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Submission to the Not-for-Profit Sector Tax Concession Working Group concerning the Fairer, simpler and more effective tax concessions for the not-for-profit sector Discussion Paper

By the Standing Committee of the Synod of the Anglican Church Diocese of Sydney

1 Who we are

- (a) Our organisation is the Anglican Church Diocese of Sydney (the Diocese).
- (b) This submission is made on behalf of the Standing Committee of the Synod of the Diocese.
- (c) Our contact details are –

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2 Preliminary comments

- (a) We are grateful for the opportunity to make a submission to the Not-for-Profit Tax Concession Working Group (the Working Group) in respect of its Discussion Paper “Fairer, simpler and more effective tax concessions for the not-for-profit sector” (the Discussion Paper).
- (b) The Discussion Paper addresses a range of tax concession areas affecting the not-for-profit sector. However the Discussion Paper gives the general impression of seeking to identify reform for reform’s sake rather than systematically identifying and exploring issues and their root causes which might lead to a meaningful reform process built on evidence based research and inputs. In this regard, we believe that the Working Group has not been helped by its inability to comment on certain current Federal Government tax reform agenda items that are also proposed to affect the not-for-profit sector.

3 Income Tax Exemption and Refundable Franking Credits

3.1 Eligibility

- (a) As the Working Group would be aware, the Federal Government announced the introduction of a statutory definition of charity which is due to commence on 1 July 2013. We are concerned that an exposure draft of the proposed definition has not yet been released.
- (b) We acknowledge the not-for-profit sector is larger than just charities. However we recommend that priority is given to finalising any reforms surrounding the meaning of charity before proceeding further with reforms to tax concessions that apply to charities and other not-for-profit entities.
- (c) We also wish to draw the Working Group's attention to the fact that charities operating under the common law meaning of charity, with the exception of charities for purposes beneficial to the community, have a presumption of public benefit. In various places the Discussion Paper refers to a "public benefit test"¹ and in so doing appears to proceed on the basis that there is or should be no presumption of public benefit.
- (d) The presumption of public benefit currently applies and, for the reasons set out in our previous submission to Treasury on the matter, must be retained in any statutory definition of charity.

3.2 Refunds of franking credits

The policy objective on refunding franking credits is clearly articulated in the Discussion Paper. However the Discussion Paper's use of statistics comparing refunds of franking credits to growth in Australian Government revenue in an attempt to highlight a 'concern' with the refund policy is unhelpful and, of itself, is not a cogent policy reason to limit in any way the amount of franking credits an organisation can receive as a refund.

3.3 Endorsement framework

- (a) The recently established Australian Charities and Not-for-profits Commission (ACNC) was established as '*a national regulator for not-for-profit entities*'² and will '*be responsible for registering entities as not-for-profit entities*'³.
- (b) It is important the ACNC undertakes this responsibility for the entire not-for-profit sector as originally intended. Accordingly, registration with the ACNC should be a '*prerequisite for an entity to access certain Commonwealth tax concessions*'⁴ which would include relevant income tax exemptions for all not-for-profit entities.

4 Deductible Gift Recipients

4.1 Extending Deductible Gift Recipient status

- (a) The Discussion Paper outlines three options for expanding access to the deductible gift recipient (DGR) regime (Discussion Paper Options 2.1, 2.2 and 2.3).
- (b) If changes are to be made to expand the range of charities eligible to access the DGR entitlement, only Option 2.1 is supportable, namely that DGR entitlement should be extended to all charities without exception or limitation.
- (c) Options 2.2 and 2.3 are premised on a series of untested and potentially misleading assertions that appear to cast doubt on the public benefit of charities which exist for the

¹ See for example paragraph 17 and Consultation Question 3.

² Extracted from guide contained in Section 10-5 of *Australian Charities and Not-for-profits Commission Act 2012*.

³ Section 15-5(2)(b)(i) of *Australian Charities and Not-for-profits Commission Act 2012*.

⁴ Section 15-5(3) of *Australian Charities and Not-for-profits Commission Act 2012*.

advancement of religion, education and child care. We consider that the appeal to the provision of “private benefits” to persons who access the services of such charities to support a view that they are essentially self-serving and exist for a closed group of individuals indicates a misunderstanding about the nature of these charities and the public benefit they provide. We are also unconvinced by the suggestion that “integrity issues” would be more apparent in respect to these charities if they were granted DGR status.

