



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

ECONOMICS LEGISLATION COMMITTEE

**Reference: A New Tax System (Tax Administration) Bill 1999**

WEDNESDAY, 17 NOVEMBER 1999

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**SENATE  
ECONOMICS LEGISLATION COMMITTEE**

**Wednesday, 17 November 1999**

**Members:** Senator Gibson (*Chair*), Senator Murphy (*Deputy Chair*), Senators George Campbell, Chapman, Murray and Watson

**Participating members:** Senators Abetz, Boswell, Brown, Brownhill, Calvert, Conroy, Coonan, Crane, Eggleston, Faulkner, Ferguson, Ferris, Harradine, Knowles, Lightfoot, Lundy, Mason, McGauran, Parer, Payne, Quirke, Ridgeway, Schacht, Sherry, Tchen and Tierney

**Participating members for this inquiry:** Senators Bartlett and Woodley

**Senators in attendance:** Senators Bartlett, Gibson, Murphy, Sherry and Woodley

**Terms of reference for the inquiry:**

A New Tax System (Tax Administration) Bill 1999 and Taxation Laws Amendment Bill (No. 8) 1999

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**Committee met at 11.17 a.m.**

**CHAIR**—Welcome. Today the committee is considering two bills: A New Tax System (Tax Administration) Bill 1999 and Taxation Laws Amendment Bill (No. 8) 1999. The committee's scheduled reporting date for both bills is 29 November this year. This is a public hearing and as such all members of the public are welcome to attend. Today we will be taking evidence from witnesses who have made submissions concerned with certain provisions of the bills. We will also receive a response from government officials on comments made during the hearing. To assist all parties involved with the inquiry, I propose that the committee agree to publicly release all submissions received during the inquiry, except those to which confidentiality applies. There being no objection, it is so ordered.

Before we commence taking evidence, I wish to state for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to evidence provided. Parliamentary privilege refers to the special rights and immunities attached to the parliament or its members and others necessary for the discharge of its parliamentary functions without obstruction and fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by him or her before the Senate or any of its committees is treated as a breach of privilege.

[11.19 a.m.]

**CLARKE, Dr Wayne Murray, Chief Executive Officer, Fundraising Institute—Australia Ltd**

**ZERMAN, Mr David John, President Elect, Fundraising Institute—Australia Ltd and General Manager, Royal Flying Doctor Service (Victoria)**

**CHAIR**—Welcome. Do you wish to make an opening statement?

**Dr Clarke**—Yes, we have some general comments to begin with. I guess all of us today are very much aware that fundraising plays a significant part in our Australian communities. If you watch television on any night, you would see one major charity or major not-for-profit organisation doing some promotion in terms of fundraising. But the important thing to stress here is that fundraising just does not happen. People are very generous but they need to be asked. They need to understand the need and to understand how they can help an organisation to make a difference and to help a particular organisation. Today fundraising contributes to a wide range of Australian communities including medical research, education, the arts, community resources, welfare, religion and overseas aid as well as perhaps the more often publicised welfare areas that we see more on the television each day.

The importance of what we are here to talk about today is to accept that fundraising does cost money and that there are a number of things that organisations do that go towards trying to generate funds for their organisation. We are concerned that there is perhaps an unintended consequence that comes as a result of this bill. I do not think it is to be made as any major issue but I think what we are trying to do is to clarify that fundraising does cost money and that it can be part of an organisation's objectives in raising that.

The Fundraising Institute supports the general notion of the bill. We are really very much of the view that there should be a total transparency in fundraising and that there should be total accountability. I think the notion of establishing the reapplication of the tax deductible status and the not-for-profit status is going to help clarify all of those issues. However, the particular part of the proposed act that we have some concern about concerns the establishment of the gift fund and how the gift fund may be used. In our report in our submission we clearly indicate where there may be some misinterpretation. The words in usage for the gift fund say that:

the entity must use the following only for the principal purposes of the fund, authority or institution.

- (a) gifts made to the fund
- (b) any money received because of such gifts

We are concerned that many of the organisations in the Fundraising Institute are in fact voluntary, not-for-profit agencies. There are many hundreds of them who have boards whose members are volunteers and who are perhaps not particularly aware of all of the legislative requirements that are there and they may ask to see what gives them permission for their organisation to actually go out and spend money to raise funds. If you look at the act as it is proposed at the moment there could be some confusion in that. What we are really suggesting is that there may be some amendment to the proposed act just to include the few words—that the costs associated with establishing, maintaining and obtaining such gifts—be actually included in the bill, so that it becomes quite clear to everybody that there is a fundraising cost but it is very much part of the organisation.

The Fundraising Institute is a member organisation and we have had a number of people that we have talked to about this. Our role is that of being an advocate in terms of fundraising.

We are trying to promote fundraising and trying to assist our members to get better skills in fundraising and we are certainly encouraging them in terms of their accountability and making fundraising as cost effective as possible. But the concern that I return to is the point that there may be some confusion just in the wording of the proposed act. I will ask my colleague David Zerman to give you some anecdotal things as to what actually happens in fundraising.

**Mr Zerman**—We thank you for the invitation to appear before the committee. As Wayne has said, the FIA supports transparent, accountable and ethical fundraising. I would like you to consider, on the left-hand side, Christmas Island in the Indian Ocean, on the right-hand side, Lizard Island on the Great Barrier Reef, and all places in between. If these are the two extremities of mainland Australia, think of all the distance in between and think of all the organisations from Christmas Island to Lizard Island that do fundraising. Think of other organisations that could do fundraising, such as the Royal Flying Doctor Service. I chose Christmas Island and Lizard Island particularly because I will refer to them in a moment.

Fundraising takes place throughout Australia. It could be a primary school in Daylesford, a high school in Prospect, the University of Adelaide, QUT or Queensland University. It could be an overseas aid organisation, a health organisation, an AIDS related organisation, an arts or sporting organisation. Many hundreds of thousands of people throughout Australia are involved in fundraising on a day-to-day basis.

What is fundraising? Fundraising is an occupation undertaken either in a voluntary or a professional capacity, as I said, by hundreds of thousands of people in Australia to support the fabric of Australian society. The FIA represents professional fundraisers who are committed to transparent, ethical and accountable fundraising. As General Manager of the RFDS in Victoria, I lead a total staff of 1½ other people who last year raised \$1.8 million via direct mail, telemarketing, bequests and auxiliaries—the volunteers who work for us. The Royal Flying Doctor Service physically operates in all states other than Victoria. So why should Victorians support the Royal Flying Doctor Service? Because people in Victoria are concerned about people elsewhere in Australia. They want to contribute to the fabric of Australian society, as I mentioned before.

Our appeal president is the actor Bud Tingwell, who is on the envelope I have given you. Our appeal chairman is John Ralph, who is probably well known to this committee for his recent report. The reason that I have given you this envelope is that next week in a courageous decision—as Sir Humphrey would say—500,000 of these are being delivered to households in Victoria. I told my board it is going to cost us between \$90,000 and \$100,000 to undertake this fundraising activity. Using the methodology that fundraisers do, I estimate that in the first year—that is, beginning three or four weeks after this goes out—we will recover the cost of this one-off fundraising activity. However, as a minimum we will have 2½ thousand to 3½ thousand new donors. It costs the Victorian section of the Royal Flying Doctor Service of Australia this amount of money—nearly \$100,000—to raise money which is going to be used for the service.

You might say, ‘Why are you doing it? Why do you have to spend money to raise money?’ Fundraising is like any business: you need to be able to spend money to raise money. Regrettably, in most fundraising activity you have to put out a lot more money first of all before it comes in. That is the existing practice of all fundraising activity. The legislation as proposed could be interpreted not to include fundraising costs, with resultant consequences.

So, as to how we interpret the legislation as it would apply if it goes through in its present form from 1 July, let me give you some statistics. Nationally, the Royal Flying Doctor Service

in the just-finished last financial year raised \$10.7 million. The fundraising costs were \$2.9 million, so the net fundraising is \$7.8 million. The fundraising cost is about 27½ per cent. If the legislation is passed in its present form with the resultant unintended consequence, the RFDS would need to raise \$13 million: \$10 million for our work which we carry out on a day-to-day basis and that would be tax deductible, and then we would have to raise another \$3 million from the ether of the Australian community—people who do not give us money now but whom we would hope would give us money in the future, and they would not get any tax deductible arrangement for it and would not be able to claim it in any way.

We are asking you to help us ensure that all money received by all fundraising organisations in Australia is used for the true purpose for which it was intended—for the benefit of the organisation, which includes the cost of fundraising. The question I pose, rhetorically, to you is this: if the recommendation we are asking you to consider is not passed, where will the extra money come from to raise the funds that all organisations need to carry out their daily work? Thank you.

**CHAIR**—Thank you.

**Senator SHERRY**—You say you are putting an interpretation on the proposed legislation. Have you had any discussions with or feedback from Treasury about what is actually intended and what the impact will be?

**Mr Zerman**—As a prelude to this, we were in Canberra a couple of weeks ago. We have had discussions with people in the Prime Minister's office, Senator Woodley, people in Senator Cook's office, people in Senator Kemp's office, people in Senator Evans's office and some people from the ATO. In drawing the attention of everyone to this particular issue, the general feeling was that it was not intended to be seen to happen in this particular way.

**Senator SHERRY**—What about the ATO?

**Mr Zerman**—The ATO have said that the matter could be solved by a ruling rather than legislatively.

**Senator SHERRY**—Did they give any undertakings about the nature of such a ruling? Did they indicate that they would make a ruling that would satisfy your concerns?

**Mr Zerman**—I do not believe that they have.

**Senator SHERRY**—So it is on a 'may' and a 'wish'?

**Mr Zerman**—Yes.

**Senator SHERRY**—You say in your submission that some \$5 billion annually are raised in Australia. You also estimate that the average cost to the organisations you surveyed of collecting that \$5 billion is about 24 per cent.

**Mr Zerman**—Not of the \$5 billion—

**Senator SHERRY**—Of a smaller amount. Can you extrapolate that over? The total amount raised is \$5 billion annually. Can you transfer that over? Would that represent a reasonable percentage of the costs of moneys raised in Australia?

**Dr Clarke**—I think that might be extending it a bit further. That \$5 billion is a sort of indication of what it would be for all of the not-for-profit organisations including churches and a broad range of organisations.

**Mr Zerman**—That is a figure from an Industry Assistance Commission report a couple of years ago.

**Dr Clarke**—Many of them would not have professional fundraisers and would not be increasing their funds, so that this would include things like bequests and so on.

**Senator SHERRY**—On the example you gave, Mr Zerman, of the Royal Flying Doctor Service, was that just in Victoria or was it national?

**Mr Zerman**—Nationally we raised about \$10.7 million.

**Senator SHERRY**—What would be the impact if you could not raise the additional \$3 million you referred to? What would you have to do?

**Mr Zerman**—Every day, for example today, we would see 500 patients throughout Australia. We would not be seeing that many patients. We would not be providing 20 accident and emergency aerial evacuations, literally, from Christmas Island or Lizard Island or places in between. Services would be reduced significantly.

**Senator SHERRY**—It would put substantial pressure on the service provision of your organisation?

**Mr Zerman**—Absolutely.

**Senator SHERRY**—Can you name other organisations similar to the Royal Flying Doctor Service that you have knowledge of?

**Mr Zerman**—The Garvan Institute said that the institute would have its research funding seriously jeopardised. The Brotherhood of Saint Laurence said that this development would limit the organisation's ability to raise the same amount of funds, which in turn would lead to a decrease in service provision. The Cystic Fibrosis Association have indicated that services would be reduced by 53 per cent as they have to raise 75 per cent of their funds each year. The Children's Medical Research Institute indicated that, as 60 per cent of funds are derived from donations, their research efforts would be cut by at least 60 per cent.

**Senator SHERRY**—Do you believe that what you are seeking is within the agreement that was entered into between the government and the Democrats in respect of charities?

**Dr Clarke**—We could answer that very positively and say yes, it is. The view is that fundraising is very much part of the Australian community and the agreement is that not for profit agencies should continue on raising funds in the best way they possibly can. All we are trying to do is to ensure that there is no ambiguity there in terms of organisations being able to hold up a document and say, 'Yes, we can use these funds for fundraising purposes and to continue the process of fundraising.'

**Mr Zerman**—This would just codify existing practice.

**Senator SHERRY**—So your understanding is that it is existing practice?

**Mr Zerman**—No, our proposed amendment would codify existing practice.

**Senator SHERRY**—Treasury are coming along later, so we can ask them, but you cannot shed any light on why Treasury are reluctant to ensure that what you are seeking is put in legislation.

**CHAIR**—It is the tax office, not Treasury, coming in.

**Senator SHERRY**—Sorry, the tax office.

**Senator WOODLEY**—In your written submission you talk about the fact that 70 organisations provided comment. I realise you probably need to check with them, but if any of that comment is reasonably substantial with regard to some of the costs, it would be useful for the committee to have some of that tabled because it would support your submission. Is

that possible? You would need to check with them. I am not asking for the 70; a sample would be helpful.

**Mr Zerman**—That would be possible. We will arrange for that.

**Dr Clarke**—Senator, we identified this issue when it first came up and obviously we advised our members in terms of what some possible implications might be in all of this. That is why we gathered quite a lot of information just to support our case in that. We did it on the basis that it was not a public document and it was not to go out that way. We could go back to our members and request that that information be made available.

**Senator WOODLEY**—It would just give the committee an additional feel for the problems. One of the problems that has been drawn to my attention in a number of forums I have attended is not only the overall amount—for instance, whether it is 24 per cent, 27 per cent, 10 per cent or whatever—but that it really does depend on the nature of the fundraising.

As you have just indicated in your illustration, if you are beginning a particular campaign you are going to use a very much higher percentage of what you receive but on the basis that, later on, that percentage will be reduced and the income will be substantially more. Let me turn that into a question. Would you like to spell that out a little more? The committee needs to understand the nature of fundraising from that point of view.

**Mr Zerman**—I will use a couple of examples, Senator. With direct marketing for what we call an acquisition appeal—the example I gave of what we are doing in Victoria next week—the start-up costs are very high. In the first return you would either cover your costs or make a loss. But you have those donors who you assume will be—and who, generally, depending on the organisation will be—with you for a minimum of four, five, six or seven years. So in subsequent years, when you go back to them, your fundraising costs for those donors are very low and your return is much greater.

Another aspect of fundraising is bequests. The cost of bequests is generally fairly low because you are producing some brochures and staff are going out to visit potential bequesters and having discussions with them as part of their everyday work. The amount that you get in bequests varies. I can say from personal experience with the RFDS that in the past year it was from \$938 to \$275,000. The cost of that might only be, all up, two or three per cent. With another aspect of direct marketing, for example, you might cost it initially at 70 per cent to raise that amount of money.

In other forms of fundraising—telemarketing, for example—the costs might be 40 per cent, which is enshrined in legislation, for example, in New South Wales. In going back to existing donors the cost of fundraising might be 10 to 15 per cent. So, of the different forms of fundraising, the cheapest—for want of a better expression—or the least expensive is bequest fundraising, and the most expensive is donor acquisition. The rate would go, really, from five to 90 per cent, 95 per cent, 120 per cent in some donor acquisition campaigns. Anecdotally—because there have not been recent studies in Australia—if an organisation has its fundraising costs at about 30 per cent, it is considered to be an acceptable industry standard.

**Senator WOODLEY**—If there is any time, I have one other question.

**Senator BARTLETT**—I just have one main question. In your submission you state that you support the overall objectives of the bill and schedule 7 of the bill.

**Mr Zerman**—Absolutely.

**Senator BARTLETT**—Your members basically are people who work for non-profit organisations. Parts of that schedule require the setting up of a separate gift fund and regulate

the expenditure of that. In the same way that you have raised concerns about fundraising expenses perhaps not being part of that, concern has been raised about administration expenses. Do you see that as a concern as well, or do you think the aim of setting up a whole separate fund and regulating what you can spend it on is an appropriate way forward for the non-profit sector?

