

Chapter 3

Charities and tax treatment

Definitions of a charitable organisation

3.1 The Committee regards 'charities' as altruistic bodies which seek to help members of the community in need. They work for those who lack the resources to provide a comfortable existence for themselves, be they Australians, people overseas or animals. As well as providing physical assistance, they counsel and empathise with those in distress. 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).

3.2 This view accords with the definitions of 'charity' in the *Shorter Oxford Dictionary* and the *Macquarie Dictionary*:

Beneficence, liberality to or provision for those in need or distress; alms-giving.

Almsgiving; the private or public relief of unfortunate or needy persons; benevolence.

3.3 The Committee regards this conception of 'charities' as being widely shared within the community and it was reflected in some submissions:

...the primary purpose of any charitable institution is to provide assistance to a section of society that is in some way disadvantaged and/or experiencing hardship.¹

3.4 It became apparent, however, that there was some disjuncture between such popular understandings of 'charity' and legal and other technical understandings of the term. In particular, there seemed to be a difference of view as to whether a charity's focus is on the *disadvantaged*, or just on anyone outside its membership. Father Lucas put to the Committee:

Caring for rich people is as charitable as caring for poor people.²

3.5 It may help in clarifying this difference to distinguish between the provision of tangible goods and services that are also available in private markets (such as food and accommodation) on the one hand, and less tangible forms of support such as counselling and sympathy that cannot be purchased. The Committee would expect that

1 Ms Tanya Smith, *Submission 32*, p. 1.

2 Father Brian Lucas, General Secretary, Australian Catholic Bishops Conference, *Committee Hansard*, 29 June 2010, p. 18, repeated p. 20.

a charity would provide the latter to all but provide physical goods only to those who otherwise cannot afford them.

3.6 This difference of interpretation may be a legacy of the legal meaning of charity deriving from a 400-year-old statute passed in the final years of the reign of Elizabeth I and associated case law (UK and Australian).

3.7 In Australia, as in many other jurisdictions, the operation of the not-for-profit sector relies on the application of common law, which since 1891 has categorised 'charity' and 'charitable purpose' under four heads:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; and
- other purposes beneficial to the community.³

3.8 The common law includes a presumption that charities operating under the first three heads of charity provide a public benefit and only those that carry out activities for other purposes beneficial to the community have to demonstrate public benefit when seeking to qualify as a charitable organisation.⁴

3.9 Treasury explains that the presumption of public benefit has arisen:

...because of the difficulties faced by the courts in deciding whether or not particular activities are providing a public benefit.⁵

3.10 The bill before the Senate, by introducing a 'public benefit test' would reverse this presumption. This would bring the situation in Australia closer to that in New Zealand where the Charities Commission makes an assessment:

...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.⁶

3 Department of the Treasury, *Submission 82*, June 2010, pp 4-5. The four heads were set out by Lord Macnaughton in *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531.

4 Department of the Treasury, *Submission 82*, pp 4-5.

5 Department of the Treasury, *Submission 82*, p. 3.

6 Mr Trevor Garrett, Chief Executive, Charities Commission New Zealand, *Committee Hansard*, 28 June 2010, p. 25.

Defining public benefit

3.11 Some confusion is evident around the use of the adjective 'public' in 'public benefit'; while members of an organisation are also members of the 'public', if the organisation only provides a benefit to these members, the organisation is only providing a 'private benefit' not a 'public benefit'. One suggestion is to replace 'public benefit' with 'community benefit' but this may suffer from the same potential ambiguity.⁷ Also, a 'public benefit' does not have to benefit *every* member of the public.

3.12 The bill explicitly seeks to ensure that an assessment of public benefit also takes account of 'any detriment or harm'. In this it borrows from the practice of the Charity Commission for England and Wales. They explained to the Committee:

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...⁸

...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...⁹

3.13 Consideration of detriment or harm raises the issue of how to deal with the behaviour of individual miscreants within large organisations. Recent cases of child abuse by clergy were raised during the inquiry in the context of how widespread such behaviour must be before it is taken as indicative of a culture that condones such behaviour within an organisation.¹⁰ One indicator may be how the hierarchy of the organisation responds: do they investigate matters promptly and refer them to the police, or seek to cover up the allegations and press members not to go public with information?

