

# WACOSS Submission in response to the Tax Concession Working Group – Discussion Paper



**wacoss**

Western Australian  
Council of Social Service Inc

*Ways to make  
a difference*

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## **About WACOSS**

The Western Australian Council of Social Service (WACOSS) is the leading peak organisation for the community services sector, and represents 300 member organisations and individuals and over 800 organisations involved in the provision of services to individuals, families and children in the community.

WACOSS is part of a national network consisting of the State and Territory Councils of Social Service and the Australian Council of Social Service (ACOSS). Our national coverage strengthens our capacity to represent the interests of people in Western Australia across the breadth of state and national agendas.

Each year WACOSS member organisations deliver services to hundreds of thousands of Western Australians. The services we provide include health, community services and development, disability, employment and training, aged and community care, family support, children and youth services, mental health and drug and alcohol treatment, indigenous affairs, support for culturally and linguistically diverse people, victims of violence and abuse, housing and advocacy.

We speak with and for Western Australians who use community services, to bring their voices and interests to the attention of government, decision makers, media and the wider community.

## **DISCUSSION PAPER**

The Tax Concession Working Group (TCWG) has released a discussion paper with a view to progressing reform of the tax concessions available to the not-for-profit sector. The scope of the discussion paper is extensive in its treatment of tax concessions and highly complex in the detail it provides.

The Western Australian Council of Social Service (WACOSS) supports the recommendations made in the ACOSS submission and provides these additional comments, based on the outcomes of our consultations with our members on the discussion paper. The Council supports the need to review NFP tax concessions to create a transparent, fairer and simpler system and eradicate anomalies and distortions in existing tax concessions. We welcome this opportunity to respond to the discussion paper.

## **SUBMISSION**

WACOSS has consulted with a cross-section of its membership to obtain a community perspective on the various points raised in the discussion paper. WACOSS's members, and the wider not-for-profit sector, hold a diversity of views concerning tax concessions and it is not practical for us to conflate the breadth and depth of different perspectives into a single submission during the relatively brief consultation period. This submission therefore focuses on the broader principles of the discussion paper and not the particulars, except where identifiable misconceptions, anomalies and distortions led to significant comment and concern.

The strong consensus of our members was that the basis for any consideration of tax concession reform should be recognition of charitable and not-for-profit community service organisations as mission-driven organisations seeking to produce public good outcomes and to deliver services and support to disadvantaged and vulnerable citizens and the wider community. On this basis the principle role of NFP tax concessions is recognised as supporting and enhancing the delivery of public good outcomes, that taxes are not levied on what are non-commercial public good activities, and that tax concessions are a means of improving the impact and effectiveness of public donations, voluntary contributions, corporate and private philanthropy and other charitable activities, as well as the delivery of public services funded by federal, state and local governments.

This is an important point, because any consideration of NFP tax concessions that focuses purely on those concessions as ‘foregone tax revenue’ without taking into consideration the amount of community benefit delivered, the outcomes secured for the disadvantaged or vulnerable, or the significantly higher cost to governments were they to seek to deliver the same services through the public service is simply not considering the full picture. On this basis, the focus of any consideration of NFP tax concessions reform should be on the issues of its efficiency and effectiveness, the simplicity and equity of access to concessions and associated reporting, and on how to maximise community outcomes through improving the bang we get for our bucks.

By seeking to narrow the consideration of reform options to those achievable within the current envelope of cost (rather than value), we are concerned that the terms of reference set for the discussion paper and the working group are unduly limiting the capacity of the inquiry to deliver reforms that would significantly improve community outcomes and/or result in significant reductions in other areas of government expenditure over time. One simple example is the extent to which the reliance on current common law definition of charity (Lord Macnaughten’s four heads of charity) which focuses too narrowly on activities to directly relieve poverty and effectively excludes many other equally worthy activities that seek to prevent disadvantage and improve health, well-being and life outcomes (including the role of systemic advocacy in addressing underlying causes of disadvantage) results in significantly higher costs for secondary and tertiary services at the crisis and chronic end of the service spectrum, results in poorer community outcomes overall ... and an increasing pressure to focus limited government resources more narrowly on the most disadvantaged.

### **Competitive neutrality**

The Council supports the comments of ACOSS on the role of competitive neutrality within the NFP sector and the recommendations, that is, that the concept is only relevant to commercial activities and it is inappropriate to apply the concept of competitive neutrality to activities with a predominantly charitable purpose. Applying the concept of competitive neutrality to charitable purpose challenges the aim of tax concessions of enabling historically underfunded and under-resourced charitable entities to better achieve their core mission of alleviating poverty and disadvantage. Tax concessions help to level the playing field and enable charitable entities to better discharge their mission and purpose.