**Dr Clarke**—We would really have to speak in terms of fundraising. I think that is the most important thing to stress. We are really saying that this gift fund is to be set up—and this is not new; this is something that the tax office has really been working at for a number of years, in terms of actually having funds go into a particular account—and our concerns are that there are these identifiable fundraising costs which we really would like to have used as part of that fund, because it is in fact promoting the objectives of the organisation, et cetera. I think the question of administrative cost is something else. It is not really part of all of this. We are talking about the direct fundraising costs, such as the mailing programs, the running of databases, the costs of production of this material, and the employment of staff involved in hands-on fundraising and going out and seeking bequests. That is what we would like to support.

**Senator BARTLETT**—Obviously, you have raised the issue in terms of the fundraising aspect of that, but are you supporting the objectives of the whole schedule in any case, or are you not really passing comment on the administrative costs and that sort of thing?

**Dr Clarke**—That is the view that we would have. I think that the act is in fact really clarifying this whole question of donations and how an organisation should treat them and how the receipt should be given. We, again, come back to the point that we believe that fundraising should be totally transparent to everybody concerned, that it should be also something that is totally accountable. We would certainly want to encourage all of those things for the future as well.

**Senator BARTLETT**—Do you think it is accountable at the moment?

**Dr Clarke**—In fact the Industries Assistance Commission did make the point, I think, in the last report that there did need to be some standardised reporting in terms of fundraising and not-for-profit agencies, and that is what we would certainly encourage as well.

**CHAIR**—As there are no further questions, I thank Dr Clarke and Mr Zerman very much for appearing before the committee.

**Mr Zerman**—Thank you, Senator. The institute would be pleased to work not only with the committee but with all parties within the parliament on any fundraising issue in the future. We are happy to act as a resource to provide available information.

[11.46 a.m.]

**BUCHANAN, Mr Andrew, Managing Director, Group Training Australia Ltd**

**KIRBY, Mr Michael, Director, Group Training Australia Ltd**

**CHAIR**—Welcome. Do you have an opening statement that you wish to make before the committee?

**Mr Buchanan**—To summarise the submission that we actually made to you, you are aware that Group Training Australia is a national network represented in over 200 locations around Australia and representing 110 non-profit groups. We are involved in the vocational education and training sector. Group Training Australia is very keen to ensure that the not-for-profit status of group training companies is not lost with the introduction of the arrangements foreshadowed in the new tax legislation. We are concerned that tests will be used by the Australian Taxation Office to determine whether group training companies should continue to enjoy tax exemption.

In terms of our growth and our commitment to training of apprentices and trainees, we are keen to ensure that the guarantees that we have had in the last years of growth as an organisation will be maintained. It is fair to say that we have expanded our operations as part of Group Training over the years, in response to declining support from government to meet operating costs. As you would be aware, government policy has been to encourage companies around Australia to become more entrepreneurial; so what we are pretty keen to do is to express caution, to ensure that the legislation does not have unintended consequences on a sector that plays a fairly vital role.

In summary, what we are concerned about is really the cashflow effect to small businesses and to group training companies, particularly those with little or no cash reserves, and the hesitation or restriction that may impact on growth. If this in fact occurs, it will naturally inhibit training—particularly in the building trade, we would forecast, with subcontractors having to seek alternatives. It impacts particularly where you have a one-person operator. So we do not want to lose the advantage of flexibility in terms of what Group Training may do around Australia.

**CHAIR**—Have you raised this matter with the government?

**Mr Buchanan**—Yes, we have.

**CHAIR**—Who have you had meetings and discussions with? What has happened?

**Mr Buchanan**—It is still under consideration. We have actually taken it up with the Australian Taxation Office, to see whether we could be perceived as an educational facility in terms of training and whether we could be tax exempt. This in fact also brought to our attention the proposed legislation and that we should approach it from another angle, as well.

**CHAIR**—So you have not raised it with the minister's office?

**Mr Buchanan**—We have raised it with Minister David Kemp's office, yes.

**CHAIR**—Thank you. Do senators have questions?

**Senator SHERRY**—I am not clear, from what you said, about the response of the ATO. Is the ATO indicating that at least some of the group training organisations around Australia will have problems?

**Mr Buchanan**—Yes. It is fair to say that our feedback from the ATO is not as positive as we would like it to be.

**Senator SHERRY**—In what way will you have problems?

**Mr Buchanan**—We will not be tax exempt. We have put forward the argument, as an example, that we provide vocational education and training and that there should be an exemption under an educational capacity.

**Senator SHERRY**—Yes. But does the ATO, for example, take the view that—I am familiar with the operations; I was on the Tasmanian board of Hospitality Group Training—whilst training is a part of a group training organisation, it is not the primary function of a group training organisation. It is an employer, effectively—a subcontractor.

**Mr Kirby**—That is right. But, at the end of the day, the whole purpose of the group training operation is to produce trained and skilled workers for industry. It is a training program that uses the workplace component, that employment component, to deliver that training.

**Senator SHERRY**—I do not disagree with you. However, looking at it from the perspective of the proposed legislation and the view of the Taxation Office, you would want very clear indications that that is the way you will be treated—as an education and training organisation, therefore enjoying tax exempt status.

**Mr Kirby**—We would like to have a very clear indication that that is how we will be treated.

**Senator SHERRY**—Yes. On my reading of it at the moment, there is significant doubt that that will be the case. Do you share that doubt?

**Mr Buchanan**—We share that doubt.

**Senator SHERRY**—I notice you are collectively employing over 32,000 apprentices and trainees. I understand that is a very substantial proportion of apprentices in this country now. You may have the precise figures. If you were hurt by these tax changes, it would have a detrimental effect on training levels and apprenticeship and trainee levels in this country, wouldn't it?

**Mr Kirby**—There is no doubt about that. This would come on top of some other policy decisions that have impacted on the group training network. For example, we have already lost the completion payment that is available to every other employer in Australia. So we are already at a disadvantage with that. It would appear at this stage that the GST impact is going to be quite strong on our operations. To have this as well is a compounding situation where we are constantly put under pressure, particularly cost pressure, by these sorts of decisions.

**Senator SHERRY**—And that is at a time when overall trainee and, particularly, apprentice total numbers in this country are not good in terms of future training.

**Mr Kirby**—Particularly if you look at specific areas—and that has already been identified through government policy—there are skill shortages. Whilst the overall quantum of contracts of training is increasing at the moment, there are very obvious areas of skill deficiency. That is a result of not enough apprentice training. So it would impact on that.

**Senator SHERRY**—You mention the GST. What sorts of problems are you encountering with preparation for a GST?

**Mr Kirby**—At the moment, I do not know that we are encountering any problems in preparation. It is what we foresee as being the impact of it when it comes into force on 1 July.

**Senator SHERRY**—What will that be?

**Mr Kirby**—Every invoice that we send to our host employers will increase by 10 per cent. Many of those host employers are very small businesses. They are not terribly sophisticated

in the way they view or administer their operations. They will see that as simply a 10 per cent increase in cost.

**Senator SHERRY**—So the cost goes up 10 per cent. Is it likely that those small employers would adopt an alternative approach of directly employing apprentices?

**Mr Kirby**—I think they will adopt an alternative approach of direct employment, but I do not think they will employ apprentices. At the end of the day, they have to employ someone, but they will choose another flexible alternative—which is, in general, casual employment and non-training based employment—because it is a much simpler option for them.

**Senator SHERRY**—So that would lead to a reduction of the number of apprentices employed in some industries?

**Mr Kirby**—That is our argument, yes.

**Senator SHERRY**—And a reduction of the numbers of skilled and trained people and the level of skill and training that they would receive?

**Mr Kirby**—Yes.

**Senator SHERRY**—You have to add 10 per cent to the cost because, effectively, you are a subcontracted employer. What about competition from other subcontract employers? There are other subcontract employers—I can think of a few—that have grown that do not have an education or training focus or a focus on apprentices and trainees, but in general employment. Would any of those move into the areas that you are focused on?

**Mr Kirby**—I would not think so. There is certainly no indication that they are rushing to put on apprentices and trainees at this stage. At the end of the day I do not think the GST will impact on that scenario. It is not so much that it will disadvantage us in relation to other more commercial providers of labour; it is more a case that it will be seen by our host employers as another imposition that they can get around by just having a casual labourer rather than taking on an apprentice.

**Mr Buchanan**—On your point, can I highlight that 50 per cent of Group Training host employees are really very small in operation. In fact we understand that some actually employ fewer than five people.

**Senator SHERRY**—In hospitality, for example, from my knowledge, small employers overwhelmingly do not have the size or the resources to employ someone full time. They are able to have an apprentice maybe for a year or 18 months for part of their apprenticeship, and that is the only way practically it can be done.

**Mr Buchanan**—And that really sums up the whole beauty of the concept of Group Training Australia, so that any employer can operate a trainee or an apprentice for any duration they may require.

**Senator SHERRY**—Thank you.

**CHAIR**—You mentioned that you were concerned about a lot of small employers being frightened by the GST. Why wouldn't most of the employers associated with Group Training register for the GST, even if their turnover is less than \$50,000 so they can claim the credits back for their purchases, including from you?

**Mr Buchanan**—I think the main point we were trying to impart is that with this proposed legislation, if you have not got cash reserves, that small company is in an impossible situation to be able to provide training and/or apprentices. The GST, we understand, is a factor. What we are doing as an organisation is providing training to those Group Training companies to

accommodate. In terms of this proposed legislation, it was really the issue that, if Group Training companies have not got a cash reserve, then in a sense they are handicapped.

**Mr Kirby**—As well as being Director of Group Training Australia, I actually manage a Group Training company and we are currently giving a lot of advice to small businesses, in particular our host employers, in how to deal with this and we are stressing that it is not a real cost. The point I was making is that many of them see it as a perceived cost. I accept your point that it is not a real cost to them, but that is not the issue. Maybe in five years time, we might get that message through, but right at this minute they can see that from a cash flow point of view, if they did not go through us and use our Group Training apprentices, they could employ a casual labourer directly and not have to incur the outgoing of that 10 per cent. That is really the issue.

**CHAIR**—Sure. You would also agree while you are talking about cash flow that, for most businesses, the GST will be cash flow positive, perhaps not in the first few weeks but quarter by quarter it will be cash flow positive.

**Mr Kirby**—I am not disputing that. The point I am making is that, in everything else that those small businesses do, there are no alternatives to paying the GST. They cannot get out of it. The one area where they have an alternative is group training. They can say, ‘We will employ directly.’ If in employing directly they still employ an apprentice, I guess at the end of the day it does not matter, but we are very doubtful that that is what they will do. They will employ directly, and they will seek to have the same flexibility that we are giving them. The only way they can do that is to use a casual type arrangement.

**CHAIR**—Have you asked the government for education funding assistance to get this message through to your employers as part of the GST package?

**Mr Buchanan**—Yes.

**CHAIR**—And has there been a favourable response from the government?

**Mr Buchanan**—We are still awaiting a response.

**Senator WOODLEY**—In your written submission, you say that 110 not-for-profit group training companies are located in all states and territories. I am possibly aware of some of those, but I might be on the wrong track. Can you give me an idea of the kinds of people who would be part of your association? I suppose Mr Kirby can tell us what his company is called.

**Mr Kirby**—My company is called Apprentices Trainees Employment Ltd, which is shortened to ATEL. We are a good example of the sorts of companies that are members of Group Training Australia. Our current membership is around 100, isn't it, Andrew?

**Mr Buchanan**—It is 110.

**Mr Kirby**—They are all essentially not-for-profit group training companies like mine. They either operate in a regional area and service an area across a broad range of industries or are industry specific group training companies, where they serve only a particular industry.

**Senator WOODLEY**—It is a very creative response to a need. I am trying to get my head around how the not-for-profit status works. Are some of these run by, for example, the Salvation Army, who do run job centres, and so on?

**Mr Kirby**—Mission Employment, for example, runs a group training company. My own company is an incorporated company. Its membership is made up of the local government organisations in our region and some of the large employers in that region. But our constitution says that none of those members can gain any financial benefit from what we are doing.

**Senator WOODLEY**—Which is the point you make in the submission later on—if you wind up, any assets left over are transferred to a like company.

**Mr Kirby**—That is right, yes.

**Senator WOODLEY**—In your submission you raise the issue of the definition of a public benevolent institution, and we all know the incredibly convoluted way in which that has been interpreted over the years. Do you believe we need a new definition of ‘public benevolent institution’? Is that where part of the problem is?

**Mr Buchanan**—If that is aiding the perception that we have just pointed out, perhaps we do need a new definition. We as an organisation are attempting to encourage more companies to take on apprentices and trainees, in line with the current government’s VET reforms through ANTA and DETYA. We are very supportive of that, but if there is a perception which indicates that this is going to inhibit future trainees and apprentices being employed, perhaps the definition does need to be clearer.

**Senator WOODLEY**—It is a leading question. Let me reveal my hidden agenda: I believe that is one of the big problems. It is becoming a real stumbling block in trying to get the tax reforms in place. What on earth is a public benevolent institution, and how should it be defined? It seems to me that is something the government perhaps should think seriously about. From my understanding, for example, a registered club can be a public benevolent institution but ACOSS cannot be. It is to do with the definition, the purpose of the operation, and so on. It seems to me that, if that is so, there is a real problem at that point. That is my hidden agenda, which is now revealed.

**Mr Buchanan**—We have no hidden agenda to reveal.

**Senator WOODLEY**—I compliment you.

**Mr Buchanan**—Thank you. We are simply attempting to reveal the fact that we want to make it as easy as possible to encourage the growth of the concept of Group Training Australia and to inhibit any nervousness about doing so.

**Senator WOODLEY**—I am interested in the whole issue of surpluses, which quite clearly is a big issue for you. Would you like to give us some idea of the problems? It is in your submission, but could you could illustrate it a bit? Is this something that happens regularly, or is it an aberration? Can you give us a scenario which would describe the problem that is in your submission?

**Mr Kirby**—The submission is envisaging that having a surplus could be a problem in terms of how the Taxation Office looks at your status.

**Senator WOODLEY**—Because that would be seen as a profit?

**Mr Kirby**—Yes. But it is not taking into account why those surpluses are there and what they are then used for. The best way I can explain what I am trying to say is that, if you go back five or six years, you will be hard-pressed to find any group training company that had surpluses, because we were in fairly poor economic conditions. We were using what services we had to try and keep our apprentices working.

At the moment, we are in a quite different economic environment, and many of the companies are building reasonable surpluses. The point of that is that, when the economy turns down—and, in our view, it probably will one day—we are going to need to be able to call on those reserves to maintain the employment of our apprentices and to keep them operating. The disadvantage from the group training companies’ point of view is that we get apprentices

returned to us. If we are in a poor labour market when that happens, it is then extremely difficult to go on and place them elsewhere.

**Senator WOODLEY**—For that period, do you then become the employer?

**Mr Kirby**—Yes, and we are paying their wages, and we are not able to recover them. We put in place strategies to get them back into that work force, and those strategies cost substantial amounts of money. Those reserves allow us to get through those periods and ride out the ups and downs of the economic cycle.

**Senator SHERRY**—On that point, it is true, isn't it, that you are always the employer?

**Mr Kirby**—That is right.

**Senator SHERRY**—You have an ongoing legal liability to pay the apprentice or trainee—if it is an apprentice, for four years. You have an ongoing legal liability to pay them, whether or not they are placed with an employer.

**Mr Kirby**—That is right, yes.

**Senator WOODLEY**—It seems to me that is a very creative use of your surplus. Surely, the government would be very sympathetic to that proposition.

