SACOSS
South Australian Council of Social Service

Marjorie Black House
47 King William Road
Unley SA 5061

P. 08 8305 4222
F. 08 8272 9500
E. sacoss@sacoss.org.au
www.sacoss.org.au

ABN 93 197 662 296

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

Via email: NFPReform@treasury.gov.au

Submission responding to Discussion Paper

We are writing to make a submission in response to the Discussion Paper *Fairer, simpler and more effective tax concessions for the not-for-profit sector.*

The South Australian Council of Social Service (SACOSS) is the peak non-government representative body for the health and community services sector in South Australia. Our members support vulnerable and disadvantaged people and provide vital services to the community in our state. The tax status of our members varies – most are income tax exempt charities, some have PBI status, some have DGR status, while some are volunteer organisations that operate below the taxable threshold. All have a keen interest in a fair, simple and effective system of tax concessions that supports the sector in providing vital services to the community. In this context tax concessions are important in directly reducing costs for charities, encouraging community investment in social services and supporting sector organisations to have a diverse funding base – something which is in the interest of both the sector and the government.

In making this submission, SACOSS has discussed issues with the national body, the Australian Council of Social Service and endorse the ACOSS submission on the Discussion Paper. In particular, we support the ACOSS comments on the framing of the document, but won't repeat the arguments here. The matters raised below add detail or are in addition to the issues raised by ACOSS and reflect key points raised in consultation we undertook with the sector in South Australia.

Income Tax Exemptions and Franking Credits

It is difficult to answer questions as to whether the current entitlements to tax exemptions or refunds of franking credits should be extended to other entities given that those entitlements currently extend to charities, but the definition of charity is still not settled. However, as a general principle SACOSS believes that a simple system is fairer and more transparent. Therefore, in most cases the same benefits should be available to all charities – rather than having differential benefits available to charities, PBIs, and DGRs as outlined in Table A of the discussion paper.

In relation to ***Question 6*** specifically, SACOSS notes the importance of franking credits to a number of charities with investment portfolios. Such investments provide an important

income stream for many charities which is particularly important as government funding is stretched and NGOs are increasingly encouraged (and forced) to find alternative income sources. The franking credits system supports this and should not be limited so long as the benefit accrues to the charities, although we accept that this may not be the case or supportable in relation to some schemes of off-market share buybacks.

In relation to ***Question 7***, SACOSS can see advantages in extending the requirement for formal ATO endorsement for tax exemption beyond charities as this would provide greater clarity and transparency. However, so as not to overburden the regulator(s) or impose extra administrative burdens on many small organisations, we believe that this should be coupled with an increase in the tax threshold as contemplated in Option 1.5. Accordingly, the answer to ***Question 9*** is also yes, but we would also support the increasing of the threshold regardless of issues of ATO endorsement. The current threshold of $416 is ridiculously low and we suspect that there is widespread non-compliance from small volunteer organisations who simply lack the knowledge or accounting systems to deal with tax issues for what are ultimately quite small amounts of annual income ($8 per week). The different taxing rates applicable between $417 and $915, and then above $916 just adds complexity for no good reason. If the threshold was set in the order of $5,000 per year, it would still be less than 1/3 of the individual tax free threshold, would not provide any real incentive to create multiple entities (given the costs of running separate organisations) and would alleviate administrative burden on a range of small community organisations.

Deductible Gift Recipients

The current DGR system is not transparent, fair or simple. There is no clear reason why some organisations are listed in the *Income Tax Assessment Act*, others have to be on a relevant register, or be PBIs, while other entities which are accepted as charities are not entitled to DGR status. This lends itself to politicisation (where Ministerial approval is needed for registration, or lobbying is done to be included in the *Act*) and distorts donor giving and the "fundraising market".

SACOSS strongly supports the recommendation of the Productivity Commission to expand DGR to all charities (***Question 11***). The extension of DGR to all charities would benefit in particular small charities who are just as "worthy" of support, but who have not had the tax expertise to navigate their way to having DGR status, but whose fundraising efforts have to compete with the big professional DGR fundraising.

We note the issue of schools and religious institutions where benefit accrues to select groups – often associated with the donor, rather than a wider community benefit), but the mechanisms proposed to limit this would be tricky and potentially counterproductive. For instance, trying to separate out organisation's expenditure into DGR and non-DGR expenditure (as envisaged in ***Question 12***) is artificial at best, and could limit the ability of some charities to use donated funds to top up government services or could limit the ability to subsidise access to non-DGR services (eg. childcare) for vulnerable and disadvantaged people as that would require spending DGR money on excluded activities. Similarly, adding an "activities test" on top of the test of charitable purpose (as envisaged at ***Question 13***) runs counter to the common law defining charities which is based on purpose of the organisation, although again our comment here is limited by not knowing what the proposed statutory definition might entail. Our general principle though (as per the 2001 Charities Definition Inquiry cited in the ACOSS submission) is that the relevant distinction should be

between charities that are “altruistic and for public benefit” and other NFPs, not as currently between one charity and another.

