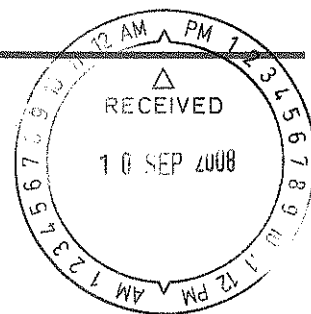


AUSTRALIAN NATIONAL SECULAR ASSOCIATION

ABN: 15 846 286 456

The Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House ACT 2600



Dear Secretary

Please find enclosed relevant pages from my recently published book, *The Purple Economy: supernatural charities, tax and the state*. The book was published December 2007. I believe there are copies of the book in the parliamentary library. Also enclosed is a copy of a paper I will be presenting to a conference in New Zealand on 30 August 2008. While it is titled 'Clericalism in New Zealand: a conspiracy of silence', it discusses matters relevant to your enquiry with respect to Australia.

Regarding your terms of reference we make the following recommendations:

- Australia should follow England and New Zealand in establishing a Charities Commission. Simple registration and annual reporting requirements would help prevent acts of fraud easily committed by the lack of registration and reporting. I refer you to the cases of Father Vincent Kiss and Nachum Goldberg in my book.
- Australia should abolish the charitable status of religious organizations. When religion was recognized as charity in the 1601 Statute of Charitable Uses religious belief was expected and the law of blasphemy was enforced. In 21stC Australia religion has declined at every census and church attendance is very low. The idea that the Commonwealth of Australia should 'advance religion' through tax exemptions is an idea past its time. We argue religion is a private matter, with private, not public benefits. As such it should not be subsidized by citizens who have no interest in it. To allow religious organizations to accumulate exponentially rising wealth through exemptions with no requirement for that wealth to be used for traditional charitable causes is an ancient privilege well past its 17thC rationale.
- At the same time, the public 'good works' of religious organizations should retain their tax-exempt status.
- Regarding the commercial activities of religions which compete with business, the American distinction between 'passive' and 'active' investment deserves some consideration. The private, competitive industrial/commercial activities of churches should be taxed but exemptions could be allowed for the passive parking of investment funds of public-purpose charities.
- If a Charities Commission is established all the incomes and expenditures of organizations that register should be on the public record, easily available for all to see through the Commission's website.

Yours faithfully,

Max Wallace
Director

26 August 2008

PO Box 554
Milsons Point NSW 1565
Australia

Director: Max Wallace PhD
M: 0412 707 428
F: 02 9964 9486
secularansa@gmail.com

PO Box 700
Elsternwick VIC 3185
Australia

THE PURPLE ECONOMY

SUPERNATURAL CHARITIES,
TAX AND THE STATE

MAX WALLACE
BA. M.Soc.Sc.(Hons) PhD

THE RISK TO THE standing of the office of Governor-General of such an appointment from the now volatile social structure of religion is evident.

As I will argue here, the effects of the lack of clarity of non church-state separation, in terms of financial resources being applied to well-to-do unaccountable supernatural charities, is serious. Also, I suspect their welfare work, for all the undeniable good it has done, has for years obfuscated their true financial position and directly aided the failing proselytising agendas of the major supernatural charities. As *Business Review Weekly* recently pointed out,

Religious groups are the hidden giants of the economy. In an era of corporate regulation, they are virtually unaccountable. The five big churches [in Australia] had revenue of more than \$21.7B in 2004.⁴⁵

The situation in Britain does not fill one with confidence as to how these charities are managing their finances. The following examples give cause for concern. *The Guardian* of 24 August 2001 reported that in 1992 it was disclosed the Church of England had lost £800m through,

... reckless property investments, unethical conduct, massive borrowings of hundreds of millions of pounds, and a level of administrative incompetence.

Professor Coady is exactly right when we writes,

Organisations cloaked in secrecy and furtive about their finances serve the genuine interests of neither democracy nor religion.⁴⁶

But he does not take the next step and ask *why* they are furtive about their finances.

Tax exemption for the 'cared-for darlings'

In his February 1998 document, *The Australian Taxation System: In Need of Reform*, the Treasurer, the Hon. Peter Costello said,

Australia's taxation system should serve all Australians.

Noting that the system originated in the 1930s he went on to say that,

Ordinary Australians are now facing the prospect of paying the highest possible income tax rate. This is not fair when there are other Australians who don't pay their way.⁴⁷

As previously stated, the Purple Economy is the wealth generated by the eternal mass exemption from taxation of supernatural charity organisations, their subsidiaries and their charitable arms. I argue the earth has moved beneath the feet of successive Australian governments since the 1930s with respect to the ideational culture of religion and tax. The last sixty years of tax-exempt status especially has made many supernatural charity organisations considerably wealthier. The reasons for their tax-exempt status are outdated and unreasonable. The question needs to be raised and reviewed.

In 2000 the government initiated a review, the Charities Definitions Inquiry, but with very narrow terms of reference. Its findings were also narrow. It concluded that if an organisation says its 'purposes' are charitable then there was no need to look at the actual 'activities' of the charity.⁴⁸

In my view, to ensure an equitable balance between these and other organisations, the government should have concluded that supernatural charity organisations pay tax with deductions for legitimate and proven welfare works. If their welfare work equals 100 per cent of their income they should be entitled to a total deduction. Supernatural charity organisations should be fiscally accountable for the income they earn as much as any other taxpayer and the Tax Act should be amended accordingly.

The Industry Commission 1994 draft report *Charitable Organisations in Australia* pointed out that,

Commonwealth Treasury has no information on revenue foregone from exemption of income tax of charitable organisations as there is no requirement for them to lodge returns with the Australian Taxation Office.⁴⁹

Early estimates of the tax foregone from supernatural 'charitable' organisations ranged from millions to hundreds of millions but not billions. Until recently we had no clear idea because 'organisations that advance religion' were,

... not covered in [the Industry Commission's] inquiry.⁵⁰

As noted earlier, more recently *Business Review Weekly* found that the tax forgone would run into billions and that, for example,

The Catholic Church does not consolidate its accounts and it is in its interests not to do so. It has about 200 religious orders which control assets worth many tens of billions of dollars. In fact, the Catholic Church is the largest property owner in Australia.⁵¹

That wealth is partly a function of its tax-exempt status and the land that was donated to it in the colonial period. Other reports on the public record give us some idea of unrelated supernatural corporate activity,

In the five years between 1996 and 2000 Sanitarium's Australian and New Zealand operations expect to contribute about \$55M to the church, roughly 65 per cent of its earnings. Being church-owned, Sanitarium operates free of corporate tax, a status that is the envy of its competitors.⁵²

Sanitarium, the breakfast and health food company, is owned by the Seventh Day Adventists. *The Financial Review* report confirms what the then Senator McMullan said in the Senate on 15 December 1992,

The income tax exemption that applies to religious institutions applies to the Sanitarium Health Food Co. because it is owned by a religious institution. We are not all that happy about that, but the attempt to disentangle that would be too difficult.

A similar response was generated when the minister representing the treasurer responded in the Senate on 1 May 1984 to Senator Hamer who asked the treasurer,

(5) Would it be practicable to separate, for tax concession purposes, the charitable activities of a religious body from its other activities.

Senator Walsh replied:

(1) The Income Tax Assessment Act exempts from income tax income derived by a religious institution.

(5) I believe there would be considerable practical difficulty in separating the charitable activities of a religious body from other activities. Legally, the advancement of religion is a charitable activity.

This is a cop-out and quite wrong. Officers of the Australian Tax Office are capable of suggesting the appropriate amendments. As long ago as 1969 the *US Tax Reform Act* included,

... revision of the tax-exempt organization area to tighten the taxation of unrelated business income.⁵³

The truth is partly that sixty years of government indifference and the incorrect general impression that all supernatural charities are involved in non-profit 'good works' has served to obfuscate this issue.

The reason why supernatural charity organisations in Australia do not pay income tax at all is because the Tax Act says that they do not have to. The Tax Act in effect defines religion as a charitable activity. A 1996 Tax Office document, *The Club Pack* stated:

The word charitable has a technical, legal meaning... an organisation will be considered charitable only if its main purpose falls within one of the following:

relief of poverty;
the advancement of education;
the advancement of religion; and
other purposes beneficial to the community.

The same document states,

Charitable institutions for the advancement of religion include organisations established to build and maintain a building of worship, and organisations established to provide stipends to the clergy.

So, if an organisation owns, rents or uses a building for religious purposes and there is a clergyman/woman and a set of beliefs which the Tax Office consider acceptable to qualify as a charity, then the organisation need pay no tax. What counts as a set of beliefs that are acceptable were defined by the High Court in the case of the *Church of the New Faith v. The Commissioner for Payroll Tax in*

Victoria.⁵⁴ As stated earlier in the 'Introduction', this case concerned the Church of Scientology, where the Court defined religion as any belief in a supernatural being, thing or principle and the acceptance of canons of conduct that give effect to that belief.

In passing it is worth noting that tax law distinguished between religious organisations that advanced religion and 'religious institutions'. The latter were a tiny minority of usually closed, private groups that were not active in proselytising and thus, not eligible for tax exemption. Recently, the government passed legislation to allow exemptions for these groups as well.

With respect to what counts as a 'charitable organisation', the Industry Commission's 1994 report points out that the *Income Tax Assessment Act*,

... does not define a charitable organisation. This has been left to case law.⁵⁵

Pemsel's case generally established four sub-categories of charitable purpose:

- trusts for the relief of poverty;
- trusts for the advancement of education;
- trusts for the advancement of religion; and
- trusts for other purposes beneficial to the community.

Trust of these kinds are stand-alone, tax-exempt legal entities into which money is paid and disbursed for those reasons and purposes. Trustees who manage a trust are legally obliged to maintain the trust for its stated purpose.

The *Pemsel* case was heard by the Privy Council in 1891. Ely argues that while the *Pemsel* case was a turning point for the definition of charity, the earlier application of the 1736 *Mortmain Act* defined benefits for the wealthy as charitable.⁵⁶ *Pemsel* also demonstrates the equation of religion with the technical word 'charitable' turned partly on the idea that 'charity' did not just refer to relief for the poor, but referred also to the advancement of religious understanding, specifically a belief in Christianity. Lord Watson said that previous authorities,

... establish positively that charity is not limited to relief of physical wants of the poor, but includes their intellectual and moral culture.⁵⁷

Advancement of 'intellectual and moral culture' was not limited, however, to the poor of Great Britain. The *Pemsel* case was brought by the Moravian Church or United Brethren whose mission work also involved converting 'heathens' in other cultures. Before he defined the four categories that comprise the meaning of charity, which is accepted in Australian tax law, Lord MacNaghten pointed out,

The Moravians are peculiarly zealous in missionary work. It is one of their distinguishing tenets. I think they would be surprised to learn that the substantial cause of their missionary zeal was an intention to assist the poverty of heathen tribes.⁵⁸

I take this to mean that Lord MacNaghten realised that while relief of poverty was the guiding principle of charity, an unintended consequence of *Pemsel* was that while they were being allowed exemption from income tax for relief of poverty, their true missionary intention was religious conversion. That was now being subsidised by the state. Dissenting from the decision to allow the exemption Lord Bramwell said,

I think the judgement should be reversed. As the majority of your Lordships think otherwise the State will be a subscriber of £17 a year to supporting, maintaining, and subsidising 'the missionary establishment among heathen nations of the Protestant Episcopal Church known by the name of the Unitas Fratrum, or United Brethren.

He added ruefully,

Whether this was meant by the authors of the Income Tax Act, if it was, why, and whether it will be continued, are questions not before us.⁵⁹

In passing, *Pemsel* refers to the date when the first modern British income tax legislation was passed: 1799.⁶⁰ For Australia Professor McGregor-Lowndes writes that 'Charitable organisations have remained exempt from income tax in Australia since the first state income tax legislation in 1884 through to the current *Income Tax Assessment Act 1936* [now the 1997 Act].⁶¹

The *Income Tax Assessment Act* was debated in the Senate on 20 May 1936 and the question of exemptions for religiously

owned commercial organisations arose. There was heated debate. The members recognised that some religious organisations were engaged in business and were making tax-free profits. A Senator Arkins said,

Senator Leckie has told us the agitation that has been in progress for several years to alter the taxation laws in relation to charitable and religious bodies which engage in commercial undertakings. In NSW the members of certain organisations are continually on the doorstep of members of Parliament, asking for protection in their businesses against the competition of semi-religious organisations... some charitable or religious organisations... are engaged in business, and because they escape taxation they are competing with businesses privately controlled. If there is anything in the allegation that such bodies are using the cloak of Christianity to make profits without paying taxation, it is about time that legislation was framed to check them.⁶²

Defending the non-taxation of religion, Mr McLachlan, the Postmaster-General, who introduced the Bill said,

... any decision to compel religious institutions to pay income tax upon trading profits would react harshly upon an organisation which is doing great service to the poor of Australia.⁶³

Of course, he was speaking during the Great Depression. His defence of the non-taxation of religion was spiked with a curious swipe at the privilege. He said,

Some of the institutions, while they do engage in business, use the fruits of their industry in most estimable ways. Others are organised to make a trading profit. In this respect their operations resemble those of a State or Federal Government; they have the advantage of escaping from income tax and various other charges on their profits. They are apparently *the cared-for darlings* of the several Commissioners of Taxation of the Commonwealth and the States.⁶⁴ (Emphasis added.)

This was a strange remark from a minister introducing a Bill. It seemed to imply that the Commissioners of Taxation had quarantined religious organisations from taxation for reasons the minister was not prepared to discuss. I suspect that the Commissioners for Taxation were Christians who saw it as their religious duty to protect what they understood to be the legitimate interests of their supernatural

charities from the burden of taxation for what they believed were legitimate reasons. A Senator Hays said,

I deprecate this searching criticism of their activities and implication that some of them are purely trading concerns. The revenues derived from their activities are utilized for the furtherance of scientific, educational, religious or philanthropic purposes, and it is no exaggeration to say that they relieve the Commonwealth and the State governments of hundreds of thousands of pounds of expenditure on social, educational and other services which, but for their existence would have to be raised by taxation of the people.⁶⁵

The contribution made to society by organised supernatural charities has been considerable but the question remains: is this 1936 defence still valid? And how do we know welfare expenditure is comparable to their incomes? (This is discussed further in the next section.) What then is the aim of the tax exemption given to supernatural institutions? If grants to supernatural charity schools are 'in order to' promote education (the High Court's rationale as discussed further on), what 'in order to' motive is involved in the tax exemption? Tax law says that religion is a 'charitable activity', but a charitable activity is not defined in the Act. It is left to case law, i.e. the *Pemsel* case, which involved a claim for tax exemption by the United Brethren.

As we have seen, *Pemsel* makes clear that 'charity' not only refers to relief of poverty but also includes the development of 'intellectual and moral culture'. The Australian Tax Office lifts its definition of 'charitable' directly from *Pemsel* that stated 'intellectual and moral culture' means,

... the advancement of religion.

Pemsel equates religion with 'intellectual and moral culture' in a nineteenth century way. Proselytisation of 'intellectual and moral culture' advances religion. The Australian Tax Office has implicitly accepted the nineteenth century Christian purpose, which in turn had its derivation in the seventeenth century *Statute of Charitable Uses*, at face value, when they rely on *Pemsel* for justification of the tax exemption for religion.

So the 'in order to' of the tax exemption is 'in order to' advance religion.

The question arises: where is the separation of church and state if the tax system is used to 'advance religion'? Where is McLeish's so claimed,

... state of neutrality toward religion...⁶⁶

in Australia? By favouring supernatural charities with tax exemptions while requiring secular organisations with non-religious beliefs to pay tax, the Tax Act and common law compromise the principle of separation of church and state. A Canadian court expressed the result of this phenomenon very well in a related case,

Religious values rooted in Christian morality are translated into a positive law binding on believers and non-believers alike.⁶⁷

Speaking to the High Court's findings in the Defence of Government Schools (DOGS) High Court case,⁶⁸ Professor Sadurski argues that the judges selectively interpreted s.116,

One telling omission... is the preservation of equality between religious and non-religious beliefs, activities and bodies. While freedom, in Mason J's catalogue, works both ways (i.e. both for the religious and non-religious persons) equality is one dimensional: it is only between religions. One might perhaps say that it is consistent with the method of a literal reading of the Constitutional text: there is no express mention of the equality of religion and non-religion. True, but there is no mention of 'religious equality' either.

It is hard to see on what basis we can deny the constitutional mandate to preserve equality between religious and non-religious people, bodies and activities. This is all the more unclear since s.116, in contrast to the American First Amendment, explicitly prohibits law 'imposing any religious observance', hence expressing concern with the rights of the non-religious. Why this concern must fall short of granting them full equality, remains to be explained by the Court.⁶⁹

Similarly, whoever drafted section 23(e) of the *Income Tax Assessment Act 1936* reproduced the ancient common law privilege: the tax exemption for religion was 'balanced' against exemptions for scientific, and other organisations as if there was some equivalence between religious and secular organisations. Section 23 reads,

The following income shall be exempt from income tax:-

(e) the income of a religious, scientific, charitable or public educational institution;

It is not the role, however, of a nominally secular state to subsidise the ideational culture of religion through exemptions as the French (see section on France), at least in principle, realised. It is not a question of being even-handed. These exemptions compromise the state by making the theological belief systems, the recruitment and conversion aims of the supernatural charities, which serve the interests of some, on a par with secular activities in which all members of society have an interest. This preference is not a legitimate function of a liberal, secular democracy. The supernatural charities can have their belief systems and proselytise to their hearts content. What they should not be able to have is unqualified tax-exempt income to promote those beliefs at the expense of that nominally secular democracy comprising an increasing number of citizens who have no interest in the ideational culture of religion.

Furthermore, the three saints' crosses of the British union jack in the corner of the Australian and New Zealand flags (St George, St Andrew, St Patrick) could be taken to signify, whether we like it or not, we are indeed a Christian theocracy of sorts. The exemptions, rooted in 400 year old law, still apply as if contemporary societies are as religious now as they were then. Clearly this is not so. The secular are now subsidising those with a belief in the ideational culture of religion without our agreement. Unlike the German and Italian examples mentioned earlier in the Introduction, our taxes are garnisheed without our support.

Professor Sadurski focused on the point of what I argue above was the inappropriate balancing act concerning exemptions when he argued,

... the only plausible interpretation of neutrality is along non-interventionist lines: the state has to remain aloof from religious activities (just as it should not get involved in anti-religious, as contrasted to non-religious, activities and beliefs).⁷⁰

Following *Pemsel*, the drafter of section 23(e) of the original Tax Act balanced religious with secular exemptions. This compromises the point that the secular state could not in principle be involved in the former while it *could* be involved in the latter, as a legitimate action of a secular representative government encouraging secular but *not* anti-religious activities. Governments are empowered to give grants and subsidies to businesses and other secular interests as a legitimate policy of encouraging economic activity (and we can criticise this as largesse), but it should not be funding atheists and others to push the atheist cause; yet in Australia the converse in practice does not apply: supernatural charities are subsidised in effect by the state in an absurdly discriminatory way to do as they please.

