

**Senate Inquiry into Charities
and Public Benefit**

**An Inquiry arising from
Tax Laws Amendment (Public
Benefit Test) Bill 2010**

Submitted on 1st June 2010

A Submission for common sense.

Introduction

You have already received a submission arguing that there should be a wider debate before the benefits verses harm test for charities is implemented if at all, this submission obsfucates issues which are common sense and need no debate beyond this investigation. The proposed bill introduces common sense and clears up the complexity of apply common law.

In the submission that argues for a debate it is argued that Scientology organisations could have their charity status revoked now under common law. The glaring issue with this argument is that Scientology organisations were granted charity status under Australian common law and still hold on to it now despite all the controversy surrounding them.

As will become clear in this submission if it were as simple as the submission arguing for debate implies then logically Scientology organisations would not have received charity status in the first place let alone still have it today.

This bill is not just about Scientology organisations though. This bill is about challenging all charities to demonstrate they will provide a benefit to the society from which they expect subsidy in the form of tax allowances.

For most charities this should be straight forward as they operate in keeping with the public conscience whether it be taking in stray animals and caring for them or providing food and shelter for homeless people; that people donate to these charities demonstrates a desire for them, the people who donate do not expect to receive a direct benefit from the charity.

Who should handle charities?

Since they already make the decisions surrounding charities the Australian Tax Office is as capable of dealing with this just as much as any charities commission in England, Scotland and Wales.

Although in time an Australian charities commission may well be in the public interest don't let this hold up common sense.

This bill only gives the ATO a common sense addition to their decision making process that will ease the burden of decision making by reducing the reliance on the complex area of common law.

How benefit should be assessed.

Assessing benefit is common sense. It should not need to be spelt out but there are two simple questions around which the decision should be based.

1. Is the primary role of the proposed charity to provide help, assistance or service to those who do not donate to it?
2. Is the help, assistance or service desired by society?

For a charity to be beneficial to society the answer to both questions must be yes.

The answer to the second question seems the most troublesome however it is actually moot.

Charities only survive because people donate to them and people only donate to charities without expecting a direct benefit for themselves if they perceive it as benefiting society.

Note that some businesses or individuals may sponsor a charity for the advantage of being able to advertise their association to it, this is not (or should not be) donating in order to receive the charities primary service though which might be taking in orphans or saving whales.

So in answering the benefit question anyone need only look at whether the charity aims to provide help, assistance or services to those who don't donate to it as a primary role. The charity will only survive if society perceives a benefit from it.

What about religions?

According to the submission suggesting the need for a debate the area of religion is complex and needs to be closely looked at, who is qualified... Again dealing with religions is simply a matter of common sense.

With respect to religions, ideally they should provide free "out reach" services within the community but at the very least these organisations should be the most open of all. They should offer all services for free with donations not being associated to any services they provide.

Tithing is a donation to a church but it is not associated to any services the church provides, also no one is turned away from a proper church because they don't give a tithe.

Likewise the collection tin at a Sunday service is not really associated to the service because there is no suggestion of an amount, this being a matter of conscience and could be zero; no one is held to account for not donating and is free to attend services without donating albeit surreptitiously.

As with other charities they will only survive if people feel there is a benefit from them and so donate.

A church that expects donations for services, especially one that solicits donations for services with suggested fixed or minimum amounts is not open to the wider community and so cannot be providing any benefit beyond that of its membership; it gives nothing back to the community for all the tax breaks it receives.

Any church claiming that they have a philosophy of "exchange" requiring payment be made for services may be a church or a religion but not one that warrants charity status because such a philosophy is the anti-thesis of charity. One could also argue that such a philosophy demands the church be taxed as this is "exchange" for being allowed to operate in society. This is common sense, there is no need to debate this.

Conclusion.

Any organisation that does not provide the bulk its services freely and openly to those who do not donate to it is not a charity it is a business.

Any organisation that attracts complaints from members of society and accusations of immoral activities is likely harmful and should not be given charity status. Charities by their nature should not be controversial or at the very least should not be challenged by the society off which they feed; such challenges should surely be sufficient grounds for denying or removing charity status.

This bill allows the ATO to consider these factors when making its decisions on who to grant charity status to without the complexity of deciding if common law can be applied based on prior case law.

The organisation calling itself the church of scientology may be an exception but if it is then it is the one that proves the rule.

Let common sense prevail and ensure that public subsidy be granted only to those organisations that society believes they benefit from.