

Ms Linda Lavarch
Chair
Not-For-Profit Tax Concessions Working Group
NFPReform@treasury.gov.au

Dear Ms Lavarch,

Submission to the NFP Tax Concession Working Group

Question 1: What criteria should be used to determine whether an entity is entitled to an income tax exemption?

As someone with a disability, who is partially dependent on goods and services provided by the Not-For-Profit (NFP) Sector, it worries me that we presume NFPs have an automatic entitlement to tax exemptions, with the very first consultation question. Personally, one is very attracted to the comments of William Gladstone,¹ noting in Annex 2:

In my opinion, "a corporation is a corporation" but as things stand "not all corporations are created equal". There are those that produce everything from breakfast cereal to slate tiles and are still obliged to pay taxes and charges. By contrast, charitable corporations (generally limited by guarantee, as identified in the Discussion Paper) receive a variety of concessions and, donations are generally tax deductible. And while there is no doubt they employ people and provide many essential goods and services, they also receive favourable tax treatment that no other business can expect. Do these "other" businesses that do pay tax fail to produce employment, goods and services which Australians need? It is debatable whether this differential and deferential treatment of not-for-profits continues to be justified.²

To me, this treatment is not justified and, is a very false economy. For example, governments and commentators alike seem to variously rail against the cash economy³ and, "middle-class welfare,"⁴

¹ See The Not For Profit Secretariat, *Discussion Paper*, November 2012, p.10 (16 of 79)

² Annex 2, pp. 3-4

³ There is a great deal of debate over the exact size of the cash economy in Australia: see for example, *Australia's cash economy: Are the Estimates Credible?*, Ideas, <http://ideas.repec.org/p/wpa/wuwpma/0509025.html> as at November 16, 2012. The site carries a range of papers on the issue. Also see, Monika Reinhart, Jenny Job & Valerie Braithwaite, *Untaxed Cash Work: Feeding Mouths, Lining Wallets*, Regulatory Institutions Network, Australian National University, Report for the Department of Family and Community Services, March 2004, http://vab.anu.edu.au/pubs/FACS_FINAL_March_04_1.pdf as at November 16, 2012. The interesting aspects of this report included that it indicates 5 to 10% of Australians reported their involvement in the cash economy (based on sample prepared to acknowledge this behaviour to the researchers). It was also found that the behaviour was general and cut across socio economic groups, though there tended to be slightly higher levels amongst young people. An interesting conclusion of note was:

The times are such that governments of democratic countries throughout the world are changing their social contracts with citizens, asking them to be more entrepreneurial, self-sufficient, to show initiative and to seek out rewards for their individual effort. Challenges such as this do not go unheeded by the population. They comply, through developing their own scripts in an uncertain, brave new world. Maybe cash economy activity is best understood as one of these scripts. (pages 73-74 [76-77 of 81])

⁴ See for example, Matt Wade, *Rich Cash in on Welfare*, Sydney Morning Herald, November 15, 2012, <http://www.smh.com.au/national/rich-cash-in-on-welfare-20121114-29d0w.html> as at November 16, 2012

yet a different set of rules seems to apply to NFPs. It is acknowledged that your discussion paper does raise the issue of public benefit and the public good, yet I struggle to see how these exactly justify special treatment to the NFP sector. This is because any number of reports can be cited to show terms like 'the public good' or 'the public interest' are concepts notoriously hard to define.⁵ On this basis, I find the *Discussion Paper's* use of phrases like the "public good" and "public interest" singularly unconvincing.

The earliest known income tax exemption may well have been granted to hospitals treating leprosy patients in 1274,⁶ but those who have been granted tax exemptions in the modern day come from an ever-growing grab bag of well-connected lobbyists and pressure groups, seeking to gain rents off the goodwill of the Australian taxpayer.⁷ For example, in a world of mass-communication, the internet and social media, just how clear is it that we need to give tax-breaks/subsidies to education on a nation-wide basis? With the debate over public funding of non-government schools being so fierce this year,⁸ not to mention all the newsprint and internet chatter over the *Gonski Review*⁹ it is hard to see where the policy consensus is around this issue.

