



**Compassion Australia submission on the Tax Laws  
Amendment (2012 Measures No. 4) Bill 2012: tax exempt  
body “in Australia” requirements**



## **1 Introduction**

1. Compassion is an international Christian child development and child advocacy ministry committed to working in partnership with local churches around the world to foster the economic, social, physical, spiritual and emotional development of children living in extreme poverty in over 26 developing countries. It undertakes work in Australia. In Australia it operates as a PBI in its own right and also conducts a necessitous circumstances fund. For the purpose of its overseas aid work, Compassion Australia operates an Overseas Aid and Development Fund. Compassion Australia is also income tax-exempt.
2. Compassion Australia currently has over 72,000 supporters and over 97,000 beneficiaries throughout the developing world. Whilst some funds received are directed to particular children, projects or purposes, sometimes when funds are received they are not received as directed to a particular object and so it is possible for Compassion Australia to bank the funds, issue a deductible receipt as a PBI and then apply the funds as may best be consistent with its purposes.

Whilst most of the funds received by Compassion Australia is by way of donations for which a tax deductible receipt is issued, not all of the income for Compassion Australia is received in that way. Funds are received for which a tax-deductible receipt is not required.

3. Compassion Australia is an Australian company limited by guarantee but operates as a part of an international network known as Compassion International.
4. Compassion Australia has not received any government funding.
5. The board of Compassion Australia serves on an entirely voluntary basis.

## **2 Scope of this submission**

6. This submission is in response to the revised exposure draft 'Tax Laws Amendment (2012 Measures No. 4) Bill 2012: tax exempt body "in Australia" requirements' with particular reference to sections 30-18 (1)(a) and (b), 50-50 (2)(b), 30-18 (3), and 50-50 (4).

## **3 Issues of Concern**

7. In regard to Section 30-18 (1)(a) and (b) which states:

*30-18 Fund, authority or institution must operate in Australia*

- (1) A fund, authority or institution satisfies the conditions in this section if:*
- (b) it operates solely in Australia; and*
  - (c) it pursues its purposes solely in Australia.*

and Section 50-50 (2)(b) which states:

- (2) The entity must:*
- (b) pursue its purposes principally in Australia*

We feel this does not adequately take into account some organisations structures and activities. For example, an organisation which is endorsed as a PBI that also has an approved Overseas Aid Fund (OAF) with DGR status attached. This OAF deems that funds directed through it satisfy section 50-50 (2)(b) under section 30-80 (international affairs deductible gift recipients). For certain reasons specific to that organisation, such as the administration of a Leadership Development Program or through receiving undesignated donations through a bequest, they are unable to channel all funds designated for overseas through that OAF and do not issue tax deductible receipts for them. As some of these funds still may be directed for overseas use in accordance with the stated purposes of the organisation and in accordance with the purposes for which they were raised, these funds come under the organisations PBI status and so would be technically required to comply with the pre-mentioned sections 30-18 (1)(a) and (b), and 50-50 (2)(b). These proposed sections would make these funds non-compliant with section 50-50 (2)(b) as they are designated for overseas distribution.

8. We recommend that provisions be made for charitable organisations so that funds designated for overseas use would not be subject to the 'in Australia' special conditions if those funds are for benevolent purposes such as leadership development and the relief or alleviation of poverty even if these funds are not able to be channelled through an OAF. These funds still must be able to be applied according to their purpose and the purpose of the organisation.
9. In regard to section 30-18(3) which states:

- (3) If a deductible gift recipient gives money, or property to another entity that is not a deductible gift recipient, take into account the use of the money or property by that other entity (or any other entity) when determining whether*

*the deductible gift recipient satisfies the requirements in paragraphs (1)(b) and (c).*

and Section 50-50 (4) which states:

*(4) "If an entity gives money or property to another entity that is not an exempt entity, the use of the money by the recipient (or any other entity) must be taken into account when determining whether the first mentioned entity satisfies the requirements in paragraph (2)(a) and (b).*

We feel this section fails to account for the structure of some charities and the fact that funds raised must be applied for their purpose. For example, the Australian arm of an international charity that operates principally in Australia however conducts programs and distributes funds raised to beneficiaries via the international headquarters located overseas.

