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ECONOMICS LEGISLATION COMMITTEE

Reference: Tax Laws Amendment (Public Benefit Test) Bill 2010

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**SENATE ECONOMICS
LEGISLATION COMMITTEE**

Monday, 28 June 2010

Members: Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*), Senators Cameron, Joyce, Pratt and Xenophon

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hutchins, Johnston, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Trood, Williams and Wortley

Senators in attendance: Senators Cameron, Eggleston, Fisher, Stephens and Xenophon

Terms of reference for the inquiry:

To inquire into and report on:

Tax Laws Amendment (Public Benefit Test) Bill 2010

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Committee met at 9.09 am

ACTING CHAIR (Senator Eggleston)—I declare open the first hearing of the Senate Economics Legislation Committee into Tax Laws Amendment (Public Benefit Test) Bill 2010. I am chairing this meeting in the absence of the Chair, Senator Annette Hurley, who for personal reasons to do with her family cannot be here today. I am the chair of the economics references committee, so by default I am chairing this committee today of the legislation committee.

The bill was referred to the Senate Economics Legislation Committee for inquiry on 13 May 2010. The committee is due to report by 31 August 2010. I will set out a few ground rules to facilitate the operation of what we are trying to do here today. This is a public hearing and members of the audience are most welcome to observe the proceedings. However, the audience is not a part of the proceedings so members of the audience do not have any right to speak, to interrupt or to contribute while the committee is hearing from witnesses giving evidence.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera or it may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a Senate committee.

I also emphasise that the terms of reference of this inquiry are limited to the examination of provisions of Tax Laws Amendment (Public Benefit Test) Bill 2010. The committee acknowledges that there has been public commentary concerning particular organisations. However, the operations of individual organisations are not within the terms of reference of this committee, and the committee does not have the authority to deliberate on such matters. They are not relevant to the bill.

I ask all members of the committee and witnesses to ensure that questions and comments are relevant to the terms of reference of the inquiry. A copy of the bill is available from the secretariat if you require guidance in this regard. If a witness objects to answering a question, the witness should state the grounds upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course be made at any other time. A witness called to answer a question for the first time should state their full name and the capacity in which they appear, and witnesses should speak clearly and into the microphones to assist Hansard to record proceedings.

There is one other matter I would like to mention before we hear from the first witness, and that is that the Church of Scientology has written to the secretary of the committee requesting a private meeting today before the committee proceedings begin. The committee has declined to have any such meeting, because the meeting was to discuss matters to do with the legitimacy of this hearing and the matters that might be raised before it.

I wish to put on record that this hearing has been ordered by the Senate, is legally constituted and is in effect a committee of the parliament of Australia inquiring into a piece of legislation. It is no different from any other Senate committee conducting an inquiry into legislation and only evidence given during the course of the proceedings will be considered by the committee.

[9.14 am]

MUTCH, Dr Stephen Bruce, Private capacity

ACTING CHAIR—I welcome to the committee Dr Stephen Mutch, a former member of the House of Representatives—who, I am sure, knows all about committee procedure. Dr Mutch, would you like to make an opening statement?

Dr Mutch—Thank you, Mr Chairman. I would like to tender to the committee a copy of my 2004 PhD thesis entitled ‘Cults, religion and public policy’. In this electronic age, and at less expense than a bound copy, I have transferred it to a disk. It is a read-only disk, but I know senators are well-equipped electronically. I hope that might be of some interest to you or your staffs. Secondly, I would also like to table for you an article I wrote entitled ‘Cultism, terrorism and homeland security’. It might not seem instantly related to this inquiry but in that article I talk about the role of cult watch groups in the gathering of information that might be of security use to the government. Within that article there is information that might be of relevance to this committee, so I would like to table it and a copy of the journal in which it appears.

I think that this inquiry is a timely investigation into what I would loosely call a loophole in our taxation system. It deals with an arcane area of tax law, applying a medieval presumption which in its country of origin has been superseded for a number of good public policy reasons. The inquiry does cross a number of fields of scholarship and is seen to be complex; indeed, controversial. It is also seen to be complicated and politically difficult. I do not think the truth is quite so daunting.

I have been invited to give evidence today because of my academic research. When I left parliament I thought I would go back and do some more work at university which I did not do well enough the first time around—I spent too much time with the Young Liberals! I went back to university and wrote a Graduate Diploma of Arts dissertation, which was entitled ‘From “cult” to “religion”’. I have already tabled that in the sense that it is an annexure to my submission, so I have given that up as a bonus to committee members. The PhD which flowed from that dissertation is a much more nuanced analysis of this area—I go into far greater depth and have changed a few of my views, though not very much—and that is the document that I would like you to look at in your busy lives.

The research that I undertook at university flowed from my own activities as a parliamentarian both at the state level, where I was a member of the New South Wales Legislative Council, and then at the federal level from 1988 to 1998. One of the reasons I have been asked to appear, I presume, is that at the moment I am an honorary associate in the Department of Modern History, Politics and International Relations at Macquarie University and I teach, among other things, courses on Australian governments and public policy and Australian foreign policy. I also conduct there a colloquium for the Global Leadership Program at Macquarie on religion, secularism and the state. When I have time from all the teaching that I do to do any research I like to look at this area of the interrelationship between new religious movements, groups that some people sometimes call cults or sects, mainstream religions and the state.

My field of research is public policy, in particular the interaction, as I said, between cults, sects, new religious movements, established religions and the state. I have published a number of articles in this field and my doctoral dissertation anticipates this inquiry in that it proposes my ideas for a way forward. In public policy terms we call this a bottom-drawer solution—I think the Americans call it a trash-can solution—in that it has been quietly gathering dust awaiting an opportunity such as this. I am pleased to be the first cab off the rank. I note that the Australian Taxation Office seem to be the other bookend, but their submission is of the utmost importance and we need to focus very much upon their submission.

I think the Treasury submission pretty much confirms the concerns I raised in my own submission about the inadequacies of the present system. I think as well as putting to bed the major objection to the proposed bill at the same time it raises the need for administrative and policy support to bring the bill into effect. A major objection is put to bed when Treasury say straight out:

Overseas experience demonstrates that the introduction of a public benefit test, thus removing the presumption of public benefit, has not caused significant issues for the charitable sector ...

Focusing somewhat on the Treasury’s submission, the ATO advises that it already applies the common-law public benefit test to applications. I think that statement in the submission does require some clarification.

I can always be picked up on this by either Treasury officials or other people making submissions—I am sure they will correct me if I am wrong—but it seems to me that what is applied at the moment to religious charities is indeed a nontest. It is a presumption. The ATO presumes that a religious charity operates by

definition for the public benefit. The only occasions on which this presumption is reversed and then tested in a fashion in my mind seem to be very haphazard. Treasury state:

The common law already envisages situations where purported charities' purposes fail to exhibit public benefit aspects, where public benefit is negligible, and where public detriment outweighs any public benefit.

... ..

Currently, weighing of public benefit against public detriment or harm is not required. However, the ATO advises that these considerations are, at times, taken into account by the Commissioner.

First of all I would query how you can determine public benefit without weighing up the benefit against harm. The submission also states:

... the Commissioner of Taxation can and does revoke endorsement of organisations where there is factual evidence available that the organisation does not provide a public benefit.

Not only that, it also states:

The Commissioner does not currently have a capacity to make 'policy decisions' about what should or should not be considered to provide a public benefit. He can only interpret and apply the statute and common law and apply it to the circumstances of individual taxpayers.

Going back to those sections, in other words, all religious charities are presumed to be for the public benefit. It is only under not so far revealed circumstances in that submission where the commissioner actually comes across factual evidence that might indicate that the presumption should be tested that the commissioner might take these considerations into account.

There is no transparent mechanism as far as I can tell whereby the reverse of the presumption is triggered. For instance, does the Australian Taxation Office monitor news reports? Does it monitor court cases for adverse comments about groups? Does it monitor assiduously *Hansard*—I presume it does? Does it act on the odd representation if officers feel moved to do so? Does anyone know that they should write to the Australian Taxation Office to object to the endorsement of a particular entity? Although it is becoming clear to me, after some years of looking at the issues and the reasonings involved in this area, it is a very opaque area and it is difficult for the average citizen to know where to go and who to take their complaints or objections to.

This state of affairs is entirely unsatisfactory. It is inadequate. It is not transparent enough. It can be improved. It is often said we need to solve the whole problem first, but we have been looking at these matters for sometime and I think this mechanism for the rebuttal of the presumption of public benefit needs to be looked at and can be addressed quite easily by this bill and by this committee.

The state of affairs is entirely unsatisfactory. Even if the ATO feels that the presumption should be reversed in determining whether in fact an entity operates for the public benefit, the commissioner can only apply known precedents and cannot apply his own policy decisions. So the scope for disqualification of problematic organisations is extremely narrow.

The central observation I would make here is that in England where the common law of charity developed, the two-pronged definition of religion was relatively narrow—belief in a deity and worship. The definition applied to essentially Christian groups in a country with an established church and was extended incrementally. The presumption of public benefit for religious charities was therefore applied to a relatively narrower group with the anomalous inclusion even there of Buddhism, for instance. With the advent of multiculturalism and plural faiths in our modern societies, and lots of immigration where people bring their faiths with them, we have tended to expand this definition of religion.

It was felt necessary to widen the definition of religion. In England where they have moved to codify these laws, they have widened the definition of religion somewhat—still not to the width that our definition entails, or our alleged definition entails—but at the same time they have removed this presumption of public benefit. The whole purpose there is to keep some sort of regulatory control over non-conforming or problematic groups. I am not naming any names and I will not at the moment. The point is that I think people are concerned about some groups that are non-conforming in that they might cause some harm to the adherence and harm to people in the public as well.

The problem with the Australian situation, as I see it, is that the reverse trend has happened. In 1983, we had a case called the Scientology case. In that respect, Scientology does feature prominently in the major public policy decisions that are made by the courts and governments. In that decision, the reverse has occurred. The ATO and other agencies have incorrectly or correctly, I am not sure, implemented a widely inclusive definition of religion. At the same time, they have continued to accept the now outdated presumption

of public benefit. This laissez-faire approach, in my view, allows a loophole through which all sorts of undesirable groups can gain access to tax exempt status as religious charities, subject only to an admittedly very ad hoc application of a public benefit test.

With respect to religious institutions, where it is noted that the Treasury states that there is no common law public benefit test in relation to working out whether an entity is a religion—or indeed perhaps religious charities—I would not be surprised if the basic definition of religion applied by the ATO is in fact an ethically neutral definition because the 1983 Scientology decision on this point is not entirely clear. The definition derived for administrative purposes from that case is belief in a supernatural being, thing or principal and canons of conduct giving effect to that belief. That begs the question: do canons of conduct giving effect to a belief have to be ethical canons of conduct, or are they merely mechanical or ritualistic? Could they really be just applied to an ancient bacchanalian cult?

ACTING CHAIR—We might ask you to finish soon because we have only a limited amount of time, and then the senators can ask you questions, unless there are other important points you want to make.

Dr Mutch—I will come back to them then. I would submit, first of all, that the legislature could require a positive ethic in any definition of religion—and this is not precluded in my view by the 1983 case. I will open it up to senators for questions. Thank you very much. I will come back to some of my points.

ACTING CHAIR—One of the problems with Senate committees is that we have lots of interesting witnesses but limited time, so that is why submissions are so important. You have tabled a document and a CD. Is it the wish of the committee that these be accepted? It is so ordered. Thank you very much.

The public benefit test proposed by the bill will be contained in regulations. Some submissions the committee has received have criticised this aspect of the bill. From your experience researching in this area, do you think that the proposed approach is desirable or would you like to see the bill modified? If so, how would you like to see it modified beyond what you have said already?

Dr Mutch—I do not have a definite view on that matter. I think that guidelines are provided to the Charity Commission for England and Wales and so forth so you can provide guidelines which would be subject at a future time to legislative oversight and review. I think it is a matter for senators really. If you think these matters are of the utmost public importance and interest and controversy, put them into the main bill. That really is of no great concern to me. I think the main thing is that the provisions are enacted.

Senator CAMERON—The Productivity Commission indicated that the benefit to charities in relation to public funding was anywhere between \$4 billion and \$8 billion. You indicate that the whole approach is based on an arcane approach and a medieval presumption. Do you want to just expand on why we should take a more modern approach to \$1 billion of public money?

Dr Mutch—If we are going to privilege organisations, we should make sure that we do so on proper public policy grounds, not on some odd presumption that a group is necessarily for the public benefit. There is an awful lot of taxpayers' money that is not necessarily wasted. In fact, it is put to good use if these organisations are genuine. If they are genuine organisations, they are providing a very good service to the citizens of this country. But there are a few non-conforming groups—seemingly the ones that want to take as much money as they can out of the hands of the people that are their adherents, and they often spend that money on litigation against their critics—and those types of groups maybe should be looked at in terms of their tax relationship with the state.

Senator CAMERON—You say there are a few non-conforming groups. Some of the submissions we have had from other organised religions say that they should not be disadvantaged because there are a small group of nonconformers—you should deal with the nonconformers and you should not make law generally on the basis of an exception. What is your view on that?

Dr Mutch—I think that is what this bill proposes, doesn't it? It sets up a general system. It is not a great onerous responsibility. Performing and genuine groups can show a public benefit. There might be other ways. There are different ways of approaching this that you could certainly look at. You could have a trigger mechanism. If there is an administrative problem in making sure that every group has to prove public benefit, you could have a different system set up whereby the ATO is given guidelines on when it triggers a reversal of the presumption and then goes along and tests a particular entity based on the guidelines that I think are very properly provided under this bill. If anything, this submission by the ATO shows to me that they are crying out for more legislative guidelines in this area.

Senator CAMERON—Some of the submissions that we have say that all of the issues that have been raised in relation to this inquiry can be addressed by the existing agencies using the existing powers, and much has been made of taxation ruling TR 2005/21. Do you have a view on that?

Dr Mutch—That is always said, isn't it? That could very well be the case when you are looking at particular criminal activities of an organisation. But, if you want to apply a test to an organisation that should be for the public benefit, I think the agency that we are looking at here is the Australian Taxation Office. So it is a fairly specific thing. I do not see any problem with that.

Senator CAMERON—Are you aware of the changes that have been made in the UK, Scotland, Ireland in relation to the establishment of a commission?

Dr Mutch—I must say that my focus was up until the end of my PhD. I have had very little time to revisit the taxation issues involved. Prior to the changes in the United Kingdom, there was a very important case involving Scientology. The Charity Commission for England and Wales examined that organisation with respect to its taxation as an entity. They actually ruled it out on the basis of definition. They said that it did not comply with the second prong of the definition, being worship.

Also they then went on, in that charity commission's case, to examine questions of public benefit and they said that they would have reversed the onus without any problems whatsoever and the things that they looked at there included adverse comment in public, adverse comment from the judiciary and so forth. They used all that sort of evidence to say that they would have reversed that onus. Then they would have looked at whether or not public benefit was provided by that organisation and they would have concluded that it was not, because if there was any benefit at all it was more in a private capacity for the auditing and counselling services that Scientology charges money for.

Senator CAMERON—You indicated, and I am not sure if these are the words that you used, that organised religious groups in the UK are working quite well and effectively with the charity commission. Is that so?

Dr Mutch—I do not have any direct knowledge of that myself. But that is what the ATO have said and that is what the Treasury submission says and I think we must rely very much upon their expert advice, so I would rely upon that.

Senator XENOPHON—Thanks for your submission and your work in this area. In relation to the 1999 Charity Commission for England and Wales decision in relation to the Church of Scientology, is it your understanding in respect of that decision that in order to determine public benefit the commissioners looked at issues of public detriment and harm?

Dr Mutch—It is an interesting question because they looked at those issues on the basis of whether or not the presumption should be reversed and then they applied further analysis as to previous cases. Once they said, 'Look, there's no problem here reversing the presumption; we are very concerned about these issues,' they had to take all those things into account. I think it is very unsatisfactory. In my thesis I think that the system then was also very unsatisfactory in the United Kingdom in the sense that they were relying upon newspaper reports and they were relying upon some adverse commentary in cases and so forth. Even then I think that was not really good enough in terms of the need to balance detriment against harm. I cannot see any way of avoiding that need. You really need to weigh those considerations and if they need further guidance I think that is good, because it was provided in the United Kingdom.

Senator XENOPHON—Insofar as the Charity Commission for England and Wales, in looking at issues, has a balancing act in weighing up both detriment and benefit, do you see it as relevant, in the framing of any regulations pursuant to this bill, to actually ensure that there is consideration given to issues of conduct and individual cases in order to frame those regulations?

Dr Mutch—How could you not take into account individual concerns and complaints? What do the ATO act upon now, for instance? Is it an individual's concern or complaint that they happen to receive? Is it that they happen to speak to someone in their family that knows about something? It seems a bit unclear to me as to what triggers them to take the decision to reverse the presumption and then apply some sort of test. The ATO's application of the test is extremely narrow and limited because they are only confining themselves, once the onus is reversed, to looking at some specific decisions that have been made in the courts in England essentially—because most of the examples that they have used here are English examples. In fact, I am not even sure that they would look at the charity commission decision. Is the charity commission decision a court decision? It is a quasi-judicial body, interestingly enough.

Senator XENOPHON—I am concerned about time constraints. There are a couple of things flying from that. Perhaps this is a double barrel question: are you aware of any decisions of the ATO where an organisation has been knocked out in terms of any religious status so that it will not get a tax-exempt status? And secondary to that, do you have any views as to whether you think, from your research, that the High Court's decision in 1983 in relation to the Church of the New Faith could be subject to further review or do you think there is scope there for the High Court to look at these matters?

Dr Mutch—Absolutely. It is a good question. I mentioned in my thesis there was a decision I believe—this is second-hand, but I read a submission that was made to the Sheppard inquiry and it mentioned the group known as the Raelians. They are the followers of Elohim—

Senator XENOPHON—How do you spell that?

Dr Mutch—E-l-o-h-i-m. Raelians are a group that follow Elohim who are an advanced race of extraterrestrials who created life on earth. The State Department of the United States says this is a religion, I believe, but the thing is that this religion was established by Claude Vorilhon—now called Rael—after an encounter with a little person in a green suit from a UFO in 1973. Now apparently the story is that—

Senator CAMERON—Are you saying that is a fact, or are you alleging that?

ACTING CHAIR—What was he smoking?

Dr Mutch—No, I am stating that he believed it to be a fact. And subsequently he is setting up embassies for the visits of the Elohim. But interestingly enough apparently they were denied religious institution status because they did not qualify as a religion by definition.

Senator XENOPHON—Here in Australia?

Dr Mutch—In Australia. That is what I mentioned in my thesis here on page 430. It is interesting why. It is because there is nothing supernatural about meeting someone in a flying saucer; they are real. So that would have been the reason for them being denied religious status. All they have to do is change their scripture and say really what emerged was a spirit and then they would get religious definitional status. What I am basically saying here is the definition of religion, although it is an expanding and very wide definition in Australia through which you can drive every cart—I mean you can have a group of Viking revivalists who would probably quite easily qualify as a religious institution. And frankly you might wish them to qualify as a religious institution for the purposes of marriage or, say, they wished to conduct a funeral service with Valhalla and so forth. So you could in fact have a very broad definition of religion so long as you can apply public—and that would also protect the aspect of section 116 of the Australian Constitution talking about religious exercise and religious freedom. But at the same time I do not think there is any problem whatsoever raised by section 116 in applying public policy parameters to the privileges afforded to groups that get the status of religion by definition because the definition is an ever-expanding definition. It could well be—and in fact if you look at various countries such as India, for instance, it is more of a spiritual group—sometimes it has been contemplated now that an equivalent belief to religion would also qualify as a religious organisation. So the word 'religion' is an expanding dynamic and almost impossible to define.

The Australian High Court gave an opinion on that, but it was in its appellate jurisdiction and I do not think people realise this. Not only that, the Australian High Court was extremely hamstrung by the fact that the pleadings before it limited its consideration of this matter.

Senator XENOPHON—This is the 1983 case?

Dr Mutch—Yes, that is the 1983 Church of the New Faith decision, the Scientology decision. So that decision really needs to be looked at very closely. You can either have an extremely broad definition of religion to cater for the free exercise component, in which case you could have a witches' coven, which is recognised as a religious institution, and celebrate marriage and so forth on whatever, and perhaps no harm done. But at the same time you might not wish to have a group becoming a charity with all of the privileges that that entails, and also the fact that you are giving them state sanction to conduct certain activities in the public that you might not wish certain groups to conduct. So it might sound a bit complicated, but it is not all that complicated and I do not think the High Court would balk at proper public policy parameters to the privileges that are given to these groups.

Senator XENOPHON—In essence are you saying that freedom of religion under section 116 of the Constitution does not necessarily mean that you get tax-free status?

Dr Mutch—Exactly, but of course it might mean something in the sense that it does mean something. It could mean that you have the right to free exercise of your religion perhaps in company with others but it does not give that right to do other types of activities in the community that the state does not want to subsidise you for. I have been working on this for a number of years, so it seems a little more understandable to me. I can understand how the very definition of religion is mind-boggling if you are encountering this aspect of it for the first time because it is so vague and could jump either way.

Senator XENOPHON—Finally, as my colleagues have questions to ask of you: is it your understanding from the work you have done on this that the public benefit test as applied in the United Kingdom has not been unreasonable or onerous with respect to the operations of those organisations that are now subject to—

Dr Mutch—As I said before, that is really something that I rely very much on the Australian tax office's statement where they said it is not the worst thing in the world to happen. I am also saying that there are probably other ways to attack that particular problem without being too onerous to all those genuine groups that we all know do good work in the community. I think there are a number of mechanisms that you could consider that would trigger a reversal of an onus.

Senator XENOPHON—Finally, the ATO in their submission, I think, were saying that the UK does not look at detriment. You are saying that is not quite the case, is it, because they have to balance benefit and detriment. Is that your understanding of the 1999 decision?

Dr Mutch—In my understanding of the earlier case they looked at that insofar as that was required for them to determine whether or not the reversal of the onus should occur. It gets a little complicated, doesn't it? Yes, of course they considered that and then they looked to see whether the body itself was performing a public benefit. They said that if they had decided the case on that basis it would not have been either. This is where organisations like the ATO and the charity commission are crying out for legislative guidance with a bit of strength so they can make these decisions. They like to say they are only applying precedent decisions, but in my view that creates a lot of holes because a precedent has not been created under a number of circumstances. That is why I pretty much admire what has been written in this bill because you are setting out quite clearly a number of public policy parameters that we need to look at that are very relevant to this.

In my thesis I proposed a mechanism where an adjudicative body would be set up—and there have been other proposals for that type of thing—but I do not see any reason to sit on our hands and not start to require this to happen now. It is all very well to say we have to do all this at once and then delay it to the never-never when there are very real concerns out there. Senator Cameron talked about the amount of money that organisations in default receive because of this wonderful gift of tax-exempt status. It is the very few organisations that probably do not deserve it that we should be looking at. I am not sure how few or how many because we just do not have the information.

Senator STEPHENS—Thank you, Dr Mutch, for your submission. I noticed that your thesis was completed in 2000.

Dr Mutch—No, that was my grad dip dissertation.

Senator STEPHENS—In your thesis, have you taken into account—I am sorry that I only have your grad dip thesis and have not had the chance to look at your other one. Since your earlier piece of work, *From 'Cult' to 'Religion'*, I guess you would have drawn on the 1996 industry commissioned report into Australian charity's not-for-profit sector. Since then, we have had the charities definition inquiry in 2001 and the proposed charities bill, which was proposed by the previous government in 2003-2004, so I was quite interested in your submission today. You really do not support the recommendation by the Henry review and the Productivity Commission's most recent report into a charities commission. I wonder why that is the case.

Dr Mutch—No, I said I do not really support the need for a new bureaucracy called the charities commission but I am very interested in the gatekeeping functions of the charity commission. I think those gatekeeping functions are very important to isolate and give more authority than the Australian tax office says it has now to make reasonable decisions on public policy grounds. It seems to me that that may be one of the impediments; setting up a whole charity commission is setting up a very big new bureaucracy.

Senator STEPHENS—Have you read the Productivity Commission's recommendations?

Dr Mutch—Some of them. That also related a lot to the commercial activities of charitable entities which might be seen to be in competition and so forth with ordinary commercial activities.

Senator STEPHENS—Quite a lot of the Productivity Commission’s report goes to the issue of taxation treatments and the benefits that not-for-profit organisations are able to access. I am also interested in the notion of public benefit, an issue taken up in the Productivity Commission report around the issues of the public benefits test and competition policy. Is that an issue that you have given any consideration to?

Dr Mutch—Not particularly, no. I have just focused upon what I think is the need to have a proper test and the need to do it sooner rather than later. I think that is important. Obviously the opinions of others should be taken into account.

Senator STEPHENS—The Treasury makes the point in its submission that the bill will only codify one of the aspects of the definition of charitable purposes and will not define charitable purposes more generally and will apply to charities and religious organisations seeking an income tax exemption. I am reading from page 65. So the public benefit test introduced by the bill will not apply to charities seeking access to other tax concessions at either Commonwealth or state levels. Do you see that as an issue?

Dr Mutch—I think you could maybe amend the bill so that it applies to the Commonwealth area. In my thesis I looked at the idea of state and Commonwealth, and I thought the Commonwealth should set the lead here. That is why I advocate the setting up of an adjudicative tribunal which could start to work on these definitions and so forth and would have more public policy discretion. I thought that the states would, in time, come on board that. At the moment, the states are not bound by section 116 to the extent the Commonwealth is. They might not be so keen. But I thought you had to take the lead at the Commonwealth level. I think that, if the bill needs to be amended to include other Commonwealth entitlements and privileges, it should do so.

Senator CAMERON—How do you make the determination about the actions of individuals in relation to an organisation? We have had plenty of reports of child abuse and mental anguish from people. The argument that gets put forward is that these are individuals within an organisation and it is not the organisation that is doing it. It is the issue of vicarious liability. When do the problems become so great that they become problems for the organisation and not the individual?

Dr Mutch—It is a good question. The organisation will often say, ‘This was undertaken by an individual within the organisation and we’re not responsible.’ I do not think it is a matter that is not able to be properly addressed. These decisions are being made now, of course, with the application of whether an organisation got a public benefit and so forth. It is just a matter of weighing evidence, and that is why I advocated the implementation of a judicative style tribunal. My view is that it is a lot easier to weigh the evidence of harm versus good in a small organisation where you have a very large number of complaints from former members, and people associated with them, who have been attacked by the organisation. It depends on the size of the organisation. With a large religious organisation with millions of adherents, you might see the occasional complaint come forward. But with some small, high-demand intolerant groups—and I think we know the types of groups we are concerned about—an extraordinary number of complaints and criticisms come out. I do not think it is that hard a job to weigh complaints against the size and so forth of the organisation. It is just a matter of weighing up evidence, which is something that judicative style tribunals do every day of the week.

ACTING CHAIR—Thank you very much for appearing before the committee. If you wish to make any additional comments or an additional submission you may do so.

[9.58 am]

ANDERSON, Mr James Alexander, Private capacity

MACKEY, Mr Kevin, Private capacity

SCHOFIELD, Mr Paul, Private capacity

UNDERWOOD, Ms Carmel Delia, Private capacity

VONTHENTHOFF, Ms Janette, Private capacity

ACTING CHAIR—Welcome. Before inviting you to make an opening statement I would like to remind you that 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. The committee acknowledges that there has been public commentary concerning particular organisations. However, the operation of individual organisations is not within the terms of reference of this committee and the committee does not have the authority to deliberate on such matters because they are not relevant to the purpose of this bill.

I ask all members of the committee and the roundtable to ensure that questions and comments are relevant to the terms of reference of this inquiry. These are public proceedings although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee. Such action may be treated by the Senate as a contempt, and it is also a contempt to give false or misleading evidence to a committee. Do you have a spokesperson, or are you individually going to make opening statements?

Mr Mackey—Individually.

Senator XENOPHON—I raise a preliminary point further to your opening remarks. I think Dr Mutch, in his evidence, said that, in framing the regulations or determining a public benefit test, it may be relevant to look at the behaviour of an organisation or systemic issues. I am not sure what the views of the committee are in relation to that. I will not take it any further at this stage.

