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NFP Sector Tax Concession Working Group Secretariat  
The Treasury  
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Dear Sir/Madam

## **SUBMISSION IN RESPECT OF THE NFP SECTOR TAX CONCESSION WORKING GROUP**

### **General**

1. The Australian Council of Jewish Schools (ACJS) expresses its gratitude to the Secretariat of the not-for-profit Tax Concession Working Group for the opportunity of making this submission.
2. Each registered school that is a member of the ACJS is also a member of the respective Association of Independent Schools (AIS) and each school generally supports the submission of their AIS and the Independent Schools Council of Australia (ISCA).
3. This submission addresses matters of particular importance to Jewish schools and Early Learning Centres together with those aspects that are peculiar to our Schools' interests and their associated entities.
4. The ACJS represents 19 Jewish schools on 26 campuses throughout Australia. ACJS also has as a member, an organisation that provides Hebrew language and Jewish studies to government schools. Each member school operates as a part of its school an early learning centre and or preschool. There are over 10, 000 students directly accommodated between the member schools and the preschools. Additionally there are the students serviced by the Hebrew language and Jewish study entity enrolled in Government State schools.
5. Generally, the interests of the Jewish schools are represented by the respective AIS on matters that are common to the non-government sector. Most interests affecting the operation of schools are common to our schools and the sector alike.
6. Each school is governed by a board of management, which includes members of the Jewish Community, including parents of students at the school. The school boards operate under strict governance principles, including the election (sometimes contested election) of officeholders. Each school operates on a not-for-profit basis and no officeholder is entitled to be employed by the school, or to contract with the school other than on a strictly transparent basis.

7. The ACJS Schools and the associated early learning centres are academically non-selective and vary in average socioeconomic status considerably. Many ACJS Schools will enrol non-Jewish students, although preference is given to students of the Jewish faith (or persons converting to Judaism). Further, the ACJS Schools vary significantly in their approach to religion, culture and ethos.
8. For example, in both Sydney and Melbourne there are schools that cater for Progressive Judaism, modern Orthodox Judaism and “Torah True” Judaism. In Melbourne, there are also schools that cater for “cultural Judaism” (i.e. the teaching of Jewish culture but otherwise consistent with pluralism).
9. All of these schools are represented by the ACJS to both State and Federal Governments, within the AIS community and generally. Their interests are significantly different in some areas, and these interests are generally considered and catered for by Governments, other non-government and government schools, and the community generally.

### **Enrolment Policy and Internal Subsidies in Each School**

10. As earlier stated, the ACJS Schools are non-selective. The Jewish community has a long history of support for education. Education is one of the key fundamentals of Jewish culture. This has been the case for over 2000 years. The Jewish community considers that education, including education in its own culture, is one of the cornerstones of Jewish continuity.
11. Judaism (and Jewish culture, if that be different) has developed, or has always taught, policies which would, today, be classified as multiculturalism. The Jewish view is that members of the Jewish community should integrate into general life, while adhering to Jewish values: integration, but not assimilation.
12. As a consequence, the Jewish community has always expended a far greater proportion on education than is the norm. It also has continued to adhere to a policy that no Jewish child should be denied an education; nor denied a Jewish education for financial reasons. This practise results in the need of the schools to rely on wide community support in addition to fees charged.
13. Enrolment at our schools occurs at a young age (i.e. well before admission) and enrolment is accepted, generally, without regard to the capacity to afford fees. If, on admission of a child, a family is unable to afford education at the particular institution, a number of different methods are used to subsidise that education and to allow the child or children to continue at the school. Community support by way of donation and charitable giving is the cornerstone to such a program
14. The methods used to cross subsidise poorer members of the community vary from school to school and from State to State. In New South Wales, for example, there is a general communal appeal from which the schools are allocated amounts to subsidise families that are unable to afford the ordinary level of school fees and each school effects further subsidies from its fees. That subsidy will vary depending upon the means of the family. In Victoria, Western Australia, South Australia and Queensland, each school takes its own steps in order to subsidise families, usually by way of cross-subsidisation from within the fees otherwise received and from communal supports of the schools. Our schools are often aligned for a variety of reasons to various community bodies. In each case however the dependence on charitable giving to underwrite the program is paramount.

