

Chapter 8

Tax concessions

8.1 This chapter examines the tax concessions available to Not-For-Profit Organisations from Commonwealth and state and territory government and proposes taxation reform based on evidence provided to the committee.

8.2 The committee heard that:

Tax law for the non-profit sector in Australia is complex and confusing. There are a variety of concessions given at both a state and federal level, each to a variety of nonprofits. It is impossible to find any set of principles underpinning the different pieces of legislation that designates these concessions and there are no links between the concessions provided and public disclosure requirements.¹

Definitions for tax purposes

8.3 The 2001 Inquiry into the Definition of Charities and Related Organisations was undertaken, as described in Chapter 1, to examine existing definitions of charities and related organisations used in Australia and to provide options for enhancing the existing definitions in Australia. The Final Report highlighted the issues associated with the current definitions, such as an outdated one-size-fits-all approach, complex interaction with taxation legislation and the reliance on a common law definition for 'charity'.² For the history of the present definitions in use, the 2001 Final Report is an excellent source. The recommendations made by the Inquiry to overcome the existing difficulties have not been implemented. As a result, the criticisms levelled by submitters to the 2001 Inquiry have been reinforced by submitters to the current Inquiry.

8.4 Currently, charities can be identified according to legal, administrative and taxation benefits that they receive. These benefits are related to the primary purpose of the organisation itself. To qualify for the benefits, organisations must fit certain criteria.

8.5 The ATO, which can confer charitable status on organisations in Australia, considers that the characteristics of a charity are that:

- it is an entity that is also a trust fund or an institution
- it exists for the public benefit or the relief of poverty

1 Keating, K., *The National Governance of the Non-Profit Sector*, 2007, p. 32.

2 Inquiry into the Definition of Charities and Related Organisations, *Chapter 2: The Need for Clear and More Consistent Definitions*, http://www.cdi.gov.au/report/cdi_chap4.htm (accessed 17 October 2008).

- its purposes are charitable within the legal sense of that term
- it is Non-Profit, and
- its sole purpose is charitable.³

8.6 The ATO goes on to state that a charitable purpose is one that benefits the community through certain activities, including:

- The relief of poverty or sickness or the needs of the aged
- The advancement of education
- The advancement of religion
- Other purposes beneficial to the community, including:
 - o promoting health – for example, through educating the public about a particular disease
 - o providing community facilities – for example, museums, libraries, halls, botanical gardens, migrant resource centres, neighbourhood centres and community radio stations
 - o promoting art and culture through means such as music and drama
 - o helping to maintain defence and public order and providing emergency services
 - o relieving distress due to natural disasters such as floods or bushfires
 - o providing social welfare through activities such as counselling, child care, and family or marriage support services
 - o helping people cope with the problems of unemployment
 - o promoting scientific research
 - o advancing commerce, agriculture and industry through activities such as research and resource development
 - o protecting animals, and
 - o preserving historic buildings.

The ATO does not consider this list to be exhaustive but it also provides examples of institutions and funds whose purpose is not charitable.⁴

3 Australian Taxation Office, *Types of Non-Profit organisations - Tax basics for Non-Profit organisations (Charities)*, http://www.ato.gov.au/nonprofit/content.asp?doc=/content/00100254.htm&page=2#P18_307 (accessed 17 October 2008).

8.7 Four subsets of charity are identified by the ATO for taxation purposes. These include public benevolent institutions (PBI), health promotion charities (HPC), charitable institutions and charitable funds. Briefly, these subgroups have been defined in the following way:⁵

PBI - A public benevolent institution (PBI) is a Non-Profit institution organised for the direct relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness.

HPC - A health promotion charity is a Non-Profit charitable institution whose principal activity is promoting the prevention or control of diseases in human beings.

Charitable institution - A charitable institution is an institution that is established and run solely to advance or promote a charitable purpose.

