



St Vincent de Paul Society
NATIONAL COUNCIL *good works*

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***Submission in response to Not-For-Profit Sector's Tax
Concession Working Group Discussion Paper: "Fairer,
simpler and more effective tax concessions for the not-for-
profit sector"***

1. The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 148 countries around the world. In Australia, we operate in every state and territory, with more than 50,000 members and volunteers committed to our work of social assistance and social justice. We are accountable to the people in our community who are marginalised by structures of exclusion and injustice.
2. On 2 November 2012, the Chair of the Non-For-Profit Sector Reform Council invited the National Council to make a submission on the Not-for-profit Sector Tax Concession Working Group's discussion paper, *Fairer, simpler and more effective tax concessions for the not-for-profit sector*. The Council is charged with representing the Society on a national basis, and in particular in the area of advocacy. The Council has now consulted with its member states, and welcomes the opportunity to contribute a submission on this discussion paper. The Society has previously provided submissions on related issues.¹

Background

3. The Society agrees with the conceptualisation of tax benefits for the NFP sector provided in the first and second rationales in the discussion paper: concessions are a form of subsidy for the delivery of public benefit, for a worthy cause.
4. The Society will address the points in the discussion paper on which it has a view.

1. Income Tax Exemption and refundable franking credits

Q1/2/3, and Q10

5. The question of whether the current categories of income tax exempt entity are appropriate (Q1) depends on what criteria should be used to determine whether an entity is entitled to an income tax exemption (Q2, Q3). The nature of those criteria, in turn, depend on the underlying purpose of providing tax concessions to non-for-profit organisations.
6. The discussion paper states that concessions can be seen as a form of subsidy for the delivery of public benefit, for a worthy cause.² We would agree with extending the "public benefit" test so that it applies to the income tax exemption (Question 2, 3). The question then becomes what types of public benefit should qualify a non-for-profit for an income tax exemption.
7. In our analysis, considering the principles of fairness, simplicity, and maximising social good, we categorise the non-for-profits that currently receive an income tax exemption into three groups, providing different levels of "public benefit".

Group 1

8. The first group comprises includes organisations that provide universal access to *essential* goods and services, either as part of a government program or not. This

¹ See, for example, *Submission to the Standing Committee on Economics* (20 July 2012) (at vinnies.org.au/files/Submission%20-%20ACNC%20-%20St%20Vincent%20de%20Paul%20Society%20-%202020%20July%202012.pdf); *Submission to Treasury Review of Non-For-Profit Governance Arrangements*, (June 2012) (at vinnies.org.au/files/NAT/SocialJustice/2012/Submission-to-NFP-Governance-Review.%20final.pdf).

² *Ibid*, 9.

would include charities providing food, clothing, housing, and social support; public hospitals that are open to everyone regardless of wealth; and public schools that accept all children from all backgrounds. As such, this definition would encompass “charitable” organisations (noting the work that the ACNC will do on this definition).

9. These organisations provide what might be considered the minimum level of goods and services that everyone in our society has a right to access in order to maintain a basic standard of living, and to ensure human dignity and human rights are protected. Moreover, these goods and services are provided without discrimination as to status, and without monetary fees that would exclude disadvantaged Australians.
10. We believe this group safely fits within the “public benefit”/“worthy cause” test.

Group 2

11. Then there is a second group of non-for-profits that operate in the same area, but provide a different level of services. These include private hospitals, private health insurers, and private schools: all providing important services, but services that are not “essential” to maintain that basic standard of living (in some cases because they are provided for free elsewhere).
12. It must also be noted that the institutions grouped here are “private”: they cost money, and so are often closed to socially marginalised people on very low incomes.³ Moreover, they are sometimes entitled to exclude people from their services for other reasons.
13. Concessions to this group must be more carefully considered.⁴ This is particularly true when tax concessions here may occur at the expense of higher concessions or subsidies to the group of *essential* non-for-profits, with the inadvertent effect of increasing inequality by providing a higher level of services to those who can afford it – this is not a “public benefit”.

Group 3

14. Finally, the discussion paper mentions the group of “cultural”/“social” institutions that currently receive income tax exemptions: art, games, sport, literature, and music. There is a clear and important rationale for promoting cultural participation and engagement, and we all benefit enormously from these organisations. The Society maintains that access to cultural and sporting activities should not be the preserve of an elite but should be accessible and affordable for all members of the community. Many of the institutions that would appear to fall into this category play a crucial role especially in enabling low-income members of the community to enjoy the often under-appreciated value of participation in sport and the arts. They should therefore perhaps be considered more accurately as belonging to category 1.
15. Relating to Chapter 5 of the discussion paper, some activities of some organisations that fall into the category of “mutuality, clubs and societies” may also fit into this third

³ On how those on low incomes are far less likely to attend independent schools see, for example, Carmen Lawrence, “Mind the Gap: Why the rising inequality of our schools is dangerous” *The Monthly* (2012) July (at themonthly.com.au/why-rising-inequality-our-schools-dangerous-mind-gap-carmen-lawrence-5620).

