

# Inquiry into Tax Laws Amendment (Public Benefit Test) Bill 2010

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*Submission by the Rationalist Society of Australia to the Senate Economics  
Legislation Committee*

*June 2010*

The Rationalist Society of Australia (RSA) welcomes the opportunity to make a submission to the Committee.

In October 2008 the RSA made a submission to the Australia's Future Tax System Secretariat in relation to the definition of 'charitable purpose'. We argued that it is not appropriate for 'the advancement of religion' to be included in this definition. We argued religion in itself should not attract tax exempt status. A copy of our submission is attached.

The common law on charitable purposes and the tax status of charities is well established. The Bill outlines a set of principles to be utilised in the formulation of a 'public benefit test'. Institutions would be required to demonstrate to the Commissioner of Taxation that their aims and activities satisfy these principles before they are given tax exempt status.

It is not clear whether the intention of the Bill is to replace the existing common law. This is not clear either from the Bill or the explanatory memorandum. If the intention is to replace the common law, we submit that the Bill should reflect the way in which the principles depart from existing common law.

A recent 2009 Full Federal Court decision (FCof T v Aid/Watch Incorp 2009 FCAFC 128) recognised and followed a 1891 decision (Commissioners for special purposes of income tax v Pemsel 1891 AC 531) on the four categories of charity: trusts for the relief of poverty, trusts for the advancement of religion, trusts for the advancement of education and trusts for purposes beneficial to the community. The Federal Court stated that a common requirement underlies these categories, namely that for a purpose to be charitable it must be able to construed by the Court as being for the public benefit. Thus the Federal Court recognises that entities engaged in activities for the purpose of relieving poverty, advancing religion, advancing education and benefiting the community are engaged in charitable activities. The Federal Court recognises that such activity is of its nature beneficial to the public. The Federal Court also recognises that for a purpose to be charitable it must

be beneficial to the public, it must pass the public benefit test. The common law public benefit test however is informed by the presumption of public benefit in the categories of purpose above and how the court construes the public benefit on a case by case basis.

The proposed Bill does not appear to challenge the existing common law public benefit test or create the formulation of an alternative public benefit test. The broad principles of the Bill could in effect sit beside or give legislative force to the common law presumption that there is an over-riding public benefit to the four categories of charity formulated by Lord Macnaghten in 1891. We are not sure this is the intention of Senator Xenophon. He wishes to examine each activity of an organisation and assess its public benefit not burdened by a presumption that certain activities of organizations are in themselves charitable. Clearly Macnaghten's assumption that the advancement of religion and the advancement of education were *ipso facto* charitable purposes may have been appropriate in relatively homogenous Victorian Britain where 'religion' was equivalent to the Church of England and cozy afternoon teas with the vicar. However this assumption cannot uncritically be carried over into the 21<sup>st</sup> century where we have witnessed from time to time some religious leaders calling for the destruction of Western civilization together with schools that educate their students in the means to carry out this destruction. Neither *being religious* nor *being educational* can any longer be in itself a guarantee of charitable intention. Therefore it is important that some form of public benefit test be formulated as the over-riding criterion for charitable status without the burden of the presumptions at common law.

We consider that the Bill needs to be amended to make it clear that it displaces the existing common law public benefit test both by addressing the charitable purposes which the common law already defines as inherently charitable purposes for the public benefit and by making clear its aim of creating a new public interest test to allow the community to properly assess whether an institution is acting for a charitable purpose and therefore properly in receipt of a tax exemption.

We agree with Senator Xenophon that organisations such as the Church of Scientology should not be able to use tax concessions to fund programmes that cause pain and hardship to members of the community. The RSA has demonstrated its support of the Senator's campaign in this regard. However we are concerned that this Bill may be perceived as addressing the activity of this single organisation as opposed to the wider and deeper issue, which is to identify which entities should properly be considered charities for the purpose of tax exemptions.

We agree with the recent Henry Report on Australia's future tax system in relation to his observations on the complexity of tax concessions with respect to charities and how the current framework does not fully reflect community preferences. Henry recommends a National Charities Commission. We support this in principle.