Charitable fund - A charitable fund is a fund established under an instrument of trust or a will for a charitable purpose. Charitable funds mainly manage trust property, and/or hold trust property to make distributions to other entities or people.⁶

8.8 The committee heard that:

The above definitions provided by the Australian Taxation Office indicate the inconsistency and contradictory nature of the sector. Specifically, a charity has a sole purpose that is charitable, thereby excluding advocacy and commercial activities. Whereas a Public Benevolent Institution has a dominant purpose in providing relief, which it allows it to carry on advocacy and undertake commercial activities that are inconsequential to the operations of the relief activities.⁷

PBI and DGR

8.9 Of particular concern to contributors to the inquiry was the award of PBI and Deductible Gift Recipient (DGR) status by the ATO. In order to be a PBI, the ATO requires that the organisation's dominant purpose is providing benevolent relief. DGRs are organisations that can receive income tax deductible gifts. DGRs are PBIs that are either endorsed by the ATO or named specifically in the tax law, including prescribed private funds. In order to qualify for endorsement as a DGR, organisations or funds

4 Australian Taxation Office, *Types of Non-Profit organisations - Tax basics for Non-Profit organisations (Charities)*, http://www.ato.gov.au/nonprofit/content.asp?doc=/content/00100254.htm&page=2#P18_307 (accessed 17 October 2008).

5 Australian Taxation Office, *Types of Non-Profit organisations - Tax basics for Non-Profit organisations (Charities)*, <http://www.ato.gov.au/nonprofit/content.asp?doc=/content/33609.htm> (accessed 17 October 2008).

6 Nearly all funds are charitable trusts such as Prescribed Private Funds, although they may have a corporate trustee.

7 Name withheld, *Submission 65*, p. 1.

must fall within one of the 40 general categories specified in the *Income Tax Assessment Act 1997*. An organisation may be endorsed for 'the operation of a fund, authority or institution that it owns or includes'.⁸

8.10 The committee heard that the value of having DGR status:

...is not so much in terms of the donations. People tell us that it is much more about the ability to access many of the philanthropic sources of funding that are there that many organisations are keen to access. With fringe benefits there is a big issue around wages. That was the issue I was alluding to in terms of the treatment of family tax benefit and family payments.⁹

8.11 The issue of anomalies in DGR rules was the subject of concern for some submitters:

The inconsistency is mind shattering. You can be a private school, a building fund and get DGR, yet you can be a neighbourhood house beavering away in the most disadvantaged area and you cannot get it.¹⁰

8.12 In addition to this issue, Ms Kelly Bruce, of the Australian Council for International Development believes that the focus on 'relief' means that organisations which also provide sustainable development education, resources and training are unable to qualify. She states that this 'seems to be at odds with government priorities and policy on what constitutes good development practice'¹¹ in implying that prevention is inferior to cure.

8.13 Ms Karen Mackay of the Association of Neighbourhood Houses and Learning Centres agrees, suggesting the addition of 'prevention' into the definition of PBI:

...where in other words organisations still have to meet the PBI test and all the other criteria there but will be allowed to also adopt preventive approaches to welfare which brings us in line with international charity law thinking.¹²

8 Australian Taxation Office, *Guide for deductible gift recipients and donors*, p. 6., <http://www.ato.gov.au/content/downloads/SME18699nat3132.pdf> (accessed 13 November 2008).

9 Mr Gregor Macfie, Policy Manager, Australian Council of Social Service, *Proof Committee Hansard*, 29 October 2008, p. 75.

10 Ms Karen Mackay, Project Manager, Association of Neighbourhood Houses and Learning Centres, *Proof Committee Hansard*, 29 October 2008, p. 7.

11 Ms Kelly Bruce, Business manager, Australian Council for International Development, *Proof Committee Hansard*, 29 October 2008, p. 75.

12 Ms Karen Mackay, Project Manager, Association of Neighbourhood Houses and Learning Centres, *Proof Committee Hansard*, 29 October 2008, p. 2.

Updating definitions

8.14 Contributors to the current inquiry have found these and other definitions to be inadequate. As the definitions are not enshrined in law, but are based on definitions in the preamble of the *Charitable Uses Act 1601*, there is a lack of clarity as to where some modern Third Sector Organisations sit within the definitional framework. Perpetual states that:

There is confusion in the use of terminology describing the participants in the sector. The following descriptions need to be defined and the relationship between them clarified – Not-For-Profits, charities, social enterprises, charitable, trust, foundations and the like.

