

12 March 2013

The Officer-in-Charge,  
NFP Sector Tax Concession Working Group Secretariat  
The Treasury  
Langton Crescent  
Parkes ACT 2600

### **Submission re the NFP Sector Tax Concession Working Group**

On behalf of the member schools of the Australian Association of Christian Schools, thank you for the opportunity to make a submission in response to this Discussion Paper of the NFP Sector Tax Concession Working Group of the Commonwealth Treasury.

AACS appreciates and honours the stated principles of the Discussion Paper to *'ensure that the (tax) concessions are used in a way that provides the maximum social benefit by enabling the NFP sector to achieve their community and altruistic purposes.'* We also warmly embrace the principles of:

- The benefits of 'giving'
- Fairness and equitable treatment
- Simplicity and transparency in the administration of tax concessions in the NFP sector
- Efficiency and low-cost administration of tax concessions in the NFP sector

AACS acknowledges the fact that, over time, legislation and regulation have created certain complexities and inequities that are not, on the face of things, in support of the common good. To this extent, we are supportive of the goals of the review expressed under 'Scope' on p4 of the Discussion Paper.

Finally, AACS appreciates the fact that the Australian Government is *'considering ways to effectively direct .....support for the sector'* p8 and looks forward to this constructive partnership continuing into the future.

#### **About AACS Schools**

The Australian Association of Christian Schools represents approximately 120 schools, over 50,000 students and around 95 parent Associations/Organizations across Australia whose stated objects involve the establishment and maintenance of a school or schools. We have schools located in every state and territory and they range in size from very small (< 20 students) primary schools in remote areas to very large (>1700 students) combined primary-secondary schools in larger urban centres.

Most of our schools are owned and governed by parent/church associations, though a small number are governed as 'ministries' of particular church congregations. In all cases, our schools are incorporated under either State or Federal company law. All schools are eligible to receive government funding and are therefore either 'registered' or 'exempt from registration' (though compliant under their particular State's regulations). [The registration provisions and requirements vary a little from State to State.]

Each school association is governed under its own constitution which generally identifies in its statements of purpose and/or objects that it exists to educate the enrolled children within a context of Christian beliefs, a Christian worldview and/or Christian values as identified in the Christian scriptures, the Bible. In most, if not all cases, the schools will have incorporated into their constitutions a Statement of Faith or a Creed that specifies their communities' particular beliefs or simply references their beliefs to the Bible.

### **This Submission**

This submission will not address all questions raised in the Discussion Paper. Instead, we will provide:

1. Some general introductory statements
2. A rationale for our position
3. Comments in response to specific questions

#### **1. General Introductory Statements**

- a. AACCS schools are, by their nature, involved in *providing a service to the community*. As such, they contribute to the common good by educating children, teens and young adults to the point that they begin to contribute to the nation's economic, social and moral capital. We are very proud of the contribution our graduates are making to their individual communities and to the nation as a whole.
- b. As with all schools, the education provided in AACCS schools is directed by a particular vision of life and learning that we label *a worldview*. A strong commitment to this worldview gives the education we provide a cohesive purpose that is focused on core beliefs, attitudes of life and values for living that we believe will equip students to be good, contributing and law-abiding citizens.
- c. In taking on these social responsibilities, AACCS schools exercise a commitment to offer parents a choice as to the context and the content of the influences and learning to which their children will be exposed. This right expressed in the International Covenant on Civil and Political Rights which Australia has signed and ratified is fundamental to the existence of our AACCS schools.
- d. For every child enrolled in a AACCS school, there is an estimated saving to governments, in average recurrent costs alone, of something in the order of \$5,000 per student. When adding to that the fact that AACCS schools save governments something like 80% of capital costs in acquiring and maintaining facilities, there is a serious economic benefit to the society as a whole that is borne by the fee paying parents of our schools.
- e. Governments contribute significantly to the cost of operating AACCS schools by needs-based funding. AACCS believes that these grants are an equity measure that are part of the governments' recognition of the real savings to the community.

