Not-For-Profit Sector Tax Concession Working Group

Fairer, simpler and more effective tax arrangements for the not-for-profit sector

Discussion Paper November 2012

Submission by UnitingCare Australia

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1. Introduction

UnitingCare Australia is the Uniting Church's national body supporting community services and advocacy for children, young people, families, people with disabilities and older people. The Uniting Church's commitment to community services is an expression of the Christian vision of inclusion and equality of opportunity for all people and communities regardless of age, gender, sexuality, ability, class, colour, creed or cultural origin.

UnitingCare Australia represents the network of UnitingCare community services operating nationally across more than 1300 sites in urban, rural and remote Australia. Our network is one of the largest providers of community services in Australia and we make a strong contribution to the Australian economy by providing services to over 2 million people each year, with an annual turnover in excess of $2 billion a year, employing 35,000 staff and 24,000 volunteers nationally. We employ a holistic approach to supporting individuals and communities to access the resources and opportunities needed to live a decent life. We partner with governments, other organisations, communities and people of goodwill.

UnitingCare Australia has long advocated for taxation policy which maximises the capacity of not-for-profit (NFP) community and social service providers to fulfil their role of delivering sustainable support and leveraging non-government sources of funding. This has been the focus of our contributions to the 2008 Henry Tax Review, 2009 Treasury Tax Form, 2010 Productivity Commission Study into the Contribution of the Not-for-Profit Sector, 2011 Tax Forum and the Government's wider NFP reform agenda.

Tax arrangements for NFP community and social service providers, as compared with for-profit and government providers, seek to recognise the value of the models of services delivered by these organisations. In considering any reform of these arrangements it is critical to understand that NFP providers are wholly different to for-profit organisations, public and government entities. NFP community and social services providers are defined by altruistic mission and purpose and are neither an arm of government, nor a subset of the business sector. They provide a critical infrastructure which contributes to the Australian economy. The envelope of essential tax arrangements for the NFP sector is a resource efficient mechanism through which the Government can contribute to improving not just the wellbeing of all people living in Australia but also to the health of the nation by:

- supporting philanthropic donations;
- providing salary sacrificing arrangements to enable charities to compete with the private and public sector in order to attract and retain the right staff to deliver essential social services;
- enabling governments to further their social objectives; and
- providing a mechanism by which the majority of taxpayers (even those who do not donate to charities) contribute to the most disadvantaged through taxation.

UnitingCare Australia welcomes the work of the NFP Tax Concession Working Group and the opportunity to comment on the 'Fairer, simpler and more effective tax concessions for the not-for-profit sector' discussion paper.

2. Principles and review

UnitingCare Australia supports the guiding principles adopted by the Working Group in their review of the necessary tax arrangements for the NFP sector. Additionally we believe that effective tax arrangements for the NFP sector must:

- help to maximise the resources available to NFP organisations for direct service delivery;
- respect the independence and diversity of the NFP sector;
- reduce administrative burden whilst upholding the principles of transparency and openness;
- appropriately address abuse or misuse of existing arrangements;
- acknowledge the real and decreasing value of existing tax arrangements;
- introduce mechanisms for tax arrangements to retain real time value; and
- align tax reforms with the Government's wider NFP reform agenda.

In responding to the discussion paper we have made best use of our own resources by focusing on the areas that are of current primary importance to the UnitingCare network - access to the envelope of support, deductible gift recipients (DGR) and fringe benefit tax (FBT). We have assessed the proposed reform options in those areas against the following parameters:

- is the proposed reform likely to improve or be more beneficial to the NFP sector, and those it supports, than the existing arrangements;
- the likely impact of the proposed reform on the diversity and independence of the NFP sector;
- will implementation of the proposal introduce additional costs both in terms of immediate compliance and longer term administration; and
- how will the cost of the proposal impact on funding to the NFP sector.

It is our assessment that the Working Group's discussion paper is a sound start as it outlines the existing arrangements in a comprehensive and easily digestible format. However, we do not believe that sufficient information has been made available on the current values or budget costs of either the existing arrangements or the proposed reforms to enable definite conclusions to be reached when assessing the proposals. This is of particular concern because the terms of reference for the review state that the Working Group will identify offsetting budget savings from within the NFP sector for any proposals that have a budget cost.