15. Generally, but not universally, the school will insist upon a commitment to some fees, albeit, in some cases, quite nominal. The number of families on subsidy fluctuates, and the proportion of families varies between the different schools. In some of our schools up to 83.2% of families are subsidised to some extent. The lowest proportion of subsidised families was, in one year, 7%, but generally would not be lower than 13%, at any school. The median proportion of students assisted at ACJS Schools is 29.6%, and the average 30.9% of the school population.
16. The means test by which an entitlement to subsidy is measured, and by which the level of subsidy is fixed, includes family income, family size, family assets and takes account of disposable income. If income alone were the criterion by which subsidy was measured, there would be significant anomalies and inequities in the application to different families.
17. Further, there is no academic selectivity in the enrolment process. Except to the extent that a young child may be classified as not yet ready for school (on the same basis that would occur in, say, government school), all children are accepted, without regard to academic performance.
18. ACJS Schools also have a significant number of students who suffer intellectual and/or physical disabilities, for which additional funding is available from the government, but, unfortunately, at a minimal level. Three ACJS Schools have over 7% of such students, the highest being 15%. No school has less than 1%; the median being 2%, and the average 4% as the proportion of student enrolment.
19. ACJS Schools are mostly co-educational and operate mostly at both primary and secondary levels. The "Torah True" religious Jewish schools are single gender schools (for at least all classes above Year 4) or operate single gender campuses, for reasons associated with a strict application of religious ethos. Some of the ACJS Schools operate only at a primary school level. Most of the schools conduct a preschool, and/or operate early childhood services, on a sessional or long day-care basis.
20. Each of the schools conduct programs through different structures that integrate the teaching of general studies with religious studies. The primary objective of the organisations which conduct the activities is often difficult to define. Education by definition includes the teaching through formal and informal methods of core designated curriculum as defined by ACARA as well as the teaching of moral values, civics and citizenship as well as religion and religious practices.
21. The activity in the main includes formal class room teaching. It however also includes extracurricular activities that occur in a form of social environment that may be conducted through youth groups and may occur during, or out of, normal school hours. Our school day is extended in order to take into account the dual general and religious curriculum in a variety of delivery methods. A number of our schools conduct weekend classes and a number are associated with youth groups that meet on weekends and evenings to deliver an informal education program in line with the values and teaching of the school. Integration of overlapping categories and entity types is fundamental to the success and operational models of our schools. Each providing entity is charitable entity or a not-for-profit.
22. Using existing definitions of charitable purpose, where both "the furthering of educational goals" and the "furthering of religious teachings and practises" were both deemed naturally charitable purposes, the distinction between the two was less important. The goals were in either situation being met. The introduction of a difference in charitable status or rates, may impact in one area affecting the charitable status of the other. This can have an overall global

adverse impact on the totality of our educational programs. The programs although delivered and managed through separate structures are highly integrated and are inter dependent. Each relies on charitable giving and community support.

23. There are formal structures in place that distinguish the general teaching arms from the religious teaching arms and again distinguish those activities from the fund raising or charitable arms. Each arm however combines to deliver an integrated program. The separation of class of not-for-profit in the taxation regime would be complex for our integrated programs to manage.
24. The ACJS sees the need for flexibility and equal treatment between these arms as essential to conduct its activity and maintain the excellent outcomes its schools have achieved.

## **CONSULTATION QUESTIONS**

### CHAPTER 1 — INCOME TAX EXEMPTION AND REFUNDABLE FRANKING CREDITS

26. What criteria should be used to determine whether an entity is entitled to an income tax exemption?
  - 26.1. Section 1.2 (page 12) of the November 2012 discussion paper identifies the primary objectives of not-for-profit entities that can claim exempt taxation status.
  - 26.2. In various forms, these entities provide a range of community services and social benefits. The categories defined at Section 1.2 have been well established and in place for a considerable time. The definition objectives and outcomes, are well defined in common law and the community understand their purpose and operational methodology. The categories defined are in legislation and deemed to be of public benefit.
  - 26.3. In some cases members of the community may question the benefit to society. That view is subjective. Public opinion should not be the determinant of social policy. Public opinion changes over time, and is influenced in the short term by a range of factors. We have seen the vast extent of apologies and damage undertaken by historic responses to perceived public opinion. Tax exempt status requires a long term goal. Long term security needs to be defined and entrenched in legislation. Recognised not-for-profit entities should have access to income tax exemption without exception and with long term security.
  - 26.4. The Australian Government recognises the impact and contribution to the economy of volunteerism. The Australian Government is acting positively to promote the volunteer concept. The volunteer concept plays both a direct beneficial role as well as an indirect beneficial role. The not-for-profit sector is the primary avenue engaging the vast majority of volunteers. The not-for-profit sector is heavily reliant on charitable giving and income tax exempt status. This reliance and income exempt status plays a very significant part of the funding model. Without it, the work undertaken would need to be restricted. The extent of volunteers engaged would diminish.

