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Submission to Australia's Future Tax System Review Panel

By the Standing Committee of the Synod of the Anglican Church Diocese of Sydney

Who we are

1. The name of our organisation is the Anglican Church Diocese of Sydney (**Diocese**).

2. This submission is made by the Standing Committee of the Synod of the Diocese. The Standing Committee is the executive of the Synod. The Synod is in turn the principal governing body of the Diocese constituted under the *Anglican Church of Australia Constitutions Act 1902 (NSW)*[1]. The Diocese is the oldest and largest of the 23 Anglican dioceses which together form the Anglican Church of Australia.

3. The Diocese is an unincorporated voluntary association comprising various bodies constituted or incorporated under the *Anglican Church of Australia Trust Property Act 1917 (NSW)* and the *Anglican Church of Australia (Bodies Corporate) Act 1938 (NSW).* These bodies, together with the diocesan network of 267 parishes, are accountable to the members of the Church through the Synod of the Diocese[2].

4. Our contact details are –

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What we do

5. The Diocese, through its various component bodies and through its congregational life is a provider of a wide range of programs including in social welfare, education, health and ageing, youth work, and for the homeless.

6. Our particular focus in this submission is on religious institutions and charities for the advancement of religion, as well as the range of other charitable and benevolent institutions through which the Diocese contributes to the welfare of society.

7. In addition to parish life in the Diocese, there are many other bodies providing services to the community across the Diocese. These include large social welfare institutions such as Anglicare[3] and

[1] The Synod has 719 members, the majority of which are appointed or elected representatives from our 267 parishes.
[2] The regular combined membership of our 267 parishes is about 80,000 people.
[3] Anglicare relates to approximately 40,000 clients on an annual basis with counselling, children and youth services, emergency relief, family relationships and aged care.

Anglican Retirement Villages, as well as other charitable institutions including Anglican Youthworks[4], and 39 Diocesan schools[5].

8. The importance of the parishes and their networks of people within congregations to the provision of these services should not be underestimated. These are real communities of people within local communities. They are a natural social infrastructure which is an effective base for the provision of services which contribute to social inclusion.

Summary of submission

Like many other organisations in the charities sector, the Diocese has made a number of submissions to inquiries and consultations over the past few years as a contribution to the work that has already been done to assist in reform for the charities sector. In order not to be repetitive, we will only address the following matters in this submission.

A. There is a need positively to recognise the valuable contribution made by charitable and religious institutions and charitable funds (we will collectively refer to these for convenience as **charities**) to the 'social economy' and social inclusion through the concessions and benefits available to them.

B. A clear articulation of the place of charities in society in promoting the common good has been missing from current regulatory regimes. It can be seen still in judicial decisions, but has been noticeably absent in a regime where the Australian Taxation Office (**ATO**) is the primary 'gate-keeper'. The ATO like other taxing authorities has a statutory responsibility to protect the tax base, and not to provide an intentional, policy-based regime for the charities sector.

C. There remains a need for a high level, in-principle commitment to support of the charities sector as a key player in the provision of services and support to social inclusion. This could be achieved by the introduction of a form of charities' commission.

D. Any legislative reform of the law relating to taxation of charities should reflect the common law of charities as it presently stands, including the role of judicial interpretation, because this has enabled the historical flexible response to need which has been a feature of the role of charities in society.

E. There are a number of practical options to consider to improve the taxation system as it relates to charities.

Contribution to social inclusion and 'social capital'

1. There is a need positively to recognise the valuable contribution made by charities to the 'social economy' and social inclusion through the concessions and benefits available to them.

2. Since establishment during the period of first colonial settlement Diocesan congregations and institutions have been treated as exempt from taxes and duties as charitable institutions for the public benefit on the basis of the Church's key contribution to the welfare of society within the Diocese - what today would be referred to as contributing to the 'social inclusion' agenda.

3. Charities in general, and the church in particular, have had a key presence in Australia that stems back to the early days of convict settlement. From the first days of the colonial settlement charities have played the primary role in the provision of social welfare, education and prison reform among other things.[6]

4. Because of the broad reach of charities into and across communities, charities in general, and the Diocese in particular, are well placed to contribute in a very wide range of areas.

