

**Submission on behalf of the**  
**Australian Catholic Bishops Conference**

**to**  
**The Senate Economics Committee**  
**Inquiry into**

**Tax Laws Amendment (Public Benefit Test)**  
**Bill 2010**

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Thank you for the opportunity to make a submission to the Committee's Inquiry into the Tax Laws Amendment (Public Benefit Test) Bill 2010. As members of the Committee will be aware, the Catholic Church, through its large number of organisations, undertakes significant charitable activities in Australia.

These charitable activities vary across a wide range, including health, aged care and community services; primary, secondary and tertiary education; pastoral care and religious services.

It is therefore with interest, but also some concern, that the Australian Catholic Bishops Conference views this proposed amendment to the Tax Laws. The concern is mainly due to the additional burden of regulation proposed by the Bill without any apparent advantage. A particular concern is that the apparent problem with one organisation, referred to in the explanatory memorandum, could be addressed without the imposition of considerable uncertainty as to the status of many thousands of other organisations.

**Is There a Problem?**

As the Committee will be aware, taxation in general and Charities in particular have been extensively examined in recent years. For example:

- The Charities Definition Inquiry in 2000 undertook an extensive study of Charities.
- The Productivity Commission's 2009 Review of Not for Profit Organisations also undertook an extensive study of Charities.
- The "Henry Tax Review", Australia's Future Tax System, which reported this year, also undertook an extensive study of Charities, especially in Chapter 7 of the Consultation Paper published in 2009.

Catholic Church agencies have made extensive submission to these Inquiries. None of these Inquiries recommended the substantial additional burden on Charitable and Religious Institutions in the form proposed by this Bill.

There is also extensive case law, both long standing and recent, concerning taxation and other matters regarding Charities.

In the Explanatory Memorandum for this Bill, Senator Xenophon says:

"The purpose of this Bill is to insert a public benefit test into the Income Tax Assessment Act 1997 which will require religious and charitable institutions seeking tax exemption to demonstrate public benefit through its aims and activities.

This Bill follows allegations from former members of the Church of Scientology about coerced abortions, false imprisonment, breaches of Occupational Health and Safety laws, stalking, harassment and extortion, to name but a few.

Given this, the tax exempt status of the Church of Scientology should be subject to a Public

Benefit Test as to whether or not it is appropriate that it is afforded taxpayer support.....

Charities are granted tax exempt status on the assumption that their aims and activities are in the interest of the community and to the benefit of the public, however it has become apparent that some organisations may be abusing this privilege.

A Public Benefit Test would significantly mitigate the risk of this occurring.”

This proposal would impose considerable burden upon many organisations in order to address what is alleged to be a problem with one. All of the alleged inappropriate matters listed in the Explanatory Memorandum can be addressed by existing agencies, using existing powers.

This Bill proposes to make a radical change to the existing law relating to the presumption of public benefit, without any indication of how it would be implemented, what criteria would be applied, or what existing organisations would need to do with respect to current endorsements. It seeks to do this in order to deal with a particular issue and as such is not good law.

The public benefit test used by the United Kingdom Charity Commission is problematic. Having reversed the presumption of public benefit it has sought to develop criteria to measure public benefit. For example, with respect to independent fee paying schools, it assesses public benefit by reference to such matters as community access to facilities and availability of scholarships for those who have insufficient means to pay the fees. Such criteria are arbitrary: How much access? How many scholarships?

This approach is not consistent with the original purpose of a public benefit requirement. This was not a qualifying test but a disqualifying one. Institutions for the advancement of education, or religion would be disqualified if the benefit was only to a small closed group associated with those who controlled the institution.

Taxation Ruling TR 2005/21 deals in detail with the concerns this Bill is attempting to address. It explains issues connected with private benefit, or where the purpose is commercial, illegal or against public policy. There is a specific section relating to purposes that are of insufficient value to the community.

### **Is More Regulation Needed?**

It is noted that the Prime Minister, the Leader of the Opposition and various other Parliamentarians, including Senator Xenophon, have often said that there is a need to reduce “red-tape”. The Federal Government National Compact, “Working Together” has as priority action area 5 - “reduce red-tape and streamline reporting”. Regulation is only justified if the additional benefit outweighs or, atleast, equals the burden imposed. It is submitted that the proposed burdens are disproportionate to the benefit envisaged by this Bill, especially when other means can achieve the same outcome.

The Bill will introduce a new regulatory mechanism that is undefined. A new process is likely to add to the administrative expenses Charitable and Religious Organisations will face as they take professional advice and put in place the procedures necessary to meet the Bill’s requirements.

There has been significant discussion in the academic literature relating to the way in which Charitable and Religious Institutions should be defined and how they should be regulated. This has

been considered by the Productivity Commission January 2010 report. This Bill should not be considered in isolation from the broader questions that it seeks to pre-empt.

A handwritten signature in black ink, appearing to read 'Brian Lucas', with a stylized, cursive script.

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18 June 2010