**Mr Kirby**—The only comment I can make is that government bureaucrats seem to have a very schizophrenic approach to this. When we do not have cash reserves, they belt us because we are not good managers of our finances. When we do have good reserves we are belted with, 'What are you doing? You're raising lots of money.' You cannot win with this particular one and, from my point of view, that is a real concern. I find you are damned whatever you do. If we have not built the reserves, get a bit of a downturn and have financial problems within the group training network, we are told that we are poor financial managers. We are asked, 'What's wrong with you?' When we build cash reserves to meet that downturn—

**Senator WOODLEY**—We might ask some questions of the Taxation Office later in the day on this one.

**CHAIR**—Thank you very much, Mr Buchanan and Mr Kirby, for appearing before us this afternoon.

**Proceedings suspended from 12.08 p.m. to 12.21 p.m.**

**O'FLYNN, Mr Herbie J., Representative, Australian Catholic Church Tax Working Group**

**CHAIR**—Welcome. We have your submission. Do you have an opening statement that you wish to make?

**Mr O'Flynn**—In trying to make sense of the submission itself I have just a couple of points. One is that the Catholic Church is a very large and complex organisation. It is structured legally, certainly in this diocese, as a property trust under New South Wales law as well as under ACT law. So there is only one legal entity for the diocesan church.

There are other trusts—for example, the sisters who run the hospital or the brothers who run Marist College or Daramalan College—that are under separate trusts. But here there is just one legal entity. I just wanted to highlight that because the church works through canon law, as I am sure you understand, and it tries to use a principle of subsidiarity—in other words, things are done at the lowest level that they should be done at. If you mix that with the complexity of the church, plus the fact that we are always trying to do things better for the administration and cost of management, it does mean that the major difficulty, which has been put to you in that paper, is that if we have to keep breaking down organisations to that lowest level and then registering them we are going to get to be a very complicated organisation in a lot of ways.

The main point they want to put to you is that, if the trust is a tax exempt organisation, all of those entities, subsidiaries and bodies that work within the trust—not separately incorporated or separately under any other legal structure, but those that belong to the trust—should then take the tax exempt status of the trust. I think the feeling is that if we have to comply with the act as it is being proposed, it could mean that we would have to register right down to those low levels, which often would bring much more complexity into our organisation than we have. That applies to the tax exempt status as it does to the tax deductible gift recipient status.

I suppose it is summed up in the last paragraph, which basically says that, for organisations such as the church that have a trustee arrangement, any fund or entity within the church that is still carrying on the main duties and functions of the church should carry the same tax exempt status or tax deductible gift status. That is the key. Thank you.

**CHAIR**—Thank you, Mr O'Flynn.

**Senator SHERRY**—What sorts of activities within the trust organisation that you currently operate do you believe could be affected by tax changes? Can you give me some examples?

**Mr O'Flynn**—I suppose I would see it as being right down to the parishes that are still owned by the church; they would have to be registered quite separately. Some of them we will register for other purposes, but it would be a shame if every parish, every building fund of the parish and every structure within the parish that is still owned by the trustees had to be registered.

**Senator SHERRY**—Obviously, there is a legal cost as well as an administrative accounting cost associated with the breaking up into separate legal entities.

**Mr O'Flynn**—Yes. Especially if you have to have committees and constitutions. Often when I have written to the government over things they have written back and said, 'Give us your constitution.' And you say, 'Well, I don't really have a constitution where I am; it's only the church trust.'

**Senator SHERRY**—So you have, say, the one church trust, but you could potentially be looking at—and it would depend on the diocese, I suppose—hundreds of different organisations and committees that would require some sort of legal definition, and the costs associated with that.

**Mr O’Flynn**—Precisely. Within the Archdiocese of Melbourne, which is the biggest one in Australia, there are 250 parishes; you would multiply that further by schools and building funds and other organisations that are added on to that; it could be in the thousands.

**Senator SHERRY**—So it would move from, say, one overall umbrella organisation to literally thousands in that case.

**Mr O’Flynn**—Precisely.

**Senator SHERRY**—You mentioned the costs of fundraising. We have had submissions from the Fundraising Institute—Australia. Is it your understanding that the costs of fundraising will not be tax exempt?

**Mr O’Flynn**—No. It has not been that. The only item I had there was that the cost of administration in fundraising should be able to be met from the gift fund. So if administration is involved in an area which is, within the church, receiving tax deductible gift status, the cost of that administration should be borne within that fund, but not on the other side, no; I did not see that.

**Senator SHERRY**—We have to clarify that with the ATO. But if that were the case, the costs of fundraising were not tax exempt, would that be an additional burden?

**Mr O’Flynn**—It is always hard. When we go out with these things, because of the administration costs that we try to minimise all the time, we might be eliciting funds for a variety of trusts at the same time, which might be looking at sick and retired priests or the blind or Aboriginals—a wide range—it all comes into that and is then disbursed into trusts that would exist below that. So, certainly, yes, that would be an extra cost in the cost to us if we could not get the same status.

**Senator SHERRY**—Do you use professional fundraising companies at all?

**Mr O’Flynn**—The church tends to do it itself, but we do use professionals if we need advice of some sort. At the moment in this diocese we are looking at putting a bequesting foundation in place. We have gone to a number of professionals to ask them, and have paid for their opinion, about how we should structure it. At the end of the day we will do the fundraising for it, but we will get that professional opinion there.

**Senator SHERRY**—And obviously you will be charged accordingly.

**Mr O’Flynn**—Yes. We will be charged accordingly and will pay that fee to them.

**Senator SHERRY**—Are you concerned about additional cost pressures on your operation? Are you able to meet demand in the community for your range of services?

**Mr O’Flynn**—I would have to say that most of the dioceses could not meet the current demand at all. A lot of them have lived in the past on interest generated from investments, but now the interest rates are down so low and investments are being eaten up. They could not cope with any more demand on that. If we had to do that outside of our current tax exempt status or gift deductibility status, it would certainly be an extra impost on it.

**Senator SHERRY**—So it would hurt, for example, people in the community that you assist—whether they be the homeless, people who do not have employment or food, or even retired priests.

**Mr O'Flynn**—Yes, precisely. It would mean that a lot of those programs would have to be reassessed.

**Senator SHERRY**—When you say reassessed, that means cut?

**Mr O'Flynn**—It means cut, yes. At the end of the day, if we could not do it and could not pay for it, it would have to be cut.

**Senator SHERRY**—One last point: have you discussed this issue with the tax office at all?

**Mr O'Flynn**—I cannot answer that for the committee, I am sorry.

**Senator SHERRY**—Have you discussed it with anyone within government?

**Mr O'Flynn**—I am sorry, I do not know the answer to that.

**CHAIR**—Before asking a question, I should declare an interest as a Catholic part of this committee. Senator Sherry down the end is taking note.

**Senator SHERRY**—I do not think we would ever hold that against you. I certainly wouldn't.

**CHAIR**—Thank you, Senator, I know that. You have described the structure of New South Wales and of Victoria. May we assume that the other state archdioceses are structured similarly?

**Mr O'Flynn**—I think the New South Wales dioceses, of which there would probably be about 10, are under a property trust act. In Victoria, Tasmania, South Australia and Western Australia it is a corporation sole, but it is a similar structure in that there is just one legal body. I think it is the archbishop or bishop in those areas, whereas in New South Wales it is a trustee organisation.

**CHAIR**—Just following on from Senator Sherry's last question, could you perhaps check with your chair, Mr Exell, as to whether or not there has been any direct contact made with one of the ministers or minister's offices about this matter and let us know?

**Mr O'Flynn**—I will.

**Senator WOODLEY**—I am very interested in this whole issue because it affects all the churches, and they have got different incorporation. Do you know how many dioceses there are in Australia in the Catholic Church?

**Mr O'Flynn**—There are 23 dioceses.

**Senator WOODLEY**—There are 23 dioceses and each would have multiple parishes of course, and each parish would have multiple organisations. We are looking at really thousands and thousands of entities.

**Mr O'Flynn**—There are 23 dioceses, but on top of that you would add the religious orders that run the hospitals, schools and aged care institutions of their own besides the diocesan ones. There would be, I am guessing, maybe another 23 or 30 of those. There could be 50 organisations then with subsidiarity going on there.

**Senator WOODLEY**—I am underlining the point because I do want the tax office and the government to get a feel for the 'monster' that has to be addressed at this point. We are looking at tens of thousands of entities that are grouped together in various ways. I suppose I should declare my vested interests, too, as a Uniting Church minister. Just within the Catholic Church, for instance, some of the St Vincent de Paul organisations are separately incorporated, and so you go on. It really is a very large thing that we are trying to get hold of.

**Mr O’Flynn**—I think that is a good point. Besides what I was talking about, which are the diocesan and religious orders, there are also those affiliated organisations that are separately incorporated. They do not come into what we are talking about here. They would actually meet their own requirements.

**CHAIR**—Are there many of those?

**Mr O’Flynn**—I think probably there would be. How big each one of those is I do not know. It would be like St Vincent de Paul, and then broken up and incorporated by states. I am really not sure within that how many there would be, but there are aged care places that are separately incorporated in other societies that are separately incorporated. The feel from the church’s point of view was for bodies that are not separately incorporated but just come under the ownership and umbrella of the church.

**Senator WOODLEY**—There is an interesting request in your written submission which would open up a very significant debate in Australia if we acceded to it, and that is:

Churches . . . should be understood as charitable not merely because they are for health or education purposes but also because they promote the advancement of religion. This should be embodied specifically in the legislation.

The problem with that is that it probably would be seen to be against the Australian Constitution, which prohibits the establishment of any religion. ‘Establishment’ has been defined over the last century in various ways, but it is a veritable Pandora’s box. I have a feeling that that one might not succeed, but it is a very big debate. You might like to comment.

**Mr O’Flynn**—The only comment I could make from a personal point of view is that it would be wrong for the churches to break themselves into those various areas. Often when we come to seek some exemption or to gain some status we are told, ‘It would be easier if this was just an educational matter; we’ll break you into educational’—or charity or public benevolent institution—‘because you obviously meet those criteria.’ It would be a shame if the church was then broken up into those areas, when in fact the activity they do tends to cover all those areas. Not all people do it, so not all parts of the church, and only few parts, have PBI status, but we would still not wish to make them a separate organisation because of that. I think that is what would lead to these sorts of words—that the religion is really a charity as well as a religion. Not all charities are religions.

**Senator WOODLEY**—It is good that you are very frank in your submission, but I was just raising that issue, which we have debated for the last 100 years. Another issue in your submission, and again I can well understand it, is that of subsidiary bodies which do not have tax deductibility status, but the overall body does and they are able to shelter under that. Do you have any advice for the committee? I do understand that one of the reasons for the government raising this in legislation is that there has been ‘a point at which some rotting has occurred’. It is not necessarily within the churches, because we are talking about subsidiary bodies. For instance, a situation could arise where one organisation which has tax deductibility status receives donations for another organisation, which is quite separate, and possibly even for a separate purpose, but then hands the donations over and transfers their tax deductibility status to another organisation. Do you have any advice for the committee about how we could deal with that legislatively if we were sympathetic to your proposition, which I certainly am.

**Mr O’Flynn**—This tries to make clear that it is like a grouping, so it would expect that any subsidiary organisation operates within the same rules and is not outside them. That would be seen to be a rort and I would not think the Catholic Church would be in that at all.

**Senator WOODLEY**—I was not suggesting that.

**Mr O'Flynn**—I would imagine that that is open to scrutiny. That is all I can suggest—otherwise you are right, it could lead to something. But providing it is a matter of grouping, and I think that is the issue, any subsidiary organisation must operate within the same rules, and it would be a shame if in some ways we had to be regulated down to the bottom line because there was seen to be the possibility of a rot in those organisations that were not good corporate citizens.

**Senator BARTLETT**—Firstly, a question about the links down the chain with the various components. In terms of the archdiocese and the church, is there any link upwards, either nationally or internationally with the Vatican?

**Mr O'Flynn**—No, not legally. The Australian bishops gather as a conference to discuss things and we would sometimes seek to use that organisation but, no, there is no supertrust that looks after all of the dioceses. From a legal point of view there is not. Canonically, within Catholic Church law, there would be some reporting requirements. Does that answer your question?

**Senator BARTLETT**—I think so.

**Mr O'Flynn**—It is not a corporate legal structure within Australia.

**Senator BARTLETT**—And the links back to the Vatican are under canon law?

**Mr O'Flynn**—Those are under canon law and by way of consultation and reporting, rather than by any other control.

**Senator BARTLETT**—Is there much of a cross-transfer of funds between sections? I guess one of the issues is if each down to a certain level has to establish its own gift fund and can only use it. I presume that area would preclude any transfer across. Does that happen in various circumstances?

**Mr O'Flynn**—Yes, I would imagine more so down than any other way, so certainly when money comes in it could come in at an upper level and then be dispersed down to different levels. Once it gets there, it tends to stay down there and not really come back up again.

**Senator WOODLEY**—But what about organisations like Caritas, for example? Money would be collected at parish level?

**Mr O'Flynn**—Yes, it is; that certainly is true. It is collected at parish level and then sent back into a central organisation. That would be collected on behalf of Caritas and sent to them. But money that comes in often to the dioceses would then get dispersed into various funds and that would be a problem.

**Senator BARTLETT**—This is probably a difficult question to answer specifically but would you have a general idea of what proportion of overall church income comes from gifts and donations?

**Mr O'Flynn**—No, I really could not give you a percentage because of how the gifts and donations come in. Is your question related to something eligible for tax deductibility or just a donation? A lot of donations that come into the church have no deductible status whatsoever. That would be money that would come in for parish operations and would then go to the bishop from parishes that way. So they have no deductible status whatsoever and then there is other money that comes into school building funds and into other trusts which would have deductible status or that comes into our social welfare area that has deductible status. But the percentages I could not give you.

**Senator BARTLETT**—I am thinking of the income that would have to go into this new gift register or gift fund and how big a chunk that would be. I imagine it would be pretty hard work to detail that.

**Mr O’Flynn**—It would. This is always an issue within the church: if our main role is to be a religion, then all of these other things are quite a distraction if we have to keep accounting for them and doing all of that, not only a cost but certainly a distraction from what the main game is.

**Senator BARTLETT**—That leads to the final question I was wanting to ask you. Do you support or see a need for establishing a separate fund through which the church—whether it is all its subsidiaries or just a small number—would have to track and account for funds? Do you see that as a reasonable requirement that the government is now trying to put on organisations such as yours?

**Mr O’Flynn**—I would have say no just from a manipulation point of view of trying to do the administration. It is certainly much better, when people are giving money, to be able to get finely focused as to where it is, rather than its going into some general fund which is later dispersed. Is this what you mean—a central fund which would replace all these subsidiary funds and all the money would come into that?

**Senator BARTLETT**—That would just be for the purpose of this section of the legislation that we are dealing with, which is to establish a gift fund. It requires non-profit organisations to establish a specifically and clearly delineated gift fund and then to account for the money and demonstrate that it is spent on particular activities. I presume the rationale for that is transparency of the whole tax deductibility of gifts, but I wonder whether you would see that as appropriate or desirable in terms of what impacts it will have on the operations of your organisation.

**Mr O’Flynn**—I could not see it as being very desirable from our point of view. We would not go for a central, large fund. That would not really work very well. I am sure that it would mean we would have a multitude of smaller funds which would then be more difficult to administer and to manage.

**Senator SHERRY**—How do you see businesses that are operated by the church being treated for tax purposes? I will give two examples that come to mind. One is property, whether it is residential or commercial, owned by the church and then rented out commercially. The other is Catholic bookshops, where you sell books and the general public would obviously be able to purchase books but I am sure that at least some of them—usually on religion—would be available from other bookshops. How do you see the tax treatment of those two particular activities?

