

MAKINSON & d'APICE

— L A W Y E R S —

30 August 2012

Partner: Bill d'Apice
Direct Line: 9233 9013
Direct Facsimile: 9233 9113
Email: wdapice@makdap.com.au

Our Ref: 111194:Wd'A

BY EMAIL: community.affairs.sen@aph.gov.au

Committee Secretary
Senate Standing Committees on
Community Affairs
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



Level 12 135 King Street Sydney NSW 2000
GPO Box 495 Sydney 2001 • DX 296 Sydney
Telephone (02) 9233 7788 • Facsimile (02) 9233 1550
Email mail@makdap.com.au • www.makdap.com.au

ABN 83 586 046 478

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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

A handwritten signature in black ink, consisting of a large, loopy initial 'M' followed by a long horizontal stroke that tapers to a point on the right. The signature is written over the text 'Makinson & d'Apice'.

Makinson & d'Apice

Encls.