

5 June 2015

Tax White Paper Task Force
The Treasury
Langton Crescent
PARKES ACT 2600

By post and by email: bettertax@treasury.gov.au

Dear Sir / Madam

The Queensland Law Society (**the Society**) expresses its thanks for the opportunity to comment in relation to the Australian Government's 30 March 2015 '*Re: think Tax Discussion Paper*' (**Paper**). The Society is also of the view that there is room for considerable simplification and improvement in the structure of divisions 30 (deductibility) of the *Income Tax Assessment Act 1997 (ITAA)*. The Society makes the following submissions with the assistance of its Not-for-Profit Law Committee.

Summary

This submission addresses the discussion questions raised in Chapter 7 of the Paper, concerning the taxation of the Not-For-Profit (**NFP**) sector.

The view of the Society is that, in relation to the NFP sector, taxation legislation should be focused on ensuring the tax exemptions and concessions available for the NFP sector assist organisations to effectively return a benefit to the community. The principal objective of the taxation legislation should be to ensure that the taxation system is used to further public policy objectives, rather than as a method of revenue raising.

In this context, the Paper's focus on 'foregone revenue' is of particular concern for the Society and its members. The tax concessions and exemptions provide an incentive for the Australian community to contribute to the programs and services delivered by the NFP sector and to contribute to the growth of the sector, thereby encouraging taxpayers to invest in programs or organisations that will ultimately, in turn, return a benefit to the community.

Without the support of the community, government would be required to make a greater contribution to the cost of service delivery, thereby putting further strain on tax revenue.

Any concerns government has regarding 'foregone revenue' would be better addressed through regulation, to ensure these tax advantages only benefit appropriate NFP organisations.

The extent to which NFPs receive 'competitive advantages' as a consequence of their charitable status has been extensively considered in previous reports and enquiries which have concluded that they do not give rise to any significant policy concerns. In short, the 'competitive neutrality' concerns lack substance. It is our view that these findings continue to apply to the sector.

Discussion Questions

The Society wishes to make comment concerning the following Discussion Questions:

47. Are the current tax arrangements for the NFP sector appropriate? Why or why not?

This question was considered in great depth by the Not For Profit Sector Tax Concession Working Group (**Working Group**). The Working Group identified three rationales for providing tax concessions to the NFP sector:¹

1. Concessions are a form of government assistance to worthy causes.
2. Tax concessions to the NFP sector are a form of payment or subsidy for the delivery of goods or services.
3. Income tax is imposed on entities as proxies for individuals. Charities and NFPs formed for public benefit not the private benefit of individuals should therefore not be included in the income tax regime.

There has been no change in the operations or activities of the NFP sector in the last 2 years that would impact on these rationales and the findings of the Working Group based on an extensive consultation process remain relevant.

The Society urges Treasury to have regard to the work done by the Working Group and the extensive contribution the NFP sector made to its review of the tax concessions.

48. To what extent do the tax arrangements for the NFP sector raise particular concerns about competitive advantage compared to the tax arrangements for for-profit organisations?

This issue has also been considered extensively in previous consultations and enquiries. This concept of 'competitive neutrality' was also subject to considerable public debate following the 2008 decision of the High Court in *Word Investments*,².

'Competitive neutrality' concerns were investigated by the Industry Commission in 1995 in its *Charitable Organisations in Australia Report*. Whilst acknowledging the

¹ Fairer, simpler and more effective tax concessions for the not for profit sector, Not for Profit Sector Tax Concession Working Group, Final Report, May 2013 at p.2

² *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55.

comparative tax advantages provided to the NFP sector, the report concluded that 'such exemptions were unlikely to provide an unfair advantage to NFPs'.³

The issue was again considered in 2009 as part of the Australia's Future Tax System Review ('the Henry Review'). The Henry Review focused on the income tax, GST and FBT concessions provided to the NFP sector. The Henry Review also ultimately concluded that the concessions 'do not appear to violate the principle of competitive neutrality where NFP organisations operate in commercial markets'.⁴

The tax arrangements of the NFP sector were also considered by the Productivity Commission 2010 in its *Contribution of the Not-for-Profit Sector* report. The Commission found that, despite the tax advantages available for the NFP sector, 'on balance, income tax exemptions are not significantly distortionary'.⁵

The tax advantages of the NFP sector were considered extensively by all three reports referred to above with the same result each time: there is no objective basis for 'competitive neutrality' concerns. The Society is not aware of any facts or circumstances that would make, the conclusions drawn by these reports no longer valid.

49. What, if an, administrative arrangements could be simplified that would result in similar outcomes, but with reduced compliance costs?

These issues were extensively considered by the Working Group and the Society urges Treasury to have regard to the work done by the Working Group and the extensive contribution the NFP sector made to its review of the tax concessions.

50. What, if any, changes could be made to the current tax arrangements for the NFP sector that would enable the sector to deliver benefits to the Australian community more efficiently or effectively?

These issues were extensively considered by Working Group and the Society urges Treasury to have regard to the work done by the Working Group and the extensive contribution the NFP sector made to its review of the tax concessions.

In the light of the decisions in the *Hunger Projects* cases,⁶ there may well be a basis for consolidating into one broad class all of the different welfare providing heads of deductibility including the following perhaps with different special conditions:

- Public Benevolent Institutions;
- Health promotion charities;
- Harm prevention charities;
- Necessitous circumstances funds;
- Disaster relief funds; and possibly
- Overseas aid Funds.⁷

³ Industry Commission, *Charitable organisations in Australia*, report no. 45, 1995, App K.

⁴ Australia's Future Tax System Review Panel, *Report to the Treasurer: Part Two detailed analysis*, 2009, vol 1, p 209 (Henry Review, Report).

⁵ Productivity Commission, *Contribution of the not-for-profit sector: research report*, 2010, p 197.

⁶ *The Hunger Project Australia v Commissioner of Taxation* [2013] FCA 693; and *Commissioner of Taxation v Hunger Project Australia* [2014] FCAFC 69

Next steps

Should you wish to discuss these submissions, or any other aspect of the Paper and its contents, the Society invites you to contact Julia Connelly, Policy Solicitor, Advocacy and Policy team, at J.Connelly@qls.com.au or on (07) 3842 5884.

Yours faithfully



Michael Fitzgerald
President

⁷ See: M. Turnour (2014) Court Decision Points the Way to DGR Category Simplification AT <http://www.probonoaustralia.com.au/news/2014/06/court-decision-points-way-dgr-category-simplification#> accessed 4 June 2015.