

Central Land Council - NFP Tax concession submission

Introduction

The Central Land Council (CLC) is an Australian Government Statutory Authority subject to the Commonwealth Authorities and Companies Act 1997 (CAC Act), initially established under the Aboriginal Land Rights (Northern Territory) Act (ALRA) Act 1976 as an advocate for Central Australian Aboriginal people, and it is also a recognised Native Title Representative Body under the Native Title Act 1993.

The CLC is primarily funded directly by transfers from the Aboriginals Benefit Account (ABA) and from the Native title program approved by the Minister. The ABA is funded by a contribution from the Commonwealth Government equivalent to the amount paid to the Northern Territory Government for mining royalties on Aboriginal land. As such – increases in a major source of funding are limited by royalty payments, and are not linked directly to regular budget appropriations.

In addition, the CLC attracts significant levels of transfers from other agencies/departments for the purpose of undertaking special projects and programs on behalf of those organisations. The CLC annual budget is approved by the Minister on the basis of an Estimates submission.

The CLC is designated as a PBI, and also a DGR although it does not regularly receive donations or other deductible gifts.

The CLC's influence extends to approximately of 750,000 square kilometres in the southern half of the Northern Territory. Of this, traditional Aboriginal landowners own 407,985 square kilometres of Aboriginal freehold land under the Aboriginal Land Rights Act. This represents 52 per cent of the land covered by the CLC's nine regions.

The CLC's core purpose is based around serving Central Australian constituents. In this regard the CLC is influential over various aspects of Aboriginal life in Central Australia, including rights, land access, cultural protection, sustainable and economic use of Aboriginal land and building stronger communities.

The CLC operates in a remote region of Australia frequently experiencing hostile climatic conditions. CLC employees operate in conditions that would generally be considered intolerable or unacceptable to most Australians. Therefore, it is exceptionally difficult and expensive to attract, recruit and retain staff. The cost of staff recruitment is also exceptionally high, frequently involving relocation costs from throughout Australia.

The CLC is reliant on its status as a PBI, and to a lesser extent the related remote area fringe benefits tax exemptions, to provide attractive remuneration packaging to attract and retain staff, and to provide minor other benefits. If these benefits were removed it would be undoubtedly necessary to provide compensatory remuneration increases. The increased financial resources would need to be provided by the Australian Government.

Submission

The CLC would like to comment on the following specific paragraphs/questions:

28. Require all NFP entities that seek income tax exemption, FBT rebateable status or GST concessions to be endorsed by the Commissioner.	3
128. The FBT exemption provides significant benefits to employees of eligible entities	3
135. Anecdotal evidence suggests that fringe benefits that are typically provided under the capped FBT exemptions include cars, mortgage repayments, rent, and school fees. Employees often receive a ‘salary package’ which involves a ‘salary sacrifice’ so that benefits are provided out of pre-tax income. This can result in a significant tax saving	3
136. Each package, in the example in Table E, provides the employee with the same net income after tax, but salary sacrificing provides the PBI with a saving of over \$8,000. This saving could be provided in its entirety to the employee by way of higher remuneration, or some or all of the saving could be retained by the PBI.	4
137. Meal entertainment, entertainment facility leasing and car parking expenses are excluded from the benefit caps placed on some of the FBT concessions. Accordingly, employees of the relevant categories of eligible entities can receive unlimited amounts of these benefits from pre-tax income. 4	
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28. Require all NFP entities that seek income tax exemption, FBT rebateable status or GST concessions to be endorsed by the Commissioner. This endorsement would provide greater certainty for these organisations and prevent entities incorrectly self-assessing themselves as entitled to the concessions". (Q 7 Should the ATO endorsement framework be extended to include NFP entities other than charities seeking tax exemption?)

CLC comment: Any endorsement of the exemptions and concessions provided to an Australian Government Statutory Authority would incur unnecessary and wasteful expenditure that might be associated with any application or examination process.

