Institute of Chartered Accountants Australia

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Dear Darren

**Not-for-Profit Sector Tax Concessions Working Group Discussion Paper November 2012**

The Institute of Chartered Accountants Australia (the **Institute**) welcomes the opportunity to comment on the abovementioned Discussion Paper on the Working Group's review into fairer, simpler and more effective tax concessions for the not-for-profit (**NFP**) sector.

The Institute is the professional body for Chartered Accountants in Australia and members operating throughout the world. Representing more than 70,000 current and future professionals and business leaders, the Institute has a pivotal role in upholding financial integrity in society. Members strive to uphold the profession's commitment to ethics and quality in everything they do, alongside an unwavering dedication to act in the public interest.

While the guiding principles of the review are supported, the Institute's comments on the Discussion Paper are severely restricted for several reasons. The most important of these is the terms of reference for the Working Group which require any recommendations to be overall revenue neutral. These terms are, in the Institute's view, unduly restrictive and are likely to have hindered consultation.

Also the timing of the review is unfortunate from the Institute's perspective as it coincides with a time when:

- the NFP sector is facing a reform agenda that is still underway;
- a number of other important tax consultations are also taking place; and
- accountants in public practice are typically very busy in the run-up to the Christmas/New Year break.

This factor has likely constrained the Institute's, and indeed others', ability to comment on the Discussion Paper.

The Institute's comments, necessarily limited at this stage, and are set out below.

## 1. Scope of review

The Discussion Paper contains the Working Group's terms of reference for the review. They *inter alia* require the Working Group to "identify offsetting budget savings from within the NFP sector for any proposals that have a budget cost". In other words, overall any changes should be "revenue neutral".

The Institute is of the view that the terms of reference are, in the above respect, unduly restrictive. Further, the likely effect of that constrained scope will have been to hinder the extent and quality of the consultation process as well as the level of participation from external stakeholders.

Indeed this was the experience of the Business Tax Working Group (**BTWG**) when it was tasked with identifying potential ways to fund a reduction in the corporate tax rate. In its report of 2 November 2012, the BTWG made a number of findings but was unable to recommend a revenue neutral package to lower the company tax rate. Put simply, there was no consensus within business.

We believe that there are important comparisons to be made here.

Firstly, the cost of any reform measures to fund changes elsewhere in the NFP sector will not be experienced evenly but will vary from sector to sector. The likely asymmetric outcomes between "who bears the cost" and "who benefits" was apparent to many at the outset of the consultation process, drawing immediate comparisons with the BTWG's recent experience.

As a result, the Institute expects that many stakeholders who might have otherwise contributed to the consultation will have not participated, or alternatively done so in muted terms. Alternatively, others may have largely founded their submissions on sectoral interests leading to narrowly focused submissions. In either case, the consultation process is likely *not* to have been as fulsome or as constructive as would have occurred if the terms of reference had not been constrained by the revenue neutrality requirement. The Institute is of the view that the Working Group should bear this consideration in mind when preparing its recommendations to the government.

Another concern that we have is that the review is very broad covering all (federal) government tax concessions for the NFP sector. As noted in the Discussion Paper, the aspects raised during the October 2011 Tax Forum only focused on FBT concessions for restaurant meals and the hire of entertainment facilities for private purposes. This then led to the announcement by the Treasurer of an extremely wide review with a very optimistic timetable.[1]

The review is on top of an existing NFP reform agenda that is still underway. Most recently the Australian Charities and NFPs Commission (ACNC) was launched. Other changes are still in the pipeline such as the reforms to better target the NFP tax concessions (in terms of unrelated commercial activities). In light of this, the review might arguably have come at the less hectic time, be less broad and/or have a more realistic time frame to allow for a thorough and robust review

[1] Completion of the Working Group's report has already been extended to March 2013 (originally due this month).

When looking the combined factors above coupled with the sheer diversity of the NFP sector, the Institute has concerns that, through no fault of its own, the Working Group might not be in a position to recommend any meaningful reforms to the NFP sector.

**2. Mutuality**

The Institute is a not for profit members organisation. The Institute prepares its own income tax returns by reference to the application of the principle of mutuality to its revenue and expenses. We are of the view that the common law principle of mutuality should not be disturbed and see no compelling need for this principle to be legislated.

**3. Compliance costs**

To the extent that the Working Group makes any recommendations to change existing provisions or introduce new law to implement a new policy outcome, it is submitted that careful consideration should be given to costs associated with the implementation, compliance and ongoing administration of any change.

**4. Transitional issues**

Although mindful of concerns with complexity, the Institute also recognises the importance of having appropriate transitional provisions.

The timing of commencement of reforms and the nature of transitional arrangements are important considerations and are significant factors in determining the viability of proceeding with any reforms.

The Institute submits that the following key transitional issues should be addressed by the Working Group in its recommendations to government:

1. Sufficient implementation time
2. Prospective changes only, and
3. Transitional arrangements including, where appropriate, grandfathering of existing provisions.

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If you would like to discuss any aspect of our comments, please contact me on 02 9290 5609.

Yours sincerely

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**Institute of Chartered Accountants Australia**