

James Brown Memorial Trust



Kalyra Belair Aged Care
Kalyra McLaren Vale Aged Care
Kalyra Woodcroft Aged Care
Kalyra Heights Village
James and Jessie Brown Cottages

ABN 15 447 235 771

14 December 2012

NFP Sector Tax Concession Working Group Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600
NFPReform@treasury.gov.au

Dear Sir / Madam

**Re: Fairer, simpler and more effective tax concessions for the not-for-profit sector
Discussion Paper – November 2012**

James Brown Memorial Trust is a not-for-profit provider of aged care services, retirement living and aged / exceptional needs affordable housing. As a charity, PBI and DGR recipient, tax concessions are a vital component of the Trust's business, and allow the Trust to undertake charitable works that reach out to more residents, tenants and clients.

Attached is the Trust's response to the consultation questions raised in the discussion paper. The very short time-frame for responses to the NFP Sector Tax Concession Working Group and the quantum of consultation questions has impeded somewhat the depth of response that we have been able to provide. The short time frame set by the Working Group has put significant time pressures on the sector.

Should you wish to discuss any of the attached comments further, please contact me on 08 8278 5444.

Yours sincerely

Kristy Newman
Director Finance & Administration

Dennis Chamberlain
Chief Executive Officer

2 Kalyra Road
Belair
South Australia 5052

Correspondence to
PO Box 196
Blackwood
South Australia 5051

Telephone (08) 8278 5444
Facsimile (08) 8278 3944
www.jamesbrown.org.au
Email trust@jamesbrown.org.au

'In accordance with the Will of Jessie Brown, to perpetuate the memory of James Brown by providing and facilitating humanitarian services which improve the quality of life of those in need.'

Fully accredited by The Aged Care Standards and Accreditation Agency and The Australian Retirement Village Accreditation Scheme

APPENDIX E — CONSULTATION QUESTIONS

CHAPTER 1 — INCOME TAX EXEMPTION AND REFUNDABLE FRANKING CREDITS

1. What criteria should be used to determine whether an entity is entitled to an income tax exemption?

The current system serves the community well therefore the income tax exemption criteria should not be changed.

2. Are the current categories of income tax exempt entity appropriate? If not, what entities should cease to be exempt or what additional entities should be exempt?

Yes, the current categories of income tax exempt entity are appropriate, as it allows those entities to continue to provide many critical services to the community. The Government would need to provide these services if NFPs could no longer provide some services due to the withdrawal of tax exempt status.

3. Should additional special conditions apply to income tax exemptions? For example, should the public benefit test be extended to entities other than charities, or should exemption for some types of NFP be subject to different conditions than at present?

No. Current conditions within each category are appropriate.

4. Does the tax system create particular impediments for large or complex NFPs?

No. No major impediments are currently experienced by James Brown Memorial Trust.

5. Should other types of NFPs also be able to claim a refund of franking credits?

No, the current NFPs that receive refund of franking credits are appropriate.

6. Should the ability of tax exempt charities and DGRs to receive refunds for franking credits be limited?

No. Refunds for franking credits provide a critically important form of income that allows entities to continue services.

7. Should the ATO endorsement framework be extended to include NFP entities other than charities seeking tax exemption?

No.

8. Should the income tax exemptions for State, Territory and local government bodies be simplified and consolidated into the ITAA 1997? Which entities should be included?

Yes, all entities should be included.

9. Should the threshold for income tax exemptions for taxable NFP clubs, associations and societies be increased? What would a suitable level be for an updated threshold?

No comment.

10. Please outline any other suggestions you have to improve the fairness, simplicity and effectiveness of the income tax exemption regime, having regard to the terms of reference.

No further suggestions.

CHAPTER 2 — DEDUCTIBLE GIFT RECIPIENTS

11. Should all charities be DGRs? Should some entities that are charities (for example, those for the advancement of religion, charitable child care services, and primary and secondary education) be excluded?

No, not all charities should be DGRs. The current exclusions should remain in place.

12. Based on your response to Q11, should charities endorsed as DGRs be allowed to use DGRs funds to provide religious services, charitable child care services, and primary and secondary education?

Yes

13. Would DGR endorsement at the entity level with restrictions based on activity address the behavioural distortions in Australia's DGR framework? Could unintended consequences follow from this approach?

Yes. DGR endorsement at the entity level with restrictions based on activity is appropriate. It is unclear if unintended consequences could follow.

