



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

Restating and standardising the special conditions for tax concession entities (including the 'in Australia' conditions)

It has been brought to NHMRC's attention that there are strong concerns by the Australian Association of Medical Research Institutes (AAMRI), Research Australia (RA) and individual Medical Research Institutes (MRI) about the impact of international research collaboration, the quality of their research and their financial security. NHMRC understands that many of these organisations, including the Lowy, George, Burnett, Murdoch and Baker Institutes are considering providing submissions in their own right.

Given the NHMRC's role to support health and medical research, NHMRC seeks to briefly outline the important role of international collaboration in research, and particularly by independent Medical Research Institutes (MRI).

Research and development are important and essential to any national enterprise and health and medical research (HMR) is essential to Australia's health system. Through the support of HMR, Australia benefits by:

- policies and practices in the health system being better based on evidence, leading to better preventive strategies;
- new treatments being developed, leading to better health;
- a health system and health services that operate more effectively and efficiently;
- commercialisation of discoveries that create economic growth;
- improved health literacy that leads to better health choices and reduces costs to the health system;
- greater engagement in our region through research collaboration that leads to improved regional health, economic growth and political and social stability; and
- 21st century jobs for Australians.

NHMRC has led Australia's health and medical research effort for 75 years. The National Health and Medical Research Act 1992 (The NHMRC Act) charges NHMRC with promoting the development of individual and public health standards, fostering national consistency in health standards, supporting research and training, and fostering consideration of relevant ethical issues.

NHMRC's research strategy seeks to create knowledge, build research capacity and translate knowledge, and target research in areas of high need. Ten years from now, Australia can aspire to a health system that is firmly based on evidence gained from health and medical research. In that system:

- patients will receive care that research has shown to be effective;
- new science based therapies can overcome the ill-health burdens of today;
- public health could be strengthened by policies based on evidence of what works; and
- health costs can be contained by using public funds only for evidence based interventions and therapies.

Australia can also be an exciting place to work for talented health professionals and scientists. We can build a biotech industry from research, and we can reduce the gap in health outcomes for Aboriginal and Torres Strait Islander Australians and other disadvantaged groups.

These prospects are fundamentally based on HMR collaboration on a regional and global basis. Collaboration builds expertise more rapidly and more cost-effectively.

The purpose of NHMRC's submission on the proposed tax law amendment, *Restating and standardising the special conditions for tax concession entities (including the 'in Australia' conditions)*, is to briefly outline the role of independent Medical Research Institutes (MRI) in Australia's health and medical research sector, and advise that it appears the proposed amendment could result in unintended consequences through a reduction in legitimate international collaborative research activities conducted by MRI.

This result would be inconsistent with the Australian Government's investment in research, which seeks to deliver high quality HMR that supports the translation of HMR into clinical practice and therein realises improved health and economic outcomes for Australians.

NHMRC considers existing NHMRC administration arrangements could potentially, and should, enable MRI to satisfy the overseas exception provision in the draft amendment. This would result in the majority of MRI that are subject to this part of the *Income Tax Assessment Act 1936* (ITAA) not being affected adversely by proposed changes to the legislation. The NHMRC seeks that Treasury considers this matter with a view to avoiding adversely impacting on the legitimate international research collaboration of MRI.

Following an NHMRC Minute to Minister Butler (N11001816) in September 2011, Minister Butler wrote to Minister Shorten to bring AAMRI's concerns at that time to his attention (**Attachment A**).

NHMRC encourages Australian researchers to collaborate internationally and strengthen the quality and impact of HMR, and to contribute to global health with a particular focus on impacts that benefit the stability and health of the Asia-Pacific region, and therefore Australia. International collaboration is encouraged by NHMRC, and increasingly common to NHMRC research activity.

NHMRC funding is controlled by NHMRC-accredited 'Administering Institutions' (AI) within Australia, including MRI. In approving an MRI as an NHMRC AI, a key criterion that must be met by applicants is that the MRI must be established under Australian legislation and have health and medical research as part of its objectives.

