



# Changemakers Australia

# NEWS

Spring 2010



## Welcome from the Chair

It's been some time since our last newsletter but the board of Changemakers Australia is beavering away in the background with our ongoing commitment to growing social change philanthropy.

I have taken over the chair and I want to thank Mary Crooks for her tireless effort in steering and supporting the work of CMA over the past five years.

The most significant initiative to happen in the past quarter for CMA was the appointment of Esther Abrams as project worker for the Changemakers Charity Law Reform Project, with a grant from the Legal Service Board and CMA.

We now have office administration support from Peter Flanagan and our IT support from Dwight Smith. Both Peter and Dwight are assisting CMA to support our projects.

Our AGM will be held on Wednesday, November 11 from 5.30-7.30pm at Room 108, the Melbourne Law School building, 108 Pelham St, Carlton. Registration is free but bookings are essential. Please RSVP to (03) 9214 8384 or [CentreForPhilanthropy@swin.edu.au](mailto:CentreForPhilanthropy@swin.edu.au) by Friday November 5 at 5pm.

At the AGM Esther Abram will present the 2010 Stegley Lecture on Philanthropy, Advocacy and Public Policy Charity law Reform—Progress to Date. Esther, a community sustainability consultant, has been appointed by Changemakers Australia to undertake the Charitable Law Reform Project. Esther will present the results of her research on the impact of charity law on philanthropic and community organisations.

In addition to Esther's talk, Ann O'Connell, Matthew Harding and Joyce Chia of the Melbourne Law School will give a brief overview of the 3 year Australian Research Council funded project - *Definition, Regulating and Taxing the Not-for-Profit Sector: Law and Policy for the 21st Century*. Ann, Matthew and Joyce will report on what has been done on this project to date, and what is planned for the future.

I am very pleased to announce that Tracy Gary is returning to Australia in October to run a series of workshops on social change philanthropy. The information appears in this newsletter, so book your place early as there are limited seats available in each workshop.

Jill Reichstein  
Chair  
Changemakers Australia

# Charity Law Reform Project

## Can you help complete the picture?

The Charity Law Reform Project is seeking changes to charity laws to ensure philanthropic and community organisations can legitimately work towards social change. While there is an important role for organisations to deliver direct relief of social and environmental ills (such as poverty or environmental degradation), so too is there a need to address the root causes of such problems.

The most common way that root causes are addressed by not for profit organisations is through activities which try to change government policy, legislation or influence programs. Such activities are loosely thought of as “political activities”, including activities such as running media campaigns, researching and documenting policy options, and communicating issues to decision makers through lobbying.

While it is not illegal to engage in political activities, there are concerns that laws relating to charities create barriers to political activities. Most not for profit organisations rely on being classed as a “charity” to enable them to access a range of tax incentives.

For instance, Deductible Gift Recipient (DGR) status enables an organisation to provide a receipt for taxation purposes to donors and is extremely important to organisations which rely upon donations from the public for their activities.

An organisation has to be classed as a charity by the Australian Tax Office (ATO) to access DGR and this is reliant upon political activity being only “incidental” to the organisation’s function.

This raises many issues for not for profit organisations, including philanthropics. How much political activity can I undertake before it is perceived as more than “incidental”? What exactly is political activity anyway? And for funders – what if I fund a project which involves political activity? Can I lose my charity status?

These issues would all be academic if it weren’t for the fact that the ATO has



*Esther and her family at Mt McKay in the Alpine National Park, which was saved from being turned into a ski run through the political activities of several community organisations*

challenged the charity status of a number of organisations in recent years. This makes for nervous times for the people who manage not for profits with a commitment to pursuing social change.

The Charity Law Reform Project has been established by Changemakers out of concern that Changemakers’ primary aim, to support the growth of social change philanthropy, is being hampered by the approach of government to charity laws.

In this light, Changemakers seeks to understand how philanthropic and community organisations see themselves in relation to political activity. Do not for profits see themselves as able to engage in or fund political activity? Have any of Changemakers’ members been audited by the Australian Tax Office of late, and what was the outcome? Which organisations have been refused charity status and why?

