

14 December, 2012

Manager
Charities Unit
Indirect, Philanthropy and Resource Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: NFPReform@treasury.gov.au

Dear Manager

RE: FAIRER, SIMPLER AND MORE EFFECTIVE TAX CONCESSIONS FOR THE NOT FOR PROFIT SECTOR

Please find attached our response to the NFP Sector Tax Concessions Working Group Secretariat's Discussion Paper, for submission by 10am, Monday 17 December, 2012.

Two [2] versions of the document are provided: Word and pdf.

Yours sincerely



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**RESPONSE TO NOT FOR PROFIT SECTOR
TAX CONCESSION WORKING GROUP -
Fairer, simpler and more effective tax
concessions for the not for profit sector –
Discussion paper November 2012**

Submission from
The Women's Housing Association Inc.

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1. Background

- The Women’s Housing Association Inc. is a leading not-for-profit community housing organization based in South Australia. Our purpose is to provide safe, secure and affordable transitional and longer-term housing for women on a low income, with or without children. We specialize in providing housing to those who have experienced domestic or family violence. With over 450 properties housing more than 1000 South Australians, Women’s Housing is a vital and integral part of halting the domestic violence cycle, enabling women and children to rebuild their lives. As one of a select number of “Preferred Growth Providers” in SA, we aim to significantly increase our housing portfolio in the coming years to better meet the needs of this disadvantaged group.
- The Women’s Housing Association is incorporated under the SA Association Incorporation Act 1985, and registered under the South Australian Co-operative and Community Housing Act, 1991.
- We have Deductible Gift Recipient status, Public Benevolent Institution status, and tax exemption.

2. Executive Summary

Positive social and economic benefits

The Not for Profit (NFP) Sector and organisations such as The Women’s Housing Association deliver significant social and economic benefits to the communities in which we operate across Australia. The social benefits include improvements to the wellbeing of women experiencing homelessness/housing affordability problems and particularly those who have experience family or domestic violence.

The economic benefits are also significant. In 2010 the Productivity Commission released the report “Contributions of the NFP Sector. The report found that “Australia has 600,000 not-for-profit organisations which contributed \$43 billion to Australia’s GDP, growing at an annual rate of 7.7 per cent since 2000. If you count the contribution of 4.6 million volunteers, with an imputed value of \$15 billion, this would make it a similar contribution to the retail industry.” The total expenditure in Australia on GDP during the same period was \$1,046B (5204.0 - Australian System of National Accounts, 2006-07). As a percentage, the value of NFP sector is therefore about 5.5% of GDP.

The current value of tax concessions provided to the NFP Sector is approximately \$4b, which is less than 4% of the value of tax concessions provided to the economy as a whole (see page 8 of the Discussion Paper). Taking into account the significant social benefits contributed by the NFP Sector along with its relative economic size there is no case to reduce the level of tax concessions provided and a case can be made to increase such concessions.

Competitive neutrality

Competitive neutrality between the NFP Sector and the “for profit” sector is often an argument raised by supporters of the position to reduce tax concessions provided to it. On certain activities the level of tax concessions provided should be assessed by considering what each type of entity charges for the services or products they “deliver/sell” into the market place. If these differ then there is no need to try and bring in competitive neutrality with respect to tax concessions received by NFP. In these instances, if the tax concessions were reduced the NFP’s costs will rise, but their revenue will remain unchanged because they do not charge at the market rate.

Flawed terms of reference

Item 4. of the terms of reference of the Working Group as described on page 4 of the Discussion Paper says that “the working group will identify offsetting budget savings from

within the NFP sector for any proposals that have a budget costs”. We reject this item and ask that it be removed on the basis that it is unreasonable on the following grounds:-

- It is inequitable for one part of the NFP sector to be disadvantaged so that another part can be advantaged e.g. it is suggested in the paper that the cost of widening the scope of deductible gift recipients (surely there is already enough choice now for donors as to where they allocate their donations?) could be funded by the reduction in FBT concessions to PBI’s.
- On the basis of current size and contribution of the NFP sector, there is a case to increase the NFP sectors share of Australia’s tax concessions above the current 4% level. If there is off-setting to be done for budget purposes, a reduction of tax concessions *outside* the NFP sector is where savings should be found, that is, within the other 96% of tax concessions provided to the Australian economy. For example the value of the negative gearing concession available to private sector landlords (and of no value to NFP affordable housing sector provider like The Women’s Housing Association) costs the Australian Government in excess of \$4B per annum in lost revenue. Further, it is arguable that negative gearing actually makes housing more *unaffordable* for low to middle income earner because of its effect in bidding house prices upwards.

Contents of this submission

The main tax concessions accessed by affordable housing and homelessness providers in the NFP sector are those that relate to fringe benefits and GST. The feedback within this paper therefore mainly concerns itself with the discussions questions raised in these areas.

