

# Chapter 4

## An alternative to the bill – a national commission

### Need for broader reform

4.1 Much of the evidence gathered by the present inquiry reiterated that the previously identified issues of transparency, accountability, complexity and inconsistency remain problematic:

... people who are doing public good...should receive tax concessions. We are very strong about that. But we also say they should be accountable.<sup>1</sup>

...transparency is both needed and wanted. So the imperative for reform there must be to ensure that transparency is achieved but not in a way that imposes undue burdens compliance wise.<sup>2</sup>

...charities should demonstrate levels of transparency, accountability and governance which are beyond reproach, particularly when they are dealing with the most vulnerable in our communities and utilising funds from the public to deliver their services.<sup>3</sup>

4.2 Many submitters took the view that reform should only be pursued on a broad basis, rather than 'piecemeal', and raised the establishment of an independent national commission as an alternative means of achieving reform:

The Henry Review and the Productivity Commission Research Report 'Contribution of the not-for-profit Sector' both raise issues regarding the tax concessions extended to the not-for-profit sector. The issues raised in this Bill are best addressed in the context of that broader inquiry. Any changes to the status requirements for religious organisations and charities should be a part of overall package of taxation law reform that improves the enabling and regulatory environment of the sector.<sup>4</sup>

Redefining what constitutes charity, and how this definition fits with the overall not-for-profit sector, is a complex issue which over the past decade has been the subject of much debate and two lengthy and complex Government inquiries...This is proof that the redefinition of charity is an issue which needs to be addressed as a whole, rather than piecemeal.<sup>5</sup>

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- 1 Mr David Nicholls, President, Atheist Foundation of Australia Incorporated, *Committee Hansard*, 28 June 2010, p. 58.
  - 2 Dr Matthew Harding, Senior Lecturer, Not-for-Profit Project, Melbourne Law School, University of Melbourne, *Committee Hansard*, 29 June 2010, p. 30.
  - 3 Uniting Care Australia, *Submission 60*, p. 1.
  - 4 Dr Matthew Turnour, *Submission 1*, p. 3.
  - 5 Philanthropy Australia, *Submission 42*, p. 1.

A public benefit test should never be legislated in isolation, particularly in a Bill that contains little detail of how, and by whom, it would be administered. The objects of the proposed public benefit test, if determined to be valid, should be examined within the broader context of reform to the not-for-profit sector, as raised in the Productivity Commission report and the Henry Tax Review.<sup>6</sup>

### ***Limitations of the bill***

4.3 Although the consensus is that greater transparency and accountability is needed and the proposed bill is a possible avenue for achieving such reform, not all submitters are in favour of it being progressed given its narrow focus.

4.4 The bill proposes the introduction of a new section, section 50-51, to Division 50 of the ITAA 1997. This section introduces a new requirement that would result in an entity seeking income tax exemption under either item 1.1 or 1.2 of the ITAA 1997, needing to meet a public benefit test. Therefore, in addition to satisfying the special condition requirements of section 50-50 and section 50-52, charitable and religious institutions would also need to satisfy this public benefit test before qualifying for income tax exemption.

4.5 The bill is however very limited in its coverage. No other entities identified in section 50-5 or the remaining sections of Division 50 will be affected. An extract of Division 50 is attached as Appendix 6.

4.6 The Committee noted that individual submitters to the inquiry tended to favour the bill and its introduction of a public benefit test on the basis that it would improve the status quo.<sup>7</sup>

I write to you in support of the Tax Laws Amendment (Public Benefit Test) Bill 2010. I would like to see this Bill passed unchanged...In these turbulent economic times, proper tax collection without waste is paramount. This bill is needed so honest charitable organisations can claim tax exemption and at the same time deny that benefit to groups who would abuse it.<sup>8</sup>

I am seeking to lend my support to there being a public benefit test (PBT) for an organisation to gain tax-free status. An organisation that operates tax-free is effectively subsidised by the taxpayer, since vital taxes must be levied against other things, or at higher levels to make up the shortfall. It is therefore right that the taxpayer should be assured that there is genuine

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6 Australian Christian Lobby, *Submission 48*, p. 4.

