



**Response by EPIC Employment Service Inc  
to Australian Government Re:think Tax  
Discussion Paper**

1 June 2015

## EXECUTIVE SUMMARY

EPIC Employment Service Inc (EPIC) is a leading charity in the area of employment services, which serves the most disadvantaged in our community. Our submission concerns Chapter 7 of the review, regarding not-for-profits (NFPs), particularly fringe benefits tax (FBT) concessions.

Charities serve niche needs in our Australian society and economy. We occupy spaces that cannot support mainstream fully-functioning markets. Unlike for-profit businesses, we are constrained by our purposes, our mission to serve the public benefit rather than generate profits, and the demands of multiple sets of stakeholders. Unless these differences are properly understood, efforts to reform NFP tax concessions will produce unhelpful unintended consequences.

Historically, governments have recognised the unique social and economic contribution of charities through financial support, both direct and indirect. This is both because charities deserve recognition for their good work and because charities alleviate the burden on government. Tax concessions are also a more administratively efficient way of providing support than direct grants. They remove the temptations that exist with direct grants: to make short-term gains from cuts in times of straitened finances which merely increase the longer-term costs of social issues; and to impose politically motivated controls on the sector.

As the Productivity Commission found in 2010, concessions are also not a competitive neutrality problem outside FBT concessions for the hospital sector. The myth of competitive advantage from FBT concessions is a persistent one, but a myth nonetheless, which needs to be put to bed once and for all. FBT concessions do not allow the sector to offer higher pay. The concessions merely make it possible for us to compete for the quality staff we need, which we would otherwise struggle to attract due to less flexible access to funds than the for-profit and government sectors.

Any policy choice which reduces the real value of current tax support for charities must be carefully weighed and carefully costed. The Discussion Paper makes much of the increasing 'cost' of tax concessions, but fails to identify the drivers of those costs. It also fails to quantify the other side of the equation: the benefit provided as a result of those concessions. This produces a meaningless and misleading narrative which does not assist a genuine discussion about reform.

The issues with NFP FBT concessions are arguably more to do with the complex FBT system as a whole rather than NFPs in particular. In any case, the major issue relating to uncapped entertainment benefits has been addressed by the 2015 Budget. EPIC also supports stopping employees from claiming the cap from more than one employer. However, the caps should be indexed as promised in 2001.

EPIC's other suggestions for longer-term reform would be to restrict concessions to charities only. Government bodies should not be eligible for FBT concessions as they lack the altruism characterising the NFP sector. EPIC would also support replacing FBT concessions with an added 'bonus' tax free threshold for the employees of PBIs and income tax exempt charities.

In relation to income tax exemption, EPIC suggests removing the special conditions introduced in 2013, which have produced significant legal uncertainty for no added practical benefit. We also suggest that the time has come to reframe the concept of 'public benevolent institution'. Charities like EPIC exist to promote human flourishing and human dignity by ameliorating the disadvantage which blocks access to these things. We should not need to describe the people we serve with the outdated and offensive term of 'pitable' or be restricted to relieving needs only once they are acute.

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## INTRODUCTION

EPIC Employment Service Inc ('EPIC') thanks the Government for its commitment to a simpler and fairer tax system, and for its commitment to considering the widest possible range of ideas and possible solutions to tax problems, without pre-judgment.

### EPIC Employment Service Inc

EPIC is a leading charity helping the most disadvantaged people in our community find and keep mainstream employment, growing from a small group started by university staff and students in the 1980s to one of the largest disability employment services provider in Queensland. We assisted over 13,000 clients in the past financial year. This is our response to the reality that in Australia, 'the system of support for Australians with a disability is broken'<sup>1</sup> and 'having a disability makes and keeps people poor'.<sup>2</sup>

EPIC operates over 50 regional services spread throughout Queensland and northern New South Wales.

Our clients are drawn from groups suffering systemic disadvantage or discrimination: those with physical, psychological or intellectual disabilities; those living in poverty; the poorly educated; the socially isolated; refugees; ethnic minorities; and those recovering from major injury or illness.

EPIC programs include:

- Employment support, assisting people with disabilities (including school leavers) to find and maintain employment in the mainstream labour market;
- Rehabilitation and disability management programs; and
- Home based Telecentre enterprise.

We believe that it is our compassionate care for our staff and our clients that has driven our success. EPIC's commitment to inclusive practices extends to our corporate governance, with a client representative being part of our management committee.

EPIC is a Public Benevolent Institution (PBI) currently endorsed by the Australian Taxation Office as a Deductible Gift Recipient (DGR), income tax exempt charity (ITEC), concessional treatment for Goods and Services Tax (GST) and exemption from Fringe Benefits Tax (FBT).

Further information about EPIC is available from our website, [www.epic.org.au](http://www.epic.org.au) .

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<sup>1</sup> The Hon Mitch Fifield MP, *Address to the National Press Club* (20 November 2013), Canberra. Transcript available at <http://mitchfifield.dss.gov.au/speeches/40>.

<sup>2</sup> The Hon Bill Shorten MP, *Opening Address to National Disability and Carers Congress* (2 May 2011), speech delivered at the National Disability and Carers Congress, Etihad Stadium, Melbourne. Transcript available at <http://billshorten.com.au/opening-address-to-national-disability-and-carers-congress>.

## **Overview**

Charities provide essential social infrastructure and services to our society, often at lower cost and with a better knowledge of their local community than is possible for government. Charities like EPIC, which exist to empower the most vulnerable Australians, are especially vital to the community.

Central to our ability to provide these services is the ability to employ enough properly qualified and experienced staff. A key element in being able to do so is FBT concessions.

In our submission, we will briefly address the issues raised regarding income tax exemption and deductible gift recipient status, but the main focus of our submission will be FBT concessions.

We will firstly address the core principles behind offering tax concessions to PBIs and charities, and why this has historically been done through the taxation system. We will then discuss the importance of FBT concessions to the sector, and why the concerns raised in the Discussion Paper and earlier government inquiries have been overstated.

EPIC will also make some suggestions for reform of FBT concessions.

### **General comment on Discussion Paper**

EPIC does not wish to see sector resources wasted on repeatedly responding to issues which have already been thoroughly ventilated in existing reports.

Given the amount of resources invested by the sector in responding to the Not-for-Profit Sector Tax Concession Working Group (2012), the Productivity Commission *Contribution of the Not-for-Profit Sector* report (2010) and the Henry Review (2009), it is disappointing that the Discussion Paper does not seem to take up, acknowledge or progress the findings of those inquiries so far as they relate to the NFP sector. There is bi-partisan support for reform and many of the issues (although not all, notably issues in relation to the ACNC) are relatively non-contentious with both sides of politics seeking similar tax concession outcomes.