The reform options in relation to Income Tax and Refundable Franking Credits are supported.

Our organisation does not at present engage in large scale fundraising activities. The DGR status and concessions are however considered valuable and we, for the most part support the reform options proposed in the paper except for the following.

- On the question of extending DGR concessions to all charities, we would propose that no, this should not be extended. Australia is already well served by a great variety of tax-deductible charities across a diverse range of charitable activities. Broadening the number would only create extra choice that is not required and dilute the availability of donated funds available to existing DGR’s
- Whilst the concept of a clearing house linked to the ACN Register is attractive because of its simplicity, it is likely that such an institution or entity would be misused by parliamentarians and it would be seen as an opportunity for “pork barrelling”.

Parliamentarian interference will occur in respect of the allocation of the funds to entities. Such abuse would severely damage the very concept of giving that is being promoted. In addition it would not give charities any assurance of income from the fund whereas with the present arrangement they have greater assurance because they are the ones having the conversations with the prospective donors.

Fringe benefit concessions are valued however some changes are needed

Fringe benefit concessions are critical to the ongoing viability and effectiveness of the NFP sector and organisations such as The Women’s Housing Association. They assist to bridge the remuneration gap that exists between the profit and NFP sector. These concessions are particularly valuable for The Women’s Housing Association and other social housing providers at present on account of the significant growth that our organisation has experienced over the last five years and expects to have over coming years (arising from actual or proposed reforms within State Housing Authorities).

This growth will mean that affordable housing providers will need to recruit new staff, many with technical and specialised skills from the private sector. FBT concessions will assist with this recruitment. The financial operating margins in the provision of social housing services are very slim and FBT Concessions help to reduce employment costs.

In summary, changes are proposed in the following areas:-

- Capping of meal entertainment and entertainment facility leasing benefits are warranted, however this should be done in conjunction with increases in concessional caps limits that reflect reasonable allowance for the continuation of such benefits.
- An increase in the concessional cap is also warranted to reflect that the existing cap has not been indexed since it was introduced in 2001.

GST concessions operating effectively with minor changes proposed

The GST concessions available to The Women’s Housing Association have had a significant positive impact on the creation of new affordable housing. Under Section 38(250) of the GST Act, The Women’s Housing Association is able to claim back GST input tax credits incurred when building new affordable housing. This is possible because the supply of accommodation that we provide is deemed to be a GST Free supply because the rents charged to tenants are less than 75% of the market rents of the supply.

The changes proposed relate to this concession, in particular:-

- We propose that the 75% limit mentioned above be raised to 80% to be administratively consistent with maximum rentals able to be charged under NRAS (National Rental Affordability Scheme).
- Taking a pooled approach with revenue when assessing whether a charity is charging less than 75% of market rent.

3 Detailed responses

Fringe Benefits Tax Concessions

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

Yes these benefits should be brought within caps. It is inconsistent with the broader intent of the legislation that certain benefits must be provided within a cap and others can be provided without limit.

3.2 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 concessional cap limits should be increased if these benefits are brought within caps. If they aren't then this would unfairly disadvantage both our organisation and then staff that we employ.

As to the idea of separate caps we would propose that this would be too difficult and instead suggest that there be a redistribution of the value of the tax concessions available for meal entertainment (ME) and entertainment facility leasing (EFL) back to increase the value of the overall FBT cap.

To determine the appropriate amount for such a cap it is important to first consider the following:-

(i) Since 2001, the \$30,000 concessional cap for PBI's has not been indexed. It would be fair to say that the growth in ME and EFL benefits has come about because the general \$30,000 cap has not been indexed.

(ii) What is a reasonable limit for meal entertainment and entertainment facility leasing benefits?

This is a more difficult question to answer as it requires assessing what would be reasonable. For any one organisation this would depend up current level of average salaries and interest in this form of salary packaging. It is proposed that assuming an average salary of \$50,000, then a reasonable ME exemption would be 10% of this i.e. \$5000 or \$10,000 grossed up. For EFL, a similar exemption of \$10,000 grossed up would also be reasonable.

Two options are proposed for consideration.

Option 1 Single flat concessional cap limit for each employee

The CPI Index at June 2012 was 180.4. At June 2001 the CPI Index was 133.8. If the cap was indexed by the CPI it would have been \$30,000 *180.4 / 133.8 = \$40,448, say \$40,000 as at June 2012. To this you would also need to add a reasonable amount for ME and EFL benefits. If an allowance of \$5000 (not grossed up) was made for each benefit and assuming a gross up factor of say 2, then a new higher limit could be calculated as follows:-

\$30,000 cap indexed = \$40,000
Plus ME = \$5000*2 = \$10,000
Plus EFL = \$5000*2= \$10,000
New Limit \$60,000 (Grossed Up)

Option 2 Proportional concessional cap limit for each employee

An alternative the above flat rate could be to introduce proportionality to the cap so that the amount of salary packaging that an employee could do would increase as their salary increases. This would ensure that salary packaging remains a relevant incentive to attract and retain staff across the range of salaries paid by an organisation. Under a fixed cap arrangement, the value of the concessional cap diminishes as salaries rise.