Equally, I cannot see a continuing argument for taxpayer subsidies to 'advance religion'. The story of the late 20th and early 21st centuries has been marked by the general decline of formal religious institutions and observances in the West. While religion will continue to mean much for some people, this is not an argument sufficient to say that the general community should subsidise it.¹⁰ In my view, the only bodies truly worthy of ongoing charitable subsidies are those undertaking scientific research. My reasoning here can largely be seen in Annex 3, where I unsuccessfully tried to dissuade the Treasury from proceeding with the National Disability Insurance Scheme (NDIS) in favour of enhanced funding for research. As I told the Productivity Commission's inquiry into *Disability Care and Support*, when I appeared as a witness before them:

MR JOHNSTON: The only other issue that I really do want to raise is I know from the report you seem fairly committed to moving forward the idea of insurance for disability. My concern with that is that one of my other clear interests is the advancement of medical research. I would just put to you that within the next 10 to 20 years, we could be looking at

⁵ For example, in 2008, Geoffrey Edwards, a doctrinal student at Griffith University set himself the task in his thesis of *Defining the Public Interest*. The abstract to his thesis, which is available online, observes in part that:

In short, no authoritative or objective standard could be discovered. Further, the hold that relativism and neo-liberalism have within the social sciences and the policy community makes it unlikely that scholars will reach a consensus on how to crystallise the public interest in the foreseeable future. (Geoffrey Edwards, *Defining the Public Interest*, <http://www4.gu.edu.au:8080/adt-root/public/adt-QGU20090116.165333/index.html> as at November 16, 2012)

⁶ See *Discussion Paper*, p. 12 (18 of 79)

⁷ See *ibid.*, at sections 1.1 to 1.3, pp. 11-13 (17-19 of 79)

⁸ See for example, Kevin Donnelly, *Gillard is setting up non-government schools for a fall*, *The Punch*, 24 February 2012, <http://www.thepunch.com.au/articles/gillard-is-setting-non-government-schools-up-for-a-fall/> as at November 18, 2012. Another view says that non-government schools have been over-funded and generously subsidised for a long time – see for example, David Giblin, *Non-government schools get many subsidies as well as public funding*, *On-line Opinion*, 28 April 2004 <http://www.onlineopinion.com.au/view.asp?article=2167> as at November 18, 2012.

⁹ See for example, *Gonski report at a glance*, *The Age*, February 20, 2012, <http://www.theage.com.au/opinion/political-news/gonski-report-at-a-glance-20120220-1tinh.html> as at November 19, 2012

¹⁰ While I happily identify as a member of the Christian faith, I appreciate that many will have other faith traditions, or not wish to identify with any faith tradition at all. Furthermore, despite my own belief I do not hesitate to be openly critical of the all too favourable tax treatment of religious bodies. Refer to Annex 2, pp. 3-4 (in particular, see the discussion at footnote 6 of the document)

a very different world and hopefully you and I won't be in these things any more, these wheelchairs, and I think that's a real possibility. There is real scientific research going on about the regeneration of nerves, cells, the regrowth of body parts, things like that, both here and overseas. I also note that scientists in Australia are currently debating quite forcefully and in public the merits of withdrawing or holding certain research funds. Now, there is a certain degree of choice between insuring for something and deciding that disability is going to continue or also deciding that there is a real possibility for cure or amelioration of disease and a question of priorities.

I know that you have indicated that you're looking for new funding of a couple of billion dollars, I think the figure was \$6 billion, and particularly with current events, I just wonder what that \$6 billion could do in the scientific field, because again over the past several years, my thinking on disability has changed in terms of not seeing it as permanent but seeing it as temporary. Look, I'd prefer to see it as temporary and therefore I have a bias towards the sciences, I have a bias to see them continue. I hope that they give some ground in relation to the Patent Act, so that people have more ready access to the outcomes of science and it's less costly. I would ask you to consider that in making public expenditure for an insurance scheme that there may be an opportunity cost in other areas, particularly science advancement, cures and amelioration of diseases that we're insuring for.¹¹

To me, the same logic applies to subsidising charities with tax deductions or other exemptions; that is, it is a false economy, which may well perpetuate some peoples' dependence.