EPIC commends the previous reports to the Government and requests that the Government take cognizance of work already done and carry forward that work with this inquiry focussing on genuinely new or unresolvable problems. Some of this submission, of necessity because of questions asked, reiterates points already made but every attempt is made to ensure that these are only as a platform for fresh ideas and new developments.

## RATIONALE FOR PROVIDING TAX CONCESSIONS TO CHARITIES

Before addressing the substantive issues raised in the Discussion Paper regarding the taxation of Not-for-profits (NFPs), EPIC would like to address the general question of why NFPs are afforded concessional or special treatment in the taxation system.

### Charities make a unique and irreplaceable contribution to social wellbeing

As recognised in the Discussion Paper, the tax system provides various supports to the NFP sector 'in recognition of the NFP's sector's contribution to the Australian community'.<sup>3</sup> This is a long-standing feature of Australia's revenue collection systems at all levels of government.<sup>4</sup>

Charities have a unique role in the Australian community and economy, occupying the spaces that cannot support mainstream fully-functioning markets. Some people are not able, whether for economic or other reasons, to access mainstream services and employment.

Private businesses must charge for their services in order to provide a return for their owners, and are not in a position to give ongoing special treatment to the needy. While government exists to provide public goods, and increasingly does so through contracting NFPs and for-profit businesses to provide these public goods on its behalf, its role is a product of law and social contract. Australia's democratic political system often requires governments to obey majority opinions and serve majority concerns. Those who are most vulnerable, however, are rarely part of this majority. It is well recognised that it falls to charities to care for minority concerns.<sup>5</sup>

Charitable activity is, by definition, altruistic. It is done to benefit others, not for personal gain. Charities often rely on volunteers, and gifts from the public, to continue delivering their services. As an independent and altruistically motivated sector, charities are both a valuable voice for social wellbeing and social inclusion, and an ideal vehicle for addressing social issues and social concerns.

In opening the C20 in Melbourne in 2014, Kevin Andrews (then Minister for Social Services) said:

Civil societies help to sustain transparent governance; and ensure social goods, like inclusive employment and well-targeted social infrastructure, are delivered accountably and effectively.<sup>6</sup>

Under the law of charity in Australia, in order to be classified as a 'charity', an organisation must pursue a charitable purpose, and it must also exist to provide benefit to the public, or a section of the public, rather than to members or owners.<sup>7</sup>

In designing tax policy, EPIC agrees that 'the tax and transfer system should treat [entities and individuals] with similar economic capacity in the same way'.<sup>8</sup> EPIC would point out, however, that NFPs are not 'the same' as for-profit businesses and do not have the same economic capacity as for-profits, being constrained by their purposes, and the demands of multiple sets of stakeholders.

<sup>3</sup> Commonwealth Government, *Re:think: Tax Discussion Paper* (March 2015) p 147.

<sup>4</sup> See Ann O'Connell, 'Charitable Treatment? – A (Potted) History Of The Taxation of Charities In Australia' Conference Paper presented at July 2010 Tax History Conference, Centre for Tax Law, University of Cambridge, for a summary of the development of Australia's tax benefits for charities.

<sup>5</sup> See Estelle James, 'The Public/Private Division of Responsibility for Education: An International Comparison' (1987) 6 *Economics of Education Review*, pp 1 – 4; Martti Muukkonen, *The Familiar Unknown - Introduction to Third Sector Theories* (Licentiate Thesis, University of Joensuu, 2000) pp 102 – 103; Burton A Weisbrod, 'Toward a Theory of the Voluntary Nonprofit Sector in a Three-Sector Economy' in Burton A Weisbrod (ed), *The Voluntary Nonprofit Sector* (1977) pp 51, 75.

<sup>6</sup> The Hon Kevin Andrews MP, *The Art of Associating* (21 June 2014), available at <http://kevinandrews.com.au/latest-news/2014/06/21/art-associating-together-21-june-2014/>.

<sup>7</sup> At the federal level, this is determined by the *Charities Act 2013* (Cth).

<sup>8</sup> Commonwealth Government, *Australia's Future Tax System: Final Report* (2009) Part 1, p 17.

Given the increase in government outsourcing of social services delivery, and pressures on NFPs to conduct income producing business activities to shore up their financial sustainability, it is understandable why regulators might overlook the enduring differences between business, government and the 'third sector'. Nevertheless, failure to understand these differences in evaluating tax concessions for NFPs will frustrate efforts to reform the concessions.

## **Government support for charity is deserved, necessary and good policy**

### *Service delivery*

Governments throughout the world have acknowledged, and continue to acknowledge, the unique contribution of the charitable sector through both direct and indirect financial support.

The efficiencies of providing services through not-for-profits (NFPs), due to their 'unique relationship with the community',<sup>9</sup> has long been recognised, leading in Australia and elsewhere to unprecedented levels of service delivery through organisations like EPIC. NFPs often excel at building trusting relationships with the people they serve, enabling greater access to and influence in the client group.<sup>10</sup> NFPs can also utilise volunteer networks and philanthropic funds to 'multiply' the impact of government funding.

Currently, EPIC receives approximately \$22 million per annum to deliver programs on behalf of the Commonwealth Department of Social Services and the Commonwealth Department of Employment. Our expertise and ethic of care enables us to help our clients achieve their employment goals in a more efficient and sensitive manner than would be possible for government directly. We are consistently chosen in tenders for government contracts for our excellence in service delivery. We maintain these excellent service standards despite offering less lucrative remuneration than our for-profit competitors.

In fact, EPIC has continued to attract increasing amounts of responsibility and government funding since its inception in the 1980s. In latter years, this has been in an environment of competition with for-profit providers.

### *Provision of public goods*

As well as providing direct benefit to disadvantaged people by increasing their employability, self-confidence and economic situation, charities like EPIC also indirectly benefit the general public. The increased economic participation of disadvantaged groups and people with disabilities in mainstream employment promotes positive social diversity, reduces welfare dependence, and benefits the economy.<sup>11</sup> This is particularly important in the context of Australia's ageing population and its effect on the tax base.<sup>12</sup>

Australian governments' support for charities' contribution to the public good dates from the earliest days of colonial legislation.<sup>13</sup> This is in recognition of the role charity plays in supporting social infrastructure and meeting needs that are outside either the financial or legal capacity of government, but nonetheless are socially considered to be government's responsibility, or are

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<sup>9</sup> Commonwealth Government, *Australia's Future Tax System: Final Report* (2009) Part 2 Vol 2 p 206.

