



**Submission to:**

**Not-for-profit Sector Tax Concessions Working Group**

**December 2012**

## Introduction

This submission briefly outlines the Community Council for Australia (CCA) response to the Not-for-profit Sector Tax Concessions Working Group discussion paper.

It is important to note that this submission has been prepared through a process of consultation with the membership of the CCA (see Appendix 1 list of CCA members) and key organisations in the not-for-profit (NFP) sector. This submission does not over-ride any positions outlined in individual submissions from CCA members.

CCA is strongly supportive of ongoing discussion and development of a more considered and targeted use of tax concessions to enhance the role of the NFP sector in Australia. While the current system has some positive benefits for our organisations and communities, there are clearly policies and practices that require review.

The ongoing development of appropriate tax concessions must encourage both innovation and sustainability for the NFP sector in Australia. This is not just about fairness, technical fluency, or consistency, but about the nature of our communities and our lives.

The Not-for-profit Sector Tax Concessions Working Group is to be commended for their paper which not only asks some challenging questions, but also provides a level of facts, detail and informed commentary previously unavailable to the NFP sector. The Discussion Paper: *'Fairer, simpler and more effective tax concessions for the not-for-profit sector'* is already a touch-stone for any NFP tax concession policy discussion.

CCA look forward to seizing the opportunity for reform, and being part of the process of further developing policy positions that will enhance the role of NFP organisations in our communities.

## The Community Council for Australia

The Community Council for Australia (CCA) is an independent, non-political, member-based organisation dedicated to building flourishing communities primarily by enhancing the extraordinary work and effort undertaken within the NFP sector in Australia. CCA seeks to change the way governments, communities and the NFP sector relate to one another. This includes establishing a regulatory environment that works *for* community organisations, not against them.

The mission of CCA is to lead the sector by being an effective voice on common and shared issues affecting the contribution, performance and viability of NFP organisations in Australia, through:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- working in partnership with government, business and the broader Australian community to achieve positive change.

## **Recommendations**

1. Commission the development of a comprehensive blueprint for the future of the NFP sector

### **Income Tax concessions**

- 1.1 Reduce, not increase, the ATO endorsement framework by relying more heavily on the ACNC
- 1.2 Streamline income tax rules nationally
- 1.3 Increase the tax free threshold for taxable NFP clubs, associations and societies

### **DGR status and associated concessions**

- 2.1 Extend DGR status to all charities (longer term)
- 2.2 Extend DGR status to most charities (short to medium term)
- 2.3 Review incentives for giving in Australia with a view to actively promoting more giving and more engagement in charities and the NFP sector
- 2.4 Review and simplify property donation rules and anti-avoidance rules
- 2.5 Eliminate public fund requirements for charities registered with the ACNC

### **FBT concessions**

- 3.1 Cap the FBT meal entertainment and venue hire allowance within current FBT caps
- 3.2 Put in place mechanisms to avoid multiple FBT exemptions being claimed
- 3.3 Align FBT rate and FBT rebate rate
- 3.4 Undertake modelling and consultation to explore the feasibility of phasing out the FBT concession and replacing it with alternative tax-based support mechanisms for eligible NFP entities
- 3.5 Consider measures to reduce FBT concession compliance costs for employees and organisations

### **GST concessions**

- 4.1 Adopt a principles-based approach to the fundraising concession
- 4.2 Provide an opt in arrangement for GST treatment of non-commercial supplies

### **Mutuality, clubs and societies**

- 5.1 Conduct a comprehensive review and publish a discussion paper about the role of clubs and societies, the tax concessions currently received and the public benefit provided by clubs and societies

### **Next steps**

- 6.1 CCA supports the proposal to deliver reform to DGR status against the offset of capping FBT concessions

## **Context: not-for-profit reform**

The NFP sector contributes over \$43 billion to GDP per annum, encompasses over 600,000 organisations ranging in size from large to very small, and is estimated to employ over one million staff (or eight per cent of all employees in Australia). Over the last decade, the growth in the NFP sector is second only to the mining industry, and employment growth has outstripped any other industry.

