AUSTRALIA

13 December 2012

NFP Sector Tax Concession Working Group Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600
Email: NFPReform@treasury.gov.au

SUBMISSION IN RESPONSE TO THE NOT-FOR-PROFIT SECTOR TAX CONCESSION WORKING GROUP DISCUSSION PAPER

Dear Sir,

Thank you for the opportunity to respond to the discussion paper on NFP tax concessions. This topic is of particular interest to Lifeline Australia and our network of Centres as the possible changes to the taxation components outlined will have substantial impact on our ability to provide suicide prevention and crisis support services to the Australian community.

We have responded to each of the Chapters as they relate to Lifeline Australia. We have not attempted to provide more general comment on the potential effects of the issues raised beyond the specifics of our environment.

If there is any further clarification required on the opinions expressed, please contact Helen Quiggin, CFO on 02 6215 9447 or by email at helen.quiggin@lifeline.org.au.

Yours sincerely

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Lifeline Australia Submission in Response to the Not-For-Profit Sector Tax Concession Working Group Discussion Paper

Version 1.1

13 December 2012

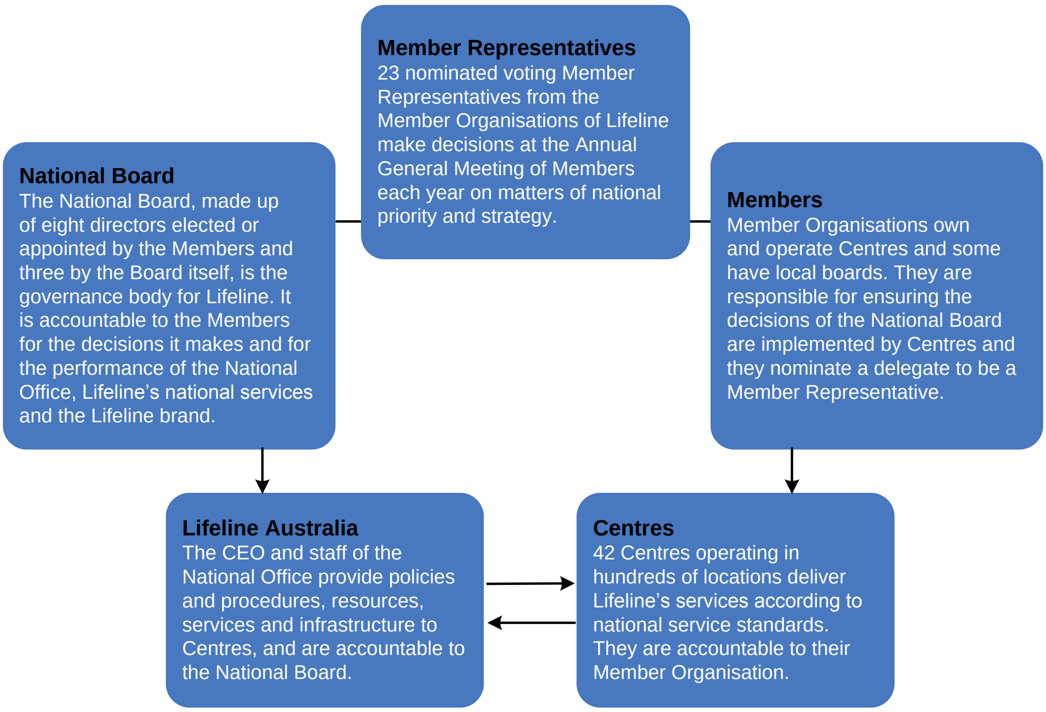
Not-for-profit sector – Tax Concession Working Group

1. Background

1.1. Lifeline Australia is a company limited by guarantee that operates as a national charity existing to support Australians in times of crisis and equip individuals and communities to be resilient and suicide-safe. Lifeline Australia is a Public Benevolent Institution (PBI) and has Deductible Gift Recipient (DGR) status. We currently receive the following tax concessions:

- Income tax exemption
- Refundable franking credits
- Fringe Benefits Tax (FBT) exemption with a $30,000 cap
- Other FBT concessions
- GST concessions
- Deductible gifts

1.2. Lifeline comprises 23 member organisations that collectively employ approximately 1,000 staff and a further 11,000 volunteers. Lifeline delivers crisis support services, related information and educational material and is a conduit to broader health services. Through our Centres based throughout the nation, local services are delivered to equip individuals and communities to be more resilient and socially inclusive. Community disaster support, targeted outreach to families in crisis, social re-engagement services and bereavement support programs for those who have experienced loss and grief, especially as result of another's death by suicide, are all delivered by the network of Lifeline Centres at over 60 locations.



