



**ActionAid Australia
Submission on Tax Deductible Gift
Recipient Reform Opportunities
Discussion Paper June 2017**

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ActionAid Australia is part of a global federation working to achieve social justice, gender equality and poverty eradication. The organisation supports women living in poverty to understand their rights, reflect on the people and systems that oppress them and act with other allies and movements to change their lives and positions in society. We work with local partners in over 50 countries. This work is supported by the Australian Aid Program in more than 10 of these countries.

ActionAid Australia welcomes the opportunity to provide input on the DGR reform opportunities outlined in the Discussion Paper.

In principle, ActionAid welcomes modifications that would streamline DGR registration, reporting and monitoring of charities and the requirement that any DGR organisation also register with the ACNC with an annual certification included in the Annual Information Statement. We believe this is a balanced and reasonable proposition since, as the Discussion Paper mentions, the majority of DGRs are already registered with the ACNC.

However, some of the compliance proposals, such as a formal rolling review program and a sunset rule of five years, are far too onerous from ActionAid's perspective. The increased requirements on both the charity and government agencies would require significant time and expense, and the need for additional regulation beyond what is already in place. This includes the regulator's power to conduct audits on a random basis and/or to address systematic problems, which has not been sufficiently justified in the Discussion Paper.

ActionAid Australia agrees that charities granted DGR status should ensure annual certification through the ACNC. However, with regards to removing the Overseas Aid Gift Deductible Scheme (OAGDS) from DFAT and handing all tax deductibility registration to the ATO, ActionAid Australia believes that this would undermine important development standards such as child protection, counter-terrorism funding risk management and the quality of activities that constitute international development.

ActionAid also strongly believes that the Australian Government should continue to uphold an organisation's right to engage in advocacy in order to address root causes of social and environmental issues. This is part of the role civil society plays in a healthy, functioning democracy. For ActionAid, advocacy and campaigning to address the structural causes of poverty, gender inequality and injustice, is an important part of a human rights based approach to development, and runs alongside efforts to empower people living in poverty to know and claim their rights. Like other charitable organisations, ActionAid's donors support the organisation's advocacy activities and view these as part of a process of social change. ActionAid would not want to see any changes to DGR regulation that might narrow the scope for charities to legitimately undertake advocacy related activities related to their purpose.

ActionAid strongly opposes the proposition of requiring environmental organisations to commit a minimum of 25% of their expenditure from public funds to environmental remediation. As a matter of principle, ActionAid Australia does not believe in differential or discriminatory treatment of organisations by dictating specific levels of funding or fundraising. Whilst we recognise the importance of environmental remediation and the need for some organisations to focus on this work, we also acknowledge the need to address root causes of environmental issues by advocating for behavioural, policy and legal changes. Decisions about how best to produce the results related to the purpose of a charity are best left to the charity's governing bodies rather than regulators.

Recommendations

ActionAid makes the following recommendations to the Australian Government in its review of Tax Deductible Gift Recipient Status:

1. All charities with DGR status should be registered with the ACNC and annual DGR certification should be self-regulating and happen through the Annual Information Statement.
2. No additional reporting requirements regarding advocacy activities should be collected as this would cause undue reporting burden on both the charity sector and the government.
3. Advocacy activities should be respected as integral to the work of charities in influencing policy and social change towards a more just, equitable and sustainable society and central to a well-functioning civil society and democracy.
4. The current standards for assessing eligibility for OAGDS should be maintained with DFAT unless a viable, alternative model can be developed in consultation with the development sector that will manage risks and maintain Australia's rigorous development standards.
5. No formal rolling reviews or sunset clauses should be added to the DGR process, as there are no significant issues that cannot be addressed through the current system which have been identified.
6. Environmental organisations should not be required to commit a minimum of 25% of public funding expenditure to environmental remediation. Charities' governing bodies should be left to decide how best to spend revenue to meet their purpose, just as donors should be able to donate to advocacy organisations if this is the type of activity they wish to support.

Response to Specific Consultation Questions

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?

ActionAid Australia supports the proposal that all DGR (other than government entity DGR) be a registered charity to be eligible for this status. We recommend that the new requirement commences at least 1 year from the introduction of the relevant legislative amendment. We also recommend that appropriate transitional support is provided by the ACNC to facilitate the registration process and that the ACNC is properly resourced to manage the additional workload that will arise from additional charities falling within their jurisdiction.

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

See response to question 1.

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

ActionAid Australia is not aware of any privacy concerns associated with this proposal and believes the current power of the ACNC to withhold and/or remove information would ensure privacy issues can be managed appropriately.

