wanslea
since 1943

NFP Sector Tax Concession Working Group Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

By email: NFPReform@treasury.gov.au

Re: Not-for-Profit Sector Tax Concession Working Group

Thank you for the opportunity to respond to the discussion paper in regard to the Not-for-Profit sector tax Concession.

Wanslea Family Services Inc is a not for profit community agency and charity operating in Western Australia since 1943. Services include family support; out of home care; community capacity building and child care. They are delivered in metropolitan Perth, Great Southern, Peel and Goldfields regions of WA.

Yours sincerely

Tricia Murray
CHIEF EXECUTIVE OFFICER

PO Box 211 Scarborough WA 6922 Tel: **(08) 9245 2441**
Email: **support@wanslea.asn.au** Website: **www.wanslea.asn.au**

WANSLEA FAMILY SERVICES INC
ABN: 36 660 171 727

WANSLEA CHARITABLE TRUST
ABN: 62 907 718 590

WANSLEA EARLY LEARNING AND DEVELOPMENT
ABN: 35 530 687 121

Wanslea welcomes the opportunity to provide feedback to the Not-for-Profit Sector Tax Concession Working Group.

The paper is based on some assumptions that need further discussion and consultation, however, the timeframe for response is unnecessarily short given the impact any change is likely to have on the charitable/not-for-profit sector. To have a closing date at what is the busiest time of the year for much of the sector raises questions of understanding of Government and the Reference Group. The definition of 'charity' requires further discussion and agreement. Equally there is no mention of the intrinsic value of the many organisations that make up this group and their contribution to the fabric of our community: i.e. the notion of 'civil society'.

The fundamental principle of 'tax concessions' is also questionable. The charitable, and particularly those in the Public Benevolent Institution group, have tax arrangements that acknowledge that they are not commercial entities, but organisations that are based on proud traditions of mission, vision and values that offer far more than service delivery to the community. If any of these is "lost" as a result of this process the culture of Australian society will be severely eroded.

The not-for-profit charitable sector (charitable sector) has traditionally had lower salaries across all levels of employees when compared with salaries offered by private industry and government departments. It needs to be recognised and acknowledged that, for many positions the work type, work load, consumer of services, qualifications and experience required are exactly the same as if delivered by Government or for profit staff, with no differential as to the sector. So one must question why there is a commonly held view that if the work is conducted within a charitable sector organisation the employee 'deserves' to be paid less. This is a premise that must be dismissed as nonsense. Salaries need to be paid in accordance with principles of work value within a market of equity and fairness that recognises a person's worth.

There are some comparisons that can be made. Teachers in the private sector do not expect to be paid less than their public sector counterparts and families and the community would be outraged if this was suggested. Equally doctors and nurses in private hospitals expect at least the same conditions as their public sector counterparts in providing health services. However, when it comes to the community services that most Australians will need at some point in their lives the value of remuneration to community sector staff can be 30% or more below Government and private sector employees without any question of relativity being raised, unless the term "fat cat" used in this paper is indicative of the thinking of Government. The staff in this sector have been underpaid for too long and the Gender Equity decision of 2012 doesn't even come near to addressing this.

Historically salary packaging has been the only mechanism the community sector has had to match salaries paid in other sectors. The decision by the, then, Howard Government to introduce the current regime was an attempt to stop perceived 'rorting' by some organisations that allowed staff to package their entire salaries. The system as it stands now at least captures tax payments from a significant number of employees, who it must be remembered are mostly at the lower end of the salary scale when compared with average weekly earnings. The intention at the time of implementation was that the grossed up $30,000 value would be indexed enabling relativities to be maintained. This was 'forgotten' by both Liberal and subsequent Labor Governments and the value of packaging has been eroded over time.

