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Chair
The Australia's Future Tax System Review Panel
AFTS Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

29 April 2009

Via email: AFTSubmissions@treasury.gov.au

Dear Dr Henry,

Australia's Future Tax System Review

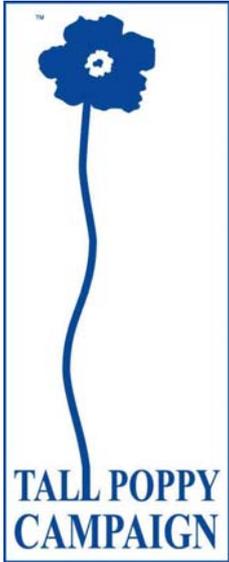
The Australian Institute of Policy and Science (AIPS) appreciates the opportunity to contribute to The Australia's Future Tax System Review Panel.

We commend the Senate Economics Committee for undertaking this inquiry into Australia's taxation system and welcome the inclusion of a focus on not for profit (NFP) tax concessions and treatment (Q7.1 and Q7.2 in Consultation Papers).

We wish to make a brief submission focusing on the definition, regulation and taxation status of charities and NFP organisations, and to bring to the Panel's attention issues from the perspective of a not for profit dedicated towards science engagement, a newly emerging community interest focus in Australia.

AIPS was first established in 1932 as the Australian Institute of Political Science, becoming the Australian Institute of Policy and Science in 2006. It is a national organisation with offices in NSW, South Australia and Victoria. It aims to promote public understanding of important political, economic, social, cultural and scientific issues facing Australia.

AIPS activities aim to support the capacity of society to engage in science and its relevance to major policy issues that affect the whole community. Through its flagship Tall Poppy Campaign, AIPS seeks to enhance science communication and engagement, promote scientific knowledge and achievement and foster an appreciation of science and innovation in all spheres of public life. It strives to ensure that science opportunities are accessible to all, especially young people, by investing in the support of science education, science career paths and open debate on socially relevant issues where science can contribute.



AIPS considers that there is little new to add to the knowledge base on taxation review for the NFP sector.

Over the past decade there have been three major Commonwealth inquiries into these issues.¹ However few of the ensuing recommendations have led to substantive or coherent change.

Much has been documented about the contribution of the NFP sector to Australia's social and economic well-being.² There remains potential for Australians to give more.³ This is particularly true for giving through Private Prescribed Funds which can only give to DGRs. Enhancing giving is critical during a period of global financial downturn to ensure a continued contribution of the Third Sector, whether as employers, service providers, contributors to GDP or actors for a better society in the short and longer term.

Taxation regulations will play an important part in this. The current economic downturn only highlights the need to preserve the Third Sector's contribution – as service providers; partners of community, government and corporate sectors in altruistic endeavours.

Overall, we support the Public Interest Advocacy Centre submission to this review in suggesting that:

*"...this Inquiry builds on the findings and recommendations of these reports, rather than investing further resources in conducting additional research. In particular, the findings of the Charities Definition Inquiry are relevant and should be implemented."*⁴

Currently the definition of charity is relatively archaic, complex and inflexible. It is largely determined by the Income Tax Assessment Act 1997 (C'th) which outlines entities and ways of gaining exemption from certain taxes as well as governing deductions including 'deductible gift recipient' (DGR) status for relevant NFP entities.

In our view, entities not fitting neatly into current criteria are disadvantaged. NFPs also find it difficult and confusing to seek tax exemptions. Those seeking DGR status are potentially constrained to follow a lengthy, and in the end costly to the community, lobbying route. Sometimes this precludes acceptance of gifts from members of the Australian public who have otherwise pledged their support in belief that the purpose of the relevant NFP entity is indeed charitable, that is, in the end for community benefit and altruistic.