This aspect would appear, in NHMRC's understanding, to satisfy the overseas exception proposed in the draft amendment to the Tax Act.

MRI are generally co-located with hospitals and universities and an adverse impact on international collaboration will reduce the capacity for world's-best research, increasingly based on international collaboration, to be translated into clinical practice and into best practice teaching.

There are currently 30 MRI that competitively win, on average, around one quarter of NHMRC's competitively awarded grant funding – see below.

Total Commitments Annually for New Grants - 2009-2011 Application Years						
Sector	2009		2010		2011	
	\$m	%	\$m	%	\$m	%
Government	\$1.5	0%	\$1.7	0%	\$1.9	0%
Hospital	\$3.5	0%	\$3.5	0%	\$1.1	0%
MRI	\$138.2	19%	\$233.1	31%	\$219.4	27%
Other**	\$2.8	0%	\$7.6	1%	\$3.8	0%
University	\$600.9	80%	\$514.1	68%	\$589.4	72%
Grand Total	\$746.8	100%	\$760.0	100%	\$815.6	100%

**Other generally represents Philanthropic Organisations

NHMRC research funding only provides support for the direct costs of research, however, and MRI rely on NHMRC's *Independent Research Institute Infrastructure Support Scheme (IRISS)* for a contribution to the cost of infrastructure at the rate of 20 cents for every dollar of competitively won NHMRC funding. Most MRI can ^{also access} get State Government infrastructure support funding.

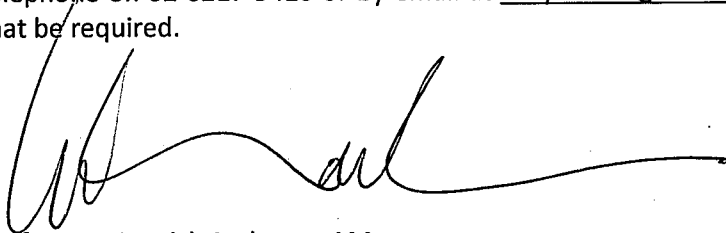
As such, MRI constitute an important part of the Australian HMR system. NHMRC seeks that Treasury consider the potential for existing NHMRC administration arrangements on the approval of AI to satisfy the overseas exception provision in the draft amendment to the Tax law. If so, this would ensure the majority of MRIs conducting legitimate collaborative international research are not affected by proposed amendments to the legislation. NHMRC would be happy to work with Treasury to help clarify the assurance that its administration could provide in support of the operation of the proposed new legislation.

NHMRC is also of the view that it would be best for Treasury to engage with individual MRI to determine the applicability of the overseas exception provision to their circumstances, in the context

of NHMRC's AI arrangements, as individual MRI have different funding and governance arrangements.

NHMRC would appreciate Treasury confirmation that the proposed legislative changes do not intend to adversely impact upon international HMR collaboration.

The contact officer for this matter is Tony Krizan, Chief Finance Officer, and he can be contacted by telephone on 02 6217 9410 or by email at tony.krizan@nhmrc.gov.au to clarify any matters, should that be required.

A handwritten signature in black ink, appearing to read 'Warwick Anderson', with a long horizontal flourish extending to the right.

Professor Warwick Anderson AM
Chief Executive Officer

16 May 2012



Australian Government
National Health and Medical Research Council

cc: MINISTER ROXON
Ms Halton
Mr Butt
Ms McDonald

RECEIVED
- 5 OCT 2011
Parliamentary Section

MINUTE TO THE MINISTER

MINISTER BUTLER

M110 26937

LETTER TO THE MANAGER, PHILANTHROPY AND EXEMPTIONS UNIT, PERSONAL AND RETIREMENT INCOME DIVISION, THE TREASURY, COPIED TO YOU

PURPOSE: To brief you and provide a recommendation regarding the letter to the Manager, Philanthropy and Exemptions Unit, Personal and Retirement Income Division, the Treasury, dated 26 August 2011, which you were copied into along with the Hon Bill Shorten MP, Assistant Treasurer and Minister for Financial Services and Superannuation and Senator, the Hon Kim Carr Minister for Innovation, Industry, Science and Research.