These figures only tell a small part of the story. The real value of the NFP sector is in the often unattributed contribution to the quality of life we all experience in Australia. NFPs are at the heart of our communities and are what makes us resilient as a society.

The current Federal Government has committed to promoting social enterprise; reducing compliance costs for NFP organisations; encouraging a diversification of financing options to build a more sustainable funding base; streamlining and refining the regulation of NFPs and charities; developing a clearer definition of charities; establishing less bureaucratic reporting requirements while building community transparency; and working to improve relationships between government and the NFP sector (see Attachments 2 and 3). These are major commitments and have informed a raft of NFP sector reforms. While the benefit of these reforms may take some time to be realised, the NFP reform agenda is already well advanced.

The Australian Charities and Not-for-profits Commission (ACNC) is now established and operational. This is the first time the NFP sector has had an independent regulator dedicated to serving their needs. It is a very positive step towards reducing red tape and enhancing the role of the sector across our communities. The new regulator has followed other reforms including the signing of the National Compact between the government and the NFP sector, and the now well established work of the Not-for-profit Sector Reform Council that continues to drive reform across government from the Department of Prime Minister and Cabinet.

Within this context of growth and reform, it is important to ensure the regulatory environment including tax concessions, is appropriately structured to ensure longer term sustainability, innovation, productivity and increased effectiveness into the future, as well as maximising community benefit.

Unfortunately there is very limited longer term planning for the NFP sector. This lack of clear direction for the future makes any current discussion about tax concessions even more important.

Without a stronger sense of direction for the NFP sector in Australia, it is difficult to understand how broader issues impacting on the NFP sector may or may not impact on what NFP tax concessions are going to be in the best interests of governments, NFP organisations and the broader community. While we can never know our future with certainty, ignoring the inevitability of change has the potential to perpetuate short term reactionary policies. This is not a reason to avoid reform, but to ensure proposed new policies are informed by longer term goals.

In consideration of NFP taxation concessions, policies should take into account the need to support resilient and connected communities benefitting from a more active and engaged NFP sector.

## **Framing the CCA response**

In CCA Board discussions and in discussions with individual member organisations, there has been strong agreement that CCA policy positions in relation to tax concessions must be informed by what is desirable from the perspective of the long term interests of the NFP sector rather than focusing too much attention on what is possible in the short term.

There is a danger operating within a short term perspective framed primarily by what is possible right now. The reality is that some of the changes CCA might support as an immediate policy response may later need to be undone as broader reform and other changes lead to new ways of approaching the issues. While this should not be seen as a reason to delay implementing reform that will benefit the NFP sector into the future, it is a reason to seek more information, engage in further consultation and frame a more developed vision of the sector and how tax concessions would operate in an ideal regulatory environment.

In responding to the issues raised in the tax concessions discussion paper, CCA has sought to place some realistic time frames around what could be achieved. To this end some recommendations have identified time frames: short term (less than one year), medium term (less than three years) and longer term (more than three but less than five years).

CCA has also considered the current requirement for short term proposals to be revenue neutral. To this end, part of the discussion in this submission assumes a capacity for offsets with minimal real impact on most NFP organisations. While the tax concessions discussion paper enables some assumptions to be made about the quantum of savings from various changes, the actual details relating to offsets requires more thorough examination to ensure they do not have a detrimental impact on NFP organisations, or more particularly, the communities they serve.

Given these broader considerations, there is one over-arching recommendation that CCA sees as of critical importance in any consideration of NFP tax concessions.

CCA strongly believes that one of the priority areas of work to inform longer term framing of tax concessions policy is to develop a detailed blueprint for the future of the NFP sector based on extensive modelling, consultation and consideration of options that will strengthen the role of the NFP sector in our communities. This work also needs to consider the role of for profit 'social good' and 'social enterprise' programs and services. The proposed NFP 'blueprint for the future' would inform many of the issues raised in the tax concessions discussion paper. CCA believes this is a priority action that can be achieved in the short to medium term with minimal cost.

