

NDS comments to the Australian Treasury on the Bill capping FBT concessions on salary packaged entertainment benefits

Overview

NDS regards the planned budget measure to limit Fringe Benefits Tax (FBT) concessions on salary packaged entertainment benefits as short-sighted. It is inconsistent with broader priorities, including implementing the National Disability Insurance Scheme (NDIS) and aged care reforms. We urge a more considered and strategic approach to any reform of Fringe-Benefit-Tax exemptions for the not-for-profit (NFP) sector.

Reducing the resources available to the disability NFP sector at this time will cost Australia more than it gains over the longer term from the proposed Tax and Superannuation Laws Amendment (2015 Measures No.4) Bill 2015. The suite of FBT tax benefits is critical to the success of NFP disability organisations which in turn is critical to the successful implementation of the NDIS. Together, the disability NFP sector and the NDIS improve the social and economic wellbeing of Australia.

The Government should not proceed with this Bill and instead explore ways to improve the tax system that are more consistent with imperatives to:

- sustain a well-functioning disability NFP sector during the rapid expansion of a competitive market-based approach to disability services¹
- enable growth and leadership in the disability workforce employed in the NFP sector².

If the Government does proceed with this Bill, then NDS strongly recommends that either the proposed cap of \$5,000 grossed up value is raised to \$15,000 per employee or, preferably, that the Meal Entertainment Allowance is replaced by lifting the current FBT exemption cap of \$30,000 to at least \$45,000 grossed up value per employee. This latter approach would retain the purpose and value of concessions in the sector, prevent its misuse and reduce administration and compliance costs.

¹ The final report of the Australian Government Competition Policy Review 2015 supports increased competition in human service markets such as disability support but urges caution. In particular, it is concerned that the contribution of the NFP sector is preserved and enhanced. One of the least market-distorting ways to support the NFP disability sector is through tax concessions.

² The Council of Australian Governments (COAG) Disability Reform Council recently released the 'NDIS integrated market, sector and workforce strategy' which highlights the significant challenge faced by the disability sector to develop diverse and sustainable suppliers and expand an appropriately skilled workforce. The NFP disability sector will play a critical role in this –otherwise the risk of market failure is palpable.

The Government should also index the FBT exemption cap as was intended at the time of its introduction in 2001. The real value of this benefit has significantly eroded over the years.

The entertainment tax benefit needs to be considered in context

NDS is sympathetic to concerns about extravagant use of the exempt benefits for Meal Entertainment and Venue Hire. However, these concerns relate to a small minority of cases and should be put in context. The proposed cap of \$5,000 grossed up benefit per employee is overly restrictive.

Advice provided to NDS indicates that most community services use the uncapped benefit within a modest band of \$4,500 to \$6,500 a year (equivalent to \$9,600 to \$14,000 grossed up). In recent years, more disability sector organisations are making this benefit available to their employees as a method to attract and retain staff in a low-paid sector where demand for services and workers is growing. For example, the relatively low-paid families working in the NFP disability sector can use current tax exemptions to contribute to a family holiday or meal out which they would otherwise not be able to afford.

As illustrated by the 'Equal Remuneration Order' decision by the Fair Work Commission (FWC) in 2012, this is not a sector of excess. After a detailed examination of comparable roles between the government and community sectors, the FWC found a large pay gap between workers in the non-government community sector and workers in public sector employment. The subsequent wage increases ranging from 19 to 41 per cent are still being implemented.

Disability organisations use salary packaged entertainment benefits to compete with the corporate and government sectors for more senior staff - see examples 1 and 2 below. These staff are critical to leading a successful sector-wide transition to the NDIS.

Example 1: A recent recruit to the disability sector told NDS: "I have an extensive corporate background of over 20 years and recently joined a local disability service. I sincerely love my role and the opportunity to use my corporate skills to enhance the lives of people with a disability. I did have to drop a considerable hourly rate but salary packaging provides some financial consolation and allows me to 'live a little'."

Example 2: A regional disability service employer told NDS: "We face increasing difficulty recruiting suitable staff. Our family friendly supportive culture and great wage package is attractive but not enough without the FBT concession. The FBT exemptions are the biggest single factor in attracting people to our company although the value is eroding. It begins to compensate for the difference in salaries available to teachers, trainers, frontline supervisors and sales consultants. We retain mature staff because of the concession. We risk losing their experience and skills as mentors and trainers as they choose retirement in the face of salary package reductions."

