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Submission to the Senate Standing Committee on Economics: Inquiry into the Tax Laws Amendment (Public Benefit Test) Bill 2010

By the Standing Committee of the Synod of the Anglican Church Diocese of Sydney

1. This submission is made by the Standing Committee of the Synod of the Anglican Church Diocese of Sydney. The Synod is the principal governing body of the Diocese.
2. The bill for the Tax Laws Amendment (Public Benefit Test) Bill 2010 (the "Bill") is being promoted to address a specific concern about alleged criminal behaviour in the Church of Scientology. Allegations of criminal behaviour should be referred to the police rather than addressed under a taxation measure of general application.
3. There is currently a presumption of public benefit for religious and certain other charitable purposes. In order to displace this presumption it is not necessary to show that the purpose is detrimental to the public, but only that it is non-beneficial to the public.
4. The public benefit presumption has worked well as a mechanism for avoiding undue litigation about the question of public benefit. However it remains open to the courts to find that the presumption has been displaced and that income tax exempt status should therefore not be granted. This has happened, for example, in relation to certain closed or contemplative religious orders.
5. We are concerned that the removal of the public benefit presumption will lead to legitimate charities increasingly becoming embroiled in litigation or the threat of litigation concerning the question of public benefit. This would be particularly so in the absence of a specialist charities regulator.
6. We are also concerned that the public benefit test proposed under the Bill is to be formulated by regulation rather than by reference to the common law or under primary legislation which is subject to parliamentary debate.
7. We submit that the potential administrative costs associated with complying with the measure proposed by the Bill (both to the charitable sector and to the ATO) are likely to outweigh any benefit that might be achieved in relation to the few charities with questionable public benefit.
8. Accordingly we recommend to the Inquiry that the Bill be rejected in principle.

ROBERT WICKS

Diocesan Secretary

4 June 2010