Also, we have seen above that the modern exemption of supernatural charities from taxation is a consequence of *Pemsel*, formalised in section 23(e).

Pemsel was a decision that was confirmed in the courts in Britain, and ten years before the Australian Constitution was drafted. There is nothing specific in the Constitution which says there must be an exemption for religion. Interestingly, in 2006 the Church of the Latter-Day Saints (Mormons) claimed that they would eschew the tax exemption available on the grounds,

... that it is a global religion and does not get such exemptions overseas, for their commercial business practices.⁷¹ If the Mormons voluntarily recognise this, why do the other supernatural charities remain silent, and why does the Federal Government refuse to answer questions about this matter?

Section 116 and church and state

Section 116 of the Australian Constitution says:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Section 116 was modelled on the First Amendment of the US Constitution which the US Supreme Court has interpreted as enshrining the separation of church and state. The two main clauses of the First Amendment mirrored in the section above concern:

- (1) When is it legitimate for a government to interfere in religious activities (the 'free exercise' of a faith)?
- (2) Which government actions amount to a preference for religion that could lead to an 'establishment' of religion in nominally secular states (separation)?

Establishment in the British sense of the term means the Church of England is the national religion of England, preferred by law above others. For example, Anglican bishops are appointed by the prime minister to the House of Lords. Establishment in the American sense means any government action that would breach the constitutional 'wall of separation' between any state and church.

On 2 March 2006, the Prime Minister, John Howard, a Constitutional Monarchist, responded to a motion in the Senate by Democrats leader, Senator Lyn Allison, to move Australia towards separating church and state,⁷²

What the separation of church and state means in this country is that there is no established church... we don't have the Anglican Church as the official state religion, that's what it means.⁷³

In saying this he was echoing similar words spoken by Edmund Barton during the debates concerning Australian Federation in 1897. The difference is that Barton understood the absence of state funding for religious schools as a defining characteristic of separation. This characteristic was swept away by the 1981 DOGS

Charities and supernatural charities

The sums that have been lost to revenue up to now through supernatural charity tax exemptions and that will be lost into the future are many billions. The Australian states are not legally obliged to allow this largesse at their level of government and there is no logical reason for it. For example, churches would pay their electricity, gas and other related expenses. But when they put their garbage out to be collected, when a church catches fire, or should there be vandalism, they expect garbage collection, fire trucks and police without paying for them. Similarly, they expect footpaths, roads and other infrastructure to be paid for by other rates and taxpayers while making little or no contribution themselves. There is room for reform here which would save the states considerable amounts in revenue foregone.

As McGregor-Lowndes and Conroy note at a state level,

Many charities are exempt from sales tax [pre-GST], land tax, stamp duty, financial transaction duties, gambling taxes, payroll tax and other minor indirect taxes.²²⁰

These exemptions may vary from state to state but generally, religious organisations do not pay land tax, payroll tax and stamp duty. If they run commercial businesses which are income tax-exempt they may have to pay these taxes and Fringe Benefits and GST taxes. But these imposts have to be seen in the context of being exempt from income and capital gains tax. At a local government level supernatural charities do not pay rates or water rates for their buildings and the minister's residence. The loss of revenue from supernatural charities not paying payroll tax is very significant as Richard Lead notes.²²¹ This is so because the Catholic Church and the Uniting Church are very large employers.

In its submission to the 2001 Charities Definitions Inquiry the Church of the Latter-Day Saints argued,

The church has been able to convince the state governments in every state except NSW that it ought to be afforded a stamp duty exemption when it acquires property for religious purposes. In NSW the State Treasurer

retains a discretion and we are advised that he exercises that discretion in favour of pure humanitarian charities... In NSW we thus believe we have identified a state government attitude to deny traditional charitable status to the churches – in favour of what may now be regarded as purely secular charities.²²²

This curious remaining vestige in NSW of the separation of church and state does not seem to apply elsewhere. In 1987 the then City of Doncaster and Templestowe issued a summons at the Melbourne Magistrates Court for the recovery of rates from a party entitled, 'The Society of God'. The council believed it was not a *bona fide* religious organisation. When it came before the Magistrate's Court the Magistrate dismissed the Council's action finding two people were training to be ministers of religion on the property. The property was held in a trust with a trust deed. There was a constitution, a manual and regular meetings at the property. The Magistrate found the minister sincere in his beliefs. The two people training to be ministers were a minister's sons. However, the fact that the minister worked as a public servant for 37.5 hours per week persuaded the Council to appeal the matter to the Victorian Supreme Court. The matter was heard on 31 May 1988. In dismissing the case the Court found that,

... it is not to the point that a minister of religion does something else with his time other than practise as a minister of religion.²²³

So, a pensioner living in a house with rates of say, \$750 to \$1,000 per annum in what is now the City of Manningham, will get a modest reduction. A minister of religion with what is in effect a full-time job pays no rates. This is clearly economic discrimination as a function of religious belief. In its submission to the Charities Definition Inquiry the Melbourne City Council estimated (as noted in the Introduction) the cost of rates exempt properties to be approximately \$10m which amounted to a 10 per cent surcharge on all other rateable properties.

Similarly, in the wealthy Sydney suburb of Manly where the Catholic supernatural charity has significant property holdings, the local council was moved in the 1980s to,

... double the normal garbage collection fee because [the Catholic properties] are not rateable.²²⁴

Freedom of religion within Australia has come more to mean freedom from taxation within the Purple Economy. In the Black Economy tax is evaded by cash changing hands between parties or where cash is kept undeclared from the gaze of the Tax Office. The Goods and Service Tax (GST) was introduced in 2000 to partly account for that missing revenue. The Purple Economy as noted earlier may be defined as, *the wealth generated by the eternal mass exemption from taxation of supernatural organisations, their subsidiaries and their charitable arms*. This has the same effect as the Black Economy in so far as government, this time willingly, surrenders its right to revenue.

Charities generally in Australia pay no income tax, they receive refundable imputation credits, they can acquire gift deductible status, they receive a Fringe Benefits Tax rebate, the \$30,000 capped Fringe Benefit Tax exemption and GST concessions. The worth of Australia's 'not-for-profit' sector has been estimated to be as high as \$70 billion.²²⁵ No one is sure because supernatural charities are not obliged to submit tax returns or put their accounts on the public record. The only tax that religious supernatural organisations as charities pay is some rates on non-religious property, some GST and fringe benefits tax which, as we shall see, is generously allocated to ministers of religion. As noted earlier, they are also exempt from most state and local government taxes. While charities cannot pay their directors, a charity's employees can realise generous salary packages.

The scale of the lost revenue on account of charity exemptions is steadily increasing. According to the report of the Federal Government's 2001 Charities Definitions Inquiry, the government's current and capital grants to the overall non-profit sector, including supernatural charities, totalled over \$11 billion per annum. The Inquiry stated that there were 40,202 charitable organisations with tax-exempt status at the time the report was written. I am informed another 4,000 or so have since notified the Tax Office of their presence.

Presently the only entry that would know how many charitable organisations are supernatural organisations is the Australian Tax Office. There is no publicly available list of these organisations even though Australian taxpayers are effectively subsidising them. There is a list of Gift Deductible Recipients. Many of these are subsidiaries or trusts of the larger supernatural organisations in the Tax Office data bases which are eligible to receive donations that the donor can deduct from his or her income tax. They are so numerous they are relatively difficult to browse. In a press release of 29 August 2002 the treasurer said, belatedly, in response to the findings of the Charities Definition Inquiry that the status of gift deductible and tax-exempt organisations will be noted for the first time on the public record through the Australian Business Register from 1 July 2004. This is a little improvement, but we still will not know how exactly all charities are applying their funds to charitable causes. Furthermore, legislation required charities to be endorsed by the Tax Office by 1 July 2000. When the deadline came and went and probably hundreds had not registered for endorsement, the government moved the endorsement date to the 1 July 2004 date. However, if supernatural charities did not register there was no sanction; and if they did not apply, and as they do not have to file tax returns, the Tax Office does not even know of their existence. Compare that treatment to the vast majority of secular taxpayers.

In 2000 the Institute of Chartered Accountants expressed their disquiet at the state of charities in Australia. A study of the annual reports of sixty charities with head offices in Victoria found that nearly half had qualified audit opinions which,

... limited the auditor's ability as to the effectiveness of the financial statements examined.²²⁶

This leads to the inference that monies raised for charitable causes are going into other pockets.

The Institute's chairman suggested the Australian Securities and Investment Commission (ASIC),

... had a role to play in ensuring charities were held accountable for the funds they are handling.

He further suggested the government should follow the British example and establish a Charities Commission. This was a fair suggestion as ASIC have quite enough on their hands with corporate illegality as it is, and clearly, the recent corporate collapses demonstrate they are not coping. The Certified Practising Accountants Association also expressed disquiet at the lack of charity accountability in Australia,²²⁷ as did *The Australian* in its editorial of 31 January 2003. It noted that,

Donors are largely left in the dark about exactly how the money they give so generously is used. Charities must send annual returns to government, but are under no obligation to disclose their financial statements to those who fund them. Reporting standards vary from crude to adequate... Such [charities] anomalies would have been cleared up by now if the August 2001 recommendation of the Charities Definitions Inquiry were not gathering dust on Treasurer Peter Costello's desk. The inquiry recommended the establishment of an independent administrative body to determine the status of charities and ensure their accountability to the public, based on a clear and consistent framework.²²⁸

It is sobering that even with regulatory bodies in existence and supposedly oversighting the commercial sector and the insurance industry, the HII Insurance company could collapse with \$5 billion worth of debt. If that occurred with some regulation in place, what is happening in the multi-billion charity sector where there is little or no regulation? It is little wonder a recommendation for a Charities Commission is 'gathering dust'.

Earlier in 1993 a visiting professor expressed astonishment at Australia's lax charity laws characterising Australia as a, ... tax haven for certain non-governmental institutions.

He noted that at that time only Israel and Hungary allowed tax free commercial activities for non profit organisations as long as the proceeds are applied to a tax-exempt purpose. He was surprised at the language of a member of the Administrative Appeals Tribunal who said with respect to a NSW bowls club appealing its subjection to tax by the Australian Tax Office,

The club has money pouring out of its ears and doesn't know what to do with it all. So what?²²⁹

The club was holding \$10m in cash and was making millions annual tax free profit from poker machines. The Tribunal was overwhelmed by the Tax Office's objection that not all the income was generated strictly in a manner related to bowls. Our visitor pointed out that the Tax Office had lost a similar case in the Federal Court which opined that it does not matter how a club generates its income, including bussing people across a state border to play poker machines, so long as the 'purpose' is for charitable ends. While this decision concerned a secular charitable organisation one might say that perhaps the Court realised that if the secular 'non-profit' organisation had apparently unrelated activities disallowed for exemption the same standard would have to apply to supernatural charities. In 2003 the state government of New South Wales decided to tax the poker machine profits of clubs and in 2006 it was decided the tax would only apply to clubs earning more than \$1m in poker machine revenue.

As noted, all religions approved by the Tax Office as supernatural are legally charities and they do not have to file income tax returns. The Charities Definition Inquiry Report claimed religion itself makes up only 4.3 per cent of the charitable sector. Their organisations are prominent in education, community services and health. If we assume that figure is reliable, 4.3 per cent of approximately 44,000 charitable organisations would amount to about 1,892 religious organisations having tax-exempt status in Australia. By way of comparison, Ward and Humphries, writing in 1995, said there were some 300 religions but the census generated 1,500 different descriptions of religion which had to be coded into the data of the Australian Bureau of Statistics.²³⁰ The trend seems to be up. Those who claim governments are not doing enough to encourage religious diversity may calm down. It is likely the tax-exempt status of religion is drawing new supernatural charity organisations into being like moths to a flame.

As well as being tax-exempt, religiously owned organisations often apply for financial grants from government for their charitable

organisations. Given that supernatural charity organisations are usually reluctant to publicise their complete financial position, to the best of my knowledge it is a reasonable inference that they are double-dipping, albeit legally, from government revenue for their charitable causes. Once from the exemption and once from the grants. The person who makes a donation to his or her church is also paying twice: once through their taxation which serves to give grants to their supernatural charities' causes and again when they put money on the plate.

The Industry Commission's 1994 Draft Report, *Charitable Organisations in Australia*, outlines the then top fifty charities and from their chart it is clear that some of the largest church-based charities obtained substantial funding. For example, Anglican Retirement Villages received \$43.9m; Wesley Mission \$38.6m; Anglican Home Mission \$50.8m; Baptist Community Services \$57.9m; Brotherhood of St Laurence \$51.8m, and so on. If there was a way to reconcile this scale of funding with the churches' own investment income the picture would be clearer as to whether or not the churches are, and to what extent, double-dipping.

For example, the Annual Report of Anglicare for 2000-2001, freely available on the Internet, states that it had an annual expenditure of \$444.6m. It received \$168.4m in grants from the Federal Government and \$11.5m in donations. That would infer that the organisation generated \$264.7m from Anglicare's own investments or received funds from the Anglican Church itself. But that is not stated to be the case. There is no statement of where the \$264.7m came from. There may be a reasonable explanation but it is not provided. At the same time the larger charities do have to meet accountability requirements from government for the grants they receive.

The Charities Definitions Inquiry reported also that,

... estimates are not available for the cost to revenue of the income tax exemption for religious, scientific, charitable or public education institutions.

We also do not know how many religious organisations are engaged in charitable activity. According to Philanthropy Australia in 1997

religious organisations received \$1.025 billion in donations or 36.8 per cent, the lion's share of donations.²¹ There is little collated information on how that money was spent. Also, we do not know the value of bequests that supernatural charities receive. There is little information concerning supernatural charity finances on any of the main church websites.

In evidence to a Parliamentary Committee in 1999 Professor McGregor-Lowndes, Director of the Centre for Philanthropy and Non-Profit Studies unit at the Queensland University of Technology, and in no way an ardent critic of churches' privileges, commented that,

... we lack a formal framework of measuring of non-profit income or fundraising costs, and we do not have any accounting principles like in the UK, the US and even New Zealand.

He went on to say that the Catholic Church's religious and welfare services were important but that the structure of the Australian Catholic Church was 'an absolute mystery'. He commented that it would take a 'life's work' to understand it. He claimed that,

There has been a marked increase in the number of religious groups, particularly charismatic and fundamental groups. From the rumours one hears from the ATO [Australian Tax Office], that is an area of concern to them, particularly with respect to fringe-benefits and other tax compliance issues.

He said,

I also believe that it is about time that gift deductible organisations which are participating in a tax expenditure have fully public accounts and that they are published. This has happened for decades in the US where they have tax returns for organisations which have tax deductibility status or other favours from the states called a Form 990. It also serves as a regulatory statement for fundraising and other issues and it is available [to] the public. More recently, they have switched to donors being able to ask for that statement and it must be given on demand within a very short period. Most organisations are publishing it on their Internet site so you can gain that information. That sort of public accountability would stop many of the rorts, make it more open and accountable...²²

It is instructive that while Professor McGregor-Lowndes recognises there can be 'rorts' with 'gift deductible organisations'

he does not acknowledge that torts can also occur with tax-exempt organisations. Both sets of organisations are charities. Both sets of organisations should be open to scrutiny. As we have seen, there are allegations of impropriety concerning sections of the Catholic supernatural charity, the structural arrangements of which he describes as an 'absolute mystery'. It is also the case that in the United States that,

Churches... are also exempt from the requirement applicable to most nonprofit organisations of filing annual returns (Form 990)...²³³

Many submissions to the Charities Definitions Inquiry suggested, as noted, a Charities Commission to establish guidelines and improve accountability for charitable organisations. This would seem to be a forward step given the scale of the mess but the government has refused to even comment on the recommendation. This means that a lack of transparency for charities, supernatural charities especially, will continue to apply. The Australian Tax Office itself has argued there should be,

A single, targeted, transparent and accountable program of direct outlays...²³⁴

by government to worthy charities. In refusing these recommendations the government is abrogating its responsibility to all taxpayers.

When *Business Review Weekly* was critiquing the chaotic charity sector, an organisation wrote to *BRW* to relate their experience of becoming a charity,

We were amazed to discover from the taxation guidelines that an application of funds is charitable if it is within 'the spirit and intendment' of the Statute of Charitable Uses 1601 (the so-called Statute of Elizabeth), as set out in the preamble to the relevant legislation. We were even more amazed to discover we are not required to submit any official record of our activities to anyone.²³⁵

The response of supernatural charity organisations to the Charities Definition Inquiry question as to whether there should be a Charities Commission in Australia was instructive. In a way,

it was a straw poll on whether these organisations would agree to transparency and accountability. Not surprisingly, given the scale of their operations in Australia divided into many entities, the Catholic supernatural charity was not in favour.

It is paradoxical that as mainstream supernatural charities are becoming increasingly irrelevant to a majority of Australians there is unlimited potential for supernatural charity wealth to increase exponentially.

What the Australian Government needs to explain is why it is not establishing a Charities Commission while New Zealand *has*. In a media release their Charities Commission Preparatory Unit pointed to the lack of accountability and transparency of charities and stated that,

... the primary purpose of the Commission would be to register and monitor charities wanting to retain their tax-exempt status.²³⁶

The Charities Act requires the country's 35,000 charities to be registered with the Commission by July 2008.

Speaking to the situation in Australia, the *Business Review Weekly* editorial of 24 March 2005 stated that when the magazine began to research this topic,

... one government department after another gave *BRW* the run around, most politicians ran a mile when asked to comment, and most business people would only speak off the record.

The magazine pointed out that Treasurer Peter Costello,

... refused to co-operate for the story or answer questions put to him.

Interestingly, in *The Western Australian* 11 May 2004, the treasurer agreed to the proposition that government school students,

... should be made to study the Bible at school.

As noted, the Catholic supernatural charity opposes a Charities Commission.

Having spelt out the political context in which charities operate, it is useful to make another digression to the world's most secular democratic country to see how they have handled the balance between supernatural and democratic authority.

'Employed by God?'

It is important to clarify an important distinction: between individual taxpayers and non-taxpaying supernatural charity organisations. Individual employees of supernatural charities – those that *are* employees – are liable for taxation. Those that are licensed to be ministers of religion also pay income tax but surprisingly they may not be 'employees'.