128. The FBT exemption provides significant benefits to employees of eligible entities (and to the entities themselves), with the ability to engage in salary packaging worth up to around \$4,300 per annum to an employee with a taxable income of \$45,000 and up to around \$6,100 per annum to an employee with a taxable income of \$100,000. Anecdotal evidence suggests that salary sacrificing is utilised by eligible employers as a method of attracting employees by offering packages that compete with those offered by the commercial sector. Meal entertainment and entertainment facility leasing benefits can be provided with no limit.

CLC Comment: The CLC does use salary sacrificing as a method of attracting employees, however this is not necessarily in direct competition with the commercial sector due to the nature of its operations and objectives. The CLC commissioned an external independent remuneration review in 2010. One of the conclusions of the analysis, based on benchmarking with four other relevant public sector employers, was that the overall CLC remuneration was 9% less than the benchmarks. However, salary packaging represented an average of approximately 8% thus offsetting the salary disadvantage. Therefore, this analysis should be considered as evidence that salary packaging enables salaries to be offered at comparative levels, but providing budgetary savings. Without the packaging arrangement remuneration would need to be increased by at least 10% to compensate (including grossing up to compensate for the income tax effect), with a direct budgetary impact on the Ministerial approval of the annual Estimates. A 10% increase in remuneration would be approximately \$1.7 million per annum.

The CLC recognises that the provision of meal entertainment and entertainment facility leasing benefits without any limit would be a misuse of the intent of the objectives. Therefore, CLC self-imposes a 'reasonable' meal entertainment limit. Although this reasonable level of benefit does not provide a substantial financial and taxation advantage it is considered that the intrinsic value of providing meal entertainment in remote communities is a far more valuable aid to employee retention than any taxation advantage. Employees working in remote areas incur substantial accommodation and other expenditure returning to the locations from which they were recruited usually to visit family and friends etc. Remote area concessions do not provide for the accommodation and meal costs. The meal entertainment and entertainment facility leasing benefit partially offsets this expenditure. The average weekly amount for the 97 employees (less than 50% of CLC employees) who accessed these benefits was \$46 in the 2012/13 FBT 'year' (until the end of October). It is therefore concluded that the benefit is not being misused by CLC employees as implied by the 'no limit' reference in paragraph 128.

135. Anecdotal evidence suggests that fringe benefits that are typically provided under the capped FBT exemptions include cars, mortgage repayments, rent, and school fees. Employees often

receive a 'salary package' which involves a 'salary sacrifice' so that benefits are provided out of pre-tax income. This can result in a significant tax saving ... Salary packaging arrangements are often complicated by interactions with various other transfer payments provided by the Australian Government, such as Family Tax Benefits and parenting payments. The PC noted that FBT concessions are sometimes used in ways that are not consistent with the initial policy intent.

CLC comment: Refer comment to paragraph 128. The CLC does not use the PBI benefit in a way that is inconsistent with the policy intent. The benefits provide the CLC with a basis of attracting and retaining staff who would not otherwise be prepared to work in remote and harsh conditions. Although the remote area fringe benefit exemption does partially compensate for the cost of housing this does not meet all the cost disadvantages, e.g. transport and fuel costs, medical. For example the unleaded fuel cost in Alice Springs is currently continuously \$1.69 per litre (there is no fuel discounting cycle in Central Australia as in capital cities), and the cost of a medical consultation is approximately \$70 and a net cost of \$35 after Medicare rebate.

136. Each package, in the example in Table E, provides the employee with the same net income after tax, but salary sacrificing provides the PBI with a saving of over \$8,000. This saving could be provided in its entirety to the employee by way of higher remuneration, or some or all of the saving could be retained by the PBI.

CLC comment: Refer comment to paragraph 128. Any reduction in PBI benefit would have to be entirely offset with an increase in remuneration that at least provides the same net after income tax result to employees or the CLC would be under added pressure to recruit and retain its qualified staff. There would not be any saving to the CLC and any increase in expenditure would be directly reflected in the annual Estimates process approved by the Minister and to be funded by the Australian Government.

137. Meal entertainment, entertainment facility leasing and car parking expenses are excluded from the benefit caps placed on some of the FBT concessions. Accordingly, employees of the relevant categories of eligible entities can receive unlimited amounts of these benefits from pre-tax income. The PC indicated, in their 2010 Report, that the only practical limitation on these benefits is the taxable income of the relevant employee. Nevertheless, it appears that some eligible entities voluntarily limit the quantum of these benefits available to employees.

