

8 April 2014

Our ref NFP/1

General Manager
Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600Email: 

Dear General Manager

Restating and centralising the special conditions for tax concession entities

Thank you for providing the Society with the opportunity to comment on the draft legislation, draft regulations and explanatory materials implementing the 2009-10 Budget measure to restate and centralise the special conditions for tax concession entities.

Without commenting on the need for or desirability of the amendments generally, the purpose of this brief submission is to raise two issues of concern:

1. The meaning of the word, "**solely**" which seems to be used in other than its plain English meaning. The Macquarie Dictionary defines, "*solely*" as follows - "*as the only one or ones*"; "*exclusively or only*"; "*wholly or merely*". As the proposed amendments and supporting material is read it is apparent, at least in relation to DGRs and also by implication in relation to current s50-50(2) proposed to be s50-50(3), that what is in mind is "**almost solely**" as "minor and incidental" departures are to be disregarded.
2. The meaning of the expression "**governing rules**", in the context of being required to "comply with all the substantive requirements in its governing rules" (current s50-50(2) proposed to be s50-50(3)). We note that this expression is defined in the ACNC Act to be limited to *written rules* but note that it does not seem to be defined in the Income Tax Assessment Acts. The reason for this concern is in light of a recent Supreme Court of Appeal case in Queensland, *Pine Rivers, Caboolture and Redcliffe Group Training Scheme Inc & Ors v Group Training Association Queensland & Northern Territory Inc [2013] QCA 358*. In this case the court ordered the respondent to "perform and observe its rules", being an **implied rule** to produce documents to members of its governing body (management committee). Substantial compliance with "implied rules" seems a very high bar.

We would hope that both of these matters would receive attention in the next draft of the proposed amendments.