In occasional unfair dismissal disputes between supernatural charities and their ministers, the supernatural charities have claimed that the minister was responsible to 'God' and not employed by the supernatural charity, therefore ineligible for termination benefits.³²⁷ In a 1999 dispute the NSW Industrial Relations Commission found that the spiritual character of the applicant's priestly office and functions was inconsistent with a contract of employment. This was because the applicant who was an Anglican minister of religion did not enter into a contract of employment when he received a license to carry out priestly duties from his bishop.³²⁸

This was the case of the Reverend Howard Knowles who was a chaplain at Bathurst Gaol in NSW.

The Reverend Knowles (Father Howard) became a minister of the Anglican Church in 1976. Eventually he became the chaplain at Bathurst Gaol for ten years and despite the fact that he had served the supernatural charity for some twenty-one years he was effectively dismissed when he had 'differences' with the Bishop of Bathurst. These differences,

... appeared to relate to a difference of view as to the appropriateness of the applicant continuing to perform the role of chaplain at the Bathurst Correctional Centre.³²⁹

He was nearing retirement. To use a comment made in Trollope's *Barchester Chronicles*, this was apparently a situation which had 'nothing to do with Jesus Christ'.

The Anglican Church used its authority, and its solicitors in the Commission, to establish a point which they must believe is consistent with their version of Christianity: it is legitimate for

a bishop to withdraw the licence of a minister when they have a difference of opinion, leave him open to serious financial loss, even though he is approaching retirement. Ironically, in the Church of England in Britain, and presumably in Australia and New Zealand, while priests and curates can be effectively dismissed in this way, a rector or a vicar cannot.³³⁰ Just why one standard applies to some officers of the church but not others is hard to fathom.

Father Howard thought that he was an employee because he received a regular Group Certificate in his name as 'employee' and the church as 'employer'. He also thought he was employed because he had a letter from the charity referring to his 'employment'. His 'emoluments' of office,

... comprised a stipend, an allowance to cover both fixed costs and running costs of a motor car, the provision of a house (in this case rented), payments towards telephone, heating and power costs and a contribution to a clergy superannuation fund.³³¹

Only 25 per cent of Father Howard's income was paid out of Synod funds. Approximately 75 per cent of his income was paid by the Department of Corrective Services. The Department,

... prepared a cheque which was sent to the Anglican Church offices at Bathurst and was banked to the credit of the Synod Management Fund account.³³²

Father Howard claimed that he was owed \$7,500 for long service leave, was facing a loss of superannuation entitlement,

... arising out of dismissal prior to Synodical age of retirement – in excess of \$30,000 [and] loss of stipend/remuneration... [worth \$48,405].³³³

The supernatural charity refuted his claims. Referring to a number of British precedents they argued that as an ordained priest he 'served God', he did not serve an employer. There was no contract of employment therefore he was not an employee. The fact that tax was deducted from his stipend 'shows nothing'. His emoluments were merely provided to,

... enable him to carry out his priestly functions.

If he was unhappy with his dismissal he could appeal to the domestic tribunal of the Diocese.³³⁴

The Commission agreed. Finding that worker's compensation insurance was never taken out for Father Howard or other clergy, the Commission found that all the materials before it,

... clearly show the relationship was a religious one. It was a,

... consensual compact to which the parties were bound by their shared faith based on spiritual and religious ideas - not based on a common law contract.³³⁵

The case was distinguished from the similar fact situation when a Greek Orthodox archbishop was effectively dismissed in South Australia. In that case the High Court found that there was an employment contract between the Greek Orthodox Community and the archbishop.³³⁶

Father Howard's case has some interesting implications. The first is obviously that it is a message sent to all ministers who would contradict their bishops. The second is that this supernatural charity, in this matter at least, is embracing separation of church and state: they are running their own affairs and have proved that in these 'licence to minister' matters the state is not involved. The third is that there is an 'Alice in Wonderland' aspect to the whole concern for while a minister is *not* an employee as far as the supernatural charity is concerned, a point agreed to by industrial law, he or she is an employee for the purposes of the *Income Tax Assessments Act* and *Fringe Benefits Act*! It is wondrous that the word 'employee' means exactly what it connotes in these acts, but in *industrial* law, as far as *some* clergy are concerned, it does not!

While again this is legislation favouring the purposes of supernatural charities, perhaps it could be argued that is fair enough: the minister has one leg in the supernatural world and one leg in the secular world and deals with them equally on their own terms. What makes the arrangement particularly obnoxious is that ministers of the ideational culture of religion are not treated equally with other taxpayers under the *Fringe Benefits Act*.

Fringe benefits

Speaking to the introduction of the Fringe Benefits legislation in 1986, Gleeson pointed out that it was known as the 'lurks and perks' tax designed to put an end to free cars, free holidays and 'super cheap housing loans'.³³⁷ A fringe benefit is non-cash remuneration provided to an employee by an employer. Examples are a company car, housing benefits, mortgage payments, holidays, school fees, food, clothing, child care and medical costs.

Speaking to his fringe benefits tax reforms on ABC Radio 2BL on 25 February 2000, Mr Costello said,

The way it works is this: that you and I are on a salary of \$40,000, we pay income tax on \$40,000. If you happen to work for a tax-exempt, that is, a body that doesn't pay income tax, you could take \$40,000 in fringe benefits and not pay any income tax. Your employer could pay your mortgage. Your employer could pay your grocery bills. Your employer could pay your school fees. And because you weren't taking any income and because tax-exempts are not subject to fringe benefits tax, you could take your whole income tax free.

Tax-exempt fringe benefits apply to ministers of the ideational culture of religion who undertake pastoral and counselling like duties; some benefits apply to students undertaking courses of instruction in the duties of a minister; full-time members of a supernatural charity order; students at a college conducted solely for training persons to become members of supernatural charity orders. A typical package for a minister would include a car, a house factored into his or her salary in lieu of taxable income by way of mortgage payments, holidays, health insurance; private school fees for the minister's children; life insurance and superannuation, food, clothing, child care and medical costs. Tax accountant Richard Lead argued on Radio National on 30 September 1998 that a recently advertised position for a pastor with a stipend of \$33,000 was effectively \$93,000 after the fringe benefits were taken into account.³³⁸

Eventually the government decided the 1985 reforms to fringe benefits did not go far enough. The front page of *The Australian* of 27 February 1998 reported that,

The Australian Taxation Office is preparing a major crackdown on high and average income earners who are repackaging their salaries to avoid tax. The tax office is also investigating non-profit groups such as schools, churches and sporting clubs.

The then Tax Commissioner, Mr Carmody, was quoted as saying that the exploitation of salary-sacrifice arrangements by non-profit organisations including 'churches' had gone too far. On 25 August 1998 *The Canberra Times* reported that,

... the Federal Government told churches and charities yesterday to stop using loopholes to reduce tax for their senior staff. Many benevolent institutions were loading fringe benefits such as expensive cars into salary packages, Treasurer Peter Costello said. 'The churches can't have it both ways... they can't say on the one hand we stand for a tight tax system against avoidance but on the other we don't want any of our fringe benefits brought into the tax net.'

But, after raising the issue of the 'loading' of fringe benefits into the salaries of church 'senior staff', and introducing legislation to 'cap' these privileges at \$30,000 for most taxpayers, ministers of religion continued to be *exempted* from these caps! Section 57 which allows benefits to employees of religious institutions has *not* been amended. In a media release of 13 April 2000, Treasurer Peter Costello said that the government had announced a measure designed to,

... stop over use of the current open-ended concessional FBT treatment available to public benevolent institutions and certain other not-for-profit organizations.³³⁹

He continued,

The Government's agreement with the Australians Democrats [who then held a balance of power in the Senate] involved increasing the level of the cap applying to charities and certain other not for profit organizations to \$30,000 of grossed up taxable value *per employee*, effective from 1 April 2001 (emphasis added).

He did not mention that ministers of religion may not be 'employees' and that the \$30,000 cap on fringe benefits would not apply to them. The inference was they could continue to package their whole income to avoid tax completely if they so desired.

When quizzed, the Tax Office points out the relationship between fringe benefits and industrial law still allows generous packaging for other workers in addition to ministers of religion. However, in a 2001 decision, benefits even apply to *retired* pastors. In an appeal case decided by the Tax Office, a retired pastor was found to be entitled to accommodation, the use of a car and \$1,000 a week, ... in the form of goods and services paid for by way of the church's credit card.³⁴⁰

It is hard to reconcile this generosity with the treasurer's words cited at the beginning of Part 1,

Less than half the population rates clergymen highly for ethics and honesty.

If he cites that finding with approval why does he allow the roting of fringe benefits by some ministers of religion to continue?

The case of the retired pastor also makes a further interesting point of comparison to the treatment meted out to Father Howard. Toe the line and depending on the supernatural charity involved, you may be eligible for \$50,000 a year in goods and services, free accommodation, free car and probably superannuation on top of that. And that may not be all. Assuming the fringe benefits are not counted as income, the pastor could also be entitled to a full or part old age pension if he or she is over the retirement age. How sweet that would be? In that case the question has to be asked: is this a legitimate use of taxpayers' funds? Is it what the Department of Social Security and governments have in mind as a legitimate use of an old age pension? Frankly, this use of the Fringe Benefits Tax to privilege ministers of religion is a rort and legislation should be introduced to block what, one hopes, is an unintended consequence of the fringe benefits legislation.

Mr Costello made noises about reform, but, as we have seen, the Fringe Benefits legislation continues to exempt ministers of religion through s.57 of the Tax Act. On Radio National on 21 April 2003, economist Peter Martin pointed out, using the term 'rort' to describe it, that,

In one case I know... I think this may be fairly typical... a minister takes out a home loan and instead of paying salary, paying cash into his bank account [the church] pays cash into repaying the loan!

The result of the tactic described by Martin is to reduce the tax a minister would pay on a higher income.

It is little wonder a sizeable religion in Australia described the *Fringe Benefit Tax Assessment Act* as a 'blessing'. The *Oxford English Dictionary* defines 'blessing', in a Christian context, as an,

Authoritative declaration of divine favour and countenance, by God or someone speaking in his name.

However, the point is that the exemption, as in the case of the grants to supernatural charity schools, does not come from an abstract god: it comes, in large part, from secular taxpayers. Who asked the High Court and the government to grant secular taxpayers' money to ministers of the ideational culture of religion and supernatural charities as if it was minted in heaven?

The justification for fringe benefits for ministers is that they are on call 24 hours a day, seven days a week for pastoral care. Then so are most Australian parents, especially (and usually) mothers with young children. Also, the dramatic declines in supernatural charity attendance have seen a shrinking flock but the ministers still get their privileges. And this, in the face of statistics from the *Australian Survey of Social Attitudes* cited earlier which found that only 2 per cent of the population would turn to a supernatural charity minister if they were troubled and 1.2 per cent for advice concerning a key decision in their life. In the face of this information, the generous fringe benefits ministers and other supernaturalists enjoy seem way out of proportion though it would vary from parish to parish. What about our 'retired' pastor on \$50,000 plus per annum who has ceased duties altogether but is still awarded the privileges by the Tax Office simply because he is 'religious'? If this is not a rort, what is? Fringe Benefits tax exemptions alone for supernatural charity institutions amounted to \$180m in 1999-2000.³⁴¹ They have no doubt increased since then.

Supernatural charities and property

It has also to be understood, as noted, that supernatural charities are among the non-profit organisations that are not liable for taxation while many, but not all, simultaneously run non-profit 'good works' charities.

Padraic McGuinness has argued that,

The revenues of the traditional churches are no longer coming from the tithes or donations of the faithful, but more and more from property gifted in the past, and they are maintained by the commercial disposal of assets which have never paid tax and even now do not attract tax when realised. That is, the traditional churches are largely living off the tax exemptions which were granted when they were important social institutions. They have become a new breed of land-developers, selling off open space as well as buildings for commercial exploitation.³⁴²

McGuinness is right as is James Murray, an Anglican priest and journalist who recently commented,

The churches... are the owners of considerable tracts of property. When they cry poor, as they often do, this wealth is infrequently mentioned.³⁴³

However, there is a diversity to the capital and income of the major supernatural charity organisations as reports on the public record demonstrate.

In a useful lead story review of supernatural charity assets in *The Bulletin*³⁴⁴ which predated the *BRW* exposés cited earlier, Lenore Nicklin assembled a contemporary table of the property holdings of the major supernatural charities. Noting that 'hard-headed professionals have replaced unworldly vicars at controlling the purse strings' of charity assets, Nicklin made some valuable points:

- the Catholic supernatural charity with 4.7 million Australian members and 10 times as many schools as the Anglican and
- Uniting charities combined is the largest supernatural charity and private landholder in Australia;
- just how much real estate the charity owns is a mystery;
- ownership of Catholic charity property is in the hands of hundreds of subsidiary organisations;
- the twenty-seven dioceses in Australia are divided into 1476 parishes, each responsible for its own finances; and

• published accounts of their assets are extremely rare.

With respect to the Anglican supernatural charity, Nicklin argues they are 'probably the biggest buyers of property for investment'. Richard Lead points out that the Sydney diocese of the Anglican supernatural charity in 1996 bought a 50 per cent interest in an equity fund management business that holds \$260m in equities. He also points out that on 27 June 1996 The Church of England sold a commercial building in Adelaide for \$44.9m. The building was the Adelaide Tax Office.³⁴⁵

Just how the Anglican supernatural charity operates in Australia is on the public record to an extent but the *British Telegraph* of 1 November 2000 reported that in England,

... the Church relies on parishes to pay 61 per cent of its income to cover clergy stipends and pensions. But the report [on finances to the newly-elected General Synod] predicts that a 'significant proportion' of members will be on a pension by 2004. It costs £740 million a year to run the Church of England – more than £2 million a day. The largest proportion – 46 per cent – is spent on clergy, and 30 per cent on worship and buildings.

The Uniting supernatural charity is also significantly wealthy. In a letter to the editor of the *Daily Telegraph* 17 February 1998 Reverend Harry Herbert, Executive Director of the Board for Social Responsibility of the Uniting charity in Australia, criticised the government for its failure to tax the wealthy. He said that,

... apart from capital gains tax, this is a neglected area.

He went on to say that,

There is no sign of the Federal Government being brave enough to tackle income splitting through family trusts or removing negative gearing. Why should wealthy people be able to split their income through trusts or use negative gearing to build up their assets at the expense of the ordinary taxpayer?

However, in her *Bulletin* article Lenore Nicklin pointed out that the Uniting charity,

... has \$340m under management by a trust. Only about 15 per cent is invested in property, the rest is in fixed interest and the short-term money market. Its mid-city headquarters and its largest parish, the Sydney Wesley Mission, occupy a site it once owned but has now leased for 103

years at a reported \$63m to the developers of the Piccadilly retail and office complex.³⁴⁶

The *Herald-Sun* of 27 August 2002 reported that the Uniting charity has a \$430m investment portfolio in Victoria alone, including 1,000,000 shares in Bristle, 1,000,000 AMP diversified PT units and 1,100,000 Telstra. In the past decade the charity has sold,

152 churches (25 in metropolitan Melbourne) for a total of \$28m. Its Melbourne properties include a 100-space car park and a four-storey building with shop and showroom space.

The Uniting Church Trust Association, described in the *Financial Review* of 29 August 2002 as 'among the country's biggest landlords' sold the QBE Centre in Parramatta, NSW to the Yangdo Group for \$22.6m. It was renting office accommodation, retail and car spaces for \$1.9m per annum prior to the sale. *The Canberra Times* of 10 November 2002 reported that the President of the Uniting Church, James Haire, stated that with 77,000 employees, not including clergy, the charity,

... is the largest employer in Australia except perhaps for the Catholic Church. Growth in community work, largely paid for by state and federal governments, accounts for the employee base.³⁴⁷

This candid admission that taxpayers largely fund supernatural charity employees is instructive. The 2006 census indicates that attendance at Uniting churches has slipped from 6.7 per cent of the population to 5.7. So how is it that from such a low attendance base the Uniting charity has grown to such heights of wealth and employer status in Australia, to the extent that it has become, like its counterparts, largely dependent on government largesse for a very large workforce?

While the answer is clearly historical and linked to the tax exemptions for supernatural charities, the search facility of newspaper data bases also now makes it possible to track some of the charities' commercial and financial dealings through reports on the public record to illuminate the scale of their dealings. Most but not all of them concern property. In the next chapter I have

paraphrased items from the *Australian Financial Review* between the years 1992 and 1995 with some other and later references as noted. The interpretation of these reports is mine.

The public record

2 July 1992

Wesgo buys radio 2SM from the Catholic charity for \$2m.

15 July 1992

St John of God Health Care Inc. pays Coles Myer \$4.1m for residential development site at Heathridge, WA. The property will be held as a long-term investment by the Catholic St John of God chain, which is the second largest private hospital group in Australia.

24 September 1992

A wealthy family purchases Swifts (a property) at Sydney's Darling Point for \$9m from the Catholic charity.

8 January 1993

3.5 ha site at Burswood, Victoria: sale of site for \$9m to consortium of World Vision, Blackburn Baptist Church and New Life Retirement Villages.

11 January 1993

National Australia Bank negotiates sales of Papua New Guinea subsidiary for \$12-14m to local consortium led by the Catholic charity.

24 March 1993

Two parcels of land at Fortitude Valley, Qld, sold by the Catholic charity for \$11.95m.

27 July 1993

Casino Austria, Country Comfort and the Australia Olympic Committee Consortium bid \$200m for Cairns Casino. Country Comfort Trust is backed in part by the superannuation fund of the Catholic Diocese of Maitland. The charity acquired the casino shares indirectly because it was a shareholder in the Country Comfort Trust Hotel Group. The diocese [originally] gained 5 per cent of the Trust in 1990 after selling a motel that had been an orphanage.³⁴⁸

14 October 1993

Catholic Church Insurances Ltd has 1,008,330 convertible notes in QCT Resources, a coal company; Society of Jesus in Victoria has 700,000; Uniting Church in Australia Property Trust (Vic) has 300,000.

5 January 1994

St Patrick's Catholic Church seeks development approval for an \$80m, 200 unit residential tower opposite Grosvenor Place, Sydney.

4 February 1994

The Catholic charity loses unspecified sums over the development of Notre Dame University in Fremantle, WA.