...

Where does a trustee corporation such as Perpetual fit in? Perpetual is neither a charity nor Not-For-Profit organisation but...still plays a significant role in the philanthropic environment.¹³

8.15 The Law Council of Australia believes that the well-established principles of the Act of 1601 which exclude some Not-For-Profit Organisations 'do not adequately reflect the nature of charity or charitable organisations in modern society'. In particular, the Law Council concludes that, as well as laws of taxation, the following should be clarified as part of any codification process:

- confirmation of the extent to which a charity may engage in advocacy activities, and details of the types of advocacy activities that charities may engage in without jeopardising their charitable status;
- confirmation of whether, and the extent to which, the advancement of a charitable purpose can constitute charitable conduct;
- confirmation that a charity can run any sort of business, whether those activities themselves are charitable or not, in order to raise funds for its charitable purpose; and
- codification of the principle of mutuality in relation to the membership income of NFPs.¹⁴

Religion as 'charity'

8.16 Several submitters to the Inquiry indicated dissatisfaction that activities such as 'advancement of religion' (especially promoting conversion from one religion to another) were described as a charitable purpose by the ATO for tax purposes.

I submit that religious instruction and practice, prayers and proselytisation should be paid for by the faithful and not be subsidised by the state or non-believers. Therefore, I submit that religions should not be afforded preferential tax treatment. I conclude by asking you to exclude the

13 Perpetual, *Submission 166*, p. 3.

14 Law Council of Australia, *Submission 128*, pp 14-15.

advancement of religion and the offering of prayers by contemplative orders from the list of charitable purposes.¹⁵

Australians enjoy religious freedom. Approximately 16% of the population classified themselves as having 'no religion', according to the 2001 Census. This is the third largest group after Catholic (27%) and Church of England (21%). The 'no religion' percentage is considered a conservative estimate by many respected commentators due to the wording of the question in the census form. I submit that "Advancement of Religion" should be removed from the scope of tax exemption.¹⁶

8.14 The 2001 Charities Definition Inquiry explored this subject and noted the controversy that continued to surround the inclusion of religion as being a charitable purpose. That Inquiry found that:

The Committee affirms that 'the advancement of religion' should continue as a head of charity. It is clear that a large proportion of the population have a need for spiritual sustenance. Organisations that have as their dominant purpose the advancement of religion are for the public benefit because they aim to satisfy the spiritual needs of the community. Religious organisations satisfy these needs by providing systems of beliefs and the means for learning about these beliefs and for putting them into practice.¹⁷

8.15 Given that the inclusion of religious organisations as charities to qualify for tax concessions was unexplored by the majority of submitters, the committee is unable to comment further.

Political advocacy

8.16 The committee heard that from a number of submitters that charities and Not-For-Profit Organisations consider political advocacy to be an important part of what they do and integral to achieving their purposes:

From the perspective of the St Vincent de Paul Society, we would see advocacy as absolutely non-negotiable. It is integral to our charitable purpose. This is not something we have invented in recent years; it goes to the heart of our founding. In Paris in 1833, our founder made very explicit the principle that we were not simply to give assistance to the poor but to seek out and understand the structures that give rise to poverty and inequality, and to actively advocate to change those structures.¹⁸

15 Mr John Goldbaum, *Submission 6*, p. 1.

16 Mr Peter Robinson, *Submission 44*, p. 1.

17 Inquiry into the Definition of Charities and Related Organisations, *Chapter 20: The Advancement of Religion*, http://www.cdi.gov.au/report/cdi_chap20.htm, (accessed 14 October 2008).

18 Dr John Falzon, Chief Executive Officer, St Vincent de Paul Society National Council of Australia, *Proof Committee Hansard*, 28 October 2008, p. 48.

