

17 December 2012



Ms Linda Lavarch  
Chair of the Not-for-profit sector Tax Concession Working Group  
NFP Sector Tax Concession Working Group Secretariat  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**Discussion paper – November 2012**  
**Submission by Variety – the Children's Charity**

Dear Ms Lavarch,

Variety– the Children's Charity ("Variety") is thankful for and welcomes the opportunity to provide a submission in respect of the Discussion Paper released in November 2012 by the Not-for-profit Sector Tax Concession Working Group ("Discussion Paper"). Variety considers that robust and timely reviews / discussions in respect of the taxation landscape of not-for-profit sector are appropriate and should be encouraged.

Notwithstanding this, Variety also considers that changes should only be made to the current system where it is beneficial to all parties. By their very nature, Charities operate on skeleton staff and significant changes without associated benefits would simply pull away valuable resources from the main goals and objectives of the charity of helping the needs of a sector of the community. In addition, Variety also notes that while some of the changes discussed would be welcome by Variety, it is difficult to foresee how the changes can be implemented on the basis that all changes should, per the Discussion Paper, be revenue neutral. By extension, the requirement to be revenue neutral means Variety would need to forego an existing benefit in order to achieve the changes. As such, it is our preference no changes are made to current benefits for the purpose of obtaining new ones.

This submission is made by Variety on behalf of all the Australian States in which Variety provides invaluable services to the children of Australia. Variety operates through eight companies in six states and the Northern Territory, with separate Governance structures in each state. As eight different submissions would be too voluminous, we have provided our comments in the form of a national submission. Appendix A of this submission provides background to Variety and its activities.

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KG, KT, GCB, OM, AK,  
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## Executive Summary

Detailed responses to the consultation questions have been provided at Appendix B. Some of the key areas to note are:

- Variety is of the opinion the current criteria for the recognition of DGR status is appropriate. A blanket “all-in” rule for charities would increase the complexity, as it would require some to be excluded on the basis DGR status is not appropriate. This will simply add an unnecessary level of complexity to the process.
- A full tax deduction for donations should continue in place. A tax offset mechanism is likely to have adverse financial consequences to Variety. In our opinion, it is likely that the reduced tax benefit would result in high income earners donating less which would not be offset by an increase in donations from low income earners. This will reduce the funds available to assist the community by the charity.
- Increasing the threshold to obtain a tax deduction to \$25 is too high, especially under the current economic circumstances. In particular, many donors donating through “Regular Giving” or “Workplace Giving” tend to donate about \$10 - \$20 per period and a \$25 threshold would disqualify these donors from obtaining a tax deduction. In this regard, any increase of the threshold from \$2 (even to a threshold such as \$5 or \$10) should be applied on an annual basis and not on a per donation basis. An application on an annual basis would result in Regular / Workplace Giving Donors obtaining an appropriate tax deduction on the basis their total annual donations exceed the threshold. Failure to have this exemption would result in many of the regular donors not being able to obtain a tax deduction, despite their annual donation being well above the threshold.
- The Fringe Benefits Tax (“FBT”) concessions are an essential component of funding the operations of a charity. In many instances a charity is simply unable (due to cash limitations) to remunerate staff completely in cash. As such, the FBT concessions allow the charity to remunerate staff (but only up to their reasonable arm’s length remuneration) using non-cash mechanisms. These are never exploited as they are subject to commercial limitations. Reduction or removal of these concessions would hinder the ability of Variety to appropriately remunerate its staff, especially the Senior Staff and therefore its operations.

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Variety would welcome the opportunity to discuss the matters raised in this submission in person with you in Canberra. In the interim, if you have any queries, please contact Neil Wykes (Treasurer and International Vice President Variety International and National Company Secretary, Variety Australia Limited) on 0413 752 417 (e-mail: wykesn@ramsayhealth.com.au) or Mahesh Hettiaratchi (Board Member, Variety NSW) on 0419 243 464 (e-mail: maheshh78@gmail.com).

