Submission to the Fairer, simpler and more effective tax concessions for the not-for-profit sector review

The Deaf Society of NSW, established in 1913, is a not-for-profit, bi-lingual, bi-cultural, community-centred organisation which exists to achieve equity for deaf people. Our vision is “Equity for Deaf People” and our mission is to work in partnership with the Deaf Community to enhance the quality of life of deaf people, strengthen the community and advocate for changes that will ensure fundamental rights and freedoms. Our high quality, flexible and responsive services and programs include employment services, Auslan interpreting, education and training, advocacy, community development, independent living skills and community services.

In common with other Disability Service Organisations within the Not-for-profit (NFP) sector, the Deaf Society of NSW plays an integral role in providing vital and life important services for marginalised and disadvantaged Australians. We welcome the opportunity to provide comment on the paper released to inform discussion on how the tax concessions provided to the not-for-profit sector can be made ‘fairer, simpler and more effective’.

While we recognise that the Government may consider changing the availability of some tax concessions to other types of NFP organisations, we believe it is critically important that disability organisations, such as the Deaf Society of NSW, are not disadvantaged by any proposed changes.

Government funding provides approximately 45% of our operating revenue with the remainder from fees for service, fundraising and investment income. In common with other disability service providers, any surpluses generated by the Deaf Society of NSW are not distributed to individuals but are re-invested in activities associated with the charitable purpose of our organisation - to support deaf people. The Deaf Society of NSW believes that the proposition that tax concessions which assist in the generation of these surpluses should be measured in terms of 'a cost to government' is inappropriate as these surpluses support the provision of services that would otherwise need to be directly funded by governments themselves resulting in significantly greater expenditure.

Fringe Benefits Tax (FBT) Concessions

One of the key challenges in the provision of effective and professional disability services is the difficulty in recruiting and retaining appropriately qualified professional staff. The Deaf Society of NSW currently utilises the FBT Concessions through salary packaging for our employees which effectively increases the 'take home' benefit of the remuneration. This assists us to remain competitive with salaries paid within private sector. Retention of FBT concessions is essential if the sector will be able to meet the demand of provision of increased number of workers who will be required under the National Disability Insurance Scheme.

The High Court D Word Investment decision in 2008 to uphold the right of charities to conduct commercial activities without losing their charitable status reflected the goal reflects the

If a business activity of a disability service provider is incidental to the charitable purpose of that organisation it should not be taxed—that it is the purpose not the nature of the activity that should determine whether it should be taxed. This approach is supported by considering the impact of taxing the business activities of charities. Such a tax would result in fewer support services—the charitable purpose—being delivered and people with disability would be further disadvantaged. Governments would ultimately be called upon to address this shortfall by funding these activities.

As Word endeavoured to make a profit, but only in aid of its charitable purposes. To point to the goal of profit and isolate it as the relevant purpose is to create a false dichotomy between characterisation of an institution as commercial and characterisation of it as charitable".

This principle was affirmed by the High Court in the Word Investment case, where it found that the goal of making a profit was not an end in itself but was incidental to a charitable purpose.

The Deaf Society of NSW believes that concerns regarding competitive neutrality _______

NDS rejects concerns about competitive neutrality. NDS's interest in tax concessions is, simply, to maximise opportunities for people with disability to have a decent life.—which assist disability service organisations to maximise their charitable purpose (including having the workforce necessary to provide services)—.

Fringe Benefits Tax Concessions

Many disability service providers are endorsed as FBT exempt employers and use the allowable fringe benefits arrangements to offer salary packaging to help attract and retain staff. The introduction in 2001 of the FBT exemption/rebate cap (set at a grossed up value of $30,000 per employee per FBT year) enabled

NFP disability service providers across Australia regularly experience workforce shortages which are exacerbated by lower wage levels, limited by inadequate government funding. The provision of FBT exemption enables the Deaf Society to

inadequate government funding; the sector is unable to pay wages comparable to other industries.

The introduction, in 2001, of the FBT exemption/rebate cap (set at a grossed-up value of $30,000 per employee in each FBT year) which enabled eligible employers to effectively increase the value of employees' remuneration and assisted in the recruitment and retention of staff, and benefits all employees including those on low salaries.

The value of the FBT concessions have, however, been eroded over recent years. Since 2001, the

The Fringe Benefits Tax exemption/rebate cap has not been increased from $30,000 cap since its introduction in 2001, despite the undertaking that this would be reviewed regularly, and has not been adjusted to reflect inflation.