ACTING CHAIR—The views of the committee are that we are here to deal with the terms of reference of the committee.

Senator XENOPHON—Very well.

Mr Schofield—On behalf of the five of us here, I would like to thank the committee for extending an invitation to us to appear here today for this discussion. I would like to begin by detailing why I personally believe that a public benefit test on tax exempt organisations is needed in Australia. I would like to quote a few personal anecdotes on this, if that is fine with the committee. I believe these are necessary for the argument I am about to present.

In February 2000, my 15-month-old daughter Lauren was rushed to hospital in Sydney with injuries that subsequently claimed her life. Friends, family and the medical staff rallied to our side during the two days she clung to life. An enormous and unexpected help in those very trying days was Ronald McDonald House, which provided my wife, my one-month-old son and me with accommodation so that we could be close to Lauren during her final hours. For us this was a godsend, that a for-profit multinational had sponsored this service for parents with hospitalised children. Contrast this to the subsequent actions of Scientology. I will detail only one instance. When my wife and I sought compensation for the loss of our beloved daughter, we were informed by Scientology officials that should we claim against Scientology insurers for our loss we would be suing the Church of Scientology and thus, per Scientology's own policy, become ineligible for further Scientology services, effectively expelling us from Scientology. As a result, we did not pursue the claim.

ACTING CHAIR—Mr Schofield, would you prefer this evidence to be given in camera?

Mr Schofield—That is fine; I am quite okay with continuing, if that is okay. We have some fantastic organisations in this country that are tax exempt, and rightly so, I believe. Australia is truly a lucky country and we Aussies have always been generous in sharing that luck with those less fortunate. One of my nieces recently returned from Sri Lanka, where she worked as the chief nurse for Medecins Sans Frontieres in a refugee camp, and another and her parents have spent much time and energy helping Hope for Cambodian

Children, a very worthy charity. And who could forget groups like Anglicare, which recently provided a brilliant program for my son and other boys his age called Boys will be Men, and the Salvos and many, many more? Many of these groups have raised valid concerns—

ACTING CHAIR—I have just been advised by the secretary that, because you have made remarks that reflect on Scientology, the committee should go in camera to consider this. We will now suspend for a private meeting of the committee.

Proceedings suspended from 10.03 am to 10.22 am

CHAIR—The committee is concerned about some of evidence that might be given in a session and in general throughout the day. We want to make it clear that we are not prepared to accept evidence about matters which are before the courts or sub judice. We would prefer that evidence given deals with general issues and principles. It must be understood that this committee cannot deal with and cannot judge individual cases or individual matters. The committee would prefer that evidence given relates to matters of principle that can be considered in terms of a public benefit test for a charity. Having stated those points, the committee will now proceed. The committee has decided not to go into an in camera session at this stage. Please continue, Mr Schofield.

Mr Schofield—Is it okay if I quote media reports and such as part of my argument?

CHAIR—If it is within the context of those points we have raised. You cannot quote media reports about matters which are sub judice.

Mr Schofield—Okay. Thank you. Many of these charity groups that I have previously mentioned have raised valid concerns about a proposed public benefit test for tax-exempt organisations. Submissions No. 37 by the Anglican Dioceses of Armadale and No. 63 by the Australian Catholic Bishops Conference are good examples of these. On the other hand, there are instances of abuses by tax-exempt organisations like those raised in a submission No. 39 by Graeme Webber, detailing the horrors of the Order of Saint Charbel. There is also Bryan Seymour's excellent expose on Channel 7 last Tuesday night of how Scientology in the United Kingdom and elsewhere are avoiding paying tax there by using a basically non-existent charity registered here in South Australia. There is also the recent example also in South Australia of The Agape Group. That their name means 'love' in Greek is in sharp contrast to the arsenal of weapons confiscated from their properties during recent police raids.

Even Scientology's own submission to this inquiry, No. 66, helps highlight the need for further regulation in this area. It makes much of Scientology's volunteer ministers' program. A Scientology volunteer minister is required to buy their own T-shirts, jackets and other paraphernalia from Scientology, and also do a short course on Scientology costing several hundred dollars, at which point that are qualified to be a volunteer minister. They usually have to pay their own airfare to and from a disaster area and make their own arrangements for food and accommodation once there.

There was no mention in Scientology's submission of volunteer ministers at the Haiti disaster this year, though there was an awful lot of negative media surrounding their presence there. The Red Cross website at that time had a post begging unqualified people not to go, and not to send things but just donate money. Rony Brauman, former president of doctors of the world, said, 'The country is still in an emergency phase so all persons who arrive from abroad without qualifications are obstacles to humanitarian aid.' Yet Scientology sent approximately 400 volunteer ministers to Haiti, many almost immediately, who became a burden on the already limited resources, as per reports at the time.

Two days after the 9-11 tragedy, a Scientology group calling themselves 'national mental health assistance' got Fox News to run Scientology's free-phone number for five hours at the bottom of their screen. Fox News ran this apparently in the belief that this was the official outreach hotline. It was removed after an irate intervention from the real National Mental Health Association. Note the different final words in the names of these two groups, with Scientology calling theirs national mental health 'assistance'. The president of the National Mental Health Association said: 'The public needs to understand that the Scientologists are using this tragedy to recruit new members. They do not provide mental health assistance.'

The dilemma I believe we face as Australians is how to ensure tax exempt groups are truly deserving of such. We look to you, the committee, as our elected representatives to navigate this minefield. I personally do not envy you that job. In conclusion, I would like to ask if I may table my formal submission, which contains further data and arguments for a public benefit test of some sort. I thank the committee for taking the time to listen to us this morning.

ACTING CHAIR—Is it the wish of the committee that the submission be tabled? It is so ordered. Mr Mackey.

Mr Mackey—I am not sure that a public benefit test is the only right model. I am particularly concerned about the collateral damage to many well-meaning charities in the form of red tape because I feel it could be quite burdensome, especially for very small ones. My personal experience is that I was a Scientologist for 26 years and I did not find anything charitable about the Church of Scientology. Scientology does deliver a very expensive psychotherapy that does not deliver on its broad promises. It also pays the existing customers 10 to 15 per cent of the total spend of any new customers that they bring in. It is called a commission. This is a highly efficient sales model. Should a customer complain that they did not get what they paid for, they are put through a thorough investigation as to what was wrong with them that caused the failure—and this is at their own expense. Sometimes they will redo the failed level—also at their own expense.

When we went to the consumer watchdog, it was beyond their brief to act on our behalf. We made many calls and we ran into dead ends on every aspect. In short, there is no recourse. While I feel the Church of Scientology and many others such as the Agape ministries do not deserve tax exempt status, it has been raised in many other submissions that the vehicle to revoke this already exists in law today. I would like to see a special-purpose ombudsman appointed to facilitate and police such groups and to monitor the behaviour of such groups. I would also like to table my own modified submission to the committee.

ACTING CHAIR—Does the committee accept the submission? It is so ordered.

Mr Mackey—I would like to thank you for your time.

ACTING CHAIR—Mr Anderson.

Mr Anderson—Please bear with me, as I have had to change things a little bit because we are not in camera.

ACTING CHAIR—We are not in camera and we have to address the terms of reference.

Mr Anderson—I understand.

ACTING CHAIR—I would just add that you are protected by parliamentary privilege in this forum. You cannot be sued or taken to court over anything you say while under parliamentary privilege.

Mr Anderson—Thank you. The situation of possibly applying a harm/benefit test across religious groups and charities has come about because of allegations at some groups and one in particular that I was associated with over many years—over 25 years in fact. I am of the understanding that my submission was received by the Senate Economics Committee but I was not notified as to whether it was accepted or rejected. In light of that, I would like to table that submission today, and I will make that available at the end of my opening address.

ACTING CHAIR—On that point, Mr Anderson: all submissions received are accepted. We do not reject submissions. We sometimes decide whether or not it is in the public interest to put them on the web, however.

Mr Anderson—Thank you. I will assume that it is there then. In the opening pages of that submission, I stated that I did not feel that such a test was the best way to go about addressing this situation. There are a large number of extremely worthwhile charitable organisations that do fantastic work, and I do not think that they should be punished because of the allegations levelled at a particular organisation—an organisation of which I was a member for 25 years. Some of these charitable groups have been in existence of much less time than Scientology. Those charitable groups and their good works are widely known and used. People on the street, in the community, can, I am sure, identify those particular groups. Those same people want to give their support. They know it is good to have their tax dollars going towards support for those groups. I like that my tax dollars go to support such groups.

Beyond the wording of documents, definitions and legalese—all of which are important, of course—charitable works should be able to be observed. They either exist or they do not. That is really the only valid test. One should be able to clearly identify groups who do good works, because they see the results. If one cannot see those results, that particular group should be deemed to be highly suspect and should be treated as such. I guarantee if you asked the same taxpayer what good works Scientology do and what they are known for, they would actually struggle to give you an answer. I know I do. That was one of the things I found very difficult to reconcile in my association with Scientology over 25 years. I in fact found them to be quite self-serving and not really directed at the external environment. I could not go along and see a house that had been

set up for the purposes of housing the homeless. In our business I do a lot of work for organisations that provide Barnardo's and charitable homeless situations for people who are trying to get themselves off the street. I know I can go along and check these places out—and they exist. That was one of my main objections.

I think that however it is done, something needs to be done. I believe that something can be done about groups that receive a tax benefit because they deem themselves to be a religion. The final analysis is: can you actually see it in the environment? Can you physically go and partake in that? If you cannot, it should be treated as highly suspect. How it is to be done, I really do not know. Maybe the harm/benefit test is the best way to go about it and maybe it is not. There are lot of minds better than mine that could be applied to this—and I think there will be.

ACTING CHAIR—Thank you, Mr Anderson.

Mrs Underwood—Firstly, I would like to emphasise that the argument regarding this proposed tax amendment being a threat to religious freedom is not an argument. With the 1983 High Court decision, the criteria for what constituted a religion was greatly broadened. The proposed tax amendment addresses the eligibility of religious organisations gaining tax exemption based on their religious status.

In my mind, the issue of tax exemption has nothing to do with religious beliefs, practices or observances. The general group of adherents to Scientology and to other religions may well be religious—and there is no argument on that—but this does not equate to their organisation being deserving of tax exemption. In earlier times, tax exemption was granted to religious bodies, as far as I can tell, because it was apparent to a society that they had a public benefit and were giving back to society at large. Prior to the 1983 High Court decision, religious organisations were given tax exempt status because it was generally recognised that, through their charitable works, they did have a broad public benefit. They were not granted tax exemption because of any of their beliefs.

Religious status in this country is not granted nor based on public benefit, it's granted on beliefs practices, and observances, and the general group of adherents having a religion. Previously, the presumption that religious status equated to a broad public benefit to society may well have been true, but with the 1983 High Court decision this presumption became defunct. With the judgment of the High Court decision, Justices Mason and Brennan stated:

... charlatanism is a necessary price of religious freedom, and if a self-proclaimed teacher persuades others to believe in a religion which he propounds, lack of sincerity or integrity on his part is not incompatible with the religious character of the beliefs, practices and observances accepted by his followers.

There is a valid argument that religious status and tax exemption are separate issues. Religious status does not necessarily warrant tax exemption as it seems to be doing in our country today. The claim that this proposed amendment is an attack on religious freedom is bogus. To me, it is an obvious attempt by some organisations with a hidden agenda, such as the Church of Scientology, to avoid tax and to avoid scrutiny.

Secondly, as a former Scientologist I believe that the Church of Scientology is a prime example of why this tax amendment is required. As I outlined in detail in the attachment to my submission, the Church of Scientology is a tax-exempt organisation which, one, enjoys tax-exempt status while it only serves itself at the detriment of others. It does not even serve its members. Its members actually serve it. Two, it is fraudulent. It deceives and heavily coerces its people in order to obtain so-called donations. It often does not deliver what is promised, and in some cases it uses those funds for purposes other than what is stated. This is fraud and it is a crime. Three, it is an organisation which threatens its people with 'pay up or else'. This is extortion.

Due to my extensive involvement and experience with the Church of Scientology, I am of the conviction that religious status does not warrant tax exemption. When I was a Scientologist, I did not have any particular view on the matter. As a Scientologist who was wrapped up in a cult, I did believe that the Church of Scientology would help save mankind. However, it is because of the organisation's lack of charity and care for the individual that I finally got out of it. I could not abide its ruthlessness and serving its own ends. On reflection now, I see that the Church of Scientology is the furthest thing from charitable and is completely self-serving. It is abundantly clear to me that the Church of Scientology is an organisation which looks after itself to the detriment of its members and society. It feathers its own nest and benefits only the elite of its own organisation in the USA. I would not argue about its religious status, although I would argue that it uses its religious status to gain tax exemption and to stay under the radar of the law.

The Church of Scientology does have some members who give their time to contribute to charitable projects. However, they do it at their own expense and usually at the orders or coercion of others. There is and

has been constant demand on Scientology staff and members to either organise or partake in activities which are done solely for the purpose of maintaining public and/or religious image. I have never seen the Church of Scientology fund any of these charitable activities. They have been funded by additional donations by members, specifically obtained for that activity, not by financial resources from the Church. The Church of Scientology does not contribute a cent to help anything but itself, so why should we as taxpayers essentially be subsidising it? Why should our government be granting tax exemption to any organisation which does not have a proven public benefit, and a public benefit which is also commensurate with its income?

In closing, I can grant that religious status may in the past have been sufficient criteria for tax exemption, but the Church of Scientology is a prime example of why that should not be the case today. Thank you for your willingness to look at the information we former Scientologists have to offer. I hope that it will be of good use to you in your deliberations.

ACTING CHAIR—Thank you, Ms Underwood. That is quite good evidence, because you are dealing with the issue of eligibility. Ms Vonthenhoff, would you like to make a statement?

Ms Vonthenhoff—Some of the stuff I wanted to go over involves my experience. It is very brief, so if it is inappropriate I am fine to be stopped at any point.

ACTING CHAIR—So long as you remember the points we mentioned a few minutes ago and address the terms of reference. We want examples which relate to eligibility, if that is what you are going to talk about.

Ms Vonthenhoff—That is no problem. I would like to thank the committee for inviting me to speak today regarding the inquiry into the public benefit test. The one point I wish to emphasise today is that the Australian taxpayer should not be funding systematic organised abuse. The proposed public benefit test will ensure that this is no longer a concern in this country. Genuine religions and charitable organisations whose purpose it is to help will be able to continue to benefit from the tax-free status, as they should. Those organisations that are currently tax free due to their religious or charitable status but are not working for the genuine good will no longer be supported by hardworking Australians. To not have the public benefit test in place ensures that abuses such as mine and many others is unknowingly supported by the Australian taxpayer.

I am a former member of the Church of Scientology who has spoken out not only to the media but to government officials on this subject. I was involved in Scientology from 1995 to 2007. I was 20 years old when I came into it through my boyfriend at the time. We had no children and I was working as a retail assistant. I had no desire whatsoever to be involved in Scientology but was given an ultimatum to either get in or lose the boyfriend. Needless to say, I got on board, because he was a lovely man. I spent around 6½ years as a staff member working for Scientology. I formally resigned in December 2007 due to my devastating experiences within the church while my husband and I were members. The experiences include bullying and harassment; two coerced abortions; Scientology justice procedures, including court hearings resulting in removal of freedoms; forced financial donations; severe financial stress; working a minimum of 40 hours and up to 70 hours a week for no pay; removal of my Australian passport while studying for Scientology in the US, so I was unable to leave; working under duress all night on many occasions while my young children were forced to stay at the office and sleep on the lounge; threats of loss of my family if I tried to leave; psychological abuse; being forced to sign a suicide waiver, freeing Scientology of all responsibility if I caused myself any harm, when I made it clear how much I wanted to leave; and interrogation regarding my personal life and sex life.

Since leaving Scientology in December 2007, I have suffered from post-traumatic stress syndrome, anxiety and depression, for which I have been seeing a psychologist every week since February this year. I am happy to say that I know I am feeling more in control of my life and I am very much looking forward to moving on from my experiences of 13 years in Scientology.

I do hope that this is acceptable for you to have a look at. I have supporting documents of my claims here. I spent last night trying to go through these to be able to present to you. I have not brought anything because the terminology that is used in these papers such as my court proceedings would not make much sense. With the jargon, it took me about four years to even understand what Scientology was talking about half the time, so to present it to you—

Senator XENOPHON—You are talking about the Scientology court proceedings—in other words, within the Church of Scientology's own system of dealing with issues?

Ms Vonthenhoff—That is right. In terms of my claims, the bullying and harassment, a lot of this stuff can be seen in the documentation if you know what it means. If possible I can take time to put those together with

the terminology so it will make sense, because if it is presented to somebody who is not a Scientologist it does not mean a lot. If you require that or you would like that I am happy to do that; I just do not have that ready today. It will take a bit of time.

Senator XENOPHON—I think it would be useful, Chair.

ACTING CHAIR—The view of the committee seems to be to accept it. The point of it all, however, is that it must be related to whether or not a public benefit test is desirable for religious organisations to be eligible for tax exempt status.

Ms Vonthenthoff—The only reason I would like you to look at that is that so far there is an appearance that the Church of Scientology can say, 'We are a church, we have volunteer ministers, we run Sunday service, therefore we are for the public benefit.' It is only by exposing something like this that you can actually have a look into an organisation. I am not saying target Scientology. That is my only experience. I do not know about other cults or religions. Obviously that is what you are here for. I can only present that there are other things that are not always to the public benefit, and the issue then is how we address these things as a country.

ACTING CHAIR—We understand that. Thank you very much for that evidence.

Mrs Underwood—Excuse me, Chair, I forgot to ask if I could have these tabled.

ACTING CHAIR—Is it the wish of the committee to accept those documents? It is, so they can be tabled. We will go to questions.

Senator CAMERON—I will ask questions generally, and whoever feels competent to answer them can do that. One of the issues that no-one has raised is the distinction between a charity and a commercial enterprise. Are there any views among the roundtable members as to whether there should be a distinction between commercial enterprise and charity?

Mrs Underwood—Absolutely.

Mr Schofield—Indeed.

Senator CAMERON—Can someone explain that position to me?

Mr Schofield—I will give an example. I have worked for a number of the social betterment Scientology groups and they are required as part of their charter to take 10 per cent of all moneys coming in, deemed to be management expenses, and three per cent of that goes straight to the Church of Scientology and at least half of that is immediately sent overseas. I find that that is more a commercial thing rather than a charity thing. I think maybe it should be part of the public benefit test to look at where money is actually flowing. Bryan Seymour raised the same point in his *Today Tonight* program last Tuesday night. Maybe the money trail needs to—

Senator CAMERON—I am not an avid follower of *Today Tonight*.

Mr Schofield—I am just saying that an area of concern is: where is the money going? At the moment the accounts are not always transparent for a not-for-profit organisation. I think that should definitely be part of it because, in my own experience, this money has been taken not for the public benefit but for the benefit of particular small groups or individuals. I am not just targeting Scientology here; there have been many other groups where this has happened. If we are going to have a public benefit test, yes, there should be a very distinct delineation between a commercial enterprise and a charitable organisation as to who is getting the money that is being given.

Senator CAMERON—The bill says there must be an 'identifiable benefit arising from the aims and activities of the entity'. Some of the submissions we have had go to outcomes for Scientology that you would generally say would be in the public benefit—that is, drug education and prevention, voluntary ministry, defending human rights and promotion of the Universal Declaration of Human Rights. These are outlined on the public record by Scientology as issues that go to the public benefit. I suppose if members like Mrs Underwood believed that Scientology could save the world then you could understand why some members of Scientology would say: 'Look, there's a real public benefit here. This is a great organisation. It's doing things that other churches do and it's a net public benefit.' How do you deal with that position?

Mr Mackey—They would say that and believe it. In fact, in Scientology four events a year cover the benefits of Scientology to the broader community, and these are in very general terms. Thousands of people reach for the drug-free message and that kind of thing. The fact is that there is an organisation within Scientology that takes approximately \$100 million a year called the International Association of Scientologists. It has refused to open its books on several accounts. It does not show its expenditure, and

recent defectors from the International Association of Scientologists claim that no more than 10 per cent of the money taken goes to the causes that it claims to have been supporting. There is a tremendous accent on the taking of money, so it has got to be weighed up. A level of transparency has got to be given in order to attain tax exemption, I feel. It has not been forthcoming from some organisations.

Mrs Underwood—In addition to that, as I mentioned in my address earlier, this should be commensurate with its income. The Church of Scientology makes millions and millions of dollars, and the activity that is done on the drug campaign and on this, that and everything else is nothing compared to the millions of dollars that the Church of Scientology makes with its various little separate corporations. Besides that, it is not funded or resourced by the church.

Senator CAMERON—Could I just stop you there. What makes that different from other churches?

Mrs Underwood—The church does not fund it. It is actually done by the members, and the members are pretty well coerced and forced into doing it, or encouraged. But while the church has all these resources it does not use those resources for that. It heavily coerces its members to do it—and not only to do it but also to do it for its public and religious image.

Mr Schofield—May I give you a specific example of this?

ACTING CHAIR—What we are saying here, though, is that there is this money and they claim it from tax. Is that correct?

Mr Schofield—Basically these moneys are claimed as tax exempt. If I may give you a specific example, I was the executive director of the church's drug rehabilitation program, Narconon, for not just Australia but New Zealand and the South Pacific region. We had a Narconon in Nepal that was being sponsored by its executive director, who was a retired police superintendent. He was sponsoring this totally by his own pension and his salaries that he was getting. I wanted to request that the International Association of Scientologists help this guy out, because he was not able to collect money for it. He had something like 65 addicts that he was trying to treat via the Narconon program. He was in severe financial distress and I attempted to get the International Association of Scientologists to fund this because, after all, the International Association of Scientologists were part of Scientology, and Scientology was using this drug rehabilitation in Nepal as an example of its outreach programs. I was told that there would be no way in the world they would help bail this guy out. He had to handle it himself.

Mr Mackey—They have a policy where each separate unit such as this man's activity has to fund itself as well as pay a tithe to the church.

Mr Schofield—Yes. He was supposed to pay me 10 per cent of his money for management expenses, which I then spent. I sent some to Narconon International and I sent some directly to a church body called the Association for Better Living and Education, which is a Sea Org management unit in the church. So, although he was a charity, no money was going to be sent to him unless it was raised by him or people with him. He is working in one of the poorest countries in the world, Nepal, attempting to get people off drugs. He is obviously charging them for it, but contrary to Scientology policy he could not take money upfront, because that is a complete no-no in Nepal. So he would finish someone on the program, they would not be the astounding success they were supposed to be and he could not get money for it. He was basically broke but was still being forced to continue this rehabilitation program at his own expense.

ACTING CHAIR—There has been a public benefit, in fact—a rehabilitation program—so what is your objection? The fact that they were siphoning off money?

Mr Schofield—Yes.

Mrs Underwood—It is not the church that is doing it.

Mr Mackey—The church was not funding it.

Mr Schofield—The church did not fund this man. This man had to pay a tithe.

Mr Mackey—It is a commercial enterprise.

ACTING CHAIR—We have to spell this out for the *Hansard* record, though. You have to make the connection to the reference.

Mr Schofield—Okay. The church was saying he had to pay a tithe. The church itself did not fund what he was doing in the time that I was the executive director for Narconon for the Asia-Pacific area.

Ms Vonthenthoff—I understand that it has been presented to you that they have drug education, volunteer ministers and a whole list of things that look amazing—the public benefit is so obviously there—but it is like McDonald's telling me that their salads are really healthy and if I eat them I am going to look amazing. There is one thing that is being projected, and it is only a public benefit test. What actually has to be looked at is what the volunteer ministers do. What successes did they bring? Who did they actually help? Who are these people? Right now the church claims a certain number of members. I know that in Canberra it claims 5,000. I can tell you for a fact that that is completely untrue. You are looking at maybe 50 here in Canberra if you are lucky. If it is 5,000, why aren't the 5,000 here? The church says: 'Yes, we have volunteer ministers. We have drug rehabilitation programs. We run Criminon. We do this great stuff.' Provide the evidence. Does what it is doing now outweigh the harm that it has caused to so many people—not just ex-members but the ex-members' families and friends and their ability to work afterwards? Are we actually out there doing what we should have been doing? Only a public benefit test can actually monitor that, rather than my statement that it was bad for me or the church's statement—'We're amazing'. Only something like this can really look at that.

Mrs Underwood—Looking at all the income that the church makes, how much of that income goes to these charitable-type activities? That is where you would find that the public benefit is really nothing to speak of and is lip service.

Senator XENOPHON—I am very concerned about time constraints, but I will just drill down in the context of the bill, the public benefit test and having regulations to determine whether something is to the public benefit or not. Mr Anderson, you have previously said publicly that you and your family spent a lot of money on the Church of Scientology for courses. In what region? How much money did you spend?

Mr Anderson—To encompass all of what we spent, it is probably close to \$450,000, but I am light-on by comparison to another member at this table.

Mr Mackey—That would be me.

Senator XENOPHON—How much did you spend, Mr Mackey?

Mr Mackey—Between \$1 million and \$1.2 million between my wife and me.

Senator XENOPHON—Is that because, under the rules of the Church of Scientology, in order to progress further you have to pay for courses because they are strictly copyright? Is that the case?

Mr Mackey—Partially.

Mr Anderson—Sorry to interrupt again. There is a well-known factor in Scientology and there is this definition. There is policy on it. There is exchange. You get nothing for nothing. If you do not contribute money to the organisation, you get nothing back. In fact, as far as the organisation is concerned, L Ron Hubbard wrote a policy in reference to charity, and he mentioned this thing about charity. He said, 'Charity benefits the person that is giving it.'

I will explain that a little bit because it is important. The view is that within the church if you are giving something away and you are not getting something back in exchange for it then you are doing the other person that you are giving that item to harm.

Senator XENOPHON—Which is almost the reverse of the commonly held view of charity.

Mr Anderson—Absolutely, and there is policy written on it. I could get that reference for the committee.

Senator XENOPHON—If you could, I think that would be useful for the committee. Sorry, Mr Mackey.

Mr Mackey—How did it come that we spent so much? It is an interesting thing, when you start in Scientology it begins very cheaply. The further you go, the more value the church places on the services it delivers. My wife and I have got onto and spent a lot of time on the upper level of the bridge. It is a very long level. I spent 15 years on it. In a way you are a captive audience. The methodology of extracting money was basically the service became more and more expensive by the year and, further, there was a tremendous amount of pressure because you were supposedly attaining such a huge level of freedom and every day you were getting this spiritual freedom. This is supposed to be the route to total freedom, the bridge is the route to total freedom, and of course that is not going to come at a low cost. You are then a captive audience and expected to contribute more and more to help people join onto the bridge or the route through Scientology to total spiritual freedom. In a way you are a prisoner of your own goal as you go through this.

Senator XENOPHON—Can I raise two other questions because of time constraints and of course your submissions are in evidence for the committee. Could any of you explain that there is what I think is referred

to as wog justice. How does your organisation that you are involved with treat the issue of Australia's judicial system in relation to this? Also can any of you explain the doctrine of 'fair game'? I think the organisation says that does not apply now. Does it still apply, in your understanding?

Mr Mackey—Our understanding is that 'fair game' exists.

Ms Underwood—Absolutely. Especially since November we have copped some of it ourselves, so we know it exists.

Senator XENOPHON—Could you explain 'fair game' to the committee?

Ms Underwood—Probably Kevin is the person to answer that.

Mr Anderson—I just want to make a statement to your first question, which was in regard to the separation between wog, which is, with the exception of a few people at the back of the hall here, all the rest of us are wogs. We are ex-Scientologists but we are now wogs; we joined the wog class, so to speak. That refers to raw meat—you are a raw meat, people to be taken into the church and sold services to and converted to being a Scientologists. 'Wog justice', Mr Hubbard wrote about the concept of the church justice system as being superior really to anything that exists in the wog world. In fact, in my original submission I pointed up that governments and 'wog justice' systems that exist here on behalf of the people of Australia, for example, are a false organisation. Hubbard talks about this: they do not really have the true technology. The view within Scientology is that the Scientology technology is superior to anything that is done outside of Scientology. Just to point this up, there was a Scientology event when there were a lot of organisations supposedly going to bigger sizes in the US and they were building these ideal organisations. One of the meres of a particular area—I would have to research to find the exact place—made the point that he now felt that their city was on the church's organising board. The church has is organising board and I will not go into detail, it would bore you, but the fact is that he now felt that they were on the church's organising board. In other words, the way the whole church is structured, the whole of civilisation is actually on their organising board and they are superior and senior to governments.