- (d) It would seem the real issue is the proposed fiscal cost of a change, stated in the Discussion Paper as \$1 billion per annum. Accordingly debate on this topic should be based on whether the extension of DGR entitlement to all charities is affordable as a nation rather than on untested and potentially misleading assertions that large parts of the charitable sector are not operating, or even capable of operating, for the public benefit.

4.2 Tax offsets versus tax deductions

We consider that further modelling is required to enable a more informed discussion on the merits of tax offsets versus tax deductions for the individual donor. Specifically the modelling needs to consider who would actually benefit, including the impact on DGRs, from such a proposal.

4.3 Clearing house for donations

We do not support the proposal to create a clearing house for receipting, processing and distributing donations. We note that the objects of the ACNC include supporting an independent and innovative not-for-profit sector. A clearing house for donations, whether or not linked with a government body such as the ACNC, would not foster an independent and innovative not-for-profit sector.

4.4 Streamlining and rationalising reporting obligations

We believe there is an opportunity to streamline and rationalise the reporting obligations of public ancillary funds now the ACNC is operational. This opportunity currently exists for those public ancillary funds which are also endorsed as tax exempt charities. In due course streamlined reporting through the ACNC could apply to all public ancillary funds once the ACNC assumes responsibility for the whole not-for-profit sector. We therefore encourage the ACNC as part of its object to reduce red tape and unnecessary regulatory obligations to identify which ATO regulatory obligations are no longer necessary and remove these accordingly.

5 Fringe Benefits Tax Concessions

5.1 Preliminary comments

- (a) In relation to the two tiered FBT concession structure referred to in the Discussion Paper, we do not believe there is any need for change. The Discussion Paper provides no compelling reason for any change.
- (b) The Discussion Paper is intended to deal with issues relating to the not-for-profit sector. However included in this section of the Discussion Paper is data relating to public hospitals. We would be concerned if the Working Group formed recommendations which have been influenced by the use of disaggregated data relating to multiple sectors as opposed to focusing solely on specific not-for-profit related data.

5.2 Meal entertainment and entertainment facility leasing benefits

- (a) The Discussion Paper questions whether changes should be made to the meal entertainment and/or entertainment facility leasing benefits.
- (b) As previously stated, the Discussion Paper has not presented any compelling reason for a change to occur. However if any recommendation is made to include these benefits within the general fringe benefit cap of \$30,000, we consider that such a change should be accompanied by an increase in the general cap. It is noted the general cap has not been

adjusted since its inception in 2001 and, as a minimum, a CPI adjustment from 2001 to date should be applied to the cap.

- (c) If any recommendation for change is to be developed for either the meal entertainment or entertainment facility leasing fringe benefit concession, any such recommendation should be limited to benefits that are received as a result of a salary sacrifice arrangement. This will ensure these benefits, when they are provided by employers in the normal course of their operations, remain concessional for fringe benefits tax purposes.

5.3 *Long term reform options*

- (a) The Discussion Paper under section '3.4.4 Part B - Long Term reform options' refers to the Australia's Future Tax System Review (AFTS) report as the platform for the long term reform options.
- (b) We categorically disagree with the AFTS recommendation (contained in the Discussion Paper questions) that FBT concessions should be phased out. Nor do we believe any of the replacements identified to be practical, equitable or sustainable over the short life times of political expediency. We are also unable to support any proposal to limit concessions to solely non-remuneration, incidental benefits.

6 Goods and Services Tax Concessions

- (a) The Discussion Paper proposes a principles based definition to the types of fundraising activities that would be eligible to access the GST input taxed fundraising concession. We would support further exploration and development of this concept.
- (b) The Discussion Paper further proposes the non-commercial activities test for supplies by charities could become optional. At first glance this proposal has some merit however further consideration needs to be given to the practicalities of complying with such a proposal and whether there would be any unintended consequences. One aspect that would require further consideration is the potential interaction of GST adjustment periods, particularly in relation to property transactions.

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