[4] Anglican Youthworks is the co-ordinator of work amongst children and young people and provides materials to 300,000 students, supports 4,000 volunteer and employed scripture teachers, and 8,000 youth leaders attending training events. 50,000 mostly young people and children attend outdoor programs and centres.

[5] Attended by approximately 35,000 students.

[6] See Appendix 1.

Concessional support of charities

5. A clear articulation of the place of charities in society in promoting the common good has been missing from current regulatory regimes. It can be seen still in judicial decisions, but has been noticeably absent in a regime where the ATO is the primary 'gate-keeper'. The ATO like other taxing authorities has a statutory responsibility to protect the tax base, and not to provide an intentional, policy based regime for the charities sector.

6. The taxation regulation of the charities sector is spread across a number of government departments (ATO in particular, but also state bodies such as the Office of State Revenue (**OSR**) in NSW) and there is no principled statement from government of the place of the sector in the economy and society. Consequently in the absence of this, the ATO's decisions and position on the sector are mechanistic. While the ATO and indeed other revenue authorities have undoubtedly acted in good faith in making these decisions, their statutory responsibility is inconsistent with a values based position statement on the kind of society that we want and the role of the charities sector in contributing to this.

7. There are a number of reasons for treating charities as exempt from taxes and duties. However fundamentally –
   (a) The services provided by charities are integral to our community as evidenced by the significant levels of support for these services provided by the community. Subsequent government involvement in providing equivalent services is further evidence of their importance.
   (b) Charities such as the Diocese are however generally a more effective provider of equivalent government services because of the extensive range of volunteers and volunteer communities which are part of or associated with them[7]. These can both leverage impact from the volunteers themselves to augment services, and also provide the natural communities as mechanisms of social inclusion.
   (c) Any additional tax or duty burden on these entities will simply lessen the impact of these services and increase the burden on government.
   (d) Taxing charitable services is therefore as illogical as taxing government services.

8. Australians give very significant levels of support to charities because they are trusted to deliver for the beneficiaries of their philanthropic goodwill. They expect the tax system to support this giving and confidence they have shown in the sector.

9. It should be considered for the purposes of the review that three relevant sectors exist in the community – the government sector, the for-profit sector, and the charitable sector (or the not-for-profit sector).

10. Governments at all levels are dependent on the charitable sector for the highly leveraged delivery of essential community services – leveraged because of the access by charities to the participation of volunteers and donors. Both government and for-profit providers are unable to access this additional support, and would not be able to deliver the social inclusion outcomes that charity-based services can provide.

11. As a result, it would be illogical to impose taxes on the charitable sector when the government is dependent on this sector for services that the government would otherwise be required to provide to the community.

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[7] There is evidence available from ABS data as well as the National Church Life Survey 2006 that "church attendance is associated with higher levels of volunteering than in the general community" (*Volunteering within and beyond the congregation* Leonard and Bellamy Australian Journal on Volunteering Vol 11, No 2 2006). ABS and NCLS data (2001) indicates –

(a) Church attenders are move likely to be volunteers in local community groups than the wider Australian population.

(b) There is a strong positive correlation for all denominations between volunteering within the congregation and beyond (ie volunteering within the congregation is not an obstacle to volunteering in the community – on the contrary there appeared to be no inward looking groups that supported themselves but not the wider community).

(c) Volunteer rates –

Church attenders	43%
Australia	32%

12. It is also important to note that charities have historically provided services where there is perceived need before this need is met by government. Typically government has followed, providing financial support for the services delivered by charities[8]. On the whole it would be true to say the for-profit providers have been late entrants into the provision of services, and have only done so where they think they can do so profitably. They have therefore been selective in their choices of services.

13. It follows that any argument suggesting that tax concessions and benefits have given charities a competitive advantage over for-profit equivalents is fundamentally flawed. Rather these concessions and benefits represent an intentional and philosophical support of the charities sector and have the effect of facilitating the charitable sector in its provision of vital services to the community.

An independent charities commission

14. There remains a need for a high level, in-principle commitment to support the charities sector as a key player in the provision of services and support to social inclusion. This could be achieved by the introduction of a form of charities' commission.

15. If a new government body with a particular focus on charities is determined to be the best means of facilitating the operation and governance of the charities sector, then the following must be achieved.

