

THE CHURCH OF  
JESUS CHRIST  
OF LATTER-DAY SAINTS

AUSTRALIA'S FUTURE TAX SYSTEM

# Submission

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The Taxation Treatment of Donations to NFPs

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**Submission to: The Australia’s Future Tax System Review  
Panel (The Henry Review)**

**Re: Consultation Paper released 10 December 2008  
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**Introduction**

This submission responds to Question 7.2 set out in the Consultation Paper (the “Report”), namely,

*Given the impact of the tax concessions for NFP organizations on competition, compliance costs and equity, would alternative arrangements (such as the provision of direct funding) be a more efficient way of assisting these organizations to further their philanthropic and community-based activities.*

We propose that funding of NFPs (inclusive of faith-based organisations and other charities) should continue to include funding by private non-government donations. In this regard we propose that *all* such donations should attract full tax relief to the donors.

Our reasons and arguments for the above views are now explained in this submission.

**Current arrangement**

Tax relief to donors is not available generally in respect of donations to NFPs. (In this submission a reference to NFPs is a reference to NFPs generally, i.e., inclusive of faith-based organizations and other charities.)

The current gift deduction arrangement (Income Tax Assessment Act 1997, Division 30) provides allowable deductions to donors in respect of qualifying donations made to a “deductible gift recipient” (DGR).

There are a large number of described classes and named DGR listed in Division 30.<sup>1</sup> But the operation of the gift deduction arrangement is restrictive. For example, the

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<sup>1</sup> As at the beginning of April 2009 Division 30 listed 43 described classes and 194 named entities; there were also 775 “prescribed private fund” DGRs (which are named in Schedule 3, Income Tax Assessment Regulations 1997).

deduction is not available for gifts to all or any charitable purposes (as opposed to a specified charitable purpose<sup>2</sup>).<sup>3</sup>

Charity or charitable in its legal (as opposed to its ordinary) sense refers to one or more of the relief of poverty, the advancement of education, the advancement of religion, and other purposes beneficial to the community.<sup>4</sup>

In Australia DGRs are substantially outnumbered by the non-DGR NFPs.<sup>5</sup> It has been estimated that in Australia about one in four of all donations made by individuals is claimed as a tax deduction. As to the remaining three-quarters the donation has been assumed to be claimable, but not claimed, or made to NFPs that are not DGRs.<sup>6</sup>

### **Taxation gift relief – comparable jurisdictions**

New Zealand, United Kingdom, Canada and USA<sup>7</sup> are countries with a language, culture, system of government, legal system, and patterns of social behaviour common or broadly comparable with Australia. In contrast to Australia, each of those countries provide tax relief for charitable donations generally.

Under the New Zealand Act relief is provided in respect to “a charitable or other public benefit gift”.<sup>8</sup> “Charitable”, in this Act includes every charitable purpose at law and the other purposes nominated by that Act.<sup>9</sup> Prior to the 2008/2009 tax year relief was available for gifts of up to \$1890 by individuals. From the 2008/2009 tax year tax relief is available in respect to gifts of up to the amount of the donor’s taxable income.<sup>10</sup>

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<sup>2</sup> See e.g., s.30-45(1), item 4.1.3 – a public fund for the relief of persons in Australia who are in necessitous circumstances.

<sup>3</sup> A gift to a charity which is also a public benevolent institution can be deductible (Sec 30-45(1), item 4.1.1) however, although a public benevolent institution may be a charity in the legal sense, not every charity is a public benevolent institution (*Northern Land Council v Commissioner of Taxes* (2002) 141 NTR 1; 171 FLR 255 at [15]).

<sup>4</sup> *Central Bayside Division of General Practice Ltd v CSR (Vic)* (2006) 228 CLR 168 at [18] fn6, [70].

<sup>5</sup> “Giving Australia: Research on Philanthropy in Australia, Summary of Findings October 2005” (Department of Family and Community Services) ISBN: 1 921 1 3001 6, p.vii.

<sup>6</sup> Giving Australia, op.cit., 36.

<sup>7</sup> See Giving Australia, op.cit., and Adrian Stack and Jason Leung-Wai, Report to: Philanthropy New Zealand, “Giving New Zealand: Philanthropic Funding 2006” (March 2007) ISBN 978-0-473-12091-7.

