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LAWYERS

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

Dear Sir/Madam

Restating the "In Australia" Special Conditions for Tax Concession Entities

We are a law firm based in Sydney which has a proud history of having provided professional advice to the Charities and Not-For-Profit (**NFP**) sector since the firm's inception in 1859.

We act for a large number of Church bodies, community groups, welfare organisations and others involved in the NFP sector.

We are of the view that the proposed restatement of the "In Australia" Special Conditions for Tax Concession Entities will have unintended consequences which will have significant impacts upon our clients.

We make the following comments in respect of the issues raised in the Exposure Draft:

1. The revised definition of "Not-For-Profit Entity" is in our view acceptable and allows for Not-For-Profits (**NFPs**) to distribute or transfer assets to owners or members operating for a similar purpose or in payment for reasonable expenses.

2. The commentary issued by the Assistant Treasurer allows a charity to donate to another charity regardless of their individual charitable purposes (paragraph 1.77). This statement is not included in the legislation and, in our view, should be.

3. The disregarding of use of donated monies or Government Grants is subject to

conditions which have not yet been identified. It is important that these are understood and we suggest that a draft regulation should be issued at this time. At paragraph 1.69 Treasury indicates what some of those requirements might be but in our view it is important that the sector has greater certainty about these at this stage.

4. Tax exempt entities must comply with all the "substantive requirements" contained in their governing rules. The Assistant Treasurer's commentary provides an insight into the expression "substantive requirements" but it is our view that these provisions should be incorporated in the legislation or by way of regulation.

5. Tax exempt entities must use income and assets **solely** for the purpose for which the entity is established and operated. There is no provision for any flexibility for incidental or minor activities which may not satisfy that requirement. This should be relaxed in our view.

6. Entities which are both endorsed as DGRs as a whole entity and which also might conduct overseas aid funds which are DGRs, may find that their overseas aid fund disentitles the organisation as a whole to endorsement because that activity would prejudice the organisation's overall operations "In Australia". In our opinion, this should be addressed.

7. Where a tax exempt entity pays money to another entity which is tax exempt then it is necessary to trace the use of those funds to determine whether the first tax exempt entity can satisfy the conditions about operating and pursuing its purposes in Australia. There needs to be greater clarity about the extent of this tracing.

8. In our view an exemption should be considered for an entity incurring significant expenditure overseas which results in a benefit in Australia. For example, an entity might engage in research overseas where the relevant academics are located, but the result of that research will be used in and be beneficial in Australia. This overseas element may jeopardise the tax status of an entity which would otherwise be entitled to endorsement as a tax concession charity or a deductible gift recipient.

We submit that a further Exposure Draft should be issued for public consultation prior to the Government making a final decision on restating the "In Australia" Special Conditions for Tax Concession Entities.

Yours faithfully

Makinson & d'Apice