8.17 In 2005, the ATO released a ruling in relation to taxation benefits afforded charities. As a part of this ruling, what is or is not considered to be a charitable purpose was defined more clearly than it had been in the past:

Political and lobbying purposes are not charitable. While such purposes may use educational means, this is not sufficient to show a charitable purpose. However, political or lobbying purposes and activities that are merely incidental to a purpose that is otherwise charitable do not by themselves prevent that purpose being charitable.¹⁹

8.18 However, the committee heard that that many organisations supported the broadening of this definition for a number of reasons:

If you go back to what is the charitable purpose—it is actually something that is not for private benefit but for public purpose—then philosophically and personally I would say that political debate, in the way we have it in a democratic country, is of public benefit, and the evidence for that is in all the countries that do not have it. In that sense, I would probably prefer a broader approach. However, focusing again on environmental stuff, if planting trees is for public benefit and therefore is a charitable purpose, then surely stopping them from being knocked down is a public benefit. It just does not make sense otherwise.²⁰

[I]n broadening that definition we should be able to allow not-for-profit organisations, and philanthropic organisations which fund them, to more effectively address discrimination and disadvantage and work towards greater equity through undertaking a range of activities which assist them to fulfil their charitable purpose.²¹

8.19 Concerns were raised about the difficulty in drawing the line between political advocacy and partisan political advocacy where an organisation consistently supports one political party and is still eligible to receive taxation concessions for those activities. In response to questioning by the committee, Ms Trudy Wyse of the Melbourne Community Foundation agreed that the situation surrounding political advocacy was not black and white, but also stated that:

There is a grey line there about advocating for achievement of your charitable purpose in a particular area and advocating for a position that is actually supported by one political party and not the other, but that is reality. That is real life. I think where a particular political party has a policy that is consistent with the policy and the principles of a community organisation, the community organisation has to somehow separate itself

19 Australian Taxation Office, *Taxation Ruling TR 2005/21*, <http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR200521/NAT/ATO/00001> (accessed 10 November 2008).

20 Dr Greg Ogle, National Legal Coordinator, The Wilderness Society Inc., *Proof Committee Hansard*, 28 October 2008, p. 18.

21 Ms Sarah Davies, Chief Executive Officer, Melbourne Community Foundations, *Proof Committee Hansard*, 30 October 2008, p. 10.

from a political party and be persuasive and convincing around the value of that position in terms of achieving its charitable purpose separately from whether there is a political party that also supports it. I think to put a blanket denial to say that you cannot undertake those activities, that sort of advocacy role, is really undermining the community's capacity to get real and needed change within the community because everything can be defined as political, which I think is what has happened. It is too easy to say a thing is a political activity when in fact it is robust debate within a democracy about policy and program.²²

In conclusion

8.20 Many contributors to the inquiry indicated general support for the implementation of the recommendations of the 2001 Inquiry in order to clarify eligibility for taxation status.

In broad terms, PilchConnect endorses the recommendations made by Inquiry into the Definition of Charity 2001...²³

8.21 However, the committee heard that Mr Don D'Cruz of Charity Matters opposed broadening and/or modifying definitions who stated that such a request was 'code for: 'We want to be able to do whatever we feel like''.

Committee View

8.22 The committee is mindful of the fact that its terms of reference for this Inquiry do not specifically direct it to define terms relating to the Third Sector. While the committee has heard evidence that confusion exists within the sector in relation to definitions, it has lacked the time to give appropriate consideration to every issue raised. However, the committee notes the call for the implementation of statutory definitions and agrees that there needs to be an ongoing clarification of these terms for the Sector.

Concessions - Commonwealth Government

8.23 The Commonwealth Government offers a range of tax concessions to eligible not-for-profit organisations, including income tax, GST and Fringe Benefits Tax exemptions. There are very few tax concessions that apply to all not-for-profit organisations, with some only applying to particular organisations. Professor Mark Lyons describes the current situation in saying that:

Charities are nonprofit organisations. However, in practice and in government policy, there is little that distinguishes them from many other nonprofit organisations. Charities are provided with tax exemption, but so are many other nonprofits; some charities are deductible gift recipients

22 Ms Trudy Wyse, Manager, Donor and Community Services, Melbourne Community Foundation, *Proof Committee Hansard*, 30 October 2008, p. 15.

