



11 August 2011

SUBMISSION

Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

BY EMAIL: NFPReform@treasury.gov.au

EXPOSURE DRAFT – 'IN AUSTRALIA' SPECIAL CONDITIONS FOR TAX CONCESSION ENTITIES

Dear Manager

Interested Party Details

1. This submission is made by Australian Christian Churches.
2. The Church comprises 1076 individual churches throughout Australia involving around 225,861 individual members.
3. The Church applauds the published intention of the measures but considers there are unintended consequences exposed in certain provisions of the draft legislation.
4. We write to inform you of the impact these provisions will have upon the local and overseas mission (including the relief of poverty) of our churches and, undoubtedly, thousands of other churches in Australia.

Overseas mission

5. Our churches are endorsed tax concession charities under Item 1.1 in the Schedule to Sec 50-5 of the *Income Tax Assessment Act 1997*.
6. Most of our churches conduct, in one form or another, overseas Christian missionary programs.
7. It should be noted that funds applied to overseas missionary programs from our churches are received from donations by church members after they have already paid tax on their income.
8. These programs do not involve donations in respect of which a tax deduction has been obtained in any way. Whilst there is a significant secondary aid outcome to the particular arenas the primary purpose has always been Christian mission.

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9. The programs have proceeded either under the allowance of Sec 50.75 (which is to be repealed under the new measures) or by affiliation through a prescribed institution under the provisions of Sec 50-50(d) which does not have any equivalent in the exposure draft.
10. Whilst there is provision (in proposed Sec 50-51(3) for a foreign resident to be prescribed in regulations along the lines of former Sec 50-50(c), there is now no provision equivalent to the old section 50-50(d) relating to a prescribed institution that has a physical presence in Australia but incurs its expenditure and pursues its objectives principally outside Australia.
11. In the proposed measures we see that Trade Unions are excluded¹ from the application of Sec 50-50 (2) and foreign residents may be prescribed. The church in Australia will not enjoy the benefits afforded to Trade Unions nor have the opportunity to be prescribed as foreign residents will have.
12. We cannot understand how this is consistent with the stated goals for the measures.
13. The ambit of the overseas missionary program of most of our churches would most certainly not amount to "pursuing its objectives principally outside Australia" as most missional endeavor is in Australia. This would, however, be the case for our dedicated overseas missionary department.
14. The failure to allow for prescribed institutions pursuing objectives principally outside Australia means every overseas department of an evangelical denomination in Australia will fail to qualify for exemption.
15. Whilst our many individual churches pursuing their own overseas missions programs will not fail due to the omission of a provision similar to existing Sec 50-50(d) these activities will now fail due to the operation of the proposed Sec 50-50(2)(c). They will not be allowed to donate money to any other entity (including a missionary individual or group) as, by their very nature, the overseas entities to which missionary funds are provided will never qualify as an "exempt entity" within the meaning of the section.
16. Because the definition² of "entity", as the term is used in proposed 50:50(2)(c), includes an individual, it means that any of our churches wishing to support one of their number going overseas for missionary work will now lose their exemption status.
17. We will no longer be able to support indigenous churches in other parts of the world to spread the Christian gospel.
18. Surely these consequences are not intended.

¹ Proposed Sec 50-51 (2)

² Sec 960-100 ITAA 97

Impact on local charitable work

19. Whilst our churches do not seek DGR status as Public Benevolent Institutions to attract tax deductible giving for the relief of poverty, misfortune, helplessness etc they all, to some considerable extent, operate to provide such benevolent relief whether this information is statistically available to you or not. This relief, though unheralded, is integral to the mission of the Church and, in our submission, is statistically significant to the state.
20. It is a matter of plain interpretation to forecast that the ability of a church to, amongst other things, give a donation to a needy person ("entity"), except at the risk of loss of exempt status on the basis of proposed Sec 50-50 (2) (c), will be lost.
21. It is not reasonable for the state to assert, on the basis of the structure of exemption legislation, that relief of poverty is only a function of society to be supported through an endorsed PBI and not through a church. Relief of poverty is, and always has been, integral to the church and the proposed measure will, in our submission, remove its ability to lawfully do so if it wishes to maintain its exemption.
22. Surely this consequence, too, is not intended.

Summary

23. We can see the reasoning behind the proposed measures but, for the reasons given above and in the ways indicated, the inclusion of proposed Sec 50-50 (2) (c) in its current form, and the exclusion of the previous Sec 50-50 (d) provision, will seriously damage the lawful charitable ends of our churches, namely the advancement of religion.
24. On the one hand, the law will continue to theoretically declare that the advancement of religion is a legitimate charitable purpose, but on the other hand these measures in particular will deny the churches the capacity to outwork the purpose and thus render it practically illegitimate in Australian society.
25. We suggest a provision with a similar effect to the previous Sec 50-50 (d) be included in the measures.
26. We also suggest proposed Sec 50-50 (2) (c) be amended to read as follows

"(c) except for charitable purposes (whether or not within Australia), not donate money to any other entity, unless the other entity is an exempt entity"

Yours faithfully



SEAN STANTON
National Secretary