Submission by the
Financial Rights Legal Centre

The Treasury

Re:Think Tax Discussion Paper, March 2015

May 2015

Financial Rights Legal Centre |PO BOX 538, Surry Hills 2010 | Tel (02) 9212 4216 |Fax (02) 9212 4711 |
info@financialrights.org.au | www.financialrights.org.au | @Fin_Rights_CLC | ABN: 40 506 635 273

About the Financial Rights Legal Centre

The Financial Rights Legal Centre (*formerly known as the Consumer Credit Legal Centre (NSW)*) is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the Credit & Debt Hotline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 22,000 calls for advice or assistance during the 2013/2014 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether. Federal Government changes to legal services funding agreements in mid 2014 restrict policy and law reform that CLCs can undertake with Federal Government funds. These restrictions have the potential to deprive Government and others from valuable advice and information and reduce efficiency and other improvements in the legal system.
For more information please see
www.communitylawaustralia.org.au/law-reform-and-legal-policy-restrictions/

For Financial Rights Legal Centre submissions and publications go to
www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/

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Credit & Debt Hotline 1800 007 007
Insurance Law Service 1300 663 464
Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to comment on the Treasury's Tax Discussion Paper Re:Think. The Financial Rights Legal Centre will address two issues raised by the white paper:

- the stamp duty on insurance under 8.3. Features of state (including local government) taxes, discussion question 52; and
- the role of tax concessions for the not-for-profit sector under 7. Not-for-profit sector, discussion questions 47 and 48.

Stamp duties on insurance

As consumer advocates in the insurance space we have the following comments about stamp duties on insurance. We strongly agree with the Discussion Paper's statement:

> *As with stamp duties more broadly, insurance taxes are among the most inefficient taxes in Australia. Insurance taxes increase the cost of insurance to consumers and place a large burden on home insurance. They may lead to under-insurance or to people not insuring at all, particularly if householders are sensitive to price increases.* [1]

The Productivity Commission has recently reported a similar conclusion in its Inquiry into Natural Disaster Funding Arrangements:

> *Insurance policies may not be effective in encouraging mitigation where the price signals are not risk reflective or are distorted by specific insurance taxes or levies. Taxes and levies significantly raise the cost of insurance and contribute to non insurance and underinsurance. They should be phased out and replaced with less distortionary taxes.* [2]
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> …
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> *Replacing state insurance taxes and levies with more efficient revenue sources, such as broad-based payroll or land taxes, would improve the price signal to policyholders and the effectiveness of insurance as a risk management tool and reduce the price of insurance.*[3]

We support the abolition of stamp duties on domestic consumer insurance products like home building insurance, home contents insurance, comprehensive car insurance, income protection insurance and any other consumer insurance products. Stamp duties on insurance contribute to the underinsurance problems in Australia, and where the funding for fire and civil defence authorities can be shifted to more equitable levies (like property tax) we support that shift.

However, if taxes are removed from domestic consumer insurance products we strongly urge the Government to empower a regulator to ensure insurers genuinely pass on savings to consumers. There are two examples in recent years where Australian Governments have successfully empowered regulators to ensure consumers benefit from reduced taxes.

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[1] http://bettertax.gov.au/files/2015/03/TWP_combined-online.pdf (page 146)
[2] http://www.pc.gov.au/inquiries/completed/disaster-funding/report (Vol 1, Pg 32)
[3] http://www.pc.gov.au/inquiries/completed/disaster-funding/report (Vol 1, Pg 216)

First, when the Australian Government repealed the carbon tax in July 2014 it gave the Australian Competition and Consumer Commission (the ACCC) extra powers to ensure that consumers saw the benefits as quickly as possible. [4] The ACCC's new enforcement powers and enhanced monitoring role came under amendments to the *Competition and Consumer Act 2010* as part of the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* which was passed by Parliament in mid-2014. The ACCC's extra powers focus on:

- monitoring the prices of certain regulated goods (electricity, natural gas and synthetic greenhouse gases because these were the goods most significantly affected by the carbon tax);
- taking action against businesses supplying regulated goods that attempt to exploit other businesses and consumers by failing to pass through all of their cost savings from the carbon tax repeal; and
- taking action against businesses that make false or misleading claims about the effect of the carbon tax repeal or carbon tax scheme on the price.