3. Specific Comments on the Discussion Paper

3.1 Access to the envelope of support

The current envelope of support provided through tax arrangements for the NFP sector by the Australian Government is made available to a broad range of organisations which includes charities, scientific and religious organisations, public and NFP hospitals, and organisations that promote animal racing, art, games, sport, literature and music.

In reviewing the envelope of support the Working Group has been asked to identify offsetting budget savings within the NFP sector for any proposals that have a budget cost. This is a restriction to designing and delivering innovative reform of taxation arrangements for the NFP sector which will ultimately benefit the Australian economy. Therefore, we suggest that a key step in the Working Group's review is to identify which organisations should remain 'in the envelope' and which can be moved 'outside of the envelope' to free-up resources for reform. For example, public sector hospital employees currently receive benefits from the envelope of support for the NFP sector.

3.2 Deductible Gift Recipients

The debate and consultation on the need to simplify the taxation system has been ongoing for many years. For many UnitingCare agencies taxation processes have been integrated into normal financial and accounting process. However, as the discussion paper rightly identifies *(2.3 Concerns with the DGR Framework)* there continues to be significant complexity in determining whether an organisation is deemed to be a charity and the relevant concessions that should apply. We believe that fundamental to reform of the DGR framework is an agreement on the Statuary Definition of Charity which is being taken forward under the Government's NFP reform agenda.

The Discussion Paper states (point 35):

> *"The Australian Government provides DGR status as the primary tax concession that promotes giving to particular entities."*

Based on the experience of the UnitingCare network we find that that DGR status helps to maximise donations given to particular organisations. We strongly oppose *Option 2.7-Creating a clearing house for donations to DGRs.* The proposal is based on the assumption that a clearing house will promote and encourage charitable giving through more informed choices, and in particular increase workplace giving. There is no evidence to support this assumption and we believe that the proposed cost to establish a clearing house ($25 million) will likely outweigh the benefits.

We believe that the introduction of a clearing house as outlined in *Option 2.7* would create an unhelpful distance between donors and NFP organisations, add an additional unnecessary layer of administration, delay funding, compromise the role of the newly established Australian Charities and Not-for-profits Commission (ACNC) and reduce support available to the sector.

UnitingCare agencies are an integral part of their local communities and are able to access volunteers, donations, in-kind support and good will from community members to enhance the quality and quantity of their services. The reputation of a community organisation, based on direct contact and a sense of relationship, is often the primary driver for the decision to make a donation to a particular organisation. The organisation's DGR status is an important tool to encourage donors to increase the amount they give.

Cash donations, particularly when linked to specific appeals such as community events and annual door knock appeals, are significant sources of charitable funding collected directly by organisations themselves. To add additional transactions requiring donations to be forwarded to a clearing house will increase administration and possibly delay access to funds. Cash donations are often the most accessible and important funding source for smaller charities which can be highly vulnerable to delays in funding.

We believe that the proposed role of the ACNC in a clearing house compromises it as the independent regulator for the NFP sector and will negatively impact on the independence of the sector itself. Independence is a core principle of our sector which allows NFP organisations to make their own decisions on how best to meet their mission without undue influence and control from the Commonwealth Government and its agencies. We believe that the ACNC should not act or promote services or activities which undermine the independence of the sector such as the proposal to use the ACNC register to influence donor behaviour.

Additionally, like government and for-profit organisations, many NFP organisations use their website as a key marketing tool, providing information about their work, advocating for purpose, publishing details of their structure, staffing, services and support, in addition to enabling and encouraging donations. We recognise and support the ACNC as an additional resource to help maintain and enhance public trust and confidence in our sector but due care must be exercised to ensure that the ACNC does not become the primary interface between the public and the NFP sector.

We do not believe that the creation of a clearing house for all gifts to DGR organisations is a necessary step to encourage greater participation in workplace giving. There are already a number of mechanisms in place to facilitate workplace giving and options to improve these processes should be developed through a more comprehensive consultation process with the NFP sector.

3.3 Fringe Benefits Tax

The Discussion Paper rightly acknowledges that current FBT arrangements are complex and overly burdensome to administer, but that they do provide significant benefits to employees of eligible organisations and to organisations themselves. UnitingCare Australia also agrees that it signals that FBT arrangements are sometimes used in ways that are not consistent with the initial policy intent, particularly the uncapped meal entertainment and entertainment facility leasing benefit.

