

Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Senators,

Tax Laws Amendment (Public Benefit Test) Bill 2010

I am an Australian corporate lawyer. I spent a number of years working for the Australian Securities and Investments Commission, investigating and assisting with the prosecution of serious breaches of the law by company officers, market participants and persons engaged in illegal fundraising.

I was raised a Christian, have spent many years in volunteer leadership roles in the church and have investigated breaches of ministerial ethics on behalf of my denomination. For three years, I was employed by a not-for-profit engaged in theological education.

I support Senator Xenophon's proposed amendment to the public benefit test for charitable organisations, for the following reasons:

1. The proposed legislation will build confidence in the charitable sector and reduce the cynicism that a vocal part of the Australian public has toward tax relief for religious entities;
2. Genuine charitable organisations would benefit if independent assessments were to be published explaining how the organisation is of benefit to the public;
3. Taking into account the harms that an organisation perpetrates as part of the public benefit assessment makes good common sense and is in the public interest;
4. If the public benefit test already allows for harms to be taken into account, then there should be no objection to clarifying the law to that effect;
5. The proposed amendment would impose no additional burden on any organisation unless it had committed public harms.

I, therefore, urge the committee to support the proposed legislation and to encourage the publication by the Australian Taxation Office, or whichever body in future makes the relevant determinations, of Public Benefit Assessments as they are made.

1. The proposed legislation will build confidence in the charitable sector and reduce the cynicism that a vocal part of the Australian public has toward tax relief for religious entities

There is a good deal of cynicism in the Australian community about the value of religious organisations to the wider public. One need not spend much time reading comment sections on the websites of our major newspapers to discover that most discussions about religious organisations will eventually include comments to the effect that no religious organisations

should be receiving tax exemptions.

I think those comments are (to the extent that they target religious organisations per se) misguided and reflect a lack of knowledge about the benefits that most religious organisations bring to the community in terms of social cohesion and inclusion, as well as pure charitable works.

In some cases, however, the cynicism is warranted as some organisations are tax exempt which, arguably, ought not be.

These issues could be better addressed by an assessment process that is:

- a) robust (taking into account the benefits provided and the harms committed); and
- b) transparent (reported publicly).

The UK Charities Commission publishes [Public Benefit Assessment Reports](#)¹ about entities that it has reviewed. Those reports are most enlightening. Here are three that illustrate the methodical process of review that is undertaken, together with a range of possible outcomes:

1. [Church Missionary Society](#)² - Confirmed to be a charity and to be operating for the public benefit.
2. [The Rest Bay Convalescent Hotel](#)³ - Found to be operating for a purpose other than that stated in its objects and that the purpose was NOT a charitable purpose. The trustees were given time to consider whether the charitable aim was capable of being fulfilled in the social and economic circumstances and, if not, to consider whether to develop new charitable aims and submit a plan to enable the charity to meet the public benefit test.
3. [S. Anselm's School Trust Ltd](#)⁴
 - sub-principle 2b (the opportunity to benefit must not be unreasonably restricted by ability to pay any fees charged); and
 - sub-principle 2c (people in poverty must not be excluded from the opportunity to benefit)

“Sub-principles 2b and 2c - conclusion

The charity charges high fees which require some mitigation in order to show that the opportunity to benefit is not unreasonably restricted. We recognise that the extent to which the charity is able to mitigate the fees is heavily influenced by factors such as size of the school, location and financial situation. It is also clear that the charity is addressing the requirements of these sub-principles. It is taking a number of steps to provide opportunities to benefit in a material way that are related to the

1 http://www.charity-commission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/pbassessreports.aspx

2 <http://www.charity-commission.gov.uk/Library/guidance/assesschurch.pdf>

3 http://www.charity-commission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/assessrestbay.aspx

4 http://www.charity-commission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/assessanselm.aspx#e

charity's aim for those who cannot afford the fees, including those in poverty. At this stage, however, our assessment is that the organisation needs to do more and, in particular, needs to:

- *make accessibility to its benefits more extensive and targeted at those unable to afford the fees; and*
- *take further action to ensure that people in poverty are not excluded from the opportunity to benefit.*

We concluded that, taking into account what is reasonable and appropriate in the circumstances of this charity, it does not provide sufficient opportunity to benefit in a material way for those who cannot afford the fees, including people in poverty, and that the charity does not fully meet sub-principles 2b (in relation to fees) and 2c."

2. Genuine charitable organisations would benefit if independent assessments were to be published explaining how the organisation is of benefit to the public

An independent, robust assessment of the benefits provided by an organisation to the public, published as a report, would be a useful marketing tool. Charities may find that increased public confidence translates into increased donations.