In sum, while we support the intent of this Bill, we believe what is needed is a comprehensive review of the existing law with respect to charities and the public benefit.

e: [rationalist@bigpond.com.au](mailto:rationalist@bigpond.com.au)  
ph: (03) 9530 2954  
PO Box 1312 HAWKS BURN, VIC 3142



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Australia's Future Tax System Secretariat  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [AFTS@treasury.gov.au](mailto:AFTS@treasury.gov.au)

**Inquiry into Australia's Future Tax System**  
**Submission by the Rationalist Society of Australia**

*INTRODUCTION*

The Rationalist Society of Australia welcomes the opportunity to submit our views regarding aspects of the Australian tax system, and would also very much welcome the opportunity to elaborate on our views to the members of the Inquiry in due course.

In the following submission we focus on the definition of what should be considered a "charitable purpose" and argue it is no longer appropriate, if it ever was, for the "advancement of religion" to be included in such definition, and hence inappropriate that any religion *qua* religion be eligible for tax-exempt status.

The **Rationalist Society of Australia** is a not-for-profit organisation that has in effect existed, with minor name changes, since 1909 when it was founded in Melbourne by a small group of free thinkers including John Latham, later Sir John Latham, Chief Justice of the High Court of Australia. The Society currently has nearly 500 members across all states of Australia. The aims of the society are:

- (a) To propound and advance Rationalism, which is defined as the attitude of mind which unreservedly accepts the supremacy of reason, and aims at establishing a system of philosophy and ethics independent of all arbitrary assumptions or authority.
- (b) To stimulate freedom of thought.
- (c) To promote inquiry into religious and other superstitious beliefs and practices.
- (d) To encourage interest in science, criticism, history and philosophy, as connected factors in a progressive human culture, independent of theological creeds and dogmas.
- (e) To promote the fullest possible use of science for human welfare.
- (f) To promote a secular and ethical system of education.
- (g) To print or publish original material, including electronically recorded material, relevant to the objectives of Rationalism; or re-issue any periodical or standard or notable books on matters relevant to the objectives of Rationalism and to support the printing, publication or re-issuing of the same by any other person.
- (h) To aid the progress of Rationalism by means of publications or literature, public lectures, or other such means and activities which may be determined from time to time.

In making this submission, the Society believes that any consideration of this aspect of the Australian tax system should be conducted in the light of the important information contained in Max Wallace's book *The Purple Economy: Supernatural Charities, Tax and the State*. We understand that a copy of this book has been submitted to the Inquiry by its author, and we strongly urge its close reading by the Inquiry.

The Rationalist Society believes the existing definition of "charitable purposes" currently accepted by the Australian government, and in particular, the inclusion of "the advancement of religion" in that definition of charitable purposes, is not consistent with what we accept in a modern secular society as a purpose of charity, and this unfairly distorts the tax collection system in this country and deprives the government, and hence other taxpayers, of the benefit of monies that logically should be part of our national resources. Moreover, when religions become involved in fundamentally commercial operations, the market becomes unfair and anti-competitive. It leads to such stark commercial anomalies as one breakfast food manufacturer being liable for taxation and its competitor, which happens to be owned by a religion, being exempt.

Many organisations, including religious organisations, have historically provided and currently continue to provide charity. However it does not necessarily follow that an organisation, religious or otherwise, that *performs charitable acts* is therefore a *charity*.

It is time, we believe, to take “the advancement of religion” out of the definition of charity and measure in wholly secular terms those elements of an organisation that wishes to be considered charitable, whether a religious organisation or not.

Historically the inclusion of “the advancement of religion” in the definition of charitable purpose goes back to the time of Queen Elizabeth I, when England had an established religion and there was a symbiotic relationship between the Church of England and the Monarchy, symbolized by the fact that even to this day the English monarch is crowned in a cathedral by the Archbishop of Canterbury and the appointment of an Archbishop of Canterbury is made by the monarch on the advice of the Prime Minister. While even the original logic of including “the advancement of religion” as a charitable pursuit may have been shaky, it did at the time make sense politically. However in twenty-first century Australia very different conditions prevail. It is time to abandon this archaic throw-back to a previous era. We suspect it has survived to this day, despite its manifest inappropriateness, only because there are powerful vested interests who unjustly benefit from it and up till now no legislator or legislative body has had the courage to challenge them in the public interest. It is to be hoped this Government will have that courage and take the logically necessary step of removing “advancement of religion” from the definition of charity.