14. If DGR status is extended to all endorsed charities, should this reform be implemented in stages (for example, over a period of years) in line with the PC's recommendations, or should it be implemented in some other way?

Yes, implementation in stages would be appropriate.

15. Would a fixed tax offset deliver fairer outcomes? Would a fixed tax offset be more complex than the current system? Would a fixed tax offset be as effective as the current system in terms of recognising giving?

No, a fixed tax offset would not deliver fairer outcomes, as higher income earners generally pay more tax.

Yes, a fixed tax offset would be a more complex system when compared to the current system.

No, a fixed tax offset may not adequately recognize giving by higher income earners, and thus discourage them for giving larger contributions.

16. Would having a two-tiered tax offset encourage giving by higher income earners?

No. We strongly disagree that having a two-tiered tax offset would encourage giving by higher income earners. High income earners are encouraged to give more with the current arrangements, as they receive a fairer tax deduction.

17. What other strategies would encourage giving to DGRs, especially by high income earners?

The current system is appropriate for encouraging giving to DGRs by high income earners.

18. Should testamentary giving be encouraged through tax concessions and what mechanisms could be considered to address simplicity, integrity and effectiveness issues?

No, testamentary giving tax concessions are complex.

19. Would a clearing house linked to the ACN Register be beneficial for the sector and public?

No, we see very limited benefit to James Brown Memorial Trust from the operation of a clearing house, which is potentially expensive for the Government.

20. Are there any barriers which could prohibit the wider adoption of workplace giving programs in Australia? Is there anything the Working Group could recommend to help increase workplace giving in Australia?

No.

21. Do valuation requirements and costs restrict the donation of property? What could be done to improve the requirements?

No, we consider valuation requirements to be appropriate.

22. Is there a need to review and simplify the integrity rules?

No.

23. Are there additional barriers relevant to increasing charitable giving by corporations and corporate foundations? Is there anything the Working Group could recommend to help increase charitable giving by corporations and corporate foundations?

We have not identified any additional barriers.

24. Are the public fund requirements, currently administered by the ATO, either inadequate or unnecessarily onerous?

No.

25. Are there any possible unintended consequences from eliminating the public fund requirements for entities that have been registered by the ACNC?

Unknown.

26. Should the threshold for deductible gifts be increased from \$2 to \$25 (or to some other amount)?

The threshold for deductible gifts should be increased to \$5.

27. Outline any other suggestions you have to improve the fairness, simplicity and effectiveness of the DGR regime, having regard to the terms of reference.

No further suggestions.

CHAPTER 3 — FRINGE BENEFITS TAX CONCESSIONS

28. Assuming that the current two-tiered concessions structure remains (see Part B), what criteria should determine an entity's eligibility to provide exempt benefits to its employees?

The existing criteria for determining eligibility should remain. Charitable institutions, PBIs and health promotion charities, NFP public hospitals and NFP public ambulance services should continue to be eligible as they provide significant benefit to the community. These services would otherwise need to be provided by Government. If the services were not provided at all, this would leave large segments of the community vulnerable.

29. Also assuming that the current two-tiered concessions structure remains (see Part B), what criteria should determine an entity's eligibility to provide rebateable benefits to its employees? Should this be restricted to charities? Should it be extended to all NFP entities? Are there any entities currently entitled to the concessions that should not be eligible?

The existing criteria for determining eligibility should remain. It is not appropriate to extend the rebateable benefit to all clubs and other NFP entities.

We do not have any direct knowledge of entities that are currently entitled to the concession that should not be eligible.

30. Should there be a two-tiered approach in relation to eligibility? For example, should all tax exempt entities be eligible for the rebate, but a more limited group be eligible for the exemption?

A current two-tiered approach to eligibility is appropriate, as we agree that not all tax exempt entities should be eligible for the rebate or exemption.

The current limited group should continue to be eligible for the FBT exemption, as this allows charitable institutions, PBIs and health promotion charities, NFP public hospitals and NFP public ambulance services to attract quality staff to deliver services that provide significant benefit to the community.

31. Should salary sacrificed meal entertainment and entertainment facility leasing benefits be brought within the existing caps on FBT concessions?

No, salary sacrificed meal entertainment and entertainment facility leasing benefits should not be brought within the existing caps on FBT concession.

