YWCA Australia
Submission to NFP Tax Concessions Working Group
December 2012

Response to *Fairer, simpler and more effective tax concessions for the not-for-profit sector* discussion paper

Introduction

Thank you for the opportunity to comment on the November 2012 *Fairer, simpler and more effective tax concessions for the not-for-profit sector* discussion paper (**Discussion Paper**).

As stated in the Productivity Commission's 2010 *Contribution of the Not-for-Profit Sector* research report (**Productivity Commission Report**), the current system of NFP tax concessions is complex, inefficient and inequitable, imposing substantial administrative costs on both NFPs and governments[1]. There is much room for improvement.

YWCA Australia believes it is appropriate to ensure that NFP tax concessions are properly targeted at charitable organisations that are working for change at the coalface of poverty and disadvantage in our communities. It is important that concessions are used in a way that provides the maximum social benefit by enabling charities to achieve their community and altruistic purposes. We thank the Working Group for its detailed Discussion Paper which will greatly contribute to the development of policy in this area.

As the Working Group is aware, the not for profit sector is currently dealing with a series of reforms and in our view any major changes to the tax concession regime should be considered only after the current suite of reforms have been implemented, particularly the statutory definition of charity. Having said that, the new statutory definition of charity should be developed taking into account that the complicated system of NFP tax concessions will need to be reformed at a later date, including modernising the definitions of Public Benevolent Institution (**PBI**) and Deductible Gift Recipient (**DGR**).

About YWCA Australia

YWCA Australia is the national association of YWCAs in Australia and is part of the World YWCA movement. We are a women-led organisation that achieves positive change by providing advocacy, programs and services for women, families and communities.

YWCAs undertake advocacy and deliver services and programs that develop the leadership and collective power of women and girls, support individuals, their families and communities at critical times, and promote gender equality and community strengthening.

YWCAs have been providing community services in Australia since the 1880s.

[1] See p.155, available at http://www.pc.gov.au/__data/assets/pdf_file/0011/94565/11-chapter7.pdf

General

Our submission focuses on the most significant tax arrangements for YWCAs in Australia, particularly income tax exemptions and fringe benefit tax (**FBT**) concessions.

We also refer the Working Group to submissions from the following organisations, which have helped to inform our submission:

- Australian Council of Social Service (**ACOSS**)
- Communities Council for Australia (**CCA**)
- Philanthropy Australia.

Framing the discussion

We note the valuable contribution of the NFP sector in enhancing community wellbeing by delivering critical services that Australian governments would otherwise need to deliver directly. As recognised by the Productivity Commission, the sector contributed $43 billion to the Australian economy in 2006-07 (7.7 per cent pa in real terms), which was 4.1 per cent of GDP in 2006-07, and employed close to 890 000 people. Volunteers contributed an additional $14.6 billion in unpaid work in 2006-07.

Charitable tax concessions should therefore not be framed as lost revenue. While we understand the Australian Government's fiscal constraints, the considerable social and economic benefits of providing tax concessions to the sector do not appear to be taken into consideration. Any decrease in independent funding streams would result in an equivalent reduction in community services delivered, and put an increased burden on governments (including increased costs to fund and administer the critical services). As ACOSS states in its submission[2]:

> *The quantification of the sector's tax concessions is not presented in terms of investment or overall economic (as well as social) benefit, but is assumed to be a cost to revenue. We do not accept this framing of the value of NFP tax concessions; nor the direction it sets by requiring any recommendations that might add to the value of NFP tax concessions to be somehow 'offset' within the existing concessions framework*.

Competitive neutrality

YWCA Australia supports ACOSS's view that 'the principles of competitive neutrality should not apply to activities that have a predominantly charitable purpose' (p.2). We strongly disagree with the proposition that for-profit and not-for-profit entities should be equally subject to competitive neutrality principles. We endorse the position of the Melbourne University Not for Profit Group[3] that the competitive neutrality argument is problematic in this context for a number of reasons, including:

- Comparing NFP with government and private providers is inherently difficult, because of the need to compare the different objectives of the organisations and to include in

[2] ACOSS Submission, pp.1-2.

[3] Not-For-Profit Project, University of Melbourne Law School, Submission to the Treasury, *Better Targeting of Tax Concessions*, 27 May 2011, p. 2.

the balance the public benefit provided by NFPs, such as the provision of homeless services by NFPs operating hotels.

- Comparisons need to take into account **disadvantages** suffered by NFPs including limited access to equity capital. Other disadvantages include the inability to retract and retain specialist staff unless the fringe benefit component is available to make salaries more competitive, and the challenge of reinvesting operating surpluses into sinking funds where there is a growing and unfunded need for community services.

- Competitive neutrality is affected by many economic factors specific to particular industries that cannot be readily or practically incorporated into a tax on business income.

