



## **Submission to The Treasury**

General Manager  
Law Design Practice  
*TaxLawDesign@treasury.gov.au*

***Exposure draft: Tax and Superannuation Laws Amendment  
(2014 Measures No. 3) Bill 2014:***

***'in Australia' special conditions***

**April 2014**

## **Introduction**

This brief submission should be read in conjunction with the previous two CCA submissions relating to proposed 'in Australia' special conditions for tax concession entities. Rather than cut and paste or repeat previous points, the most recent CCA submission on this proposed legislation (May 2012) is attached.

This is the third submission on this legislation that has been prepared with the members of the Community Council for Australia (Attachment 2) as well as other key organisations in the not-for-profit sector, academics, lawyers, government officials, and key policy advisors.

A number of our members have raised concerns about the latest proposed legislation. CCA supports the policy intent, and the improvements in this draft compared to previous versions. At the same time, there is scope for further improvement in the legislation to reduce potential negative consequences for not-for-profits, our communities and international communities that benefit from their engagement with Australian not-for-profit organisations. These concerns are outlined under three main sub-headings:

1. New barriers to international engagement
2. Additional administrative requirements
3. Interpretation, implementation and enforcement.

It is important to note that this submission does not over-ride the policy positions outlined in the individual submissions from CCA members.

CCA welcomes this opportunity to comment on this exposure draft and commends the Treasury for engaging in this consultation process. CCA would be more than willing to engage in further discussion about any of the issues raised in this submission.

## **The Community Council for Australia**

The Community Council for Australia is an independent, non-political member-based organisation dedicated to building flourishing communities primarily by enhancing the extraordinary work and effort undertaken within the not-for profit sector in Australia. CCA seeks to change the way governments, communities and the not-for-profit sector relate to one another. This includes establishing a regulatory environment that works for community organisations and not against them.

The mission of CCA is to lead by being an effective voice on common and shared issues affecting the contribution, performance and viability of not-for-profit organisations in Australia through:

- providing thought and action leadership
- influencing and shaping sector policy agendas
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- working in partnership with the government, the business sector, and the broader Australian community.

## Issues with the proposed 'in Australia' legislation

As noted previously CCA supports the intention of the proposed legislation and sees the latest legislation as a significant step forward from that first legislation in this area proposed over two years ago. While CCA is generally not opposing the legislation, there are still a number of issues which CCA believe need to be addressed in the next iteration of this Bill. They are briefly summarised below within three sub-headings broadly addressing; barriers to international engagement, additional administrative costs, and implementation. The issues raised in this submission would ideally be included in a Regulatory Impact Statement within two years of the Bill being passed.

### 1. New barriers to international engagement

There are very real benefits to Australia, our communities, our not-for-profit organisations and our international partners in promotion of international collaboration and engagement. We do not believe we should increase the barriers to this engagement.

There are a number of measures in the proposed Bill that appear to potentially create additional new compliance requirements for NFPs engaged in international activities.

- How approvals for exemptions are obtained is critical to the effective implementation of this legislation. There are a range of requirements for exemptions to the 'in Australia' provisions or for approvals of tax concessions for special purpose funds supporting the international activities of Australian based charities. While it may appear appropriate for an Arts Minister to approve tax concessions for funds supporting international activities in the arts, it becomes more complex for a broad range of organisations that fall outside of the international development, touring arts, medical research, environment, or other clearly delineated areas. For instance, who approves tax concessions for organisations involved in health services (mental health, first aid training, etc.) when they operate a small special purpose DGR fund to support their overseas activities?
- It is preferable that organisations self-assess in this area as much as possible rather than having to gain exemptions through separate Ministerial processes and determinations.
- The current listing of possible exempt organisations is too narrow. At the very least, the list of exempted organisations should be expanded as much as possible to provide certainty to a broader range of Australian organisations that have well targeted and managed international engagement programs supported by philanthropic funds.
- Aside from listed exempt organisations, it is preferable to have a very clear definition of what kinds of organisations and activities will be exempted in developing specific purpose funds for international activities. Not all performing arts groups for instance would describe themselves as touring arts groups. The current Bill and explanatory memorandum falls short in this area.
- While the test of reasonableness in ensuring money provided to international organisations is used for the purpose intended is welcome, it still may be interpreted as a barrier by some. Ideally there would be a clearer description or set of specific examples across different areas and activities in the explanatory memorandum about what constitutes reasonable practice.
- CCA has learned that grandfathering clauses need to be very specifically spelt out and emphasised if they are to be maintained over time. We do not want to create a barrier for existing organisations involved in international work being able to continue their international engagement.
- As part of any Regulatory Impact Statement, the level of international engagement by Australian not-for-profit organisations needs to be monitored to ensure there is no reduction in this valuable work.

