

MAKINSON & d'APICE  
LAWYERS

30 August 2012

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**BY EMAIL:** corporations.joint@aph.gov.au

Committee Secretary  
Parliamentary Joint Committee on  
Corporations and Financial Services  
Parliament House  
CANBERRA ACT 2600

Dear Secretary

**Inquiry into the Tax Laws Amendment (Special Conditions for Not-For-Profit Concessions) Bill 2012**

We refer to our letter to The Manager of the Philanthropy and Exemptions Unit of Treasury on 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 for your information.

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 Bill. 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 ACN are not entitled to a tax deduction.

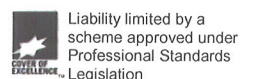
CM is also established as a corporate body under the provisions of the *Roman Catholic Church Communities' Land Act*. CM is funded by donations and bequests from Australian and overseas donors. CM assists a significant number of persons and communities around



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the world. For example, \$8 million in total was distributed overseas towards its charitable 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.

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 Bill even though the Explanatory Memorandum offers some insight. Our clients submit that these conditions should be made clear now in the legislation.

Our clients are concerned that legislation provides 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. The 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

**Makinson & d'Apice**

Encls.

MAKINSON & d'APICE  
LAWYERS

12 August 2011

Partner: Bill d'Apice  
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Our Ref: 111162:WDA

**BY EMAIL:**

**E-MAILED**  
12.08.11 3:58pm

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 act for Aid to the Church in Need and Catholic Mission and are **enclosing** a Submission from these bodies in response to the Exposure Draft released by the Assistant Treasurer on 4 July 2011 entitled "*Restating the In Australia Special Conditions for Tax Concession Entities*".

Yours faithfully

**Makinson & d'Apice**

Encl



Restating the “In Australia” Special Conditions  
for Tax Concession Entities  
Submission in Response to Exposure Draft Issue  
4 July 2011



**Aid to the Church in Need**



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## Restating the “In Australia” Special Conditions for Tax Concession Entities

This submission is in response to the Exposure Draft released by the Assistant Treasurer on 4 July 2011 titled “*Restating the In Australia Special Conditions for Tax Concession Entities*”. Aid to the Church in Need (**ACN**) and Catholic Mission (**CM**) welcome the opportunity to contribute to the discussion by way of this submission and we look forward to the opportunity of continuing to interact with Government as it further develops policy on these matters.

The submission is structured as follows:

1. About Aid to the Church in Need
2. About Catholic Mission
3. General comments on policy issues
4. Specific issues

Both ACN and CM are part of the Catholic Church and are aware of the submission made by the Australian Catholic Bishops Conference (**ACBC**) on 30 July 2011. The submission by the ACBC indicated “*some sectors of the Church, for example, the Church Missionary Agencies, may make additional sector-specific responses to the Exposure Draft*”. Both ACN and CM are in agreement with all issues put forward by ACBC in its submission and offer this additional submission by way of a specific response to the Exposure Draft to deal with issues specific to missionary agencies of the Church.

### **1. Aid to the Church in Need**

The office of ACN was first established first in Australia in 1963 on a voluntary basis and continued to operate as such until 1990 when a full time office was inaugurated. ACN in Australia is endorsed as a charitable institution and thereby entitled to GST concession, FBT rebate and income tax exemption. It is not entitled to receive tax deductible gifts. It operates legally in Australia through a corporate trustee known as the Trustees of Aid to the Church in Need incorporated under the *Roman Catholic Church Communities Land Act 1942 (NSW)*.

In 2010, ACN's total gross income raised in Australia was more than \$5 million. Its income (after deduction of local expenses) is forwarded to the international headquarters of Aid to the Church in Need in Germany or paid out to other charitable organisations at the direction of the headquarters of Aid to the Church in Need in Germany.

ACN in Australia is part of an international Catholic charity under papal jurisdiction. Its main purpose is the promotion of pastoral and religious activities, especially in areas where the Church is persecuted or prevented by various obstacles from fulfilling her proper mission. The charity also supports refugees from regions where the Church is persecuted. The charity was founded in 1947 by a Dutch Norbetine priest, Father Werenfried van Straaten, who appealed for help for the 14 million German refugees expelled from their homes in the former German territories of Eastern Europe. In the late 1940s to 1950s, Father Werenfried campaigned to



provide priests in Europe with vehicles to deliver material aid to refugee priests and financial support for the training of priests.

