

# NFP Tax Concession Working Party

## Response to Discussion Paper



### SUBMISSION FROM

Sarah Davies  
CEO  
The Reach Foundation  
152-156 Wellington Street  
Collingwood  
VIC 3066

Email – [sarah.davies@reach.org.au](mailto:sarah.davies@reach.org.au)  
Phone – 03 9412 0900

### INTRODUCTION

Thank you for the opportunity to provide comment, feedback and ideas on the issues canvassed in the discussion paper. The Reach Foundation (Reach) is highly supportive of improving the fairness, simplicity and effectiveness of the tax concession package offered to the sector and of the guiding principles underlying the review and its objectives.

The Reach Foundation is a tax concession charity (TCC) and a public benevolent institution (PBI) with item 1, Deductible Gift Recipient (DGR) status and GST and income tax exemption. It is a company limited by guarantee established to assist and support young people experiencing distress, suffering or feelings of helplessness and hopelessness. To achieve these purposes Reach provides programs to address the needs of these young people and build resilience and self-esteem; and provides resources and training to teachers and others working with young people.

The attached document describes more fully Reach's work and activities.

The remainder of this document summarises our views and ideas on selected topics from the discussion paper, where we have direct and relevant expertise and our views are informed by our experience. Therefore we have not addressed topics where we feel less qualified to comment.

We would be delighted to discuss our response in more detail or to answer any questions you may have, at any time.

### 1.4 INCOME TAX EXEMPTION

#### Q 1

The core criteria for determining income tax exemption should be the purpose of the organisation – that is one whose primary purposes are beneficial to the community and where income is directed at undertaking the activities which support the purpose.

#### Q 2

The current categories defined as charitable organisations, health, education, research and knowledge creation, arts, sport and community services are all appropriate purposes for income tax exemption. It is also logical that where government, employee and employer associations are delivering services for community and public benefit, that they be income tax exempt.

At the other end of the scale it is very hard to see why 'promotion of animal racing' and animal racing are primarily beneficial to the community.

More complex is the range of associations and membership organisations (e.g. industry associations, resource development organisations and professional associations) where the primary purpose is more about the benefit to a discrete group of members only, not to broader community or public benefit. This is not the same as requiring that profits or assets are not distributed to members – if the purpose is benefiting private interests, then it is hard to argue for an income tax exemption.

### **Q 3**

Yes, it would be logical to have a mechanism that identifies the difference between 'private' benefit and charitable, community or public benefit, and to have criteria or conditions that do not provide income tax exemption for private interests or benefit.

## **1.5 REFUNDABLE FRANKING CREDITS**

There is no doubt that refunding of franking credits is a significant benefit to philanthropic trusts and foundations, endowment funds, and to large non profit charities which have significant capital invested. In particular, where the trust deeds of philanthropic foundations require that only the interest earned on invested capital be distributed as grants, the ability to generate more income from franking credits is critically important. Even when the capital value may reduce as a result of negative investment performance, the benefit provided by refunding franking credits can ensure that there is still valuable income to distribute to charities.

### **Qs 5 & 6**

As per comments above on income tax exemption, the core criteria for determining eligibility for refund of franking credits should be the purpose of the organisation – that is one whose primary purposes are beneficial to the community.

If the grant making capacity of trusts and foundations is reduced by limiting or removing franking credit benefits, the shortfall would present as increasing the demand on the government purse.

## **2.3 ENDORSEMENT CONDITIONS RE THE SCOPE OF CHARITABLE ACTIVITIES**

### **Q 11**

Without defining "charities" it is impossible to answer this question. In context of the discussion paper, no, not all charities should be DGR. But with the change to a statutory definition of "charity", it might be extremely beneficial to have a definition that did also mean that all non-profits identified as "charities" would also be DGR.

It is also important to clearly define and differentiate between a "charity" and those organisations that have charitable purposes, but may not themselves be "charities" – particularly trusts and foundations. It is important therefore, to differentiate between item 1 and item 2 DGRs in reviewing or defining conditions around eligibility and scope.

The current restrictions of item 2 DGRs only being able to grant to item 1 DGRs should be maintained. Now that the Private Ancillary Fund (PAF) and Public Ancillary Fund (PuAF) guidelines have specific mechanisms to enable the transfer capital between the two structures, this distinction should be maintained.