Yours sincerely



Mr Ennio Tavani  
National Chairman – Variety – the Children’s Charity  
Att.

## **APPENDIX A: VARIETY – WHO WE ARE**

Variety believes in real opportunities and outcomes for all Australian children who are sick, disadvantaged or who live with special needs, empowering them to live, laugh and learn. Our vision is for all Australian children to attain their full potential regardless of ability or background.

We undertake to fulfil the above through three core programs. These are:

- **Variety Freedom Program:** The Freedom Program aims to provide various grants to assist children in terms of independence, self-esteem, mobility and communication. The grants are dependent on the specific facts and circumstances and cover multiple areas such as wheelchairs, standing frames, walkers, communication aids, computers etc.
- **Variety Future Kids Program:** Under this program Variety grants various children with social or distance disadvantages or disabilities scholarships to fulfil their full potential, be it academic, sports, music or arts.
- **Variety Caring for Kids Program:** This program is utilised to grant children with intensive care medical facilities and emergency transport equipment.

In the 2012 year, Variety granted a total of over \$13 million under the above three programs. This makes Variety one of the largest, if not the largest, charity that is specifically catering for the needs of the disadvantaged and disabled children in Australia.

## APPENDIX B: RESPONSES TO CONSULTATION QUESTIONS

### CHAPTER 1 — INCOME TAX EXEMPTION AND REFUNDABLE FRANKING CREDITS

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

Variety is of the view the current criteria is appropriate and should not be amended.

**2. Are the current categories of income tax exempt entity appropriate? If not, what entities should cease to be exempt or what additional entities should be exempt?**

Variety does not consider any immediate changes are required at this stage.

**3. Should additional special conditions apply to income tax exemptions? For example, should the public benefit test be extended to entities other than charities, or should exemption for some types of NFP be subject to different conditions than at present?**

Variety is of the opinion the tests should not be changed. In addition, in our opinion the status of a charity should not be extended to any other organisations than those that currently qualify as a charity.

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

No – the current system is appropriate both from a compliance and regulatory perspective. Variety discourages any changes to the current tax regime impacting charities. These changes would produce marginal benefits, if any, but will take time and resources to implement.

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

Variety has no comments to make in this regard. This is on the basis that the Discussion Paper does not propose to limit the ability to obtain a refund of franking credits for those NFPs that are currently allowed to do so and is merely canvassing extending this to other types of NFPs

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

Please refer to the response above at Question 5.

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

Variety considers the current regime does not require any amendments.

**8. Should the income tax exemptions for State, Territory and local government bodies be simplified and consolidated into the ITAA 1997? Which entities should be included?**

Variety has no specific views or opinions on this question.

**9. Should the threshold for income tax exemptions for taxable NFP clubs, associations and societies be increased? What would a suitable level be for an updated threshold?**

Variety has no specific views or opinions on this question.

**10. Please outline any other suggestions you have to improve the fairness, simplicity and effectiveness of the income tax exemption regime, having regard to the terms of reference.**

Variety has no specific views or opinions on this question.

## **CHAPTER 2 — DEDUCTIBLE GIFT RECIPIENTS**

**11. Should all charities be DGRs? Should some entities that are charities (for example, those for the advancement of religion, charitable child care services, and primary and secondary education) be excluded?**

Variety is of the view that the current system of registering DGRs is appropriate and should not be amended. Any steps to allow all charities to be DGRs would result in two complexities. Firstly, it would allow any and all “charities” to be given gift deductible status. For example, this could extend DGR status to certain charities that operate profitable and at times significant business ventures. Under the current rules these organisation would not qualify to be a DGR and granting these DGR status would be grossly inappropriate.

Secondly, to deal with such inappropriate granting of DGR status (in a regime where all charities are automatically DGRs) would need the implementation of a series of exemption and exclusions.

As such, it could potentially make it more complicated than the current arrangement and increase the compliance cost to the sector. In addition, it may also have an adverse impact on the Federal Budget due to the need to be “excluded” from DGR status as opposed to the current regime of being “included”.