The implication in the paper is that employees, of charitable sector organisations are 'fat cats' exploiting the system. At Wanslea salary packaging is offered to all staff across the organisation as a way of matching salaries to the public sector. It is used by staff who work full and part time, but not by casuals and staff are encouraged to take it up to maximise the value of their remuneration package. Very few use any of the additional options such as venue or meal entertainment cards simply because they do not have the disposable income needed for what are seen by many as 'luxury items'. A large proportion of staff in the sector is female, part time and at the lower end of salaries. The benefit of packaging may be limited by these factors, but for those on low wages every dollar counts.

Wanslea has undertaken a calculation of what it will cost the organisation if salary packaging is removed and the same value in salary is maintained. This only took into account the eligible $16,000 allowed i.e. no additional options and the increase in funding required under Commonwealth and State Government contracts is $850,000 p.a. at today's salary value.

The Commonwealth Government has a poor history of indexing its contract funding. If there is no packaging option available the cost to Government will increase exponentially each year. The paper refers to lost tax revenue of $3billion but makes no reference to the estimated cost of maintaining the relative value of the salary component of grants and contracts. Logic indicates it will be far higher than $3billion as a whole new Government Department will be created to administer a system to monitor, review and acquit the proposal outlined.

Other issues from the Paper:

- Implementing a tax offset mechanism for gifts
    - Should donating to charitable causes concessions be driven by savings to Government. The more the community donates the less the Government needs to fund to ensure charities are meeting the needs of their constituents. It also provides the means by which charities can fulfill the mission of their organisations and add to the fabric of civil society
    - A clearing house for donations is not supported. Charities have more than a financial relationship with their donors and the reverse is also true. The emotional factor of donating needs to be acknowledged, supported and encouraged. The proposed set up and ongoing costs of a Clearing House don't indicate that this is a cost effective suggestion
    - In calculating the benefit of the FBT exemption the indicative value of the salary packaging doesn't include the component of 'what do I need to earn to have the same salary value after tax'. Charities will need to increase salaries by nearly twice the 'value' amount contained in this paper for employees to receive the same take home pay. The modeling assumes that PBIs can pay the higher competitive salaries; however, it is acknowledged that the sector has the lowest paid, most casualised employees, after hospitality, in the country.

It makes sense to remove the packaging offered to employees in the various State Health Departments. Doctors and nurses have had the capacity for salaries to maintain parity through Award increases that have been denied employees in the community sector. The reports of rorting have largely come from these staff groups and there have been few consequences for those individuals who have been caught.

The charitable sector provides enormous value to the vulnerable and disadvantaged in the community and staff need to be remunerated fairly and equitably in line with the value of their work.

Comments on Discussion Paper: Fairer, simpler and more effective tax concessions for the NFP sector

Background and Scope

"As well as considering ways to effectively direct Australian Government support for the sector, this review also provides an opportunity to consider whether support for the sector can be delivered in a simpler way. Existing arrangements are complex and impose compliance burdens on the sector. Proposals to simplify the tax concessions would reduce this compliance burden"

Proposed areas of reform

- Income tax exemptions
- Deductible gift recipients
- Fringe benefit tax
- Goods and services tax
- Mutuality principle in clubs and societies

Income Tax Exemptions

The current tax law provides an income tax exemption to entities that primarily undertake purposes that are broadly beneficial to the community, such as charitable, religious, scientific and public educational institutions. The exemption applies to both ordinary income and statutory income such as capital gains tax

A charity is a NFP that has a sole purpose that is charitable. A charity needs to seek endorsement from the ATO to be granted Income Tax Exempt status as well as other tax concessions (eg. FBT, GST). Some other types of entities are not expected to seek specific endorsement. They can self - assess as an Income Tax Exempt Entity.

This chapter examines the equity and fairness of the different methods by which entities achieve various tax concessions and exemptions.

One option that is put forward is that ALL NFP entities are required to seek income tax exemption and other concessions endorsed by the Commissioner. Therefore, the current practice of some entities self - assessing to be abolished.

