

**Submission to the
Philanthropy and Exemptions Unit
the Treasury
on the**

**Revised exposure draft,
“in Australia” requirements**

May 2012

About the Australian Council for International Development

The Australian Council for International Development (ACFID) is the peak body for international aid and development NGOs in Australia. We have 76 member organisations which operate in over 100 developing countries. The Australian not-for-profit international aid and development sector raises \$1.2 billion annually for international humanitarian and development work, with over \$850 million of this donated by the Australian public. Over 2 million Australians donate to our member organisations each year. As such, we are a significant part of the Australian not-for-profit sector with strong Australian public support. A full list of our membership is included.

ACFID also administers a rigorous Code of Conduct for the not-for-profit aid and development sector. The ACFID Code of Conduct is internationally recognised as a leading Code in the development sector and includes over 150 obligations to which our members commit, covering a range of areas including governance, financial reporting, transparency and good development practice. The Code includes an independent complaints mechanism to address non-compliance.

ACFID appreciates the efforts taken to redraft the proposed legislation; the revised exposure draft removes many of the measures that would have had a drastic impact on the provision of international aid and development.

In order to continue to provide aid and development to the poorest people in the world, including within Australia, ACFID recommends that the exposure draft be amended or withdrawn entirely.

Issues relating to the revised exposure draft for the “in Australia” requirements

Loss of whole of entity endorsement

In addition to being endorsed as a DGR for the operation of an overseas aid fund, some organisations in the aid and development sector also have whole of organisation DGR endorsement, usually as a public benevolent institution (PBI) or a health promotion charity (HPC). Many agencies in our sector also have whole of entity endorsement as a tax exempt entity. There are a range of Australian overseas aid agencies that do most of their work overseas, but also do some domestic Australian-based work, for example with indigenous communities. Organisations with whole of organisation DGR endorsement can perform the Australian-based work as part of their general operations. Those without whole of entity endorsement, if they wish to receive deductible gifts and funds from public ancillary funds, are forced to seek DGR endorsement for the operation of a second fund, commonly under the category of PBI.

The application of the proposed “in Australia” requirements in the revised exposure draft means that an agency with DGR endorsement as a whole will no longer be eligible for such endorsement and those not yet endorsed will be denied the opportunity. This is because, when viewed as a whole, the activities of an overseas aid agency will inevitably surpass the amount of the Australian-based work, despite the fact that the overseas aid work is being conducted through an overseas aid fund.

In our view, the activities undertaken by an organisation through its overseas aid fund (for which it has DGR endorsement) should be excluded from the DGR ‘in Australia’ test. Put another way, if, having disregarded all the expenditure and activities performed through its overseas aid fund, the organisation would be eligible for whole of DGR endorsement, then such an organisation should not be denied this endorsement simply because it has chosen to perform its worldwide activities within one organisation. Far from reducing red tape, these new provisions will increase administrative and compliance burdens as organisations are forced to break up operations across multiple entities, one for overseas aid work and one for Australian-based work. They would be forced to do this for no other reason than to retain/obtain DGR endorsement.

The importance of whole of entity endorsement cannot be over stated - the benefits that accrue to an organisation with this endorsement have been acknowledged by Productivity Commission enquiries, hearings of the Senate Economics Committee and other Government consultations. At all times, ACFID and the rest of the not-for-profit sector have gone to great lengths to demonstrate to the Government and the public at large, the importance of these benefits enabling not-for-profits to fulfil their purpose.

Whole of entity endorsement allows an organisation to take charitable donations that can then be used most optimally in achieving its publicly benevolent pursuits. Having relief from income tax allows a charity to retain its meagre surpluses and channel them towards its charitable purpose.

Example of how this will affect agencies with whole of entity DGR endorsement

XYZ Ltd has as its primary purpose the relief of distress, disability, poverty and helplessness both in Australia e.g. programs with indigenous Australians (about 10%) and overseas in developing countries (about 90%). XYZ Limited has whole of organisation DGR endorsement as a public benevolent institution (PBI). It is also endorsed as a “tax concession charity” and is accordingly exempt from income tax and fringe benefits tax. In addition, XYZ Ltd has DGR endorsement for the operation of a “developing country relief fund” (or “overseas aid fund”).

XYZ Ltd funds and pursues all of its overseas activities through its overseas aid fund. Generally, donors are completely happy to make a tax deductible donation to XYZ Ltd and trust it to direct and use the money as it determines. Funds necessary to support its overseas work are deposited into its overseas aid fund from which point the funds are then expended in accordance with the ATO requirements and AusAID guidelines for overseas aid funds and the ACFID Code of Conduct, to which it is a signatory. XYZ Ltd's Australian work is funded directly out of the organisation's operating funds.