Senator XENOPHON—So you ignore court hearings. They are not accepted.

Mr Anderson—They have court hearings.

Ms Underwood—Avoid at all costs. Any justice you need, they want you to deal with it internally within the organisation. You only deal with the justice system or authorities outside the organisation if you absolutely have to. If you are going to, you have to be in coordination with the Office of Special Affairs because it is considered a risk. Anything 'wog'—wog justice, wog authorities—is considered with disdain and to be inferior. The Scientology authority is superior and it has got the fantastic technology. They are the ones you should go to. You only deal with the wog justice, the wog systems and the wog authorities when you have to.

Ms Vonthenthoff—But not just when you have to: you must get permission from Scientology. If you want to go to court or report somebody, it is considered a high crime in Scientology, so we have got our own list of high crimes and misdemeanours. It is a high crime for you to go to court against somebody without the permission of the International Justice Chief. That is somebody based in America who is the head of all Scientology ethics. If you were to take somebody to court without that permission, you could be declared a suppressive person, which you means you will be immediately expelled from the church. All Scientologists must cut communication with you insistently.

Senator XENOPHON—So allegations of abuse, for instance, you would have to go to the Office of Special Affairs before you go to the police.

Ms Vonthenthoff—Absolutely, it is up to them to decide how they deal with that. I will give a quick example: I mentioned about my passport being removed while I was in America. I was 21 years old. I was eight weeks pregnant with my first child. I had severe morning sickness. I was expected to stay there. Originally, I was told I was only going for three weeks. After that three weeks was up, I was still there. I wanted to leave. I could not actually leave unless I caught a particular flight with my sister who had got me a free flight over there. If I did not get on that plane, I was going to be stuck over there because I knew Scientology were not going to pay for me to get a ticket back.

A week prior to that when I brought up the topic of leaving, my passport was removed. On the day my sister was leaving on that flight, I was absolutely hysterical. I was put into a room and told that I was not going anywhere. When I begged for my passport, I was told there was no way I was getting it because I was not leaving. When I started screaming, 'I'm going to call the police,' I was immediately dragged from that room to

another room where I was spoken to by two church officials who said, 'Do not ever threaten to call the police again.' It was made clear to me at that point: 'If you go to the police or mention this at all to anyone, then you will be declared.'

Mr Mackey—L Ron Hubbard wrote in policy that man in his aberrated state cannot handle justice. So he sought to isolate existing Scientologists from the world at large and from recourse to the regular justice available to people.

Senator CAMERON—On this point, can I just—

CHAIR—Very quickly because we are a long way over time.

Senator CAMERON—indicate that the Church of Scientology are saying that nothing in the material that they have provided to the committee shall ever or under any circumstances justify any violation of the laws of the land.

Ms Vonthenhoff—I am happy to provide you with evidence of the statement I just made about it being a high crime. I am happy to provide you with transcripts of my court hearings to show you how I was tried, what I was tried for. I am sure between us we can come up with contrary evidence—

Ms Underwood—Also church policy on the matter. There are two that I can think of on this very matter that would address that.

CHAIR—Thank you very much. We are well over time. I remind you: we are not conducting an inquiry into Scientology; we are talking about a specific reference. You have to relate this to the reference—that is something which all witnesses should be reminded of. Thank you for appearing. We are now a long way over time, so we are going to forgo the morning tea break. If you wish to submit additional submissions, you are quite welcome to do so.

[11.10 am]

HODGKINS, Mrs Roslyn Ann, President, Cult Information and Family Support Inc.

SMITH, Mr Anthony, Member, Cult Information and Family Support Inc.

SMITH, Mr Peter, Member, Cult Information and Family Support Inc.

ACTING CHAIR (Senator Eggleston)—We welcome Cult Information and Family Support Inc., with Mrs Roslyn Hodgkins as president. I invite you to provide an opening statement. I remind you that this committee is here to deal with a specific inquiry about the tax exempt status of charities.

Mrs Hodgkins—Thank you, Chair, and thank you to the committee for giving us the invitation to present to you at this hearing today. We come from CIFS, which is an organisation that came together in 1996, as our submission says. All in CIFS have had experience in this area and knew how valuable it was to find support and information. That broadened, with CIFS helping many people. We continue today to be an organisation that is able to provide people with help, information and support. We have moved on to trying to educate people, especially health professionals, by giving seminars. We are also very interested in trying to help schools understand phenomena that the community lacks understanding about.

We believe that we have experience at the coalface or where the rubber meets the road, if you like, to make a contribution to this important Senate inquiry regarding the Tax Laws Amendment (Public Benefit Test) Bill 2010. We are not lawyers. We do not have all the answers. But we are a voice, I believe, for the many people who have been brave enough to seek help and share their experiences.

I have to say that at this point the human toll that runs across into society has a ripple effect. There are many people who can be devastated by people who enter organisations that are claiming tax exemption and lose contact with family members, such as with grandchildren, and who are no longer allowed to speak with their siblings, perhaps. I wanted to point that out today as we look at this important issue.

The other point that I would like to strongly make is that this is not about one or two groups. Contrary to some of the submissions that are against the bill because only one publicised such group that I will not mention is of concern. CIFS can confidently estimate that there are many hundreds—if not more; perhaps thousands—of groups operating within Australia that claim tax exemption simply because they claim a religious status. Yet these groups would show on examination that basic human rights and the freedoms that we take for granted here in Australia are not afforded to their members and indeed would contravene all that freedom and democracy are about.

We cannot state strongly enough how many stories that we have heard that we have been able to confirm. It is not just a few disgruntled former members speaking. Many people come to us seeking help and support from many different types of groups that automatically receive tax exemption.

CIFS absolutely believes in and advocates for freedom of belief. It is a democratic right to believe what you choose. But that belief should never be something that can be used to cause harm or take away the freedom of another human being. When accepted human rights being abused because of a religion that is being supported by taxpayer money that it creates a cynicism within the Australian public towards the legitimate charitable organisations and churches that are providing enormous benefits to a very broad population within Australia.

We have also heard of the horrendous long-lasting harm caused to individuals and to families by authoritarian, elitist, exclusive groups of all shapes and sizes. They use psychological manipulation, insidious and coercive techniques and the dynamics known as thought reform or mind control to indoctrinate and keep members obedient and compliant.

I know that time does not allow us to go into too much detail here. I would like to table or give to you a copy of *After effects from cult involvement as experienced by former members*, an investigation that CIFS undertook in 2006. Along with that, I will give you a list of groups that we have had inquiries from. We in no way say that all of our inquiries are to do with abuse. We cannot claim that these groups are abusive just because that we have had an inquiry, but through careful consideration we do know that many are and we know how those abuses came about. We would like to table those things, along with a handout that we give to the universities, which provides a very succinct and simple way to understand what we as the CIFS organisation want to present today regarding tax exemption.

ACTING CHAIR—The committee is happy to receive those.

Mrs Hodgkins—At this point, I want to give a simple statement that might provide a way of understanding the phenomena. It is not easy for the average person who has not had contact with one of these groups and

who hears people talking about their experiences within one of these groups. Looking at thought reform or mind control, we can think of these as a specific set of methods and techniques that influence how a person feels, thinks and acts. It becomes destructive when used to undermine a person's ability to act and think independently and disrupts the person's authentic identity. At this point, the person is unable to express opinions different from those of the group or from the leader's directives. Add to this manipulating rewards and punishments and a tightly controlled system of logic, in which those who dissent or question are made to feel that there is something inherently wrong with them.\

At this point, I would like to say that no-one joins a cult or a destructive group. They join a group that they see as having answers for them—answers that are attractive and give benefit to them and that are also beneficial to society. The problem is that the group that they being associated with and belong to never tells them what they will end up believing down the track or what they will have to do down the track. I understand this from personal experience. I will not go into that today. But my daughter joined a group. It was a church group. It was Bible based. It was well recognised in Australia. It was banned from universities, which is almost unprecedented. Yet it claimed tax deduction and it did the things that we are talking about today. It came from America. The minute it landed on these shores, it claimed tax exemption.

Beliefs can be used misused cleverly to be the tool used to manipulate, control and abuse. We can take sacred texts and we can use those out of context to cleverly cause people to be manipulated and controlled. We have to be aware of this. A great deal of research has been done through the International Cultic Studies Association based in Florida, of which we are members. It gives us a greater, a wider, a broader understanding of how people can be influenced by a set of very incremental steps: initially a small commitment expected, progressing into bigger commitments of both time and usually money.

I could go on, but I know that the time is short for us to be here. I would just like to say that along with this, if behaviour is controlled, the studies show that our thoughts and emotions go to join up with that behaviour because of the cognitive dissonance that we get from being out of kilter. Add that to information control, which groups that are abusive will use, then we do not have the very tools we need to make informed choices because everything outside of that is worldly, impure, satanic, evil. We have heard other words given today, but we know from talking with people that these groups become very insular. They are the world, they are the ones that have the answers, they are elitist.

ACTING CHAIR—Mrs Hodgkins, if you do not mind, we will stop there and let the senators ask questions because we have got a little bit behind time. Thank you for that introductory statement.

Senator CAMERON—Mrs Hodgkins, I really do not want to go into a great deal of detail on cults other than to ask you your view on this: there is a sociological view that some cults can be beneficial.

Mrs Hodgkins—Of course there are some beneficial things about being in a cult, otherwise no-one would ever be in them for more than five minutes. There is a sense of belonging, there is often a sense of black-and-white thinking, there is often a sense that, 'Now we have the answers to complicated issues which we know exist in our society.' So we are not denying that there are beneficial aspects of cult involvement, but the benefits do not outdo the harm. The benefits that are there can be found in safe groups, they can be found in groups that do not abuse, do not take away people's freedom. So that would be my argument—that is, we cannot condone something because of those beneficial things that are there, those good things that of course are there because human beings would not stay five minutes otherwise.

Senator CAMERON—Some of the research I and my staff have looked at says that Christianity was considered a cult and that there are cults within Christianity, such as the cult of the Virgin Mary. I am wondering how you define that sort of mainstream cult approach as distinct from what I think you are talking about, the worst aspects of some cults?

Mrs Hodgkins—That is a good question, but I would argue that there was freedom within Christianity when it started. If we look at the basic understanding of Christ and his teachings, there was freedom that is not afforded in these groups that would claim to be Christian, that would use the Bible as their status. We have to have an understanding of why we can describe a cult or a high demand group—cult is just a buzzword—or something as abusive and that is the set of techniques that we now understand that have to be present in all of those areas. Of course some groups do use some control, but that does not mean to say that it is an abusive group. They can perhaps leave that group and still be part of the friendship with those people, whereas cults, when you leave, you are not allowed to talk to any of your family members that are still in that group. So there are big differences, and I think this is where coming to understand and certainly know about these areas, it can be very helpful.

Senator CAMERON—I want to bring it back from generalities to the specifics of the bill in relation to the actions of cults, because you have concentrated on cults. I am not here to defend cults, but could there be an identifiable benefit from the aims and activities of a cult? Could it be that the balance in a cult could be on the positive side, against any detriment or harm, and could it be that the benefit is to a significant section of the public and not merely individuals with a material connection to the cult? I have deliberately framed that on the basis of the bill, because I think we need to talk about the bill instead of the generalities as to cults in Australia.

Mrs Hodgkins—In answer to that question, I believe CIFS would say, categorically: there could not be benefits, long-term, from belonging to a cult, purely because the nature of what we describe as a cult has all of those insidious harm factors—the taking away of the authentic person and the cloning of them into the likeness of the group, in the way we have explained further in the paper that we gave you. In the short term, people come in and go out and can perhaps have the benefits of belonging and becoming part of something for a short time. As I said, there will be factors that people can benefit from. But, as to a cult, or a destructive group, if we call it that, or a thought-reform group or a totalising group—it is difficult when we start throwing these words around—from the way we would understand such a group and how to evaluate it, we would categorically say that there is no benefit to allowing taxpayers' money to be given to such a group because, while it is a cult, it has some benefits. Does that sort of answer the question you are asking?

Senator CAMERON—It does to some extent. That leads to the next question. Who should determine that benefit or lack of benefit? If there is a benefit and a cult meets all of these tests—and I think that is theoretically possible—who should then determine whether tax-exempt status applies?

Mrs Hodgkins—That is a very difficult question. While it is not an easy question I do not think it is an insurmountable obstacle to getting together a set of criteria in a set of areas that have to be looked at carefully and coming to a conclusion that a group is truly harmful, totally because of its behaviour. I am not talking about beliefs, because beliefs could be about anything—we have freedom to believe that the moon is made of cheese if we want to. A group may claim to be idealistic or to have answers to life's questions, but if it is virtually using the members as labour then at the top of the pyramid will be the leaders—who are benefiting the most, always—and the workers will be at different levels. But there is a way to understand that. When we hear the stories coming from these many different groups, they are all the same. They may have different components as to what they were told to do, but the type of behaviour control, information control, thought control and emotional control are all there in an absolute way. That then creates the psychological effect of coming under that influence. We know that that has been studied extensively, especially in prisoners of war in Korea, where we found out that brainwashing had the ability to change people's thinking. So there are many experts in this.

Senator CAMERON—Is it your submission that this is being done with taxpayers' support?

Mrs Hodgkins—Is our submission—

Mr P Smith—Our submission is that, yes. Can I address that point, because the process of mind control and coercive persuasion has been documented heavily in books and articles. CIFS is a witness to the perpetration of these methods, which we hold can be very harmful and which, in these cultic groups, are used for harm. The submission from Dr Mutch, who spoke earlier, quoted a Victorian parliamentarian, who said:

... there is a large file in the Attorney-General's Department of complaints about all sorts of sects or pseudo-sects in this State, and about the harm that can be caused to people ...

Governments have known about this for a long time and, although these abuses occur, interestingly, according to authorities no law has been broken and, when the abusive group is called a religion, authorities are loath to act. People are eventually advised by authorities to go to the police or to the courts to seek redress but the abusive group have deep pockets and will delay and frustrate court action until these tactics so further abuse the victim so that he or she is forced to give up after running out of money or becoming psychologically broken.

If dissenting questions are raised within the group, those who raise them are often automatically punished because criticism itself is a punishable offence. Dissent and redress are frustrated at every turn. However, the harms are perpetrated by renegade groups using the imprimatur of religion and so can easily be indirectly funded by the Australian taxpayer. CIFS holds that the retention by these abusive groups of their tax exemption is an abuse of the taxation system. Stephen Mutch quoted the tax office's submission, but the Treasury submission states:

As religious organisations self-assess their eligibility for an income tax exemption and are exempt from lodging income tax returns, the number of these entities is unknown.

Later it admits that tax law does not define 'religious'. I put it to you, Mr Chairman, that the Treasury has no idea how many religious organisations claim tax exemption and whether those which do are really religious. Rhetorically I ask: where is the oversight, where is the stewardship of the taxation dollar, where is the duty of care to the Australian citizens caught up in these abusive groups and where is the response to complaints of harm? There is none. Meanwhile, abusive groups are free to destroy families; provide unfair work conditions; require members to lie to authorities; and cause psychological distress, even suicide, with unchallenged tax exemption. The abuses of some groups have been mentioned today, but they are only some of the many dozens of groups that CIFS receives inquiries about. Even so, we are sure that CIFS has only a small exposure to the totality of this problem. We heard for the first time from these complainants today—

Senator CAMERON—Mr Smith, can I just stop you reading your prepared statement. I am really interested in what practical solutions you see to the problem that you have rightly raised. I am looking at your submission and you do say that the bill is welcome. You support the bill?

Mr P Smith—We support the bill. Paragraph 50-51(2)(b) states:

... the benefit must be balanced against any detriment or harm ...

And the harm is what it is all about. But there is nobody listening or looking at what the harm is. The fact that these harms are occurring we find abhorrent. They are funded by the taxpayer and no-one is making any effort. The Treasury does not even know how many groups there are and what the nature is of their work or, for example, how much money goes through their books. It was mentioned that some cults will not open their books. I put it to you that they are not required to under the law.

ACTING CHAIR—So you are suggesting that the law should require examination of the financial records?

Mr P Smith—No, I am talking primarily about the harm.

ACTING CHAIR—We are dealing with a tax-exempt status.

Mr P Smith—Yes, tax-exempt groups—benefit versus harm.

ACTING CHAIR—We would like you to suggest to us a criteria which may be useful in determining a tax-exempt status for any group claiming to be a religion.

Mr P Smith—A criterion would be, first-up, to assess whether there is any benefit. Many groups can say, 'We do this, that and the other; we're beneficial.' But the other side of the story is the members—what is their experience? What harms are they put under by these methods of a small subset of tax-exempt religious groups which use persuasive coercion to further their own power agenda?

ACTING CHAIR—There is a common law definition of 'charity,' which relates to providing charity educational services and so on. You are saying that is not sufficient?

Mr P Smith—It is not sufficient because it does not look at the harm. In fact, not only does our system not look at the harm but it does not accept complaint of harm.

ACTING CHAIR—So you would like that to be included?

Mr P Smith—Definitely.

Mrs Hodgkins—Could I just make a point here and, once again, it is through personal experience of having my 20-year-old daughter join a cult that was recognised, by using that term, around the world. Moneys were gathered for the Hope charity that it said it was funding through walkathons to give to people who were in need. I do not have the documentation, so I cannot back this up at this stage, but documentation was done in the English part of this church about the tax avoidance that was happening there. Very often it is difficult to know where that funding goes. In my daughter's experience it was used for a holiday down at the snow for the members who were very high up in the pyramid. I think this is a very big issue. We like to take people at their face value. Obviously, it is not a simple question as to how this can be dealt with. We have great respect for those people who perhaps will look thoroughly into these issues to see whether there can perhaps be some committee that can validate certain aspects that cannot be denied that a group is causing harm. Perhaps that is one way. I think we can gather sufficient professional research that has been undertaken to be able to do that.

Senator XENOPHON—I have quite severe time constraints. I have only four or five minutes and a number of questions to put to you, so I would be grateful if you could give me brief short answers and, if you need to elaborate on them, perhaps with the permission of the committee you could do that on notice. Should one issue in determining a public benefit test be the ease with which a person can leave an organisation? In

other words, if they are subjected to any harassment or coercion or are being cut away from members of their family, is that the sort of thing you are saying should be a criterion to consider whether an organisation should get tax-free status?

Mrs Hodgkins—Absolutely. We know we could say that groups are beneficial and name groups regarded as religious groups and churches that would allow that, that would still have good communication with those that remained in that church or that belief system.

Senator XENOPHON—In other words, there is a level of tolerance towards family members who remain if someone leaves. Given your understanding of the current system, some submissions say that there is already a public benefit test and that is what the tax office looks at. Mr Peter Smith, you are saying that that is not the case—is that correct?

Mr P Smith—Could I submit that that applies to the fourth heading of the Statute of Elizabeth—in my reading of it. Groups claim special exemption for a benefit which is not a poverty, education or religious organisation. This current public benefit test is never applied to a religious organisation. And I refer to the quote that I gave you.

Senator XENOPHON—Yes. If you want to put it on notice, you can do that. Your understanding is that, at the moment, if there are complaints about an organisation which receives tax-free status, there is no adequate mechanism to deal with those complaints—is that correct?

Mr P Smith—There is no mechanism.

Senator XENOPHON—You are saying there is no mechanism?

Mr P Smith—There is no mechanism.

Senator XENOPHON—Has your organisation approached, for instance, the Australian Taxation Office to say that you have concerns about this or that organisation and have you asked the ATO whether they are looking into it?

Mr P Smith—We have not done that.

Mrs Hodgkins—Individuals have in the past from their own experiences. We know that.

Senator XENOPHON—Are you aware of what the response was from the ATO?

Mrs Hodgkins—No, we have not documented responses from individuals that have done this.

Senator XENOPHON—Are you saying that there is no mechanism for transparency or accountability? If there are complaints about an organisation and its tax-free status, it does not really go anywhere at the moment in the current system.

Mr P Smith—In the current system there is a complete disconnect between a complaint of harm and tax deductibility. There is no connection. If we can connect those, we would go a long way to address this issue. I think the bill does that.

Senator XENOPHON—Thank you.

Senator STEPHENS—Thank you for your evidence. In your submission you are very supportive of this bill and the introduction of a benefit test. I know you were here earlier when I mentioned the work that was undertaken by the Productivity Commission, which looked extensively at the regulatory regime for charities and not-for-profit organisations in Australia, and makes a recommendation for a charities regulator and a not-for-profit regulator. Would you support some kind of a regulator or register independent of the tax office?

Mr P Smith—We would support that if there was a mechanism for complaints to be adequately addressed. In any commercial organisation there is a complaints process and a complaints policy. I submit that a lot of these cults have no complaints policy except punishment and expulsion, and escalation thereafter to the courts, bankruptcy and psychological damage.

Senator STEPHENS—I understand what you are saying—an individual being able to take some kind of action.

Mr P Smith—No, I am talking about the basis for the authority giving the tax exemption or withdrawing it. I am not talking about one complaint. In my work I have had a complaint against me. I am still working because the complaint was properly and adequately addressed in a democratic way. I was not kicked out. If I was, I would be talking about an unfair dismissal.

Senator STEPHENS—I am trying to understand the thrust of your submission, which is for two things: one is for some independence around the assessment of tax deductibility issues and the tax treatment of organisations; the second is for a complaints resolution mechanism—is that correct?

Mrs Hodgkins—We think that would go hand in hand. If it were to be that the qualifying thing is harm being done against the benefits that may be very minute compared to the harm, we think this is that only way that the two can go together.

Mr P Smith—We consider that if there is adequate harm the benefit should be removed. It should not just be an address of those harms, because they would be symptoms of a systematic failure of the organisation not to provide harm.

ACTING CHAIR—Thank you. The common law definition of charity is relief of poverty, the advancement of education, the advancement of religion and other purposes beneficial to the community not falling under any of the preceding heads. How would you like to see that varied and amended? Would examples following from the list of cults you have given us perhaps mean we exclude the advancement of religion and recommend—

Mrs Hodgkins—I think all of those benefits are noble but, if there is tax exemption, is it spreading into the community or is it being deemed only available to a small group of people who are benefiting because of their religious belief, taking in the taxpayers' money to fund schools and education within their own organisation? I think we have to look at groups that are exclusive and not inclusive of seeing that taxpayer money spread into the community—which they should, in a way, be part of if they are receiving that tax money for these noble causes. I think that is an area that really needs to be looked at against the harm that may be coming from groups because of their exclusiveness. Without mentioning names, there is a problematic group that has been looked at that does very much separate itself from general mainstream society. It has schools largely funded. The people going to those schools are the beneficiaries of that community. So I think there is a broadness here. I bring it back all the time to what we are talking about, which is taxpayers' money going almost automatically when those things can be ticked. I think we should look further into those areas and I think the best way, as we have been talking about, is to hear and to recognise complaints when they come, to be willing to think it is not just a few disgruntled members who have been hurt and to look seriously and deeply at those issues that will not go away.

ACTING CHAIR—Thank you. I said 'exclude religion' just to be a little bit provocative to see what you would say, but really what you are asking for is an assessment of the way the organisations operate and their structure and internal function.

Mr P Smith—There may be a broad presumption of benefit of religion. We accept that a classic religion is a benefit. If a group of people worship together, that may provide some spiritual benefit. But if harm is not addressed then these beliefs can be subverted into other activities which are for the benefit not for what it would outwardly appear is the case.

ACTING CHAIR—It is very difficult to define a test for this, though, isn't it?

Mr P Smith—I think looking at the harm is the main part.

Mrs Hodgkins—Perhaps it has been brought up, but there is also when a group becomes a business and does not get looked at from that point of view. We are certainly for the freedom to operate of the groups who have the interests of the communities and our belief systems and who are operating without a lot of these things happening. But perhaps we could stress today that the problem is not one or two groups; it is a much larger area. I think we could bring that to the Senate today.

ACTING CHAIR—I thank you for that list. It is very interesting, I must say. You have put together a very comprehensive list of organisations which could be classified as cults. With that we will have to conclude your evidence, so thank you very much for appearing this morning.

[11.50 am]

GARRETT, Mr Trevor David, Chief Executive, Charities Commission, New Zealand

ACTING CHAIR—Welcome, Mr Garrett, to today's hearing. Have you flown over especially for this inquiry?

Mr Garrett—I have.

ACTING CHAIR—In that case we thank you for being here especially. Before inviting you to make an opening statement I would like to remind you that the protection of parliamentary privilege in the Australian parliament cannot be guaranteed to jurisdictions outside of Australia. Your evidence should be made knowing the inability of the Australian Senate to protect you outside of Australian jurisdiction. I add that these are public proceedings, although the committee may agree to a request to have evidence heard in camera or it may determine that certain evidence should be heard in camera. Having said those things, and if you accept those limitations, I invite you to make an opening statement.

Mr Garrett—Thank you for inviting me here. We have not put in a submission, so what I am really prepared to do is simply to answer questions about our experience. But let me give you a little bit of background to start off with. The Charities Commission was established in New Zealand on 1 July 2005, so on Thursday we are having our birthday. Prior to the commission we had an environment where charities, in order to get their tax exemptions, would self-assess their tax status. From time to time some organisations would write to our Inland Revenue Department and seek a letter of comfort, which simply gave them comfort that they could claim the status that the IRD thought they were a charity. But that was one off and it had no legal backing.

Our role is several-fold. The first role that we do is to register charities. The second is that we receive annual returns from charities. Essentially they are financial statements and any changes that they have made during the course of a year. We monitor and investigate charities. We deal with complaints about charities. We make charities transparent to the extent that we publish all financial information about charities that is provided to us. Part of that is geared towards developing an environment of public trust and confidence in the charitable sector. The last thing that we do, which was something that came into the legislation during a select committee phase, is this. It was a move away from our regulatory role—which everything I have said so far is—to work on educating charities on governance and management. Sometimes there is a conflict between those two roles.

Registration is essential for tax exemptions. Charities which had been claiming tax exemptions before our establishment and which have not registered with us or have not been registered no longer have tax exemptions. Our Inland Revenue Department is currently working through that with charities that are not filing tax exemptions and that are not registered. Since 2007 we have assessed something like 30,000 applications for charitable status and we have registered about 25,000. From the annual returns that we receive I can tell you that about \$14.5 billion is assessed as tax-exempt income, so it is a quite significant economic impact that charities have. There is something like \$2.5 billion that has come to charities by way of donations. That is information which is coming out of the financial statements that are provided to us.

As part of the annual returns, we will monitor charities and do that on a selective basis, but sometimes what can come out of that is that we deregister charities, normally because they are not carrying out charitable purposes. That is a process that we are going through. In terms of consideration as to whether an organisation is charitable or not, first of all, they must be exclusively charitable. Sometimes we find that an organisation has some charitable purposes but also some which are not charitable purposes and which are a main purpose, one of the principal ones being political advocacy. And then, secondly, we deal with the four heads of charity, which, Acting Chair, you have mentioned—although, listening to proceedings today, I wonder if we are talking about advancing poverty and relief from religion, but that is something you can chew over.

The last part of it is that all charities must have public benefit. When we look at that, we look at, firstly, whether there is a benefit, which means that we will also look at whether there are harms that are caused; and, secondly, we look at the extent to which the charity is accessible to the public. We bring in both of those tests. Since you have been talking predominantly about religion, I will mention that what we use is case law out of Australia which has been confirmed in our own courts, which says that religion is beneficial, but we will still apply the public benefit test to that. That is probably all I need to say at this stage, although what I have

brought over, which the secretariat has been kind enough to copy, is the guidance that we have on the public benefit test, which is publicly available in New Zealand.

ACTING CHAIR—Thank you very much, Mr Garrett; that will be very helpful. We appreciate your doing that. Senator Cameron.

