

**AUSTRALIA'S FUTURE TAX SYSTEM  
SUBMISSION  
FROM**

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**Labor Market Distortions caused by the FBT Exemption – The Issue**

The residential aged care industry, private for profit and charitable (PBI) providers are governed by the same regulatory and funding system. The aged care industry competes internally for all types of employees and externally with the public & non-profit hospital sectors for registered & enrolled nurses.

This submission addresses the issue of Fringe Benefit Exemption in the Residential Aged Care Industry and the Public Hospital Industry and identifies that the exemption:

- **Distorts the labor market** for employers in attracting & retaining employees to the extent that a private sector employer needs to pay 23% more to equal the salary of an employee in a PBI earning \$55,380pa with the \$30000 FBT exemption. There is a lower level of FBT exemption distortion caused by the hospital sector where the wage rates are around 12-15% more than in the aged care sector & where the exemption is \$17000. The table at Attachment A sets out further examples that involve the most common jobs in residential aged care
- **Provides a lack of equity for employees** performing the same work in the same industrial agreement classification where the pay rate of \$55380 results in \$8736 more benefit, ie \$8736 less tax for the employee with the PBI employer vs the private employer. The work of both employees is of equal merit
- **Prevents the mobility of labor** between sectors & provides cost free labor retention mechanisms to employers with PBI status. We have had 2 examples in the past 6 months relating to 2 PBI employers where:
  - We were approached by an employee of a PBI as she knew we had a vacancy arising by retirement and was keen to work with us. She was on the same wage as we offered (around \$36000), but we could not meet the cost of the salary package plus the FBT Tax. The employee was unhappy working for the PBI employer she stated due a level of disorganization & slow decision making, but she stays in the job with out enthusiasm.
  - An RN responded to our advertisement & we offered the position which she was keen to accept because of what she saw in our systems. Our salary rate was slightly higher at \$60,000pa, but again we could not match the salary packaging & pay the FBT tax. When not being able to accept our position, the RN commented to us that “if they don’t care about how the place works’ I guess I shouldn’t worry!” She continues to work for her PBI employer.

Fringe benefit Tax was introduced to prevent tax avoidance by principally high income earners at a time where marginal tax rates were much higher than they are now & where the avoidance appeared to be rife.

The provision of FBT exemptions to PBI’s was I believe an unintended consequence of the introduction of the FBT legislation.

## **Labor Market Distortions caused by the FBT Exemption – Possible Solutions**

There are a number of ways of addressing the labor market distortions caused by FBT exemptions:

- Increase the spread of the exemptions to the private sector employees principally engaged in the same occupation as those personnel receiving the exemption in the PBI sector of particular industries.
- Eliminate the FBT exemption over a period of time, while also adopting the above position to produce equity in what would need to be quite a long phase out period. For example, the \$30000 exemption could be phased out over 10 years & the \$17000 exemption phased out over say 5 years
- A combination of the above, where after a particular date no new employee could receive an FBT exemption, and the exemption for existing employees is phased out as above.

The Aged Care industry has adopted a policy where it would like the whole industry to have the exemption.

However while the exemption continues, there are always likely to be some well reasoned arguments for its extension to others who are equally deserving employees.

Indeed any other employee!

## **Should PBI Status be Retained for Mature Business Operations? The Issues**

Charitable (PBI) & private for profit residential aged care providers compete in the same market place in the provision of services, the attraction & retention of employees and operate under all the same funding & regulatory requirements.

This raises the question as to whether or not the vast majority of residential aged care is normal business as distinct from a charitable service that needs a special tax incentive status to exist.

Residential Aged Care is a mainstream service provided in our mixed economy structure.

There are quite small & distinctive components of residential aged care where particular incentives are required to provide services to otherwise uneconomic locations or particular welfare functions overlaying the provision of residential aged care service.

Some of these incentives are provided by the funding department and others are provided by the taxation system due to PBI status.

It could be argued that the funding department is in a much better position to determine service planning & incentives for particular disadvantage locations &/or additional functions without the overlaying need for broad based tax incentives. This approach can also apply to other industries

Over time there have been changes in our society and in the extent of service provision.

For example, many years ago, the provision of home age care services was only affordable by the wealthy and there was no tax benefit provided.

The past decade has seen the development of care at home for the aged as a society wide policy objective initiated by Government and principally implemented by charities with PBI status.

That business is now open to the private sector which is beginning to take up some of those opportunities. It is a matter of judgment as to when the special tax incentive should be removed and allow competitive industry development managed by the funding/regulating department.

In the case of residential aged care the industry is now mature & has had uniform regulation & funding for many years.

The provision of PBI status to charitable providers is about as logical as *not* giving special tax status to McDonald's but giving it to Hungry Jack's because they say their burgers are better.