## **Recommendation**

- 1. Commission the development of a comprehensive blueprint for the future of the not-for-profit sector**

## **Response to issues raised in the discussion paper**

### **The principles**

CCA supports the principles outlined in the discussion paper, but at the risk of being seen as pedantic and engaging in a discussion beyond the core issue of tax concessions, CCA does seek a clearer definition of social good. Social good as a concept informs many of the principles. In describing this term the discussion paper refers to 'public benefit' and the achievement of 'community and altruistic purposes'.

In recent times some politicians have sought to use the notion of public good as a reason to cut spending to the most marginalised groups, penalise NFP organisations for advocating on behalf of the communities they serve, and to reduce government support for key service areas including public health.

CCA argues that in this context, defining 'public good' needs to be very clearly driven by communities rather than individuals, law makers or organisations that may have their own vested interests. It is important to emphasise that the purpose of most NFP organisations is to meet the perceived needs of a particular community. When NFP organisations are at their best, they are very responsive to their communities. When NFP organisations are at their worst, they are usually disconnected from their communities and pursuing goals beyond their purpose.

Public good is an appropriate principle, but who defines public good? In this context, public good should be grounded in the aspirations of communities themselves to ensure real meaning.

### **1. Income tax concessions**

CCA believes the current structure is ad hoc and inconsistent. There are too many categories of tax concessions and a lack of clarity across the NFP sector and the broader community about how and why tax concessions are applied. At the same time, CCA sees any expansion of the role of the Australian Taxation Office (ATO) as counterproductive to the development of a simplified and accessible system of concessions. Rather than increase the requirement for ATO endorsement so that other organisations satisfy the same requirements as charities, CCA would question why charities need to further apply to the ATO if they have already registered and satisfied the requirements of the Australian Charities and Not-for-profit Commission (ACNC).

CCA is also keen to see the role of the ACNC recognised and adopted across governments and other relevant bodies, but we do not wish to see the role of the ACNC expanded beyond that of a regulator. The ACNC will face many challenges in fulfilling its objects and becoming an effective regulator. It should be encouraged and enabled to pursue these goals un-encumbered by broader roles and expectations.

### **Recommendations**

**1.1 Reduce, not increase, the ATO endorsement framework by relying more heavily on the ACNC**

**1.2 Streamline income tax rules nationally**

**1.3 Increase the tax free threshold for taxable NFP clubs, associations and societies**

## 2. Deductible Gift Recipients status and associated concessions

The goals of streamlining NFP tax concessions, reducing the role of the ATO and enhancing the regulatory role of the ACNC have informed the CCA position in relation to DGR status.

The current DGR regime creates winners and losers amongst charities involved in very similar activities. It deters some donors from giving money to worthwhile charities, and impacts negatively on smaller charities. The reality for most charities is that if they have the time, the resources and can afford an appropriately skilled and experienced lawyer, they can usually achieve DGR status over time. For many smaller organisations, the process is seen as daunting and not worth the effort.

The government has supported the expansion of philanthropy through the creation of Public and Private Ancillary Funds, yet these organisations, like most charitable Trusts and other similar organisations, can only distribute their funds to organisations that have DGR status. In practice this favours donations to larger organisations that have been established over a longer period of time.

Government should be seeking to encourage community connectedness, engagement, resilience and giving of time and money to community causes. It therefore seems appropriate to provide tax concessions to donors who choose to give to smaller emerging organisations that are capable of adopting new and innovative responses to community needs. For this to occur there needs to be a change to DGR status eligibility.

Ideally all charities would have access to DGR status, however CCA recognise that this may not be achievable in the short term given the cost implications if all schools, churches and early learning organisations were able to offer tax deductibility for donations. For this reason CCA supports both the short term goal of extending DGR status to many more charities and the longer term goal of achieving automatic DGR for *all* charities in the future.

CCA is very concerned about anything that might negatively impact on giving in Australia. For this reason, CCA is reluctant to make recommendations in relation to giving until the impact of any proposed changes can be fully modelled and tested. This includes offset mechanisms, hybrid systems for PAFs, tax incentives to encourage testamentary giving, and a clearing house for donations to DGRs. In relation to the clearinghouse discussion, CCA is not a supporter of ATO-led programs in the NFP area. It seems a poor fit to have an organisation like the ATO in responsible for promoting a DGR program.