Senator CAMERON—Thanks, Mr Garrett. Some of the submissions we have had from charitable organisations say that if we adopt the bill that is before us it will place a substantial additional burden on charities and religious institutions. Was that argument put forward in New Zealand prior to your coming about as an organisation?

Mr Garrett—Yes, it was. Certainly, when we were going through the registration process, we often got this thing about it being burdensome, but that has not been our experience. For example, it took one organisation something like 12 minutes to put in their application online, because they simply provided the rules, the list of officers and the fact that they were not disqualified, and ticked the boxes. So, no, that was not an issue. Similarly, we get concerns about the filing of an annual return, and again our experience is that that is not burdensome either. That is partly because of the approach that we have taken, which is that our organisations are doing good and it is not our job to make that more difficult for them. We get sufficient information for us to be able to make a decision.

I would say, though, that some organisations, when they looked at their rules—and some of them had not looked at them for some time—found that they were out of date. We also found that many organisations had inappropriate winding-up clauses which would have made them not registrable. So some organisations did have to do a bit of work in order to make themselves ‘charitable’. But I think our experience is that that was not an added burden.

Senator CAMERON—Many charities in Australia carry out commercial activities to fund their charitable function. How do you deal with that in New Zealand?

Mr Garrett—We allow it. For example, Sanitarium is registered. Many of the op shops are registered. The test that we have relates to private benefit. In other words, if the organisation is owned by the registered charity, if all of the proceeds go to the registered charity, then we would say that that was appropriate. What we would look at was whether there was private benefit. We would look within the organisation to find whether excessive salaries were being paid or things like that. Otherwise, we are okay with that. We accept that charities use a whole range of mechanisms to raise funds for the charity, and commercial enterprise is simply one of those.

Senator CAMERON—I suppose the other issue that we face today and in some of our submissions is the question I have put a number of times: how do you balance the public benefit against the actions of individuals within an organisation, and then how do you balance the vicarious liability for the organisation against the actions of individuals? Do you do that?

Mr Garrett—We do to a certain extent. We have just had a recent example with IHC—I do not think you used the full term these days—where there was fraud within the organisation. The person then went before the courts. What we did in that case was look to see whether the organisation itself has handled that appropriately. In other words, was there something they condoned. If the answer was yes, then we may have had some issues with them. But when we looked at them, they had identified the problem, they had gone to the police and that had been taken to the courts. So we would look at it on the balance of what is happening within the organisation.

Senator CAMERON—The argument about bureaucratic structures and problems for the public benefit has also been in some of our submissions. What is the bureaucracy of your organisation? How many people are employed and how much does it cost to run it?

Mr Garrett—When we went through the registration process, we were up to around 65 staff, because we had a large number of applications—30,000 applications coming in in something like 18 months. We needed to work out through that. We are probably down to about 40 now for the 25,000 organisations. We are covering a number of things. I would also have to say that we are not into business as usual yet—we are still treading carefully through some of our activities. We have a small number of staff, because we receive about to a 2,500 new applications for registration each year. We are still trying to work out what staff is appropriate for the monitoring of charities and for investigating charities. Investigations will come about because (1) there has been a complaint; (2) we see something that we do not like or; (3) in some cases, where we have registered an

organisation, we are not convinced that they are going to be charitable, so we will review them after a year. We are also now developing our education function. That is an additional function. I would not say it is a bureaucratic function, but it still contributes to the size of the organisation.

Senator CAMERON—I use the term ‘bureaucratic’ in its literal meaning—efficient organisation.

Mr Garrett—When you are on the side of the bureaucrats, they always are efficient is it the people on the other end who do not always acknowledged that.

Senator CAMERON—Let’s not go there.

Mr Garrett—One of the things is the culture of the organisation. I have come from having had a regulatory background working in the community. Most of our staff have had a lot of experience working in the community. So we are always looking at how we can make this easy. I would have to say that the charities law is incredibly difficult. How do you get the stuff which is incredibly difficult and explain it to Mrs Smith in Bowrah? On the one hand you have to have sufficient information which is useful for lawyers; on the other hand you have to have something for the person who is working at the kitchen sink to understand what it is that you are doing. That is the balance that we as an organisation have to try to juggle all of the time.

Senator CAMERON—I have two final questions. Firstly, is there an appeal process from your decisions?

Mr Garrett—Yes.

Senator CAMERON—Could you outline it to us. Secondly, is there a best practice emerging internationally about dealing with the charities—an international best practice?

Mr Garrett—The first thing is that, in terms of appeals, my board will make decisions about declines and deregistrations. After that, people can appeal to the High Court. We have had about 12 or 13 appeals to the High Court—sadly, three of them were from my first decisions—and currently we have one case before the Court of Appeal. We have got that going. That was the first question. I have forgotten the second.

Senator CAMERON—The second question is: is there an emerging international best practice on the regulation of charities?

Mr Garrett—I think there is. The UK, the Scots and the Irish charities commissions are all based on the commission-type system. They have started to add to the heads of charity, although you can get your own evidence from them. But my understanding is that the four heads still form the basis of what is happening. My observation is that countries go two ways: one is through the tax system, where decisions are made within that; and the other is within the charities commission-type system. My observation tends to be that those that are within the tax system tend to be much more secretive because that is the culture and that is the law around tax, whereas those in the charities commission-type systems tend to be more transparent because that is the way that that tends to go.

Senator XENOPHON—Mr Garrett, thank you for being here to give evidence on this issue. Does this cover churches as well as religious organisations per se?

Mr Garrett—Yes. Every church that wishes to claim tax exemption would need to register with us, and they will need to go through the same tests.

Senator XENOPHON—Once an organisation has been registered and has passed those tests, is there a mechanism for ongoing monitoring? For instance, followers or former followers of a particular church said: ‘Look, these things are happening. They are sanctioned by the organisation.’ Is that the sort of thing where you can revisit the charitable status of an organisation?

Mr Garrett—Yes. We will do that. We have already had some complaints not about churches but about other charities and, when we have looked at them, we have carried out an investigation and deregistered them. Churches put us into a slightly more difficult environment, but we would do that.

Senator XENOPHON—It is a slightly more difficult way. Is there a constitutional fetter?

Mr Garrett—No. What the courts have said is that it is very difficult to make a judgement about a religious organisation and about the benefits of a particular religion. But if you then start to look into the religion and some of the practices it might have, there is the public benefit test. For example, if we looked at a closed order religious organisation where everything was internalised, where the prayers were internalised, we would have to ask: is there a public benefit there? So, while the courts have assumed that there will be a benefit because of the mere fact that it is a religion, we would still go through a test. There are two things that we can look at with a church. If it restricted membership, prevented people from joining the church, we would ask about the public

nature of the public benefit. If a church was involved with illegal practices, we would question the public benefit in that. This example is taking it to an extreme: if it had human sacrifices or animal sacrifices and those practices were illegal, we would have difficulty with that. If a complaint came to us about that, then we would act on the complaint.

Senator XENOPHON—Further to that, in the context of how this test operates, do you look at the books? Is there a requirement for tax returns or financial statements to be filed, or is it only on an as needs basis if you have concerns? Perhaps I will rephrase that: if an organisation has a significant amount of income and it has a tax free status, is there a requirement to show that that is not being siphoned off and that it is not going either overseas or to the hierarchy of the organisation where they are living very comfortably—in other words, beyond even any commercial basis in terms of what is a reasonable level of remuneration? How far can you dig into this in terms of the books? Is there a requirement to file financial statements or tax returns or some sort of statement if they are tax free?

Mr Garrett—There is a requirement to file a financial return to us annually and we will publish that information. We have had churches apply to us to have that information withheld. Our view is that public transparency is more important than withholding information. Sometimes organisations might change their behaviour a little bit to try to hide information within their accounts but because those accounts are public we may look at them. If someone is particularly interested, they will look at them themselves and if they are concerned they can make a complaint to us about it. With some of the charismatic churches the media have taken an interest in the amount of money going to the organisation and, because of our transparency, the media will do some of that work and, if necessary, they will come to us with a complaint.

Senator XENOPHON—In considering whether there is a public benefit, do you consider the level of donations, their income and the public works they do? Is there a balancing act to there?

Mr Garrett—A church does not have to do public good. We have to separate out between the wealthy work a church might do, educational work or whatever, and the work it does solely for its religious purposes. Sometimes there is a confusion between those. We will look at income and so on, although I would also have to say that it is pretty early days. Many of these organisations are putting in their first annual returns now so we have not developed a pattern with this. Any member of the Australian public can go on to our register to have a look at any church in New Zealand, at its income, expenditure and activities. You could do that now. I cannot imagine many Australians having an interest in doing that, but a New Zealander could look at any church and say, 'We have concerns about it. We gave this amount of money and we cannot see where it is in these books,' or 'They've said that there is no expenditure, but we know that money is going overseas.' So we as an organisation have the power to go in and carry out a more detailed investigation, if warranted, or we could refer it to the police, serious fraud office or any other agency.

Senator XENOPHON—If an organisation, whether it is a religion or a charity, which is claiming tax-free status says that they are charging very high fees in order to achieve further levels in that religion, does that concern you or is there a fair degree of latitude for that religion to charge what fees it wants? Is that part of the test you consider?

Mr Garrett—I can see where you are heading here, so let us keep it slightly more general. One of the things we would say, as part of a public benefit, is that the public should have a reasonable opportunity to get a benefit from the charity and the charging of fees may hinder that ability. For example, we register sports organisations. There is a difference between golf where at some places it is \$500—we would probably say that is reasonable—but if someone charged \$20,000—we would say that the public does not have a reasonable opportunity to participate, so we would not register them. If you bring that into the church environment, that may well be something we would have to take into account.

Senator XENOPHON—So that is one of the issues. You look at the commercial structure, if you like, of the organisation.

Mr Garrett—In other words, if you had a church which for various reasons—cost being one—made it difficult for people to participate, then we would see that the public benefit was hindered there.

Senator XENOPHON—So if an organisation is saying 'This is a path to enlightenment,' as a lot of faiths do, 'but there are enormous fees involved' that would be a negative factor in terms of whether it should receive tax-free status.

Mr Garrett—It could well be.

Senator STEPHENS—Mr Garrett, how does the New Zealand commission deal with international organisations?

Mr Garrett—We will register them but what we look at is the extent to which we are able to enforce any of our provisions within New Zealand, which means that they would normally have to have an office there or something like that—that is the first thing. Secondly, for tax purposes, if they are operating overseas then they need to get special provision from inland revenue which is done by a separate act of parliament. I think those are probably the main things. We have turned down some international organisations but that has mostly been because they have operated overseas with no real base in New Zealand. We have looked at some organisations which are Australasian and we have looked at again whether we can enforce the law in New Zealand or whether it is reliant on Australia. So we have registered an awful lot of organisations. I think we have got something like 2,500 charities which provide international services.

Senator STEPHENS—And the commission was established by a new act of parliament in New Zealand, wasn't it?

Mr Garrett—Yes, it was.

Senator STEPHENS—I am sure that you are aware that we have been having this debate here in Australia for quite a long time and have got to the stage where there was a draft charities bill proposed in 2004. Most recently the Henry review of the Australian taxation system recommended a modern charities act. Do you think that the act that you are currently operating under clarifies some of the complexity around charity law?

Mr Garrett—Probably not. When I got asked to set this organisation up and I was really in the sport and recreation sector, I thought charity was quite narrow around the welfare area. I think that is a popular understanding of what charity is, yet when you look at it, it is incredibly broad. We have sometimes thought about the fact that you have got this piece of legislation from the 1600s. What relevance does that have, and should we change it? As we have worked through the process, I have probably got a feeling that you are not going to make any simpler by changing the definitions. I think the UK people have tried to by saying, 'These are things which may be charitable.' So I think that is helpful.

What we find—and you will find it here too—is that one's perception of charity changes over time, and something which was charitable 50 years ago is now no longer charitable, so you still have to have a system by which you are able to constantly respond to the needs and requirements of modern society. I am not too sure how today you can somehow do that in a way which is going to be just as accessible in another 20 or 30 years time. For example, sport in the 1800s was considered not to be charitable because it was entertainment for the aristocracy, whereas now we see sport as something which is really important for public health and is used for education. It is on that basis that we have reviewed how we deal with that, so it is having an ability to make those changes.

Senator STEPHENS—I have a final question. The issue of deregistering an organisation—how many of those have you done since the register was established?

Mr Garrett—It might be up around 800 to 1,000 over the past year or so, but I would have to say that most of those are either because the organisation does not send in its annual returns and we will deregister them or they have gone belly up, in which case we want to take them off the register so the register is up-to-date. We have probably dealt with only about a dozen organisations where we have decided that what they were doing was not what they told us that they were going to do. And we have had some where we think there is fraud going on, and so we have deregistered them for financial mismanagement. So there is a range, but again I would have to caution all of that by saying we finished registration of the big bulk last year and we have only just received the first of the annual returns for every organisation.

Senator XENOPHON—I just want to ask something further to that. So at the moment the criteria for a public benefit test, you can look at the potential issue of harm as well—

Mr Garrett—Yes.

Senator XENOPHON—Is it evolving at the moment because it is relatively new? Do you rely on common law precedents? How do you determine it?

Mr Garrett—Some common law. You raised a question in a previous group about the ease of being able to leave an organisation. I quickly put that down and thought, 'Gee, that's an interesting one because if you can't leave is there harm which is associated with that?' An example might be parachuting or a sport which has lot

of danger. We would say that with the amount of danger that there might be that we think there is potential harm there. So we do look at that, but it certainly is evolving.

Senator CAMERON—Mr Garrett, I am just having a look at your website. I must congratulate you; it is really good. I have never been able to see anything like this in Australia, it is very good.

Mr Garrett—We launched that one last Tuesday.

Senator CAMERON—It is very good. You have financial performance in relation to when you go in and look at the returns.

Mr Garrett—Yes.

Senator CAMERON—Is that a standard financial performance that everyone must apply to? There is no variation to that; everyone must talk about their grants, their income, their membership fees, donations, bequests? Is that standard?

Mr Garrett—Yes, it is. The only thing I would say though is that one of the things we have found is that the financial reporting standards for organisations range from abysmal to pretty good, and so we are starting to look at whether we should have some financial reporting standards for not-for-profit organisations. So that is the first thing. The other is that we are starting to see some issues starting to emerge such as cost of administration or costs of fundraising, and we are looking at how we might be able to address that in the future, bearing in mind that sometimes there is a mismatch between a community expectation about costs and the real cost of running an organisation or raising money. And we are also mindful, and this comes back to your bureaucratic question, about the extent to which a government agency should be telling a not-for-profit organisation or a charity or whatever how it should be running itself and what it should be doing, and so there is a real balance there as well. We have not got to a stage where we are trying to work our way through that.

Senator CAMERON—I am just looking at the income and expenditure for one charity—I will not name the charity; it is not fair, I would not do that—and it seems to me to be very generalised. Cost of service provision is a six-figure sum. Cost of trading operations is a six-figure sum. Are there audits done on these or do you just take this as that is how it is?

Mr Garrett—What you are looking at is what is filled in by the organisation on our form. We actually get that, because that is what we use for all of our statistics. We can do all sorts of breakdowns—for example, based on that information, I could tell you how many organisations get money from shares and from dividends and what percentage of the income comes from that. We use that for statistical purposes. What you can also do—and this is what we would encourage you to do if you are looking at an organisation—is go beyond that. You can go in and look at the financial statements for that particular organisation. That is where you will get a more accurate understanding of that organisation.

We did some work just to test the accuracy from transcribing from their financial statements through to the form that you are referring to, and we found that most of it was relatively accurate, even though people were having to make some judgment calls. In fact, the only problem we had was that larger organisations, where we talked about rounding, instead of putting \$22 million put \$22,000, so if anything we were underreporting that, but otherwise it was relatively accurate.

Senator CAMERON—I have just done that. I clicked on the statement of income and expenditure for that charity, and it goes into a lot of detail about the income and expenditure. I am not sure if you dealt with the issue of whether you actually go in and audit any of these to make sure that there is a public benefit and what they are saying is accurate?

Mr Garrett—Yes, we do, but this is where we are just starting to put some thought as to how many we do that with. In other words, we are not going to look at 25,000 organisations every year.

Senator XENOPHON—Is it complaints driven?

Mr Garrett—Complaints driven will be one. Currently, we are looking at what sort of risk analysis we should have for charities. We are looking at organisations which give out grants, for example. We would look at that. So, no, we have not quite got there yet. Getting yourself into the paper does not help, because we do tend to have a look at those organisations, but that is of a complaints driven type nature. We have looked at 600 organisations over the past nine months to test whether we thought there was anything particularly wrong, and for the most part we found that actually most organisations were pretty compliant. So I am starting to think: is that the best approach, or should we put more effort into a smaller number of organisations where we can go into just a little bit more detail?

Senator XENOPHON—Thank you. Sorry, Senator Cameron.

Mr Garrett—But I think the important thing that Senator Cameron raised was the fact that, just in a quick demonstration which you have provided, that is how we are making every charity transparent. While I might not look at every one of the 25,000, someone like you will and, because you have a particular interest in the organisation, you are the one who is going to start raising some questions. You may deal with those internally within the organisation or you may come to us or someone else.

Senator CAMERON—For some of these generic itemised accounts that just say, ‘General expenditure \$200,000,’ could someone go, ‘What’s this about?’ and say to you, ‘We don’t think this is right; why would there be a general expenditure of \$200,000?’ Would you then take that up?

Mr Garrett—Yes, we will. In fact, we had one recently that was an organisation raising money through telemarketing. We looked at the fact that, let us say, they got \$900,000 from telemarketing. About \$700,000 of that went back as fees to the telemarketer. Then another \$150,000 went in administration costs. When we looked, something like \$6,000 went for the service, so \$900,000 suddenly became \$6,000, so we obviously asked some questions about that. But that is the sort of thing which comes out of transparency.

Senator CAMERON—You could do some statistical analysis on, say, charities that are receiving from \$50,000 to \$1 million, from \$1 million to \$10 million, from \$10 million to \$20 million, and then look at that and say, ‘This is what you should be expending,’ or ‘This is a best practice on expenditure for costs,’ so that the bulk of the money can go back to charity. Can you do that?

Mr Garrett—Yes, we can do that. There are lots of things we can do with that register. I will give you an example. We had a select committee which was looking at an issue related to fundraising and it wanted to know how many charities used third parties for fundraising. So we chose a province or state, if you like, and we sent out a question to, let us say, 2½ thousand charities. By the next morning we had answers from 1,600 of them and we could give an answer to the select committee the next day.

Senator CAMERON—They don’t ignore you!

Mr Garrett—No, they do not. That is always the nice thing about being, if you like, a benign regulator—people will give you answers. In fact, one of the difficulties we have got at the time being is that when people had to fill out the forms they ticked every box in terms of what they did, I think hoping like heck that that would make them look more impressive, and we have now got to try and refine that just a little bit more.

Senator CAMERON—In your submission you said to us that \$4.5 billion was tax exempt income in New Zealand.

Mr Garrett—\$14.5 billion.

Senator CAMERON—Okay, \$14.5 billion, and charities received about \$2.5 billion by way of exemptions.

Mr Garrett—No, \$2.5 billion by way of donations, so that would be the rattling-the-bucket type stuff, and \$14.5 billion from general income, so that would be from investments and so on.

Senator CAMERON—The Productivity Commission estimated the cost to the public purse of charities in Australia was anywhere between \$4 billion and \$8 billion. That seems low compared to in New Zealand.

Mr Garrett—Yes, when you mentioned that before that seemed low to me. But I would have to say that before we existed all of this was a guess, whereas those figures we are getting now are the ones that have come from that form that you were looking through.

Senator CAMERON—It is an important point because if we do not understand the public funding that is going into charities we cannot make judgments about what regulations should be there.

Mr Garrett—It makes it very difficult. I mentioned that fundraising exercise, with \$900,000 in amounts raised. If you were to give the full tax exemption to that, and then look at the \$6,000 that was given out, you are looking at the cost of government providing a grant for a particular activity.

Senator CAMERON—Does your organisation have general community support?

Mr Garrett—I think it has improved. I will give you an example. We are running some forums around the country at the time being, and one of the good things we can do is very quickly send out an invitation. Something that, as we were getting established, would have taken me months to do I can do now instantaneously. We are running six forums around Auckland this week and we have something like a thousand charities turning up to them—and this is to talk about us. Also, in the feedback we are getting, something like

90 per cent of the responses put it as either valuable or very valuable. I am talking to people from local government who go to these forums and they are saying, 'We're seeing people we didn't know existed in our communities.' I think these people are coming to the forums because they have now got a much better ability to network with each other, and we have now got a very good ability to send material out to charities. For example, when our Reserve Bank wanted to put something out for issuers we were able to look at the characteristics of an issuer and send out Reserve Bank material just to those people.

If someone is looking at a reduction in the fees for bank cards, we can say to them, 'Tell us the characteristics of an organisation that will have a bank card in order to receive donations or because of trading and we can target information that will go out to that organisation.' So I look at the fact that, yes, we are a regulator, but, with the information that we have, how can we make this beneficial to the sector? I think it is that last bit which is getting support over a pretty short period of time for what we are doing.

Senator CAMERON—The major religions are involved in massive amounts of charity work. Of the money that goes from government to them, lots of it goes back out again—or all of it goes back out, depending on what charity it is. Can you measure that? Isn't that an important part of how a charity is operating effectively?

Mr Garrett—We will be able to. The only problem with a church—well, it is not a problem—is that a lot of the money that comes into the church is for the people who run the church; it is for the ministers and so on. So we can look at what the cost of that is to the church. What we then have to look at—and this is where the financial reporting standards may assist—is: 'When you go out and do your non-religious work, your welfare work, your education work, can we separate out that activity within your accounts?' Then we can better see what money is coming in and where it is going to within the church environment.

Senator CAMERON—So if a charity breaches workplace laws or minimum wage standards, or operates in such a way that the public benefit is diminished, when do you say, 'That public benefit is diminished to the extent that you should not be a charity any longer,' and what is the process that you would then undertake?

Mr Garrett—If they were breaking those other laws and someone came to us, we would quickly refer them to the appropriate jurisdiction for that. If we see persistent breaking of laws then we will send them a letter which says, 'We intend to deregister you,' and we will go through a proper process around that. For example, we saw one organisation where we thought there was fraud, so we went through the process of deregistration and it was deregistered.

You do not want to have a situation where they have broken one law—for example, where they may have inappropriately paid youth rates—and when you see that you say, 'Right; we are going to deregister you.' It would have to be persistent. In other words, we would raise the issue and expect them to correct it and move on. If they did not correct it, or if they kept persisting in that sort of behaviour, then we would move to deregister them for those reasons.

Senator CAMERON—I am hesitant to ask this but I suppose I have to ask: how would you deal with persistent child molestation from an organisation that gets a benefit as a charity? How would you deal with that?

Mr Garrett—Fortunately, we have not had any examples of that. I think our first port of call with child molestation would be the police. We have developed links with other law enforcement agencies. We would think, 'That is starting to take us beyond our ability to respond to that particular complaint.' If the police saw that and found that it was systemic within the organisation, then we would look to see how we could act with that as well. We would not tolerate something like that, but we would not want to carry out an investigation which might lead to a deregistration if we thought there was more serious criminal activity taking place.

Senator CAMERON—So you would work hand in glove with the police authorities on an issue like that?

Mr Garrett—Yes. In that case it would be the police. I will give you an example. There was a local op shop from which someone came to us to say, 'We think the person behind the till is nicking money. We have taken it up with management and with the board, and they have told us, "Just go away."'

This group—they were a lot of little Miss Marples, I think—went and purchased something and they got a receipt, and they went in the next day and the receipt had been torn out of the receipt book. So they said, 'What do we do?' We helped them go to the police about that, and the police said to us that the difficulty they have with charities is that everyone thinks that everyone is doing good. If someone starts nicking money, they do not go to the police, because 'She has been such a lovely lady and has given such neat service' and they let them quietly go away. They quietly go away, often, to another organisation and do the same thing again. So

what we will do, where we think there is criminal wrongdoing, is either get the complainant to go to the police or we will go to the police. But we will take it to an appropriate place.

Senator CAMERON—Do you have a statement of charitable purpose that organisations have to give to you?

Mr Garrett—No, we do not at this stage. That is something which we think about. They come back to us with their annual return, and if they have changed their purposes then they need to let us know. So if there were any rule change they let would let us know, and we will reassess them. What we are looking at is: how do we get the organisation to satisfy, if you like, the public that they are doing charitable things? We have not quite got that far yet.

Senator CAMERON—Isn't that a very difficult thing? Don't the public make donations on the basis that you have ticked them off—

Mr Garrett—Yes—

Senator CAMERON—and that gives them some respectability. But the public really do not know when they put money in the tin what is happening, do they?

Mr Garrett—Part of what we are looking at is: how can we educate the public to be better donors? You are dead right: if someone is rattling a bucket in front of you and you throw two bucks in, you are not going to go and turn on your computer to make sure that you have got the right organisation. But we are saying that if you are starting to make significant donations, have a look at the register and satisfy yourself that the organisation you are giving money to is using your money appropriately.

Senator CAMERON—That is the point. I have just had a very quick look at it. I can see the income and expenditure, but I cannot see the charitable purpose.

Mr Garrett—Right. So the next part is that we are saying to charities: 'You tell a better story on that computer about what it is that you do.' I spoke to our Fundraising Institute of New Zealand a month ago, and all there are all these fundraisers from organisations. I said, 'How many of you have looked at your entry on our register?' And about half the hands went up. I said, 'That's hopeless, because this is going to be the first port of call for the media or for people who are wanting to make a donation. And if you don't tell a good story about yourself through your accounts or what you are putting onto the register, then don't get upset when people don't want to support you.' So our next step is: how do we make that information on the register even more useful than what it is now?

Senator CAMERON—Given your experience on that, if we moved to a commission, would it be a positive thing for us to say that you must have a statement of charitable purposes and outline the good that you are doing?

Mr Garrett—I would have thought that would be quite a positive thing to do. People think they are doing good, and sometimes it does not hurt to say to them, 'Why do you think you are doing good? What have you actually done in your community, or across the country, which actually is good?' Lots of people we see have a beef within the organisation so they go and set up another one, a parallel one. You look at the number of organisations that are all doing the same thing, because they all think they are doing good. To go down that line is probably a positive thing to do.

Senator CAMERON—Thank you.

ACTING CHAIR—Senator Fisher wishes to ask one question, I am told.

Senator FISHER—Mr Garrett, I was wondering: does your regime apply to employee and employer organisations—unions?

Mr Garrett—No, and that is because—

Senator STEPHENS—Or industry associations.

Senator FISHER—Or, indeed, as Senator Stephens has just said, industry associations?

Mr Garrett—No, because they are member organisations. If you look at our decisions—because we publish all of our decisions—you will see that we say that, where you are a membership organisation, the benefits are solely to the members. So we have to look at what happens outside. I will give you an example. We could not register Rotary because they had the 'lunch club', though they did lots of other good things. The lunch club is important but it is actually member only. It is all private benefit. We had Rotary separate out all

of their charity work—which they put into a charitable trust, which could be registered—and their member work, which could not be registered.

Senator FISHER—So unions, employer organisations and industry associations are not subject to the same regime?

Mr Garrett—No.

Senator FISHER—Thank you.

Senator CAMERON—So you cannot use that for a new Work Choices.

CHAIR—Thank you, Mr Garrett. That has been very useful evidence. We thank you very much for making the long journey from Wellington to Canberra. It was very good evidence and very interesting.

[12.46 pm]

LIND, Mr Andrew John, Partner, Corney and Lind Lawyers

ACTING CHAIR—Welcome. Would you like to make an opening statement, Mr Lind?

Mr Lind—Yes, thank you. First of all, thank you for the invitation to present to the committee. I will not go over the matters that I raised in our written submission but I would like to speak to a couple of other matters. A key question that seemed to be raised by a number of the submissions this morning was: who is the umpire? Who is the one who decides who is in and who is out? Is it the parliament? Is it the courts? Is it the regulator? Is it the administrator? All of these bodies have a role to play.