<sup>10</sup> Productivity Commission, *Contribution of the Not-for-profit Sector* (January 2010) Research Report, pp 15 – 17.

<sup>11</sup> Productivity Commission, *Disability Care and Support* (July 2011) Productivity Commission Inquiry Report, Chapter 20.

<sup>12</sup> Commonwealth Government, *Re:think: Tax Discussion Paper* (March 2015), p 10.

<sup>13</sup> Ann O'Connell, 'Charitable Treatment? – A (Potted) History Of The Taxation of Charities In Australia' Conference Paper presented at July 2010 Tax History Conference, Centre for Tax Law, University of Cambridge, pp 2 – 4, 8.

otherwise complementary to government activity. Victorian MP J.M. Davies explained this reasoning in his speech introducing Australia's first legislation for tax-deductibility for charitable donations: '...although the State would lose revenue in one direction the encouragement afforded to charitable giving would probably make up the loss.'<sup>14</sup>

### **Tax concessions as a form of support: an efficient and fair way to meet social needs**

Use of the taxation system as a vehicle for recognising and supporting charities has been government strategy from the first income tax Acts, which excluded entities not operating for profit.<sup>15</sup> As types of taxation have proliferated, so have charity tax concessions; the rationale, however, for providing exemptions, concessions and deductions, remains the same. Charitable bodies, especially 'benevolent institutions', the forerunners of organisations like EPIC, have enjoyed exemptions from numerous taxes from the beginning of Australian taxation, in recognition of their contribution to public good.<sup>16</sup>

Similar to the 'dividend' obtained by government when services are provided by a community organisation rather than the state itself, organisations enjoying tax exemptions or concessions are able to multiply the face value of the concession. A concrete example of this is given in the discussion below on long-term reform options.

Avoiding the transaction costs of collecting money from those who will ultimately benefit from its distribution is an old idea which we now call 'churn'. It is more efficient to provide tax concessions than to collect tax in full, only to send it back to the organisation in grants and contracts funding.

It has been suggested on multiple occasions in the context of FBT concessions particularly that abolishing concessions and replacing them with 'direct grants' to NFPs would be a better way to target government assistance.<sup>17</sup> It is argued that this would reduce money wasted by organisations in administering the concessions, and would enable government to support 'worthy' projects. In short, more support for the same price, and in a fairer distribution. EPIC rejects the idea that this method of assisting NFPs would be more beneficial for the Australian community, for the following reasons.

#### *Neutrality?*

The primary reason given by the Henry Review for changing NFP concessions in this way was the need for a 'more neutral form of assistance';<sup>18</sup> that is, a more competitively neutral form of assistance. For reasons explored elsewhere in this submission, this reason is based on false premises.

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<sup>14</sup> Victoria, *Parliamentary Debates*, Legislative Council, 2 October 1907, 1356–1357; cited in Ann O'Connell, 'Charitable Treatment? – A (Potted) History Of The Taxation of Charities In Australia' Conference Paper presented at July 2010 Tax History Conference, Centre for Tax Law, University of Cambridge.

<sup>15</sup> Ann O'Connell, 'Charitable Treatment? – A (Potted) History Of The Taxation of Charities In Australia' Conference Paper presented at July 2010 Tax History Conference, Centre for Tax Law, University of Cambridge, pp 2 – 4, 8.

<sup>16</sup> Commonwealth Government, *Australia's Future Tax System: Final Report* (2009) Part 2 Vol 2, 206; Ann O'Connell, 'Charitable Treatment? – A (Potted) History Of The Taxation of Charities In Australia' Conference Paper presented at July 2010 Tax History Conference, Centre for Tax Law, University of Cambridge, pp 2 – 4, 8; Productivity Commission, *Contribution of the Not-for-profit Sector* (January 2010) Research Report, p 25.

<sup>17</sup> For example, Not-for-Profit Sector Tax Concession Working Group, *Fairer, simpler and more effective tax concessions for the not-for-profit sector* (November 2012). This idea has gained traction with regard to FBT concessions especially.

<sup>18</sup> Commonwealth Government, *Australia's Future Tax System: Final Report* (2009) Part 2 Vol 2, p 212.

The Productivity Commission, whose findings EPIC supports, made a similar but more tempered recommendation, concentrating particularly on hospital employees:

...the FBT concessions produce a number of significant distortions, affecting resource allocation and changing employee behaviour, the Commission concludes that there is no compelling reason to increase the cap [for hospital employees, to account for inflation]. Indeed, it would be preferable to phase out the concessions. As discussed, the Commission recognises that this could impose hardship and would need an appropriate phasing out period and a means of providing intended support to those NFPs not competing in the market.<sup>19</sup>

The Commission did not go further to recommend a particular method of support. EPIC has an alternative proposal to direct grants, which we raise later in this submission.

Where PBIs are competing with for-profit providers, this is usually only where the for-profit provider has been funded by government to deliver services which were traditionally delivered by government or by NFPs. The reason for the 'competition' is creation of a 'market' by government funding, which would not exist in the absence of that funding. In addition, not all NFPs choose to enter these 'markets'. If there was a competitive advantage that was 'unfair' it was in relation to the lack of a cap on meal and entertainment allowances and that has been addressed in the most recent budget announcements. Removing remaining FBT concessions which apply to a wide range of entities, whether or not they compete with for-profit providers, will hamper NFP efforts to address social problems in areas where there is and will never be any for-profit interest.

Charities operate for the good of the community, not for profit. Charities did so before government funding of the sector, and before making money from providing government-funded services was a commercially viable proposition. Charities will continue to do so long after a for-profit business would abandon the field. That is why about 86% of non-government disability service providers, as an example, are charities.<sup>20</sup>

We again point to the findings of the Productivity Commission:

...concessions are an important and reliable source of support for many NFPs, especially to attract and retain staff. Most of these NFPs do not compete directly with for-profit businesses, and for the few that do, they tend to be delivering government services.<sup>21</sup>

Put bluntly, disability services is a charity space, which for-profits have only thought to enter in more recent years, hoping to secure a slice of government funding. The FBT and other concessions existed before commercial operators entered the sector. They cannot now protest that the rules of the game are unfair.

EPIC does acknowledge that in some emerging quasi-market spaces such as the National Disability Insurance Scheme, FBT concessions may need to be redesigned. Over time, areas previously not suitable for market forces may become suitable. Other hybrid semi-market conditions may be intentionally developed by government, as in the case of the National Disability Insurance Scheme.