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

ActionAid Australia strongly believes that no additional information should be required by the ACNC from all registered charities about their advocacy activities should be required as no rationale has been provided for treating advocacy as a special category of activities, and because doing so would impose new and unjustified red tape on charities.

For many organisation's within the aid and development sector, advocacy is a core part of our theories of change, and particularly in addressing structural causes of poverty and injustice.

Reform should maintain a primary focus on assessing DGR eligibility at the level of purpose. Any shift to focus on activity level assessments needs to establish strong and compelling reasons for an increased compliance burden and ensure the compliance requirements are commensurate to risk.

The focus on purpose rather than activities has been accepted in the ACNC legislation where the principle charity registration section¹ is expressed in terms of purpose with one exception being Harm Reduction Charities which have a 'principle purpose' test.

A purpose approach allows the governors of charities to devote charitable resources to the most efficient and effective ways of achieving their purposes, in line with their theories of change. This allows flexibility that a pure activities approach may curtail. A purpose approach is consistent with the Government's interest in reducing red-tape and administration.

¹ S 25-5 Australian Charities and Not-for-profits Commission Act 2012

From ActionAid's perspective, the Discussion Paper does not establish strong and compelling reasons for DGR reform to focus more on activities, such as advocacy, and is therefore unwarranted. The current legal regime is robust in outlining the purposes for which charities can legitimately be established, as well as in ensuring charities must demonstrate that they do not have a 'disqualifying purpose.'² Additionally, as shown in the ACNC compliance reports, there is a process already in place that allows members of the community (as well as a range of vested and politically motivated interests) to lodge complaints about the activity of individual charities.

Advocacy undertaken by charities has been recognised as both a legitimate activity and one that is essential to Australia's system of parliamentary democracy³ and to a well-functioning civil society. Advocacy is an important tool for charities in addressing the structural causes of poverty and injustice, rather than just treating the symptoms – an approach that often requires seeking policy and legal change. The Discussion Paper has framed proposals around advocacy activities that by default treats advocacy as different to other activities undertaken by charities in pursuit of their purpose. This view is not coherent with many of the sector's underlying theories of social change, nor consistent with best practice in the development space.

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

As ActionAid Australia does not recommend this information be collected, no vehicle for collection is required.

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

ActionAid Australia strongly believes that collection of this information is unnecessary as the discussion paper has not given enough justification to show that the current reporting, auditing and complaint processes are insufficient. Regardless of the method of collecting this additional information, it would create significant burdens by increasing the time and resources that charities need to put into reporting and compliance. This would impact smaller organisations most significantly, who would likely struggle with limited resources to provide exhaustive details on advocacy activities. It would also require a greater investment in administration at a time when charities are being expected to show increased value for money and reduce administrative overheads. It would also impact the tax payer, who donates to a charity in the expectation that the bulk of the funds they donate will go towards the activities of that charity and not to administrative requirements.

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?

² Disqualifying purpose includes: a purpose to promote/oppose political parties/candidates; a purpose to engage in or promote unlawful activity; a purpose to engage in or promote activities contrary to public policy (which does not necessarily include opposing specific policies of the Government). See ACNC Fact Sheet http://www.acnc.gov.au/ACNC/Reg/Charities_elections_and_advocacy_.aspx last accessed 14/7/17.

³ See *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42, available at <http://www.austlii.edu.au/au/cases/cth/HCA/2010/42.html> last accessed 14/7/17.

ActionAid welcomes any effort to reduce administration burdens, streamline reporting and monitoring of DGR related issues and improve transparency to the Australian public. However, transferring the administration of all four DGR Registers to the ATO does not recognise the distinctiveness and expertise required for each of the four programs, including the Overseas Aid Gift Deduction Scheme (OAGDS).

ActionAid has a significant concern that the Discussion Paper has not given due attention to the way in which the OAGDS currently provides an important risk management framework for the Government and Australian charities in their development activities overseas. Moving the OAGDS to the ATO would risk watering down the robust regulatory measures in place to support strong, upfront assessment of organisations applying tax deductible funding to their work in overseas environments.

The regulatory environment in overseas contexts is often lacking or underdeveloped and it is this lack of commensurate regulatory environments in which overseas aid charities undertake their work that we believe provides a compelling rationale for the need to maintain the standards of the OAGDS assessment process.