Reform options	Assessment against the Working Group's guiding principles
Option 1.1: Who should be eligible for exemption for income tax?	The option allows issues of fairness and maximising the social good to be addressed.
Option 1.2: Who should be eligible for refunds of franking credits?	The option allows issues of fairness and maximising the social good to be addressed.
Option 1.3: Extend ATO endorsement framework All entities that are potentially eligible for an income	The option scores highly for fairness as there is no clear rationale for requiring charities to apply for endorsement but not applying

tax exemption would need to apply for endorsement by the ATO. At present only charities require endorsement to be exempt from income tax.	the same requirement to other NFP entities. The option does not score as highly for efficiency, as a requirement to apply for endorsement would increase compliance burdens for NFP entities that do not currently need to be endorsed.
Option 1.4: Rewrite and consolidate rules for State, Territory and Local Government bodies Income tax exemption rules for State, Territory and Local Government bodies are complex and remain in the ITAA 1936. A rewrite and consolidation into the ITAA 1997 would make the provisions more accessible.	The option scores highly in terms of efficiency as compliance burdens could be reduced by simplifying the relevant provisions.
Reform options	**Assessment against the Working Group's guiding principles**
Option 1.5: Increase the tax free threshold for taxable NFP clubs, associations and societies The current tax free threshold is $416 and has not been updated for several decades.	The option scores highly on maximising social good and simplicity. Increasing the tax free threshold would reduce the compliance burden for those entities that no longer need to lodge tax returns or pay tax.

Comment: From Wanslea's perspective, any proposed changes will not affect us. These proposed changes appear to be sensible and help with providing more clarity in an area that is currently open to interpretation

Deductible Gift Recipients

There are a number of ways in which an entity can become a DGR

- Endorsement by ATO
- There are also about 200 entities already listed as DGRs in the Income Tax Assessment Act
- Some DGRs must be formally approved by a Minister and be recorded in one of four DGR registers

One of the concerns is that many entities that are eligible for income tax exemption are not eligible for DGR status. The requirement to fit within a general DGR category presents problems for entities that undertake activities that fit within, or are covered by, more than one general DGR category. DGR endorsement is "entity" based, not activity based. One solution that is suggested is that DGR status is extended to ALL endorsed charities. But this can result in complications if the charity provides significant private benefit to the individuals that access its services. Eg. a private school. Granting DGR status to these schools is likely to give rise to integrity issues as it would be difficult to distinguish between the payment of fees and voluntary donations.

This chapter also discusses various mechanisms to provide donors with tax incentives. One method discussed is changing the tax deductibility option to a tax offset.

It is also suggested that a clearing house for donations, linked to the ACNC register is established. All donations to charities will be processed through one central system. This has many implications for charities that depend on the fundraising dollar, one of which is that the relationship established with donors will be eroded.

