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13 October 2016

Review of Local Government Rating System

Independent Pricing and Regulatory Tribunal

PO Box K35

Haymarket Post Shop NSW 1240

Submitted online via

www.ipart.nsw.gov.au/Home/Consumer_Information/Lodge_a_submission

Dear Dr Boxall

Review of the Local Government Rating System – Submission in Response to Draft Report dated 22 August 2016

The University of Sydney (**University**) welcomes the opportunity to comment on IPART's Draft Report on the Review of the Local Government Rating System released in August 2016 (**Draft Report**).

Currently, under section 556(1)(l) of the *Local Government Act 1993* (NSW) (**LG Act**), land that is vested in a university, or a university college, that is used or occupied by the university or college solely for its purposes, is exempt from all rates, other than water supply special rates and sewerage special rates.

The Draft Report recommends changing this exemption such that university land used for residential and commercial activities will no longer be exempt. We have concerns regarding the description of residential and commercial activities in the Draft Report and the wide application this could have to land and facilities owned by us and by our six affiliated residential colleges: St Andrew's College; St John's College; St Paul's College; Sancta Sophia College; Wesley College and the Women's College (together, the **Colleges**).

According to the description of "residential activity", all student accommodation on located on land that we and our affiliated colleges own (including International House, Mandelbaum House and Sydney University Village) would be rateable, in addition to many of our other properties on which "commercial activities" are undertaken.

If the recommendations in the Draft Report are adopted, approximately 80 of our 135 properties would be fully rateable if IPART's description of "residential activities" and "commercial activities" is applied, while the remaining 55 would be partially rateable in the proportion that "commercial activities" are conducted upon them. Our assessment is that this would have a significant financial impact on the University, though we are unable to provide a precise estimate based on the information provided in the Draft Report.



More generally, the proposed changes do not appear to acknowledge the specific role that charitable not-for-profit public universities play in contributing towards broad community outcomes by providing education, research, sport, recreation, cultural and associated services.

In addition to the education, research, innovation and social benefits provided by the University, we make a substantial economic contribution to the NSW economy. The University also provides direct public benefits to our local communities through capital investment in infrastructure and the provision of public facilities and services. For example, as summarised in Annexure A of the **attached** submission, we have invested over \$27 million since 2014 towards campus open space, stormwater infrastructure, traffic and pedestrian upgrades, and heritage/conservation works, in addition to the numerous other facilities and services offered by the University to the public.

It is for these reasons, and others outlined in the **attached** submission, that we request that the existing exemption in section 556(1)(l) be retained or that any changes to section 556(1) include an explicit exemption for land vested in the University or the Colleges that is used for purposes consistent with the objects and functions of the University under the *University of Sydney Act 1989* (NSW) (**University Act**) and the Colleges under each of the relevant Acts of Parliament establishing the Colleges (including for residential and commercial purposes).

I would be pleased to discuss the matters raised in the **attached** submission further with IPART to reach a solution that encourages the continued growth and development of Australia's first university, and the various public services we provide for benefit of the people of NSW.

Yours sincerely

Signature removed for electronic distribution

Michael Spence

Attachments

University of Sydney Submission in response to IPART's Draft Report on the Review of the Local Government Rating System, October 2016

Annexure A to the University's Submission – summary of public benefits provided by the University

Annexure B to the University's Submission – 2012 Universities' Submission to the Commonwealth Government's Discussion Paper: "Fairer, simpler, and more effective tax concessions for the not for profit sector"



UNIVERSITY OF SYDNEY SUBMISSION IN RESPONSE TO IPART'S DRAFT REPORT ON THE REVIEW OF THE LOCAL GOVERNMENT RATING SYSTEM, OCTOBER 2016

EXECUTIVE SUMMARY

In 2015, the University of Sydney (**University**) enrolled more than 51,000 students, employed more than 7,500 permanent staff, and generated more than 5,000 jobs in the areas of construction, facilities maintenance and services. The University is a significant employment node and destination, as well as a future employment provider through its qualified students. The University's main campus covers a total of 49 hectares (comprised of the Camperdown Campus at 33 hectares and the Darlington Campus at 16 hectares) and wholly occupies the postcode of NSW 2006. The University has other significant landholdings throughout NSW including in Western Sydney, Narrabri, Bathurst, Orange, Dubbo, Lismore and Marulan.

The University is a not-for-profit public charity, specialising in tertiary education, research and its translation for the benefit of the people of NSW. The University relies on significant grants, donations and external funding to provide new facilities for both the University community and the wider community at large. The University also provides and funds significant infrastructure services, and a wide variety of open space and community facilities, which are available for the public to access and use.

Currently, the substantial public benefits to the community that the University provides are recognised by an exemption from paying rates. Section 556(1)(l) of the *Local Government Act 1993* (NSW) (**LG Act**) provides that "*land that is vested in a university, or a university college, [that] is used or occupied by the university or college solely for its purposes*" is exempt from rates, except for water supply special rates and sewerage special rates.

The University has recently become aware of IPART's Draft Report on the Review of the Local Government Rating System dated 22 August 2016 (**Draft Report**) which includes, inter alia, the following draft recommendations:

- (a) Allow councils to choose between the Capital Improved Value (**CIV**) and Unimproved Value (**UV**) methods in setting rates (Draft Recommendation 1); and
- (b) Amend sections 555 and 556 of the LG Act to:
 - (i) exempt land on the basis of use rather than ownership, and to directly link the exemption to the use of the land;
 - (ii) ensure land used for residential and commercial purposes is rateable unless explicitly exempted; and
 - (iii) make land proportionally rateable if used for both an exempt use and a non-exempt use (whether spatially or temporally),(Draft Recommendations 10, 15 and 16).

If these recommendations are implemented, a significant portion of the land owned by the University and all of the land owned by the six residential colleges affiliated with the University, being St Andrew's College, St John's College, St Paul's College, Sancta Sophia College, Wesley College and the Women's College (together, the **Colleges**) would be rateable. The



land owned by the University that is used for student accommodation includes 1,415 existing beds under its operation (including 801 beds in the Queen Mary Building, 202 in International House and 200 in Abercrombie Student Accommodation), Mandelbaum House (an independent college located on land owned by the University) and Sydney University Village (a 650 bed facility in which the University is the landowner and owns some equity). This would have material financial impacts for the University and the Colleges, affect the affordability of student accommodation and potentially have flow-on impacts that hinder the University's ability to attract international and domestic students.

The practical effect of this would be to redirect some of the grants (including from both the state and federal governments), donations and other external funding that the University receives to local government.

For the reasons outlined in this submission, the University requests that the existing exemption in section 556(1)(l) be retained or that any changes to section 556(1) include an explicit exemption for land vested in the University or the Colleges that is used for purposes consistent with the objects and functions of the University under the *University of Sydney Act 1989* (NSW) (**University Act**) and the Colleges under each of the relevant Acts of Parliament establishing the Colleges (including for residential and commercial purposes).

1 INTRODUCTION

The University acknowledges that councils need to meet the demand for local infrastructure and provide public amenities and public services within their local government areas and that a large part of the funds they require to do this is raised through levying rates. The University has a shared interest with councils in their objectives to improve the amenities and provide adequate and appropriate infrastructure and services for the local community.

However, the University has significant concerns about the potential application of the proposed changes to levy the University's and the College's land that is used for residential and commercial activities.¹

In effect, levying rates on this land would redirect valuable funds of the University which are often received by way of grants, donations and external funding sources (including from both the state and federal governments) for educational and research purposes to local infrastructure and services.

The University considers this to be unreasonable, particularly given the:

- (a) education, research, innovation and social benefits provided by the University;
- (b) economic contribution that the public university sector (including the University) makes to the economy; and
- (c) past, current and planned future works and services the University contributes that have a substantial public benefit, not only to the University's students and staff, but also to the wider community.

¹ As those terms are described on page 78 of the Draft Report.

2 BACKGROUND AND CONTEXT

The University, founded in 1850, is Australia's first University and has an international reputation for outstanding teaching, as a centre of research excellence and as an active and engaged community leader. It is a not-for-profit charity independently regulated by the Australian Charities and Not-for-profits Commission.

The University has approximately 51,000 domestic and international students and 7,500 permanent staff.

The land that is vested in the University is an integral part of the University's business. It has a public charter, is open to the public and provides substantial public benefits. The University's landholdings and land uses are discussed further in section 4 and the substantial public benefits the University provides are discussed in section 5.

3 SPECIFIC CONCERNS AND COMMENTS REGARDING THE DRAFT REPORT

The University makes the following comments in relation to the Draft Report:

- (a) It is not clear how using the CIV method will impact on student accommodation, particularly high-rise student accommodation such as the University's Queen Mary Building and strata title student accommodation such as Selle House. Also, the CIV method does not meet the *ability to pay principle* in relation to student accommodation;²
- (b) The vast majority of goods and services provided by the University have the characteristics of "public goods" or "mixed goods" as opposed to "private goods";³
- (c) The University provides and maintains many of the same services funded by local council rates such as streets and footpaths, parks, libraries, pools and other community services.⁴ These services are discussed further below in section 5;
- (d) The University considers that commercial activities and residential uses conducted on the land that it owns generate substantial public benefits for the community and does not agree that these purposes impose additional costs on councils.⁵ The University's student accommodation and the commercial activities it carries out are essential in providing a sustainable university campus in that they support the overall student experience and are not purely commercial in nature such as those in the private sector. These public benefits are discussed further below in section 5;
- (e) The University argues that, on efficiency and equity grounds, land it and the Colleges own should be exempt because that land generates substantial public benefits in a similar way to schools and hospitals;⁶

² Section 3.2.1 on page 31 of the Draft Report.

³ As those terms are described in Box 2.1 on page 21 of the Draft Report.

⁴ As referred to in Box 3.2 on page 28.

⁵ As discussed in section 1.3.2 on page 7 of the Draft Report.

⁶ See Box 6.1 on page 76 of the Draft Report.



