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AUSTRALIA

Leaders in governance

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NFP Tax Concession Working Group Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

By email: NFPReform@treasury.gov.au

Dear Treasury

Fairer, simpler and more effective tax concessions for the not-for-profit sector: Discussion paper

Chartered Secretaries Australia (CSA) is the peak body for over 7,000 governance and risk professionals in Australia. It is the leading independent authority on best practice in board and organisational governance and risk management. Our accredited and internationally recognised education and training offerings are focused on giving governance and risk practitioners the skills they need to improve their organisations' performance.

CSA has unrivalled depth and expertise as an independent influencer and commentator on governance and risk management thinking and behaviour in Australia. Our members are all involved in governance, corporate administration and compliance with the *Corporations Act* (the Act). Many of our members serve as officers of not-for-profit (NFP) organisations, or work for or are involved with companies limited by guarantee. CSA itself is a company limited by guarantee, formed to serve the interests of its Members, who are governance professionals. CSA also provides benefit to the community through training offered in the form of seminars, briefings, and on-line short courses.

CSA welcomes the opportunity to comment on the Not-for-Profit Sector Tax Concession Working Group's discussion paper on *Fairer, simpler and more effective tax concessions for the not-for-profit sector* (the discussion paper) and draws upon the experience of our Members in formulating our response.

Coordination with the commencement of the charity regulator

CSA welcomes the commencement of the Australian Charities and Not-for-Profits Commission (ACNC). CSA notes that the new national regulator will drive reform to cut red tape and is a key part of delivering a national approach to NFP regulation.¹ This will require the ACNC to coordinate the manner in which charities, in the first instance, are registered and regulated.

CSA strongly cautions, however, against undertaking any taxation reform during the initial commencement stages of the ACNC. The regulatory body has as its major task the simplification

¹ The Hon David Bradbury MP, *Independent Charities Commission Commences Operation*, Press Release, 3 December 2012

of regulation and reporting requirements for NFPs, with particular emphasis placed on good governance practice, compatible with ensuring that scarce resources are efficiently and effectively utilised for the official objectives of NFP organisations.

CSA believes that among a wide range of the ACNC's responsibilities will be the following:

- administering the statutory definition of charity (after consultation on the draft legislation has taken place)
- involvement in developing charitable fundraising regulations
- overseeing the implementation of and adherence to governance standards
- drafting and compiling guidance for the NFP sector on registration and regulation processes
- educating the sector
- encouraging and monitoring compliance
- educating the public about the role of NFP organisations, and
- developing and maintaining an accessible and searchable public information portal.

CSA recommended in our previous submission to Treasury on the *Better targeting of not-for-profit tax concessions* consultation paper that any changes to taxation arrangements for NFPs should be delayed until the implementation of the ACNC. CSA reiterates that any taxation reform undertaken during this initial commencement period will undermine the NFP reform initiative by placing significant administrative burdens on all NFPs, including small NFPs, which often lack the technical skills and resources to handle complex administrative matters.

Introducing changes to taxation arrangements for NFPs is also likely to hinder the effective roll-out of the NFP reform program. Many charities and NFPs remain suspicious as to the intentions of the NFP reform project, believing it is not aimed at reducing red tape or facilitating their enterprises, but aimed rather at raising revenue and imposing additional compliance burdens on them. The first consultation paper to be issued when the NFP reform project commenced was on tax concessions, which sparked the fire of this suspicion. Ongoing consultation on taxation issues merely confirms existing cynicism, regardless of other initiatives that are being introduced that actively improve the regulatory framework for NFPs.

Charities in the first instance, and many NFPs, are struggling to make sense of the NFP reforms underway, and CSA encourages the government to focus on enabling such organisations to:

- comprehend the new regulatory framework
- participate in consultations on the remaining pieces in the puzzle, such as governance standards and the statutory definition of a charity
- feel comfortable with the new regulatory framework and assess how it assists them to achieve their objectives

rather than creating confusion and dismay by proposing changes to taxation arrangements.

CSA strongly recommends, therefore, that any proposed taxation reform should be deferred until at least the other measures indicated above have been implemented across the sector.

Simplifying access to NFP tax concessions-

It is well accepted that tax concessions provide NFP organisations and charities in particular with benefits which appeal to beneficiaries, financial donors, employees and various other stakeholders. A complex taxation concessions system, however, means that in many instances charities and NFPs are not utilising the concessions available in an efficient manner and to the fullest extent. CSA believes that any proposed taxation reform must simplify the obligations of charities and NFPs and provide access to them in a manner which is easy to understand and implement.

