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Dear Not-for-profit Sector Tax Concession Working Group

Discussion Paper, November 2012
Fairer, simpler and more effective tax concessions for the not-for-profit sector

Netball welcomes the Not-for-profit Sector Tax Concession Working Group consulting with the community on the whether there are better ways of delivering the current envelope of support provided through tax concessions to the not-for-profit sector by the Australian Government.

Netball Australia also welcomes the Government's commitment to reform Australia's not-for-profit sector to deliver smarter regulation, reduce red tape and improve the transparency and accountability of the sector. The establishment of the Australian Charities and Not-for-profits Commission and the aim to harmonise the federal, state and territory laws relating to the not-for-profit sector should assist the reform agenda.

Netball Australia has limited expertise in many of the areas raised in the Discussion Paper. Accordingly, Netball Australia will not answer each of the consultation questions separately; rather, this response deals with the policy intent and Netball Australia's observations.

Netball strongly encourages the Treasury, if it has not done so, to engage with the Australian Sports Commission and the Australian Department of Regional Australia, Local Government, Arts and Sport to ascertain if there are likely to be any significant impacts and challenges for the broader sport industry.

Netball appreciates the opportunity to provide its Submission to the Working Group and looks forward to ongoing involvement.

If you require further information, please contact me on phone (03) 8621 8600, or email infonet@netball.asn.au.

Yours sincerely

By email

Nadine Cohen
Head of Strategy & Government Liaison

12 December 2012

Encl.





Submission to the Not-for-profit Sector Tax Concession Working Group Fairer, simpler and more effective tax concessions for the not-for-profit sector

BACKGROUND: NETBALL

As Australia's leading female sport, netball strives to deliver fair, safe, inclusive, respectful and supportive environments for all Australians. We believe that netball offers the enjoyment of participation, a sense of belonging and life-long involvement – no matter whether that's as a player, coach, official, administrator, volunteer or fan.

Netball in Australia (Netball Australia and the State/Territory Netball Associations) is committed to leading social change, strengthening and building capacity and capability in communities and providing innovative and sustainable netball programs to empower women and girls.

Netball is the largest female community based sporting organisation in the world, with more than 70 nations playing and over 21 million participants world-wide. Netball can make a real difference in the lives of women and girls.

Netball Australia is a National Compact Partner and as such is committed to the National Compact's shared vision, purpose and principles.

Netball is eligible for income tax exempt status under existing law and would strongly oppose any changes to the tax system that may harm the not-for profit sector, including removing benefits of tax concessions or changing income tax arrangements.

Netball Australia fully supports the Government's policy to prevent commercial entities avoiding their legal taxation obligations by abusing not-for-profit tax concessions.