CLC comment: Refer comment to paragraph 128. Unlimited amounts are not available as the CLC voluntarily limits the quantum of these benefits available to employees to a reasonable amount. Not all employees avail themselves of the benefits.

140. There is considerable anecdotal evidence to indicate that some relatively high income individuals receive significant benefits from the use of uncapped meal entertainment and entertainment facility leasing concessions. The PC, in its 2010 report, noted examples of high income professionals paying for restaurant meals and hire of wedding venues from pre-tax income under these concessions.

CLC comment: Refer comment to paragraphs 128 and 137. The reasonably low limit would not allow CLC employees to engage in any extravagant expenditure. The PBI concession is being

applied to partially offset the severe cost of engaging staff in remote areas which is only partially offset by other concessions.

141. The perceived need to offer fringe benefits imposes considerable compliance burdens on eligible entities. This includes the requirement to organise and offer salary packaging and the recording and reporting requirements for fringe benefits. These costs might be met internally or through engaging an external provider. However, anecdotally, the take up rate is often not commensurate with the effort exerted in offering salary packaging arrangements. Take-up rates tend to be higher for more highly paid employees than for lower paid employees, apparently due to the higher tax savings.

CLC comment: The CLC has outsourced much of the packaging and compliance requirements to a specialist external organisation. Salary packaging does still require a limited amount of internal compliance resources, but it is estimated to be less than half of a full time employee per 200 employees. The remove of PBI concession is unlikely to result in any material saving to the CLC.

142. FBT concessions allow some entities in the NFP sector to offer attractive remuneration benefits to employees. However, the FBT concessions are complex, impose significant compliance burdens and raise concerns about fairness. Inequality arises because there are inconsistencies related to who is eligible for the concessions and also because fringe benefits tend to be provided to employees with higher disposable incomes.

CLC comment: Refer comment to paragraphs 128, 137 and 141. The fringe benefits are available to all employees. The value of the benefit is proportionate to the marginal tax rates. Employees with higher disposable incomes would demand a proportionate increase in gross salary to preserve the same after tax income.

Consultation questions Q31, Q32, Q33, Q34, Option 3.6:

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

CLC response:

No. The intrinsic value of these benefits is a valuable staff recruitment and retention mechanism in remote areas, and should be retained. If the benefit is to be generally removed the equivalent concession should be transferred as separate components to the remote area fringe benefit concession.

Q 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?

CLC response: As stated in the response to Q31 the intrinsic value of these benefits is a valuable staff recruitment and retention mechanism in remote areas, and should be retained. To prevent the misuse, documented only as anecdotal evidence and not experienced at the CLC, it may be reasonable to impose separate caps. However, cap levels should be based on individual and

dependant circumstances as the costs incurred by employees with dependants are far greater than employees without dependants.

Further evidence – besides anecdotal evidence – should be gathered by the ATO and/or working group .

Q 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?

CLC response: Refer response to Q32.

Q 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?

CLC response: As a matter of principle it is agreed that employees should not be able to access concessions from more than one employer. However, due to the CLC's employment circumstances it would be improbable that this is occurring. Any changes should not impose heavy compliance burdens on employers. The CLC also imposes a restriction on new employees who commence part way through an FBT year, such that they are only permitted to pro rata the cap. This at least prevents the cap being fully claimed from the CLC and another PBI.

Option 3.6: Phase out capped FBT concessions and replace with alternative government support

CLC response: This option raises serious concerns with relation to current, signed employment and other agreements. The most serious concern is that the CLC's standard employment contracts that are used for all staff include an obligation to provide PBI concessions. Most CLC contracts are initially offered on the basis of a 3 year contract, but renewed on the same terms and conditions. The CLC's Enterprise Agreement, recently approved by Fair Work Australia, also describes the provision of PBI fringe benefits, with a caveat that the benefits are subject to FBT legislation. There would be a reasonable expectation of employees that the loss of the benefit would be compensated for. To a lesser extent for the CLC, but possible a much bigger issue for other PBI organisations, regard would need to be had for long term service delivery agreements that are structured on existing cost structure for which increased government support would not support.