⁴ Morally, there is an argument that any education system that is funded by the public, but that benefits wealthier students more than others is unfair. See, for example, Tim Pitman, “A Low Target” *The Conversation* 16 November 2012 (at theconversation.edu.au/a-low-target-enrolling-poor-uni-students-remains-a-challenge-10297).

group – the commercial-scale gaming and hospitality offered by some is certainly not the “same type of public benefit” as other non-for-profits.⁵ Moreover, the present law was not designed for clubs in their current (sometimes massively commercial) form.⁶ Again, the service that some of these societies provide to the community is very similar to a for-profit commercial company.

16. In relation to this group of organisations, the Society would question whether merely being “non-for-profit” should be enough to win an organisation an exemption from income tax, or whether a stricter “public benefit” test should apply. This might be equated with the work done by “charitable” organisations providing services to people who aren’t maintaining a basic standard of living from other sources.

Conclusion

17. Whilst recognising the large social good that is done by the non-for-profit organisations in groups 2 and 3 above we believe that it is a qualitatively different kind of good to those organisations operating in Group 1, which provide essential services to those who are unable to provide for themselves. We make this suggestion with the important caveat that there are organisations that might initially be perceived to belong solely to category 3 but actually should be identified as belonging to category 1 inasmuch as they provide access to cultural and sporting activities for people who experience social exclusion on the basis, for example, of disability, class, gender or race.
18. For that reason, it is possible that a net gain in social benefit could be achieved by reducing the income tax concessions available to those non-for-profits that provide less essential public goods, and redistributing the benefits elsewhere: perhaps to be used as further tax concessions for charities performing essential public benefits. A reduction in income tax concessions to a group would not have to be complete: for example, concessions could be weighted according to the level of benefit provided.

2. Deductible Gift Recipients

Q11/12.

19. We would support one overriding purpose test that could offer some simplicity and fairness, and a chance to synthesise the rules on who qualifies as a DGR. We note the ACNC’s upcoming work in the area of defining charity.

Q26.

20. We ask why there needs to be a threshold for deductible gifts at all. Why not do away with the threshold, thereby recognising all giving (and possibly encouraging more, small, gifts)?

3. Fringe Benefits Tax Concessions

21. We agree that “salary sacrificing is utilised by eligible employers as a method of attracting employees by offering packages that compete with those offered by the

⁵ Above n **Error! Bookmark not defined.**, [216].

⁶ *Ibid*, 57.

commercial sector.”⁷ In our experience, fringe benefits can be a valuable recruitment tool.

22. Again, we note the confused variety of categories within the non-for-profit sector (Q28/29), and believe that the ACNC will do valuable work in unpacking this. With regards to the two-tiered system (Q28/29), again we believe those entities that most need support, and whose work the government has the most to gain by supporting are charities that operate to provide essential public services: these should receive the highest level of tax concessions, possibly with other public-benefit providers entitled to different levels of concessions.

Q 31/32/33.

23. Meal entertainment benefits should remain outside the existing caps on fringe benefits – otherwise non-for-profit sector employees will lose benefits. Meal entertainment benefits should be capped, however; we suggest a cap of \$20,000 per fringe benefits tax year to begin with (with could be adjusted over time). We would also support the possibility of excluding high-income employees from this benefit.

Q34

24. Employees should not be able to access multiple caps when changing employment during a single fringe benefits tax year. Otherwise this may be legitimately viewed as ‘double dipping’.

Q35

25. The fringe benefits tax rebate should be aligned with the fringe benefits tax rate for simplification of the process as long as the value of the benefit to employees does not decrease.

Q36

26. We find that the limitation of \$300 for minor fringe benefits not being subject to FBT provides an organisation with reward, recognition or acknowledgement benefits which are valuable to not-for-profit organisations and their employees. We think that this should remain.

Q 37/38/39

27. We would be wary of *any* of the current tax benefits being replaced with direct government funding for projects/staff.

Q 40

28. A direct refundable tax offset is not guaranteed and may be altered. Also, a tax free allowance of \$2,800 would not provide as much value as the current benefit gained.

Q 41/42

29. Fringe benefits tax concessions should not be limited to non-remuneration benefits. It should remain as it currently stands due to the flexibility of the system to suit

⁷ Above n **Error! Bookmark not defined.**, [128].

individuals and their circumstances. A broad brush approach to treating all employees the same is not appropriate.

4. *Next Steps*

30. We are concerned about the possible implications for charities of balancing some reforms with others so as to provide a revenue neutral result.
31. We also note that, given several comments in the discussion paper about the total value to some tax concessions being difficult to estimate, it could be difficult to ensure that any measures are truly revenue neutral for the government.