CSA notes that there are some 600,000 NFP organisations (excluding body corporates) within the Australian NFP landscape. The Productivity Commission reports that the majority, some 440,000, are small unincorporated organisations (such as neighbourhood tennis, babysitting, or card clubs)². However, within the NFP sector also reside associations (CSA is one such association), hospitals, community services, universities, sports clubs, religious groups, day care centres, recreation clubs, environmental groups, job-training centres, family counselling agencies, and many more. These entities range from large high-profile organisations to small community-based societies, which are structured under a myriad of legal forms such as incorporated associations, companies limited by guarantee, proprietary companies, trusts, cooperatives, special Acts of Parliament, Royal Charter, and aboriginal corporations.

Aside from the diversity of the sector, charities and NFPs also deal with an overall compliance and reporting matrix that rules the sector. Many are required to undertake extensive administrative processes in order to comply with their reporting and taxation obligations. CSA is delighted to see that the government has announced that the Commonwealth Grant Guidelines will be amended to support the implementation of the proposed 'report-once, use-often' reporting framework for charities registered with the ACNC, thus significantly reducing their reporting obligations given that they often have to provide the same information in different forms to different government agencies, including the Australian Taxation Office. However, the Guidelines establish the grants policy and reporting framework for all Commonwealth departments and agencies subject to the *Financial Management and Accountability Act 1997*, and charities and NFPs will continue to have regard to the sometimes competing concerns of state departments administering the Fundraising/Collection Acts or providing government funding, as all such parties have disparate requirements of NFP organisations.

Any change to access to tax concessions will require an investment by the charity or NFP in implementing substantial changes to meet their new obligations, which will potentially include:

- implementing changes to their accounting methodologies and systems or introducing new accounting software in relation to changed tax concessions
- turning the attention of senior members of staff to meeting their new compliance obligations which will divert them from attending to their responsibilities to provide charitable services
- seeking professional and legal advice to ensure they remain compliant with the law and/or understand whether they can still access tax concessions and continue to provide the services for which they were formed.

While CSA supports, in principle, the reform of the current taxation model to make it simpler, fairer and more efficient, CSA again strongly cautions against undertaking such reform during the initial commencement stages of the ACNC.

Reasons for limiting tax concessions

CSA does not believe that the concept of 'competitive neutrality' or 'levelling the playing field' is an appropriate consideration for limiting tax concessions for NFP organisations. The discussion paper alludes to the advantage that fringe benefits tax (FBT) exemptions for NFPs provides in terms of competing and attracting staff who would not be able to access FBT exemptions working at for-profit entities. CSA is of the view that the argument that the playing field between NFP and for-profit organisations is not level is flawed, given that for-profit organisations are free to distribute their profits as they see fit, whereas NFP organisations are not. It is also well known that for-profit organisations can generally offer higher levels of remuneration to staff than can NFPs. While FBT exemptions may provide NFPs with some ability to compete with for-profit businesses for staff, the FBT exemption provides only a marginal benefit relevant to one particular aspect of the entity's operations.

² Ibid note 1

Reform should not be based on the misapprehension that the private and NFP sectors can and should be treated in similar fashion. This approach defeats the objectives of providing a separate regulatory framework for the NFP sector that takes into account its specific characteristics and needs.

Consistency of definitions and criteria

In discussing the criteria proposed for determining either income tax exemptions, deductible gift recipient (DGR) status, FBT concessions, and goods and services tax (GST) concessions, CSA is in accord with the government that there should be a level of consistency across the preconditions proposed and the surrounding legal framework.

For example, in relation to income tax exemptions, the current regime requires a charity to prove that it is an NFP, its sole purpose is charitable, and it exists for the public benefit or for the relief of poverty. This draws on the current common law position which harks back to the English definition of charity in the *Charitable Uses Act 1601 (UK)*. CSA notes that there are currently '15 pieces of Commonwealth legislation and 163 pieces of state/territory legislation under which ascertaining entitlement to a benefit or some other legal outcome involves determining the charitable purpose or status of an organisation'.³ As a result, CSA believes that some charities have difficulty assessing whether or not they are eligible for income tax concessions. Therefore, consistency should assist charities to understand eligibility requirements.

