



Submission to the Treasury

Tax Deductible Gift Recipient Reform Opportunities

July 2017

Introduction

This submission briefly outlines some of the key issues for Australia's not-for-profit sector in response to the Treasury Discussion Paper on Tax Deductible Gift Recipient Reform Opportunities.

This CCA submission has been prepared with CCA members (see listing of CCA members, Attachment A) as well as other key organisations working within the broader not-for-profit sector.

It is important to note that this submission does not over-ride any policy positions that may be outlined in any individual submissions from CCA members. This is especially true when talking about charitable status and DGR eligibility as several CCA members currently comply with different codes of practice, different regulators, and are listed on different registers in relation to their Deductible Gift Recipient (DGR) status.

While CCA believes the current regulations relating to DGR are long overdue for reform, members are concerned that the Treasury Discussion Paper leaves unanswered the fundamental question of what is the policy goal of DGR eligibility processes? This lack of clarity about purpose is reflected in some of the options outlined in the Treasury Discussion Paper that appear to inflate supposed costs to government of 'foregone revenue', confuse the established definition of charity and impose unnecessary new red tape in sunset clauses, reviews and audits of activities. CCA supports a number of the options outlined in the paper, but rejects a framing of the discussion that fails to fully acknowledge the benefits of DGR.

CCA welcomes this opportunity to provide comment on the discussion paper and is willing to engage in further discussion about any of the issues raised in this submission.

The Community Council for Australia

The Community Council for Australia is an independent non-political member based organisation dedicated to building flourishing communities by enhancing the extraordinary work undertaken by the charities and not-for-profit sector in Australia. CCA seeks to change the way governments, communities and not-for-profits relate to one another. It does so by providing a national voice and facilitation for sector leaders to act on common and shared issues affecting the contribution, performance and viability of NFPs in Australia. This includes:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- improving the way people invest in the sector
- measuring and reporting success in a way that clearly articulates value
- building collaboration and sector efficiency
- informing, educating, and assisting organisations to build sustainable futures
- providing a catalyst and mechanism for the sector to work in partnership with government, business and the broader Australian community to achieve positive change.

Our success will drive a more sustainable and effective charities and not-for-profit sector in Australia making an increased contribution to the well-being and resilience of all our communities.

Current situation – the context

The not-for-profit sector

The NFP sector encompasses over 600,000 organisations - from large to very small, and employs well over one million staff (around 10% of all employees in Australia). Australia's 54,000 charities collectively turn over more than \$130 billion each year and hold over \$260 billion in assets. In the last decade, sector growth has continued at more than 7% a year, higher than any comparable industry group.

These facts tell only a small part of the story. The real value of the NFP sector is often in the unmeasured contribution to Australian quality of life. NFPs are at the heart of our communities; building connection, nurturing spiritual and cultural expression, and enhancing the productivity of all Australians.

The importance of the NFP sector is internationally recognised with many governments now putting in place measures to increase NFP investment and productivity, including new measures to promote increased giving and philanthropy. Smaller government and bigger community is a common theme, driven in part by savings, but also by a commitment to greater civic engagement, social entrepreneurship and productivity within the NFP sector.

In Australia there are currently various initiatives seeking to: promote social enterprise; reduce compliance costs for NFPs; encourage a diversification of financing options to build a more sustainable funding base; streamline and refine the regulation of NFPs and charities; establish less bureaucratic reporting requirements while building community transparency; increase volunteering, increase philanthropy; improve relationships between government and the NFP sector; promote impact investing; and increase sector performance measurement. CCA supports all these activities.

The establishment of the Australian Charities and Not-for-profit Commission (ACNC) is the first time the NFP sector has had an independent regulator dedicated to serving their needs and enhancing their capacity. It has proved to be a positive step towards red tape reductions, increased transparency, and trust in the community by prospective volunteers and donors. The national charities register has also provided invaluable information, particularly for those seeking to donate or support a cause.