- 26.5. The not-for-profit Sector Tax Concession Working Group has throughout its paper commented on the opportunity cost to the community based on income tax forgone through either DGR donations or non-taxed revenues that apply to the not-for-profit sector.
- 26.6. Absent from each costing appears to be the offset benefit and economic saving generated by this work being carried out through an income tax exempt body. A body that relies on donations, community support, and tax savings and volunteers, that are used to address a real and expensive community need. That need if not for the community support and tax offset, would otherwise need to be met by the direct allocation of taxpayer funded dollars.
- 26.7. The costing highlights throughout the discussion paper and the Tax Concession for NFPs – 2011 Tax Expenditure Statement (Appendix D page 68) is misleading. It overestimates the cost to general revenue by failing to address the opportunity cost savings.
- 26.8. The ACJS believe the existing model is functional, reliable, provides security in the long term and has integrity. There should be no change to the existing criteria.
27. 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?
- 27.1. The terminology used in the question is concerning and appears to use two terms interchangeably. That is “categories of exemption” and “exempt entities”. Each has a separate and distinct meanings and role. The terminology in the question can cause confusion.
- 27.2. The question starts with reference to the “categories of exemption”. The question concludes with reference to entities. A category of exemption is descriptive and refers to the objectives of the entity. The entity is the legal structure which carries out the objectives.
- 27.3. The tax exempt status should be based on the “category” of the objectives. The enterprise that houses the structure to fulfil the category criteria is the “entity”. It should not matter which structural format is chosen to house the objective, provided it meets the legal body definition. The question should consider only the categories of exemption.
- 27.4. The current categories of exemption are appropriate.
28. 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?
- 28.1. At present the categories that fulfil the “public benefit” requirement are “deemed” in legislation. This has been a long standing and appropriate determination. This should not be changed.
- 28.2. Within the question there are two distinct and separate aspects that have been joined. One is the question of the determination of “public benefit”. The other is the question

of conditions applying to certain categories or perhaps entities that provide a public benefit.

- 28.3. The question of “public benefit” (refer to the statutory definition of ‘charity’ discussion paper and our submission dated 9<sup>th</sup> December 2011) goes beyond the definition of “public” and also considers what might be considered a definable quantity of members of the public to be sufficiently represented and to have their activity if otherwise eligible recognised as charitable.
- 28.4. A standing practise exists whereby what benefits members of the Jewish community (and other statistically smaller groups) irrespective of statistical representation is deemed to be in the overall public interest if that group (and potentially others) benefit.
- 28.5. The ACJS would be opposed to any change in that understanding or application and does not think there should be a change to the existing definitions or determination as to what constitutes public benefit.
- 28.6. The Charities Bill 2003 provided that a purpose is not directed to the benefit of a sufficient section of the public if the people to whose benefit it is directed are numerically negligible. The ACJS believes this definition of ‘a sufficient section of the public’ that is based exclusively on numerical criteria can lead to discrimination and ineligibility based on popular practise or statistical anomaly.
- 28.7. This is of particular concern within the Jewish community as there is within the community and amongst the schools, schools which have an interest in cultural and heritage teaching, schools that give priority to specific religious and or other aspects of learning and or religious priority, and schools that lean to the generalisation. Each of the groups and schools, service communities that could statistically be identified and deemed to be statically negligible.
- 28.8. The predetermined and existing definition that imputes charitable purpose and or defines the concept of mutuality where it is bone fide and evidenced should not be changed. The determination of what constitutes public benefit needs to be deemed and protected. Today, popular opinion is in the midst of change. There is much misunderstanding in respect of a number of historic charitable heads. Religious practice and religious education are categories being publicly questioned today as being in the public interest. Perhaps in time, there may be questions as to the benefit of arts and cultural categories. Reaction to popular opinion carries a risk. There is a need in legislation to protect and determine appropriate values.
- 28.9. The risk of losing the structures to a short term change in perceived public opinion is high. To re-establish a lost category and the structures behind it is not always possible. We have seen in recent times the extent of apologies being extended as a result of short term public opinion acting on social policy. The ACJS questions the reliance on public benefit as subjectively determined. The determination of assessing public benefit is also yet to be defined. To incorporate the concept into the question, pre supposes a determinate methodology.
- 28.10. The discussion paper appears to refer to private schools in a manner that implies a great private personal benefit to those that participate in the private school sector. This

implication appears not to be present when referring to private hospitals as an equivalent example.

