



The Manager
Philanthropy & Exemptions Unit,
Personal & Retirement Division,
The Treasury,
Langton Crescent
PARKES ACT 2600

10 August 2011

Email: NFPReform@treasury.gov.au

Dear Sir/Madam,

Submission re "In Australia" conditions for Tax Concession Entities

On behalf of the several Western Australian Christian denominations who are signatories to this document (see attached letters of authority) we present our united concerns regarding the proposed law, in its present form.

Add-Ministry Inc. itself exists to help equip and inform the charitable sector and because it shares the concerns now expressed it has been requested to coordinate this submission. Our involvement is across the spectrum of the charitable sector including a large number of independent churches and many charities that do not themselves have a faith charter.

In this submission we speak for the –

- Apostolic Church Australia,
- Assemblies of God in WA,
- The Baptist Churches of Western Australia,
- The Catholic Archdiocese of Perth,
- C3 Church Australia (formerly Christian City Churches),
- Churches of Christ in WA,
- Church of the Foursquare Gospel,
- IPHC Ministries (Australia), and
- Uniting Church in Australia Synod of WA.

This submission has the support of the Anglican Diocese of Perth who however will be a party to a submission by the Anglican Church at a national level.

This submission is not only on behalf of the denominations that are signatories but also on behalf of their 689 member churches, which represent more than 84,000 regular worshippers. These denominations and their local churches are actively involved in charitable and philanthropic activities both within Australia and beyond its shores, motivated by their Christian religious values and commitment.

A very significant number, if not all, of the member churches contribute regularly and substantially to humanitarian activities in developing countries. These activities are very significant in financial terms but are also expanded by the teams of workers, mainly volunteers, who travel overseas for both short and longer term engagements to work in these philanthropic activities. This is often in conjunction with other Australian and international Christian entities, but also quite frequently as local church initiatives to enable the development of accountable personal relationships which help ensure that the support and relief given is effective in the receiving culture. These philanthropic activities are part and parcel of proclaiming the Christian message and of “loving our neighbour” in practical ways because of our hope in Jesus Christ.

The activities are diverse, but include provision of medical support, education for illiterate people, the supply of clothing and food and wells for clean water. There are also training programmes established to help disadvantaged people to develop vocational skills that will enable them to be self-supporting thus breaking the poverty cycle. We contribute, as representatives of the Australian people, a significant force in compassion and care.

Also, within Australia itself, in addition to the advancement of our Christian faith, which is in itself a charitable activity, churches are regularly carrying out a multitude of other charitable acts that benefit the Australian people not only directly, but indirectly through financial support to other charitable agencies.

The Churches have joined together collectively to emphasise that the concerns expressed are substantial and they impact, they believe, on virtually every branch of the Christian community. Far wider than that, they also impact on a significant number of other non-faith charities and not-for-profit entities.

Our concerns of principle are that the proposed changes are:

- Contrary to Australia’s commitment to the Millennium Goals, and to the overall thrust of Australia’s overseas aid policy.
- Inconsistent with the generous nature of the Australian people who are reaching out in so many philanthropic ways, not only through overseas aid entities and Prescribed Institutions , but very significantly through charities that are not themselves Prescribed Institutions.
- Eroding the rights of the individual Australian citizen to help his neighbour who is in need through the making of donations to Tax Concession Charity (TCC) endorsed entities who give both emergency relief and development aid support to charities working in developing countries.
- Contradicting our nations expressed stand as a multi-cultural society by the introduction of barriers for those Australian residents of a different ethnic origin who seek to give philanthropic support to people in their country of origin – thus adding to their feeling of being second-class citizens here.

We also express our concern about the timing of these proposed changes to taxation law, coming as they do so soon after the announcement of the establishment of the Australian Charities and Not-For-Profit Commission (ACNC) and other reforms planned for the charitable and not-for-profit sectors. We consider these are matters that properly come within the role of the new Commission and should be delayed until the Commission is fully operative and able to fully consider the implications to the charitable sector.