23 PilchConnect, *Submission 129*, p. 41.

(DGRs), but others are not and many non-charities are DGRs. Some charities are subject to charitable fundraising laws, but so too are many non-charities while many charities are exempt.²⁴

8.24 In order to access the range of tax concessions available to Not-For-Profit Organisations, organisations must first register for an Australian Business Number (ABN). An ABN allows not-for-profit organisations to:

- register for GST and claim GST credits
- register for PAYG withholding
- deal with investment bodies
- apply to the Tax Office for endorsement as a deductible gift recipient, tax concession charity or income tax exempt fund
- interact with other government departments, agencies and authorities, and
- interact with the Tax Office on other taxes, such as FBT.²⁵

8.25 Not all Not-For-Profit Organisations are required to have an ABN. However, Not-For-Profit Organisations with an annual turnover of \$150,000 must register for the Goods and Services Tax (GST), and in order to register, organisations must have an ABN. To be eligible for an ABN, the ATO requires that an organisation be:

- a company registered under the Corporations Act 2001
- an entity carrying on an enterprise in Australia
- an entity that, in the course or furtherance of carrying on an enterprise, makes supplies that are connected with Australia
- a government entity
- a non-profit sub-entity (for GST purposes), or
- a superannuation fund.

Entities can include charities, non-profit clubs, societies and associations.²⁶

Income Tax

8.26 In order to be exempt from income tax, organisations must fall within one of the 30 types of exempt entity. Organisations may self-assess their eligibility for exemption from income tax, with the exception of charities and non-charitable funds

24 Professor Mark Lyons, *Submission 67*, p. 4.

25 Australian Taxation Office, *Tax basics for non-profit organisations*, http://www.ato.gov.au/content/downloads/NAT7966_05_2007.pdf (p. 6), (accessed 27 October 2008).

26 Australian Taxation Office, *Tax basics for non-profit organisations*, http://www.ato.gov.au/content/downloads/NAT7966_05_2007.pdf (p. 6), (accessed 27 October 2008).

that distribute solely to DGRs that are income tax exempt. These organisations **must** be endorsed by the tax office in order to be exempt. Organisations whose activities fall in both a charity and non-charity exempt fund must still be endorsed by the ATO.

8.27 According to the ATO:

Non-profit organisations that are not exempt are taxable and are generally treated as companies for income tax purposes whether they are incorporated or not. Non-profit companies may have special rules for lodging income tax returns and special rates of income tax.²⁷

8.28 The assessable income and deductions of taxable organisations may be affected by the principle of mutuality, which provides that 'where a number of persons contribute to a common fund created and controlled by them for a common purpose, any surplus arising from the use of that fund for the common purpose is not income'.²⁸ This principle typically applies to clubs, professional organisations and friendly societies, where activities between the club and its members are included (such as membership subscriptions), but not activities with outsiders.

8.29 Types of exempt entities are:

- Charities (subcategories- charitable institutions; and charitable funds)
- Community service organisations (subcategory- community service)
- Cultural organisations (subcategories- art; literature; music; and musical purposes)
- Educational organisations (subcategory- public educational institution)
- Employment organisations (subcategories- employee association; employer association; and trade union)
- Health organisations (subcategories- public hospital; non-profit hospital; health benefits; hospital benefits; and medical benefits)
- Income tax exempt fund (subcategory- income tax exempt fund)
- Religious organisations (subcategory- religious institution)
- Resource development organisations (subcategories- agricultural resources; aquacultural resources; aviation; fishing resources;

27 Australian Taxation Office, *Income tax guide for non-profit organisations*, http://www.ato.gov.au/content/downloads/Nat7967_3_2007.pdf (p. 7), (accessed 27 October 2008).

28 Australian Taxation Office, *Principle of mutuality*, http://www.ato.gov.au/nonprofit/content.asp?doc=/content/17832.htm#P24_1633 (accessed 27 October 2008).

horticultural resources; industrial resources; manufacturing resources; pastoral resources; tourism; viticultural resources; and information and communications technology resources)

- Scientific organisations (subcategory- scientific institution; science association; and scientific research fund)
- Sporting organisations (subcategories- animal racing; and game or sport).