- (f) It is noted that land owned by private hospitals is proposed to be exempted from rates.⁷ Not all private hospitals are not-for-profit. Non-government schools are already exempt under section 555(f) of the LG Act. The University should be treated in a similar way to schools and hospitals, notwithstanding that the University is not wholly funded by the government (in the same way that private hospitals and non-government schools are not wholly funded by the government);
- (g) The definition of “commercial activity”⁸ is far too broad and would capture some of the activities carried out within a large number of properties that the University owns. These activities are discussed further below in section 4. Also, it is not clear whether an activity would only have to satisfy one or all of the limbs to be a commercial activity and there is no definition of “public service”;
- (h) The provision of student accommodation owned by the University and the Colleges does provide a public benefit in that it is intrinsically linked to the education and research activities conducted by the University.⁹ Characteristics of the University’s student accommodation are discussed further below in section 6;
- (i) The definition of “residential activity”¹⁰ expressly refers to “student accommodation provided on University campuses”. However, while the definition of “commercial activity” refers to “nominal consideration” as defined by the Australian Taxation Office, the definition of “residential activity” does not. The University currently provides its student accommodation at below 75% of market value, thus satisfying the ATO’s definition. The University’s student accommodation facilities are in strong support of the federal, state and local government agendas to pursue an increased supply of affordable housing. The University is soon to commence construction of hundreds of affordable beds in Darlington and has recently obtained development consent to construct affordable beds on its Lismore campus;
- (j) Table 6.1¹¹ indicates that “Land used by Universities for educational purposes” will remain exempt, while “University student or other residential accommodation” will become rateable. Research and other land uses permitted by the University under the University Act are not referred to;
- (k) Section 556(1)(l) of the LG Act requires land to be used for a specific purpose, that is, for the purpose of a university or a university college and, therefore, the exemption in section 556(1)(l) should remain in the same way that the exemptions for land belonging to a religious body used for its purposes and land belonging to a school and used for its purposes are being retained;¹²
- (l) Based on the reasoning in section 6.3.1 of the Draft Report, rates should not be levied on land owned by the University as it partially funded by the government and provides

⁷⁷ Section 6.3.2 on page 82 of the Draft Report.

⁸ In Box 6.2 on page 78 of the Draft Report.

⁹ See section 6.2.1 on page 78 of the Draft Report.

¹⁰ In Box 6.3 on page 78 of the Draft Report.

¹¹ On page 80 of the Draft Report.

¹² See section 6.3 on page 81 of the Draft Report.



a public service. Levying rates would result in a transfer of costs between governments;¹³

- (m) While the Draft Report discusses the way in which many subsections of section 555 and 556 of the LG Act will be retained, amended or removed, it is silent on the exemption in section 556(1)(l).¹⁴ We therefore have not had an opportunity to comment on the proposed amendments to section 556(1)(l);
- (n) Given the variety of uses that the University's land is put to, as discussed further in section 4, it would be extremely difficult to calculate the portion of land used for an exempt purpose and that used for a non-exempt purpose. Similarly, it would be burdensome to assess what percentage of time the University's land is used for a non-exempt purpose;¹⁵ and
- (o) To minimise the regulatory burden, universities and university colleges should be included in the list of categories of exemptions where it is presumed that they are unlikely to be involved in non-exempt activities to any great extent;¹⁶

The University is particularly concerned about its and the College's student accommodation becoming rateable. Not only does the University own approximately 1,415 existing beds of student accommodation (including 801 new beds in the previously dilapidated Queen Mary Building, purchased from the NSW Government and Sydney Local Health District and revitalised by the University) located across 78 separate titles, the University has committed significant investment and funds into developing an additional 2,641 beds. If student accommodation properties operated by universities become rateable, similar projects may become unviable in the future. Meanwhile, if our local health district partners were to provide identical accommodation on land they own they would remain exempt under the changes recommended in the Draft Report. The University's affordable accommodation strategy is discussed further in section 6 below.

4 UNIVERSITY'S LANDHOLDING AND LAND USE

The University currently owns approximately 135 properties in NSW.

The most significant of these properties is the University's Main Campus, comprised of the Camperdown Campus and the Darlington Campus.

On 18 January 1855, Her Majesty the Queen granted much of what now comprises the Camperdown Campus to the University by way of Crown Grant. The significant size of Main Campus and the extent of services and infrastructure provided give it a unique character as a quasi-suburb. Indeed, the University has been allocated with its own postcode, being "NSW 2006".

¹³ On page 81 of the Draft Report.

¹⁴ In sections 6.3 and 6.4 on pages 80 to 83 of the Draft Report.

¹⁵ As discussed in section 6.5 on pages 83 to 87 of the Draft Report.

¹⁶ Section 6.5.1 on page 84 of the Draft Report.



The Crown Grant specifies that the University was to make a sub-grant of certain lands to the trustees of the Colleges and that the Colleges were to provide “*systematic religious instruction and domestic supervision with efficient assistance in preparing for University lectures and examinations*” to students of the University with the aim that “*religion, virtue, and sound learning may be by means of the said University and Colleges better advanced within our Territory of New South Wales*”. The affiliation between the University and the Colleges and the purpose of the Colleges in providing accommodation to students of the University is therefore clear.

The University also has significant other landholdings throughout NSW including in Western Sydney, Narrabri, Orange, Dubbo, Lismore and Marulan. Many of the University's properties have strong and established links with other public services, for example, local health districts in Orange, Dubbo and Lismore and local primary schools in Broken Hill.

The University uses its properties for a diverse range of activities, all of which are pursued for the purpose of delivering on its public good objectives as legislated by the NSW Parliament. While the principal use of the University's Main Camperdown Campus is as an education and research establishment, there are many other uses conducted upon it including childcare centres, libraries, sports and fitness facilities, museums, an art gallery and retail and professional services (including 28 cafes, 6 medical and health practices, 1 post office, 2 book stores, 5 banks, 2 bars, 2 travel centres, 2 beauty/hair salons, 2 fashion stores, 1 computer shop and 1 bicycle shop).

On its rural properties and farms, the University conducts, inter alia, agricultural and veterinary science teaching and research into new crop generation, and plant and animal disease prevention and eradication. In addition, the University is supporting government initiatives on these properties in pursuing healthy, sustainable and resilient food production on its environmentally sustainable and contaminant-free lands. In Orange, Dubbo and Lismore, the University's properties are typically co-located with property owned by the Department of Health where teaching and research within the medical faculties is undertaken.

Examples of activities conducted on land owned by the University include:

- (a) Veterinary teaching hospitals at both the Camperdown Campus and the Camden Campus;
- (b) Clinical research facility (operated in conjunction with Sydney Local Health District);
- (c) Plant Breeding Institute at Narrabri; and
- (d) An experimental robotic dairy at Camden.

All these uses are consistent with the objects and functions of the University under section 6 of the University Act. Notably, section 6(3)(a) provides that “*the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others*”. Section 6(3)(a1) allows the University to generate revenue “*for the purpose of funding the promotion of its object and the carrying out of its principal functions*”. In addition, the University may “*develop and provide cultural, sporting, professional, technical and vocational services to the community*” under section 6(3)(b).



As a not-for-profit entity, any surplus revenue generated by the University's activities is reinvested to support the University's core teaching and research missions.

The University is concerned that, if the recommendations in the Draft Report are adopted, approximately 80 of the 135 properties it owns would be fully rateable if IPART's description of "residential activities" and "commercial activities" is applied, while the remainder would be partially rateable in the proportion that "commercial activities" are conducted upon them. This would have a significant financial impact on the University, though we are unable to provide a precise estimate based on the information provided in the Draft Report.

In regard to the mixed-use of many of the University's properties:

- (a) some of the land owned by the University is comprised in very large parcels. For example, 14.28 hectares of the Darlington Campus is comprised in a single lot (being Lot 1 in DP790620) and the University is soon to lodge a Plan of Consolidation, which will consolidate the Camperdown Campus into a single 33.8 hectare lot;
- (b) the University considers it would be extremely difficult to assess what portion was being used for an exempt use and what portion for a non-exempt use. For example, while the operation of a veterinary hospital is likely a "commercial activity" and clients are charged for veterinary services, teaching and research are also conducted at the hospital on an ongoing basis. Therefore, it would be very difficult to make an assessment of what portion is used for an educational purpose and what portion is used for a commercial activity.

5 SUBSTANTIAL PUBLIC BENEFITS PROVIDED BY THE UNIVERSITY

The education, research, innovation and social benefits provided by public universities (including the University) are well recognised. The Australian public university sector contributes many billions to the economy and employs in excess of 100,000 staff.

At the local level, the University provides infrastructure and services that have a substantial public benefits over and above its core focus on education and research, not only to the University's students and staff, but also to the wider community. These include public access to and use of the University's libraries, spaces for cultural events, community facilities such as childcare centres, sporting facilities (including an aquatic centre), playing fields and stadiums, entertainment spaces, retail facilities and professional services, and large areas of open space. In addition, the University maintains and upgrades the roads, pedestrian areas and stormwater drainage systems within and near its boundaries. These are analogous to the public amenities and services which councils provide in their local government areas.

The University argues that its land is used to generate public benefits as opposed to private benefits because teaching and research facilities, libraries, laboratories, student accommodation, retail and professional services, recreational facilities, open space, and all other associated infrastructure, are integral to the University's broader educational and research functions which are inherently public in nature. Indeed, the University is prescribed as a public authority for development that is permitted without consent under the *State*



*Environmental Planning Policy (Infrastructure) 2007 (NSW) (Infrastructure SEPP).*¹⁷ In addition, the University is prescribed to be the Crown for the purpose of making Crown development applications under Division 4 of Part 4 of the EP&A Act.¹⁸

The past, current and planned future works and services the University contributes that have a substantial public benefit can be summarised as follows:

(a) **Open space**

In total, there are approximately 4.6 hectares of lawn area and 4.6 hectares of garden beds within Main Campus. The grounds are accessible and regularly used by the general public, in addition to the students and staff of the University. The annual budget for open space, planting, repairs and maintenance is \$3,200,000.