CCA believes there is a need to review the current practices around gifting of property, but is uncertain about whether any of the proposed solutions will address the issues identified in the discussion paper.

CCA also has concerns about increasing the threshold for deductible gifts from \$2 to \$25. There is little evidence that the current \$2 threshold creates much work for charities, and there are concerns about the negative implications of how government might frame a message to the broader community that smaller gifts are no longer entitled to (worthy of) concessions.

CCA is keen to see workplace giving programs in Australia gain more participants and favours an 'opt out' approach to workplace giving.

CCA also supports eliminating the obligation to have a public fund satisfy a range of separate requirements to the ATO. Most public funds operate within organisations that are themselves required to satisfy accountability requirements.

## **Recommendations**

### **2.1 Extend DGR status to all charities (longer term)**

### **2.2 Extend DGR status to most charities (short to medium term)**

### **2.3 Review incentives for giving in Australia with a view to actively promoting more giving and more engagement in charities and the not-for-profit sector**

### **2.4 Review and simplify property donation rules and anti-avoidance rules**

### **2.5 Eliminate public fund requirements for charities registered with the ACNC**

## **3. FBT concessions**

Ideally all employees in the charities and NFP sector would be paid an appropriate wage. In practice, FBT concessions to charities have become an important form of additional employee compensation for lower wages in the NFP sector. FBT concessions enable some NFP organisations to attract and retain skilled staff despite lower salaries.

Some aspects of the current FBT concession system can be difficult to justify. The concessions clearly favour higher paid employees and those who can afford to pay for expenses such as meals out of their pre-tax salary commitment can receive greater benefits. Over time, the changing personal income tax rates and the lack of indexing of FBT caps have reduced the real benefit of FBT concessions, especially for lower paid staff. Compliance costs are unnecessarily high and could easily be streamlined.

It is important to acknowledge that the current FBT system has become entrenched in the salary practices of many charities. FBT concessions are part of the terms and conditions of many workplaces and are written into many contracts and workplace agreements. Any change to the FBT concession system will hurt some organisations and possibly some employees.

In the longer term, FBT is probably unsustainable without change. There is a case for addressing the way some choose to use the meal entertainment and venue hire allowances for major personal expenditure such as weddings etc., and the multiple claiming of FBT concessions by some relatively highly paid employees. There may also be a case for limiting FBT concessions to staff earning less than \$150,000 per annum given the associated public perceptions of unfair advantages to well paid staff.

## **Recommendations**

### **3.1 Cap the FBT meal entertainment and venue hire allowance within current FBT caps**

### **3.2 Put in place mechanisms to avoid multiple FBT exemptions being claimed**

### **3.3 Align FBT rate and FBT rebate rate**

### **3.4 Undertake modelling and consultation to explore the feasibility of phasing out the FBT concession and replacing it with alternative tax based support mechanisms for eligible NFP entities**

### **3.5 Consider measures to reduce FBT concession compliance costs for employees and organisations**



## **4. GST concessions**

CCA is not aware of any major concerns about GST exemptions for charities, although there are some issues in relation to the way GST can be charged for ticketing of arts and cultural events, and the application of GST to fundraising activities.

CCA believe the fundraising concession concerns are best addressed within the broader context of encouraging giving in Australia, and the issue of non-commercial supplies particularly in relation to the provision of arts and cultural events requires further consideration. At this stage, CCA broadly supports the current position with the two minor improvements suggested in the discussion paper.

### **Recommendations**

#### **4.1 Adopt a principles based approach to the fundraising concession**

#### **4.2 Provide an opt in arrangement for GST treatment of non-commercial supplies**

## **5. Mutuality, clubs and societies**

Like many in the charitable sector, CCA has some concerns about the way some clubs (particularly some gaming clubs) choose to apply their tax concessions and use mutuality without necessarily demonstrating a significant public benefit. It appears that some clubs operate largely as commercial businesses competing against other large entertainment providers such as hotels who do not receive concessions.