- f. There are other forms of government assistance available for schools. These include tax concessions addressed in this Discussion Paper. As registered charities and registered deductible gift recipients (DGRs), AACCS schools have access to various concessions in the taxation environment that make these schools affordable and accessible for families across a wide range of income brackets.
- g. AACCS are, on the whole, low fee schools. While a small percentage would charge mid- range fees, none would have large reserves with which to initiate high cost options. Most would operate at a minimal surplus; some would run the occasional deficit budget; none would be in a position to set high surplus budgets. I can confidently say that the overwhelming majority of our schools would provide access to low income families by means of significant concessional fee arrangements.

**In Summary:**

AACCS schools need continuing access to various forms of concession in the tax environment in order to serve the wide range of families who seek access to our schools.

**2. A rationale for our position**

AACCS would argue that the overall support ‘settings’ for non-government schools from the governments are approximately in the right place and in the right mix provided that indexation rates applied continue to keep pace with the actual cost increases experienced in the education sector. To change or lower those settings would, in our assessment, seriously limit our capacity to serve low-income families and maintain the broad range of services expected of any modern school (irrespective of sector). Our level of activity would certainly become ‘*sub-optimal*’ p9 if concessions were reduced or removed.

AACCS acknowledges the so-called ‘*fiscal rationale for tax concessions*’ and believes that to be a responsible and justifiable rationale when considering the very broad-based public benefits that flow from a quality education model to the society as a whole, fiscal measures must be part of the mix. To use the terminology of the Discussion Paper, we believe that, for schools in particular, the ‘spill-over effects’ of fiscal measures in the taxation system are particularly broad and deep and impact a very high proportion of the society at some level or another. It is for this reason that AACCS would reject the argument that ‘*charities and NFPs should not be within the income tax regime*’ because ‘*they are not formed for the private benefit of individuals*’ as distinct from ‘*public benefit*’.

p9

The argument about tax concessions for one group putting ‘*a greater tax burden on others*’ p10 needs to be balanced with the argument that the tax payer is already saved \$169m per year from AACCS schools alone.

The argument about tax concessions affecting ‘*competitive neutrality*’ p10 by creating an uneven playing field rarely, if ever, could be seen to apply to the schooling sector. There are almost no competitors in the schools business sector who would not be eligible for FBT concessions.

As for the argument that questions the ‘*nature and scope of the public benefit*’ p10 provided by schools simply do not understand the long-term role of **all** schools in delivering a benefit to society.

AACS therefore believes that there are good grounds for treating schools in the non-government sector as a special case when it comes to looking at concessions in the taxation environment.

### **3. Comments in response to specific questions**

- Q1. AACS believes that the following criteria should be considered when determining whether an entity is entitled to an income tax exemption:
- a. Whether there are for-profit competitors operating in the same sector.
  - b. Whether there is a palpable public benefit being provided by the entity (both short-term and long-term)
  - c. Whether there are taxes that would otherwise apply and give government schools an unfair advantage.
  - d. Whether the taxes that would otherwise apply might impose a significantly higher cost burden on parent fee-payers over and above the taxes that they contribute.
  - e. Whether there are appropriate provisions governing the registration of the entity and its registration for tax exemptions that ensure that it meets declared standards that are within reason and that protect the common interest.
  - f. Whether the entity's accountability for the expenditure of public financial benefits is sufficiently transparent and accessible to public scrutiny.
- Q2. AACS believes that all current exemptions applicable to registered not-for-profit schools are appropriate and should be retained unchanged.
- Q10. AACS believes that all non-government not-for-profit schools should be dealt with as a special case and exempt from all forms of tax in order to maintain a level of fairness in comparison with schools in the government sector.
- Q11. AACS believes that there is a strong argument to support the exclusion of charitable entities from all forms of tax. We would certainly suggest that registered non-government primary and secondary not-for-profit schools should be one exempted category of charity.
- Q12. AACS would argue that 'religious services' p25 is a very broad category and should certainly not be an impediment to the way that 'religious' entities use DGR funds when those entities are schools. 'Religious formation' is an integral part of education irrespective of which type of school a child attends (assuming one takes a broad definition of 'religious formation'). As children form their beliefs about the nature of the world and life, they are forming a view about religion or beliefs that stand in the place of religion. Accordingly, it is imperative that the legislators do not discriminate against those who educate in a specifically 'religious' framework.
- Q13. AACS is nervous about the implications of this question. There may indeed be unintended consequences (see response to Q12.)
- Q23. This should certainly be considered as it does limit the expansion of giving from the corporate sector to schools.
- Q24. Our schools have certainly welcomed the promised simplification of reporting requirements through the ACNC and hopes that they will significantly improve on the requirements imposed by the ATO.
- Q25. As yet, this is an unknown environment.
- Q26. AACS believes that a lower threshold for deductible gifts is defensible in the schools environment as some low income families make regular small donations rather than single larger donations.

