The Tax Laws Amendment (Public Benefit Test) Bill 2010 is a vital reform that will provide regulatory bodies with the ability to ensure that charitable status is granted only to organisations that provide an actual public benefit.

"The common law holds that 'public benefit' is an essential condition for determining charitable purpose… The object or purpose must be beneficial in itself, that is, it must be aimed at achieving a universal or common good; by definition, a purpose cannot be beneficial if it is harmful to the public."

- Report of the Inquiry into the Definition of Charities and Related Organisations, June 2001, Part IV Principles to Define a Charity - Chapter 13 Altruistic and for the Public Benefit

A public benefit test already applies to charitable organisations however currently there is a presumption of public benefit for organisations claiming to be charitable under the first three heads of charity - 'relief of poverty', 'advancement of education' and 'advancement of religion'. An organisation claiming to be charitable under the fourth head of charity ('other purposes beneficial to the community') must demonstrate public benefit.

This situation effectively creates a loophole whereby an organisation can easily gain charitable status and associated tax exemptions by claiming to be established for 'relief of poverty', 'advancement of education' and/or 'advancement of religion', even if the actual activities of the organisation do not result in a public benefit. In practice, organisations are able to gain charitable status even if they primarily produce private benefits or public harms.

The presumption of public benefit has resulted in the proliferation of groups that do not provide public benefit while they enjoy taxation exemptions and charitable status. This erodes public confidence in the charity sector, and this loss of confidence adversely affects genuine charitable organisations.

Recent news reports have highlighted a cult operating in South Australia known as 'Agape Ministries International'. Funds raised by the organisation may have been used to purchase the stockpiles of firearms, ammunition and explosives discovered by police during the May 20, 2010 raids on the cult's properties. Police are currently investigating millions of dollars of donated funds that are unaccounted for. According to the Australian Business Register, Agape Ministries International benefited from charitable status from July 1, 2000 until May 27, 2010. Agape Ministries International enjoyed an income tax exemption since July 1, 2000, as well as a GST concession and FBT rebate since July 1 2005. The review processes of the ATO were inadequate and failed to detect the deliberate abuse of charitable status. Charitable status was only revoked after criminal activity had reached such an extreme level that it necessitated immediate police intervention.

The taxation system is effectively subsidising harmful activity in the community because of inadequate assessment of public benefit.

In the United Kingdom the presumption of public benefit was removed by law reforms enacted in 2006. Subsection (2) of section 3 of the Charities Act 2006 abolishes the presumption of public benefit previously enjoyed by organisations claiming to be for 'the relief of poverty', 'the advancement of education', or 'the advancement of religion'. Charitable purposes are therefore treated equally and public benefit is explicitly required. Consistent application of the public benefit test is instrumental in maintaining public confidence in the charity sector. I strongly recommend that the Senate Economics Committee consider the successful example of the UK Charities Act 2006 and the legislatively mandated public benefit test as a precedent for similar reform in Australia.

The submission by Dr Matthew Turnour (Neumann & Turnour Lawyers) suggests that the charitable status of Scientology organisations could currently be revoked on the basis of evidence that Scientology organisations are "adverse to the very foundation of all religion", "subversive of all morality or religion" and "the actual purposes of Scientology organisations are illegal or against public policy". Dr Turnour also cites the decision of the Charity Commissioners for England and Wales in 1999 to deny charitable status to the Church of Scientology on the basis of the common law that currently applies in Australia today, and he argues that this demonstrates that a legislatively mandated public benefit test is therefore unnecessary. This conclusion ignores the current lack of oversight demonstrated by the ability of other harmful organisations such as Agape Ministries International to gain charitable status while pursuing purposes contrary to the public benefit.

Even if, as Dr Turnour suggests, application of the common law should result in the revocation of the Church of Scientology's charitable status in Australia, it remains a fact that the ATO currently lacks either the ability or the will to actively detect and remedy the severe abuse of charitable status by organisations such as Agape Ministries International, let alone large and wealthy organisations with a history of engaging in protracted litigation such as the Church of Scientology. I urge Senators to call upon the Commissioner of Taxation and request that the ATO actively review the charitable status of the Church of Scientology. A legislatively mandated public benefit test would assist the ATO in achieving its regulatory responsibilities.

The submission by Pastor Rob Norman (Southland Vineyard Church Incorporated) suggests that assessment of public benefit as a prerequisite to the granting of tax concessions is akin to government interference in matters of religion. This is simply untrue, because tax exempt status is a privilege granted by the government in recognition of an organisation's positive contribution to the community. If an organisation fails to provide public benefit it is not appropriate for the taxation system to be subsidising its activities. Revocation of a tax exemption in such a situation does not prevent observance of religious requirements, it does not penalise religious practice and it does not restrict free exercise of a religion. Such an organisation would remain free to operate as previously and it would be treated in the same manner as any other non-charitable organisation.

The submission by FamilyVoice Australia requests that the status quo be maintained. This ignores the serious potential for abuse that arises due to the current presumption of public benefit, as demonstrated by organisations such as Agape Ministries International. It also ignores the successful experience in the United Kingdom where the removal of the presumption of public benefit has not adversely affected genuine charitable organisations.

The vast majority of religious organisations do operate in a charitable manner and provide significant benefits to the community; hence they will retain their charitable status and the associated tax concessions. Such organisations have nothing to fear from the consistent application of the public benefit test.

A legislatively mandated public benefit test would close the loophole that currently allows organisations to gain charitable status even when they provide no actual public benefit. This would improve public confidence in the charity sector and therefore benefit genuine charitable organisations. I strongly support The Tax Laws Amendment (Public Benefit Test) Bill 2010 as it implements a necessary reform that is in the public interest and it is consistent with a similar law reform introduced in the United Kingdom through the Charities Act 2006.