In the 1950s to 1960s, ACN expanded its charitable activities throughout the world, from providing aid to China and North Vietnam, to the Greek-Catholic Church in Ukraine, to campaigns for the Church in Africa. Many national offices of the ACN around the world were established during this time. By 1984, ACN had offices or representation in more than 13 countries and was recognised by Rome as an Association of Pontifical Right of the Universal Church.

The charitable work of ACN continued to expand in the 1990s via numerous campaigns and projects, including its new aid programme for the re-evangelisation of Eastern Europe and the increase in aid for the persecuted Church in Communist China. By 2006, ACN had national offices in 17 different countries. The international office is located in Germany, and acts as the charity's central source for information and project management for grants that are sent on to their Church project partners throughout the world.

ACN receives all of its income from private donations and bequests. Its income, derived from donations from more than 600,000 benefactors around the world, is distributed to Catholic churches in need in 144 countries around the world and supports more than 5,000 projects worldwide.

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. Work and support is prioritised towards training seminarians and catechists, support for religious sisters, charitable help for refugees, and the building and renovation of churches, convents, seminaries and catechesis centres. ACN's income is also used towards translating, printing and dispatch of Bibles and religious literature, including the publication of the Child's Bible, of which over 43 million copies have been distributed in over 150 languages.

Over €65 million was distributed to 153 countries in 2010 for work relating to construction, mass offerings, pastoral aid, theological formation, catechesis, media apostolate, bible apostolate, transport, subsistence aid and emergency aid.

## **2. Catholic Mission**

CM is the Australian arm of the Catholic Church's global mission aid agency in a worldwide network known as the Pontifical Mission Societies. CM was specifically commissioned by the Pope to promote a universal spirit of mission, and to provide both spiritual and financial support to young and growing Churches around the world.

CM was founded in 1822 in France and is the oldest mission aid agency in the Catholic Church. For more than 185 years CM has initiated or been involved in charitable projects in 160 countries around the world, in Africa, Asia, Oceania and Americas. In 1996, the name of the Pontifical Mission Societies was changed to "Catholic Mission – the work of the Pontifical Mission Societies".

CM assists people living in situations of extreme poverty, dramatic climate change, with HIV/AIDS, persecution from military dictatorships and extremists, racial and religious wars, and those who have suffered the loss of family ties and land to commercial exploitation.

While comprised of three autonomous Societies, that is, areas of work, CM is one organisation committed to the worldwide mission of the Church by providing mission animation to the people of Australia and through practical support of the various works undertaken by the three Societies. The three Societies are named Children's Mission (working with children), St Peter Apostle (working with communities) and Propagation of Faith (working with Church leaders). All three Societies have a global focus, especially to disadvantaged parts of the world.

CM is funded by donations and bequests from Australian and overseas donors. A significant source of income derives from donations collected by Catholic dioceses across Australia. In 2010, over \$16 million was collected by Australian dioceses that contributed to CM's gross income. Other sources of income derive from private donations, bequests, donations collected by schools and other educational establishments and partnerships.

CM assists a significant number of persons and communities around the world. For example, in the last year, Children's Mission, the Society of CM that aids children in need, assisted more than 2.66 million children globally. CM is the only Catholic organisation with global works specifically dedicated to children.

While the charitable work carried out by CM takes place primarily overseas, CM runs a campaign named Home Mission Fund that assists large rural dioceses of Australia that have significant Aboriginal populations. One third of the funds raised by CM for its work with communities are distributed to the Home Mission Fund.

According to CM's 2010 Annual Report, its income was distributed in the following ways:

- About \$8 million in total was distributed overseas towards its charitable campaigns:
  - More than \$3 million was distributed in 31 countries for the Working with Children campaign;
  - More than \$3 million was distributed in 10 countries for the Working with Communities campaign; and
  - Over \$840,000 was distributed in seven countries for the Working with Church Leaders campaign.
- Almost \$2 million was distributed in Australia for its Home Mission Fund campaign.

CM is endorsed as a charitable institution and accesses GST concession, FBT rebate and income tax exemption. It also operates a deductible gift recipient fund known as Catholic Mission Overseas Mission Aid Fund. This submission does not relate to the Catholic Mission Overseas Mission Aid Fund but is only in respect of the non deductible gift recipient activities of Catholic Mission which are dependent upon donations which do not attract tax deductions to donors.

CM operates legally in Australia through a corporate trustee known as "*Catholic Mission*" incorporated under the *Roman Catholic Church Communities Lands Act 1942* (NSW).



### 3. General Comments on Policy Issues

Both ACN and CM clearly fall under categories identified as charitable activities by Lord MacNaghten in *Pemsel's*<sup>1</sup> case as being for the advancement of religion and/or the relief of poverty and/or other purposes beneficial to the community not falling into the preceding categories.

