



Submission to The Treasury

**Response to Exposure Draft Legislation
Limiting Fringe Benefit Tax Concessions for
Salary Packaged Entertainment Expenses**

August 2015

Introduction

This submission briefly outlines some of the key issues for Australia's charity and not-for-profit sector in the proposed changes to the Fringe Benefit Tax (FBT) concessions for salary packaged entertainment expenses. This submission has been prepared with Community Council for Australia (CCA) members (see listing of CCA members, Attachment A) as well as other key organisations working in the broader not-for-profit sector. It is important to note that this submission does not over-ride any policy positions that may be outlined in any individual submissions from CCA members.

The tax system is not just about an economic exchange, it is part of the fabric of our communities. The provision of tax concessions to charity and not-for-profit organisations has been an important contributing factor in building a strong and resilient Australian community.

CCA has for some time acknowledged the need to reform taxation arrangements including possible changes to the FBT concessions available to employees of public benevolent institutions, health promotion charities and employees of public and not-for profit-hospitals and public ambulance services. CCA has also consistently argued that any capping of this concession needs to be part of a broader package of reforms, taking into account the impact of any changes on the broader charities and not-for-profit sector, and redirecting savings achieved back into more effective ways of supporting the sector. Unfortunately, the proposed changes do not meet these criteria.

Given this failure to adequately consider the consequences, or to place the proposed changes within the context of broader taxation reform, the proposed changes need to be more comprehensively reviewed prior to being legislated. CCA is concerned about the low level of the cap, how additional costs to charities and not-for-profits will be met, and the potential loss of quality staff.

CCA appreciates this opportunity to be part of the national conversation and provide input into this area of taxation policy and its impact on charities and not-for-profits.

The Community Council for Australia

The Community Council for Australia is an independent non-political member based organisation dedicated to building flourishing communities by enhancing the extraordinary work undertaken by the charities and not-for-profit sector in Australia. CCA seeks to change the way governments, communities and not-for-profits relate to one another. It does so by providing a national voice and facilitation for sector leaders to act on common and shared issues affecting the contribution, performance and viability of NFPs in Australia. This includes:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- improving the way people invest in the sector
- measuring and reporting success in a way that clearly articulates value
- building collaboration and sector efficiency
- informing, educating, and assisting organisations to build sustainable futures
- providing a catalyst and mechanism for the sector to work in partnership with government, business and the broader Australian community to achieve positive change.

Our success will drive a more sustainable and effective charities and not-for-profit sector in Australia making an increased contribution to the well-being and resilience of all our communities.

Current situation – the context

The not-for-profit sector

The charities and not-for-profit sector turns over more than \$105 billion annually, contributes over \$55 billion to GDP per annum, and employs over one million staff (or eight per cent of all employees in Australia). The sector holds over \$175 billion in assets, and across the last decade, sector growth has continued at approximately 7% a year, greater than any other industry group.

These figures tell only a small part of the story. The real value of the sector is that these are the organisations at the heart of our communities; building social connection, nurturing spiritual and cultural expression, and enhancing the productivity of all Australians.

The importance of the sector is now being internationally recognised with many governments putting in place measures to increase NFP productivity. Smaller government and bigger community is a common theme, driven in part by savings, but also by a commitment to greater civic engagement and productivity within the NFP sector. The sector itself is beginning to work on productivity as a core issue.

The recent history of the NFP sector is framed by growth and reform, but there are a number of new issues emerging. The level of individual philanthropic giving has levelled out from the high in 2008. The ongoing increase in revenue available to governments is effectively stalling in real terms against a backdrop of increasing demands and higher community expectations. Competition within the sector is increasing, although not always to the benefit of the community.

