

**Submission to the  
Tax Laws Amendment (Public  
Benefit Test) Bill 2010 Inquiry**

**ANGLICARE Diocese of Sydney**

**June 2010**

## **About Anglicare Sydney**

ANGLICARE Sydney is one of the largest Christian community organisations in Australia; it embodies the Christian commitment to care for all people in need, as comes from Jesus' command to love your neighbour as yourself.<sup>1</sup> ANGLICARE Sydney has been providing a wide range of professional services to the community since 1856 and serves many thousands of people every year. Its services include: counselling; community education for families; family support services; youth services; emergency relief for people in crisis; foster care and adoption for children including those with special needs; migrant services including humanitarian entrants and newly emerging communities; English as a second language classes; aged care both through nursing homes and community services; opportunity shops providing low-cost clothing; emergency management services in times of disaster; disability case management and respite and chaplains in hospitals, prisons, mental health facilities and juvenile justice institutions.

## **The Proposed Bill**

The Bill seeks to amend the tax laws to require that religious and charitable institutions meet a public benefit test to justify their exemption from taxation. The Bill provides that the public benefit test must include the following key principles:

- a) There must be an identifiable benefit arising from the aims and activities of an entity;
- b) The benefit must be balanced against any detriment or harm;
- c) The benefit must be to the public or a significant section of the public, and not merely to individuals with a material connection to the entity.

The following submission outlines concerns which ANGLICARE Sydney has about the proposed Bill and raises a number issues that would need to be resolved.

## **The Catalyst for this Bill**

In the first instance, the Bill seeks to create a mechanism to enable a review of the tax status of the Church of Scientology, through a change to the tax law as it is applied to the whole sector. In speaking to the Bill, Senator Xenophon has said, "I make no secret of the fact that the Bill is prompted by the heartbreaking stories I have heard from the victims of the Church of Scientology...If the stories I have heard are true, and I believe they are, then the Church of Scientology does not deserve the tax-payer support it receives."<sup>2</sup>

ANGLICARE Sydney sympathises with people who report that they have been harmed through the activities of organisations and would wish to commend appropriate action being taken by the relevant authorities. However we question whether this isolated situation is a sufficient basis upon which to change the way in which income tax status is determined for all charities and religious organisations across Australia. It is also unclear whether it has been established that the Australian Taxation Office requires additional powers to investigate and potentially remove endorsement from organisations found to have breached their charitable status.

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<sup>1</sup> The Gospel of Matthew, chapter 22 verse 39

<sup>2</sup> Tax Laws Amendment (Public Benefit Test) Bill 2010 – Second reading

## **Is this Broader Change Really Needed?**

The Bill seeks to obtain greater accountability from charities as a whole. Senator Xenophon has outlined that “Under this legislation, all religious or charitable organisations will have to come clean about what they do both good and bad”.<sup>3</sup> However no evidence has been presented of widespread problems within the sector which would require such a change.

The proposed Bill follows a wide ranging inquiry into the Not-for-Profit sector by the Productivity Commission and of taxation matters by the Australia’s Future Tax System Review Panel. It is noteworthy that neither of these inquiries has recommended a public benefits test as part of proposed reforms. It is concerning that the proposed Bill represents a fundamental shift in the way that the tax status of charities would be assessed without clarification as to how it fits within the broader approaches already recommended by these inquiries.

## **Public Benefit is Already Implied**

The meaning of charity in Australia has been affirmed through the court system as being a not-for-profit body whose main purpose and activities are for the relief of poverty, the advancement of education, the advancement of religion or other purposes beneficial to the community. Following the Inquiry into the Definition of Charities and Related Organisations (2003), the then Federal Government chose to retain the common law meaning of a charity rather than adopt a statutory definition.

ANGLICARE Sydney is of the view that it is unclear how the proposed Bill will generally improve upon this existing common law situation. As was noted in the Productivity Commission’s report “there is a general understanding that tax concessions are granted to support NFPs because they serve the community and their activities provide positive public benefits” and “The greater the benefit, the larger the range of exemptions.”<sup>4</sup>

## **The Prior Need for a Charities Commission**

In providing justification for the Bill, Senator Xenophon refers to the situation in the United Kingdom where a Charities Commission has been in place since 2006, part of the role of which is the administration of a public benefit test.<sup>5</sup>

However at this stage, Australia does not have a charities commission. Both the Tax Review Panel and the Productivity Commission have recommended the establishment of such a body. The Tax Review Panel has sought “the establishment of a national charities commission to monitor, regulate and provide advice to all NFP organisations. The commission could be tasked with streamlining the NFP tax concessions, and modernizing and codifying the definition of a charity.”<sup>6</sup> It could be argued that a public benefit test, if were to be considered, is best placed with such a commission.

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<sup>3</sup> Tax Laws Amendment (Public Benefit Test) Bill 2010 – Second reading

<sup>4</sup> Productivity Commission (2010) *Contribution of the Not-for-Profit Sector*, Research report, Canberra, p156.

<sup>5</sup> Tax Laws Amendment (Public Benefit Test) Bill 2010 – Second reading

<sup>6</sup> Australia’s Future Tax System (2009) *Australia’s Future Tax System. Report to the Treasurer*, The Treasury, Canberra, p43.

Instead the Bill proposes that these powers be handed to the Australian Taxation Office (ATO). The ATO is currently the de facto body for regulating which Not-for-Profits qualify for charitable status. It was argued in submissions to the Productivity Commission's Inquiry that it is important to separate the ATO's role of endorsing the tax concession status of Not-for-Profits from its revenue protection and enforcement role.<sup>7</sup> Consequently the Productivity Commission recommended that endorsement for Commonwealth tax concessions for Not-for-Profits should instead be undertaken by the proposed Registrar for Community and Charitable Purpose Organisations. Therefore in the light of the Productivity Commission's inquiry, the Bill appears to be proposing a less than optimal arrangement for the introduction of a public benefits test.

### **The Need for Broader Consultation**

The proposed Bill requires prior broader consultation, reflection and clarification about what is a public benefit, what constitutes harm, how benefits and harm are to be balanced and what the impacts of this Bill might be on the sector, such as in the case of increased compliance costs. It is unclear at this stage what the wider ramifications of this Bill might be, and it is also unclear what consultation has taken place with the sector regarding this Bill.

### **Conclusion**

In conclusion, ANGLICARE Sydney contends that there are several grounds not to proceed with this Bill at this time. Our concerns centre around:

- Whether there is a sufficient basis for such a change to the current system of determining the tax status of Not-for-Profits and whether this change would improve the existing situation
- The relationship of this measure to recommended systemic reforms already outlined in the recent Productivity Commission's inquiry into the Not-for-Profit sector and the Henry review of the taxation system
- The need for consultation with the sector.

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16 June 2010

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<sup>7</sup> Productivity Commission (2010) *Contribution of the Not-for-Profit Sector*, Research report, Canberra, p144.