

Not-for-Profit Sector Tax Concession Working Group

Australian Red Cross Society -- Responses to Consultation Questions in the Discussion Paper

Introduction

As summarised in the recent publication, "**A Year in Review: 2011/2012**" ("the Review"), the Australian Red Cross Society is a part of the world's largest humanitarian organisation, through its membership of the International Red Cross and Red Crescent Movement, (including National Red Cross and Red Crescent Societies, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies).

In accordance with its Fundamental Principles, Australian Red Cross is independent of government and has no political, religious or cultural affiliation. Its vision is to improve the lives of vulnerable people in Australia and internationally by mobilizing the power of humanity. Its mission is to be a leading humanitarian organisation in Australia, improving the lives of vulnerable people through programs delivered and promotion of humanitarian laws and values.

The Australian Red Cross Society operates primarily in Australia, with some activities undertaken overseas in conjunction with other National Societies in the Federation, with the Federation itself or in other ways, such as through personnel on secondment to the International Committee of the Red Cross.

Although its activities are across a broad spectrum, the seven priority areas are:

- Overcoming social exclusion by providing bridges back into the community
- Addressing the impact of migration
- Tackling entrenched locational disadvantage
- Increasing international aid and development
- Strengthening disaster and emergency services
- Working with Aboriginal and Torres Strait Islander peoples
- Championing international humanitarian law.

In addition, the Australian Red Cross Blood Service (as an operational division of Australian Red Cross) plays a central role in the health system of Australia, funded entirely by the governments of Australia.

The work of Red Cross in all of these areas is summarised in the Review, a copy of which is Annexure 1.

Given the complexity, size and diversity of operations of Red Cross, the Discussion Paper and the Consultation Questions raise matters of great significance to Red Cross and to the achievement of its vision and mission.

Red Cross welcomes the opportunity to provide submissions to the Working Group and to participating in the continuing analysis and discussion of the future shape of support from Government for the activities of the not-for-profit sector.

Chapter 1 – Income tax exemption and refundable franking credits

The Discussion Paper notes that tax exemptions for charities have had a long history and identifies a number of rationales for providing those tax concessions, including income tax exemptions. It also notes that other possible reforms in relation to income tax concessions are being reviewed in other ways (including the definition of charity) and are not within the scope of the Working Group's consideration¹.

In this context, the Australian Red Cross Society ("Red Cross") does not seek to make extensive submissions in relation to those rationales, the variety of perspectives which may be provided in relation to them and other possible approaches, including a general consideration of criteria which may be used to determine whether an entity is entitled to an income tax exemption.

Certainly one compelling consideration – noted amongst the rationales referred to in the Discussion Paper - is that Red Cross does not carry on its activities for the private benefit of the individuals who are its members; rather its activities are directed to achieving its objects as set out in its governing constitutional documents, as has been the case since its initial establishment in 1914. The objects of Red Cross are now set out in its Royal Charter and in its Rules (see Annexure A) and are charitable.

Moreover, the extensive activities of Red Cross (as outlined for example in the attached "Year in Review 2011/2012", set out in Annexure 2) demonstrate that those activities are directed towards achievement of its objects and are well within the traditional rationales and, consequently, are of a kind which in its submission warrant the continuation of the existing income tax concessions

¹ See the Discussion Paper, page 9.

Chapter 2 – Deductible gift recipients

In its discussion of the history of tax concessions for tax deductible gifts, the Discussion Paper refers to the genesis of the availability of deductions as including the incentive to donate being related to a reduction in tax payable by the taxpayer. So there appears to be an underlying assumption in the Paper and the consultation questions in this section that tax deductibility is a core reason or motivating factor which underpins charitable giving.

Experience of Red Cross suggests that while income tax deductibility is undoubtedly an essential contributor to decision-making processes of donors, experience also suggests that there are many other and varied reasons for donor behaviour, such as altruism, some form of personal connection to or experience with the particular charitable activity, and so on. Nonetheless, as the data referred to in the working paper in relation to claims for tax deductions suggests², these other motivations are likely at the very least to be reinforced by the tax deductibility of donations, particularly for higher-income earners; every day experience suggests that tax deductibility strongly influences the amount of a donation, as the amount is influenced by the 'after-tax' cost to the taxpayer.

From the information available to Red Cross in relation to its donors and prospective donors, it is not possible for Red Cross to make any further observations based on evidence as to this aspect of the Discussion Paper, especially in relation to how donors manage their taxation affairs relative to their donation behaviour. However, the experience of Red Cross is that over 20% of donations by value are received just before the end of the taxation year.

Red Cross submits, consistent with the guiding principles referred to by the Working Group – including maximizing the social good and recognising giving - that the taxation system should support and encourage giving by mechanisms which are themselves efficient, fair, simple and effective.

15. Would a fixed tax offset deliver fairer outcomes? Would a fixed tax offset be more complex than the current system? Would a fixed tax offset be as effective as the current system in terms of recognising giving?

16. Would having a two-tiered tax offset encourage giving by higher income earners?

In the Discussion Paper, the Working Group identified several factors as guiding principles for the review,³ which in this context relevantly include:

² See the Discussion Paper, paras. 86 and 87

³ See Discussion Paper, pages 6-7

- understanding the current position
- maximizing the social good
- recognise giving in Australia
- fairness
- simplicity
- effectiveness
- structural coherence
- efficiency
- transparency.