Reform options	Assessment against the Working Group's guiding principles
Option 2.1: extending DGR status to all charities All charities would be eligible for endorsement as a DGR entity.	This option scores highly in recognising giving in Australia, as the public will be able to donate to all charities on a tax deductible basis; simplicity as the general DGR categories and Registers will be eliminated; and transparency as eligibility conditions will be simplified and easy to understand.
Option 2.2: extending DGR status to most charities All charities, except for charities that are primary and secondary education providers; charitable child care providers and entities established for the advancement of religion, would be eligible for endorsement as a DGR entity.	This option scores highly in terms of structural coherence as the option helps safeguard Australia's DGR framework from inappropriate use, have less cost to revenue than reform option 2.1. The other benefits identified for reform option 1 apply to this option.
Option 2.3: establishing endorsement conditions relating to the scope of charitable activities All charities will be endorsed with restrictions on the scope of activities an entity can use DGR funds to finance.	The option scores highly in terms of efficiency as it reduces behavioural distortions which characterise Australia's current DGR framework. The other benefits identified for reform option 2.1 and reform option 2.2 apply under this option.
Option 2.4: implementing a tax offset mechanism for gifts Donors would receive a tax offset (tax rebate) at a rate to be determined for gifts to DGR entities.	This option scores highly in terms of fairness as all taxpayers would receive a similar tax benefit. It also scores highly on transparency and efficiency as it will be easy to understand and use.
Option 2.5: hybrid system for donations to private ancillary funds (PAFs) Donations to PAFs will continue to be tax deductible, and donations to all other DGR would be offset at a fixed rate to be determined.	This option scores highly in terms of recognising giving in Australia as it would ensure that the tax benefit for high net worth individuals is not reduced. The other benefits identified for option 2.4 apply to this option, but to a lesser extent (particularly related to fairness).
Option 2.6: tax incentive to encourage testamentary giving Donors would receive a tax deduction for testamentary gifts made to DGRs.	This option may help to encourage giving by reducing the difference which exists between the tax treatment of gifts made during a person's life and those provided in a will. The effectiveness of this reform option is likely to be low. Overseas experiences and similar past Government programs suggest that such initiatives are likely to have a significant cost to revenue, result in substantial tax avoidance opportunities, and have only a very limited impact on testamentary giving. This option creates distortions as different DGRs will effectively operate under differing DGR frameworks which would undermine reforms to simplify the framework.
Option 2.7: creating a clearing house for donations to DGRs The ATO would establish and maintain a clearing house for donations to DGR entities which is linked to the Australian Charities Not-for-profits Register (ACN Register).	This option scores highly in recognising giving in Australia as it reduces transaction costs associating with giving, provides simplicity for both donors and DGR entities, and is transparent as all entities would have information on their operations included on the ACN Register. Donors would also be readily able to track their gifts for claim purposes. It is estimated that a significant percentage of gifts to DGRs are not currently claimed.
Option 2.8: simplification of property donation rules and anti-avoidance rules Property donation rules and integrity rules would be streamlined and simplified.	This option scores highly in terms of efficiency as rules would be streamlined and simplified reducing compliance costs, transparency, as it would foster a sounder understanding of the rules, and recognising giving as it will be easier to make property gifts which would likely increase property donations.
Option 2.9: eliminate public fund requirements for charities registered by the ACNC Where an entity is registered by the ACNC it would not have	This option scores highly in terms of efficiency as charities which are registered by the ACNC would not have to simultaneously prove that they meet governance standards

Reform options	Assessment against the Working Group's guiding principles
to comply with the public fund requirements.	and public fund requirements. However, this would not ensure suitably qualified persons controlled the DGR so as to help prevent inappropriate decisions being made by it in breach of its constitution or the law.
Option 2.10: increase the threshold for a deductible gift from $2 to $25	This option scores highly in terms of efficiency as the threshold has not been updated for many decades and the requirement to issue receipts for relatively small donations can be a compliance burden for some deductible gift recipient and for some types of fundraising activity. This option is likely to score less well on recognising giving, as gifts of less than $25 would no longer be tax deductible, unless an exception applies (for example, for workplace giving).

Comment:
As Wanslea does not currently engage in active fundraising, this particular reform will not impact on us. However, for those entities that depend on fundraising, these changes could have some negative impact. If the number of DGRs increases, the fundraising dollar will merely be spread amongst a larger number of recipients. The establishment of a donor clearing house could impact on the personal relationships established by major fundraisers and their donors. People give to a cause that impacts on them in some way. Giving to an anonymous clearing house assumes that giving has no emotional impact on the donor, yet traditionally most charities use a "heart tug" approach to attract donors and this has been successful. The proposal to increase the minimum value of deductible donations will do away with the traditional street appeal type of fundraisers that are popular ways of collecting small donations.

Fringe Benefit Tax Concessions

This chapter deals with the various types of FBT concessions available to PBIs and to NFP hospitals as well as other charitable entities. It discusses some of the anomalies as well as inconsistencies and the perception that the FBT benefits are used by some higher paid individuals to access very large tax savings. This is particularly in connection with those in the medical profession.