## 2. Additional administrative requirements

CCA shares the government's stated commitment to reducing red tape for the not-for-profit sector, but is concerned about the potential for additional administrative requirements being imposed through this proposed legislation. In particular, having a range of different approval processes for different organisations creates an additional level of compliance.

CCA has supported the establishment of a single regulator for the sector in the Australian Charities and Not-for-profit Commission and we believe the ACNC could play an important role for groups seeking exemptions to establish specific purpose overseas activities funds.

- Provided there was a clear legislative framework and explanatory memorandum outlining the grounds for provision of exemptions, having an independent regulator oversee self-assessed exemptions clearly reduces duplication and compliance costs.
- The ACNC could also review identified groups of exempted organisations (such as touring arts organisations) that have self-assessed against the guidelines outlined in a more detail explanatory memorandum, rather than relying on a separate process through a separate minister. This seems to provide a low risk, low red tape option that has elements of self-assessment with external oversight.
- As part of any Regulatory Impact Statement the level of additional red tape and compliance needs to be actively monitored, reviewed and reduced wherever possible.

## 3. Interpretation, implementation and enforcement

One of the issues raised with CCA about the proposed new legislation is the degree to which definitions rely on interpretations, implementation and enforcement practices. Clearly what is reasonable and appropriate may vary depending on who is making the judgement and from what perspective

Experience tells us that 99% of organisations operating in this area are doing the right thing, but for the legislation to be meaningful and have some practical implication, it needs to be monitored.

- Making the proposed 'in Australia' legislation as clear as possible with as many categories of groups and activities listed in the explanatory memorandum as possible, will enable self-assessment for the vast majority of organisations involved in working internationally not already exempted through grandfathering and other provisions in the Bill.
- CCA has already noted that it sees an expanded role for the ACNC (or a replacement independent regulator) in identifying where the international activities of Australian based charities may need to be reviewed. This form of enforcement of self-regulated compliance within a clear legislative framework is most likely to achieve the most effective and efficient interpretation and enforcement of the proposed new legislation.
- This is another area CCA would like to see reviewed as part of the Regulatory Impact Statement.

It is important to note that one of the real difficulties being experienced by some agencies seeking to engage internationally is the cost of obtaining credentialing. For well-established charities involved in some international work in our region, the processes have become a major issue. For instance, one highly respected CCA member agency has invested tens of thousands of dollars in staff and consultant time over two years of interactions with AusAID, but is still in an ongoing process to gain accreditation. This situation is unacceptable.

## Conclusion

As noted in previous submissions, CCA supports the policy goal of ensuring the proper targeting of tax concessions for the broad benefit of Australian community. Preventing tax concessions being used to generate funding in support of international terrorism or other misappropriations is clearly a goal all CCA members support.

There have been major improvements to the initial draft legislation from three years ago, but there are still a number of concerns impacting on organisations within the not-for-profit sector.

While the ACNC exists and is performing the role of sector regulator, it seems logical to include oversight of a self-regulated 'in Australia special conditions' exemption system under the remit of the ACNC rather than having a range of compliance requirements that are front end loaded (or gated), but that lack ongoing monitoring capacity. If the ACNC is to be disbanded, the replacement regulator could and should take on this responsibility.

CCA welcomes this opportunity to provide this submission and looks forward to any future consultations or other processes that may further improve this exposure draft legislation.

***NB. Please see attached our second submission in relation to the 'in Australia special conditions' legislation submitted in May 2012.***



## **Submission to The Treasury**

***Restating the 'in Australia' special conditions for tax concession entities - revised exposure draft***

**May 2012**

## **Introduction**

This very brief submission should be read in conjunction with the previous CCA submission in August 2011 in response to the release by Treasury of draft legislation that will restate the 'in Australia' special conditions for tax concession entities.