Some detail about the intended content of these principles is set out in the Discussion Paper.

Red Cross submits that any change from tax deductibility of donations to any form of tax offset is appropriately assessed by reference to those principles. Specifically, any change to a tax offset system should be considered from the perspective of the guiding principles including, in particular:

- recognising giving and its effect on donations to DGRs;
- fairness (e.g. equity for the donor);
- efficiency; and
- simplicity.

Red Cross does not have any research data on which to base an informed view that provision of a fixed tax offset, or a two-tiered tax offset, to donors would be as effective as the current system or would encourage giving by higher income earners. Red Cross cannot therefore make any suggestions based on research as to any changes in donor behavior which might be encouraged by either of these changes.

However, from the perspective of the efficiency of raising donated funds, there would appear to be few if any gains to a DGR from the change, unless there were in fact positive changes in overall donor behavior leading to a higher level of donations than otherwise would have been the case, based on any change from tax deductibility to tax offsets.

On the basis of the particular thresholds used in the Treasury modeling referred to in paragraph 91, the estimated impact of a change to a two-level tax offset structure is a decline in donations to DGRs. In this situation it seems that total donations by low-income earners would increase and those by higher income earners would decline. A similar prediction from

the Productivity Commission is noted in paragraph 92, although a single fixed tax offset rate of 38% is thought to be revenue neutral to the Government.

However, the fairness of any change is contingent on the donor's circumstance and the way in which a donor organizes their tax affairs and on value judgments. Provision of a single rate tax offset may be seen as a more equitable recognition of donor support than the current arrangements for deductibility. The guidelines of fairness and simplicity may be able to accommodate a two-level tax offset structure along Canadian lines (provided the differences between the levels are not too large), if DGRs can be assured that any change would improve fairness and maintain a sufficient degree of simplicity without adversely affecting overall levels of donated support. But at present Red Cross does not have any research data as to whether this outcome can be assured.

Red Cross submits that, as the objective of the review is to consider whether there are better ways to deliver the current envelope of support, no change from deductibility to either a single-level or two-level tax offset structure should be considered further until more definitive research has been undertaken and is available which demonstrates that the equity gains of a tax offset regime are not likely to result in diminished level of donations to DGRs overall.

17. What other strategies would encourage giving to DGRs, especially by high income earners?

Under the provisions for tax deductibility of donations to DGRs, high income earners currently derive the maximum tax benefit.

As a general proposition, in the experience of Red Cross in the context of the current tax deductibility regime, the level of giving is largely influenced by a range of factors such as the variety of donor characteristics or demographics, the real and perceived financial needs of Red Cross to deliver a service or to support service offerings in particular areas with which a donor may have some affinity, and other matters.

Consequently, given a particular tax regime, and assuming that it applies in the same way to all DGRs (so that there is a level playing field amongst DGRs), then levels of giving will come down to a broad range of factors such as the prevailing financial climate, how particular needs are perceived at various times and how effectively each DGR promotes support for the charitable purposes it is serving.

Red Cross supports general and active encouragement of a climate supportive of philanthropic activity particularly amongst higher income earners (whilst not diminishing the responsibilities of government to support vulnerable persons in a variety of ways; private activity should add to the means of supporting the most vulnerable).

18. Should testamentary giving be encouraged through tax concessions and what mechanisms could be considered to address simplicity, integrity and effectiveness issues?

The proposal outlined in the Mitchell Review (referred to in paragraph 99) is to enable testamentary gifts to DGR arts organisations and receive an immediate tax deduction equal to the value of the gift.

Red Cross does not make any comment upon or submission as to the specific recommendation made in the Mitchell Review itself⁴.

However, in the broader context of DGRs generally, Red Cross is concerned that adoption of a proposal of this kind would lead to increased complexity in connection with gifts made as testamentary bequests, with the possibility of discernable increase in giving from high-wealth or high-income individuals.

For example, the provision of the tax benefit at the time of providing for the gift in the will broadly may assume that a will remains static (that is, will not be changed by the testator) and will not be contested after the testator's death. For this and other reasons, such as entitlements of dependent persons and others to contest the terms of wills in some cases, ensuring the receipt of the gift under the will may require provision for charitable remainder trusts or other mechanisms to secure the future benefit of the gift under the will to the charity⁵.

Despite these concerns, Red Cross considers that the potential for enhancing charitable bequests through this mechanism warrants further detailed analysis and consideration, bearing in mind critical factors such as equity considerations and the need to avoid and prevent abuses.

19. Would a clearing house linked to the ACN Register be beneficial for the sector and public?

As a matter of principle, Red Cross supports reforms which are intended to and do achieve increased and practical transparency of the broad charities and NFP sector.

In this context, the ACNC Register is and will be a very useful repository of searchable information in relation to all registered charities.

⁴ See the Mitchell Review --

http://arts.gov.au/sites/default/files/pdfs/Report_of_the_Review_of_Private_Sector_Support_for_the_Arts.pdf -- "**Recommendation 2:** The Australian Government introduce the capacity for private donors to provide a cash gift through their will to an arts organisation, and to receive an immediate taxation benefit to the present value of the gift."