CSA notes that similar concerns arise in relation to the application of GST concessions which are redeemable through existing fundraising arrangements. There is uncertainty concerning the scope of events which the Tax Commissioner considers to be within the tax concession system, and there is also diversity in the fundraising legislation at the state level, which places differing requirements and exemptions on charities. The current fundraising framework across Australia is onerous for many charities which take a national approach to fundraising. Fundraising activities of charities are subject to state and territory government regulations, and some Commonwealth and local government regulations as well. In some instances, CSA notes that there are also separate regulators to administer some of the discrete activities involved in fundraising in different states. The net effect is significant administrative pressure on charities costing them time inefficiencies and the burden of duplication of information in reporting. Again, consistency in criteria and definitions should assist charities to understand fundraising requirements.

However, **CSA recommends** that further clarity surrounding proposals to change the charitable fundraising regulatory framework is required before we can respond with any certainty as to the criteria proposed for determining either income tax exemptions, deductible gift recipient (DGR) status, FBT concessions, and goods and services tax (GST) concessions. Furthermore, any proposals to change charitable fundraising regulation should be subject to public consultation and implemented before any changes are made to the tax concession model.

CSA recommends that any definitions in legislation concerning tax concessions should align with the definitions and criteria provided to charities and NFPs across all regulations.

Charities and NFPs should not be required to either seek legal or professional advice, or provide additional information to access tax concessions. It is also important that the criteria and definitions are not limited simply to the particularities of charities, but in fact also relate to the broader NFP sector.

³ Australian Government, Productivity Commission, *Contribution of the Not-for-Profit Sector: Research Report* January 2010,

Conflict between offsetting budget costs and increasing access to tax concessions

CSA notes that the terms of reference for the tax concessions working group requires the offsetting of any proposals that would incur a budget cost. CSA believes that the requirement to balance budgetary offsets conflicts with reform aimed at ensuring simplicity, fairness and effectiveness.

By way of example, CSA notes the proposal to extend the ATO endorsement framework to all entities that may be entitled to income tax exemptions. While CSA concurs with the Working Group's assessment, against the guiding principles of the review, that the requirement to apply for endorsement will also increase the compliance burden for NFPs that do not currently need to be endorsed, it is clear that extending this option would also provide fairer access for NFPs that are not charities. Extending the endorsement to the entire sector, however, will also likely increase the uptake of concessions and increase the required budgetary offset.

The proposal to extend DGR status to all charities canvassed in the consultation paper is another example which would likely improve the fairness of the current system, but also incur significant fiscal and budgetary cost. It is evident that the tax concessions system should encourage charitable giving and that the DGR mechanism offers a good avenue for this to occur. However, it is clear, with less than half the charities endorsed as income tax exempt also achieving DGR status, that the application of DGR is not consistent across charities.

Therefore, the options put forward for consideration to ameliorate the impact of extending DGR status to all charities, including, for example increasing the threshold for which deductible gifts can be claimed, pose problems for those seeking to respond to them. CSA notes that a variation in the threshold for a deductible gift may produce a range of outcomes, including

- that donors of small amounts who might not usually claim a tax deduction might not be affected by an increase in the threshold
- that donors might be turned away by a higher deductible gift threshold, or
- that donors might even increase their donations in order to meet an increased minimum deductible gift level, in order to continue to claim the tax deduction.

CSA believes, therefore, that there must be some weighting provided to the competing demands of balancing budgetary offsets and achieving fairness, efficiency and simplicity in any revised taxation system.

Conclusion

CSA strongly reiterates the need for consistency across the criteria which will be required to help charities and NFPs determine their appropriate status across all forms of regulation. While the reform to the regulatory framework is well underway and will result in benefit to the sector, there is much more that still needs to be achieved before all the pieces of the puzzle make sense. Any changes to the taxation concessions framework should not be undertaken until such time as that puzzle is in place and charities have had time to adjust to the new regulatory framework.

CSA strongly encourages the government to postpone further consultation on reform to taxation arrangements, allowing charities and NFPs to engage in consultation on:

- governance standards
- external conduct standards
- financial reporting
- companies limited by guarantee
- the statutory definition of charity
- fundraising regulation.

This is more than enough for the sector to be dealing with at present. Concentration on these reforms will also assist charities and the NFP sector to react positively to the reform project rather than fearing it is intended to undermine their capacity to operate.

CSA would welcome the opportunity to discuss any of our views in greater detail.

Yours sincerely

A handwritten signature in black ink that reads "Tim Sheehy". The signature is written in a cursive, flowing style.

Tim Sheehy
CHIEF EXECUTIVE