This submission has been prepared with the members of the Community Council for Australia as well as other key organisations in the not-for-profit sector, academics, lawyers, government officials, and key policy advisors.

It is important to note that this submission does not over-ride the policy positions outlined in the individual submissions from CCA members.

The CCA welcomes this opportunity to comment on the second exposure draft and commends the Treasury for engaging in this consultation process, especially the manner in which almost all the previous concerns have been addressed in the revised exposure draft. CCA would be more than willing to engage in further discussion about any of the issues raised in this submission.

## **The Community Council for Australia**

The Community Council for Australia is an independent, non-political member-based organisation dedicated to building flourishing communities primarily by enhancing the extraordinary work and effort undertaken within the not-for profit sector in Australia. CCA seeks to change the way governments, communities and the not-for-profit sector relate to one another. This includes establishing a regulatory environment that works for community organisations and not against them.

The mission of CCA is to lead by being an effective voice on common and shared issues affecting the contribution, performance and viability of not-for-profit organisations in Australia through:

- providing thought and action leadership
- influencing and shaping sector policy agendas
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- working in partnership with the government, the business sector, and the broader Australian community.

## **Executive summary**

CCA supports the apparent policy intent of the draft legislation, that is to ensure income tax exempt entities generally must be operated principally in Australia and for the broad benefit of the Australian community. Likewise, deductible gift recipients (DGRs) generally must be operated solely in Australia and for the broad benefit of the Australian community.

CCA believe it is appropriate to ensure that taxation concessions to charitable and not-for-profit organisations are properly targeted and that funds remitted overseas (whether through the established overseas aid and development framework, or in any other way) are not used for improper purposes.

It is also important to acknowledge and continue to support those charities that operate in the international development area. This means continuing to support the well-established framework of regulation that applies to overseas aid and development organisations, and maintaining the option of providing charitable status to those international development agencies that satisfy the current requirements to achieve Direct Gift Recipient status for their international aid work.

CCA is pleased that the revised exposure draft addresses most of the concerns raised in our previous submission.

CCA believe there is clearly still some concern in the sector about the way in which the legislation will be enacted and enforced. CCA would be very disappointed if the passing of this legislation led to a significant number of charities having to either significantly alter their international activities or to withdraw from their involvement in overseas charitable work.

## **Support for the revisions**

CCA supports the key changes to the exposure draft. In particular, CCA is pleased to see that:

- Australian charitable organisations may now provide funds to an overseas entity that is not entitled to be income tax exempt provided the purpose to which the funds are being applied is consistent with the charitable purpose of the Australian organisation providing the funds
- Charitable organisations will not lose their charitable status for minor breaches of their governance rules
- The rewritten definition of not-for-profit organisations is more lenient in allowing transfers of funds and property between not-for-profit organisations with similar purposes
- Existing entitlements of organisations that are currently prescribed in regulation will be grandfathered
- When fulfilling the requirements of government contracts and grants to provide services overseas, a more lenient approach will be taken
- Public hospitals, public schools and some environmental groups will not be subject to the full 'in Australia' provisions
- The emphasis in the revised legislation is on the level of activity undertaken rather than applying a simple 50 / 50 expenditure formula.



## Ongoing concerns

CCA members still have some concerns about the way in which the legislation might be applied.

Most CCA member organisations involved in international aid and development have DGR status for this work and operate with the well-established regulatory framework around international aid and development.

There are, however, a number of medium to larger not-for-profit member organisations that have some form of interaction with international groups and communities, much of which is supplementary to the core activities and purpose of the organisation.

CCA understands that provided the work remains supplementary and consistent with the primary purpose of the organisation the 'in Australia' provision will not apply. Clearly where the primary work of the organisations is 'in Australia' these organisations can continue to be actively involved in international aid and development activities.

CCA believes such work is invaluable to both the organisations and to those receiving the benefit of their international activities. Any threat to this work would be detrimental and counter to the best interests of Australia and the international beneficiaries. The 'in Australia' provisions should not be seen by any organisation as a barrier to this form of supplementary work.

