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28 August 2008

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

Dear Madam/Sir,

Re Inquiry into the Disclosure regimes for charities and not-for-profit organisations

We wish to offer for your consideration our views in relation to the regulation of charities and in particular the role of religion in the definition of charity. Our concerns address the issue of the lack of distinction between charities and religious non-charities. This lack of distinction affects both the current regulatory regime and the tax regime. We welcome the opportunity to express our views on the former, as these have further implications in rationally addressing the latter.

The regulatory shortcomings historically arise principally as a result of the continuation of an archaic feature of Australia's tax regime. The origins of this lie in the Preamble to Statute of Elizabeth, or the Statute of Charitable Uses (1601), following which all religious activities came to be deemed as charitable. As a result in Australia today, all the operations of religious organisations are deemed charitable and are thus unregulated and tax exempt. Due to the persistence of this medieval doctrine, Australia is one of only three countries in the world where these exemptions extend even to the commercial operations of religious organisations.

We would hope that rectifying this anomaly will be a high priority and will be expressed in the recommendations of your Committee. The Background Paper provided for this Inquiry refers to the recommendations from the 2001 inquiry into the definition of charities and related organisations, which have not been implemented. We would like to refer to particular aspects of those recommendations to which we have particular objection.

Recommendation 11 states that "there be no requirement that charitable purposes fall either within the spirit
and intendment of the Preamble to the Statute of Elizabeth or be analogous to one or more of its purposes or be analogous to one or more of its purposes". If the implication of this is that there be no requirement that charitable purposes be religious, then this should be so obvious that it should not require statement. It is rather inexplicable to us why it should be felt necessary to refer at all to this medieval Statute.

The purpose of the reference appears to be to provide some basis for the anomalous aspect of the definition of charitable purpose to which we object. The effect of the medieval Statute is thus apparent in Recommendation 12, where "the advancement of religion" is cited as an item, amongst seven others, in the definition of charitable purpose. The other items listed provide an adequate

definition. There is simply no rational or evidential basis for the presumption that the advancement of religion is of itself necessarily charitable.

Certainly, the activities of religious organisations may be charitable. To the extent that they are, they will be covered by other items in the definition. Conversely, there is considerable evidence that the advancement of religion, of itself, to the extent that it causes division in society, can be anti-social. Hence we strongly urge that the "advancement of religion" be deleted from the definition of charitable purpose.

We would like to refer to another instance that we are aware of where such archaic perceptions appear to form part of current legislation. The Extension of Charitable Purpose Act 2004 – Sect 5 (1) (b) defines a group or religious order that " regularly undertakes prayerful intervention at the request of members of the public" as being for the public benefit. People are perfectly entitled to engage in such activities if they wish, but there is surely no justification for what may be regarded as little more than irrational superstition being defined as a public benefit for a charitable purpose.

The available evidence on this matter suggests the contrary. Clinical trials have been conducted in the United States in which groups suffering from serious illnesses were either prayed for or not. Prayerful intervention was found to make no difference, except in cases where a group knew that prayerful intervention was being undertaken on their behalf by others. The medical outcomes of this group were found to be significantly worse. The suggested explanation for this was that the intervention caused psychological damage that adversely affected their recovery.

The definition of religion can be applied to any sect, cult or superstition provided that they express adherence to and belief in a supernatural being or principle. These sentiments may be perfectly acceptable in themselves but they do not provide an adequate or rational basis for a regulatory framework for charities in Australia in the 21st century.

One of the principal problems in the current system is that as the definition of charity allows exemptions to apply to all the activities and income of religious organisations. These bodies are not required to report the breakdown of their charitable, and business or investment activities. This lack of transparency makes it difficult to determine the actual cost of these exemptions, which in itself is a problem.

It is standard budgetary procedure that the loss of revenue arising from exemptions, for example those applying to superannuation pensions, are listed in budget papers and can be quantified. No such requirement exists for religious organisations, even those that may be involved in significant business and investment related activities. We therefore submit the following.

1. We submit that the definition of "charity" in relation to the reforms reflects the more modern view that religious worship and indoctrination are not charitable activities in themselves.

2. We submit that the activities of any charitable organisation, religious or not, should not be exempt from accountability or from taxation.

3. We submit that the investment and business related activities of any organisation should not be exempt from taxation.

4. We submit that only the bona fide charitable activities not connected with religious worship or indoctrination should be tax exempt.

5. We submit that a Charities Commission be established for the purposes of regulating and making accountable the charitable activities of all non-profit organisations. This should include religious

organisations and ensure that tax exemptions are provided only in relation to bona fide charitable activities and not used to disguise religious worship or indoctrination.

6. We submit that all not-for-profit and religious organisations be required to submit annual reports that are audited, and publicly available in a manner similar to that for public companies.

7. We submit that in order for religious organisations to receive tax exemptions these must be provided only to the extent that their activities are bona fide charitable. Where an organisation is involved in religious worship and indoctrination, their business activities, investment income and other taxable activities should be separated, either through an accounting division or through operational separation.

In conclusion, we submit that a rational reform of the disclosure regime for charities, along the lines we have suggested, is necessary to improve transparency and accountability in this sector. It is also an essential first step in addressing the anomalous situation whereby tax exemptions are extended to religious organisations for activities that are not bona fide charitable activities.

These tax exemptions narrow the taxation base and place a higher burden on individuals and businesses that cross-subsidise these organisations through higher taxes. This distorts the flow of capital and labour and encourages the setting up of structures for the purpose of carrying on businesses to gain an unfair advantage.

We thank you for this opportunity to express our view and commend our submission for your consideration.

Yours sincerely,

John L Perkins
Frank Gomez
Kenneth Cooke

Secular Party of Australia