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Submission to the

NFP Sector Tax concessions
Working Group

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www.anglicare.asn.au

Background

Anglicare Australia is a network of 43 member agencies across Australia. These members together support one in forty Australians of all ages, operate 1,545 sites, employ over 31,000 staff and volunteers and have a combined budget of over a billion dollars. They have a diversity of size and service offering and are present in every type of community across Australia. They have been supporting their communities for over 150 years and are deeply embedded in the communities which they serve.

Anglicare Australia members have a variety of governance and organisational structures typically as either Incorporated Associations or as Companies limited by guarantee which may affect taxation status and therefore the range of benefits they access.

Membership of Anglicare Australia is conditional, requiring members to (amongst others requirements) *“operate at the highest and most transparent level of governance and financial stewardship”* (Anglicare Australia Code of Ethics).

General comments

Anglicare Australia believes that in the NFP sector agencies operate very close to financial break even and current tax arrangements provide a basis on which to maintain viability and sustainability in a very tight funding environment. Additionally because of funding constraints, the NFP sector has difficulty in providing significant wage incentives to attract staff and remuneration is significantly below that which is provided in the for profit and government sectors.

The Discussion Paper makes little reference to the National Compact, not recognising the benefits of the NFP sector and the extraneous benefits it delivers.

Further by not including the effects of the proposed Unrelated Business Income Tax the review is limited in its future view of the full range of measures in relation to the NFP sector.

The taxation regime of any country should underpin and drive the desired social structure. Once that outcome is achieved it should in its operations be efficient. Any changes should be made to achieve these two outcomes and not to achieve zero cost change as is set in the Terms of Reference for this project. The benefits of the NFP sector are societal wide; trying to contain reform within a zero cost or internal fairness seems, at best, shortsighted.

Anglicare Australia will not seek to answer all the questions in the discussion paper individually but advocates that the principles outlined above are utilised to underpin any decisions.

Specific Comments

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

Anglicare Australia supports the use of The Working Group's agreed upon guiding principles for this review of NFP tax arrangements with the intent of maximising the public benefit generated by these concessions.

The net gain in social benefit is a compelling rationale for an entity to be entitled to an income tax exemption, however a more in depth understanding of what it takes to deliver a net gain in social benefit requires further consideration.

Overtly "for profit" activities within any of the entities qualifying for an income tax exemption do require guidance and a balanced reflection of emerging community values both in Australia and developments in other countries. NFP's such as medical and education organisations often partner with "for-profit" organisations in the delivery of mutually beneficial outcomes. This can involve the creation of complex entity combinations and structures which in isolation might present a different conclusion to the entitlement to an income tax exemption.

Financing structures between NFP's and charities and "for profit" organisations often leverage resources such as providing access to global investors and capital markets. Much of government innovation policy looks to financing "social benefit" programs through the private sector as is being seen with the advent of SIB's (social impact bonds) and innovative Workers Compensation Insurance structures such as Retro Loss Paid Workers Compensation Insurance which transfers liability from government to private insurers and reinsurers.

It is well established that some entities qualifying for income tax exemption in the NFP sector only qualify as a result of gaming and gambling ventures which either directly or indirectly fund the "core" social benefit activities of those organisations.

For the more straight forward NFP, PBI, Trust, Registered Unincorporated Associations entities operating in Australia the ACNC should be able to assess public benefit and respond to ATO requirements without major reform. More complex structures and less transparent parallel activities of them will require further analysis and assessment to account for new technology which can be very powerful in diverting funds away from stated public benefit purposes.

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?

Persons or organisations not genuinely in pursuit of the criteria suggested by The Working Group should be prevented from deriving benefit from these arrangements. Excessive commercial "for profit" activity co-mingled or associated with fundraising should also be contained in the context of fairness and primary purpose.

Point 13 provides ...

“13. A charity is a NFP that has a sole purpose that is charitable. At common law, as modified by Commonwealth legislation for Commonwealth purposes only, charitable purposes are:

- the relief of poverty or sickness or the needs of the aged;*
- the advancement of religion;*
- the advancement of education;*
- the provisions of child care services; and*
- other purposes beneficial to the community.”*

The ACNC might wish to further qualify the commonwealth definition of charities into a more prescriptive concept of social benefit. Sustainability of a typical NFP can require operating surpluses to entities which then channel funds into an endowment model to build capital bases for funding future operations and capital investment to maintain and upgrade infrastructure to meet developing service needs.