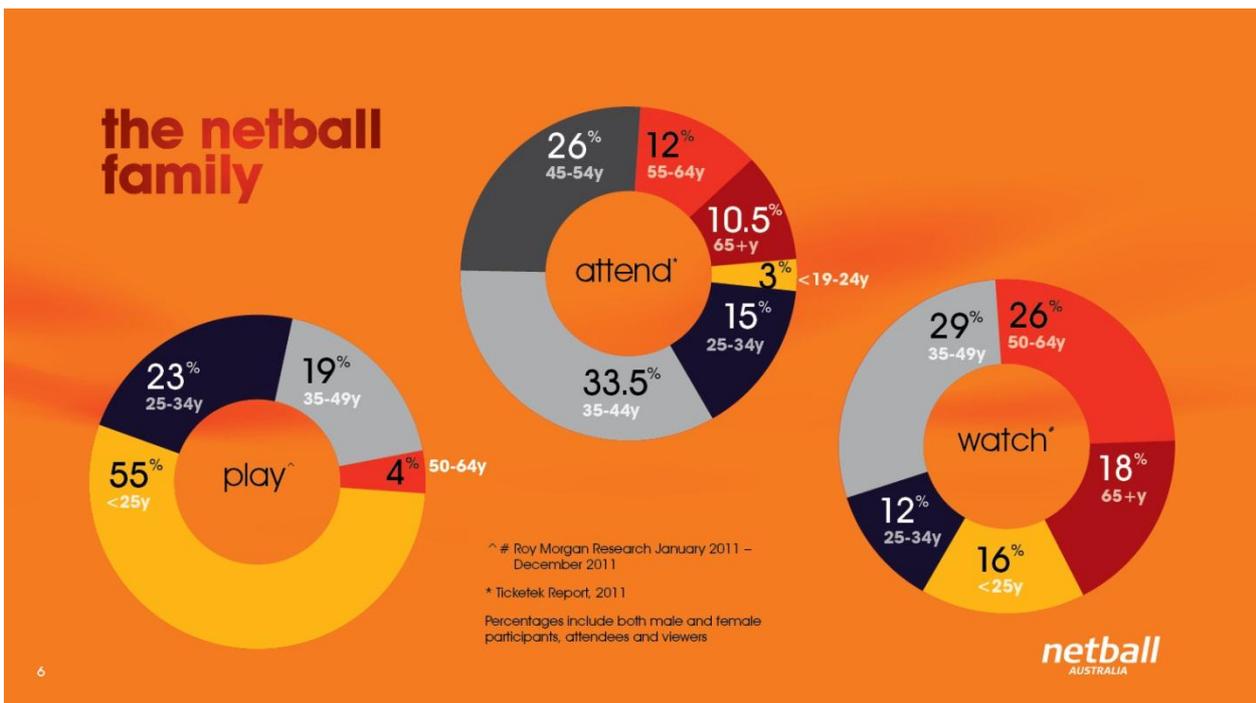
**netball
in australia**

Netball in Australia boasts a thriving and prosperous netball community who are engaged with the game:

- 1.2 million**
Over 1.2 million participate
- leading**
Leading women's participation team sport (age 15+)
- 87%**
Females make up 87% of participants

netball
AUSTRALIA

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In 2011, Netball Australia reviewed the strategic positioning of netball in Australia. A new vision was endorsed **“Netball is more than a game – we lead social change, strengthen and build capacity in communities and empower women and girls”**. The vision shifts the perception of netball as a sporting organisation to an agent for social change.

An important strategic priority centres on social responsibility and in particular netball’s impact on the social, political, economic, education and health status of women and girls and vibrant relationships with community partners. Netball’s repositioning maximises the social good and enhances netball’s altruistic activities.

BACKGROUND: SPORT SECTOR

Sport is a central part of Australian Society.

Sport helps to create an inclusive society where all are valued, and have the opportunity to participate fully, regardless of factors such as age, gender, race, religion or disability.

The Australian Sports Commission in Australia's Winning Edge¹ outlines that sport is not only good for our sense of national pride, it also contributes to other important Government objectives in areas such as participation, economic development, health, wellbeing and education.

As the Working Group would be aware, the Productivity Commission² was tasked by the Australian Government with assessing the contribution of the not-for-profit sector and impediments to its development.

The Productivity Commission noted that not-for-profits have a diverse range of purposes, come in a variety of sizes and locations, and take different approaches to production and management. They operate in a number of market sectors, mostly services such as sports and education, as well as in social or community 'non-market' areas such as civil rights and religion.

The Productivity Commission noted that sports and physical recreation activities include sports teams, health and fitness centres, and horse and dog racing. In 2005-06, there were an estimated 9,256 organisations providing sports and physical recreation services, of which 3,649 were not-for-profits. Sporting teams and recreation clubs represented around half of these not-for-profits. Almost 182,000 volunteers were involved in sports and physical recreation activities.

Frontier Economics³ identified three main ways in which sport delivers to society benefits in addition to those captured by those who provide sport services and participate in sport directly. These are:

- Community level sport promotes physical activity, with benefits in terms of reduced health-care costs and improved labour productivity. Research shows that health costs could be reduced, in gross terms, by \$1.49 billion per year; and that productivity gains by making the workforce healthier through increased physical activity could be as much as 1% of GDP (or \$12 billion)per year.
- Community level sport accounts for a disproportionate amount of volunteers, and by better supporting the work of these, benefits that stem from sport through its impacts on health, socialisation and social cohesion can be enhanced. Volunteer labour is also a key input into the development of elite sportspeople. The labour input of volunteers is valued at around \$4 billion
- The international success of elite Australian sportspeople is one of the most significant measurable positive impacts on well-being; with the value of that increased well-being likely to be in excess of the current annual budget for elite sports (roughly 20 dollars per household per year).