(b) **Community facilities**

The University provides many facilities and services that allow entertainment, creative and recreational pursuits, education and training, and rest and respite that are open to the public including:

- Three childcare centres providing 148 spaces;
- Nine libraries across Main Campus totalling approximately 30,000m²;
- Sports and fitness facilities accessible by the public (with an annual budget expenditure of \$1,888,131 and \$28 million spent since 2012) including 10 outdoor venues, 5 indoor venues (including an aquatic centre with an Olympic-size swimming pool) and 44 sports clubs. These attract over 650,000 visitors per year (excluding staff and students);
- Three museums and an art gallery totalling approximately 5,000m²;
- The Seymour Centre and several other small theatres and studios;
- Numerous events attracting over 25 million visitors per year (e.g. theatre, libraries, museums, Vivid, fairs, markets, educational forums such as Sydney Ideas);
- The benefit of conservation works to heritage buildings which, since 2014, has totalled \$12,850,000; and
- Public access to retail and professional services totalling approximately 4,000m² including 28 cafes, 6 medical and health practices, 1 post office, 2 book stores, 5 banks, 2 bars, 2 travel centres, 2 beauty/hair salons, 2 fashion stores, 1 computer shop and 1 bicycle shop.¹⁹

In addition, the University is shortly to lodge a State Significant Development Application for a new 8,000m² museum building, which is expected to cost approximately \$66.2 million and will be located in a prominent position on the Camperdown Campus when arriving from University Avenue. The museum will be

¹⁷ Clause 277(4) of the *Environmental Planning and Assessment Regulation 2000 (NSW) (EP&A Regulation)*.

¹⁸ Clause 226(1) of the EP&A Regulation.

¹⁹ It should be noted that, although these retail facilities are owned by the University, the vast majority of the rents received from these retail shops goes to the University of Sydney Union, an entity that is separate to the University, which provides a broad and varied range of co-curricular opportunities with more than 200 clubs and societies across 9 categories including: Arts and performance; Degree-related; Faith and religion; Food and Beverage; Ethno-Cultural; Humanitarian; Political; Sport, and Just for Fun.

available to and accessible by the general public.

(c) **Traffic and transport facilities**

The University provides roadworks and related facilities that support and augment similar connected works provided by local councils (in particular, City of Sydney Council) and service the public in similar ways to Council road facilities. The University's spend on transport, traffic, public domain works and strategies between 2014-2017 totals \$4,413,605 and includes:

- Abercrombie, Codrington and Lawson Streets works = \$2,048,816;
- Darlington Lane Share Road upgrade = \$995,000;
- Darlington public domain works = \$420,289;
- Gateway between Victoria Park and Camperdown Campus = \$566,000;
- Camperdown-Darlington connection to surrounding precincts = public domain strategy and urban design guidelines = \$345,000; and
- Camperdown Concept Landscape Plan = \$38,500.

(d) **Stormwater drainage**

The University has undertaken, and is planning to undertake, significant upgrades to its stormwater drainage infrastructure to support the planned developments and mitigate any impacts on infrastructure and the environment under the University's Campus Improvement Program (**CIP**). The University's spend in this regard totals \$6,545,000 and includes

- Completed works Camperdown Campus = \$2,750,000
- Committed works Camperdown Campus = \$3,000,000; and
- Committed works Darlington Campus = \$5,795,000.

Further detail and information regarding the amenities and facilities referred to in this section 5 is contained in **Annexure A**.

6 AFFORDABLE STUDENT ACCOMMODATION

The University has identified the need to develop up to 4,000 beds of affordable student accommodation by 2020 to bridge the current under-supply in housing stock and meet the future expected growth in demand.

The University notes the following:

- (a) The University's student accommodation facilities are or will be located on University land and wholly funded, owned and managed by the University. The University has a dedicated Student Support Services department dedicated to the support and wellbeing of student residents;
- (b) The University's development of student accommodation will provide housing for students who would have otherwise lived elsewhere, most likely in adjoining suburbs within councils' local area;
- (c) Students living in the University's student accommodation will most certainly use the public amenities and services provided by the University including libraries, sporting

facilities and open space as opposed to any other similar public amenities and services provided by councils elsewhere in the local area;

- (d) The University's affordable student accommodation program is an instrumental component in ensuring the retention of students on Campus as well as supporting the University's success in education outcomes. A high-quality student experience will be central to the student accommodation facilities, and is governed by a best-practice framework incorporating accessibility, transition, retention, academic performance, engagement, careers and security;
- (e) The University's student accommodation buildings will be linked either directly (within the same building) or strategically (adjoining buildings with pedestrian links) to formal University teaching and tutorial spaces, libraries, and 24-hour learning hubs. In addition, every future student accommodation development will provide spaces for quiet learning, group or tutor work, peer to peer learning spaces, breakout spaces, and meeting rooms to allow students to read and engage outside of the formal learning spaces of the broader University Campus;
- (f) The University is an endorsed charity pursuant to Division 176 of the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*. Under section 38-250(1) of the GST Act, a supply of accommodation by an endorsed charity is GST-free if the rent charged is at least 25% below the GST-inclusive market value of the supply. The University currently retains this GST-free exemption (which applies to both the development and ongoing operation of its student accommodation) by ensuring that the rent it charges to students is at least 25% below the market rate. On 20 July 2015, the University obtained a private binding ruling from the Australian Taxation Office which approved the University's rent setting methodology; and
- (g) It is in both the University's and the local councils' interest that the proposed 4,000 affordable beds be developed, as they will help take pressure off the local rental market for low cost accommodation.

For these reasons, the University argues that its student accommodation should not be subject to rates as it is inextricably linked with the University's educational objectives and outcomes notwithstanding that, on its face, it would seem that such developments will increase the demand for public amenities in the area. If it would assist, the University would be happy to undertake further analysis and modelling to support its argument that students occupying the University's student accommodation facilities use the amenities, facilities and services provided by the University rather than those provided by councils.



7 SUBMISSION TO COMMONWEALTH GOVERNMENT

In December 2012, the University was involved in making the submission **attached** as Annexure B in response to the Commonwealth Government's Discussion Paper: "Fairer, simpler, and more effective tax concessions for the not for profit sector". Many of the arguments raised in the submissions are relevant as to why the existing exemption in section 556(1)(l) of the LG Act should be retained.

8 REQUEST TO RETAIN EXISTING EXEMPTION

For the reasons outlined above, that the University requests that the existing exemption in section 556(1)(l) be retained or that any changes to section 556(1) include an explicit exemption for land vested in the University or the Colleges that is used for purposes consistent with the objects and functions of the University under the *University of Sydney Act 1989* (NSW) (**University Act**) and the Colleges under each of the relevant Acts of Parliament establishing the Colleges (including for residential and commercial purposes).

ANNEXURE A - SUBSTANTIAL PUBLIC BENEFITS PROVIDED BY THE UNIVERSITY

Open Space

	Details	Expenditure
Public Open Space	<p>In total the Grounds Unit actively manages 55 hectares in the Main Campus. The grounds are accessible and used by the general public.</p> <p>Across the Main Campus there are approximately 4.6 hectares of lawn area and 4.6 hectares of garden beds.</p> <p>Repairs and maintenance of all open space areas are undertaken by the University Grounds team for all soft-scape area-lawns and gardens and cleaning of hard surfaces. Hardscape repairs and maintenance works, irrigation and tree maintenance are contracted out to specialist providers.</p>	<p>The annual open space spend is \$3,200,000 across the University.</p> <p>\$1,400,000 is allocated to Repairs and Maintenance.</p> <p>Annual spend equates to \$3 per sqm per annum.</p>
Tree Management	<p>Total canopy cover across the Main Campus is approximately 22%. Through an ongoing tree replacement program, the University aims to have a 30% canopy cover by 2030.</p> <p>All 2000 trees across the Main Campus are assessed annually and managed through a preventative maintenance program called Arborplan.</p> <p>Public access to tree data is available through the campus flora app. CIS and the School of Biological Sciences are expanding this app to include indigenous plant life and a Waterhouse Camelia Walking trail.</p> <p>In consultation with the Planning Unit and the City of Sydney Urban Forest Manager, the previous 2009 Tree Management Procedure has been updated and revised into a Tree Management Plan. The aim of</p>	<p>Tree maintenance is the largest expenditure of the Grounds Repairs and Maintenance budget. Annual spend is approximately \$77 per tree.</p>



	<p>this document is to provide strategic direction for tree management across campus addressing the following key issues:</p> <ul style="list-style-type: none">• Establish the University's commitment to best practice, excellence and world class standards in managing its tree population;• Procedures for tree management on development sites; and• Tree removal and replanting program, supporting CIP. <p>This document will be reviewed and updated every two years.</p>	
Planned Open Space Works	<p>CIS has engaged Gehl Architects to establish a Landscape Master Plan for the Main Campus. Once established, it will form the basis for all public domain works through the implementation of CIP.</p>	

Community Facilities

	Details	Expenditure
Child Care Facilities	<p>Three (3) centres for 148 spaces at:</p> <ul style="list-style-type: none"> • KU Carillon Avenue – 39 spaces; • KU Union Child Care – 47 Spaces; and • Boundary Lane Children's Centre – 62 spaces. 	
Libraries	<ul style="list-style-type: none"> • Public access to nine (9) libraries across campus (30,000m²). • Libraries at: Badham, H Geddes, Burren Street, Bosch, Fisher, Fisher Stack, Law, JFR, and Mallet St. 	
Sport and Fitness Facilities	<ul style="list-style-type: none"> • Outdoor Venues: Oval No.1, Oval No.2, The Square, St Johns Oval, St Johns Rugby Oval, St Andrew's Oval, St Paul's Oval, SAC Tennis Courts, Fisher Tennis Courts (3 synthetic tennis courts), Manning Tennis Courts (8 lawn tennis courts). • Indoor Venues: Sports & Aquatic Centre, Darlington Campus; Arena Sports Centre, Camperdown Campus; Oval No.2 Grandstand & High Performance Centre, Camperdown Campus; Ledge Climbing Centre, Camperdown Campus; Manning Squash Courts. • 44 Clubs including AFL, Athletics, Basketball, Boxing, Cricket, Fencing, Judo, Netball, Sailing, Swimming, Table Tennis, and Water Polo. • Numerous sporting events. 	<p>Capital expenditure since 2012 is \$28,000,000 comprised of:</p> <ul style="list-style-type: none"> • Sydney University Sports & Aquatic Centre Extension, Darlington Campus: \$15,000,000; and • Oval 2 Grandstand and Oval Works, Camperdown Campus: \$13,000,000.

