

## Submission to the Australian Charities and Not-for-profits Commission (ACNC) Review Panel

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### Special conditions in Division 50 of the *Income Tax Assessment Act 1997*

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- 1 This submission is made on behalf of the non-government members of the Australia Taxation Office Not-for-Profit Stewardship Group named below.
- 2 The Stewardship Group was established to foster strategic discussions about the major issues affecting not-for-profit organisations and their representatives with key stakeholders from the charity and not-for-profit community. The group includes members that represent a broad spectrum of not-for-profits.  
  
The government participants in the Group include representatives of the Department of Treasury, the ATO, and the ACNC.
- 3 The Group established a working group of its members some time ago to examine concerns raised by the sector in relation the operation of the special conditions in Division 50 of the *Income Tax Assessment Act 1997*.
- 4 The relevant special conditions were enacted, with effect from 1 July 2013, in *Tax Laws Amendment 2013 (Measures No 2) Act 2013*. The conditions require that an entity:
  - comply with all the substantive requirements in its governing rules (the **governing rules condition**); and
  - apply its income and assets solely for the purpose for which the entity is established (the **solely condition**).The special conditions must be complied with if the income of the entity is to be exempt from income tax.
- 5 The working group has discussed the issue several times. It considers the special conditions unduly complex and administratively difficult to apply, and create uncertainty for the sector which will result in unnecessary red tape compliance obligations.
- 6 The attached submission from the Law Council of Australia to Treasury dated 19 October 2016 outlines a number of concerns with the special conditions and recommends a number of significant legislative changes.
- 7 However, by way of compromise and with a view to minimising the legislative changes, the non-government members ask the panel to recommend only the following changes:
  - (a) the repeal of the **governing rules** condition for registered charities;
  - (b) the amendment of the special conditions applicable to both registered charities and other not-for-profit entities, so that the **solely condition** will not be breached where income or assets are applied for purposes or activities that are incidental or ancillary to a purpose for which the entity is established; and

- (c) removal of the guillotine-like operation of the special conditions for minor, unintended and remediated breaches by registered charities or other not-for-profit entities and the inclusion of a Commissioner's discretion in relation to the application of the special conditions.
- 8 The government members of the Stewardship Group reserve their views, but I understand the ATO accepts that the recommendations if implemented would be administratively workable to it.

Please let me know if you would like any amplification of the above.



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Joe Zabar (Catholic Social Services Australia)  
Co-Chair of the Stewardship Group

Dated 27 March 2018

**Non-government members of the Stewardship Group supporting this submission**

Robyn Ayres (Arts Law Centre)  
Jennifer Batrouney (Law Council of Australia)  
Phil Butler (Australian Institute of Company Directors)  
John Emerson (Herbert Smith Freehills)  
Nunzio Giunta (Giuntabell)  
John McIntosh (Salvation Army)  
Myles McGregor-Lowndes (Australian Centre for Philanthropy and Nonprofit Studies, QUT)  
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