

**SUBMISSION – NOT-FOR-PROFIT SECTOR TAX CONCESSION WORKING GROUP
PORTS AUSTRALIA**

Ports Australia welcomes the opportunity to comment on the Discussion Paper of November 2012 which addresses issues associated with the tax treatment of the Not-For-Profit Sector.

We do not wish to comment on the paper issue by issue, preferring to focus at this stage on general key matters that we believe are central to the successful ongoing operations of Ports Australia and probably those industry peak bodies that can effectively demonstrate their bona fides and importantly, that they generate substantial net industry and community benefit.

Ports Australia – Representation

Ports Australia is the peak industry body encapsulating all port authorities and corporations, both publicly and privately owned, at the national level. Ports Australia is a constituted company limited by guarantee with a Board of Directors, comprising the CEOs of eleven member ports. Our website is at www.portsaustralia.com.au

Ports Australia is accordingly subject to the disciplines required by Corporations Law and as a matter of company policy it has developed and adheres to high standards of governance and financial transparency.

We recognize that the discussion paper addresses a wide range of organisations operating within the generically described Not-For-Profit (NFP) sector and that some particular issues raised are, by way of example, more pertinent to charities than say industry peak bodies.

Some key Issues

1. Rationale for Providing Tax Concessions

We do not speak for other industry bodies and indeed recognize that there are many of them that vary in their effectiveness and capacity to extend their reach to the full extent of their potential constituencies. Accordingly this suggests a wide variation in the net community benefit that individual peak bodies actually generate or have the ability to generate. In this respect we would support a position that there is merit in organisations having to establish their respective bona fides in providing net community benefit that outweighs the concessions that may be made available to them. We add however that we also support the principle of simplicity and ease of compliance and would further note that it appears to us that some of the measures flagged within the paper are at odds with this principle.

For example we note the suggestion on page 64 that *“..FBT concessions be replaced with direct government funding, to be administered by relevant government portfolio agencies or the charities commission. All NFP organisations eligible for tax concessions should be able to apply to the relevant body for funding for specific projects or for assistance with the costs of recruiting specialist staff”*.

In our view this is an untenable approach if simplicity and cost minimization are genuinely key objectives of the process. Applying to government agencies for funding is invariably an arduous and expensive process and a resource intensive activity for small organisations such as Ports Australia and implies an endeavor to secure a budget outcome rather than pursue other goals, as indeed does other commentary in the paper.

A more effective and certainly simpler process would be for the ACNC or some other body to place the onus on NFP organisations say every 3 years, to demonstrate that they are providing the benefit that they assert that they are providing. Generally speaking however there appears to be an emerging disposition to over regulate our sector when we are already subject to the Corporation's law and the requirements of the ATO. These process and requirements are well defined and clear and for organisations with good governance and systems, and who can point to a very useful purpose by virtue of their existence and activities, compliance is straight forward and uncomplicated. Ports Australia is one such organization. While, at this point at least, we would not be able to provide a precise empirical measure of the community benefit that we generate we are confident that it is present and that it is substantial.

2. Supporting the Case for Tax Concessions

Firstly Ports Australia represents all port authorities and corporations so we can claim that our activities span the Australian port community rather than part of it.

Australia's economic well-being is highly exposed to trade with nearly \$400 billion worth of trade passing through member ports each year. Australia's standard of living, access to consumer choice and the effective delivery of inputs to our mining and farm sectors is all highly dependent on the performance and competitiveness of our seaports.

Core business for Ports Australia includes intensive engagement with the Federal Government and its agencies on the implementation of the National Ports Strategy which was developed as a collaborative endeavour between this organisation and the Government, to secure better policy and regulatory settings for ports, to ensure that they operate as efficiently as possible and importantly, to enable them to develop their capacity in a timely and sustainable way to meet the very robust increase in trade that is currently predicted.

No less importantly Ports Australia effectively facilitates the exchange and dissemination of information and best practice over the entire ports community including in the following areas:

- The safe navigation and operation of our ports, harbours and waterways;
- Safe practices within all aspects of port business;
- Project management including environmental protection and safeguarding of the marine environment;
- Efficient port operations including the management of land side road and rail access corridors; and
- The prevention of land use conflicts around ports and their freight precincts.

With assistance of key people within our constituency Ports Australia carries out these functions on a budget of less than \$1 million per annum. Our assertion is that our activities generate a very

substantial community benefit and very small cost to the taxpayer by virtue of our tax free status and limited utilization of concessional FBT arrangements.

The message that we would wish to convey is that the taxation regimes under which we operate are sufficiently predictable and simple to enable us to carry out core business functions without the distraction of complex procedures which we foresee, given the thrust of the discussion paper, as a possible outcome of the Committee's deliberations.

We support the goal of rigorous review of taxation concessions for bodies who categorize themselves as NFP where there is no real public interest case to provide them and where very real and demonstrable distortions are evident. However we do not support their removal in the cases such as Ports Australia where very substantial benefit is provided at small costs even if this means added or more rigorous requirements on organisations such as ours to substantiate the case that such benefits are real.

Finally we believe that the points listed on p 10 for limiting tax concessions in the particular case of Ports Australia are weak. These points are:

- That such tax concessions create a burden elsewhere;
- They may affect competitive neutrality; and
- That the scope of the public benefit may be limited.

We believe that we have established our case in relation to the latter point but have indicated that we would be happy to articulate this case with more rigour if that was viewed as essential to the reform of taxation arrangements for this sector.

Secondly the costs to the public purse is minimal particularly when compared to the potential costs to the tax payer in the absence of the benefits that our activities provide which, for example, are in part directed to disseminating best environmental practice . Thirdly the question of competitive neutrality is moot – some would argue that they were established in the first place to provide competitive neutrality with high paying corporations.

We would be happy to elaborate on the points made in this brief submission.

Ports Australia
December 2012