While the recent history of the NFP sector is framed by growth and reform, new issues are emerging. The level of volunteering and individual philanthropic giving as a percentage of income has still not recovered to the highs of 2009. Revenue available to governments is effectively falling in real terms against a backdrop of increasing demands and higher community expectations. Competition for fundraising and funding for services has increased in the NFP sector. Most charities are no longer growing at the rate they were, with many facing real reductions in their total income at the same time as they are being asked to do more, be more accountable and proactively demonstrate their value.

Given the size of the sector and its critical role in our community, the Federal Government can achieve real economic and social benefits if it chooses to strategically invest in the sector, provide greater certainty with the funding and regulatory environment, reduce red tape and needless compliance, promote and enable community involvement, volunteering and philanthropy.

A strong civil society is fundamental to national prosperity. Well informed policy settings adopted by government that support the role of NFPs are critical to building flourishing communities.

Overview of key issues

Begin with what the policy is trying to achieve – what is the goal of DGR concessions?

The goal of the DGR process should be to encourage community involvement, engagement and ownership of issues they are concerned about. Encouraging civil society to own their issues of concern is not only good public policy, it is very good economic policy. Governments around the world acknowledge the benefit of community involvement and actively seek to promote philanthropy.

Unfortunately, the Treasury Discussion Paper does not address this fundamental question about the policy goal of providing DGR. In fact, the discussion paper seems to imply that foregone revenue through tax concessions afforded by DGR status are a cost to government, rather than a benefit. It suggests charities receive 'generous' concessions resulting in government losing significant revenue. There is no acknowledgement that the level of DGR benefit is entirely dependent upon the level of community support for DGR organisations.

The Treasury Discussion Paper extrapolates the real cost to government of DGR concessions based on an assumption that every dollar given to a DGR charity or other organisation would otherwise have been taxable revenue. This assumption is compounded by the failure to factor in the significant transfer costs of having government collect, administer and redistribute funds back to the community. The implication that every dollar given to a DGR charity represents a loss in revenue is grossly inflated.

Interestingly, governments never suggest that money used to employ people in businesses (and therefore written off as non-taxable expenses) represent a generous concession to business or a loss of revenue to government. Similarly, no-one suggests that because the Minerals Council of Australia writes off the expenses associated with their lobbying of politicians that they are receiving generous concessions to engage in political advocacy. The companies that support the Minerals Council of Australia write off their contributions as expenses in the same way individual donors to DGR organisations might claim deductions. The 'foregone government revenue' of the very extensive and expensive political advocacy undertaken by all Australian businesses makes the small amount claimed back by individual donors to DGR inconsequential.

Unlike most businesses, which seek to benefit owners, when a charity provides programs or services to a community it often enables governments to reduce their costs by not having to provide those programs and services, thereby creating very real savings. Charities also often provide services at less cost than equivalent government services. Where are these additional benefits of supporting charitable activity outlined in the Treasury Discussion Paper?

Even using the Treasury's flawed assumptions about the costs to government, if the total DGR concessions amount to around \$1.3 billion each year, that is still only approximately 1% of the total annual turnover of the charities sector.

The government should make a clear definitive statement about the benefit of increasing DGR contributions, and frame any reform of DGR within a context that explicitly acknowledges the benefits as well as possible costs, and states the purpose of providing DGR status is enhancing our communities.

The current DGR processes are dysfunctional and need reform

CCA supports the view reflected in the Treasury Discussion Paper that the complexity of the current DGR arrangements make it an almost unworkable system, particularly for small charities.

As CCA has pointed out in previous submissions, the process to obtain DGR status can be very lengthy and expensive. CCA has previously been quoted at least 12 months of work and a legal bill of \$30,000 to obtain DGR status.

The way DGR status is administered with the ATO determining most eligibility as well as having four separate Departmental registers and a wide range of specific listings by Treasury Ministers reflects a dysfunctional, confusing, and costly approach to obtaining DGR status. It favours large charities over small, rich over poor, those with strong political connections over those with weak.

Not one review of the current DGR system has ever supported its continuation. It needs to be reformed.

All DGRs should be charities and all charities should be DGR

It is difficult to justify the current distribution of DGR eligibility which reflects the arbitrary and ad hoc manner in which DGR eligibility has developed.