16. Any new regulatory regime should lessen overall regulatory burdens rather than simply adding a new layer of additional regulation. There are great potential benefits for society as a whole from the charities sector, a significant contributor in all areas of the "social economy". However these could be lost if either –
    (a) the current regulatory regime remains as complex and messy as it is now; or
    (b) the current regulatory regime is replaced by a burdensome and overly bureaucratic regime.

17. Part of the brilliance of the charities sector in Australia is its long history of flexibility and capacity to respond early to need as it is identified. Historically charitable institutions in Australia have provided critical social infrastructure and social welfare initiatives before these have been supported politically as the proper concern of government.[9] There is a real danger that in well-intentioned attempts to provide support and reform to the sector, an over-engineered reform regime will lead to the brilliance of the sector, and its differentiating qualities of responsiveness, creativity and lack of bureaucracy, being lost.

18. The scope and role of an independent charities commission should be determined on the basis of the demonstrable benefits in the public interest and to the sector – in particular it must be appropriate in scale and well targeted to proven need. Specifically it must not be heavy-handed or an over-engineered model as an over-reaction to the relatively low level of evidenced abuse.

19. The most significant benefits, from both direct cost savings and improved efficiencies, will come from the rationalisation and harmonisation of the range of State and Federal government regulations and tax exemption regimes that apply to the sector. An independent charities commission could have the role of bringing together on the government side expertise and understanding of the whole regulatory environment within which the charities sector works. This will make possible a perspective that is not currently present.

Simplified entry point

20. The formation of a specific regulatory body as an entry point to charities regulation should be of considerable assistance to supporting the charities sector.

21. The entry point for tax concession charity exemptions and benefits is already highly complex and at present is regulated by the ATO which, as discussed above, has responsibility for protecting the taxation base rather than facilitating an effective charitable sector. Any regulatory reform would usefully lessen rather than add further layers of regulation and accountability. A simplified entry point may be the most effective way of rationalising regulation.

22. For reasons similar to those advanced in respect of the ATO, we do not consider that a corporate regulator such as ASIC would be an appropriate regulatory body for charities.

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[8] See Appendix 1.
[9] See Appendix 1.

23. We recommend the consideration of reforms that incorporate and rationalise the diverse regulatory regimes that make the management of charitable institutions complex and expensive. A process for obtaining group or synchronised registration and exemptions for types of institutions would represent a significant cost saving both for the charitable institutions themselves and government regulators.

Access to review

24. We agree with the criticism of the Non-Profit Roundtable of the wide range of confusing, sometimes contradictory concessions – some unfair and requiring court action to correct. Most bad decisions are not appealed by charitable institutions either because they do not have the funds to meet the cost of litigation, or they cannot justify spending donors' or other funds on such litigation.

25. A Charities Tribunal[10] could be a considerable improvement to lessen the current cost burden of legal action to obtain review of administrative decisions. A Charities Tribunal could assist by bringing together relevant expertise in the trusts, tax and corporate governance issues relevant to charities.

The common law of charities

Flexibility to adapt to changing needs of society

26. Any legislative reform of the law relating to taxation of charities should reflect the common law of charities as it presently stands, including the role of judicial interpretation, because this has enabled the historical flexible response to need which has been a feature of the role of charities in society.

27. In order for charities to be able to function effectively, it is important that they are able to adapt to the changing needs of society and to provide the services that are required by the community as they are required. As a result, it is important to ensure that both the legal definition of a charity, and the administration of organisations that fall within this definition in Australia are flexible to allow this to occur.

28. The definition of a charity has not been codified and as a result currently remains as it has been determined by the courts over many years. This method of interpretation of the meaning of a charity has the effect of enabling the class of purposes and activities that fall within the definition of a charity to be flexible to include the changing scope of charities and their activities over the years, and the changing needs of society.

29. To ensure that the legal meaning of a charity is correctly applied to appropriate organisations and funds, it is important that charities are administered not by the ATO, but by an independent body whose brief would be the support and endorsement of charitable funds and organisations in Australia.

30. This establishment of this body would be an effective mechanism of reform by assisting to clarify the relevant tax treatment and provide consistency (including between the states) for different funds and organisations.

Public benefit presumption

31. The current position under the common law in relation to religious and certain other charitable purposes is that these purposes will be presumed to be for the public benefit unless the contrary is proved - the 'public benefit presumption'.