	<ul style="list-style-type: none"> • Various school and institutions utilising University facilities and grounds. • 650,000 visits per year to University facilities (excluding students and staff, coaches, volunteers). 	
Existing Museums and Art Gallery	<ul style="list-style-type: none"> • Public access to three (3) museums across campus (5000m²). • Museums at Macleay, Nicholson and Seymour. • Public access to the Verge Art Gallery. 	
New Museum (to be constructed)	<ul style="list-style-type: none"> • New 8,000m² museum building to be located in a prominent position on the Camperdown Campus when arriving from University Avenue. • This new museum will be available and accessible by the general public. 	Approximately \$66,200,000
Events Available to the Public	<ul style="list-style-type: none"> • Visitor destinations attracting over 25 million visitors per year (theatre, libraries, Vivid, fairs, markets). • 12 significant annual events run by the University Events Office and attracting 55,000 patrons. • 3 significant educational forums (e.g. Sydney Ideas) attracting over 24,000 patrons per year. 	
Conservation Work to Heritage Buildings	<ul style="list-style-type: none"> • The University is the custodian to a number of heritage listed buildings. These buildings are instrumental in attracting visitors and in visitor education and awareness of heritage significance. 	<p>For the year 2014-2015 the University expended \$12,850,000 on the upgrade of the following heritage buildings:</p> <ul style="list-style-type: none"> • B01 JD Stewart – roof and façade: \$2,000,000;



	<ul style="list-style-type: none">The University conducts regular heritage tours (<i>The Old and New Heritage Tour</i>) around the campus to general visitors, schools and heritage bodies.	<ul style="list-style-type: none">A08 Heydon Laurence – façade: \$800,000;A16 Badham – roof and façade: \$500,000;A11 Edgeworth David – roof and façade: \$1,000,000;A09 Refectory – external façade painting and other works: \$1,000,000;A28 Physics – façade painting: \$1,500,000;A26 Edward Ford – roof and façade: \$1,500,000;F09 Madsen – façade: \$800,000;A20 Wooley – chimney: \$650,000; andMake safe facades project: \$3,100,000.
Retail and Professional Services	<p>The following retail and professional services (covering 3,970 m²) are provided:</p> <ul style="list-style-type: none">28 cafes;6 medical and health practices;1 post office;2 book stores;5 banks;2 bars;2 travel centres;	

	<ul style="list-style-type: none"> • 2 beauty/hair salons; • 2 fashion stores; and • 2 miscellaneous stores (computers, bicycles). 	
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Traffic and Transport Facilities

	Details	Expenditure
Abercrombie, Codrington & Lawson Streets – Works and Contributions	<p>The University's 2014 Pedestrian & Bicycle Access Solution for the Darlington precinct, including financial and works contributions towards the City of Sydney public domain upgrade works in Darlington including:</p> <ul style="list-style-type: none"> • Shepherd Street footpath return and connection to University Boardwalk and Abercrombie Street footpath upgrade between Shepherd and Lawson Streets - \$1,160,728; and • Maze Crescent pedestrian intersection upgrade \$888,088. <p>In May 2015, the University completed a new pedestrian intersection upgrade to Maze Crescent and adjoining Codrington Street, Darlington. This junction is part of a heavily 4-way trafficked junction, and the pedestrian junction provides for safe and accessible pedestrian movements towards City Road and Darlington, as well as catering for the many visitors and schools utilising the adjoining Noel Martin Aquatic Centre located on the Darlington Campus.</p>	\$2,048,816
Darlington Lane Share Road Upgrade	<p>Conversion of City of Sydney Council owned Darlington Lane, Darlington, from a service laneway to a Shared Road, designed to ensure pedestrian prioritisation, safety and accessibility. The project has been closely discussed with RMS and City of Sydney (being the landowner). The project is currently a State Significant Development Application with the Department of Planning.</p>	\$995,000



Darlington Public Domain Upgrade Works	New Codrington Street footpath from Abercrombie Street to Darlington Lane and Abercrombie Street footpath from Codrington Street to Darlington Public School.	\$420,289
Victoria Park Upgrade and Gateway to Camperdown Campus	<p>The City of Sydney is currently preparing a \$3.6 million upgrade of Victoria Park incorporating walking tracks, lighting and activity areas.</p> <p>The University is contributing \$566,000 towards a publicly accessible pathway and ramp that will connect Victoria Park with a new eastern gateway to the University's Camperdown campus. The gateway connection is designed to satisfy security and safety, and access for persons with a disability, with accessible connections through to the campus' Eastern Avenue.</p> <p>Planning approvals have been obtained for all works, and which are currently undergoing a tender procurement process with the City of Sydney for construction works.</p>	\$566,000
Camperdown-Darlington Connection to Surrounding Precincts – Public Domain Strategy and Urban Design Guidelines	<p>The University has engaged internationally renowned Gehl architects (from Copenhagen) to inform its strategy of delivering a connected campus through the development of a Public Realm Strategy and Urban Design Guidelines. The Brief seeks development of those principles for the campus itself, but also for connecting to the surrounding public domain and precincts.</p> <p>The Gehl principles will be used to work with the community and other precinct stakeholders to inform the development of strategies which will connect the campus internally and externally, and importantly, invite the community in to the University. In particular we have identified UTS (Gehl has previously looked at public domain principles for UTS), Carriageworks, ATP, future connections to Redfern station and to the RPA and Health precinct.</p>	\$345,000

	Gehl has been asked to investigate principles for creating rich and vibrant places across the campus including interface areas such as the University/City Road interface area.	
Camperdown Concept Landscape Plan	<p>During 2014, the University engaged Clouston to prepare a Concept Landscape Plan for the Camperdown-Darlington campus. The Plan provides the University's campus domain with key Landscape Planning and Design Principles for the whole Camperdown-Darlington campus, and cognisant of the public accessibility and usability of the campus domain.</p> <p>The Concept Landscape Plan has been endorsed by the University Senate, approved by the Minister for Planning under CIP, and is currently being implemented.</p>	\$38,500
Total expenditure across 2014-2017: \$4,413,605		



Stormwater Drainage

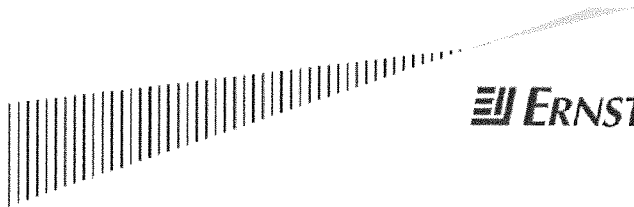
	Details	Expenditure
Camperdown - Johnstons Creek catchment		
Completed Works Camperdown	Stormwater drainage concept design and flood mitigation report	\$150,000
	Science Road stormwater piped drainage augmentation and gross pollutant trap and oval 2 detention basin	\$1,000,000
	Fisher Road Stormwater piped drainage augmentation and gross pollutant trap	\$1,600,000
	Total Completed Works Camperdown	\$2,750,000
Committed Works Camperdown	Hockey Square detention basin	\$1,500,000
	Health precinct stormwater drainage works	\$1,500,000
	Total Committed Works Camperdown	\$3,000,000
Darlington - Blackwattle Creek catchment		
Committed Works Darlington	Darlington Lane stormwater capacity augmentation, gross pollutant trap and on-site detention basin	\$440,000
	Improvements to roads and street lighting	\$315,000
	Landscape to the open space (Corner Darlington Lane and Codrington Street)	\$40,000
	Engineering & Technology Precinct detention basin and culvert upgrades	
	Total Committed Works Darlington	\$5,795,000



THE UNIVERSITY OF
SYDNEY

ANNEXURE B - RESPONSE TO THE COMMONWEALTH GOVERNMENT'S DISCUSSION PAPER

See separate attachment.



20 December 2012

NFP Sector Tax Concession Working Group Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Email: NFPReform@treasury.gov.au

Private & Confidential

Submission in response to the Discussion Paper: "Fairer, simpler, and more effective tax concessions for the not for profit sector" on behalf of various State, Territory and Commonwealth Public Universities

This submission has been prepared by Ernst & Young on behalf of various State, Territory and Commonwealth Public Universities, each of which may be impacted, to varying degrees, by the reform options contained in the Discussion Paper released by the Not for Profit (NFP) Sector Working Group in November 2012.

The following State, Territory and Commonwealth universities (collectively referred to as "Public Universities") have agreed to participate in this submission:

University of Adelaide	University of Melbourne
Australian Catholic University ¹	University of New England
Australian National University	University of NSW
Southern Cross University	University of Queensland
Charles Darwin University	University of South Australia
Charles Sturt University	University of Southern Queensland
Edith Cowan University	University of Tasmania
Macquarie University	University of Technology Sydney
Monash University	University of Western Australia
University of Newcastle	University of Western Sydney
RMIT University	University of Wollongong
University of Sydney	Victoria University

This submission is divided into two parts:

- Appendix A summarises the unique objectives of the public university sector and outlines reasons as to why it is fundamentally critical that current tax concessions available to the sector be maintained. Appendix A also outlines reasons supporting the extension of Fringe Benefits Tax (FBT) concessions to the public university sector to assist the sector remain competitive in attracting world class

¹ Australian Catholic University is a not for profit university and is treated like a public university for the purpose of this submission notwithstanding it is eligible for the FBT rebate.
2012 NFP uni submissionfinal.docx

academic, executive and administrative staff and to ensure consistency with the income tax exemption provisions;

- ▶ Appendix B addresses a number of key questions raised in the Discussion Paper from the perspective of the public university sector.