In relation to ***Questions 15 and 16*****,** SACOSS does not support a tax offset system and believes that the current DGR system (as expanded) would be simpler and fairer. We do not necessarily accept the suggestion in the discussion paper that DGR is regressive, because it really just annuls income for tax purposes, rather than giving a disproportionate benefit to those on higher incomes (in effect, they don’t get to use the income, so don’t derive benefit from it). Further, we fear that the tax offset system would be unnecessarily complicated and would impose extra stress on the sector at a time when it is already dealing with multiple regulatory reforms.

Similarly, while the clearing house for DGR donations contemplated in ***Question 19*** has some superficial attractions, we believe there are some major implementation problems. Questions of donor acquisition and ownership of donor details and history (an important part of modern fundraising) are not canvassed in the Discussion Paper, and linking it to the ACNC register is problematic because the ACNC deals only with registered charities, not with all DGR entities (eg. most entities covered by Subdivision 30-B of the *ITAA*). In this context, it would appear that the government-run clearing house was assisting fundraising for some organisations and not for others, which is problematic in maintaining the independence of the sector. We also fear the costs in processing data, keeping information up to date, and the necessary establishment of an administrative bureaucracy to maintain the clearing house. All these issues would need to be addressed before the proposal could be supported.

A similar charity/not-charity issue arises in relation to the proposal to eliminate public fund requirements for charities registered by the ACNC (***Question 24-25***). That said, for both charities and others, we believe that the public fund requirements are onerous and add nothing to the good governance of organisations. The public funds often require supporting extra bank accounts, meetings, communications, and confusion (and occasionally even cash flow problems) for management committees who (for a while at least) are technically not in control of all of the funds donated to the organisations. The requirement for a separate public fund should be abolished – at least for charities, but probably for all DGRs.

The final option in relation to DGRs, the increase in threshold for deductible gifts (***Question 26***) is also supported, although with some qualification. The $2 limit is outdated and a trivial amount, but there was concern among some SACOSS members that $25 was too high in relation to “tin-rattling” door-to-door type collections. In the light of the fundraising benefits of monthly donations and workplace giving, there is also a concern to ensure that the amount is cumulative over the course of the year rather than being a threshold for each individual donation (otherwise, a monthly donation of $20 would fall under the threshold and the $240 annual donation would not be tax deductible).

Fringe Benefits Tax

The FBT effectively only applies to some charities and PBIs – those who employ staff and who have the administrative framework and expertise to translate that into salary packaging. In that sense it is primarily a benefit to (some) medium and large charities, but for those charities it is an important support which enables them to offer more competitive salaries and to attract and retain the quality workforce necessary to offer quality services. However, to

ensure competitiveness and assist in quality of services across the NFP sector, we see no reason why (in answer to ***Question 28***) it should not extend to all charities. We admit this would further the gap between large and small charities, but currently that gap exists across an unclear divide as to who qualifies as a PBI and has the relevant tax concessions – and relatedly, who is entitled to a rebate and who gets an exemption. In that sense, our answer to ***Question 30*** would be that the two tiered approach is artificial and we are opposed to frameworks which discriminate and view some charitable work as "more worthy" than others.

While we have pointed to the importance of the FBT concessions for attraction and retention of staff for many charities, we acknowledge that there are some problems in the system. We support the limitation of concessions for meals and entertainment by bringing them under the existing caps (***Question 31***) (not a separate cap - ***Question 32***) and further we believe the caps should be indexed to CPI to maintain the value of that support provided to charities. Finally, we believe that the cap should apply to the *cumulative earnings* of each employee, rather than banning multiple caps which would disadvantage low-paid workers employed for limited hours by a number of agencies (***Question 34***).

We note that the concerns raised in our consultations broadly reflet those done by ACOSS in 2009-10, and we believe that beyond the specific answers to questions raised in the Discussion Paper, the 3 broad principles outlined in the ACOSS submission should underpin any FBT reform:

- Clients of social services should not be left worse off;
- NFP community organisations should not be worse off; and
- Employees of NFP community organisations should not be worse off.

GST

There are no specific comments relating to GST concessions, but we would see the three principles above applying to any GST reform as well.

Mutuals, Clubs and Societies

While most SACOSS members are charities rather than mutuals, clubs or societies, SACOSS has a long history of concern for the impacts of problem gambling - both because of our mandate to advocate for the interests of vulnerable and disadvantages South Australians and because many of our members provide key support services to people and communities suffering the effects of problem gambling. In this context, it does not matter whether the gaming machines are owned privately or by a club, the impact is the same. We question why such a dubious revenue stream (noting that an estimated 40% of gaming machine revenue comes from problem gamblers) would attract tax concessions. That said, we also note that many small community clubs rely on gaming machine revenue to operate. Accordingly, in relation to ***Question 50*****,** SACOSS would support clubs over a reasonably high threshold being taxed on gaming machine revenue in the same way a commercial operator would be taxed, with deductions being possible for any money donated to charitable groups.

Conclusion

SACOSS thanks the Working Group for their efforts to develop a fairer, simpler and more efficient tax concession system and hopes that these reforms can be meshed with any changes to the statutory definition of charity to ensure a good outcome for charities and the

people we serve. In this context, we believe that the proposal to extend DGR status to all charities has particular merit and is probably the single most important reform proposed.

Should you have any queries about any of the above, or wish to discuss the issues further, please contact me on (08) 8305 4223 or by email ross@sacoss.org.au

Yours,

Ross Womersley
Executive Director