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9 July 2010

Senate Economics Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

***Re: Inquiry into the Tax Laws Amendment (Public Benefit Test) Bill 2010 – questions on notice***

Thank you for the opportunity to provide additional comments to the Committee in relation to the Tax Laws Amendment (Public Benefit Test) Bill 2010 (the Bill).

ACL is happy to provide comment on the potential for a charities commission in Australia, even though it believes this falls outside the terms of reference of the inquiry. As the Chair of the Committee stated at the commencement of ACL's appearance at the public hearings of Tuesday, 29 June 2010:

*the terms of reference of this inquiry are limited to the examination of the provisions of the Tax Laws Amendment (Public Benefit Test) Bill 2010 . . . I ask all members of the committee and witnesses to ensure that questions and comments are relevant to the terms of reference of inquiry.<sup>1</sup>*

The establishment or otherwise of an Australian equivalent to the charities commissions of the United Kingdom, New Zealand or elsewhere is not the object of the Bill, nor is it provided for in any of its provisions. Although the UK Charities Commission is briefly raised in the Bill's Explanatory Memorandum and Senator Xenophon's second reading speech, the assumption that the Public Benefits Test proposed to be legislated by the Bill would necessarily be administered by an as yet to be constituted charities commission was nowhere communicated to respondents prior to the commencement of the inquiry.

Witness statements at the recent public hearings, and indeed the submissions to the inquiry, may well have been better targeted to the Committee's priorities had the Committee made the examination of a charities commission explicit in its terms of reference.

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<sup>1</sup> Acting Chair, Senator Eggleston (2010, 29 June) *Senate Economics Legislation Committee Hansard*, p. 1.

ACL is not opposed to a public debate about the merits or otherwise of a charities commission for Australia. However, ACL notes that apart from the alleged abuses within the Church of Scientology cult which have motivated the Bill and subsequent inquiry, a case has not been made that there is abuse of tax concessions by mainstream religious charities. ACL also notes that the recent Henry Review and a recent Productivity Commission inquiry have not identified abuses or inadequate accountability measures.

ACL was concerned by the tone of questioning by Senators which seemed to assume religious charities were not currently subject to adequate accountability. Again, no case has been made that this is the case. There was little or no recognition that the poor and needy are the main beneficiaries of the tax concessions granted to religious charities.

While the cost to the Australian taxpayer for the tax concessions granted to religious charities has not been measured, nor has the cost to the taxpayer of the Government providing the applicable services instead of the charitable sector. Both these measurements are relevant in any future public debate. The keen focus of the Committee on the former question with little focus or apparent understanding of the latter is of grave concern. The sector should not be characterised by what it denies the public, rather celebrated for what it contributes to communities and to society more broadly. This should be the context of any future debate about a charities commission.

ACL believes that the question of whether charities commissions overseas create additional bureaucracy for genuine charitable organisations can only be answered within the context of the complex regulatory environment that already exists within Australia for such organisations. If a charities commission were to be created in Australia without any other reform to the sector or reduction in compliance measures, then we would perceive the commission to have increased the amount of bureaucracy. If, however, the introduction of a charities commission is accompanied by genuine reform to the sector which removes or streamlines pre-existing regulatory burdens for the charitable sector, then bureaucratic pressures may ease.

If a charities commission were introduced, it would be ACL's hope that compliance and regulatory requirements would be simplified. ACL would oppose measures that redirect scarce resources away from the provision of services to the needy to meeting overly bureaucratic demands of regulators. ACL supports a public consultation process about the adoption of additional measures to achieve reasonable and proportionate transparency measures where it can be demonstrated that this is lacking.

There may be scope for greater transparency and accountability for the charitable sector and the adoption of a UK or New Zealand style charities commission is one, albeit internationally popular, way of obtaining the level of transparency desired in comparable common law jurisdictions. Should anecdotal evidence be proven that the public is unable to obtain accurate or consistent information about the financial activities of tax exempt organisations in a timely or user-friendly fashion, ACL would conditionally support a charities commission that maintains a database of such information for public use.

ACL is unable to provide additional comment on whether a legislated public benefit test would provide a greater degree of transparency and accountability, as requested by Senator Xenophon. The Bill under inquiry includes insufficient detail on how such a test would be formulated or administered. There may be scope for greater transparency and accountability through an

appropriately-worded public benefit test, but ACL would need to see the actual text of that test, and be provided with clear details of how it is to be administered, before it would commit to a position on the potential advantages of such a test.

Thank you again for the Committee's willingness to consider the views of ACL on the very important matter of a public benefit test for tax exempt organisations.

Yours sincerely,

A handwritten signature in blue ink, consisting of a series of fluid, connected strokes that form a stylized representation of the name 'Lyle Shelton'.

**Lyle Shelton**  
**Chief of Staff**