While the Society does not dispute that many religious groups are involved in charitable activities, for regulatory and taxation purposes these activities can clearly be accommodated under the other heads of charity. The question that needs to be asked is, “Is there anything specifically charitable about a religion *per se*?” – as distinct from its charitable off-shoots – that needs singling out for special treatment. The answer, we argue, is “No!”

In Australia, the definition of religion has been clearly established in case law, specifically by the High Court judgment in the so-called “Scientology case”.

In *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic) 1983 154 CLR 120* [1983] HCA 40; (1983) 154 CLR 120 (27 October 1983), the newly-declared “church” of Scientology appealed against a ruling by a Victorian tax commissioner that Scientology was not a religion, and that therefore the organisation was not entitled to the generous tax breaks afforded religion in Australia. The lead judgement by Acting Chief Justice Mason and Justice Brennan maintained:

We would therefore hold that, for the purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion. (at p137)

So in Australian law, religion is defined as belief in a supernatural Being, Thing or Principle, plus the acceptance of canons of conduct to give effect to that belief. Therefore, "the advancement of Religion" can only mean "the advancement of belief in a supernatural Being, Thing or Principle and the advancement of the acceptance of canons of conduct in order to give effect to that belief". It is clear the advancement of belief and of canons of conduct can in no way be construed as charitable acts, irrespective of any praiseworthy charitable activities the belief's adherents may get up to at other times; it is thus also clear the advancement of religion as a head of charity *per se* has no logical justification. Any genuine charitable activity indulged in by members of religious organisations is easily accounted for under the other heads of charity and a separate discrete category for religion *qua* religion is an anomaly and a *non sequitur*.

In the past the inclusion of the "religion" head has been buttressed by the argument that, in general, religion is a "good thing" and should therefore be supported by the community. Thus, for example:

... the law presumes that it is better for a man [*sic*] to have a religion ... rather than to have no religion at all. *Holmes and others v (UK) HM Attorney General* [1981]

However the fact something is worthy of support does not in itself entail that it ought *ipso facto* be defined as a charity – there are many other worthy activities that are not so defined. Further, in the light of modern history with its plethora of religiously inspired violence, it is at least an open question as to whether it is in fact better in all circumstances for a man (or woman) to have a religion rather than have no religion at all. In fact, in modern times "the advancement of religion" could be seen as inimical to the public benefit, rather than supportive of it. This is not just a biased atheist opinion. In a paper delivered to the Inaugural Australasian Christian Legal Convention in 2001, Mr Justice Michael Adams, a leading member of the Uniting Church, admitted:

I do not think it can be seriously contended that any substantial legal, social or political advance, even in the modern era, has been marked by a Christian consensus, with the possible exceptions in the USA of the extension of civil rights to Afro/Americans in the 1960's and 1970's and the changes to the Australian Constitution concerning indigenous Australians in 1967.<sup>1</sup>

More recently, a study by Gregory Paul showed that amongst the developed countries, pro-religious democracies consistently endured higher rates of societal dysfunction than pro-secular ones:

In general, higher rates of belief in and worship of a creator correlate with higher rates of homicide, juvenile and early adult mortality, STD [sexually transmitted disease] infection rates, teen pregnancy, and abortion.<sup>2</sup>

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<sup>1</sup> The Hon Justice Michael Adams: "Christianity and Law Reform: a historical perspective, with special reference to the criminal law." <[http://www.lcf.pnc.com.au/convention\\_papers42.htm](http://www.lcf.pnc.com.au/convention_papers42.htm)>

<sup>2</sup> Gregory S. Paul: "Cross-National Correlations of Quantifiable Societal Health with Popular Religiosity and Secularism in the Prosperous Democracies: A First Look", *Journal of Religion & Society*, Volume 7 (2005)

Moreover, each religion believes it is “the one true faith” and all other religions are at least in part committed to false beliefs; in an inclusive and multicultural society this leads to unwanted divisiveness, and tends to loosen communities’ ties rather than strengthen them, despite all efforts of the various religions to “work together”. This is a further reason for not considering religion, distinct from any actual charitable acts that may be performed by religious organisations, to be a public benefit.