At the same time, CCA is not in a position to propose ending practices that provide advantages to mutual clubs and societies. CCA therefore favours a more informed discussion with a view to identifying the public benefit provided by clubs and societies, and the potential misuse of advantages received by clubs and societies where they may not be contributing a proportional level of funds to promoting social good.

### **Recommendation**

#### **5.1 Conduct a comprehensive review and publish a discussion paper about the role of clubs and societies, the tax concessions currently received, the public benefit provided by clubs and societies**

## **6. Next Steps**

CCA supports efforts to deliver as many positive reforms as possible within the existing limitations of revenue neutrality. At the same time, it will be very important to ensure the proposed offsets including capping the meal entertainment and venue hire FBT concessions do not have any unintended consequences. CCA also supports in principle measures to achieve the major reform of expanding DGR status to charities albeit with the initial limitations around churches, schools and early learning.

### **Recommendation**

#### **6.1 CCA supports the proposal to deliver reform to DGR status against the offset of capping FBT concessions**

## **Conclusion**

CCA commends the Not-for-profit Sector Tax Concessions Working Group for their work in preparing the discussion paper. CCA is a strong supporter of positive reform in this area and believes there are short medium and longer term changes that need to be made to make tax concessions work *for* communities and NFP organisations rather than working against them.

It is fundamental that the NFP sector continues to build trust and accountability to the communities they serve. It is also important to promote giving, strengthen community engagement and ensure fairness and effectiveness in tax concessions.

The NFP sector is too important to allow the current ad hoc and inconsistent tax concessions regime to splutter along creating all kinds of distortions. While significant change may take time, there are opportunities now to make major positive reform and these opportunities should be realised.

**Current Membership – Community Council for Australia (December 2012)****Appendix 1**

<b>Organisation</b>	<b>CEO/Director</b>
Aboriginal Employment Service	Danny Lester
Access Australia	Sandra Dill
Access Community Group	Samantha Hill
Alcohol and Other Drugs Council of Australia	David Templeman
Alcohol Tobacco and Other Drugs Association ACT	Carrie Fowlie
ANEX	John Ryan
Associations Forum Pty Ltd	John Peacock
Australian Council for International Development	Marc Purcell
Australian Healthcare and Hospitals Association	Prue Power
Australian Indigenous Leadership Centre	Rachelle Towart
Australian Institute of Superannuation Trustees	Fiona Reynolds
Australian Major Performing Arts Group	Bethwyn Serow
Catholic Social Services Australia	Paul O'Callaghan
Church Communities Australia	Chris Voll
Connecting Up Australia	Doug Jacquier
Consumers Health Forum of Australia	Carol Bennett
<b>Drug Arm</b>	<b>Dr Dennis Young (Director)</b>
Foundation for Alcohol Research and Education	Michael Thorn
Fundraising Institute of Australia	Rob Edwards
Goodstart Early Learning	Julia Davison
<b>Good Beginnings Australia</b>	<b>Jayne Meyer-Tucker (Director)</b>
<b>HammondCare</b>	<b>Stephen Judd (Director)</b>
HETA Incorporated	Sue Lea
Hillsong Church	George Aghajanian
Illawarra Retirement Trust	Nieves Murray
Lifeline Australia	Dr Maggie Jamieson
Maroba Lodge Ltd	Viv Allanson
Mental Health Council of Australia	Frank Quinlan
Melbourne Citymission	Rev. Ric Holland
Missions Interlink	Pam Thyer
<b>Mission Australia</b>	<b>Toby Hall (Director)</b>
<b>Musica Viva Australia</b>	<b>Mary Jo Capps (Director)</b>
Opportunity International Australia	Rob Dunn
Philanthropy Australia	Deborah Seifert
Principals Australia Institute	Heather Parkes
Pro Bono Australia	Karen Mahlab (Assoc. Member)
<b>RSPCA Australia</b>	<b>Heather Neil (Director)</b>
St John Ambulance Australia	Peter LeCornu
Social Ventures Australia	Michael Traill
<b>Surf Lifesaving Australia</b>	<b>Brett Williamson (Director)</b>
The ANZCA Foundation	Ian Higgins
The Australian Charities Fund	Edward Kerr
<b>The Benevolent Society</b>	<b>Anne Hollonds (Director)</b>
<b>The Big Issue</b>	<b>Steven Persson (Director)</b>
The Centre for Social Impact	Andrew Young
<b>The Smith Family</b>	<b>Lisa O'Brien (Director)</b>
The Ted Noffs Foundation	Wesley Noffs
Volunteering Australia Inc	Cary Pedicini
<b>Wesley Mission</b>	<b>Keith Garner (Director)</b>
WorkVentures Ltd	Arsenio Alegre
<b>World Vision Australia</b>	<b>Tim Costello (Chair)</b>
YMCA Australia	Ron Mell
Workplace Giving Australia	Peter Walkemeyer
Youth Off The Streets	Fr Chris Riley
YWCA Australia	Dr Caroline Lambert