3.14 The Charity Commission of England and Wales explained their approach:

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... If it was endemic throughout the organisation and affected its ability to operate for the public benefit...that is when it would become an issue...it could affect

7 Mr David Graham, *Submission 7*, p. 1.

8 Ms Joanne Edwardes, Head, Status and Public Benefit Policy, Charity Commission for England and Wales, *Committee Hansard*, 28 June 2010, p. 68.

9 Ms Joanne Edwardes, Charity Commission for England and Wales, *Committee Hansard*, 28 June 2010, p. 68.

10 Name withheld, *Submission 13*, p. 1.

the organisation's ability to demonstrate that it satisfies the public benefit requirement.¹¹

3.15 Some submissions propose a very narrow test of public benefit:

If a test is to be applied to religious groups it should be limited to questions of Law, i.e., "Are the activities of this group within the Law". In cases where it is proven that certain religious groups are conducting illegal activities their tax exemption status could be suspended...¹²

3.16 It seems an odd argument to make that anything which is not illegal deserves a subsidy.

Charity versus commercial enterprise

3.17 An important consideration in distinguishing between a charity and a commercial enterprise is whether goods and services are provided free or at a market price. This principle has been applied by the Charity Commission for England and Wales in the context of applying its public benefit test, and they concede:

...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.¹³

3.18 Similarly, in New Zealand the extent of charging for services affects charitable status:

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.¹⁴

3.19 The Committee notes a number of submissions emphasise this distinction between commercial enterprises and charities:

Any organisation that doesn't provide the bulk its services freely and openly to those who do not donate to it is not a charity...¹⁵

11 Ms Edwardes, Charity Commission of England and Wales, *Committee Hansard*, 28 June 2010, pp 63-64.

12 Southland Vineyard Church, *Submission 12*, p. 2.

13 Ms Joanne Edwardes, Head, Status and Public Benefit Policy, Charity Commission for England and Wales, *Committee Hansard*, 28 June 2010, p. 65.

14 Mr Trevor Garrett, Chief Executive, Charities Commission New Zealand, *Committee Hansard*, 28 June 2010, p. 28.

15 Mr Alan Low, *Submission 18*, p. 1. A very similar view was put in *Submission 3*, p. 1.

If an organisation “charged” for services and restricted who could access their services by ways of monetary obligations, I would suggest this organisation was acting in a commercial capacity and not in the interest of the public.¹⁶

Any church claiming that they have a philosophy of “exchange” requiring payment be made for services may be a church or a religion but not one that warrants charity status because such a philosophy is the anti-thesis of charity.¹⁷

3.20 Some submitters were wary of bans or excessive restrictions on commercial activity but emphasised that:

...any such commercial enterprise should be incidental to the main purpose of the organisation...¹⁸

3.21 There can be cases of initially charitable organisations that over time mutate into commercial operations, such as:

...hospitals which began as genuinely charitable institutions run by orders of nuns whose work was voluntary and ‘seen as part of their vocation’. They relied entirely on donations for their survival. Today, they are essentially business operations. Ministering to the sick and destitute is a substantially different thing from providing high quality health care for those able to afford it.¹⁹

Legal definition of religion

3.22 As the term 'religion' is not defined in Australia's tax legislation, its meaning is determined by the common law definition.

3.23 In Australia, the High Court gave its interpretation of religion in the 1983 case of *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)*:²⁰

...for the purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the

16 Mrs Cassandra Kelsey, *Submission 38*, p. 1.

17 Name withheld, *Submission 3*, p. 1.

18 Vision Australia, *Submission 51*, p. 5.

19 Anglicare Australia, *Submission 69*, citing former Senator Andrew Murray and Mary O’Donovan, *One Regulator, One System, One Law: the case for introducing a new regulatory system for the not-for-profit sector*, Canberra, July 2006.

