The “In Australia” Bill

(Special Conditions for Not-For-Profit Concessions Bill)

The Problem

- Control of funds going off-shore is a key item of Government policy.
- International Treaty obligations.
- Taxation law is used as a control mechanism
- There are special control provisions for non-profit entities, including charities

The Present Law – since 1995

The present income tax law states that a charity "… is not exempt from income tax unless the entity is a **prescribed institution** that has a physical presence in Australia but which incurs its expenditure and pursues its objectives principally outside Australia".

Charities barred from sending funds overseas unless they are Prescribed Institutions risk losing their income tax exempt status.

Concessions in the law allow a charity to send minor part of their funds overseas

Churches rely on this concession - commonly only modest gifting

Mission agencies obtain “Prescribed” status by joining Missions Interlink as it is “Prescribed”

Unless the mission agency is “Prescribed “ its TCC endorsement is at risk

As a part of the Charity Reform Program the Government proposes major changes to these concessions.

Why?

- Australia is a party to international treaty obligations to better restrict money laundering and terrorism.

- They have been advised to tighten the legal rules as our current law is below our treaty obligations.

In August 2011 there was a proposal to change the law to meet these obligations.

The proposal was poorly drafted - It stated that "Word Investment" case was inconsistent with ATO views.

ATO knows best so the law needs changing!

The more important issue was the treaty obligations.

The WA Churches said

“The thrust of the replacement Section 50-1 and replacement Section 50-50 is that even quite modest donations from an existing TCC endorsed entity (for example a local Australian church) that go directly overseas will cause the remitting church to lose its TCC endorsement.

This has an immediate impact on its access to the GST-free charitable supply concession apart from its other implications. The present provisions of Section 50-50 enable modest contributions to be remitted off-shore without disadvantage and should, we submit, be retained".

The proposed Bill also stated that TCC and DGR entities must generally be operated for the “broad benefit of the Australian community” –

“Broad benefit” was not defined but effectively meant “charity begins at home”.

The Government were forced to withdraw the proposal and advised they would "consult further" with the Charity Sector.

When the ACNC Bills were introduced to the Parliament late in 2012 the Government, without any evidence of any further consultation, attached another Bill which was their revised "In Australia" proposals.

The Bill is stalled in the House without further action –

It appears unlikely to progress due to the Opposition and the Greens views.

However the Government treaty obligations remain so further action – perhaps a revised Bill – is expected!

This present Bill is much softer than its predecessor –

BUT - It includes provisions that require tracing the funds where money is provided from an endorsed charity to another unendorsed entity “in furtherance of its Purposes”.

Effectively an Australian charity would need to **trace** the application of the funds to test that its intended purposes are complied with.

Similar provisions are intended for DGR funds.

The Bill also would have the same impact on funds transfers to an Australian resident entity that didn't have charity endorsement.

The tensions –

- The restriction of funds that may assist terrorism should be supported.
- The present law is already complex and poorly understood.
- There is conflict with Australian Government’s commitment to the Millennium Goals.

- The two proposals seek to stifle our nations generosity to Third World countries.
- It would hinder the churches support of evangelism.
- The methodology proposed so far is cumbersome – costly - probably impossible to implement.