## Attachment 2

### National Compact Extract: signed by sector organisations and Government 17/3/10

#### Shared principles of the National Compact

The Australian Government and the Third Sector will work together according to these principles to achieve their shared vision:

- We believe a strong independent Sector is vital for a fair, inclusive society. We acknowledge and value the immense contribution the Sector and its volunteers make to Australian life.
- We aspire to a relationship between the Government and the Sector based on mutual respect and trust.
- We agree that authentic consultation, constructive advocacy and genuine collaboration between the Sector and the Government will lead to better policies, programs and services for our communities.
- We believe the great diversity within Australia's Third Sector is a significant strength, enabling it to understand and respond to the needs and aspirations of the nation's varied communities, in collaboration with those communities.
- We commit to enduring engagement with marginalised and disadvantaged Australians, in particular, Aboriginal and Torres Strait Islander people and their communities.
- We recognise the value of our multicultural society and we will plan, design and deliver culturally responsive services.
- We share a desire to improve life in Australia through cultural, social, humanitarian, environmental and economic activity. To achieve this, we need to plan, learn and improve together, building on existing strengths and making thoughtful decisions using sound evidence.
- We share a drive to respond to the needs and aspirations of communities through effective, pragmatic use of available resources.
- We recognise concerted effort is needed to develop an innovative, appropriately resourced and sustainable Sector.
- We acknowledge the need to develop measurable outcomes and invest in accountability mechanisms to demonstrate the effectiveness of our joint endeavours.

#### Priorities for action

Implementing the Compact principles will require coordinated engagement across Government and collaboration with the Sector to develop action plans. These plans will detail how the Compact's eight priorities for action, outlined below, will be met.

1. Document and promote the value and contribution of the Sector.
2. Protect the Sector's right to advocacy irrespective of any funding relationship that might exist.
3. Recognise Sector diversity in consultation processes and Sector development initiatives.
4. Improve information sharing including greater access to publicly funded research and data.
5. Reduce red tape and streamline reporting.
6. Simplify and improve consistency of financial arrangements including across state and federal jurisdictions.
7. Act to improve paid and unpaid workforce issues.
8. Improve funding and procurement processes

Reference: [www.nationalcompact.gov.au/resources/national-compact/](http://www.nationalcompact.gov.au/resources/national-compact/)

## **Attachment 3**

### **Statement of government support for PC recommendations (extract from the Communiqué from the second meeting of the Not-For-Profit Sector Reform Council, 18 May 2011)**

With regards to the Productivity Commission research report, Contributions of the Not for Profit Sector, the Minister advised that the Commonwealth Government has accepted 'in-principle' all but one of the recommendations relating to the Commonwealth. The one recommendation not supported was recommendation 9.5 pertaining to program related social innovation funds. While encouraging greater innovation is critical, the Government believes this should be pursued in other ways.

**Reference:** [www.notforprofit.gov.au/node/140](http://www.notforprofit.gov.au/node/140)