Advantages of whole of entity endorsement

Having whole of organisation DGR endorsement enables XYZ Ltd to, amongst other things, receive deductible gifts of a generalist nature, issue tax deductible receipts in the name of the organisation. XYZ Limited can also engage in generalist fundraising advertising campaigns and, once received into a general account, can direct the funds received from deductible gifts to whichever of its projects it determines from time to time. This model is less administratively burdensome and more flexible.

Effect of proposed reforms

The inclusion of the new “in Australia” requirements for DGR endorsement (proposed section 30.18) will have a negative effect on the Australian-based work performed by XYZ Ltd. This is because viewed as a whole, the vast majority of XYZ Ltd's activities are performed overseas, albeit through an overseas aid fund which it is endorsed to operate. It will therefore fail to satisfy the in Australia requirement for DGR endorsement and none of the listed exceptions apply.

“in Australia” test for income tax exemption

We are of the view that the explanatory material to the exposure draft should provide more detail about how the exemptions to the “in Australia” test under proposed section 50-51(2) operate with respect to the operation of a fund, in particular an overseas aid fund. For instance, it should be stated that all the activities and expenses of an endorsed fund (even all the overseas activities and expenditure conducted through an endorsed overseas aid fund) are to be disregarded when applying the “in Australia” test for income tax purposes to the organisation as a whole.

Extent of the responsibility to track the use of funds – “look through” provisions

As compared to the first exposure draft, the revised draft is less onerous in terms of its “look through” provisions. The intent is simply to make a registered charity responsible for how its funds are used. The wording of the revised draft, however, effectively places no limit on how far a giving entity must look through when it provides funds to an unendorsed entity.

Sections 30-18(3) and 50.50(4) of the Exposure Draft use the phrase “the use of the money by the recipient or any other entity”. At the extreme there is no end to the inquiry that the giving entity must undertake; it is expected to construe and be responsible for all possible uses of its money far beyond the practical ability of any charity or even government.

We ask that some limit be placed on how far a giving entity must look through when determining how money it has provided to another entity (which includes a person) is being used.

ACFID Member Organisations as at 2 April 2012

40K Foundation Australia	Burnet Institute	Mission World Aid Inc.
Act for Peace – National Council of Churches Australia	Care Australia	Motivation Australia
ActionAid Australia	Caring and Living as Neighbours (CLAN)	Nusa Tenggara Association Inc.
ADRA Australia	Caritas Australia	Opportunity International Australia
Afghan Australian Development Organisation	CBM Australia	Oxfam Australia
Anglican Board of Mission - Australia Limited	Charities Aid Foundation**	Partners in Aid
AngliCORD	ChildFund Australia	Plan International Australia
Archbishop of Sydney's Overseas Relief and Aid Fund	Credit Union Foundation Australia	Project Vietnam
Assisi Aid Projects	Emergency Architects Australia Ltd	Quaker Service Australia
Australasian Society for HIV Medicine	Foresight (Overseas Aid and Prevention of Blindness)	RedR Australia
Australia for UNHCR	Fred Hollows Foundation, The	Refugee Council of Australia*
Australian Aid International	Friends of the Earth (Australia)	RESULTS Australia
Australian Business Volunteers	Global Development Group	Salesian Society Incorporated
Australian Conservation Foundation	GraceWorks Myanmar	The Salvation Army**
Australian Doctors for Africa**	Habitat for Humanity Australia	Save the Children Australia
Australian Doctors International	HealthServe Australia	Sexual Health & Family Planning Australia
Australian Federation of AIDS Organisations	Hunger Project Australia, The	TEAR Australia
Australian Foundation for the Peoples of Asia and the Pacific	International Centre for Eyecare Education	Transparency International Australia
Australian Himalayan Foundation	International Nepal Fellowship (Aust) Ltd	Union Aid Abroad-APHEDA
Australian Lutheran World Service	International Women's Development Agency	UnitingWorld
Australian Marist Solidarity Ltd	Interplast Australia – Royal Australasian College of Surgeons	WaterAid Australia
Australian Medical Aid Foundation	Islamic Relief**	World Education Australia Limited
Australian Red Cross*	Lasallian Foundation	World Vision Australia
Australian Respiratory Council	Leprosy Mission Australia, The	WWF Australia
Australian Volunteers International	Live & Learn Environmental Education	
Baptist World Aid Australia	Marie Stopes International Australia	
	Mercy Works Inc.	

* Denotes Consulting Affiliates

** Denotes Provisional Members