Instead of including religion *per se* in the definition of heads of charity we need to be able to single out for charitable status those examples of benign activity performed by religious organisations that are in fact charitable. It is clear the other heads of charity can do this very efficiently and effectively. The discrete category for religion is at best redundant and at worst dangerous.

A similarly flawed rationale for the retention of the “religion” head was put forward by the Commonwealth of Australia *Report of the Inquiry into the Definition of Charities and Related Organisations (June, 2001)*, which justified it as follows:

The Committee affirms that ‘the advancement of religion’ should continue as a head of charity. It is clear that a large proportion of the population have a need for spiritual sustenance. Organisations that have as their dominant purpose the advancement of religion are for the public benefit because they aim to satisfy the spiritual needs of the community.

Putting to one side for a moment the question as to whether such spiritual needs are in fact so widespread, this proposal creates insoluble problems in conceptualization and implementation. Firstly, charity is not about providing for the “needs of the community” as a whole, spiritual or otherwise. Charity is about meeting the needs of those people who through social or individual circumstances are unable to meet their needs themselves. Charities do not meet, for example, the nutritional needs of the whole community, but only of those poorer members of the community unable to provide for those needs themselves. In order for “satisfying spiritual needs” to be a charitable act, it would need to be demonstrated that the members of the community were not able to satisfy their spiritual needs themselves and needed help. But that is precisely what religious organisations are: groups of people coming together to mutually satisfy their spiritual needs, so there is no question that they are in need of charitable help because they have demonstrated their spiritual self-sufficiency and they cannot be classified as people in need of spiritual charity. So the claim that religions “aim to satisfy the spiritual needs of the community” in no way makes them charities in any meaningful sense of the word.

Secondly, according to Abraham Maslow’s widely accepted ‘hierarchy of needs’, there are a number of base level needs that must be satisfied before higher level needs come into play. The problem is, spiritual needs come at the top of the pyramid and logically, if we classify meeting spiritual needs as appropriate objectives for charity, we must include all the needs below them also. This means meeting any human need whatsoever is a candidate for charitable status, which is clearly untenable.

Maslow's base level is biological and physiological needs: air, food, drink, shelter, warmth, sex, sleep, etc. This is plainly an area where charities might be needed and historically have been needed, to help those unable to meet these needs themselves. Likewise for Maslow's second level of safety needs: protection, security, order, law, limits, stability. The role of charity in Maslow's third level – the need for belongingness and love: family, affection, relationships, work group – is less clear, although there may be some room for involvement. However it is patently obvious that Maslow's fourth level – the need for esteem: achievement, status, responsibility, reputation – are needs we expect people to meet without the help of charity. There is no Royal Society for the Preservation of Status and Reputation. The same may be said for the fifth and highest of Maslow's levels, the need for self-actualization: personal growth and fulfilment – where spiritual needs fit. It can hardly be claimed this is an area where charity is appropriate.

In any event, secular community is rich in a diversity of activities people engage in to find happiness, satisfaction and meaning in their spiritual lives, and this spreads well beyond the province of religion. Spirituality is by no means the exclusive province of religion. In April, 2000 the Rationalist Society conducted a two-day conference on *Spirituality Without Religion*<sup>3</sup> and there have been important recent books: *Spirituality for the Skeptic* (Robert C. Solomon, OUP, 2006) and *Atheism et Spiritualité* (André Comte-Sponville, Viking, 2007). So concern with spirituality cannot in itself set religions apart from other movements and *ipso facto* cannot be invoked to justify the advancement of religion as a charitable activity.

We therefore assert that the attempt of the *2001 Report of the Inquiry into the Definition of Charities and Related Organisations* to justify the "advancement of religion" head as acceptable to the definition of charitable purpose under the guise of "meeting spiritual needs" cannot be maintained and must be abandoned.

There is a further problem with the notion of advancement with respect to religion. If this means attempting to increase numbers and gain converts, such advancement can only be at the expense of other religions, which is not very charitable. If it means the internal consolidation and refinement of the religion and its practices, this amounts to self-help rather than helping others and again, cannot be considered a charitable activity and for the public benefit.

