



The Fred Hollows
Foundation

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14 May 2012

Manager
Philanthropy and Exemptions Unit
Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: NFPReform@treasury.gov.au

Dear Sir/Madam

***Re: Exposure draft legislation on the 'in Australia' special conditions
for tax concession entities***

I write on behalf of The Fred Hollows Foundation to express our deep concern about elements of this revised Exposure Draft. While we appreciate that Treasury has addressed some of the problems in the first draft raised by ourselves and others in the international development sector, three significant matters remain that that will have a serious deleterious impact on The Foundation if not corrected.

As background, the objects of The Foundation are to end avoidable blindness in developing countries and to improve Indigenous health. Given this two-fold object, we differ from many other international development agencies in that we conduct programs both in Australia and overseas.

To date the Australian Government has supported this dual focus to our work – both through direct grants and through tax concessions. The Foundation has whole-of-organisation Deductible Gift Recipient (DGR) endorsement as a Health Promotion Charity (HPC) as well as two DGR endorsed funds – an Overseas Aid Fund and an Aboriginal Fund.

Our main concern is that, as currently drafted, the proposed legislation puts our whole-of-organisation DGR status at risk – precisely because we operate both in Australia and overseas.

The main problem resides in the drafting of Section 30-18 which first sets out the basic rule for entitlement to DGR endorsement (that a fund, authority or institution must be established in Australia, operate solely in Australia, and pursue its purposes solely in Australia), and then provides some exceptions to this rule.

While sub-Section 30-18(4) allows our Overseas Aid Fund to continue to receive DGR endorsement, our *whole-of organisation* DGR endorsement is still governed by 30-18(2) which specifies that an institution (as distinct from a fund) will fail to meet the ‘in-Australia’ test unless its overseas activities are merely “incidental” or of “minor importance” in comparison to its activities in Australia. This is an activity based test that The Foundation as a whole can neither meet nor should be expected to meet.

The actual if not the desired impact of this provision is that The Foundation will *either* lose our whole-of-organisation DGR status *or* be forced to abandon the second part of our mission (working in Australia to improve Indigenous health). We submit that neither of these outcomes is desirable within the Government’s own policy framework.

- Losing our whole-of-organisation status would add enormously to the administrative complexity of our organisation. It would run counter to the Government’s commitment to reducing unnecessary red tape and administrative burdens on all Australian businesses – including not-for-profit businesses such as our own. It is important to understand that it was precisely to streamline our internal administration systems that we applied for and received whole-of-organisation DGR status in 2011. It allows us to issue receipts whether for deductible or non-deductible gifts in the name of The Fred Hollows Foundation and deposit them in a central operating account. We can then transfer funds as required to our Overseas Aid Fund at which point they are handled in accordance with the specific rules that apply to that Fund. This is administratively a much more efficient system and one that actually aids our compliance with the rules.
- Abandoning our work in Indigenous communities would not only breach our own constitution but would mean The Foundation could no longer contribute to the Government’s policy goals in the Indigenous health sphere.

We trust that Treasury will agree that both these options are unpalatable. We believe that neither will be necessary if a simple amendment is made to Sub-Section 30-18(2) by adding a new paragraph (c) so that it reads:

“(2) Despite subsection (1), a fund, authority or institution that operates or pursues its purposes outside Australia does not fail the conditions in paragraphs (1)(b) and (c) if:

- a) its activities outside Australia are merely incidental to its activities in Australia; or
- b) its activities outside Australia are minor in extent and importance when considered with reference to its activities in Australia; *or*
- c) ***its activities outside Australia are performed through a fund, authority or institution covered by section 30-80 (international affairs deductible gift recipients).***

We also see a problem with the current wording of Sub-Section 30-18(3) which seeks to ensure that a DGR endorsed entity is responsible for how its funds are used when it gives money to another organisation. We appreciate the fact that the new wording is an improvement on the first draft which

restricted deductible gift recipients to giving money or property only to organisations that also hold DGR status. This is no longer the case. However as currently worded, two problems remain.

- First, this sub-section applies to *any* money which is given by a deductible gift recipient to any other organisation. We believe this is over-reaching and request that the ambit of this sub-section be limited to *deductible monies*.
- Second, as currently worded, this “look through” test has no horizon. There seems to be no limit to how far an entity must go in tracking the use to which any of its funds are put. We submit that this is completely unrealistic from a practical point of view. Again it seems to be over-reaching in terms of Treasury attempting to overcome the problems it believes are caused by the High Court’s ruling in the Word Investments case. We request that some sensible limit be placed on the obligation imposed in this Sub-Section, as well as in the similar Sub-Section 50-50(4) for the purposes of income tax exemption.

In conclusion, as an agency that is AusAID accredited and certified as compliant with the stringent ACFID Code of Conduct, The Foundation is fully in agreement with the need to ensure that any funds that attract a tax concession should be properly expended and not misused. However we believe that the drafting problems we have identified in this submission do nothing to assist this valid public policy goal. To the contrary, they will only add administrative complexity to the operations of organisations such as our own and are more likely to hinder compliance rather than assist it. We therefore trust that our recommendations will receive serious consideration and that the problems we raise will be rectified in the final legislation that is submitted to Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read "E. Hounslow", with a horizontal line underneath.

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Deputy CEO

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