It makes good policy sense that all donations made to registered, complying charities should be tax deductible. This is the practice in comparable countries like the UK and Canada.

Given there is a well-functioning regulator determining charitable status through an effective process, and given charitable status is embedded in the notion of public benefit, DGR should be directly associated with charitable status.

This position has been supported by the Productivity Commission and the Not For Profit Tax Concessions Working Group. This position has also been strongly supported by CCA for many years.

Purpose should determine both charitable and DGR status, not activities

It has long been established that the activity of a charity is not what matters in determining charitable status. The High Court of Australia has repeatedly ruled that it is the purpose that remains the touchstone for determining charitable status and public benefit.

At any point in the Treasury Discussion Paper when it is referring to activities, it is applying a somewhat arbitrary and untested notion that activities in some way determine purpose.

For instance, a local charity in a rural city may run a carwash or carpark for the weekend football game as a way of underwriting their charitable purpose. If the organisation engages in promotion of their carpark it does not make them an advertising agency, nor does running a carpark make them a for-profit business if all the money they raise is directed to their charitable purpose. Purpose, not activity, is what tells us about a charity and also informs our donations to a charity.

Auditing of activities through accounts and other record keeping is a waste of time and effort

Any auditing of activities is a waste of time and money. Financial accounts do not fully explain or describe an activity, let alone the purpose of an activity. The line items associated with financial accounts are not governed by any agreed protocols or practices. Many reflect the way an organisation's income and expenditure have evolved over time.

For instance, meeting with other local organisations may be seen as just part of the role of the CEO, but may also be costed out and listed under a broad range of activities including; marketing, advocacy, partnership building, fundraising, policy development, etc..

Knowing that staff were involved in running a carpark does not tell you the purpose of the organisation anymore than knowing part of the CEO's role is promotion of the organisation and its goals.

Advocacy by charities should be encouraged, not restricted

Advocacy by charities is critical to a well-functioning democracy.

The recently released Canadian *Report of the Consultation Panel on the Political Activities of Charities*, released a month ago, makes some salutary points about the role of advocacy and the difficulty of excluding what are termed 'political activities'. In framing their report, the authors clearly set out the benefits of charities playing an active role in public policy:

Charities have long played a critical role in our society. Along with providing much-needed programs and services, they serve all Canadians by pressing for positive social and environmental change. Charities bring commitment and expertise to the formulation of public policy, develop innovative solutions to issues and engage a diverse group of stakeholders, many directly affected by the matters under discussion. This is particularly valuable in an era of complex social and environmental challenges and constrained government budgets, where all informed perspectives and ideas are vital.

To enable and maximize the contributions of charities, we need a regulatory environment that respects and encourages their participation in public policy dialogue and development.

(Canada Revenue Agency; *Report of the Consultation Panel on the Political Activities of Charities*, 31/3/17, cited from: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/pltbl-ctvts/pnlrprt-eng.html>)

For charities complying with the law and fulfilling other regulatory requirements, advocacy is a legitimate and often effective way for charities to pursue their charitable purpose.

Advocacy is part of what donors and communities expect of charities. Any suggestion that donors are not aware that they are supporting advocacy by the charities they donate to has no basis in evidence.

The only groups that have expressed any concerns about the level of advocacy by charities are those seeking to profit in one way or another from activities some charities feel are harmful to the communities they serve. This includes mining interests opposed to environmental advocacy.

All existing registers for DGR should be phased out

Many charities have reported to CCA that it is very difficult, time consuming and expensive to gain DGR status, and this is particularly true when listing on a Departmental register is required.

There are currently four current Departmental registers:

- The Department of Foreign Affairs and Trade administers the Overseas Aid Gift Deduction Scheme and register.
- The Department of Social Services administers the Register of Harm Prevention Charities.
- The Department of the Environment and Energy administers the Register of Environmental Organisations.
- The Department of Communications and the Arts administers the Register of Cultural Organisations.

CCA does not believe it is appropriate for individual Commonwealth Government Ministers to have the final say in determining charitable status or eligibility for DGR. Ministerial involvement in these processes creates inconsistency and uncertainty, and undermines the credibility of all charities.