### **Should PBI Status be Retained for Mature Business Operations? – Possible Solutions**

In my view PBI status should be seen as *a* means by which Government can encourage the development of particular activities for the benefit of society, similar to all manner of economic/taxation incentives used by Government for particular policy objectives.

It is clear that over time as our society changes and develops, that where an activity fits will also change over time.

Equally as organizations evolve over time the nature of activities within organization also changes.

There needs to be a review of PBI status to define:

- what is an ordinary business activity within our economic structure &
- what is it that defines an activity such that it should be given a special tax status

This review process needs to be an ongoing activity every several years so that the cost of PBI status to the community is appropriately targeted. The task would quite usefully fit within the Productivity Commission.

When an organization is granted PBI status it should be limited to certain activities. Other activities that it may engage in would not then have the benefit of the PBI status.

Additionally the PBI status should be granted for a limited period, say 5 to 7 years with the right to re-apply and in the event of rejection, a say, 2 or 3 year “change” extension would be granted.

Where the status of an activity such as residential aged care changes from attracting PBI status, there need to be effective transmission rules to change the form of ownership with minimal cost.

Existing multifaceted charities may well end with a mix of business activities & charitable activities.

The business activities will operate in their market place in a similar environment to private businesses and in competition with them.

Profits will be taxed, be able to be retained for further business development & the dividends that are available from the business activity can be donated to PBI status charitable activity & attract the appropriate tax deduction.

While organizations with PBI status may resent the change, competitive business frameworks will work more effectively and it may well be that new non PBI business activities will grow & develop to provide a better return for their PBI stakeholders.

### **Background to the Submission**

Trevu is a high care aged care facility in Gawler SA. Gawler is a regional centre located in between the northern suburbs of Adelaide & the Barossa Valley.

In Gawler we compete with 3 other ACF's, two being PBI's & one other private for profit facility in both service provision & for the attraction & retention of employees.

We all also compete with the local public hospital for registered & enrolled nurses.

The northern suburbs & the Barossa Valley are well serviced by aged care facilities. In the northern suburbs there is a fairly even mixture of PBI & private facilities, whereas in the Barossa the facilities are all long standing community based operations that are also PBI's.

We compete in these areas for labor and to a lesser extent for service provision.

There are also public hospitals in the Barossa valley & a large public hospital in the northern suburbs which also create competition for RN & EN employees.

### **Recent Business Development in the Region**

Retirement village development has sometimes been directly connected with the provision of residential aged care.

In recent years there has been significant development in this industry.

One large private SA retirement village developer/operator has recently built 3 facilities each between 150& 300 dwellings in the northern metro region.

Each development set aside land for a collocated residential aged care facility to service the needs of the existing & new community.

In 2 cases the opportunity was taken up by different private providers and in the other case, a charitable PBI provider.

The services provided at each site are high & low care, & one of the private providers operates an extra service facility.

All three providers have other aged care facilities

- the PBI operator has 11 sites including 1 rural;
- one private operator has 10 sites, some extra service, two rural;
- the remaining private operator has 3 metropolitan sites some extra service.

Within the Gawler area there are 4 main retirement village operations:

- the largest & newest is private & sold land for the co-located ACF operated by a PBI;
- the oldest & second largest & still growing is a long standing not for profit community based operation & is not directly associated with aged care facilities;
- The second oldest was privately developed & operated including residential aged care for 25 years & sold to a PBI aged care facility operator in recent years, who has recently closed down the residential aged care component as it was "not economic".
- There is one smaller private serviced apartment complex that also operates as a retirement village.
- A Barossa Valley PBI residential aged care provider has been looking to enter the local retirement village market as it believes it can boost its financial fortunes with further retirement village development.

**Attachment A follows...**

Review 08

<b>Title</b>	<b>Employer tax status</b>	<b>Full time Salary</b>	<b>Tax colm 2</b>	<b>tax after FBT exem</b>	<b>Net Salary</b>	
Nurse	Pub Hosp	62712	13884	8268	54444	plus 24% with 13.2% gross advantage
Nurse	Large PBI	57353	12168	3120	54233	plus 23.6% with only 3.7% gross wage advanta
Nurse	local PBI	55316	11492	2756	52560	plus 19.8% while paying a similar gross amount
Nurse	Private	55380	11492	na	43888	RN comparison base
care worker	PBI	33690	4264	0	33690	plus 14.5% while paying the same gross wage
care worker	Private	33690	4264	na	29426	Care worker comparison base
cleaner/kitchen hand	PBI	31958		0	31958	plus 13.8% while paying the same gross wage
cleaner/kitchen hand	Private	31958	3900	na	28085	Cleaner base comparison

In each case the RN rates are the top of Level 1 for each organization  
 Early the advantage of the PBI FBT exemption accelerates as the gross wage & marginal tax rates increase.  
 This seriously exacerbates the problems in hiring & retaining middle managers who also are RN's