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To: Committee Secretary
Standing Committee on Economics
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From: Adam Johnston, Proprietor, ADJ Consultancy Services

CC:

Date: 8 January 2016

Re: Inquiry into tax deductibility

TERMS OF REFERENCE

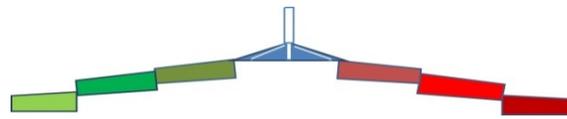
The Committee will examine some options to simplify the personal and company income tax system, with a particular focus on options to broaden the base of these taxes in order to fund reductions in marginal rates. Matters to be examined include:

- The personal tax system as it applies to individual non-business income, with particular reference to the deductibility of expenditure of individuals in earning assessable income, including but not limited to an examination of comparable jurisdictions such as the United Kingdom and New Zealand; and
- The company income tax system, with particular reference to the deductibility of interest incurred by businesses in deriving their business income.

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1

INTRODUCTION

The biggest challenge this Committee will face is the Magic Pudding Syndrome when it comes to tax reform. The *Puddin'* was known to be grumpy, as are a wide variety of interest groups if they feel their particular pet project has not received the funding support they deem it deserves from government. On the other hand, individuals and companies are often grumpy when it comes to paying tax.

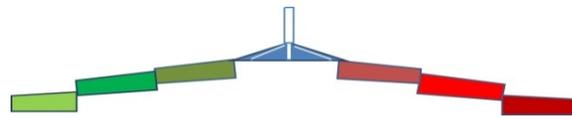
Finally, many activists for a variety of causes seem to readily invoke the rhetorical argument "Australia is a wealthy country". I am not so sure of this line, particularly now that we are living in the post-mining-boom era. However,

¹ Norman Lindsay's, *The Magic Pudding*, <https://www.prosper.org.au/wp-content/uploads/2014/04/The-Magic-Pudding.jpg> as at 6 January 2016

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as this submission will make clear, many interests appear to treat public revenue like an inexhaustible Magic Pudding. Growth in outlays is clearly impossible without significant reform, on the analysis of leading economist Saul Eslake.² Partly in response to ever-growing demand for State and Federal authorities to provide and/or subsidise a stratospheric list of goods and services (like a National Disability Insurance Scheme), governments are turning to outsourcing as a means of addressing cost over-runs and infra-structure (social and physical) shortfalls.

In my view, these are bad public policies, based on flawed economics and, with potentially serious, adverse outcomes for many people.

REFERENCE DOT POINT ONE

It is unfortunate that such a vital inquiry will not receive the attention it deserves, coming at this time of year. For my part, you should know that I am a disability pensioner, who also happens to be a lawyer. As the ranks of unemployed solicitors (not to mention graduates) has grown, it has been necessary to diversify into consultancy, lobbying and research, to earn a few dollars of my own.

This has produced a number of perverse outcomes, of relevance to this inquiry. First of all, in periods where I have held full-time, entry level work, you do tend to wonder about the value of your endeavors. This is particularly when you realise that anything up to half of your daily wage goes in taxation. While much will be returned in the taxation refund process, as a worker whose has spent a significant amount of his working life on the margins of the workforce, I wonder about the value of deductions.

Why go through the process in the first place? The Committee should consider abolishing tax deductions altogether,³ while allowing people to keep more of

² See Saul Eslake, *Australia's tax system is like 'Swiss cheese'*: Saul Eslake, Sydney Morning Herald, Business Day, September 22, 2015,

<http://www.smh.com.au/business/the-economy/australias-tax-system-is-like-swiss-cheese-saul-eslake-20150922-gjs8lt.html#ixzz3wSKqkBFH> as at 6 January 2016.

³ This was something I advocated for in my submission to the *Henry Tax Review* at http://taxreview.treasury.gov.au/content/submissions/pre_14_november_2008/Adam_Johnston.pdf as at 3 January 2016.

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the money they earn. This is in preference to having them declare and pay the Australian Taxation Office (ATO), only to have much of the money return in welfare payments. Abolishing this churn would put many Australians in a far improved financial position. On current figures, 35 per cent of Commonwealth revenue is returned to taxpayers as transfer payments, and the trend line is moving upwards.⁴ Equally, in the same report, the Productivity Commission ('the Commission') predicts that net tax paid is set to rise substantially, particularly so "for the scenario with unindexed income tax thresholds".⁵ This makes unanswerable the argument for handing back bracket-creep back to taxpayers, which I have argued for repeatedly in the *Rethink Tax Review*⁶ and the last Pre-Budget submission process,⁷ as well as the earlier Commission of Audit.⁸

⁴ See Productivity Commission, *Tax And Transfer Incidence In Australia*, Commonwealth of Australia, 2015, p.8, Figure 2.3: Transfer expenditure as a proportion of tax revenue Australian Government, 1973-74 to 2013-14, citing ABS (Australian National Accounts: National Income, Expenditure and Product, Dec 2014, Cat. no. 5206.0) <http://www.pc.gov.au/research/completed/tax-and-transfer-incidence/tax-and-transfer-incidence.pdf> as at 4 January 2016

⁵ Ibid., p.107

⁶ See generally, my submission to the *Rethink Tax Review* and associated documents, contained in the "Rethink bundle" compressed file.