17 May 1994

Charitable bodies including the major supernatural charities convince the Australian Securities Commission to exempt them from Corporations Law prospectus provisions affecting fundraising and investment schemes. The Catholic, Anglican and Uniting charities were reluctant to disclose the value of their private investment schemes, but it is estimated they, at this time, run into hundreds of millions nationally. Later in 2006 the Australian Prudential Regulatory Authority had to devise a new set of rules to ensure the funds being operated by Catholic and Anglican charities were not disadvantaging the banks.³⁴⁹

17 May 1994

The Catholic charity tries to wrest control of the Bank of the South Pacific in PNG. The Director, a priest, representing the Catholic Archdiocese of Port Moresby with a stake of about 25 per cent, seeks to remove the chairman and managing director at a special board meeting. The chairman alleges that he is targeted because he is not a Catholic and that the Director 'never accepted that the Church did not own or control the bank'. In calendar year 1990 the bank reported a \$4.2m profit.³⁵⁰

12 May 1995

Taylor Point, an 18.8 ha site north of Cairns is available for purchase from the Anglican charity's diocesan synod of North Queensland for \$14.75m.

21 June 1995

The Uniting charity sells commercial complex at 62 Astor Terrace, Spring Hill, Brisbane for \$4.25m.

29 September 1995

Bidders for the Bond University include the short-listed IITS Foundation, a Judaeo-Christian organisation linked to Opus Dei. (Opus Dei founded the University of Navarre in Spain in 1952 and seeks to influence elites by engaging in higher education.)³⁵¹

February 1996

An article by Tony Abbott in the *Sydney Morning Herald* is republished in the Catholic journal *AD2000*. Abbott complained the leasing of St Patrick's College at Manly to an international hotel school was 'abandoning a sacred site'. He said, 'If the Church needed money, why couldn't it have sold its office buildings and kept its soul?'

4 July 1996

Scots Church Property Trust has applied to develop a \$150m hotel and retail complex in the Melbourne CBD.

17 July 1996

The Uniting charity buys a Melbourne warehouse for \$3.8m.

24 December 1996

The Catholic charity sells St. Patrick's Church site in The Rocks, Sydney, for more than \$17m.

23 August 1997

The Catholic charity stands to make a \$20m 'windfall gain' on 104 now luxury residential properties it owns in Manly (with views across the Tasman Sea) when leases are renewed.

22 April 1998

The Seventh Day Adventist charity will sell its 50 room health resort near Mount Donna Buang and the Yarra Ranges National Park, 75 km from Melbourne. It includes a hospital, nine residences, a laundry, workshops and an 18 room lodge. The capital investment is estimated at \$12m.

20 December 1998

The Uniting charity plans to sue an accounting firm after it failed to detect embezzlement of funds from its 'exclusive eastern suburbs kindergarten' in Sydney, where \$315,000 was lost. The kindergarten charged up to \$45 a day to mind children up to the age of five.

6 January 2000

Catholic Bishop William Brennan argued that charities' tendering for job agency business (worth hundreds of millions of dollars per annum) compromised their mission. He asked, 'Can it not be argued that when tendering against private, as distinct from public, interests, the church's various taxation exemptions give it an unfair advantage, and where is the justice in such an unequal contest?'

27 August 2000

The Bunbury, WA diocese of the Anglican charity is, 'understood to have up to \$900,000 in outstanding loans' to a failed real estate company. 'About \$200,000 of that is believed to be in loans at risk.'

31 January 2001

The five Glebe Stewardship Investment Trusts have about \$20m under management and \$54m in wholesale funds. Glebe Australia, the investment arm of the Anglican charity, manages \$400m in ethical investments. Glebe's Pan Asian Growth Fund returned 37.8 per cent for the year to 31 December [2000].

11 April 2001

Up to 50 Melbourne churches reap tens of thousands of dollars by renting their roofs, steeples and belltowers for mobile phone

antennas. Telstra said, 'quite often a church will approach us and say, "we have a huge building in this spot, how about it?" Many antennas are disguised as crosses on the roof.'

23-24 June 2001

The Australian: 'God's work has become very big business'. If the Salvation Army were a company it would sit comfortably in Australia's top 200. It holds net assets of at least \$1 billion and has a healthy annual income of about \$350m. The 2006 Annual Report for the Eastern territory of the Salvation Army indicates at p.22 there was an allocation of \$36.935m to 'capital reserves'. The explanatory footnote at p.32 states that part of capital reserves are 'designated funds' which go to front line specific programs/capital projects. They 'support costs of a wide variety of evangelical and social work' through the Army's 'eastern territory' of Australia. There is no doubt the Salvation Army is a thin blue line for many poor Australians. But it is unlikely donors know when they contribute for this work that an unspecified sum is being designated for 'evangelical' work.

23-24 June 2001

The Salvation Army has more than \$300m invested in financial markets and investment schemes. It has net assets of about \$1 billion. It is a big business that could be 'losing its religion'.

July 2001

A letter in the Catholic journal *AD2000* claims that a four acre parcel of Catholic charity owned land with 'heavenly' views of the ocean at Airey's Inlet in Victoria is to be sold at auction. The proposed subdivision of the four acres is for 13 blocks which are expected to sell at \$180,000 per block. The land was donated thirty-five years previously for 'church purposes'.

21 January 2002

The 2001 *Anglican Year Book* reveals the Brisbane diocese of the charity has \$41m 'under administration', but this money is not the

'reserves' from which compensation for sexual abuse is paid. The charity will not discuss the nature of the reserves and declined to discuss where the diocese would ultimately find money for sexual abuse compensation.

2 February 2002

I receive a response to a Freedom of Information request to the Treasury concerning AgReserves' purchase of its four Griffith, NSW farms for \$61m. AgReserves is owned by the Church of the Latter-Day Saints. A covering Treasury letter states: 'You will note some words have been removed... The words have been removed because they were not entirely accurate in the description of who controls AgReserves. A mistaken impression of ownership of AgReserves could cause commercial harm and the removal of the words has been made at the request of AgReserves'. The document concerned was the Minute signed by the Assistant Treasurer giving the church approval to acquire the farms. In the 29 June 2006 BRW it was reported that the church, as noted earlier, 'has decided not to take the religious exemption status for the business it operates, on the grounds that it is a global religion and does not get such exemptions overseas'.

30-31 March 2002

The Anglican charity in Melbourne invests \$20m in the 'thriving \$421m Uniting Church fund offering 5 per cent return for cash at call, and full security, because it is underwritten by the Church itself'.³⁵²

1 July 2002

The Catholic charity insured itself sometime between 1990 and 1994 for up to \$5m against compensation payouts to victims of sexual abuse through its own Catholic Church Insurances Ltd. The president of Broken Rites, a victims support group said the existence of the policy showed that the charity knew it has a problem but, 'did not do the right thing in exposing those perpetrators of abuse'. The *Sydney Morning Herald* of 15 November 2002 reported that in 2000-01 Catholic Church insurances reported a \$12.3m surplus

and jumped from 247th to 211th place in BRW's top 500 private company rating.

12 July 2002

The Sydney Catholic Archdiocese of the Catholic charity has spent \$33m on a new headquarters at 133 Liverpool Street, Sydney. This would be partly financed by the sale of Polding House in Pitt Street for about \$12m.

1 August 2002

Father Tim Norris noted in the *Courier-Mail* on that 'paying business tycoons more than the state premier earns to run [charities] will give many donors pause for thought'.

31 August 2002

The Sydney Church of England Co-educational Grammar School (SCÉGS) Redlands which receives \$3m a year in government subsidies has had to write off \$1.3m in revenues it expected to receive from a failed commercial project in the hospitality industry. The total bill, in lost rent, legal fees and settlement of claims is expected to come to more than \$2m.

24 September 2002

A 'substantial' amount may have been syphoned from the Brisbane Boys Town multi-million dollar charity. Police were called after an internal investigation and advice from a QC.

24 September 2002

In an apparently unrelated matter, a priest told the Health Practitioner's Tribunal that he sought counselling from another priest registered as a psychologist over his anxiety concerning 'the alleged embezzlement of a large sum of money by a Catholic school principal in a colleague's parish', and the confusion he was experiencing 'about a relationship he was having with a female parishioner'. The matter came before the Tribunal when the priest psychologist engaged in 'touching' practices that shocked the anxious priest.

27 September 2002

A woman is suing a Sydney evangelical centre for the effects of brain damage after she fell backwards onto a floor striking her head after she was 'touched by God'. Two 'catchers' were unable to break her fall.

13 November 2002

(news.com.au), The Presbyterian Church's Scotch College is described as a '\$30m a year enterprise'.

15-17 September 2003

The Anglican charity has raised the ire of local residents opposing a substantial development of apartments and commercial facilities on either side of the St John The Evangelist Church in Darlinghurst, Sydney. NSW MP Clover Moore said, 'The church's all-or-nothing attitude is surprising and disappointing, given its mission of goodwill. There has been less than the usual dialogue with the community, despite adverse reports from South Sydney Council and refusal from Sydney City Council'.

12 October 2003

The Uniting charity is developing its holiday camp and convention centre site at Bundeena, adjacent to the Royal National Park, with thirty-six townhouses in the face of local opposition. The same report noted that the Catholic charity... has been given the green light by the State Government to develop 152 homes on the 24 ha St Patrick's estate' at Manly.

25 May 2005

Business Review Weekly details the worth of the rising Pentecostal supernatural charities: Hillsong 'estimated to be worth more than \$150m'; Christian City 'revenue believed to be more than \$100m'; Christian Outreach 'makes \$48m a year in Australia alone'.

Other case studies

Returning to the question of tax exemptions, these also apply of course to organisations such as the Unification Church whose global reputation is, to say the least, controversial.

In 1995 the Unification Church managed to book the Great Hall of Federal Parliament for a major dinner and reception in honour of their leader, the Reverend Moon. They had arranged for certain heads of state from minor Third World countries to fly in to give the function an air of importance. Their publicity inferred that prominent political and religious Australians would be attending. A few of the more alert members of parliament were able to put a stop to it at a late stage avoiding considerable humiliation for the government. The Reverend Moon was gaoled in the United States in 1982 for tax evasion and in 1995 the Unification Church was convicted of serious fraud in Japan. While this example is tangential to the tax issue it speaks to the fact that organisations such as this are emboldened by government indifference.³⁵³

Another instructive example is the Cornerstone religion. This non-denominational sect is centred around Burke, NSW. It also was active at Dubbo, Canowindra, Coonamble, Derby and Emerald. *The Weekend Australian* reported in 1994 that the sect had taken over the local backpacker hostel, indoor cricket centre, a lawn mowing run, a pizza business and the tourist information bureau. Some of these are detailed on the Cornerstone website. Young student 'disciples' enrolled in a 'Bible Studies' course also work on the cotton plantation which, *The Australian* reported at that time, produces about 1 per cent of Australia's cotton crop. While the 'disciples' are paid for their labour,

... the sect collects more than \$350 gross per disciple per week, or half a million dollars a year from the 30 farm labourers alone, who are employed on other work outside the picking season. Similar arrangements apply in other training centres. Under the extraordinary work agreement, students are informed that 'as there are no obvious monetary rewards, you will be able to develop a motivation from work that comes from within.'³⁵⁴

It is hard to believe the government intended, through its social security legislation, that students could voluntarily work long hours for tax-exempt commercial enterprises while simultaneously being engaged in full-time religious studies – while receiving Austudy or other government benefits. Similarly, Kelvin Thompson noted in the parliament on 12 February 1997 that young members of another supernatural organisation received social security benefits while working for commercial enterprises run by a supernatural charity. The accreditation process for courses of this type is very straightforward. So straightforward that it acts as an incentive.³⁵⁵

The Cornerstone prospectus states that applicants should contact their Centrelink office to discuss their eligibility for Youth Allowance or Austudy. They are encouraged to obtain the application forms without delay.

Nevertheless, when the subject of critique in *Business Review Weekly* of 24 March 2005, the business and finance director of Cornerstone complained that they had no choice but to engage in commercial businesses asking,

What else can we do when we have no government support for the training we provide to extend the Christian faith?³⁵⁶

The director seemed to be overlooking the obvious fact that it is hardly the role of the Commonwealth of Australia to fund Christian training when the organisation is already the beneficiary of exemption from income tax, other tax breaks and are eligible beneficiaries for fringe benefit advantages.

Cornerstone's turf business, Turf the Lot, is in head-to-head competition with the Bungendore-based Canturf company. A recent critique of the way their operation works spells out the way tax exemption benefits them vis-à-vis Canturf.³⁵⁷ The *Sydney Morning Herald* of 23 July and 9 August 2003 reported that several people connected with Cornerstone had invested in a hotel and golf course development in Dubbo promoted by a Singaporean developer, who had come to Cornerstone and 'found God'. They were owed 'over \$500,000'. It has apparently all ended in tears when matters

unravelling, the Dubbo development evaporated and the developer, who had previously rubbed shoulders with senior Liberal and Labor politicians was found to be in Australia illegally. From the Villawood detention centre, the *Herald* of 14 August 2003 reported that he was then suing members of Cornerstone for defamation.

In addition to the examples cited, smaller scale religious organisations in Australia which are increasing in number are, of course, also exempt. An interesting case study where the reasonable inference could be drawn that a religious organisation was established with the purpose of avoiding tax was the case of the 'Church of S.J.'³⁵⁸

In this case, the 'Reverend J' who controlled no less than twenty family companies, also formed the 'Church of S.J.', an insurance company and a trade union.

Another example was the 'Grace Church', raised by Kelvin Thomson in the Federal Parliament on 23 May 1996. Mr Thomson raised this example in the context of a speech concerning free speech and concluded,

... [the minister] should not be immune from public scrutiny simply because he sets up a church.

The irony is, taking a line from the 'Reverend J.' case, if this particular person said he was truly a Christian who believed in Jesus Christ, it is unlikely the Tax Office would dispute his assertion and the commercial activities of his 'church' would be tax free.

On 1 January 1993 the *Financial Review* included the St Vincent de Paul Society, the Catholic supernatural charity's highest profile charity, in its list of the top ten charities in Australia by income. In 1994 the Industry Commission gave a breakdown of St Vincent de Paul's income for the 1992-93 financial year. Its total income of \$114.6m for that year included government funding of \$49.8m or 43.5 per cent.

It is not clear why one of the wealthiest charities belonging to the wealthiest supernatural charity requires this level of funding, while the latter simultaneously has a diverse range of commercial

investments upon which it pays no tax. Lyons has pointed out that, ... until recently the St Vincent de Paul Society, at the State level, was unable to prepare an annual financial statement...³⁵⁹

In a debate on *The Religion Report* on Radio National 30 September 1998 the above-mentioned Reverend Harry Herbert responded to the comment that the Sanitarium company paid no tax because it was owned by the Seventh Day Adventist Church. He said,

... the Sanitarium one is trotted out all the time. It is an anomaly in the system. Not many parts of the church would be equivalent to the Sanitarium Health Food Company.

Reverend Herbert's dedicated social justice work on behalf of his charity is significant.³⁶⁰ But the Sanitarium case is hardly an anomaly. *Business Review Weekly* of 18 August 2000 reported Treasury concerns about supernatural charity,

... tax exemptions provided for such activities as property development, public funds management, manufacturing and retail operations, travel agencies and insurance.

Some examples would be YMCA's involvement in the leisure and recreation industry; Cornerstone's website lists its various businesses, and the submission of the Commission of the National Association of Nursing Homes and Private Hospitals to the 1994 Industry Commission inquiry pointed to the considerable tax advantages enjoyed by supernatural charity run organisations in opposition to themselves.

The question of tax-exempt supernatural charity hospitals came in for some discussion on the *Religion Report*, Radio National, 21 February 2001. Senator John Woodley, himself a Uniting Church minister, was asked:

ANNOUNCER: One of the stipulations of the Charities Commission in the UK is that a charitable organisation has to be able to show that any commercial advantage it enjoys 'has to be incidental to its charitable aims'. What does this actually mean? Does this mean that charities aren't allowed to make a lot of money, or that a private hospital run by a Catholic Church (for example) shouldn't be overly competitive in the healthcare industry?

WOODLEY: It's the second really which is causing some problems, and as a Uniting Church minister I'm well aware of this problem for the churches particularly, and that is where they are engaged in commercial operations. They get a tax advantage because they're churches and then the question mark is, in what way are they different?

ANNOUNCER: How would you answer that question yourself?

WOODLEY: Well, I don't think they are. I've got to say to you, unless they engage in some specific activity which is not engaged in by other private hospitals, such as using a substantial part of their fund to, for example, have places for people who are poor. Otherwise, I don't think that there is any claim that private hospitals run by churches can make to be any different.

Furthermore, in a submission to the 1994 Industry Commission inquiry the now defunct Victorian company, Fitness Corporation of Australia Pty Ltd complained bitterly about the YMCA's tax exemptions which gave them a head start in undermining their leisure industry business. They noted the YMCA's turnover was reported at \$42m in 1994. They quoted the then National Director of the YMCA saying in *THE AGE* 6 March 1994,

Today the YMCA has nothing to do with young, it has nothing to do with men and nothing to do with Christian. The name is here to stay. We just have to wear it.

Again, *THE AGE* recently reported commercial activity gone awry in the Uniting charity,

Melbourne's Wesley Central Mission bought a business for \$300,000 more than it was advised to pay, an investigation into the management of the beleaguered church has found. The finding is contained in one of two confidential reports that paint a damning picture of an organisation out of control. According to investigators, Wesley's board breached Uniting Church guidelines when it agreed to buy a business, the Label Place, in 1998 for about \$1.8 million -- some \$300,000 more than consultants recommended.³⁶¹

THE AGE also reported the case of a Uniting Church minister who was involved in the charity's attempt to start up a safe injecting room for drug addicts in Melbourne. While this was an honourable Christian endeavour it just so happened that the Reverend was on a

salary package of \$160,000 per annum and had the use of a \$500,00 apartment. Eventually, after controversy, he was obliged to leave his position.

As discussed earlier, religious organisations have a range of other forms of capital investment which would attract no tax as the exemption that applies to Sanitarium would equally apply to any other organisation of a commercial nature owned by a religious organisation. That has been the case, as we have seen in the *Hansard* debate of 20 May 1936, for a very long time. That is why the then Senator McMullan said in the Senate on 15 December 1992,

The income tax exemption that applies to religious institutions applies to the Sanitarium Health Food Co. because it is owned by a religious institution.

It follows from McMullan's statement that any business or investment owned by a supernatural charity would not pay tax. Richard Lead stated the facts of this matter plainly,

Section 23(e) of the *Income Tax Assessment Act 1936* exempts religious institutions from tax on every type of income, not just donations from their parishioners. Property rents, bank interest, dividends, capital gains, trading profits – you name the income, and section 23(e) renders it free from income tax.³⁶²

Further, while it is not quite on point, and the matter concerns the Anglican rather than the Uniting charity, the *Sydney Morning Herald* of 15 October 2002 reported that thirty East Asian region Anglican bishops booked into the luxury Opal Cove resort, Coffs Harbour, NSW, for a 'retreat'. The resort features a nine hole golf course, flood-lit tennis courts, seasonally heated swimming pool, spa and sauna facilities, gymnasium and fresh water lagoon. The basic tariff for a single room at the resort at that time was \$135 per night. While this 'retreat' would not have been paid for out of funds raised for charity, at the same time religions are charities by definition, who receive tax exemptions because religion is deemed to be of public benefit. It is hard to see what the public benefit is here. Also, it would be a fair hypothesis that not all 'retreats' make it into the newspapers.