The role of the Australian Charities and Not-for-profits Commission should be expanded and enhanced to cover DGR

The determination of charitable status is now clearly the legal responsibility of the Australian Charities and Not-for-profits Commission (ACNC). Charities that are deemed to have satisfied the requirements of the ACNC, including annual reporting of activities and finances, have achieved their status based on the current legal definition of charity including the test of providing a public, as opposed to private, benefit.

The present system of determining Deductible Gift Recipient (DGR) status through the Australian Taxation Office (ATO) and four separate Departmental registers favors larger charities that can afford lawyers and lobbyists to assist the progression of their applications. This has not been the case with obtaining charitable status since the inception of the ACNC.

CCA believe it is appropriate for the ACNC to determine charitable status and to recommend to the ATO that appropriate concessions, including DGR, be applied. The ATO would retain the power, but would need to show cause why a charity was not entitled to a concession. These measures could be phased in over time to ensure an appropriate transition of requirements.

Resourcing for the ACNC should be increased and the role extended where necessary to ensure any organisation currently enjoying DGR status can be monitored by the ACNC.

With annual reporting to the ACNC, no sunset clauses are required

The provision of an Annual Information Report combined with a relatively detailed public register ensure all charities are accountable to the ACNC. The fact that over 13,000 charities have been deregistered in less than five years is strong evidence that sunset clauses are not required.

Regular reviews of DGR status organisations are unnecessary

As noted above, the ACNC already has good oversight of all charities and the regulatory capacity to investigate any issues of concern raised by anyone at any time. These provisions ensure there is no need to insist on any regular review processes, provided the ACNC is adequately resourced to fulfill its role.

Singling out environmental groups is counter productive

The Treasury Discussion Paper singles out environmental groups as organisations needing to have their activities monitored. In particular, the paper suggests advocacy activities should be restricted.

Australian communities are built on the back of charities and not-for-profits working to achieve community benefit. Any suggestion that charities and not-for-profits advocating to reduce the degradation of the environment offer no benefit to the community is an absurdity.

It is widely accepted in most fields of endeavour that prevention is much better than cure. Waiting for a problem to get to the stage of needing remediation is the most ineffectual way of addressing emerging issues. In key areas of human endeavour, solutions are driven by preventing death, disease and other harms. In environmental terms, it is clearly a false economy to wait until an area is polluted to the point of needing costly remediation rather than seeking to prevent the pollution in the first place.

Clearly there are strong vested interests that profit by exploiting the environment. While such groups are free to pursue their economic interests, the attacks on those who are operating as charities and not-for-profits is about enhancing profit and shareholder interests, not prioritising community benefit.

CCA believes any reform of DGR concessions needs to be systemic and based on considered policy goals and careful application across the whole charities sector. To identify one part of that sector (protecting and enhancing the sustainability of our environment) and raise the possibility of withdrawing concessions that will continue to be available for others is, at best, a retrograde step. Such a measure will only exacerbate an already inconsistent set of rules, requirements and concessions while achieving no net benefit for our community.

The illegal activities of some charities

As CCA has previously noted, there have been some suggestions that a very small minority of Australia's charities (including some environmental and animal welfare groups) regularly engage in illegal activities. CCA does not support charities pursuing illegal activities as part of their purpose. A small minority of businesses also engage in illegal activity. Again CCA does not support illegal activities.

Where businesses or charities, or any organisation has engaged in illegal activities, the law should be applied. This includes deregistration by ASIC or the ACNC where appropriate, and seeking whatever remedies are considered necessary by these regulators.

Listing of specific answers in response to consultation questions

Please note. CCA has addressed most of these questions within the more detailed discussion of issues raised by the Treasury Discussion Paper. The answers below are provided for convenience only and need to be cross referenced to the more detailed discussion of issues.

1. *What are stakeholders' views on a requirement for a DGR (other than government entity DGR) to be a registered charity in order for it to be eligible for DGR status. What issues could arise?*

Provided a phase in period was applied along with increased resources for the ACNC, CCA does not foresee any major issues with this proposal.