If you would like to provide any information to help the Charity Law Reform Project, I would love to hear from you. My name is Esther Abram and I have been contracted by Changemakers to undertake some research and support aimed at reforming charity laws.

Most of my working life has been spent working in the not for profit sector, predominantly in environment organisations and involving lots of political activities. Please email me if you have any information that might be useful: [esther68@optusnet.com.au](mailto:esther68@optusnet.com.au)

# Social Change Philanthropy – What is it?

Defining Social Change philanthropy is like trying to define feminism. The definition changes whoever you talk to.

The following definition comes from Resource Generation [www.resourcegeneration.org](http://www.resourcegeneration.org)

‘Social change philanthropy focuses on the root causes of social, economic and environmental injustices.

It strives to include the people who are impacted by those injustices as decision makers. It also aims to make the field of philanthropy more accessible and diverse’.

In social change philanthropy, foundations are accountable, transparent and responsive in their grant making.

Donors and foundations act as allies to social justice movements by contributing not only monetary resources but their time, knowledge, skills and access.

Social change philanthropy is sometimes called social justice philanthropy, social movement philanthropy, and community based philanthropy.

It is the definition adopted by the Reichstein Foundation [www.reichstein.org.au](http://www.reichstein.org.au)

While charitable giving results in relief and a benefit for individuals, a characteristic of social change philanthropy is that it often results in a universal outcome.

The following article is a great example of a social change project.

—Christa Momot  
Executive Officer  
Reichstein Foundation

## Rainbow Families Council’s Love Makes a Family Campaign

On January 1, 2010, with little or no fuss, some important new Victorian laws came into effect. The lack of fuss was perhaps a surprise, given that these have been “hot button” issues for conservative politicians and shock jocks alike. They included equal access for single women and lesbians to fertility services, and legal recognition of same-sex parented families. Their passing, a year earlier, was very much due to the efforts of a grassroots community group, the Rainbow Families Council, with support from the Reichstein Foundation.

The Rainbow Families Council is a volunteer-run organisation that works for social and legal recognition of same-sex parented families and prospective parents, and supports existing groups. The Council and its predecessor, the Fertility Access Rights Lobby, began working for these reforms in 1998, when Victoria had some of Australia’s most discriminatory laws for same-sex parented families and prospective parents.

Yet bad laws have never stopped people from creating loving families. As a result, prospective parents were engaging in expensive and stressful “reproductive tourism”, or less-than-ideal informal arrangements and thousands of children’s relationships with their non-birth parents were completely unprotected by law.

In 2002, the Victorian Government referred the matter to the Victorian Law Reform Commission. The Fertility Access Rights Lobby, and later the Council through our ‘Love Makes a Family Campaign’ worked hard to engage our community in the Commission’s four consultation rounds. We spoke to community groups, collected personal stories for our submissions, and provided training and resources to encourage people to make their own. As a result, that inquiry received more submissions than any in the Commission’s history.

On December 14, 2007, the Government announced that they would implement nearly all of the inquiry's complex raft of recommendations. We knew the vote would be tight, so the campaign got busier than ever. We had always combined more traditional advocacy methods—letter-writing, public forums, stalls, media, lobbying and alliance-building—with use of email lists and electronic newsletters. We held an advocacy training day, extended our visits to community groups to regional Victoria, and created the key tools in our campaign: the Rainbow Families Council website, e-groups and information kit.

Through all these means, we encouraged and supported families and prospective parents to visit their local MPs, and send them emails and family photos. Hundreds of people who had never before engaged in political campaigning told their personal stories, and got their parents, friends and workmates to do the same. That was our strategy: to show that this was about real children and real families.

It worked! On October 30, 2008 we called a 'Prams and Grans' community gathering on the steps of Parliament. After the rally, about 40 parents and our children went to watch the debate in the upper house, and met MP Robert Smith in the foyer. It was an important chance meeting, as he said in his speech supporting the Assisted Reproductive Treatment Bill: "The impact it had on me—not confronting but meeting these women and their children face to face—was profound. It drove home to me the fact that we are dealing with real people and real children, here and now. They exist. Are they treated fairly and equally in society through birth certificate registration et cetera? The answer is no. Should they be? My view is yes, they should."