One that did was reported by the *Courier-Mail* on 25 September 2002. It reported that Gold Coast units bought for lottery draws for the Boys Town charity had been used as holiday homes by Boys Town Catholic brothers but the practice is now banned. Further, a \$300,000 unit at the Aquarius high rise in Surfers Paradise was used as a 'retreat' for two years. It was to be sold to 'help disadvantaged youth'.

Taxpayer subsidy of supernatural excess

In 1993 the press was alive with stories about the activities of Father Vincent Kiss, a high-society Catholic priest who was sentenced to eight years jail for cheating the ANZ Bank and four charities of \$1.8m. Prosecuting counsel told of Kiss's penchant for chauffeur-driven limousines. The court was told that Kiss, formerly of Melbourne's bayside suburb of Brighton, had gone on a spending 'orgy' with the money that should have gone to Open Family Foundation, Lions International, the Fitzroy Community Youth Centre and International Social Services charities.

Kiss was the manager of the ANZ bank's charitable trust. He had distributed money from the bank to various charities before persuading them to send it to a Westpac account known as the Vanuatu Development Project account. Counsel said Kiss had told them the money would go to helping the cyclone-stricken island but that none of it had reached Vanuatu, since Kiss was the account's only signatory. The court heard Kiss had used the money to: acquire the use of a villa in the Philippines, pay off a \$100,000 mortgage on a house in South Melbourne, put a \$16,745 spa into his South Melbourne home, landscape his garden, give five Australian ballet stars a trip around the Philippines, donate \$19,180 to the Carlton AFL Club, fly two great danes to the Philippines, throw a \$2,382 birthday party for his mother, make seventeen overseas trips and numerous internal flights and hire a chauffeur-driven limousine sixty-six times. It was alleged he had eleven credit cards, topped up with funds from the fictional Vanuatu fund.

These examples may be risible but they are offensive to Australian taxpayers who give to charities in good faith. In this case, where were the checks and balances to ensure fraud of this kind could not occur? Again, a Charities Commission (or a tribunal with appropriate powers) which the Catholic supernatural charity opposes, and the government refuses to discuss, would have easily prevented this fraud. (That is also true of another case of 'charity' fraud, this time by one Nachum Goldberg who was sentenced to

five years gaol in 2000 for defrauding the Commonwealth of at least \$20m in tax. He ran a completely fictitious 'charity' known as 'United Charity'.³⁶³)

How did Kiss make seventeen overseas trips, including a trip to Venice to officiate at a highly publicised society wedding which went off the rails when the groom allegedly ran off with the best man,³⁶⁴ without raising any suspicion within his Catholic charity? As we have seen earlier, there are inferences that behind the scenes, money in Catholic organisations may similarly be flowing in unaccountable directions. On his frequent arrivals in Manila, Kiss would be met by a waiting helicopter to take him the 90 km to his mansion,

... the whirring of helicopter blades above the Philippine river resort of Pagsanjan meant only one thing to the locals – the arrival of Father Vincent Kiss.³⁶⁵

Where the supernatural charity frequently claims the high ground on moral issues it seems it knew nothing about Kiss's misdemeanours. When it comes to abortion, euthanasia, contraception, homosexuality, stem cell research and so on, the charity knows everything. Yet when it comes to abusing priests and nuns they know nothing or feign ignorance. This is despite the fact that an activist in the Philippines wrote a number of letters about Kiss to the Catholic authorities in Manila which drew no significant response.³⁶⁶ (A similar fact example came to light in September 2006 when two Catholic US priests based in Miami were arrested after misappropriating more than \$US8m from their church. The money was spent on real estate, travel, gambling, women and a generally high lifestyle over a period of some years.³⁶⁷)

After his conviction, Kiss appealed. One of the grounds of the appeal was that the learned sentencing judge took into account an irrelevant consideration, namely, his,

Observation of the prisoner in the dock during the plea.

The judge had observed Kiss was 'completely disinterested' during the Crown prosecutor's opening address. He had become 'more interested' during his own counsel's submission. The judge dared to

remark that he had seen similar behaviour, in his experience, when other professional criminals were in the dock.

This comment was used as a ground for appeal. Kiss's counsel said that rather than being 'completely disinterested' in the charges being laid out against him, he was in fact 'praying'. Given his situation, maybe he was, but a full bench of the Victorian Supreme Court threw out the appeal.

Sometime after his release, after serving six years, the *Sydney Morning Herald* of 8 August 2002 reported that Kiss had pleaded guilty to sexually abusing four youths aged 13 to 17 between 1966 and 1973. He was later sentenced to ten years gaol. Evidence was led that Kiss had upset authorities in the New Hebrides (Vanuatu) and was deported from there in 1979. Yet he still continued to practise as a priest and was elevated to run the ANZET charity.

Similarly, former Catholic priest, Michael Glenmon, also set up a front organisation the 'Peaceful Hand Youth Foundation'. His abuses commenced as early as 1974. He was sentenced on further charges of abuse in 2003. Another eighteen years in gaol on top of his sentences from earlier cases.³⁶⁸

In July 2005 William Kamm, the 'Little Pebble', a leader of a sect, was found guilty of sex offences against a 15 year old girl. In 1997 a Federal Member of Parliament raised the question of his tax-exempt status, the first statement of its kind since the 1936 debate referred to earlier.³⁶⁹

It is worth noting that supernatural organisations do not lose their tax-exempt status when their members are found guilty of serious offences. At the time of writing the Australian Democrats have called for an inquiry into this and related matters.

'Non-profit' religious organisations are characterised by a non-existent or an inadequate level of accountability. The funds of the commercial entities of the Catholic supernatural charity are very well concealed. Scandals like the Vincent Kiss charity example do not generate the kind of soul-searching and 'code of ethics' which eventually emerged after many proven instances of paedophilia

in the church. We also wait in vain, it seems, for members of supernatural organisations who deliberately conceal information about paedophile or abusing priests, or who move them to other locations in spite of their crimes, to be arrested for perverting the course of justice.

It is now a truism the Catholic supernatural charity clearly has a global public relations crisis on its hands with the widespread incidence of paedophilia and the sexual activities of priests in particular. Abuse of and by nuns is also starting to come to light.³⁷⁰ The scale of this latter abuse, when it comes to light, and the charity's strategies to conceal it, will lift the damnation of the charity to another level.

While the Eros Foundation's recently published *Hypocrites*,³⁷¹ detailing a decade of charities' sexual abuse of children in Australia, is no more than black propaganda designed to obfuscate the sex industry's commercial exploitation of many vulnerable, mainly working class women and men, it is a fair comment that if any secular profession generated the amount of sexual abuse that the ideational culture of religion does, particularly of children, there would be a royal commission. Prime Minister Howard not surprisingly ruled this out as the fallout over religions would be damning. Media reports of child abuse by supernatural charity organisations, the many compensation cases, and the many attempts to cover up these incidents is so widespread, there is no point in further detailing them here. However, political commentator, Malcolm Macgregor, argued in 2000 that,

It is easy to point to paedophile priests and sleazy television evangelists.

But that misses the point. How many secular humanists believe that the entire ALP edifice is evil on account of the behaviour of Bill D'Arcy or Keith Wright [two Labor politicians gaoled over paedophile offences]?³⁷²

Unhappily for Macgregor these comments were made before major scandals emerged in the United States in 2002 on such a scale that the Pope had to call US Cardinals to Rome for an unprecedented meeting to discuss the sexuality crisis in the Catholic Church. The scale of Catholic paedophilia is so widespread that it

cannot be written off as isolated incidents; rather it is structural, endemic and characteristic of the corporation. In October 2002, a US activist group unveiled a report that accuses the Vatican of trying to hide child sex abuse scandals and has asked the United Nations' Committee on the Rights of the Child to investigate.³⁷³ The attempts to cover up the many allegations and the shifting of priests sideways has forever wounded the charity's credibility. To make matters worse the Vatican has embarked on a homophobic purge of homosexuals in its ranks. Almost certainly the hierarchy will be left untouched and others will be unfairly targeted.

All this would seem to confirm Joan Smith's assertion that, Christians are no more likely than atheists to behave well to their fellow human beings.

In September 2003 South Australian Independent MLC Nick Xenophon indicated he was preparing a bill to waive the protection of the confessional and make mandatory the reporting to authorities of child abuse confessions. As noted in Chapter 1, the reason he could advance this bill is because there is no mention of religion in the South Australian Constitution. As if to prove Xenophon's point the Brisbane *Sunday Mail* revealed that a jailed paedophile Catholic priest had been confessing to abusing children for twenty-five years without being reported to police.³⁷⁴ When push came to shove, however, the legislation excluded the confessional when it was passed in the South Australian legislature.

Coincidentally in August 2003 a Vatican document was leaked to US lawyers acting on behalf of supernatural charity abuse victims. The document was titled, 'On the Manner of Proceeding in Cases of the Crime of Solicitation'. It was written in 1962. Its critics allege that it sets out Catholic policy in handling claims of sexual abuse which included shifting accused clerics to new postings and threatening excommunication to anyone in the charity who made claims of abuse public. The charity has attempted to take the edge of this potentially explosive document by pointing to its age and subsequent policy statements on the same issue.

However, the charity cannot claim on the one hand that it has fair and workable contemporary policies, such as the Australian 'Towards Healing' policy document, dealing with the charity's approach to claims of sexual abuse, and on the other, criticise Xenophon's legislation to make reporting of abuse claims in confessionals mandatory. *The Australian* cited a Vatican archbishop, a member of the Congregation for the Doctrine of the Faith declaring that, The demand that a bishop be obligated to contact police in order to denounce a priest who has admitted the offence of pedophilia is unfounded... If a priest cannot confide in his bishop for fear of being denounced, then it would mean that there is no more liberty of conscience.³⁷⁵

So it is okay for a priest to abuse children for twenty-five years and get away with it? Criminal activity within a supernatural charity is above the law if the crime is confessed in a confessional? In opposing Xenophon's legislation the charity is showing its true colours. It is also to ignore a comment reportedly made by Jesus that,

And whosoever shall offend one of these little ones that believe in me, it is better for him that a millstone were hanged about his neck, and he were cast into the sea. (Mark 9: 36-7)

There is also the important point that constitutionally it is unlikely any supernatural charity in South Australia has any status. If so, religious 'liberty of conscience' could not apply in a state that does not recognise the ideational culture of religion.

Nevertheless, significant losers in the imbroglio of deceit concerning paedophilia are the many members of Christian organisations, both lay and members of orders, who give their lifetimes selflessly in the service of others only to be humiliated and shamed by their peers.

Similarly, speaking of her television series, *A Shifting Heart Revisited* prominent Catholic Geraldine Doogue said,

I was determined not to do a whole program about sexual abuse because, like a lot of Catholics in the pews, I thought 'this is not symptomatic of my church'... when I had to absorb myself in the

personal stories though – the phone calls not returned to loyal parishioners from the Bishop's office, files being pulled from police stations – I was deeply shocked.³⁷⁶

The Catholic supernatural charity has only reluctantly revealed the extent of sexual abuse in its ranks. Similarly, it is likely that it would go to equal lengths to conceal the true extent of its wealth in Australia as it has done recently in the Diocese of San Diego, California.³⁷⁷ Cardinal Edward Clancy's comment on 28 July 1998 that the government's tax reform should,

... eliminate opportunities for wealthy companies and individuals to avoid paying their fair share of tax,³⁷⁸

is just breathtaking as is the 28 July 1998 Position Paper of the Australian Catholic Bishops on the *Moral Reference Points for Tax Reform*. While making some valuable points this document could only be described as one of the greatest exercises in double standards ever published by a supernatural organisation. The document is replete with criticism of how the wealthy should pay their fair share of tax and how the poor should be protected with a total lack of self-reflection. What makes the charity's position even more odious is the history of their exploitation of young women in commercial businesses.

Past supernatural charity exploitation of women and children

In an interview on Irish radio in 1993 Patricia Burke Brogan, a former nun of the Mercy Order, told how she too was 'shocked' when she was moved into a supervisory position in one of Ireland's infamous Magdalene Laundries in the 1960s. Earlier, her play *Eclipsed*, about what she witnessed, was performed, breaking the silence around the subject of women's incarceration in laundry convents in Ireland. These institutions had been in existence from at least the nineteenth century. When Marian Evans, otherwise known as 'George Eliot', dared to review a book by the atheist German philosopher Ludwig Feuerbach, a minister of religion suggested that because of her,

... impudicity of mind... Magdalene asylums may be needed for others besides the unfortunate beings who seek a refuge from guilt and misery there!³⁷⁹

Brogan's play was later followed by the radio documentary made by Radio Eirann in 1993 and French and British television documentaries. The Irish Government's Laffoy Inquiry, up to 2003, put beyond any shadow of doubt that the Catholic Church had been involved in large scale human rights abuses of women, unfairly, and in all likelihood, illegally, incarcerated in institutions where they were forced to work as laundry hands for no pay. As many as 30,000 women may have been through these institutions. An unknown number had children 'out of wedlock' and were put into these institutions by their parents so the 'shame' could be concealed and the children adopted out. The scale of the misery has been so vast that that the Irish Government backed away from its commitment to adequately fund the Laffoy Commission and the Commissioner felt obliged to resign. Later, the Laffoy Commission was followed by the 2005 *Ferns Report*, which has been described by an Irish historian as being 'one of the most important documents in modern Irish history'.³⁸⁰ More of this later.

Given these laundries were also operating in Australia it is possible that the availability of illegal abortions in early to mid-twentieth

Conclusion

The present non-taxation of supernatural charity organisations in Australia is both discriminatory and probably scandalous. As noted earlier, the cost to revenue must be considerable. It would be reasonable to conclude that not all their commercial activities have been reported in the financial press.

In 1936 when the Income Tax Assessments Act was passed, organised religion did not have shareholdings in a wide range of commercial activities; they did not have large cash sums in management trusts; they did not partly own banks, or act as landlords for government gambling agencies, run multi-million dollar job agencies and so forth. To apply the 1936 defence that supernatural charities' tax-exempt income is offset by their charitable activity as if nothing has changed is misconceived, notwithstanding an increase in the diversity and extent of charitable works that the non-profit arms of these organisations may usefully undertake.

I suggest that sixty years of government indifference together with: (a) fear of electoral political consequences for political parties, and (b) clientalistic and patronage links between supernatural charity hierarchies and political elites has compromised political parties' abilities to be critical of the major charities.

The 1936 defence for their non-taxation conflates informal 'for-profit' supernatural charity organisations with non-profit organisations. The considerable personal efforts of those members of supernatural charity organisations who volunteer their time in the various organisations of the major supernatural charities (and others like them), which relieve commonwealth expenditure, is no longer sufficient reason to exempt supernatural charities from the burden of taxation. It is not a question of writing off these vast sums with the glib assertion that volunteer work could be reconciled to the missing revenue. The point is that if charity volunteers want to do volunteer work out of a sense of a personal responsibility it is just that: a significant personal commitment that should not be

deceptively underwritten by secular taxpayers who may not share the ideals of the volunteers.

In 1936 organised religion did not have shareholdings in a wide range of commercial activities; they did not have large cash sums in management trusts; they did not partly own banks, or act as landlords for government gambling agencies, run multi-million dollar job agencies etc. To apply the 1936 defence that supernatural charities' tax-exempt income is offset by their charitable activity as if nothing has changed is misconceived, notwithstanding an increase in the diversity and extent of charitable works that the non-profit arms of these organisations may usefully undertake.

There is a way the major supernatural charities could prove an argument such as the one I have presented to be wrong: they could openly declare their income from commercial and other activities and demonstrate that it is comparable to the amount that is spent paying clergy and staff modest incomes, maintaining charity property and cross-subsidising their charitable causes.

The Treasurer, Mr Costello, said in the document cited earlier,

The income tax and sales laws date back to the 1930s. Both have failed to keep pace with changes in the economy.³⁸⁸

This is transparently correct and obviously applies to tax laws applying to supernatural charity organisations. Furthermore, I would argue, it is contradictory to totally exempt 'non-profit' supernatural charity organisations from taxation when only a minority of Australians now attend churches regularly.

What are now minority organisations in that sense should be made accountable like the rest of us and deductions only given for expenditure on truly charitable works. The state should not subsidise the recruitment and conversion efforts of supernatural charities, big or small, in an unqualified way. All their incomes and expenditures of their charitable causes should be on the public record: preferably on the internet.

As it stands, this 1930s anachronism is at least as bad as the mess of indirect taxation that Australia's new GST was designed to

correct. Mr McMullan's comment that unpacking the relationship between commerce and the ideational culture of religion is 'too difficult' is not good enough and the parliamentary silence on the issue so far has been a major omission. I suspect that making high profile commercial organisations like the Seventh Day Adventist's Sanitarium liable to tax is not undertaken, because there is no way of doing that without compromising the commercial activities of the major supernatural charities.

And what are we to make of the previous government with their making so much of 'tax reform'? This major omission of focus on the exemption is, no doubt, a result of the perception that what is 'too difficult' is in fact the task of asking those who believe in the supernatural to pay their fair share of tax.

Up to now the finances of supernatural charities have remained mostly a mystery. The often heard claim that they are 'asset rich but cash flow poor' is belied by what evidence there is on the public record. Finally, I have seven responses to the notion that this issue is too hot to handle politically, or is beset by 'practical difficulty'.

The first response is that the exemption is an historical anomaly long overdue for correction. The supernatural charities believe they can avoid death. They know they can avoid tax. If they opposed a review it would reflect on their credibility as the subject has not been frankly discussed since the 1930s. As noted, on 30 August 2004 the Senate Community Affairs Committee of the Parliament released a report, *Forgotten Australians*, detailing abuse of children in mainly church-based institutions some of which were unincorporated. In Recommendation 4 it argues that,

... availability of federal tax concessions to charitable, religious and not-for-profit organisations [should be examined to gauge whether they should be] dependent on, or alternatively linked to, them being incorporated under the corporations act or under state incorporated associations statutes.

By way of analogy it is likely there would be popular support for a review. Hall points out that a,

1991 opinion poll found that 79 per cent thought the Queen [Elizabeth II] should pay tax on her private income.

What shifted the richest person in Britain to pay some tax was the unwelcome publicity of a 1991 *World in Action* TV programme based on Phillip Hall's book.³⁸⁹

The second response is that the tax exemptions for the ideational culture of religion may well be discriminatory, breaching Australia's international agreements, and are only constitutional because of the perverse finding in the DOGS case as I have argued earlier. The Italian solution where citizens can opt to have a very small percentage of their taxes paid to a church or a charitable organisation of their choice seems fair.