32. Should the caps for FBT concessions be increased if meal entertainment and entertainment facility leasing benefits are brought within the caps? Should there be a separate cap for meal entertainment and entertainment facility leasing benefits? If so, what would be an appropriate amount for such a cap?

Yes the caps for FBT concessions should be increased if meal entertainment and entertainment facility leasing benefits are brought within the caps, however we do not believe these two items should be brought within the caps.

Yes, there should be a separate cap for meal entertainment and entertainment facility leasing benefits, which should be set at \$10,000 each.

Over the years since the caps were introduced, there has been a slow erosion of the FBT concession benefit, as tax rates have decreased and there has been a lack of indexation of the caps. We strongly support the implementation of annual indexation to the caps.

33. Are there any types of meal entertainment or entertainment facility leasing benefits that should remain exempt/rebateable if these items are otherwise subject to the relevant caps?

All meal entertainment and entertainment facility leasing benefits should remain as exempt / rebateable, however as described above in question 32, we believe that a cap being set for each category is appropriate.

34. Should there be a requirement on eligible employers to deny FBT concessions to employees that have claimed a concession from another employer? Would this impose an unacceptable compliance burden on those employers? Are there other ways of restricting access to multiple caps?

Yes, eligible employers should deny FBT concessions to employees that have claimed a concession from another employer.

It is not envisaged that this would place an unacceptable compliance burden on employers, but would be the most effective way of restricting an employee's access to multiple caps.

35. Should the rate for FBT rebates be re-aligned with the FBT tax rate? Is there any reason for not aligning the rates?

Yes, there is no reason for not realigning the rates.

36. Should the limitation on tax exempt bodies in the minor benefits exemption be removed? Is there any reason why the limitation should not be removed?

Yes, the limitation should be removed as there is no valid reason why it should remain.

37. Is the provision of FBT concessions to current eligible entities appropriate? Should the concessions be available to more NFP entities?

The provision of FBT concessions to current eligible entities is appropriate, and should not be available to more NFP entities.

38. Should FBT concessions (that is, the exemption and rebate) be phased out?

We strongly disagree that FBT concessions be phased out. The current limited group should continue to be eligible for FBT concessions, as this allows those eligible entities to attract quality staff to deliver services that provide significant benefit to the community. These valuable services may not be able to be provided if quality and experienced staff cannot be retained within the NFP sector.

39. Should FBT concessions be replaced with direct support for entities that benefit from the application of these concessions?

No. The current system of FBT concessions is established and works well. Many charitable programs run by NFP entities are not recognized or funded by Government.

40. Should FBT concessions be replaced with tax based support for entities that are eligible for example, by refundable tax offsets to employers; a direct tax offset to the employees or a tax free allowance for employees?

No. The current system of FBT concessions is established and works well.

41. Should FBT concessions be limited to non-remuneration benefits?

No comment.

42. If FBT concessions are to be phased out or if concessions were to be limited to non-remuneration benefits, which entity types should be eligible to receive support to replace these concessions?

No comment.

CHAPTER 4 — GOODS AND SERVICES TAX CONCESSIONS

43. Does the existing fundraising concession create uncertainty, or additional compliance burdens, for NFP entities that wish to engage in fundraising activities that fall outside of the scope of the concession?

No, there is no significant uncertainty or additional compliance burdens.

44. Would a principles-based definition of the types of fundraising activities that are input-taxed reduce the compliance burden for entities that engage in fundraising?

No.

45. Should current GST concessions continue to apply for eligible NFP entities?

Yes. The current GST concessions are essential to the ongoing sustainability of the NFP sector.

46. Are there any other issues or concerns with the operation of the GST concessions in their current form?

No other issues or concerns are identified.

47. Would an opt-in arrangement result in a reduced compliance burden for charities that would otherwise need to apply apportionment rules to supplies made for nominal consideration?

No.

48. If an opt-in arrangement is favoured, would the preference be to treat the supplies as taxable or input taxed? Why?

Not applicable.

49. Is there an alternative way of reducing the compliance burden associated with apportionment for supplies made for nominal consideration?

None identified.

CHAPTER 5 — MUTUALITY, CLUBS AND SOCIETIES

Question 50. to 55.

No opinion.

CHAPTER 6 — NEXT STEPS

56. Are there any areas in which greater streamlining of concessions could be achieved?

No comment.

57. Do you have any ideas for reform of NFP sector tax concessions within the terms of reference that have not been considered in this discussion paper?

No comment.