7 In addition to those quoted here, submissions supportive of the bill included Vision Australia, *Submission 51*; Australian Skeptics, *Submission 31*; Ms Natascha Fareed, *Submission 57*; Mr Chris Lavery, *Submission 64*; Mr Nevin Cartwright, *Submission 45*; and *Submissions 13, 17, 29,30, 34, 54, 70, 71* and *72* from persons who requested their names be withheld.

8 Mr Dane Weber, *Submission 15*, p. 1.

public benefit from each such organisation—particularly at a time when money is tight for many families.<sup>9</sup>

I write this in wholehearted support of the Tax Laws Amendment (Public Benefit Test) Bill 2010, proposed by Independent Senator Nick Xenophon. I recommend that this Bill be passed unchanged. As it stands, the amendment will benefit the public by ensuring a greater deal of scrutiny on organizations that apply for tax free/exempt status.<sup>10</sup>

4.7 Organisational and academic submitters however tended to criticise the bill suggesting that it may not be the best way to achieve the necessary reform, particularly in light of the recent reports by both the Productivity Commission and the Henry Review.

4.8 In giving evidence to the Committee at its public hearing, Dr Matthew Harding from the University of Melbourne Law School's Not-for-Profit Project stated:

...our point is that that reform has already been the subject of detailed scrutiny and recommendation from numerous bodies over the years but that reform is a larger reform than what this bill is directed at. The danger of the bill is, in our view, that it will enact part of the reform in isolation from the whole and then there will be distortions and effects that were not intended.<sup>11</sup>

4.9 This view was consistent among organisational submitters who although supportive of reform are concerned that passage of the bill may undermine the work of the previous inquiries. The predominant view is that reform should be informed by the finding of these recently completed reviews:

The proposed Bill follows a wide ranging inquiry into the Not-for-Profit sector by the Productivity Commission and of taxation matters by the Australia's Future Tax System Review Panel. It is noteworthy that neither of these inquiries has recommended a public benefits test as part of proposed reforms. It is concerning that the proposed Bill represents a fundamental shift in the way that the tax status of charities would be assessed without clarification as to how it fits within the broader approaches already recommended by these inquiries.<sup>12</sup>

PilchConnect has made detailed submissions to the multiple inquiries that have considered the issue of what organisations should receive concessional taxation treatment, and what the appropriate body is to determine status for this and other purposes... We assume that the Committee will be fully appraised of the seminal 2001 Charity Definition Inquiry Report where these issues were considered in a holistic way, with considerable input from

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9 Mr Julian Moller, *Submission 27*, p. 2.

10 Mr Hudson Carrad, *Submission 65*, p. 1.

11 Dr Matthew Harding, *Committee Hansard*, 29 June 2010, p. 32.

12 Anglicare Diocese of Sydney, *Submission 46*, p. 3.

the NFP sector and consideration of overseas models. In short, PilchConnect again recommends that:

- any taxation reform should be underpinned by a rational policy basis for charity and NFP taxation exemptions and other incentives;
- this underpinning was carefully considered in the 2001 Charity Definition Inquiry and we endorse the recommendations arising from that Inquiry's report;
- the current Senate Inquiry, in line with the 2008 Senate Disclosure Regimes for Charities and Not-for-Profit Organisations, endorses the recommendations of 2001 Charity Definition Inquiry; and
- implementation of these reforms to legislative treatment of charities occurs after, or in conjunction with the establishment of a new, independent, specialist NFP regulator.

... It is our view that the draft Bill would serve as yet more piecemeal reform that would do more harm than good to an already complex and unfit regulatory framework for Australia's economically and social significant NFP sector.<sup>13</sup>

The present bill...does not address any of the wider regulatory issues which have been raised by charities in the recent review of the sector by the Productivity Commission, or in the Henry Review.<sup>14</sup>

[The Asia-Pacific Centre for Social Investment and Philanthropy] is concerned however that the introduction, in isolation, of the provisions of the proposed Bill could have considerable unintended consequences.<sup>15</sup>

...it is considered that the appropriate process to review the relevance of any 'public benefit test' for charitable organisations is in the context of the Federal Government's detailed response (as yet not released) to the reports provided by the Australian Government Productivity Commission into the contribution of the not-for-profit sector and the Australia's Future Tax System Review...These reviews contained a number of recommendations that could possibly affect the charitable and not-for-profit sector and in this light it is prudent not to introduce new legislation that has not been considered in conjunction with any recommendations or debates relating to these reviews.<sup>16</sup>

4.10 When advocating that change be informed by the previous inquiries, submitters supported the recommendations made by those inquiries which, if adopted,

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13 PilchConnect, *Submission 81*, pp 2-3.