20 154 CLR 120. Department of the Treasury, *Submission 82*, p. 5. The High Court was hearing an appeal against a decision by the Supreme Court of Victoria about whether an organisation was a genuinely religious organisation; Dr Stephen Mutch, *Submission 16*, Attachment 1, pp 61-65; *Confidential Submission 23*. One submitter went so far as to call the High Court's ruling 'the definitive legal decision on freedom of religion in the world'; *Confidential Submission 74*, p. 2.

acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion.²¹

3.24 This ruling by the Court is sometimes put forward as implying that any organisation claiming a belief in a supernatural being, thing or principle should unquestionably receive a tax benefit.²² But while there is probably a consensus that a broad definition of religion is perfectly appropriate in determining the right to express religious views, it does not follow that there are always sound public policy grounds for other taxpayers to subsidise such an organisation.

3.25 This difference between a right to believe in a religion and a justification for taxpayer subsidy for it is particularly important given that Justices Mason and Brennan commented in their judgement:

...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.²³

Competitive neutrality²⁴

3.26 As identified in Chapter 2, the existing tax concessions probably reduce tax revenues by between \$1 billion and \$8 billion, or possibly more. A recent court case may increase the cost of these concessions and also raises concerns about competitive neutrality.

3.27 The Committee agrees with the Henry Review's statement of principle that:

Tax concessions for NFP organisations...should not undermine competitive neutrality where NFP organisations operate in commercial markets.²⁵

3.28 The High Court decision in the *Word Investments Case*²⁶ significantly broadened the ability of charitable institutions to carry on commercial activities on an income tax exempt basis:

21 Dr Matthew Turnour, *Submission 1*, Attachment 1, p. 7.

22 Ms Louise McBride, *Submission 66*, Attachment 1, pp 8-10.

23 This comment was highlighted by Dr Stephen Mutch, *Submission 16*, Attachment 1, pp 74-75.

24 Competitive neutrality is the principle that promotes the equal treatment by government of competing organisations to achieve a level playing field by removing artificial advantages. It is a key aspect of promoting strong competition.

25 *Australia's Future Tax System—Report to the Treasurer—Part Two, Detailed Analysis*, December 2009, p. 206.

Under that case an organisation—say, an aged care home for wealthy retired merchant bankers—could be set up on a fee-paying commercial basis. They could be considered charitable if they are giving all of their profits, say, to a charity. This entity could be considered under the Word Investments case a charitable entity, even though it itself does not have charitable activities...as long as its money is going to a charitable purpose—that is, it is being given to a separate entity or it itself is undertaking a separate charitable purpose.²⁷

3.29 Recent reports of both the Productivity Commission and Henry Review have been relaxed about the implications for competitive neutrality of the case:

...on balance, income tax exemptions are not significantly distortionary as not-for-profit [entities] have an incentive to maximise returns on their commercial activities that they then put towards achieving their community purpose.²⁸

The NFP income tax concessions do not generally violate the principle of competitive neutrality where NFP organisations operate in commercial markets.²⁹

Income tax exemption

3.30 In recognition of the long held view that the services provided by the not-for-profit sector are worthy of public funding and that the sector can often provide those services at a lesser cost than government, not-for-profit entities, including charities and religions, qualify for a range of tax and other exemptions at both the state and federal level.

As was noted in the Productivity Commission's report there is a general understanding that tax concessions are granted to NFPs because they serve the community and their activities provide positive public benefits and the greater the benefit, the larger the range of exemptions.³⁰

Who is relieved from the tax burden that the rest of us have to bear? ...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.³¹

26 2008 HCA55, 3 December 2008. Word Investments operated a commercial funeral business to fund its translations of the Bible.

27 Ms Sandra Roussel, Manager, Philanthropy and Exemptions Unit, Department of the Treasury, *Committee Hansard*, 29 June 2010, p. 49.

28 Productivity Commission, *Contribution of the Not-for-Profit Sector*, January 2010 p. 197.

29 *Australia's Future Tax System—Report to the Treasurer—Part Two, Detailed Analysis*, December 2009, p. 209.

30 Anglicare Sydney, *Submission 46*, p. 2.

31 Mr Andrew Lind, Partner, Corney and Lind Lawyers, *Committee Hansard*, 28 June 2010, p. 35.

3.31 At a national level the income tax legislation provides that the income of charities and religious institutions is exempt from income tax. Section 11-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) lists those entities that are exempt from income tax and identifies the provisions of the legislation under which the exemption is granted. In the case of religious and charitable institutions, exemption is granted pursuant to Division 50 of the ITAA 1997.

