

JBWere

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

JBWere  
17 December 2012





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# Introduction

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Thank you for the opportunity to comment on this Discussion Paper.

JBWere is a financial services organisation that provides wealth management and advisory services to a broad range of private individuals and families, businesses, non-profit and corporate clients. Through its major shareholder, National Australia Bank, JBWere has access to a broad suite of banking, funds management and trustee services, and more particularly those focused on servicing the community sector.

The JBWere Philanthropic Services team is a dedicated team within JBWere Private Wealth Management. It encourages mutually beneficial relationships between our clients, individuals and families, businesses and their respective stakeholders (i.e. employees, customers and shareholders), and the community sector.

## **The principal aims of the Philanthropic Services team are to:**

- promote philanthropy broadly, and where appropriate, incorporate philanthropic planning into the wealth management strategies our clients
- assist charitable, cultural, sporting, member organisations and other NFPs in the management of resources, utilising sound investment principles, whilst understanding the special requirements of these non-taxpaying entities to ensure these organisations' ongoing sustainability. This includes helping to establish relationships with potential supporters who may be able to provide ongoing support.
- work with private and public businesses to assist them in establishing and managing socially responsible strategies and to build appropriate relationships with philanthropic and NFP organisations
- support external financial organisations, dealer groups and independent financial planning firms to educate and service their clients about the most appropriate philanthropic structures and where possible provide appropriate advisory and product solutions.
- explore and support innovative ways to put funding into the community through the use of a variety of social investment alternatives.

JBWere also promotes a public ancillary fund known as the JBWere Charitable Endowment Fund, the sole trustee of which is National Australia Trustees Limited.

We contribute to the promotion, growth and education of the philanthropic sector in a variety of ways, and distribute information and insight via our website, our employees, our clients and the media.

The work of the JBWere Philanthropic Services team means we are well placed to comment on the Discussion Paper. The relationships we enjoy allow us to view issues not only from a charity perspective but from the perspective of a company supporting the sector, as an advisor to major donors supporting the sector and as an advisor to a wide diversity of charity recipients.

This submission follows recent JBWere submissions in relation to Private Ancillary Funds, Public Ancillary Funds, Fundraising Regulation Reform, Finance for the NFP Sector and the establishment of the Australian Charities and Not-for-Profit Commission.

In this submission we have not attempted to answer all the questions posed in the Discussion Paper.

# Discussion Questions & Responses

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## 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?**
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?**
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?**
4. **Does the tax system create particular impediments for large or complex NFPs?**
5. **Should other types of NFPs also be able to claim a refund of franking credits?**
6. **Should the ability of tax exempt charities and DGRs to receive refunds for franking credits be limited?**

Many endowed charities and DGRs such as Public and Private Ancillary Funds rely on the income they receive from franking credit refunds to help meet their funding commitments. For many Public and Private Ancillary Funds in particular, the loss of this income could challenge their ability to meet their annual minimum distribution requirements in a sustainable manner.

The current regime is simple, efficient and fair. Charities and DGRs are exempt from paying tax on income earned and this exemption is closely related to the principle that they are deemed to be acting in the public interest. Limiting entitlement to franking credit refunds is contrary to this principle. Charities and DGRs with investment portfolios are more likely to be sustainable and robust organisations, due to their financial health, which enables them to plan, carry out and expand their charitable activities in a sustainable manner. Endowed entities also have the ability to generate passive income at a lower cost to alternative forms of fundraising. Franking credit refunds represent a particularly efficient, low cost form of income for charities and DGRs. This income, applied for charitable purposes, helps generate social benefit, and reduces reliance of government funding and other forms of subsidy. Absent this income, charities and DGRs would need to seek additional funding at higher cost, and/or scale back their services to the community.

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

**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?**

Consistency and simplicity across the States, Territories and local government bodies would create a more efficient and equitable environment for tax-exempt entities. It may also work to encourage additional efficiencies and beneficial consolidation in the sector, via mergers and collaboration. For example, federated entities may be encouraged to consolidate their operations within a national framework.

**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?**

**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.**

When considering income tax exemption in relation to unrelated commercial activities undertaken by charities, the Working Group should take into consideration the notion that such activities can foster self-sustainability and less reliance on philanthropic and Government subsidy. We support the concept of commercial activities undertaken to enhance the viability and sustainability of charities and DGRs, provided these activities ultimately support the charitable purpose for which income tax exemption was given in the first place. In this regard, it is important to adopt a holistic and long term view when considering how profits on commercial activities are applied, and whether, in any event, they should be taxed.