14 Not-for-Profit Project, University of Melbourne Law School, *Submission 47*, p. 2.

15 Asia-Pacific Centre for Social Investment and Philanthropy, *Submission 53*, p. 2.

16 The Salvation Army (Eastern Territory), *Submission 61*, p. 1.

would see Australia's not-for-profit sector embark on reform consistent with the emerging practice in international jurisdictions.

4.11 The examples of the approach taken in foreign jurisdictions received much attention throughout the inquiry, many organisations complimentary of the reform that has been achieved, particularly in England and Wales and in New Zealand.

### **Committee view**

4.12 The Committee is of the view that the taxation and regulatory arrangements of the not-for-profit sector, including, but not limited to, charitable and religious institutions, is in need of urgent reform.

4.13 The Committee shares the view of many submitters that the scope of the bill before the Senate is too narrow and that the bill inappropriately delegates legislative power.

4.14 The Committee takes the view that this inquiry has only served to highlight the urgent need for broader reforms within the sector. This has been a recurring theme in all previous inquiries dealing with possible regulation of not-for-profit organisations. The Committee considers it appropriate that any incoming government initiate broader sector-wide reform, following an extensive consultation process. The Committee believes that reform of the sector can no longer be ignored as reform would provide much needed support, transparency and accountability within the not-for-profit and charitable sector.

There comes a point where a government...has to make a decision either to do something or to stop saying that it is going to intend to do something, because this matter has been on the agenda for many, many years.<sup>17</sup>

### **The experience overseas**

4.15 Throughout the inquiry the practices that apply to the not-for-profit sectors in foreign jurisdictions were consistently cited by submitters as examples of reform achieved in other countries. These examples were cited as being both relevant to the consideration of a public benefit test and suggestive of the need for broader reform as the framework which governs Australia's not-for-profit sector is derived from the English tradition.

4.16 The Committee notes that its previous report *Disclosure regimes for charities and not-for-profit organisations* (December 2008) extensively considered the regulatory frameworks governing the not-for-profit sectors in foreign jurisdictions, specifically those of England and Wales, and New Zealand. The Committee does not see another detailed analysis as necessary and would rather examine how the experiences of those jurisdictions apply to the continued development of the sector

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17 Father Brian Lucas, General Secretary, Australian Bishops Conference, *Committee Hansard*, 29 June 2010, p. 25.

within Australia. The Committee has attached the relevant chapter of its 2008 report as Appendix 8.

### ***England and Wales—Charities Act 2006***

4.17 The United Kingdom has a strong history of legal reform of the charitable sector that includes a complicated mix of case law, common law and legislation. In the UK the pinnacle of this reform was the *Charities Act 2006 (UK)* ('The English Act'). The Act followed previous legal reforms that had been undertaken since the evolution of case law beyond the original four heads of charity.

4.18 The UK previously legislated with respect to charities in 1958, 1992 and 1993. A review of the entire charities sector commissioned by then British Prime Minister Tony Blair in July 2001 recommended the modernisation of charity law, with an emphasis on enhancing accountability and transparency.<sup>18</sup> At that time in the UK, charities and religions were operating in a similar framework to that which applies in Australia today.

4.19 The review recommended several reforms including the establishment in legislation of a definition of 'charitable purpose', enhanced accountability and transparency, improved powers of the regulator (the Charity Commission for England and Wales) and the establishment of a Charity Tribunal within the British court hierarchy.

### ***Joint Committee Report 2004***

4.20 The British Government published the draft bill in May 2004. A Joint Committee comprised of members of both Houses examined the draft legislation, publishing their report after extensive consultation with stakeholders across the UK in September 2004.<sup>19</sup>

4.21 That report included over 50 recommendations, finding that law reform in this area was 'well overdue'<sup>20</sup> and recognising that the establishment of a Charity Tribunal would encourage transparency and accountability and ultimately assist the charity sector's growth.<sup>21</sup>

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18 The Charities Bill, [HL] Research Paper, 06/18, p.9; Religions Working Together (UK), *Submission 86*, p. 1.