28.11. Private hospital patients receive private benefits. This concept and the funding of private hospitals is perceived to be in the public interest and a significant saving to the tax payer. The same logic although applicable in the private school environment has at present an apparent counter public view. The discussion paper in a number of places refers to the private benefit of those attending private schools, but does not refer the same implication or question to private hospital funding and concessions. There should be no differentiation.

28.12. Within Australian legislation, education for every citizen has been enshrined as a right. This education may be accessed through a public education system or a private system. The public system is fully and totally funded by taxpayer funds. The Private system is tax payer funded on average to the extent of only 59% of the funding required. The private school systems enrol about 35% of the school age population. The balance of the costs required to support these schools are derived from after tax incomes of the parents by way of fees and charges and from charitable giving toward the support of infrastructure.

28.13. The table of costs at appendix D in the discussion paper refers to tax revenue forgone and an opportunity cost to the tax revenues for charitable giving in this category. The table as noted above fails to offset the savings to the tax payer as a result of the lower than 100% contribution toward private education servicing over 1/3<sup>rd</sup> of the population. This value is estimated at a saving to the public purse of about \$7b per annum. Without the charitable giving and the taxation concessions, many of the schools would not succeed and the taxpayer at a government school would need to pick up the cost.

28.14. Within the estimated costing structures of schools and tax payer funding requirements there is an assumption that economies of scale apply to the education sector. It does not. A study of all Australian non-government schools 2007-2010 data provided by DEEWR demonstrates that the greater the enrolment-size of the school, the greater the cost per student. The compounding effect and true dollar saving to the community and the tax payer by having a non-government school system funded at less than 100% of the cost of providing a government based system is not properly reported. The reliance on charitable giving to support the structures and the students that could not otherwise afford to attend non-government schools would way very heavily on the tax payer. Charitable giving to this structure is vital. Its withdrawal or restriction would result in a heavy cost to the taxpayer. That cost is not reflected at all in the expenditure analysis undertaken within the discussion paper.

Attached is an in-confidence in –house draft discussion paper that analysis and considers the economies of scale in an educational environment. This paper at this time is not for general publication. It is attached to support the comments in this submission

28.15. Conditions to access taxation concession should be applicable equally to all not-for-profit entities under the same rules. The variation in requirements, obligations and criteria, leads to complexity, confusion and distrust.

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

29.1. The larger the not-for-profit, the more likely it is the entity will cover multiple categories of charitable work. The difficulty encountered by the larger entities is distinguishing and reporting against specific defined and identifiable categories when the work is largely integrated.

29.2. ACJS submits that it should be sufficient compliance provided the category and the effort to fulfil the objectives are of an approved category. The determination of specific category should be irrelevant when multiple activities are integrated.

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

30.1. Dividend imputation is a form of corporate Taxation. The introduction of Franking credits regime was introduced in order to prevent a double taxation situation from arising. Once by the corporate entity and again in the hands of the individual beneficiary.

30.2. The Franking credit regime reduces or eliminates the tax disadvantages of distributing dividends to shareholders. This is achieved by requiring the individual taxpayer to pay only the difference between the corporate rate (already paid before receipt) and their marginal tax rate, or to receive a refund to equate the two. In this way a tax penalty as a result of the source of income is eliminated as share dividends are the only source of income that arrive pre taxed at a corporate rate.

30.3. In contrast income earned from financial institutions by way of interest is not pre taxed at its source. Interest is taxed only in the hands of the recipient based on the recipient's marginal tax rate.

30.4. In the hands of a not-for-profit, there is no income disclosure requirement and there is no tax obligation on interest received. The receipt of a full franking credit in the hands of a not for profit removes the tax implication from the recipient. If the franking credit protocol were to be removed or restricted, the not-for-profit would be disadvantaged and in a form taxed. The tax would be inequitable as the tax would depend on the investment strategies of the not for profit rather than the structure and entitlement of the not-for-profit.