ISSUE:

- 2. The President of the Association of Australian Medical Research Institutes (AAMRI), Professor Julie Campbell, copied you in to her letter dated 26 August 2011 at Attachment A.
- 3. The letter expresses concern about the possible unintended impacts of proposed tax laws amendment on the deductible gift recipient (DGR) and income tax exempt status of Medical Research Institutes (MRIs).
- 4. Professor Campbell's letter further suggests that uncertainty about the DGR and income tax exempt status of MRIs may adversely affect their financial security.

BACKGROUND:

- 5. NHMRC is not in a position to conduct a thorough review of the proposed tax law amendments outlined in the *Exposure draft of the Tax Laws Amendment (2011 Miscellaneous Measures) Bill (No.1) 2011: tax exempt body "in Australia" requirements* at Attachment B.
- 6. The *Exposure Draft* is supported by explanatory material which is provided at Attachment C.
- 7. The explanatory material indicates that the purpose of the proposed tax law amendments is to restate the 'in Australia' special conditions for tax concession entities by ensuring that:
 - income tax exempt entities generally must be operated principally in Australia and for the broad benefit of the Australian community; and
 - deductible gift recipients generally must be operated solely in Australia and for the broad benefit of the Australian community.
- 8. The explanatory material further explains that:
 - a DGR *does not fail the 'operating solely in Australia' test if overseas activities are merely incidental to the Australian activities of the entity, and the overseas activities are minor in extent and importance when considered with reference to the Australian activities.*
 - entities that are DGR *under the category of 'international affairs' are exempt from the DGR 'in Australia' special conditions.*

9. Treasury's website states that *restating the 'in Australia' special conditions will provide support to the anti-avoidance measures in the tax law which limit income tax exempt entities expending money offshore and ensure tax supported funds remain in Australia.*

RELEVANCE TO ELECTION COMMITMENTS/GOVERNMENT POLICY/COAG REFORM AGENDA:

10. The Australian Government aims to support researchers to deliver high quality health and medical research (HMR). MRIs are an important part of the HMR system.

Remote Service Delivery National Partnership (RSDNP):

11. This activity is not relevant to RSDNP.

COMMENT:

12. After conducting a brief review of the proposed tax law amendments, NHMRC has found that AAMRI's concerns about some MRIs not being able to retain DGR and income tax exempt status may be valid.

13. Professor Campbell's letter provides the example of the Burnet Institute, an international leader in infectious diseases which conducts extensive research into HIV and other diseases outside Australia. NHMRC is not in a position to advise whether the Burnet Institute will meet the restated 'in Australia' special conditions or will be eligible for an exemption as an *international affairs* DGR but notes that the Burnet Institute is currently listed on the AusAID website as an overseas aid fund.

14. It may be useful for you to write to Minister Shorten to bring AAMRI's concerns to his attention. A draft letter from yourself to Minister Shorten is at Attachment D for your consideration and action.

15. Professor Campbell's letter was not addressed to you, therefore you are not required to provide a formal reply to this letter, however, a draft letter of response from yourself to Professor Campbell as a courtesy, is at Attachment E for your consideration and action.

Sensitivity:

16. The proposed tax law amendments are likely to impact on some MRIs as outlined in Professor Campbell's letter. The HMR sector may lobby Government for exemptions.

Financial Implications:

17. Nil.

Consultations:

18. NHMRC has consulted with the Regulatory Policy and Governance Division (RPGD) of the Department.

19. The Secretary/Deputy Secretary DoHA was consulted on the approach of this minute
has sighted this minute
none of the above

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COMMUNICATION ACTIVITIES:

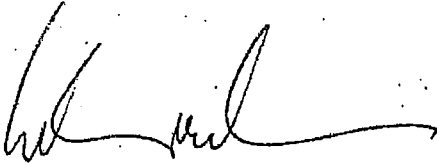
20. Nil.

