

Senate Economics Legislation Committee  
Inquiry into Tax Laws Amendment (Public Benefit Test) Bill 2010  
Government Response

**Recommendation 1:** The Committee recommends that the incoming government should follow the emerging international best practice and work with the Council of Australian Governments to amend legislation governing not-for-profit entities to include a definition and test of 'public benefit'.

**Recommendation 3:** The Committee recommends that the incoming government work through COAG to establish a single independent national commission for not-for-profit organisations. The incoming government should establish a working group, or use the COAG Business Regulation and Competition Working Group. The working group should consult extensively with the sector in a timely manner to address issues arising from the establishment of a commission which applies a public benefit test. The Australian model should draw on the Charity Commissions in the United Kingdom and New Zealand.

**Recommendation 4:** The Committee recommends that the working group consider the functions and role of an Australian commission which should include, but not be limited to, the following:

- promote public trust and confidence in the charitable sector;
- encourage and promote the effective use of charitable resources;
- develop and maintain a register of all not-for-profit organisations in Australia using a unique identifying number (for example an ABN) as the identifier;
- develop and maintain an accessible, searchable public interface;
- undertake either an annual descriptive analysis of the organisations that it regulates or provide the required information annually to the ABS for collation and analysis;
- educate and assist charities in relation to matters of good governance and management;
- facilitate, consider and process applications for registration as charitable entities;
- process annual returns submitted by charitable entities;
- supply information and documents in appropriate circumstances for the purposes of the Tax Acts;
- monitor charitable entities and their activities to ensure that registered entities continue to be qualified;
- inquire into charitable entities and persons engaging in serious wrongdoing in connection with a charitable entity;
- monitor and promote compliance with legislation;
- consider, report and make recommendations in relation to any matter relating to charities; and
- stimulate and promote research into any matter relating to charities.

The Government committed to strengthening the not-for-profit sector in its 2010 election campaign including a scoping study for a national regulator for the sector to be completed in early 2011.

The Government will consider the recommendations of the Senate Economic Legislation Committee as part of the scoping study for a national regulator that Treasury has been tasked to undertake.

- A test of public benefit would be considered as part of any proposal to codify the key principles of the common law definition of charity.

**Recommendation 2: The Committee recommends that the Attorney-General's Department provide a report to the Committee on the operation of Miviludes and other law enforcement agencies overseas tasked with monitoring and controlling the unacceptable and/or illegal activities of cult-like organisations who use psychological pressure and breaches of general and industrial law to maintain control over individuals. The report should advise on the effectiveness of Miviludes and other similar organisations, given issues that need to be addressed to develop an international best practice approach for dealing with cult-like behaviour.**

The Government does not support this recommendation.

The Government recognises the financial, psychological and emotional impact that the activities of cult-like organisations can have on individuals and their families and considers that religious observance should not be regarded as a shield behind which breaches of the law can be hidden. However, it is doubtful that the Commonwealth has legislative authority under the Constitution to establish an agency with similar functions to the French *Mission interministérielle de vigilance et de lutte contre les dérives sectaires* ("Miviludes").

Miviludes' primary tasks include:

- observing and analysing the movement of religious and other groups which are perceived as constituting a threat to public order or that violate French law;
- producing and archiving documentation and discussion papers on groups considered "sects";
- providing information and training relating to potential threats to public order to the media, the French government and individuals; and
- helping victims of "sectarian deviances" to receive financial aid.

Australia is home to a diversity of faiths, united by tolerance, mutual respect and a commitment to democratic traditions. All Australians are free to choose their religion and are able to express and practise their religion and their beliefs, without intimidation and without interference. The Government considers that it is not the Government's role to interfere with the religious beliefs or practices of individuals, unless they are in breach of Australian laws.

States and territories are generally responsible for criminal laws and enforcement action directed against criminal activity including conduct resulting in physical, emotional or psychological harm perpetrated by members of religious organisations. Law enforcement agencies and Directors of Public Prosecutions are appropriately equipped to deal with allegations of wrongdoing or criminal activity.

State and territory laws also provide for restitution and compensation for victims in certain circumstances, including through victims of crime compensation schemes. Access to such schemes varies depending on specific criteria in the relevant state or territory.

On 8 March 2006, the United Nations Special Rapporteur on Freedom of Religion or Belief released "Mission to France," addendum two to her report, "Civil and Political Rights, Including the Question of Religious Intolerance" (E/CN.4/2006/5/Add.4). The report concerned France's policies in the late 1990s, during the terms of Miviludes' two predecessors. The Special Rapporteur's findings included a statement that the policies "undermined the right to freedom of religion or belief and raised serious concerns about religious intolerance." The Special Rapporteur indicated an intention to continue to closely monitor Miviludes to ensure its actions remained consistent with the right to freedom of religion and to "avoid past mistakes".

The Government does not propose to provide any further report on the operation of Miviludes and other law enforcement agencies overseas who monitor and/or control "cult-like" activities.