1.3 Lifeline services are funded from 3 primary sources:

- Federal and State Government grants
- Community fundraising and corporate sponsorships
- Proceeds from retail operations in the sale of second hand goods.

In addition, Lifeline receives enormous support through the donation of goods, professional services, intellectual property, volunteer effort etc.

1.4 Lifeline is concerned by the various issues raised by the Tax Concession Working Group and offers the following comments to outline the impact the proposals will have on our ability to continue to provide services to the community. The comments provided primarily reflect the impact on Lifeline Australia, however, where relevant comment has also been made about the potential impact on our member organisations. No attempt has been made to comment on the broader application of the discussion paper beyond the impact on Lifeline entities.

2. Opinion on Chapter 1 - Income Tax Exemption and Refundable Franking Credits

2.1 Subjecting Lifeline Australia and our Centres to income tax would impose additional complex compliance obligations in the requirement to submit a company tax return. The exclusion of income relating to gifts and grants, and therefore the expenses associated with those gifts and grants, presents a challenging accounting scenario. In the case of Lifeline Australia, in 2011/12 less than 2% ($0.4million) of total revenue of $19.4million was attributed to interest. Additionally, Federal Government Grants consistently require that interest earned in relation to grant monies is identified and attributed to the program of services that is funded by the grant program. Taxation of the interest earned would then complicate the grant acquittal processes that exist. The only business type income generated by Lifeline Australia relates to fees for certificates issued as a Registered Training Organisation (RTO) and courses provided on a cost recovery fee for service basis, some $0.5million in 2011/12.

2.2 For those Lifeline Centres that have a retail operation to support the provision of Lifeline services, the taxing of the profits generated seems at odds with the notion of donated goods and volunteer staff. These 2 factors are significant in distinguishing these ‘businesses’ from for-profit businesses. If there is a clear nexus between the attribution of revenue generated and services to the community that are consistent with the charitable purpose of the organisation then the imposition of income tax is counter to that purpose. There is also the potential for a decline in donated goods if the resulting income is not able to be fully directed into service provision.

2.3 Refunds of franking credits should continue to be accessible to charities in the same way that individuals and self-managed superannuation funds (SMSFs) are able to access the credits, even in circumstances where no income tax is payable (eg SMSFs supporting pension streams). The revenue generated from such refunds must be applied for charitable purposes, thereby addressing the social good requirement. Charities are typically risk averse in their investment portfolios and denial of the franking credit refunds is likely to have a significant impact on new investment in Australian equities as charities look to other products to maximise return on investments with less underlying capital risk.

3. Opinion on Chapter 2 - Deductible Gift Recipients

3.1 Lifeline Australia received approximately $1.8million or 9% of its 2011/12 revenue from tax deductible gifts and is actively seeking ways to expand our revenue from this source. Some Lifeline Centres operate under the auspices of various churches eg Uniting Church, however the fundraising activities conducted under the Lifeline Trademark should be subject to the same concessions as any other Lifeline Centre as the income generated must be applied for Lifeline purposes.

3.2 The concept of a tax offset mechanism for gifts that is equivalent to less than the highest rate of marginal tax seems fundamentally unfair. The Productivity Commission predicted a small overall decline in the level of giving to DGRs if the fixed tax offset set at 38% was adopted. Any decline in gift income would require compensation from the Government to retain service levels. The proposed offset mechanism would act as a disincentive for individuals to make gifts to charities, thereby putting more pressure on governments to make up the lost income or reduce the expectation for the level of services provided. On the other hand, retaining the current tax deduction mechanism provides an incentive for charities to seek additional income as donations.

3.3 The notion of a clearing house for donations to DGRs has the potential to be expensive and confusing. The public sector does not have a track record in running cost effective services for the general public and this proposal adds another layer of administration that would be a first charge on all charitable giving. There is no evidence to indicate that donors have difficulty identifying who and how they donate to, nor is there evidence that payment gateways used by charities have security issues.