2. *Are there likely to be DGRs (other than government entity DGRs) that could not meet this requirement and, if so, why?*

See answer 1.

3. *Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?*

See answer 1.

4. *Should the ACNC require additional information from all charities about their advocacy activities?*

No.

5. *Is the Annual Information Statement the appropriate vehicle for collecting this information?*

See answer 4.

6. *What is the best way to collect the information without imposing significant additional reporting burden?*

See answer 4.

7. *What are stakeholders' views on the proposal to transfer the administration of the four DGR Registers to the ATO? Are there any specific issues that need consideration?*

CCA supports ending Departmental oversight of the four registers and ceding greater powers to the ACNC to make recommendations to the ATO regarding DGR.

8. *What are stakeholders' views on the proposal to remove the public fund requirements for charities and allow organisations to be endorsed in multiple DGR categories? Are regulatory compliance savings likely to arise for charities who are also DGRs?*

CCA supports this proposal.

9. *What are stakeholders' views on the introduction of a formal rolling review program and the proposals to require DGRs to make annual certifications? Are there other approaches that could be considered?*

CCA does not support this proposal.

10. *What are stakeholders' views on who should be reviewed in the first instance? What should be considered when determining this?*

See answer 9.

11. *What are stakeholders' views on the idea of having a general sunset rule of five years for specifically listed DGRs? What about existing listings, should they be reviewed at least once every five years to ensure they continue to meet the 'exceptional circumstances' policy requirement for listing?*

CCA does not support a sunset clause.

12. *Stakeholders' views are sought on requiring environmental organisations to commit no less than 25 per cent of their annual expenditure from their public fund to environmental remediation, and whether a higher limit, such as 50 per cent, should be considered? In particular, what are the potential benefits and the potential regulatory burden? How could the proposal be implemented to minimise the regulatory burden?*

CCA does not support audits of activities, or activity requirements beyond compliance with charity law and ACNC requirements.

13. *Stakeholders' views are sought on the need for sanctions. Would the proposal to require DGRs to be ACNC registered charities and therefore subject to ACNC's governance standards and supervision ensure that environmental DGRs are operating lawfully?*

CCA supports the current role of the ACNC in overseeing charity regulations and investigating any issues of concern about any charity.

Conclusion

CCA strongly supports the need for reform, particularly with the ongoing engagement between not-for-profit organisations and Commonwealth agencies. The level of counter-productive regulatory and compliance activity, and lack of consistent independent application of tax concessions is having a very negative impact on the productivity and effectiveness of not-for-profit organisations. This is particularly true for smaller local charities that have limited time, energy, and resources to fight through the layers of red tape and compliance activity associated with gaining DGR status.

Any reform of DGR needs to be informed by a clear policy goal. For CCA, the goal is clear – encourage stronger civil society engagement in their community through enhancing the capacity to recognise and support community contributions to charities. The more our communities own their issues and put their own resources towards addressing them, the more productive and resilient our society will be.

It has never been the case that all people support all charities or all DGR eligible organisations. The great thing about DGR is that the extent of government support provided to DGR eligible organisations depends entirely on the level to which the community engage with the charity and seek concessions for making their DGR eligible donations.

The charities and not-for-profit sector wants to work with government to reduce red tape while improving transparency and accountability. One way to achieve these outcomes is to accept the recommendations of many inquiries and reports by streamlining requirements for all charities in gaining DGR status.

The best, most efficient, transparent and effective means of doing this is to empower the ACNC to determine charitable status as well as making recommendations to the ATO on DGR eligibility. This would not only make the ACNC a truly one stop shop for charities, but also end duplication and costly reliance on a range of disparate departmentally-based bodies that are often under-resourced and ill-equipped for the roles they are enacting. This would also build public trust and confidence while holding all charities to higher standards of governance and reporting than currently applies.