There have been no less than 15 major reviews, reports and inquiries into the regulation and contribution of the charities and not-for-profit sector since 1995. There are currently a range of initiatives seeking to promote social enterprise; reduce compliance costs for NFP organisations; encourage a diversification of financing options to build a more sustainable funding base; streamline and refine the regulation of NFPs and charities; establish less bureaucratic reporting requirements while building community transparency; increase philanthropy and improve relationships between government and the NFP sector. CCA supports these activities as do most of the sector.

It is important to emphasise that the sector itself has consistently offered to positively participate in discussions about reforms to enable more effective taxation and regulation of the sector.

The Australian Charities and Not-for-profits Commission (ACNC) is now an effective independent national regulator dedicated to serving the needs of the sector and the needs of the community. This is a positive step towards reducing red tape, supporting transparency, building community trust and enhancing the role of the sector.

The inability of governments to streamline their own regulatory processes, their tendering processes, contract management and programs monitoring has consistently been identified as a major barrier to improving productivity in the not-for-profit sector in Australia. The lack of certainty in the government regulatory environment, funding and contracting processes also undermines performance and ongoing investment in improving outcomes. For the sector to be more effective, these issues must be addressed.

Given the size of the sector and its critical role in our community, the Federal Government can achieve real economic and social benefits if it chooses to strategically invest in strengthening our communities and our NFPs by improving the way it taxes and regulates the sector.

Overview of key issues

- **The purpose of the Australian taxation system**

CCA believes that all Australians want to live in flourishing communities. While it is important to have a fair, efficient and effective taxation system, the way we tax also has a direct impact on many of the relationships between citizens and within our communities. Our tax system influences the availability of housing and employment, the quality of our education, health care and support services. A good tax system helps create opportunity and promotes public benefit. It supports investment in innovation and creativity, while increasing productivity.

Any proposed changes to current taxation arrangements should be meaningfully canvassed with those it will impact on – keeping in mind the fundamental principle of all good interventions – first do no harm.

- **Concessions and public benefit**

As the recent tax discussion paper points out, concessions to the charities and not-for-profit sector provides at least \$5 billion in tax concessions through various exemptions including FBT, GST, income tax and imputation credit exemptions and concessions. While the rationale for concessions varies, the fundamental principle informing these concessions is that the purpose of charities and not-for-profits is to provide a public benefit and serve their communities, often in situations where there is market failure and high community need. All charities and not-for-profits are driven by a purpose that has to be about providing a real public benefit. Most commercial entities are primarily about making money for individuals. This distinction is critical.

There also needs to be an acknowledgement that the transfer costs of collecting taxes and then redistributing this revenue back to communities through government bureaucracies creates inefficiencies and represents a significant cost.

- **Current Fringe Benefit Tax (FBT) Concessions**

FBT concessions have been important to many charities, Public Benevolent Institutions (PBIs) and not-for-profits (NFPs) in both attracting and retaining quality staff. This concession has enabled benefits such as subsidised vehicles or accommodation assistance to be partially underwritten as a component of employee benefits. FBT concessions and exemptions are often a critical component of employee remuneration, particularly in hard to recruit roles and difficult locations.

Many in the sector would like to see FBT concessions increased to enable charities to compete more equitably in employment markets with better resourced government agencies and commercial organisations. For some employees, the FBT exemptions can add 10% to their annual salary package making work in the charitable sector more attractive, and enabling more services to be provided to the community. It is also important to note that not all eligible organisations access this concession.

CCA has acknowledged there is a need to address the situation where a small minority of highly paid employees are using the FBT concessions for entertainment expenses to package very significant amounts of tax free income, well beyond what most people would consider reasonable. At the same time, CCA has consistently argued that any measures to address this issue need to be part of broader reform including extending current Deductible Gift Recipient eligibility and other charity and not-for-profit taxation arrangements.

CCA Concerns with Proposed Changes to FBT Concessions

1. Why a cap of \$5000?

The feedback CCA has received from many of its members is that the proposed cap of \$5000 grossed up seems very low, especially given that there has been no movement in the broader FBT concessions for over a decade, and the capacity of managers to reward loyal and competent staff has effectively been eroded over the years with other changes to tax rates, etc.

