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House Standing Committee on Economics  
House of Representatives  
PO Box 6021  
Parliament House  
Canberra ACT 2600

4 February 2013

Sent via email: [economics.reps@aph.gov.au](mailto:economics.reps@aph.gov.au)

**Further Information requested by the Economics Committee in the review of Schedule 7 of the Tax Laws Amendment (2012 Measures No. 6) Bill 2012 (In-House Fringe Benefits)**

Dear Sir / Madam

Firstly, Ernst & Young would like to thank the Committee for the opportunity to participate in the hearing for the inquiry process before the Committee on 30 January 2013 with respect to the above mentioned draft legislation on behalf of our clients operating in the NSW electricity industry as electricity distribution businesses (Essential Energy, Endeavour Energy and Ausgrid).

This letter addresses your request for further information with regards to the number of award employees who currently participate in electricity salary sacrifice arrangements and may be impacted by the proposed legislation. Please refer to Appendix One for the detailed information in this regard.

To summarise, in our appearance before the Committee we made the following recommendations:

1. Not to proceed with the in-house benefit legislative reforms to FBT; or
2. Defer the legislative reforms to take effect from 1 April 2014 (with no transitional rules);  
or
3. At the very least, provide further clarification and/or relaxation regarding the operation of the transitional provisions.

Further, we feel it necessary to reiterate some key concerns that we presented to the Committee in relation to:

- a. The significant impact upon award employees as result of the proposed law; and
- b. The proposed transitional provisions.

*a. Award Employees*

The proposed legislative changes in their current form would have a significant impact upon employees on award arrangements across the three companies.

As the data at Appendix One emphasises, across the three companies for whom we are acting as advocate, the significant majority of employees engaging in salary sacrificing of in-house benefit arrangements are award staff. For example, of the 2,318 Endeavour Energy employees currently salary sacrificing electricity, 85% are award staff. Similarly at Essential Energy, 96% of the 3732 employees currently salary sacrificing electricity are award staff and award staff represent 88% of the 3,059 salary sacrificing employees at Ausgrid.

In total, there are over 9,000 employees currently salary sacrificing who will be impacted, of which 90% are award employees. As these figures demonstrate, **the removal of the concessional treatment in**

relation to in-house benefits (by way of salary sacrifice arrangements) would impact heavily on the award based workers, which is not consistent with the intentions of the 2012-13 Federal Budget.

This impact would also likely extend across the entire electricity industry, both in New South Wales and across other Australian states. There would also likely be a similar impact across other Government service and utility, for example, the water industry, as well as across major retail organisations where there would be a large number of award employees impacted by these proposals.

*b. Transitional Provisions*

If the reforms are still deemed necessary, we suggested deferring the effective date to 1 April 2014, and removing the transitional rules given the ambiguity in determining whether the salary sacrifice arrangements have been entered into before 22 October 2012. **Additionally, having the new legislation take effect part way through an FBT year, produces an inconsistent and inequitable result within a large employee base where some employees will be able to continue to benefit from concessional treatment and others will not, depending on whether they sacrifice under a deduct and pay or accrual approach and/or the particular processes adopted by their employers in administering these arrangements.**

With respect to Treasury's view that transitional provisions are necessary for integrity purposes, at the very least we suggest that the provisions be broadened to extend to all types of existing salary sacrifice arrangements. These integrity measures are too narrow in their current form. For example, the Explanatory Memorandum suggests that transitional provisions will only apply to "existing salary packaging arrangements". However, these are narrowly defined as those arrangements that were given "legal force" before 22 October 2012. Depending on how arrangements are administered, this may effectively limit the transitional provisions to accrual arrangements, i.e. potentially excluding some deduct and pay benefits, notwithstanding that the employee had previously salary sacrificed benefits under the arrangement and continues to believe they are party to an existing arrangement.