On December 4 the Bill passed by one vote. The law is not perfect, and some issues remain outstanding. Yet it was an amazing community effort, a wonderful human rights victory, and proof that grassroots, campaigning really does work!

The Council's work is far from done. Since the law's passing, we have been working to ensure its proper implementation—for example training staff at Births, Deaths and Marriages—and educating people about their new rights through the website and a community conference. We will continue to engage people in advocating for the remaining reforms, including same-sex adoption, which was referred to federal committee. However, our focus now moves from legal to social recognition of our families.

Homophobia and marginalisation remain all-to-frequent experiences for both children and parents. We are keen to develop our website to become a real resource for supporting and empowering rural, regional, and socially isolated same-sex parented children and families.

We are also keen to further develop our new 'Who is in your family' resource kit on family diversity and inclusion, produced for kindergartens and childcare centres in the City of Darebin with funding from Darebin City Council, and offer it, along with training, to early childhood services and schools statewide.

Same-sex parents have always had to be advocates for ourselves and our children. And many of our children are growing up to be powerful advocates in their own right, for themselves and others. Participation in the campaign—and watching the debate and passage of the law—was a profound and empowering experience for many who took part. The Rainbow Families Council will continue to engage our community in creating ongoing legal, institutional and social change—in creating the future we want for our children.

— Felicity and Sarah Marlowe [www.rainbowfamilies.org.au](http://www.rainbowfamilies.org.au)

# Pursuing public policy reform

Central to Changemakers Australia's belief is the view that in order for not for profit organisations to effectively address the underlying causes of social ills, such as poverty, inequality, abuse of human rights and environmental degradation, they must have the capacity to pursue public policy reform. The Aid/Watch case is tackling this issue with an appeal to the High Court and Changemakers is seeking similar reforms through its Charitable Reform project.

## The Aid/Watch Case

Aid/Watch is an independent membership-based watchdog on aid, trade and debt, which works with communities in the Global South. It seeks to challenge practices which undermine the ability of communities to determine their own futures, and promote development alternatives based on social and environmental justice. Aid/Watch researches and evaluates development policies and practices, and campaigns around these issues as part of the global justice movement.

In October 2006, the Australian Tax Office (ATO) moved to disqualify Aid/Watch as a charitable organisation. The ATO insisted Aid/Watch was not a charity on the basis that its purpose was to monitor the aid program, not to deliver aid. The ATO argued that Aid/Watch attempts to influence government aid programs, and this is likewise uncharitable. On both counts, the ATO imposed a restrictive definition of charitable status, at odds with current realities.

Aid/Watch appealed this decision to the Administrative Appeals Tribunal and in July 2008 the AAT found in favour of Aid/Watch and overturned the ATO's decision.

In February 2009 the ATO appealed to the Federal Court's Full Court, indicating that this would be a test case for the charitable sector. The Federal Court judgement, handed down in September 2009, overturned the decision of the AAT finding in favour of the ATO.

The judgement focused on the question of whether Aid/Watch had a charitable purpose. It held that there are three broad elements:

- Is alleviation of poverty a purpose of Aid/Watch? Yes;
- Is public education a purpose of Aid/Watch? Yes;
- Does Aid/Watch have a dominant non-charitable political purpose? Yes.

The court found that as a charity Aid/Watch could devote itself to monitoring the aid program, in order to educate the public and alleviate poverty. But it could not take a view on the aid program.

The court accepted that monitoring the aid program to alleviate poverty and for public education was a charitable purpose. But it found that the moment Aid/Watch sought to pursue this purpose, it ceased to be a charity.

Aid/Watch has now launched an appeal to the High Court. This was due to be held in late June. The ruling in this case will have implications for the charitable sector as a whole—particularly for not for profit organisations that engage in advocacy and lobbying of the government for policy reforms. This case threatens the ability of charities to speak out fearlessly on political issues.