Current Membership – Community Council for Australia (Attachment 1)

Access Australia's National Infertility Network, Sandra Dill, CEO

Access Housing, Gary Ellender, CEO

Adult Learning Australia, Jenny Macaffer, CEO

Alcohol, Tobacco and Other Drugs Association ACT, Carrie Fowlie, Executive Officer

Arab Council Australia, Randa Kattan, CEO

Arthritis Australia, Ainslie Cahill, CEO

Australian Charities Fund, Jenny Geddes, CEO

Australian Community Support Organisation (ACSO), Karenza Louis-Smith, CEO

Australian Council for International Development, Marc Purcell, CEO (CCA Board Director)

Australian Indigenous Leadership Centre, Belinda Gibb, CEO

Australian Institute of Superannuation Trustees, Tom Garcia, CEO

Australian Major Performing Arts Group, Bethwyn Serow, CEO

Australian Women Donors Network, Julie Reilly, CEO

Business Council of Cooperatives and Mutuals, Melina Morrison, CEO

Carers Australia, Ara Cresswell, CEO

Centre for Social Impact, Kristy Muir, CEO

Church Communities Australia, Chris Voll, CEO

Churches of Christ Vic and Tas, Gabriel Hingley, Executive Director

Community Based Support (Tas), Murray Coates, CEO

Community Broadcasting Association of Australia, Jon Bisset, CEO

Community Colleges Australia, Don Perlcut, CEO

Drug Arm Australasia, Dennis Young, CEO (CCA Board Director)

Ethical Jobs, Michael Cebon, CEO

Everyman, Greg Aldridge, CEO

Foresters Community Finance, Rhyll Gardner, CEO

Foundation for Alcohol Research and Education, Michael Thorn, CEO

Foundation for Young Australians, Jan Owen, CEO

Fragile X Association of Australia, Wendy Bruce, CEO

Fundraising Institute of Australia, Rob Edwards, CEO

Good Samaritan Foundation, Catherine Cresswell, Executive Director

Good to Give, Lisa Grinham, CEO

Hammondcare, Stephen Judd, CEO

Hillsong Church, **George Aghajanian, CEO (CCA Board Director)**

Justice Connect, Fiona McLeay, CEO

Legacy Australia, Jennifer Walker, CEO

Life Without Barriers, **Claire Robbs, CEO (CCA Board Director)**

Mater Foundation, Nigel Harris, CEO

Menslink, Martin Fisk, CEO

Mission Australia, **Catherine Yeomans, CEO (CCA Board Director)**

Missions Interlink, Pam Thyer, CEO

Musica Viva Australia, **Mary Jo Capps, CEO (CCA Board Director)**

Non Profit Alliance, Kelly Beaumont, CEO

Our Community, Denis Moriarty, Managing Director

Palliative Care Australia, Liz Callaghan, CEO

Philanthropy Australia, Sarah Davies, CEO

Playgroup Qld, Ian Coombe, CEO

Port Phillip Housing Association, Haleh Homaei, CEO

Power Housing Australia, Nicholas Proud, CEO

Pro Bono Australia, Karen Mahlab, CEO

Queensland Water & Land Carers, Darryl Ebenezer, CEO

RSPCA Australia, **Heather Neil, CEO (CCA Board Director)**

SANE, Jack Heath, CEO

SARRAH, Rod Wellington, CEO

Save the Children, **Paul Ronalds, CEO (CCA Board Director)**

Scope, Jennifer Fitzgerald, CEO

Settlement Services International, Violet Roumeliotis, CEO

Smith Family, **Lisa O'Brien, CEO (CCA Board Director)**

Social Ventures Australia, Rob Koczkar, CEO

St John Ambulance, Robert Hunt, CEO

Starlight Foundation, Louise Baxter, CEO

Ted Noffs Foundation, Matthew Noffs, CEO

Touched by Olivia, Bec Ho, CEO

Variety Australia, Neil Wykes, Company Secretary

Volunteering Australia, Adrienne Picone, CEO

Wesley Mission, Keith Garner, CEO (CCA Board Director)

White Ribbon Australia, Libby Davies, CEO

World Vision, Tim Costello, Chief Advocate (Chair CCA Board)

YMCA Australia, Melinda Crole, CEO