3.32 Section 50-5 specifically lists charitable and religious institutions as being income tax exempt at items 1.1 (charitable institutions) and 1.2 (religious institutions). Section 50-50 explains the special conditions that attach to the tax exempt status of charities and religious institutions. It provides that:

50-50 Special conditions for items 1.1 and 1.2

An entity covered by item 1.1 or 1.2 is not exempt from income tax unless the entity:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (b) is an institution that meets the description and requirements in item 1 of the table in section 30-15 [ie a Deductible Gift Recipient]; or
- (c) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident; or
- (d) is a prescribed institution that has a physical presence in Australia but which incurs its expenditure and pursues its objectives principally outside Australia.

3.33 Section 50-52 goes on to specify that unless a charitable institution has been endorsed,³² it will not be income tax exempt and further specifies that an entity seeking endorsement must apply in accordance with the requirements of Division 426 of the *Taxation Administration Act 1953* (TAA 1953).³³ Subsequently, provided a charitable institution meets the definition of charity, satisfies one of the tests set out in section 50-50 and is endorsed by the Commissioner, it will be income tax exempt and not required to lodge income tax returns unless otherwise specified.³⁴

3.34 By way of contrast, although the application of the common law treats the advancement of religion as a charitable purpose, the entitlement of a religious institution to income tax exemption does not hinge on it carrying out charitable pursuits. Rather, a religious organisation's eligibility to income tax exemption is put beyond doubt by item 1.2 of section 50-5 of the ITAA 1997, and therefore excludes

32 The responsibility for endorsement of charities rests with the Commissioner of Taxation.

33 Division 426 of the TAA 1953 sets out the procedural rules relating to endorsement of charities and other entities. These rules cover matters such as the application for and revocation of endorsement, and the entry of the details of endorsement on the Australian Business Register.

34 Australian Taxation Office, *Income tax guide for non-profit organisations*, NAT 7967-03.2007, 2007, p. 63.

those organisations from having to seek endorsement as charities. As a result, where an institution self assesses that it is a religious institution and it also meets one of the tests of section 50-50 it will be exempt from income tax and not required to lodge income tax returns.³⁵

3.35 Although the tax laws specifically provide that charities and religious institutions are eligible for these tax exemptions, the income tax laws do not define the terms 'charity' or 'religion' leaving the common law to determine eligibility. In addition to the common law, the Commissioner issues interpretive aids to assist self-assessing entities to apply the common law.

The Commissioner of Taxation and current administration

3.36 To assist self-assessment and inform entities as to how he will in fact administer the law, the Commissioner of Taxation has issued guidance in an extensive *Taxation Ruling, TR 2005/21—Income tax and fringe benefits tax: charities*.

3.37 The ruling sets out that:

- charities are not-for-profit;³⁶
- 'charitable purpose' has an intention of benefit or value—and notes that the benefit that the entity provides is required to be real or substantial, it must not be negligible but must be of overall benefit and on balance cannot be harmful;³⁷
- the entity's activities must benefit the community (although it need not benefit the whole community provided it is for an 'appreciable section' of the public);³⁸ and
- the sole purpose of a charity must be charitable although it may have purposes which in isolation would not be charitable (but may be commercial or business-like) provided they are not more than incidental or ancillary to the charitable purpose.³⁹

3.38 The published guide which complements the ruling further explains that whether or not an institution seeking charitable status is a charity is to be determined by looking at the purpose of the entity and identifies that evidence supporting the

35 Australian Taxation Office, *Income tax guide for non-profit organisations*, NAT 7967-03.2007, 2007, p. 21.

36 ATO, *Income tax guide for non-profit organisations*, 2007, p. 33.

37 Australian Taxation Office, *Taxation Ruling TR 2005/21—Income tax and fringe benefits tax: charities*, para 43 and pp 8-11.

38 *Taxation Ruling TR 2005/21*, para 50 and 58, pp 13-14.