Even a report that identifies harms committed by an organisation could be of value were it to:

- a) state the measures put in place by the organisation to remedy the harms and prevent future instances; and
- b) identify the benefits provided by the organisation to be weighed against the harms.

3. Taking into account the harms that an organisation perpetrates as part of the public benefit assessment makes good common sense and is in the public interest

That an organisation can be supported by public funds (in the form of tax exemptions and concessions) while at the same time committing serious, systematic public harm that is not taken into account in determining whether to grant that public support runs contrary to notions of justice, good conscience and the public interest.

Consider the situation where there are victims of serious abuse by an organisation recognised as charitable, in the following three scenarios:

- a) The community provides public funding support to the organisation and is not interested to consider the harms perpetrated by that organisation;
- b) The community considers the harms perpetrated by the organisation, giving due weight to both the seriousness of the abuse suffered by the victim(s) and the public benefits the organisation provides. The community continues to provide public funding support provided that the organisation puts in place measures to redress the harm and prevent

future occurrences; and

- c) The community considers the harms perpetrated by the organisation, giving due weight to both the seriousness of the abuse suffered by the victim(s) and the public benefits the organisation provides. The community determines that the harms committed, in all the circumstances, are such as to require that no public funding support be made available to the organisation.

Scenario a) is unacceptable, in my submission. Yet, scenario a) appears to be the current state of the law and practice. It certainly represents the wider community's perception as to how the system works.

Scenario b) may not fully satisfy victims, but it must be immeasurably more palatable to both victims and the wider community than scenario a).

4. If the public benefit test already allows for harms to be taken into account, then there should be no objection to clarifying the law to that effect

The process in scenarios b) and c) - that proposed by the private senator's bill - should be expressly required by law. Some submissions to the committee argue that public harms can already be taken into account under the current wording of the law. If that argument is accepted then there can be no objection to making the public harm consideration explicit.

The community needs to be assured that measures are in place to ensure that our taxes are not supporting organisations committing ongoing abuses. An express requirement that harms be taken into consideration will go some way to building confidence among the Australian community that the process can:

- a) screen out organisations which commit serious and systematic harms; and
- b) require rectification and redress by those organisations which have committed harms, but which the public interest, on balance, supports granting tax exemption/concession.

5. The proposed amendment would impose no additional burden on any organisation unless it had committed harms

If an organisation has committed harms, then it should properly take steps to redress those harms and prevent future harms occurring *irrespective of any application for, or grant of, charitable status*. That is just good governance.

Thus, the proposed amendment would not itself impose any additional burden on the organisation except that it would need to report the steps taken and make a case that the public interest is in favour of charitable status being granted notwithstanding the harms committed. That burden is greatly outweighed by the benefit to the wider community in ensuring public funds do not support abusive organisations and in increased confidence in the charitable sector.

CONCLUSION

In conclusion, I have made no submissions specific to any particular organisation, because I believe the proposal to be a good one for general application.

However, in the interests of full disclosure, I wish to state my interest in the Church of Scientology and its related organisations as follows:

- a) I was never a member of the Church of Scientology, nor have I undertaken any of its courses.
- b) Until I began researching Scientology in early 2008, I knew no Scientologists or former Scientologists (to the best of my knowledge).
- c) Since early 2008, I have undertaken activism to bring accountability to the management of the Church of Scientology and to prevent further instances of crimes and abuses. That activism has included:
 - a) corresponding with politicians, government and non-government bodies and members of the media in Australia, the United States, the United Kingdom, France, Germany and elsewhere;
 - b) liaison with the US Federal Bureau of Investigation; and
 - c) meeting with senior staff of a US Senator and a US Congresswoman to discuss human trafficking within the Scientology organisations.
- d) In February 2010, my name and photograph appeared on a website maintained by a senior Scientologist based in Los Angeles and which may best be described as a "hate" site.
- e) On 9 and 10 March 2010, I was followed from my place of employment by agents of the Church of Scientology.
- f) In May 2010, I was informed by the Legal Profession Complaints Committee in my state that the Church of Scientology in Australia had lodged a complaint against me, alleging unprofessional conduct on the basis that I had used pseudonyms to protect my identity. The investigating officer advised in a response to the Church of Scientology that no unprofessional conduct was disclosed on the face of the complaint.
- g) In spite of the above, I do not wish to see any "ban" on the practice of Scientology, but only that it be practised in accordance with general laws. Until that is demonstrated to be the case, I believe that any grant of tax exempt status or other concessions to Scientology organisations offends good conscience and is not in the public interest.

Yours faithfully

(Name redacted)