30.5. Any not-for-profit should be able to claim a full franking credit.

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

31.1. There should be no limitation on the extent of receipt of franking credits. Refer to the response to section 30.1 to 30.4

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



- 32.1. There is confusion in respect to the term “seeking tax exemption” The term could refer to a defined and endorsed charity, a not-for-profit, or perhaps a mutual fund. Each seeks or claims exemption from the payment of income tax, and in some cases, State based duties. The ACNC initially and perhaps remain using the term charities are those that seek tax exemption. There are other criteria that distinguish income tax exemption from DGR and other tax exempt applications. Prior to responding to this question definitively this needs clarification.
- 32.2. The present system calls for endorsement for only entities seeking additional exemption or perhaps DGR endorsement. The Income tax exemption is self assessed as is all income based taxation legislation.
- 32.3. The self assessment aspect of income tax legislation is subject to audit and Australian Taxation Office review. This applies not only to individuals, but corporations, trusts, partnerships and those claiming not-for-profit exempt status. Each entity has a registered ABN. The not-for-profit sector should not be singled out and treated differently.
- 32.4. The Australian Taxation Office should not be extended to include NFP entities other than charities seeking DGR or other non-income based tax exemptions. The compliance requirements should remain as they are through self assessment and general verification review.
33. 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?
- 33.1. Harmonisation of the taxation exemptions between State and the Commonwealth should be a priority.
34. 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?
- 34.1. The threshold for income tax exemptions for taxable NFP clubs, associations and societies should be zero dollars.
- 34.2. The introduction of a threshold would result in the need for a new level of compliance and would add significant cost the organisations and adversely impact on the work presently undertaken.
35. 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.
- 35.1. No suggestions in respect of this question

## CHAPTER 2 — DEDUCTIBLE GIFT RECIPIENTS

36. 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?

- 36.1. The reference to the charitable status of charities as DGR's in the question is over implied. The fact that a non-government school provides primary and secondary education, or that a religious body advances religious practice and teaching does not in itself give rise to their eligibility for DGR status.
- 36.2. The DGR status for which an entitlement may arise is predicted on the fulfilment of other external and very specific criteria. Non Government educational institutions as an example do not have DGR status for the provision of general educational services. They have DGR status for specific and defined activities. These include
- 36.2.1. School Building funds. The requirement is specifically in respect of building infrastructure used specifically for education. If the facility is regularly or predominantly used for religious or other community service, the DGR eligibility for the use on that aspect of the facility falls away.
- 36.2.2. Schools have Library funds. These funds have specific use restrictions. If the funds are not used in the specific designated area on approved resources within the library the fund eligibility falls away.
- 36.2.3. Schools have scholarship funds. These funds are for allocation in specific circumstances and are open to students not only at the school but at any school, including Government schools. The funds are not available to provide general educational services or designed to meet general operating expenditures.
- 36.3. As referred in question 28, the cost aspect referenced in the discussion paper fails to take otherwise offset cost savings into account. The use of DGR is specific and in the main provides fixed resources to accommodate the execution of the program. Without these resources, the tax payer would generally need to fund the infrastructure at other locations and incur a far greater cost, rather than the offset marginal cost incurred by the charitable donation.
- 36.4. Charities such as religious organisations and schools should not have their charitable status as a DGR restricted. The use of the charitable funding is not for the provision of private benefit as referred. The individual benefit received is paid for by after tax dollars by way of fees and charges. Some infrastructure and certain limited resources are provided for by DGR entities. These resources and facilities do not give rise to private benefit as referred.
37. Based on your response to Q11, (Q36 in the response paper) should charities endorsed as DGRs be allowed to use DGRs funds to provide religious services, charitable child care services, and primary and secondary education?
- 37.1. Yes. The present structures restrict this activity. However, given that the alternate provision of the service is 100% tax funded directly, an equitable offset would be the allowance of DGR as is the present case, or perhaps the allowance of tax refunded fees. This in fact was the situation pre the latter part of the 1970s. The favourable impact on the public purse would be significant.
38. 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?