<sup>8</sup> Income Tax Act 2007, s.LD1.

<sup>9</sup> Income Tax Act 2007, s.YA1.

<sup>10</sup> Income Tax Act 2007, s.LD1(1) and Tax Administration Act 1994, s.41A(3).

In the UK a donor is entitled to “gift aid” tax relief in respect of qualifying donations to a charity<sup>11</sup> including to a charitable trust.<sup>12</sup> “Charity” here means an entity that is a “charity” in the legal sense<sup>13</sup> and also includes any of the other entities named or described by the Act.<sup>14</sup>

The USA tax relief applies to “charitable contributions” made to tax-exempt organizations.<sup>15</sup> A tax-exempt organization includes one organized and operated exclusively for purposes that are “charitable” in the legal sense.<sup>16</sup>

Canada provides tax relief in respect of gifts to registered charities operated for charitable purposes.<sup>17</sup> Gifts of up to an amount equal to 75% of an individual’s net income qualify for the relief.<sup>18</sup> “Charitable” here means “charitable” in the legal sense.<sup>19</sup>

Available research indicates that in 2005/2006 donations as a proportion of Gross Domestic Product in Australia was 0.68%, in New Zealand 0.81%, UK 0.9%, Canada 0.46%, and USA (in 2004) 1.6%.<sup>20</sup>

In a 2006 New Zealand government discussion document<sup>21</sup> it is reported that over the preceding decade there has been significant and sustained efforts around the world to increase charitable donations through changes in government policy. An area noted as one on which those efforts have focused is developing tax incentives that favour charitable donations.<sup>22</sup>

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<sup>11</sup> Income Tax Act 2007 (c.3), s.414, s.416.

<sup>12</sup> Income Tax Act 2007 (c.3), s.520.

<sup>13</sup> *ITC v Pemsel* [1891] AC 531 at 581-583 (HL).

<sup>14</sup> Income Tax Act 2007 (c.3), s.430.

<sup>15</sup> Internal Revenue Code s.170.

<sup>16</sup> Internal Revenue Code 501(c)(3).

<sup>17</sup> Income Tax Act (1985, c. 1 (5th Supp.)), s.118.1(1) and (3).

<sup>18</sup> Canada Revenue Agency, Information Sheet RC306-3b(E).

<sup>19</sup> Canada Revenue Agency, Information Sheet RC306-3a(E).

<sup>20</sup> Giving Australia, op.cit., ix, Giving New Zealand, op.cit., 8, 13-14.

<sup>21</sup> “Tax incentives for giving to charities and other non-profit organizations”, ISBN 0-478-27143-3, first published in October 1986 by the Policy Advice Division of the Inland Revenue Department.

<sup>22</sup> Tax Incentives, op.cit., para 1.12.

Taxation is acknowledged in Australia as a measure to provide financial incentive for giving and, for donors, as providing a framework for planned giving.<sup>23</sup>

### **Role for and benefit of private philanthropy**

The Report acknowledges that NFPs perform a valuable role in Australian Society (p.7) and that gifts are an important source of their funding (p.8).

The New Zealand government discussion document notes that among the reasons governments seek to promote charitable giving are<sup>24</sup>:

- Charities and other non-profit organisations help governments to further their social objectives, such as increasing support to the disadvantaged members of society and fostering a more caring and cohesive society.
- Many of the activities of charities and other non-profit organisations provide wider benefits to society over and above the value of the benefits received by the recipient or supplier of the activity.
- The activities of charities and other non-profit organisations may be more responsive to the needs of society than government programmes, since donors and charities can often respond more quickly to changing social needs. Also, the donations people make to such organisations provide an effective indicator of the extra goods and services people feel are needed.
- Because charitable activities use donated goods and volunteer labour they may be a more efficient way of providing social assistance than government programmes.

We submit these same points may properly be made in relation to Australia.

The contribution of NFPs to society is in almost every sphere of activity: sports, recreation, arts, culture and heritage, emergency and social services, health, education, conservation and the environment.

NFPs direct altruistic activities for the public good to the provision of goods and services not generally provided by the business sector. NFPs therefore make a

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<sup>23</sup> Giving Australia, op.cit., 36.