The value of salary packaging fringe benefits from an employee's perspective is quantified as the increase in disposable income . Section 128 states that, "The FBT exemption provides significant benefits to employees of eligible entities (and to the entities themselves), with the ability to engage in salary packaging worth up to around $4,300 per annum to an employee with a taxable income of $45,000 and up to around $6,100 per annum to an employee with a taxable income of $100,000"

Comment:
This calculation does not take into account the increase in equivalent salary as a result of packaging. The real benefit is more in the region to $5,000 to $ 10,000 i.e. the amount that needs to be earned to match the salary after tax if there was no packaging.

Concerns with current concessions

1. Inconsistency of treatment: The only entities entitled to the exemption are PBIs, public and NFP hospitals, health promotion charities, ambulance services and religious entities. Some, but not all, income tax exempt entities are entitled to the rebate

2. Competitive neutrality: Entities entitled to the exemption have a competitive advantage over for-profit organisations in hiring and retaining staff and also over other NFP entities that are not eligible for the exemption

   Comment:
   This is the only means by which NFPs can attract and retain quality staff. It does not give them an advantage over for-profit organisations; it merely attempts to make it a level playing field.

3. Use of concessions outside of initial policy intent: There is considerable anecdotal evidence to indicate that some relatively high income individuals receive significant benefits from the use of uncapped meal entertainment and entertainment facility leasing concessions. The PC, in its 2010 report, noted examples of high income professionals paying for restaurant meals and hire of wedding venues from pre-tax income under these concessions

   Comment:
   Agree that if the system is being used to benefit a few in a way that is outside the original policy intent, some measures need to be put in place to curtail this practice. However, the number of high income individuals in the sector is relatively few when compared with the large number of low paid employees. This can be supported by the recent Gender Equity Pay Claim made by Fair Work Australia. The Commonwealth Government's payment to funded services is based on Level 4.1 of the Award as the average for the sector. This is approximately $40,000pa for a fulltime employee and well below average weekly earnings for Australia.

4. Administrative burdens: Offering fringe benefits impose considerable compliance burdens on eligible entities and the take up rate is mostly amongst highly paid staff

   Comment:
   From Wanslea's perspective this is not any more of a burden than compliance measures in place for funded contracts. The benefits far outweigh the costs. Also, if the value of salary packaging is promoted amongst staff the take up rate is high and definitely not restricted to higher paid staff.

Section 142 states: FBT concessions allow some entities in the NFP sector to offer attractive remuneration benefits to employees. However, the FBT concessions are complex, impose significant compliance burdens and raise concerns about fairness. Inequality arises because there are inconsistencies related to who is eligible for the concessions and also because fringe benefits tend to be provided to employees with higher disposable incomes.

Comment:
Yes the FBT concessions are complex. However, unless a less complex substitute that offers the same benefits can be suggested, NFPs are better off staying with the current system.

Should the list of entities eligible for the exemption or rebate be revised?

Comment:
The only reason that NFPs benefit from these concessions is that they can stay competitive in the labour market. Those NFPs that need this advantage should be provided with the exemption or rebate.

Short Term reform options

1. Include meal entertainment and entertainment facility leasing benefits within the relevant caps

Comment:
A solution is to place a limit on amount allowed for meal entertainment and venue hire (on top of $30,000 cap) if it is thought that there is widespread abuse. From Wanslea's perspective, any changes to this legislation will not affect recruitment as these benefits are not promoted as part of the package when recruiting staff.

2. Require employment declarations to include information about FBT concessions to avoid employees from benefiting from multiple caps

Comment:
An area where it appears that original policy intent was not carefully considered. This will only affect staff if they have been recruited from another NFP and only applies for the remainder of the FBT year. If staff are working in more than one organisation they are already paying tax at a higher rate due to the tax threshold legislation. The FBT value is added to their income tax for purposes of other benefits so the cost to government is likely to be minimal.