Trusts, Foundations, non-charity organisations working for the clear benefit of charity organisations might well be optimal candidates for the extension of income tax exempt status. ACNC might formulate activity specific models within existing entities which provide one off concessions. These might be offered as start up incentives sponsoring directional change in the sector or could be projects which offer such significant net social benefit that targeted concessional support would be a sound strategy.

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

Significant time, effort, money and resources are invested by large or complex NFP's to be compliant with the requirements of the tax system. This is a reality in most countries and requires recognition and measurement by ACNC as an important data point to monitor against expectations. Any reform should lower compliance burdens and not increase them, as for example, attempting to quantify the benefits of income tax exemptions at an organisational level would.

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

Corporate Social Responsibility (CSR) and special one-off ventures such as events, fundraising, and targeted research by participants being, individuals and entity in a range of sectors should be able to come together for a public benefit purpose and be entitled to specific one-off tax concessions. There is a need for further innovation to grow, fund, incentivise and support public benefit activities.

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

No. This is a significant source of income to these entities. These entities need to be sustainable to continue to provide public benefit. Franking credit refunds is one key input to this sustainability.

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

Yes but perhaps on a progressive basis case by case rather than providing an incentive for individuals and for profit entities to divert their funds into NFP entities for primary reasons of obtaining tax concessions as typically this becomes problematic in determining public benefit and sustainability of the NFP sector.

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?

Yes, much higher than \$416, we would suggest \$10,000 indexed.

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.

Tax payers could be given the option of having tax deductible donations automatically collated into their tax returns by ATO. Income earners should be able to receive a concessional tax rate for pro-bono hours worked in order to sponsor closer engagement between for profit and NFP and charitable and NFP activity.

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?

Yes, subject to the confirmation of public benefit of the charity's activities. For example well-off individuals donating to the private school attended by their children and other children paying high fees is not of public benefit.

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?

Only subject to the confirmation of public benefit of the all the charity's activities.

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?*

The ACNC is not presently geared up to conduct meaningful reviews of all charities to become eligible for DGR. A phased approach is reasonable, that is based on need, impact and priority of support being given to new charities being established with compelling and significant public benefit.

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

Yes, although there needs to be a full assessment of the extent of funding available to the ACNC to provide such a service. Expanding the linkage and automation of ATO related requirements would offer funded synergy. However this does not seem to be a particularly efficient method of increasing donations and may detract from other functions to be performed by the ACNC.

An informational clearing house would need to be provided on a well governed basis that does not assume the analysis and communications by media and other commentator users will always be accurate honourable nor in the public interest. This approach also assumes that all eligible charities and NFP's would have the necessary funding to initiate and constantly upgrade their communications and social media to remain "competitive" with other organisations in similar sub sectors.

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?*

See response to questions 23. (volunteers and pro-bono) , 26. (technology), 5. (combinations of marshalled resources). Charities and NFP's are often challenged by the degree of influence a sponsor or major donor has over the direction of the organisation or specific events being supported. This area requires monitoring and governance.

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

Valuations drive the amounts by which assets are transferred and any taxes, duties or costs are attached. Improving valuation techniques whilst reducing the cost of valuation would assist.

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

Yes this would provide more prescriptive guidance in a difficult area.

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?*

Pro-bono staff hours are essentially donated hours by staff. Volunteers' and donated corporate staff time needs to be organised, sponsored, encouraged and recognised as "value in kind" for which a concessional rate of tax should be provided for a proportioned estimated paid hours of work (including and cash bonuses) employees receive. Government presents a blockage of masses of "good will" work by trained professionals imparting their

skills to charities and NFP's in areas of specific need by assuming there are sufficiently talented and remunerated resources in the NFP sector.

In addition adopting the Canadian model but at a higher \$1,000 level regarding minimum and maximum marginal tax rates make a lot of sense.

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

For administrative ease a shift to the Canadian model of donations below and above \$200 is compelling. The application of fixed rate deductions is also compelling from The Working Group criteria perspective. Suitable levels should take into account the small start of many long term donors and the typical monthly (or regular) amounts many donors give. However we would caution moving to a much higher level all in one go as this may be enough to signal to donors and prevent some donations.

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.

Expand DGR to qualifying NFP's but adopt the distinctions between purpose and the integrity issues in respect of funds and closeness to government.

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?

Stringent application of the Public benefit criteria.

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?

Given the two-tiered concessions structure remains, the public benefit criteria should form the basis of eligibility. ACNC is not geared up to monitor NFP activities at this point so the actual administration requirement is not likely to be serviced in the near term. It is important to retain the benefits for charities. ACNC will review existing and new charities public benefit status over time which would be an appropriate time to amend eligibility on that basis.