There have been some concerns regarding the overuse of FBT exemptions for meals and entertainment purposes and the disability sector itself has reviewed self-regulation maximum benchmarks. Options to review the FBT exemption/rebate cap could be to formalise an industry benchmark to limite the excessive use of the FBT exemption for meals and entertainment.

NDS acknowledges that concern about FBT concessions has largely focused on the excessive use of FBT exemptions for restaurant meals and the hire of entertainment facilities for private purposes by relatively high income professionals. NDS shares these concerns, however, self-regulation within the disability sector has largely mitigated the over-use of this benefit; most organisations that support people with disability have limited this concession to a maximum of $10,400 per year. This is a well-accepted but unwritten disability sector benchmark.

One option to limit the excessive use of the FBT exemption for meals and the hire of entertainment facilities would be to formalise the unwritten disability industry benchmark of $10,400. An advantage of this proposal would be simplicity as the rules governing the operation of FBT exemptions would remain largely unchanged.

A further option may be to review the establishment of a new salary sacrifice limite which includes

NDS notes that the operation of FBT exemption/rebate cap (with a grossed up value of $30,000) is well understood by employees and employers but that the rules for exempt items (meals and entertainment facilities) do cause some confusion. For this reason, NDS would also support the option of combining the existing maximum salary sacrifice of $16,050 with the proposed $10,400 (for a total of $26,450) and removing the exempt items. This option would result in minimal disruption to the sector.

1. **NDS also supports the option of establishing a new salary sacrifice limit of $26,450 (existing $16,050 plus $10,400) and removing exempt items**

NDS's least preferred option would be for the grossed-up value of the FBT exemption/rebate cap to be increased by an amount less than the benefit that would be provided under point 2. While this would go part way to meeting NDS's concerns about the non-indexation of the FBT exemption/rebate cap, such an approach could significantly decrease the value of FBT concessions to the sector. This would ultimately impact on the sector's ability to attract and retain workers.

2. **NDS's least preferred option for changing the treatment of FBT exempt items is to increase the grossed-up FBT exemption/rebate cap to a value less than provided under point 2**

3. **NDS does not support removing the FBT exemptions for meals and the hire of entertainment facilities without raising the FBT exemption/rebate cap**

The discussion paper points to concerns some hold about employees benefitting from multiple caps. NDS does not believe this practice is widespread in the disability sector (where it may be possible—generally among the disability support workers who receive relatively low wages—it would not be an attractive option). NDS is concerned that any restriction on limiting these workers to one cap could drive up the cost of service provision. This would be because workers seeking to maximise their benefits would obtain the cap from one NFP disability organisation and seek all additional work through a staffing agency (which generally pay higher wages). A greater use of agency staff would drive up the cost of service provision (and is likely to drive down its quality).

4. **NDS does not support options to limit low-paid employees from benefiting from multiple caps**

As this consultation process seeks to simplify tax concessions for the not-for-profit sector, it should consider changing the FBT liability for occasional car use.

Restricted commuter use cars are those generally stored on the premises of the employer and used during the day extensively for work related purposes by a variety of employees. Occasionally these cars are ‘taken home’ by an employee. This, however, is not generally a benefit to the employee but is because:

i. it is a more efficient use of time. For example because that person’s first appointment is out or near their home and it is a more efficient use of time to take the car home;
ii. it is cost effective. For example the first appointment is closer to the employee’s home than work.

To employees, the occasional use of one of the pool cars is not generally seen as a remuneration item. To employers, the calculation of this ‘benefit’ is administratively costly.

5. **To relieve the excessive administrative costs associated with administering the FBT liability resulting from the restricted commuter use of a car, an exemption of $2,000 in taxable value per annum should be applied**

When considering FBT concessions, NDS urges the Australian Government to retain the current method of calculating entitlement for Family Assistance benefits.

A budget measure announced in 2008 proposed changes to the approach used to calculate entitlement to Family Assistance benefits. The impact of the proposal—to move to using the gross value of reportable fringe benefits rather than the net value—would have had serious impact on the family assistance payments available to many employees of not-for-profit community service organisations.

As a result of reasoned arguments, legislation was passed which prevented the introduction of this measure, which would have adversely affected the income of lower-wage employees and ultimately the capacity of disability service providers to recruit and retain staff.