As the responses in Appendices A & B indicate, the public university sector does not recommend any significant change to the existing NFP tax concession framework. Any significant structural change to the tax concessions available to the public university sector at this time would be particularly inappropriate given the various outstanding NFP tax reforms currently being considered by Government, including:

- ▶ the proposed "Better targeting of NFP tax concessions";
- ▶ the restated "in Australia" special conditions for tax concessions including deductible gift recipients; and
- ▶ the proposed statutory definition of 'charity'.

We are particularly concerned that parallel reform proposals would add unreasonable uncertainty and compliance burdens, particularly for those organisations that may be in the process of implementing some of the proposed changes, some of which have retrospective application.

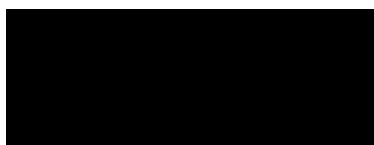
Notwithstanding the above, this submission recommends a number of worthwhile enhancements which would both "fine-tune" the existing NFP tax concession rules to promote a more simple, fair and effective framework, and also assist the public university sector in achieving its objectives and purposes. Fostering these objectives and purposes is critical in ensuring Australia continues to develop as a well educated and skilled nation, which is essential to its future prosperity. In summary, the public university sector strongly urges the Working Group, in its report to Government, to reinforce and confirm the position that:

- ▶ Tax concessions should continue to be provided to those organisations that have charitable objectives and provide significant public benefit. The tax concessions currently provided to public universities are largely effective in supporting their educational, research, innovation and social benefit objectives and should be maintained;
- ▶ Tax concessions do not, in every instance, violate the principles of competitive neutrality. Given the unique objectives of public universities and in particular their focus on education, research and diverse community engagements, there is sound policy rationale justifying the availability of tax concessions to their activities in contrast to "for profit" education providers. Tax concessions are required by public universities to maintain competitiveness in a sector which is being increasingly challenged by a growing number of international competitors. It is within the Australian public interest to maintain a world class tertiary education system;
- ▶ Tax concessions provided to public universities do not equate to lost revenue for the Government. Given a significant portion of public university revenue is received through Federal Government funding, it would not make sense to then impose tax upon the income received. In addition, maintaining tax concessions which support giving to the public university sector would decrease the reliance on Government support. Philanthropic funds are increasingly relied upon by the public university sector and any changes recommended by the Working Group should enhance the propensity of Australians to support the activities of the public university sector; and
- ▶ The entitlement to the FBT exemption / rebate should be amended to be consistent with the income tax exemption provisions. The education industry is dominated by income tax exempt entities that are also entitled to the FBT rebate. The public universities are denied access to this concession and therefore are at a disadvantage when competing for the best academic, management and administrative staff in the education sector. Moreover, most of Australia's research intensive public

universities are heavily involved in health and medical research, often in collaboration or competition with hospitals and medical research institutions, which are treated differently for FBT purposes.

We look forward to discussing this submission further with the Working Group and Treasury at your earliest convenience, and note that the Discussion Paper indicates that the Working Group will conduct targeted consultation with interested stakeholders. Representatives of the public universities, together with Ernst & Young, would welcome the opportunity to be included in the consultation process both prior to the finalisation of the Working Group's report to Government in March 2013 and any subsequent consultation framework. In the meantime, if there is any aspect of this submission in relation to which the Working Group would like more information, please contact Jason Wrigley [REDACTED] Alf Capito [REDACTED] or Richard Czerwik [REDACTED]

Yours faithfully



Jason Wrigley
Tax Partner
Ernst & Young

Appendix A

1. Introduction

In order to assist the Working Group in its consideration of the application of tax concessions to the public university sector, this part of the submission is intended to provide an overview of the history, current status and future potential trends that should be taken into account in developing fairer, simpler and more effective tax concessions for the public university sector.

The public university sector acknowledges that the NFP sector is broad and diverse and that a number of organisations will have their own worthwhile objectives and claims for on-going or additional support by way of tax concessions. The purpose of this submission is not to rank nor position public universities in contrast to other NFP entities, but instead to reinforce the critical role played by public universities in Australian society and outline the importance of tax concessions in maximising the public benefits which flow there from and in reducing the reliance on Government funding.

2. Overview of Australia's higher education sector

Australia's public universities continue to be recognised as the focal point of the higher education sector as well as the overall education sector. The Tertiary Education Quality and Standards Agency (TEQSA) national register of Higher Education Providers identifies 173 registered entities, 39 of which are universities. NFP public universities represent the overwhelming majority of all universities. The Australian university sector is a \$23 billion dollar industry employing more than 100,000 academic, professional and administrative staff and generating \$15 billion dollars in export revenue through the provision of education services to international students both in Australia and offshore.

Notwithstanding the direct and significant role it plays in the Australian economy, the public university sector is, at its core, a not for profit organisation established by law and required to service the public interest. It achieves this objective by providing Australians with affordable opportunities to access world class education services and by creating a community which fosters social inclusion, diversity and innovation.

The importance of the education sector was recently reinforced by the Productivity and Prosperity Advisory Panel (the Panel) in its 2010 Report. The Panel recognised that:

"A well educated and skilled people are central to Australia's future prosperity and the so called "second generation success story", which sees the children of migrants attain relatively high levels of education, tending to lift the average level of education attainment in Australia, is an important element in this.

Indeed there are tremendous opportunities for Australia to benefit from further emphasis on investment in education and skills development.

*Both Government and industry are working to improve education and training. Recent reforms to universities will leave them better able to respond to student demand, giving more Australians the opportunity of the benefits of a tertiary education. At the other end of the spectrum, reforms to schools aim to improve the foundation skills of the population."*²

²Report of the Productivity and Prosperity Advisory Panel, 14 December 2010, page 37

Importantly, the Australian higher education landscape is changing rapidly and the public university sector in particular requires support to ensure it continues to be a vibrant contributor to Australian society. In addition to Australia's 39 public and private universities, there are approximately 140 other registered higher education providers and this number has grown significantly in recent years. International competition in the tertiary education market in particular has rapidly increased as has the number of "for profit" education providers. These developments pose the following risks to the future viability and quality of Australian tertiary education:

- ▶ With the increase in international and "for profit" education providers, there is a risk that profits of the higher education sector are being extracted for shareholder or private benefit rather than being reinvested into research and other community activities. NFP public universities reinvest funds to support their social good objectives and are not carried on for the private benefit of shareholders or individuals;
- ▶ The growth in international tertiary education providers puts at risk the continuing development of Australian skills, research and innovation. Moreover, the potential reduction in student fee revenue for Australian public universities places greater strain on the ability of these organisations to deliver their social objectives and places more reliance on Government funding; and
- ▶ The growth in the number of education providers and "for profit" organisations in particular has not been matched by similar increases in research activity or cultural programs which are often not economically viable for these organisations

Given these concerning developments, it is vital that the position of Australian public universities is properly protected to ensure that the critical contribution they make to society, the economy and the innovation system through their education, research and diverse community engagement activities is not impeded, particularly in the current challenging economic climate.

3. Key features of modern Australian public universities

There are currently 37 public universities located in Australia. The dominant university model in Australia is a broad-based teaching and research institution, supported by a large asset base and a large, predominantly in-house back office. Most universities are large, complex organisations engaged in diverse activities directed towards the common goal of pursuing objectives which benefit the public and foster social inclusion. Indeed, most Australian universities:

- ▶ Serve a broad mix of student segments - school leavers, mature age students and international students;
- ▶ Offer a broad range of disciplines - health sciences, arts, science, technology, business, economics, education, law and more;
- ▶ Deliver teaching and learning programs primarily on campus in Australia, supplemented by various online offerings, franchise arrangements, twinning partnerships and international branch campuses;
- ▶ Deliver and manage the vast bulk of student services and back-office functions (HR, IT, payroll, finance, procurement and so on) in-house.³

³ "University of the future, A thousand year old industry on the cusp of profound change" Ernst & Young, 2012, page 14

Whilst today's modern Australian public universities continue to grow with a view to providing an extensive, contemporary and diverse tertiary educational experience, they have maintained their fundamental teaching and research identity and objective of advancing tertiary education. Where the public university is established by an Act of Parliament, the Act confirms their "core" objects, functions and powers. Where a public university is not established by an Act of Parliament, its "core" objects, functions and powers are set out in its constitution. Ordinarily, a public university's "core" objects and functions include the following:

- ▶ The provision of facilities for education and research of a university standard;
- ▶ The encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry;
- ▶ The provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community;
- ▶ The participation in public discourse;
- ▶ The conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards;
- ▶ The provision of teaching and learning that engage with advanced knowledge and inquiry;
- ▶ The development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals of the university and that are sufficient to ensure the integrity of the university's academic programs; and
- ▶ Providing essential community services and facilities

As the above indicates, public universities have varied and wide-ranging core objects and functions. In many cases, particularly with public universities based in regional areas, the core objects and functions may extend to supporting the community in which the university operates.

A non-exhaustive list of common activities undertaken by a public university in pursuit of its core objects includes:

- ▶ Provision of education;
- ▶ Services primarily provided to students and university staff (i.e. food outlets, car parks, medical centres, training facilities, sporting clubs/gyms, library, unions, hotels etc);
- ▶ Student accommodation;
- ▶ Property (university infrastructure and student accommodation) development and maintenance;
- ▶ Research and professional services (including consultancy and testing);
- ▶ Investment portfolios;
- ▶ Administrative functions;
- ▶ Operation of commercial activities by students in furtherance of their tertiary studies; and
- ▶ Commercial exploitation of intellectual property

These broad objectives and activities give rise to substantial funding requirements. In order to meet these requirements, public universities need to raise revenue from a number of sources. Whilst, revenues from student fees, philanthropy and commercial ventures continue to grow, the ability of the public university to deliver on its social objectives is very much dependant on the direct and indirect funding received in the form of grants and tax concessions from the Commonwealth and State Governments.

