

Summary and recommendations

Religions and charities, and other not-for-profit organisations in the 'third sector',¹ play an important role in the community and in the economy. They receive significant tax concessions. It is therefore important that they are transparent and appropriately accountable. The bill before the Committee goes some way to address this requirement and promote confidence that religious and charitable organisations receiving tax concessions generate a net benefit to the public, not just to their own members. The Committee views the bill, however, as too narrow to respond to the broad range of issues identified by the Committee.

The Committee regards 'charities' as altruistic bodies which seek to help members of the community in need. The role of charities is to mobilise their members and supporters to help *others*, not to just act in their members' private interests. Their motives mean that all true charities are not-for-profit organisations (but not all not-for-profit organisations are charities). Charities provide some social and community services that governments cannot provide at all or cannot provide as effectively. The Committee agrees with the view that the work of charities therefore reduces the burden on taxpayers of providing social services.

A national commission

The Committee notes the previous inquiries conducted by parliamentary committees, the Productivity Commission and the recent Henry Review. Notwithstanding their work, there remains a serious lack of information in relation to the not-for-profit sector; for example, estimates of the value of tax concessions range from \$1 billion to \$8 billion.

The earlier inquiries all recommended various changes to the regulatory oversight of the not-for-profit sector. The Committee believes the incoming government should increase transparency and accountability in the sector. A national commission, which incorporates a public benefit test in the broader regulatory framework, should be established, consistent with international best practice.

The commission should not be regarded as an additional bureaucratic impost; it would rather replace a complex array of state and territory regulatory bodies, streamlining processes for charities and reducing their compliance costs. It would increase public confidence in charities by improving their transparency as well as being a source of advice and assistance to charities.

The Committee agrees with the view expressed to it that there comes a time when a government has to make a decision either to do something or to stop saying that it is

1 The 'third sector' refers to organisations that are neither part of the private sector nor the government sector.

going to do something, because the matter has been on the agenda for many years. It is now time for action.

Recommendation

The Committee recommends that the incoming government work through COAG to establish a single independent national commission for not-for-profit organisations. The incoming government should establish a working group, or use the COAG Business Regulation and Competition Working Group. The working group should consult extensively with the sector in a timely manner to address issues arising from the establishment of a commission which applies a public benefit test. The Australian model should draw on the Charity Commissions in the United Kingdom and New Zealand.

Recommendation

The Committee recommends that the working group consider the functions and role of an Australian commission which should include, but not be limited to, the following:

- **promote public trust and confidence in the charitable sector;**
- **encourage and promote the effective use of charitable resources;**
- **develop and maintain a register of all not-for-profit organisations in Australia using a unique identifying number (for example an ABN) as the identifier;**
- **develop and maintain an accessible, searchable public interface;**
- **undertake either an annual descriptive analysis of the organisations that it regulates or provide the required information annually to the ABS for collation and analysis;**
- **educate and assist charities in relation to matters of good governance and management;**
- **facilitate, consider and process applications for registration as charitable entities;**
- **process annual returns submitted by charitable entities;**
- **supply information and documents in appropriate circumstances for the purposes of the Tax Acts;**
- **monitor charitable entities and their activities to ensure that registered entities continue to be qualified;**
- **inquire into charitable entities and persons engaging in serious wrongdoing in connection with a charitable entity;**
- **monitor and promote compliance with legislation;**

- **consider, report and make recommendations in relation to any matter relating to charities; and**
- **stimulate and promote research into any matter relating to charities.**

The Committee would expect a commission to adopt a tiered reporting system to ensure that small not-for-profit organisations are not overburdened by the costs of compliance.

The Committee would expect legislation establishing a commission to be referred to it in due course.

A public benefit test

The Committee supports the application of a public benefit test in the context of broader reform.

The Committee agrees, however, with the preference expressed by the Scrutiny of Bills Committee that it would be better for a public benefit test to be in legislation, where it would be subject to more parliamentary scrutiny, than be set by a minister through regulations, as proposed by the bill.

Recommendation

The Committee recommends that the incoming government should follow the emerging international best practice and work with the Council of Australian Governments to amend legislation governing not-for-profit entities to include a definition and test of 'public benefit'.

Cults

In relation to the activities of cult like organisations and the consequences for individuals and society of failing to take steps to protect the community from unacceptable behaviour by cult like organisations, the Committee believes that sufficient evidence was put before it to suggest that the behaviour of cults should be reviewed with a view to developing and implementing a policy on this issue that goes beyond taxation law. The Committee notes the evidence in relation to the response of the French government and the establishment of Miviludes.

Recommendation

The Committee recommends that the Attorney-General's Department provide a report to the Committee on the operation of Miviludes and other law enforcement agencies overseas tasked with monitoring and controlling the unacceptable and/or illegal activities of cult-like organisations who use psychological pressure and breaches of general and industrial law to maintain control over individuals. The report should advise on the effectiveness of

Miviludes and other similar organisations, given issues that need to be addressed to develop an international best practice approach for dealing with cult-like behaviour.