39 *Taxation Ruling TR 2005/21*, paras 128-131, pp 34-36.

purpose would be sought by reference to the governing documents of the entity (for example, trust deeds or constitutions), annual reports, financial statements, minutes of meetings, or the activities it is undertaking.⁴⁰

3.39 In advising that TR 2005/21 does not apply to religious institutions that do not conduct charitable activities, the ATO confirmed that the Commissioner has not released any public ruling concerning the income tax exemption and how it applies to religious institutions.

Mr Hardy—On just the question of religious organisations, there is no particular ruling on that question. It is a particular category in the taxation legislation as to whether a religious organisation, if it is one, can be exempt from tax. That is a self-assessment option as opposed to approaching the tax office to also be granted charitable tax concession.

Senator XENOPHON—Has the tax office considered giving a ruling in terms of religious organisations, giving guidance?

Mr Hardy—No. We tend to provide public rulings where there is a large public demand or uncertainty. We have not been approached by entities that have found it concerning enough to seek public guidance.⁴¹

3.40 It is noted that the Commissioner's *Income tax guide for non-profit organisations* draws on the High Court ruling in identifying that:

An institution will be a religious institution if:

- its objects and activities reflect its character as a body instituted for the promotion of some religious object; and
- the beliefs and practice of the members constitute a religion.

[and]...to be a religion there must be:

- belief in a supernatural being, thing or principle, and
- acceptance of canons of conduct that give effect to that belief, but that do not offend against the ordinary laws.⁴²

3.41 Religious organisations therefore self-assess their status thereby gaining an exemption from income tax without having to engage with the Commissioner of Taxation:

If the nature of their activities in relation to goods and services tax, for example, were below the thresholds for registration, they would not be registered for goods and services tax purposes. If they did not have

40 Australian Taxation Office, *Income tax guide for non-profit organisations*, NAT 7967-03.2007, 2007, p. 33.

41 Mr Michael Hardy, Assistant Commissioner, Australian Taxation Office, *Committee Hansard*, 29 June 2010, p. 41.

42 Australian Taxation Office, *Income tax guide for non-profit organisations*, NAT 7967-03.2007, 2007, p. 20.

employees they would have no requirement to engage with the tax office in the fringe benefits tax space, and so they may in fact be technically invisible to the tax office in any formal sense.⁴³

3.42 At present, organisations claiming exemptions self-assess eligibility and are only audited if a concern is raised with the ATO. Given the right to privacy of information is the foundation of taxation law in Australia, unless the ATO makes a ruling in a particular case, the wider public has no idea as to whether or not there has been impropriety.

3.43 The Tax Office did state however that self-assessment does not mean that religious institutions will never come to the attention of the Commissioner of Taxation as the Commissioner does have powers of inquiry that can be invoked if there is reason to believe that a self-assessing organisation were making an incorrect assessment.⁴⁴ The Treasury pointed out that:

...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.⁴⁵

3.44 Although the ATO currently has the power to revoke charitable status, it has neither the mandate nor the resources to act beyond its functions as a revenue collection service.⁴⁶

3.45 As many religious institutions carry out charitable activities and therefore seek tax exemption pursuant to item 1.1 of section 50-5 as a charity rather than a religious organisation under item 1.2 of section 50-5, it was suggested by submitters to the inquiry that reform is perhaps more necessary in respect of item 1.2 rather than 1.1 of section 50-5:

The bill...seeks to amend items 1.1 and 1.2 of section 50-5...Within 1.1 of course, we have the four heads of charity...in which religious institutions can be included. Item 1.2 does not have a similar charitable test. It allows the endorsement as tax-exempt...religious institutions that do not have [a] charitable purpose...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...Religious institutions under 1.2 currently are not required to be charitable.⁴⁷

43 Mr Michael Hardy, Assistant Commissioner, Australian Taxation Office, *Committee Hansard*, 29 June 2010, p. 40.

44 Mr Michael Hardy, Australian Taxation Office, *Committee Hansard*, 29 June 2010, p. 40.

45 Department of the Treasury, *Submission 82*, p. 5.

46 Dr Stephen Mutch, *Committee Hansard*, 28 June 2010, p. 2.

47 Mr Andrew Lind, Partner, Corney and Lind Lawyers, *Committee Hansard*, 28 June 2010, p. 36.

It now appears the religious institutions category may be an inoperative category, or is currently only accessed by a limited number of organisations that are not able to be endorsed as charitable institutions.⁴⁸