4. Existing tax concessions available to the NFP public university sector

Summarised below are the various Federal tax concessions that are generally available to Australian public universities. The importance of each of those concessions is considered in more detail in Appendix B in response to the relevant Discussion Paper questions.

4.1. Income Tax

Public universities are generally exempt from income tax either pursuant to item 1.4 of section 50-5 of the Income Tax Assessment Act 1997 (ITAA 1997) (as a public educational institution), or item 1.1 of section 50-5 (as a charitable institution), which reflects the public educational activities of the universities and their intrinsic connection with the NFP sector.

However, there may also be various other NFP entities connected with a public university, such as sporting and other clubs which may be eligible for income tax exemption (e.g. exempt under s.50-45 of the ITAA 1997) or which may, alternatively, apply the principle of mutuality in relation to member activities.

Public universities are generally eligible (as an exempt institution within the scope of s.207-115 of the ITAA 1997) to claim a refund of franking credits on franked distributions from Australian companies under section 67-25 of the ITAA 1997.

4.2. Deductible gift recipient

Most public universities are endorsed as a deductible gift recipient (DGR) under table item 1 in section 30-15 of the ITAA 1997 (relying on the public university category in s.30-25(1)). The endorsement is provided on an 'entity' basis rather than a more restrictive fund basis. Donations received by public universities are predominantly directed towards benefiting the education experience of students including student scholarships, improving student resources and by supporting Australian based research.

4.3. Fringe Benefits Tax

Pursuant to the Fringe Benefits Tax Assessment Act, 1986 (the FBT Act), a variety of businesses are entitled to concessions based on their operations and/or the sectors in which they provide services. For example, the FBT Act indicates that certain benefits provided by a very specific list of employers are deemed to be exempt benefits. Additionally, many NFP employers are allowed a rebate on their FBT otherwise payable. It is under these rebate provisions that many educational institutions receive relief. Under the FBT Act, specifically in relation to the education sector, private universities (such as Bond University and Australian Catholic University) and primary and secondary private schools are eligible for the FBT rebate. This rebate applies such that for a rebatable employer, their FBT liability may be almost halved, subject to a per employee cap, compared to normal FBT paying employers, such as public universities.

Critically, there is no consistency between the employers afforded income tax exemptions provided under the ITAA 1997 and employers eligible for the FBT rebate provided for under the FBT Act. Currently, assessment for exemption from income tax is completely independent of an employer's liability to FBT, causing additional administration for employing entities to determine which, if any, concessions apply to their business. In practice, an employer may be required to trawl through any number of different Acts to determine the correct amount of income tax and FBT for which they are liable.

To the extent the income tax rules and FBT rules are incongruent on concessions for different entities, particularly within the same sector, it provides for disharmony across companies and, in turn, across the workplace environment. As the Working Group identifies, this also raises competitive neutrality issues.

The education industry is dominated by income tax exempt entities that are also entitled to the FBT rebate. However, the public universities are denied the FBT rebate on the basis they are/were historically an institute of the Commonwealth, a State or a Territory.

However these institutions are directly competing with other education providers that are eligible for the FBT rebate for the best employees. As demand for suitable employees increases, so too does the cost. This is in direct contrast to the objective that the universities fill in the marketplace. As NFP entities, wherever costs are increased there is a direct reduction in funds available to provide services and facilities to the public.

Faculty staff, such as lecturers and other teaching staff can be enticed by rebatable employers in primary and secondary schools or private universities. However, university employees also extend beyond just faculty staff. In order to function, the universities require administration staff, including Directors and Executives that field offers from other education and NFP entities that are entitled to the FBT rebate. Medical schools within the universities also compete with medical research institutions and hospitals to employ researchers and academics. In practice, such university employees within the medical schools are often working alongside public hospital or research institution employees that are entitled to the FBT rebate, whilst missing out themselves. Without the FBT rebate that is available to other rebatable employers, as noted above, the universities are forced to offer higher salaries or absorb higher FBT costs to deliver the same benefits to their employees. Alternatively, they are required to seek talented employees who are driven by a social and community conscience rather than monetary reward. However, given the prevalence of NFP, socially conscious entities in the education and research fields that are entitled to the rebate, this argument is relatively weak for the universities, making it even more difficult for universities.

These increased costs are further exacerbated by the recent Living Away From Home Allowance (LAFHA) amendments that have directly impacted the ability of universities to offer attractive remuneration packages to prospective employees from outside Australia. Initially aimed at preventing high income individuals from exploiting FBT concessions, the changes to the legislation have impacts across the entire mobile workforce regardless of pay, industry or even purpose of travel. If the universities wish to continue to attract international staff they are now faced with significant tax liabilities where they provide assistance to these individuals, which is often crucial in securing the talented individuals as employees. Where the universities cannot meet these higher costs, they are now forced to recruit from their local market. As noted above, this requires them to directly compete with local education providers that are eligible for the FBT rebate who can offer higher package values, for lower employer costs by way of effective salary packaging. By expanding the FBT rebate provisions to include all NFP education institutions, the public universities will be able to compete equitably for talented employees.

As a result of their NFP structure and Charter, it has been legislated that these universities be exempt from paying income tax. It therefore appears counter intuitive that an entity deemed to be exempt from paying income tax should be liable for FBT, particularly given the sector they work in, as noted above.

With the above considerations in mind, fairness dictates that public universities should be provided with access to the FBT rebate as a direct result of their NFP activities and the sector in which they operate.

Ideally this would be achieved by extending the relevant FBT concessions to all NFP entities. A situation where all income tax exempt entities are eligible for the same FBT concessions would enable the public universities to compete on a more even playing field for talent in the workforce focused on the sector in which they operate.

Alternatively, if it is not possible to extend the FBT concessions to all NFP entities then the rebate should at least be extended to all NFP entities operating in the education sector.

4.4. Goods and Services Tax (GST)

The majority of education courses supplied by the university sector are currently treated as GST-free. We note however that the GST Distribution Review Report prepared by Treasury dated October 2012 includes comments (although recognised as a contentious issue) that the GST-base could be strengthened if the GST-free treatment of supplies made by entities within certain industries, such as the health, education and food sectors, was to be removed. Any changes to the GST-free treatment of education courses would have a wide-reaching and significant impact on the university sector.

Notwithstanding the above, our comments in this submission have been prepared on the basis that the GST-free treatment of education courses will continue to remain in place. We have not considered the impact of how any changes to the GST base would affect either the GST concessions currently available to NFP entities or the university sector more widely, as we understand this to be outside the ambit of the Discussion Paper.

Of the GST concessions currently available to NFP entities, there are a number that are used widely by entities across the public university sector. These include:

- ▶ The GST-free concession in section 38-250 of the GST Act for supplies of accommodation and other supplies for nominal consideration. This is an important concession and applies, for example, where public universities provide accommodation and other services to their students;
- ▶ Public universities benefit from the ability to opt for input taxed treatment under section 41-160 of the GST Act in respect of their fundraising activities; and
- ▶ Entities within the public university sector also benefit from the concession available under section 111-18 of the GST Act which allows universities to claim input tax credits where volunteers are reimbursed directly for expenses they incur in the course of their voluntary services for the universities.

4.5. Summary

As the Working Group's review is limited to the consideration of Federal tax concessions, we have not considered the eligibility of any State or Territory based tax concessions in relation to public universities or their connected entities.

The above summary of tax concessions illustrates that whilst public universities do benefit from a number of important NFP tax concessions, they are disadvantaged by their inability to access certain concessions, particularly FBT.

5. Tax concessions should complement Government Objectives for Public Universities

As the Working Group acknowledges, tax concessions are a form of Government assistance and should be directed towards worthy causes. The Government has consistently acknowledged the importance of the public university sector in Australia and has in place a number of strategies to ensure the continuing viability of the sector. These strategies are outlined, in part, in the Department of Education's 2009 Report: Transforming Australia's Higher Education System⁴ and also in the Government's Innovation Policy Report, 2012. These reports indicate that the Government's objectives for public universities include:

- ▶ Encouraging public universities to diversify their income streams; and
- ▶ Encourage public universities to continue to innovate.

⁴ *Transforming Australia's Higher Education System* - Department of Education, Employment and Workplace Relations- Commonwealth Government 2009

Given the above, the public university sector strongly argues that the tax concession framework should continue to support these Government objectives. These are discussed below:

5.1. Diversification of Income Streams

The higher education sector has been subject to significant structural, funding and regulatory review over recent years. These reviews have led to a number of changes to the way the sector now operates. The Government's strategy for the higher education sector, as set out in *Transforming Australia's Higher Education System*⁵, includes recommendations for various additional changes, particularly in relation to future funding models. Put simply, the higher education sector, including public universities, is under increasing pressure to diversify their income streams to reduce the traditional heavy reliance on Government educational funding. Accordingly, diversification of income streams going forward will be particularly important given the likelihood that Australian Governments, regardless of political persuasion, will be increasingly fiscally constrained. As such, it can be anticipated that Government funding, as a share of university revenue, is likely to decline and public universities will need to continue to search for ways to move beyond the 'fight for funds' relationship with Government.⁶ In particular, and relevant for the purposes of the Working Group's review, are recommendations for public universities to increase their sources of funding from philanthropy. To this end, the Higher Education Base Funding Review in 2011⁷ observed that:

"Philanthropy plays a far smaller role in Australian universities than in many overseas institutions. While the older universities receive substantial support from alumni, businesses and donors, other institutions have far less focus in this area of endeavour. The Government has previously received a recommendation from the Bradley Review of Australian Higher Education to develop a pool of funds as an inducement to match gifts from new donors. The Panel suggests performance in this area could be improved if some universities had access to a small seed funding scheme to help build institutional capacity."

