



**THE AUSTRALIAN  
LUNG FOUNDATION**

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*"When you can't breathe...nothing else matters"™*

**GENERAL SUBMISSION  
AUSTRALIA'S FUTURE TAX SYSTEM  
APRIL 2009**

## A. Introduction

Incorporated as an association in South Australia in 1990, The Australian Lung Foundation is a Public Benevolent Institution with deductible gift recipient status and is exempt from income tax. The organisation receives no State or Commonwealth funding to support its core operations.

Our mission is to assist people burdened with lung disease and promote lung health in Australia. To do this, we:

- ♥ raise funds to encourage and facilitate medical and scientific research into lung disease;
- ♥ educate the community in lung health;
- ♥ provide support and educational services to patients, their families and carers; and
- ♥ advocate to government and the business community on the impact of lung disease.

This general submission seeks to address the consultation questions posed in the Consultation Paper of December 2008, and to make recommendations for use of tax policy to assist with future preventative health programs.

## B. Question: Given the impact of the tax concessions for NFP organisations on competition, compliance costs and equity, would alternative arrangements (such as the provision of direct funding) be a more efficient way of assisting these organisations to further their philanthropic and community based activities?

The Foundation cannot accept the concept that not-for-profit organisations could be considered as being a competitive threat to commercial enterprises, generically or otherwise. Commercial enterprises operating in any given profit-making endeavour will generally specialise and gear their entire enterprise towards particular areas of product or service delivery. Not-for-profits will generally operate with a multifaceted fundraising strategy. In certain cases a small facet of that fundraising strategy may be to provide goods or services also provided by commercial entities, *to underpin their charitable cause*, as determined by their constitutional objects. The majority (if not all) of these not-for-profits do not specialise in that commercial area. The Foundation fails to see how a few not-for-profits can thus have a large impact on competition within large consumer or other markets, without this specialist expertise, strategy, human resource, shareholder equity etc.

From a Government perspective, surpluses so derived by not-for-profits are disbursed tax free in pursuit of public benefit, as opposed to commerce's taxed private dividend benefit. These not-for-profit surpluses are spent in complementing public spending in meeting society's needs – be they social, health, environmental etc. Being on the "coal face", not-for-profits are experienced in, and specialise in disbursing their income to particular causes within the gambit of public benefit – resulting in the payment of the maximum amount of funds (efficiency) in a timely manner.

The alternative, from a Government perspective, would be to tax not-for-profits on their income. These funds would then go through multiple tiers of public sector administrative processes over a period of time with the aim of being returned to the generators of the income (not-for-profit organisations) via the provision of direct funding. By this time however, a significant time would have elapsed, and these funds would have been eroded in paying for public sector administrative infrastructure eg additional ATO departments.

A further risk of taxing not-for-profit organisations, besides reduced economic efficiency and timeliness, is that insufficient direct funding (ie less than would have been available with tax concessions) is disbursed to not-for-profits due to Treasury budget cutbacks for whatever reason (political or other), or the rise of a Government which gives less weight to concepts of social and environmental justice, and instructs Treasury or policy makers accordingly. In such cases, these organisations would simply cease to exist due to insufficient funds, with the related section of society no longer receiving that benefit. This would be a step backwards in the welfare of society, the environment and social justice.

Social equity should not take a backseat to shareholder equity.

Non-government organisations such as The Australian Lung Foundation enjoy massive input from a large band of volunteers ranging right from the Chairman of the various consultative groups of key opinion leaders, right down to cleaning the office. This generous input allows us to provide services to the Australian community which would in the absence of NFP such as ourselves need to be provided by government.

An example of this is the provision of pulmonary rehabilitation services. Empirical evidence in both the United Kingdom and Canada proves that gentle exercise for those burdened with lung disease can significantly improve their quality of life and reduce the flareups of their disease - with consequent hospital admissions reductions. This results in a considerable saving to the public health system. The Australian Lung Foundation is piloting a pulmonary rehabilitation program, Lungs In Action, in response to an identified need for this service, which is generally not provided by the Australian public health system.

The Foundation submits that direct funding would pose significant challenges and potential disadvantages, as follows:

a) The challenge of direct funding quantification:

The various tax concessions are calculated using various bases, for example the FBT exemption is applied to the number of employees, and the income tax exemption on income. These concessions fund different purposes, for example FBT exemptions enable not-for-profit organisations to offer market-related salaries which increases staff retention (internal benefit), whilst income tax exemptions free up more funds to disburse for public benefit and charitable causes (external benefit). A direct funding formula would need to incorporate all the concession bases to be considered fair and equitable.

b) An increase in administrative burden:

In their submissions to the Standing Committee on Economics, many organisations in receipt of government funding complained of excessive reporting requirements by government, disclosure and compliance obligations which had become an inefficient burden requiring additional staff, some having to utilise up to 46% of the value of a grant simply to account for the grant.<sup>1</sup>

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<sup>1</sup> Standing Committee on Economics – Disclosure regimes for charities and not-for-profit organizations, page 103

The provision of direct funding in the form of an annual or other cyclical grant, to organisations in lieu of tax concessions thus has the potential to divert vital financial and human resources to servicing the administrative, accounting and reporting requirements of that funding.