⁷ See generally, "Pre Budget 2015" compressed file. In that process, I recommended:

1. The tax and transfer system needs to be simplified urgently;
2. All governments support too many rent-seekers, on the basis of short term political motives;
3. Charitable and not-for-profit entities should no longer be tax exempt;
4. Gifts to such entities should not be claimable as tax deductions;
5. The Government should recommit to funding the Scientific Research Future Fund, even if this slows the "rollout" of the Disability Insurance Scheme;
6. With the Disability Insurance Scheme as the most recent example of the Medicare Levy being raised to fund non-clinical goods and services, the Government should not be reluctant to make the case for the Scientific Research Future Fund being financed by a co-payment;
7. The Commonwealth and State Governments alike should urgently review their policies to outsource the delivery of goods and services (particularly to vulnerable communities). In my experience, I am less than confident that many NGOs are fit for purpose. Appendix 5 is a submission outlining my experience with a major NGO, which is now a provider of NDIS services in the Hunter Region of NSW. I leave it to Treasury to determine whether to publish it (the NSW Parliamentary Committee the submission was sent to originally, declined publish it.) In any event, the document should raise questions about the governance and propriety of the NGO sector; particularly that of the organisation named. Treasury should keep under very close review those NGO agencies receiving public funds and, whether such funds are truly being deployed in the interests of individual clients, or in the wider public interest. (*Pre-Budget Submission 2015*, pp. 1-2.)

From Recommendation 5, you will note my particular interest in advancing science. In this light, note Appendix 4 in the same bundle, which outlines my failed bid to bring Hybrid Assisted Limb (HAL) technology to Australia. Hopefully, given Prime Minister Malcolm Turnbull's public commitment to innovation and technology, this

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As it applies to non-business income, in *Rethink* I recommended:

1. The minimum rate of tax be lifted, so that the 73% of Australians who receive transfer payments equivalent to the tax they pay, need no longer interact with the tax system;
2. The Government introduce “tick and flick” (tax) returns (following UK practise), as widely as possible for individuals and businesses, significantly reducing the compliance burden;
3. The Government simplify and shorten the ATO’s window to review returns, by placing more of an onus on the ATO itself to stand by its original assessment (particularly with the introduction of “tick and flick” returns, prepared by the ATO);
4. Any review launched by the ATO should be subject to a cost/benefit analysis. Complex cases should also be subject to regular cost/benefit

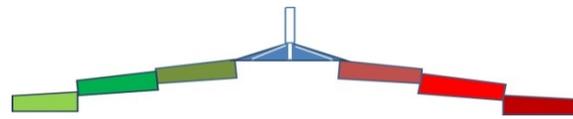
should become easier. In the disability sector though, innovation is far from easy, as often inefficient suppliers are subsidised and protected from international competition by government; see my submission to the Queensland Competition Authority, responding to the Discussion Paper and Request for Submissions: *Medical and Disability Aids and Equipment Pricing Investigation*, [http://www.qca.org.au/getattachment/2fc8db1a-9c27-43c1-9547-8bc40979c8d3/Adam-Johnston-\(Oct-13\).aspx](http://www.qca.org.au/getattachment/2fc8db1a-9c27-43c1-9547-8bc40979c8d3/Adam-Johnston-(Oct-13).aspx) as at 8 January 2016. Also note generally my submission to Professor Ian Harper’s *Competition Review* at <http://competitionpolicyreview.gov.au/files/2014/07/ADJ.pdf> as at 8 January 2016.

To those who say I’m peddling my own special interest in science while trashing charity and every other form of tax deduction or subsidy, my response is to cite something like this: David Nield, *This new brain implant has the potential to restore paralysed limbs*, Science Alert, 5 January 2016, <http://www.sciencealert.com/this-new-brain-implant-has-the-potential-to-restore-paralysed-limbs>, as at 8 January 2016. In the face of what our society could be and, how the human condition should be improved, why is our tax system biased towards protecting old, inefficient institutions? The example given from Science Alert comes from the Centre for Sensorimotor Neural Engineering (CSNE) at the University of Washington. Surely, if we were to reorientate our tax system, more similar examples could come from Australia; we have the scientists to do this: see e.g.: the NSW Stem Cell Network at <http://www.stemcellnetwork.org.au/> as at 8 January 2016 (I am a member of the Network though I do not claim to speak for the organisation).

