

SUBMISSION TO TAX LAWS AMENDMENT (PUBLIC BENEFIT TEST) BILL 2010

1. Summary of this submission

In considering whether a public benefit test should apply to charitable institutions, it is necessary to acknowledge that one category of charitable institutions come about through a presumption in law that a religion (or religious institution) is automatically a charitable institution.

I recognise and support the fundamental human right to freedom of religion, and therefore for religions to establish themselves and disseminate. There is a distinction between a religion's right to exist and grow, and the extent to which public support through forgone taxes (in the name of the public good) is desirable. Many would argue against the assumption that religion of itself is of benefit to the public, and even more would argue against a view that all religions act for the public benefit in everything they do.

Thus there is the threshold question: should the presumption in law that religions should automatically be given charitable institution status continue to exist? On the one hand, freedom of religion is an acknowledged human right, and concomitantly, religions should be allowed to emerge, evolve and prosper. On the other, in Australia we have observed the propensity for some religions to engage in destructive and anti-social acts, and the ability under current tax laws to cynically organise to meet the criteria of a religion, to gain material advantages – financial and operational, through a lack of scrutiny and regulation.

Tax concessions and exemptions confer significant benefits on charitable institutions. Most religious/charitable institutions act consistent with normal standards of charitable behaviour, and are established on traditional principles such as compassion, benevolence, tolerance, inclusion. Judging from allegations recently in the media and my personal observations from eight years of close association, Scientology does not. There are other religious organisations/charitable institutions who have also been the target of complaints and allegations, such as the Exclusive Brethren and The Family. The Australian public indirectly supports these organisations by shouldering the burden of taxes forgone and thus indirectly assists to perpetuate these organisations and their activities. Truly charitable institutions should have no trouble in meeting the public benefit test, and the administration of such tests should favour these institutions.

In this submission I:

- Propose removal of the presumption in law that religions are automatically charitable institutions, and
- Support the notion of a public benefit test for all charitable institutions.

2. Support for the public benefit test

2.1 The presumption that all religions are charitable institutions

In the consideration of whether Australia has need of a public benefit test to be applied to organisations that seek taxpayer and governmental support through tax relief, there is a threshold question, and that is:

Should all religions automatically be considered charitable institutions?

In the current Australian tax system, religions are more or less automatically considered charitable institutions, and charitable institutions are eligible for tax exemptions and concessions. Many religions do of course carry out charitable activities. Some do not. Some have objectives and practices that are antithetical to what the average person would consider to be "religious practices", and are specifically organised to act counter to generally held religious characteristics of compassion, benevolence, tolerance and forgiveness – Scientology and the Exclusive Brethren, to name just two, according to credible media reports. Official status as a religion confers significant tax benefit as well as other advantages such as relative autonomy and the "religious persecution" defence, both of which have potent symbolic value in the Western world. The lack of scrutiny and regulation that religions in Australia enjoy would be as desirable as the financial advantages of religious status.

It could be argued, however, that some newer religions arising since the development of contemporary tax law and regulations are able to cynically organise themselves specifically to meet the requirements and criteria set by those laws and regulations.

I am a strong supporter of freedom of religion as a fundamental human right. Support of freedom of religion implies support of the right of new religions to emerge and establish themselves. New religions constantly emerge and evolve, and the only way humans can know whether a religion is enduring or not is through the passage of time. The "big three" religions – Christianity, Islam, Judaism – have endured for centuries and are now more or less benign, although in the past have been associated with periods of fanaticism, cruelty, intolerance, injustice and oppression. (The Crusades and Spanish Inquisition come to mind.) And they too generate breakaway sects and offshoots, as do old religions such as Buddhism and Hinduism.

For me the threshold question is: should religions automatically be allowed tax concessions purely because they are religions? This presumption implies that religion per se is a public good, and that all religions therefore are for the public good. I think there are qualifications and arguments that can be made against both suppositions.

Because of the emergence of new religions (or belief systems that have the status of religion conferred on them), I think it is necessary to distinguish between two broad types of religion. On the one hand, there are religions that are founded on principles and values (and act in ways)

that Australians find desirable, that further social cohesion and wellbeing, and those that are not and do not. The ordinary bystander might agree that religious values include an acknowledgment of the spiritual dimension of life; compassion for humankind; benevolence; tolerance; a peace-loving attitude; inclusion; forgiveness; integrity; charity. (I admit these are somewhat contrary to the sometimes warlike history of some of the religions represented in Australia today.)

Against that, there are religions that serve only a closed group of members, that express contempt for the laws of the land or for ordinary people through commission of criminal or anti-social activities, and that are cynical in their establishment and activities.

Under current legislation, both types of religions receive subsidies from Australian taxpayers through tax concessions; both enjoy a certain autonomy and freedom from regulation and scrutiny. Yet some religions in the second category may fly under the radar of taxpayers who, when asked, would find their activities and objectives antithetical to normal standards of behaviour, therefore not worthy of support.

For government entities to distinguish between these two categories and their nuances will be impossible, given the unknowables associated with religion and difficulties of making comparisons. And if it's impossible, we shouldn't try to do it. It is more principled and simpler to allow all religions to exist without restriction and discrimination (apart from a requirement to act in accordance with the laws of the land).

