# Productivity Commission
## Inquiry into Caring for Older Australians

Submission by and on behalf of the organizations listed on the cover sheet.

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## The Effect of Fringe Benefit Tax (FBT) Exemptions on Aged Care

We submit the FBT exemptions granted to providers with PBI status produce labour market distortions and inequities.

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

This submission addresses the issue of FBT in the Residential Aged Care Industry and the Public Hospital Industry and submits that the exemption:

- **Distorts the labor market** for employers in attracting and retaining employees to the extent that a private sector employer needs to pay 23% more to equal the salary of an employee in a PBI earning $55,380pa with the $30000 FBT exemption.

  There is a lower level of FBT exemption distortion caused by the hospital sector where the wage rates are around 12-15% more than in the aged care sector & where the exemption is $17,000.

- **Produces a lack of equity for employees** performing the same work in the same industrial agreement classification where the pay rate of $55,380 results in $8736 more benefit, i.e. $8,736 less tax for the employee with the PBI employer versus the private employer. The work of both employees is of equal merit

- **Prevents the mobility of labour** between sectors & provides cost free labor retention mechanisms to employers with PBI status.

  We can cite examples from our own experiences where staff have wanted to move from PBI employers to private-sector aged care employment, because they would have preferred the latter's organizational culture and systems, but were unable accept the roles because of the loss of net financial benefits they would have suffered.

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

The provision of FBT exemptions to PBI's was, we believe, an unintended consequence of the introduction of the FBT legislation.

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

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

- Increase the spread of the exemptions to the private sector employees principally engaged in the same occupation as those personnel receiving the exemption in the PBI sector of particular industries.
- Eliminate the FBT exemption over a period of time, while also adopting the above position to produce equity in what would need to be quite a long phase-out period.
  For example, the $30,000 exemption could be phased out over 10 year and the $17, 000 exemption phased out over say 5 years
- A combination of the above, where after a particular date, no new employee could receive an FBT exemption, and the exemption for existing employees is phased out as above.

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

However, while the exemption continues, there are always likely to be some well reasoned arguments for its extension to others who are equally deserving employees. Examples, of these include the teaching profession and those in the childcare industry.

Indeed any other employee!

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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