After all, surely it is better to cure someone of their illness or disability, rather than leave them in chronic ill-health and dependence. This will give them independence, personal dominion and fulfilment. As a consequence, there will be more taxpayers, growth in the economy and, further opportunity to lower non-business income. This will be a substantial improvement on current, failed employment policies, which are discussed in my submission to the Australian Human Rights Commission’s *Willing to Work Inquiry*, attached for your reference.

⁸ See generally, my submission to the Commission of Audit at <http://www.ncoa.gov.au/docs/submission-adj-consultancy-services.pdf> as at 4 January 2016.

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evaluation, to avoid outcomes such as those highlighted by the Australian Broadcasting Corporation's 7:30 program;
5. The Government should consider waiving its status as a secure creditor, in the interest of other creditors, be they individuals, small businesses, workers, contractors or to meet the day-to-day needs of a debtor's immediate family (endnotes omitted).⁹

The Commission's report, while useful, comes with an important caveat, that there are a variety of limits on the quality, quantity and accuracy of data. This applies to both Australian and international datasets, as well as their comparison.¹⁰ This becomes apparent when you consider Box 5.4¹¹ and Figure 6.2¹² together. As a disability pensioner who has made the transition from welfare to work a number of times, I question the Box 5.4 conclusion on Cameo 4, that there is any gross or net gain for disability pensioners returning to work. Indeed, as highlighted in my *Rethink* submission:

(As) somebody confined to a wheelchair and, with chronic conditions coming from disability, you do have to make a judgment about whether taking up employment and potentially giving up subsidised access to medicine is a positive step for either your physical or financial wellbeing? In short, both personal welfare and, the welfare system more generally, have a vexed relationship to the tax system.

To resolve this, tax expenditures must be considered. A tax expenditure is "a provision of the tax law that provides a benefit to a specified activity or class of taxpayer that is concessional when compared to the 'standard' tax treatment that would apply." Holmes and Gobbett demonstrate that expenditures are carving out a significant hole in budget receipts, to the value of \$115 billion, or 7.5% of Gross Domestic Product (GDP) in 2012-13. Ending tax expenditures would put the budget on a much stronger footing and, as Holmes and Gobbett

⁹ *Rethink* submission, pp. 2-3 of 9, contained in "Rethink bundle" compressed folder

¹⁰ See Productivity Commission, op. cit., pp. 22-24

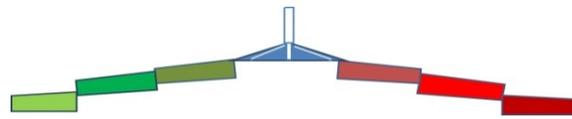
¹¹ See *ibid.*, p.91 - Box 5.4 Participation tax rates for cameo families - Change in private income, income tax and transfers after transition into work

¹² See *ibid.*, p.97 – Figure 6.2: Average income tax rate by private income - Annualised lifetime results compared to annual 2014-15 results (Source: Commission estimates).

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argue “transparency would be increased in many cases if tax expenditures were replaced with direct expenditure” (endnotes omitted).¹³

REFERENCE DOT POINTS ONE AND TWO

If the Committee is serious about broadening the base of personal income tax so it is possible to reduce marginal rates, you need to ask yourselves why the Government persists in giving subsidies to so many professional or trade organisations. In my view, there is no good reason to continue this practise.

My own profession, law, is a case in point; a monopoly protected by statute, it has largely been unwilling to adapt as the university law schools have pumped out graduates to a grossly over-supplied market. Yet, if you want to have any hope of practising your craft, you need to keep your training credentials up-to-date through a strictly controlled number and range of providers – one being the (State-based) Law Society. How much do these bodies actually serve the current cohort of professionals (be they lawyers or anyone else), or are they institutional echoes of a by-gone 18th century (or earlier) perspective?

Certainly, while one can claim the cost of sometimes dubious mandatory continuing education seminars as tax deductions, taxi fares¹⁴ (even with a disability transport subsidy) could eat \$100 out of my non-business income. All of which makes me wonder as to the value of many professional bodies,¹⁵ particularly when many are formed as charitable, not for profit or other benevolent-type societies, with associated tax benefits.¹⁶

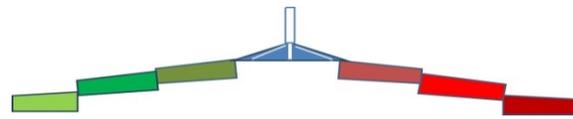
¹³ See *Rethink* submission, p.3 of 9, referring to Dr Anne Holmes and Hannah Gobbett (Economics), *Tax expenditures: costs to government that are not in the Budget*, Parliamentary Library, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/Briefing_Book44p/TaxExpenditures as at 10 May 2015.

¹⁴ I do not drive, given my physical condition.