I certainly see this as someone with a disability who has been subject the inefficiencies and transparency deficits of the disability employment sector. This sector, predominantly administered by NFP organisations (supported by a large amount of taxpayer funds) is not something I would engage with by choice. It is only because of 'search for work' criteria imposed by *Centrelink* that one must deal with them. My general comments on the many failings of these bodies can be found in my submission to the Senate during an inquiry into disability employment,¹² while my submission to the *Disney Review* outlines the complex compliance mechanism this relatively useless 'employment' system imposes on people.¹³ And at the end of it, there is little or no guarantee of a job. But whatever happened, my over-riding impression was that the NFP employment agents continued to receive funding; this must stop. The public is being misled, while many extremely needy and vulnerable people are being very poorly served.

It is to make this point that I provided you with Annex 1 and Annex 2. Both outline a series of reforms, which are essential to the NFP sector, in terms of both integrity and credibility. In particular:

- Introduction of a strict dominant purpose test, to ensure the 'dominant purpose' of an organisation remains charitable;¹⁴

¹¹ Productivity Commission, *Disability Care and Support Inquiry*, Transcript of Proceedings at Sydney on Wednesday, 13 April 2011, at 8.59 AM: Continued from 12/4/11 at Brisbane, *Transcripts*, p.650

¹² See generally, my submission to the Senate Inquiry into *The administration and purchasing of disability employment services in Australia*, <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=a6fa4e6a-eb31-49de-bb0f-c9f11849c86c> as at 19 November 2012

¹³ See generally, my submission to the *Independent Review of the Job Seeker Compliance Framework (the Disney Review)*, September 2010, Department of Education, Employment and Workplace Relations, <http://www.deewr.gov.au/Employment/ComplianceReview/Documents/AdamJohnstonSubReviewFinal.pdf> as at 20 November 2012

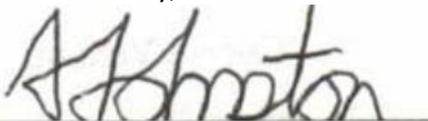
¹⁴ See Annex 2, p.2 (2 of 14)

- Taxing the administrative and fundraising arms (particularly of large NFPs/charities) as bodies discreet from their service delivery arm;¹⁵
- Making the client and their family matter. Often, people who are the recipients of NFP 'benevolence' (particularly where the supposed 'benevolence' is funded by a government contract) have to take the good or service as, when and how it is offered; while some agencies and NFPs claim to give customers *choice*, this can in truth be very limited;¹⁶
- Making clients and their families' real participants in their own lives and restoring their presence as citizens. I make the case for those reliant on charities becoming virtual non-citizens, through a combination of their dependence on NFPs and, the public policy preparedness to "outsource" some people's very existence to the NFP sector. This point is taken up very directly in Annex 1. I specifically draw your attention to the text beneath the sub-heading "What or who is (or is not) a citizen"¹⁷ and, suggest you read on till page 13 of the Annex. This is my summation of the administrative, democratic and societal deficits around our current approach to NFPs and their provision of support to some of the neediest people in Australia.

Annex 2 goes into some depth about the motivations people should have for giving¹⁸ and, whether corporate giving is either legal or proper.¹⁹ I end the discussion on page 12 of Annex 2 with the observation that many charities have been so radically altered by corporate personality and corporate giving that they are virtually unrecognisable. And ultimately, if the removal of tax deductions discourages some individuals (be they wealthy or not) from giving,²⁰ then so be it; I will never beg via charitable proxy for my supper. I am a citizen, not a serf.

Finally, many charities are now professional rent-seeking businesses, who have been unjustifiable excused from meeting taxation obligations. Many are also now organisations in which I am reluctant to place a great deal of trust, much less my own fate or that of someone I love, as we age and become increasingly dependent and vulnerable. If you need further evidence of my concerns, read Annex 1 for page 13 onwards.

Yours faithfully,



Adam Johnston

23 November 2012

¹⁵ See *ibid.*, p. 4 and p.9 (4 of 14 and 9 of 14)

¹⁶ See *ibid.*, p. 9-10 (9-10 of 14) In particular, I refer you to footnote 28, where I discuss my adverse experience with an attendant care agency.

¹⁷ Annex 1, p.5 (5 of 21)

¹⁸ See Annex 2, pp. 1-2 (1-2 of 14). In particular, read footnote 1 of the document.

¹⁹ See *ibid.*, pp. 9-12 (9-12 of 14)

²⁰ See Discussion Paper, *op. cit.*, p. 18 (24 of 79). If wealthy individuals will only give if they and/or their favoured charity are no charged income tax, then this exposes some of their true motives for giving in the first place.