**Mr O’Flynn**—I suppose that on the property side under the current legislation the trust does have money and it needs to earn interest on that money so I could not see much difficulty, providing it was not outweighing other sources of income. In other words, the trust here in the ACT needs to put its money on the market to do something to earn interest that is not currently being used. Some of that might be involved in property acquisition or in rental. Sometimes property is left to the church and it is not a matter of desiring to get into it but the church is involved in that. I would still see that as just part of income generation for the church, providing it is not to such an extent that it is outweighing the other work of the church.

**Senator MURPHY**—What about the question of competition where you are competing in retail with other retailers?

**Mr O'Flynn**—If the church were to run other sorts of shops, then of course that would clearly be not following the church's whole purpose of existence. That we run a religious bookshop to get religious books into the market seems to me to be in line with what we are doing but if we were selling shoes or were in some other business such as wine—

**Senator SHERRY**—I understand that but you would appreciate it becomes a bit hazy at times. You might be selling postcards or books that are generally about religion—they might not be Catholic specific—that would be available in other commercial bookshops. It does become a bit difficult, doesn't it?

**Mr O'Flynn**—Yes.

**Senator SHERRY**—I will give you another example. Certainly in my state of Tasmania a church that I am aware of—and this is not about the Catholic Church—operates a commercial printery in direct competition with commercial printeries that are not operated or owned by a religious organisation. Do you see the difficulty with that and what that leads to?

**Mr O'Flynn**—I can and, unless there is some particular link with the church and that is the majority of their work, I would see that would be unfair competition. But I would not judge its existence solely on the fact that it exists or it does not exist. As with the books, I think there is some connection to getting that material into our parishioners' hands, and that would be covered there. These are not terribly large organisations at the end of the day.

**Senator SHERRY**—I know.

**Mr O'Flynn**—We cannot even make them pay, to tell you the truth. The bookshop cannot even get to its break-even point, so in fact the church subsidises that in order to get that material into the market.

**Senator SHERRY**—By way of background, have you been involved in the church organisationally for a significant period of time?

**Mr O'Flynn**—Yes, I looked after the Pope's visit when he came here—that is 10 to 12 years ago—and I have been involved in the church since at parish level and at diocesan level. I am more on the money side at the moment, but I have been involved in church reorganisation.

**Senator SHERRY**—From your general knowledge and observation, has there been an increase in the number of religions operating in the country in the last 10 or 15 years?

**Senator WOODLEY**—And how!

**Mr O'Flynn**—Anecdotally, I would have to say yes. Some of the new age religions certainly are there.

**Senator SHERRY**—The fringe counterculture types—that would be my description.

**Mr O'Flynn**—Yes. Anecdotally, I think that is true. Certainly, the main religions that you would think of are dwindling in numbers. Attendance in church is getting less and, again anecdotally, I think 10 years ago people went to church more than they might do now.

**Senator SHERRY**—Are you aware, for example, that there has been an ongoing dispute—particularly in the United States but I do not know about here—about scientology: is it a religion? It is extraordinarily wealthy, as I understand, and operates a whole range of business activities. There is a difficulty in definition in this area about what is a religion and what is not.

**Mr O'Flynn**—I agree. I think at the end of the day somebody has to sit down and say, 'This is acceptable because it goes that way.' All we can say is that we have been around for 2,000 years and hope to be around for the next 2,000 years.

**Senator SHERRY**—I accept your bona fides. I am a bit doubtful about the bona fides of a few others that have been springing up but there is no question about your bona fides.

**Senator BARTLETT**—Are you trying to argue the ALP is a religion, Senator Sherry?

**Senator SHERRY**—The Catholic Church founded the Labor Party so I have no problems in accepting your credentials, Mr O'Flynn.

**CHAIR**—Thank you, senators. Thanks very much, Mr O'Flynn, for coming here and appearing before us this afternoon.

**Mr O'Flynn**—Thank you very much.

**Committee adjourned at 12.51 p.m.**

**Committee met at 1.50 p.m.****McGREGOR-LOWNDES, Dr Myles (Private capacity)**

**CHAIR**—The committee is continuing its hearing into A New Tax System (Tax Administration) Bill 1999. I welcome Dr McGregor-Lowndes to this inquiry. We have received your submission on this bill and also the following one, the Taxation Laws Amendment Bill (No. 8) 1999, which we will deal with next. Do you wish to make an opening statement?

**Dr McGregor-Lowndes**—Yes, just a short one on some of the issues that have already been raised. Senator Sherry asked for statistics on fundraising costs. It is very difficult to get any clear picture on that. We lack a formal framework of measuring of non-profit income or fundraising costs, and we do not have any accounting principles like in the UK, the US and even New Zealand, which makes that difficult and it is a continuing problem.

With respect to the claim by Group Training Australia that they think they may have a problem with surplus monies and their tax exemption, I have never run across that issue with the ATO about having surpluses. There may be issues about whether you are performing your principal object, but usually whether you have a surplus or not does not figure in the tax exemption classifications that they do.

Senator Gibson asked about the structure of the Catholic Church. It is an absolute mystery. It is one of those enduring matters. You could lock an academic away for years and they would eventually produce something—a life's work. The GST has brought to the surface the issue of church structures, how complex they are and how important they are for delivering religious and welfare services. I welcome the statement by the Treasurer that he is going to make flexibility for grouping and branching with the GST. That is an excellent move.

Senator Sherry asked whether there was an increase in a number of religions. Yes, there has been a marked increase in the number of religious groups, particularly charismatic and fundamental groups. From the rumours one hears from the ATO, that is an area of concern to them, particularly with respect to fringe benefits and other tax compliance issues.

In summary with respect to the tax administration bill, I presented a fairly long paper, but I wanted to touch on a couple of issues. There is a suggestion that there is a threat to the taxation base in this sector. I have never been quite able to get to the bottom of what the threat is and I think it is about time that the threat was identified and those perpetrators dealt with. I believe that publicity of such matters, particularly in the charitable sector, would bring such moral odium on such people that are using the taxation system and deductions in order to masquerade as charities, that that may well be a deterrent.

I also believes that it is about time that gift deductible organisations which are participating in a tax expenditure have fully public accounts and that they are published. This has happened for decades in the US where they have a tax return for organisations which have tax deductibility status or other favours from the States called a form 990. It also serves as a regulatory statement for fundraising and other issues and it is available in the public. More recently, they have switched to donors being able to ask for that statement and it must be given on demand within a very short period. Most organisations are publishing it on their Internet site so you can gain that information. That sort of public accountability would stop many of the rorts, make it more open and accountable, and I would support some move in that direction.

With respect to the Australian business number and the registrations, there will be a huge number of these. The tax office has about 30,000 presently registered on its gift database which

you can search on the Internet. They are expecting something in excess of 200,000 registrations of funds and organisations. This is going to be a huge undertaking for them. Many non-profit organisations have largely been outside the tax system and so this will come as somewhat of a shock.

I have been somewhat involved with the ATO in recent months because I have been appointed to the charities consultative committee which was set up between Democrats and the government out of that later. ROGATE has been mentioned several times there. The officers are very diligent. They are competent in my view, but they have a huge task. I want to challenge the committee to make sure that they have enough resources to do the job properly and to educate the sector, because it their first time in this process. There are some exceptions to this registration, and I wonder why political parties who can get gift deductions and the specifically named organisations such as Amnesty International, Nursing mothers and a whole host of others are not covered by this as well.

I have some issues about the Australian Business Register which will be set up to list these so that the public can look to see whether an organisation is donation deductible. Organisations go under a number of names. Their formal name of the Catholic Church or arm may not be what they are commonly known as. In Brisbane the Mater Hospital is a very big fundraising charity, but it is not known in law as the Mater Hospital and you would never know by searching the register. They need an 'also known as' tag on the register to make it through.

How the ATO is going to vet all these organisations to see that they are what they are, is going to be difficult and resource intensive. It is not a tick and flick by a junior staff member. An assessment takes quite a deal of time and people have to take it seriously. The best way is for the tax office not to have to go through every application, but by proper education means to get the sector to comply. There will be a reduction in costs on both sides.

Maintaining a gift fund has been mentioned previously in these hearings and a little bit of clarification is needed. I would push that the clarification be made in the legislation itself, rather than the public ruling which may or may not come. That is because I have some difficulty with some parts of the public ruling on school building funds, which seems to measure the same provisions. Here it is about whether a swimming pool is a building. The tax office says that a swimming pool in a school is not a building, but if you put a wall up and a cover over it, it then qualifies as a building and becomes gift deductible.

Those are the sorts of things that the tax office has to rule on. They are forced to by law and the interpretation, but those really fine distinctions are lost on people and in my view it brings the tax system into disrepute. A school includes a swimming pool in Queensland where I come from. If you do not have a swimming pool, you have to get one because of the heat and the necessity to learn to swim. It seems counterproductive and brings the tax system into disrepute. One of major issues with respect to tax compliance in Australia is that people hold it in disrepute as being overly complex or difficult to administer, and they will not comply voluntarily and look for aggressive loopholes.

The other thing is the definition of what a charitable institution is. As you can see, I do not think that the common law definition as it is applied in Australia at the moment is given enough clarity. There are going to be problems. My suggestion is that we need to have a look at the definition of charity and the definition of public benevolent institution and get better definitions, because it is causing all sorts of distortions and problems. That has occurred for many years, but it will only be magnified in the future, as these definitions for GST and this registration process start to bite.

**CHAIR**—But you are not suggesting that for the bill that is before us today; we have to report in a week's time.

**Dr McGregor-Lowndes**—No. I am just taking the opportunity to push a barrow, that you ought to send it off to the Australian Law Reform Commission for review.

**Senator SHERRY**—You are recommending effectively that we defer consideration of this legislation—

**Dr McGregor-Lowndes**—and put it off to the law commission.

**Senator SHERRY**—Because of the reasons you have outlined?

**Dr McGregor-Lowndes**—No. In a perfect world I would like the tax office to issue the rulings now for charities to have time before 1 July. That is not going to occur. They need to have something very soon for the purposes of GST and registration. Although I would like to put it off—because charities are going to have a FBT issues, GST issues and these issues all coming on 1 July; it is going to be a massive impost for them—and I think the only practical thing to do is to send this reference off to the Law Reform Commission to fix up the whole mess that it is in, I do not think you can wait until that is done.

**Senator SHERRY**—It seems to me that you are saying, 'There is going to be a mess. Pass the mess and refer it off to the Law Reform Commission to restructure to resolve the mess.' That seems to me to be the wrong way around.

**Dr McGregor-Lowndes**—It has been a mess for 20 to 25 years; it is just that the mess is going to come into public focus, because the tax office is going to be registering people and people are actually going to find out. We have been able to gloss over it and not pay too much attention to it. Because they have taken the definition of charitable institution into the GST for separating people, it is going to come into sharp focus. It is not that this legislation creates a mess; it is that the mess was already there but is going to come into focus, because it is used in a whole lot of ways.

**Senator SHERRY**—Do the changes compound the mess?

**Dr McGregor-Lowndes**—No, I do not think they compound the mess; they are just going to focus on it and it is going to become much more important for charities and others to work in the mess and find out what they are.

**Senator SHERRY**—We had evidence this morning from the Fundraising Institute. Are you aware of their submission?

**Dr McGregor-Lowndes**—Yes.

**Senator SHERRY**—I notice you referred to other submissions in your—

**Dr McGregor-Lowndes**—That was their submission before the Industry Commission. The Industry Commission several years ago did the same sort of thing. Unfortunately, this great tome of work—although I do not agree with it—because of political exigencies has just been left. It had a whole lot of good recommendations about the definitions of charity, fringe benefits—the lot—but, because it came down just because an election, it just got shelved.

**Senator SHERRY**—The Fundraising Institute was concerned about the impact of the proposed arrangements on the fundraising industry. Apparently, a significant proportion of moneys that are raised in fundraising activities, they believe, without the legislation being clarified, would be subject to tax, and they have not been taxed before. Are you aware of that problem?

**Dr McGregor-Lowndes**—No. I did not quite understand that that was what they were saying. They were saying that the gift deductible fund is going to be formalised by this legislation. The ATO has made noises that it would like this to happen, and in other areas, such as school building funds, it has actually happened. They are worried that the moneys can only be used for the benevolent principal purposes and not to cover administration. I am not so sure. We want to know what the tax office is going to do—for example, they allow building funds to be used not only for building but for security costs, for looking after the school and maintenance and some other things. We just do not know what it is going to be. The problem with the rulings is—although they come out in draft form and you get a chance to argue about them—if you want to take it further, you have to take it court. It is expensive to go to court. Charities do not like to go to court, so it will stay there for years, because nobody really pays any attention to the charity regulations. It has been disregarded.

**Senator SHERRY**—The Fundraising Institute put to us that they want just to include a few words to amend the bill to ‘include costs associated with establishing, maintaining and obtaining gift funds.’ Do you have a view on that?

**Dr McGregor-Lowndes**—In an ideal world I would like to see it clarified in the legislation or, at the very least, in the explanatory memorandum. I think the school building fund, which allows for security costs and a few other things, would be preferable. But, whatever the situation is, it needs to be made crystal clear—if not in the legislation, then in the explanatory memorandum—that it is the intention to cover those sorts of things.

**Senator SHERRY**—They are saying that the tax office have said that they can issue a ruling. But how can the tax office issue a ruling if the law does not allow them to do that?

**Dr McGregor-Lowndes**—I am not so sure that the law does not allow them to do it. You can read it two ways, and it just depends which interpretation you take. The legislation, on one interpretation, would allow things incidental to the principal purpose, and I believe—from informal conversations that I have had—that is the line the tax office are taking. But, of course, that has to stand up in court, if it gets there, and there may be a change of personnel in the tax office. It just needs to be clarified.

**Senator SHERRY**—Would it not be better to put that in the principal legislation?

**Dr McGregor-Lowndes**—Yes. I would go, in order of my wish list: principal legislation, explanatory memorandum.

**Senator SHERRY**—The Fundraising Institute claimed that what they are seeking is consistent with the agreement that they understood that the Democrats reached with the government on this issue.

**Dr McGregor-Lowndes**—I do not know of that.

**Senator SHERRY**—You are not aware of that?

**Dr McGregor-Lowndes**—No.

**Senator SHERRY**—There could be confusion or particular problems with this definition. The Fundraising Institute is claiming, for example, that the Royal Flying Doctor Service—and there was a representative of their organisation here—would have to raise an additional \$3 million a year to offset the additional costs they would face and that it was just not possible to raise that amount of money unless they got a favourable ruling and, as a consequence, they would have to cut services.

**Dr McGregor-Lowndes**—That scenario has been widespread among the non-profits that I have raised this issue with. The other thing is that if it is in a separate trust fund you cannot

amalgamate it with your other funds to put it on the short-term money market in one large lump and get the best interest rate. So those sorts of issues are also inherent in this. I think the policy is that you need to ensure that the money is accounted for, that it is used for the appropriate purpose and that it is not passed on for some non-deductible purpose.

**Senator SHERRY**—Lastly, we have also had a representative from the Catholic Church Tax Working Group, Mr O’Flynn, who outlined practical problems they see. They have a common trust structure in the states that legally retains management and ownership of all of their property and activities within the state. They are expressing concern that they may have to break down entities that are within that common trust structure at the moment. Do you have a view about that?

**Dr McGregor-Lowndes**—Yes. Many school building funds, for one reason or another, have not gone and sought approval from the ATO, and they need not have done that under the law. So, in the Catholic system some dioceses have over 2,000 different funds that they are going to have to register, so that is going to be a mass of paperwork. In most other countries in the world they register these gift deductible funds. Then make them lodge tax returns and they supervise them and make those returns public and accountable. Australia has not done that. My real problem is that this paperwork occurs with FBT changes and GST coming in, and it is going to be a big impost and a big ask of them. So what we need is the ATO properly resourced, a proper education program and a bit of leniency.