3.4 Smaller charities are likely to suffer under a clearing house option as difficulties will arise in identifying a single specific charity out of the thousands of charities that would be listed. These difficulties are likely to result in frustration for the donor and lower donations as a result. In the case of Lifeline, any listing would be likely to include all 42 Lifeline Centres making it difficult to identify where a donor may wish to direct their funds.

3.5 Lifeline Australia, as well as most other DGRs, receives gifts from a range of sources including our own website, third party web platforms (eg Everyday Hero and Go Fundraise), third party providers (eg Public Outreach and Lets Talk Marketing) as well as cash and cheques. The proposed ATO clearing house will not replace all of these existing channels, therefore in house receipting functions are still going to be required. It is very difficult to see how the clearing house would achieve any economies to pass back to the charity sector.

3.6 Workplace giving is a program that Lifeline participates in and it is difficult to accept that the ATO would be more active in facilitating this program than those charities that have a clear interest in increasing income from this source. The forecast operational costs of a clearing house are not quantified, however if the $25million establishment cost was to be recovered from charities, the impact on the provision of social goods as a result of reduced revenue will be felt for years to come.

3.7 The rules associated with property donation and gifts associated with minor benefits are presently too complex. The effect within Lifeline Australia is that tax deductions are generally not available for the supporters attending corporate fundraising events. A system based on a standard threshold such as any individual ticket price in excess of $250 for an event, could be tax deductible. This type of system is simple to administer and may result in increased participation rates and therefore additional income to the charity sector.

3.8 Increasing the threshold for a deductible gift from $2 to $25 would not simplify administration for DGRs. Sound accounting practices require that receipts must be issued for all donations regardless of amount. The notion that an exception would be required to ensure workplace giving donations are not adversely impacted by any change in the threshold seems at odds with the concept of simplification. Changing the threshold for deductible gifts is only likely to result in fewer donations.

4. Opinion on Chapter 3 - Fringe Benefits Tax Concessions

4.1 The FBT concessions must be considered in the context of the remuneration packages available to NFP sector employees. In relation to Lifeline Australia, there is 100% take up of the $30,000 concessional cap entitlement and varying degrees of take up in relation to meal entertainment and entertainment facility leasing expense concessions (EFLF). Lifeline Australia is outsourcing its salary packaging services to ensure compliance is not compromised in this complex area, however the costs associated with outsourcing are no more expensive than would be incurred if salary packaging of superannuation or novated motor vehicle leasing was being undertaken. These last mentioned packaging elements are standard options for employees within government, private and NFP sectors.

4.2 Removal of the existing FBT concessions will add a layer of compliance in relation to fringe benefits that doesn't presently exist. The additional compliance burden will specifically relate to entertainment provided by the organisation of which there is very little, however, reporting systems will be required to capture expenditure that is currently exempt from FBT.

4.3 Removal of the current FBT concessions will result in either an immediate increase in the remuneration packages that are currently paid to Lifeline staff or an inability to attract and retain qualified professional staff. An analysis of our current executive remuneration structure compared to industry benchmarks shows we are currently sitting well short of the industry benchmark at the 60th percentile for equivalent positions, on average 13% below. Removal of the FBT concessions would have the impact of moving average executive salaries downwards by 10% which would then place our executive salaries some 22% below the industry benchmark for equivalent positions.

4.4 Lifeline Australia is able to attract and retain executive staff because of additional concessions available such as meal entertainment and EFLF benefits, however, most staff accept lower than market rate packages as their additional contribution to the community sector. In 2011/12, the use of meal entertainment benefits by executive staff averaged over $14,000 per person. The FBT concessions enable Lifeline Australia to partially bridge the gap between actual salaries compared to industry benchmarked salaries yet the cost to the organisation is some $48,000 per person less than it would be without the concessions.

4.5 The same benefits are available to managers and other staff at Lifeline Australia although the meal entertainment and EFLF are taken up at a lower average rate ($4,800 per person) than for the executive staff. This is primarily due to lower disposable incomes for staff below the executive level so the fact that the benefits decrease as income available to salary package declines is an expected outcome. A key point of differentiation is that managerial and lower grade staff have their base salaries set at the 60th percentile of the industry benchmark for equivalent positions, whereas the salaries for executives have not been set at the equivalent benchmark because of affordability concerns. In essence, the greatest disparity in salaries is at the executive level, therefore access to FBT concessions to assist to bridge this gap enables fundraising and other income to be directed toward service delivery expenses as opposed to management expenses.