- 38.1. The statement at paragraph 56 (page 21) of the discussion paper states “This behavioural distortion arises because endorsement for DGR status is at the entity level and is not activities based. This distortion typically generates increased compliance and administration costs.” This statement is not in its totality correct.
- 38.2. The DGR requirement by virtue of the existing regulations is a factor of both, the entity status and the activity involved. DGR eligibility does not apply across the board. The initial requirement is that the entity be a charitable body. Once that is satisfied the DGR eligibility only applies to specific activity within that structure.
- 38.3. For example, a primary and secondary school is a charitable entity. A school is eligible to acquire DGR status for specific activities that support its overall objective, but not necessarily the provision of the objective within itself. DGR status cannot be applied to the provision of teaching in the classroom. It can be applied to the activity of providing the building structure, in which the teaching occurs, the resources in the library or the provision of scholarships that under pre set conditions assist students to attend. They are not freely available for indiscriminate activity use, just because the school is a charitable entity.
- 38.4. The ACJS does not consider with the present activity based requirements associated to a DGR that there is a distortion as referred in the discussion paper
39. 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?
- 39.1. This is difficult to comment on as the ACJS is not privy to the logic or the data that the productivity commission used to make its progressive implementation proposal.
- 39.2. ACJS as noted in a number of the above sections that the 2011 Tax Expenditure Statement noted as appendix D considers the costs to the tax payer of allowing the various charitable, not-for-profit concessions only. This one sided view severely overstates the costs as offset and otherwise required alternate costs are not considered. If this schedule in the absence of the otherwise incurred costs and the cost savings were used by the productivity commission, then the progressive implementation is understandable on the basis of budgetary need.
- 39.3. The ACJS is of the view that the cost offsets are not adequately included in the tables considered and is of the opinion staggered implementation would be costly and administratively complex.
- 39.4. Implementation if extended should be introduced in full as each entity receives endorsement. The application process by definition will to some extent result in a self measured staggering introduction process.
40. 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?
- 40.1. The response to the consideration of a fixed tax offset rather than the marginal tax rate currently in place would very much depend on the level of the offset.

- 40.2. A level of offset lower than the top marginal tax rate would act as negative incentive for major donors in the top marginal tax rate. Table "C" at discussion point 87 (page 26) notes that 53.8% of individuals earning in excess of \$100,000 a year, donate on average \$1,460 each. The introduction of a fixed rate below the top marginal rate would likely reduce the incentive and reduce charitable giving with a negative impact.
- 40.3. A level of offset higher than the lower marginal rate could act as a positive incentive for lower taxed donors in that category. The impact however would be minimal as the dollar sums of the average donation are relatively low with a far smaller proportion of the individuals within the category donating. The impact would be minimal. The reason relates to capacity of the individual to pay.
- 40.4. The setting of a tax rebate above the top marginal rate would be a positive step and an incentive to charitable giving at all levels.
- 40.5. The ACJS is of the opinion that a tax deduction at the marginal rate of the donor is the fairest option, although not the most attractive to encourage charitable giving. That is not to say, that a rate above the top marginal rate is unfair. The differential is greater to the lower income earner and charitable giving is therefore better rewarded in such a case.
41. Would having a two-tiered tax offset encourage giving by higher income earners?
- 41.1. Refer to the response at paragraph 40
42. What other strategies would encourage giving to DGRs, especially by high income earners?
- 42.1. Refer to the response at question 40.4 and 40.5
43. Should testamentary giving be encouraged through tax concessions and what mechanisms could be considered to address simplicity, integrity and effectiveness issues?
- 43.1. No comment on this question
44. Would a clearing house linked to the ACN Register be beneficial for the sector and public?
- 44.1. The introduction of a clearing house where all DGR contributions are made to central body would be an impediment to the not-for-profit sector.
- 44.2. A very significant influencing factor in attracting voluntary donations is the direct and close relationship that is developed between the donor and the cause entity. The personal relationship encourages donations. The introductory single entry clearing house would act as barrier to that relationship as new and independent entity becomes involved.
- 44.3. From the sector perspective the introduction of a clearing house will delay the funding mechanism, and the ability for the recipient entity to be aware of the donation and appropriately acknowledge it. It is also unclear and subjective as to what tests may be introduced before funding is released or what discretionary ability may exist by the clearing house that could delay a distribution. The introduction of a third independent party adds an element of uncertainty and most likely additional compliance

45. 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?

45.1. The extent and practise of workplace giving is unknown. The ACJS and its member schools do not benefit significantly from work place giving. ACJS has no comment on this question.

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

46.1. ACJS has no comment on this question.

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

47.1. ACJS has no comment on this question.

48. 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?

