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The Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary,

**Submission to Senate Economics Legislation Committee
Tax Laws Amendment (Public Benefit Test) Bill 2010**

The Asia-Pacific Centre for Social Investment and Philanthropy (APCSIP) is a teaching and research centre established at Swinburne University of Technology in 2001. APCSIP is committed to promoting and advancing social investment and philanthropy amongst all sectors in Australia and throughout the Asia-Pacific Region.

APCSIP appreciates the opportunity to comment on the Bill under enquiry and makes the following submissions:

Current charitable purpose provisions

The status of "charitable institution" for the purposes of the *Income Tax Assessment Act 1997* is a question of common law. Applications by institutions seeking endorsement as charitable are assessed by the Commissioner of Taxation and currently involve the application of a public benefit test. Chapter 10 "Charities and Deductible Gifts" of "Taxation Statistics 2007-08" as released by the Australian Taxation Office in March of 2010, details the following as the basis for assessing applications for endorsement as a tax concession charity:

A charity is an institution or fund established and operated for altruistic purposes that the law regards as charitable.

Charitable purposes are:

- *the relief of poverty*
- *the relief of the needs of the aged*
- *the relief of sickness or distress*

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- *the advancement of religion*
- *the advancement of education*
- *the provision of child care services on a non-profit basis*
- *other purposes beneficial to the community.*

The characteristics of a charity are:

- *it is an entity that is also a trust fund or an institution*
- *it exists for the public benefit or the relief of poverty*
- *it is non-profit*
- *its sole purpose is charitable.*

(ATO 2010: 104)

This assessment framework in part reflects the extent to which the issue of public benefit has previously been the subject of detailed community consultation and policy review in Australia in 2001 and 2010.

The 2001 *Report of the Inquiry into the Definition of Charities and Related Organisations* noted that the principles of interpretation of “public benefit” established at common law include that “*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*” (Charities Definition Inquiry 2001: 111).

The 2010 Productivity Commission *Contribution of the Not-for Profit Sector – Research report* also included a comprehensive review of prevailing charitable taxation arrangements. The Productivity Commission noted that while the call for greater simplicity in 2001 had not been adopted, the Commission reiterated its predecessor’s recommendations:

RECOMMENDATION 7.1

The Australian Government should adopt a statutory definition of charitable purposes in accordance with the recommendations of the 2001 Inquiry into the Definition of Charities and Related Organisations.

(Productivity Commission 2010: 168)

Potential for unintended Consequences

While APCSIP is supportive of the principle of applying a public benefit test to religious and charitable organisations seeking taxation concessions. APCSIP is concerned however that the introduction, in isolation, of the provisions of the proposed Bill could have considerable unintended consequences.

Given that part of the stated intention of the application of the proposed key principles is to enable the exclusion of an identified institution, APCSIP is of the view that considerable caution needs to be exercised to ensure that a range of (other) institutions and organisations are not inadvertently excluded by the proposed additional test.

The stated intention of the test raises the question as to the potential frequency with which the proposed test would be applied. Is the test to

be applied to all existing institutions which have been endorsed by the Commissioner of Taxation as charitable? If so, then the implication is that the new test would also need to be applied on a recurring basis, in order to ensure that endorsement remains applicable. Alternatively, is the public benefit test to be re-applied on the basis of complaint or by way of random testing by the ATO? Whatever the process, should an institution lose the status it had previously been granted, the requirement for and implications of an appeal process could be cumbersome, onerous, and/or resource intensive.

The cost to the public purse of creating the necessary infrastructure to administer a recurring review process would be considerable. There would also be considerable cost to the endorsed charitable institutions which would need to repeatedly demonstrate that they continue to meet the revised public interest test run the risk. These costs, in our view, would in all probability outweigh any potential benefit which might be achieved.

Conclusion

As we have outlined above, it is the view of APCSIP that modifications to the public benefit tests applied for religious and charitable institutions to be granted taxation exemption status requires a comprehensive and integrated approach. The complexity of the matter is evidenced by the detailed and wide-ranging inquiries into related matters in Australia. Our concern is that the introduction of a new Section (50-51) into the *Income Tax Assessment Act 1997* could give rise to serious and unintended consequences, inclusive of cost escalation for all of the parties involved.

Should the Senate Economics Legislation Committee have any queries in relation to the above comments on the Tax Laws Amendment (Public Benefit Test) Bill 2010, the Asia-Pacific Center for Social Investment and Philanthropy is available to discuss this submission further.

Yours faithfully

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Director

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