¹⁵ See for example, my submissions and evidence to the Productivity Commission's *Access to Justice Inquiry* at <http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test2/submission-counter/subdr164-access-justice.docx> and <http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test2/submission-counter/subdr297-access-justice.docx> (submissions); and <http://www.pc.gov.au/inquiries/completed/access-justice/public-hearings/20140603-sydney-access-justice-transcript.pdf> (transcript, pp. 203-209) as at 4 January 2016

¹⁶ In relation to the NSW Law Society, it is a company limited by guarantee and each member is liable (should the organisation be wound up) for \$2.00. Charities can use such structures. Thankfully though, the Society's 2014 Annual Report reveals it is liable for income tax; see Law Society of NSW, *Annual Report 2014*, p.47 (48 of

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Remove these benefits and tax all companies and legal entities on all income in the same way¹⁷ and, I doubt there would be anywhere near the same revenue difficulties. Even if, on Peter Kurdi's figures, the NGO generates about \$43 billion, the fact that tax expenditures (which subsidise many NGOs) cost the Budget \$115 billion,¹⁸ mean that there is a significant shortfall. Politicians seem very reluctant to confront this problem. This is not surprising because in many ways, State and Federal Governments have jointly become dependent on charities/NGOs to deliver goods and services that they once did themselves. Often, the goods and services concerned are received by the poor, elderly and disabled.

I do not approve of being "farmed out" by various State and Federal governments (of all political hues), to the NGO sector. I raise this during an inquiry into personal and company income tax rates for a number of reasons. The first reason is that, in my experience, many of the alleged services (particularly in the employment area) provided by NGOs are ineffectual.¹⁹ And

62) – "Consolidated Statement of Changes in Equity for the year ended 30th June 2014" at <http://www.lawsociety.com.au/about/organisation/annualreports/2014/index.htm#> as at 5 January 2016. Nonetheless, Peter Kurdi states that:

The system of tax concessions available to charities and other NFPs (not-for-profits) is complex, but the 2010 Productivity Commission report Contribution of the Not-for-Profit Sector estimated that in 2008–09, the value of tax concessions given to the NFP sector and donors of deductible gifts was worth around \$4 billion, and may have been substantially more...According to the Productivity Commission, the sector attracts 4.6 million volunteers who contribute to around 700,000 entities, and their effort generates around \$43 billion for the economy. The sector has around 900,000 paid employees (or about 8% of the Australian workforce). Most Australian NFPs operate in the services market sector of the economy such as sports, education and health, while others operate in community 'non- market' areas such as civil rights and religion.

Peter Kurti, In the Pay of the Piper: Governments, Not-for-Profits, and the Burden of Regulation, Issue Analysis, No. 139, 23 April 2013, Centre for Independent Studies, p.4 (5 of 16)
<http://www.cis.org.au/app/uploads/2015/07/ia139.pdf> as at 6 January 2016.

¹⁷ I discussed this matter extensively in my Submission to the Treasury on Governance of the Charitable Sector, which is attached as Appendix 2 in the "Pre-Budget 2015 bundle" compressed file.

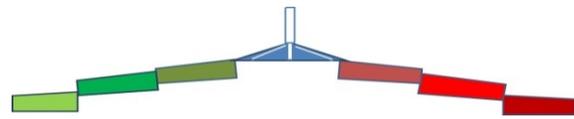
¹⁸ See footnote 10 above; I am relying on the figures of Dr Anne Holmes and Hannah Gobbett as cited. While some may complain that the two sets of figures are not clearly comparable, the Budget arguably loses far more in tax expenditures than the economy gains from the NGO sector.

¹⁹ See my submission to the Senate Education and Employment Committees inquiry, *Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Bill 2014*, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Strengthening_Job_Seeker/Submissions (Submission 12) as at 6 January 2016

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it is not just my personal opinion,²⁰ but much sound, learned academic opinion and research have raised questions about the negative impacts of such outsourcing.

For example, O'Sullivan, Considine and Lewis argue that when employment services were privatised, neither unemployed participants nor the new service providers operated in anything like a 'free market' of consumer choice and open competition amongst NGOs. Indeed, the means by which the reform was implemented ultimately lead to a system which was increasingly rigid. It sought to manage individual jobseeker outcomes and, was an arrangement where a large proportion of case managers in services surveyed in 2008 felt their work was dictated by the AE3000 computer system.²¹ This was the data

²⁰ Though my concerns have increased over the years; see for instance my submission to the Senate Education, Employment and Workplace Relations Committee's 2011 inquiry into *The administration and purchasing of Disability Employment Services in Australia*

<https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=a6fa4e6a-eb31-49de-bb0fc9f11849c86c> as at 6 January 2016. One was formerly a strong supporter of "Welfare to Work" policies, but over time, one has seen a growing number of NGOs seeking ever larger rents from government for very dubious returns. Refer to Appendix 3 in the "Pre-Budget 2015 bundle" which is my submission to the McClure Review of the Welfare System. In this, I say in part:

I note Graeme Innes's (former Disability Discrimination Commissioner) recent speech to the National Press Club, reproduced by the Sydney Morning Herald as - *If we're not lifters, it's because society forces us to be leaners*, Opinion, 2 July 2014 at <http://www.smh.com.au/comment/if-were-not-lifters-its-because-society-forces-us-to-be-leaners-20140702-zstli.html> as at 19 July 2014. While I agree with many points he makes, I am skeptical about a "jobs plan" and large corporates setting up a Disability Network. Is either initiative a true mobilisation of an economic resource, or a marketing exercise, helped along by a government grant and/or favourable tax treatment? As Mr Innes says: "*Many private employers are willing to commit to these processes. But they need to learn from their peers, and be resourced to get on with it, not be surrounded by government red tape. Limiting rules and bureaucratic disincentives are, to paraphrase Missy Higgins, a danger government are addicted to. And the various services contracted to find jobs for people with disabilities are not giving us value for money.*" A "jobs plan" is bureaucracy, while resourcing should not be code for indefinite workplace subsidies; if our employment is little more than an act of public charity, then "thanks, but no thanks!" If there is not a viable economic (unsubsidised) business case for the employment of people with disabilities (amongst others), then let's stop the charade here and, free ourselves of all the useless employment services Mr Innes makes reference to. (Appendix 3, pp. 10-11 of 24)

Having NGOs run extensive "make work schemes" is wasteful and should be abolished if we wish to reduce the rate of tax on personal, non-business income.

²¹ See Siobhan O'Sullivan, Mark Considine and Jenny Lewis, *John Howard and the Neo-liberal Agenda: regulation and reform of Australia's privatised employment services sector between 1996 and 2008*, (Presented at the Australian Political Studies Association (APSA) Conference) (September 2009) Macquarie University, 10 http://ssps.unimelb.edu.au/sites/ssps.unimelb.edu.au/files/John_Howard_and_the_Neo-liberal_Agenda_Sept_2009.pdf as at 6 January 2016.

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management system shared by *Centrelink*, the then Department of Employment and Workplace Relations and, service providers. How services supported individuals (and how much support was offered) was highly influenced by their desire to meet government targets and thus retain funding, which meant collecting compliance data, amongst other administrative activities.

Therefore, what government claimed reforms to employment services were achieving and, what the evidence showed is arguably contradictory. For instance, O'Sullivan and others explain that these reforms were being justified (including by the Keating Labor Government as providing "accurate assessment of the needs of jobseekers and an intensive plan to assist disadvantaged people".²² Despite these intentions, coinciding with the belief that competition would improve service delivery,²³ a Productivity Commission Report in 2001 found individual jobseekers with complex needs were being excluded from services as providers focused on those clients most likely to find employment and, ensure a contractual return for the service provider. In what the Commissioner labelled 'parking' and 'creaming'²⁴ the system perversely encouraged assistance to go to those who needed it least, while rationing support for those who needed it most. Paralleling this was an increasing movement of administrative functions from the Commonwealth to providers, which O'Sullivan and others conclude:

Frontline staff employed by private employment agencies had originally been engaged for the purpose of providing in-depth assistance to jobseekers. By 2008, those same staff were increasingly required to provide basic government oversight of job search activities, including more stringent monitoring of jobseekers to ensure they comply with 'mutual obligation' requirements. This monitoring type service appears to have displaced a more counselling style jobseeker/case-manager relationship, at least to some extent.²⁵

²² Ibid., p.6, quoting Keating, P. J. (1994), *Working nation: policies and programs* (Government of Australia White Paper). Canberra, Australia: Australian Government Publishing Service.

²³ See *ibid.*, p.7.

²⁴ See *ibid.*, p.25, citing Commonwealth of Australian (2002), Independent Review of Job Network: inquiry report; available online at http://www.pc.gov.au/data/assets/pdf_file/0018/54333/jobnetwork.pdf.

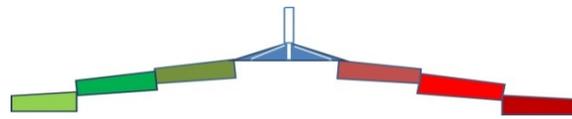
Accessed 21/7/09.

²⁵ Ibid., p. 19.