⁵ See section 2.2.1 of the Mitchell Review, which outlines the approaches adopted in other jurisdictions such as the United Kingdom, Canada and the United States of America.

However, Red Cross submits that establishment of a 'clearing house' website of this kind, attached to the ACNC Register, is not likely to be particularly beneficial to the sector as a whole and to the public generally.

In respect of the potential impact on Red Cross as a substantial organisation in the charitable sector, a clearing house function linked to the ACNC Register could have a severe and adverse effect upon one of the most important aspects of relationship building between the donor and Red Cross – it may have the effect of 'commoditising' the donation rather than reinforcing the connection between the donor and the DGR and it could also reduce the degree of engagement between the donor and the DGR.

For example, some direct engagement benefits for both donor and the DGR could be lost or diminished through this process, as it may diminish opportunities to offer a meaningful donation 'product' for the donor, or to provide straightforward ways to increase the extent of support provided by the donor – such as may be sought in support of specific current needs (such as a disaster relief fund).

Moreover, there would likely be administrative overhead in data transfer and potential inconsistencies in demographic detail which might be available to the DGR through the data from site.

Given the very large number of registered charities and DGRs, it is perhaps unrealistic to consider that there is potential for significantly increased room for informed choices to donors through the clearing house mechanism.

Red Cross suggests that, in any case, if a simple 'clearing house' function were to be established, it would be essential that it be a supplement to and not a replacement of existing mechanisms for giving.

20. Are there any barriers which could prohibit the wider adoption of workplace giving programs in Australia? Is there anything the Working Group could recommend to help increase workplace giving in Australia?

Red Cross agrees that workplace giving programs are an underutilized avenue for making donations in Australia.

Red Cross suggests that the main barriers to achieving a higher workplace giving participation rate, which is more widely available amongst a broader section of employers, are that :

- employers who participate act as a type of third-party intermediary;
- employers have little if any incentive to support the process; and
- the lack of direct communication and engagement between the donor and the DGR (as the employer or an alternative third party is often the intermediary between the two) often results in:
 - less involvement of the donor in the work of the DGR.;
 - less understanding of the benefits being delivered as a result of the donation; and
 - ultimately, the decline of the relationship between the DGR and the actual donor.

Any workplace giving program requires establishing a relationship between a DGR (or more than one DGR) and that employer, as well as the DGR and the donor, although it is the DGR (or DGRs) and the donor who benefit from the arrangement - through a tax deduction for the donor and a donation for the DGR. In that situation, establishing the relationship between the DGR and the employer is not simple to achieve, especially when there is little incentive for the employer to promote or administer the activity and in practice that employer support is likely to be more difficult to arrange with medium and smaller employers.

Improving the extent of workplace giving participation requires many more individual employers to have a workplace giving program and capability and for them to be in a position to actively promote it. Incentives for participating organisations, especially to match employee donations, would potentially work to increase participation rates. Consideration also should be given to appropriate mechanisms to help employers overcome lack of awareness of workplace giving possibilities and the cost barriers which they may incur, so as to assist achieving improved participation (particularly amongst enterprises of medium or smaller size).

26. Should the threshold for deductible gifts be increased from \$2 to \$25 (or to some other amount)?

Red Cross considers that changing the threshold for deductible gifts will not significantly change giving patterns of donors to Red Cross. A high proportion of individual donations made to Red Cross are for more than \$25. At present:

- more than 80% of individual donations responding to disaster appeals made by Red Cross are more than \$25;
- more than 60% of individual donations to Red Cross for everyday work are more than \$25

although this data does not include individual gifts received through some indirect means – such as third-party fundraising. Overall, Red Cross estimates that these proportions of donations to it which are more than \$25 would be lower if those other sources of donations are included.

As noted earlier in this submission, the availability of a tax deduction for a donation is not the only motivator for giving, and under the current procedures for claiming deductibility the onus of making a claim for the deduction is on the donor to demonstrate their eligibility to claim the deduction.

A change to the level of the minimum required donation to attract the tax deduction is unlikely to reduce the compliance burden for the recipient DGR, as the systems and processes for receipt generation would still need to be in place. Subject to any need for a receipt to be issued irrespective of the deductibility of the donation, the only change in practice would be that the business rules for actioning the creation and issuing of a receipt would change to reflect the new minimum donation rule.

For Red Cross, a significant proportion of each regular giving donation (including workplace giving donations) is less than \$25 (usually regular giving occurs monthly). The proportion that is less than \$25 per month is usually in the range of 40% to 50%. If a minimum donation of \$25 is required and that rule is applied to workplace or other regular giving deductions (i.e. per monthly or other periodic donation), then there would be a disincentive to increasing and indeed current actual participation rates for regular giving, particularly for workplace giving. This outcome would clearly be undesirable and should be avoided.

In the submission of Red Cross, there is no necessity for the threshold for deductible gifts to change and consequently there should be no change to that threshold.

However, if the Working Group were to consider that a recommendation for a change in the threshold is warranted then, as the Discussion Paper notes,⁶ an exception could be created for workplace giving (and, presumably, other regular giving). Red Cross suggests that the recognised need for an exception in that case supports the contention that no change to the threshold amount should be made.