Overall, this would add a level of complexity, uncertainty and revenue cost that is unnecessary to the sector or to the Federal Government.

**12. Based on your response to Q11, should charities endorsed as DGRs be allowed to use DGRs funds to provide religious services, charitable child care services, and primary and secondary education?**

Given the current economic climate and the revenue neutrality position of the Discussion Paper, Variety has no specific views on this question. This may be a matter to be explored in further detail at a future stage.

**13. Would DGR endorsement at the entity level with restrictions based on activity address the behavioural distortions in Australia’s DGR framework? Could unintended consequences follow from this approach?**

Variety does not have any specific comments.

**14. If DGR status is extended to all endorsed charities, should this reform be implemented in stages (for example, over a period of years) in line with the PC’s recommendations, or should it be implemented in some other way?**

Please refer to our response at Q11.

**15. Would a fixed tax offset deliver fairer outcomes? Would a fixed tax offset be more complex than the current system? Would a fixed tax offset be as effective as the current system in terms of recognising giving?**

A fixed tax offset would not improve the ability of DGRs to raise more donations. If anything, it will most likely hamper it.

Paragraph 91 of the paper states “Under these thresholds, it is estimated that donations to DGRs would decline by around 5 per cent due to the behavioural response of high income earners, which would outweigh the response of low income earners in total dollar terms.” [Emphasis added]. However, the paper gives no basis, empirical evidence or other research to support the statement that the reduction in donations from the higher income earners would “...outweigh the response of low income earners in total dollar terms” by around 5 per cent. It is simply a statement without any factual basis.

In our experience, this will not be the case. Low income earners are struggling to make ends meet and make donations due to the “goodness of their hearts” and not as a tax planning mechanism. It is very unlikely that they would increase their donations due to a higher tax offset. This would especially be the case where as in current times, most low income Australians are struggling to pay for the basic necessities of life.

In addition, we anticipate the reductions in donations from higher income earners may be significantly greater than the 5% noted in the paper. By way of an example, Variety International was recently raising funds for an event and experienced an 80% reduction in donations when the donor was advised a tax deduction may not be available. At the higher income levels, the ability to get an appropriate (i.e. at the marginal tax rates) tax deduction can be critical to the decision to donate. This is also a function of the higher numerical amounts that are donated by the higher income earners where the denial of a full tax deduction may have greater adverse cash consequences to the donor.

A tax deduction, at the marginal tax rate of the donor, is the most appropriate way of giving a tax benefit in respect of charitable donations. Any alteration of this would simply be shifting the tax benefit that has been appropriately obtained from the high income earner to the low income earner without any benefit to the DGR.

**16. Would having a two-tiered tax offset encourage giving by higher income earners?**

This is very unlikely to occur – a detailed discussion is given at our response to Q15. We respectfully note that the statements in the paper have no factual basis. Whilst paragraph 93 of the paper refers to

changes in the Canadian tax system in respect of tax offsets, no support is offered from the changes experienced in Canada to support the assertions made in paragraph 91.

We request Treasury not to amend the current tax donation rules as it will not only confuse matters to individuals, but may also severely limit the ability of charities to raise funds.

**17. What other strategies would encourage giving to DGRs, especially by high income earners?**

Under the current rules, it is difficult to obtain a full tax deduction where an individual has purchased tickets to a fundraising event. The rules are complex to apply and can in some instances increase the uncertainty in respect of calculating the correct ticket price. Variety would welcome a change that allows a full deduction for the profit portion of the ticket price with only the cost portion being non-deductible. However, we again note it is difficult to achieve this objective in the revenue neutral environment canvassed in the Discussion Paper.

**18. Should testamentary giving be encouraged through tax concessions and what mechanisms could be considered to address simplicity, integrity and effectiveness issues?**

Whilst it would be beneficial to have encouragement in this area, the paper notes that any measures introduced should be revenue neutral. Variety is unable to see any measure that would encourage testamentary giving and also be revenue neutral.