The competitive advantage raised in the discussion paper that the NFP sector purportedly gains from tax concessions over other sectors, presumably the for-profit sector, sidesteps the reality that the

two sectors generally do not provide equivalent job positions or wages. Nor do these two sectors in any significant way compete with each other for staff or government funding and any suggestion of competitive advantage in this context is misguided and irrelevant.

The only accurate measure for making comparisons about job positions or wages is between the not-for-profit sector and the public sector. These sectors share similar types of job positions and therefore provide the benchmark for determination of inter-sectoral wage parity. The wage disparity between the two sectors currently weighs heavily in favour of the public sector. This assertion is well founded in the recent Fair Work Australia Equal Remuneration Order (ERO) which established that employees in the not-for profit sector were grossly underpaid compared to their public sector counterparts.

*WACOSS does not support the application of competitive neutrality to charitable purposes, nor does it accept the premise that tax concessions give the NFP sector a competitive advantage, due to the reasons outlined above.*

### **Fairness, simplicity and effectiveness**

The current system of determining the PBI or DGR eligibility of not-for profit entities by the ATO is fraught with inconsistencies and delays. Instances of organisations receiving negative ATO eligibility determinations despite having a primary purpose similar to other entities that have obtained PBI or DGR status are not uncommon.

The not-for-profit sector is replete with similar accounts of entities engaged in direct service provision having a similar mission and purpose to other recognised PBI or DGR entities receiving negative determinations. There are no apparent reasons or explanations in the regulatory framework to account for uneven determinations for similar PBI or DGR applications. This conundrum has led to confusion over what regulations exist and how they apply, and the perception that the decision making process is arbitrary and too reliant on the judgements of individual ATO assessors.

Further, there appears to be a backlog of applications within the ATO from entities applying for PBI or DGR status, and long delays in making eligibility determinations. The reasons for these delays are unclear, but regulation of the application process clearly requires streamlining and transparency.

*These issues of inconsistency and delay make apparent the need to achieve fairness, simplicity and effectiveness in regulating and administering tax concessions. In this respect, WACOSS fully endorses the discussion paper's central objective of achieving efficacy and equity within the regulatory framework covering tax concession eligibility, decision making, administration and compliance.*

### **Limiting tax concessions**

The brief in the discussion paper of producing an outcome that delivers savings and limits costs from the reorganisation of tax concessions raises questions about the original intention and purpose of tax concessions. This objective places a cost rather than a social value on charitable work. It fails to appreciate that tax concessions were founded on the fundamental principle that tax concession benefits add social value to charitable work; it is a public form of recognition of charitable entities

and the work they perform for the public good. Framing tax concessions around cost as a budgetary consideration diminishes the value of charitable work and undermines this important principle.

Moreover, treating tax concessions as an item of cost rather than a social value potentially subjects tax concessions to government budgetary constraints and thereby shifts the benefits from charitable entities to government. This approach has the potential to diminish the value of tax concessions for charitable entities and their client populations, and flies in the face of accepted principle that tax concessions should first and foremost benefit charitable purposes.

*WACOSS recommends that that consideration of tax concessions is properly considered in relation to their value for charitable purpose and public benefit and not simply considered as foregone revenue in the absence of any analysis of the opportunity cost were services not provided.*

### **Income tax exemption**

The discussion paper poses the question of “... limiting the categories of exempt entity and thereby tax concessions to provide a net gain in benefits to be distributed elsewhere.” The implication is that limiting concessions would materialise in savings (in the very narrow sense of forgone tax revenue), but it is unclear whether the intention is that these savings would then be dedicated to other charitable purposes – or if the government might then claim these savings as tax revenue. The proposition, and the meaning of “elsewhere” in this context is both unclear and a cause for concern.

As we have detailed above, it is arguable that such ‘savings’ would in fact result in a diminution of service delivery and community benefit whose cost equivalence, were government to seek to provide or replace those services directly, would be far in excess of the amount of tax revenue forgone. Further, if the benefits derived from limiting tax concessions were to be redistributed towards charitable purposes it is unclear what decision-making process would be used to determine the value of these benefits now and into the future. This raises further questions about how the benefit/savings are to be redistributed, to whom, and which government agency will have responsibility for the distribution? It also presents a very real risk that the advance of time would diminish the value of the benefit provided (given the current inadequate approach to indexation), and that the community benefits previously generated from charitable and philanthropic sources would be increasingly dependent on continuity of government funding and less resilient to changes in government policy or reductions in government revenue. The Council considers that the proposition to limit tax concessions in order to generate savings places the emphasis on cost instead of social value and adds further complexity to an area overcrowded with complex regulation.