¹ Inquiry into the Definition of Charities and Related Organisations 2001, <http://www.cdi.gov.au/html/report.htm>;

Board of Taxation consultation on the draft Charities Bill 2003 (2003), <http://www.taxboard.gov.au/content/charities.asp>>; and

Treasury consultation on Financial Reporting by Unlisted Public Companies (2007), <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1269>

² *Giving Australia Report* commissioned by the (then) Department of Family and Community Services on behalf of the Prime Minister's Community Business Partnership (10 October 2006): summary currently available at

<http://www.philanthropy.org.au/community/transcripts/Giving%20Australia%20Summary.pdf> and more recently *An Examination of Tax Deductible Donations Made By Individual Australian Taxpayers in 2005-06*, McGregor-Lowndes, Myles and Newton, Cameron J. (2008):

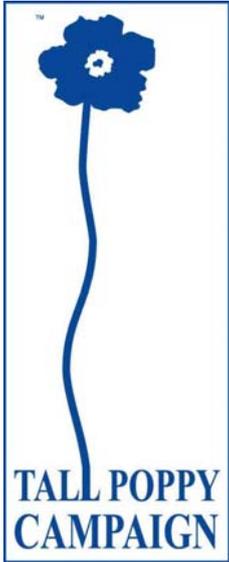
<http://eprints.qut.edu.au/13517/>

³ *Good Times and Philanthropy: Giving by Australia's Affluent*, Dr Kym Madden and Dr Wendy Scaife (March 2008):

http://www.bus.qut.edu.au/research/cpns/documents/GoodTimesandPhilanthropyGivingByAustralia'sAffluent_March2008.pdf

⁴ Public Interest Advocacy Centre (PIAC) October 2008:

http://taxreview.treasury.gov.au/content/submissions/Public_Interest_Advocacy_Centre.pdf



Those not able to gain fringe benefit tax (FBT) concessions for staff are disadvantaged in the labour market as they, like AIPS, cannot offer competitive salary packages. We fully support FBT concessions as an effective mechanism for support of the NFP sector and its competitiveness in the labour market.

Our key purpose in this submission is to endorse the submission to the Review Panel by Promoting Law in the Public Interest Law Clearing House (PILCH) on these key issues; in particular, recommendations flowing from its observations about how current charitable law is out of step with contemporary public opinion and too convoluted for public, including Third Sector, understanding.⁵

We support all the recommendations of the PILCH submission as members of the NFP sector, in particular that:

*"In broad terms, PILCHConnect endorses the recommendations made by the Inquiry into the Definition of Charity 2001 and urges the Senate Inquiry to refer the recommendations made by the Inquiry into the Definition of Charity to a specialist committee for implementation"*⁶

We also welcome the Australian Government's Productivity Commission study on the contributions of the NFP sector, its broad purview, and the direction for it to have regard to the current Panel's inquiry and past relevant inquiries: "the findings of the Government's Taxation Review headed by Dr Ken Henry and the Inquiry into the Definition of Charities and Related Organisations (2001)".⁷

We commend the scope of the current Productivity Commission's inquiry, including to:

- assess current and alternative measures of the contribution of the not for profit sector and how these can be used to better shape government policy and programs so as to optimise the sectors contribution to society
- identify unnecessary impediments to the efficient and effective operation of not for profit organisations and measures to enhance their operation
- examine the impact of the taxation system on the ability of not for profit organisations to raise funds and the extent to which the tax treatment of the sector affects competitive neutrality

We urge the Panel to have regard to the above issues in its deliberations on Australia's Future Tax System where relevant to its terms of reference.

AIPS concurs with the 2001 Inquiry's comments in Chapter 12: Dominant Charitable purpose, including that:

The Committee considers that the element of public benefit remains fundamental to the concept of charity and that the framework for determining public benefit, as enunciated by the common law, continues to be appropriate. To be of public benefit a charitable purpose must:

- *be aimed at achieving a universal or common good;*
- *have practical utility, which may be broader than material benefits; and*
- *be directed to the benefit of the general community or a `sufficient section of it'.*⁸

With regard to the proposed "Other Purposes Beneficial to the Community" and associated comments in the 2001 Inquiry, we agree that the advancement of

⁵ Public Law Interest Clearing House (PILCH) October 2008:

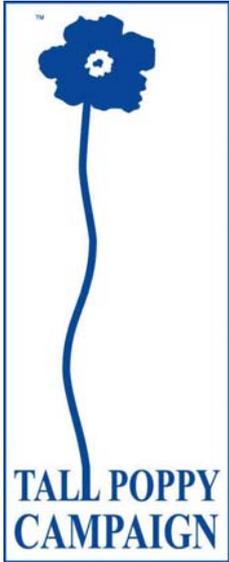
http://taxreview.treasury.gov.au/content/submissions/Public_Interest_Law_Clearing_House.pdf

⁶ P. 9; Ibid.