19 The Charities Bill, [HL] Research Paper, 06/18, p.11.

20 The Charities Bill, [HL] Research Paper, 06/18, p.11.

21 The Charities Bill, [HL] Research Paper, 06/18, p. 12.

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*Charities Act 2006 (UK)*

4.22 The Committee notes with interest that the Charity Commission for England and Wales existed prior to the *Charities Act 2006 (UK)*.<sup>22</sup> The 2006 Act played an important role in harmonising the powers of the Charity Commission as the sole regulator of the sector, allowing higher levels of scrutiny and accountability with public monies.

4.23 The English Act did not override the Statute of Elizabeth as suggested, but further developed the heads of charities<sup>23</sup> and removed the presumption of public benefit,<sup>24</sup> through the introduction of section 3 of the Act:

Section 3 The 'public benefit' test

- (1) This section applies in connection with the requirements in section 2(1)(b) that a purpose falling within section 2(2) must be for the public benefit if it is to be a charitable purpose.
- (2) In determining whether that requirement is satisfied in relation to any such purpose, it is not presumed that a purpose of a particular description is for the public benefit...<sup>25</sup>

***Charities and Trustee Investment (Scotland) Act 2005***

4.24 In Scotland, the *Charities and Trustee Investment (Scotland) Act 2005* ('the Scottish Act') provides for the establishment of the Office of the Scottish Charity Regulator (OSCR) as well as the implementation of similar provisions to those found in the English Act. As previously mentioned, the Scottish and English Acts operate complementarily of each other, which allows for greater consistency both across and within the UK.

4.25 The Scottish Act however does not override the common law with respect to charities. Section 7 defines a charity test and charitable purpose.<sup>26</sup> It also includes provisions which enable the Judiciary to interpret charitable purpose as required.<sup>27</sup>

4.26 The Scottish Act, like the English Act, explicitly removes the common law presumption of public benefit, contained in Section 8(1):

No particular purpose is, for the purposes of establishing whether the charity test has been met, to be presumed to be for the public benefit.<sup>28</sup>

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22 Dr Stephen Mutch, *Cults, Religion and Public Policy*, PhD thesis, University of New South Wales, March 2004, pp 365-366. Indeed, it traces its origins back to the 19<sup>th</sup> century.

23 As found in the *Charities Act 2006 (UK)*, ss 2(2)-(4).

24 Ms Joanne Edwardes, Head, Status and Public Benefit Policy, Charity Commission for England and Wales, *Committee Hansard*, 28 June 2010, p. 62.

25 *The Charities Act 2006 (UK)*, s 3(1)-(4).

26 *Charities and Trustee Investment (Scotland) Act 2005*, s7(1)-(2).

27 *Charities and Trustee Investment (Scotland) Act 2005*, s7(2)(p).

4.27 Similarly, the Scottish Act provides legal redress for decisions of the OSCR to be examined by the Scottish Judiciary.<sup>29</sup> Section 34 provides explicit avenues for the OSCR to legally address concerns about compliance within Scottish charity and not for profit law. This process is commenced in the Scottish Court of Session, significantly departing from the English model, which was the establishment of a sector specific Charity Tribunal.

### ***Charities Act 2005 (New Zealand)***

4.28 Prior to the passage of the *Charities Act 2005 (New Zealand)* the Inland Revenue Service assisted charities in a similar manner to the ATO's dual regulator/tax collector role in Australia.<sup>30</sup>

4.29 The New Zealand legislation also includes a definition of serious wrongdoing, which may be useful for Australian drafters wanting to include a 'detriment' provision:

- (a) an unlawful or a corrupt use of the funds or resources of the entity; or
- (b) an act, omission, or course of conduct that constitutes a serious risk to the public interest in the orderly and appropriate conduct of the affairs of the entity; or
- (c) an act, omission, or course of conduct that constitutes an offence; or
- (d) an act, omission, or course of conduct by a person that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.<sup>31</sup>

4.30 Legislation establishing a Charities Commission was introduced in New Zealand with the passage of the *Charities Act 2005 (New Zealand)*. This Act, introduced by the former Clark Government, was sent to the House of Representatives (NZ) Social Services Committee for inquiry and report. The inquiry received a total of 753 submissions, and held public hearings in Auckland over two days.<sup>32</sup>