DISCUSSION PAPER OBSERVATIONS

1. Income Tax Exemption and Refundable Franking Credits

Netball in Australia, most likely at local grass roots association and club level, could be negatively impacted by any changes to the tax system that would remove income tax exemption for not-for-profits. By way of example, the current tax concessions assist Netball Australia⁴ to achieve community and altruistic purposes such as:

- Create a uniform entity through and by which netball in Australia can be encouraged, conducted, promoted and administered and to be the governing body of netball in Australia;
- Promote and encourage international netball and the conduct of international competition as an affiliated member of the International Netball Federation Limited;
- Control, manage and conduct netball competitions at a national level;
- Select and manage netball teams to represent Australia in international matches inside and outside Australia;
- Encourage, conduct, promote, and administer netball throughout Australia, through and by the Member Organisations for the mutual and collective benefit of Members and netball;
- promote the health and safety of athletes, officials and other individuals participating in netball in any capacity;
- Establish and conduct education and training programs for players, coaches, umpires and officials in the implementation and interpretation of netball rules and standards;
- Formulate and implement appropriate policies to better regulate for members and netball;
- Promote performance-enhancing drug free competition; and
- Encourage appropriate recognition for those whose efforts in connection with netball merit such recognition.

Consultation Considerations

In considering the reform options, Netball Australia is aware that the Federal Government will present a statutory classification of 'charity' for all Federal laws from 1 July 2013, based on the 2001 Report of the Inquiry into the Definition of Charities and Related Organisations⁵ (the Report). It would seem logical that the statutory definition of charity should be a forerunner to adoption of new directions in this area, as without that there could be an ongoing lack of clarity regarding eligibility.

Suggestively in this Report, the Committee recommended that the encouragement of sport and recreation to advance health, education, social and community welfare, religion, culture or the environment be a charitable purpose. Notwithstanding in reading the Report, the case law distinction between mere sport - sport played for competitive reasons or for amusement - and sport to advance a recognised charitable purpose still remained central.

The uncertainty is the use of sport as a means to an end, rather than an end in itself and the Australian Taxation Office's (ATO) application of what is *broadly beneficial to the community*. Recognition is needed that pure sport and altruistic outcomes ought not to be mutually exclusive and are multi-dimensional. For example, would the current Netball Australia Constitution need to be amended to specifically reference that the primary purpose of Netball Australia is the advancement of health,

education, social and community welfare given the Report noted it would not be enough that such benefits accrue as incidental to the advancement of sport (netball) or another purpose such as competition or social purposes.

Netball Australia notes that the terms of reference require the Working Party to identify any offsetting savings for any proposals that would have a budget costs. Notwithstanding, given that all levels of government recognise the valuable role sports plays in tackling social issues such as obesity, mental and physical wellbeing and community development, netball proposes that national sporting organisations and state sporting organisations be included as a charity in any new definition. Relevant organisations would then apply to the Australian Charities and Non-for-profit Commission (ACNC) for registration.

2. Deducible Gift Recipients (DGR)

Netball notes and supports the Productivity Commission's report which stated current DGR arrangements are distortionary and out of date, subsequently recommending progressively expanding DGR status to all charitable institutions and funds endorsed by the Registrar (recommendation 7.3).

Netball Australia understands that the ATO will continue to administer federal tax concessions but will accept the ACNC's determination of an entity's charitable status where that status is a condition of accessing such concessions. However, the ATO will continue to determine whether any additional conditions in the tax law are satisfied.

It is interesting to note that the DGR Sport and Recreation category appears to be limited to scouts and guides. Accordingly a key ACNC and ATO relationship consideration going forward is broadening the entities eligible for the ATO's DGR status. It is anachronistic that cultural organisations and health organisations are "on the list" whilst sporting organisations that "operate for the public good" positively influencing and impacting communities, are not on the list.

PilchConnect⁶ notes that a cost-benefit and value-benefit analysis is important to determine whether being endorsed as a DGR will be of sufficient benefit especially as some conditions could be onerous or restrict the activities of the entity. DGR status should only be examined if the entity wants to receive gifts from the public and or the entity wants attract funds grant makers and philanthropic bodies which only give to DGRs entities.

The latter is the key for netball as many companies and foundations, due to ATO restrictions, require Notices of Endorsement from the ATO as a DGR and or as a Tax Concession Charity as a precursor to apply for support from Private Ancillary Funds and Public Ancillary Funds.

This area will become more relevant for sports, for example, Australia's Winning Edge references helping sports to reduce costs/complexity and grow their capacity by increasing commercial revenue and *philanthropic investment*.