⁷ <http://www.pc.gov.au/projects/study/not-for-profit>

⁸ Inquiry into the Definition of Charities and Related Organisations 2001:

<http://www.cdi.gov.au/html/report.htm>



health, education, social and community welfare, religion, culture or the environment are key. However, we wish to highlight that the advancement of science for community benefit currently falls outside the cracks.

We acknowledge the 2001 Inquiry's summation that:

*"The 'other purposes beneficial to the community' category has proved to be of value in providing the courts with the scope for finding 'new' purposes to be charitable. Without such a category new purposes of benefit to the public could be denied charitable status."*⁹

In relation to the above, as a 'scientific organisation' we note that currently entities dedicated towards promoting science engagement are not included in the primary heads of charity in Australia. Nor are they adequately covered by more recent changes to legislation, which for just one example, laudably include specific articulation with regard to health promotion.

Our prime area of purpose and activity is science engagement with the general public for community benefit.

The definition of science engagement is perhaps best encapsulated by the UK Parliamentary Office of Science and Technology:

*The term 'public engagement in science' has different meanings for different people and organisations. It is used both in broad content to mean public awareness of science, science communication, scientific literacy, and general involvement with science and its processes, through activities, debates and the like... Increasingly, however, 'public engagement with science' has come to imply involving the public in policy decisions and in setting research priorities."*¹⁰

We consider that our prime focus constitutes activity for the public benefit, and that the Australian public would concur, although few directly relevant studies can confirm. The latter is perhaps an indicator the relative lack of activity in the science engagement arena by government, NFP and corporate sectors in Australia to date, although we consider this to be an area of growth in the NFP sector.

This represents an example of where public opinion and our changing society may spawn charitable endeavours driven through the NFP sector with a primary purpose of community benefit though not currently encapsulated in cumbersome and complex definitions largely determined by taxation regulations.

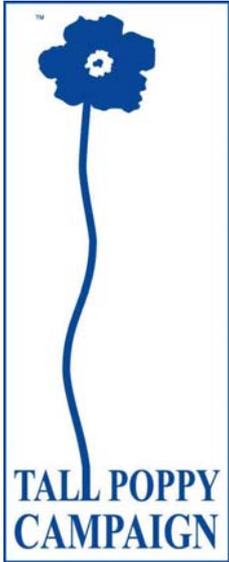
The 2007 Victorian Department of Industry, Innovation and Regional Development's commissioned study into Community Interest and Engagement with Science and Technology in Victoria provides some insights into public views which support the argument that the Australian public is interested in, values and could be further engaged in science related issues:¹¹

"Attitudinally, the vast majority of the community agrees on a number of important propositions relating to promoting and building awareness of science and technology. For instance, virtually all agree that:

⁹ Ibid.

¹⁰ POSTNOTE, March 2006 Number 260, Parliamentary Office of Science and Technology, March 2006: <http://www.parliament.uk/documents/upload/postpn260.pdf>

¹¹ Victorian Department of Industry, Innovation and Regional Development 2007: http://www.business.vic.gov.au/busvicwr/_assets/main/lib60228/science-technology-cie-report.pdf



- *It is important for the wider community to be aware of what's happening in science and technology (95% agree)*
- *It is important for scientific breakthroughs to be well publicized (94% agree)*
- *It is critical that young people learn about science so they can effectively participate in society when they are older (93% agree)*
- *It is important that the community should be consulted about advances in science and technology (83% agree)*

There is also strong and near universal agreement with the impact science and technology are having on society with more than four in five agreeing that:

- *New technologies are improving my quality of life (84% agree)*
- *Advances in science are improving my quality of life (84% agree)*
- *Science and technology are improving society (84% agree)"¹²*

As an NFP committed to science engagement, we also note that the 2008 Review of the National Innovation System: *Venturous Australia - building strength in innovation*, and in particular Chapter 8 - tax and innovation, gave little consideration to the Third Sector and any relevant taxation issues.¹³

While we welcomed the above review and its recommendations including on Research and Development Taxation Concessions in relation to the corporate sector, we believe that potential NFP sector contribution and public engagement in all identified priorities for the Australian innovation agenda could be better addressed by the current Review Panel in relation to taxation regulation.

Thank you for consideration of our brief submission.

Yours sincerely

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¹² Ibid, pp 11 – 12.

¹³ Report on the Review of the National Innovation System, Department of Innovation, Science, Industry and Research
http://www.innovation.gov.au/innovationreview/Documents/NIS_review_Web3.pdf