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The Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Madam/Sir,

Re: Inquiry into Tax Laws Amendment (Public Benefit Test) Bill 2010

We welcome the opportunity to offer our comments to this Inquiry. We certainly agree that in order to receive exemption from income tax, the aims and activities of religious and charitable institutions must be assessed against a public benefit test. To receive a tax exemption, such activities should be *bone fide* charitable. A public benefit test is a necessary measure to ensure this is the case.

This amendment will achieve nothing, however, unless it is made clear that the "advancement of religion" is not *ipso facto*, a public benefit. Where it is not in fact charitable, the advancement of religion is not a public benefit, but the reverse. We consider that it can be divisive and detrimental and therefore not worthy of tax concessions. We suggest that to achieve this, it may also be necessary to amend, where appropriate, the definition of "charitable purpose".

We note that in the 2008 inquiry into the Architecture of Australia's Tax and Transfer System, the Treasury Discussion Paper described the current situation. Under the section on charities it stated:

> Charities are eligible for a range of tax concessions, including refunds of imputation credits, income tax exemptions and GST concessions. To be eligible for endorsement as a charity, an organisation must be operated for public charitable purposes. Charitable purposes are: the relief of poverty, sickness, or the needs of the aged; the advancement of education; the advancement of religion; and other purposes beneficial to the community. A charity can only carry on a business or commercial enterprise where that activity is merely incidental to its charitable purpose.

We accept that some of the activities of religious organisations may be charitable, however "the advancement of religion", should be removed from the definition of charitable purpose. Religious activities, if charitable, will qualify for exemptions in regard to one or more of the other criteria, which are sufficient to identify a public benefit.

We note that any sect, cult or superstition may be deemed eligible for such concessions, provided that they express belief in a supernatural being or principle. Given that religious groups may adhere to conflicting beliefs and ideologies, their promotion may thereby contribute to social disharmony. The coercive behaviour of cults can also cause severe distress, psychological trauma, and can disrupt the lives of families.

The inclusion of the advancement of religion in the definition of charitable purpose can therefore be counterproductive. It is unduly broad, anachronistic, inequitable, and gives rise to several glaring anomalies. We submit that this Inquiry consider whether the proposed amendment to introduce a public benefit test is sufficient to rectify this situation.

Section 116 of the Australian Constitution states that the "Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion …". As a result of the 1982 High Court decision on the Defence of Government Schools case, the advancement of any or all religion has been deemed permissible under the constitution. There is however, no constitutional requirement that religion should be advanced. The free exercise of religion does not imply that religion must be exercised at the expense of the taxpayer.

In addition, the concept of freedom of religion does not require that the exercise of such freedom be the subject of tax concessions. Declarations of such freedom refer to the "freedom of thought, conscience and religion" and they require the absence of coercion. If the advancement of freedom of thought and conscience were similarly deemed a charitable purpose, then presumably freethought groups such as Humanists, Rationalists, Secularists and Atheists should also be entitled to tax concessions.

The extent of the current anomaly is not limited to this. Australia is one of only three countries in the world where even the commercial enterprises of religious organisations are granted tax concessions. One may wonder how such a situation could possibly have arisen.

The origins of these regulatory shortcomings, which also apply to the disclosure regimes, can be traced to the legal framework inherited as a result of the Preamble to the Statute of Elizabeth, or the Statute of Charitable Uses (1601). Following this, the presumption entered common law that all religious activities were inherently charitable. Subsequently, the concept became entrenched and has remained so ever since. It is an anomalous anachronism, therefore, that the tax regime in Australia in the 21st century should be determined by the persistence of a medieval doctrine.

We would like to refer to another instance that we are aware of, where such archaic perceptions appear to form part of current legislation. The Extension of Charitable Purpose Act 2004 – Sect 5 (1) (b) defines a group or religious order that "regularly undertakes prayerful intervention at the request of members of the public" as being for the public benefit. People are perfectly entitled to engage in such activities if they wish, but there is surely no justification for what may be regarded as little more than superstition being defined as a charitable purpose for the public good.

The available evidence on this matter suggests there is no benefit. Clinical trials have been conducted in the United States in which groups suffering from serious illnesses were either prayed for or not. Prayerful intervention was found to make no difference, except in cases where a group knew that prayerful intervention was being undertaken on their behalf by others. The medical outcomes of this group were found to be significantly worse. The suggested explanation for this was that the intervention caused psychological damage that adversely affected their recovery.[i] If "evidence based policy" is the objective, then "prayerful intervention" is disqualified as being a charitable public benefit.

As to obtaining evidence regarding the extent of the concessions that are available to religious organisations, this is difficult, due to inadequacies in the disclosure regime. These bodies are not required to report the breakdown of their charitable, business or investment activities. This lack of transparency makes it difficult to determine the actual cost of these exemptions.

We would like to refer here to some estimates of the value of these exemptions, which were also provided in a previous submission in relation to the Treasury's review of taxation. We attempted to quantify the magnitude of the revenues and concessions. An estimate of revenue and assets is shown in Table 1.

Table 1 – Revenue and Assets of Churches (2007 estimates)

	$ Million	Notes
Revenue of the 10 biggest churches	47,647	W
Estimated collections	2,760	X
Catholic Church Assets	150,000	Y
Estimated other church assets	217,647	Z

Notes:

W 2005 information from BRW article "God's Business" June 2006 + 20%
X 10% of estimated Catholic Church revenue
Y 2005 information from BRW article "God's Business" June 2006 + 50%
Z Assumes Catholic assets same ratio of total (40.8%) as of revenue.