3. Align the rate for fringe benefits tax rebates with the fringe benefits tax rate of 46.5 per cent

Comment: **Agree**

4. Align the minor benefit exemption with the commercial sector. Should the limitation on tax exempt bodies in the minor benefits exemption be removed?

Comment : **Agree**

Long term Reforms

1. Phase out capped FBT concessions and replace with alternative government support in the form of grants.

   The capped FBT concessions should be phased out entirely over 10 years and replaced with direct government funding. AFTS suggested that this direct funding might be provided by application to the ACNC or relevant Commonwealth Government agencies for funding for specific projects or for assistance with the costs of recruiting specialist staff. The major benefit of this approach would be a significant reduction in the compliance burden for tax-exempt NFP entities that are currently required to provide salary sacrificing and FBT reporting services to their staff. However, applications for direct grants and reporting on those grants to government agencies can also involve significant compliance costs that would, to some extent, replace those tax compliance burdens.

Comment:

This does not make any sense at all. Applying for and acquitting grants will be a far greater burden. The real benefit of offering salary packaged wages will not translate into direct funding from the government. This paper contains no information as to the likely cost to Government of this proposal.

2. Phase out fringe benefits tax concession and replace with alternative tax-based support mechanisms for eligible not-for-profit entities
   a. Refundable tax offsets payable to eligible entities
   b. A direct tax offset paid to employees of eligible entities. Lower tax on wages
   c. Tax free allowance for employees of eligible entities

Comment:

(a) – How will the refundable tax offset be calculated? If it is averaged out across all staff, the entity may be disadvantaged and end up having to pay FBT

(b) – This appears to be a workable option that will need to be indexed annually to maintain parity.

(c) - This could also be considered as an option and could pick up casual staff who are currently ineligible for packaging options.

3. Limit concessions to benefits that are incidental to employment

If the FBT concessional framework were to be retained, the Working Group will consider the alternative of limiting concessional fringe benefits to 'non-remuneration benefits' (for example, benefits that are incidental to employment such as use of a staff car park at no cost in the CBD). This approach would eliminate concessional treatment for salary packaged benefits, but the sector would retain the ability to provide incidental benefits to employees, such as in-house meals or incidental use of cars, without FBT being payable, or with application of the rebate. The concessional treatment of these incidental benefits would not require capping due to the specific requirement that these benefits not be part of the employee's remuneration.

Comment:
This does not allow NFPs to be competitive with salaries and thereby attract and retain quality staff. It is definitely not an alternative to current concessions as it assumes that NFPs are located in areas of work where these types of concessions are applicable. Most NFPs are not located in the CBD and few have onsite meal options. For many, the use of cars is tied to direct client work and is not seen as having personal financial benefit.

Goods and services tax concessions

Reform options	Assessment against the Working Group's guiding principles
Option 4.1: Adopt a principles-based approach to the fundraising concession The current concession for fetes, balls, gala shows, dinners, performances and event where all goods are sold for $20 or less outside the ordinary course of the NFP body's business would be replaced with a principles-based concession.	The option scores highly on simplicity and efficiency. The existing fundraising concessions distort decisions about fundraising activities and impose avoidable compliance burdens on the sector.
Option 4.2: Provide an opt-in arrangement for GST treatment of non-commercial supplies The GST-free treatment of non-commercial supplies increases compliance costs in some cases if only a small number of supplies are non-commercial. An opt-in mechanism could reduce these compliance costs.	The option scores highly on simplicity and efficiency. The existing system imposes disproportionate compliance burdens on entities when a small proportion of supplies are non-commercial. An opt-in arrangement would reduce the compliance burden whilst having a small positive impact on Government revenue.

Comment:
Neither of the above will affect Wanslea

Mutuality, Clubs and Societies

Not Applicable