**19. Would a clearing house linked to the ACN Register be beneficial for the sector and public?**

Variety does not see the benefit of a clearing house. It will simply add a layer of complexity to the charity in terms of the administration of the collection of donations. It will also make it more “impersonal” for donors who may like to enjoy more direct contact with the charity.

It is important to understand that donors donate to charities due to the “goodness of their hearts” more often than for unemotional / economic reasons. As such it is important to allow the donor to have direct contact with the charity and also to allow them as much as possible to experience / observe how their funds benefits the charity.

In our opinion, a clearing house would eliminate both the close relationship between the donor and the charity and the understanding of the donor on how their donations are utilised.

**20. Are there any barriers which could prohibit the wider adoption of workplace giving programs in Australia? Is there anything the Working Group could recommend to help increase workplace giving in Australia?**

As discussed in detail at Q26 below, Workplace Giving programs are becoming quite popular in Australia and are a major source of funding for charities. However, in most instances donors only donate about \$10-\$20 per month. Therefore, any increase in the tax deductibility threshold from \$2 to different amount should only be applied on an annual basis. Applying a higher threshold on a per donation basis may result in a number of Workplace Giving donations not being tax deductible.

**21. Do valuation requirements and costs restrict the donation of property? What could be done to improve the requirements?**

Whilst it would be preferred to have the valuation requirements in respect of property simplified, we do not consider this should be achieved at a cost of losing other benefits. Again, we note the Discussion Paper requires all changes to be revenue neutral.

**22. Is there a need to review and simplify the integrity rules?**

Variety does not have any specific comments in relation to this question.

**23. Are there additional barriers relevant to increasing charitable giving by corporations and corporate foundations? Is there anything the Working Group could recommend to help increase charitable giving by corporations and corporate foundations?**

Variety does not have any specific comments in relation to this question.

**24. Are the public fund requirements, currently administered by the ATO, either inadequate or unnecessarily onerous?**

Variety does not have any specific comments in relation to this question.

**25. Are there any possible unintended consequences from eliminating the public fund requirements for entities that have been registered by the ACNC?**

Variety does not have any specific comments in relation to this question.

**26. Should the threshold for deductible gifts be increased from \$2 to \$25 (or to some other amount)?**

Generally speaking, Variety prefers the threshold to remain at \$2. However, Variety understands that this may not be feasible in the medium to long term.

In addition, significant portion of the donations to Variety comes in the form of “Workplace Giving” or “Regular Giving” programmes. Under these programs, individuals agree to donate a fixed amount at regular periods (usually each month). The most common of these is “Workplace Giving” where an employee may donate an amount from their monthly remuneration each month. A key attraction of a Workplace Giving programme is the ability of the employee to receive the tax benefit at the time of the donation each month instead of at the time of lodging their annual income tax return.

In a quantitative sense and by way of an example, Variety NSW has received approximately \$250,000 last year through Workplace Giving and Regular Giving programmes. In a majority of the instances, the donation per month would be less than \$25 (often around \$10-\$20).

Therefore, an increase in the threshold to \$25 without providing for any exceptions could reduce the donations received by Variety NSW by approximately \$250,000.

Therefore, Variety accepts the threshold may need to be raised to \$5 or \$10 to ensure the threshold is line with change in value of money and donation thresholds of individuals. However, Variety requests the threshold is applied on an annual basis and not on a per donation basis. That is, donations of less than \$10 per annum to a specific charity would not be deductible. Implementing a threshold as high as \$25 would discourage donating. In addition, implementing even a threshold at \$5 or \$10 per donation (instead of an annual threshold) would discourage Workplace Giving and Regular Giving which are an essential source of income to charities.

As such, Variety is of the opinion that a threshold of \$25 is too high and would have adverse consequences to Variety. However, it accepts a threshold of \$5 or \$10, on the basis the threshold is applied on an annual basis and not per donation in recognition of the unique nature of Workplace Giving and Regular Giving.

**27. Outline any other suggestions you have to improve the fairness, simplicity and effectiveness of the DGR regime, having regard to the terms of reference.**

Variety has no further comments in this regard.