8.30 People wishing to determine if their organisation is income exempt are required to apply further self-assessment tests to confirm their exemption status. In addition, some organisations must pass one of three self assessment tests:

- (i) Physical presence in Australia test (organisation must be wholly in Australia or have a division, branch or sub-division in Australia);
- (ii) Deductible gift recipient test (your organisation is a DGR); and
- (iii) Prescribed by law test (your organisation is prescribed by name in income tax regulations).

8.31 An organisation that is income tax exempt does not need to pay Capital Gains Tax or lodge an income tax return, (unless specifically asked to) and does not need to get confirmation of its exemption from the ATO. The ATO recommends completing a worksheet on income tax status for an organisation's records, and carrying out a yearly review to check if the organisation is still exempt. Major changes within an organisation's structure or activities should also prompt a review.²⁹

GST

8.32 Goods and Services Tax (GST) is a tax of 10 per cent on the sale of most goods and services within Australia. The ATO applies an annual turnover threshold of \$150,000 over which not-for-profit organisations must register for GST. Not-For-Profit Organisations with an annual turnover under this amount are not required to register for GST, but may choose to do so as they may then receive a benefit in the form of GST credits (also known as input tax credits).

Fringe Benefits Tax (FBT)

8.33 The FBT is payable by organisations who provide fringe benefits to their employees or associates of their employees. Some Not-For-Profit Organisations are entitled to FBT concessions, including both the FBT exemption and the FBT rebate.

29 Australian Taxation Office, *Income tax guide for non-profit organisations*, http://www.ato.gov.au/content/downloads/Nat7967_3_2007.pdf (p. 27) (accessed 27 October 2008).

FBT exemption

8.34 Eligible organisations are exempt from FBT where the total value of benefits for each employee during the financial year is equal to, or less than, the capping threshold. Public Benevolent Institutions (other than hospitals) and Health Promotion Charities are eligible for an FBT exemption at the capping threshold of \$30,000 per employee. The organisation needs to be endorsed by the ATO in order to access the exemption. Public and not-for-profit hospitals and public ambulance services are also exempt, with a threshold of \$17,000 per employee. The organisation does not require endorsement.³⁰

FBT rebate

8.35 An FBT rebate is a rebate equal to 48 per cent of the gross FBT payable, subject to capping. Charities must be endorsed by the ATO to be eligible for the rebate. Other Not-For-Profit Organisations may self-assess their eligibility. The ATO states that those organisations eligible for the rebate:

...are certain non-government, non-profit organisations. Organisations that qualify for the FBT rebate include:

- certain religious, educational, charitable, scientific or public educational institutions
- trade unions and employer associations
- non-profit organisations established to encourage music, art, literature or science
- non-profit organisations established to encourage or promote a game, sport or animal races
- non-profit organisations established for community service purposes
- non-profit organisations established to promote the development of aviation or tourism
- non-profit organisations established to promote the development of Australian information and communications technology resources, and
- non-profit organisations established to promote the development of the agricultural, pastoral, horticultural, viticultural, aquacultural, fishing, manufacturing or industrial resources of Australia.³¹

30 Australian Taxation Office, Tax Basics for Non-profit Organisations, http://www.ato.gov.au/content/downloads/NAT7966_05_2007.pdf (pp 25-26) (accessed 10 November 2008).

31 Australian Taxation Office, Tax Basics for Non-profit Organisations, http://www.ato.gov.au/content/downloads/NAT7966_05_2007.pdf (p. 26) (accessed 10 November 2008).

8.36 Religious institutions are also eligible for FBT concessions subject to certain restrictions.

8.37 The committee heard that FBT is wrong in theory because:

[I]t is the employee who should be paying it. Why the tax office decided the employer was going to pay it, when they brought in FBT, was because they could regulate it, it cut compliance costs, and so on, and they could collect the tax. That is where nonprofits come in. If they are exempt and they do not pay income tax they cannot get the deduction that otherwise the for-profit employer gets. That is why it has become a distortion in the tax system.³²

Refunds of franking credits

8.38 Under Australia's imputation system, some Not-For-Profit Organisations such as endorsed income tax exempt charities and DGRs may be entitled to a refund of franking credits providing that they comply with prescribed criteria.