In practice, providing a less than \$3000 per annum additional benefit is relatively insignificant, even for lower paid staff. Under the previous uncapped arrangement, some organisations had been able to offer long term valuable employees higher incentives. One charity, for instance, was able to offer a one off overseas study tour for all employees who had worked for ten years in the organisation. While the same benefit can still be provided, the charity had previously worked with employees to draw on the FBT concessions to enable it to afford this benefit. The real costs to this charity of maintaining the current approach will be in excess of \$100,000 per annum.

CCA has seen no modelling showing the impact of a \$5000 cap, a \$10,000 cap, or a \$20,000 cap on the tax system, the income of charities or the income of individual beneficiaries. Without this modelling, it is difficult to understand why such a relatively low cap was chosen.

CCA believe the level of the proposed cap needs to be reviewed prior to finalising changes to the FBT concessions for entertainment expenses. A cap of \$10,000 seems more reasonable and less damaging.

2. Why impose new compliance costs?

CCA finds it difficult to comprehend why this change necessitates the imposition of new reporting requirements. The employee receiving the benefit of a tax concession to the value of less than \$3000 is unlikely to distort the purpose or the amounts involved, especially given the benefit is so small.

Any employee making legitimate and claimable expenses already needs to justify their claims at the employer level and this should suffice. Making this level of documentation available to the ATO seems a step too far in compliance costs.

3. Why not target the misuse?

There are certain categories of employees where it appears a generous approach to salary packaging has become widespread. Medical specialists in Victoria, for instance, are apparently more likely to engage in high levels of concessions through entertainment expenses than are workers in the broader charity sector. Imposing a cap on many because of the more extravagant behaviour of a few seems unfair.

There are a range of options that could effectively limit the misuse of concessions that may or may not have been considered by Treasury including; imposing a limit on FBT concessions for employees earning above \$200,000; grossing up an average amount per employee that is paid directly to the employer; limiting use of the concession in industries where high levels of misuse are apparent. These alternative policy approaches would have left most charities largely untouched by the capping of this benefit, but may achieve the goals of reigning in misuse and preserving the integrity of the tax system. These alternatives may be worth considering rather than simply imposing a flat limit on everyone.

4. Why take the savings from the sector?

It is important to note that in all the recent CCA budget submissions, CCA has proposed measures where the savings from introducing a reasonable cap on FBT concessions for entertainment expenses could be applied in building a stronger charities and not-for-profit sector, and providing greater benefits to the community.

CCA is disappointed that the this measure is being introduced as a one-off savings measure that will effectively represent a loss of investment into the charities and not-for-profit sector, a loss that will have to be made up in some other way. In some cases it may mean a loss of good staff, in others it may mean additional salary costs. CCA would be more supportive of this measure had it been developed as part of a reform package with a view to better using the savings from capping the FBT concession in support of the sector rather than just reducing government expenditure.

5. Why not consult before introducing the measure?

This submission reflects many discussions with CCA members and others in the charities and not-for-profit sector, none of whom had been consulted in any way about proposed changes. This lack of consultation is disappointing given the sector has been more than willing to engage in this discussion and consider measures to reign in unreasonable levels of tax concessions being provided to the highest paid employees in the sector.

Conclusion

CCA believes there is some merit in the policy position of capping FBT entertainment expense concessions, but only when taking into account the impact of any changes, and only as part of a package of reforms including strengthening the sector through better use of tax concessions and arrangements.

Unfortunately, the way this proposed change has been developed and announced has undermined sector support for the changes. There has been little or no consultation with the sector. The rationale for arriving at such a low cap figure has not been made available to the sector. The need for additional reporting and the lack of any clear intention to reinvest savings into the sector are all factors that need to be addressed in considering the proposed change.