Finally, the broad brush approach to religion which includes all religious organisations' activities leads to other anomalies. Some religions are engaged in commercial activities and are competing on the open market with non-religious companies in the same niche of the market. The Australian Tax Office and the Treasury would be acutely aware that this situation is uncompetitive and distorts the market.

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<sup>3</sup> See the proceedings at <<http://www.rationalist.com.au/archive/54/ar54toc.pdf>>)



The amount of tax foregone by the Government is not insignificant. Research done for the Rationalist Association of Australia in 2004 has shown that tax privileges accorded religious organisations provide substantial incentives for organisations to seek status as a religion in order to benefit from these concessions, thus distorting the market significantly. Utilising the various tax exemptions available, a hypothetical 'New Universal Church', with start up capital of \$10B, could achieve tax savings of more than \$250M over its first three years compared with organisations doing similar work but not accorded such exemptions (see Appendix 1). We are also aware the Secular Party of Australia has estimated the total cost to Australian taxpayers of tax concessions accorded religious organisations is in the realm of tens of billions of dollars. Without precise data it is hard to quantify the actual revenue foregone but it is fair to say it is significant.

We agree with the recommendation of the *Access Economics* submission to the 2001 *Commonwealth Inquiry Into The Definition Of Charities And Related Organisations* that:

“it is appropriate to distinguish between commercial and non-commercial activities undertaken by charities and related organisations.

“Whether or not charities and related organisations undertake commercial activities in order to perform their core purpose effectively is a matter for them to determine. However, such activities should be subject to the principle of competitive neutrality as applies to similar commercial activities undertaken by government business enterprises and to private sector businesses. For public sector support to charities and related organisations to be effective, efficient, fair and transparent and accountable, it should be focussed on activities that are charitable, religious and community service not-for-profit in nature, and not extended to activities that are commercial in nature.”

Again, this problem would be solved by deleting the religion head altogether and inviting religions to apply for charitable status for their genuinely charitable activities only.

For all of the above reasons, we say there is no sound argument for including the “advancement of religion” head in the criteria for charities, and moreover, its inclusion leads to undesirable consequences, both from the point of view of maintaining government revenue collection and from the point of view of ensuring competitiveness in a free market.

**We therefore strongly recommend the Taxation Inquiry should seek the deletion of the “advancement of religion” as a definition of charitable purpose.**

# G R George, D Foster and D Green

## Tax policy:

# Religious tax privileges as concessions

### Introduction

This paper is informed by research conducted by Master of Business Administration students of the Victoria Graduate School of Business. The Rationalist Society of Australia provided funding for this research, during 2004 and 2005. The research and the reports were directed by Dudley Foster, Associate of the Graduate School of Business and advised by Geoffrey George, also of the Graduate School and the School of Accounting and Finance, under the Project Partnership program of the Graduate School.<sup>1</sup> Assistance with the research and report preparation was provided by a Steering Committee comprising Peter Dumble and David McKenzie with Dudley Foster and Geoffrey George.

### The research brief and findings of project 1, 2004

The research was conducted during 2003 and published in 2004 as, 'Concessions available to religious and other non-profit organisations in Australia: An ongoing investigation'.<sup>2</sup> The brief for Project 1 was to identify existing taxation and other concessions available to not-for-profit (non-profit) organisations in Australia, including religious organisations in particular as a specific sub-group of the not-for-profit sector. The brief also included a requirement to estimate the costs to revenue associated with the concessions identified.

Data was gathered from public sources, government bodies at federal, state and local government levels, officers of the Anglican Church of Australia, the Unitarian Church, the City of Boroondara, City of Port Philip, and other sources noted in the Report.<sup>3</sup>

The findings with regard to not-for-profit organisations (NPOs) in general include the following:

#### 1. At all levels of government:

- Disclosure of concessions and the cost to revenue of concessions is underestimated for all levels of government in Australia as a result of incomplete information capture at each level of government.

#### 2. At federal government level:

- Four categories of NPOs were identified as eligible to receive concessions being charities, community service organisations, public benevolent institutions and religious organisations
- Federal treasury recognizes eleven concessions which apply to NPOs
- Federal tax concessions were found to be uneven

in application and further, issues of definition of concessions were investigated by the Charities Definition Inquiry in 2001<sup>4</sup>, by the Productivity Commission in 2003<sup>5</sup> and the Australian Taxation Office (ATO) in its Ruling TR 2005/21<sup>6</sup>.