### *Government control*

It is also clear from the Henry Review that the primary attraction for government in replacing concessions with direct grants would be greater control over entities' use of concession funds.<sup>22</sup> This is both an undesirable outcome from the charity perspective and also inconsistent with the

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<sup>19</sup> Productivity Commission, *Contribution of the Not-for-profit Sector* (January 2010) Research Report, p 213.

<sup>20</sup> Ibid p 10.

<sup>21</sup> Ibid p xxxi.

<sup>22</sup> Commonwealth Government, *Australia's Future Tax System: Final Report* (2009) Part 2 Vol 2, pp 205, 211, 213.

government's stated policy goals of reducing red tape and preserving the independence of the sector. In a speech opening the Building Partnerships Between Governments and Not-for-profits Conference in May 2014, Kevin Andrews, then Minister for Social Services, said:

We hold that Government is neither omniscient nor omnipotent and that you'll always know how to do your business better than we do. So the best thing we can do is to get the regulators off your backs and out of the way to the maximal [sic] extent possible.<sup>23</sup>

FBT exemption allows charities the freedom to provide salary packages necessary to attract the required skilled staff without government intrusion. It also allows employees to choose the benefits most relevant to them.

### *Efficiency*

While using direct grants would be simpler in some regards and relieve a great deal of concession compliance costs, it would impose new compliance costs related to the acquittal of those grants. Red tape reduction is a priority for this Government. Reporting to government on the use of direct grants would not be preferable to the current FBT arrangements and would substantially increase red tape.

The ongoing issues with the administration of recent Department of Social Services funding rounds would seem to illustrate how difficult it is to streamline grants acquittals procedures for NFPs while also protecting government's interest in accountability and value for money.

Government administration of the suggested direct grants option would also consume resources. This would either be an added cost on top of the cost of grants themselves, or would be taken from the available pool of grant money, reducing the amount available to organisations.

Whilst the Australian Treasury will have access to modelling on the cost of raising revenue in Australia, we note that the most recent US research in this area suggests that the cost of raising revenues to 'fund provision of public goods' could be 'roughly double' what was formerly thought, if different methods of assessment are adopted.<sup>24</sup> We submit that in this context, where concessions are clearly less expensive than grants and raising revenue to fund public goods comes at a substantial cost that is difficult to quantify, the case for concessions over grants remains compelling. Providing truly equivalent support would therefore cost more than the current tax expenditures figure.

In addition, moving to direct grants would reduce certainty for NFPs, which is an economic cost unto itself.

EPIC notes that the Not-for-Profit Sector Tax Concession Working Group, the body which considered this issue most recently, also had reservations about the efficacy of replacing FBT exemption in particular with direct grants.<sup>25</sup>

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<sup>23</sup> The Hon Kevin Andrews MP, *Opening Address to the Building Partnerships Between Governments and Not-for-profits Conference* (20 May 2014), available at <http://kevinandrews.com.au/latest-news/2014/05/20/opening-address-building-partnerships-governments-profits-conference/>.

<sup>24</sup> Will Martin and James E. Anderson, *Costs of Taxation and the Benefits of Public Goods: The Role of Income Effects* (September 2005) World Bank Policy Research Working Paper No. 3700, available at <http://elibrary.worldbank.org/content/workingpaper/10.1596/1813-9450-3700>.

<sup>25</sup> Not-for-profit Sector Tax Concession Working Group, *Fairer, simpler and more effective tax concessions for the not-for-profit sector* (May 2013) Australian Government the Treasury, Canberra, p 42.

## *Democratic*

Indirect concessions are in some ways more democratic than direct grants. 'Economically significant' NFPs receive less than half of their revenue from government funding.<sup>26</sup> They receive the remainder of their support from community sources.<sup>27</sup> If an NFP cannot garner community support, it will not survive long enough to make any financially meaningful use of tax concessions. Those that do manage to gain this community support should arguably not be then subjected to government ideas about what is 'appropriate' NFP activity and what is not.

## *Direct grants would not maintain value of concessions to sector*

Finally, we note that the budgets of most developed countries for social welfare spending and international aid have been constrained in recent years by ongoing global and domestic financial problems. The politics of austerity generates perverse incentives to cut the same social spending which can help prevent more costly social problems in the future. The NFP sector has experienced a considerable reduction in funding at the Commonwealth and at the State and Territory level in recent years.

It is also EPIC's experience that funding initiatives for the not-for-profit sector are rarely indexed to retain their full value, even in times of prosperity. For example, EPIC's five year Employment Support Services contract and its three year Disability Management Service contract with the Government do not include CPI increases – instead, EPIC is expected to deliver an efficiency dividend by delivering services in subsequent years for the same price as in Year One of the contract. Applied to direct grants, this general trend would further erode the support given to not-for-profit organisations.

Accordingly, EPIC considers that a change from indirect concessions to direct grants of an equivalent value is unlikely, in the long term, to preserve the current level of assistance to NFPs. If that is the outcome sought, it should be the subject of a separate debate. It does not belong in a discussion about how the existing goals of the tax system can be better achieved through better design.

In summary, it is inefficient to insist upon reform for principle's sake that does not deliver increased resources to charitable work or actually save money for the Government. Reform which is costly in time, resources and compliance adjustments but does not deliver meaningful added value to the community is of negligible benefit. Accordingly, any policy choice which reduces the real value of the current tax support for charities must be carefully weighed and carefully costed.

We now turn to the specific concerns raised about NFP concessions in the Discussion Paper, particularly Fringe Benefits Tax (FBT) concessions.

## **CHAPTER 7: NOT-FOR-PROFIT SECTOR**

### **A. FRINGE BENEFITS TAX**

The Discussion Paper raises a number of concerns about FBT and FBT concessions which have been circulating for some years: quantum of the concessions, competitive neutrality, inequitable access and the generally complicated nature of the concessions.<sup>28</sup>

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<sup>26</sup> Commonwealth Government, *Re:think: Tax Discussion Paper* (March 2015), p 122.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid* pp 43, 49, 55 – 56, 124 – 126.

EPIC agrees that there are elements of the current regime which are flawed and in need of reform. It does not, however, agree with either the extent or the relevance of a number of concerns raised by the Discussion Paper. We will address each concern in the order they appear in the Paper.