The other thing, which may not come through in my submission, is that I think the ATO needs to establish quite clearly an expert specialist unit in this area. Other countries—Canada, the UK, the US—have this and it works well. We need to move towards that in Australia. It has lots of benefits. At the moment, the ATO’s framework on the world is business—small business, large business—individuals and tax practitioners. At the moment they classify most charities under small business, gifts advising. It is just inappropriate because charities and non-profits are different from small business. I think they have come to that realisation through the GST process. I really think the ATO would be well advised to establish a specialist tax charity area. Often these areas not only regulate; they help inform and educate because you have a continual turnover of treasurers who need to be educated to comply with the tax regulation.

**Senator WOODLEY**—I want to pursue the PBI definition. You have suggested that the Australian Law Reform Commission would be the appropriate body to do that. Could you give us a bit of an outline why you think that?

**Dr McGregor-Lowndes**—Yes. The definition of PBI is problematic. It is based on outmoded concepts which do not correlate to modern policy welfare formulations. It is becoming contradictory because of cases. It is becoming very difficult and complex and away from the touchstone of commonsense. For example, for public benevolent institution, if you are helping people directly you often can be a PBI, but if you are trying to prevent an occurrence occurring—prevention such as marriage counselling or preventing people from beating up their wives or their children—you often find that that will fall outside the definition of PBI; whereas, I think it is more in line with modern social policy to accentuate the prevention because it costs less and produces better outcomes.

Why the Australian Law Reform Commission? It is basically the lawyers who have got us into this muddle with cases and technicalities. They have to draw attention to it. There is a trend in major welfare economies and Commonwealth countries for a review of the definition of tax exempt and tax deductible entities. There has recently been an excellent report on the

definition of ‘charity’ by the Canadian Law Reform Commission. The Charity Commission in England is at the moment undergoing a process of consultation for three years about the definition of ‘charity’. They are reviewing the register and what is difficult in the definition—culling the old ones. It is an ongoing process.

Australia needs to address the same sorts of problems, but it is very difficult for politicians because they attract a whole lot of flack about it and disturbing that peace of charities and the order. So it is a hot issue. If the Australian Law Reform Commission can bring down some legal guidelines, accentuate why the system is broke and have some policy directions—and I would hope they would go along the line of the UK Charity Commission or the upcoming Canadian reforms—I think we will be well on the way.

**Senator BARTLETT**—You outline the imputation credits anomaly in your submission. Would that be able to be addressed by an amendment to this bill?

**Dr McGregor-Lowndes**—I do not think so. I have not considered that point. It is an issue which was raised back in the Industry Commission and I do not think it would have too many revenue effects.

**Senator BARTLETT**—In terms of the establishment of the register itself, you outline that as a new condition, even though the explanatory memorandum claims it is an implicit requirement, but it has not been done before.

**Dr McGregor-Lowndes**—It has not been mandated before, but it is quite common.

**Senator BARTLETT**—You have stated that you may need to get 200,000 registrations as opposed to what we have currently—30,000. That is going to happen anyway, is it, because of the GST?

**Dr McGregor-Lowndes**—The definition of ‘charitable institution’ is used frequently—and ‘charitable trust’, ‘charitable fund’ and ‘charitable fund trustees’—for GST-free purposes. People have to know very clearly whether they fall into those categories for the GST to work at all. It would be absolutely catastrophic for a charity to believe it was GST free, operate on that basis and a year down the track to have an ATO audit decide that they are not a charitable institution and to find that they are up for all the GST. There would be a horrendous consequence. Every volunteer treasurer would just leave after the first case. It is a worst case scenario. We need our non-profit sector and we need to be clear about these things, even if it means that people do not get GST free. That is better than it being undecided and people not knowing.

**Senator BARTLETT**—In terms of putting this in place, do we need this register? Does it serve a worthwhile purpose? Is it necessary? Could we just slice this bit out of the bill and all would be fine?

**Dr McGregor-Lowndes**—Any other time, I would support the register because it is a move towards public accountability and transparency. The big issue is that this comes on at the most turbulent tax time ever in the federation for non-profits. They are going to have a really tough time. You cannot delay it, but you can make sure that adequate resources go into the ATO in order to do it.

**CHAIR**—Time is running on. We had better move to the Taxation Laws Amendment Bill (No. 8) 1999 while Dr McGregor-Lowndes is with us. You have made a separate submission to us on that bill. Could you quickly make your key points about that, please?

**Dr McGregor-Lowndes**—Yes. I do not want to deal with this very much at all. They are technical points. The ATO can take them up, or not. The only thing I would like to make a

song and dance about is with respect to the initiative for private funds to come on board. Concerning these private funds—which will be like a private foundation, which Australia has not really had before—the legislation and explanatory memorandum say:

Private funds seeking to be prescribed in the Regulations will need approval from the Government.

I just do not know what is involved with that approval. If it is like the situation now that specific organisations can lobby the government of the day to get specifically mentioned in the deductibility act, because they do not fall within the definition of PBI or others, then—

**Senator GEORGE CAMPBELL**—That depends on whether you are running your agenda.

**Dr McGregor-Lowndes**—That is my point. All the politicians—I am not singling out anyone—all parties, everybody has been doing it. You find somebody who can leverage some political pressure on you and you give in and list them, and there they stay for all time. I think that it would be better dealt with by some sort of regulation; set the regulations for what is an appropriate private fund, what the accountabilities and transparencies are and, as long as they meet that set of criteria, then they can become a gift deductible private fund. I am reluctant to have politicians approving it. I think the cost and the energy that non-profits will have to go through to get the approval will stifle philanthropic endeavours in Australia. Remember the baby boomers are coming up to transferring their wealth. This is Australia's big opportunity to create foundations in order to fund the non-profit sector for a long time in this country as an alternative to government funding or earned revenue through fees and charges. I would really like to stress that that ought to be prescription by regulation not by politicians.

**CHAIR**—Are there any questions on this bill?

**Senator SHERRY**—You refer to baby boomers and property and philanthropic activity. Are you seriously suggesting that philanthropic activity should form the basis of a substantial proportion of the funding of our education and health systems?

**Dr McGregor-Lowndes**—No, but I am realistic enough to know that the statistics done so far show that in Australia 65 to 67 per cent of income for non-profits comes from earned income or fees and about five per cent to seven per cent comes from private donations or foundations, and the rest comes from government. The bit from government is shrinking. The earned fees are increasing. I want to make sure that they get the best opportunity possible to get some of that transference of wealth that everybody tells us is coming up, so that it is a good independent source of funding, that is a diversification of income for them.

We need to develop our philanthropic foundation endeavours. I think there is going to be a boon in community foundations. They are taking off big time in Queensland, Tasmania and Melbourne. It is in its infancy, but I would see it as a diversification of income for non-profits and a particular seed capital funding for non-profits—a take-up where government will not go and when you cannot earn income and fees. It is an important segment, but it is not going to solve all the problems.

**Senator WOODLEY**—I want to tease out the whole issue of how we allocate tax deductibility status. You were saying that that often is a political process. I recall that the Democrats ran the RSPCA cause for some years, and probably some people in this room may have been involved in that. Is that what you mean?

**Dr McGregor-Lowndes**—Yes. Nursing Mothers was another wonderful case study. The wives of parliamentarians who were nursing mothers or connected got heavily lobbied. There were 10,000 letters. Even Stone, who was the Treasurer at the time—a wily old fox—put up

his hands in surrender at the end of it. It is a matter of whether you can get that political leverage.

**Senator WOODLEY**—You always surrender to the Nursing Mothers.

**Dr McGregor-Lowndes**—It should be on merit. The question you have to ask is: whom should the state favour? It should be done on a somewhat rational basis rather than on how much political pressure you can bring to bear. The whole definitional concept needs to be worked out and reformed. They are doing it in Canada. They have done it fairly successfully in the UK. There is no reason why Australia cannot do it. Australia needs to get down and do the hard yards. More than anything, that will improve the viability of the non-profit sector.

**Senator GEORGE CAMPBELL**—Are you saying that there should be a transparent set of objective criteria against which—

**Dr McGregor-Lowndes**—For private foundations, yes.

**Senator GEORGE CAMPBELL**—How far do you actually see this going in this country?

**Dr McGregor-Lowndes**—It is difficult to tell. I have personally come across a number of what the legal profession call high net worth individuals—for whom the average solicitor dreams of acting—who want to establish a foundation to do good, but they want to have their name and stamp on it. You cannot talk them into going into a community foundation or giving it direct to a non-profit; they want their name there as a bit of a legacy, like the Americans.

**Senator SHERRY**—Why not tax them and call a tax after them—for example, the Murdoch tax.

**Dr McGregor-Lowndes**—Exactly. I have no problems with that as long as the money that you tax them goes to the non-profit sector. The reality is that you can tax these people but they still have money to give away. Let's help them give it away in a way which is not an abuse of the system and is transparent, and put it to a good cause. It is different from taxes in that there is a bit of discretion—sometimes government will not fund some things. That is the history of the non-profit sector. When the sector takes some initiative and does something, the government says, 'You've proved it works; it's a good idea. We'll fund it and take it over.' Just look at Blue Nurses and Lifeline. A whole lot of them were initially non-profit sector initiatives which were not government funded. They led the way and then government money came in once they had proven it. The non-profit sector needs to move on and, instead of being contract servants of government, to push back the frontiers of service delivery again. They can do that only if they get untied money from government, which is unlikely in these days of accountability. The other sources are money from earned income, surpluses or money from foundations who seed fund innovative ideas.

**Senator GEORGE CAMPBELL**—Can I just come back to the original point. Has your organisation or have you attempted to try to put a value on what these foundations are likely to generate, given that we have very little or no history of them in this country?

**Dr McGregor-Lowndes**—Philanthropy Australia estimate that it is \$1 billion a year. I think that is overinflated. The Queensland Community Foundation, of which I am a board member, has been doing some very innovative work with the Public Trustee. As the Public Trustee writes wills they give people the opportunity to be part of the Community Foundation. In the three years from start-up they have written \$26 million worth of donations in wills that will start to come in, and they have not even started to get going yet. I think there is going to be considerable money in that.

Transfers of wealth in this country are changing. Through history, transfers of wealth have occurred at birth, at marriage and at death. Now I think the main transfers of wealth in our economy are occurring with people's education—that is, where you give your money to your kids. You live longer so you need your superannuation, but you still have something left. Kids are often set up, healthy and self-sufficient, so people are not giving them their money. They want to give it to a charitable organisation or foundation enterprise. I am seeing more and more of that in the community, and I think that will grow amongst the upper income earners, certainly.

**Senator BARTLETT**—Can I just clarify that. I understand the main premise you are putting forward in relation to this bill is that the ability of people to set up private foundations is impeded because it is too bureaucratic, too uncertain or too difficult, and we need to make it more transparent and clear-cut.

**Dr McGregor-Lowndes**—I am saying that it should not be by approval of politicians. It should be by approval of parliament, but rubber-stamping a set of regulations going through the ATO. So if you meet these criteria you get it; not if you meet these criteria and have a politician onside you get it.

**Senator BARTLETT**—Have you got a suggested amendment that would achieve that?

**Dr McGregor-Lowndes**—Yes, I think so.

**Senator BARTLETT**—The other point is that, as I understand it, sections of the bill allow donors to choose to spread deductions for gifts to cultural entities listed at items (4) and (5) of section 30-15. As I understand it, that is just for cultural entities rather than for broader health, welfare, education or environmental entities. Do you see that as appropriate?

**Dr McGregor-Lowndes**—I would like to see it broader, but perhaps that is the next tranche of reforms for the PM's roundtable, which has still got legs. If it works well in that area, perhaps we will extend it. But, yes, I think it ought to be extended.

**Senator BARTLETT**—There is no particular policy reason that you would be aware of as to why it should be cultural entities?

**Dr McGregor-Lowndes**—I do not think there has been any given, but 'cultural' often involves very large gifts of property and buildings, and often donors cannot take full advantage of the deductions in the year of income, so it is recommended that it be spread and that that would encourage more donations. I think that if it works well you could move it to other areas. Again, that has financial-tax expenditure implications. But I think the government would get value for money.

**Senator BARTLETT**—Sadly, due to time constraints we cannot really focus on the special treatment of political parties, so we will have to let that one slide.

**CHAIR**—Dr McGregor-Lowndes, thank you for your submissions and for coming here to give evidence before us today.

[2.31 p.m.]

**KERR, Mr Michael, Legal Adviser, Australian Conservation Foundation**

**CHAIR**—Mr Kerr, welcome to this Senate hearing. You have made two submissions, the first one on A New Tax System (Tax Administration) Bill 1999, which is the one we will start with. We will then go on to the Taxation Laws Amendment Bill (No. 8) 1999. We have your submissions before us. Do you wish to make an opening statement before we go to questions?

**Mr Kerr**—I do not really wish to make an opening statement in relation to A New Tax System (Tax Administration) Bill because my submission only reiterated the point made by the Fundraising Institute—Australia. I believe that they may have already given evidence.

**CHAIR**—Yes, they did, this morning.

**Mr Kerr**—My submission basically reiterates a point made by the Fundraising Institute—Australia. Perhaps the committee does not really want me to comment any further on the point that I raised.

**CHAIR**—We will switch to questions from senators on this particular bill immediately, but thank you for making that point. You are correct; they gave a full statement this morning and we are fairly clear on the ins and outs of that.

**Senator SHERRY**—I notice you advocate in your submission that you want to allow a donor to choose to spread deductions for gifts to cultural entities listed in items 4 and 5 of section 30-15 over up to five years.

**Mr Kerr**—So we are now talking about the Taxation Laws Amendment Bill No. 8).

**Senator SHERRY**—Yes. Then you say, ‘It is our submission that with the increasing emergence of environmental problems such as salinity, loss of biodiversity and pollution. . .’ You want to be able to extend it to those types of areas.

**Mr Kerr**—Yes.

**Senator SHERRY**—Do you see any particular problems with an open-ended extension, even for these very worthy areas of environmental concern?

**Mr Kerr**—No, I do not see that there is a problem with an open-ended extension. In fact, I find it quite unusual that the drafters of this bill, or the government that has proposed it, have singled out cultural entities. Obviously cultural entities are worthy of the amendment that has been proposed and the benefit of being able to spread out deductions over five years. But it would be ACF’s submission that conservation organisations or environmental groups are equally as deserving, as are other organisations that deal with health, education and welfare. If an organisation has been given tax deductible status, obviously the Australian Taxation Office or the commissioner, whoever grants that status, believes that they are worthy in some respects. If they have already satisfied that threshold, they should be able to benefit from the proposed amendment.

**Senator SHERRY**—Tax deductibility is highly commendable in some areas, but do you see what you are proposing as being able to deal with the reductions in direct government assistance and funding in these areas of concern in the environment?

**Mr Kerr**—It is an overall picture. Incentives to promote greater contributions from the private sector are going to make up for deductions in grants and contributions from the government. They will only assist organisations such as the Australian Conservation Foundation in doing their work, but they will not make up for it. It would be our submission

that any incentives through taxation measures would only go part of the way; they must come hand in hand with strong grants and contributions from the government to the environment.

**Senator SHERRY**—You mentioned in your opening remarks the submission of the Fundraising Institute. We had a fairly lengthy discussion with them earlier today about the issues that concern them in terms of the costs associated with establishing, maintaining and obtaining such gift funds. They gave us some figures. Of the organisations they surveyed with regard to the funds raised, 24 per cent went to the costs of raising those particular moneys. What is the situation with the ACF? Do you use professional fundraisers? Do you have any idea what the costs of raising funds are?

**Mr Kerr**—We do not use professional fundraisers. We do not, for instance, use consultants or anything of that nature. Basically, fundraising is undertaken by employees of the Australian Conservation Foundation or, in some instances, counsellors of the Australian Conservation Foundation. I cannot give you exact figures on the costs that would be tied up with that.