Despite its complexity, the FBT is a significant and important mechanism which enables many NFP organisations to better utilise funding from all sources of income to deliver more services to those in need. Like others in the sector, many UnitingCare agencies now outsource the administration of Employee FBT schemes to specialist businesses.

UnitingCare Australia strongly believes that any misuse of any of the tax arrangements for the NFP sector should be appropriately dealt with.

The main input cost for NFP community and social services delivery is labour. The key components to ensure the quality of those services are workforce skills and retention. The loss of the FBT arrangements, without an equivalent replacement that guarantees the preservation of the value of the FBT, would result in the removal of a significant proportion of indirect funding leading to a reduction in service delivery, employment and the net pay of PBI staff. Our own research shows that employment costs account for between 65-75% of total expenditure and that the removal of current FBT arrangements would result in a pay reduction in the order of 8-10%, which employers would need to cover. NFP community service employers are simply unable to absorb such increased payroll costs without making significant cuts to services and workforces.

Reforms that enable PBIs to compete, secure, train and retain appropriately skilled staff in a competitive labour market will have the greatest impact. FBT arrangements have not been indexed since the 2001 introduction; wage inflation, CPI increases and changes to the personal tax rate have all eroded the support to PBI employees. Reforms must enable FBT arrangements to keep pace with the labour market by increasing the current cap and ensuring that it is indexed adequately into the future.

In instances where FBT arrangements are being misused we believe action should be taken to prevent both individuals and organisations from continuing such practice. This action should be directed at those who misuse the arrangements and must not be detrimental to those organisations that appropriately manage the use of FBT by its employees and ensure it is applied within the spirit and principle for which it was introduced.

Therefore we believe that the meal entertainment and facility leasing benefit should be included within the relevant caps, with the caps lifted to reflect what their current value would be if they had been indexed since introduction and that they should continue to be indexed into the future. We believe that this would reduce administration, retain value and save resources. The saving made by the simplification of this process should be taken into account when costing the proposal.

In terms of eligibility to access FBT arrangements we believe that, as highlighted earlier in this paper, further work needs to be done to identify which types of organisations/employees should remain 'in the envelope' and which can be moved 'outside of the envelope'. This research would need to consider the full range of organisations which currently access tax arrangements for the NFP sector to identify if each continues to meet the criteria for eligibility, if the arrangements provide more or less benefit to some organisations than was originally intended and if the current envelope of support creates an advantage for some organisations to the detriment of others. We expect that likely areas to inform this work will be wage comparison across different types of FBT eligible organisations/employees, opportunities and access to different sources of funding and also to compare the outcomes of the envelope of support for urban, rural and remote organisations.

4. Conclusion

UnitingCare Australia welcomes the work of the Not-for-Profit Sector Tax Concession Working Group to consider improvements to the envelope of tax arrangements currently available to the sector. It is vital that the Government and its agencies better understand the structure and diversity of the sector and the reality of how current tax arrangements deliver necessary support to the sector in order to pursue reform.

Not-for-profit community and social service providers are an intrinsic element of the social and economic fabric of Australia. The NFP sector is an important employer in Australia; the vast majority of its workforce is female and a significant proportion are older employees and/or part time workers. Tax arrangement of their income and expenses should maximise the NFP sector's ability to fulfil its purpose, meet the increasing demand on its services and support and value the role that the sector plays in increasing workforce participation across Australia.

Income Tax exemption, FBT, GST and DGR status all provide critical support which if removed or reduced would lead to a reduction in the provision of vital community services and workforce participation. Therefore, we believe that initial reform of the current envelope of tax arrangements for the NFP sector should seek to:

- review access to the envelope of support;
- reduce complex and overly burdensome administrative requirements;
- better enable the NFP sector to meet the increasing costs and demands of providing vital social services and support;
- where applicable index arrangements to CPI to retain their real value;

- enable appropriate and swift action to counter any misuse of the arrangements; and
- consider how the proposed reforms will interact with other elements of the Government's NFP reform agenda (i.e. Statutory Definition of Charity).

This would then allow for on-going consultation across government, the NFP sector and community to develop longer-term reform of NFP tax arrangements which is sustainable and affordable.