The pressing need to modernise and define a statutory definition of charity cannot be underestimated. A particular example is where genuine "charities" have a number of purposes and do not fit neatly into a single existing DGR category. It is ridiculous that they are currently not eligible for DGR unless they restrict their activities and purposes to fit a DGR category. Similarly, a number of smaller, regional charities which do not have the capacity or scope of programs to apply for DGR are unreasonably left out of the DGR benefits.

Therefore a review of the DGR system in line with a statutory definition of "charity" is called for.

### **Q 12 & 13**

DGR endorsement should be applied at an entity level – and not multiplied and applied at an activity level within an organisation. This would lead to significant increased complexity, cost and administration (both within the sector and within government and the regulators) which is the antithesis of the overall reform agenda.

Within the statutory definition of charity, DGR should be determined by the organisation's primary purposes -where they are beneficial to the community and where income is directed at undertaking the activities which support the purpose.

Within the primary and secondary education system, we already have a mechanism through DGR funds for buildings, libraries and scholarships.

## 2.4 MECHANISM TO PROVIDE DONORS WITH TAX INCENTIVES

### Q 15 & 16

We do not support the introduction of a fixed tax offset nor a differential approach for PAFs.

There is no evidence that increasing the tax incentive for lower income earners will lead to increased donations. Increasing incentives for a segment that has by definition a limited capacity to give, will not increase its capacity to give. Indeed, Australia's track record of giving by low to middle income earners is high compared to international patterns and has far greater participation than that of high income earners. It is the high income earners and high net worth segment that needs attention and incentivising.

A differential approach for PAFs is likely to funnel more donations into long term giving structures and result in less giving directly to the organisations that are doing the work and need the resources on a daily basis (which is the ultimate purpose of encouraging philanthropy). The emphasis on ensuring distributions from PAFs get made quickly to Item 1 DGRs should be maintained.

### Q 18

The matter of testamentary giving is vexed and complex. The current capital gains provisions for testamentary gifts do provide incentive and are well used. There is no doubt that Australian giving patterns more broadly through bequests are low compared to international patterns.

The Henry Tax Review raised consideration more broadly of estate taxes / death duties. This is something we need to grapple with in a holistic and national economic and social framework, not just picking partial, ideas under reform to the charitable sector.

However, the idea of allowing private donors to receive an immediate tax deduction and make a testamentary gift in their will to DGR art organisations, whilst enjoying private benefit from the art themselves during their lifetime, is fraught with issues and inequity. The regular legal challenging of wills and charitable bequests is already difficult to navigate and complex. The lessons learned from the Cultural Bequests program should be heeded.

A fuller, considered exploration of options and objectives around estate taxes, including testamentary giving, in a broader economic, social and legal context would be beneficial.

## 2.7 CLEARING HOUSE FOR DGRS

### Q 19.

No.

A clearing house to channel donations to DGRs, linked to the ACNC Register, would be a negative, retrograde step.

There is no indication or evidence of any benefit. It is not hard to give to DGRs, especially with the growth in on-line, mobile, workplace and other facilitated forms of giving. Once we build the ACNC register to give clear, coherent information to the community in a consistent and accessible format, it will be even easier.

For those who want advice and intermediary support to help them with their giving there is a plethora of really good options (Community Foundations, commercial gift funds, brokers, websites, donor circles, etc) all of which are growing and offer excellent support, services and choice.

The proposition also ignores the key, fundamental drivers of *why* people give (which then leads to the *how* they give). There is ample research and knowledge about *why* people give (we would be happy to provide you with a range of studies and findings from Australian and international reputable sources over many years). A clearing house linked to the ACNC is a *how*, and as it does not support or reflect the *why*, it would simply add cost, complexity and even more confusion to a market place that is asking for clarity, confidence and reduced red tape.

### Q 20

Workplace giving is already simple to set up, easy to administer and very cost effective to run. Again, there is already excellent choice for those employers who do not want to set it up themselves, to use 3<sup>rd</sup> party brokers and intermediaries. The barrier to workplace giving is more about awareness and understanding, particularly around how

simple it is to set up and operate, and the effort is more in the thinking about the design of the program (e.g. whether and how to link it to other community engagement objectives and activities) rather than the actual mechanism or channelling the donations, which is the easiest, simplest part.

## 2.10 INCREASE DEDUCTIBLE GIFT THRESHOLD

### Q 26

Yes

We support the proposition that the tax deductible gift threshold be raised from \$2.00 to \$25.00 for the reasons outlined in the discussion paper.

In addition, we should have a mechanism that regularly (e.g. every 5-7 years) increases the threshold in line with CPI so we maintain the right balance.