Both ACN and CM have operated for many decades within Australia and carried on their charitable activities for the benefit of Australian and international communities.

CM has been instrumental over its time in Australia in contributing to the establishment of religious groups including many of the Catholic Religious Orders who are the largest providers of non-profit education, age care, hospitals and welfare in Australia. This is an example of where donations made by generous donors in overseas countries have provided assistance in establishing significant charitable and social welfare structures in Australia. Australia has received this benefit over the centuries and should encourage provision of similar benefits to overseas countries in need, as provided by these missionary agencies.

By any definition, both ACN and CM are charitable institutions and have been recognised as such for many decades without challenge.

As such, they have attracted tax concessions which have assisted each in carrying on their charitable activities. It is important and relevant to note that each of these entities is dependent upon donations made by individuals in Australia who are making these donations from "after tax" funds and donors are not seeking tax deductions in respect of those donations.

The charitable works of ACN and CM are undertaken as an expression of solidarity with Church communities universally. These entities seek to support people not only within national boundaries but all human need wherever it may occur.

There has been no suggestion of abuse of taxation concessions by either ACN or CM.

Both entities have arrangements for remitting funds for worthy causes overseas through networks of the offices of local conferences, diocesan bishops or other church authorities. There has been no suggestion that funds have been used for any improper purpose.

The proposals in the Exposure Draft are likely to have the effect of disentitling ACN and CM to income tax exemption (and other tax exemptions). ACN and CM submit that such an outcome is unjust and unwarranted and would have the effect of reducing funds available for each entity to carry out its charitable works.

### 4. Specific Issues

In addition to the matters raised in the submission by the ACBC, ACN and CM wish to highlight the following specific and limited issues which are particular to Church missionary agencies such as ACN and CM.

ACN and CM contend that they would each qualify as entities that "*operate principally in Australia and ... pursue its purposes principally in Australia*" as required

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<sup>1</sup> *Commissioners for Special Purposes of the Income Tax v Pemsel* [1891] AC 531

by proposed section 50-50(2)(a) and (b). This view is reached upon the basis that each operates and pursues its purposes (being the raising of donations to be applied in many cases by overseas entities for charitable purposes) and that this activity is undertaken and the purpose is achieved within Australia. However, the proposed amendment to the Act should make that position clearer for the sake of achieving certainty for ACN and CM and those in positions similar to them.

Both ACN and CM are particularly concerned about the requirement in proposed section 50-50(2)(c) which would preclude both organisations from carrying out their purposes without losing their respective entitlement to tax concessions. This section would preclude ACN and CM from donating money to entities which are not exempt entities that themselves satisfy the proposed "*In Australia*" requirements. As can be seen above, this is the main charitable activity of each of ACN and CM.

This would have the effect of practically crippling the activities of ACN and CM and other church missionary activities which have for many decades supported charitable activities without regard to national boundaries.

Both ACN and CM expect that the government would not be intending to deny them their current tax concessions by the imposition of this new legislation and challenge the Government to look for a method to allow ACN and CM and organisations who may similarly be the victims of unintended consequences to maintain their tax concession status.

Without limiting other options which may be open to the Government, ACN and CM recommend that appropriate exemption be granted under proposed section 50-51.

The existing section 50-50(d) provides a mechanism for a prescribed institution that has a physical presence in Australia but pursues its objects principally outside Australia to maintain exemption from income tax. We note that 13 entities have been prescribed for the purpose of that regulation. We understand that the effect of the Exposure Draft will be to remove the possibility of prescription under that section. The possibility for prescribed exemption under section 50-51(3)(b) will not offer sufficient protection to ACN or CM or other currently prescribed entities.

ACN and CM submit that the Government should provide that the conditions in section 50-50(2) do not apply to an entity that is a prescribed institution that has a physical presence in Australia but which pursues its objects principally outside Australia. ACN and CM further contend that guidelines be established for such prescription that would include organisations such as ACN or CM. This could be done, for example, by prescribing corporate entities that are incorporated under legislation particular to Church bodies (eg. the *Roman Catholic Church Communities Land Act*).

ACN and CM further submit that the proposed section 50-50(2)(c) be amended to read:

"(c) *except for charitable purposes (whether or not within Australia), not donate money to any other entity, unless the other entity is an \*exempt entity\*.*"

ACN and CM do not submit that these are the only possible solutions and request the Government to make appropriate provision in any proposed legislation that will not have the effect of removing tax concessions presently available to ACN and CM and

to other entities who may be similarly affected by unintended consequences of the proposed legislation.