RECOMMENDATION:

R1. That you NOTE that some MRIs are likely to be adversely impacted by the proposed tax law amendments.

R2. That you SIGN the enclosed letter to the Hon Bill Shorten MP, Assistant Treasurer and Minister for Financial Services and Superannuation, if this letter is considered to be required.

R3. That you SIGN the enclosed letter of response to Professor Campbell, if this letter is considered to be required.



Professor Warwick Anderson
Chief Executive Officer
NHMRC

2/19/4
Outcome: 1 - Population Health



MARK BUTLER

DATE SIGNED. 11/10

R1. NOTED

R2. SIGNED / NOT SIGNED

R3. SIGNED / NOT SIGNED

Contact Officer: Maureen Gain on (02) 6217 9420

N 11001816

MINISTER'S COMMENTS:

Advice Rating	1	2	3	4	5	Comments
Timeliness						
Presentation						
Quality of Advice						

Poor Satisfactory Excellent

ATTACHMENTS:

- A. Letter from Professor Campbell (AAMRI) to Treasury.
- B. Exposure draft of the Tax Law Amendments (2011 Miscellaneous Measures) Bill (No.1) 2011: tax exempt body "in Australia" requirements.
- C. Explanatory material to the Exposure Draft.
- D. Draft letter to Minister Shorten.
- E. Draft letter of response to Professor Campbell (AAMRI).

CBR11-00932

RECEIVED
29 Aug 2011
Minister for Mental Health & Ageing

AAMRI
ASSOCIATION OF AUSTRALIAN
MEDICAL RESEARCH INSTITUTES

Min
ag
M

26 August, 2011

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

Minister for Mental Health and Ageing

30 AUG 2011

Reply by	Action
<input checked="" type="checkbox"/> Minister	<input checked="" type="checkbox"/> Knowledge
<input type="checkbox"/> Chief of Staff	<input checked="" type="checkbox"/> Response
<input type="checkbox"/> Adviser	<input type="checkbox"/> Phone Call
	<input type="checkbox"/> Information
<input type="checkbox"/> Department	
Other	<input type="checkbox"/> Urgent by
<input type="checkbox"/> Campaign	
<input type="checkbox"/> Constituent	<input type="checkbox"/> Refer to
<input type="checkbox"/> Background Information Required	
Comments:	

DEX-NH-21

MB-M-100

Research - m/c

M11026937 20/9

Dear Sir / Madam

Re: Exposure Draft of the Tax Law Amendments (2011 Miscellaneous Measures) Bill (No. 1) 2011: tax exempt body "in Australia" requirements

The Association of Australian Medical Research Institutes (AAMRI) appreciates the opportunity to provide Treasury with comments on the *Exposure Draft of the Tax Law Amendments (2011 Miscellaneous Measures) Bill (No. 1) 2011: tax exempt body "in Australia" requirements*.

AAMRI is the peak body that represents the interests of Australia's leading medical research institutes. AAMRI contends that the amendment as drafted may have unintended impacts on the deductible gift recipient (DGR) and income tax exempt status of Australian medical research institutes. Many of our member Institutes conduct research and health promotion activities outside of Australia. The proposed legislative changes that relate to the 'in Australia' conditions for tax exempt entities are ambiguous and open to interpretation.

Of principal concern to AAMRI and its members are the proposed changes to the DGR endorsement. Many of our member institutes conduct overseas programs and thus do not meet the new DGR requirement for an institution to operate and pursue its purposes solely in Australia at all times. Under the proposed legislation, our members will have to try and maintain their DGR endorsement through demonstrating that their overseas activities are 'merely incidental' and 'minor in extent and importance' to their Australian activities.