Reporting

8.39 Organisations are required to complete an activity statement or GST return at the end of each reporting period, which may be monthly, quarterly or annually.

State and Territory Governments

8.40 Not-For-Profit Organisations may qualify for tax concessions or exemptions for taxes payable to state and territory governments. Organisations with a multi-state or national presence should be aware that compliance requirements may differ. Concessions or exemptions may be available to Not-For-Profit Organisations with regard to Stamp Duty, Payroll Tax and Land Tax.

Tax reform

8.41 The committee heard that contributors to the Inquiry were overwhelmingly in favour of tax reform for Not-For-Profit Organisations. Ms Kelly Bruce, Business Manager at ACFID shared her experiences with organisations dealing with the ATO.

I can share some of the experiences that our members encounter on a day-to-day basis in trying to interpret tax concession eligibility for their own organisations and also, from a compliance perspective, trying to comply with the various expectations of the ATO as well.

There is hardly a day that goes by at ACFID in my role where I do not get a call from either a member saying, 'Can you help me talk to the tax office? Can you help me understand what they are asking me?', or from a small organisation or a group of people wanting to start up a charity saying, 'The ATO has given me a piece of paper but we still do not understand what we

32 Professor Myles McGregor-Lowndes, *Proof Committee Hansard*, 29 October 2008, pp 79-80.

have to do. Can you please help us to understand the range of tax requirements and legislation?’

We are discussing today some various failures of the regulatory system to deliver simple, clear, concise policies for the not-for-profit sector and in the tax area it is particularly a problem. I read the submission from the ATO to this committee, and I am just going to quote their summary statement, which states:

... the range of taxation concessions, recognition of a wide variety of legal forms, interplay between State, Territory and Commonwealth legislation, limited disclosure of information and different expectations of what information is disclosed dependent upon a particular taxation concession granted; make the nonprofit sector challenging to administer and challenging for the public to understand.

I sympathise with them, but if they have problems administering the not-for-profit tax requirements, then it is understandable that so many organisations, particularly the very small organisations, in the not-for-profit sector have trouble understanding how to comply, how to apply and how to register...³³

8.42 The committee is aware of the Australia's Future Tax System Review (Henry Review), which will examine the current tax system and make recommendations to ensure that Australia's system is able to meet the challenges of the 21st Century. (This review is discussed in further detail in Appendix 5). With regards to the tax system for Not-For-Profit Organisations, the committee received evidence that:

Any taxation reform should be underpinned by a rational policy basis for charity and NFP taxation exemptions and other incentives. The current system no longer has this underpinning.³⁴

8.43 Dr Ted Flack urged a deeper examination of concessions available to the Sector:

Is the tax deduction actually economically efficient? Does it produce more donations than the cost of the exemption? We do not have good data on that in Australia.³⁵

8.44 Professor Mark Lyons, however, suggested that:

...we leave the complexity of tax to one side and sort out incorporation, fundraising and public transparency in the first instance. Then, hopefully on the basis of having better data sets and better knowledge of the sector amongst public servants and others, we could start to move towards thinking about the really complicated tax mess.³⁶

³³ Ms Kelly Bruce, Business Manager, Australian Council for International Development, *Proof Committee Hansard*, 29 October 2008, pp 73-74.

³⁴ PilchConnect, *Submission 129*, p. 8.

³⁵ Dr Ted Flack, *Proof Committee Hansard*, 29 October 2008, p. 81.

³⁶ Professor Mark Lyons, *Proof Committee Hansard*, 29 October 2008, p. 61.

Committee View

8.45 The committee agrees that Australia's taxation system is confusing for Not-For-Profit Organisations and difficult for the general public to understand. Tax concessions for the Sector seem to represent historical accidents rather than any rational plan. However, in light of the complexity of the subject matter and the Australia's Future Tax System Review (the Henry Review), the committee chooses to link its recommendation to the Review, and urge Dr Henry to give careful consideration to the tax system as it applies to Not-For-Profit Organisations.

Recommendation 8

8.46 The committee recommends that the Henry Review include an examination of taxation measures affecting Not-For-Profit Organisations with a view to simplifying these arrangements and reducing confusion and cost of compliance for these organisations.