**C. Question: What is the appropriate tax treatment for NFP organisations, including compliance obligations?**

In formulating our answer to this question, we have first considered the principal tax concessions affecting the Australian Lung Foundation, and then go on to make some broader comments in relation to how the tax system and its application to our partners in the private sector may have flow-on benefits for both The Lung Foundation and the not-for-profit sector as a whole.

**Principal taxes and compliance obligations**

1. Fringe Benefits Tax

The present FBT exemption for the Lung Foundation has been capped at a threshold of \$30,000 per employee for many years. (Section 57A of the Fringe Benefits Tax Assessment Act 1986). This exemption enables us to provide market rate after-tax salaries to our employees at a lower cost to the Lung Foundation than would otherwise be the case. In addition, it frees up funds for research and other projects to relieve the burden of lung disease in the Australian community.

2. Deductible Gift Recipient Status

As with other Public Benevolent Institutions, The Lung Foundation is endorsed by the ATO as a tax concession charity with deductible gift recipient status. This enables donors to make a claim in their tax returns for relief in respect of donations of \$2 and above.

**Appropriate future tax treatment**

1. Specialist legal structure

The Lung Foundation supports the Standing Committee on Economics' recommendation that a single, specialist legal structure be adopted for Not-For-Profit Organisations through a referral of state and territory powers – in full consultation with those organisations.<sup>2</sup> The Lung Foundation submits that the legal structure should be mandatory for all Not-For-Profits over a certain revenue threshold, so as not to unfairly disadvantage small community groups. An example of this is those whose services are delivered mostly in kind, by volunteers.

The full suite of tax concessions could then be applied consistently to the organisations so incorporated.

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<sup>2</sup> Standing Committee on Economics – Disclosure regimes for charities and not-for-profit organizations, page 2

## 2. Fringe Benefits Tax exemptions

We believe that the FBT exemption should be indexed to average weekly earnings which would keep the exemption in line with salary movements. This would meet the government's objective in helping not-for-profit organisations and charities such as the Lung Foundation to attract and, importantly, retain competent skilled staff. In conjunction with this indexation initiative, a one-off increase to the \$30,000 threshold amount should be considered to counteract the erosion in the value of this exemption over the years since its introduction.

As an ancillary issue which affects the talent pool available for employment, in common with many other not-for-profit organisations, the Lung Foundation employees people returning to the workforce after, for example, a family absence. High effective marginal tax rates (EMTR's) are a barrier to many young mothers wishing to return to the workforce, as they would lose items such as family tax benefits and low-income relief. The net effect of this can be as high as 80% or to put it another way individuals will only be 20% better off by returning to the workforce. Economic incentives, in the form of tax concessions to assist in returning to work, are required to enable continued economic efficiency, particularly considering the imminent retirement of a large demographic proportion of the workforce.

## 3. Deductible Gift Recipient concessions

It is widely accepted that Australian charities lag well behind their cousins in the United States of America as far as both individual and corporate philanthropic donations are concerned. We believe that the Australian government should look for ways to increase the level of giving in Australia by making adjustments through the tax system. One straightforward way of achieving this would be to provide incentives for donors over and above their marginal tax rates. We see this in other countries where companies and individuals enjoy a double dip deduction for donations to benevolent institutions such as the Lung foundation.

## 4. Rationalisation of State/Territory Taxes

It was puzzling to see that Goods and Services Tax has been excluded from the terms of reference of Dr Henry's review when GST accounts for approximately 25% of tax revenue in Australia. We believe there is a strong argument for rationalisation of state/territory taxes to simplify both not-for-profit and for-profit entity compliance burdens.

## 5. Excise and customs duty on cigarettes

The principal cause of most areas of lung disease can be found in patients' smoking history. We recognise the power of "Big Tobacco" and are aware of the intense lobbying at a high level in government by the tobacco industry. Nevertheless it is recognized that taxation reform is one very effective tool to reduce consumption of tobacco. There has not been any real increase in excise and customs duty on cigarettes for the past 10 years. We believe that serious consideration should be given to increasing tax on tobacco to fund preventative lung health programs, with the benefit of ameliorating the massive cost in both dollar and social terms for our nation associated with smoking tobacco.

#### **D. Conclusion**

The Henry review is certainly a bold step and if balanced correctly can deliver strategies that will deal with demographic, social, economic and environmental challenges facing our nation now and in future. It will also provide an opportunity to rectify some of the unintended consequences of the burgeoning tax laws over the last few years.

The Australian Lung Foundation envisages a fair and equitable taxation system which recognises the funds acquired and disbursed by not-for-profits, as complementary to public spending and meeting society and the environment's needs. As public spending is not itself taxed, so neither should not-for-profit funds expended for public benefit. As Government needs to retain human resource to maintain economic efficiency, so too does the not-for-profit sector.