4.6 As mentioned above, any changes to either the concessional cap or limiting meal entertainment benefit will have an immediate detrimental impact on the current comparative remuneration packages of all Lifeline Australia staff and executive staff in particular. The estimated savings attributed to making meal entertainment and EFLF reportable would need to be put straight back into remuneration packages within the sector. If the concessional cap was increased, a suggested appropriate amount would be $60,000 to replace the $30,000 grossed up cap. Creating an additional cap for meal entertainment benefit would add to compliance costs and is not supported.

4.7 The suggestion that FBT concessions be denied for employees with multiple employers adds to compliance costs for employers and would create difficulties for employees changing employers' part way through a year. The new employer will not be aware of the extent to which the concessional cap was used in the previous position and in many cases, the employee will not be able to answer this question until their Annual PAYG Payment Summary is issued. Employees moving between employers would therefore be disadvantaged.

4.8 Lifeline Australia does not support the notion that FBT concessions be phased out in the longer term. Replacement with direct support would be a once only adjustment that would be subject to averaging across the sector where the take up of the various concessions varies markedly between organisations. The likelihood of Lifeline Australia being fully compensated for the benefits currently attributed to our organisation is not considered high.

4.9 The suggested process of applying for and reporting on grants as a compensation measure is a major cost imposition for organisations that have efficient systems in place to deal with the salary packaging issues. This type of alternate process would require specific high level work to be undertaken as compared to routine payroll processing undertaken by junior staff members. The increased exposure to government funding restrictions is a significant risk element that would be imposed through this suggestion.

4.10 The replacement support mechanism proposed of an average payment per employee to replace the FBT concessions will fall well short the actual benefits currently utilised by Lifeline Australia employees. Clearly the take up rate of the various concessions varies markedly across the sector. Based on the Lifeline calculations above, where over $30,000 per annum is the average value of the FBT concessions compared to the PBI average of $2,800, a substantial shortfall would result for Lifeline.

4.11 The direct tax offset approach is unlikely to adequately compensate employees for the equivalent FBT concessions if it is based on the PBI average as noted in the previous paragraph. Further, salaries would need to be increased for the value of the benefits removed and there is no indication given as to how organisations would be able to fund the higher salaries.

4.12 A tax free allowance to replace all FBT concessions would be a simple way forward and would not result in additional costs for employers. It would be simple to administer if the gross up requirement was removed. The cap would need to be in the order of $30,000 to adequately compensate for the loss of meal entertainment, EFLF and concessional cap benefits.

4.13 Lifeline Australia is of the view that all FBT concessions and salary packaged items including meal entertainment and EFLF should be reportable on the annual PAYG Payment Summary to ensure that eligibility for Centrelink and other Government benefits is consistent between NFP employees and those outside the sector.

5. Opinion on Chapter 4 - Goods and Services Tax Concessions

5.1 Lifeline Australia supports the introduction of a principles-based test under which NFP entities would self-assess whether an event satisfies the requirements of the fundraising concession. At the same time it would seem sensible to simplify the principles so that they are clear and can be readily applied by all NFPs. Removing the requirement to apply to the Tax Commissioner must reduce the compliance burden of organisations that are active in this fundraising area.

6. Opinion on Chapter 5 - Mutuality, Clubs and Societies

6.1 Lifeline Australia is a member-based organisation and as such the mutuality principle applies. The possible change to legislate the mutuality principle and provide that all income from dealings between entities and their members be assessable income, would introduce the income tax compliance obligations referred to at paragraphs 2.1 and 2.2 above. In the case of Lifeline Australia and its 23 member organisations, the financial dealings between the entities primarily involve the transfer of grant and gift monies to enable the provision of services at the local Centre level. The idea that such transfers be subject to income tax is inconsistent with the basic concept that income tax is payable on business operations. The extension of the mutuality principle and the application of income tax as proposed in the discussion paper would appear to have quite significant unintended consequences for NFPs with governance structures similar to Lifeline.

Lifeline Australia

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