**Senator SHERRY**—You make it clear that your preference is that the costs associated with such fundraising be indicated clearly in the legislation rather than your being reliant on a tax office ruling.

**Mr Kerr**—Yes. I reiterate what the Fundraising Institute had recommended as an amendment to proposed section 30-125(5) of the Income Tax Assessment Acts. It would be more consistent and concise if it was contained in the Income Tax Assessment Acts rather than coming from a ruling.

**Senator SHERRY**—Have you had any discussions with the tax office or other representatives or ministers in the government about this issue?

**Mr Kerr**—Not specifically in relation to that issue. As you will see, it is the only comment that ACF had in relation to A New Tax System (Tax Administration) Bill. I saw it as a glaring problem that needed to be rectified before the bill became legislation—or if it did become legislation.

**Senator SHERRY**—Do you have any knowledge of the deal reached between the Democrats and the government in this area as to whether this was supposed to occur?

**Mr Kerr**—No, I have no knowledge of that.

**Senator WOODLEY**—In your written submission there is a general comment at the end which interested me but I am not sure what it means. It is in terms of *Philanthropy: sustaining the land*. You talk about ‘tax incentives to facilitate the creation of private conservation reserves’, which seems to me to be a very good idea. But then you say:

These include access to tax deductions or the 34% landcare rebate for costs associated with managing land covered by a conservation covenant, allowing private conservation reserves to be negatively geared and giving their owners primary producer status.

Could you say a bit more about that so that I can understand it? I think it is something I could support but I am not sure what it means.

**Mr Kerr**—I will do my best as I am no expert on taxation law although I am a lawyer. As far as gaining primary producer status, one of the problems for the owners of private conservation land or reserves—meaning land with, for instance, a forested area on it that is sitting there and that really, for all intents and purposes, is not earning an income as such—is that there can be no deductions on capital expenditure used in maintaining that area. It might mean that it relates to fencing. It might mean in relation to rates and taxes that are paid on

that particular piece of land. It might relate to removing weeds and other infestations on that land.

Currently, once people have the status of primary producer, they are able to claim deductions for expenditure incurred in their operations. It would be our submission that, if owners of private conservation reserves were able to obtain a similar status and were able to claim a deduction for their expenditure used in maintaining their private reserves, there would be more incentive for people to protect areas of their land knowing that they could claim a deduction for the expenditure used in maintaining it. Does that help?

**Senator WOODLEY**—Yes, I get the point.

**Senator BARTLETT**—I want to pursue one issue in terms of trying to advance the principle that I understand your submission argues for: encouraging through the tax system a greater private investment or involvement in land conservation.

As I understand it, at the moment with some of the issues that arise with tax deductibility, one of the problems for environment related organisations has been the more traditional understanding that charitable operations be involved for the benefit of people rather than animals, wildlife or the environment. I would be interested if you could expand on the issue of the intrinsic value of habitat preservation in terms of its value to the community more broadly.

**Mr Kerr**—This is a very general question but I suppose you are right in saying that historically and generally philanthropy is dedicated to a social function. One of the problems that we are continuously facing in the environmental movement is the distinction that people draw between what is of benefit to the environment and what is of benefit to the community. We would say that a healthy and thriving environment benefits people, so one thing that people should always be careful of doing is drawing a line or distinguishing between environmental issues and social issues. I think that they are intertwined.

Perhaps there is some understanding of that in so far as the taxation office—or whoever has drafted the Income Tax Assessment Acts—allows environmental organisations to receive tax deductions. That is an acknowledgment of the importance of environmental issues within the wider community. So perhaps it really is an acknowledgment of the importance and of how we really should not be distinguishing between social and environmental issues.

**Senator BARTLETT**—Is the ACF involved in any land management trusts or operations like that?

**Mr Kerr**—I am sorry that I cannot answer that. I am not aware of any involvement but that is not to say that we are not. If you would like further information on that, I am more than happy to supply that. I cannot answer that question offhand at the moment.

**Senator BARTLETT**—That would be handy if you could—see how you go. Are you familiar with the operations of Trust for Nature in Victoria?

**Mr Kerr**—Yes.

**Senator BARTLETT**—I understand it partly involves private individuals with covenants over their land.

**Mr Kerr**—That is correct.

**Senator BARTLETT**—One issue in relation to the operations of that trust and similar ones, if you are aware of them, is this: do they tend to have conditions in relation to access of

people? Are people usually encouraged to be on the land or are they sometimes excluded from parts of it? Is it a case-by-case situation?

**Mr Kerr**—I am not sure what the covenants provide for. I suppose the overall purpose is to protect the native vegetation and areas of high conservation land on private property. I do not know to what extent the covenants do that. It might mean in some instances that a covenant just puts a prohibition on clearing of vegetation but I am not sure whether that would extend to refusing people access to that land. I am not really sure but at the same time, when you think about it, a covenant applies to private land and it would always be open to a private landholder to refuse people access to his or her land.

**Senator BARTLETT**—Maybe that is so if it is one of those covenants where a property has been donated, after a person has died, to a trust that continues to manage the property through what conditions it puts on it.

**Mr Kerr**—Exactly. But coming from my background, I know that really in most respects a covenant can state anything as long as it is within the bounds of the law. So I would imagine that a covenant could extend to put in place such prohibitions, but I do not know whether the organisation that you just mentioned, Trust for Nature, extends its covenants to that extent.

**Senator BARTLETT**—My next question concerns your awareness of the operations of the Trust for Nature organisation or of others that, at least as I understand it, are focused on the sorts of activities that your submission is promoting. Are there aspects of the taxation law as it operates at the moment that impede them in progressing that sort of work? Are there changes that could be made—and I am aware of the philanthropy paper you have referred to—that would basically facilitate that sort of activity?

**Mr Kerr**—The same recommendations that have been made in that paper would apply to lands or property with a private conservation covenant placed on them. Basically, for all intents and purposes, that would create a private conservation reserve, so the same impediments that are placed in front of people with a conservation reserve on their land would also be placed in front of people with a conservation covenant placed on their land. Effectively, that is what it does: it creates a private conservation reserve but currently, with impediments created by the Income Tax Assessment Acts, it basically sits there and does nothing. It creates no incentive for expenditure on creating that reserve and maintaining it and contributing to its upkeep.

**CHAIR**—We have got away a bit from the specific provisions of the bills before us. I think that finishes the questioning on the tax administration bill. Do you want to make any opening comments with regard to the Taxation Laws Amendment Bill (No. 8)?

**Mr Kerr**—Yes. We have, I suppose, concentrated on the Taxation Laws Amendment Bill (No. 8) 1999 in the questioning and we are turning to that again now. That was what I concentrated on in the submission, but I just want to place that part of my submission in its overall context and give some sort of justification as to why we think that greater incentives are needed to promote conservation in Australia.

The government has always said that they would like to see greater private contributions to philanthropic institutions. We can see why. Basically, there has been an enormous cut to federal government funding to voluntary conservation organisations recently. For instance, the Australian Conservation Foundation received a further 10 per cent cut in this year's funding, bringing our funding down to \$54,000. The Wilderness Society received a similar cut. I think it was about a 50 per cent cut, bringing their grants down to \$30,000. Overall, the Australian

Conservation Foundation has seen a reduction in its general conservation grants from the federal government.

**CHAIR**—Mr Kerr, we are here to talk about the bill, and we have only eight minutes left. Please get onto it.

**Mr Kerr**—What I am trying to say is that if the government continues to cut funding to environmental organisations and indeed other philanthropic institutions it should create tax incentives to provide greater private contributions to those same philanthropic institutions which it has reduced its funding to. That is the whole thrust of our submission. We are saying two things. Firstly, the current amendments relate only to cultural entities. We see that cultural entities are deserving organisations to receive the benefits espoused by the amendments; however, we think that other entities deserve the benefit of such amendments. I cannot understand why cultural entities are singled out to the exclusion of all others. Our submission would be that conservation organisations and other philanthropic institutions, such as health and education institutions, should receive the same benefits.

The other part of our submission would be that the Taxation Laws Amendment Bill (No. 8) 1999 does not go far enough in creating the necessary incentives. There might have been some incentives in relation to an exemption from capital gains and an incentive in relation to the prohibition of giving gifts purchased in a period greater than 12 months—they are fine—but we think that the Taxation Laws Amendment Bill needed to go further and include amongst the recommended amendments the recommendations, for instance, that were included in that paper that I made mention of—that being the *Philanthropy: Sustaining the land* briefing paper that was basically prepared by the Potter Foundation with contributions from other foundations. That is basically the thrust of our submission in that regard.

**CHAIR**—Are there any questions, Senators?

**Senator WOODLEY**—I think we have covered it. That whole issue is one that we have been debating. The last two witnesses have been debating this. I think we are starting to get the feel for it. I guess we will be looking for some response from the tax office.

**Mr Kerr**—I think that would be necessary.

**CHAIR**—As there are no further questions, I thank you very much for coming online with us this afternoon.

**Mr Kerr**—You are welcome.

**CHAIR**—Thank you for your submissions.

[2.55 p.m.]

**AHERN, Mr Michael, Manager, Registration of Charities Project, Australian Taxation Office**

**McLEAN, Mr James (Jim) Edmund, Director, Technical Management and Government Liaison, Australian Taxation Office**

**MILLER, Mr Geoffrey John, Assistant Commissioner, Australian Taxation Office**

**CHAIR**—Welcome. Before we commence, may I remind committee members that, under parliamentary privilege resolutions agreed to by the Senate, officers of a department of the Commonwealth or a state shall not be asked to give opinions on matters of policy. Officers shall also be given a reasonable opportunity to refer questions asked of them to superior officers or to a minister.

**Senator WOODLEY**—Can I just ask you a question about that. I am not challenging that ruling, but is the tax office a department of the Commonwealth government?

**CHAIR**—It is a statutory organisation, isn't it, so I would imagine that ruling would still apply.

**Senator WOODLEY**—Yes. I am happy with the ruling.

**CHAIR**—We have heard witnesses earlier today and have their submissions; do you wish to go through them and give us comments or just take questions from us?

**Mr Miller**—Essentially, we would like to just take questions. But I would like to open and say that, of course, we are here to assist you in any way we can, particularly in the operation of the proposed legislation as it will apply. I do note that during some of the discussions it was inferred that the Australian Taxation Office could in some way clarify the tax policy on some of these matters. Unfortunately, the tax office is not the holder of tax policy, but we will give you any assistance we can in how this might apply to the public.

**CHAIR**—Thank you, Mr Miller.

**Senator SHERRY**—That is an interesting point to raise at the start. I do not know whether any of your officers were here when we had evidence from the Fundraising Institute—Australia, which, in common with a number of other organisations, raised concerns about the way in which they will be treated. They have suggested that there should be an amendment to the A New Tax System (Tax Administration) Bill, inserting the words, 'Costs associated with establishing, maintaining and obtaining gift funds.' They argued that there was some doubt about how that would be treated under the proposed legislation. They did indicate to us, without quoting them directly, that they had had a meeting with the tax office and that the tax office had indicated there could be a ruling given that would satisfy the amendment that the Fundraising Institute is seeking. What is your understanding of this issue?

**Mr Miller**—We understand, and have always understood, that it does include those additional costs. In fact, in the explanatory memorandum we actually talk about including the ancillary costs. Maybe we needed to be a bit clearer in the explanatory memorandum but that means all those costs incurred in whatever the organisation needs to do to collect, promote, market and get donations coming in to them; it includes the building they live in and everything else—all the other ancillary costs involved with such an organisation. If there is still confusion out there and they would like some form of tax determination, we can certainly look at that. Our understanding is that the law is fine to include all those costs.

**Senator SHERRY**—You do not have any problem with their proposed amendment if it is consistent with that policy approach?

**Mr Miller**—We just do not believe it is necessary.

**Senator SHERRY**—To allay their fears and concerns, and they are not the only organisation to have a concern, wouldn't it be appropriate to have the definition in the act?

**Mr Miller**—Amendments to the act are really up to government. From the Australian Taxation Office's point of view, we are quite happy to put out a ruling if that helps with the clarification of that matter.

**Senator SHERRY**—You understand that the position that has been enunciated by the FIA is consistent with government policy?

**Mr Miller**—Yes.

**Senator SHERRY**—Okay. Are you aware of the submission we had from Group Training?

**Mr Ahern**—I was present this morning, Senator, yes.

**Senator SHERRY**—They raised concerns about the impact of the various tax changes on them as an organisation. It is submission No. 2. They raised the issue of surpluses. What is your understanding of the treatment of those surpluses?

**Mr Ahern**—The issues they raised this morning come out of existing law, not out of this bill. The two issues they raised were whether they would be exempt and the tax office focus on the surplus funds they would build up.

**Senator SHERRY**—I was going to come to the exemption issue. Can we deal with the surplus issue?

**Mr Ahern**—Regarding the surplus issue, the law requires that the funds be applied to the purposes for which the charitable institution exists. If people accumulate moneys there may be some doubt about that. The gentleman spoke this morning about the way they operate. It would be highly unlikely that the funds they would accumulate would be seen to be contrary to their principal purpose. It would have to be quite a substantial amount before anyone would argue that the accumulation of funds is contrary to their principal purpose.

**Senator SHERRY**—You say 'quite a substantial amount'. How do you go about defining that?

**Mr Ahern**—It is all relative. You have to examine the facts of the case. For instance, it is probably insignificant for a Catholic Church to have \$10 million put aside, but if a training organisation like you were talking about this morning had \$10 million put aside you would wonder what they were doing with the \$10 million. You have to look at the facts of the case and the relativity of it all.

**Senator SHERRY**—Have you had to do that, to date?

**Mr Ahern**—I am not aware of it.

**Senator SHERRY**—You might just check. You would look at, for example, their surplus as a proportion of their turnover?

**Mr Ahern**—If they are charitable organisations, the requirement of the law is that the funds are applied to the purposes for which they were established. That is what you have to consider. If you have accumulations then the question that arises is this: are you applying your money to a purpose for which you were established? For instance, the accumulation over time of funds

to build a structure would satisfy the requirement. But that is not the situation here, and I am a bit surprised that it has come up.

**Senator SHERRY**—Can you deal with the issue of tax exempt status that we had some discussion about?

**Mr Ahern**—The exempt provision they come under is educational body. Because they are educational they would also be charitable. They said they have had discussions with the tax office—I think it is in relation to the existing law; it is nothing to do with the present proposal, as far as I am aware. I think the question would come down to, and I am only guessing here because I am not familiar with any of the representations they have made, whether they are public or not. If the companies or trusts or whatever their structure is were established for a private purpose such as to deal with the apprentices for an industry, company or something like that, then that would not be for a public purpose and would therefore not be charitable.

**Senator SHERRY**—What about primary purpose?

**Mr Ahern**—It still has to be charitable and it has to have that public element about it. I am not sure what their point of contention with the tax office is, but I suspect that that may get down to it. They are obviously out there trying to promote education; there does not seem to be an issue there. It may be that the way they operate does not fit the requirements for them to be charitable in a public nature—they may be operating as a private company. They might be saying they are non-profit, but you can be non-profit and still operating for the purposes of an industry, for instance, so that might not be sufficient for them to satisfy the public requirement. Again, I am not sure. I am assuming the situation.

**Senator SHERRY**—Perhaps you could provide the committee with some further information on this issue.

**Mr Ahern**—I am not sure I can do that. If I can find out I cannot give it to you under the secrecy provisions of the law, so I am not sure where we will go with that.

**Senator SHERRY**—I am sure you can find some appropriate way to give us some general guidance that does not breach the secrecy provisions. The Catholic Church were outlining their concerns with their current trust structure in most states in Australia—the complexity and associated costs of having to register and the various financial and legal requirements to break down the structure. What comment do you have on that?

