16 July 2015

To whom it may concern,

Family Planning NSW welcomes the opportunity to make a submission on the exposure draft of the *Tax and Superannuation Laws Amendment (2015 Measures No. 4) Bill 2015* that seeks to limit fringe benefits tax concessions for the not for profit (NFP) sector.

Family Planning NSW hold serious concerns regarding the negative impact of the proposal on both the not for profit sector and on the marginalised and disadvantage members of the community served by the sector.

Family Planning NSW opposes the proposed legislation and believes that no changes to tax arrangements for the sector be considered until the wider tax review process has been completed.

For further information, please contact Ann-Maree Ashburn, Director Communications Government and Community Affairs, Family Planning NSW at annmareea@fpnsw.org.au or 02 8752 4356.

Yours sincerely,

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Family Planning NSW

Family Planning NSW is the leading provider of reproductive and sexual health services in NSW. We are experts on contraception, pregnancy options, Sexually Transmissible Infections (STIs), sexuality and sexual function, menstruation, menopause, common gynaecological and vaginal problems, cervical screening, breast awareness and men's sexual health.

We have five fixed clinics in NSW (Ashfield, Fairfield, Penrith, Newcastle and Dubbo) and use innovative partnerships to deliver services in other key locations across the state with more than 28,000 client visits annually. We also provide Family Planning NSW Talkline 1300 658 886, a confidential telephone and email information and referral service, connecting our expertise to people and communities across NSW.

We provide information and health promotion activities, as well as education and training for doctors, nurses, teachers and other health, education and welfare professionals.

Our services are targeted to marginalised and disadvantaged members of the community, including people from culturally and linguistically diverse and Aboriginal and Torres Strait Islander backgrounds, refugees, people with disability, young people, people from rural and remote communities and LGBTIQ people.

We respect the rights of our clients to make choices about their reproductive and sexual health and we treat each and every person with respect, dignity and understanding.

Our work is evidence-based, and shaped by our research through the Family Planning NSW Sydney Centre for Reproductive and Sexual Health Research, our published clinical practice handbooks on reproductive and sexual health, our nationally recognised data and evaluation unit and validated through our own extensive clinical practice.

As an independent, not-for-profit organisation significantly involved in extensive health promotion activities aimed at the disadvantaged and marginalised in the community, Family Planning NSW and the communities we serve will be seriously adversely impacted by the proposed amendments to the Fringe Benefits Tax Assessment Act 1986 (FBTAA) as outlined in the *Tax and Superannuation Laws Amendment (2015 Measures No. 4) Bill 2015.*

As such, Family Planning NSW strongly opposes the proposed introduction of a limit on the use of salary sacrificing meal entertainment and entertainment facility leasing expense benefits to a separate single grossed-up cap of $5,000 for employees of employers able to access a general fringe benefit tax (FBT) exemption or rebate.

Family Planning NSW is extremely concerned that there has been incomplete consultation with the sector affected by the proposed changes and believes this has led to a misunderstanding of the extent of the detrimental impact on the sector.

Further, the proposed amendments ignore the recommendations of the Productivity Commission (2010) and the Not-For Profit Tax Concession Working Group (2013), as set out below, to introduce tax reform in such a way that the not-for-profit (NFP) sector is not adversely impacted.

Detrimental effects of the measure on the sector include:

- Undermining of existing remuneration arrangements between charity NFPs and their employees that have been in place for decades, are built into remuneration for staff, and are intrinsic to the ongoing viability of charity NFPs

- The measure to severely limit meal entertainment and entertainment facility leasing expense benefits will significantly impact the ability of charity NFPs to be competitive employers, particularly in relation to attracting and retaining senior, more highly skilled staff, where this mechanism is used more widely to offset lower base wages. The charity NFP sector is already very unfairly disadvantaged

- by not being able to offer the high levels of remuneration paid to senior staff in the private for-profit sector.

- The capping of these entitlements amounts to a pay cut for staff. Existing and future staff will consider better paying options within the private sector and a significant skill shortage within the NFP sector is likely to develop.

- This will have a direct impact on the health industry - public benevolent institutions, health promotion charities, public and not-for-profit hospitals and public ambulance services - who are already under enormous financial pressure compared to other industries.

- Rather than improving fairness in the tax system, as stated in clause 1.1 of the exposure draft legislation, the introduction of these cuts will unfairly enhance the competitiveness of the private, for-profit sector because the charity NFP sector will become even less competitive due to its increased inability to attract and retain staff, especially senior staff

- These measures do nothing to address the already enormous inequalities in tax arrangements for larger corporate organisations compared to the smaller, "third sector".