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?

If a two tier system is retained a reasonable and indexed cap should be identified that provides a meaningful benefit. If a comprehensive benefit of a matching sum can be provided to employees as an alternative without penalising their employer then, notwithstanding administrative constraints, this should be explored further.

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?

Employees are by the nature of and compensation for their work for NFP's often employed by multiple employers. The guiding principle should be that regardless of the employer an FBT concession to employees should be available for qualifying activities, but should not be granted concessions multiple times for the same item i.e. no double dipping. One employer has no obligation to another to enforce tax administration not within its own entities' operations. A clear distinction needs to be made between non-compliant rorting of caps, by individuals structuring evasive arrangements, which should be open to regulatory scrutiny as part of an assessment of an individual, and the genuine entitlement an individual to avail themselves of concessions when in the employ of an employer.

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

The sliding scale of FBT rates is administratively burdensome to NFP's and distorts decisions on arbitrary measures such as vehicle cost, size, km's travelled which often conflicts with fitness for purpose such as safety, environmental concerns and client needs where a salary package vehicle is also used for work purposes. FBT rates and concessions do need to be normalised and concessions to match until a comprehensive alternative form of remuneration and concessionary mechanism can support NFP's in attracting and retaining good staff.

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

Yes, if the public benefit of the NFP is demonstrated and the cost of administration supportable.

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

No, not unless there is a fully funded alternative that improves the result going forward to the individual, the NFP entity and presumably the government.

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

Only if the net outcome is consistent with making the individual and the NFP no worse off now or into the future. The direct support should be transparent and favour greater those earning less. Such support should also require employees to opt in rather than opt out. The current system requires employers to recommend people access expensive advice before taking up.

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?

Only if the net outcome is consistent with making the individual and the NFP no worse off now or into the future. The regulators would also need to understand this includes no further cost in servicing the proposed administrative process.

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

More definition detail is required before this question can be properly answered.

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?

The current arrangement provides significant benefit; removing it would be to the risk of sustainability and service impact.

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?

We would be interested to research this further especially in the context of discouraging “commercial” fundraising activity which operates to the detriment of many other organisations not engaged in the activity.

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

Yes.

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

We understand there may be proposals to increase the GST rate in the near term. We would seek clarification that the existing concessions would increase in scale were the GST rate to rise.

Technology supporting the collection administration and refunding of GST should be upgraded to reflect the technology available to access bank accounts and mobile phones etc. When GST was introduced much of the technology available today was not in use or not invented.

One of the innovations Anglicare sees as necessary in the future is co-operative arrangements forming between NGO’s, NFP’s and community groups. This direction is seen as being important in the facilitation of integrated community care services rather than clients having to deal with a separate government department or their outsourced provider for each different category of service. It is important that the tax status of co-operatives are considered as part of formulated agreements rather than finding out that more optimal configurations could have been established.

CHAPTER 6 — NEXT STEPS

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

Continue to simplify FBT arrangements in the NFP sector.

Give tax payers the option to have DGR's directly loaded to their Tax Returns through a process of confidential provision of tax file numbers.

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?

The key argument is that the NFP sector already operates under a number of significant constraints and that the FBT regime is an enabler of the work we do. The NFP sector deliver the bulk of community services across the nation. Anything which compromises ability to deliver services or which impinges on financial viability will not only impact those agencies but also the quantum and quality of the services currently being delivered, and in the end the client and their families. This is especially true in a competitive tendering environment and where CPI is often not met in recurrent funding and NFPs are expected to absorb such costs from within their own investment or donation pools. The true benefit of the sector is complex and not alluded to at all in this discussion paper.

The complexity in reporting to Government on servicing over many (one member reported 350 for example) Acquittals and prudential reporting in Community Care and Aged Care services along with Segmental reporting at a statutory level adds a cost to charities' administration which is excessive. Given this activity is primarily to verify the proper dissemination of government funds into servicing specific programs, more streamlined and efficient reporting mechanisms need to be introduced and reporting templates normalised across local, state and federal programs. It would be preferred if ACNC can provide influence over this normalisation so that the tax arrangements that charities and NFP's do benefit from are not misdirected into disparate reporting processes.

Government is increasingly providing significant monies on consumer directed care and individualised care package choices which will support more choice for the client base. Changes to taxation arrangements for the sector should be made with this in mind and not so that more redtape will be created and more reform needed in subsequent years.