

# **Additional Comments by Senator Xenophon**

## **Introduction**

1.1 There have been numerous inquiries into the not-for-profit sector over the past decade, all consistently calling for reform of regulation of the not-for-profit sector in order to ensure greater transparency and accountability.

1.2 This Senate inquiry was a beneficial and successful opportunity to continue this discussion and heard from a range of experts, charities and religions and members of the public through the submissions and public hearings process.

1.3 The Committee's recommendations for the establishment of a single independent national commission for not-for-profit organisations, similar to the Charity Commission for England and Wales; and for the Government to inquire into the operation of MILVILUDES in France to learn how it monitors the activities of cults, with a view to establish a similar agency in Australia, should both be initiated as soon as possible.

## **The need for reform**

1.4 Not-for-profit organisations, including charities and religions, are currently afforded tax exempt status due to the presumption that they provide the community with services and assistance that is of benefit. Subsequently, these entities are not required to lodge income tax returns unless otherwise specified.

1.5 According to the Mr Michael Hardy, Assistant Commissioner of Taxation with the Australian Tax Office,

"There are about 55,000 organisations that have some sort of charitable tax concession endorsement. We receive around 6,000 applications per year, which are reviewed."

1.6 Of those, however, Mr Hardy acknowledged that, given resource limitations, not all of these applications are closely scrutinised.

"There is certainly a fast tracked assessment process. Realistically, with the staff available and to work through the number of applications per year, perhaps in the order of 70 percent of applications work through the risk assessment as being relatively fast processed through the system. Some of

those are tagged for subsequent, after-the-event review. The remaining ones would be subject to more careful scrutiny upon application."<sup>1</sup>

1.7 Perhaps more concerning, however, is that charities and religions are also able to self-assess their income tax status and may therefore be income tax exempt and operate completely unknown to the Tax Office.

**Mr Hardy**—If they make that self-assessment, which also then allows for them to be exempt from income tax, they would not make themselves known to the tax office. They would not be required to make themselves known to the tax office. 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 employees or they did not have any fringe benefits tax arrangements in relation to 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.

**ACTING CHAIR**—That in a way answers the question which I was going to ask, and that is: since groups can self-assess as a religion, what quantum, what number, of religions would you say are out there whereby, unless they become visible to you from some of their activity, you would not know they existed as such? For a group to claim tax exemption there must be a point where they put in a tax return or an exemption is claimed, and therefore it must be possible to make some sort of assessment of the numbers.

**Mr Hardy**—The only tax concession that could be accessed without an approach to the tax office by a religious organisation would be to self-assess that they were a religious organisation, which makes them exempt from income tax. The practical consequence of that is that they do not have to lodge an income tax return. If they have no reason to have a dealing with the tax office in any other capacity then they have no dealing with the tax office.

**ACTING CHAIR**—Do they have to advise you of their self-assessment?

**Mr Hardy**—No. Self-assessment is that. They self-assess.

**ACTING CHAIR**—In other words, they are left alone. They have self-assessed and you do not have any reason to monitor them whatsoever.

**Mr Hardy**—No. The legislation does not provide for that. They are potentially invisible to us as a taxation entity or an entity that has an interaction with the tax system.

**Senator XENOPHON**—Mr Hardy, further to Senator Eggleston's line of questioning, that means that once an organisation has a tax free status as a religion, for instance, and they self-assess, there is no scope to look into the books of that organisation?

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1 Mr Michael Hardy – Australian Taxation Office, *Proof Committee Hansard – Tuesday 29 June 2010*, p. 37.

**Mr Hardy**—There could be for an organisation, and not just in the charity sphere, because the tax system is premised along self-assessment. If the tax office became aware of an organisation that was self-assessing as a religious organisation and we had reason to believe that they may have made an incorrect assessment, we certainly do have powers of inquiry to make contact with them and to gather information. We might be able to advise them that they were incorrect in their assessment and that perhaps they were not a religious organisation, in which case they may be part of the tax system in some other fashion.

**Senator XENOPHON**—But if they are classified as a religious organisation, they are invisible—you used the word ‘invisible’ earlier—for the purpose of being subject to pay tax; therefore, you cannot look. Once they have got the status of religion you cannot really look behind that.

**Mr Hardy**—Once they are a religious organisation and they self assess, they are exempt from income tax and therefore have no obligation to lodge an income tax return.<sup>2</sup>

1.8 There is a clear need, therefore, for greater scrutiny and accountability of organisations which receive income tax exemption.

1.9 The establishment of a national independent commission for not-for-profit organisations as recommended by the Committee will address this issue, as well as broader concerns facing the sector.

### **The need for a Public Benefit Test**

1.10 The Senate inquiry heard from a number of former members of the Church of Scientology, an organisation which is provided with charitable status in Australia and is thereby income tax exempt.

1.11 These individuals recounted their experiences while they were members of the organisation, and explained why, based on their experiences, they do not believe the organisation should be tax exempt.

Some examples of the evidence provided include:

**Mr Anderson**—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

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2 Mr Michael Hardy – Australian Taxation Office, *Proof Committee Hansard – Tuesday 29 June 2010*, p. 40.

years. I in fact found them to be quite self-serving and not really directed at the external environment.<sup>3</sup>

**Mrs Underwood**—... 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.<sup>4</sup>

**Ms Vonthehoff**—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.<sup>5</sup>

1.12 The Committee's recommendation that a Public Benefit Test, such as the one proposed in the *Tax Laws Amendment (Public Benefit Test) Bill 2010*, will therefore ensure that an organisation's aims and activities are for the 'public good' and is weighed against any harm caused, such as the test in effect in the United Kingdom.

1.13 Furthermore, the recommendation that the Government provide a report into the operation of France's MILVILUDES agency (which monitors the operation of cult-like organisations), and similar international bodies, with a view to establishing a similar agency in Australia, will ensure that cult-like activities are closely monitored and appropriate laws are introduced to combat these groups who use psychological pressure and breaches of general and industrial law to maintain control over individuals.

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3 Mr James Anderson, *Proof Committee Hansard – Monday 28 June 2010*, p. 11.

4 Mrs Carmel Underwood, *Proof Committee Hansard – Monday 28 June 2010*, p. 12.

5 Ms Jannette Vonthehoff, *Proof Committee Hansard – Monday 28 June 2010*, p. 13.

## **Conclusion**

1.14 The Committee's recommendations go further than the scope of the *Tax Laws Amendment (Public Benefit Test) Bill 2010*, by recommending a Charities Commission using a Public Benefit Test to provide appropriate and fair scrutiny of not-for-profit organisations and, with this, much greater protection for individuals.

1.15 Given some of the horrific stories heard within the Inquiry, it is important that any legislation to establish a Charities Commission and/or a MILVILUDES equivalent in Australia be introduced as soon as possible and by no later than 30 June 2011.

**Nick Xenophon**  
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