4.31 The Social Services Committee report recommended substantial changes to the bill, broadly supporting the establishment of the Charities Commission as a Crown entity but changing the Commission's focus to include one of guidance and education so as to increase flexibility of registration.<sup>33</sup> Flexibility was a specific concern raised and noted in the report, as organisations raised concerns about financial costs associated with compliance mechanisms.<sup>34</sup> The bill itself was highly contentious, both

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28 *Charities and Trustee Investment (Scotland) Act 2005*, s8(1).

29 *Charities and Trustee Investment (Scotland) Act 2005*, s34.

30 Hon Judith Tizard, *House of Representatives Hansard (NZ)*, 12 April 2005, p. 19940.

31 *Charities Act 2005 (NZ)*, section 2(1).

32 Ms Georgina Beyer, *House of Representatives Hansard (NZ)*, 12 April 2005, p. 19944.

33 Hon Judith Tizard, *House of Representatives Hansard (NZ)*, 12 April 2005, p. 19940.

34 Ms Judith Collins, *House of Representatives Hansard (NZ)*, 12 April 2005, p. 19943.



before and after the Social Services Committee's report and the subsequent passage through the House of Representatives on 12 April 2005.<sup>35</sup> The bill was amended to reflect some changes originally proposed by the Social Services Committee, to ensure its passage through the Parliament.

### ***Charities Act 2009 (Ireland)***

4.32 The Irish parliament has also recently revised its legislation relating to charities. One provision in this seeks to prevent support going to dangerous cults. Section 3(10) reads as follows:

For the purposes of this section, a purpose or a gift is not a purpose or a gift for the advancement of religion if it is made to or for the benefit of an organisation or cult—

- (a) the principal object of which is the making of profit, or
- (b) that employs oppressive psychological manipulation—
  - (i) of its followers, or
  - (ii) for the purpose of gaining new followers.

### ***International best practice***

4.33 Informed by the above jurisdictional comparisons, the Committee notes with interest that these recent reforms were preceded by much debate and public consultation. Reform, however, in all cases has largely been consistent. This supports the concept of an emerging best practice for the not-for-profit sector.

4.34 Mr Trevor Garrett, the Chief Executive of the New Zealand Charities Commission, in response to the question of an emerging international best practice, cited the United Kingdom (England, Wales, Scotland) and Ireland, each of which has moved to implement a 'charity commission-type system'.<sup>36</sup> The United Kingdom has in fact had some form of charity commission since the 19<sup>th</sup> century.<sup>37</sup>

4.35 Evidence provided by Mr David Locke of the Charity Commission of England and Wales further suggests that it is these jurisdictions which are leading reform in this sector of the economy.

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... We also have an international program at the charity commission. It has been in operation since 2003-04 and in that context we

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35 Hon Judith Tizard, *House of Representatives Hansard (NZ)*, 12 April 2005, p. 19973.

36 Mr Trevor Garrett, New Zealand Charities Commission, *Committee Hansard*, 28 June, p. 27.

37 Ms Joanne Edwardes, Charity Commission of England and Wales, *Committee Hansard*, 28 June 2010, p. 60.

work with a number of different governments and regulatory authorities across the world.<sup>38</sup>

### **Committee view**

4.36 The Committee considers that reform in the Australian not-for-profit sector should be guided by international best practice and notes the success of England and Wales in setting a precedent and taking a leading role in international reform of the sector.

4.37 The Committee considers that the UK model informed New Zealand in the design of its commission.

4.38 The Committee also notes the approach taken in Scotland where in addition to introducing statutory definitions of 'charity' and 'charitable purpose' the ability of an entity to seek guidance from the courts was preserved in the Act. The Committee considers that if Australia should introduce statutory definitions of 'charity' and 'charitable purpose', the inclusion of such a clause could help allay the concerns of organisations currently receiving the benefits of charitable status, but which were not expressly covered by the definitions contained in a statute.