### **Cost-benefit analysis that includes only costs not a true analysis**

The Discussion Paper states that 'it is important to assess [the] effectiveness' of NFP tax concessions as they 'result in significant revenue forgone', especially FBT exemptions.<sup>29</sup>

However, the Paper also states in Chapter 3 that 'FBT was introduced as an integrity measure' which 'only raised around \$4.3 billion in revenue in 2013 – 14 (or about 1.2 per cent of total Australian Government tax revenue.'<sup>30</sup>

Further, the Discussion Paper does not explain why FBT concessions have grown in 'value'. This is important because without this information, there is the potential to create a misleading impression of 'revenue forgone' growing out of all proportion to the commensurate benefits enjoyed by the public as a result of the concession. To begin with, the increases cited include inflation.<sup>31</sup> A large amount of the increase therefore has nothing to do with changes in how the FBT concessions are used by NFPs. Second it is not clear whether the increase is due to government policy to extend FBT concessions to non-charitable government hospitals. If that is so then it is not the charity sector but government that is to blame. The sensible development of the tax law would be to return the concessions to the NFP sector only.

In addition, in the absence of evidence to the contrary, given that FBT concessions are tied to fringe benefits packages given to employees, one would expect an increased volume of concessions to correlate to an increased volume of employees or their hours of work. One would also expect a corresponding increased volume of services delivered to the community. In calculating the 'cost' of FBT concessions, it is important that a proper evaluation of the benefits is taken into account.

EPIC notes that the need for workers in the disability and aged care sectors is increasing and is likely to continue to increase in the future. The National Disability Insurance Scheme is expected to add disability support 13,000 jobs to the Queensland economy alone. There is a great deal of NFP activity in these sectors, and it would be logical that many of these NFPs, given the nature of the sectors, would be PBIs. It is therefore to be expected that the utilisation rate of FBT exemptions will continue to grow. This is not necessarily negative if there is also an increase in community services, and flow-on effects to economic activity more generally.

### **A competitive neutrality issue?**

The FBT concessions are of vital importance to charities like EPIC in enabling us to provide quality and reliable services to those most in need in Australian society. As stated above, EPIC is currently exempt from paying FBT. This is due to its status as a PBI.

At page 125, the Discussion Paper states that:

Given the size and reach of the NFP sector, some tax concessions may result in distortions that affect the broader allocation of resources in the economy, particularly where they operate in competition with for-profit providers. These distortions arise when the prices that NFPs pay for their inputs (such as labour) are altered by the presence of concessions in the tax legislation...[The FBT concession]

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<sup>29</sup> Ibid p 124.

<sup>30</sup> Ibid p 43.

<sup>31</sup> Treasury advises that figures in the *Tax Expenditures Statement* are expressed in terms of that year's dollars and therefore include inflation. Ie, 2017-2018 estimates are expressed in 2017-2018 dollars, not 2014-2015 dollars.

could be used by the NFP to offer employees a higher salary, providing them with an advantage in hiring and retaining staff.<sup>32</sup>

While this might be theoretically sound, it is simply not true in practice.

In EPIC's experience, FBT arrangements do not in fact allow non-hospital PBIs to 'out-bid' for-profit operators. Commercial businesses almost invariably offer higher salaries and more generous packages than the not-for-profit sector, even when FBT exemptions are available.

This was precisely the conclusion of the Productivity Commission following its investigation of this issue in 2010. The Commission found that workers choose the sector for its emotional rather than financial rewards.<sup>33</sup> Most NFP employees would work more hours if there was money to pay them for their work.<sup>34</sup>

The Productivity Commission stated that 'even when FBT exemptions are considered, wages in the community sector are still considerably lower than equivalent positions in the public sector.'<sup>35</sup> It also found that 'the finding by the Industry Commission (1995) inquiry that income tax exemptions have few adverse consequences appears to remain relevant.'<sup>36</sup>

EPIC notes that the Discussion Paper merely suggests that NFP concessions 'may result in distortions' (emphasis ours). The suggestion that NFP concessions undermine competitive neutrality is a myth that refuses to die. It has been raised multiple times by multiple inquiries and yet never established. The evidence is to the contrary.

EPIC submits that the Productivity Commission findings on this issue were the product of more focused research, and therefore are a better source of guidance on this policy issue.<sup>37</sup> The Commission found that FBT concessions were not a competitive neutrality issue with regard to the sector as a whole. The notable exception to this was the same area singled out for attention by the Henry Review: public and NFP hospitals.<sup>38</sup> These hospitals provide the same services under the same funding structure as commercial hospitals, but have access to significant FBT benefits.<sup>39</sup>

In summary, staff choose EPIC and the NFP sector more broadly because they want to join in making a positive contribution to public welfare, not because they will be financially better off. Our 'competitive advantage' is not FBT concessions but charities' and NFPs' altruistic motivations and commitment to caring for the person.

Our staff can afford to choose to work for us in part because of FBT exemptions and concessions and that should not be taken from them.

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<sup>32</sup> Commonwealth Government, *Re:think: Tax Discussion Paper* (March 2015).

<sup>33</sup> Productivity Commission, *Contribution of the Not-for-profit Sector* (January 2010) Research Report, p 262.

<sup>34</sup> *Ibid* p 264.

<sup>35</sup> *Ibid*.

<sup>36</sup> *Ibid* p xxxi.

<sup>37</sup> The Henry Review does not cite any evidence in support of its short conclusions on FBT – this in the 'Detailed Analysis'.

<sup>38</sup> Commonwealth Government, *Australia's Future Tax System: Final Report* (2009) Part 2 Vol 2, pp 210 – 211; Productivity Commission, *Contribution of the Not-for-profit Sector* (January 2010) Research Report, p xxxi.

<sup>39</sup> Productivity Commission, *Contribution of the Not-for-profit Sector* (January 2010) Research Report, pp xxxi, 197, 212, 216.

## ‘Rorting’

In 1995 the Industry Commission called for FBT exemptions to be abolished entirely, as packaging by NFPs was considered to have gone ‘too far’ in terms of the level of fringe benefits provided.<sup>40</sup> This behaviour was ‘largely driven by non-profit organisations finding that their funds from government [were] decreasing and their mission increasing through government withdrawal of public services.’<sup>41</sup> This is why the Industry Commission also recommended that government grants be increased to make up the shortfall.<sup>42</sup>

More recently, concern has focused on the ‘misuse’ of uncapped meal entertainment and entertainment facility leasing fringe benefits, particularly amongst higher paid employees.

Any system, regardless of its design, will be vulnerable to those who seek to exploit any available loophole for personal profit. As a charity dedicated to the ethical and effective use of resources for the maximum benefit of our clients, EPIC considers abuses of the FBT system to be wrong. In fact, EPIC voluntarily imposes a limit of \$600 per fortnight per staff member in meal entertainment and entertainment facility benefits and has had like limitations in place virtually from when it began offering fringe benefits as part of staff remuneration.