32. In the case of religious charities, the presumption was developed to avoid the problems that could arise if the courts and those administering the tax and other treatment of religious charitable purposes were required to scrutinise whether those purposes were for the public benefit.

33. In the case of religious charities today, we generally see two types of organisations: ones where the public benefit is clear from the purposes of the organisation, and another where a public benefit exists in the form of social inclusion networks created by a specific, but in some cases more insular, group. This latter type of group should continue to be included in the public benefit presumption due to the benefit to the community arising from the sense of community for individuals in society.

[10] Similar to the one introduced in the UK under the *Charities Act 2006*.

34. There is no evidence that there will be any improvement in the governance and management of charities with removal of the public benefit presumption for categories of charities.

35. Any loss of the common law presumption of public benefit will also raise a real possibility of an increased number of disputes between religious and other charitable organisations and Government authorities as to whether the requisite public benefit exists for charitable status. As a consequence the courts would, in the case of religious purposes, likely to be increasingly asked to make determinations on matters which they have hitherto been reluctant to consider, namely the public benefit of religious activity. The removal of this presumption would therefore increase uncertainty in the sector and create greater confusion in relation to the approach to be adopted by the ATO and courts in determining whether a charity exists for the public benefit.

36. We therefore submit that the common law public benefit presumption be retained in any tax reform in respect of all religious and other charitable purposes.

Charitable entities in tax law

37. There are a number of practical options to consider to improve the taxation system as it relates to charities.

38. We advocate consideration of –
    (a) a group endorsement or registration system where there are multiple entities that are in reality parts of a whole institution; and
    (b) in the event of the introduction of a UK or New Zealand style of independent charities commission, the exemption of religious institutions from reporting if they already have an accountability structure in place. There does not appear to be sufficient evidence that it would add to transparency and accountability for such institutions to be required to make additional reports to a Commission. In these circumstances the lack of demonstrable benefit would not seem to justify the additional cost.

39. Generally, a new system of registration of charities would not in itself add to the compliance burden for most charities.

40. However, charities such as the Diocese are often made up of a large number of charitable institutions and / or charitable funds set up to assist in the administration of the different roles the charity is performing and the different sectors of the community that are being supported by the charity. This complexity is made more onerous by the current requirement that each entity is considered separately for endorsement purposes.

41. More substantively, it is apparent that the use of the “entity” concept is aimed at dovetailing the definition with existing tax legislation which already uses this concept extensively. While the “entity” concept may be generally useful for the purposes of tax law, in the context of large and complex charities such as the Diocese, the effect of using this concept is to impose an inappropriate and artificial construct on the broader organisation by insisting that charitable status be determined by reference to its constituent parts rather than by reference to the work of organisation as a whole.

42. Aside from increasing the costs involved in administering charitable status at the level of each constituent part, this fragmented approach ignores the fundamental wholeness of charitable purposes undertaken by charities such as the Diocese and the interdependence of its constituent parts. It is likely that, in time, a diminution of the charitable status of any part of the broader organisation’s mission will undermine the ability of the organisation to effectively deliver its mission as a whole.

43. We submit that this would not be a desirable outcome for either the Government or the broader community, both of whom benefit from the synergistic effect achieved by entities working as part of a broader charity.

44. We submit that consideration be given to expanding the definition of entity in the proposed definition to accommodate the concept of groups of entities forming part of broader charities. This proposal is similar to the introduction of GST religious groups to deal with the problem arising under GST legislation.

45. Further, the concept of grouping separate legal entities for tax purposes and determining the status, or business, of the group on a whole of group basis rather than an individual basis is not without precedent in current tax law. The concept of the 'single entity rule'[11] for income tax consolidation purposes and its application to the 'same business test' for loss recoupment purposes considers that the business of the group is determined by reference to the activities of the group as a whole, rather than the activities of the discrete entities within the group.[12]

46. On this basis, provided the entity-grouping as a whole is able to be characterised as a charity, then each of the constituent entities comprising the group should be regarded as a charity by virtue of its membership of the group.

47. Provided the membership criteria for groupings of charitable or religious entities were clear, the potential savings in administrative costs for the broader organisation and also the ATO would be significant. Fundamentally however, we submit that the ability of entities within large and complex charities to group for the purposes of considering their charitable status as a whole is justifiable on the basis that, in almost all cases, the structure of the broader organisation was established well before the concept of entity was imposed on such organisations for tax purposes.