The third response is that there are already examples where US state governments have applied taxes to supernatural organisations and the sky has not fallen in. Edd Doerr writes that,

If California can apply a sales tax on goods sold in-state or by mail from out of state, other states should follow suit. If Texas, New Jersey, and a few other states can apply a sales tax to religious literature without violating the First Amendment, other states should follow their example. If Florida and Tennessee may tax church-run commercial enterprises, there is no reason for other states not to follow suit. If some states may limit the amount of tax-exempt land a church may own, others may also do so. If federal law may tax active church business income, why shouldn't it tax passive business income as well? The above taxes would not be taxes on religion but upon business.³⁹⁰

Also, Professor McGregor-Lowndes notes,

Australia has a liberal taxation regime when compared with similar jurisdictions. Tax-exempt non profit organisations are not subjected to an unrelated business income tax such as in the United States or prohibited from carrying on unrelated business such as in England. Australian non-profit tax-exempt organisations are not even required to seek formal registration of their exemption or file an annual tax return.³⁹¹

Again, in 1993 Gjems-Onstad noted that,

Australia appears to be a tax haven for certain non-governmental institutions.

He pointed to a 1991 survey that found that,

... only Israel and Hungary are mentioned as countries allowing tax-free commercial activities for non-profits as long as the proceeds are applied to the tax-exempt purpose.

He noted that a 1975 Taxation Review Committee report to the Federal Parliament recommending an end to this largesse was ignored.³⁹² In 2007 United Press International reported the European Commission was considering whether to have a formal inquiry by its Competition Commission concerning the tax breaks given to the Catholic Church in Italy by the government of the former Prime Minister, Silvio Berlusconi. It was reported that,

The church... has a 50 per cent reduction in Corporate income taxes on church business activities.³⁹³

In Australia they get a total exemption.

In 1996 in the State of Colorado an attempt was made via a citizens' initiated referendum to end exemption for property taxes for all religions when 66,000 signatures were gathered to mount a referendum (see illustration on Amendment #11). If the referendum had passed, citizens' rates would have been lowered because church properties would be sharing the burden. The religions responded with a massive television campaign to defeat the proposal with misleading propaganda. It was estimated that such taxes would raise US\$70-100m per annum from a population that numbered close to four and a half million at July 2001.³⁹⁴ Taking a line from that general figure the potential annual sums in Australia would be considerable.

The fourth response is that there are many men and women in most supernatural organisations who do not lack of sense of fairness and who would see the sense of ending the current structure of overly generous exemptions and fringe benefits. Some in the private school system recognise the inequity of current school funding and believe public education is entitled to the same level of support their schools receive.

The fifth response is that tax exemptions are given to organisations whose function in society has changed with a significant decline in



VOTE YES NOVEMBER 5, 1996 AMENDMENT # 11

AMENDMENT TO TAX PROPERTY OF MANY NON-PROFITS

LOWER YOUR PROPERTY TAXES — IT'S ONLY FAIR

AN IDEA WHOSE TIME HAS COME

SOME FACTS YOU SHOULD KNOW

YOU HAVE FULL FINANCIAL ACCOUNTABILITY TO THE IRS

THEY DON'T

YOU HAVE TO PAY STATE & FEDERAL INCOME TAXES

THEY DON'T

YOU HAVE TO PAY FOR POLICE & FIRE PROTECTION, LIBRARIES AND SCHOOLS

THEY DON'T

YOU HAVE TO PAY TAXES ON YOUR INVESTMENTS, STOCKS, MUTUAL FUNDS & BONDS, ETC

THEY DON'T

YOU HAVE TO PAY SALES, GAS, CAR, USE & EXCISE TAXES, ETC

THEY DON'T

YOU HAVE TO PAY INHERITANCE TAXES

THEY DON'T

YOU HAVE TO PAY PROPERTY TAXES EVERY YEAR

THEY DON'T

YOU HAVE TO PAY CAPITAL GAINS TAXES IF YOU SELL YOUR PROPERTY

THEY DON'T

CAN YOU OWN ACRES AND ACRES OF RETIREMENTS?????

THEY CAN

IF THE AMENDMENT PASSES, NON-PROFITS WOULD ONLY BE REQUIRED TO PAY PROPERTY TAXES AND WOULD STILL ENJOY NOT HAVING TO PAY ALL THE OTHER TAXES TAXPAYERS HAVE TO PAY.

FELLOW TAXPAYERS FOR EVERY TYPE OF TAX DOLLAR THEY DON'T PAY, YOU HAVE TO MAKE UP THAT TAX BASE AS YOUR TAXES KEEP GOING UP, AS IS HAPPENING ALL THE TIME. THIS LIMITS AND REDUCES YOUR CONTRIBUTIONS TO THE COMMUNITY AND YOUR PURCHASING POWER.

IF THE OVERBURDENED, HARDWORKING TAXPAYERS AND PEOPLE ON FIXED AND LIMITED INCOMES CAN PAY ALL THE TAXES THEY HAVE TO PAY AND STRUGGLE TO KEEP THEIR HOMES AND PROPERTIES, THEN SO CAN THE NON-PROFITS THAT OWN PROPERTY. IT'S ONLY FAIR!

THERE WILL BE APPROXIMATELY A \$70 MILLION TAX REDUCTION TO PROPERTY OWNERS. OUR OPPOSITION CLAIMS A \$100 MILLION OR MORE.

WITH YOUR REDUCTION OF CURRENT TAX, YOU CAN CONTRIBUTE MORE TO THE COMMUNITY OR CHARITY OF YOUR CHOICE.

THE GUARANTEE OF REVENUE REDUCTION TO PROPERTY OWNERS IS WRITTEN IN THE AMENDMENT "DECREASING THE PROPERTY TAX RATE TO PREVENT A NET REVENUE GAIN TO ANY TAXING ENTITY" THE REDUCTION WILL BE IN THE FORM OF REDUCED MILL LEVIES AS THE TAX BASE IS BROADENED. THIS REVENUE REDUCTION IS YEAR AFTER YEAR, NOT ONE TIME ONLY.

WHOSE PROPERTIES WOULD REMAIN UNTAXED? THOSE THAT CARRY OUT COMMUNITY DUTIES SUCH AS HOUSING FOR LOW INCOME ELDERLY, DISABLED, HOMELESS OR ABUSED PERSONS, ORPHANAGES, CORRECTIONS FACILITIES AND SCHOOLS, RELIGIOUS OR NOT. (WE BELIEVE IN OUR CHILDREN'S EDUCATION.) THESE EXEMPTIONS ARE WHAT THE NON-PROFIT STATUS WAS ORIGINALLY INITIATED FOR. THIS IS FAIR!

IT IS TAXPAYERS' DUTY TO HELP THOSE WHO CANNOT HELP THEMSELVES. THIS IS FAIR!

IT IS NOT TAXPAYERS' DUTY TO SUPPORT ALL THE OTHER CHURCHES, RELIGIOUS ORGANISATIONS, NON-PROFITS, FRATERNAL ORGANISATIONS (MEMBERSHIP BARS), OR CORPORATIONS. THIS IS BIG BUSINESS AND THE TAX EXEMPT STATUS IS BEING TOTALLY TAKEN ADVANTAGE OF. NOW 94% OF NON-PROFIT PROPERTIES ARE USED FOR PURPOSES OTHER THAN COMMUNITY DUTIES. POOR, SMALL CHURCHES DO NOT OWN PROPERTY THEY RENT. MANY NON-PROFITS DO NOT OWN PROPERTY, THEY RENT IN LOW DISTRICTS. THIS IS NOT FAIR!

their membership making them minority organisations, but still with the maximum tax exemptions. This is inequitable.

The sixth response is that with endless demands on the federal budget Australia can no longer afford 1930s-style blanket exemptions. The tax exemption for the ideational culture of religion allocates resources to groups on grounds not related to economic merit, but for the ancient and discriminatory reason of 'advancing religion'. It is not the role of a supposedly secular state which professes to separate church and state to 'advance religion' in an unqualified way.

The seventh response is that if the every person with a supernatural belief on earth prayed for global warming to end it would make no difference. More funding for science is required to address this and many other pressing environmental issues, not to mention true relief of global poverty. Unqualified exemptions for supernatural charities are surplus to our most pressing requirements.

It is not a question of 'if' the religious tax exemptions should be reviewed, qualified and abolished but 'when' and 'how'.

ENDNOTES

INTRODUCTION

1. In 1993 the US Federal Government, under President Clinton, at the behest of lobbying from the Religious Right, enacted the *Religious Freedom Restoration Act* (RFRA Act) prohibiting both the Federal and State Governments from 'substantially burdening' an individual's exercise of religion without a compelling interest. This Act allows broad-based exemption from law on the basis of religious belief, minimising church-state separation in the US. Professor Marci Hamilton cites the case *Boerne v Flores* where the Supreme Court took issue with the application of RFRA Act to the US states saying,

Congress does not enforce a constitutional right [free exercise of religion] by changing what the right is. It has been given the power 'to enforce', not the power to determine what constitutes a constitutional violation. (*God vs The Gavel*, 2005, Cambridge University Press, p.236.)

The Religious Right also encouraged the states to enact their own RFRA's in parallel attempts to impose their will on the courts. Since then, there have been two appointments of very conservative judges to the Supreme Court. Just whether they will continue the Court's defence of separation of church and state is the big question.

The decision in a 25 June 2007 case, *Hein v. Freedom From Religion Foundation*, could be a portent for the future. The Court found that lawsuits against the Federal Government's executive branch for unconstitutionally promoting religion can no longer be filed on behalf of taxpayers. This overturned a 1968 ruling which found the reverse. The result is that 'faith-based' federal funding can go to charities, such as the Healing Place Church in Los Angeles who claim they can free drug addicts 'through the Power of God'. A decision such as this is a blatant breach of the principle of separation of church and state. *International Humanist News*, June 2007.

2. Cited in J. S. Gregory, *Church and State*, Cassell, Melbourne, 1973, p.206.

3. *Church of the New Faith v. Commissioners for Pay-roll Tax (Vic)* (1983) 154 CLR 120. New Zealand law follows this finding. See *Tax*

32. Gregg, S. 2004, 'Rendering Unto Caesar: New Challenges for Church and State', The Sixth Annual Acton Lecture on Religion and Freedom, Australian Stock Exchange, Sydney, 18 May, Centre for Independent Studies.
33. Sexton, M. 2007, 'A man and his dogma', *The Australian*, 14-15 April.
34. Whitehead, op. cit., p.7. The 'no religious test' for trusts was intended to eliminate the prohibition against Catholics and Presbyterians holding a public office in Australia. I am indebted to Richard Hurford on this point.
35. Gregory, J. 1999, 'State Aid to Religion in the Australian Colonies, 1788-1895', *Victorian Historical Journal*, vol. 70, no. 2, November, p.131.
36. Costello, T. 2003, 'A churchman cannot serve two masters', *Sydney Morning Herald*, 4 June.
37. Morrison, J.A. 2001, 'Political priests', Letter to the Editor, *The Scotsman*, 10 August. Father Steve Gilhooly later quit the church while on sabbatical in Ireland. This was after he wrote a book detailing the abuse he suffered as a child by another priest. The book was *The Pyjama Parade* (Lomond, UK, 2001). He announced he was going to quit the priesthood in *The Irish Times*, 9 May 2005. He alleged the response to his book was that his archbishop received... a threat... that if he didn't silence me, they'd discipline him. I was treated as the perpetrator rather than the victim.
38. *Hansard*, Federal Parliament of Canada, 10 April 2002, obituary of Father Andy Hogan by Ms Alexa McDonough.
39. *University of Saskatchewan News*, 21 May 1999.
40. 'Antiwar sermon brings IRS warning' 2005, *Los Angeles Times*, 7 November.
41. *God Under Howard* 2005, Allen & Unwin, Sydney.
42. 'Defend unborn's rights, Pope tells Catholic lawyers' 2005, *Sydney Morning Herald*, 1 February.
43. Skene, L. 2002, 'On the relationship of church, law and state', *Macquarie Bank Lecture*, Sydney, 15 October. Paul, G.S. 2005, 'Cross-National Correlations of Quantifiable Societal Health with Popular Religiosity and Secularism in the Prosperous Democracies', *Journal of Religion and Society*, vol. 7, concludes that for societies where there is not an overt religious influence, '... although they are by no means utopias, the populations of secular democracies are clearly able to govern themselves and maintain social cohesion'.
44. *Focus* 2001, Anglican Church, Brisbane, June. In the *Sydney Morning Herald*, 26 February 2002, Gerard Henderson claimed Hollingworth was, 'confused about the relationship between church and state' but provided no argument to justify this claim or his statement that, 'In Australia... there is a separation of church and state'.
45. 'Charity Inc.' 2005, *Business Review Weekly*, 24-30 March, p.45.
46. 'Religion and politics: philosophical perspectives' in *Spirit of Australia II*, eds B. Howe & P. Hughes, ATF Press, Adelaide, 2003, p. 20.
47. *The Australian Taxation System: In Need of Reform* 1998, Treasury, Canberra.
48. *Charities Definitions Inquiry Report* 2001, Treasury.
49. *Charitable Organisations in Australia* 1994, Industry Commission Draft Report, Melbourne, p.229.
50. *ibid.*, p.228.
51. *BRW*, op. cit., 2005, p.47.
52. *Australian Financial Review*, 14/15 February 1998.
53. Surrey, S. 1970, 'Federal income tax reform: the varied approaches necessary to replace tax expenditures with direct governmental assistance', *Harvard Law Review*, vol. 84, at p.352.
54. *Church of the New Faith v. Commissioners for Pay-roll Tax* op.cit.
55. *Charitable Organisations*, op. cit. p.220.
56. Ely, J. 2006, *Defining Charity: The Long Shadow of Elizabethan Ambiguities*, Melbourne, December, unpublished paper.
57. *Commissioners for Special Purposes of Income Tax v Pemsel*, [1891] AC 531, p.561.
58. *ibid.*, p.583.
59. *ibid.*
60. Hall, op. cit., pp.xix-xx, points out the tax was introduced to pay for the Napoleonic Wars. It ended after the conclusion of these Wars but was reintroduced again in 1842.
61. McGregor-Lowndes, M. 1998, 'Does Charity Begin and End at Home for Tax Exemptions?' *Canberra Law Review*, vol. 5, nos. 1 & 2, p.221. These 1884 exemptions seem to contradict Winsome Roberts' assertion that no churches 'were granted formal privileges in the rule of law' in early Australia. 'The churches' role in constituting an Australian citizenry' in Howe & Hughes, op. cit., p. 55. Similarly, S. Liesching overlooked the significance of the tax exemptions when she wrote that, 'Surely a law "for the establishment of any religion" was

- meant to include legislation which might restore the financial nexus between Church and State', *Church and State in Australia*, 1953, MA thesis, ANU, p.49.
62. *Hansard*, Senate 1936, 20 May, p.1896.
 63. *ibid.*, p.1894.
 64. *ibid.*
 65. *ibid.*, p.1897.
 66. McLeish, S. 1992, 'Making Sense of Religion and the Constitution: a Fresh Start for Section 116', *Monash University Law Review*, vol. 18, no. 2, p.223.
 67. *Her Majesty the Queen v Big M Drug Mart Ltd* (1985)-18 DLR (4th).
 68. *Attorney-General (Vic) (Ex rel Black) v Commonwealth* (1981) 146 CLR 559.
 69. Sadurski, W. 1990, 'Neutrality of law towards religion', *Sydney Law Review*, vol. 12, March, pp.450-451.
 70. *ibid.*, p.454.
 71. *Business Review Weekly*, 29 June 2006, p.46.
 72. Notice of Motion 28 February 2006. Senator Allison asked the Senate *inter alia*, to '(iv) consider other ways of achieving a true separation of church and state'.
 73. Australian Associated Press, 2 March 2006.
 74. *Everson v Board of Education of the Township of Ewing* 330 US 1 (1947).
 75. Rudd, K. 2007, Speech, The Great Hall, Parliament House, 7 March.
 76. Macfarlane, P. & Fisher, S. 1996, *Churches, Clergy and the Law*, Federation Press, Sydney. Similarly, in his recent book on church and state, Bishop Tom Frame characterises separation in Australia as 'an imaginary wall'. This is a weak defence of supernatural privileges that completely overlooks the republican dimension to the question.
 77. *Attorney-General (Vic) (Ex rel Black) v Commonwealth* (1981) *op. cit.*
 78. *ibid.*
 79. *ibid.* at 579-580; similarly Justice Gibbs at 598, Justice Mason at 615-616.
 80. Irving, 2006, *op. cit.*
 81. Mortensen, *op. cit.*, p.225. 'Autochthony is the status of being based solely on local sources and not dependent upon the continuing legal

- or other authority of an outside source.' Hogg, P.W., *Constitutional Law of Canada* (1992), cited in N.S. B. Cox, *op. cit.*, p.xv.
82. Liesching, S. *op. cit.*, p.44.
 83. The Bottom of the Harbour schemes where companies were stripped of their assets via a regression of buy-outs by other companies with the result that the last company was left with nothing taxable, were so devastating to revenue that even then Treasurer John Howard was obliged to approve the 1982 *Taxation (Unpaid Company Tax) Act* to be applied retrospectively. *The Canberra Times* commented on 18 October 1986 that,

Royal Commissioner Mr Frank Costigan reported in December 1981 that tax avoidance had developed in Australia '...particularly over the last five years, at a rate far in excess of any other industry and has brought with it profits comparable only to the heady days of the Victorian gold rush'.
 84. Lehmann, G. 1984, 'The Income Tax Judgments of Sir Garfield Barwick: a study in the failure of the new legalism', *Monash University Law Review*, 9-10, p.155. See also Freiberg, A. 1988, 'Ripples From the Bottom of the Harbour: some social ramifications of taxation fraud', *Criminal Law Journal*, 12.
 85. Marr, D. 1980, *Barwick*, Allen & Unwin, Sydney, p.227.
 86. Justice Robert Jackson, cited by F. Whitehead, *op. cit.*, p.10.
 87. Puls, J. 1998, 'The wall of separation: Section 116, the First Amendment and Constitutional Religious Guarantees', *Federal Law Review*, vol. 26, no. 1, 139, p.163.
 88. Cited in B. Horrigan, *Adventures in Law and Justice*, UNSW Press, 2003, p.93.
 89. Rishworth, P. 'Coming Conflicts over Freedom of Religion', Ch. 6 in *Rights and Freedom*, eds G. Huscroft and P. Rishworth, Brookers, Wellington, New Zealand, 1996, p.237.
 90. Palmer, G. 1992, *New Zealand's Constitution in Crisis*, John McIndoe, Dunedin, p.39.
 91. Ely, J. 1981, *Erosion of the Judicial Process: an aspect of church-state entanglement in Australia*, Defence of Government Schools, Victoria, January, p.17.
 92. Mason, A. 1986-87, 'The role of a constitutional court in a federation: a comparison of the Australian and United States experience', *Federal Law Review*, vol. 16, p.10.
 93. *Locke, Governor of Washington, et al v Davey*, United States Court of Appeals, Ninth Circuit, No. 02-1315, 25, February 2004.