NDS would like reassurance that the calculation of entitlement for Family Assistance payments—using the net value of reportable fringe benefit—will be retained for organisations that are FBT exempt. This is critically important for the low-wage workers in the disability sector.

The current method of calculation of entitlement for Family Assistance payments and other Government benefits—based on the inclusion of the net value of reportable Fringe Benefit Tax—should be retained

NDS would be concerned by any proposals to replace tax concessions with direct funding. The current funding arrangements for the provision of disability support services—sometimes through different levels of government and numerous departments—are complex. Calculating the direct funding that was appropriate and fair may be impractical, if not impossible.

The complexity of this task would be compounded by the range and take-up of salary packaging arrangements within disability organisations and across the sector. Concern exists that direct funding calculations may overstate the prevalence of salary packaging and therefore result in lower funding being provided. This funding arrangement could ultimately put downward pressure on wages—in an already low paid sector—or even put service provision at risk.

Recruiting and retaining staff would become more difficult.

NDS would also be concerned that the introduction of direct funding to replace tax concessions could undermine the stability and sustainability of the sector—direct funding decisions may be applied at an administrative level and could be subject to budgetary decisions. Current arrangements (for tax concessions) are legislated, thus provide greater certainty for the sector.

6. **Substituting direct funding for existing tax concessions is not considered a practical or sustainable option to replace the range of tax concessions provided for NFP organisations, charities and Deductible Gift Recipients**

Another proposed alternative to FBT concessions is the use of refundable tax offsets payable to eligible entities. The discussion paper notes that this approach would allow the entity to allocate the funding to where it would do the most good. NDS does not support this approach. In reality, these funds would essentially be coming directly from the remuneration of the employees of the organisation; consequently the choices available to the organisation about use of the funds are largely limited to compensating the employee for the loss of income. The impact of this would flow on to other employees, including those not currently salary packaging; it would not be a budget neutral option.

The DSNSW does not support replacing FBT concessions with refundable tax offsets

NDS also rejects the direct tax offset proposal. In addition to increased complexity for the individual (such complexities that would arise through employment with more than one type of organisation or through multiple eligible employers), it would be complex for organisations to administer. Once again, it would have flow on effects to other (currently non-salary-packaging employees).

NDS has long held concerns about the erosion of the value of FBT concessions. Any new arrangements for FBT concessions should be accompanied by a commitment to the application of an indexation method to regularly adjust FBT caps.

7. **FBT caps should regularly adjusted by the application of an appropriate indexation rate**

Goods and Services Tax Concessions

The Deaf Society of NSW believes that the current structure of Goods and Services Tax (GST) concessions for NFP organisations, charities and Deductible Gift Recipients is appropriate, and assists the sector in its charitable purpose—to provide support to disadvantaged Australians.

8. **Existing GST concessions for NFP organisations, charities and Deductible Gift Recipients should be retained**

Amendments to the imputation, or franking credit, system enables charities and DGR to claim a refund on imputation credits from dividends. The Deaf Society believes that this treatment prevents the inadvertent taxation on charities and DGRs. Income on investment provides 17% of the operating revenue of the Deaf Society of NSW and any change to current arrangements could substaintally alter the investment decision resulting in a reduction is fair and prevents the inadvertent taxations on chariti

Imputation Franking Credit Refunds

Investment income funds the work of many charities, to varying degrees. Imputation or franking credits were introduced to avoid the double taxation of company profits. Later amendments improved the system by allowing charities and Deductible Gift Recipients to claim a refund of imputation credits associated with dividends. The result is a treatment of imputation credits for charities that is fair and prevents the inadvertent taxation of charities and Deductible Gift Recipients through the investments that they may hold.

It should be noted that any changes to current arrangements could substantially alter the investment decisions of charities and Deductible Gift Recipients and prevent a proper consideration of diversified investment.

Deductible Gift Recipients

The Deaf Society of NSW supports the continuance of tax deductibility for donations to disability service organisations with Deductible Gift Recipient status. This tax provision encourages public donations to support the work of the sector. We do not support the proposal to raise the threshold for deductible gifts from $2.00 to $25.00.

Receipt of tax concessions enable disability service organisations to maximise their charitable purpose, which include maximising the opportunities for people with disabilities to enjoy a decent life. Achieving this requires the benefits of current taxation arrangements to be reaffirmed

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