Our concerns of detail are:

1. There is a lack of certainty in respect to the continued standing of the Prescribed Institutions under present Section 50-50 (2) (c) and (d), in particular under (d). Currently a significant portion of the philanthropic support from churches is channelled through such entities in addition to their support through approved Overseas Aid Organisations. The availability of tax deductibility to the original donor, while beneficial, is often of less significance than the making of a combined effort as a Christian community to a people who are significantly disadvantaged. From our review of the proposed legislation it is clear that entities currently TCC endorsed may lose their TCC status under the Prescribed Institution provisions.

Also, the requirement in Section 50-50 (3) (a) and elsewhere in the draft Bill that an entity must at all times comply with its governing rules is expressed in such an absolute way that it is a draconian provision. It is saying that even a minute breach that is promptly rectified would disqualify a charity from TCC endorsement. Constitutional documents are in themselves subject to change, and so are the laws relating to them. Currently the Associations Incorporation Act WA is being reviewed with the changes expected to be presented to the WA Parliament later this calendar year. It will require almost all constitutions of the more than 17,000 associations in this State to be amended. Such action cannot happen overnight, so the impact in this State alone will be major. We understand that many of the other States have also been changing their laws, presumably with a similar effect.

It also seems singularly inappropriate for taxation legislation to be used as a regulatory tool in an area which is properly the role of another administrative body. Currently Corporations Act, in Section 1322, provides a procedure in respect to minor breaches, and this, we consider, is the appropriate place for such regulatory control. It is highly probable that the draft amendments to the Associations Incorporation Act in WA will contain similar provisions, giving the department charged with the administration of that Act similar discretionary authority.

It is also our understanding that with any taxing legislation, whether State or Federal, there is consistently a discretionary power granted to the acts administrator in respect to minor matters.

Recommendations:

- a) Change the provisions to ensure the preservation of the Prescribed Institutions provisions.
 - b) Substantially soften the effect of Section 50-50 (3) (a) to ensure an entity complies with its Objects and also to provide for remedial provisions.
2. 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.

Further, the requirement proposed that TCC endorsement will be conditional upon not donating money to any other entity unless they are an exempt entity. This is a denial of the whole purpose of philanthropy. Section 960-100 identifies "entity" as including individuals. Philanthropy is defined in the dictionary as being "benevolence towards one's fellow-men".

The proposed changes, if brought into law, would ensure that the charter of many, perhaps most, charities would automatically deny them TCC endorsement. It appears to deny the whole purpose of the TCC exemption provisions.

Recommendation: Either remove or substantially change the last dot point in Section 50-1 and also Section 50-50 (2) (c) to retain the present effective benefits, and enable charities to continue to provide benevolent support to their fellow men, whether it be physical, emotional or spiritual support.

3. The proposed repealing of Section 50-75 appears to remove the continued availability of TCC endorsement of many charities that operate solely to support philanthropic and/or Christian ministry activity overseas (which support is mainly in developing countries). A major source of funds for such entities is from gifts of support from Australian churches, yet a gift by a church to such an entity that is no longer TCC endorsed will apparently cause the donor church to also lose its TCC status. In many cases the donors making the donation do so in contemplation that the money may be donated to appropriate causes in this manner (for example members of a church congregation giving to the general purposes of the church do so in the knowledge that the money received by the church will be used more broadly than the administration and direct activities of the church – but rather will be used to support organisations and people in need as a part of the world-wide church.) If this becomes the result of the law changes it will produce a significant detrimental impact on the funding of philanthropic activity for the whole sector. The Explanatory Memorandum does not give any reason for this proposed change.

Recommendation: That Section 50-75 be retained without change so that gifts and government grants will continue to be disregarded in determining the TCC status of an entity.

4. Monies received by a charity by way of donation, for which no tax deduction has been claimed, should be free to be donated to appropriate causes that may or may not be income tax exempt in Australia. However if Section 50-75 is removed the provisions of Section 50-50 (2) (c) as currently proposed present an absolute bar to such activities even within Australia, and effectively prevent a charity carrying out any charitable acts at all – thus preventing it functioning as intended under its Objects.