Under the OAGDS, organisations must demonstrate that they meet four criteria in order to be recommended as an approved organisation. These criteria are assessed and include safeguards for important components of overseas work including child protection, the capacity to manage and deliver overseas programs and the ability to deliver overseas aid in partnership with in-country organisations.

Assessing agencies' ability to meet these criteria creates important assurances that humanitarian and development initiatives undertaken overseas are done so with an appropriate level of development expertise and risk management practice. This provides the dual benefit of ensuring that taxpayer money is well-spent, and Australian charities working overseas do not negatively impact the rights and dignity of people living in poverty in low income countries.

The Discussion Paper's proposal to move all four DGR Registers under the ATO neither makes mention of these types of risks, nor outlines how the ATO could proactively manage issues such as child protection overseas to a commensurate level to what is currently done by DFAT. In the absence of this further detail about what it would look like to move responsibility for OAGDS eligibility away from DFAT, ActionAid does not support this shift.

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?

ActionAid Australia views this as a suitable proposal providing that all DGR fall under the jurisdiction of the ACNC and its oversight mechanisms.

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?

ActionAid Australia believes that reviews and audits coming on top of the annual requirements already in place for ACNC registered entities (of which all DGR will be, if the proposition in Discussion Question 1 proceeds), are unnecessary.

The Discussion Paper, itself, notes that 92% of DGR organisations are registered with the ACNC already meaning that 25,760 of the 28,000 DGR entities are already governed by the annual requirements of ACNC registration. Furthermore, under the current framework, the ATO encourages DGRs to self-review annually or when circumstances change. The burden, therefore, is on the DGR entity to regularly ensure that they still comply with the eligibility criteria. ActionAid believes that unless systemic issues have been identified and/or, certain risk thresholds amongst categories of charities and DGR have been surpassed, that the current self-assessment process remains proportionate and appropriate to the risk. This is also consistent with the Taxpayers Charter, whereby, charity governors have a right to be treated as being honest.⁴

Furthermore, the ATO can presently undertake a review or audit of any entity that they believe is non-compliant and administer a penalty. Therefore, the creation of a new and additional power to pursue an approach of rolling review and audit would be costly, and the justification for undertaking it on top of the other systems already in place to ensure compliance, is insufficiently established in the Discussion Paper.

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

As noted in our response to question 9, ActionAid Australia believes that the burden for establishing continual compliance with DGR eligibility should sit with the DGR entity and its governing body except in cases where systemic issues have been identified and/or certain, well-established risk thresholds have been surpassed.

11. What are stakeholders' views on the idea of having a general sunset rule of no more than five years for specifically listed DGRs? What about existing listings, should they be reviewed at least once every, say, five years to ensure they continue to meet the 'exceptional circumstances' policy requirement for listing?

ActionAid Australia does not believe it is necessary to have a general sunset rule or audit of existing entities as it believes continual compliance with DGR eligibility sit with the DGR entity and its governing body except in cases where systemic issues have been identified and/or certain, well-established risk thresholds have been surpassed.

The additional time, effort and money required for these reviews and audits, both within the charities and the government agency or agencies, would result in significant resource drains and burdens on the tax payer and the Discussion Paper has not provided sufficient need for these additional reviews.

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?

ActionAid Australia strongly opposes any requirement for any percentage of a charity's activities to be mandated by the Government. Governors of charities are best placed to determine how to efficiently and effectively allocate resources in line with their charitable purpose.

⁴ <https://www.ato.gov.au/About-ATO/About-us/In-detail/Taxpayers-charter/Taxpayers--charter---treating-you-as-being-honest/> last accessed 10/7/17.

As noted in our response to question 4 above, ActionAid believes that the focus of charitable organisations with regards to their DGR status should be more reflective of their purpose than their specific activities.

There are many critical ecological threats that require advocacy, community organising and campaigning if Australia is to address major ecological issues and climate change in a meaningful way. Many of these threats cannot be addressed solely through “on-ground” activity, and require changes to regulations and laws governing or restricting developments and current industrial, agricultural and other activities. Again, as noted in response to question 4 above, addressing the root causes of issues is a vital part of ensuring long-term sustainable solutions to critical environmental and social issues facing Australia and the world.

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?

ActionAid Australia believes compliance with the rule of law is an underpinning principle of a democratic society. We believe all entities—charities, businesses and governments-- should be operating within the bounds of the law and any breach of the law can and should be pursued by the relevant authority. The need for new or additional measures to ensure lawful operations are unsupported by evidence within this Discussion Paper of wide-spread, inadequacy of current powers. Without such evidence, any additional initiatives would constitute a wasteful approach to allocating public funds.