Increasing demand for workers in the disability NFP sector

Demand for workers in the disability and aged care sectors is projected to grow substantially over the decade ahead. The implementation of the NDIS will double demand for disability workers. It is anticipated that between now and full implementation in 2019-20 the workforce will increase from approximately 73,600 full-time equivalent (FTE) workers to

an estimated 162,000 FTE workers³. The NDIS will require leaders, innovators and skilled employees who will need to be recruited with competitive remuneration packages.

FBT tax benefits for the disability NFP sector facilitate fair competition

Governments must be careful when establishing new human service markets such as NDIS markets. Historic underfunding in the disability sector may put NFP disability providers at a disadvantage when competing with large for-profit competitors. This is because these new entrants can more easily access capital and invest in new NDIS-suitable systems and marketing. The risk is that some good NFP providers will not survive the transition which may prevent the creation of diverse markets which offer choice to service users.

NDS is comfortable with the proposal to increase consumer choice in disability services and through this create more competitive market structures. However, we urge governments to heed the recommendation of the competition policy review that governments retain a stewardship function; carefully commission human services with a clear focus on outcomes, encourage diversity of providers and take care not to crowd out community and volunteer services⁴. One of the most straightforward ways in which governments can do this without distorting markets is through tax concessions⁵.

A sustainable disability NFP sector is in everyone's interest

Current tax concessions are necessary to help NFP disability organisations maximise their charitable purpose. NFP disability organisations are at the forefront of building inclusive communities, which is a cornerstone of the NDIS. Through collaboration across local communities, local government and allied sectors with common causes, the NFP disability sector has become a rich source of social capital. It recruits volunteers, builds community engagement, develops skills and social networks and enhances civil society.

It is difficult to precisely calculate the value-add contributions of the NFP sector but we do know that in many cases they cannot be efficiently contracted for and will not be provided by the for-profit sector.

Offering tax concessions to the NFP disability sector will lead to both a great return on the investment and better support for some of Australia's most disadvantaged people. Conversely, any gain in tax revenue from removing tax concessions in the NFP disability sector will reduce the resources that the sector has to direct towards building inclusive communities and effective support networks, thus increasing the need for crisis services. Over time, this short-sighted policy would likely increase the cost of crisis services in the health, justice, income support, housing, child protection and disability sectors.

The proposed cap is too low

If a cap is imposed on salary packaged entertainment benefits, it should be higher - at least \$15,000 grossed up (consistent with current reasonable use). The administrative burden

³ NDIS, 2015. Integrated Market, Sector and Workforce Strategy

⁴ Harper, I. et al. 2015. Final report of the Australian Government Competition Policy Review

⁵ In 2010 the Productivity Commission found that on balance NFP tax exemptions are not significantly distortionary. The Commission did identify concerns about concessions on input taxes (including FBT) related to hospitals and gaming. These concerns are not relevant to the disability sector.

required to manage the proposed exempt benefit of \$5,000 grossed up is disproportionate to the actual benefit to the employee.

Maintain the purpose and value that the benefit offers the sector

NDS recommends that the Government:

1. not proceed with this Bill and instead explore ways to improve the tax system that will assist NFP disability organisations to attract and retain an effective workforce

If the Government does proceed with a measure to restrict the Meal Entertainment Benefit, it should:

2. replace the Benefit with an increase to the FBT exemption cap to at least \$45,000 grossed up value per employee

This approach would retain the value of the benefit, prevent its misuse and reduce administration and compliance costs. It would maintain the purpose of the benefit to assist NFP organisations to compete with corporate and government sectors to attract and retain skilled staff.

NDS also recommends that the Government:

3. index FBT concessions to help NFP disability organisations address the increasing pressure to attract and retain an effective workforce

The cap on FBT must be regularly adjusted with inflation. The real value of the current \$30,000 limit (grossed up nominal value per employee) continues to erode, despite a commitment at the time of its introduction in 2001 to regularly adjust it. Yearly indexation is advised.

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Contact: Dr Ken Baker
Chief Executive
National Disability Services
Ph: 02 6283 3200
Mob: 0409 606 240
ken.baker@nds.org.au

National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its Australia-wide membership includes 1000 non-government organisations, which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.