⁶ Para. 124

Chapter 3 – Fringe Benefits Tax concessions

The context

The Discussion Paper suggests as follows:

"128. The FBT exemption provides significant benefits to employees of eligible entities (and to the entities themselves), with the ability to engage in salary packaging worth up to around \$4,300 per annum to an employee with a taxable income of \$45,000 and up to around \$6,100 per annum to an employee with a taxable income of \$100,000. Anecdotal evidence suggests that salary sacrificing is utilised by eligible employers as a method of attracting employees by offering packages that compete with those offered by the commercial sector. Meal entertainment and entertainment facility leasing benefits can be provided with no limit."

The Discussion Paper also suggests that:

"...anecdotally, the take up rate is often not commensurate with the effort exerted in offering salary packaging arrangements. Take-up rates tend to be higher for more highly paid employees than for lower paid employees, apparently due to the higher tax savings."⁷

In the context of these observations in the Discussion Paper, before making some comments on the specific consultation questions which have been asked, Red Cross wishes to put forward some data and submissions in relation to its use of salary packaging for staff and the associated utilisation of the FBT concessions.

Generally, these submissions relate to the non-blood humanitarian operations of Red Cross; however, in terms of overall utilisation of salary packaging, the data provided includes data for the Australian Red Cross Blood Service (as an operational division of the Australian Red Cross Society). Aside from that data, the submission specifically relates to the non-blood humanitarian services part of Red Cross.

Salary packaging available at Red Cross

The Discussion Paper notes anecdotal material concerning the range of fringe benefits provided under the capped FBT exemptions⁸.

Currently, under its salary packaging policy and the taxation law, Red Cross⁹ provides a range of salary packaging choices for staff. A \$30,000 limit applies to the grossed up taxable value of fringe benefits which can be salary packaged without FBT applying. Benefits salary packaged above that limit attract the full rate of FBT, if the payments are subject to FBT. Up

⁷ Para. 141; a similar comment, in respect of utilisation by employees on higher disposable incomes, is made in para. 142.

⁸ Para. 135

⁹ This section summarises the salary packaging options provided for staff employed in the 'non-blood' humanitarian operations of Red Cross.

to \$16,049 of GST-free payments can be salary packaged (that is, \$30,000 of grossed up value per annum) on this benefit type before FBT is incurred. When salary packaging benefits are subject to GST, the actual amount which can be spent is less than \$16,049.

The available benefits include:

- child care expenses
- health insurance premiums
- Higher Education Loan Program (HELP) (previously HECS)
- investment plans
- personal loan repayments
- private domestic travel
- private home mortgage repayments
- private home rental payments
- private overseas travel
- public transport costs
- Salary Packaging Payment Card
- school fees.

Concessionally taxed benefit items are also available under the Red Cross salary packaging policy and the taxation law:

- additional superannuation contributions
- remote area allowances
- FBT-free benefits
- meal entertainment
- entertainment facility leasing expenses (or "venue hire")

The current Red Cross rate of take up of salary packaging

Since early 2009, participation in salary packaging by Red Cross employees in respect of its 'non-blood' humanitarian operations has grown - for salary packaging as a whole by 33% and for meal and entertainment benefits also by 33%.

As at September 2012, there were:

- 67% of staff (1,975 staff members) participating in salary packaging
- 40% of staff (1,341 staff members) participating in meal entertainment benefits
- 11% of staff (317 staff members) participating in entertainment facility leasing benefit (commonly known as "venue hire") noting that the availability of this benefit to staff of Red Cross is relatively recent

- 73 staff participating in novated leasing.

At the conclusion of the 2011/12 financial year, 60% of eligible paid staff were participating in the salary packaging program and 3.5% were participating in the novated leasing options.

In respect of staff employed in a number of States and Territories (including Queensland), the salary packaging participation rates in each locale is well above 67%. This is an important benefit – for example Red Cross often finds it relatively harder to attract staff in Queensland, due to highly competitive labour markets in the relevant work areas in that State.

Moreover, in addition to the number of Red Cross employees engaged in the 'non-blood' humanitarian operations of Red Cross who access salary packaging, Red Cross employees engaged in the Australian Red Cross Blood Service are eligible to salary package.

From a total headcount of 3,775 staff employed in the Blood Service, there are 2,895 staff who salary package, which is a participation rate of 76.7%.

Availability of meal entertainment and entertainment facility leasing benefits

Until 2010, Red Cross capped the meal entertainment at \$5,200 per year. However, it recognised that many other NFPs and other employers (such as some in the public health sector) did not cap this benefit. Red Cross decided to remove its own 'policy cap', so that Red Cross could give its staff the same access to the benefits of salary packaging that already applied in many other organisations.

The potential impact of removal of current FBT concessions

The context for consideration of short-term and long-term reform options

Red Cross appreciates that the Discussion Paper is raising questions about the suitability of the current FBT concessions and in that context is raising both short-term and long-term reform options.

However, it is important for the significance of the current arrangements to be understood, in the light of the operational circumstances in which Red Cross is placed.

Under the terms of the Royal Charter by which it is established, Red Cross has the unique status of being an auxiliary to the public authorities in the humanitarian field¹⁰. In addition to its operation of the Australian Red Cross Blood Service, Red Cross provides a wide range of

¹⁰ Royal Charter, cl 2

services and programs to vulnerable people and communities throughout Australia and internationally (through the 'non-blood' humanitarian operations of Red Cross)¹¹.

