at far lower cost – than if such efforts were focussed on ‘direct relief’ for poor families having children they did not wish to have.

Case Study No. 2 – gender equity and empowerment of women

The United Nations Population Fund highlighted, in its *State of the World Population 2000* report, the urgent need to address gender inequality as a key underlying cause of poverty, disadvantage and suffering in many less developed nations.

For example, major reproductive health benefits – and economic and social benefits - flow from empowering women, improving gender equity in relationships, laws and in society at large, and creating incentives to have families keep their girl children in school.

Such work is not ‘direct relief’ of poverty and suffering, as presently defined, since it addresses the underlying societal causes of such poverty and suffering, rather than merely band-aiding the symptoms. Yet its long-term benefits are vastly greater – they endure for the lifetime of the recipient and beyond, as societal traditions and practices transform and future generations experience the same benefits.

About ARHA

Legal status

The **Australian Reproductive Health Alliance Inc.** ('ARHA') is incorporated as an association under the *Associations Incorporation Act 1991* of the ACT.

ARHA is a not-for-profit community organisation. Effective 1 July 2000, ARHA was endorsed by the (Australian) Commissioner of Taxation as an **income tax exempt charitable entity** under Subdivision 50-B of the *Income Tax Assessment Act 1977* under Item 1.1 (charitable institution).

See below (page 6) for information on two other entities that are associated with ARHA –

- the **Australian Reproductive Health Foundation Pty Ltd** ('the Foundation')
- the **Australian Reproductive Health Trust** ('the Trust').

Aims

ARHA's aims, as set out in its Rules (Part II, paragraph 2) are –

Mission statement

1.To promote public support, both within Australian and internationally, for the improvement in the well-being and status of women and the development of reproductive health in families and individuals by means of and including:-

- *the production of educational materials*
- *the organisation of seminars and workshops;*
- *the preparation of briefing materials for members of the press;*
- *networking with parliamentarians, government departments and other interested parties as required;*
- *the support and promotion of alliances of opinion makers with comparable aims and objectives.*

2.To promote knowledge, education and research relating to the development of family planning and other reproductive health services, paying particular attention to the needs of indigenous women, both within Australian and internationally.

3.Where appropriate, to identify and support specific development projects which promote reproductive health, and enhance the status of women and girls, either working independently or with partner organisations.

4.To promote, maintain and extend the interest of ARHA members in the broad range of issues concerning reproductive health and its role in development.

ARHA's mission flows in large part from the *Cairo Plan of Action*, which was agreed by all participating nations - including Australia - following the United Nations' International Conference on Population and Development held in Cairo in 1994. The *Cairo Plan of Action* essentially proposes measures, on a world scale, to address concerns about population growth and reproductive health.

Activities

ARHA's activities include, by which it pursues its aims, include –

- education and information
- awareness raising
- advocacy.

'In Australia'

ARHA is based in Australia. Its only office and permanent staff are in Australia.

However because its goals including enhancing reproductive health in countries other than Australia – including especially countries that are less affluent and/or have particularly poor reproductive health or health rights –

- ARHA's activities occur both in Australia and overseas
- the principal purpose of ARHA's activities **within** Australia is often to improve reproductive health **beyond** Australia. For example, a major function for ARHA is monitoring the Australian Government's response to the *Cairo Plan of Action*, under which the Government agreed to increase its overseas development aid (including population-related aid) to UN recommended levels. Advocacy and awareness work aimed at improving the chances that the Government will raise its aid in that way most often occurs within Australia. The **immediate, direct** 'purpose' of such work is clearly 'in Australia' – in the sense that the work aims to have the Australian Government act in a certain way. But the **long-term, indirect** purpose is primarily (but not exclusively) an international one, where the major effects would be felt outside Australia by people in nations to whom such aid would flow.

ARHA certainly does conduct activities within Australia whose purpose is to improve reproductive health within Australia rather than overseas, for example, activities aimed at improving the reproductive health, rights and awareness of –

- indigenous Australians
- non-indigenous Australians whose access and awareness is limited by, for instance, living in rural or remote areas, low socio-economic status, or gender inequality.

However because ARHA's purposes flow in large part from the *Cairo Plan of Action*, the indirect long-term purpose of much of its work will always be international rather than domestic.

Under the new tax system (post-GST), the Australian Tax Office's (ATO's) *Application for Endorsement as a Deductible Gift Recipient (DGR)* (at www.taxreform.ato.gov.au) sets out at Question 5. the 'in Australia' issue.

That form seems to suggest that to be eligible for DGR status, ARHA (or any Public Fund established by it) would have to –

- **either** be an Overseas Aid Fund, which is defined as a public fund that the Treasurer has declared (by notice in the *Gazette*) to be a relief fund
- **or** have its beneficiaries or purposes 'predominantly in Australia'.

ARHA's current operations would not seem eligible for categorisation as an Overseas Aid Fund, and it would seem hard to characterise its beneficiaries or purposes as being '**predominantly**' in Australia.

Public Benevolent Institution

Trying to fit ARHA into the Public Benevolent Institution (PBI) category would seem to be equally problematic, because ARHA's primary goal is most fairly described as **preventative** rather than 'providing benevolent relief' which is described in ATO materials as 'the direct relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness'.

As many submitters have pointed out, the PBI definition penalises those who seek to prevent ill-health, disability and poverty and rewards those who apply band-aid relief while leaving the underlying causes undealt with.

ARHA's two related entities

The **Australian Reproductive Health Foundation Pty Ltd** ('the Foundation') is incorporated as a company under the *Corporations Law* of the ACT. Effective 1 July 2000, the Foundation was endorsed by the (Australian) Commissioner of Taxation as an income tax exempt charitable entity under Subdivision 50-B of the *Income Tax Assessment Act 1977* under Item 1.1 (charitable institution).