160. AFTS recommended that the capped FBT concessions be phased out entirely over 10 years and replaced with direct government funding. AFTS suggested that this direct funding might be provided by application to the ACNC or relevant Commonwealth Government agencies for funding for specific projects or for assistance with the costs of recruiting specialist staff. The major benefit of this approach would be a significant reduction in the compliance burden for tax-exempt NFP entities that are currently required to provide salary sacrificing and FBT reporting services to their staff. However, applications for direct grants and reporting on those grants to government agencies can also involve significant compliance costs that would, to some extent, replace those tax compliance burdens.

CLC comment: Refer to earlier comments regarding remuneration substitution and compliance costs. It would also be anticipated that a 'phasing' out change to the system would increase complexity and compliance costs. Current compliance costs are a minimal cost to the CLC, given

that the management is mainly undertaken by an external agency that are compensated by a fee directly charged to employees, therefore the proposed change would have minimal impact on the compliance burden.

161. This option may also raise concerns for some in the NFP sector about its effect on their autonomy and independence from government. It may also expose the sector to the risk of sudden reductions in funding as a result of budget decisions.

CLC response: *The CLC has concerns regarding the additional impact on its autonomy and independence as a statutory authority. Existing Estimates approval regimes already threaten autonomy and limit activity to the areas approved by Government. Any requirement to seek approval for compensatory increases in remuneration levels would be subject to discretionary authorisation and any refusal or part approval would have a direct impact on recruitment and retention, and subsequently on services provided to Aboriginal peoples.*

Consultation questions Q37, Q38, Q39, Q40

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

CLC response: *The FBT concession is appropriate to NFP statutory authorities operating in remote areas.*

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

CLC response: *No. Refer also responses to Q31.*

Refer also comments to 136: "Any reduction in PBI benefit would have to be entirely offset with an increase in remuneration that at least provides the same net after income tax result to employees or the CLC would be under added pressure to recruit and retain its qualified staff. There would not be any saving to the CLC and any increase in expenditure would be directly reflected in the annual Estimates process approved by the Minister and to be funded by the Australian Government."

A phased approach to the removal of the concessions will increase compliance costs.

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

CLC response: *Yes. As previously discussed it would be critical to increase remuneration or other concessions to ensure that all employees are not worse off, or there will be a negative impact on successful recruitment and retention of qualified staff. Refer also responses to Q38 and Q31.*

Q 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?

CLC response: *As an income tax exempt statutory authority the CLC could not benefit from a tax offset. The current PBI benefits are differentiated to the marginal income tax rates, and therefore*

employee offsets or tax-free allowances would need to be structured to recognise this and the need to retain the same net after tax remuneration.

167. Employers that currently retain part of the tax savings from salary packaging arrangements would need to reset their employees' remuneration having regard to the employees' eligibility for the offset. The offset amount might need to take into account the flow on effect of a reduced reportable income for employees in relation to family tax benefit and other government benefits and levies. The tax offset would also need to be designed to take account of multiple eligible employers. The offset should only be available with respect to one employment.

CLC comment: The CLC does not retain part of the tax savings from salary packaging arrangements. Salary packaging supports the recruitment and retention of staff and effectively reduces the annual Estimates approved by the Minister.

226. Reform options. Treasury costings indicate that extending DGR status to most charities (see Chapter 2) and bringing meal entertainment and venue hire fringe benefits within the relevant caps (see Chapter 3) would have approximately offsetting impacts on revenue. The cost of extending DGR to most charities has been estimated at approximately \$120 million and bringing meal entertainment and venue hire within the relevant caps would generate an additional \$100 million of revenue. Accordingly, these reforms could be brought forward as a package to largely fulfil the need to offset the cost of any proposals that have a revenue cost.

CLC comment: The impact of bringing meal entertainment and venue hire benefits within the relevant caps will encourage upward pressure on salary demands during enterprise agreement negotiations with a consequential increase in organisation expenditure and Annual Estimates.