Recommendation: Section 50-75, which needs to be retained, should specifically apply to the application of Section 50-50 (2) (c) to provide that gifts and government grants are to be disregarded when determining whether an entity has made a donation to another entity that is not income tax exempt.

5. The definition of a “not-for-profit entity” in new Section 995-1(b) is worded in such a way as to prevent distribution of profits or assets to members. This has significant and presumably unintended consequences that will prevent the distribution in a winding up of the surplus assets to another charity – which is the normal and effectively only arrangement for a charity. Clarification is needed as to what is to happen in such a circumstance – especially if the entity being wound up is a Deductible Gift Recipient (DGR). It will also prevent a re-structuring by way of merger, or the creation of a “subsidiary” related entity. This will be a significant impediment to the development of the whole Not-For-Profit Sector to the disadvantage of the Australian people.

Recommendation: That the definition be modified to ensure that a distribution, whether in a winding up or for some other purpose, to another entity that is consistent with the Objects of the entity making the distribution is for an approved purpose.

The definition in fact is creating a new definition for a Not-For-Profit entity that is significantly different to its present accepted meaning in other existing State and Federal laws. The lack of the words “except in good faith in the promotion of the Objects, or for the provision of services actually rendered” (or similar words) is a significant obstacle. We believe the proposed definition needs to be significantly revised.

Recommendation: That the wording be changed to remove the words “particular entities” and make such other changes as are needed to ensure that the section is more consistent with the commonly accepted meaning of “not-for-profit”.

6. The Explanatory Memorandum states that TCC and DGR entities must generally be operated for the “broad benefit of the Australian community”. This “broad benefit” phrase is not explained, but the draft Bill is imposing such significant restrictions on the Sector as to make it clear that the changes will in fact be detrimental to the whole intent of philanthropy – not beneficial to the Australian community at all. Refer here to our concerns of principle.

Recommendation: That the term “broad benefit of the Australian community” be substantially clarified, taking into account the commitment of the Australian people and of the Australian Government to the needs of disadvantaged people in developing countries.

7. It appears that the likely result of the proposed changes is that a large number of entities that currently have TCC endorsement will lose that status. As a consequence they will need to lodge Income Tax returns and will be subject to the payment of Income Tax on their non-mutual income. While most charities will have modest or no net income when donations are excluded, and therefore will have some relief under the mutuality provisions of tax law the loss of TCC endorsement for a charity with real estate introduces a significant Capital Gains Tax (CGT) hazard where there is a property re-arrangement. For instance, a Capital Gains Tax event will occur with the loss of TCC endorsement. As a minimum this will require a property to be valued to determine its CGT cost base. A subsequent sale of that property will require tax to be paid on any assessable gain. Many charities and sporting clubs have substantial property assets but modest income. As such they would not have the resources to meet such a tax liability. It appears this would be an unintended consequence of the draft laws.

Recommendation: That provision be made in the legislative changes to grant an exemption from CGT liability in such circumstances.

8. The proposed laws, as currently worded, ban the making of donations to entities that are not exempt which, as earlier stated, includes individuals. It appears that for even just one such breach an entity will lose TCC endorsement and will not be eligible to re-apply. Similarly the requirement to comply at all times with the governing rules of the entity is also absolute. We can see no provision for remedying such breaches, and as such we submit the provisions go further than they should and need to be softened substantially. There should be a de minimis provision included in the draft Bill.

Recommendation: That provision be made to allow the Commissioner a discretion in respect to minor breaches to not impose the penalty of loss of TCC endorsement, and also that provision be made for an entity to re-apply after demonstrating it has addressed the issues that have caused the breach.

We respectfully ask that some major changes be made to the proposed Bill to ensure that the Not-For-Profit Sector can continue to make a significant contribution for the broad benefit of the Australian community, as the Bill in its present form will, we believe, produce the contrary result. As it stands the proposed Bill promotes an insular attitude within the Australian community, when global tragedies of starvation, poverty and distress are being brought to our attention daily through the media.

This submission is supported by the confirming letters, now attached, of the Churches named in the letter.

Yours faithfully,

N E HARDING
Chairman