*WACOSS does not support limiting tax concessions as outlined above and recommends that current income tax exemptions be available to all NFP registered organisations engaged in providing as a primary objective charitable benefit for the public good.*

### **Fringe benefits tax exemption**

The Council supports the concerns raised by ACROSS in their submission in relation to the need to improve the equity and accessibility of FBT exemptions. We believe simplifying and streamlining the system could allow more small community service providers to make better use of FBT, and address

some of the biases within the existing system that can favour those within the sector on higher salaries.

The Council considers the option canvassed within the discussion paper of reconfiguring the FBT concession by replacing it with direct government funding, on the premise that FBT exemption is an indirect form of supplementation that is at times unevenly and unfairly applied, is problematic. This option opens the prospect of replacing the benefits accrued to charitable donations, philanthropy and funding from diverse other sources with a grants-based system that is potentially subjugated by government budgetary concerns and hence has the potential for diminishing the level of funding available to eligible entities. The option also does not guarantee that employers would distribute grant money equitably among their employees, or otherwise be absorbed into operating costs.

Furthermore, a grants based system would exclude those charitable and religious entities that are not and choose not to be government funded as a fundamental principle of preserving their independence. These entities would entirely lose their FBT benefits and be subjected to inequitable treatment from this ill-founded option.

The second proposed option of replacing the FBT concession with tax offsets, if applied directly to employees, would shift the onus of the compliance responsibility from the employer to the employee and consequently reduce the employer's administrative burden. Tax offsets could potentially achieve a more even distribution of benefits among employees, though this is presently uncertain. However, if the tax offsets are rebated directly to the employer, for the employer to distribute the benefit among its staff, then there is no guarantee that the benefits would be evenly distributed or otherwise absorbed into operating costs.

It is well established and supported in the ERO referred to above that PBI entities are heavily reliant on FBT exemptions to achieve wage parity with other sectors (particularly the public sector) and to attract qualified staff that can deliver a high standard of service - wherein lies the value of tax concessions. The full implication of the "grants based" and "tax offset" options would be to erode these benefits and the ability of PBI entities to pay and compete for staff on terms equitable to other sectors. Moreover, the proposed options, in attempting to address issues of equity in the distribution of benefits to employees, would succeed only in creating further and worse inequity.

*WACOSS therefore regards the grants based and tax offset options as inequitable and likely to result in an erosion of the current benefits available to charitable entities and their employees, and therefore supports retention and reform of the current FBT exemption.*

Furthermore, the cap on salary packaging has remained unchanged since first introduced over 10 years ago. The value of the FBT concession has significantly declined and the wage disparity widened. Without the cap being indexed, the value of salary packaging will continue to decline and finally and completely exhaust the value of the benefit. Indexation of the salary packaging cap, possibly using the Consumer Price Index, is clearly needed in order to retain the value of the benefit and not further increase wage disparities.

*WACOSS recommends that annual indexation of the salary packaging cap is introduced as soon as possible in order to safeguard the salary package benefits derived from FBT exemption.*

## **Meals and entertainment allowance**

Recent reports in the media have highlighted cases of abuse of the meals and entertainment allowance within certain sections of the not-for-profit sector. Such abuses of the allowance would be uncommon among community or religious based organisations where use of the allowance tends to be modest, responsible and applied to genuine purposes.

*WACOSS supports initiatives to reform the meals and entertainment allowance and recommends that a reasonable cap be placed on the allowance to reduce the potential of abuse. WACOSS does not recommend that the allowance be brought into the fold of the salary packaging cap because such a move would restrict genuine and responsible work related activity such as entertainment of donors for fund raising purposes.*

## **Deductible gift recipient status**

The option of extending DGR status to a wider spread of NFP organisations engaged in charitable work would provide access to public donations for a greater number of organisations. The proposal may dilute public donations to current DGR entities, but many more deserving entities would benefit from donations, and donors would have a greater choice of charitable causes or activities to donate to.

*WACOSS supports the extension of DGR status to all NFP organisations that are engaged in the primary purpose of charitable work for public benefit.*