## The Appeal Process

There are two stages to the High Court appeal process. The first involves making an application for Special Leave to Appeal to the High Court. The second is the appeal itself.

Factors in favour of the application for special leave to appeal include:

- (i) The judgement states that the Federal Court 'as an intermediate appellate court'

could not overturn a previous law which stated that a charitable body could not engage in matters considered to be "political". This suggests the case needs to be heard at the High Court level to determine whether in today's society, where government engages in a vast number of areas, that public debate can be said to be "political" in the first instance, and if so whether it can be said that public debate is in the "public interest" and a charitable body that promotes such debate is not thereby disqualified from being considered a "charitable institution".

(ii) The judgement overturns a decision of the AAT, made by a judge, which lends it some significance.

(iii) The issue of the political role of charities has not been dealt with by the High Court in Australia in any depth, and the appellate law is uncertain.

(iv) The judgment has wide implications for the charitable sector, and for issues of equity and public engagement in society at large.

(v) Judges, and others, have expressed concern at the potential breadth and impact of the exclusion from public debate for charities, which can be categorised as "political". If so categorised the institutions charitable status is at risk.

(vi) The judgment is based solely on the question of political debate. The Federal Court accepts that Aid/Watch has charitable purposes to alleviate poverty and provide public education. It finds these are cancelled-out by a dominant political purpose to participate in public debate.

—*Marion Webster*

*The Changemakers Charitable Law Reform Project*

## Ethics debate

Melbourne Community Foundation and the Melbourne Writers Festival are co-hosting the 2010 Great Philanthropy Debate—***Giving is Good? Ethical Issues in Philanthropy*** It will be held on Thursday, November 25, 6-8pm at BMW Edge, Federation Square

Moderated by Michael Short of The Age, five philanthropic, business and community leaders will debate and discuss the ethics of holding the purse strings and having an agenda:

- John Armstrong, Philosopher-in-Residence, Melbourne Business School and Senior Advisor in the Office of the Vice-Chancellor at the University of Melbourne.
- Andrew McLeod, CEO, Committee for Melbourne
- Rupert Myer, AM, Chair of The Myer Family Company Pty Ltd
- Meredith Sussex, Board Director and Public Policy Consultant
- a fifth speaker TBA

They will robustly debate issues such as:

- Are Philanthropic dollars public funds forgone?
- Should levels of tax deductibility reflect government priorities?

- Public accountability requirements of philanthropic funds
- Philanthropy and the responsibility to do no harm.
- Philanthropic conflicts of interest – giving to your mates.

Invitations will be sent shortly; in the meantime contact Trudy Wyse for further information on (03) 9412 0412 or [trudy@melbournecf.org.au](mailto:trudy@melbournecf.org.au)

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## Tracy Gary workshops

The Australian Women Donors Network is presenting a series of educational and inspirational workshops and community events with one of the world's most celebrated philanthropic and legacy advisors, and social justice visionaries.



Over the past 25 years, philanthropist and donor activist Tracy Gary, of Inspired Legacies, USA, has worked with 7000 donors, 2500 advisors, 3000 non-profits and founded 18 non-profits including the Women Donors Network, USA. She knows the Australian

philanthropic landscape intimately, having helped many Australian families with their giving. Her expertise on giving and legacy planning is world-class.

### **DONORS/GRANTMAKERS**

Options for families, donors, investors, corporate foundations

**Melbourne:** Oct 18: Family Foundations: From Good to Great!; Oct 19: Accelerating Social Change; Oct 19: Transformational Giving

**Sydney:** Oct 20: Family Foundations: From Good to Great!; Oct 20: Transformational Giving; Oct 21: Accelerating Social Change

**Perth:** Oct 25: Family Foundations: From Good to Great!; Oct 25: Transformational Giving

### **PROFESSIONAL ADVISORS**

Tailored program for professional advisory community (Tracy has coached 2500+ advisors globally)

From Trusted Advisor to Inspiring Wealth Coach: **Sydney** – Oct 21; **Melbourne** – Oct 22; **Perth** – Oct 26

### **COMMUNITY CONVERSATIONS**

Special Event for Donors, Advisors and Non-Profit Community. Come hear Tracy Gary!