**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?**

Cost-benefit implications are obviously an important consideration, however, in principle, any charitable institution or fund that satisfies a public benefit test should be able to offer donors a receipt for tax deductibility purposes. In recognition of the wide range of charitable activities undertaken by many charities, entities should also be able to apply for DGR status without limiting themselves to a single DGR category, but should instead be able to seek endorsement under multiple categories that reflect their charitable activities and objects. Organisations (e.g. charitable trusts) should be able to apply for DGR status rather than have it automatically granted, as an automatic granting of DGR status might restrict the class of eligible beneficiaries they can fund.

DGR status is commonly considered to be essential to successful philanthropic fundraising. The current classification system for DGRs, involving DGRs of different 'Type' also acts as a control mechanism for the transfer of funds between charitable funds and institutions of different Type. Inter alia, this is to protect against the possibility that charitable monies move back and forward between charitable entities outside the tax system without ever being distributed back into the community. Inadvertently, the regime also restricts the ability of some funders to support worthy causes. For example, Type 2 Private Ancillary Funds are unable to distribute to Type 2 hospital foundations that seek to generate philanthropic support for public hospitals. This effectively prevents many Private Ancillary Funds from funding hospitals, as the alternative – funding the hospital directly – is usually not possible, due to the hospital itself not possessing DGR status.

We propose a regime where any charitable institution or fund that satisfies a public benefit test should be able to offer donors a receipt for tax deductibility purposes (i.e. should be able to apply to be endorsed as a DGR under one or more categories of charitable purpose); that there be a single 'Type' of DGR; and that restrictions on funding *by* DGRs be defined by reference to a DGR entity's objects, constitution, charitable purpose, etc. The Australian Charities and Not-for-Profits Commission is to act as a regulator for the sector and the Commission is best placed to monitor the application of funds by charities. For example, the Commission's (anticipated) access to standardised financial reporting provides an opportunity for it to monitor appropriate application of funds by DGRs. Oversight by the Commission would add to the regulatory, legal and fiduciary framework within which trustees and directors of charitable entities must fulfil their duties. Under this system, an organisation would continue to hold DGR status as long as it continued to satisfy the requirements for a charitable institution or fund subject to a public benefit test. Loss of charitable status would immediately trigger loss of DGR status also.

**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?**

**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?**

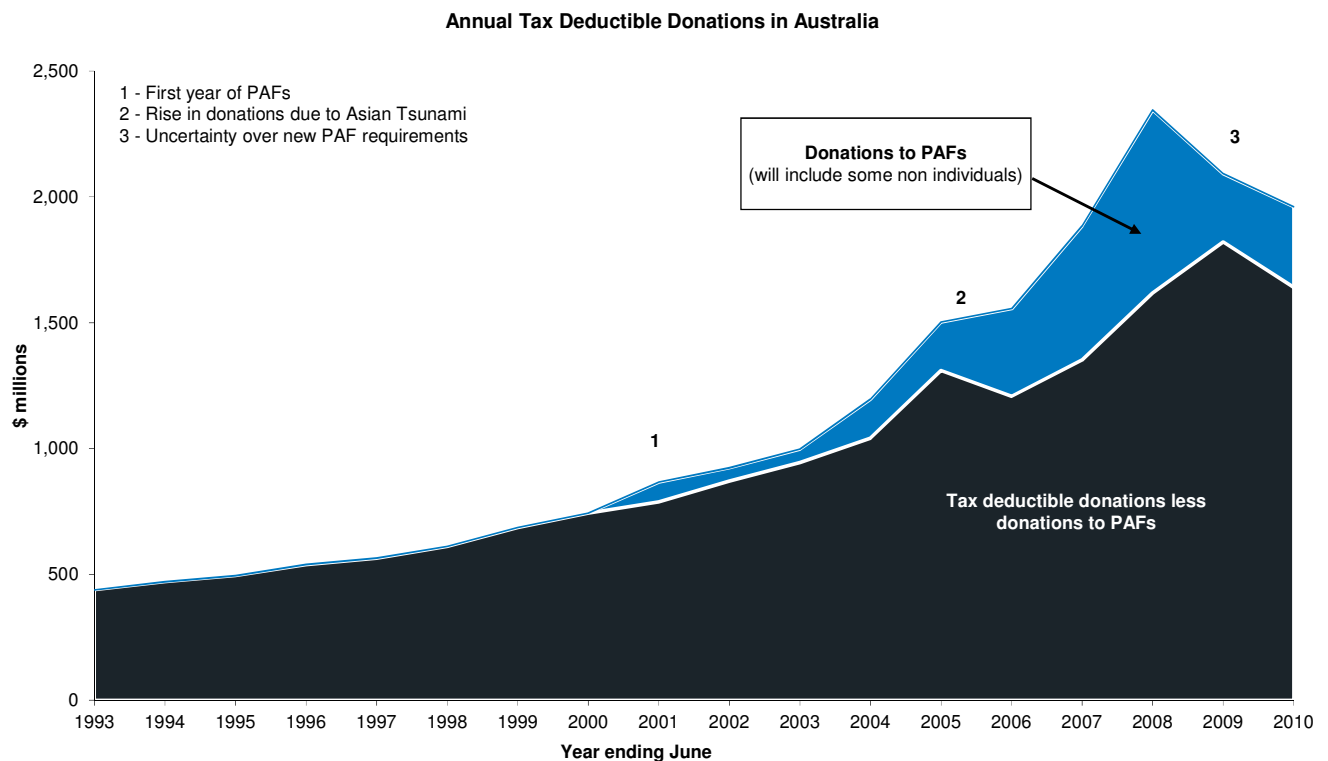
**14. If DGR status is extended to all endorsed charities, should this reform be implemented in stages (for example, over a period of years) in line with the PC's recommendations, or should it be implemented in some other way?**