4.39 The Committee considers that the establishment of a Charity Tribunal is preferable to the automatic referral of compliance issues to a court within the Australian judiciary. Due to the risk of compliance burdens being imposed, the Committee finds it preferable that adjudication by the judiciary occur in a separate Charity Tribunal in the first instance, with appellate jurisdiction to a higher court available if necessary. The Committee is of the view that the Administrative Appeals Tribunal would be an ideal model to either adopt separately or have a Charity Tribunal incorporated into, to ease costs of regulator establishment.

4.40 The introduction of section 20 of the Scottish Act tends to confirm the concerns raised with the Committee by Treasury officials that the Commonwealth may not have sufficient authority under section 51 of the Constitution to enact legislation introducing a Charities Commission in Australia:

...my understanding is that there is not sufficient constitutional power for the Commonwealth to seek to cover that whole field and that it would therefore be necessary for the Commonwealth to act in concert with the states and territories through either a COAG process or some other process.<sup>39</sup>

4.41 The Committee takes the view that legislation for the not-for-profit sector needs to apply across all charities and religious groups evenly and operate across state and territory jurisdictions. As a result, given the experience of Scotland, the

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38 Mr David Locke, Charity Commission of England and Wales, *Committee Hansard*, 28 June, p. 66.

39 Mr Michael Willcock, Treasury, *Committee Hansard*, 29 June 2010, p. 35.

Committee sees value in referring to the experiences of other countries when enacting legislation of this type, especially a country like the United Kingdom where, like Australia, devolved powers require cross jurisdictional arrangements. The Committee suggests that, should moves to enact a national commission in Australia be taken, negotiation through COAG would be required.

4.42 'Charity Commission' may be too narrow a name for a regulator whose role encompasses other not-for-profit organisations. The Committee also considers that the term 'Not-for-Profit Commission' is negative as it defines organisations by what they are not and is somewhat ambiguous given that government departments and entities such as the Reserve Bank of Australia are not-for-profit entities but would not be covered. Other possible names for the independent commission include 'Third Sector Commission'<sup>40</sup>, 'Tax Exempt Entities Commission', 'Community Organisations Commission' or 'Social Enterprise Commission'.

4.43 The introduction of a national 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.

4.44 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.

4.45 The Committee sympathises with the frustrations of some witnesses that a commission has been recommended by a number of reports, but not implemented.

There comes a point where a government, probably not before the next election but whoever might be the government after the next election, has to make a decision either to do something or to stop saying that it is going to intend to do something, because this matter has been on the agenda for many, many years: should we have a charities commission or not? What structure should we have in place? We had an Industry Commission [report] in 1995. We have had extensive consultation with the sector

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40 As detailed in the 2008 Report scholarly literature often divides society into four sectors: Business (First Sector); Government (Second Sector); Not-For-Profit, non-government, voluntary, intermediary (Third Sector); and Family (Fourth Sector). The Third Sector in Australia sits alongside the government and private sectors. Third Sector organisations may receive government funding to provide public services, but they are not part of government. Similarly, Third Sector organisations may charge for business services, but are not part of the business sector because their primary aim is not to generate profits for their owners. Broadly, Third Sector organisations comprise charities, churches and religious organisations; sporting organisations and clubs; advocacy groups; community organisations; cooperatives; trade unions; trade and professional associations; chambers of commerce; welfare organisations; and service providers, which can be divided into three clear classes of organisations (i) Mutuals, (ii) Social Enterprises and (iii) Not-For-Profits. Source: Senate Economics Committee, *Disclosure regimes for charities and not-for-profit organisations*, 2008, p. 11.

leading to the charities definition bill. It is a goldmine for the lawyers because they like to entice you into using them to make submissions. We then had the Productivity Commission. Most recently, we had the Henry tax review. All of the major charitable organisations in this country, the major churches, have made submissions to all of those. It is not my place to give direction to government, but it would be good to either say, 'Here is a model that we can consult about, that we can actually get into the detail of and see whether it is workable or not and how we finetune it,' or leave the status quo but not continue this process of creating uncertainty.<sup>41</sup>

4.46 The Committee believes it is time for action. It expects legislation establishing a commission to be referred to it in due course.

### **Recommendation 3**

**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 4**

**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;**

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41 Father Brian Lucas, General Secretary, Australian Catholic Bishops Conference, *Committee Hansard*, 29 June 2010, p. 25.

- **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.**

**Senate Annette Hurley  
Chair**

