

**Presbyterian Church of Australia**  
**in the State of New South Wales**  
ABN 42 645 495 256

168 CHALMERS STREET, SURRY HILLS NSW 2010  
PO BOX 2196, STRAWBERRY HILLS NSW 2012  
E-mail: [general@pcnsw.org.au](mailto:general@pcnsw.org.au)  
Telephone: (02) 9690 9333  
Facsimile: (02) 9310 2148

23<sup>rd</sup> June, 2011

The Manager  
Philanthropy and Exemptions Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

cc email: [NFPReform@treasury.gov.au](mailto:NFPReform@treasury.gov.au)

Dear Sir,

**PHANTOM TAX CRACKDOWN UNNECESSARY**

*Response to the request from the Assistant Treasurer to consult on the government's plans  
to reform the use of tax concessions for certain NFP operations*

This Paper raises significant concerns about the federal government's wish to dislocate the legitimate operations of charitable entities by imposing behaviour dampening consequences on their community activities, including the burden of additional compliance costs – for no established benefit to anyone.

The overwhelming mistake treasury is making is trying to fit religious organisations and churches with rugby league and other sporting organisations, philanthropic charities, medical research, NGOs and other special interest groups all together as one common category only because they exist primarily for purposes other than profit. These do not constitute a common industry and cannot be treated the same.

The Hon Bill Shorten states "Too long has the sector waited for a government to embark on this important reform process." Unfortunately, the writer is yet to identify anybody who has sought this government action. This is a shaky foundation upon which to pursue such radical disruption.

The more common assumption is that this government must have an ideological agenda which it is refusing to disclose so as not to divert 'consultation' discussion on what it has already decided to implement. The consultation process would be more legitimate if the government would be more transparent concerning its ultimate objective.

The process so far has failed to identify any material problem that this new comprehensive legislation will fix which could not otherwise be adequately attended to with the much lighter touch of regulatory improvement where found to be necessary and helpful.

Mr Shorten has also called for information to "identify whether there are any unintended consequences." The difficulty with this request is that not enough is disclosed by the government or treasury as to how some of their stated tax objectives are intended to apply or what overarching good they are meant to achieve.

Fundamental questions that require clarification before competent assessment of the impact of the changes can be made, and serious consultation can take place, include;

- A. Is the use of the term 'altruistic' defined? Will it mean the same as 'charitable purpose'? If different, how is it different?
- B. What is meant by activities which indirectly further an NFP's altruistic purpose will be taxed? What is the difference between 'directly' and not directly?
- C. What is meant by paying tax on retained earnings and profits that are not directed back to the altruistic purpose? What happens if for normal prudential or other capital reasons the surplus ought to remain in the operational activity? Who will mandate the appropriate deemed dividend to ensure wrongful taxation does not occur?
- D. What is meant by 'passive' income and investment? Many charitable trusts operate properly within trust law which entail prudent active management of cash and other investments in support of the charitable purpose. Will these investment entities, if earnings are occasionally retained, be taxed?
- E. Has the government or treasury considered the impact of its intentions on a very large unincorporated charitable association established by an Act of Parliament with all its assets and title held by a charitable property trust, also established by Act of Parliament – namely a CHURCH?
- F. What concerns are there about "a level playing field for all"? Does this relate to 'competition' between NFP's or more widely? Will government seek to price the competitive benefit some charities may experience due to their volunteer, unpaid, helpers and deem a value for taxation or IR purposes?

The specific 'Consultation Questions' are very narrow and assume the conclusion. Is the government open to providing more information based on each of their questions, as asked below?

1. Why is treasury seeking to scope out certain activities of charities referred to as 'related business' or 'unrelated business'? What material ethical or business problem has it identified which needs addressing?
2. Why is treasury interested in micro-managed charitable activities?
3. What is meant by small-scale or low risk? Low risk to whom?
4. Why is the State involving itself in the entity structure of the Church?
5. Why would the State attempt to force a structural change upon the Church?
6. Does the State understand the purpose and structures of the Church, or do they regard the Church to be the same as a Rugby League Club?
7. How can treasury claim to be consulting when the assumption to transition is already made?
8. Does treasury honestly believe this action will not impose significant compliance costs?
9. Will treasury consider non-transition as an option?
10. Can treasury demonstrate what business types or activities it is concerned about and why?
11. Does treasury intend to impose costly compliance procedures required to justify a 'NIL' tax return?
12. What types of new or changed activity does treasury envisage not being tax exempt?
13. Does government intend to use the threat of the loss of government service delivery contracts to achieve its ends?
14. Will the government make clearer its intended targets in respect of taxable status?
15. Can the government identify functions or activities it envisages will need transferring from an existing entity to a new entity for taxation purposes?

If government or treasury are able to provide answers about their intentions and preferred outcomes in respect of these potential consequences then much more useful 'consultation' can occur.

Yours Faithfully,  


Wayne Richards

**General Manager, Presbyterian Church of Australia in the State of New South Wales  
 Secretary, The Presbyterian Church (New South Wales) Property Trust**