**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?**

Any changes to the system should be designed to encourage giving by Australians with lower incomes, without discouraging giving by Australians with higher incomes.

A fixed tax offset would be slightly simpler to administer, however the current system is not overly complex in our view. Allowing deductions at a taxpayer’s marginal tax rate means the incentive to make donations increases as income increases, which generally means there is more incentive to give for those with greater capacity to give, which may be the most equitable and effective incentive system. The following chart shows the effect of tax incentives introduced in 2000 for the purpose of encouraging giving by high net worth Australians. There is every reason to believe that retaining the current system of offering high net worth Australians the opportunity to claim deductions at their marginal tax rate will continue to drive growth in philanthropy in Australia. This growth is about more than just money. Philanthropy, for individuals, families and groups, is about participation in society. It can be about education of the individual, the development of personal and family values, and the creation of a culture of giving in its broadest sense. Ultimately, philanthropy is an important part of Australia’s social fabric, and preserving proven incentives is an essential part of growing giving.

We also believe the introduction of a fixed offset in the manner contemplated would have an unintended consequence. Wealthy Australians would be incentivised to set up Private Ancillary Funds for the purpose of obtaining a tax deduction at their marginal tax rate. These tax payers would then fund their preferred charities via their Private Ancillary Funds. Whilst we strongly support growth in Private Ancillary Funds, we believe this would be a distortion.





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

A two- tier offset will add some complexity to the current system and may retard growth in giving by high income earners.

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

The concept of the charitable remainder trust has been explored to some degree in recent years, although not fully, due to changes in Government at the Commonwealth level. We recommend a full exploration of this concept and the various models Australia could adopt.

Common in the United States of America these vehicles are established by donors whilst they are alive to provide named beneficiaries with an income stream during their life, with the capital ultimately being distributed to charity. The donor receives a deduction for the capital contribution and the trust itself is a tax-exempt entity. This vehicle may be appealing to those who want to make a donation but are concerned that they may require capital to generate income during their own lives. This allows capital to accumulate in a tax-exempt environment for charitable purposes whilst providing an income stream to the donor.

Another concept worthy of consideration is the Charitable Lead Trust. Again common in the United States of America, these trusts are established by a donor during their lifetime with a set income stream provided to a charity or charities for a set period, with the capital reverting back to the donor or to a nominated beneficiary at an agreed time (often death). This provides donors with a vehicle to support charities during their life or for a set period, with capital returning to them or their chosen beneficiaries at a defined point. The deduction accessed at the time of the donation is not the capital amount but instead the present value of the income stream to the charity.

It may be worth noting that whilst the Cultural Bequests Program is cited in the Discussion paper, it may not constitute a representative sample.

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

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

A clearing house has some appeal and the potential to reduce the cost of compliance and administration for DGRs. A clearing house of this kind could also be used to promote giving, by providing a one-stop-shop for donors and by helping to improve belief in the integrity of the sector.