There is no doubt that this change will have some negative consequences across the sector including increased costs and a loss of some good staff. Given the importance of the charities and not-for-profit sector to our economy and our communities, it is very disappointing that such a major policy change has been implemented in this way without due regard for the consequences.

The charities and not-for-profit sector has a long history of being proactive and being prepared to engage in wide ranging discussions about reform to taxation and regulation of the sector. This eagerness to improve the sector and be part of the national policy conversation has not always been reciprocated.

CCA would hope that the commitment to stronger communities and stronger organisations serving our communities will be given a greater priority as this proposed change to FBT concessions is considered by policy makers and the Parliament. CCA looks forward to being part of these considerations.

Current Membership – Community Council for Australia *Attachment A*

Organisation

2realise

Access Australia's National Infertility Network

Arab Council Australia

Australian Charities Fund

Australian Council for International Development

Australian Healthcare and Hospitals Association

Australian Indigenous Leadership Centre

Australian Institute of Superannuation Trustees

Australian Major Performing Arts Group

Australian Women Donors Network

Canberra Men's Centre Inc

beyondblue

Carers Australia

Charities Aid Foundation

Church Communities Australia

Churches of Christ Community Care VIC & TAS

Community Broadcasting Association of Australia

Community Colleges Australia

Compass Housing Co Ltd

Connecting Up Australia

Drug Arm Australasia

e.motion21

ethicaljobs.com.au

Family Life Services Australia

Foresters Community Finance

Foundation for Alcohol Research and Education

Foundation for Young Australians

Fundraising Institute of Australia

Good Beginnings Australia

HammondCare

Hillsong Church

Justice Connect

CEO/Director

Rowena Stulajter

Sandra Dill

Randa Kattan

Jenny Geddes

Marc Purcell

Alison Verhoeven

Rachelle Towart

Tom Garcia

Bethwyn Serow

Julie Reilly

Greg Aldridge

Georgie Harman

Ara Cresswell

Lisa Grinham

Chris Voll

Paul Arnott

Jon Bisset

Kate Davidson

Greg Budworth

Anne Gawen

Dr Dennis Young (Director)

Kate Simkovic

Michael Cebon (Associate Member)

Jo Cavanagh

Ashley Hood

Michael Thorn

Jan Owen

Rob Edwards

Jayne Meyer-Tucker (Director)

Stephen Judd

George Aghajanian (Director)

Fiona McLeay

Lifeline Australia

Life Without Barriers

Maroba Lodge Ltd

Mater Foundation

Missions Interlink

Mission Australia

Musica Viva Australia

Opportunity International Australia

Our Community

Palliative Care Australia

Philanthropy Australia

Port Phillip Housing Association

PowerHousing Australia

Pro Bono Australia

Relationships Australia

RSPCA Australia

SANE

SARRAH

Save the Children

St John Ambulance Australia

Social Ventures Australia

The Benevolent Society

The Big Issue

The Centre for Social Impact

The Reach Foundation

The Smith Family

The Ted Noffs Foundation

Variety Australia

Volunteering Australia

Wesley Mission

World Vision Australia

YMCA Australia

Youth Off The Streets

YWCA Australia

Brett Goodridge

Claire Robbs (Director)

Viv Allanson

Nigel Harris

Pam Thyer

Catherine Yeomans

Mary Jo Capps (Director)

Robert Dunn

Denis Moriarty (Associate Member)

Liz Callaghan

Chris Wootton

Karen Barnett

Julie Quaass

Karen Mahlab (Associate Member)

Alison Brook

Heather Neil (Director)

Jack Heath

Rod Wellington

Paul Ronalds (Director)

Peter LeCornu

Michael Traill

Joanne Toohey

Steven Persson

Andrew Young

Sarah Davies

Lisa O'Brien (Director)

Wesley Noffs

Neil Wykes

Brett Williamson (Director)

Rev Keith Garner (Director)

Rev Tim Costello (Chair)

Ron Mell

Fr Chris Riley

Dr Caroline Lambert