Q28. AACS acknowledges the need for simplicity, fairness and consistency of access in the FBT environment and can see the need for greater simplification of current practices and exempt benefits. On the other hand, we would point out that schools (again a special case) do often use the facility of FBT access to attract potential staff to apply for employment, notably in high cost suburbs or regional and remote locations. Until recently, one of the main elements of exempt benefits that could be packaged was school fees. However, the government has just moved to discontinue this benefit (as an in-house item). The Working Group should take note that this is a severe disincentive for many schools as potential employees often have a need to enrol their children in the school to which they are applying for employment. This is often a new or additional cost to the family budget. The inclusion of school fees as an eligible in-house exempt benefit can often become the difference between an applicant accepting or declining an offer of employment. AACS believes that, once again, non-government schools should be treated as a special case and be immune from the general exclusion of this exempt benefit.

The eligibility criteria for entities to provide exempt benefits should therefore include:

- a. Whether there are for-profit competitors operating in the same sector.
  - b. Whether there is a palpable public benefit being provided by the entity in the location in which the entity is operating
  - c. Whether the absence of the exempt benefit would give government schools an unfair advantage.
  - d. Whether the exempt benefit is open to manipulation or abuse
  - e. Whether the entity's accountability for the application of exempt benefits is sufficiently transparent and accessible to public scrutiny.
  - f. Whether the exempt benefit is accessible to all employees on an equitable basis.
- Q29. AACS does not believe that an entity's eligibility to provide rebateable benefits to employees should be restricted to charities. Rather, it should be more broadly available as a form of tax relief to NFPs irrespective of their status as Charities or DGRs or neither.
- Q30. AACS would favour a more open approach to eligibility for NFPs.
- Q31. Unless there are ways of preventing rorts in this area, AACS would accept that they should be excluded from existing caps.
- Q34. Yes. Possibly. A pro-forma from the ATO completed by the employee that is similar in style to the Tax File Number Declaration Form Nat 3092. Employees deciding to take advantage of salary packaging from more than one employer would therefore need to declare each year what benefits and what value of each benefit they planned to access in their packaging arrangements.
- Q36. AACS can see the simplification argument in removing the 'minor benefits exemption'.
- Q38. No. Though we can see that a simplified tax arrangement could be designed to replace this benefit.
- Q39. AACS can see that a simplified tax arrangement could be designed to replace these concessions.
- Q40. AACS can see that a simplified tax arrangement could be designed to give both employer and employee appropriate compensating benefits in return for the removal of the current tax concessions.
- Q41. No

Q42. All NFPs

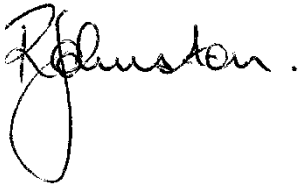
Q44. Yes

Q45. Yes, but for non-government schools in particular, definitely.

Q46. No

We would be quite prepared to make further comments on the above submission should that be required.

Yours faithfully

A handwritten signature in black ink that reads "Robert Johnston." The signature is written in a cursive style with a large, looped initial "R".

Robert Johnston  
Executive Officer