Not-For-Profit Sector Tax Concession Working Group inquiry (2013)

The draft legislation refers in clauses 1.5 and 1.6 to Recommendation 13 of the Not-For-Profit Sector Tax Concession Working Group inquiry (2013) that uncapped meal entertainment and entertainment facility leasing benefits should be included in existing caps.

It is nowhere referenced, however, that the Inquiry also stated: "Submissions indicated that the FBT concessions are highly valued by the NFP sector, in part to compensate for funding shortfalls and budgetary constraints. Other submissions stated that use of the concessions was critical in aiding NFP organisations attracting and retaining staff by decreasing the shortfall in net pay for their employees compared to similar roles in the commercial sector" (1) and that "some eligible NFP entities currently retain a portion of the benefit of FBT concessions and rely on this to supplement their operating budgets." (2)

Given the reliance of many organisations on the FBT concessions, that Inquiry also recommended that "removing the concessions altogether without consideration of a mechanism to replace the support would have a significant impact. The Working Group proposes an alternative support payment to employers, possibly through the tax system, to replace the FBT concessions provided through salary packaging."

The Inquiry further recommended that any net savings from any recommendations adopted by the Government "should be returned to the NFP sector as soon as practicable."(3)

The Exposure Draft does not include any references or measures aimed at introducing a support mechanism to employers nor does it address returning any net savings to the NFP sector.

Furthermore, Recommendation 13 was to be considered as part of the overall recommendations of the Inquiry which included:

- review and consolidate the income tax exemptions:
- extend Deductible Gift Recipient status to all charities other than in relation to religious, child care and primary and secondary education activities
- remove the minimum gift deduction threshold (currently $2)
- explore mechanisms to promote giving

By referring to the recommendation in isolation the intent has been taken out of context and should not be relied upon as a basis for supporting the reform.

Productivity Commission report (2010)

The exposure draft legislation (Clauses 1.7 & 1.8) also refers to the Productivity Commission report (2010) into the NFP Sector to support capping meal entertainment and entertainment facility leasing expense benefits, particularly the Commission conclusion that “There appears to be a strong case to limit or eliminate the meal entertainment benefit.”

However, this is only one of many recommendations contained in the report and should not be considered or implemented in isolation.

The report also identified that “For NFPs, less than full cost funding of many services has resulted in substantial wage gaps for NFP staff. The challenges in retaining staff threaten the sustainability and quality of services” (4) and “the wage gap between social workers employed by NFP and government providers in similar positions was estimated to be up to 25% (after adjusting for Fringe Benefit Tax concessions).” (5)

These statements in the Productivity Commission Report clearly recognise the difficulties faced by NFP organisations in the recruitment and retention of staff given lower wages within the sector. The introduction of a cap on exempt benefits, without an offsetting benefit to the sector, would magnify these inequities and result in significant negative impact on the disadvantaged and marginalised communities served by the not for profit sector.

Conclusion

The Federal government has embarked on a wide ranging review of the tax system, commencing with the release for public comment of the “Re:Think” Tax Discussion Paper, as part of process to develop wide ranging tax reform policy proposals by 2016.

The current proposed amendments contained in the exposure draft legislation pre-empt this consultative and wide ranging process, deny adequate consultation on proposed changes and alternative support payment options and prevent a comprehensive and integrated approach to tax reform resulting in ad hoc amendments that impact the not for profit sector in ways unintended by the preceding reviews and inquiries into the taxation arrangements in the sector.

Of particular concern with this ad hoc approach is that offsetting benefits as recommended by the preceding inquiries such as alternative support payment to employers, possibly through the tax system, to replace the FBT concessions provided through salary packaging , and returning net savings to the sector have not been addressed.

There is no rationale for changes to the system until the wider review process has been completed.

References

(1) (2) (3) Not-for-Profit Tax Concession Working Group, "Fairer, Simpler and More Effective Tax Concessions for the Not-for-Profit Sector: Final Report , May 2013. http://www.treasury.gov.au/~/media/Treasury/Access%20to%20Information/Disclosure%20Log/2014/1447/Downloads/PDF/NFP%20Sector%20WG%20Final%20Report.ash

(4) (5) Productivity Commission, "Contribution of the Not-for-Profit Sector, January 2010. Research Report" http://www.pc.gov.au/inquiries/completed/not-for-profit/report