In respect of the 'non-blood' humanitarian operations of Red Cross, in the 2011/12 financial year, funding provided under contractual arrangements with Federal, State and Territory governments accounted for 62% of the total operating budget of \$376 million. While Red Cross is keen, and working hard, to diversify its revenue base through areas such as marketing, fundraising and communications programs, and commercial operations, it remains heavily dependent on government funding.

Staffing challenges

It is very challenging for Red Cross to attract and retain staff in relation to offering competitive salaries and benefits. In a tight labour market, as might be expected, Red Cross competes for suitably qualified staff with other NFPs in the sector (who broadly speaking have similar award-based terms and conditions of employment for most operational areas). However, Red Cross also competes for suitably qualified staff - and significantly - with the corporate and public sectors (at all levels). In the experience of Red Cross it is particularly difficult, for example, to compete against public sector terms and conditions in respect of community services roles in regional, rural and remote Australia (where Red Cross employs significant numbers of staff in connection with services working with vulnerable people and communities). Red Cross is very concerned that removal of the current FBT concessions would make that competitive position even more difficult.

Many challenges also face Red Cross in attracting and retaining staff in essential business support functions such as information services ("IT"), Finance, and Human Resources ("HR"). While many staff are attracted to work with Red Cross because of its mission, vision, values and Fundamental Principles, Red Cross also recognises that support function staff can easily transfer employment to other sectors and industries.

Characteristics of the remuneration in the NFP community services sector

The 2012 decision of Fair Work Australia ("FWA") on the Equal Remuneration Order provided recognition based on a range of objective data on the relative disadvantage in remuneration for employees in the NFP community services sector. FWA determined that a key cause of this disadvantage was gender based, as the sector has a predominantly female workforce.

Recognising the challenge of the sector to financially sustain significant increases in remuneration, FWA decided that the award rate pay increases should be phased in over 8 years. This decision highlights the significant disadvantage staff in this sector already face.

¹¹ These have been outlined in the Introduction and are also set out in some detail in Annexure 1

Any reduction in FBT benefits, without significant effective compensatory changes, would severely exacerbate this disadvantage, and tend to neutralise the improvements in compensation for staff through the FWA decision.

This could severely impact the attraction and retention of people to the whole sector, thereby potentially further compromising the capacity of bodies like Red Cross to deliver services to communities. The community need is actually increasing, not diminishing. Removing FBT benefits would create a disconnect with the increasing external demand for our services and our capacity to pay..

Implications of any changes in FBT concessions

In this funding and labour market environment, if:

- the FBT concessions were to be removed and
- all other relevant factors were to remain unchanged,

Red Cross considers it would be likely to be unable to retain the staff levels required to maintain its current services and programs and, as a result, would need to cut back on its services and programs.

Red Cross expects that, in this scenario, it would also find it significantly more difficult to attract staff in the appropriate areas for services; it would not be competing for staff only with other employers who would be similarly affected by the removal of the FBT concessions.

Moreover, unless Red Cross were to be willing to reduce its operational activities and support areas (thereby affecting the availability of services for working with vulnerable people), it would not have the financial flexibility to increase salaries to compensate for the removal of the FBT benefit.

The practical consequence of these circumstances is that, to maintain its current level of services for vulnerable people Red Cross would need a concomitant increase in Federal, State and Territory funding to enable it to increase salaries to compensate for the removal of the FBT benefits.

This would be so, unless other benefits could be substituted which would be regarded as equally attractive by employees and which would not significantly add to administrative costs incurred by the employer. Even if this increase in government funding occurred for all roles in government funded programs, we could not afford a similar increase in positions funded through revenue independently generated by Red Cross.

Summary - the approach of Red Cross to the utilisation of salary packaging arrangements

Based on the information set out above, in summary:

- Red Cross provides a broad range of salary packaging opportunities for all staff.
- The salary packaging arrangements are offered as a means of enabling Red Cross to compete in its employment arrangements, competing both with other employers in the sector but also with corporate sector employers and some public sector employers.
- There has been an increasing rate of take up of salary packaging across the 'non-blood' humanitarian operations of the Red Cross as well as in the Australian Red Cross Blood Service.
- The take up rate is now very substantial (over two-thirds of staff) and is regarded by Red Cross as being not only well worth the effort of offering those arrangements but also as an essential component of its remuneration offering to staff.

Hence, under current funding, tax and industry employment arrangements, any adverse change in the availability of the current FBT concessions would have significant risks for employers in the charitable sector (including Red Cross) who are able to offer salary packaging arrangements based on the current FBT concessions.

Consequently, Red Cross considers that the current FBT arrangements should continue, but it makes no submission as to whether their scope should be extended to other entities.

Red Cross also considers that there would be substantial risks attached to removing the current arrangements and substituting other measures designed to provide similar support to employment in the NFP and charitable sector, *unless* these alternative approaches could be designed with great care to permit similar benefits and if required appropriate 'grandfathering' and other transitional arrangements were provided.

Red Cross now turns to consider some aspects of the short-term and long-term reform options referred to in the Discussion Paper.

Section 3.4 – Reform Options

In Section 3.4.3 Part A of this chapter, the Discussion Paper raises a number of questions in connection with the operation of the FBT concessions, and also flags in Section 3.4.4 Part B some issues for longer term reform options.