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The concept of 'mutual obligation' marks an important point in critical thinking about welfare, especially the legal, moral and political basis for its provision. Hartman and Darab (in a wider discussion of the Howard Government's *WorkChoices* industrial relations policy), argue that welfare has ceased largely to become "a right of citizenship but as the provision of minimum social standards that are appropriate to the stage of capitalist development".²⁶ These authors argue that this change is based on the convergence of two ideological policy arguments; the first sees work as a 'social good' while the second views welfare dependence as a barrier to the attainment of the first.²⁷

I concentrate on these examples simply because I am familiar with them. But let it be said quite clearly; this submission writer is a supporter of lower marginal tax rates, but for reform to be meaningful, organisations like churches, charities and other NGOs must be taxed like any other corporate entity; this must extend to assets, income and capital without exception. All governments must also review the grants and subsidies given to these bodies; for example, there is no good reason not to have *all* property owners paying land tax, *regardless of who they are*. Again, my *Rethink* submission advocates this position, citing commentary from Mr Eslake.²⁸ But, the Government should go further and, make such tax reform retrospective, at least with regard to churches and NGOs. The billions this would recover should take a lot of pressure off PAYG taxpayers, as well as making 'tick and flick' tax returns and the handing back of bracket-creep eminently affordable.

²⁶ Yvonne Hartman and Sandy Darab, *Howard's Way: Work Choices, Welfare Reform and the Working Wounded* (Paper presented to the Road to Where? Politics and Practice of Welfare to Work Conference, 17-18 July, 2006, Brisbane), p.8, quoting Mishra, R. 1999, *Globalisation and the welfare state*, Edward Elgar, Aldershot, <http://www.uq.edu.au/swahs/welfaretoWork/Final/conferencepaperHartman.pdf> as at 6 January 2016.

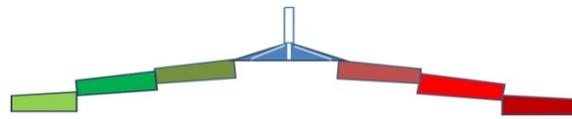
²⁷ See *ibid.*, 9, quoting Dean, H. 2004a, 'Human rights and welfare rights: contextualising dependency and responsibility', in *The Ethics of Welfare: Human rights, dependency and responsibility*, ed. H. Dean, The Policy Press, Bristol, pp. 7-28; Dean, H. 2004b, 'Reconceptualising dependency, responsibility and rights', in *The Ethics of Welfare: Human Rights, Dependency and Responsibility*, ed. H. Dean, The Policy Press, Bristol, pp. 193-210.; Andrews, K. 2005, 'A nation of participants – Workplace relations and welfare reform', *The Sydney Papers*, Autumn, pp. 75-82; Australian Government 2005b, *Welfare to Work: 2005-06 Budget*, Commonwealth of Australia, Canberra.

²⁸ See *Rethink* submission, *op. cit.*, pp. 1-2.

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These reforms are vitally important, not just for individual taxpayers, their families and businesses, but society in general. As someone with a disability, I see the growth of the NGO sector and, its march into many areas which used to be the province of the public sector as having some sinister overtones. There are some academic and historical bases for my concerns. There is at stake, a very Australian approach to social welfare whose history is largely lost in current debates on tax, welfare and the distinction between public and personal responsibility.

In his book *The Muddle-Headed Republic*, Alan Atkinson notes the change in social norms and legal expectations between Britain and Australia. He highlights the 1838 case of the *Royal Admiral*, a ship that docked in Adelaide. Several families on board complained to colonial authorities that the ship's surgeon had failed to come to the assistance of several expectant mothers, who gave birth and had to rely on each other for aid. The doctor would not have been expected to tend to poor or lower class women in Britain.²⁹ However, while convicts sent to Australia were simply criminals in the eyes of most, Atkinson says:

Governor Phillip defined the convicts as 'servants of the Crown'. As the master of such servants he made himself responsible for their welfare and discipline during the entire period of their sentence. From the early 1790s the British Government took deliberate steps to ensure the good health of convicts going to New South Wales by ensuring close control over contractors for transportation. The convicts learnt to rely on government, over and above their employers, as a means of guaranteeing minimum standards in food, clothing and working conditions.³⁰

This demonstrated a distinct change in both expectations and perceptions of the Crown, particularly during the Enlightenment. Atkinson traces the Crown's transformation from a Divine Ruler, to one where the subject owed allegiance based on a Lockean contract for care and protection. The Sovereign owed

²⁹ See Alan Atkinson, *The Muddle-Headed Republic*, Oxford University Press, Melbourne, 1993, p.35.

³⁰ Ibid, 34, citing Governor Phillip's Instructions, 25 April 1787, *Historical Records of Australia*, series 1, vol. 1, p.12; Alan Atkinson, 'Sunshine from Frost', *Push from the Bush*, no. 26 (April 1988), pp. 12-17; Alan Atkinson, 'Four Patterns of Convict Protest', *Labour History*, no. 37 (November 1979), pp. 31, 33-36, 43-48.

