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Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

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

Thank you for the opportunity to comment on the Tax Laws Amendment (Public Benefit Test) Bill 2010 (the Bill).

The Australian Christian Lobby (ACL) understands that the Bill is primarily motivated by allegations of criminal activity within the Church of Scientology, but it would cause unnecessary collateral damage to churches and Christian charities. It is an unnecessary impost that will have a bearing on the delivery of services to the country's most needy. A public benefit test is a large unwieldy tool attempting to tackle what is essentially a very small problem.

ACL believes that the Bill should not be passed because:

- Any allegations of illegal activity should be investigated by law enforcement agencies, not tackled through tax reform legislation;
- There are already existing, less intrusive means of removing taxation exemption from organisations that are undertaking activities that are illegal or otherwise contravene regulations;
- The application of a public benefit test to all tax exempt entities will create more administrative responsibilities for charities, directly impacting the provision of services for the needy;
- The Bill lacks essential details about the operation and administration of the public benefit test, creating uncertainty for service-providers; and,
- The contents of the Bill would more appropriately be addressed within the broader context of reform to the third sector, as flagged in the Henry Review of Taxation and the Productivity Commission Report, 'Contribution of the Not-for-Profit Sector'.

Alternative courses of action

The Explanatory Memorandum to the Tax Laws Amendment (Public Benefit Test) Bill 2010 explains that the Bill is primarily a response to “allegations from former members of the Church of Scientology about coerced abortions, false imprisonment, breaches of Occupation Health and Safety laws, stalking, harassment and extortion, to name but a few”. The claim is then made that because the Church of Scientology should be subject to a public benefit test, all tax exempt organisations should also be subject to that same test.

ACL is naturally concerned by allegations of criminal activity taking place within any organisation claiming status as a “religion”. However the correct mechanism for responding to such allegations is via law enforcement agencies, not taxation law reform. Imposing an additional regulatory burden on the entire not-for-profit sector on the basis of a few allegations of harm caused by a small number of tax exempt organisations is an excessive response to an isolated issue.

If the aim of the Bill is to subject to further public scrutiny the activities of particular organisations by reviewing and removing their tax exempt status, then there already exists less intrusive mechanisms of achieving this objective that will not impact on the activities of other organisations. Under Australian Tax Office (ATO) Ruling TR2005/21, the ATO has the capacity to remove tax exempt status from organisations whose purposes encapsulate activities that are illegal or are against public policy.

Arguably, the ATO could use Ruling TR2005/21 to revoke the charitable status of the organisation targeted by the Bill. It would then be up to that organisation to challenge the decision in the courts. This appears a far more even-handed action that is proportionate to the problem. It is a simple and workable solution that has the capacity to accomplish the desired additional scrutiny of the identified organisation without adversely affecting the work of the vast majority of law-abiding charitable entities.

It has been stated that a public benefit test is “nothing new”. Such a test exists in English law, but the Church of Scientology was denied tax exemption there prior to the introduction of the test. It follows that a public benefit test is not a necessary prerequisite for the removal of tax exempt status in this case.

ACL therefore recommends that alternative avenues be explored for achieving the desired objectives of the Tax Laws Amendment (Public Benefit Test) Bill 2010 that do not impact the activities of other religious and charitable organisations.

Increased regulatory burden

The recent Productivity Commission report, ‘Contribution of the Not-for-Profit Sector’ says that, “The current regulatory framework for NFPs is characterised by uncoordinated regimes at the Commonwealth and state/territory levels. Disparate reporting and other requirements add complexity and cost, especially for organisations operating in more than one jurisdiction”.¹

¹ Productivity Commission (2010), *Contribution of the Not-for-Profit Sector*, p. 113.

As the Productivity Commission has identified in its comprehensive report, charitable organisations are already subject to significant regulatory and compliance complications. Administrative burdens redirect scarce resources away from providing valuable services to needy and vulnerable Australians. The advent of a public benefit test would add a further and unnecessary regulatory requirement on the not-for-profit sector, which is already over-burdened by inconsistent and duplicated compliance regimes.

The 'Contribution of the Not-for-Profit Sector' report identifies a range of reforms that can be made to simplify and improve the regulation and compliance of charitable organisations. The Henry Review of taxation has also made a number of recommendations of this nature. A public benefit test should only ever be implemented through a comprehensive regulatory response within the context of the two reports. As a stand-alone amendment to taxation law, the Bill fails to grasp the breadth and complexity of recommended regulatory changes.

Light on detail

There is little evidence that the Tax Laws Amendment (Public Benefit Test) Bill 2010 has been tested with the not-for-profit sector or that it has been subject to consultation with affected stakeholders. It should be rejected for this reason, and because it is an inadequately-drafted bill. It lacks significant details about the operation and administration of the public benefit test. There is scarce information about how the test would be drafted and how, and by whom, it would be applied and administered.

The lack of detail in the Bill creates unnecessary uncertainty for a sector which operates within tight budgets and a complex regulatory environment. This would inevitably impact on the ability of religious and charitable entities to deliver services to Australians facing economic and social disadvantage and isolation. The public benefit test should be reconsidered in light of the impact it would have on vulnerable Australians.

Conclusion

ACL believes that the Tax Laws Amendment (Public Benefit Test) Bill 2010 is an excessive response to isolated reports of harm caused by a single organisation that currently enjoys tax exempt status. Tax law reform is the wrong avenue to tackle this issue. Thousands of other religious and charitable organisations that unquestionably respect the law should not be subject to an inequitable public benefit test on the basis of the few claims made in the Bill's explanatory memorandum.

If the single object of the Bill is to cause there to be additional public scrutiny of the activities of the Church of Scientology then there already exist mechanisms for achieving this aim. The ATO already has the capacity to rescind tax exempt status on the basis of purposes that are illegal or against public policy. All alternative courses of action, that do not adversely impact the essential work of service-providers, should be more fully considered before any serious thought is given to a public benefit test.

A public benefit test should never be legislated in isolation, particularly in a Bill that contains little detail of how, and by whom, it would be administered. The objects of the proposed public benefit test, if determined to be valid, should be examined within the broader context of reform to the not-for-profit sector, as raised in the Productivity Commission report and the Henry Tax Review.

ACL proposes that the Committee recommend against the passing of the Bill.

Thank you for your consideration of our views.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'LS' or 'Lyle Shelton'.

Lyle Shelton
Chief of Staff