



International Commission of Jurists Western Australian Branch

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The Secretary
Senate Economics Committee
Parliament House
Canberra ACT 2600
Australia

Dear Committee

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

The International Commission of Jurists (WA) submits that the *Tax Laws Amendment (Public Benefit Test) Bill 2010 (Bill)* infringes section 53 of the *Constitution* and therefore should not be introduced in the Senate.

About the International Commission of Jurists

The International Commission of Jurists (WA) ('ICJ') is the local branch of a non-governmental organisation based in Geneva which is committed to the primacy, coherence and implementation of international law and principles that advance human rights. Founded in Berlin in 1952, the ICJ's membership is composed of sixty eminent jurists who represent the different legal systems of the world. In carrying out its work, the ICJ benefits from a network of autonomous national sections and affiliated organizations located in all continents. What distinguishes the ICJ is its impartial, objective and authoritative legal approach to the protection and promotion of human rights through the rule of law.

Proposed Laws Imposing Taxation Shall Not Originate in the Senate

The Bill seeks to impose income tax on religious and charitable institutions which are presently exempt pursuant to section 50.5 of the *Income Tax Assessment Act 1997* (Cth).

Pursuant to section 53 of the *Australian Constitution*, "[p]roposed laws appropriating revenue or moneys, or **imposing taxation**, shall not originate in the Senate." (*emphasis added*)

By imposing income tax on charitable institutions and religions which would otherwise be income tax exempt, the Bill infringes section 53 of the *Constitution*.

This view is supported by the decision of Menzies J of the High Court of Australia in *Re Dymond* (1959) 101 CLR 11 at 27-29 in which he held that, "the laws providing machinery for the administration of laws imposing taxation and for the assessment, levying, payment and recovery of tax and additional tax do deal with the imposition of tax."

In addition, this Bill is contrary to the view expressed in *Odgers Australian Senate Practice* that:

“... bills which are stated to “close a loophole” or “correct an anomaly”, but which in fact impose tax where none was imposed before, even if the tax has been collected, are bills imposing taxation (Radiocommunications (Transmitter Licence Tax) Amendment Bill 2002; Bankruptcy (Estate Charges) Amendment Bill 2002).”¹

The Bill is therefore unconstitutional and should not originate in the Senate.

Yours Faithfully

Greg McIntyre SC
Chair

¹ *Odgers Australian Senate Practice* chapter 13 at 283