A key question in deciding who is in and who is out in this context is: who is relieved from paying tax? Who is relieved from the tax burden that the rest of us have to bear? The sustainable underpinning, to answer that question, it seems to me, is that tax relief is granted to activity that delivers such common good outcomes that it may otherwise have to be paid for by the government directly. I often say to my charitable clients: ‘If you’re delivering something that is of such worth and public good that, if you did not do it, the government would otherwise have to, you’re probably centre of the pocket in terms of what ‘charitable’ means.’

Who answers that question; who is the umpire? The amending legislation, the bill before us, shifts the pendulum to the government, to the parliament and the regulator and away from the courts. That is okay, but do we then have an independent umpire? The courts have of course taken over 400 years to develop their understanding of ‘charity’, and my submission is that the reduction of that 400 years of law into a codified test needs a lot more consultation than the consultation that this committee has undertaken to get to a public benefit bill.

I also want to make some comments on the need for an unconflicted administrator. In my view, the ATO, as the current administrator of who is in and who is out in terms of endorsements is severely conflicted. This is the arm of government that is responsible to maximise the size of the public purse and it is the arm of government that currently stands at the gateway to determine who gets the benefit of tax relief and who does not.

An independent umpire is needed, a charities commission. We have just heard from the New Zealand Charities Commission and I understand you will be hearing later today from the UK Charities Commission, and I commend their experience to your consideration. I support the need for an independent charities commission in Australia which can, without fear or favour, make decisions about who is in and who is out in a tax-exempt regime. It makes sense that if such an independent umpire is to be established, a charities commission, resourced and staffed by very expensive brains who will need to drive that organisation, that the established organisation have input into the rules that they will administer.

My concern for this sector is that it often runs on the ‘smell of an oily rag’, or at least a lot of the organisations that are involved in it do. They want to spend their income by and large on their purposes, on their noble charitable purposes. They do not want to spend a lot of money paying consultants like me. My concern is, let’s give them a voice by establishing an independent commission which can with them craft what charity means in our modern-day Australian context. A lot of that work has already been done through the 2000 charities definition inquiry, through the Productivity Commission report. A lot of that background work has been done. I am not suggesting that has to be done again; that could be leveraged off. So I am not against moving to codify the common law but I have grave fears for the attempt to do it at the speed at which this current bill is being introduced. The first priority, I submit, is the establishment of a charities commission that can aid in the development of a well-considered, codified definition of charity for the Australian context.

I want to suggest that there is another way of seeking to deal with organisations which public policy may have real concerns about in terms of whether they should be entitled to their tax endorsements or otherwise. I suggest the parliament is at liberty, subject to its constitutional powers, to specifically include or exclude persons or institutions from accessing particular taxation benefits. Parliament has already extended the breadth of charitable entitlement through the extension of the Charitable Purposes Act 2004 to specifically clarify the ground rules for, for example, participants in the first two years of the National Rental Affordability Scheme and, for example, for not-for-profit child-care providers, because there were significant public policy reasons to do so.

Does freedom of religion mean freedom from tax? Do the words in section 116 of the Constitution, free exercise of any religion, mean freedom from income and other taxes? It is strongly arguable, in my view, that freedom of religion does not mean freedom from tax, that there is a freedom of association, a freedom to

pursue whatever belief system you may want to pursue as long as it operates within the law, but that does not, it seems to me, necessarily mean that that organisation should be exempt from tax. It would still be free to operate but it may be a taxpayer.

If there are public policy concerns about a particular organisation, I suggest the government could move to enact a piece of legislation called something like the exclusion of charitable purpose act, to carve off and exclude particular classes of organisations, or indeed named organisations, from having the benefit of accessing tax concessions. Quite simply, that is not an attack on their freedom to operate, in my submission, but removal of a public purse subsidy for their operations. Such a move would, of course, require a process, would require opportunity to be heard, would require reasonable time for transition against any such class of organisations or named organisation that was included. Does that mean that the parliament would be moving to determine what religion means? No, I do not think so. It is simply allowing the parliament to determine who should be entitled to tax relief and who would not be. So I commend the consideration of a carve-out exclusion of charitable purpose mechanism in addition to the extension of charitable purposes mechanism that already exists.

I want to make one other introductory comment. The bill that is before us seeks to amend items 1.1 and 1.2 of section 50-5 of the Income Tax Assessment Act 1997—1.1 being charitable institutions and 1.2 being religious institutions. Within 1.1, of course, we have the four heads of charity that have been discussed at length this morning, in which religious institutions can be included. Item 1.2 does not have a similar charitable test. It allows the endorsement as tax-exempt of religious institutions that do not have charitable purpose. I think that is a key distinction. Therefore, perhaps reform is needed more in relation to 1.2 than it is to 1.1, because in 1.1 charitable institutions are already subject to a test of having to be charitable, which implicitly in our system requires a public benefit analysis—that is, it has to be a public body that does have charitable purposes which by definition have to deliver public benefit. Religious institutions under 1.2 currently are not required to be charitable.

CHAIR—We should finish there, Mr Lind, because we are running out of time. We will go to questions from senators.

Senator CAMERON—Thank you, Mr Lind, for your submission here today. I read your submission last night. I thought the main argument in your submission was: do not do anything without proper consultation—

Mr Lind—Yes.

Senator CAMERON—and you have reinforced that today. I am interested that you do support a charities commission.

Mr Lind—a charities commission by whatever name.

Senator CAMERON—You went on and outlined another proposal of a carving out parliament taking steps. Why wouldn't we just go for a charities commission on the basis of what has happened in the UK and New Zealand? I was very impressed with the evidence from the New Zealand Charities Commission this morning. Why wouldn't we go down that path?

Mr Lind—Ideally that is in my submission the best path for the sector. I was merely suggesting another mechanism that would be open to the parliament if the parliament perceived that the regulator or administrator, whoever that was, was not moving swiftly enough or in a direction that the parliament determined the public required in relation to particular classes of organisation.

Senator CAMERON—The other broader implication that you have raised in your submission is the cost to the charities. Do you have any comment on the previous evidence from the New Zealand Charities Commission that this is not now being raised generally as a problem?

Mr Lind—I would agree with that. Having heard from the leader of the UK charities commission, who I know you will be hearing from later today, and looked at some of what they are doing, I would consider that a well-established and resourced commission would ultimately lead to a reduction in the cost burden for the not-for-profit sector generally and the charitable sector specifically. There is something to be said for information that is well structured, well delivered so that well-meaning organisations who want to comply with the law know where to go for answers without having to pay an hourly rate for it.

Senator CAMERON—You have raised an interesting concept, and that is that the Taxation Office may not be the best unbiased organisation to deal with the charitable status.

Mr Lind—Yes.

Senator CAMERON—Does that mean that you think that some charities are being denied charitable status because the Taxation Office is about bringing income in?

Mr Lind—My view is that it cannot help but colour their perspective. It cannot help but affect decisions about where resource is allocated within their budgetary constraints. Let me give you a story.

Senator CAMERON—Not a long one, I hope.

Mr Lind—A short one. We had the Word Investments litigation that went all the way to the High Court, of course. There are recent indications that the ATO is requiring as a condition of endorsement that not-for-profit bodies or charitable bodies, as one of the objects in their constitution, agree that there essentially will be no commercial activity undertaken by that organisation. That is completely anathema to the decision of the High Court in Word Investments. To me it is a back-door way of seeking to implement policy contrary to that decision.

Senator CAMERON—You indicate in your submission that there are 400 years of law in relation to the definition of a charity. Because there are 400 years of law, does that mean that there should not be an analysis and maybe a redefinition of what is a charity? Are you satisfied with that—was it called the Elizabeth—

Mr Lind—From the preamble of the Statute of Elizabeth in 1601. My view is that it is appropriate in any codification that the definition be relooked at. But it needs to be relooked at in the context of where we have come to in the current analysis of what falls within those four heads of charity. Then I think, in that codification, there can be a further clarification, in 2010 and beyond in an Australian context, of what is meant by advancement of education, advancement of religion, relief of poverty and any other purpose beneficial to the community—a clarification of what is meant by those things, in our context.

Senator CAMERON—Have you had dealings with the Taxation Office in terms of clients of yours?

Mr Lind—Yes, absolutely.

Senator CAMERON—Do you find them responsive? Do you find they have got enough resources to deal with the issues?

Mr Lind—I would have to say that the responsiveness has increased in recent years. The focus of the original round of endorsements back in 2000—the resource allocation was just about getting everyone on the register. It was not about robustly analysing the nature of the applications that were put up. What that has meant is that there is a general sense out there that, if you have got your letter from the ATO saying you are entitled to these endorsements, that is all you need. That is not the case at all. There is a sentence at the bottom of all those endorsements: ‘You must tell us if you cease to be entitled to these endorsements.’ So self-assessment reigns. At the end of the day, if a review or audit takes place by the ATO and the ATO forms the view that the organisation is not entitled to the endorsements that it is claiming, it can revoke the endorsement and has power to revoke the endorsement retrospectively. That sends fear into the sector, which the sector does not need. After the initial round of getting everyone on the register, there is now, I am finding, a higher resourcing of the gate-keeping function. But I do think that that gate-keeping function is conflicted.

Senator CAMERON—Thank you.

Senator XENOPHON—Thank you, Mr Lind, for your submission and for the evidence you have given today. You are saying you do not like the idea of codification but you think there ought to be a regulatory authority that needs to look at this?

Mr Lind—No, I am happy with the idea of codification, but codification in the light of where we have come to over the last hundreds of years. The public benefit test as it is proposed in the bill before us I understand is not meant to be a complete test; it is meant to refer off to the regulator to provide further detail. My submission is that that is not appropriate. My submission is that, if there is to be codification, it ought to be codification on the face of the legislation and not referred to the regulator. It is something that needs to have the scrutiny of public debate.

Senator XENOPHON—Even though if it goes to the regulator that would, in effect, be a de facto way of looking at common-law considerations as well?

Mr Lind—Understood. But unfortunately, at this point, there is no way of knowing just what the regulator may or may not base its framework on.

Senator XENOPHON—Nor what the regulations would say? You are saying that your concern is what the regulations would say?

Mr Lind—Yes, what are the regulations going to say?

Senator XENOPHON—Just the benefit of Hansard, I think you referred to the High Court's decision in the—

Mr Lind—Word Investments.

Senator XENOPHON—Word Investments case. Could you just outline very briefly that decision in the context of your concerns that there may be a disjunct with respect to the tax office's approach on this?

Mr Lind—Yes. That decision, of course, concerned a business arm of Wycliffe Bible Translators called Bethel Funerals. Amongst other things, it ran a funeral business for profit, and it contributed the surpluses from that activity back to the registered charity, namely Wycliffe Bible Translators. The question for the High Court was whether the activity of Word Investments was charitable, and the High Court said yes, it was: the clear purposes of the organisation were to produce surpluses for charitable endeavour.

Both the Productivity Commission and Dr Henry have said that not-for-profits ought not to be limited in commercial activity. That is confirmed by the High Court's decision. The honourable Treasurer, now Deputy Prime Minister, wrote to the community housing sector in New South Wales earlier this year saying that Word Investments provides a structuring opportunity for the not-for-profit sector to legitimately run commercial activity to advance their charitable objects.

So we have all of this public policy saying that the charitable sector ought to be able to do this, and then we have the gatekeeper trying to really narrow what participants within the charitable sector may access that window of opportunity that the charitable sector has to use commercial activity as a way of supplementing its need for income. As the volunteer base diminishes, the sector needs to find other ways of raising funds.

Senator XENOPHON—Do you have concerns, though, in terms of the public policy aspects of that, that if a charity is operating, say, a printing business it can compete unfairly with a commercial printing business that does not have the benefit of a tax-free status?

Mr Lind—I do not have those concerns. I note with interest what the Productivity Commission and Dr Henry had to say about competitive neutrality and that, against that litmus test, there was no reason why the charitable sector ought not to be able to access the tax concessions they do and that it had very little adverse impact at a consumer level.

Senator XENOPHON—There could be instances where a commercial offshoot of a charitable organisation could be so big that it could distort the market and drive those commercial businesses out of the market. That could be the case, couldn't it?

Mr Lind—Yes, it could be the case, but I think there would be legitimate sanctions under the trade practices and fair-trading regimes that could prevent that from occurring. I have not directed my mind at length to that. It is a fair question. I do not think we are in that space in relation to any commercial activities, so far as I am aware, of not-for-profits that have charitable tax status.

Senator XENOPHON—You acknowledge that there is a potential there for that?

Mr Lind—Yes, there is.

Senator XENOPHON—It could get out of hand?

Mr Lind—Yes, sure.

Senator XENOPHON—Earlier in your evidence, you talked about how tax exemptions for organisations deliver a common good outcome and that, if they do not do it, the government would have to pick up the tab. I am trying to summarise your position.

Mr Lind—Yes.

Senator XENOPHON—To what extent do you think it is important that the ATO either under the current rules or under any changed circumstances ought to look at proportionality? In other words, if an organisation takes \$1 million in donations or in revenue but spends only \$1,000—to give an extreme example—on charitable purposes, should that factor be taken into account in determining whether it is reasonable for that organisation to have tax free status?

Mr Lind—Absolutely. It is currently a factor that, to maintain its tax exempt endorsements, an organisation must not just as a matter of purpose but of activity—the dominant activity—be charitable. To the extent that

the dominant activity is not charitable, their endorsement status is at risk. So I think any codification would equally take that into account.

Senator XENOPHON—So proportionality is not a reason. What about the whole issue of transparency. Do you think that is important?

Mr Lind—Absolutely. I agree wholeheartedly with transparency. The UK charities commission has done some excellent things on its website about transparency.

Senator XENOPHON—As has the New Zealand commission.

Mr Lind—Absolutely.

Senator FISHER—Mr Lind, do you advise unions and employer organisations?

Mr Lind—Personally, no. One of the business partners in our firm may have, but not as a matter of every day practice.

Senator CAMERON—Chair, I raise a point of order. This is the second time that Senator Fisher has come in and done what she normally does, and that is attack the trade union movement.

Senator FISHER—How so, Senator?

Senator CAMERON—This is not about the trade union movement. The trade union movement is not a charity. Unless there is a link to the trade union movement and charities in this inquiry, these questions should be ruled out of order.

Senator FISHER—Chair, given that the witness is not—

Senator CAMERON—I am asking for a ruling. I am not asking to hear from Senator Fisher.

Senator FISHER—experienced in advising unions and employer organisations, I would not proceed with my questioning of him for that reason. I am not accepting Senator Cameron's points at all. But I would not proceed, given that the witness is not equipped, I do not think, to explore the issues. Thank you, Mr Lind.

CHAIR—Thank you for appearing, Mr Lind. There are no further questions.

Proceedings suspended from 1.12 pm to 2.00 pm

FERRISS, Mr Michael Victor, Church of Scientology, Secretary, Church of Scientology New Zealand, Church of Scientology

GORDON, Reverend Michael, Legal Director, Church of Scientology

McBRIDE, Ms Louise, Private capacity

STEWART, Ms Virginia, Social Reform Division, Church of Scientology

CHAIR—Welcome. Before inviting you to make an opening statement, I remind you that the terms of reference of this inquiry are limited to the examination of provisions of Tax Laws Amendment (Public Benefit Test) Bill 2010. The committee acknowledges that there has been public commentary concerning particular organisations by certain individuals. However, the behaviour of specific individuals and organisations is not within the terms of reference of this committee, and the committee does not have any authority to deliberate on such matters. They are not relevant to the bill.

I ask all members of the committee and witnesses to ensure that questions and comments are relevant to the terms of reference of the inquiry. I advise everybody who is here today that these are public hearings. The committee has a preference to hear all evidence in public; however, the committee may determine based on the evidence being presented that it is appropriate to hear evidence in camera. The committee may also agree to a request to hear evidence in camera. I advise witnesses and people present that even evidence given in camera may subsequently be made public if that is the wish of the Senate.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. We have submission 66 from the Church of Scientology. Would you like to make an opening statement?

Ms Stewart—On behalf of the Church of Scientology I would like to take this opportunity to thank the committee for this invitation to appear today before this inquiry into the Tax Laws Amendment (Public Benefit Test) Bill 2010. In opening we would like to recognise the long and proud tradition that exists in Australia for the promotion of religious freedom and tolerance. Our founding fathers in uniting the six colonies to create the Commonwealth of Australia recognised and understood the need to enshrine this basic human right for future generations. This freedom is formally safeguarded by section 116 of the Australian Constitution. This foundation stone of our modern system of government prohibits the Commonwealth from making any law establishing any religion, imposing any religious observance or prohibiting the free exercise of any religion. Further, individual Australians are free to express a diversity of views as long as they do not incite religious hatred within our neighbourhoods and communities.

Today is important as this committee has been established to examine the Tax Laws Amendment (Public Benefit Test) Bill 2010. As senators are aware, this is a private member's bill. It has not been introduced by the Labor government or the coalition opposition. It is a bill that proposes that all charities and religions be subjected to a public benefit test, which would put at risk the future of many organisations that are dedicated to delivering crucial community services for the betterment of our nation. I think it is also important to reflect that only 19 private members' bills have succeeded in passing into law since Federation. Today is all about a proposed taxation bill. I wish to assure the committee that we are cognisant of the narrow terms of reference that have been established. We look forward to assisting all members of the committee as per the terms of reference.

Religions have been traditionally on the forefront of charitable work beyond the pure advancement of religion. In many of these instances the impetus towards charity has come from within the religious philosophy itself and a genuine belief that helping one's fellow man or woman is spiritually inspired, not materially. Our religion and its followers are motivated by the same spiritual inspirations. As outlined in the church's submission to this inquiry, Scientologists have been in Australia since 1952 with the Hubbard Association of Scientologists International opening in April 1955 in Melbourne. Our institution was incorporated locally as a non-profit religious fellowship for the purpose of research into the spirit and human soul and the use and dissemination of these findings. A central part of the religious philosophy of Scientology is that an individual exists as a part of a family, a work environment and a community. The community and social wellbeing of others is important to one's own family and personal success and happiness in life. Our

church encourages its members to become involved in many community projects and many do, both through financial support and active participation.

In making our submission to the Senate Economics Legislation Committee concerning the Tax Laws Amendment (Public Benefit Test) Bill 2010, the trustees of the Church underscore the myriad of grassroots initiatives undertaken by the church in Australia and around the world. Some of these community activities include drug prevention. The Church of Scientology in Australia and around the world undertakes a range of drug education and prevention programs that have delivered significant and lasting benefits to communities around the world. In Australia we have printed and distributed over 2.5 million antidrug education flyers and booklets to youths and adults and over 300,000 Australian youths have taken the drug-free pledge to dedicate themselves and others to remain or become drug free. Under our Scientology Volunteer Ministers program, Scientologists volunteer their help both in times of major disasters and in times of more personal disasters that befall all individuals. Our volunteer ministers have helped at the New South Wales and Victorian bushfires and Australians have travelled to many disasters, to our neighbours in the South Pacific, including Indonesia, Samoa and the Philippines.

The area of defending human rights is highlighted in our submission to this inquiry. Sydney Scientologists were key in exposing the fatal risks and other dangers of deep sleep treatment, with over 1,100 patients exposed to this treatment in Australia. This resulted in the establishment of the New South Wales royal commission into Chelmsford Hospital. This work was officially recognised by the report of the New South Wales royal commission into deep sleep treatment. On the international front, more than 800 volunteer ministers gave of themselves for months to help. They were initially fully supported by the Church of Scientology. This is in relation to 9/11. Here is what the police chief of the City of New York said afterwards:

“As one who saw firsthand what was needed at the World Trade Center site in the days and weeks immediately after September 11th, I want to thank you, the Church of Scientology, and the Volunteer Ministers of the Church of Scientology, many of whom came long distances to help us.

“The Volunteer Ministers worked with great energy and great compassion at Ground Zero, helping to ease the physical burdens, and mental strains of the rescue workers. From the earliest days of this tragedy, until the time when volunteers were no longer needed at the site, the people of your Church were there in force.

“The organization, the caring, and the dedication of your Volunteer Ministers were exceptional, very much appreciated, and will long be remembered by those who received their help. I cannot thank the Volunteers enough.”

The church sent more than 500 volunteers recently to Haiti, some of them Australians, including medical doctors, emergency medical technicians and nurses. They worked with the University of Miami's tent hospital at the capital and also at the airport and helped to save thousands of lives. The Georgia state legislature commended this effort. There were many other letters of commendation received by the church and the volunteer ministers for the work they did, and copies of these can be made available to the committee. Specifically on the topic of Narconon, I would like to also mention that in August-September 2009 the International Association of Scientologists gave a grant to Narconon in Nepal of over \$1 million to purchase and renovate facilities for the group.

In terms of funding for the social betterment and charitable activities that the church sponsors or supports, it is true that the funds that the church does ask for come from its parishioners to donate to support these organisations and activities, which is what all charitable organisations do. Where else is the money going to come from if not its members? The church also has used its resources to develop materials and its own facilities to develop audiovisual properties that are used within the church.

Given this inquiry has been established to inquire into the proposed Tax Laws Amendment (Public Benefit Test) Bill 2010, I would now like to address the specific matters relating to the tax treatment of the Church of Scientology in Australia. A tax concession has been available to religious and charitable institutions among other bodies in Australia in all federal government income tax statutes since 1915 without the requirement to demonstrate tangible benefits available to the public at large or an appreciably important section of the public. As senators are aware, the granting of charitable status in Australia is already a highly regulated process. There are lengthy tests and requirements that must be met to prove that a charitable status is deserved, governed by the Australian tax office.

As the committee is also aware, charitable status is not a mantle readily handed out to any organisation merely claiming to be charitable. In appearing today before the Senate economics legislation committee, it is important recognise that the church has undergone significant investigation and assessment to achieve the appropriate taxation exemptions that it has. Scientology is accepted as a religion around the world. In a few

countries the church has been forced to litigate the issue of its religiosity, either affirmatively or in response to unfounded charges. Inevitably the church's religiosity has been upheld by the courts in these cases, and its religious bona fides have been unequivocally recognised.

In relation to Australia, the 1983 High Court decision found that the church met the criteria and, as a result, was then provided with tax concessions that apply to other religions. Following this decision by the High Court, and other judicial bodies around the world, Scientology is considered by leading scholars and authorities to have established the standards regarding religious recognition that all religions must meet. For the benefit of the committee, I wish to draw your attention to the United States Internal Revenue Service investigation into the Church of Scientology. The investigation into the Church of Scientology was and remains the single largest in the history of the Internal Revenue Service. It not only involved the US church, but all churches of Scientology around the world. This IRS examination included reviewing every single claim made against Scientology, reviewing every single flow of money within the church and reviewing allegations which have been raised in the last few months by Australian media outlets.

Further, the New Zealand Inland Revenue department granted Scientology charitable status in 2002 after their inspection of the church, which lasted 10 years. In 2006, when the New Zealand Charities Commission was formed, it too gave the church charitable status. In recent days the church has also become aware of disturbing allegations regarding taxation matters in Australia. These allegations were raised by a media organisation and involved commentary from a member of the economics legislation committee. For the benefit of the committee, and given it relates directly to taxation, I wish to make the following comments. The allegations refer to the Church of Scientology in Australia and the United Kingdom, and a specific allegation that the entire UK operation is 'run out of South Australia'. The facts are as follows. The church association that is incorporated in South Australia, Church of Scientology Religious Education College Inc, was incorporated in 1976 and registered as the corporation for churches in England in 1977—a full 22 years earlier than the alleged incident in the media. The Church of Scientology Religious Education College has paid all corporate taxes on any surplus in accordance with the UK tax legislation. It receives no corporate tax benefit in the UK from being incorporated in South Australia. I wish to provide a copy of the statement that was issued by the church clarifying the allegations and outlining correct details surrounding the matter. Mr Chairman, I seek leave to provide this to the committee.

ACTING CHAIR—Leave is granted, if the committee agrees.

Senator XENOPHON—Yes.

Senator CAMERON—I am happy with that, but could you also table the statement that you are reading from? It would be helpful for us.

Ms Stewart—Yes. I would now like to turn to allegations that have come to the attention of the church relating to the corporate, legal and taxation structures of our institution. These allegations originate in the United States and involve a former staff member from the corporate office. It should be noted that these allegations have no basis and have been comprehensively investigated by the IRS. The last involvement of this employee in the legal affairs of the church was in December 1983—approximately 27 years ago. The review undertaken by the IRS took place between 1991 and 1993. The church was given a clean bill of health by the US authorities and the allegations were unfounded.

I would now like to turn to the proposed bill. The church commissioned a leading legal opinion on the proposed legislation that is currently before the Senate committee. It formed the basis of our submission and Ms McBride appears in her capacity today as a legal specialist on taxation law. She will be able to assist the committee with regard to the details arising from the proposed bill. Suffice to say, the church believes that the proposed bill is inherently flawed and puts at risk the financial future of charities and religions in Australia.

Given the need for brevity, I will not go into the details already covered in the church's submission tendered to the committee and the comprehensive arguments outlined by Ms McBride, as she will be making her opening statement. It is significant that, already, the former coalition government and more recently the Henry review commissioned by the Labor government have investigated the application of a public benefits test and on both occasions the recommendations have been ignored or rejected by the executive.

In appearing before the committee today, we welcome the opportunity to answer questions relating to proposed taxation measures. We wish to assist the committee in its important work in examining the bill and the detrimental impact that the proposed bill will have in moving forward. I would like to place on the record the great assistance of numerous senators and members of the Commonwealth parliament, including the

Privileges Committee, the Scrutiny of Bills Committee and the clerk's office in the lead-up to today's hearing. I would also like to acknowledge the assistance and support of the committee secretariat, led by Mr John Hawkins, who provided professional and impartial advice as part of the inquiry process.

Finally, given the Senate's well-established as a house of review, it is also important to recognise the role the Senate has had and continues to have in maintaining freedom of religion and the promotion of tolerance. We have no doubt that the Senate, in its wisdom, will continue to protect and promote these traditions. Thank you.

ACTING CHAIR—Ms McBride, do you wish to make a statement?

Ms McBride—I am in the committee's hands. I have an opening statement that I can tender, but I can—

ACTING CHAIR—Please proceed.

Ms McBride—Again, I would like to thank the committee for giving me leave to appear today in my professional capacity. In commencing my opening statement, I would like to make it clear that I am not a Scientologist. I do not practise Scientology. I have never been to a church that is run by the Scientologists. I am, however, a tax barrister. I have practised law since 1981. During my career I have served as a board member of the Takeovers Panel, the Export, Finance and Insurance Corporation, a corporations market and advisory committee and the Commonwealth government superannuation and the Public Sector Superannuation schemes. I have been retained by the church to provide my legal opinion on the bill, particularly as it relates to taxation as I had a role on the board of tax advising on tax reform generally. I am also retained in my capacity to advise on constitutional and administrative law issues.

My opinion, I believe, has been circulated to the members of the committee, and it is on the website. In brief, as I am sure the committee is aware, I have some major concerns with the bill as presently drafted. The bill as currently drafted imposes a taxation and therefore is subject to the limits of section 53 and section 55 of the Commonwealth of Australia Constitution. This is a bill imposing taxation where none was imposed before, given that we have already heard that religions have never been subject to tax in this country. The parliament provides that only the House of Representatives may introduce a tax bill, and then it may only be introduced by a minister of the Crown or a parliamentary secretary. I refer the Senate to standing ordinance 293. I have concern that this bill is in the wrong house. This point has been raised as a point of order. I understand that the bill has been or will be referred to the constitutional committee. I am not sure whether a point of order has been taken as to the propriety of proceeding with this inquiry, given the very significant constitutional issue raised before the committee.

ACTING CHAIR—Ms McBride, this bill has been referred to this committee by the Senate. These hearings are legitimate and have the authority of the Senate.

Ms McBride—Thank you, Chair. The bill nonetheless is a tax bill. I refer the committee to the opinion of the former chief counsel of the Attorney-General's Department which was dated 30 August 1993 and was obtained in respect of the Taxation (Deficit Reduction) Bill 1993. It talks about dealing with taxation, and these provisions include provisions that remove or add to exemptions. That inquiry took note of some learned QCs. The better view was that the Taxation (Deficit Reduction) Bill 1993 was a tax bill. Again, I realise that the Senate has referred it here. I do believe there is a significant constitutional issue.