## Recommendations

CCA would like to see two additional activities factored into the enactment of the restated 'in Australia' legislation:

1. The government should provide a clear and definitive public statement that it supports the supplementary international activities of Australian charities and not-for-profit organisations
2. The government should commit to a two year review of the 'in Australia' provisions to ensure there are no unintended consequences.

## Conclusion

CCA supports the policy goal of ensuring the proper targeting of tax concessions for the broad benefit of Australian community.

CCA was initially concerned that the consequences of the proposed legislation would have placed significantly more restrictions on not-for-profit organisations doing invaluable work. The proposed changes also had the potential to call into question the activities of all not-for-profit organisations, going beyond the overseas aid sector.

Most of CCA's concerns appear to have been addressed in the revised draft. This is a pleasing recognition that the Treasury have listened and acted on the issues raised by the not-for-profit sector.

The sector is still concerned about the way the new legislation will be enacted.

CCA welcomes any opportunity to be involved in future consultations or any other discussion process.

<b>Organisation</b>	<b>CEO/Director</b>
Access Australia's National Infertility Network	Sandra Dill
Alcohol and Other Drugs Council of Australia	David Templeman
Alcohol Tobacco and Other Drugs	Carrie Fowlie
ANEX	John Ryan
Associations Forum	John Peacock
Australian Council for International Development	Marc Purcell
Australian Healthcare and Hospitals Association	Alison Verhoeven
Australian Indigenous Leadership Centre	Rachelle Towart
Australian Institute of Superannuation Trustees	Fiona Reynolds
Australian Major Performing Arts Group	Bethwyn Serow
Australian Women Donors Network	Julie Reilly
Church Communities Australia	Chris Voll
Community Colleges Australia	Kate Davidson
Connecting Up Australia	Anne Gawen
Consumers Health Forum of Australia	Rebecca Vassarotti
<b>Drug Arm</b>	<b>Dr Dennis Young (Director)</b>
e.motion21	Karina Posanzini
Family Life Services Centre,	Jo Cavanagh
Foresters Community Finance	Belinda Drew
Foundation for Alcohol Research and Education	Michael Thorn
Foundation for Young Australians	Jan Owen
Goodstart Early Learning	Julia Davison
<b>Good Beginnings Australia</b>	<b>Jayne Meyer-Tucker (Director)</b>
HammondCare	Stephen Judd
Hillsong Church	George Aghajanian
Illawarra Retirement Trust	Nieves Murray
Lifeline Australia	<b>Jane Hayden (Director)</b>
Maroba Lodge	Viv Allanson
Melbourne Citymission	Rev. Ric Holland
Missions Interlink	Pam Thyer
<b>Mission Australia</b>	<b>Toby Hall (Director)</b>

**Musica Viva Australia**

Opportunity International Australia

Philanthropy Australia

Pro Bono Australia (Associate member)

Relationship Australia

**RSPCA Australia**

SARRAH

Save the Children

St John Ambulance Australia

Social Ventures Australia

The Anaesthesia and Pain Medicine Foundation

The Australian Charities Fund

**The Benevolent Society**

**The Big Issue**

The Centre for Social Impact

**The Smith Family**

The Ted Noffs Foundation

Variety Australia

Volunteering Australia

**Wesley Mission**

Wesley Mission Victoria

Work Ventures

Workplace Giving Australia

**World Vision Australia**

YMCA Australia

Youth Off The Streets

YWCA Australia

**Mary Jo Capps (Director)**

Rob Dunn

Louise Walsh

Karen Mahlab

Alison Brooke

**Heather Neil (Director)**

Rod Wellington

Paul Ronalds

Peter LeCornu

Michael Traill

Robert Packer

Edward Kerr

**Anne Hollonds (Director)**

**Steven Persson (Director)**

Andrew Young

**Lisa O'Brien (Director)**

Wesley Noffs

Neil Wykes

Brett Williamson

**Keith Garner (Director)**

Rob Evers

Arsenio Alegre

Peter Walkemeyer

**Tim Costello (Chair)**

Ron Mell

Fr Chris Riley

Dr Caroline Lambert