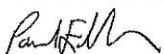
Additionally, the impact of a requirement of "legal force" (which itself is unclear) may act to exclude some arrangements due to the form of the arrangements in question (e.g. EBAs, awards, a variety of individual contracts). This is inequitable and of particular concern given that award staff represents the majority of those salary sacrificing in-house benefits in the electricity industry.

Furthermore, even if the transitional start date were deferred to the beginning of the next FBT year, there is now insufficient time before the end of this FBT year to properly re-implement arrangements that have been postponed until legislation is finalised, given that it is now February and the 2012/2013 FBT year ends on 31 March 2013. Deferring the start date to 1 April 2014 would allow enough time for employers to appropriately implement the new reforms.

It should also be noted that the potential revenue saving during the transitional period is wholly immaterial in contrast to tax receipts, based on projected revenue of \$20 million in 2011-12 income year and \$55 million in 2012-13 income year disclosed in the MYEFO statement.

If you would like to discuss this letter further or require any additional information, please contact me on 02 8295 6250.

Yours sincerely,

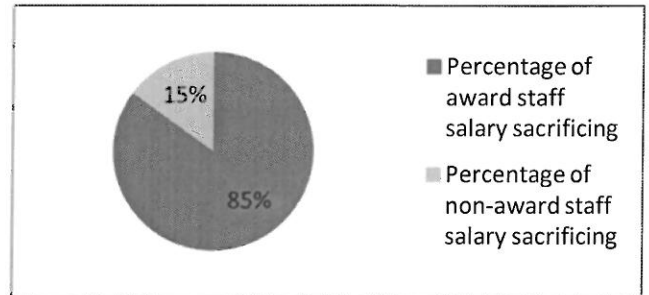


PAUL ELLIS  
Partner - Employment Taxes

Appendix One

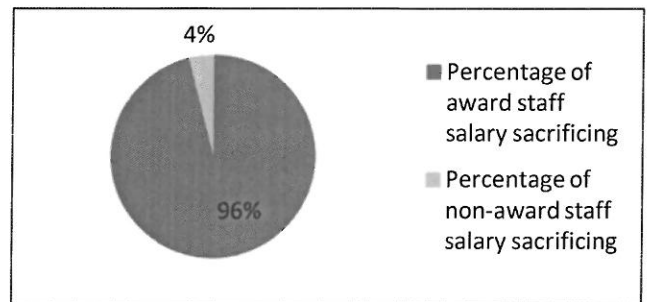
**ENDEAVOUR ENERGY**

Total number of employees	3118
Total employees salary sacrificing in-house benefit	2318
Number of award staff salary sacrificing	1959
Percentage of award staff salary sacrificing	85%
Percentage of non-award staff salary sacrificing	15%



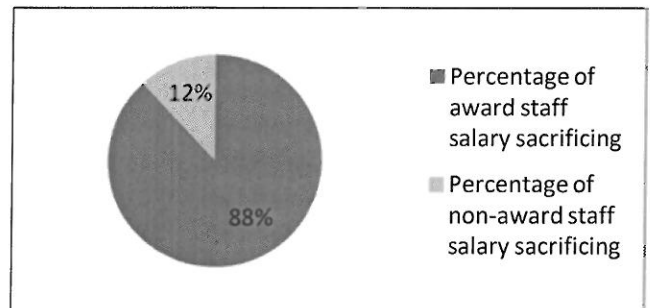
**ESSENTIAL ENERGY**

Total number of employees	4700
Total employees salary sacrificing in-house benefit	3732
Number of award staff salary sacrificing	3588
Percentage of award staff salary sacrificing	96%
Percentage of non-award staff salary sacrificing	4%



**AUSGRID**

Total number of employees	6077
Total employees salary sacrificing in-house benefit	3059
Number of award staff salary sacrificing	2686
Percentage of award staff salary sacrificing	88%
Percentage of non-award staff salary sacrificing	12%



**TOTAL**

Total number of employees	13895
Total employees salary sacrificing in-house benefit	9109
Number of award staff salary sacrificing	8233
Percentage of award staff salary sacrificing	90%
Percentage of non-award staff salary sacrificing	10%