Committee view

3.46 The Committee acknowledges the limitations on the Commissioner in administering the myriad of tax laws which necessarily requires that his limited resources be spread across the whole of the tax system. This makes it impractical to look in detail at every religious or charitable institution claiming income tax exemption but requires that he apply resources:

...where we perceive the most risk and advantage, consistent with the parliamentary intention of various tax laws the commissioner administers.⁴⁹

3.47 The Committee also notes the evidence provided by the Treasury and Tax Office representatives that, in terms of requiring information and ensuring compliance with Division 50 of the ITAA 1997:

...in the end it probably comes down to policy choices by different governments—indeed, by different parliaments—from time to time about where the appropriate place to strike the balance might be at any particular time...There are policy choices involved in deciding when it is appropriate to allow an entity to self-assess as the basis for accessing a particular concession...and when it is appropriate instead for particular processes to be set in place which require more active steps by the relevant entity to seek access to the concession by approaching the ATO and seeking some form of endorsement.⁵⁰

3.48 Administering any public benefit test may not always be a case of merely applying precedent. Policy decisions may also need to be made. While the ATO is well-placed to make decisions relating to revenue matters, issues beyond that need to be dealt with elsewhere.

3.49 Australia's federal system of government further complicates reform in this sector as charitable and religious organisations are also subject to state and territory laws that affect their operations. For example, much of the behaviour alleged of cults actually falls within the ambit of state and territory laws.

3.50 The Committee takes the view that as this sector is relied on to deliver vital services to the community often in the place of government service delivery, and is funded by public money to do so these entities should be subject to a higher level of

48 Department of the Treasury, *Submission 82*, p. 6.

49 Mr Michael Hardy, Assistant Commissioner, Australian Taxation Office, *Committee Hansard*, 29 June 2010, p. 40.

50 Mr Michael Willcock, General Manager, Personal and Retirement Income Division, Department of the Treasury, *Committee Hansard*, 29 June 2010, p. 36.

transparency. Requiring a higher level of accountability is not viewed by the Committee as an unjust impost given:

There is a kind of covenant that charities have with society: charities bring public benefit and, in their turn, are accorded high levels of trust and confidence and the benefits of charitable status. These mutual benefits are considerable: charities receive significant tax advantages; they can access funds which others - even other voluntary organisations - cannot; volunteers and donors give, respectively, time and money.⁵¹

3.51 The Committee does not consider that the ATO is in a position to administer a public benefit test with the aim of regulating inappropriate behaviour and guaranteeing accountability and transparency.

Recommendation 1

3.52 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

3.53 In the discussion of whether detriment should be taken into account when considering whether an organisation would pass a 'public benefit' test for tax concessions, there was discussion of the behaviour of cults.

3.54 It is a matter of concern that allegations of grossly inappropriate behaviour continue to be made, and arouse concern, yet there is no systematic means of dealing with these allegations, especially where no specific criminal offence has been committed.

3.55 The Cult Information and Family Support Group told the Committee that:

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 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.⁵²

51 Charity Commission for England and Wales, *Submission 41*, p. 2.

52 Mrs Roslyn Hodgkins, President, Cult Information and Family Support, *Committee Hansard*, 28 June 2010, p. 19. See also their *Submission 14*.

3.56 There has been no inquiry into this issue, although the Standing Committee of Attorneys-General contemplated in 1988 creating an offence of recklessly or intentionally causing harm to a person's mental health.⁵³

3.57 In France there is an agency Miviludes (Mission Interministérielle de Vigilance et de Lutte contre les Derives Sectaires) charged with monitoring the activities of cults.⁵⁴

Committee view

3.58 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.

Recommendation 2

3.59 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 the operation 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.

53 Dr Stephen Mutch, *Submission 16*, p. 6.

54 Interministerial Mission of Vigilance and Combat Against Sectarian Aberrations. The organisation is referred to by Dr Stephen Mutch, *Submission 16*, p. 6.

An English translation of their 2006 annual report is available at http://www.miviludes.gouv.fr/IMG/pdf/Report_Miviludes_2006.pdf.