If increasing levels of giving by Australians to the higher education sector is a priority for the Australian Government, there is an urgent need for an integration of relevant fiscal and taxation policies to ensure they work coherently to provide an environment conducive to giving, particularly by high wealth individuals. Given the above, the public university sector would support any reforms to the treatment of deductible gifts that would complement these objectives.

5.2. Innovation

Public Universities contribute significantly towards the provision of higher education and the advancement of knowledge by way of research and other activities in Australia. Accordingly, any reduction to existing tax concessions to public universities would be inconsistent with the Government's broader innovation policy which is focused on encouraging the sustainable growth of Australian industries by developing a national innovation system that drives knowledge creation, cutting-edge science and research, international competitiveness and greater productivity.

⁵ *Transforming Australia's Higher Education System* - Department of Education, Employment and Workplace Relations- Commonwealth Government 2009

⁶ "University of the future, A thousand year old industry on the cusp of profound change" Ernst & Young, 2012, page 25

⁷ Higher Education Base Funding Review, Final Report, October 2011

6. Regulation to ensure the public benefit is maximised

The Discussion Paper clearly articulates the view that the provision of tax concessions to particular entities should be met by an appropriate level of public benefit (social good). To this end, the Discussion Paper envisages both review of the eligibility criteria as well the ongoing oversight that should be directed to the relevant entity to ensure eligibility criteria continue to be satisfied. The public university sector supports the broad ranging review of the Working Group in its examination of the entire range of tax concessions across the diverse range of entities that make up the NFP sector and agrees that, in certain circumstances, a greater degree of transparency in relation to the results of Government support of the NFP sector may be desired: this is supported by the Government's recent establishment of the Australian Charities and Not for Profit Commission (ACNC) as a national regulator of charities and the NFP sector generally.

The Public University sector strongly urges the Working Group, in its report to Government, to reinforce the position that the public university sector remains one of the most tightly regulated NFP sectors. The public university sector is very closely regulated by State and Territory governments as owners, and also as part of the various sources of education and research funding provided by the Commonwealth, State and Territory Governments. Public Universities are also subject to State and Federal scrutiny through the application of laws, regulations and by-laws. It is submitted that these laws and regulations provide more than adequate transparency of public university sector operations and ensure that all activities conducted by these organisations are directed towards maximising public benefit through education and research.

An issue that may potentially be outside the current scope of the Working Group is the need for relief from potential duplicate regulation of NFP private universities by both the ACNC, as the national regulator of charities, and by TEQSA, the national higher education provider regulator that was established in 2011 following the Bradley Review of the higher education sector⁸. We would be happy to discuss these matters in more detail with the Working Group / Treasury at a later date.

⁸ TEQSA was established on 29 July 2011 under Section 132 of the *Tertiary Education Quality and Standards Agency Act 2011*.

Appendix B

PUBLIC UNIVERSITY COMMENTS ON CONSULTATION QUESTIONS

This part of the submission addresses a number of key questions raised in the Discussion Paper from the perspective of the public university sector. We have responded to the key issues relevant to the university sector, building upon comments made in Appendix A and have not sought to respond to all the questions raised in the Discussion Paper.

CHAPTER 1 – INCOME TAX EXEMPTION AND REFUNDABLE FRANKING CREDITS

Q1-4 What criteria should be used to determine whether an entity is entitled to an income tax exemption? Should additional special conditions apply to income tax exemptions?

Australian public universities are generally income tax exempt either under item 1.4 of section 50-5 of the ITAA 1997 (as a public educational institution), or item 1.1 of section 50-5 (as a charitable institution), which reflects the public educational activities of universities and their intrinsic connection with the NFP sector. Income tax exemption as a charitable institution requires endorsement, whereas income tax exemption as a public educational institution does not require endorsement provided the relevant conditions can be satisfied on a self assessment basis (although a private ruling would usually be sought to confirm eligibility).

Whilst there may be a technical debate as to which of the alternative bases for income tax exemption should apply to a public university, exemption as a charitable institution is the most common basis for income tax exemption for public universities.

There is a long standing tax policy for tax exemptions being provided to support and foster charitable institutions. The rationales for providing tax concessions particularly to charitable institutions are sufficiently set out in the Discussion Paper⁹. The advancement of education in Australia, particularly at the tertiary level, should continue to be recognised and supported as a charitable purpose and public universities should continue to be separately recognised for income tax exemption, notwithstanding the many and various advancements in education over time.

Income tax exemption is of great importance to public universities and should be maintained given the public benefit which flows from their operations. Approximately 50-60% of public university income comes from Government - it would not make sense to then make this subject to income tax.

Notwithstanding the generally recognised success of Australia's public university sector, future predictions of ongoing government funding constraints and also the challenges arising from global competition and digital technologies, mean that Australia's public university sector will need support to survive these challenges¹⁰.

⁹ NFP Sector Tax Concession Working Group- Discussion Paper- Fairer, simpler and more effective tax concessions for the NFP sector, November 2012, page 9 to 13

¹⁰ "University of the future, A thousand year old industry on the cusp of profound change" Ernst & Young, 2012, page 4

The public universities are strongly opposed to any proposed recommendations or amendments to the income tax eligibility rules that may duplicate or conflict with the Government's proposed "Better Targeting of Tax Concessions" reforms. These reforms seek to remove tax concessions connected with the unrelated commercial activities of NFP entities. Any review of income tax exemption eligibility criteria that considers factors such as unrelated commercial activities, or any equivalent type of concept, should only be done as a combined holistic exercise. We are particularly concerned that parallel reform proposals would add unreasonable uncertainty and compliance burdens, particularly for those organisations that may be in the process of implementing the proposed changes which are proposed to have retrospective application from 1 July 2012. Furthermore, it is submitted that the concerns arising from the application of tax concessions to unrelated commercial activities of NFPs should not be resolved through the loss of entity wide tax concessions.

Similarly, the public universities are opposed to any additional recommendations or proposals for additional "special conditions" for income tax (or DGR) eligibility. As the Working Party is aware, the proposed restated 'in Australia' special conditions, which are currently before parliament, will impose an arguably excessive Australian pseudo residency requirements and operational restrictions upon public universities for income tax exemption (and DGR) purposes. These special conditions have the potential to significantly impact the funding needs and operations of the public university sector. On this basis, no additional special conditions should be recommended until the concerns regarding these proposed amendments are resolved.

Public universities are one of the most tightly regulated sectors in the NFP sector. Accordingly, no additional transparency in the university sector would be gained from imposing any further regulatory or integrity measures in respect of tax concessions on the public university sector.

Q5&6 Who should be eligible for refunds of franking credits?

Australian public universities are generally eligible (as an exempt institution within the scope of s.207-115) to claim a refund of franking credits on franked distributions from Australian companies under section 67-25 of the ITAA 1997.

Public universities may qualify as an exempt institution on the basis of being an endorsed charitable institution, or alternatively, as a deductible gift recipient (endorsed under the 'entity' basis rather than the fund basis). However, a public university which is exempt from income tax on the basis of its classification as "public educational institution", will not be eligible for refunds of franking credits.

Although from a practical perspective there would be little benefit arising for public universities as a result of an amendment to extend the list of entities eligible for refunds of franking credits to formally cover public educational institutions, this amendment may be required if the proposed changes to the definition of "charity" put at risk a public university's charitable status.

Public universities should continue to be eligible for refunds of franking credits. Universities have significant investments in Australian companies which generate income to fund scholarships, education and research. Any change to the existing system would place additional reliance on Government funding and distort public university investment decisions away from Australian equities in favour of bonds and debt, the returns on which would remain income tax free. Whilst the existing system of dividend imputation remains, which allows individual resident taxpayers to benefit from refunds of excess franking credits, without any system of means testing, it would be inequitable to remove the concession from existing eligible entities within the NFP sector based on some vague notion of resource/capital asset adequacy for the NFP entity: the practical reality is that the current model for a world standard public university calls for organisations with a large asset base.

To exclude public universities from the concession would place them at a disadvantage (in respect of dividend income taxation) with both individuals and other entities within the the "For Profit" sector in that are generally able to claim the franking credits as an offset against taxable profit.

In relation to any perceived inappropriate access to franking credits, we are of the view that the various existing dividend imputation integrity rules operate effectively to address any potential abuse.

Q9. Increasing the tax free threshold for taxable NFPs

The public universities would support increasing the tax free threshold for taxable NFP entities. This measure is relevant for numerous clubs and societies associated with universities, which are a very important part of the student experience.

The existing threshold of \$416 is of little practical benefit. A threshold of \$5,000 would better suit the needs of small sized NFP clubs and societies that may generate small surpluses from non-member activities.

CHAPTER 2 – DEDUCTIBLE GIFT RECIPIENTS

As indicated earlier in this submission, public university funding will increasingly rely on philanthropy as a source of revenue. Accordingly, any reforms to the current tax concession arrangements for donations and gifts should not reduce the propensity for Australians to give to worthy, public benefit causes and should also recognise that donations and gifts to the public university sector is overwhelmingly dominated by higher wealth individuals with greater discretionary income. Put simply, the public university sector urges the Working Group to consider the introduction of favourable tax arrangements targeted at this group so that the total value of donations to universities is likely to increase and the reliance on direct Government funding is similarly decreased.

Q11 to 14. Should DGR eligibility be extended to other income tax exempt NFPs?

The public university sector is, in principle, tentatively supportive of extending DGR status to a broader range of income tax exempt NFP entities in the interest of fairness, and to encourage a broader range of philanthropy in the community to the broader benefit of the NFP sector.

The support is tentative in light of the potentially significant revenue cost, which under the terms of reference for the Working Group, is required to be funded from existing NFP tax concessions and therefore likely to disadvantage some segments of the NFP sector, including potentially public universities.

We submit that such a change should be recognised as a major structural reform to the NFP sector and, as such, the Government should consider removing this measure from the NFP sector funding requirement and undertake a broader funding analysis for this measure.

