

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates 25-26 February 2009

**Question: aet 7**

**Topic: AID/WATCH – Charitable Status (Treasury)**

**Hansard Page: Written**

**Senator Bob BROWN asked:**

Following the Australian Taxation Office's attempts to remove charitable status from the non-government organisation AID/WATCH:

1. Is the ATO taking it upon itself to apply a narrow legal definition of the types of activities a charitable organisation can undertake to get tax deductibility, or has Treasury asked it to pursue a narrow definition?
2. If Treasury has directed the ATO, why is Treasury pursuing a narrow definition of charitable activities rather than adopting the broader definition recommended in the 2001 Treasury inquiry into the Definition of Charities?
3. Were there any discussions between the ATO and Treasury about the AID/WATCH case before the ATO decided to launch a Federal Court appeal over the Administrative Appeals Tribunal decision in favour of AID/WATCH? Did Treasury agree with the ATO's decision to appeal the AAT decision? Do you agree with the ATO's decision?
4. Has the government made any plans to amend the legislation to adopt a broader definition of charities as per the recommendations of the 2001 Treasury inquiry into the Definition of Charities?

**Answer:**

1. The Commissioner of Taxation revoked his endorsement of AID/WATCH as a charitable institution in October 2006. The Commissioner took this action in response to an audit of the institution's activities which were found to be inconsistent with what the Commissioner understands a charity can undertake. The Commissioner's understanding of the law is outlined in *Taxation Ruling TR 2005/21*, which has been available on the Australian Taxation Office (ATO) website since 21 December 2005.

The Commissioner of Taxation is responsible for the independent and impartial endorsement of charities. Treasury has not asked the ATO to pursue a narrow definition of the types of activities a charitable organisation can undertake to get tax deductibility.

AID/WATCH remains a deductible gift recipient (DGR) on the Register of Environmental Organisations, and can accept tax deductible donations.

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2. Treasury has not directed the ATO. The Commissioner of Taxation is responsible for the independent and impartial endorsement of charities.
3. There were no discussions between the ATO and Treasury about the AID/WATCH case before the ATO decided to launch a Federal Court appeal over the Administrative Appeals Tribunal decision in favour of AID/WATCH.

The Treasurer advised Senator Brown in a letter of 15 January 2009 that he was aware of the Commissioner's litigation, and that the ATO is responsible for the independent and impartial endorsement of charities.

4. The Government has not made any plans to amend legislation to adopt a broader definition of charities as per the recommendations of the 2001 *Report of the Inquiry into the Definition of Charities and Related Organisations*, outside the changes introduced by the *Extension of Charitable Purpose Act 2004*.

However, the taxation and regulatory requirements applying to charities and not-for-profit organisations more broadly, are the subject of two reviews which are to report by the end of 2009.

- The Productivity Commission's review of the contribution of the not-for-profit sector
- Australia's Future Tax System Review (the Henry Review)