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The Secretary
Senate Economics Legislation Committee
P O Box 6100
Parliament House
Canberra ACT 2600

Via Email: economics.sen@aph.gov.au

Dear Sir/Madam

Inquiry into Employee Share Schemes

Fairfax Media Limited ("Fairfax") welcomes the opportunity to provide the following submission to the Committee on matters relating to the recently announced changes to the taxation of employee equity plans.

Fairfax is the one of the largest and most diverse media organisations in Australia. It publishes newspapers and magazines, broadcasts radio and publishes news, information and transaction internet sites across Australia including in country and regional areas. It also has similar news and media businesses in New Zealand, Asia and USA.

Fairfax employs around 8,000 people in Australia. Seventeen percent of employees (more than 1,400 people) and all directors of the Company participate in Fairfax Employee Share Plans.

Prior to the changes to the taxation treatment of employee share plans ("Plans") announced as part of the 2009 Commonwealth Budget, Fairfax conducted 3 Plans as set out below. All 3 Plans are presently suspended and will be reviewed after the passing of the pending amending legislation.

1. **$1,000 Tax Exempt Plan**. Under this Plan 100% of Fairfax Australian employees with at least 12 months' service, are eligible to salary sacrifice $1,000 per annum of pre tax income into this plan.

2. **Tax Deferred Plan**. Under this Plan 100% of Fairfax Australian employees with at least 12 months' service, are eligible to salary sacrifice up to 25% of their annual salary into this Plan. Because this Plan is entirely salary sacrifice, it does not have substantive hurdles to access shares in the Plan.

   Some years ago the Board of Directors of Fairfax resolved that each director would be required to sacrifice 25% of his/ her director's fee into the Tax Deferred Plan.

3. **Long Term Incentive Plan ("LTI")**. Under this Plan approximately 120 senior Fairfax managers and executives are allocated Fairfax shares annually. The shares are subject to substantial vesting hurdles which are tested 3 years after allocation. If the shares fail to vest at the 3 year test date there is a further test after the 4th year. If they fail to vest at the 4 year test date the employee loses the allocation.

The various Fairfax Plans attract very broad participation of employees across the Fairfax group and the Company believes the Plans play an important role in the motivation and hence productivity of employees and also align employee interests with shareholders. The Plans also provide employees with an attractive means of saving and providing for their financial future.

The participation of Fairfax directors in the Tax Deferred Plan has been seen very positively by shareholders.

Fairfax was very concerned about the likely negative impact of the changes announced in the 2009 Budget and welcomes the subsequent changes announced by the government including those announced on 2 July, 2009. We do however believe that, even with the announced changes, there are some areas which, if not changed, will create distortions in equity markets and will reduce the participation rate of employees in Plans. This will in turn have negative outcomes for business and consequently the economy. In this submission we concentrate on 2 issues which directly, and significantly, affect the operation of the Fairfax Plans.

1. The announced cap of $5,000 per annum for tax deferred contributions to salary sacrifice plans is too low. It is below the amount currently contributed by a significant number of Fairfax employees and directors. A cap on salary sacrifice participation at $5,000 significantly reduces the effectiveness of these Plans.

   A number of companies have mandated fee sacrifice participation by directors into Plans and these initiatives ensure directors have a real and growing equity interest in their companies aligned with shareholders generally. These initiatives have been very well received by corporate governance professionals and shareholder groups generally.

   Fairfax submits that a more appropriate cap would be $25,000 per annum. This level would allow Directors and employees to continue to participate at a meaningful level.

2. Fairfax is concerned with the operation of the “real risk of forfeiture” test to create a tax event on the date of the removal of that risk rather than on the sale of the shares or termination of employment or the 7 year maximum deferral date.

   Taking the Fairfax LTI as an example, vesting of the shares depends on the testing of financial hurdles 3 years after the allocation date of the shares to employees. All shares are allocated at the same time each year. If an allotment of shares does vest on, for example, 1 October 2012 then most relevant employees will need to sell about half of their shares to meet their tax obligation. Of course the tax is not actually paid on 1 October 2012 but that is the date on which the market price of the shares and therefore the quantum of the tax liability will be set. Many employees will want to sell shares to meet the tax liability on or close to 1 October in case the price of the shares drops between that date and when the tax is actually payable. This is particularly the case for companies, such as those in the media industry, which are highly sensitive to the economic climate and therefore have a volatile share price.

   The likely outcome will be that significant numbers of shares come on to the market on or around the same date which in turn potentially adversely affects share prices.

   Another difficulty crystallising the tax liability on vesting is that many senior executives will be unable to sell shares on or around the vesting date due to their access to share price sensitive, confidential information. Many companies, including Fairfax, have strict securities trading policies which severely limit the ability of senior executives to sell company securities.

We believe that an appropriate mechanism to avoid this problem would be to set the taxing event at the earlier of 2 years from the date of removal of the risk of forfeiture or 7 years. This change would significantly improve the smooth operation of Plans without compromising the government's goal in making the change to the pre budget rules.

In summary, Fairfax believes that Employee share plans play an important and positive role in the economy to enhance productivity, improve shareholder return and provide an effective saving mechanism for many employees. It would be a great pity if the effectiveness of Plans was compromised. For these reasons we hope the government and the Committee will give serious considerations to our suggestions above.

We would be happy to discuss any of the issues raised in our submission with the Committee. For further information please contact me on 02 9282 2062 or ghambly@fairfaxmedia.com.au.

Yours faithfully

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