The application of such a simple activity based test for determining DGR status is not appropriate for MRIs. This is particularly the case for institutes that undertake research on diseases that are not endemic to Australia or are of international significance. For example, the Burnet Institute is an international leader in infectious diseases and conducts extensive research into HIV and other diseases outside of Australia. As such, they undertake considerable research activities overseas, yet these offshore activities underlie their core purposes within Australia and the purposes for which the institution was established. This is but one example of many where MRIs are contributing research expertise to international programs and objectives.

aamri@wesleyresearch.com.au

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Level 8, East Wing, The Wesley Hospital, Brisbane

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F 07 3721 1589

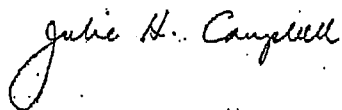
ABN 12 144 783 728

AAMRI members are reliant on revenue secured through philanthropic and fundraising activities. DGR endorsement is a key tax incentive for the public to donate to medical research. The proposed legislation if tabled would impose great uncertainty on our member's ability to gain DGR endorsement and thus their financial security. In addition, the proposed changes may also deter MRIs from pursuing current and future opportunities to contribute to international research programs.

The Exposure Draft also details changes to the requirements for income tax exempt status and subsequent amendments to the *Fringe Benefits Tax Assessment Act 1986*. Under the proposed legislation the income tax exempt status for MRIs that undertake overseas activities would seem to be dependent on DGR endorsement. That is, MRIs that undertake considerable overseas activities and thus do not obtain DGR endorsement would not be able to be income tax exempt entities. Further, AAMRI is concerned that these MRIs would also not be eligible to be fringe benefit tax (FBT) rebateable employers under this proposed legislation. The loss of the FBT concessions would negatively impact on our members' ability to attract and retain high quality staff.

AAMRI would recommend that the Exposure Draft be withdrawn and the current process of review be suspended until after the National Charities and Not-for-Profit Commission is established. The Commission could oversee future legislative reform processes and ensure that such processes include a comprehensive consultation with the all segments of the charity sector.

Yours sincerely



Professor Julie Campbell AO FAA
President

CC: The Hon. Bill Shorten MP, Assistant Treasurer and Minister for Financial Services and Superannuation, The Hon. Mark Butler MP, Minister for Mental Health and Ageing, Senator the Hon. Kim Carr, Minister for Innovation, Industry, Science and Research

COPY



**THE HON MARK BUTLER MP
MINISTER FOR MENTAL HEALTH AND AGEING**

Professor Julie Campbell AO FAA
President
Association of Australian Medical Research Institutes
c/- The Wesley Research Institute
PO Box 499
TOOWONG QLD 4066

Dear Professor ~~Campbell~~ *Julie*

Thank you for providing me with a copy of your letter of 26 August 2011 to the Manager, Philanthropy and Exemptions Unit, the Treasury, outlining your concerns about possible unintended impacts of the proposed tax law amendment on the Medical Research Institutes you represent.

I appreciate your concerns and will write to my colleague, the Hon Bill Shorten MP, Assistant Treasurer and Minister for Financial Services and Superannuation, to ask him to give consideration to the impacts you have described in your letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Butler'.

MARK BUTLER

1 OCT 2011



COPY

**THE HON MARK BUTLER MP
MINISTER FOR MENTAL HEALTH AND AGEING**

The Hon Bill Shorten MP
Assistant Treasurer
Minister for Financial Services and Superannuation
Parliament House
CANBERRA ACT 2600

Dear Minister *Bill*

Please find attached a copy of a letter that the President of the Association of Australian Medical Research Institutes, Professor Julie Campbell AO, copied you in on 26 August 2011.

Professor Campbell's letter raises some significant issues regarding the possible unintended impacts of the *Exposure draft of the Tax Laws Amendment (2011 Miscellaneous Measures) Bill (No.1) 2011: tax exempt body "in Australia" requirements* on the Medical Research Institutes (MRIs) she represents.

I would be grateful for your consideration of these impacts and seek your assistance in ensuring that MRIs, which are a valuable part of the health and medical research system, are able to operate effectively.

Yours sincerely

MARK BUTLER
1 OCT 2011

Encl