A reasonable proportion would be one third of pre-packaging salary.

For example:

Salary - pre packaging	50000	100000	150000
Less packaging	-16667	-33333	-50000
Gross Payments (Taxable)	<u>33333</u>	<u>66667</u>	<u>100000</u>
Reportable Fringe Benefits *	<u>33333</u>	<u>66667</u>	<u>100000</u>

* Assumed gross up factor =2

For ease of administration the cap could be expressed in the following terms:-

“Grossed up reportable fringe benefits cannot exceed Gross Payments” (Both terms having the same meaning as relevant to annual Payment Summaries)

To ensure lower income earners are not disadvantaged and to address impact of inclusion of

meal entertainment and entertainment facility leasing within the cap, a floor on the cap of say \$50,000 grossed up should be applied. A ceiling of say \$150,000 grossed up could also be introduced to prevent excessive packaging if this was thought necessary.

Either way, fixed or variable within a range all future caps should be indexed by CPI.

3.3 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?

Yes, those that is necessarily not easily attributable to individual employees or provided in the normal course of operations of the NFP as part of work activities.

**3.4 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, in principal the concession should only be available once to a particular taxpayer. However it would be too difficult to administer so no change is proposed in this response. We would expect that the number of staff that is employed by multiple PBI's would be too small to justify a change in the current arrangements i.e. not a material issue.

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

Yes alignment is recommended as there is no reason for not aligning.

3.6 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?

The limitation should be removed.

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

Current concessions are appropriate, no change is proposed.

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

No, these concessions are integral to ongoing viability and effectiveness of the sector and our industry. This is an important mechanism for the recruitment and retention of skilled staff to the sector. Whilst this does not close the gap to private sector wages – it does reduce the financial disadvantage of working in this sector. In its current form, it provides certainty about the salary package of an employee, compared to the uncertainty that surrounds government funding mechanisms.

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

This idea is not supported. The current method (FBT exemptions) is an efficient mechanism to deliver benefits to the sector that are allocated proportionally based on staff numbers. The employees can directly relate to the benefit. Direct support to entities would significantly harm this relationship. Direct government support increases the administrative burden of employers to apply, accept, report on funding and is only for a specific timeframe – therefore confidence of what the direct government support will look like in the short or medium term is traditionally lower than the current FBT concessions.

Any rationalisation of or reduction in FBT exemptions will come at a cost to The Women's Housing Association, and if this occurs, additional direct support will be required.

3.10 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?

Whilst this solution may offer some administrative benefits the quantum of direct payment suggested at paragraph 164 of the Discussion Paper (\$2800) is less than 50% of the benefit currently available to employees. The concept of a payment that could be used at the discretion of the PBI to allocate between employees or for some other reason introduces a further complexity to the administration of NFP employees and would confuse the process for little or no gain.

It should be borne in mind that many NFPs do not have funds to employ people to administer new and complex taxation systems. Most organisations have simple and effective systems already in place to manage current concessions (including salary packaging cards).

3.11 Should FBT concessions be limited to non-remuneration benefits?

No, this would remove the majority, if not all, of the financial advantages of the FBT concessions to our staff. The removal of this financial advantage will greatly impact on the recruitment and retention of skilled staff to the NFP sector, as a means to partially closing the remuneration gap with the private sector.

Clarity is required as to what benefits would still be available as “non-remuneration” as a means to offer compensation to existing staff accessing FBT concessions.

3.12 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?

Phasing out of concessions is not supported, however if they were PBI's should be supported on the basis that their employees would be the most adversely impacted.

Goods and Services Tax Concessions

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

Yes

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

- We propose that the 75% limit mentioned above be raised to 80%. This is to be consistent with maximum rent level set under the NRAS (National Rental Affordability Scheme). The NRAS subsidy is provided by the federal government to encourage the creation of new affordable housing.. Aligning these two percentages of market rental tests would simplify and remove confusion that arises when renting affordable housing properties into the future. This change would stream line rent calculations administratively and simplify compliance requirements.*

- Taking a pooled approach to assessing whether a charity is charging less than 75% of market rent. Presently as a PBI we charge less than 74.99% of market rent to the majority of our tenants. In a few instances, due to noncompliance with requests for information or due to longevity of tenure we charge Market Rent. A literal reading of the GST Law seems to indicate that such an action is a breach of the “74.99% rule” and consequently we should reduce the amount of GST we recover when filing our BAS.*

These occurrences are isolated and are not representative of what happens in 99% of the portfolio of properties rented out. If the rent charged across the portfolio is less than 75% of marker rent (of the portfolio) there is no impact on the GST to be recovered via the BAS return.

Q 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