10. We recommend that if the Australian arm has representation to the international headquarters which provides them with visibility and influence over the use of these funds, and the funds are distributed and used in accordance for the purposes for which they were raised, we feel that these cases should be exempt from the 'in Australia' special conditions.
11. Compassion Australia understands the need to ensure that funds are not applied to terrorist purposes and also to ensure the charity is not being used in money-laundering. This proposed legislation seems, though, to create burdens which are far in excess of that needed to ensure that Compassion Australia and other charities properly apply donated funds to their charitable purposes. Compassion Australia is part of an international network of organisations pursuing the same purposes. We have confidence in our international arrangements and our board visits projects to ensure that our purposes are being carried out. We are concerned that the obligations to follow the effective implementation of funds when we have no reason to doubt that they are already being properly applied will simply add to the cost of service delivery and thus reduce funds available to some of the world's most needy children. Put simply it is difficult to see how this proposed change to the law will work in practice. It would seem to require substantial change to our present practice but it seems impossible to assess how much change Compassion Australia will be required to make it to satisfy this legislation if it becomes law. As our board is entirely voluntary and understandably risk averse they will wish to know what they must do to comply with this legislation and it is not possible at this time to give them clear guidelines. It is our understanding that there has not been any link

established between Australian charities and international terrorism. It is therefore not immediately apparent why general antiterrorism and money laundering legislation applicable to both business and the charity sector is not sufficient and why it is necessary to amend this particular part of this legislation focused on charities such as Compassion Australia to increase the burden on organisations such as ours - which will ultimately be borne by the world's most needy as their funds are taken to comply with seemingly uncertain and possibly unnecessary Australian legislation.

12. We are also concerned that definition of "not-for-profit" entity will prohibit us transferring funds received generally from our public benevolent institution to one of our deductible funds as the funds are conducted, arguably, for different purposes than the PBI.
13. We are concerned that the proposed amendments seem to impose considerable administrative burdens and may significantly curtail the flexibility of Compassion Australia in the pursuit of its purposes. These can only lead to increased costs of administration particularly through the need for excessive legal advice and management of accounting procedures. We are also concerned that minor breaches of the proposed new legislation could lead to the loss of income tax exemption or income tax deductibility. It seems to us, for example, that if Compassion Australia were to send a small sum such as \$100 overseas without sending it through the Overseas Aid and Development Fund, income tax exemption and income tax deductibility might be lost.

As not all donations to Compassion Australia require the issue of a tax deductible receipt we query why it should be necessary to manage such funds as if they were deductible funds received for particular purposes. In any re-draft of the legislation we submit that Compassion Australia should be free to deal with such funds as it sees fit provided it complies with its stated purpose as a Public Benevolent Institution. In particular Compassion Australia should be able to transfer its funds overseas without necessarily complying with the requirements of its Overseas Aid Fund obligations. This can be particularly important for the purposes of pursuit of spiritual or administrative purposes which might be consistent with the overall objectives of Compassion Australia but outside of the guidelines of AusAID. For example, Compassion Australia distributes funds overseas for the purposes of our Leadership Development Program which come under our whole-of-entity PBI status and for which tax deductible receipts are not issued. This proposed legislation would have significant implications to our ability to continue this program which provides crucial support for future leaders in developing nations. It would seem in

the interests of the Australian government to allow these programs to continue as beneficiaries are aware support comes from Australian sources. In the government's pursuit of anti-terrorism measures, programs such as these can only assist this initiative as recipients display considerable support and cooperation with Australian initiatives.

Building on the earlier point, it must always be remembered that Australian donors can very easily contribute internationally through PayPal or direct transfer of money. It would seem to be in Australia's interest for those funds to be funnelled through Australian NGOs such as Compassion Australia rather than sent directly to other countries. If the regulatory regime imposed upon Australian NGOs places international NGOs at an advantage over Australian NGOs then Australian donors, particularly the larger substantive donors, will make donations directly, particularly in situations where a tax deductible receipt is not necessary. There will also be further pressure on NGOs with an international dimension, such as Compassion Australia, to transfer administration to jurisdictions where the legal and administrative burden is lower to further save costs. This pressure is particularly acute for Australian NGOs with the high Australian dollar and comparatively high remuneration structures. There is already considerable pressure on overseas aid organisations like Compassion Australia to demonstrate low administration costs. Forcing administration offshore would have consequences for employment in Australia. These less direct consequences for heightened legal and administrative burdens should be borne in mind in the context of this review.

14. The current FBT arrangements are an important part of our salary packaging. They are a significant factor in enabling us to retain quality staff at comparatively modest incomes compared with the commercial market for their skills. That in turn is integral to our keeping our administration costs low as a percentage of total gifts. Keeping administration costs low as a percentage of total gifts is a critical issue for our donors. Consequently any adverse interference with these FBT arrangements is likely to not be well received by our donors, and certainly not by staff in this sector. Given the very tight timetables in which we have been required to respond it is not possible for us to accurately assess the implications of all the proposed changes on our fringe benefits tax arrangements but we have identified this as an area of possible concern and raise it for Treasury to ensure that there are no unintended adverse consequences.

#### **4 Conclusion**

15. Compassion has strong concerns regarding the proposed changes to legislation that it may in fact inhibit the activities of organisations working to alleviate poverty



abroad. We request that any proposed changes do not inadvertently negatively impact on the world's poor.