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increasingly intimate duties to subjects, obliging the British to pay reparations to rebellious Americans for rights violated,³¹ just as nursing mothers on the *Royal Admiral* could expect their need for medical care to be recognised in Adelaide where it was not in London.³²

Furthermore, where free settlers and private interests in the Americas could present a challenge to the Crown, the monarchy in Australia was the sole source of wealth and power in the colony.³³ Thus, even with the arrival of free settlers, squatters and the end of transportation, Australian colonies were notable for widening the franchise, establishing public health, banking and education facilities, from the 1840s onwards.³⁴ In Atkinson's view, "(it) almost begins to look as if the Crown is a socialist enterprise".³⁵

Equally, while religion has a particular and peculiar place in both British and American cultures, while 19th century Victoria was Christian, its tone "was set by the gold-rush immigrants whose energies ran equally to revelry and religious devotion".³⁶ Authors such as Dr Helen Irving also look to Australia's founders including Edmund Barton, who were determined to make the new nation secular and, only included a reference to 'Almighty God' in the *Constitution's* preamble "in response to a flood of petitions from church organisations".³⁷

The unique Australia project of a secular welfare State administered by the Crown has been supported by government, at least until the Keating Administration. The reorientation of service delivery to the NGO sector represents a departure from history, a process accelerated by the Howard Government and maintained by Labor and Liberal successors alike.

³¹ See *ibid*, p.34.

³² See *ibid*, p.35.

³³ See *ibid*, p.34.

³⁴ See *ibid*, p.38.

³⁵ *Ibid*, p.36.

³⁶ Stuart Macintyre, *A Colonial Liberalism: The Lost World of Three Victorian Visionaries*, Oxford University Press Australia, 1991, p.119.

³⁷ Helen Irving, *Australia's foundations were definitely and deliberately not Christian*, On-Line Opinion, Posted: Wednesday, 9 June 2004 <<http://www.onlineopinion.com.au/print.asp?article=2272>>; *Contra* Elizabeth Rogers Kotlowski, *Southland of the Holy Spirit: A Christian history of Australia*, Christian History Research Institute (Dr Graham McLennan, Publisher), 1994.

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However, it was not so long ago that the classical Lockean position was well understood and endorsed by significant Australian leaders. This is reflected in the attitude of former Prime Minister Robert Menzies (founder of the Liberal Party of Australia) who said:

The country has great and imperative obligations to the weak, the sick, the unfortunate. It must give to them all the sustenance and support it can. We look forward to social and unemployment insurances, to improved health services, to a wiser control of our economy to avert if possible all booms and slumps which tend to convert labour into a commodity, to a better distribution of wealth, to a keener sense of social justice and social responsibility. We not only look forward to these things; we shall demand and obtain them. To every good citizen the State owes not only a chance in life but a self-respecting life.³⁸

It concerns me greatly that modern governments at all levels of the Australian federation seem to think it is acceptable for more and more (formerly public) goods and services to be delivered by charities/NGOs. In my view, this does not represent good value for money for the taxpayer,³⁹ lacks the degree of public accountability of State services,⁴⁰ and denudes citizens in receipt of such

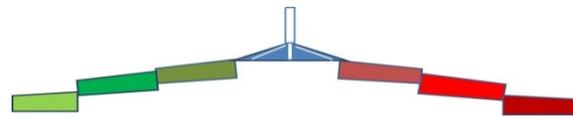
³⁸ Petro Georgiou, *Menzies, Liberalism And Social Justice*, Sir Robert Menzies Lecture Trust, 1999 Lecture (1999), p.3, quoting as at 13 March 2012, quoting Robert Menzies in a 1942 radio broadcast (citation omitted) <<http://www.menzieslecture.org/1999.html>>; the source is: Robert Menzies, *The Forgotten People: Chapter 5 - Freedom from Want*, 10 July 1942, The Menzies Foundation, Menzies Virtual Museum <http://menziesvirtualmuseum.org.au/transcripts/the-forgotten-people/63-chapter-5-freedom-from-want> as at 7 January 2016.

³⁹ Please refer to the earlier discussion of tax expenditures

⁴⁰ For example, see my submission to the NSW Parliament's Public Accounts Committee (PAC), inquiry into the Efficiency and Effectiveness of the Audit Office of NSW (Committee webpage: <http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/74E198EBC654BA7BCA257B1E00119EB6> as at 7 January 2016) and my submission - [http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/bddedc83e0a9ff20ca257bcf000c442c/\\$FILE/Submission%20No%207.pdf](http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/bddedc83e0a9ff20ca257bcf000c442c/$FILE/Submission%20No%207.pdf) as at 7 January 2016.

In this submission, my difficulties with various NGO care and support providers are outlined, as is the concern that the State Auditor was not empowered to look at the books of NGOs and, ensure monies granted by Government were spent as intended. The NSW Baird Liberal Government is yet to make the amendments to the *Public Finance and Audit Act 1983 (NSW)*, as recommend by the PAC (based on my submission). I make a similar point in my submission to the ALRC's review into *Legal Recognition Before the Law and Legal Capacity of people with a Disability* at http://www.alrc.gov.au/sites/default/files/subs/12_a_johnston.pdf as at 7 January 2016. I opened the submission, quite deliberately, with a quote from Oscar Wilde. While I am not

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services of a large part of their public citizenship. Where is the public outrage and, why is no-one marching in the street about it?