Melbourne – **Oct 22:** The Changemaker Within! Exploring Women's Leadership & Giving Trends—panel of dynamic community leaders in conversation with Tracy Gary

Perth – **Oct 25:** Give While You Live: Local & international philanthropists share the thrill of giving. Featuring Tracy Gary on a panel with other dynamic community leaders

For further details and bookings, go to: <http://womendonors.com.au>.

## **Join tour of Barmah-Millewa**

After a decade of drought the forests of the Murray are in flood, replenishing parched red gums and ushering in a boom period for aquatic plants and animals.

Right now, thousands of water birds are descending on wetlands like Barmah-Millewa to establish nests and raise young, transforming the forests into a winged menagerie for the next three months.

As part of our campaign to restore their ecological and cultural integrity, Friends of the Earth is inviting interested persons on a tour of the forests during the most spectacular flooding and bird breeding event in over a decade.

Sadly, seeing the red gums in flood is now a rare opportunity, but with your support and an effective alliance of Indigenous and environment groups we hope to change that.

FOE hopes you can join them on November 6 and 7. Over a relaxed weekend in Barmah-Millewa, there will be the opportunity to:

- hear from Yorta Yorta staff about how the new jointly managed Barmah National Park is

working on the ground and discuss their aspirations for achieving a cultural flow regime

- learn about how the forest responds to flood through an on-site presentation from a respected wetland ecologist
- spend some time out on the water in canoes or a river cruise
- talk about the progress we have made with our new Fair Go for our Rivers campaign, and why we need to make flood events like this happen more regularly and
- stay in comfortable accommodation on the banks of the Murray and relax by an open fire

If you are interested in coming, FOE can contact you with a detailed itinerary closer to the date.

To keep organising to a minimum, FOE will organise some elements of the tour and ask you to look after yourself in other areas.

FOE will arrange:

- all presentations and activities
- picnic lunches (Sat & Sun) and a communal dinner on Saturday
- directions to the tour site
- accommodation recommendation
- carpooling

You will need to arrange:

- your own transport (but FOE would be happy to coordinate carpooling)
- booking accommodation
- breakfast

**Cost:** in addition to your own travel and accommodation there will be a small cost to cover activities and communal meals.

**Travel:** Barmah-Millewa is three and a half hours drive from Melbourne. FOE will put together an itinerary that should allow you to depart Melbourne on Saturday morning and return on Sunday afternoon, although you are of course welcome to stay longer.

**Booking:** Chris Momot at the Reichstein Foundation is helping coordinate the weekend, so if you think you might like to come along please email her to register your interest.

Numbers will need to be confirmed closer to the date but as FOE would like to get a sense of how many people are interested, please let Chris know even if you're not 100% sure you can come.

**Email:** [cmomot@reichstein.org.au](mailto:cmomot@reichstein.org.au) Phone: (03) 9650 4400

Please let Chris know:

- dietary requirements
- if you would prefer a river cruise, canoe trip or both (river cruise is by motorised craft but is constrained to the main river channel)
- if, due to scheduling difficulties we are only to arrange an ecologist to present on a weekday, whether you would be interested in attending a Friday afternoon or Monday morning session.

## New faces at CMA

### Peter Flanagan

Peter came to us from Reichstein Foundation where he works as a volunteer. His background is in strategic planning, corporate governance, and business analysis, having worked for 23 years with Telstra, National Mutual and the American International Assurance company. In recent years, he was a board member for the Melbourne International Film Festival, Victorian Association for Environmental Education, and the Moreland Energy Foundation.

Peter is helping us with our administration, along with Dwight Smith. Among his specific duties include organising meetings and taking minutes, identifying corporate governance issues for the Committee of Management, and assisting the consultant on the Charity Law Reform project.

### Dwight Smith

Dwight has worked as an editor, teacher, web designer, graphic designer, systems manager, communications manager and in marketing.

Like Peter, he comes to CMA from Reichstein Foundation.

Dwight has been looking after the CMA website and publications.