We would suggest that our practices are more representative of the sector, and especially PBIs, than the stories about paying for wedding receptions and the like. Stories such as these are memorable for their egregiousness, but are not an accurate representation of how fringe benefits are actually used. Anecdotal evidence suggests that the rorting began after the FBT arrangements were extended to non-charitable hospitals and that if there has been significant rorting it began and has been principally pursued outside of the charity sector.

The most common use of fringe benefits in our sector is for a car.<sup>43</sup> This is also the case in our organisation. In line with the EPIC philosophy of ethics, a staff member must require a vehicle to carry out their work before EPIC will consider the staff member eligible to access a service car. EPIC cars are only available to staff who need to visit or transport clients, or drive between regional offices.

Only one model of car is available to staff who choose to access an EPIC vehicle.<sup>44</sup> EPIC prefers to conserve the money spent in this area so that the maximum amount of resources can be devoted to client services.

Vehicles are vital to good client service, so EPIC pays the running, servicing and fuel costs of our cars, but employees other than the executive team must contribute a fixed amount of their after-tax income to these costs. EPIC counts the value of the private use of the car towards the employee’s FBT concessional cap.

Access to this basic service car is highly beneficial to our staff. Service cars are especially valuable to our lower paid employees, who comprise the majority of our staff, and might find it difficult to access reasonably priced finance privately.

It follows that if there is to be change to the FBT arrangements to limit ‘rorting’, the reform should be targeted at the locus of the problem, not the charity or PBI sector.

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<sup>40</sup> Myles McGregor-Lowndes, ‘*The 1998 tax reform proposal: fringe benefits tax and non-profit organisations*’ (1998) Working Paper, p 15, available at <http://eprints.qut.edu.au/53424/2/53424.pdf>.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Diane Kraal, P.W. Senarath Yapa, Dianne Harvey ‘The impact of Australia’s Fringe Benefits Tax for cars on petrol consumption and greenhouse emissions’ (2008) 23 *Australian Tax Forum* pp 191 – 223, p 193.

<sup>44</sup> An employee may access a Hyundai i30, a Hyundai i35 or a Hyundai Sante Fe (base model) depending on their job description.

EPIC would also point out that FBT was originally linked to employers, rather than employees as in other countries,<sup>45</sup> due to a government desire for ease of enforcement. There being less employers than employees, it was decided that employers would be simpler to tax.<sup>46</sup> According to Professor Myles McGregor-Lowndes:

It is important to note that the policy that drove FBT to a technically impure option was the efficiency of tax collection, if this option had not been chosen, then no corrective exemptions or rebates would have been necessary for nonprofit organisations.<sup>47</sup>

It would hardly be fair to remove FBT concessions to address complexity and inequity concerns while failing to address the heart of the problem: government originally located FBT with the employer rather than employee for its own benefit. If simplicity is the goal, changing Australia's FBT to the site of the employee should be seriously considered.

### **2015 Budget plan to cap meal entertainment and entertainment facility leasing**

In any event, the Government has declared its intentions to legislate a new, separate \$5,000 cap on meal entertainment and entertainment facility leasing fringe benefits.<sup>48</sup>

EPIC supports the proposal to cap these benefits, as do many in the sector. The majority of PBI employees are on the lower end of the payscale and gain no meaningful advantage from these benefits being uncapped. Most sector employees lack the disposable income to pay for 'luxury' benefits items upfront in any case, even if they expected to eventually receive the cost back.

However, EPIC considers that introducing a separate cap rather than simply increasing the existing cap is inefficient. A separate cap for entertainment benefits will merely duplicate administrative problems and restrict freedom of choice for employees. All benefits should remain under the same cap.

EPIC also considers that the \$5,000 cap is unnecessarily restrictive. A \$5,000 value (less than \$100 a week) would seem to be connected more to a desire to discourage use of these types of benefits rather than simply placing fair and reasonable limits on use.

### **Employees accessing multiple caps**

EPIC is in favour of preventing employees from simultaneously claiming the concession from more than one employer. It may be more beneficial to employees in the sector, many of whom work casually, to have more flexibility in which employer they are claiming the concession from; for example, a relief carer who works more hours with Employer A than Employer B in January, but the reverse in February.

### **Administrative burden**

In EPIC's experience, administering the FBT concessions is not overwhelmingly difficult. We acknowledge that this is now because we outsource FBT packaging to an external provider. If employees wish to access FBT benefits, they pay a nominal sum to cover the cost of the third party's services.

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<sup>45</sup> Neil Warren, *Fringe benefit tax design: decision time* (March 2006), policy paper prepared for the Institute of Chartered Accountants in Australia, p 5.

<sup>46</sup> Myles McGregor-Lowndes, 'The 1998 tax reform proposal: fringe benefits tax and non-profit organisations' (1998) Working Paper, p 1, available at <http://eprints.qut.edu.au/53424/2/53424.pdf>.

<sup>47</sup> Ibid p 2.

<sup>48</sup> Commonwealth Government (2015) *Budget 2015-2016 Budget Measures Budget Paper No. 2* pp 22 – 23.

This works well for us but may not work well for smaller organisations. However, the smallest charities with the least administrative capacity do not employ any staff and therefore have no FBT obligations.

## **Complexity**

EPIC considers that the public perception of FBT arrangements, particularly for PBIs, is often unfairly negative. It is common for the public and for regulators to view FBT concessions as some kind of barely-legal, government sanctioned tax evasion scheme. Even among our employees, it is not unusual for their first questions about salary packaging to involve fears of owing a debt to the ATO. Given the highly complicated nature of the tax and the linked exemptions and concessions, it is not surprising that the average layperson struggles to understand the true nature of FBT.

This could be addressed by the following strategies:

- **Improve ATO guidance.** The existing ATO publications on this issue are not particularly user-friendly. More guidance from the ATO, especially in how to adequately explain FBT benefits to staff, would assist with this knowledge problem and address the fairness issue.
- **Reform underlying issues with FBT generally.** It is not really the concessions themselves that make FBT concessions overly complex; it is the nature of the FBT system more generally.

## **Inequitable access**

It has previously been suggested that access to FBT packaging is inequitable because it offers disproportionate benefits to those in higher tax brackets. In our view, fringe benefits are actually of more practical benefit to those on lower salaries. The exception to this is where an employee is not paying off any kind of consumer loan (such as a car loan or mortgage) which could be subject to salary sacrifice, and is not sending children to private schools. In these circumstances, it is difficult to actually provide fringe benefits to the employee which are worth \$30,000 (grossed up value)

We estimate that about 50% of EPIC staff access a salary packaging option, but at the management level this is closer to 90-100%. Our assessment would be that 2/3 of staff in the sector generally would be accessing salary packaging.