In the following sections, Red Cross provides some comments in relation to the Consultation Questions and also provides some further information concerning its circumstances and approach.

29. Also assuming that the current two-tiered concessions structure remains (see Part B), what criteria should determine an entity's eligibility to provide rebateable benefits to its employees? Should this be restricted to charities? Should it be extended to all NFP entities? Are there any entities currently entitled to the concessions that should not be eligible?

Whilst Red Cross does not wish to make a detailed comment in relation to this matter, it suggests that there should be robust criteria for eligibility if the benefit were to be expanded to other organisations outside the current scope. Otherwise, there would be significant risk that the integrity of the FBT concessions for genuine charity organisations would be compromised.

Section 3.4.3 Part A – Short-term reform options

31. Should salary sacrificed meal entertainment and entertainment facility leasing benefits be brought within the existing caps on FBT concessions?

No. This would decrease the benefit available to our staff and would make it more difficult to attract, reward and retain our paid workforce.

The meal entertainment and venue hire benefits are promoted during our recruitment process and form part of the employee value proposition considered by job applicants when deciding whether to accept our offer of employment. This is especially significant if they are also considering job opportunities in other sectors and industries that can afford higher remuneration. This in turn impacts our ability to deliver effective services in communities.

In respect of the short-term reform options, the recommendation of Red Cross in this submission is not to cap this benefit. However, if the Working Group were to decide to recommend a cap on the availability of meal entertainment, then Red Cross would recommend that it be at least \$5,200, and be automatically indexed annually.

Similarly, the entertainment facility leasing benefit (commonly known as "venue hire") should not have a cap, but if the Working Group were to decide to recommend a cap on the availability, then Red Cross would recommend that it be at least \$5,200, and be automatically indexed annually.

32. Should the caps for FBT concessions be increased if meal entertainment and entertainment facility leasing benefits are brought within the caps? Should there be a separate cap for meal entertainment and entertainment facility leasing benefits? If so, what would be an appropriate amount for such a cap?

First, Red Cross does not support the removal of the meal entertainment and "venue hire" benefits.

However, as question 32 is based on the premise that meal entertainment and entertainment facility leasing benefits are brought within the caps, then Red Cross strongly suggests that a relative compensation would need to be provided by increasing the level of the cap should the meal entertainment and venue hire be brought within the caps.

As explained in question 31, Red Cross does not support a cap for meal entertainment or venue hire as it would reduce its ability to attract and retain staff as part of the overall remuneration offering.

33. Are there any types of meal entertainment or entertainment facility leasing benefits that should remain exempt/rebateable if these items are otherwise subject to the relevant caps?

As stated in response to Question 32, Red Cross would like to see meal entertainment and venue hire remain outside the cap. However, if the Working Group considered that some change is required in this area in the interests of a more equitable approach, Red Cross suggests that meal entertainment and entertainment facility leasing benefits could be restricted to expenditure incurred within Australia

34. Should there be a requirement on eligible employers to deny FBT concessions to employees that have claimed a concession from another employer? Would this impose an unacceptable compliance burden on those employers? Are there other ways of restricting access to multiple caps?

Red Cross agrees that it is not appropriate that an employee can be in a position to benefit from relevant concessional caps in respect of employment by a number of employers, as this provides an unreasonable balance between the benefits available to a part-time employee who works with a number of employers (who are able to provide the benefit) compared to the full-time employee of a single employer (who can provide the benefit).

However, Red Cross considers that matters relevant to a potential tax liability should be primarily between the individual and the Australian Taxation Office, rather than the employer and the ATO.

Therefore, Red Cross suggests that resolving this potential inequity could be managed in a manner similar to the tax free threshold which an employee can elect to have accessed through one employer per financial year, based on the signed declaration that the employee provides to the employer. The employer should then be entitled to rely on the signed declaration.

Section 3.4.4 Part B – Long-term reform options

The cost impact were the current FBT concessions to be removed

Red Cross reiterates that it understands that the Discussion Paper raises, but only in the long-term reform context, the possibility of phasing out FBT concessions, and provides a number of alternative mechanisms for provision of support arrangements for the sector.

In order to provide some specific context for the longer term reform discussion, Red Cross has not only provided the information set out earlier about its current arrangements but it also has considered the general impact of a change. This provides some indication of a specific example of how an organisation would be affected by change and therefore the significance of considering how alternative mechanisms of support could be provided without adversely affecting the capacity of Red Cross to engage staff in the work of providing services of working with vulnerable people.

Red Cross has considered the example of the benefit to an organisation provided in the example in paragraph 136 of the discussion paper. The review demonstrates that this example aligns closely with the actual data for Red Cross.

Assuming an average annualised base salary of \$61,000, a staff member who salary packages has a market equivalent total remuneration package (TRP) inclusive of superannuation of \$73,876. The applicable cash benefit and tax benefit of that base salary amounts to approximately \$7,386. That is, an employer which did not have eligibility for salary packaging and wanted to achieve the same total remuneration package inclusive of superannuation would need to pay an additional \$7,386 on top of the \$61,000 to achieve the TRP of \$73,876. Consequently, if the FBT concessions were to be removed, Red Cross would need to 'top up' the remuneration of each employee and, for an employee in receipt of a salary level of \$61,000; this would mean an increase of \$7,386.