48. It would be important that the inclusion of an entity within such a group did not preclude the entity from being assessed in its own right for the purposes of obtaining, as appropriate, endorsements for specific tax concessions such as DGR endorsement and the proposed FBT exemption endorsement.

Harmonisation and rationalisation of federal and state tax regimes

49. A review of Australia's tax system as it relates to charities must address the interaction between Federal and State regimes. The State based tax regime is complex and inconsistent, presenting particular difficulty for those charities providing services across State borders. Even for those operating within a single State like the Diocese, charities have to negotiate exemption arrangements with the State revenue bodies that are variable from State to State, creating inequality in the treatment of charities operating in different States of Australia.

50. Exemptions for State taxes differ depending on the tax being imposed. To use the example of NSW, the organisations and activities for which exemptions are available under the *Duties Act 1997 (NSW)*[13] and *Payroll Tax Act 2007 (NSW)*[14] differ from each other and also from the *Income Tax Assessment Acts* (ITAA 97 and ITAA 36) (**ITAA**). An organisation that may be considered to be a charity under the ITAA may not also fall within that definition under either of the above mentioned acts. Further, the compliance requirements for the availability of the exemptions differ under the different regimes, such as Income tax which relies on endorsement by the ATO, and the Stamp Duty exemption in NSW which relies on approval of the exemption for each transaction undertaken by the organisation that involves the transfer of dutiable property.

51. This discrepancy of application and treatment creates high levels of uncertainty for charities and increases compliance costs for these organisations. Further, different regimes existing in the States of Australia results in inequitable treatment of like transactions or activities in different States.

52. Harmonisation and rationalisation of state and federal regimes would reduce compliance costs considerably and lead to improved efficiencies and equities across the sector. This may be achieved through a common endorsement program such as an independent charities commission which should be responsible for liaising with the different State and Federal taxation bodies to ensure a consistent approach is adopted.

FBT Arrangements

53. It is proposed that the current structure of FBT arrangements is reviewed and improved for equity and simplicity.

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[11] Section 701-1 *Income Tax Assessment Act 1997*

[12] Taxation Ruling TR 2007/2

[13] See extract in Appendix 2.

[14] See extract in Appendix 2.

54. FBT concessions and exemptions are an important component in the financial viability of charitable services enabling the provision of a significant level of services that would otherwise be curtailed. Currently, in respect of the Diocese and other religious institutions, fringe benefits are exempt where provided to a religious practitioner in relation to their pastoral duties or their study and teaching of their beliefs. Responsible limits are adopted by the Diocese and most religious institutions in the application of this exemption.

55. In addition to the "base-line" FBT concession treatment that would attach to a TCC endorsement under the scheme for charitable groups referred to at paragraphs 38(a) above, the FBT regime would be further improved by the introduction of a scheme whereby group registrations were also available for FBT exemption treatment (such as the scheme for 'group rulings and exemptions' in the US). This would enable smaller charitable bodies which are affiliated with a central organisation to be recognised for the purposes of a group registration.[15] This would also enable an efficient system of affiliated organisations within the same existing accountability structure to operate with a single registration and endorsement process. At present these entities are required to separately be endorsed, and under the current system these entities are seen in isolation instead of as part of the whole. Such group treatment is already available with GST registration, as is the exemption for affiliated religious institutions under the *Charitable Fundraising Act 1991 (NSW)*.

17 October 2008

[15] Although without requiring consolidated accounting.

Appendix 1 – Background to the role of the charities sector

1. Prior to the Second World War, social services in Australia were almost entirely delivered by charities: importantly if you go back even further to the foundations of white settlement in NSW, the Benevolent Society was established in 1813 and is the oldest, if not the first, charity in Australia.

2. Originally established as the "NSW Society for Promoting Christian Knowledge and Benevolence in these Territories and the Neighbouring Islands", its founders were from a group of evangelical Christians in England called the "Evangelical Revival" who set out in 1813 to create a public society to promote evangelism in the Pacific and benevolence in Sydney. The vision of the Evangelical Revival was of a regenerated, caring society, and their program was comprehensive. The hand of perhaps the best known of them, William Wilberforce, was clearly seen in their determination to address the needs of the poor and excluded in Sydney society.