48.1. ACJS has no comment on this question.

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

49.1. ACJS has no comment on this question.

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

50.1. ACJS has no comment on this question.

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

51.1. Yes. There is a common practise from donors to provide the minimum sum in order to qualify for the tax deduction. The \$2 value has been in place without indexation since its introduction. It is the opinion of the ACJS that if the minimum donation level were to be increased the average value of donations would increase. This is because the lower level which donors will contribute would rise to meet the qualification level. The ACJS proposes a minimum qualifying value of not less than \$10, but not higher than \$20.

51.2. These starting levels could over time be indexed in say multiples of \$5

52. Outline any other suggestions you have to improve the fairness, simplicity and effectiveness of the DGR regime, having regard to the terms of reference.

52.1. ACJS has no comment on this question.

53. 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?

- 53.1. In order to adequately respond to this question there needs to be an understanding as why the exemption was granted or extended to include the designations that are presently entitled to receive exempt benefits. The specific reasoning behind the initial allowance is not detailed in the discussion paper.
- 53.2. Employment in various arms of the NFP sector are very often motivated by the desire to assist the community in some form. Traditionally the remuneration reward for working in these areas is lower than equivalent corporate or commercial positions.
- 53.3. These not-for-profit characterised entities are in essence charitable entities that rely on charitable contributions, community support and tax payer funded assistance in order to fulfil their vital roles. As a form of support to attract employees onto these vital fields the community sees the FBT exemptions as a partial offset to minimise the remuneration gap that exists in these fields.
- 53.4. The ACJS would like to see the FBT exemption categories extended to apply to some extent to every not-for-profit in order to make professional employment and career structures in that sector more attractive and competitive. A removal or restriction of the exempt benefits would act as a disincentive to career choice in that sector and the public purse would need to add additional funding to ensure the services provided remain available.

54. 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?

- 54.1. ACJS believes that within the discussion paper and built into the question there is demonstrated misunderstanding as to the rebateable element of the FBT as it applies to the not-for-profit sector
- 54.2. In calculating the value of the FBT applicable, the calculation involves a "grossing up" element. The FBT applicable is calculated on the Grossed Up element and in the corporate and commercial environments the value of the tax applicable is a legitimate business expense and allowed as a tax deduction.
- 54.3. The not-for-profit sector, as it is exempt from income tax, does not have the ability to offset the tax incurred as a tax deduction. The value of the tax payable using the "gross up" methodology was a form of penalty to the entity.
- 54.4. The introduction of the rebateable element to the not for profit sector acted as an equalizer in order to eliminate the penalty element incurred by the not-for-profit sector.

54.5. Notwithstanding the introduction of the rebateable element to minimise the absence of the tax deduction component there was a cap built in. That cap is set at \$30,000 grossed up value. Beyond that level of benefit, the not-for-profit rebate falls away and the effective tax rate is in the high ninety percents on the values in excess of the \$30,000 grossed up level.

54.6. The commercial and corporate sectors have no limit on the extent of the taxation deduction applied. The not-for-profit sector remains limited and disadvantaged when comparing the limit of the rebate applicable to the extent in which a tax deduction can apply.

54.7. The rebate should be extended to every not-for-profit. The \$30,000 cap on the grossed up value should be eliminated, or for equitable reasons there should be a cap placed on the level of tax deductions available to corporate and commercial organisations

55. 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?

55.1. Refer to response 53.1

56. Should salary sacrificed meal entertainment and entertainment facility leasing benefits be brought within the existing caps on FBT concessions?

56.1. Refer to response 53.1

57. 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?

57.1. Refer to response 53.1

58. 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?

58.1. Refer to response 53.1

59. 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?

59.1. Based on the understanding that the existence of FBT exempt or rebateable benefits are to provide an incentive for professional career opportunities within the designated fields where the remuneration for equivalent positions in the corporate and commercial sectors are far greater, there is no basis for restricting multiple access through separate employers. Each employment arrangement should stand on its own.

59.2. With the FBT arrangements applying a liability to the employer rather than the employee, it is not feasible to assign a liability limit to one employer based on an individual's employment status. This is because:

- 59.2.1. The question as to which employer is, or remains, the first employer would not be easy to determine given that casual or part time employment can move from employer to employer.
- 59.2.2. A casual, part time or temporary employer may not be aware an individual employee has taken a second job at another not-for-profit. This would place an unreasonable and unknown liability on an employer
- 59.2.3. Issues as to who takes the benefit tax relief, or adds to their liability based on who is the first primary employer is inequitable.
- 59.2.4. If this option were to be considered the liability for payment would need to be moved from the employer to the employee. In that way it could managed through the personal consolidated income tax regime that applies to individuals. It cannot work whilst the FBT liability remains with the employer.