### **CHAPTER 3 — FRINGE BENEFITS TAX CONCESSIONS**

**28. Assuming that the current two-tiered concessions structure remains (see Part B), what criteria should determine an entity's eligibility to provide exempt benefits to its employees?**

Variety is of the view no changes should be done to the Fringe Benefits Tax ("FBT") concessions provided to charities. Due to uncertain and limited funds, Charities are unable to at all times to provide at market remuneration to their employees. This in particular applies to the more Senior employees such as the CEO.

Charities typically "close the gap" between the market remuneration and the cash remuneration that can be affordably paid by the charity by way of the provision of fringe benefits. These fringe benefits may be In-kind / non-cash, such as provision of motor vehicles. For example, a motor vehicle may be donated by a business to the charity which is then provided for the use of the CEO.

The discussion papers appears to indicate that Charities use the FBT concession to provide inappropriate and above-market remuneration to its employees. This is never the case. In any case, in a number of instances whilst the benefit may not be direct remuneration, it may still result in a cash outflow to the charity. By way of an example, the charity may provide Entertainment benefits to an employee – however, the benefits will be capped such that the total of cash remuneration and entertainment benefits would not exceed the arm's length remuneration that should be provided to that employee. A charity would not pay the employee over and above their market based remuneration as this will simply be a waste of precious resources of the charity.

As such, Variety is of the view that the FBT concessions should remain as is and each charity should continue to be given the flexibility to decide how to remunerate its employees in an appropriate manner having regard to their own facts and circumstances.

Variety emphasises that in the current fiscal environment charities, especially National charities such as Variety, are complex organisations to run and require skilled, competent and experience personnel to

manage them. Therefore, it is imperative that charities continue to receive FBT concessions so as to ensure it can employ such appropriate staff for the benefit of the community it serves.

**29. Also assuming that the current two-tiered concessions structure remains (see Part B), what criteria should determine an entity's eligibility to provide rebateable benefits to its employees? Should this be restricted to charities? Should it be extended to all NFP entities? Are there any entities currently entitled to the concessions that should not be eligible?**

Please refer to the response at Q28

**30. Should there be a two-tiered approach in relation to eligibility? For example, should all tax exempt entities be eligible for the rebate, but a more limited group be eligible for the exemption?**

Please refer to the response at Q28

**31. Should salary sacrificed meal entertainment and entertainment facility leasing benefits be brought within the existing caps on FBT concessions?**

Please refer to the response at Q28

**32. Should the caps for FBT concessions be increased if meal entertainment and entertainment facility leasing benefits are brought within the caps? Should there be a separate cap for meal entertainment and entertainment facility leasing benefits? If so, what would be an appropriate amount for such a cap?**

Please refer to the response at Q28

**33. Are there any types of meal entertainment or entertainment facility leasing benefits that should remain exempt/rebateable if these items are otherwise subject to the relevant caps?**

Please refer to the response at Q28

**34. Should there be a requirement on eligible employers to deny FBT concessions to employees that have claimed a concession from another employer? Would this impose an unacceptable compliance burden on those employers? Are there other ways of restricting access to multiple caps?**

Please refer to the response at Q28. In addition, it is important to note Charities operate in a "free market" and should be allowed to remunerate employees as appropriate. It is not advisable to put strict "controls and procedures" on this as it will simply stretch even more the already stretched and limited resources of staff.

**35. Should the rate for FBT rebates be re-aligned with the FBT tax rate? Is there any reason for not aligning the rates?**

Please refer to the response at Q28

**36. Should the limitation on tax exempt bodies in the minor benefits exemption be removed? Is there any reason why the limitation should not be removed?**

Please refer to the response at Q28

**37. Is the provision of FBT concessions to current eligible entities appropriate? Should the concessions be available to more NFP entities?**

Please refer to the response at Q28

**38. Should FBT concessions (that is, the exemption and rebate) be phased out?**

Please refer to the response at Q28

**39. Should FBT concessions be replaced with direct support for entities that benefit from the application of these concessions?**

Please refer to the response at Q28. Variety again emphasises the need to allow Charities to conduct their operations in the manner of a “free market” without unnecessary compliance and regulatory burdens.