The Minister's answers were,

- (4) No. As part of the tender process for the shortwave broadcasting facility on Cox Peninsula, the Government determined that the granting of a property licence to Christian Voice was not contrary to the national interest. (5) No.
201. 'Should Christians convert Muslims?' *Time Magazine*, 30 June 2003.
202. Williams, Paul L. 2003, *The Vatican Exposed*, Prometheus Books, p.170 & p.189.
203. Pollard, J.F. 2005, *Money and the Rise of the Modern Papacy: Financing the Vatican, 1850-1950*, Cambridge University Press, p.165.
204. *ibid.*, p.159.
205. Random House, NY, 1971.
206. Aarons, M. & Loftus, J. 1999, *Unholy Trinity; the Vatican, the Nazis, and the Swiss Banks*, St Martin's Griffin, NY, p.289.
207. Williams, op. cit., p.195. For current litigation against the Vatican see www.thememoryhole.org/states-v-vatican.htm. The church's recent political manoeuvres to lock in privileges between the Vatican and European states is detailed briefly in M. Fraser, 'How the Vatican Has Subverted Democracy in Europe', *International Humanist News*, August, 2004, p.5.
208. 'Cardinal's new role met with disbelief' 2005, *Sydney Morning Herald*, April 11.
209. See Williams, op. cit., Appendix C: 'The [1933] Concordat Between the Holy See and the German Reich', pp.223-234.
210. As recent as September 2005 the Chief UN War Crimes Prosecutor alleged the Vatican was concealing in one of its many monasteries in Croatia, a former Croatian general wanted for the murder of at least 150 Serbs and the forced expulsion of tens of thousands towards the end of the 1991-1995 civil war between the Serbs and the Croats. *Sydney Morning Herald*, 22 September 2005.
211. Independent.co.uk, 19 April 2002.
212. *Christianity Today* 1959, vol. 3, no. 22, cited by Murphy J. in *Church of the New Faith* op.cit.
213. Mumford, S. 1994, *The Life and Death of NSSM 200*, Center for Research and Population Security, Nth Carolina.
214. Wills, G. 2005, 'Fringe Government', *The New York Review*, 6 October.
215. Hall, K. G. 2003, 'Mexican case could expose Vatican finances', *Miami Herald*, 24 October.

216. *The Religion Report*, Radio National, 6 March 2002.
217. *Catholic Weekly*, 27 July 2003.
218. Media Release, Minister for Community Services, 14 November 2000.
219. *THE AGE*, 17 October 2003.
220. McGregor-Lowndes, M. & Conroy, D. 2002, 'The GST compliance costs of nonprofit organisations', Working Paper No. CPNS4, Centre for Philanthropy and Nonprofit Studies, QUT.
221. Lead, R. 1998, 'An oasis of privilege', *The Skeptic*, vol. 17, no. 4.
222. Church of the Latter-Day Saints 2001, Submission to Charities Definition Inquiry, January, pp.9-10.
223. Cited by M. Plummer, Rates exemptions for religions, Melbourne, unpublished paper, undated.
224. *Sydney Morning Herald*, 29 October 1983.
225. Mark Lyons, Professor of Social Economy at University of Technology, Sydney, wrote that BRW's published estimate of at least \$70 billion for Australia's third sector of the economy 'is indeed not an exaggeration'. Letters, BRW, 14-20 April 2005. Also see G. Johns and D. D'Cruz, 'Charity begins at home for the collectors with closed books', *Sydney Morning Herald*, 18 January 2006.
226. 'Concern over charities bookkeeping', *Canberra Times*, 3 December 2000.
227. '\$27B and no accounting rules', Media Release, Certified Practising Accountants, 19 July 2000.
228. *The Australian Survey of Social Attitudes* 2003, ANU, found that 28.1 per cent of Australians had 'not very much confidence' in charities and 9.1 per cent had 'no confidence at all'.
229. Gjems-Onstad O. 1993, 'Money pouring out of its ears', Working Paper No. 28 Program on Nonprofit Corporations, QUT, 31 August.
230. Humphreys, R. & Ward, R. 1995, *Religious Bodies in Australia*, New Melbourne Press, pp.3 & 16.
231. www.Philanthropy.org.au/. About \$2.8 billion is donated by Australians to charity annually, \$700m from individuals, see E. Cham 'Snapshot of Philanthropy', Government Advertiser, November 2003. However, when non tax deductible giving is taken into account, the figure could be as high as \$7.7 billion, see M. Wade, 'Donation state: taxpayers fuel charity boom', *Sydney* 7 May 2007.
232. McGregor-Lowndes, M. 1999, Evidence to the Economics Legislation Committee, 17 November.
233. Durham, Jnr., op cit., p.341, n.110.

234. Cited in Senator John Cherry's useful, 'Speech to the South Australian CPAs Not For Profit Committee', 20 March 2002, available from the Australian Democrats website.
235. Cybec Foundation, 2005, Letters, *Business Review Weekly*, 21-27 April.
236. www.charities.govt.nz
237. Lepeix, R. 2001, 'Separation of churches and state: why is it so important?', *NZ Rationalist & Humanist*, vol. 74, no. 3.
238. Boyan, A. 1993, *Le droit des religions en France*, PUF, Paris, p.50.
239. Renault, A. & Touraine, A. 2005, *Un débat sur la laïcité*, Stock, Paris, p.16. My translation.
240. *ibid.*, p.55.
241. Rivero, J. 1989, *Les libertés publiques*, Presses Universitaires de France, pp.187-8.
242. Basdevant-Gaudemet, B. 'State and Church in France', in Robbers, 1996, *op.cit.*, p.124 n.4.
243. The situation in Australia and New Zealand is the reverse. Governments are so indifferent to these issues that organisations are subsidised through tax exemptions as they carry out their abuses. For many religionist academics the human rights abuses, criminal and civil offences that occur within religious organisations, be they mainstream or cultic, are secondary to protecting those organisations' religious freedom. Just why some human rights must be protected and others ignored is something that defenders of religious freedom hardly ever address. Also, the reasons as to why the Australian Government allowed the Japanese terrorist cult, Aum Shinrykyo, into Australia in 1993 prior to their sarin attack in the Tokyo subway in 1995 have never been revealed. The Aum purchased a large rural property where they experimented with sarin gas. See Minister of Police's statement to Parliament, West Australian *Hansard*, 10 May 1995 and 'Details of Aum's sarin testing in Australia unveiled', *Mainichi Daily News*, 10 January 1996.
244. Field, C. 2004, 'France is not as secular as it purports', *New Zealand Herald*, 11 February.
245. *Label France*, April/June 2004, p.10.
246. Media Release, *Libre Pensée*, Paris, 9 December 2006.
247. *Livre Noir*, *Libre Pensée*, Paris, December, 2006.
248. Roberston, G. 2005, *The Tyrannicide Brief*, Chatto & Windus, London, pp.357-8.

249. On 13 February 1998 at the Constitutional Convention in Canberra concerning whether Australia should become a Republic, The Most Reverend George Pell moved,
- That this Convention supports the adoption of a republican system of government...
250. *The Independent Monthly*, June 1993.
251. Church Resources describes itself on its website as a non-profit organisation trust that seeks to
- ... combine the buying power of Church institutions and members to achieve savings and improved levels of savings, and to increase effective core missions including those of a religious nature.
- This trust is another example of a tax-exempt organisation indirectly subsidised by secular taxpayers and others.
252. *Sydney Morning Herald*, 6/7 March 2004.
253. Heinemann, 1993, Melbourne. Turnbull usefully exposed an example of blatant anti-Semitism in the Monarchist movement at p.201.
254. The survey is available in full at the Secular Party website 'news items' then, 'details'.
255. Davidson, K. 2000, 'Who's afraid of the Catholic Church?', *THE AGE*, 23 November.
256. Marr, D. 1999, *The High Price of Heaven*, Allen & Unwin, Sydney, p.77.
257. *ibid.*, p.219. Also, an earlier 1998 paper published by politics lecturer Rodney Smith tends to confirm Marr's description and casts doubt on Professor Warhurst's position: 'Religion and electoral behaviour in Australia: searching for meaning' in *Australian Religion Studies Review*, vol. 11, no. 2, 1998. This paper argues that religion is a significant variable in voting patterns. But there was no mention of religion in Smith's second edition of his edited book, *Politics in Australia*, Allen and Unwin, Sydney, 1993.
258. Cited in R. Yallop, 'Catholics cross the floor', *The Australian*, 27 September 2002.
259. Norris, P. & Inglehart, R. 2004, *Sacred and Secular: Religion and Politics Worldwide*, Cambridge, UK & NY, pp.25-26 & p.94.
260. Pennells, S. 2002, 'Pulpit Politics', *The West Australian*, 14 September.
261. Sexton, M. 2007, 'A man and his dogma', *The Australian*, 14-15 April.
262. *THE AGE*, 23 November 2000.

on the line over this disdainful approach to human suffering. Another important consideration here is the allegation made in 2000 that a confidential nation-wide survey of 3,000 priests in the U.S. conducted by and reported in the *Kansas City Star* found that,

... priests were dying of AIDS at a rate at least four times that of the general US population.

The Star reported that,

Catholic cardinals in the US and high-ranking church officials in Rome declined requests to discuss the issue. The Vatican referred questions to diocesan bishops.

Canberra Times, 1 February 2000.

306. BBC TV Series, 'The Brain', S. Greenfield, 2000.

307. The literature on this subject is expanding. A useful overview is by Amy Ellis-Nurt, 'Hard-wired for God: how does faith fit into our psyche?' illuminated.net/firms.com/a_hardwired.htm

308. Kohn, R. 2003, *The New Believers*, Harper Collins, Australia, p.124. A recent article in *Nature* argues that a *chance* genetic mutation about 2.4m years ago led to a change in the human jaw which affected the course of the evolution of the skull and hence the human brain,

... the decrease in jaw muscle size and force eliminated stress on the skull, which 'released' an evolutionary constraint on brain growth.

See University of Pennsylvania Media Release, 24 March 2004, 'Myosin mutant points to human origins', www.eurekaalert.org/pub_releases

309. Carroll, J. 2005, 'Nihilistic consequences of humanism', *Griffith Review*, 7, p.47.

310. Pataki, T., 2007, *Against Religion*, Scribe, Melbourne, p.84.

311. *Business Review Weekly*, 24-30 March 2005, p.52.

312. Stylianos, Archbishop H. 2000, Submissions, vol. 5, Human Rights Sub-Committee, Federal Parliament, Canberra, November, p.1087.

313. Newman, P. 2000, Submissions, vol. 5, Human Rights Sub-Committee, Federal Parliament, Canberra, p.1116.

314. *Compass*, ABC TV, 12 November 2000. 'In a world turned secular only radical steps can keep church teaching afloat', *Sydney Morning Herald*, 9 July 2002.

315. *The Australian*, 18 January 2000.

316. *The Australian*, 9 September 2000.

317. *Sydney Morning Herald*, 6 January 2000.

318. *The Australian*, 7 January 2000.

319. Associated Press, 3 November 2000.

320. Capp, F. 1988, 'Contrasting windows on faith', *THE AGE*, 13 February.

321. Maitland, S. 2004, 'In Place of Enlightenment', *Index on Censorship*, 4, p.14.

322. Clear examples are Blackburn, S. 2001, *Ethics: A Very Short Introduction*, Oxford; Singer, P. 1997, *How Are We to Live?*, Random House, Milsons Point, NSW.

323. Bloom, P. 'The accidental God', reviews ground-breaking contemporary scientific explanations for religious belief, *Australian Financial Review*, 23-27 December 2005.

324. Greenfield, S. 2001, *The Private Life of the Brain*, Penguin, London, p.2.

325. Davies, P. & Gribbin, J. 1992, *The Matter Myth*, Simon & Schuster, NY, p.29.

326. Wallace, M.W. 2007, *The Heaven of Perfect Consumption*, Sydney, unpublished paper. A fadish or a fetish can be an ideational or behavioural constraint *against* a human relationship to an object, symbol or idea or a relationship *with* something. In our culture fadishism is mostly experienced through the material act of the consumption of artifacts whereas other cultures tend to experience fetishism in the ideational consumption of myth.

PART 2

327. Broddin, E. 1996, 'The Employment Status of Ministers of Religion', *Industrial Law Journal*, vol. 25, no. 3, September.

328. *Reverend Howard Ian Knowles and the Anglican Property Trust*, *Diocese of Bathurst* [1999] NSWIRComm 157 (22 April 1999).

329. *ibid.* A point of interest here is what happens when Anglican bishops themselves make rather more profound errors. For example, was any Anglican bishop removed from office after a notorious paedophile Anglican minister eventually lost his licence to preach in 1991 after a string of offences dating back to 1976, even while training for ordination? (See *The Sun-Herald*, 19 December 2004.) Furthermore, how can the *same* penalty apply – the loss of licence – to both a notorious paedophile and someone who merely has a falling out with his bishop? How can these dramatically different situations incur the same ultimate penalty?

330. Broddin, op.cit., p.12.

331. *Reverend Howard*, op.cit., p.14.

332. *ibid.*, pp.17-8.

333. *ibid.*, 1.5.1 and 1.5.2.
334. Respondent's submissions, paras 1, 2, 3, 4, 5, 6.
335. *ibid.*, 'Conclusions'.
336. *Ermogenous v Greek Orthodox Community of SA Inc.* [2002] HCA 8 (7 March 2002). Another comparable case that has arisen in 2005 that may not have been tested in the Commission is the case of fourteen teachers who resigned en masse from the Redeemer Baptist Church at the end of 2004. It was alleged that,
- ... everyone who enters the church becomes a minister of religion. (*Sunday TV Program*, 6 March 2005.) Refuting the \$6m in claims for wages supposedly earned for teaching duties, the school bursar pointed out that,
- On joining the church they all signed ministry orders accepting the lifestyle and conditions of the church.
- At the same time the bursar alleged they were 'provided with housing and transport', i.e. fringe benefits. *Sydney Morning Herald*, 8 March 2005. On 21 June 2007 Greens MLC Dr John Kaye made a series of allegations about the Redeemer Baptist Church, including the use of fringe benefits for their teachers. L. Morris, 'Church school accused of tax swindle', *Sydney Morning Herald*, 22 June 2007.
337. Gleeson, R. 1986, *The Fringe Benefits Tax*, Information Australia, Melbourne, p.3.
338. *The Courier-Mail* of 20 June 1998 reported that,
- A parish needed about \$75,000 to stay viable, with \$36,000 dedicated towards the stipend's long-service leave, holiday allowance and superannuation, \$7,000 towards motor expenses and provision for replacement and \$5,000 for administrative and office expenses. Catholic priests receive free household expenses, accommodation, travel, usually the use of a car, and a stipend which varies according to the income of their Order. The stipend can be as little as \$250-\$300 per week, but the value of the benefits ensures they can usually live quite comfortably.
339. The Australian Tax Office defines a Public Benevolent Institution (PBI) in this way:
- A public benevolent institution is a non-profit institution organised for the direct relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness.
340. ATO Interpretive Decision, 'Fringe Benefits Tax Religious Practitioner's Exemption', 2001/332, 15 September 2001. www.ato.gov.au
341. Treasurer, Media Release, 7 June 2001; Charities Definition Inquiry Report.
342. McGuinness, P.P. 1995, 'Religion and the Taxman', *Sydney Morning Herald*, 11 March.
343. *The Australian*, 20 March 1999.
344. *The Bulletin*, 14 April 1998.
345. Lead, *op.cit.*
346. Nicklin, *op.cit.*
347. The Australian Bureau of Statistics publication no. 6306 of May 2002 states that 79.5 per cent of employees in Australia are employed by the private sector and 20.5 per cent by the public sector. BRW reported on 24 March 2005 that the Catholic charity employs 180,000 people.
348. *Sun-Herald*, 24 May 1998.
349. *Daily Telegraph*, 7 July 2006.
350. *PNG Post-Courier*, 17 May 1994.
351. Des Mazery, B. & P. 2005, *L'Opus Dei, Flammarion*, Paris, Ch.14.
352. The Uniting charity has an Investment Service. In its News and Information online publication No.2 of 1999 it reported that
- ... just over \$800,000 has been stolen from Church organisations by employees using very unsophisticated methods. www.nsw.uca.org.au
353. Maddox points out that the Great Hall is now being booked for fundamentalist religious conferences supported by members of parliament. 'God visits the house of the people', *Sydney Morning Herald*, 9 August 2005.
354. *Weekend Magazine*, *The Australian*, 1994.
355. Another case of Christian university students, and possibly other members of a supernatural charity claiming Centrelink benefits was canvassed in the story, 'Unholy Devotion', the *Sunday* program, Channel 9, 3 March 2005.
356. Letters, *Business Review Weekly*, 7-13 April 2005.
357. *Sydney Morning Herald*, 4 April 2002. In response to this article the late Nat Davy of Canturf told me that he had been contacted by a number of motel owners in the Snowy Mountains who claimed they were being undercut by ski lodges owned by supernatural charity organisations and operating as commercial businesses. He died in a tragic air accident before this matter could be followed up. The Seventh Day Adventists advertise their Adventist Alpine Village on the internet. Since their Sanitarium organisation does not pay tax it is likely their ski lodge also would not pay tax.