That said, there is the potential for charities to feel this type of clearing house undermines their ability to manage the process and build relationships with potential supporters.

**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?**

Workplace giving is a powerful and efficient giving tool and one that has been adopted by sections of corporate Australia. There is however much room for further adoption, including scope for greater participation rates from within organisations that have already adopted workplace giving programs. The taxation statistics from the 2009–10 income year showed that of the 2,504,598 employees offered workplace giving opportunities only 4% participated.

The ACNC website will attract people interested in giving. Therefore the website should contain information on the features and benefits of workplace giving and a guide to establishing a workplace giving program, The role of Government institutions in adopting workplace giving should also be a consideration of the Working Group. This would significantly increase the reach of workplace giving and help cement it as part of the Australian working culture.

The inclusion of workplace giving in the ATO 2009-10 Taxation Statistics was a welcome addition and one that will help to provide a greater understanding of the impact of such programs.

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

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

**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?**

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

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

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

We believe that the threshold for total annual deductions should be raised to \$25 for reasons of practicality and efficiency. We see limited downside, given many smaller donations are made in cash and/or do not result in a claim being made. This would also help to provide a more meaningful floor for Workplace Giving programs.

We also believe there should be no requirement to produce a receipt for a claim under \$10.

**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.**

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?**
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?**
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?**
31. **Should salary sacrificed meal entertainment and entertainment facility leasing benefits be brought within the existing caps on FBT concessions?**
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?**
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?**
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?**
35. **Should the rate for FBT rebates be re-aligned with the FBT tax rate? Is there any reason for not aligning 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?**
37. **Is the provision of FBT concessions to current eligible entities appropriate? Should the concessions be available to more NFP entities?**
38. **Should FBT concessions (that is, the exemption and rebate) be phased out?**
39. **Should FBT concessions be replaced with direct support for entities that benefit from the application of these concessions?**
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?**
41. **Should FBT concessions be limited to non-remuneration benefits?**

**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?**

Consideration should be given to the real challenges faced by organisations currently entitled to FBT concessions in relation to attracting and retaining employees. At the national level, the sector is a significant employer and any material change to the sector's competitiveness is likely to have a significant effect. Whilst many people are attracted to NFPs for non-financial reasons, NFP employers struggle to match employment packages available for comparable work in the for-profit sector and FBT concessions have played an important role in helping to bridge the gap. Attracting well-qualified and well-resourced employees to the NFP sector is critical to its future efficiency and effectiveness.

It should also be noted that many of the organisations benefitting from FBT concessions also employ volunteers who add to the output of the organisation and its contribution to the community in a way that other employers do not.

**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?**

**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?**

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

We believe that current GST concessions should continue to apply to NFPs on the basis that organisations providing a community benefit should be exempt. It is also possible that removing GST concessions may discourage the employment of professional service providers by NFPs by driving up the cost. This could lead to sub-optimal outcomes for NFPs and the community as NFPs take on (or defer) tasks that would otherwise be outsourced to specialists.

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

**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?**

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

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

- 50. Should the gaming, catering, entertainment and hospitality activities of NFP clubs and societies be subject to a concessional rate of tax, for income greater than a relatively high threshold, instead of being exempt?**
- 51. What would be a suitable threshold and rate of tax if such activities were to be subject to tax?**
- 52. Should the mutuality principle be extended to all NFP member-based organisations?**
- 53. Should the mutuality principle be legislated to provide that all income from dealings between entities and their members is assessable?**
- 54. Should a balancing adjustment be allowed for mutual clubs and societies to allow for mutual gains or mutual losses?**
- 55. Is existing law adequate to address concerns about exploitation of the mutuality principle for tax evasion? Should a specific anti-avoidance rule be introduced to allow more effective action to be taken to address such concerns?**

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

# Conclusion

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JBWere, as a pre-eminent adviser and intermediary to the private, corporate, philanthropic and community sectors, is pleased to respond to this Discussion Paper.

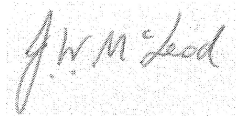
The NFP and charitable sectors are a force for good and their health is essential to the health of Australia's society. Tax reform has the potential to strengthen both sectors, create considerable efficiencies for NFPs, charities and regulators, and ultimately improve public trust and confidence in the Australian community sector.

We would welcome the opportunity to participate in future consultations or to answer any subsequent questions that may arise from this consultation process.

Yours faithfully



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