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Dear Working Group

Thank you for the opportunity to provide a submission on the topic of tax concessions for not-for-profit (NFP) organisations. As you are aware, this is a complex and important policy area. It is one in which unions have an interest both as NFP organisations themselves and as representatives of workers employed by NFPs. This brief letter addresses two of the areas discussed in your recent discussion paper: the exemption from income tax for trade unions; and fringe benefit tax concessions for employees of certain NFP organisations.

The exemption from income tax for trade unions

The Working Group's discussion paper notes that trade unions have been exempted from federal income tax since the passage of the *Income Tax Assessment Act 1915.* This exemption remains entirely appropriate given the nature and purpose of trade unions.

Trade unions are not entities with the aim of generating or distributing profits to members. They are democratic associations of workers formed with the purpose of representing and defending their members' interests.

Trade unions have been recognised and regulated as unique entities under federal industrial relations law since the passage of the *Conciliation and Arbitration Act* in 1904.[1] Their uniqueness comes from their representative status and the centrally important role they play in the operation of Australia's industrial relations system.

Today, the registration, structure and internal administration of registered organisations (employer and employee organisations) are regulated by the *Fair Work (Registered Organisations) Act 2009* (the FW (RO) Act) and the accompanying *Fair Work (Registered Organisations) Regulations 2009.*

The purposes for which trade unions in Australia are registered and recognised under federal law are articulated in the objects clause of the FW (RO) Act.[2] The intention of

[1] The validity of the provisions in this Act permitting the registration and incorporation of trade unions were upheld in *Jumbanna Coal Mine, No Liability v Victorian Coal Miners Association* (1908) 6 CLR 309.

[2] FW (RO) Act 2009, s.5. An association can only be registered under the Act where FWA is satisfied that it would further Parliament's intention in enacting the Act, as articulated in s.5, and the objects of the *Fair Work Act 2009:* s.19(1)(i).

Parliament in providing for the registration of unions (and employer associations) and according rights and privileges to them once registered is 'to assist employers and employees to promote and protect their economic and social interests through the formation of employer and employee organisations.'[3] The Act also seeks 'to enhance relations within workplaces between federal system employers and federal system employees and to reduce the adverse effects of industrial disputation, through requiring associations of employers and employees to meet the standards set out in this Act ....'.[4] Finally, the Act 'recognises and respects the role of employer and employee organisations in facilitating the operation of the workplace relations system.'[5]

In order to be registered and/or recognised under the FW (RO) Act, a trade union must satisfy a number of criteria, including that it is a 'genuine' association 'for furthering or protecting the interests of its members'.[6] It must also be representative of, and accountable to, its members and operate under democratic control.[7] A union must have rules that meet a number of criteria, including that they clearly specify the purpose for which the organisation is formed.[8] Finally, the FW (RO) Act imposes ongoing statutory obligations on trade unions in relation to their operation, conduct and disclosure.[9]
The current exemption from income tax for trade unions is warranted and appropriate. It should remain in place.

Fringe Benefits Tax concessions

The eligibility criteria for various Fringe Benefits Tax concessions are complex. The value of the concessions is estimated at around $2.5 billion in the Working Group's paper. Not all income tax exempt entities are entitled to concessions, so employees performing similar duties in organisations that have different primary purposes may face different levels of eligibility for FBT concessions. For these reasons, there may be a case for re-evaluating aspects of the FBT concession arrangements.

However, the ACTU submits that any reform to this area must be cautious and must fully involve workers' representatives. Many employees of NFP organisations are low-paid workers; their eligibility for FBT concessions can comprise a significant component of their net income. In the recent Equal Remuneration Case, Fair Work Australia awarded large increases to the minimum rates payable in the social and community services (SACS) sector on the basis that employees in that sector had been underpaid for reasons related to gender. The Commonwealth Government and some state governments have supported the case, including through committing to increased funding of the SACS sector. It would be perverse and unjust if the increase in gross earnings awarded by FWA to remedy gender-based undervaluation were to be offset by a reduction in take-home pay stemming from reform to FBT concessions.

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[3] Section 5(4).
[4] Subsections 5(1 and (2).
[5] Section 5(4). This final purpose was recently inserted through the *Fair Work (Registered Organisations) Amendment Act 2012* to, in the words of the Minister for Workplace Relations, '...recognise the fundamental importance of free and independent unions and employer associations as economic and democratic institutions in our society.' The Hon Bill Shorten MP, Minster for Workplace Relations, *Fair Work (Registered Organisations) Amendment Bill 2012 - Second Reading,* House of Representatives, 31 May 2012.
[6] FW (RO) Act 2009, s.19(1)(a). In addition, each union is required to specify in its rules must the purposes for which the organisation is formed: s. 141(1).
[7] See further FW (RO) Act, Chapter 7.
[8] FW (RO) Act, Chapter 5, and s.141(1)(a).
[9] See further FW (RO Act), Chapters 6-9.

Many employees employed by organisations eligible for FBT concessions are covered by collective bargaining agreements. The remuneration and employment conditions in these agreements have been negotiated in good faith, taking into account the availability of FBT concessions. If these were to be reduced in some way, some low-paid workers would potentially suffer a large cut in their take-home pay. This would be unacceptable. Over the longer term, workers would seek to ensure, through the collective bargaining process, that their gross earnings increased sufficiently to offset the loss of FBT concessions. Given that many eligible NFP organisations are government-funded or government owned, as in the case of public hospitals, the net fiscal gain over the medium term may be smaller than is anticipated; whatever gain there is to federal revenue would come at least partly at the expense of low paid workers.

Australian unions call on the working group to properly acknowledge the complexity and sensitivity of FBT concessions. Any reform proposals should be subject to extensive consultation and collaboration with NFP workers and their representatives. We are concerned that there has not been sufficient opportunity to fully engage with all stakeholders since the release of the discussion paper in November 2012.

Yours sincerely

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