Consultation Considerations

Netball Australia is again cognisant that the terms of reference require the Working Party to identify any offsetting savings for any proposals that would have a budget costs. Notwithstanding, the issue of DGR status and the encouragement of community, philanthropic and corporate support for the work done by national and state sporting organisations is a key matter in this Discussion Paper. Increasing such financial contributions via offering a taxation concession would cost the government money; however could reduce the government burden on funding such operations.

Further, if structured in concert with removal or reduction in concessions that give private or organisational benefit rather than broader social and community benefit; there should be no negative impact to net government revenue.

Netball is not suggesting that all organisations with Tax Concession Charity status are automatically given DGR status; rather that the comment of the Productivity Commission is right in that the categories and their application have not kept pace with supporting the major social and government issues of our time.

Moving forward, if sporting organisations are not included under the statutory definition of charity, netball suggests that DGR status / definitions / categories are unbundled from the definition of charity in the future and is instead defined by the purpose, function and outcomes generated. This may lead to a revision of the existing categories; and not limit DGR status to not-for-profits that don't fit a current narrow vision of charity but deliver great public good. Such changes could dramatically increase the charitable giving and the outcomes and outputs of such organisations.

Should the above changes not occur, netball suggests other systems proposed in the Discussion Paper could work if they gave the same taxation benefit results without the organisation having to have DGR status; however such a system would need to be simple so as not to dissuade donations from corporate, community and philanthropic sectors.

The notion of a clearinghouse for DGR / ACN register is supported with cautions. Firstly that content is controlled and limited so that no advantage is given to organisations with good marketing; and secondly that there is some way of ensuring organisations are not hampered by such things as automatic alphabetical listing.

3. Fringe Benefit Tax Concessions (FBT)

VicSport⁷ in its submission to the Federal Government Australia's Future Tax System noted that currently under FBT regulations sporting organisations are classified as 'rebatable employers' which allows a 48% rebate on any FBT payable (subject to a \$30,000 capping), in comparison, Public Benevolent Institution's and Health Promotion Charities are exempt from FBT where the grossed up value of the fringe benefits is \$30,000 or less. This exemption is used widely by the health sector as a means of offering competitive salary packaging. Personal payments such as loans, rent, education expenses and bills can be paid for by the employer on the employee's behalf from pre-tax income (up to a grossed amount of \$30,000). Given the role the sport and active recreation sector plays in promoting better health outcomes, social inclusion and community capacity building, a sound basis exists for having sporting organisations classified in the same category of 'Health Promotion Charities' and in doing so availing itself of the full FBT exemption.

Netball understands that the current FBT exemption, inconsistency in treatment, competitive neutrality and the use of concessions outside of initial policy intent has been open to abuse.

Consultation Considerations

Netball does not hold strong views on current FBT concessions. The key question is 'what was the purpose of this tax concession and does it still hold / is it still required today?'

Netball's investigation indicates that this taxation exemption could be removed (even if phased out over a period of 3-5 years) as it benefits individuals and companies. Netball suggest that investment could then be better placed in an expansion of recognising sporting organisations as Tax Concession Charities

and or obtaining DGR status that allows more (taxation concession based) donations that support particular activities and outcomes for the common good rather than just particular sets of staff.

4. Goods and Services Tax Concessions (GST)

Netball does not hold strong views on current GST concessions.

5. Mutuality, Clubs and Societies

Netball does not hold strong views on clubs and societies mutuality principles.

Consultation Considerations

Netball supports the mutuality principle being extended to all not-for-profit member based organisations on the basis of strengthening community and community benefit.

Netball does not support the proposed legislation and balancing adjustment suggesting that these proposals would make the issues too complex.

END NOTES

¹ Australian Sports Commission 2012, *Australia's Winning Edge 2012—2022, Our game plan for moving from world class to world best*, Canberra, Australia.

² Productivity Commission 2010, *Contribution of the Not-for-Profit Sector*, Research Report, Canberra, Australia.

³ Frontier Economics 2010, *The economic contribution of sport to Australia*, Canberra, Australia.

⁴ Netball Australia 2009, *Constitution*, Melbourne, Australia.

⁵ *Report of the Inquiry into the Definition of Charities and Related Organisations*. 2001.

⁶ PilchConnect 2012, *Deductible Gift Recipient (DGR) Status*.

⁷ VicSport 2009. *Submission to the Federal Government Australia's Future Tax System*.