On the basis of these estimates, we are then able to provide some estimates of the cost to taxpayers and to governments of the concessions available to religious organisations. Federally, these apply to income tax, fringe benefits tax, and the goods and services tax. State government exemptions cover land tax, payroll tax, stamp duties and car registration fees. Local governments provide exemptions from municipal rates. Concessions may also be granted for some water and power charges. We are unable to provide estimates for all these items. However we can provide estimates for direct grants from government, which are another significant cost to taxpayers. These estimates are given in Table 2.

Table 2 – Estimates of Cost to Taxpayers

	$ Million	Notes
Income tax lost (at corporate rate)	15,122	A
Capital gains tax lost (corporate rate)	6,529	B
Grants for family counselling	64	C
Chaplains in schools programme	30	D
Grants to religious schools (from commonwealth)	5,630	E
Grants to religious schools (from states)	1,800	F
Grants for abortion counselling	20	G
Grant for interfaith convention Melbourne	2	H
Grant for Catholic World Youth Day (state & federal)	140	I

Notes:

A 30% of the estimated revenue
B Assumes 10% realised CG from asset holdings, property + shares
C 2005/2006 budget forward estimates
D One third of $90 million announced over 3 years
E 2007 Budget Papers (90% of total non-govt of $6.256 billion)
F SMH article as above estimate of NSW funding x 3
G Media releases
H 2007 Budget Papers
I Govt media + budget

Further estimates of income lost to state and local governments are given in Table 3. The information in these Tables suggests that religious organisations receive ample support via direct grants for many of their activities. We question whether local and state taxpayers should pay higher

taxes and rates as a result of extending exemptions to organisations that are already subsidised through direct government expenditure.

Table 3 - Income Lost to State and Local Governments

	$ Million	Notes
Payroll tax exemptions	473	J
Stamp duty exemptions	418	K
Land tax exemptions	139	L
Rate income lost to councils	$ 610	M

Notes:

J Based on NSW treasury figures X 3 for whole country
K Pro-rated on above
L Pro-rated on above
M Pro-rated on above against Association of Local Councils source

Combining the costs shown in Tables 2 and 3, it can be seen that our estimate of the total cost of concessions to religious organisations in Australia exceeds $31 billion. This is a gross figure and necessarily somewhat speculative. It may be discounted for bona fide charitable works and for expenditures that may otherwise be required. However it does not include items such as FBT and GST where we are unable to source data on the value of concessions. The figure gives some idea of the magnitude of the cost of concessions which arise as a result of the continued adherence to the medieval “advancement of religion” doctrine.

More accurate estimates of this kind could be obtained if the information was available, but it is not. It is standard budgetary procedure that the loss of revenue arising from exemptions, for example those applying to superannuation pensions, are listed in budget papers and can be quantified. It is anomalous that no such requirement exists for religious organisations, even those that may be involved in significant business and investment related activities.

Further anomalies occur in relation to the application of the Fringe Benefits Tax and the Goods and Services Tax. As the FBT is exempt to employees who are religious practitioners, eligible employers can provide remuneration packages that are biased wholly in terms of fringe benefits, thereby avoiding any income tax. This device can also create an unwarranted entitlement to social security benefits. This is a loophole that should be closed.

In relation to the GST, an anomaly occurs in relation to ceremonies for weddings and funerals. If performed by a civil celebrant, GST is payable, whereas if done in a church, it is not. Apart from being grossly inequitable, the situation is of doubtful legality in the light of equal opportunity laws that prohibit discrimination on the grounds of religion.

In summary, we therefore submit the following:

1. We support the proposed amendment that a public benefit test be introduced as a qualification for religious and charitable institutions exemption from income tax.

2. We submit that the definition of “charitable purpose” be reformed to exclude “advancement of religion”, so that religious worship and indoctrination into any sect, cult or religion are not charitable activities in themselves.

3. We submit that the activities of any charitable organisation, religious or not, should not be exempt from accountability or from taxation.

4. We submit that the investment and business related activities of any organisation should not be exempt from taxation.

5. We submit that only the bona fide charitable activities not connected with religious worship or indoctrination should be tax exempt.

6. We submit that any organisation claiming taxation exemptions for charitable purposes should be required to submit annual reports that are audited, and publicly available in a manner similar to that for public companies.

7. We submit that if religious organisations receive tax exemptions, these must be provided only to the extent that their activities are bona fide charitable. Where an organisation is involved in religious worship and indoctrination, their business activities, investment income and other taxable activities should be separated, either through an accounting division or through operational separation.

In conclusion, we submit that a rational reform of the taxation regime for charities, with an "evidence based" benefit test, is necessary to improve transparency and accountability in this sector. It is also an essential first step in addressing the anomalous situation whereby tax exemptions are extended to religious organisations for activities that are not bona fide charitable activities.

These tax exemptions narrow the taxation base and place a higher burden on individuals and businesses that cross-subsidise these organisations through higher taxes. This distorts the flow of capital and labour and encourages the setting up of structures for the purpose of carrying on businesses to gain an unfair advantage.

We thank you for this opportunity to express our view and commend our submission for your consideration.

Yours sincerely,

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Frank Gomez

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[i] See H. Benson, J. Dusek, J. Sherwood, P. Lam , C. Bethea, W. Carpenter, S. Levitsky, P. Hill, D. Clem, Jr. , M. Jain, "Study of the Therapeutic Effects of Intercessory Prayer (STEP) in cardiac bypass patients: A multicenter randomized trial of uncertainty and certainty of receiving intercessory prayer", American Heart Journal , Volume 151 , Issue 4 , Pages 934 - 942
http://linkinghub.elsevier.com/retrieve/pii/S0002870305006496