**40. Should FBT concessions be replaced with tax based support for entities that are eligible for example, by refundable tax offsets to employers; a direct tax offset to the employees or a tax free allowance for employees?**

Please refer to the response at Q28

**41. Should FBT concessions be limited to non-remuneration benefits?**

FBT could only apply to non-remuneration benefits under the FBT legislation. No changes should be made to it.

**42. If FBT concessions are to be phased out or if concessions were to be limited to non-remuneration benefits, which entity types should be eligible to receive support to replace these concessions?**

Please refer to the response at Q28

## CHAPTER 4 — GOODS AND SERVICES TAX CONCESSIONS

**43. Does the existing fundraising concession create uncertainty, or additional compliance burdens, for NFP entities that wish to engage in fundraising activities that fall outside of the scope of the concession?**

The GST regime does not create any uncertainty or compliance burdens as the regime is currently implemented. Variety respectfully requests the regime is not amended as such amendments would simply not be required.

**44. Would a principles-based definition of the types of fundraising activities that are input-taxed reduce the compliance burden for entities that engage in fundraising?**

Please refer to the response at Q43.

**45. Should current GST concessions continue to apply for eligible NFP entities?**

Please refer to the response at Q43.

**46. Are there any other issues or concerns with the operation of the GST concessions in their current form?**

Please refer to the response at Q43.

**47. Would an opt-in arrangement result in a reduced compliance burden for charities that would otherwise need to apply apportionment rules to supplies made for nominal consideration?**

Please refer to the response at Q43.

**48. If an opt-in arrangement is favoured, would the preference be to treat the supplies as taxable or input taxed? Why?**

Please refer to the response at Q43.

**49. Is there an alternative way of reducing the compliance burden associated with apportionment for supplies made for nominal consideration?**

Please refer to the response at Q43.

## CHAPTER 5 — MUTUALITY, CLUBS AND SOCIETIES

**50. Should the gaming, catering, entertainment and hospitality activities of NFP clubs and societies be subject to a concessional rate of tax, for income greater than a relatively high threshold, instead of being exempt?**

Variety does not have any specific comments in respect of this question.

**51. What would be a suitable threshold and rate of tax if such activities were to be subject to tax?**

Variety does not have any specific comments in respect of this question.

**52. Should the mutuality principle be extended to all NFP member-based organisations?**

Variety does not have any specific comments in respect of this question.

**53. Should the mutuality principle be legislated to provide that all income from dealings between entities and their members is assessable?**

Variety does not have any specific comments in respect of this question.

**54. Should a balancing adjustment be allowed for mutual clubs and societies to allow for mutual gains or mutual losses?**

Variety does not have any specific comments in respect of this question.

**55. Is existing law adequate to address concerns about exploitation of the mutuality principle for tax evasion? Should a specific anti-avoidance rule be introduced to allow more effective action to be taken to address such concerns?**

Variety does not have any specific comments in respect of this question.

## **CHAPTER 6 — NEXT STEPS**

### **56. Are there any areas in which greater streamlining of concessions could be achieved?**

Variety is of the opinion the current regime, in all aspects work as appropriate and should not be changed. The changes proposed in the Discussion Paper will simply confuse matters both staff and donors. In addition, these changes are likely to have significantly adverse consequences (financial and otherwise) to the ability of a charity to raise funds and act for the benefit of the community in which it serves.

### **57. Do you have any ideas for reform of NFP sector tax concessions within the terms of reference that have not been considered in this discussion paper?**

Under the current rules, Charities with an Australia wide presence such as Variety are required to prepare Financial Statements and attend to tax compliance on a state-by-state basis. It would be beneficial if charities were allowed to undertake these compliance measures on a consolidated / national basis. This would significantly reduce the compliance costs of the charity and enable it to provide more services to those members of the community it serves.