#### 3. At state government level:

- Concessions available to NPOs differ state to state
- The categories of NPOs that may benefit from concessions vary state to state
- Concessions favour larger, asset-rich organisations.

#### 4. At local government level:

- Data on concessions provided to NPOs was incomplete and varied from council to council
- Councils use common law interpretations to assess eligibility for concessions
- Concessions favour land-holding organisations
- Councils are not required to publish information on concessions granted.

The findings specifically in relation to religious organisations include the following based upon a specific examination of the affairs of the Anglican Church of Australia and the Unitarian Church.

- Tax concessions are significant and very important for the financial management of religious organisations.
- Assets of religious organisations are often held by trusts, control over such assets residing with the particular religious organisation.
- Religious organisations exercise control over such assets held in trust of affiliated organisations by board membership and informal networks.
- Religious organisations achieve concessions as a consequence of the present definition of a charity, charitable purpose and their religious organisation status. Religious organisations argue that they hold an inherent duty of care.
- Any reduction or abolition of taxation and other concessions would significantly diminish the capacity of religious organisations to provide services.
- Religious organisations are organised and structured in a 'tax effective' way.

- Any attempt to distinguish religious organisations from other charities would be difficult to implement and sustain within the present legal environment.

The major taxation and other concessions available for not-for-profit organisations include the following:

### 1. At the federal government level:

- Income tax exemption for registered health-benefit organisations
- Income tax exemption for public and not-for-profit hospitals
- Income tax exemption for religious, scientific, charitable or public education institutions
- Exemption of Australian earned income of the visiting representatives of educational, religious, scientific and philanthropic organisations
- Tax deductibility of gifts to approved institutions
- Benefits provided by public benefit institutions to employees
- Rebate of fringe-benefit-tax (FBT) for some non-government NPOs
- Staff accommodation provided at religious institutions including meals
- Select car-parking FBT exemptions.

These benefits were estimated at \$1.1 billion per year by this research.

### 2. At the state government level:

- Land tax exemption on land used exclusively by charitable organisations for charitable purposes
- Land tax concessions for not-for-profit organisations where used for social, sporting, cultural, literary purposes including horse, pony and harness racing, and for other cultural and sporting recreation purposes
- Land tax exemption for friendly societies, associations of ex-servicemen
- Payroll tax exemption for public hospitals, public benevolent institutions, charities, non-public schools, not-for-profit hospitals, and for religious organisations.

These benefits were estimated at \$413 million per year by this research.

### 3. At the local government level:

- Rate exemptions for land used for charitable purposes
- Rate exemptions/reductions for cultural and sporting associations
- Registration fees (but not Traffic Accident Corporation) fees
- Water rate concessions.

It was not possible to estimate the cost to revenue of the local government concessions. The City of Melbourne<sup>7</sup>, in its submission to the Charities Definition Inquiry noted above, estimated that rates foregone were around \$10 million per year.

The Report of 2004 concluded with an examination of the activities of the Anglican Church of Australia and the Unitarian Church located within the City of Port Philip and the City of Boroondara. This data was used to identify and confirm the impact of concessions at the local government level to religious organisations.

## Research brief and findings of project 2, 2005

Following the identification of taxation and other concessions in project 1, together with the provision of an estimate of the monetary value of such benefits available to NPOs, the research brief for project 2 provided for a simulation exercise assuming that a new religious organisation was to be established in Victoria, with available funding of \$10 billion for establishment and development purposes.

Project 2 took the Catholic Church as a model for the structuring of the 'New Universal Church'. Further, the structuring of the welfare operations of the proposed New Universal Church was informed by an investigation of the structure and purpose of both the Brotherhood of St Laurence and the St Vincent de Paul Society. Regarding proposed educational facilities to be established, the Catholic Church structure was adopted for the New Universal Church, as an existing, successful and widespread system. For health facilities, Mercy Health and Ramsay Health Care were taken as existing models of health-care provision, which maximized benefits including taxation and other concessions. Finally, a commercial operations/investments element was established within the structure of the New Universal Church to enable the creation of a 'tax effective' income-stream, which would be available for the purposes of the establishment, and operation of the New Universal Church.