<sup>24</sup> Tax Incentives, op.cit., para 1.13.

contribution to the “social capital” of Australia from their own self funded activities. In economic terms, the assumption is that “the problems of society can be resolved by increasing social capital.”<sup>25</sup> Many NFPs make this social capital available by providing funds to also counter life style excesses such as, alcoholism, drug taking, nicotine addiction, unemployment, depression, family abuse, troubled marriages, to name but a few. In many cases, NFPs are the sole supplier of these types of community services.

The Industry Commission has noted that the effectiveness of tax incentives in encouraging donations is directly related to the price elasticity of giving. (Economists can measure the relationship between two variables by determining their elasticity to each other. If the price elasticity of giving exceeds one, giving is considered to be elastic.) A tax deduction on a donation to charity is considered by economists as efficient (*treasury efficient*), i.e. elastic, if the revenue foregone by government is at least matched by an increase in further donations to charity. Studies on donation price elasticity are mixed as to their results; however, the conclusion of the Industry Commission on price elasticity is that-

*unless evidence which strongly refutes the view that the incentive is treasury efficient, the benefit of the doubt must go to the retention of tax deductibility of donations.*<sup>26</sup>

Any deficit in the treasury efficiency of cash donations is more than made up by the value of volunteer labour organized through NFPs. Studies show that in Australia, the value of donated volunteer labour exceeds cash donations by at least a 3 to 1 ratio.<sup>27</sup> In the year to January 2005, 41% of adult Australians gave an estimated 836 million hours of their time at an average of 132 hours per year per volunteer.<sup>28</sup>

The individual initiative of privately funded NFPs, gives them greater flexibility to focus on unexpected community needs. This private charity response can be more efficient and effective than other bureaucratic funding processes. Such action will

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<sup>25</sup> Industry Commission, “Charitable Organizations in Australia,” Report No. 45, June 1995, Appendix J, J1.

<sup>26</sup> Industry Commission, op.cit., Appendix M, M 3.

<sup>27</sup> The John Hopkins University Institute for Policy Studies, “Volunteering in Cross-National Perspective: Evidence from 24 Countries”, by Lester M.Salamon and Wojciech Sokolowski, 2001, 4.

<sup>28</sup> Giving Australia, op.cit., vii.

build *social capital*. The uniting of Australians in providing more private philanthropy can be achieved by the government becoming more involved in providing an environment which encourages private giving.

There is a relationship between individuals giving volunteer service and their making donations to NFPs.<sup>29</sup>

### **Direct funding**

The Report (p.7) notes that some NFPs already receive direct government funding. However, in our view there remains a place for private non-government donations. It allows the individual to participate in and be benefited as a human being by charitable giving and service. Although many donations will be one-off, but often quite small, a substantial proportion represent regular and generous donations by donors with a long term association with the NFP; volunteers with or members of NFPs tend to be the most active and generous givers.<sup>30</sup>

A corollary of direct funding is the inevitable bureaucratic processes for qualifying to receive funding and the necessary reporting on and accounting for use of funds – which will impose its own administrative costs (to both government and the recipient). The nature of government funding is that the grant money is, as part of the qualification conditions, closely quarantined as to amount and the pre-determined specific purpose.

Non-government donors are free to be subjective as to which one or more good causes they will for the time being support and also may from time to time choose to be more generous to particular causes. Altruistic giving reacts to immediate need. Such giving is often spontaneous or unplanned, a reaction to a catastrophic event or to an unexpected encounter with, for example, a street collector or beggar.<sup>31</sup> The 2004/2005 Tsunami appeals, and more recently appeals responding to the Victorian Bushfires and Queensland flooding are examples of spontaneous giving.

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<sup>29</sup> Giving Australia, op.cit., x.

<sup>30</sup> Giving Australia, op.cit., x, xi.

<sup>31</sup> Giving Australia, op.cit., x.

It has been observed from Australian surveys that “everyday Australians” tended to like to support a wide range of causes.<sup>32</sup> Providing tax relief for donations to charitable causes can only encourage and support that worthy human value.

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<sup>32</sup> Giving Australia, op.cit., 32.