3. The founders of the Society were keen on evangelism as much as relief of poverty and distress, but as a result of the influence of Governor Macquarie, they began to focus on the latter object (the relief of poverty and distress) – and on the colony rather than the South Pacific. So the Society was reconstructed in 1818 to focus solely on the care of the poor – in exchange for significant government financial support in the form of cash, and the building of a substantial asylum building on the road to Parramatta.

4. This was an NGO to which the principal single contributor was the government. One of Australia's foremost historians of social history, Dr Brian Dickie, puts it this way: "Here was a public voluntary society, but one in which the government was the principal, though non-voting, subscriber to the funds used to pay running costs and virtually the sole source of capital funds."

5. Wilberforce's influence could be seen also in his strong support of penal reform in the colony – and the improved treatment of the convicts: the rather enlightened "ticket of leave" system was a feature – not just a practicality in a colony without enough freeman workers – as was the insistence on a chaplain for the convicts, and Wilberforce encouraged Marsden to take up the position in Sydney.

6. Unfortunately the emphasis on Marsden as the "flogging parson" has meant he has been rather unfairly maligned (interestingly he is a real hero in New Zealand). It has also meant we have missed the significance of what was actually going on there. It was Marsden for example who convened the committee to establish the first orphanages in Sydney and Parramatta in 1800 – with some government funding as well as donations from the public – and the support particularly from Mrs King, the wife of the Governor (so much so that the charity was often referred to as "Mrs King's orphanage"). Public support dropped off in time, so in that sense the charity as an institution did not continue.

7. In fairly quick succession district nursing services started (1820), asylums opened for the poor, blind, aged and infirm (1821), maternity hospitals (1866) and the first Women's Hospital in Australia commenced (1901). In 1862, Sydney City Mission, "an unsectarian Christian organisation" began to address poverty, and soon similar missions were in Brisbane (1859) and Adelaide (1867) (these uniting recently as Mission Australia). Vincent de Paul started its services in Sydney in 1881. Homes of Peace were established to provide palliative care by charities such as the Little Company of Mary and Homes of Peace Hospitals (now Hope Health Care) which was established by the Deaconesses within the Anglican Diocese of Sydney.

8. Many of these charities were established by the Churches, or people within the Churches. Hammond Care had its origins from the social services provided by the Anglican Church at St Barnabas' Broadway where RBS Hammond was minister at the start of the 20th Century: during the Depression years his Hammond's Social Services was the largest social service provider in Sydney. It became the Diocese's social welfare arm, Anglicare Diocese of Sydney.

9. Around the country, the distribution to the poor of food and clothing, of housing relief or district nursing support or asylums for destitute children or the aged or the dying - social services - prior to the Second World War were overwhelmingly provided by parishes in the Diocese and religious based charitable institutions.

10. Our largest overseas aid and development organisation, World Vision Australia, began 41 years ago – in 1966 by Evangelical Christians from a number of denominations.

Changing role of government

11. But society generally, and in particular government's role, has changed since these organisations began. After the Second World War and, indeed, throughout the second half of the 20th Century, the State throughout the Western World took an increasing interest in the provision of social services. Jonathan Sachs (who until recently was the Chief Rabbi of the United Kingdom and the Commonwealth) refers to this as the "nationalisation of compassion". The increasing expectation was that it was up to the State, not the individual or the community group, to be responsible for social services. Charity – once needs-based now became universal entitlement. The result was that in Western countries, compassion was nationalised.[16]

12. The interesting thing is, however, that this trend to increased State involvement in social service provision differed markedly in Australia compared to the United Kingdom (and indeed Europe and Scandinavia generally) as well as the United States. In Europe these social services were viewed as "public services" delivered by the bureaucracy or government-run departments or local authorities. In the UK there was huge growth in the provision of social services through the local government authority or through local health Trusts.

13. But that is not what happened in Australia. In Australia, government took the view – in the main – that there already were charities delivering these services. It would be more effective and efficient if the increased government funding of these areas occurred through government subsidy of those existing services rather than by a replication of them through the creation or growth of government departments.