YWCA Australia has been emphasising the inappropriateness of competitive neutrality principles in relation to the proposed *Better targeting of not-for-profit tax concessions* reforms.

Chapter 1: Income Tax Exemption and Refundable Franking Credits

Q 4 Does the tax system create particular impediments for large or complex NFPs?

No.

Q 5 Should other types of NFPs also be able to claim a refund of franking credits?

No.

Q 6 Should the ability of tax exempt charities and DGRs to receive refunds for franking credits be limited?

YWCA Australia supports retention of the current arrangements under which charities and income tax exempt DGRs can claim a refund of franking credits.

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

We support the CCA's view that rather than increase the requirement for ATO endorsement so that other NFP organisations satisfy the same requirements as charities, that the Australian Charities and Not-for-profits Commission (**ACNC**) should be responsible for endorsement. Extending the ATO endorsement framework would appear to be at odds with the establishment of the ACNC.

Chapter 2: Deductible gift recipients

In our view, it is hard to separate issues relating to Deductible Gift Recipient (**DGR**) status from discussions about the definition of charity. The first principle for a statutory definition should be to reflect the *Aid/Watch* decision. Changes to the definition of charity should ensure that charities can provide both service delivery and advocacy to affect both individual and structural change without risking their status as a charity.

Consistent with this, YWCA Australia supports ACOSS's recommendation to extend DGR status to those charities whose dominant purpose is altruistic and for the public benefit, even if they don't provide "direct relief". We support the streamlining and simplification of the process for obtaining DGR status with a focus on expanding the equitability and consistency of how the concession is applied.

As ACOSS states[4]:

> *'A clear framework for this was set out in the landmark Charities Definition Inquiry in 2001. In seeking to distinguish 'altruistic entities from other not-for-profit entities', the CDI recommended retaining,*
>
> > *'the wide definition of charity to provide recognition of the extensive range of purposes that provide benefit to the public. However, we have also identified a subset of charity that can attract more favourable treatment to be known as Benevolent Charity'. 4*
>
> *This approach was narrow enough to constrain excessive distribution of tax concessions, while avoiding the current blurring of tax concessions that occurs through the exercise of Public Benevolent Institution (PBI) status.*
>
> *The current complexity and inconsistency surrounding NFP tax concessions limits many deserving charities from benefitting from the most significant tax concessions. Reform needs to set clearer boundaries for improved tax concessions, so that those who deserve the benefits of tax concessions can benefits from them consistently and equitably.*

Charitable child care services

YWCA Australia does not support the exclusion of charitable child care services from DGR status. Affordable and accessible childcare is critical for increasing women's workforce participation and economic security and charitable child care services can be an integral part of a charity's mission, particularly organisations like the YWCA.

Indigenous organisations

YWCA Australia is concerned that some Indigenous organisations have difficulty seeking endorsement as DGRs as their activities do not fall within a single DGR category (see Discussion Paper, p.21). We would support the creation of a new general DGR category to include Indigenous organisations that carry out activities across multiple DGR categories even if broader DGR reform is not pursued.

Chapter 3: Fringe benefit tax concessions

Salary packaging options available under the FBT concession are used by NFP employers to attract workers to a sector that struggles to offer competitive wages as a result of underfunding and historical pay inequity.

We support ACOSS's recommendation that any reform to the FBT concession should ensure that it does not leave clients or employees of social services or the organisations

[4] ACOSS submission, pp.3-4.

themselves worse off (p.4). Although the FBT concession is administratively burdensome, is not indexed and therefore has declined in real value, and tends to favour higher paid staff, any reform would need to be done with extreme care to prevent negative impacts on many organisations and employees.

We note that NFPs are already implementing the Equal Pay Case in circumstances where some state government departments and corporate partners have chosen not to pass on any additional funding to contribute to the increase in salaries. This has already resulted in decreased service provision and delivery and it is anticipated to be problematic over the next eight years without increased funding. Organisations whose funding models rely on social enterprises where the profits are reinvested back into community programs and services are also facing difficulty. Any increased staff costs as a consequence of FBT concession reform may result in the business venture no longer being financially viable, resulting not only in loss of funding to programs but also increased unemployment.

In our view, the use of FBT exemptions for restaurant meals and the hire of entertainment facilities for private purposes by relatively high income professionals (such as doctors) are unlikely to be supporting the sector in a meaningful way and targeted reform may be needed. The multiple claiming of FBT concessions by some relatively highly paid employees may also need targeted reform.

Q26: Should the threshold for deductible gifts be increased from $2 to $25 (or to some other amount?)

In our view, $25 is too high and would deter many people from giving. YWCA Australia believes that the threshold should be increased from $2 to $5 to make administering small donations more financially viable. However, it may be an inappropriate time to make the change to a $5 threshold given the current economic climate in Australia.

More information

For further information or to discuss this submission, contact YWCA Australia Policy Coordinator Alison Laird policy@ywca.org.au