In EPIC's view, this phenomenon is not due to disproportionately favourable results for staff on higher incomes. FBT is complex and difficult to understand. In EPIC's experience, few staff feel able to accurately assess for themselves the advantages and disadvantages of accessing FBT packaging. We find that many of our staff are concerned about misunderstanding the FBT rules and inadvertently committing a costly error. EPIC always recommends that staff seek independent financial advice before making a choice about FBT exemption options. In practice, many staff do not do so.

Senior staff are typically more confident in this area due to their added experience, expertise and existing connections to financial advisors. We believe this accounts for the higher levels of takeup by higher income earners, rather than a perk of the FBT system itself.

## **Reform options: short term**

EPIC has specific suggestions regarding how the FBT regime might be improved.

### *Indexation of the cap*

Regardless of whether meal entertainment and entertainment facility leasing are brought within the main FBT concession cap, the present cap should be indexed as promised in 2001 as part of the *Tax Reform: Not a New Tax, A New Tax System* reforms.

This indexation has never occurred. As observed by the Productivity Commission, this is more than an administrative oversight or minor inconvenience for the sector – it is eroding the ability of NFPs and charities to provide services, as the FBT concessions are directly linked with the ability to attract appropriate staff.<sup>49</sup>

EPIC estimates that indexation would bring the current \$30 000 cap up to around \$45,600.<sup>50</sup> Adding the Government's proposed \$5,000 entertainment cap (which should also be indexed, if introduced) would result in a total amount of \$51,100.

Indexation should continue each year hereafter. The measure of indexation which is used is a matter for Treasury advice. Consumer Price Index calculations can be distorted, as the value of consumer goods varies considerably between different areas of the country.

### *Restrict FBT concessions to charities only*

In EPIC's view, part of the Government's perceived FBT exemption revenue 'problem' can be solved while improving the fairness of the tax system.

FBT exemptions and concessions available to charities should not have been extended to non-charitable government bodies and public institutions. This is because the core reason for providing tax support for a charity is absent in the case of government.

Whereas charities and NFPs are born of and sustained by the desire to help others, government activities for the public good are backed by the power of the state.<sup>51</sup> Government extracts funds from citizens through taxation to deliver its public goods. It does not need to give itself and its constituent arms tax concessions in order to continue in its mission, as it has the power to do as it pleases. FBT concessions should not be available to state-owned bodies and public hospitals.

If government wishes to give itself tax concessions for efficiency reasons, it is able to do so by creating a new category of exemption. EPIC suggests that inclusion of government activity in the existing concession category for charity and not-for-profit was logically inconsistent, and public hospitals and other government activities should be removed. For example, there is no meaningful difference between Queensland Government contractors and employees who work in hospitals, and Queensland Government contractors and employees who work for other government departments and agencies.

EPIC also submits that exemptions and concessions should properly be available only to recognised charities. As explained above in relation to the rationale for providing charities with tax concessions, charities have already been required to demonstrate that they exist for public benefit. Given that the purpose of tax concessions to the sector generally is to support provision of public benefit by non-government bodies,<sup>52</sup> organisations which are unable to demonstrate charitable purpose and public

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<sup>49</sup> Productivity Commission, *Contribution of the Not-for-profit Sector* (January 2010) Research Report, pp 213, 267.

<sup>50</sup> Calculated for 14 years of avg 3% inflation.

<sup>51</sup> Matthew Turnour, *Beyond Charity: Outline of a Jurisprudence for Civil Society* (2009) PhD Thesis pp 358 – 59.

<sup>52</sup> Commonwealth Government, *Australia's Future Tax System: Final Report* (2009) Part 2 Vol 2, p 206.

benefit to the Australian Charities and Not-for-profits Commission (ACNC) should not be eligible for FBT exemptions and rebates.

While PBIs as a category receive the greatest quantity of FBT concessions, at \$1.36 billion annually,<sup>53</sup> this is only proper. Organisations qualifying as PBIs have had to prove that they exist to serve the most vulnerable members of our society.

### **Reform options: long term**

#### *De facto phase out is a cop-out*

It has been assumed by previous inquiries that FBT concessions should be phased out completely over time in favour of direct funding. EPIC cannot support that proposal, for the reasons explained above. In any event, it is not clear to EPIC that the case for removing the concessions has been made out.

When FBT was first introduced in 1986, the taxation rate for fringe benefits was deliberately set at the highest marginal tax rate.<sup>54</sup> The hope was that employers would 'cash out' fringe benefits into employees' salaries in response to the punitively high tax associated with fringe benefits,<sup>55</sup> and that fringe benefits would eventually die off. Salaries are much easier to tax and measure, and FBT was to neatly solve the tax evasion problem.<sup>56</sup>

It appears that the same reasoning may be in play in the failure to index the FBT concession caps introduced in 2001. Perhaps it was hoped that the concessions fringe would decrease in relevance for the sector over time, as the value of the concessions became less and less. Ultimately, they would be so meaningless that they could be abolished painlessly.

Much like the result of the FBT – fringe benefits diminished, but have continued as a significant part of remuneration for many Australians – this approach cannot produce the desired result. This is because the sector cannot afford to simply replace the deteriorating value of FBT concessions with funds from other sources. Government grants and alternative concessions have not been increased to maintain the ability to offer competitive salaries in the absence of FBT concessions. Some funds can be procured through increased fundraising, commercialisation of services, and reduction of spending on core business – all of which will affect the quality and quantity of services available to our clients. If FBT concessions are to be abolished, alternative concessions are required.

#### *Tax free allowance for employees of eligible entities*

EPIC would support replacing FBT concessions with an added tax free threshold for employees of PBIs and ITECs. Eligibility for the 'bonus' tax free threshold would be tied to employment by a PBI or registered charity, with pro rata eligibility for part-year employment.

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<sup>53</sup> Commonwealth Government 2015, *Tax Expenditures Statement 2014*, p 74.

<sup>54</sup> The Hon. Paul Keating MP, Treasurer, Second Reading Speech on the *Fringe Benefits Tax Assessment Bill 1986*, available at <http://law.ato.gov.au/atolaw/print.htm?DocID=srs%2F19860039h%2F00001&PiT=99991231235958&Life=10010101000001-99991231235959>.