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

- 60.1. The ACJS envisages a relationship between the capped limits applying to the not-for-profit sector (refer paragraph 54.3 and 54.6) and the level of rebate applying.
- 60.2. At the time of its introduction the rebate was set at the top marginal company tax rate. Since that time, neither the rebate level nor has the cap have been adjusted.
- 60.3. With the top marginal tax rate reducing over time, the maintenance of the rebate at the upper level has in the industry been seen as a form of indirect indexation as the cap had not moved despite considerable inflation.
- 60.4. If the rebate were to be re- aligned, it should coincide with the elimination of the cap, or at least an indexation of the cap.

61. 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?

- 61.1. Similar to the cap applying to the FBT rebate eligibility, the limitation of minor benefits applying to the not-for-profit sector is an inequitable imposition that acts to detract from the reason in which the benefit was introduced
- 61.2. The ACJS supports the removal of the limits applying to minor benefits in the not-for-profit sector.

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

- 62.1. As the logic for remuneration offset is to assist in reducing the remuneration gap between the not-for-profit sector and corporate commercial sectors for equivalent professional positions is constant throughout the not-for-profit sector, then, the benefits should be applied to all not-for-profits.



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

63.1. For reasons noted above in numerous paragraphs, No

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

64.1. The ACJS are of the view that if this was achieved, it would add a significant financial burden on government and the community. It would be a burden likely to out way the costs noted to have provided the benefit exempt and re-bateable categories.

65. 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?

65.1. Refer to response 64.1

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

66.1. The ACJS would propose that FBT should not apply at all to non-remuneration benefits.

67. 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?

67.1. Refer to response 64.1. All not-for-profits should receive support to replace these concessions.

#### CHAPTER 4 — GOODS AND SERVICES TAX CONCESSIONS

68. 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?

68.1. Since the introduction of the GST protocols, the not-for-profit sector has understood how the GST tax regime is applied. It does create compliance burdens, but not ones that are insurmountable.

68.2. Mutiple inquiries into the charitable status, the discussion regarding the possible revision of a new definition of charity, the uncertainty as to how “public benefit” is to be defined, coupled with misinformed media reports, creates concern and uncertainty for the industry and in particular schools.

68.3. The member ACJS schools like all other schools are presently dealing with and trying to understand changes that may result from

68.3.1. The Gonski funding review

68.3.2. The Early learning reform agenda

68.3.3. The introduction of the ACNC

- 68.3.4. The discussion as to the definition of charity
- 68.3.5. The discussion as to what is determined as the public benefit
- 68.3.6. Changes to tax ruling definitions in respect of school building fund use
- 68.3.7. Changes to classes and definition of exempt benefit applying to overseas employment
- 68.3.8. The impact of the GFC on communal giving
- 68.3.9. And discussion in respect to this inquiry.

68.4. The ACJS member schools conduct integrated and joint classes with religious entities. The uncertainty and media focus on charitable donations and the DGR status of religious entities creates the uncertainty within the industry. It is not the complexity of the GST regime which raises questions of certainty and confidence required for growth and planning but a raft of interrelated other matters.

69. 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?

69.1. ACJS has no comment on this question

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

70.1. ACJS are of the opinion that all not-for-profits should be able to receive concessions equivalently.

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

71.1. ACJS has no comment on this question

72. 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?

72.1. ACJS has no comment on this question

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

73.1. ACJS has no comment on this question

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

74.1. ACJS has no comment on this question

## CHAPTER 5 — MUTUALITY, CLUBS AND SOCIETIES

75. 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?

75.1. ACJS has no comment on this question

76. What would be a suitable threshold and rate of tax if such activities were to be subject to tax?

76.1. ACJS has no comment on this question

77. Should the mutuality principle be extended to all NFP member-based organisations?

77.1. ACJS has no comment on this question

78. Should the mutuality principle be legislated to provide that all income from dealings between entities and their members is assessable?

78.1. ACJS has no comment on this question

79. Should a balancing adjustment be allowed for mutual clubs and societies to allow for mutual gains or mutual losses?

79.1. ACJS has no comment on this question

80. 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?

80.1. ACJS has no comment on this question

## CHAPTER 6 — NEXT STEPS

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

81.1. ACJS has no comment on this question

82. 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?

82.1. ACJS has no comment on this question

Yours Sincerely

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