The principal activity of the Foundation is to act in the capacity of a trustee to administer the **Australian Reproductive Health Trust** ('the Trust') which is a trust set up by a Trust Deed (which was signed in 1996 and varied in 1997). ARHA is the sole beneficiary of the Trust.

The Foundation's aims in administering the Trust (as set out in the trust deed, as varied) are to all intents and purposes identical to ARHA's Mission Statement (see above). The Foundation was established for the purpose of accepting grants and administering grant monies in the most effective way possible to further ARHA's aims.

The Foundation administered grants received pursuant to the provisions of the trust deed (which appoints the Foundation as trustee and ARHA as beneficiary). As trustee, pursuant to the provisions of the trust deed, the Foundation is not entitled to apply or appropriate funds for the benefit of a private person or non-charitable organisation (other than as payment for reasonable services for the Foundation's employees or agent's).

In a private ruling in August 1997, the Australian Tax Office ruled that the Trust's income (for years ended 30 June 1997 to 30 June 1999) was exempt from income tax under section 23(j)(ii) of the *Income Tax Assessment Act 1936* and section 50-5 Item 1.5 of the *Income Tax Assessment Act 1997*.

ATO's written explanation for the ruling advised that ATO had formed the view that the Trust was a **charitable trust** for the advancement of education - and that the Trust had therefore been established for "**public charitable purposes**" - in view of –

- the aims and objects of the trustees in administering the trust fund
- the fact that the Trust's sole beneficiary is ARHA, which is a charitable institution exempt from income tax (see above)
- the Foundation's intended activities.

More recently, ARHA has taken over from the Foundation the roles of receiving funding and employing staff, and the Foundation remains, for the time being, a shelf organisation. Likewise, the Trust is not active at the moment. However details of the Foundation and Trust have been included in this submission to highlight the fact that – despite their existence and legal status – all three entities still do not qualify for Deductible Gift Recipient (DGR) status (see below).

ARHA's resources are obtained through two principal sources –

- membership subscriptions
- funds made available to it by external funding sources, including from overseas philanthropic foundations which remain the largest source of funding.

Implications of the present definitions for ARHA (and for the Foundation and the Trust)

Neither ARHA nor the Foundation nor the Trust have to date applied to the Australian Tax Office for endorsement as a Deductible Gift Recipient (DGR), because they appear to fall outside the present eligibility criteria for DGR status. Donations within Australia to ARHA, the Foundation or the Trust are therefore not presently tax-deductible under (Australian) tax law.

Neither ARHA nor the Foundation nor the Trust have to date applied to the Australian Tax Office for endorsement as a Public Benevolent Institution (PBI), for the same reason.

As a result, neither ARHA (not the Foundation or Trust) are able to seek within Australia tax-deductible donations to financially support its work, despite the clear public importance of that work.

By comparison, many organisations pursuing work that would seem of far lower public importance are able to do so.

In conclusion

The fact that, as the definitions presently stand, a corporation or individual in Australia who believes in the importance, world-wide, of halting human population growth and of giving men, women and adolescents the ability to maximise their life-long sexual health and to determine the spacing and number of their children cannot claim, as an income tax deduction, a donation to ARHA (or to the Foundation or Trust) is an appalling state of affairs.

ARHA understands that ACFOA (the **Australian Council for Overseas Aid**) will be lodging a submission to the inquiry. However ARHA has not seen ACFOA's final submission. ARHA requests that the inquiry give careful consideration to the ACFOA submission, which ARHA feels sure will touch on many issues of relevance to ARHA.

ARHA also commends to the inquiry the following two submissions which illustrate nicely the absurdity of penalising preventative work in the reproductive health field.

Family Planning Association of WA

This submission states (in part) –

*The Family Planning Association of WA Inc is a non-government, non-profit organisation, which ... does not quite fit into the DGR categories of Health, Education, Research, Family. We have in the past been considered a PBI, but lost that status and were told that we no longer fit into Welfare & Rights as a PBI, because our work is **too preventative** - there is not enough direct relief of sickness or suffering. There are large inconsistencies within the health services - many preventative, health services such as Red Cross, Cancer and Heart Foundations are recognised as DGRs but we are not. (para 1)*

Family Planning Australia

This submission states (in part) –

... we directly provide a wide range of programs for students in schools as well as being engaged in significant training of disability workers, teachers and educators so that they can work with their students and clients on matters to do with sexual and reproductive health. A significant amount of our work therefore is in the development of teaching skills, resources and curricula. Non-direct provision, is in many circumstances, a much more cost effective and educationally effective way of improving the sexual wellbeing of our client groups.... (para 20)

We are defined as charities and enjoy benefits from this status but we are not classified as a PBI and do not obtain the tax benefits flowing from having DGR status. That is a significant disadvantage to us and will be increasingly so in the future if it is not changed. (para 22)

The absence of DGR status for our within Australia activities results in our inability to access funds which are available from organisations and individuals who would be willing to donate to us if we had such status. We address significant social issues eg drug and alcohol usage and unsafe sex on the part of adolescents, the education of Aboriginal health workers who both treat and educate their clients to prevent the very high levels of STIs [sexually transmitted infections] amongst their communities. (para 23)

We have the skills and access to the professional knowledge to contribute in areas such as these but are hindered by lack of funds, yet we know that there are funding bodies in the community who would contribute to FPOs [family planning organisations] if they could receive tax benefits for their donations. (para 24)

Some FPOs enjoyed PBI status in earlier years. This was gradually removed because they were not seen as providing welfare services in the direct relief of poverty. We reject this view as not reflecting a contemporary view of the most effective way of helping disadvantaged members of our society and of promoting the sexual health of individuals. (para 25)

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