The simple fact seems to be that most people assume charities are benevolent, noble and largely beyond question. I beg to differ.⁴¹ Also, if you want to broaden the base and reduce the rate of income and company tax, without reducing overall revenue, reduce the vast number of bodies which can attract charitable status.⁴² Furthermore, last year, both the Federal Government and Opposition entered an insane policy bidding war about multinational corporate tax avoidance. And, while legislation was proposed,⁴³ it is one thing to enact new law; it is quite another to enforce it and achieve meaningful results.

A far easier course would have been to remind corporations that making large charitable donations to minimise company profits (and tax) would not really seem to be in the spirit of the *Corporations Act 2001 (Cth)* (the Act). While

socialist, Wilde's wise words speak volumes about the current outsourcing of public services to NGO sector. Wilde said:

But (charity) is not a solution: it is an aggravation of the difficulty. The proper aim is to try and reconstruct society on such a basis that poverty will be impossible. And the altruistic virtues have really prevented the carrying out of this aim. Just as the worst slave-owners were those who were kind to their slaves, and so prevented the horror of the system being (realised) by those who suffered from it, and understood by those who contemplated it...Charity degrades and (demoralises)...Charity creates a multitude of sins.

Oscar Wilde, "The Soul of Man Under Socialism." - Quotation taken from

<http://abetterworldisprobable.wordpress.com/2012/01/01/oscar-wilde-on-the-problems-of-charity/> as at 26 December 2013; Oscar Wilde, *The Soul of Man Under Socialism*, (1891),

<http://www.marxists.org/reference/archive/wilde-oscar/soul-man/index.htm> as at 26 December 2013.

⁴¹ See generally "Pre Budget 2015 bundle" compressed folder, Appendix 5: *Submission: The Devolution And Outsourcing Of Housing, Disability And Home Care Services To The Non-Government Sector*, submission to the NSW Legislative Assembly Committee on Community Services. This document explains in detail where, how and why I lost confidence in NGOs and charities as reliable and credible deliverers of goods and services. I stand by every word of the submission as accurate, reasonable and fair comment, despite the Committee declining to publish it.

⁴² See generally "Pre Budget 2015 bundle" compressed folder, Appendix 2: *Submission to the NFP Tax Concession Working Group*

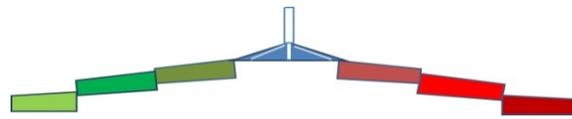
⁴³ See e.g.: Chartered Accountants (Australia and New Zealand), *Combating multinational tax avoidance - bill introduced*, Article last updated 22 October 2015,

<http://www.charteredaccountants.com.au/auditconferences/Home/Industry-Topics/Tax/Tax-news/Regulatory-and-government-updates/250915-Combating-multinational-tax-avoidance> as at 8 January 2016

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Division 4 of Part 5D.3⁴⁴ of the Act relates to charitable trusts and fees that can be charged, I am personally uncomfortable with the thought that directors believe it is within their discretion (or in a company's best interests) to give shareholder money to charities.⁴⁵ Charitable giving by corporates will be defended by its supporters as "triple entry bookkeeping" but as this phrase does not appear in the Act, what is the true position at law? In my view, while it may be "good" to give to charity, there is no positive duty to do so and, it need not be subsidised by shareholders or the tax system.⁴⁶

In much the same way, there is a general case against State or Federal governments using the tax simply to subsidise activity. This is particularly when the subsidy becomes indefinite, is not based on the recipients being in a better position as a result of the funds and, in the worst case scenario, perpetuates dependence and poverty. This is my overwhelming view of what happens when governments give money to NGOs. Stopping this constant flow of funds (or at least slowing it down) would give government the means to broaden the income tax base, without undue negative impacts on the economy. This would also provide a useful opportunity (and potentially some funds) to reform the Federation.⁴⁷ This is an important, related project, which deserves attention.

Yours faithfully,

Adam Johnston

⁴⁴ See "Division 4--Fees for being trustee or manager of a charitable trust," at

http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/ as at 8 January 2016.

⁴⁵ I am also a small shareholder.

⁴⁶ The current regime can be a double-edged sword for charities themselves – see e.g.: Catie Low, *Epilepsy*

Action Australia left in the lurch by Dick Smith's demise, Sydney Morning Herald: Business Day, January 8, 2016 - 12:45AM, <http://www.smh.com.au/business/retail/epilepsy-action-australia-left-in-the-lurch-by-dick-smiths-demise-20160107-gm109c.html#ixzz3wbY4GPEC> as at 8 January 2016.

⁴⁷ My recommendations concerning that matter are contained in the compressed file "Federation", which is found in the compressed file "Rethink submission bundle".

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