## 3. FBT

### Q 28 & 29

The core purpose of this concession should be to support non profit / for purpose entities that need to attract and retain qualified, experienced and effective staff, but who don't have the financial capacity to compete equally in the remuneration market for these staff and skills. Eligibility for the FBT concession should be determined the purpose of the organisation – that is one whose primary purposes are beneficial to the community and where income is directed at undertaking the activities which support the purpose.

If an organisation by nature of its economic and funding model has the financial capacity to do this, they should not be receiving public funding to supplement remuneration levels designed to help attract and retain the required staff (which is what FBT benefits are). It is important to note that even with the FBT benefits, the remunerations levels in charities and PBIs are significantly lower than other organisations (government, health, sports, as well as private sectors).

In terms of should FBT benefits be limited to charities, again, this depends of the definition of "charity" and there is an opportunity with the introduction of the statutory definition to clean up and simplify the eligibility definitions and criteria.

### Q 31

Yes: meal entertainment and entertainment facility leasing benefits should be capped.

### Q 32

No element of the FBT benefit package should be uncapped or unlimited.

Therefore, yes, there should be a separate cap set for meal entertainment, lease and entertainment facility benefits. Reach enjoys FBT packaging benefits and we cap this component at \$5,000 gross per annum.

### Q 33

There are items / expenses that fall within the definition of 'lease and entertainment hire' and 'entertainment facility' that really should not be there. Remembering the core purpose of this benefit (see above), hiring yachts, wedding reception venues, packaging luxury holidays, etc, is not in the spirit or intent of the purpose. So as well as a cap on the benefit, there should also be a review and tightening of what activity / expense can be claimed under the cap.

Employers should also have capped FBT concessions (for benefits that are not attributable to single individuals) – and the cap should be determined by the number of employees and volunteers the organisation has.

### Q 34

There is an immediate need to stop the 'double dipping' – that is an individual claiming (capped and un-capped) benefits from multiple employers. However, the compliance burden should not fall on the employers, but on the employee. The taxfile system is the right mechanism to use to ensure no individual receives more than the top level of FBT benefit: it is already doing this with all other tax deductible eligibilities and the onus should be on the individual to

self-manage and the system to control through the existing tax system.

The cost of managing the FBT benefit through payroll, or having the FBT benefit managed by a 3<sup>rd</sup> party to ensure compliance and effective administration is not burdensome or expensive.

**Q 35**

Yes: the FBT rebates should be aligned with the FBT tax rate. The dollar amounts set as caps and limits can be determined with reference to other information and mechanisms.

**Q 36**

Yes: the limitation on tax exempt bodies in the minor benefits exemption should be removed.

**Q 37 & 38**

Yes the provision is appropriate and should be maintained long term. However, as per previous comments, it should be cleaned up; there should be caps and limits on all eligibilities; certain types of expenses should be removed completely from eligibility; and access should be limited to those non profits and “charities” (reference statutory definition opportunity) whose primary purposes are beneficial to the community and where income is directed at undertaking the activities which support the purpose.

**Q 39 & 40**

In considering whether there is a better (i.e. cheaper, more efficient, more effective and fairer) mechanism to support PBIs in attracting and retaining talent, the following needs to be taken into consideration:

- i) Many current PBIs receiving the FBT benefit do not receive any form of government funding or grants. So to set up another mechanism would add a new process, cost and require administration;
- ii) The purpose of the benefit is to allow PBIs to attract and retain the necessary calibre and quality of staff needed to do the work and deliver the desired outcomes for the community. It should be used to supplement remuneration to make sure this critical sector can continue to attract the talent it needs. If it becomes a general support to organisations it is too easily removed, subjected to productivity savings, and /or consolidated in program or project funding which has a net effect of reducing the benefit;
- iii) Keeping the benefit directly linked to and managed through the taxfile system is using an existing purpose built system already doing this with all other tax deductible eligibilities. It allows the onus to be on the individual to self-manage and control through the existing tax system. Whether this can be used differently (such as increasing tax free thresholds for PAYE employees working in PBIs rather than FBT concessions) is worth exploring to see what the benefits would be.

VIC (National Office): 152-156 Wellington St Collingwood VIC 3066 | 03 9412 0900

NSW: Level 1 251 Riley St Surry Hills NSW 2010 | 02 8218 9200

The Reach Foundation | ABN 87 069 837 627 | reach.org.au | facebook.com/thereachfoundation