The simulations conducted by this research and modelling associated with the simulations provided as asset allocation of the available funds to churches, schools, hospitals, aged care facilities, welfare operations and commercial operations. It is noted that 'commercial operations' would be structured as an integral part of the governance structure of the New Universal Church under the control of the governing board of the New Universal Church.

The development strategy of the New Universal Church provided for the early establishment of churches within the State of Victoria, including establishment in both Metropolitan Melbourne and regional Victoria. The co-location of educational, health care and aged-persons homes with church establishments is assumed for the purposes of model building and simulations.

## SEPARATING CHURCH AND STATE

Resulting from simulations conducted by the research group, the asset allocation recommended is presented below.

### **Recommended asset allocation and estimated taxation benefits for the New Universal Church**

Churches	\$43.536 million
Welfare operations	\$5.143 million
Education – primary	\$118.690 million
Education – secondary	\$291.825 million
Education – tertiary	\$244.775 million
Health/aged care facilities	\$301.609 million
Commercial/investments	<u>\$8,994.419 million</u>
<b>Total Project Funding</b>	<b>\$10,000.000 million</b>

It was estimated that the total taxation forgone by all levels of government would approximate \$261.514 million during the first three years of the operations of the New Universal Church, assuming the following:

- All assets and ‘businesses’ would be operational within the three year establishment period
- Recognition of all income/expenditures associated with the asset allocation estimated above
- Achievement of all taxation and other concessions available to religious organisations
- Income from all operations, including ‘commercial/investment’ operations remains exempt from income taxation. (It can be expected that the New Universal Church will be established and structured in a ‘tax effective’ way as for existing religious organisations in Australia.)
- Projecting the development of the New Universal Church to a ten-year time horizon, demonstrates that the investment in aged care facilities would significantly increase within the total asset allocation to approximately 15% of total asset allocation, with a corresponding reduction in commercial operations/investments to 64% of total asset allocation by the close of year ten.

### **Conclusions and recommendations**

The findings of Projects 1 and 2 confirm that religious and other NPOs receive substantial taxation and other concessions from all levels of government in Australia at the present time. Such benefits appear likely to continue until such time that any re-definition of charities and/or religious organisations is investigated and/or implemented.

Further, the disparate levels of disclosure noted earlier in this paper remain a matter of public concern. It is likely that the cost of taxation and other concessions are underestimated by the research conducted to date and continuing. Urgent review of the disclosure requirements for not-for-profit organisations including religious

organisations appears justified from the research conducted to this time, if the ‘true cost to revenue’ of benefits and concessions is to be discovered.

It is clear that a newly establishing religious organisation could be created using a tax preferred structure which would be likely to preserve all the existing benefits enjoyed by presently established religious organisations in Australia, even if a significant part of the total operations of the newly establishing religious organisation were ‘commercial’. Structuring to ensure effective control over the total affairs of a newly established religious group appears likely to deliver equivalent benefits when comparing the newly establishing religious organisation with those already established.

Finally, it is clear that services of all kinds of very substantial value to the community are delivered by not-for-profit organisations including religious organisations. Any reduction in the provision of such services by NPOs would have a very significant impact upon governments and individuals to fund such services in alternative ways.

### **Footnotes:**

- 1 Dudley Foster, an Associate of the Graduate School, directs the Project Partnership Program of the Victoria Graduate School of Business. The program conducts consultancy and research funded by parties external to Victoria University.
- 2 Victoria Graduate School of Business, ‘Concessions Available to Religious and other Non-Profit Organisations in Australia: An Ongoing Investigation’, Victoria University, Melbourne, 2004 [see p 49 ff for **Executive Summary**]
- 3 Op. cit., pp 43-44
- 4 Charities Definition Inquiry, (CDI), 2001
- 5 *Productivity Commission, Social Capital: Reviewing the Concept and its Policy Implications*, Research Paper, Aus-Info, Canberra, 2003
- 6 *Australian Taxation Office, Taxation Ruling Income Tax and Fringe Benefits Tax: Charities 2005/21*
- 7 City of Melbourne, Submission, 2001

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