14. This decision had a profound impact on the character and nature and size of charities and non-profit organisations in Australia compared to the United Kingdom and the United States. A comparison of a table of the top US charities by income (just one indicator but a revealing one) shows that at most 25% of the top US charities are social welfare providers. The largest 25 are not predominantly focussed on human social services. In the UK about 40% of the largest 25 are providers of social service like Oxfam for emergency relief or Mencap which advocates for people with disabilities.

15. The situation is quite different if you look at Australian charities. 23 of the 25 largest Australian charities based on income are social welfare institutions, mostly religious-based. If you then exclude those that are focussed on education, they are almost all focussed upon social services.

16. The more pronounced involvement of NGOs in the provision of social services in Australia compared to the US and the UK is arguably for the following reasons –
    (a) First, in the pre-WW 2 years, when there was little involvement of government in these services, it was the charities (largely church-based) that were doing it.
    (b) Second, when the State became involved in the latter part of the 20th Century in this area of service provision, it decided in Australia (at least for domestic social welfare services) to work through the existing service providers rather than, as in the UK, establish their own infrastructure.

17. The result is that there is an overwhelming presence today of charities in the provision of social services – and these institutions are arguably some of the most efficient and effective to be found internationally.

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[16] Jonathan Sachs, The Politics of Hope, New York, 2001

Appendix 2

Duties Act 1997 (NSW)

Exemption provision for charitable and benevolent bodies

275 Charitable and benevolent bodies

(1) Duty under this Act is not chargeable on a transfer, or an agreement for the sale or transfer, or a lease, of dutiable property to, or a declaration of trust over dutiable property held or to be held on trust for, or a mortgage given by or on behalf of, an exempt charitable or benevolent body.

(1A) Duty under section 58 (Establishment of a trust relating to unidentified property and non-dutiable property) is not chargeable on an instrument that declares a trust over property held or to be held on trust for an exempt charitable or benevolent body.

(2A) Land rich duty is not chargeable on the acquisition of an interest in a land rich landholder by an exempt charitable or benevolent body.

(3) In this section –

"exempt charitable or benevolent body" means –

(a) any body corporate, society, institution or other organisation for the time being approved by the Chief Commissioner for the purposes of this paragraph whose resources are, in accordance with its rules or objects, used wholly or predominantly for –

(i) the relief of poverty in Australia, or

(ii) the promotion of education in Australia, or

(b) any body corporate, society, institution or other organisation that, in the opinion of the Chief Commissioner, is of a charitable or benevolent nature, or has as its primary object the promotion of the interests of Aborigines and if –

(i) (in the application of this definition for the purposes of subsection (1) or (1A)) the dutiable transaction or instrument is for such purposes as the Chief Commissioner may approve in accordance with guidelines approved by the Treasurer, or

(iii) (in the application of this definition for the purposes of subsection (2A)) the land holdings of the landholder are being used or are to be used for such purposes as the Chief Commissioner may approve in accordance with guidelines approved by the Treasurer, or

(c) any person acting in the person's capacity as trustee for a body corporate, society, institution or other organisation referred to in paragraph (a) or (b).

"land rich duty" means the duty chargeable under Chapter 4A.

Payroll Tax Act 2007 (NSW)

Exemption provision for non-profit organisations –

48 Non-profit organisations

(1) Subject to subsection (2), wages are exempt wages if they are paid or payable by any of the following –

(a) a religious institution,

(b) a public benevolent institution (but not including an instrumentality of the State),

(c) a non-profit organisation having as its sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose (but not including a school, an educational institution, an educational company or an instrumentality of the State).

(2) The wages must be paid or payable:

(a) for work of a kind ordinarily performed in connection with the religious, charitable, benevolent, philanthropic or patriotic purposes of the institution or body, and

(b) to a person engaged exclusively in that kind of work.

(3) For the purposes of subsection (1) (c), an "educational company" is a company:

(a) in which an educational institution has a controlling interest, and

(b) that provides, promotes or supports the educational services of that institution.

(4) For the purposes of subsection (3), an educational institution has a "controlling interest" in an educational company if –

(a) members of the board of management of the company who are entitled to exercise a majority in voting power at meetings of the board of management are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the educational institution, or

(b) the educational institution may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, more than 50% of the voting power attached to voting shares, or any class of voting shares, issued by the company, or

(c) the educational institution has power to appoint more than 50% of the members of the board of management of the company.

(5) In this section –

"educational institution" means an entity that provides education above secondary level.