<sup>55</sup> There was specific provision for this in the Act: see Clause 67, *Explanatory Memorandum, Fringe Benefits Tax Assessment Bill 1986*, available at

<http://law.ato.gov.au/atolaw/view.htm?dbwidetocone=06%3AEXT%3AExplanatory%20Memorandum%20and%20SRS%3A1986%3AFringe%20Benefits%20Tax%20Assessment%20Act%201986%3AExplanatory%20Memorandum%20->

<http://law.ato.gov.au/atolaw/view.htm?dbwidetocone=06%3AEXT%3AExplanatory%20Memorandum%20and%20SRS%3A1986%3AFringe%20Benefits%20Tax%20Assessment%20Act%201986%3AExplanatory%20Memorandum%20->

<sup>56</sup> Ibid.

This arrangement has the advantage of simplicity, efficiency, and fairness. There would be less administrative cost for organisations than the current arrangement, no added burden for employees, and no additional processing for government, unlike the direct grants option.

The benefit is clearly linked to support for the sector, with simple criteria for eligibility. All PBI and ITEC employees would have equal access to the benefit, with no knowledge barrier to inhibit takeup. The public would also understand and accept this much better than the complex FBT system.

A tax offset or tax free threshold would be linked to a natural person, rather than a workplace, so there would be no need to monitor use of multiple caps at multiple workplaces. Similar to the current tax free threshold, an employee would only be allowed to claim the threshold from one PBI or ITEC employer when paying PAYG.

As to the amount of the additional threshold, EPIC suggests the grossed down value of the current cap, but indexed as outlined above. We estimate this would be approximately \$26,000 for the current financial year.

This means that charity employees would be liable to pay FBT through their employer for any fringe benefits that their employer provides, as most Australians do. At the same time, the additional tax-free threshold would provide charity employees with around the same level of benefits as currently enjoyed, but without restrictions as to what the concession can be spent on. It is likely that fringe benefits, attracting the full premium tax, would decline in popularity in the sector as a result. Thus, the original purpose of FBT – to minimise tax evasion – would be fulfilled. Our solution would lower compliance costs for employers and government, while achieving the same goal: supporting vulnerable Australians by supporting the charitable sector.

In regard to the ‘fairness’ issue, the current tax free threshold does not fluctuate according to annual taxable income. EPIC considers disproportionate benefit to higher-earning PBI or ITEC staff to be necessary. As explored above, the primary reason for providing FBT support to the sector is to enable organisations like EPIC to compete for quality staff. Different arrangements in lieu of FBT must accomplish the same outcome.

## **B. INCOME TAX**

EPIC does not wish to comment in detail about income tax issues, other than to make the following observations.

### **Competitive neutrality**

The Discussion Paper implies that income tax concessions are a lesser issue because ‘any retained earnings must ultimately be used to further [NFPs] purposes’.<sup>57</sup> The corresponding conclusion to be drawn is that FBT concessions are not in fact used to further NFP’s purposes. This is not correct.

EPIC does not suggest that either concession is a competitive neutrality issue. Rather, this inconsistency in the Discussion Paper would seem to suggest that the Discussion Paper’s arguments about competitive neutrality in the context of FBT concessions have not been properly examined.

### **Rationale for concession**

The Discussion Paper states that ‘there appears to be no clear rationale underlying [the income tax exemption]’. It is common knowledge that there is no unifying theme or structure underpinning

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<sup>57</sup> Ibid.

Australia's income tax exemption or Deductible Gift Recipient (DGR) schemes. This is because these concessions have typically been expanded on an ad-hoc basis in response to particular issues of the day.

That is not to say that there is no rationale at all for exempting NFPs, particularly charities, from income tax. There is a common thread of benefit to the general public either directly or indirectly through encouraging civil society organisations.<sup>58</sup>

For the reasons outlined earlier in this submission, EPIC considers that charities are deserving of an income tax exemption.

### **Administrative burden**

The introduction in 2013 of two new special conditions for income tax exemption has caused considerable confusion and uncertainty in the sector. The ATO's TR 2015/1 has not meaningfully alleviated this uncertainty.

It is not clear to us what benefit (if any) the new conditions secure. According to TR 2015/1 and the Explanatory Memorandum, the conditions were already established principles of law. There is no documented mischief that the change has addressed.

From the phrasing of the special conditions, they appear to be left over from earlier failed attempts to change the 'in Australia' special conditions and introduce an Unrelated Business Income Tax (UBIT). Both of those legislative projects have been subject to extensive criticism and publicly abandoned by successive Commonwealth Governments (at least for now). Arguably, the 2013 changes provide a 'back door' opportunity for the ATO to administer a de facto UBIT through the application of assets test. If the ATO applies the provisions in this way, it will deny the sector its right to a renewed public debate about whether a UBIT should be imposed.

All that has been achieved with the 2013 special conditions is increased uncertainty in the sector, which benefits nobody other than specialist charity lawyers and accountants. EPIC recommends that the 2013 special conditions be repealed as soon as possible.

## **C. DEDUCTIBLE GIFT RECIPIENT STATUS**

EPIC has enjoyed DGR status as a PBI for some time. As such, it does not have recent experience with the difficulties of registration as a DGR. We can confirm, though, that the requirement to constantly consider whether adjusting our activities to our environment and our clients' needs will result in loss of our PBI status is an unnecessary burden.

A PBI's 'main' activity must be the relief of the needs of people who are suffering due to their poverty, sickness or other disadvantage outside the normal ups and downs of life. The problems that this 'main activity' criterion can cause has already resulted in the creation of separate categories of Health Promotion Charity and Charitable Services Institution.

EPIC suggests that it may be time to update or abolish the concept of a 'public benevolent institution' and replace it with an alternative with greater flexibility for organisations to respond to the poor and disadvantaged in the way that is most useful. Assistance in the form of education, training, counselling and coaching may not always be the 'relief' of an existing need, which is what is required for PBI status; nevertheless it is what will often provide the most benefit and impact in the long run.

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<sup>58</sup> The most comprehensive work on this to date is probably still: Myles McGregor-Lowndes, Matthew Turnour and Elizabeth Turnour (2011) 'Not for profit income tax exemption: is there a hole in the bucket, dear Henry?' in *Australian Tax Forum* 26(4), 601.

Where is the logic in having to wait until a crisis arises in order to help someone? In a society where we now recognise the importance of according every person their rightful human dignity, is it right to have to refer to a group of people being 'pitable' or attracting 'compassion' from the community, rather than simply recognising that they are facing greater than usual disadvantages?

EPIC supports an increase in the donation amount required before tax-deductibility is available. As a general principle, this should be an increase from coins to notes, in the order of \$5 - \$10.