**Mr Ahern**—They approach it from two sides. One is the gift deductibility side and the other is the exempt side. They are two separate requirements in the law. From the gift side, they have always had to have that. They focused on that in their school building funds and some of their public benevolent institution activities. Those requirements for them to have a fund authority or institution before they can get deductibility status already exist. Really what is happening under this on the gift side is no different from what they have already been required to do.

**Senator SHERRY**—You are saying to the committee that, they will not have to change anything as a result of the legislation we have before us.

**Mr Ahern**—The requirement is already in the law. Most school building funds do come and get comfort from the tax office that they are gift deductible. To the extent that they have done that, then the requirements they would have had to go through in order to get that comfort are no different from what they will have to do under the proposed law. All it is saying is that you will have to come us, whereas before they had the option of coming to us. If they have a lot of school building funds that have not come to us in the past then they have

to address that matter. I have already spoken to a number of representatives from the church and said that we should be able to do that on a mass basis rather than on an individual basis. There seems to be plenty of opportunity there for them to identify those and come to us and give us some assurances about them and we would ensure that processes are in place to ensure the endorsement of those school building funds is made as simple as possible.

**Senator SHERRY**—We had evidence from Queensland University of Technology—Dr McGregor-Lowndes. He says he has had discussions with the tax office and one of the issues he has identified is the need for a well-resourced specialist unit dealing with charitable organisations. What is your response to that?

**Mr Ahern**—At present we are looking at setting up something along those lines. It is something that we have not had in the past, and you will appreciate that there are a lot of changes going on with tax reform. That is certainly something we have been looking at to see whether we can achieve that. It has been agreed by management in my area—the small business area—that that be looked at. We are looking to see how that can be implemented, and I would hope it would be.

**Senator SHERRY**—What do you identify as the size of the task? It seems to me from the evidence presented that there is a very significant increase in workload involved in carrying out the assessments of charitable organisations.

**Mr Ahern**—I suppose the size of the tax depends on how you go about it. Effectively, we have very little data on these charities and gift bodies at present, and we are going to have to get them all endorsed with six or seven months.

**Senator SHERRY**—How many do you believe you will have to examine?

**Mr Ahern**—It is a question of whether we will examine them or not. It is different for gifts compared to the exempt side of things. Traditionally, the approach in relation to anyone who wants confirmation of gift deductible status has been that they come to the tax office and give us a copy of their constitution, details of their activities and a number of other details relevant to their organisation. We look at that and analyse it. If we think it is acceptable and accordance with the law, we give them confirmation that we think that they are gift deductible.

**Senator SHERRY**—You said ‘other details’. Does that include annual financial statements?

**Mr Ahern**—Yes, we would ask for details like that. That process is going to be continued, but we are hoping that the majority of gift deductible entities would have already come to the tax office. So there might not be as big a workload there as you would think. No-one really knows the extent of it, and we are trying to identify the issues and respond to them to make sure that we can get all the endorsements on the gift side done by 30 June.

On the exempt side of things the approach in the past has been to encourage people to self-assess and to give them a publication that goes into some of the information that they would need in order to do that. The tax office has been working to try to get a range of new rulings out to assist in all the areas of concern that we have identified. We are trying to produce several new publications in a layman’s type approach which will be quite extensive and will try to cover all the aspects of the new provisions and the requirements that are going to exist in relation to the old provisions as well. We hope to have some of those out in December or January.

We are trying to inform people of what is required before they can become endorsed and are asking them to review their status and then to declare that they satisfy those requirements. In other words, they are still self-assessing. The reason we had to adopt that approach was

that the practicalities of the situation are such that we could not review 200,000 exempt bodies in the time frame available. We would need several hundred officers to do that, and that is just not a practicality.

**Senator SHERRY**—So the time frame available is just too tight.

**Mr Ahern**—It is to go back and review them, but we have decided to endorse them. Our approach to being satisfied that they are entitled is to give them all the information that they need to make a decision, ask them to review their situation and then they can apply if they satisfy.

**Senator SHERRY**—Have you had any cases to date of abuse of the system?

**Mr Ahern**—I think just about everyone I speak seems to tell me some anecdotal evidence about abuses somewhere or other, but I cannot really give you any firm details of actual cases.

**Senator SHERRY**—You cannot legally or you cannot because you do not know of any specific cases?

**Mr Ahern**—I am aware of some particular cases, but I think the problem is much wider than the particular cases I am actually aware of. I do not know the extent of it, and I do not think anyone knows.

**Senator SHERRY**—Can you give us some detail about the cases of abuse that you have dealt with to date?

**Mr Miller**—We are all from Canberra and we are not hands on on day-to-day cases. With our own personal knowledge, it is very difficult to bring out any particular cases.

**Senator SHERRY**—Could you take that on notice and give us some examples of cases? I am not talking about names, but case studies that would give us an indication of where there is abuse.

**Mr Miller**—We could try.

**Senator SHERRY**—I would prefer names but I understand that, confidentially, that could be difficult, but could you give us some indication of the sorts of methods that are being used to minimise tax and those sorts of things? The gifts issues commented on 1 July this year, as I understand it.

**Mr Miller**—Yes, that is correct.

**Senator SHERRY**—What has occurred to date in terms of gifts? What is the cost to revenue? What sorts of structures have you been examining to date?

**Mr Miller**—I am not sure of the question, sorry.

**Senator SHERRY**—Could you give us some sort of overview about what has happened since 1 July in this area?

**Mr Miller**—Have there been increases or decreases in the amount of gifts provided?

**Senator SHERRY**—Yes, and new structures set up.

**Mr Miller**—I do not have knowledge of increases or decreases in the number of gifts because of those provisions. The first time anything would come to the notice of the Australian Taxation Office would be once the tax returns are lodged for next year. There might be increased claims for deductions for those gifts.

As far as structures, we have been talking with our counterparts in the Department of Communications, Information Technology and the Arts who run the cultural gifts program. I know that they are preparing various leaflets and other things so that people who may wish

to donate will have a reasonably good idea of what they can and cannot do, when they are going to get a tax deduction and all the other procedures they need to go through. That is about it at the moment.

**Senator SHERRY**—It has to be a gift of over \$5,000 and there are other criteria as well. Could a person, for example, donate a gift of art works obviously worth more than \$5,000 and still effectively maintain the use of those art works by displaying them in their own residence or business?

**Mr McLean**—No. If it is going to be applied under the cultural gifts program it actually has to go to a recipient organisation; that is, a national library, national museum, et cetera.

**Senator SHERRY**—But could they not set up a recipient organisation?

**Mr McLean**—Again, one of those recipient organisations has to be a public museum or a public library. They could do it, yes—it is not unheard of—but it certainly would not be sitting in their home, for instance, because that would not be a public library or public museum, et cetera.

**Senator SHERRY**—But it is possible in their own business?

**Mr McLean**—Only if they set up a public library. It would have to be open for the public to wander in to have a look at it. That is one of the key criteria for it to satisfy that public requirement. If a business is happy to open its doors to, say, its executive wing to have anybody walking through and advertise themselves as a public library or a public museum, that is fine.

**Senator SHERRY**—How would you go about, say, the foyer of a building that is open to the public and you display some of your art works there and other areas of the building are not open to the public? Do you divide up the property?

**Mr McLean**—I have not seen a case done that way? Normally, a public library or a public museum is essentially that—the whole building, the whole structure, the whole purpose of the structure is for that. Obviously there will be situations where you will have a high-rise building where a floor which is leased by a particular body will be a public museum and not the rest of it. But I have not heard of it being one owner of a high-rise and just the lobby.

**Senator SHERRY**—Are you aware of any particular suspect practices or proposals to date? Can you give us some examples? You seemed to allude to it earlier in my questioning.

**Mr McLean**—People have tried to push the boundaries of what is a public library or public museum, and the courts over the years have set fairly strict criteria. We just tell them what the criteria is and they do not progress with their plans. There are always people willing to push the envelope, and when we outline what the requirement is and tell them that they cannot do what they want to do, they do not go ahead with it.

**Senator SHERRY**—The proposal is estimated to cost \$5.5 million this financial year, rising to \$71 million. Do you know if that cost is for three years out?

**Mr McLean**—The \$71 million is for the year 2002-2003.

**Senator SHERRY**—You must have had some basis for making the projection or the estimate. Which areas of activity and philanthropic endeavour do you think are going to be enhanced through these measures?

**Mr Miller**—We have not got that sort of detail available, and we will not have that detail available.

**Senator SHERRY**—How did you come up with the \$71 million then?

**Mr Miller**—I cannot tell you. It was done by our Revenue Analysis Branch, but if you would like us to take that on notice, we will be able to give you some of that detail later.

**Senator SHERRY**—Yes. I would just like to know the basis of the estimate and how it has been derived. One last question: does the transfer of buildings into a charity occur?

**Mr McLean**—Not that I am aware of. I have not seen a case of that, but it would not surprise me if it has occurred.

**Senator SHERRY**—Again you might take that on notice and see if you can find out how transfer would apply in respect of buildings.

**Mr McLean**—Are you talking about under the new provisions or the old provisions?

**Senator WOODLEY**—Buildings are often left to charitable institutions for various purposes.

**Mr McLean**—Yes, that is right. It is certainly not unheard of. Personally, as I said, I have not seen a case of such. It would not surprise me in the least that it has happened, even under the old provisions, if the building was purchased beyond the 12-month period.

**Senator GEORGE CAMPBELL**—In relation to the issue of philanthropic trusts, Mr McLean, under the new proposed legislation if I establish a private fund and get approval for it, then presumably I can transfer property into that fund for the use of the fund, which I then get a tax concession or a tax deduction for the value of the property. What happens to the income that that property earns? Is that income tax exempt?

**Mr McLean**—That would depend on the status of the fund itself. In 99.9 per cent of the cases where the fund is being operated for charitable purposes, of course it will be exempt. I will not give a 100 per cent guarantee because there will always be that one case that will jump up and bite you, but in the vast majority of cases, yes, it will be exempt.

**Senator GEORGE CAMPBELL**—Doesn't that set up a scenario for some very creative tax avoidance schemes to be engineered?

**Mr McLean**—In what way? If the fund has its rule that it must be using that income for the purpose of the fund, that is, for charitable purposes somewhere along the line, where is the mischief?

**Senator GEORGE CAMPBELL**—I am asking you—you are the tax expert—whether or not you have made an assessment or whether or not there are potential loopholes and avoidance schemes that can be generated out of such an arrangement?

**Mr McLean**—I do not think so.

**Senator GEORGE CAMPBELL**—You don't think so?

**Mr McLean**—No. It is like with any of the current charitable organisations now; if they are not applying their funds in the manner in which they say they are going to—

**Senator GEORGE CAMPBELL**—But we are talking about a potential here for a whole range of private organisations and institutions to establish funds which have demonstrated great capacity in the past to make substantial profits out of their enterprises and not pay tax on them. It is not beyond the capacity of our tax consultants and experts around the place to be creative about how these sorts of schemes can be used.

**Mr McLean**—That would be flagrantly breaking the law.

**Senator GEORGE CAMPBELL**—It has not prevented people doing it in the past. I suppose I am really asking you whether or not the tax office has done any hard assessment of whether there are potential loopholes in this scheme for tax avoidance type activities.

**Mr McLean**—We do not see loopholes. If people are going to break the law, they will break the law, but it is not a loophole.

**Senator SHERRY**—So you do not see any loopholes where people were not breaking the law?

**Mr McLean**—Sorry?

**Senator SHERRY**—You said that, if people are going to break the law, they break the law, but what we are concerned about is whether there are loopholes through these extended measures so that people can legitimately minimise their tax by not breaking the law.

**Mr McLean**—And we do not see them. We do not think there are such loopholes. We think there are adequate safeguards.

**Senator WOODLEY**—I have two questions, but it is really one question with the two extremes of that question. I am not sure if it has been asked—I did have to go out for a minute—but it concerns the issue originally raised in the Catholic Church Tax Working Group's submission of the principle of subsidiarity. They said they have a very complex structure of churches, et cetera, where the overarching entity may have tax exemption for gifts and that flows on to some of the subsidiary bodies. The question the Catholic Church were asking was: do we have to register every one of those, or is it possible for that tax deductible gift eligibility to be transferred from the overarching entity to the subsidiary entity? That is one end of the question.

The other end of the question is where there has been obvious rorting. For instance, there may be a distinct body which seeks to use the tax deductibility of another organisation. They are distinct bodies, and even the purpose for which the donations might have been given on which the tax deductibility is approved really is quite different to the purpose which it finally gets used for. To me, that is rorting or can be rorting; it may not be. I think in some cases—and I do not want to use names—it comes pretty close to rorting.

It is the same question. At one end of it, it could be seen as rorting; at the other end, it seems to me that it is a very valid principle that subsidiarity should be allowed for some organisations only a lower down the scale entity that is part of the larger entity which has the tax deductibility. Could you comment on those two ends of that scale?

**Mr Ahern**—The subsidiarity side of things comes in with the question of whether the body is exempt or not. The provisions of the law that exist at present apply to exempt an entity from income tax. That is not going to be changed under these provisions that are in the bill at present.

The Catholic Church has a problem in trying to identify where the entity lies. There is an argument to say that the entity lies at the property trust that might arise under the act of parliament giving its legal existence. But in other cases, it could arise much lower. A lot of the independent schools, for instance, have been incorporated as separate companies and they would be entities in themselves. What needs to be resolved with the Catholic Church is where those entities lie. To the extent that it is an entity, then it does need to be endorsed separately. If the entity does lie at that top level of the property trust, then everything within that property trust would also be exempt. That is the way it operates at present. The endorsement requirements make them make decisions about that, but they should have been making those decisions all the way along. It is really just forcing them to do something that basically was contained in the law in a self-assessment basis.

If they do break it down and there is an entity down there, that entity will have to be endorsed. For instance, if a diocese has 250 schools—I think that was the example mentioned this morning—and they are separate entities, then they will have to be endorsed. But the odds are that they are not separate entities and will not have to be endorsed. I do not think the Catholic Church has yet addressed the answer. They have identified the problem but they have not really resolved whether that lies at that higher level or at the lower level. Here they are asking for the structure not to be broken down, but they are asking for the structure to be broken down to much lower levels for GST purposes. We do have a direct conflict there. For one reason they are asking to build it up and for another to break it down. They do have a unique situation and there are problems. We are trying to work with them to resolve that.

**Senator WOODLEY**—You might have to supply a fair bit of panadol. It also occurs with other churches, particularly the major churches. The problem is that it depends on which state they are in or which diocese or presbytery or whatever. Some of them are separately incorporated. It is really for them to decide for themselves how they are going to approach it.

**Mr Ahern**—We are trying to give them as much information as we can to make a decision. Some of it is not out there yet, but hopefully it will be shortly. They should have enough information to make a good judgment; that is what we are trying to achieve.

**Senator WOODLEY**—Are you concerned about the question at the other end of that scale, where you have separate bodies and one uses the tax exempt status of another?

**Mr Ahern**—I certainly would be. If a body has got gift deductible status for a particular purpose, then it must use those funds for that purpose otherwise it should not be deductible. If it passes that on to other funds that came within its principal purpose, then there would not be a problem with that. The example you mentioned was that it would come in for other purposes. If that is the case, then that would be contrary to the provisions of the law.

**Proceedings suspended from 3.32 p.m. to 3.49 p.m.**

**CHAIR**—The committee will now resume.

**Senator BARTLETT**—I will stay with the tax administration bill because that is what we were discussing when we adjourned. My understanding of what you were saying earlier about this gift fund is that the requirement for this is already in the law. Is that correct?