The second concern with the current drafting of the bill is that it makes mandatory regulations. It requires the minister to regulate and the regulations are mandatory, which means that they will have a force of law in their own right and, if there were any inconsistency between the regulations and the common law, the regulations would override the common law. That is a huge change and a departure from the way the Constitution and the parliament's power to delegate have been interpreted since 1901.

If such a massive change is to occur in the way that regulations require a test, I would have thought—forgive me; I know that I am not the Senate—that it was something that parliament needed to consider and debate at length. There is a question that if this bill were passed in its current form it would be successfully challenged as being beyond the power of parliament. There is a considerable body of law—and I refer you to Professor Pearce's works on delegated legislation—that says that the regulator cannot mandatorily regulate. The now Chief Justice French of the High Court, when he was on the Federal Court, made a very compelling statement which I have quoted in my submissions and will not read. There is an issue of whether or not this bill as currently drafted is even within the power of delegated legislation.

If it were determined to be in the power of delegated legislation, by imposing mandatory tests where the regulator, not the parliament, would determine whether something was in the public benefit or not, you place

upon the Commissioner of Taxation and the minister the potential burden of, with the best will in the world, breaching section 116 of the Constitution, that being the guarantee of religious freedom. To determine what is and what is not for the public benefit, particularly when the bill as currently drafted requires that determination to be weighted against undetermined, undefined detriment or harm, is a test that would be fraught with difficulty in administering. I draw to the committee's attention that no jurisdiction in the world has been able to impose a test where a bureaucrat has to work out whether something is more detrimental than beneficial.

On that point, I would just like to note that it would be a subjective area of the law—and public views change. There would be a body of feminists that would see it is more detrimental than beneficial for Muslim women to wear burqas. There is a body of medical opinion that says it is more detrimental than beneficial for male children to have circumcision. There would be a body of opinion at the moment that says that the Catholic Church, given the current problems it is facing, has caused more detriment than harm with sexual abuse to its members. Mores and morals change. Are the proposed bureaucrats going to say we should outlaw all of those because their detriment is perceived to be greater than their benefit?

I also want to draw to the committee's attention to the fact that these tests—which, even if they can be objectively defined, will be subjectively determined—will be in regulations. Regulations are placed before the House but do not have the normal passage through both chambers and do not have the benefit of a parliamentary debate. Regulations are either accepted in whole or rejected in whole; they are not considered on a regulation-by-regulation basis, as I am sure everybody on the committee is aware.

The bill raises the issue of retrospectivity. Scientology is already held to be a religion and already has charitable status. This bill would not only walk across the existing exemptions of Scientology and other religious groups, but its intent is clearly retrospective. Given that retrospective legislation is also abhorrent to the rule of law and good government, if that is to happen I would think that both houses of the parliament would need to be actively engaged in a review of this bill.

Finally, given that the EM, in the second paragraph, targets a group of people, and states 'allegations that have not been before the appropriate state body', the bill probably offends the human rights document *Guidance for the review of legislation pertaining to religion or belief*. This document was prepared by the Advisory Panel of Experts on Freedom of Religion and Belief for the Organisation of Democratic Institutions and Human Rights and the Organisation for Security and Co-operation in Europe and adopted by the UN. Singling out a group in a government bill, as the purpose for the bill, is discrimination. But for parliamentary privilege, it would amount to libel. It does no credit to the parliament, it does no credit to democracy and it should be referred to the Senate Standing Committee of Privileges, as it is a precedent that this country should not tolerate and, in the past, has not tolerated. The High Court has previously looked very dimly upon legislation that targets a specific person or group, notwithstanding that a member of this government might not like that group. I would like to table my opening address, together with my CV.

ACTING CHAIR—This hearing is recorded and your address will be printed in full in *Hansard*.

Ms McBride—In my opening statement I have gone into quite a lot of detail which I have not bothered the committee with. I have quoted cases and judgments and sections. I am happy to read it all out.

Senator CAMERON—Please don't!

Ms McBride—I did not think you would want me to do that, Senator Cameron!

ACTING CHAIR—Is the committee happy to accept the tabling of this statement? There being no objection, it is so ordered. The other thing I have to say to you, Ms McBride, is that this is a bill for an act. This is a private member's bill. What happens to a bill when it goes into the Senate is unpredictable. A bill is a proposal for an act. There are amendments, and you should not assume that whatever form the bill is in initially will be the form it is in at the conclusion of the parliamentary process.

Ms McBride—Thank you.

Senator CAMERON—Ms Stewart, are any of the witnesses here today employees or office bearers of, or hold any other position in, the Church of Scientology New Zealand Inc.?

Ms Stewart—Yes. Mr Mike Ferriss does.

Senator CAMERON—Mr Ferriss, I have some questions for you then. In relation to the assertion that has been made that this bill would put at risk the future of organisations, why is it that in New Zealand, where similar tests are applied to your operation, that has not put at risk the Church of Scientology in New Zealand?

Mr Ferriss—The Charities Commission of New Zealand, established in 2006, granted us charitable status. We are basically formed with the purpose of the advancement of religion and the public benefit that extends from a group established for the advancement of religion—that is, it was just a matter of course. If you look at the Charities Commission of New Zealand’s material, the advancement of religion is considered to be of public benefit. The public attend religious services, Scientology services, and they benefit from that process. It is a spiritual thing. It is something that is deemed, and has been deemed for hundreds of years, to be beneficial.

Senator CAMERON—Sorry, Mr Ferriss; that is not what I am asking you. The assertion has been made by Ms Stewart that, if this bill went through the Australian parliament, it would be a danger for the survival—I assume—of the Church of Scientology. What I am asking you is to do with the similarity of the issues in this bill and those facing your operation in New Zealand. You are an officer of the Church of Scientology of New Zealand; explain to me why there has not been the demise or the death of the Church of Scientology in New Zealand? What is the difference?

Mr Ferriss—We are not being tested on a basis of public benefit against harm. That is not part of the test for the Charities Commission of New Zealand.

Senator XENOPHON—That does not seem to be the evidence that we have had.

Senator CAMERON—No. That is not what I understand.

Mr Ferriss—Okay. Maybe I do not know the answer to the question.

Senator CAMERON—Can you see that this is a fundamental question? If you come here and your first assertion is that this bill will destroy Scientology, yet you as an officer of the Church of Scientology in New Zealand operate under similar legal obligations and it has not destroyed you in New Zealand, what are we to make of the submission that you put forward this afternoon? What will we make of that?

Ms Stewart—I would like to add something in that regard. I think the point that I also was making in my submission and my opening statement was that I was not just referring to the Church of Scientology; I also was referring to all charities in Australia that would be affected. There are quite some significant submissions that were submitted to the committee that attested to that fact, that the onerous—

Senator CAMERON—But you are not asserting that you are here talking for other charities, are you?

Ms Stewart—Yes.

Senator CAMERON—Are you talking for other charities?

Ms Stewart—I am talking on behalf of us and from that point in a generality.

Senator CAMERON—Let us stick to the Church of Scientology, please. Do not make comments about other charities if you are not representing them.

Ms Stewart—Sure.

Senator CAMERON—I am asking the office bearer, Mr Mike Ferriss, why, if there are these restrictions and obligations in New Zealand, you come here and say that this is the death of Scientology in Australia. It is a nonsense, isn’t it?

Ms Stewart—I have not said that it is the death of Scientology in Australia.

Senator CAMERON—I will tell you exactly what you said. You said it would put at risk the future of organisations.

Ms Stewart—Yes.

Senator CAMERON—Does that include Scientology?

Ms Stewart—It depends how the—

Senator CAMERON—So you were talking for others, not Scientology, when you said that?

Ms Stewart—I feel I was speaking in general, not just on our behalf.

Senator CAMERON—Mr Ferris, could you explain to us how you can continue to operate in New Zealand under the same sort of overview that would be required under this bill? Can you explain to us how it works in New Zealand?

Mr Ferriss—We have not suffered under the New Zealand Charities Commission; that is true. This bill refers to the UK charities commission, and the UK charities commission denied Scientology recognition in 1999. The New Zealand Charities Commission ignored that and gave us charitable status in that country.

Senator CAMERON—What we have to decide is whether this bill should proceed in its current form and whether this committee will support that proposal. We are entitled to the look at the New Zealand Charities Commission, as we have done, and the UK charities commission, as we will do later today. Given that you operative effectively—and that is my word—and meet your obligations under the New Zealand Charities Commission, if a charities commission were established in Australia and we were wanting to recommend a charities commission type of approach with similar tests to New Zealand's, would that be a problem for the Church of Scientology?

Mr Ferriss—I do not think it would be. I think it would be fair. I think the New Zealand Charities Commission have treated us fairly. I have seen some of their other decisions on other religious groups, which they have treated fairly. The Carmelite nuns, for example, are a charity in New Zealand, where they are not in the UK. I think it is a fair process and we are certainly experiencing that in New Zealand, yes.

Senator CAMERON—Are you an officer bearer of the church in the UK?

Mr Ferriss—No.

Senator CAMERON—I noticed in the New Zealand Charities Commission report your statement of income and expenditure, which is a public document. I am wondering if the problem was that when the charities commission came into place you had an income of \$2.6 million in New Zealand in 2007, and the following year the income dropped to \$374,000. Is there any link between that drop in income and having to report to the Charities Commission? What was the issue there?

Mr Ferriss—No, it was not anything to do with reporting to the Charities Commission. I think that drop in income was, from memory, the exchange rate drop—

Senator CAMERON—What?

Mr Ferriss—Yes, absolutely.

Senator CAMERON—I knew a lot of countries were in trouble but I did not think New Zealand was in that much trouble!

Mr Ferriss—I can take it on notice and provide you with the exact information, if that is what is required.

Senator CAMERON—That is fine. Thanks. I hope it is not New Zealand's exchange rate! There has been much said about your religious freedom. I have read the bill. There is nothing in it that says anything about religious freedom, and it is not about the Church of Scientology. It is a general based approach. It is not about religious freedom. So why would you be concerned about this bill if it does not go to the issue of religious freedom?

Ms McBride—I would like to answer that, if I may. If you refer to the judgment of the High Court on the Church of the New Faith, which, again, is in my opinion, you will see that all the judges, paraphrased, basically said that when bureaucrats and the government get involved with deciding what is and what is not religion and enacting laws, impinging on that does go to religious freedom.

Senator CAMERON—How come both in the UK and New Zealand we moved from the Charter of Elizabeth, I think it is called—

Ms McBride—The Statute of Elizabeth.

Senator CAMERON—The Statute of Elizabeth. How come we moved from that approach to a charities commission without all of the issues you have raised in your legal opinion?

Ms McBride—There are several reasons why we are different. It is a charities commission; it does not actually address religion, I think you will find. The UK has a public benefit test. It does not have a 'greater good than harm' requirement. There is no requirement that you weight the benefit against the harm. It is not in mandatory regulations. And there is an entire new act for charities which takes all of this is outside the realm of parliament. The charities commission is not answerable to a minister; it is an independent body. It has set up a tribunal and a commission, and it determines cases. It got rid of the public law presumption of public benefit, but it applies to charities.

I would also say that we have had two inquiries here, one in 2002, which was a very lengthy inquiry—and the Treasury paper refers to it in detail—and the NGO inquiry just recently. They determined, after a lot of public consultation, not to proceed with the public benefit test and not to override the common law, particularly in light of the fact that this government has committed to reducing bureaucracy, not expanding it.

Senator CAMERON—Can you point me to those deliberative decisions.

Ms McBride—Yes. I think if you look at the Treasury paper, on page—

Senator CAMERON—I am talking about government decisions; the Treasury does not make these decisions.

Ms McBride—No, but the Treasury paper refers to the government inquiry:

In response to the recommendations of the 2001—

Senator CAMERON—I am not aware of any debates on this issue in parliament where either the previous government or this government made a deliberative decision to go down the path that you are saying. That is why I am asking for—

Ms McBride—I am just trying find where it is referred to.

Senator CAMERON—So you are relying on the Treasury?

Ms McBride—I am relying on their paper, which refers to the inquiry that was held under the former government, I believe, in 2000 in relation to whether we had a charities act and a charities definition. After an extensive inquiry, I believe that it was determined—and I thought it was by the then government—not to proceed with this bill. I am just looking for the precise reference to it which I believe was inserted into the Treasury submission to this committee.

Senator CAMERON—Would you like to take it on notice?

Ms McBride—Yes, thank you; I would. Anyway, I believe this issue has been looked at at least twice before and again under the not-for-profit inquiry, and it was the subject of some consideration by the Henry review—and I believe, Senator, that it was not government policy to proceed with that recommendation. But I am happy, if I may take that on notice, to provide you with the details of those.

Senator CAMERON—I am pretty keen to focus on New Zealand, which has got a lot of similarities in terms of their rule of law, where they have come from and where they have got to. They do not seem to have had any problem moving from a common-law approach to an approach where they have a commission which can make decisions about charities. The evidence we had this morning was that the commission can make a decision but it is appealable to their High Court. What are your comments on that? Why wouldn't that be a problem?

Ms McBride—Because at the moment, as the bill is currently drafted, that is not the way it is. The public benefit test as currently drafted—

Senator CAMERON—It is not my bill. I am not proposing the bill. What I am doing is having a look at it to see what may be an outcome arising from the bill. I am asking you to tell me, with your experience of being able to work under the New Zealand Charities Commission with an appeal to the High Court of New Zealand if your religious status was challenged, why that cannot work here.

Ms McBride—At the moment it could not work here, because the bill is beyond the common law. The way the bill is drafted—

Senator CAMERON—But I am not asking about this bill.

Ms McBride—The inquiry is an inquiry into the bill. True, if it is amended so you could have something that is reviewable by the courts and challengeable by the High Court, there is no problem. I suppose what I would draw your attention to is the anti-avoidance provisions contained in part 4A of the Income Tax Assessment Act. The anti-avoidance provisions are somewhat similar. It is an objective set of criteria subjectively determined and administered which has caused a lot of angst and tax cases and cost a huge amount of money. I do not know that charities, particularly smaller charities, and religions would welcome a lot of litigation, and I am sure that this bill will lead to a lot of litigation.

Senator CAMERON—I am not sure whether you want to answer this, because it is a policy issue as distinct from a legal issue, but is it appropriate, if the Australian public—this is not just for Scientologists but for any charity—put public funds into a charity, for there to be an identifiable benefit arising from the aims and activities of that entity?

Ms Stewart—I think so, yes.

Senator CAMERON—Okay. 'The benefit must be balanced against any detriment or harm'—what is the problem there?

Ms Stewart—I think it is how you determine that by subjective means.

Senator CAMERON—Don't you determine it similarly to how they do it in New Zealand, where the Charities Commission makes a determination and it is appealable to the High Court of New Zealand? Why can't you do that?

Ms McBride—Isn't that like the example I gave you? Views of what is detrimental or harmful change.

Senator CAMERON—So do the judges in the High Court.

Ms McBride—That is true. The cost of a court case in the High Court is huge.

Senator CAMERON—But law changes over the years. This seems to me to be one of the laws that is stuck in time. Laws change as society changes, and if we need to change those laws then surely we should look at them.

Ms McBride—I do not think anybody has suggested that the law should not be looked at. As I said, I think it has been looked at on at least two—to my knowledge—and possibly three previous occasions. Far greater minds than mine decided it is like a can of worms and a recipe for disaster. You may say that is no reason for not trying to do something about it, but there is no more emotive or emotional issue than religion.

Senator CAMERON—What were the legal disasters in New Zealand arising from their move to a charities commission?

Ms McBride—I do not know.

Senator CAMERON—Then why are you using language like that?

Ms McBride—Because I practise in taxation. I see all the time problems that arise from an attempt—

Senator CAMERON—Tell me about New Zealand, then.

Ms McBride—Efforts to codify the common law are fraught with difficulty. You have only to look at our current tax legislation to see that.

ACTING CHAIR—We had your specific evidence from New Zealand. If you are going to make these comments, you surely should make specific references, because it is not very helpful to the committee to generalise.

Ms McBride—I am not here as a New Zealand tax expert—

ACTING CHAIR—Then, with respect, perhaps you should not have made the comments about New Zealand.

Senator CAMERON—If you are not an expert on New Zealand, we might ask these questions of Mr Ferriss, as an officer of a registered body in New Zealand; maybe we should be asking him these questions, because he has the responsibility, as an officer of an organisation registered in New Zealand, to understand how it operates. I am happy to take these questions up with him. Mr Ferriss, tell me what disasters have befallen the Church of Scientology in New Zealand arising from the move to the charities commission—the disasters that Ms McBride spoke about.

Mr Ferriss—As I said earlier, we have had no disasters from the charities commission. I was not aware, I must say, that they had a test of harm. I was not aware of that. I have read some of their material. I do not have it with me. But I know that when they are assessing a religious group, they see that the advancement of religion is for the public benefit. They gave one example of that. A funeral service might be being conducted and members of the public at that funeral service, by being present and listening to those prayers and the service itself, might feel some spiritual gain or benefit from just being present at something religious. They called that a public benefit.

Senator CAMERON—Given that the Productivity Commission estimate—and I will be asking Treasury about this estimate—is that somewhere between \$1 billion and maybe \$8 billion of public money goes to charities, do you accept that, if you receive a benefit from public money, you should be very open and accountable and you should act in the public interest as a charity?

Mr Ferriss—Absolutely; no question.

Senator CAMERON—And you operate in New Zealand without any problems. I am happy with that, thanks.

Senator XENOPHON—Mr Ferriss, you said that Scientology, before the operation of the New Zealand Charities Commission's laws, had an income—as I think Senator Cameron pointed out—of about \$2.5 million or \$2.6 million. Is that right Senator Cameron?

Senator CAMERON—Yes; that was in the last—

Senator XENOPHON—That was in the last year before it, and then there was a drop.

Senator CAMERON—It was \$2.623 million in 2007, and \$374,000 in 2008, and that was a big drop in the exchange rate.

Senator XENOPHON—That is right. I think, Mr Ferriss, you ascribed that to the exchange rate. Do you want to reconsider your evidence in relation to that?

Mr Ferriss—I said I would take that on notice.

Senator XENOPHON—But that would mean a drop in the value of the New Zealand dollar—

Mr Ferriss—Against the US dollar.

Senator XENOPHON—against the US dollar of in the order of 70 or 80 per cent, or more than that. It would be a complete collapse of the New Zealand dollar.

Mr Ferriss—I do not follow the currency fluctuations particularly, and I am not the church's accountant and I have not brought him with me today, so I would like to take those questions on notice.

Senator XENOPHON—Did the church change its accounting practices in the year before the New Zealand charities laws came into place and subsequent to that?

Mr Ferriss—No, not at all.

Senator XENOPHON—So the books have been kept the same way?

Mr Ferriss—Absolutely.

Senator XENOPHON—And you do not know of any other cause for such a dramatic drop in revenue or income?

Mr Ferriss—I am not going to speculate off the top of my head on this matter. I would like to take that on notice. I am very happy to provide information to the committee, but I would like to make sure that it is the correct information.

Senator XENOPHON—You understand that it seems quite a dramatic drop?

Mr Ferriss—Absolutely; I understand that. I also know something about our accounts but, like I say, I am not the accountant and I have not brought them with me.

Senator XENOPHON—We will leave that aspect of it. Ms McBride, in your submission you argue that the bill is unconstitutional because it 'imposes taxation' and therefore cannot originate in the Senate under section 53 of the Constitution. The committee has been advised that section 53 is not justiciable and it is for parliament to interpret how it deals with proposed laws rather than laws. How do you respond to that?

Ms McBride—I believe that there are two views on whether or not it is justiciable, and that goes back to the Attorney-General's advice in 1993. But parliament has a set of rules that say that tax bills need to originate in the House by a minister, because they are tax bills. You are making a mockery of that, aren't you, by saying, 'We don't care; we are going to originate it here anyway.'

Senator XENOPHON—Ms McBride, that is really quite unprofessional of you to say that we are making a mockery of laws. This has gone to the Scrutiny of Bills Committee. The Scrutiny of Bills Committee has said that it is quite appropriate for this bill to be heard by this committee. So if I am making a mockery of it, so is the Senate Scrutiny of Bills Committee, so is this committee and so, indeed, is the entire Senate.

Ms McBride—Have you asked the Attorney-General? It is not just section 53 but also section 55. Have you obtained advice from the Attorney-General or the Solicitor-General? Or has it gone to the constitutional bills committee? It may not be justiciable by a court, but it is certainly not what parliamentary practice has been in the past. Tax bills are supposed to be originated in the House by a minister or the parliamentary secretary. This bill has not been originated by either a minister or a parliamentary secretary and it is not in the House.

Senator XENOPHON—Could I suggest to you that if the bill does not impose a new tax but merely deals with the administration of exemptions granted to a tax, how would that contradict section 53? And further, it is not the role of the Senate as a house of review to be obtaining advice from the executive arm of government.

Ms McBride—No, but given that this is an inquiry and you can obtain advice from Treasury, I would have thought you would have sought advice from the Attorney-General or one of the chief counsels of that department. That is the answer to that issue. The fact is: religions have never been subject to tax, under any

federal tax bill since 1915. This bill proposes to tax religions. You are not removing an exemption; you are proposing a tax on religions.

Senator XENOPHON—Mr Lind, who gave evidence earlier today—his firm acts for a number of charities and is concerned with administrative burdens in respect of that—posed the question, ‘Does freedom of religion mean freedom from tax?’ and his answer was no. Do you disagree with that?

Ms McBride—Far greater minds than mine—and I would refer you to the High Court’s judgment in *Church of the New Faith v Commissioner of Payroll Tax*—have discussed this at length, and they would say yes.

Senator XENOPHON—Perhaps I could put it to Ms Stewart. Ms Stewart, are you saying that the whole concept of freedom of religion is tied up with freedom from paying tax? Are you endorsing what Ms McBride is saying—in other words, freedom of religion is tied up with the concept of freedom from paying tax?

Ms McBride—I have copies of the High Court’s judgment and I think you should read that with care. But that is not what the court said. What the court made very clear, and what the bill is attempting to do, is to determine which religion is worthy of a tax concession and which religion is not; which charity is worthy of a tax concession and which charity is not. That does fly in the face of section 116, because that is a subjective test and the court, which was considering a tax bill, went into great lengths, and the reason why special leave was granted in that case was to determine public policy, because there was a paucity of authority in that area. So I think the court said quite firmly, ‘All judges, no matter what you think of the religion, no matter how foolish you may think the religion is, you cannot and should not discriminate.’ They were talking about tax, so their view—and given it was a full court and it was unanimous, and they were very great brains on that court—would be ‘yes’. In the context of a tax concession, to quote Murphy, ‘One in, all in.’ You leave one out, you leave them all out.

Senator XENOPHON—An extreme example was given earlier to the chief executive of the New Zealand Charities Commission that if an organisation had human or animal sacrifice as one of its core beliefs that would be something that would be of concern to them in terms of tax-free status. You do not see that as an issue.

Ms McBride—I think the High Court, again, I commend you to read that judgement—

Senator XENOPHON—Yes, I have read the judgement.

Ms McBride—several times, clearly. I think the High Court said you are not above the law. You would not have a defence to say ‘I’m a Mormon. I have 10 wives in this country because I am allowed to under my religion.’ You have to actually abide by the law. If our law outlaws the sacrifice of humans or animals, which I believe it does, then you would not be entitled to practise that, and I am sure that the commissioner’s current ruling on charities says at paragraph 100 that things that are illegal are not charitable and therefore do not get the tax concession.

Senator XENOPHON—And if the law says that in order to get a tax concession you need to weigh up the whole concept of a public benefit test as applies in the United Kingdom and more recently New Zealand that would be the law that would have to be applied, wouldn’t it?

Ms McBride—Yes, that would be the law that would have to be applied.

Senator XENOPHON—Yes, so therefore the issue of public benefit would of necessity need to look at issues of detriment as well, wouldn’t it?

Ms McBride—In your test, yes. Your test requires it to be weighted against benefit. I do not think the UK test requires that, and you would have to determine and define what was detrimental or harmful, which the bill does not do. Then you would have to work out how you weighted that detriment or harm against any benefit. Is it substantially more than? Then you would have to have somebody who was impartial determine that issue, otherwise you run the risk of discrimination.

Senator XENOPHON—I will go to Mr Ferriss because of his role in New Zealand. You are aware that there is a public benefit test that applies in New Zealand with the Charities Commission.

Mr Ferriss—Yes, I am aware of that.

Senator XENOPHON—And that is something that has not caused the Church of Scientology any difficulty in itself.

Mr Ferriss—That is correct.

Senator XENOPHON—Would it be fair to say that in your view it would be implicit that in considering a public benefit test you look at the good an organisation does but you would also weigh it against any harmful activities or any complaints about its activities in having an impartial body looking at the determination of the benefit test.

Mr Ferriss—It is not a natural assumption when you look at the public benefit that there possibly could be a public harm. For example, the Quakers in the 17th century were against slavery and were very unpopular. They were persecuted, tortured and even murdered in England and the United States because of their views, their different way of preaching and the different methodology of their faith. They were very unpopular. It might have been even considered that their views against slavery were a public harm.

Senator XENOPHON—Sure but, Mr Ferriss, in the context of the issue of the freedom to practise a religion, the freedom to express your beliefs and have those beliefs, that is still quite different from the issue as to whether you have a tax-free status or not.

Mr Ferriss—The right to practise one's beliefs is a fundamental human right, correct.

Senator XENOPHON—And it is independent of whether you have tax-free status or not.

Mr Ferriss—It is independent of tax-free status, but if you are then going to judge one religion you would have to judge all. You could not just say, 'We're going to single out this group because this group looks particularly bad at this point in time,' because where would you be? I mean, if you were doing it with the Salvation Army, for example, back in the late 1800s, they were against alcohol, they are very active in England, and they were not welcome here in Australia, they were not welcome in New Zealand in the early 19th century because of their views against alcohol. They were beaten up and they were persecuted. So where do you go?

Senator XENOPHON—Perhaps I could ask Ms Stewart, in terms of the Church of Scientology in Australia, would you agree with Mr Ferriss that there is a distinction between the freedom of belief, the freedom to practise your religion, and having a tax-free status? There is a distinction between the two: you can have freedom of religion without having a tax-free status?

Ms Stewart—Yes, you can.

Senator XENOPHON—So there is not an issue there for you in relation to that.

Ms Stewart—No.

Senator XENOPHON—There have been a number of complaints from former members of the Church of Scientology, and you would have heard that today in terms of these complaints. Without going into the veracity of those complaints, would you be concerned at an organisation having a tax-free status if it was a systemic issue in that organisation in terms of people having difficulty leaving the organisation, being coerced into doing things they did not want to do? Again, I am not asking you to comment on the veracity or otherwise, I want to try and be as clinical and as objective as possible on this.

Ms McBride—Can—

Senator XENOPHON—I am not asking you the question, Ms McBride, if you don't mind.

Ms Stewart—That is fine, I can answer. I think one thing is what the media says and then what real life is and what documented evidence is. I think that really is what it comes down to. Some people say some things, but is it true? Can it be proven? Is there proper evidence? Is there a whole evidence base of it or not? We have provided already information packs earlier to the Senate addressing some of the allegations that were again repeated today. We have different documents that we have already put in to the Senate and we have had two right of replies published as well that address specifically those issues. So I think trial by media is one issue that we have seen in relation to the Church of Scientology very much so, and I think that personally the laws of our country are pretty good. And just in that issue, yes.

Senator XENOPHON—Can I go back to the issue of Mr Ferriss's evidence about the New Zealand umbrella, which is different from this bill although it has a similar concept in terms of the public benefit. I know Ms McBride has said the structure and overview are quite different, but we have heard evidence from the New Zealand Charities Commission. Are you comforted by what Mr Ferriss has said of his experience, the Church of Scientology in New Zealand's experience in New Zealand, with respect to being subject to a charities commission, as is the case for all religions and all charities in that country, and being subject to a broad public benefit test? Are you comforted by what Mr Ferris has said about the New Zealand experience?

Ms Stewart—I think yes. Also I looked to an investigation by the internal revenue service into the Church of Scientology, which also included the Church in Australia. They revealed all of our documentation. It also includes the church in the United Kingdom. They provided over a million documents, and they travelled to various countries to investigate the church. So I would be quite confident.