358. Case W33, Administrative Appeals Tribunal, 16 March 1989.
359. Lyons, M. 2001, *Third Sector*, Allen & Unwin, Sydney, p.25.
360. Herbert, H. 'Faith-based realities' in *Church and Civil Society*, eds F. Sullivan and S. Leppert, ATF Press, Adelaide, 2004.
361. *THE AGE*, 14 October 2000.
362. Lead, op.cit.
363. Barry, P. 2000, *THE AGE*, 14 October.
364. Fraser, J., review of L. Montesini, *My Life and Other Misdemeanours*, *The Australian*, 5 March 1999.
365. *The Brisbane Sunday Mail*, 3 December 1995.
366. Wilkinson, E. K. 1994, *People, Priests and Pedophiles*, Metro Manila, International Research Foundation, Ch.5.
367. Loney, J. 2006, 'Two priests accused of stealing \$US8m from church', www.canada.com, September.
368. *Daily Telegraph*, 23 October 2003.
369. Mutch, S. *Hansard*, House of Representatives, 23 September 1997.
370. Smith, B. 2003, 'Nuns as sexual victims get little notice', *St Louis Post-Dispatch*, 1 April 2003; *The Bulletin*, 3 September 2002.
371. *Hypocrites: Evidence and Statistics on Child Sexual Abuse Amongst Church Clergy, 1990-2000*, Eros Foundation, Canberra, 2000.
372. Macgregor, M. 2000, 'Onward Christian Values', *The Australian*, 28 December.
373. ABC Online, 9 October 2002. *The Sydney Morning Herald* of 25 April 2005 reported that there were allegations the new Pope, Benedict XVI, signed a letter in May 2001 when he was a Cardinal asserting the Church's right to hold its inquiries behind closed doors and keep the evidence confidential for up to ten years after the victims had reached adulthood.
- Also, the involvement of a retired judge who was allegedly involved in a particularly serious cover-up of a paedophile priest and later received a papal knighthood is detailed in *The New Zealander*, 26 May 2004.
374. See 'Conspiracy of silence', *Sunday Mail*, 18 January 2004.
375. Shadbolt, P. 2004, 'The Vatican's big secret', *The Australian*, 23 July.
376. Vickery, C. 1998, 'Parish The Thought', *Herald-Sun*, 28 January.
377. Dolbee, S. & Saver, M. 2007, 'Judge to decide if irregularities were intentional', *Union-Tribune*, 1 August.
378. *Sydney Morning Herald*, 28 July 1998.
379. Cited in Chamberlain, W.B., *Heaven Wasn't His Destination: the philosophy of Ludwig Feuerbach*, George Allen & Unwin, London, 1939, p.16.
380. Ferriter, D. 2005, 'When politicians saw themselves as Catholics first, politicians second', *The Irish Times*, 12 November.
381. Kavanagh, R. 2005, *Mamie Cadden: Backstreet Abortioneer*, Mercier Press, Dublin.
382. Schwartz, L. 2003, 'A local spin on the laundries of shame', *The Sunday Age*, 27 April.
383. A sanitised history of the Sandy Bay Magdalene Laundry is detailed in Nicola Goc's *Sandy Bay: a Social History*, Gentryx Publishing, Hobart, 1997. There is no mention of the girls' attempted escape. There is an interesting discussion at pp.195-7 of local councillors' attempts in 1905 to have the laundry pay council rates on the basis that the convent was running a commercial business. Goc concludes at p.198 that
- ... eventually the Magdalene Home closed its doors to 'wayward' girls as society became more liberal and the number of girls entering the home dropped.
384. Yallop, D. 1984, *In God's Name: an investigation into the murder of John Paul I*, Bantam Books, NY.
385. O'Donnell, L. & Dail, T.D. 2005, Statement on Ferns Report, 9 November. www.progressivedemocrats.ie
386. Twomey, V. 2005, 'Vatican II link to child abuse inaction', *The Irish Times*, 8 November.
387. *The Irish Times*, 11 November, 2005.
387. *The Australian Taxation System: In Need of Reform*, Treasury, Canberra, 1998.
388. Hall, 1992, op.cit., p.x and p.235.
390. Edd Doerr, Executive Director, Americans for Religious Liberty. Doerr points out that,
- The federal Tax Reform Act of 1969 modified federal tax law so that 'active' business income of churches is taxed (church-owned filling station) while 'passive' income (church-owned Exxon stock) is tax exempt.
- (<http://www2.freethought.com/ft/ftorg/nlscs/ARTICLES/ChurTax24-25.html>)
391. McGregor-Lowndes, M. 1998, 'Does Charity Begin and End at Home for Tax Exemptions?' *Canberra Law Review*, vol. 5, nos. 1 & 2, p.222.

CLERICALISM IN NEW ZEALAND: A CONSPIRACY OF SILENCE*

Max Wallace

INTRODUCTION

In 2001 the former Prime Minister of New Zealand, Sir Geoffrey Palmer, said

... *a sine qua non* of effective public debate is proper information on what our constitutional arrangements are. There is very little of that around in New Zealand. In some ways, I sometimes think there is a conspiracy to keep it quiet so no one understands how the system of government works¹. (SLIDE 1)

Today I will discuss those constitutional arrangements. I will argue they are characterised by clericalism: the assumption that a close relationship between government and religion is normal and not contingent. It is in the relationship between government and religion that we find a conspiracy of silence. This conspiracy of silence is quite well concealed. It isn't exactly what Sir Geoffrey might have had in mind. It concerns the fact that following the exemption of the British monarch from most forms of taxation, the churches are exempted from most forms of taxation. Partly as a result of exemptions, churches are very wealthy.

The political will to keep these tax exemptions and this wealth is the driving force of religious organisations and the monarch in Great Britain and religious organisations and constitutional monarchists in New Zealand and Australia. While the monarch's presence in our countries is mostly symbolic, the crown in New Zealand and Australia is the historical mechanism for exemption from taxation for religious organisations. Our democracies, the UK, New Zealand and Australia are effectively soft theocracies whose constitutional arrangements keep these tax arrangements in place.

A theocracy is usually defined as a government where the government and a dominant religion are one and the same. Naturally, in such a country that dominant religion would not pay tax. Usually a strict theocracy would be led by someone with a direct line to the supernatural power of the dominant religion. A less strict theocracy might have some gesture towards elections, as in the case of Iran.

A soft theocracy can be defined as a form of government, constitutional monarchist or republican, characterised by a separation of powers between executive, legislature and judiciary. It features freedom of association, a free

My argument is that we are just at the beginning of understanding politics and government from this perspective. You won't read what I'm going to say today in any political science textbook in New Zealand or Australia. Our lack of understanding of this core of our politics speaks to the ability of its beneficiaries to keep it very well concealed, as the quotation from Sir Geoffrey Palmer would imply. But he would hardly agree with my argument. While not everyone who accepts a knighthood is a political conservative, at the same time, to accept a knighthood is an act of deference to the monarchist establishment.

While the Queen of New Zealand does not cost the New Zealand taxpayer very much its churches arguably do, a subject to which I will return, and the monarch, expressed in New Zealand through the abstract concept of 'the Crown' is at the centre of this legal usurpation of taxpayers money. I argue it is not the role of a state to advance the cause of religion at the expense of citizens who have no sympathy with it. Religion is not the business of the state.

CONSTITUTIONAL MONARCHY

New Zealand is a constitutional monarchy. It does not have a written constitution. It does have the Constitution Act of 1986 which severed some links between New Zealand and the United Kingdom. The United Kingdom is a constitutional monarchy. It does not have a written constitution. The head of state is the Queen or in the case of New Zealand, the Governor-General is her representative. There is no constitutional separation of church and state in the United Kingdom, in fact, the exact opposite applies: the Church of England is the official religion of England. At the same time there is no section separating church and state in the 1986 Constitution Act, so there is also no constitutional separation of church and state in New Zealand.

New Zealand is similar, superficially, to a province of the United Kingdom like Scotland, Wales and Northern Ireland. It shares the same Queen. Until recently, it shared the same national anthem. 'God Save the Queen' was an official anthem of New Zealand in addition to 'God Defend New Zealand'. I note in passing that this is hardly an appropriate anthem for a supposedly secular nation, although the tune, I concede, is more attractive than Australia's awful dirge, 'Advance Australia Fair.'

The constitutional situation here contrasts to that of the Australian states in the recent past. In 2006 Professor Anne Twomey published her book *The Queen and her Governors*ⁱⁱⁱ. She explained that until 1986 the Australian states were technically colonial dependencies of the British Crown. The Queen's jurisdiction

The Queen's website reveals that she has always paid Value Added Taxes, other indirect taxes and local council rates on a voluntary basis. Now she agreed, voluntarily, to pay income tax. But only after the *World in Action* revealed she wasn't paying any.

On 9 July 2002 Liberal Democrat, Norman Baker, raised these matters in the British parliament. He argued all citizens should be treated equally on taxation, including the Queen. He said that Royal finances should be transparent 'as one would expect because public money is being spent.' He said there should be 'proper control and auditing of the way in which public money is spent on royal finances, which is the case for every other area of public expenditure'. He said 'there is no reason why royal finances should be different.' He pointed out that the monarch is legally exempt from income tax, capital gains tax, inheritance tax. He asked what the justification for this was.

He noted that in 1993 the Prince of Wales agreed to voluntarily pay income tax and capital gains tax, but not inheritance tax. He noted that the lack of an inheritance tax for the Queen meant that the British Treasury lost tax on the windfall the Queen received, something between £20 and £25 million realised when the Queen Mother died.

Before I continue, I should repeat that the British monarch and the Church of England are like Siamese twins. The Queen is the head of the Church of England as well as the monarch. The Church of England is the 'established' church of England, that is, an act of parliament had made it the official religion of England. This arrangement commenced when Henry VIII split from the Catholic Church over the question of his divorces.

In 1601 in the reign of Elizabeth I the Statute of Charitable Uses legislation was passed. This created the four 'heads' of charity which are still accepted as the basis of charity law in Britain and our countries. Charitable status meant exemption from taxation. These four kinds of charity are relief of poverty; advancement of education; other purposes beneficial to the community and – 'the advancement of religion.' That is, all religion received tax-exempt status because to proselytise the Christian God's words was considered to be a form of charity. In fact, it is '*supernatural* charity'. As recently as 2006 Pope Benedict XVI said 'Only in Christ can we find the strength to offer human affection and supernatural charity to our brothers and sisters'.^v In other words, the promulgation of Christian belief is a form of heavenly charity. It is offering us charity to save us from our ignorance and presumably hell.

about abortion fearful that political comment might jeopardise their tax-exempt status. It could be safely left to lay Catholics.

Returning to the British situation, Norman Baker pointed out in 2002 that the first income tax act was passed in 1799. This was in response to the Napoleonic wars. It was abandoned shortly thereafter but returned in 1842. Queen Victoria who reigned from 1837 to 1901 paid it. So did Edward VII who reigned from 1901 to 1910. During the reign of George V whose reign was 1910 to 1936 the requirement for the monarch to pay tax was *removed*. This was still true for George VI in 1937-38. Norman Baker said he tried to find out the reason for why the policy changed to remove the obligation to pay tax but that ‘the relevant files on the agreement have been destroyed.’ Very unfortunate.

The next question of course is *how much* tax the monarchs pay when they do pay it.

In the Parliament in 2002 Norman Baker pointed out that after the Queen volunteered to pay income tax there was no statement of how much she would pay. It follows, he said that ‘there is not the transparency in royal finances that we would wish.’

Four years later in July 2006 the cat was let inadvertently out of the bag when Prince Charles revealed, generously, that he had paid the equivalent of A\$8.2M dollars on his income of A\$35M. His income had increased 6 per cent ‘on the back of commercial property rent reviews and higher investment returns’^{vii}. That’s a tax rate of around 23 per cent. But for other British taxpayers with this high income the rate is in fact 40 per cent.

So how come he pays significantly less? By revealing how much he paid Prince Charles inadvertently raised the question of ‘well, how much tax does the Queen pay?’ She’s not saying. The ABC reported that ‘The Royal Family’s spin doctors went into damage control arguing the Queen costs each taxpayer just the equivalent of A\$1.55 per year, and that represents value for money.’ What exactly has the Monarch got to hide?

The ABC interviewed Graham Smith of the Republic movement in the UK who argued the cost of the monarchy to the British taxpayer was probably closer to \$250M per annum given the taxpayer is now providing more security for all the royals who require it. He also made the point that ‘who else gets to pay tax ... as they think appropriate?’

future. I would be equally critical of similar, secular waste of money or forms of largesse.

Be that as it may, I mentioned that the Queen of England is also the head of the Church of England. A report in the British Telegraph of 1 November 2000 claimed that 'It costs £740M a year to run the Church of England – more than £2M a day.' Nearly half of this is spent on clergy who occupy churches that are nearly always empty. When this became news there was a scandal. Again, Norman Baker gave evidence to an inquiry that was called into the lifestyle of the Anglican bishops in 2000. He said that

It's intolerable that when you have falling church rolls [i.e. low church attendance] you have rising Bishop's expenses. It is also intolerable that when you have parishes suffering [he meant poverty] you have Bishops living in huge palaces with chauffeurs and gardeners. I can't find anywhere in the Bible where it says 'Thou shalt live in lavish palaces.'

I mentioned that 'advancing religion' is a tax-exempt activity. Legally, all religions are technically charities. After the Statute of Uses of 1601 all religions became eligible for tax-exempt status. What this means is that while the monarchy is joined at the hip to the Church of England, nearly all religions now have equal status with the Church of England in terms of tax exemption. It is like an extended daisy chain of religious organisations who qualify for tax exemption. That is not true of the Church of Scientology that failed Britain's Charities Commission's 'public benefit test.'^{ix}

The concept of public benefit is instructive. Reading the Commission's determination against Scientology it is hard to pin down exactly what it is. Scientology was excluded partly because its core practise, auditing, was not considered to be of public benefit. Auditing is where a member sits opposite another more senior member and pours out all details of their life, their thoughts and details of their recent behaviour in order to be evaluated in terms of Scientology's criteria for an individual to be 'clear' of their problems. Scientology thus imitates religion's strategy of seeking to convince a subject they have problems and they should surrender themselves to religion to resolve them. If the subject falls for this line they enter the bottomless pit of contrived guilt from which they may never emerge.

Because this is a private matter, which incidentally, Scientology members may have to pay for, and the practise was not extended freely to the public, the Commission decided the practise of auditing did not match the precedents established by common law as to the meaning of public benefit. So, 'public benefit' must have a public component. This public component seems to relate to

Zealand, Australia, and wherever the ancient idea of the advancement of religion still has application.

CHURCHES AND EXEMPTIONS

Having said that, I believe New Zealand law follows Australian tax law concerning the exemptions. Where the British Charities Commission found that the Church of Scientology was not of 'public benefit', the Australian High Court in 1983 came up with a definition of religion that included Scientology. This came after their consideration of Scientology's appeal to that court after they had been refused tax-exempt status in Victoria.

The High Court overturned the Victorian court's finding about Scientology and said that religion is any belief in a supernatural being, thing or principle and canons of conduct that give effect to that belief.

With the door wide open to achieving tax-exempt status as a religion and no limit to the amount of money religious organisations can receive, invest tax free and accumulate, the pursuit of money and the protection of their tax-exempt status has become the *raison d'être* of religions. Like the Queen, up until 1992, religions do not pay income tax, capital gains tax, and sundry other minor taxes.

So, just how much revenue do our two countries miss by the churches not paying tax? In Australia the total revenues of the churches would be in excess of \$20B. The bulk of that is the \$15B turnover the Catholic Church has admitted to, that is, if you take them at their word. Tax revenue goes missing at three levels in Australia: local government, where church buildings avoid property rates and related charges; state government taxes and federal taxes such as income tax and capital gains tax. A conservative guesstimate of how much tax that could have been paid would be something between \$500M and \$1B each year, probably more. The Catholic Church is in the top five organisations by wealth in Australia. It is likely it is Australia's largest landholder and private employer. The Uniting Church has claimed that it is Australia's second largest employer after the Catholic Church.

So what is the situation in New Zealand?

If one goes to the website of the Charities Commission to find information about the incomes and expenditures of charities, including religious charities, there is nothing there. They are supported by taxpayers as non-profit organisations but there's no requirement for them to put their annual returns to the Commission on the public record. It is as if they are private organisations, rather than public

be charities in themselves, there is no requirement for them to be engaged in good works. If they want to tithe their members, accumulate millions of dollars and invest it to become significantly rich while paying no tax, they can. There is no regulation and they are not even obliged to put in tax returns to our tax offices. If they choose to mask their growing wealth by engaging in cosmetic charitable work they can.

Another question that follows from all this is whether we as secular citizens should have our taxes garnisheed to support religious organisations for which we have no sympathy. In my book^{xi}, I point out the German Government has partly agreed that this is unfair and the Italian Government allows citizens annually to nominate which charity they want to support. All citizens there give .8 of one per cent to the charity of their choice and this can include churches. That seems to me to be fair.

An argument occasionally heard to head off this danger of citizens having a democratic choice as to which charity they want to support is the idea that religious citizens are also obliged to support things that governments do with which they disagree. For example, Christian taxpayers, so the argument goes, are obliged to support government schools where the curriculum is overwhelmingly secular, where the curriculum undermines Christian belief.

Well, for argument's sake, we could follow the Italian example to its logical conclusion and say that henceforth all Christians and citizens of other faiths who so choose will be able to apply a proportion of their taxes to schools that teach a curriculum they approve of. They won't have to pay for secular schools. But if that were to be the policy, it would follow that non-Christians should not have to support Christian schools and schools of other faiths. In Australia, this is about \$12B annually.

Also, to be consistent, exemptions Christians and those of other faith receive at the level of local, state and national government should be abolished. Why should secular citizens subsidise religious citizens for their local government property rates, their garbage collection and so on? Why should secular citizens subsidise religious organisations in those instances where they don't pay land tax, payroll tax, stamp duty and other minor taxes? I'm comfortable with them paying for themselves.

Why should secular citizens subsidise religious organisations for exemptions from income tax, capital gains tax and so on?

* A paper presented to the NZHS/NZARH/ANSA conference 'New Zealand and Australia's Secular Heritage and Its Future', Law School, Victoria University, Wellington, 30 August 2008.

END NOTES

ⁱ G. Palmer, *Constitutional Conversations*, Victoria University Press, Wellington, 2002, p.386.

ⁱⁱ M. Wallace, *The Purple Economy: supernatural charities, tax and the state*, ANSA, Sydney/Melbourne, 2007, pp15-86.

ⁱⁱⁱ A. Twomey, *The Queen and Her Governors*, Federation Press, Sydney, 2006.

^{iv} P. Hall, *Tax, Money and the Monarchy*, Bloomsbury, London, 1992.

^v Benedict XVI, 'Greeting to UNIV participants', Rome, 2006.

^{vi} Deal W. Hudson, *Onward Christian Soldiers: the growing political power of Catholics and Evangelicals in the United States*, Threshold, NY, 2008, p.3ff.

^{vii} Correspondents Report, ABC, 2 July 2006.

^{viii} M. Woolf, 'Public should own all of Queen's palaces, say Fabians', *The Independent*, 6 June 2003.

^{ix} 'Application by the Church of Scientology (England and Wales) for Registration as a Charity', *British Charities Commission*, 1999.

^x S. Blundell, 'The God dividend', *The Listener* (NZ), February 2-8, 2008.

^{xi} M. Wallace, *Op. Cit.*

^{xii} *Ibid.*, pp173-6. See also N. Renton 'Taxpayers' sacrifice to the churches', *The Age*, 6 May 2008.