**Mr Ahern**—Yes, that is correct. The gift fund requirement is that the funds in the gift fund be applied for the principal purposes of the fund. In other words, the reason it got gift deductibility and got the money in the first place, the money has to be used for that purpose. The fear was that it had to be used solely for that purpose. So, if it was a welfare body, the money had to actually go towards providing welfare for someone. We have said, ‘No. It is for conducting your principal purpose, and conducting your principal purpose are things like fund raising, administration and having people out there to assist at the needy and all that sort of thing.’

**Senator BARTLETT**—Whereabouts in the law is it now? Which section of the act is that requirement in?

**Mr Ahern**—The old law?

**Senator BARTLETT**—Yes, the existing law as it stands now.

**Mr Ahern**—That requirement is not actually in the law in the format that it is at present. There are some requirements in the law to say that it has to be a public fund. There is a requirement to keep a public fund, which is basically what the gift fund is, but that is not in

relation to all organisations. There has always been an expectation that, if people are going to get gift deductible monies, they would be able to identify where the money comes from and how it is applied. We are really just formalising what those expectations were in the past.

**Senator BARTLETT**—You are formalising in the law something that was an expectation previously?

**Mr Ahern**—There were expectations in some areas, but it was in the law in relation to environmental and cultural provisions for a start. It is already there. It was also a requirement that we would ask them to set up things like school building funds. Before we would give any approval, we would ask for all this to be done.

**Senator BARTLETT**—That was a sort of administrative requirement that you would indicate to organisations when they registered previously?

**Mr Ahern**—Yes.

**Senator BARTLETT**—To tease what you are saying out a bit further and make sure I have my head around it properly, firstly, you are now expanding this to a larger number of organisations beyond cultural and school building funds, et cetera, so there will be more groups required to comply?

**Mr Ahern**—The specific requirement applies to all the big deductible bodies, whereas in the law, as I said, there was an expectation. We had rulings out in a lot of these areas saying just exactly how it had to operate. But the formality of the gift fund itself was something that we would have expected bodies to do, and now we are making sure that it is formalised, yes.

**Senator BARTLETT**—It seems clear from the evidence we have that a lot of bodies do not have a formalised segregated gift fund. That is basically because you have not chased them through on that requirement previously, is that the case?

**Mr Ahern**—Yes.

**Senator BARTLETT**—So now we are formally putting something in law that they have to maintain a gift fund and there are limits on the use of that gift fund along lines that you have outlined to some extent here.

**Mr Ahern**—I am sure the limits were not in the law before. The expectation was that, if they got money that was deductible, it would be used for those purposes. The only reason they got the deduction was for a use for a specific purpose.

**Senator BARTLETT**—Was that limitation specifically in the act previously, or is it currently?

**Mr Ahern**—No. It is a question of fact. If they did not apply for those purposes, then we would have disallowed the deductions and naturally examined them as to whether they were entitled to gift deductibility in the first place. This is under current law.

**Senator BARTLETT**—There is no narrowing of the limitations on what people can use donations for, compared to what applies now?

**Mr Ahern**—None at all, no.

**Senator BARTLETT**—It is just codified a bit more.

**Mr Ahern**—It is just making it more transparent, which I think was the word that was used this morning, yes.

**Senator BARTLETT**—In terms of the specific wording in that section of the bill, ‘that the entity must maintain for the principal purpose of the fund’, can you outline a bit more how

you regard the principal purpose of the fund or the institution? Is there a clear definition of how you will define that?

**Mr Ahern**—A fund authority or institution to get gift deductibility in the first place must satisfy the requirements set out in division 30 under one of the particular items. For instance one that has been raised is that it must be a public benevolent institution. To be a public benevolent institution, its principal purposes must be benevolent, it must be an institution and it must be public, but the whole purpose of the fund must suit the requirements set out under one of the items in division 30. That fits in. They have to have a principal purpose that is consistent with that to be gift deductible in the first place, and, once they do that, then any gift monies that come in because of that endorsement or principal purpose must go into the gift fund.

Bodies could also have ancillary activities that may not be relevant to it. For instance, a church could run a sporting team, and if the money came in and went to the sporting team, that would not be something associated with the principal purpose and it would not be something that would grant them gift deductibility in the first place.

**Senator BARTLETT**—The bill requires a number of organisations who are taxed exempt to register as charitable institutions, et cetera. As I understand it, that is not across all non-profit tax exempt bodies. For example, sporting clubs are not required to register.

**Mr Ahern**—No, it is only if they come within the definition of charity, charitable institution or the trustee of a charitable trust.

**Senator BARTLETT**—Why not include those other bodies?

**Mr Miller**—That is a policy matter outside of our scope.

**Senator BARTLETT**—I thought you would appreciate the extra work. Finally, on the issue of self-assessment. Obviously a larger number of organisations will be applying for registration, as I understand it. If they do not do that and just operate and assume that they are charitable, then you audit them down the track and decide that they are not, how will groups like that which incorrectly self-assess be dealt with if it is done in good faith?

**Mr Ahern**—They are not exempt from 1 July 2000, unless they get endorsement through the Commissioner of Taxation or through the Australian Taxation Office. If they do not get endorsement after 1 July 2000, then there is a provision in the law for the commissioner to backdate the endorsement date. So, if it is two years later and they realise that they have not been endorsed, they can apply to be endorsed back to 1 July 2000. If they do not come to us, then theoretically they are liable to lodge returns. If they do not lodge returns, have assumed they are exempt and did not know about this and we then identified them as not having been endorsed, then if we identify that they were truly charitable, then we would just get them to fill in a form and apply backwards. If they were not charitable, then they should have been lodging returns in the first place and we would get returns from them.

**Senator BARTLETT**—I have a few questions on the other bill, the Taxation Laws Amendment Bill (No. 8) 1999. As I understand it the bill, amongst other things, provides some tax concessions—capital gains tax exemption, for example—for gifts made to cultural entities. Is there any particular reason why that is just cultural entities and not welfare or other noble and good works types of organisations?

**Mr Miller**—That is a tax policy matter beyond the tax office's reach.

**Senator BARTLETT**—If that was done, would there be significant revenue implications there, do you think?

**Mr Miller**—Not being someone who is skilled in that, I am not sure what the revenue implications were, but, yes, inevitably there would be revenue implications.

**Senator BARTLETT**—Finally, as I understand it, if someone wants to establish a gift deductible fund—to use some of the examples we used before—and set up some sort of trust out of their own wealth, rather than seeking substantial donations from the public, the approval or recognition of that being a suitable find is needed from the government, is that correct?

**Mr Miller**—That is correct.

**Senator BARTLETT**—How is that going to work? I am not sure if you were here for some of the earlier evidence when we were talking about political influence, and whether organisations such as the Nursing Mothers Association or the RSPCA got tax exempt status or not. Is that sort of issue going to flow into the recognition of such a fund if it is the government that has to approve it?

**Mr McLean**—The requirements for a private fund match the requirements for a public fund, other than the requirement of having to seek donations from the public—in other words, everything else remains the same. Those criteria will still need to be satisfied to gain approval as a private fund. The question of whether politics comes into play is a question of fact and degree, and who can tell what is going to happen in the future. It may do; it may not.

**Senator BARTLETT**—Would there be some other way of structuring it so that it is a more clear-cut set of administrative criteria that could be assessed outside the political realm, or a little more removed from it?

**Mr McLean**—And leave it at the whim of public servants?

**Senator BARTLETT**—It depends on the clarity of the guidelines they have to work with, I suppose.

**Mr McLean**—Yes. It is possible, obviously.

**Senator SHERRY**—Can we just go back to the assessment process and your comments, I think, Mr Ahern, about resources. It seems to me that, given the limitation on resources, effectively you are just going to give most of them a tick. Can you do anything else but that?

**Mr Ahern**—As I mentioned earlier, the application form requires people to declare that they satisfy certain criteria. We are trying to give them as much information as we can so that they can review their situation at present to see whether they satisfy the requirements for being endorsed, and if they are satisfied they will fill in the form and we will accept it, on the exemption side. On the gift side, we will still review it. If we have reviewed them already we will not do it a second time, but if we have not reviewed them before we will still review them.

**Senator SHERRY**—Are you confident you are going to have the resources to do that?

**Mr Ahern**—Most of them should have been reviewed already. We have 30,000-odd already on our register.

**Senator SHERRY**—Out of how many?

**Mr Ahern**—We do not know. We think there might be a few thousand extra, but we are not sure whether there would be a lot extra. That is on the gift side. On the exemption side, we are expecting somewhere around 200,000 plus to come to us. But our policy in the past has been for them to self-assess and we are virtually continuing that policy. To get details of them, the application form actually gives us some sort of risk profile in relation to their

activities. The expectation is that we would undertake compliance activities as necessary in relation to the issues that arise from then on.

**Senator SHERRY**—So it is not your intention to examine in any detail all of the 200,000? It seems to me an enormous task.

**Mr Ahern**—No. A lot of those will be churches and schools that, clearly, will be charitable. If any concerns come out in relation to them it is usually about the use of the funds. But, if they are a low priority area, we would not put a lot of resources into low priority risks if there are greater risk categories around.

**Senator SHERRY**—I understand that. What would you identify as a high-risk category?

**Mr Ahern**—I suppose some of the charitable trusts. The fact that they are a trust, if they are closely controlled, means there might be risks in that area. I am not sure that there are a lot of other high-risk areas at present. Often it can be their activities or if they use funds for certain purposes, contrary to what might indicate that they are not public but private. That might be another area.

**Senator SHERRY**—But that would be difficult. You would have to have a good look at the way they are operating to identify whether or not there is abuse in a charitable trust, wouldn't you? You would have to have a look at it in some detail.

**Mr Ahern**—Yes. The application form will ask for information that will help us to focus on those issues.

**Senator SHERRY**—Will there be additional resources allocated for this task?

**Mr Ahern**—Yes, there will be.

**Senator SHERRY**—What sorts of resources?

**Mr Ahern**—There have been amounts bid for additional funding for compliance type activities in relation to the overall bid for tax reform.

**Senator SHERRY**—But no sum of money has been allocated yet for this task.

**Mr Ahern**—It is part of the ABN process, getting all these people endorsed, and there is a general funding for the ABN of which this is a part. The ABN is the database on which all this is going to be recorded, so it comes under that funding.

**Senator SHERRY**—What about staffing? Have you identified what you will need to do the job effectively in terms of both money and staffing? You must have done that.

**Mr Ahern**—We have a good idea of what we require. We made estimates of the number of cases that come in and we think we have plenty of resources in place to undertake a degree of compliance activity. Really we do not know what is out there. It might be that a little bit of activity early on shows that there is not a great need to do a lot more or it might show more later on. We do not know yet.

**Senator SHERRY**—What is your estimate? What are the figures, monetary and staffing, which you believe are needed?

**Mr Miller**—I am trying to find out what was in the explanatory memorandum. Generally, we try to cover some of those costs in that.

**Senator SHERRY**—Sorry, I have not read the explanatory memorandum. There has been a lot to read in this area in the last year.

**Mr Miller**—There is a detailed regulation impact statement for that bill, which was an attachment to the explanatory memorandum.

**Mr Ahern**—The estimate of the administrative costs for the measure, which is the endorsement of deductible gift recipients income tax exempt charities, is \$2.4 million in 1999-2000, \$2.3 in 2000-01 and for the succeeding two years.

**Senator SHERRY**—Any idea of potential revenue that can be saved? Is that in the explanatory memorandum?

**Mr Ahern**—No, it is not. You are talking about concessions, people who are supposedly already exempt.

**Senator SHERRY**—Yes.

**Mr Ahern**—It really depends on what we find out there. The idea is to make sure that the money that is subject to concession, such as a gift concession or exemption, is applied for those purposes.

**Senator SHERRY**—It seems to me that through this process it is hardly likely that you are going to lose money; it would seem likely that you will gain revenue, but it is an unquantifiable amount.

**Mr Ahern**—That is correct.

**Senator SHERRY**—Going to the philanthropy issue, obviously there is a significant increase in tax expenditures in this area. I understand to some extent at least this is modelled on the United States where philanthropy is much more extensive in the community—I am not an expert on the United States. Have you had a look at the United States and how it has operated there with the encouragement of philanthropy? I understand there have been abuses in the United States. Have you had an examination about what has occurred there?

**Mr Miller**—If that happened, it was during the development of the tax policy in this area and we are not part of that.

**Senator SHERRY**—Has the tax office examined what has happened in the United States in terms of applying it in practice here? Surely you must have done that. I am not talking about policy; I am talking about the way it is operated.

**Mr Miller**—What we have in the bill is talking about allowing tax deductions and the CGT exemptions.

**Senator SHERRY**—Yes.

**Mr Miller**—The administrative side of that is not that complex.

**Senator SHERRY**—I understand that, but there is an outcome in the United States of the encouragement of philanthropy—it is much more widespread—and there has been some abuse in the United States. Have you done any case studies or any outcome studies about how it has been implemented in the United States?

**Mr Miller**—I could not tell you whether we had specifically looked at philanthropy in the United States. I do not know.

**Senator SHERRY**—What about any other system around the world, for example?

**Mr Miller**—I am not aware.

**Senator SHERRY**—I understand that, in the United States, for people who are engaged in philanthropy—through various organisations—there is a requirement that the documentation, reports and financial accounts be publicly available. They are publicly accessed. That will not be the case here, will it?

**Mr McLean**—No. Our legislation does not impose that upon registered bodies.

**Senator SHERRY**—Would you accept that, in this area at least, the public exposure of documentation and reports is of assistance in minimising tax avoidance bodgie schemes that are established in the orbit of philanthropy?

**Mr Miller**—Again, it is not appropriate for us to guess what effect that might have.

**Senator SHERRY**—Surely, the public exposure of these schemes—some of their details, at least—is useful? Presumably, the public at large who may benefit from some of this philanthropical activity are very useful in identifying any abuses that may occur.

**Mr Miller**—In some ways you are coming from a basis where the law as it is, or as it will be if it is passed by parliament, is not already effective in picking up those abuses. If there were more of a requirement to protect the law as it is to ensure it is doing its right job, we would make those recommendations to government if we saw that was happening. But, at this point in time, we have nothing.

**Senator SHERRY**—The States is often quoted as the Mecca—I use ‘Mecca’ in the non-religious sense—of philanthropical activity in the world, for good or bad. Through this public exposure, the United States has at least added an additional safeguard against potential abuse in this area, and there can be abuse. Have you done any work in that area at all?

**Mr Miller**—At this point in time, the Taxation Office does not see the need for that safeguard.

**Senator SHERRY**—We have an additional \$71 million of tax expenditure. There is obviously that issue, and there is also the issue of ensuring we get the maximum public good from this additional philanthropical activity.

**Mr Miller**—As we always do, we will monitor this measure as it is rolled out and as it is taken up to see that the measure achieves what it was intended to.

**Senator SHERRY**—In that monitoring, will you be providing a general overview of where this money is spent and which sorts of activities the various organisations allocate money to—for example, education, health or general community wellbeing? Will there be an analysis of the increased activity that occurs?

**Mr Miller**—No report is required by law. I am not sure whether the data would be there to go that broad. It might be. It would all depend on what could be extracted from the Australian Business Register.

**Senator SHERRY**—Don’t you think that would be useful?

**Mr Miller**—I do not have a view on whether it would be useful or not.

**Senator SHERRY**—I am asking you.

**Mr Miller**—I do not have a view.

**Senator SHERRY**—You are a tax expert whom we hold in high regard, so we are interested in your expertise and views.

**CHAIR**—Senator Sherry, I remind you that we are not to put public servants under such pressure. You know that.

**Senator SHERRY**—I was not aware it was pressure. We are trying to establish good public policy.

**CHAIR**—Some questions to the officers from the Australian Taxation Office have been put on notice. The committee’s reporting deadline is the 29th, so there is not much time. Mr Miller, could your answers please be with the secretariat by the close of business on Monday?

**Mr Miller**—Yes.

**CHAIR**—Thank you for your attendance.

**Committee adjourned at 4.15 p.m.**