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LAWYERS

11 May 2012

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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 refer to our letter to you of 12 August 2011 in which we enclosed a Submission from Catholic bodies known as *Aid to the Church in Need* and *Catholic Mission*. We are **attaching** a copy of that letter together with a copy of the Submission.

We confirm that we act for Aid to the Church in Need (**ACN**) and Catholic Mission (**CM**) which are both part of the Catholic Church in Australia. Our clients are aware of the submission made by the Australian Catholic Bishop's Conference (**ACBC**) on the Exposure Draft issued by the Assistant Treasurer on 17 April 2012. Both ACN and CM support the ACBC Submission but make this following additional submission in relation to matters which are particular to the missionary agencies of the Catholic Church, but which would be equally applicable to the missionary agencies of other churches.

ACN is established as a corporate body under the provisions of the *Roman Catholic Church Communities' Land Act* and receives all of its income from private donations and bequests. The income received by ACN is used to fulfil its primary mission to provide pastoral relief to needy and oppressed people and churches throughout the world. Donors to CAN are not entitled to a tax deduction.

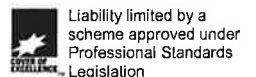
CM is also established as a corporate body under the provisions of the *Roman Catholic Church Communities' Land Act*. CM is funded by donations and bequests from Australian and overseas donors. CM assists a significant number of persons and communities around the world. For example, \$8 million in total was distributed overseas towards its charitable



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campaigns focused on working with children, working with communities and working with church leaders. CM also distributed approximately \$2 million for its Home Mission Fund that assists large rural Dioceses in Australia that have significant indigenous populations.

CM also operates a deductible gift recipient fund known as *Catholic Mission Overseas Mission Aid Fund* which has deductible gift recipient status. CM supports the ACBC Submission in that its income and expenditure in relation to the Catholic Mission Overseas Mission Aid Fund should not be taken into account in considering whether the other activities of CM entitle it to endorsement as a tax concession charity.

This submission however relates to CM's non-DGR activities, for which donors do not receive tax deductions.

The activities of both ACN and CM clearly fall within the legal definition of a charity as currently interpreted under the common law. It is expected that they will continue to still qualify as charities under the proposed statutory definition.

Our clients are concerned to ensure that their focus on the raising of funds in Australia for the purpose of providing aid and assistance to those overseas does not hinder their capacity to be endorsed as tax concession charities.

We note that the proposed section 50-50(2)(b) would be a concern for both of our clients as they do both pursue purposes outside Australia.

The provisions of section 50-50(5) provide our clients with some comfort in that the funds raised by way of gift or contribution (which would include bequests) can be disregarded for the purposes of determining whether our clients operate and pursue purposes in Australia.

Our clients are concerned about the conditions which are proposed to be prescribed in relation to section 50-50(5) as these are not contained in the exposure legislation even though the commentary to the Exposure Draft offers some insight. Our clients submit that these conditions should be made clear now prior to adoption of any legislation and clients such as our should be given the opportunity to lodge further submissions in relation to those conditions.


Our clients are concerned that legislation needs to be drafted in such a way that organisations such as our clients can be confident that an entity that has charitable objects and carries on activities consistent with those objects and whose only source of income is donations, bequests or grants (and investment income earned on them) will not fail the "in Australia" test, where:

- its funds are distributed to worthy causes overseas either directly or through affiliated or "parent" organisations;
- administration is local; and
- the entity operates through a body incorporated or otherwise established in Australia.



In particular, our clients will incur all administrative expenses in Australia but will be pursuing their charitable objects largely outside Australia. Any legislation should make it clear that the expenses incurred in Australia in respect of such entities will be a determining factor in assessing whether the entity operates principally in Australia and pursues its purposes principally in Australia.

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal stroke that tapers to the right.

Makinson & d'Apice

Encls.