Senator XENOPHON—So you are comforted by the structure that has been set up in New Zealand—

Ms Stewart—I could not comment on that because I actually am not familiar with the tax issue and I have not read the New Zealand charities—

Senator XENOPHON—Sure, but the fact that your colleague has not had any real difficulty was the New Zealand setup is of some reassurance to you.

Ms Stewart—Definitely.

Senator XENOPHON—Some of the former members of the Church of Scientology have talked about the extraordinary fees they paid over. There was evidence earlier today of a person between himself and his wife \$1 million to \$1.5 million. Again I am not asking you about that particular case, but are there instances where members of the Church of Scientology have either given, donated or handed over for courses amounts in the hundreds of thousands of dollars?

Mr Ferriss—I can answer that.

Senator XENOPHON—I wasn't asking you; I was asking Ms Stewart.

Ms Stewart—I can answer that as well. I don't think courses in the Church of Scientology come to those sums. We are an organisation that operates on donations. I think some of what you are asking me does fall outside the terms of reference of the inquiry here today. I am very happy to provide a full documented listings of how are we fundraise and what happens to the funding. I am very happy to provide that to the Senate in writing afterwards.

Senator XENOPHON—That would be useful. You also talk about the work in terms of drug education and drug rehabilitation. Can you provide details of how much is actually spent on that in terms of the receipts so that your books are an accurate reflection of the income that the church receives? Does it also show how much money goes to the head organisation in the United States? Is that reflected in your books?

Ms Stewart—If I could refer to Michael Gordon on that question. He is familiar with that.

Senator XENOPHON—You have been very quiet. Can you tell us the role?

Rev. Gordon—I believe the answer to that is yes. The books get done by accountants.

Senator XENOPHON—And they are publicly available?

Rev. Gordon—I believe they are, actually.

Senator XENOPHON—So you would have no difficulty providing them.

Ms Stewart—No.

Senator XENOPHON—That would be good. I think Senator Cameron has some questions, but I have a couple more. Do you think that your auditing sessions—this is to you Ms Stewart—should be regarded as providing a public benefit? I have seen an expression that they seem to be more like a cross between personal counselling and Maoist self-criticism. How could that be seen to be in the public benefit? You charge for those courses. Is it a form of religious observance or prayer? I note that the UK Charity Commission in their 1999 decision actually made reference to the fact that the auditing sessions were a factor as to why the Church of Scientology in the United Kingdom did not get a tax-free status. That is a common criticism that has been provided in relation to auditing sessions.

Ms McBride—Chair, I have a point of order. Isn't that outside the terms of reference of the tax bill? How is that relevant to a tax bill, Senator Xenophon?

Senator XENOPHON—Chair, I am happy to address that.

CHAIR—If you would, because it is a valid point. We have made a point of saying that this inquiry should address the terms of reference. I think that applies to senators as much as the witnesses.

Senator XENOPHON—Chair, for the benefit of the rest of the committee, my view is that it is relevant for a number of reasons. Firstly, in order to determine the issue of the public benefit this legislation is based on the approach of the United Kingdom. The United Kingdom in a decision in relation to the public benefit test made reference to how open and how public a benefit was and it made specific reference to the auditing sessions.

That is why I have drawn on a decision made on an approach that is similar to the approach envisaged in this legislation.

CHAIR—Thank you. Perhaps you should have said that in your preamble to the question.

Senator XENOPHON—Perhaps I should have, Chair. I apologise.

CHAIR—I think in that case it is a relevant question.

Ms Stewart—Could you please ask it again. I got lost in all the backwards and forwards.

Senator XENOPHON—Of course, Ms Stewart. Should the auditing sessions carried out by the Church of Scientology be regarded as a public benefit? There is a view that they are a cross between personal counselling and Maoist self-criticism. That is one view that has been given. Even if they provide a benefit to the individual paying for them, because payment is involved as I understand it, how is this a public benefit? I note that this was one of the factors that was looked at by the Charity Commission in the United Kingdom in its decision on 17 November 1999.

Ms Stewart—One thing on the 1999 UK Charity Commission issue that you were talking about, they since have come out with a law that has passed. We believe that under the new UK law that decision will be reversed. That is one point. Secondly—

Senator XENOPHON—That is a matter of opinion.

Ms Stewart—There is now legislation.

Mr Ferriss—2006.

Ms Stewart—In 2006 legislation was passed.

Senator XENOPHON—That was a codification, I think, of the earlier law.

Ms Stewart—Yes, and that codification is quite different. I am not an expert on this matter. Actually, we could provide some information to you afterwards on that. We have legal opinions on that 1999 UK decision.

On the question of our religious counselling and auditing, I put to you that those comments by former members are not shared or held by the large majority of Scientologists, who love their religion and love receiving services. For them, it is very much a public benefit—(1) because it makes them a better person; a better individual. In terms of increased spirituality and gains, Scientology works on the principle that, by increasing your spiritual awareness, you will then come to understand and know God as you move further along.

From the point of view of their opinion as compared to the opinions of courts, this matter has been taken up in courts all around the world—throughout Europe and the United States, and particularly with the IRS. They found that our religious courses and counselling were of public benefit. The same has been found in New Zealand. Also, many religious scholars have studied Scientology in great depth and they do not have an axe to grind really. So they, in my view, have come up with some quite definitive decisions along religious scholar principles of our religious services and the public benefit that they give.

Senator XENOPHON—But you do charge for the auditing sections, do you not?

Ms Stewart—Yes, but it forms the basis of our donation. The Church of Scientology has no outside business. We do not operate any secular type of activity that in turn gives us money from which to operate our church.

Senator XENOPHON—But auditing sessions, I think you said, are for the spiritual wellbeing of the followers.

Ms Stewart—That is correct.

Senator XENOPHON—But that comes at a cost?

Ms Stewart—Not always, Senator. I think a very key point is that the aim of a Scientologist is to be a counsellor and to learn to deliver this religious counselling to others and to also receive it and give it. If you wish to receive it in a professional capacity, we do request a donation—because that is how Scientologists wanted to contribute to their church. If you are not an active Scientologist—you are not receiving a service—your church does not require a donation from you. So it is equitable in terms of donations—those who use the church' services the most. The church has many, many services for which no donation is requested.

Senator XENOPHON—Can I just go to this issue of 'fair game' with you, Ms Stewart, which I note—

Ms Stewart—Senator, I think that is definitely outside the terms of reference.

Senator XENOPHON—Perhaps as a preamble for the chair, if I can indicate that, in terms of public benefit and detriment, the Scientology website refers to ‘fair game’ as being cancelled in 1968. It was a policy of basically targeting those who are against Scientology. There was a doctrine of ‘fair game’ in 1965, wasn’t there, Ms Stewart?

Ms Stewart—I do not actually know any specifics regarding dates, to be honest. What I can say is that the definition of ‘fair game’ is, I feel, definitely outside the terms of reference. I would be very happy to take that on notice and present something in writing to the Senate to specifically address those claims with documentation and evidence.

Senator XENOPHON—So ‘fair game’ does not apply—

Ms Stewart—Absolutely not. I have worked for the church for 22 years. I have never heard of it and never seen it. The only place I have heard of it is in the media, and it is used really to marginalise us.

Senator XENOPHON—I am concerned about time constraints, so perhaps you could do that. For an organisation to obtain a tax-free status, as has been suggested in this bill, there needs to be a public benefit. If an organisation was systemically involved in activities that harmed individuals or there was coercion or abuses—and, again, I want to put this in general terms; I want to make that clear—would that be something that would concern you in terms of general principles as to whether that organisation should have a tax-free status?

Ms Stewart—I might have Mike Ferriss answer the question.

Senator XENOPHON—I might get you to respond as well, Ms Stewart.

Ms Stewart—Sure.

Mr Ferriss—First of all, you have raised a couple of points. You used the word ‘systemic’. The allegations, claims and so forth are not systemic in the Church of Scientology. You have to be very careful about what is being alleged and claimed. The church has provided a lot of information to the Senate in writing, which is available—and we know it is here. It does answer many of the allegations, as Ms Stewart said earlier. The other point is that this is not—

Senator XENOPHON—So, generally, if an organisation is involved in what could be seen as human rights abuses, cover-ups, telling people not to go to the authorities if there is evidence of criminal activity, do you think those things would be relevant in determining a public benefit test?

Ms McBride—Yes, they clearly are, and they should apply to the Catholic Church as well as to the Anglican Church. I think in relation to the latter, the Governor-General had to stand down, didn’t he, over allegations in the Anglican Church. Currently, there is an enormous amount of hoo-ha about the Catholic Church. Are you going to ask the same questions of them, Senator Xenophon?

Senator CAMERON—If he does not, I will.

Senator XENOPHON—It was a general question. Do you endorse Ms McBride’s views—

Mr Ferriss—Essentially, is it the actions of individuals that these claims are about? That would have to be determined. I am saying it is not systemic. Again, there would have to be evidence and so forth that would substantiate those claims.

Senator XENOPHON—I will not take that any further. Finally, on something I find quite curious: if you believe in freedom of religion, why is it that the texts of Scientology are strictly copyrighted so that the views of Scientology are strictly protected by copyright laws? If you want to get a Bible or a Koran or other religious texts you can get them for free or virtually for free. Can you see my point?

Ms Stewart—Definitely. I have just one point. I do not think copyright has anything to do with the materials being provided for free. We provide ample quantities of our materials for free to anybody who wishes. We put books in libraries and you can download them off the internet. I do not think that they are connected. The issue of copyright is essentially one of religious philosophy. As an example, the Bible is excellent, because the Bible has undergone massive changes. It depends who wants to write it, which section they want to put in. We do not know the true text of what Jesus said. In Scientology it is very important for us that there are no alterations, because Scientology works as written—I am now talking about our religious philosophy.

Other parts of the church have writings but, in terms of the practice of the Scientology religion, it is very important to us that they are not altered or changed so that 100 years, 200 years, 1,000 years down the track we do not have a completely different book, as has happened with the Bible.

Senator XENOPHON—Sure. I thank you for that answer. But in that case, if that is the intent, why can't it be free for people to see it and to have access to all the teachings of the Church of Scientology without having to pay for them?

Ms Stewart—I think that is a larger question. I can definitely provide you with a written statement on that covering those issues.

Senator CAMERON—Mr Ferriss, maybe you are in a position to answer this. There has been criticism from the Church of Scientology about the approach taken by the UK charity commission. Last year the UK charity commission conducted an inquiry into the public benefit and the advancement of moral or ethical belief systems. A number of groups made submissions to that inquiry. Are you aware whether Scientology made a submission?

Mr Ferriss—I am not aware.

Senator CAMERON—Could you take that on notice because, given that you are critical of the UK commission, I would be interested to know whether the church made a submission to that inquiry.

Mr Ferriss—Sure. We said that we will take that on notice. Another point to be made is that we are not so critical of the UK charity commission per se but rather of the earlier decision in 1999, which was not made by the commission itself. The commission was established in 2002, I believe.

Senator CAMERON—I do not want to go into the history of that because I have only a few minutes.

Mr Ferriss—We can certainly provide you with that.

Senator CAMERON—I am interested in a consultation process that was undertaken, called the public benefit and the advancement of moral or ethical belief systems. Maybe you can come back to me on that.

Mr Ferriss—Sure.

Senator CAMERON—Submissions we have had from the taxation department say that religious organisations basically self-assess. So you, as a religious organisation, have self-assessed and gained an exemption from income tax in Australia? Is that correct?

Rev. Gordon—That would be correct.

Senator CAMERON—I hope it is correct, because that is what you need to do!

Ms Stewart—I think your question at the beginning was a bit confusing.

Senator CAMERON—You do not understand the question?

Ms Stewart—I did not understand your question. That is why there was a bit of a lag in answering it.

Senator CAMERON—Do you want me to repeat it?

Ms Stewart—Yes.

Senator CAMERON—The Taxation Office said:

Under the tax laws, religious organisations are entitled to self-assess as religious institutions, thereby gaining an exemption from income tax ...

I assume that you have done that.

Rev. Gordon—That is right.

Senator CAMERON—Are you aware of the Extension of Charitable Purposes Act 2004?

Ms Stewart—No.

Senator CAMERON—The Taxation Office said that, under the Extension of Charitable Purposes Act, religious organisations can go on to demonstrate a public benefit, and that public benefit then provides them with further tax exemptions as charitable institutions. Have you done that? You get a tax exemption as a religious organisation, which is an automatic self-assessment?

Rev. Gordon—That is right. And, yes, we did do a submission to the Taxation Office.

Senator CAMERON—And, following that, you seek a further exemption for GST and FBT? Do you pay GST or FBT?

Rev. Gordon—Yes, we do collect GST.

Senator CAMERON—So you have not sought a charitable exemption? Your exemption is on the basis of being a religion? Is that correct?

Rev. Gordon—Yes.

Senator CAMERON—Why haven't you sought the charitable concession in Australia?

Rev. Gordon—Actually we did get the charitable exemption as well. It is based on being a religion and a charity.

Ms McBride—I think we should take that question on notice. I believe there is an exemption granted, under the Goods and Services Tax Act and also under the Income Tax Act, on the basis of being a charitable exemption. I believe that has been filed with the submission.

Senator CAMERON—What the Taxation Office says is that the religious institution category for tax exemption is almost inoperative—that that is not the main area where organisations gain their tax exemption. The main area is through charitable purposes. So that brings us, in a circular way, back to the position of being a charitable organisation and being accountable. It is not just the Church of Scientology; all churches, all religions, have to comply with these issues. And there is a public benefit issue there as well.

Mr Ferriss—That is right. The issue of public benefit was raised by Senator Xenophon as well. When a person who follows a religion also lives and works in the world, that in itself is considered to be a public benefit. Scientology is not a closed order. Scientologists live and work in the world and, as an extension of their faith, as an extension of their beliefs, they do good work in the community—like many other people from other faiths.

Senator CAMERON—We had a submission from Corney and Lind Lawyers this morning. They indicated that they would support a charities commission. The bulk of the evidence seems to be that charity commissions are the best practice developing approach. You have indicated that you would not be opposed to that. Am I right in saying that the Church of Scientology would engage in a consultative process about the implementation of a charities commission within Australia?

Mr Ferriss—I think we would.

ACTING CHAIR—What did you say, Mr Ferriss? It was very hard to hear.

Ms Stewart—He was half talking to me. We would consult with anybody on that issue. We are happy to talk.

Senator CAMERON—And that would include the application of a public benefit test and a charities commission? You would sit down and talk about that issue as well?

Mr Ferriss—For sure.

Ms Stewart—Yes.

Senator XENOPHON—Ms Stewart, if you do all the good things that you say you do, you would have nothing to fear from a public benefit test. You are nodding. Is that a yes?

Ms McBride—There is already a public benefit—

Senator XENOPHON—I was not asking Ms McBride, Chair; I was asking Ms Stewart.

Ms Stewart—I do not know whether I can answer that question, because I am not fully familiar with all the other parts of what it is that you are asking. I could take that one on notice, because I would have to study more.

Senator XENOPHON—It was following on from Senator Cameron's statement.

Ms Stewart—Yes. I would have to study more to be able to answer that question.

ACTING CHAIR—We have now actually exceeded the end of this time, so I thank the witnesses for appearing.

[3.42 pm]

NICHOLLS, David, President, Atheist Foundation of Australia Inc.

Evidence was taken via teleconference—

ACTING CHAIR—We welcome the Atheist Foundation of Australia in the form of Mr David Nicholls, who is the president. Mr Nicholls is appearing via teleconference. Would you like to make an opening statement?

David Nicholls—I certainly would. Thank you for the opportunity to speak to this committee. The Atheist Foundation of Australia has existed since 1970. I have been a member for 26 years, on the management committee for eight years and the president for five years. The AFA is by far the largest subscribed atheist organisation in Australia, as well as having the biggest internet membership. All members of the management committee must sign a privacy charter which disallows any information about members or numbers of members to leave the committee room. We would be best classed as a philosophical educational organisation and not a religion. The views expressed by the Atheist Foundation of Australia represent a wide cross-section of people known as ‘free thinkers’ and, by survey on various topics, the opinions of the AFA represent a substantial number of those of a religious persuasion.

I want to stress that the AFA is strongly in favour of granting tax concessions to genuine charities that give assistance to combating poverty, illness and the problems of our aged citizens. We also endorse taxation support for educational institutions for their secular pursuits and taxation benefits for other purposes beneficial to the community, as long as they are clearly defined and secular.

The 192 High Court decision in the DOGS case—Defence of Government Schools—included that be advancement of religion was permissible, not compulsory, under the Australian Constitution. One of the prerequisites for charitable status is the advancement of religion—that is not just permissible; that is compulsory. Even so, as humans have followed around 34,000 religions and worshipped about 3,000 gods, it is reasonable to assume that advancing any or all religions is a time bomb that will create dangerous sectarian divisions in the community. A study by Gregory S. Paul titled ‘Cross-national correlations of quantifiable societal health and popular religiosity and secularism in the prosperous democracies’ leaves little doubt that religion is a divisive force in societies and in politics, but that is not the worst part. The study indicates that the greater religiosity in a society the greater dysfunction, the indices being violence, rape, murder et cetera. It follows, therefore, that the AFA does not support the notion that the advancement of religion is a charitable exercise, especially as the convention originates from the 400-year-old preamble to the Statute of Elizabeth in the year 1601, which equates all religious activity with charity.

A charity is a non-profit-making organisation. Most organised religions today are large corporations with vast reserves and holdings in equities ranging from stock market shares to real estate to manufacturing. Their profits are in the billions. Were they charities, 100 per cent of these tax-free profits would be ploughed back into charitable works, but they are not. For the most part, they are used to increase assets and, simultaneously, their influence. When the profits of the Anglican stock market portfolio were reduced last year, they curtailed their charitable work, despite the profits made in their considerable rental and other commercial enterprises. The AFA demands that only the charitable arms of religions receive tax relief, but only if, like all secular charities, their books are open to inspection and auditing, they do not restrict their charity to their own adherents and they abide by every provision of the United Nations charter of human rights. To this end, the purely commercial activities of religions must be treated as separate entities and pay their fair share of tax, thus relieving the burden on honest taxpayers. The facts are damning. The estimated untaxed income of religions in 2009 was \$30 billion. Australian taxpayers had to make up the shortfall. It does not take a rocket scientist to see that this is unethical and unacceptable. If this figure of \$30 billion of untaxed income was firmly implanted in the public mind, with it being common knowledge that the number of regular churchgoers is only about seven per cent of the population, there would be an understandable majority outcry of some magnitude. It is the opinion of the Atheist Foundation of Australia that blanket support of religions through tax breaks should cease and the charitable arms of religions should receive only taxation concessions if they are accountable to the Australian public.

CHAIR—Thank you.

Senator CAMERON—I have heard the figure of \$8 billion as the cost of charities to the public purse. Where do you get \$30 billion from?

David Nicholls—I am talking not just about charities; I am talking about the cost of all aspects of religion in Australian society. To give you an example—I cannot quite remember what they were called; it has escaped my mind for the moment. But in America the Council of Churches—I cannot remember the date but it was in the 1990s—declared that they had a tax income of \$450 billion. Now, that is with 253 million people, which is more than us. But, if you do a quick calculation, you work out that the \$30 billion is a reasonably accurate figure, and it is a figure that is supported by a book by Max Wallace called *The Purple Economy*, and there is also a study by Gomez and Perkins—and I think you have a submission from them, from the Secular Party of Australia; that is submission No. 68—which verifies what I am saying.

Senator CAMERON—The bill that is before us from Senator Xenophon goes some way towards what has already been established in the UK, Ireland, Scotland and New Zealand, and that is a charities commission. This could be like a stepping stone towards a charities commission. Do you have any views about the establishment of a charities commission?

David Nicholls—You were breaking up considerably, sorry.

Senator CAMERON—I do not know that I can do anything.

ACTING CHAIR—Senator Cameron asked you if you had any views on the establishment of a charities commission, along the lines of the UK—

David Nicholls—Yes. As our submission says, and as I have just stated, charities have to be accountable. And they have to be separate from church matters, because nobody in Australia knows—and I am sure that none of you good people would be able to tell me—what proportion of that \$30 billion is towards charities and what proportion is enhancing the religions that are being mentioned.

Senator CAMERON—It seems to me that the Atheist Foundation have basically said that religions have to be accountable, and that is a fair enough proposition. But there seems to be a bit of intolerance towards religion, and it is clear that the High Court has accepted that people are entitled to make a choice to practise a religion. What is your view on that?

David Nicholls—I do not think ‘intolerance’ is the correct word. I think religions should be treated the same as any entity that has its hand out for tax benefits. What is intolerant about that?

Senator CAMERON—No, I am talking about tolerating people who decide that they believe there is a spiritual focus and they want to practise a religion.

David Nicholls—We are not intolerant of people who want to practise a religion. People can believe anything they like. People can believe there are fairies at the bottom of the garden; we do not mind. But, when that belief encroaches upon everybody, the Atheist Foundation has to say something about it. That is what we are here for.

Senator CAMERON—Okay. That is it from me.

ACTING CHAIR—Thank you. Senator Xenophon, do you have some questions?

Senator XENOPHON—Mr Nicholls, thank you for your submission. This bill provides for a public benefit test. Does the Atheist Foundation of Australia receive tax concessions under division 50 of the Income Tax (Assessment) Act or any other legislation?

David Nicholls—We do not receive any more taxation benefits than your average pony club.

Senator XENOPHON—Sure. Mr Lind, a lawyer who acts for charitable and religious organisations, made the point in terms of broader public policy that, if an organisation delivers common-good outcomes—in other words, they perform charitable acts, they alleviate poverty or homelessness, or a number of other acts that could universally be described as being in the public benefit—and they get a tax concession, one of the arguments is that, if they did not do it, the government would have to do it, at greater expense ultimately to taxpayers. I am trying to fairly paraphrase what Mr Lind, a lawyer who acts for charities and presumably religious organisations, has put to the committee. Do you have a comment on that?

David Nicholls—We are not saying that people who are doing public good should not receive tax concessions; we are saying they should receive tax concessions. We are very strong about that. But we also say they should be accountable. There have been a couple of cases—one in your home state, Senator Xenophon—of the Agape Ministries, who use coercion and forced abortions and all sorts of things. They are classed as a charity. The figures floating around in the paper are that they have received something like \$150,000 to carry

out this work. How do you tell who is doing good stuff and who is doing bad stuff if there is no accountability? All we are asking is that charities have to be accountable.

Senator XENOPHON—You do not have any argument from me in relation to that, Mr Nicholls. I just want to get your views on what Mr Lind said. To be fair to Mr Lind, he seemed to be broadly supportive of a charities commission type approach. There is one that exists in the UK and one that exists in New Zealand more recently, where there is a degree of transparency and accountability. Is that the sort of thing that you would welcome—that there be a body that can supervise and provide benchmarks for the activity of organisations that receive tax concessions?

David Nicholls—If those bodies are working efficiently, I would suggest, yes, that would probably be the way to go. But, as I say, I do not know. I realise there are probably thousands and thousands of charities. Will they be capable of being effective?

Senator XENOPHON—You are saying that it is good to have that level of supervision or overview, as exists in New Zealand, for instance?

David Nicholls—If it is as I assume, that they have the power to investigate any matter they deem necessary that has to do with taxation money going, yes, I would agree with that statement.

Senator XENOPHON—And you have said in your submission that you are supportive of the introduction of a public benefit test. How would you see such a test working? Further to that, how would you like to see the not-for-profit sector reformed in terms of its operations?

David Nicholls—It would be a pure matter of auditing as far as I can see. The money that goes in has to be accounted for in how it goes out.

Senator XENOPHON—So it is more of a financial transaction?

David Nicholls—I think that is the only way that you are going to be able to have some sort of control on anybody who wants to class themselves as a religious charity and can get away with things such as the Mercy Ministries and Agape and probably countless others that we do not know about. Apart from separating religion itself from charities, which seems to be something that people cannot get their minds around, there has to be some sort of control on the money that goes into religion that is untaxed and where that money goes. The public have a right to know where the money goes.

ACTING CHAIR—So there needs to be a right of audit? Yes or no? You would support an audit of expenditure of where the money goes?

David Nicholls—Yes.

Senator XENOPHON—In your view, do any religious based charities provide benefits to the public, leaving aside whatever systems of belief a religion may have? You do concede that they can provide benefits to the public in terms of charitable works?

David Nicholls—Yes, I would certainly agree. People who are of a religious nature have different motives for helping with charitable institutions. I do not want to go into what those motives might be. Yes, I would fully support anybody who was trying to benefit other humans.

Senator XENOPHON—Thank you, Mr Nicholls.

ACTING CHAIR—Mr Nicholls, that concludes this segment of the hearing. Thank you for appearing this afternoon. Your evidence has been very useful.

David Nicholls—Thank you for inviting me; it has been most wonderful.

Proceedings suspended from 3.59 pm to 6.06 pm

EDWARDES, Ms Joanne, Head of Status and Public Benefit Policy, Charity Commission for England and Wales

LOCKE, Mr David, Executive Director, Charity Services, Charity Commission for England and Wales

Evidence was taken via teleconference—

ACTING CHAIR—I welcome Mr David Locke and Ms Joanne Edwardes from the United Kingdom charities commission to today's hearing. Before inviting you to make an opening statement, I would like to remind you that the privileges and protections of parliamentary privilege cannot extend to jurisdictions outside of Australia, so your evidence should be given knowing the limitations of the Australian Senate to protect you outside of the Australian jurisdiction. This is a public hearing, although the committee may agree to a request to give evidence in camera or may determine that certain evidence should be heard in camera. Would you like to make an opening statement?

Ms Edwardes—Yes. We are from the Charity Commission for England and Wales, and we have been invited to give evidence today and to talk about the public benefit test that we have in England and Wales. We are very grateful for the opportunity to make this submission. We are very interested to see this new piece of legislation that is being proposed. The public benefit test in England and Wales is something that has existed in our common law for many hundreds of years. It was only very recently, in 2006, that the UK parliament introduced the new Charities Act, which re-emphasised the need for all charitable organisations to have aims which are for the public benefit.

This followed a number of years in which the Charities Bill was debated in parliament, and there was a great deal of debate in parliament and also in the media and in the public about what 'public benefit' means. There was a lot of discussion about whether a public benefit statutory definition should be included in the Charities Act. In the end, parliament decided not to include a definition but to make provision for the Charity Commission of England and Wales, as the regulator, to issue guidance on what the public benefit test means in our law. This is what the Charity Commission has done, and we also have a statutory objective: to raise awareness and understanding of what that public benefit requirement means.

We issued our guidance in 2008, which was when the public benefit requirement as stated in the Charities Act came into being. Since that time, we have issued some supplementary guidance to further inform what that requirement means for charities in England and Wales. It is fair to say that it is quite a complicated piece of legislation in terms of what is in the common-law charity law. It does take quite a bit of explaining, but we have done that in our guidance and boiled it down to a number of key principles that charities have to meet. This applies to all charities, regardless of what charitable purpose they have.

One of the other significant things that the Charities Act did was it removed something in law which was called a presumption of public benefit. This was where charities that were concerned with the relief of poverty or the advancement of education or the advancement of religion were previously presumed to be for the public benefit unless there was some evidence to the contrary. In the Charities Act that presumption was removed in the common law. This means that the public benefit requirement is now the same for all charities, regardless of their purposes. That was the only key change, really, in terms of the public benefit requirement itself. We have applied that public benefit requirement to some individual charities just to illustrate what that requirement looks like if it is played out in the context of different purposes, and that includes charities for the advancement of religion and some fee-charging residential care homes and fee-charging independent schools. We have published the results of those on our website, along with all our guidance.

So it is something that has been with us for a long time. Certainly charities in England and Wales are used to having to demonstrate public benefit. Greater emphasis is now on it and there is greater clarity from our guidance about what that requirement means in England and Wales. If there are any questions about our test or how we have applied it we would be happy to answer them.

ACTING CHAIR—Thank you very much. We will be asking you some questions.

Senator XENOPHON—I have a preliminary question. In essence are you saying that, as a result of the 2006 legislation, there is no longer a presumption of public benefit? In other words, is it almost a reverse onus in the sense that previously the common-law position was that a public benefit was presumed and you would need to show evidence to the contrary but now you need to show in a positive sense a public benefit before the charitable status supplies?