Acknowledging that not all religions are charitable in belief and not all operate charitably, **the presumption in Australian tax law that religions/religious institutions are also charitable institutions should therefore be removed.**

To effect this, I suggest a Registry of Religions on which all religions that have a presence in Australia can register. Registration simply officialises the presence of that religion and there is no consequential expectation of tax benefit or advantage. Registration would also require the lodgement of basic corporate information: objectives, beliefs, locations, details of governing body and senior staff at the very least.

In this way religions are able to exist without the requirement to demonstrate charitable intentions or activities, and no tax benefit ensues.

Religions that have a genuine, enduring commitment to charitable activities would be free to establish/operate charitable institutions that would then come under the ambit relevant legislation and regulations.

In proposing this I am seeking a balance between the fundamental human right of religious freedom and the question of indirect public support for religious organisations that are seen to act more in their own interests than that of the public.

2.2 Scientology as an example

As noted above, some religious institutions/charitable institutions have come under criticism for alleged activities that are contrary to our notions of charity and charitable behaviour. For instance, over the past few months, alleged abuses by Scientology have been detailed in the media through programs such as ABC's 4Corners as well as on Channel 7's Today Tonight and in the US media. I will not add to these here but will simply say that I find these allegations credible, as they are consistent with my own experience of Scientology.

I was a member of Scientology from 1974 to 1982, mostly as a member of the so-called "elite corps", the Sea Organisation (or Sea Org). During those years I worked in Sydney, NSW; Clearwater, Florida; the Pacific base in LA, California; and for three months was held against my will at the (then secret) Int Base near Hemet, California. I also travelled to Mexico, the UK, Australia, New Zealand, South Africa and Denmark as well as around the USA, visiting Scientology organisations. I achieved relatively high status before I left. I have seen and read materials written by Scientology's founder, L. Ron Hubbard, in the form of confidential telexes and archived material, as well as the standard policy and technical documents.

I believe this experience qualifies me to make judgments about the beliefs and behaviours of Scientology both in Australia and overseas.

Since I left Scientology I have kept myself informed of its activities. I have also periodically been in touch with former colleagues who have left over the years, some very recently. I trust the judgment and believe the reports of those whom I know personally. This being so, I have observed that the practices of Scientology that led me to leave it, almost 20 years ago, are still current today. And that in turn leads me to conclude that they are deeply embedded and intrinsic in the writings of Hubbard, arise from systematic application of Hubbard doctrine, and are not just occasional aberrations.

My core point is: if one religion in Australia can act in the way that Scientology does, then how many others do? And furthermore, are these behaviours consistent with the standards and values that Australians expect of charitable institutions? There is a contract implicit between the taxpayer and the charitable institution: that in consideration of services rendered by the charitable institution to the disadvantaged and needy of the nation, the taxpayer provides (significant) monetary support through taxes forgone. If one side does not provide the services, is the other side justified in withdrawing its support? To put it another way, are Australians happy to pay for religious/charitable institutions that cause distress and harm?

3. The public benefit test

There are many organisations that exist to provide social benefit and not all of them are charitable institutions. There are also numerous charitable institutions that perform valuable and necessary services in Australia.

Their collective work adds immeasurably to Australian society, not just in the care of the disadvantaged and needy but also in the broadening of our creative, sporting, intellectual, etc. horizons.

I believe these organisations should be supported in acknowledgment of their contributions to our society, and tax concessions are one form of public and governmental support. However, I have concerns about the lack of scrutiny and regulation within this sector that enables a small minority to act contrary to the public good.

I currently work for a charitable not-for-profit organisation and it is not hard to see what the impact of a public benefit test would be on this truly charitable organisation and therefore for countless others.

Though clearly the compliance cost of a public benefit test may be unwelcome, I believe that this is the price of public funding. Ultimately, upholding standards of transparency and accountability will benefit both the charitable institutions as well as the Australian taxpaying public.

Genuine charitable institutions will easily demonstrate that they meet any forthcoming tests and criteria.

Therefore **I support the notion of a public benefit test to be applied to all organisations that seek tax exemption.** I wholly support the three key principles outlined for the public benefit test, namely (a) identifiable benefit arising from the aims/activities of an entity, (b) that benefit to be balanced against detriment or harm, and (c) the benefit must be to the public or a significant section of the public.

It is inevitable that some individuals in some religions will do harm to others. What is important, though, is whether the religious organisation is prepared to admit wrongdoing and make acts of reparation to those harmed – that is, to live up to its own religious code. Thus **the second principle of the public benefit test could be extended to include a clause that recognises genuine and systematic attempts by the religious institution to repair any harm or damage done** by its members and representatives. This protects charitable institutions strongly associated with religions from the aberrant behaviour of individuals, and safeguards the rights of victims of those individuals. For example, some Christian churches have been associated with incidents of child abuse. These should never be condoned, but acknowledgement should be made of their attempts to right wrongs and bring perpetrators to justice. These should also be balanced against the enormous benefits they bring to society.

My lay understanding of the UK Charities Commission is that it has been successful in removing the presumption that religious institutions are charitable institutions by definition, and by equalising the conditions under which charities and charitable institutions exist in the UK.

I hope that systems can be established that allow for fairly benign scrutiny of genuinely charitable trusts and organisations so as not to impose too much of a burden. Borderline organisations – ones that only just meet the criteria – could be subject to a more onerous, regular

scrutiny. To effect this, perhaps some sort of term-limited licensing system could be organised, with long terms (10 years) for some organisations, and shorter terms (1 year) for others. In other words, provide incentives for good behaviour.

Thank you for the opportunity to comment on this proposed amendment.

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