If this benefit were to be removed for the 1,975 Red Cross staff members who currently utilise salary packaging, it would equate to a notional cost of approximately \$14.5 million (not all staff are full time – this figure is based on annualised salaries).

If all Red Cross staff engaged in 'non-blood humanitarian operations utilised the salary packaging benefit, the cost of replacing it amounts to about \$22.5 million per annum. This would represent, approximately, a 10% increase in overall salaries and wages costs.

Approximate example of the impact of removing the FBT concession and salary packaging, for an average base salary of \$61,000¹².

	With salary sacrificing	Without salary sacrificing
Base salary (A1)	\$61,000	\$61,000
Taxable Income (A)	\$44,750	\$61,000
Salary sacrificed benefits (B)	\$16,050	-
Tax on taxable income (including Medicare levy) (2012/13 rates) (C)	\$7,212	\$12,287
Net income after tax (A+B-C)	\$53,587	\$48,713
Superannuation 9% (D)	\$5,490	\$5,490
Cost to PBI (A+B+D)	\$66,290	\$66,490
Total remuneration package	\$73,876	\$66,490

\$61,000	\$7,386	\$73,876	\$14.5M

37. Is the provision of FBT concessions to current eligible entities appropriate? Should the concessions be available to more NFP entities?

As stated in the Red Cross response to question 29, the general comment and principle is that there should be robust criteria for eligibility if the benefit were to be expanded to other

¹² By way of comparison, as at May 2012, for Australia the average weekly ordinary time earnings for fulltime adults were \$1,351-20 per week (or approximately \$70,262 per annum). See Australian Bureau of Statistics, *Average Weekly Earnings, Australia, May 2012* (Ref 6302.0).

organisations outside the current scope. Otherwise Red Cross considers that the integrity of the FBT concessions for genuine charity and NFP organisations would be compromised.

A way of approaching this issue of robust criteria for eligibility is to utilise the historical rationales for tax concessions which have been identified and which are conveniently summarised in the Discussion Paper in the Introduction¹³.

For example, while Red Cross considers it is reasonable for genuine charities to have access to these benefits (as they satisfy one or more of the stated rationales), there does not seem to be a case for a professional sporting association to be eligible, even if the association is classed as a NFP, because it would be hard to identify any of the rationales for this form of government assistance as applying to such a body.

38. Should FBT concessions (that is, the exemption and rebate) be phased out?

No. For the reasons set out in more detail above, phasing out of FBT concessions would significantly impact the ability of Red Cross to conduct the work it does with vulnerable people and communities.

Red Cross would find it very difficult to attract and retain quality staff, particularly in challenging economic climates, especially since we are competing against not only other NFPs but also against the corporate sector. It would compromise the work we do and the benefits for numerous communities we work with across Australia.

Organisationally, we receive funding from three primary sources:

- Federal, State and Territory Governments
- Fundraising / donations
- Red Cross social enterprises and commercial operations (where the profit is re-directed back into the provision of 'non-blood' humanitarian services and programs).

If Red Cross had to make up any shortfall if the FBT benefits were removed, it would need to consider these three areas of revenue. Yet our fundraising initiatives and commercial enterprises are already challenged, especially given the current economic climate. Red Cross already faces a tough budgetary situation, and is exploring a range of measures to reduce costs, while ensuring Red Cross can maintain the provision of community services to those in need.

¹³ Page 9

39. Should FBT concessions be replaced with direct support for entities that benefit from the application of these concessions?

If the FBT concessions were to be removed, then the government should fund the shortfall in full. This is a complex matter however, as suitable compensatory mechanisms would need to apply across the whole staff workforce, not just staff in roles which are currently supported by contracts for government funding from all levels of government.

40. Should FBT concessions be replaced with tax based support for entities that are eligible for example, by refundable tax offsets to employers; a direct tax offset to the employees or a tax free allowance for employees?

There would need to be a 'clear line of sight' between the removal of the FBT concessions and the alternative compensation, and the alternative arrangements would need to be 'guaranteed' on an ongoing basis. In other words, any removal of FBT concessions (on a phased in or other basis) needs to be directly linked to and conditional upon the provision of satisfactory alternative support.

These principles are likely to be difficult to achieve.

The alternative models referred to in the Discussion Paper (Options 3.6, 3.7 and 3.8) clearly have substantial limitations.

For example, Red Cross is concerned that provision of direct government support (as suggested in Option 3.6) in connection with funding contracts for particular specific projects or to recruit specialist staff (as contrasted to funding contracts for provision of services) would be likely to have the significant risks referred to in para. 161 of the Discussion Paper.

Alternative tax-based support mechanisms (as referred to in Option 3.7):

- could be more effective than the present FBT concessions (which are not necessarily taken up by all staff);
- could be more equitable than the present FBT concessions (which are not necessarily taken up by all staff);
- do not suffer from the identified concerns with Option 3.6 and are highly preferable to it.

Whilst a payment per employee, or direct tax offsets (as noted in Option 3.7), could have attractions, either of these approaches would have uncertain, and perhaps unpredictable and differential, impacts upon employment terms and conditions compared to the current environment. In addition, their impact on the capacity of employers in the sector

to remain competitive in the relevant labour markets under any longer-term changes in arrangements would also need thorough analysis.