Mr Locke—The position is that, on registration, we would always look at the issues of private benefit and public benefit. We did this prior to the introduction of the 2006 act; however, if the charity was, for example, for the advancement of religion or the relief of poverty or the advancement of education, there would be a presumption that it was for the public benefit. So in effect, on registration, if there was evidence of private benefit or significant private benefit then that may be such as to reverse the presumption and we would ask further questions. So the test has always been there, but the assumption has been that organisations furthering these purposes would probably be for the public benefit and we would be looking to see whether there were any factors on registration that indicated otherwise that would, in effect, reverse that presumption.

The position now is that, as there is a level playing field and there is no presumption in respect of any of the charitable purposes, we will ask the same sorts of questions on registration regarding the nature of the organisation. We will ask each organisation to establish how it furthers the public benefit test in accordance with our guidance.

Senator XENOPHON—If an organisation has obtained registration but there are subsequently complaints about that organisation in terms of causing harm to its followers, or if its behaviour at a systemic level appears not to be in the nature of public benefit, do you have the power, once registration is given, to either revoke or question that registration?

Mr Locke—Yes, we do. We have a number of powers of regulatory intervention that are contained in the Charities Act. We have a power to open statutory inquiries into organisations if we consider that there are significant reasons for doing so. We will look at the question of public benefit if concerns are raised with us that indicate that the organisation is perhaps not charitable. If concerns are raised with us about any significant harm or detriment, then we will look at issues of public benefit in that context.

Also, we will look at issues of public benefit if, for example, an organisation wishes to change its charitable purposes in the future, so that would be another situation where we would engage in that way. Certainly if people were making representations to us that there was significant detriment or harm or that an organisation was not actually established as a charity for the public benefit, then we would have the power to look at that.

Senator CAMERON—Ms Edwardes, the Australian Catholic Bishops Conference have provided a submission to the committee where they argue that the public benefit test is problematic. This has been a recurrent argument from submitters to this inquiry, that the public benefit test is problematic or deeply problematic. Was that similar argument put in the UK?

Ms Edwardes—There was certainly a great deal of concern voiced, particularly by religious organisations, at the time that the public benefit test provisions in the act were being discussed and also when we widely consulted on our guidance. We consulted on our general guidance on public benefit, which says what the general principles are in law. We also produced some supplementary guidance specifically for religious organisations, because they were concerned about it, and also because the law had changed in respect of the public benefit test as the presumption had been removed. We did have a very wide-ranging discussion with them. We had a series of in-depth workshops held with religious organisations, and throughout that they did voice those sorts of concerns. They said it was very difficult for religious organisations to demonstrate benefit as it was an intangible kind of a benefit that was hard to quantify, hard to measure and hard to describe. What we did in our guidance and in all our discussions was help them find a way of articulating what the benefits of religion can be and how they can be demonstrated. Certainly, as a consequence of all of that, once our guidance was agreed and published, there were much fewer concerns from religious organisations about how they would meet this difficult test. We recently had a workshop with wide-ranging representatives of all sorts of religious organisations and in fact many of them have been saying that they found it helpful because it had helped them to find a way to articulate what they do, which shows how they meet this public benefit requirement. This was also supported by some of the individual public benefit assessments that we did on four religious organisations. We did this to demonstrate how these principles play out if you look at an individual charity. We looked at different types of religion and different types of advancing religion and in all those cases the four that we assessed clearly demonstrated public benefit and we were able to show in what ways they did that. The reports that we published on those assessments have also helped strengthen this idea that it is a test that religious organisations can meet and can meet well.

Senator CAMERON—One of the things I noticed on your website is that you conducted an analysis of public benefit and the advancement of moral or ethical belief systems and that a consultation took place. Is that correct?

Ms Edwardes—Yes, it is correct. We did this partly in response to some requests that came through during the debate in parliament. There was a lot of discussion about the descriptions of purposes that were included in the act and of things that support the recognition of charitable purposes. There was a debate on whether the one on the advancement of religion should refer to other sorts of belief systems, so whether it should be the advancement of religion or belief. That was very widely debated in parliament. In the end it was decided that ‘religion’ meant something very specifically in charity law and they wished to keep it distinct.

But, of course, other sorts of non-religious, if you like, belief systems can also be charitable but under a different heading of ‘charity’—and that is the advancement of moral and ethical beliefs. We undertook to produce separate guidance for those sorts of belief systems. However, the people who responded to that consultation felt that the guidance that we produced did not quite achieve what they would like it to have achieved. It is quite a difficult area of charity law. There is very little charity law to explain what this specific area means and covers. Trying to define something almost by reference to what it is not—that is, nonreligious—is not really very helpful. It is difficult to describe it in the positive and say what it is. We attempted to do that and had consultation. The response was actually it was not very helpful in the end, so we withdrew the draft guidance that we had prepared and we deal with any questions that arise in the context of individual cases.

Senator CAMERON—Do you still rely on the extensive case law that has been built up over 400 years when you look at the public benefit test?

Ms Edwardes—Yes, we do. In fact, this was retained in the Charities Act 2006. The Charities Act clearly says that the public benefit requirement is still what it means in the common law except for the removal of the presumption of public benefit.

Senator CAMERON—What is the situation now with some of the main religions? Are they comfortable? Are there still concerns about the operation of the charity commission? How has that worked through?

Ms Edwardes—Our experience recently seems to be that many of the organisations that had been concerned all the way along were no longer expressing their concerns to us, so it would appear there is much more reassurance, particularly after we did the public benefit assessments and published those reports. The guidance itself was very well received when we published it and that did seem to address a lot of the concerns that had initially been raised.

There was a lot of misunderstanding about what the public benefit requirement meant for religious organisations and in particular there was concern that there was a secularising sort of agenda behind it and it was trying to force religious charities down advancing more secular purposes. We did an awful lot to reassure religious organisations that that was not the case. We think actually now that our guidance and the public benefit assessments we have done have given a lot of reassurance to those organisations and we are no longer receiving the sorts of concerns about it that we did at the start.

Mr Locke—As a consequence of the Charities Act 2006, a number of charities that were formerly exempted from having to register with us had an obligation to subsequently register. In the course of the last 18 months we have actually registered just over 2,500 formerly exempted charities, many of which were faith based, many of which were Anglican churches and congregations. The feedback we have had from those organisations that have gone through the registration process has been on the whole positive. They found it helpful in terms of looking at the governance of the organisation and also rearticulating what they are established for and how they help their communities. On the whole I think the feedback we are getting is fairly positive in this regard.

Senator CAMERON—Because that is the other argument—that there is a substantial additional burden placed on charities, and I would then assume religious organisations, by the operation of a charities commission. Has that been a refrain you have heard in the UK?

Mr Locke—There is concern raised by the charity sector about the level of regulation that they are subject to, but all the research that we and other organisations have undertaken does not indicate that the charity commission is part of that problem, really. It tends to be when you are looking at dealing with the inland revenue with regard to Gift Aid, or issues are raised regarding health and safety and other forms of regulation that affect charitable organisations. On the whole, the feedback from the research that we have undertaken indicates that people think that the regulatory balance is about right with regard to charity law and the charity commission.

Our approach to regulation is very much one of enabling and supporting the sector and actually recognising that, as in Australia, much of the charity sector is made up of very small, community based organisations run by volunteers with very limited capacity. So it is a question of proportionality in terms of your expectations of them. Certainly, the guidance that we have given to organisations with regard to the issue of public benefit is that that sort of proportionality also stands. So, for very small organisations, we are not expecting reams of reporting regarding public benefit; simply a few statements that articulate how they are established for the public benefit will suffice. But if you are looking at organisations that are much larger, then our expectations are much greater in terms of what they should be reporting to the public regarding their activities and how they are established for the public benefit. So we think proportionality is very much part of that.

Senator CAMERON—Do you have any examples of where a religion has not been classified as a charity or registered?

Ms Edwardes—We have. In 1999, the charity commission received an application from the Church of Scientology (England and Wales), and the report of our decision—which was to not register the organisation as a charity—a very detailed decision that we published at that time, is still on our website. In that context, when we look at any charity for the advancement of religion we look at two key things. We look, first of all, to see whether it satisfies the charity law definition of what is a religion. There are certain key criteria that religious organisations have to meet. If they do satisfy those criteria, we then look to see whether the aims, to advance the religion, are being advanced in a way that meets the public benefit requirement. In that particular decision in 1999 we decided not to register it, firstly because the organisation did not fully satisfy the criteria for religion in charity law here. We did also consider public benefit and, in that context, we concluded that it was not fully demonstrated.

Senator XENOPHON—I just want to ask a supplementary question before Senator Cameron goes back to his line of questioning. When the Church of Scientology of Australia, and also its New Zealand representatives, gave evidence earlier today, reference was made to this decision of 17 November 1999 of the charity commission. I do not want to misrepresent their position, but I think—and my colleagues will pull me up on this if I am wrong—there was some suggestion that, because of the 2006 law that was passed, that decision could be reviewed or would be subject to either review or a fresh approach. I think it was broadly in those terms—that they felt that the 2006 law could lead to a revisiting of that decision. What is your understanding? Has there been an application by the Church of Scientology to get tax-exempt status under the 2006 law, or is it now back to square one by virtue of the 2006 law? What is the status of the 1999 decision?

Ms Edwardes—No, that 1999 decision is not subject to review. At the time it was made, it could have been appealed but it was not. What would happen now? There is no appeal procedure now to go back and reopen that particular decision. Of course it would be open to any organisation such as the Church of Scientology to reapply for registration if it chose. We would obviously consider the application afresh and reach a view. If our view was that the organisation was still not charitable for the public benefit, it would have the opportunity to seek a review of that decision. That would go through our new charity tribunal or ultimately through the court. But basically that would be looking at a new application from the organisation rather than revisiting an old decision. That decision was made on the basis of the information provided to us at that time, which was some years ago.

Mr Locke—To my knowledge we have not received any application from the Church of Scientology in England and Wales. Our view is very much that the guidance that we have issued is a statement of the legal position. We do not see that as fundamentally changing what the legal position was in case law prior to the 2006 act. It is very much a restatement in modern terms of how the public benefit test applies. Whilst I do not want to prejudice any application from any party whatsoever we would obviously look at any fresh registration application afresh in the context of the legal framework and the guidance that we have issued. But we do not see the guidance that we have issued as fundamentally changing the law that applied in or prior to 1999.

Senator CAMERON—One of the issues I have raised with witnesses is the public benefit and how you deal with the issue of vicarious liability—that is, the actions of individuals employed by or who are part of a church. When do the actions of those individuals become so bad that there would be no public benefit?

Ms Edwardes—It is really a question of how the organisation itself manages those sorts of issues. Obviously, in any organisation things can arise and it is all about whether the trustees who deal with those situations had policies and procedures in place to mitigate risk of detriment or harm.

In our guidance on public benefit where we talk about detriment and harm, one factor that we say trustees should be aware of is keeping risks of detriment and harm to a minimum and managing them and dealing

effectively with any issues when they arise. I think it would become a question of public benefit if there were evidence to show that there was something inherently unreasonable about the way in which the organisation was doing that. If it was endemic throughout the organisation and affected its ability to operate for the public benefit—that would be pretty extreme of course—that is when it would become an issue. It is about whether the aims of the organisation are for the public benefit—that is, the test we have here—but of course it has to operate for the public benefit. If there is evidence to show that it is not capable or will not operate for the public benefit—for example, if it does not have sufficient child protection policies in place to protect vulnerable beneficiaries—those are the things that we would look at very carefully. There would be significant concerns and it could affect the organisation's ability to demonstrate that it satisfies the public benefit requirement.

Senator CAMERON—The New Zealand Charities Commission indicated earlier today that, for the first time, the New Zealand public now had an idea how much public funding was going to charities and that prior to the establishment of the commission it was guesswork. It seems to me that we in Australia are currently in that situation. I wonder whether the establishment of the UK Charity Commission has given the public an idea how much money is being spent on charities, what the benefits are and whether any analytical work is being done by the Charity Commission on that expenditure.

Mr Locke—Any organisation that is a charity in England and Wales that has an annual income in excess of £5,000, or about A\$8½ thousand, has a legal obligation to register with us. We have 182,000 charities on the register and about 60,000 of those, in effect, have an income below that threshold but choose to stay on the register. Through our register we very much promote the accountability and transparency of charities. So we will record on there, for example, where a charity's income comes from, where its expenditure goes to and what its assets are. Any member of the public can search on our website to see what the position is regarding any charities in their area or any national charities. Very much part of our regulatory model is to ensure that the public have trust and confidence in charities, and we think the accountability and transparency of the sector in terms of where its income comes from and where its expenditure goes is really a very central part of that.

In terms of our regulatory model, we think it is important that there is a fully accessible register of charities which enables the public to pull down data, such as you have talked about, on what is actually happening on both a macro and a micro level with charities. From my knowledge of the Australian regulatory framework, and certainly looking at what I have seen from the Productivity Commission review and the Henry report, the absence of a central register of charities seems to be an absence in terms of giving the public the sort of information that you are talking about.

Senator CAMERON—How many employees do you have in the Charity Commission?

Mr Locke—At the moment we have 460 employees. We are based over four sites. We receive just over £29 million per year in funding from the Treasury. We are a non-ministerial government department. We report to parliament for our work and report to the courts for our decision making, but we are funded directly from Treasury.

Senator CAMERON—Thank you.

ACTING CHAIR—Would you outline the impact on mainstream religions, such as the Catholic Church and the Anglican Church, that the establishment of your commission has had, if any.

Ms Edwardes—The Charity Commission has been in existence for a very long time. There is a very long tradition and history of charity law in England and Wales that governs religious organisations. By and large, we have had a good relationship with religious organisations, particularly the mainstream religious organisations. As David Locke was explaining earlier, a number of these have quite recently come under our regulatory control by dint of the need to register as a charity. Previously, they were exempted from that requirement and the Charities Act 2006 altered that position. Nevertheless, we have had a very longstanding relationship with mainstream religious organisations, and there are many who have successfully registered for many numbers of years. There are some new types of organisations also coming on to the register as well. We have certainly kept up to date with the changing nature of charities advancing religion, and so we have a very long standing relationship with them.

Mr Locke—As in Australia, much of the charitable activity and many of the charities we have in the UK were established by faith based organisations. Increasingly, over time, the sector has become part secularised, but it is only part secularised. As well as having faith-based organisations that are for the advancement of

religion, many churches and faith based organisations provide a range of different community resources and community action in areas of social welfare and deprivation.

We have a similar but different composition to the sector in Australia. Whilst we recognise that there is a different heritage to many of these different charities, we think it is important that the regulatory framework we have applies equally and fairly and that we understand how organisations are structured and operate. But, on the whole, we have a very positive relationship with faith based charities in England and Wales.

ACTING CHAIR—There is a paragraph that I will read to you from the Australian Catholic Bishops Conference. It says:

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.

It goes on to say:

This approach is not consistent to with the original purpose of a public benefit requirement. This was not a qualifying test but a disqualifying one.

Would you comment on those words, please.

Ms Edwardes—Certainly it is fair to say that one of the greatest areas of discussion and debate around the public benefit requirements in England and Wales has been around the question of the effect of fees and charities charging fees for their services. This was an area where we produced some supplementary guidance specifically on public benefit and fee charging for this reason, because there was such a great deal of interest and concern. We have been at pains to explain, both in our general guidance and our supplementary guidance, how we have derived the principles in our guidance from the existing charity law. Our view is that these tests are not arbitrary. They are principles that are derived from case law. We have published a detailed analysis of the law that underpins all of our public benefit guidance to explain the case law that these principles come from. That includes the principles in relation to fee charging. We have explained that in some detail. Obviously there may be organisations that do not agree with our interpretation of the law, but we have explained where we believe it comes from in the law and have clearly spelt that out.

ACTING CHAIR—That has not been a problem for the mainstream religious organisations in the United Kingdom?

Ms Edwardes—Certainly not. The issue of fees was something that was considered. As it is a fundamental aspect of the public benefit requirement, it was considered for all the charities that we did the independent public benefit assessments on, which included four mainstream religious organisations. In those cases, fees were not an issue and did not cause any difficulties. All of those four organisations that we used for illustrative purposes clearly demonstrated that they met the requirements. In some cases, with regard to other sorts of charities that we reviewed, which were the residential care homes and independent fee-paying schools, a couple of those organisations did not fully satisfy that aspect of the public benefit requirement. We have been working with those organisations to see what they can do to change the way in which they operate so that they can satisfy that requirement. That is ongoing work that we are doing with those charities. But, even in those cases, it was not a case of us saying, ‘I am sorry, you are not charitable.’ It was a case of us saying, ‘This is what you need to do to satisfy the requirement,’ and we have worked closely with them so that they can do that.

Senator CAMERON—On this point, the New Zealand Charities Commission indicated that if someone was dissatisfied with a decision of the New Zealand Charities Commission they could appeal to the High Court. What is the appeal process against a decision of the UK charities commission?

Mr Locke—Most of the decisions that the Charity Commission for England and Wales makes are appealable to a charity tribunal which was established under the 2006 act as well. That was established to give a quick and cheap form of redress to individuals and organisations that were dissatisfied with a legal decision of the commission. So, for example, a decision not to register an organisation on the basis of public benefit would be appealable to the charity tribunal. Similarly, if the commission took any regulatory action against an organisation on the basis that it was not charitable then that regulatory action would be appealable to the charity tribunal. There is a subsequent right of appeal from the charity tribunal through to the court as well.

Senator CAMERON—Who sits on the charity tribunal and how do you determine who is appropriate to make those decisions?

Mr Locke—It is an independent tribunal that is established as part of the independent tribunal service in England and Wales. It has a president who is independently appointed through the Ministry of Justice. There are legal members as well as lay members of the tribunal. There are now two tiers to the tribunal, and it depends on the nature and complexity of the decision that is going forward. Most cases will go to the lower level. Some decisions will automatically go through to the higher level, which is normally a High Court judge or member of the judiciary who will sit in that capacity. But it is very much independent of the charity commission; it is not an appeals system that the commission has any responsibility for. It is part of an independent appeals service which reports to the Ministry of Justice in England and Wales.

ACTING CHAIR—In addition to Senator Cameron's question, I ask whether you have an idea of what percentage of decisions are appealed beyond the tribunal.

Mr Locke—We have actually had a charity tribunal in place for about two years now. There have been a limited number of appeals that have gone through to the tribunal. I cannot recall the precise mount off the top of my head, but it is certainly single figures that we are talking about. It is a lot less than we had anticipated; our planning assumption had been that there would be about 50 decisions a year that would be going through to the tribunal, but there has been a lot less. To date we have not had any decisions that have gone to the tribunal on the issue of charitable status, although no doubt that will change. What we do have is an internal decision review process whereby, if an applicant is unhappy with our decision, they can seek an internal decision review process and they may decide to pursue that as an alternative to going directly through to the tribunal. We find that many charities and individuals do that.

Senator XENOPHON—We heard evidence earlier today from the Charities Commission of New Zealand. To what extent do you have a relationship with the Charities Commission of New Zealand? Have you given them any advice in their setup and are you familiar with the way they operate?

Mr Locke—We do have some links with the Charities Commission of New Zealand. There is an international regulators forum which has now met on three occasions. It meets on an annual basis. We have very much been a part of that engagement; for example, we hosted that in London last year, and the chief executive of the Charities Commission of New Zealand attended and spent some time in our offices as well as discussing with us issues of common regulatory concern. We also have an international program at the charity commission. It has been in operation since 2003-04, and in that context we work with a number of different governments and regulatory authorities across the world. So we do have some links with the New Zealand regulator on both a formal and an informal basis.

Senator XENOPHON—Are you in a position to say that, on the face of it, the New Zealand model is based on the UK model or at least has some similarities to the approach taken in the United Kingdom?

Mr Locke—I think there are a number of similarities between the New Zealand and the model that we have in England and Wales. Each jurisdiction inevitably when they look to set up a single regulator of charities will take what they think is best from other jurisdictions but also will adapt that to what is right for their particular context. There have been a number of countries where single regulators for charities have been established recently. In the United Kingdom, we have the regulator for Scotland, OSCR, which was established in 2005. More recently, we have had the regulator in the Northern Ireland being established. In Singapore, a new charity regulator has been established.

We are aware of a number of different models which take something from the English and Welsh model but also adapt it to according to what is right for their jurisdiction. So there are certainly similarities in the model. In New Zealand there is a central register of charities and they have regulatory powers of intervention as well as consensual powers of advice and support, which is very much similar to the regulatory model in England and Wales.

Senator XENOPHON—I would like to go to the issue of process. I know Senator Cameron has touched on that in terms of the appeal process with respect to decisions made. If there is a complaint about an existing charity, including a religious organisation, that has tax-free status, how is that brought to your attention? Can a member of the public complain? Is there a formal process? How does it actually work in the context of concerns being raised about the tax-free status of an organisation?

Mr Locke—Our role is very much in the context of the charitable status of an organisation. It is for the Inland Revenue to determine whether that is then subject to tax concessions, although ordinarily, if an

organisation is registered as a charity in England and Wales, that goes a long way to satisfying the Inland Revenue in the ordinary course of affairs. Certainly a member of the public would contact the commission either through our website or through our contact centre, Charity Commission Direct, and raise concerns. A lot of concerns are raised with us about organisations—for example, about whether they are bona fide, how the organisation is conducting itself and whether there are any breaches of charity law. In that situation we would look at the information that has been provided. We have an assessment process whereby we would analyse what has been received and look at the evidence in support of that. We would then consider how it was appropriate to engage with the organisation.

Ms Edwardes—That is certainly the case, particularly with regard to public benefit. The same process really applies. If a member of the public were sufficiently concerned about whether an organisation satisfied the public benefit test they could contact the Charity Commission and we would consider it with any evidence, as we would any other form of complaint. People do write to us and say, ‘We don’t think this organisation satisfies public benefit,’ and it really depends on what their argument and evidence is as to whether we think there is sufficient cause for concern for us to then pursue that with the organisation and investigate it. We have a lot of guidance available about how people can make complaints to us about organisations and what we would do and how we would assess it on a risk and proportionality basis. Obviously we would have to look at what was being said.

Mr Locke—We do not have a program of going through the register and auditing organisations to see whether they comply with the public benefit test. We are simply not resourced in order to do that, nor do we think that is appropriate.

Our duty is very much to promote awareness and understanding of the operation of the public benefit requirement. The onus we see is very much upon trustees of organisations to ensure that they are considering the guidance and that they are ensuring that their organisation is operating for the public benefit and that they are reporting to the public how they do that. So we see very much that our engagement is about setting out the guidance and, as Joanne has said, setting out some assessments so that organisations can see how this operates in practice. But the obligation is very much then on trustees to ensure that they report to the public and that they are accountable to the public.

Senator XENOPHON—Just to go back a step, if an organisation loses its charitable status, which the Charity Commission has the power to do, that would, more likely than not, cause it difficulties with the Inland Revenue service in respect of their tax-free status?

Mr Locke—Yes, that is correct. The Inland Revenue would be in contact with us. We have very good relationships with the Inland Revenue. We would be exchanging information, no doubt, and they would contact the organisation directly.

Senator XENOPHON—In the absence of charitable status, it would be highly unlikely for that organisation to obtain tax-free status from the Inland Revenue?

Mr Locke—Normally if an organisation is over the income threshold there would be an expectation by the Inland Revenue that it has registered with us, because there is a legal requirement on it to do so. There are many organisations, of course, that have an income below the £5,000 threshold who would just separately register with the Inland Revenue for tax benefit but would not actually have come near us. But certainly if an organisation is over that threshold that is the case.

Senator XENOPHON—Can I just go back to the issues of process. If you received complaints about an organisation that has charitable status—and I am giving you some hypothetical examples here—for instance, allegations of bullying or coercion, or that former followers of this organisation or religion were charged exorbitant fees, or that there were issues of harassment and similar conduct, would you test those allegations? Would it be enough to trigger an inquiry if there were a number of allegations? Where would you go to? And if it appeared to be a few rogue elements in that organisation would you then seek some systemic changes to ensure it did not occur again?

Mr Locke—We would certainly want to assess the evidence that has been given to us and see whether that could be substantiated. That would be our first point of contact. We would ordinarily then contact the charity in question and raise the concerns that have been raised with us and see what comments they have. We would often want to see them at that stage and see whether there was any way we could get evidence from any third party.

We have published a risk and proportionality framework which governs how we engage in these sorts of compliance matters, as we refer to them. But certainly if the issues were very serious, if they raised issues of misconduct or mismanagement of the organisation or if the beneficiaries of the charity or the funds of the charity were at risk, then those are the sorts of factors that would lead us to a stronger regulatory engagement.

If we believe it is necessary we can open a statutory inquiry under our legislation. If we do so we then have a number of regulatory powers at our disposal. They include, for example, the power to require organisations to provide information, to freeze bank accounts, to suspend and remove trustees and to appoint an interim manager in the place of trustees. So there are a number of quite strong regulatory powers that we do have, but we can only exercise those if the statutory grounds are made out—which are very much around misconduct, mismanagement, harm to beneficiaries or loss of assets—and if we are satisfied it is proportionate to do so.

Our regulatory approach would very much be, in that situation, to sort out the problems in the organisation and to get the charity back on track. So we would very much be looking to the trustees, who are the people responsible for the management and administration of the charity, to see what steps they are taking to ensure this does not happen and that the people who benefit from the charity are fully protected. But if we are satisfied there is misconduct or mismanagement and if we are satisfied that that is the proportionate thing to do, then we can remove the trustees and we can take other strong regulatory action.

Ms Edwardes—Can I add that this issue about dealing with concerns about detriment and harm was something we looked at in some detail in relation to our guidance on charities for the advancement of religion. In an annex at the back of our guidance we give some examples of what might constitute detriment or harm. We look at a lot of those sorts of issues about whether there is any evidence about coercive tactics or any encouragement of violence or hatred, for example, towards individuals or anything like that or anything which unlawfully restricted someone's freedom, or the way that the charities operate internationally which might give rise to conflict perhaps. So we do give some more detail about the sorts of instances we might regard as being detriment and harm. I think if there were significant evidence to suggest those sorts of detriment and harm might be occurring, it is likely to be something we would want to look into.

Senator XENOPHON—I am concerned about the time factor. That means that of necessity if there is an inquiry into the public benefit an organisation provides it could look at the issue of detriment in balancing whether the public benefit test is fulfilled. Is that what you are saying?

Ms Edwardes—Yes, the detriment and harm question is part of our public benefit test and one of our key principles of public benefit is that any benefits that might arise to the public must not be outweighed by any significant detriment or harm. That is a fundamental part of the public benefit test, so we would look at that anyway in the course of considering public benefit for any organisation.

Senator XENOPHON—Finally, earlier today we are from the Cult Information and Family Support group and I think one of the complaints was that when some people leave an organisation or religion they are cut off from their family members who remain in that religion. Is that something that would be considered in the context of detriment if there appears to be a systemic approach to cutting off family members, disconnecting from if some have left a particular organisation and other family members have remained in it, or don't you delve into that sort of thing?

Ms Edwardes—I think it very much depends. We know we have had very conflicting stories about those kinds of suggestions of detriment and harm. We find it very difficult to get clear evidence either way. Obviously if there was very clear evidence that something was happening that was of that nature we might look at it. There are also difficult issues sometimes about individual choice. Sometimes there are concerns expressed by family members, for example, of people who have joined religious organisations that they do not see them anymore. It is difficult sometimes to establish whether that is a question of individual choice and people who are free and able to make those decisions or whether there is actual evidence of detriment and harm and people being prevented from speaking to family members. As I mentioned earlier, restricting a person's freedom is one of those things that we specifically mention. Freedom is to come and go from the organisation, freedom to interact obviously with whoever somebody wishes. It is something that we specifically mentioned in our guidance as an aspect of what could be detriment and harm. I just know the difficulty sometimes is getting clear evidence around that.

Senator XENOPHON—Thank you, Ms Edwardes.

ACTING CHAIR—As there are no further questions, that concludes this segment. We thank you, Mr Locke and Ms Edwardes, for appearing on teleconference from the UK for this inquiry. Thank you very much indeed.

Committee adjourned at 7.04 pm