We are somewhat concerned by some of the comments that appear in Option 2 (cost saving measure) which includes primary and secondary education providers, amongst a list of other entities, which would not be eligible for DGR endorsement on the basis that they are perceived to provide "significant private benefits". Whilst this does not directly affect the public university sector, we are surprised and concerned that the provision of education by a NFP entity, whether at primary, secondary or tertiary level, is viewed as principally providing a private benefit to the student or family thereof. This ignores the findings and recommendations of various education reviews which consistently reinforce the need for advancement of all levels of the education system for the broader benefit of the economy and the community.

Q15 to 18. Tax deductions or offsets for gifts to DGRs?

Most public universities are endorsed as DGRs. Public universities typically receive significant bequests and donations in recognition of the social good their activities deliver. Whilst the degree of success in securing donations varies between universities (typically favouring the older universities), and donations only constitute a small proportion of the annual funding needs for most public universities, the trend for the future is that all public universities will be under increasing pressure to significantly increase fundraising based on philanthropy.

Notwithstanding that they presently only constitute a small proportion of the annual funding needs, donations remain vital to public universities in that the contributions and the investment earnings thereon, typically support vital research, student scholarships and high profile academic appointments. Consequently, the public universities strongly argue against any reduction of incentives to encourage giving.

The public universities do not support the use of a fixed tax offset (or a two tier system) to replace the existing tax deduction that is provided at the marginal tax rate of the taxpayer. The public university sector recommends that donations should, as a minimum, be deductible at an individual's marginal rate of tax.

The data provided in the Discussion Paper shows that the highest level of average deductions are from taxpayers with taxable incomes exceeding \$100,000. The proposed tax offset models being considered by the Working Group are likely to disadvantage and potentially discourage taxpayers on higher marginal tax rates from making gifts. Whilst survey data would be required to better determine the propensity of those taxpayers to be discouraged from making gifts, and the quantum of those gifts, the public universities are concerned that any such change is likely to be detrimental to the encouragement of philanthropy.

Instead, the public university sector encourages the working Group to strongly consider whether enhanced tax incentives designed to encourage greater levels of giving (ie which involves a deduction rate set at a level higher than the individual's marginal rate of tax) would be more effective and reduce the reliance on Government funding.

Q26 Should the threshold for deductible gifts be increased from \$2 to \$25 (or some other amount)?

Whilst the majority of public university philanthropic fundraising generally involves amounts exceeding the thresholds being considered by the Working Group, we would tend not to support a proposal that would increase the threshold for deductible gifts.

The Discussion Paper does raise a number of likely valid efficiency based arguments, but the public universities are concerned that there are no guarantees that donors, who may initially be discouraged by a higher threshold, will necessary change their behaviour and increase the level of deductions or pool deductions, with no reduction to the overall level of gift giving. Again, survey data would need to be obtained to ascertain the reliability of such assumptions.

Notwithstanding that the threshold change may be considered relatively minor, there is a general concern that such a change may tend to send an inappropriate message to donors that the Government now values philanthropy less. This could inadvertently discourage the future philanthropic practices of Australians.

Q19 - Would a clearing house linked to the ACN Register be beneficial for the sector and public?

It would be beneficial for the public and beneficial for smaller charities with no current on-line giving facilities. It would give universities another place to receive donations and it is also good for donors as it will be linked to their tax return thereby ensuring deductions in cases of lost receipts.

Q23 Are there additional barriers relevant to increasing charitable giving by corporations and corporate foundations?

The rules around deductions for charity events where the minor benefit cannot exceed \$150 or 20%

of the value of the contribution do not appear fair. We submit that the better approach would be to maintain a minimum threshold of \$150 but allow a deduction equal to difference between the value of the benefit and the amount contributed, where the benefit is less than, say, 40% of the contribution.

This would avoid the perceived unfairness which would result where, for example, a donor pays \$1 million for a painting worth \$200 and receives no offsetting tax deduction.

CHAPTER 3 – FRINGE BENEFITS TAX CONCESSIONS

Q 29 & 37 – Entitlement to FBT rebate

In response to questions 29 and 37 of the Discussion Paper, we believe that ideally, the entitlement to the FBT rebate should be amended to be consistent with the income tax exemption provisions. Alternatively, at the very least, the FBT rebate criteria should be amended to include all not-for profit entities operating in the public education sector. Capped exemption from FBT is currently provided to private universities and schools as well as medical research institutions. It would be consistent with the recognition of the community service undertaken by public universities to extend this exemption to NFP universities. In addition to the arguments in Appendix A, we make the following additional comments.

Under the income tax exemption provisions, universities are considered exempt by way of their purpose in the community as public education institutions that have a physical presence in Australia and that incur their expenses and pursue their objectives principally in Australia (s50-5 & 50-55 ITAA 1997). However, there is currently no such similar basis that would entitle them to a rebate for FBT purposes. This is notwithstanding the dominance of schools and research institutions entities in the education sector, as well as other non public tertiary institutions, that are entitled to the FBT rebate. Other education institutions operating in the same sector as the universities are able to effectively half their FBT costs.

This appears to be in direct contrast to the original intention when the FBT rebate legislation was introduced to the FBT Act. When the FBT Act was amended to value benefits at their tax inclusive value, amendments were also introduced to ensure that tax exempt entities were no worse off than if the tax exclusive value of benefits was used for FBT purposes. However, when enacted into legislation, the provisions were written such that only certain tax exempt employers were entitled to the FBT rebate. Over the course of the following 20 years, numerous additions, revisions and alterations have been made to the rebate provisions and they now bear little resemblance to the original arrangements. Accordingly, we suggest any rewriting of the rebate provisions should revolve around simplification such that entities entitled to income tax concessions are entitled to the FBT rebate, if not full FBT exemption. Where this is not possible, in the alternative, we would at the very least suggest that all public education institutions be entitled to the same FBT rebate.

Q 31 & 32 – meal entertainment and entertainment facility leasing expenses

Where the FBT rebate is extended more broadly to non-profit employers, or at least to those specifically in the public education industry, we would accept the introduction of a cap on salary sacrificed meal entertainment and entertainment facility leasing expenses (EFLE) benefits as a reasonable compromise to maintain revenue neutrality.

Whether these benefits are included in the current cap, or subject to their own cap (e.g. \$15,000), the universities do not have a preference. Ultimately, provided employees of all not-for profit entities are entitled to the same caps, it will result in an equitable outcome for the industry. However, we note these benefits are currently excluded from the existing caps because of the practical difficulty and cost that would be involved in tracking items to individuals as is required to apply the caps. Accordingly, for simplicity, any change should be directed at amounts specified in a salary sacrificed arrangement rather than meal entertainment and EFLE benefits provided in the ordinary course of the employer's operations. Any other approach would impose a disproportionate cost on employers relative to the issue sought to be addressed.

Q 34 - FBT rebate caps

In order to recoup costs involved with expanding the eligibility to the FBT rebate, we accept that it may be reasonable to look at the feasibility of limiting employees to only one rebate cap per annum, regardless of the number of rebatable employers for which they work.

However, whilst there may be merit to the concept of limiting the FBT rebate cap on a per employee (rather than per employer) basis, we agree with the concerns in the Working Group's Discussion Paper that this will create significant additional compliance burdens on employers. We suggest more work would be needed to identify an equitable system, and the approach should only be taken if it can be confirmed that this will not result in significant additional compliance for employers.

Q 36 - Minor Benefit Exemption

Under the FBT Act, generally, benefits that have a nominal value of less than \$300 and that are provided on an infrequent and irregular basis are exempt from FBT where it would be considered unreasonable to treat them as fringe benefits. However, whilst this general provision applies to most categories of fringe benefits, it does not apply to tax exempt body entertainment (TEBE) fringe benefits. Therefore, when tax exempt employers provide their employees with what would otherwise be deemed to be entertainment (recreational or otherwise), they are unable to apply this exemption, except in the most rare of cases. Effectively a de minimis test for small benefits, the minor benefit exemption allows employers to exclude small items from their FBT return. However, tax exempt employers are required to scrutinise every line item of their journal entries to find potential fringe benefits.

Given the small dollar value of benefits involved and the fact that NFP entities do not generally engage in significant entertainment activities, we suggest it does not follow sensibly that the minor benefit exemption should be denied to tax exempt employers. There is a significant amount of additional administration required to monitor this rule for these employers, for relatively few dollars gained for the ATO. On a practical level denying this exemption effectively prevents many entities from having an annual social gathering (Christmas Party or End of Financial Year Party etc) that would otherwise be a minor benefit for taxpaying employers. That is, it is effectively a tax on NFP entity Christmas parties.

There is no equitable reason why the minor benefit exemption should not be applicable to TEBE.

CHAPTER 4 – GOODS AND SERVICES TAX CONCESSIONS

The existing GST concessions should be maintained in their current form.

In particular, the continued availability of the GST-free concession under section 38-250 of the GST Act, for supplies of accommodation and other supplies for nominal consideration, is widely recognised as a key concession for the university sector. The primary use of this concession by the Universities is to support the provision of various services to their students.

The removal of this concession would impact heavily on the ability of the Universities to provide a number of services but, in particular, affordable accommodation, impacting not only the Universities' finances generally but also their ability to attract international students and students from outside the regional area of the university.

The suggested reform at paragraph 197 of the Discussion Paper to change from a GST-free concession to an opt-in arrangement to treat supplies as either input taxed or taxable would adversely impact the Universities' ability to supply affordable accommodation by effectively removing the benefit they currently enjoy as a result of this concession. Currently, student accommodation would, in the absence of any section 38-250 concession, be generally treated as input taxed. The opt-in alternative would therefore effectively result in the removal of any concession. Such a suggested change could result in either an increase in the price of student accommodation or the Universities bearing significant additional costs as a result of the removal of the ability to claim GST input tax credits on costs they incur in respect of the provision of student accommodation.

Therefore, the Universities are seeking to maintain the current forms of concessions available under the GST Act.