Until far more work has been done on alternative models and those models can be demonstrated to not only satisfy the guiding principles identified by the Working Group, but also to clearly provide the requisite support to employers in the sector such as Red Cross (so that Red Cross could at the least maintain its current levels of work with vulnerable people and communities), then Red Cross would prefer that the current concessions continue.

Chapter 4 – Goods and services tax concessions

Red Cross wishes to make limited comments only in relation to this Chapter.

44. Would a principles-based definition of the types of fundraising activities that are input-taxed reduce the compliance burden for entities that engage in fundraising?

The suggestion in the Discussion Paper is that the rules governing fundraising events could be amended to adopt a principles-based test under which NFP entities self-assess whether an event satisfies the requirements¹⁴. Although currently fundraising events are not a major component of Red Cross fundraising activities overall (although some individually significant events are organised), Red Cross supports this suggestion and considers that it has the potential to reduce the compliance burden.

46. Are there any other issues or concerns with the operation of the GST concessions in their current form?

The Discussion Paper's observations in relation to GST are directed to fundraising activities events and non-commercial supplies.

However, a general concern which Red Cross wishes to raise is the degree of uncertainty which can arise with funders, as to when GST is required to be applied to the monies provided under a grant to Red Cross as a DGR.

There may be significant concerns raised by potential funders concerning when GST is deemed to apply. In these cases, the possible obligations in respect of GST may act as a disincentive to the making of the grant or may diminish its value to Red Cross.

For example, there can be doubt as to the application of GST when a foundation is funding a program that provides no actual benefit to that foundation but may be seen as doing so for tax purposes.

The **Goods and Services Tax Ruling** GSTR 2012/2 (issued by the Australian Tax Office on 30 May 2012) provides some helpful guidance as to the application of GST to gifts to a NFP body. However, it does not readily resolve all the relevant issues.

The issues which can arise here relate to certain grants made by philanthropic trusts and in particular include whether:

- the transfer (from the grantor to the grantee) arises by way of 'benefaction'; and

¹⁴ Para. 194

- whether the grantor receives a material benefit from the grantee – the charitable body to which the monies are granted.

The issue of benefaction may arise where the grantor requires the grant to be used for a particular purpose – e.g. to support a particular programme providing for working with vulnerable people. This may also give rise to concerns as to whether the grantor is receiving a material benefit so that there is a 'supply'.

Other concerns may arise in relation to any provision in the terms of the grant for repayment to the grantor, where the granted monies may not fully expended for the stated purpose (which may happen on occasion, for a variety of bona fide reasons).

Red Cross suggests that this aspect of the operation of the GST law and ruling calls for closer consideration.

The current law and ruling is to create a degree of uncertainty in specific cases and therefore may result in an approach by both grantors and recipients which provides for a charge of GST being made in order to ensure compliance. Overall, this compliance approach may not affect the grantor (if it is in a position to claim back the GST) or the recipient charitable organisation (since the payment from the grantor covers the GST payable). However to the extent that there is uncertainty about the boundaries of charging GST in respect of grants by philanthropic trusts, then resources may be devoted to proper resolution of the tax obligations, which could be dealt with more simply.

In this context, Red Cross suggests that there may be room, for example, for an exemption from GST in respect of a grant (even when the grant is made subject to certain conditions), where the grant is made by a DGR (such as a private ancillary fund) to another DGR.

ANNEXURE 1 – Year in Review 2011-2012

[Attached]

ANNEXURE 2

Extract from the Rules of the Society as approved by the Governor-General, 12 October 2010

2 Objects and purposes of Society

2.1 Objects

The objects of the Society are:

- (a) to act in case of armed conflict, and in peace to be prepared to act in all fields covered by the Geneva Conventions and the Additional Protocols and on behalf of all war victims, both civilian and military;
- (b) to prevent and alleviate human suffering with complete impartiality, making no discrimination as to nationality, race, gender, religious

beliefs, class or political opinions or as to any other ground of discrimination which is irrelevant to the need;

- (c) to provide emergency relief and services in time of disaster or conflict in Australia and internationally for the alleviation of human suffering;
- (d) to contribute to the improvement of health, the prevention of disease and the mitigation of suffering by programmes of training and services for the benefit of the community, adapted to national and local needs and circumstances;
- (e) to provide direct relief of poverty, sickness, suffering, distress, misfortune, disability, destitution or helplessness as arouses compassion in the community;
- (f) to promote the participation of all people in the work of the International Red Cross and Red Crescent Movement;
- (g) to pursue any other objects or activities, including assistance to vulnerable people, as are in keeping with the Fundamental Principles of the International Movement and of International Humanitarian Law; and
- (h) to do all other things as may be incidental or ancillary to the attainment of these objects.

2.2 Charitable purpose

The Society may only pursue charitable purposes, associated with its objects.

2.3 Based in Australia

The Society is established, maintained and operated in Australia. The activities of the Society are to be carried out predominantly in Australia.

2.4 Duties as a component of the International Red Cross and Red Crescent Movement

The Society shall comply with its duties as a component of the International Movement, as a member of the International Federation of Red Cross and Red Crescent Societies and as an auxiliary to the public authorities in the humanitarian field.