A second example of a regulator empowered to pass tax savings on to consumers was the Fire Services Levy Monitor in Victoria. The Monitor was established as an independent statutory appointment with substantial powers to protect consumers when Victoria was transitioning to a Fire Services Property Levy.[5] The Monitor was set up to ensure that insurers genuinely passed on the savings of the abolition of the fire services levy to policy-holders. The Monitor was empowered by legislation to:

- Monitor insurance premiums;
- Monitor compliance of the industry with laws to ensure policyholders are not:
  - subject to 'price exploitation' in premiums charged to them; or
  - misled about the effect of the abolition of the FSL;
- Investigate potential breaches of the law;
- Take appropriate enforcement action.

During the time that the Monitor was in operation it found that fifty-six insurance companies and brokers had an over-collection of fire services levy (FSL) in Victoria. The total over-collection was $12.3 million. Thirty-four companies agreed to refund some or all of their FSL over-collection to customers and nearly 40,000 customers received refunds. Twenty-one companies with smaller over-collection amounts, smaller refund amounts per policy, or difficulties in paying refunds to intermediated customers, agreed to resolve their over-collections through payments to designated organisations representing the interests of insurance consumers in Victoria. [6]

Recommendation

The Financial Rights Legal Centre strongly encourage the Government to phase out taxes and levies on domestic consumer insurance products. We also recommend that the Government empower an existing regulator or create a new regulator to ensure insurers genuinely pass on tax savings on domestic consumer insurance products to policy-holders.

[4] https://www.accc.gov.au/consumers/prices-receipts/carbon-tax-repeal-for-consumers
[5] http://www.firelevymonitor.vic.gov.au/home/about/
[6] http://www.firelevymonitor.vic.gov.au/home/fsl+over-collection/outcomes/

The not-for-profit sector

The Financial Rights Legal Centre, like most other community legal centres, is a not-for profit entity incorporated in Australia under the Associations Incorporation Act 2009 and the Australian Charities and Not-For-Profits Commission Act 2012.

The Financial Rights Legal Centre is supported financially via a number of sources including the Financial Counselling Services Program administered by the NSW Department of Finance and Services (Fair Trading), the Community Legal Services program of the State and Federal Attorney-General's Departments and the Commonwealth Financial Counselling Program administered by the Department of Social Services. The Financial Rights Legal Centre also receives project and other funding from other sources including Legal Aid NSW and the Fire Services Levy Monitor in Victoria.

As a not-for-profit entity, the Financial Rights Legal Centre is entitled to state and local tax concessions including payroll tax and stamp duty exemptions. The Financial Rights Legal Centre's employees are also entitled to an exempting from paying tax on fringe benefits up to a monetary limit.

The White Paper details a number of issues relating to the concessions available to not-for-profits including the rationale for the concessions (ie. our contribution to the Australian community), the benefits of these concessions (ie. improving societal outcomes and ensuring overall level of activity in the NFP sector is closer to optimal) but raises questions as to their effectiveness and any unintended consequences, particularly given the revenue foregone as a result of the concessions.

While the Financial Rights Legal Centre supports the stated policy and rationale for the current concessions and does not recommend any changes to the current regime, it is ultimately agnostic as to the form and delivery of these concessions. What is important to note however is that like all other community centres and not-for-profits, the Financial Rights Legal Centre has built these concessions into its business and financial planning. For our current and future employees these concessions are built in to an employees' total remuneration package. Furthermore the Financial Rights Legal Centre notes that employees working in not-for-profits are often paid significantly less than their equivalent positions in government (for example, in Legal Aid) or in non-government private sector roles.

Any change to the not-for-profit tax concessions or even the removal of these concessions will have a substantial negative flow-on impact upon the ability of the Financial Rights Legal Centre to deliver its services, maintain current employment levels and attract future employees. If such changes or removal were to be contemplated, they would need to be balanced with guaranteed equivalent additional funding from the Commonwealth and States to compensate the loss. Without this, community legal centres and the not-for-profit sector generally would be severely weakened by any changes to the tax system, leading to significantly poorer outcomes for both already disadvantaged individuals who depend upon our services as well as local communities and Australian society in general.

Recommendation

The Financial Rights Legal Centre does not recommend any changes to the current tax concession regime for the not-for-profit sector. If any changes are contemplated, guaranteed equivalent funding would need to be provided to compensate for the loss and support the current services of the Financial Rights Legal Centre, other community legal centres and the not-for-profit sector more generally.

Concluding remarks

Thank you again for the opportunity to comment on the Treasury's Tax Discussion Paper. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,

Karen Cox
Coordinator
Financial Rights Legal Centre
Direct: (02) 8204 1340
E-mail: Karen.Cox@financialrights.org.au