

**AMNESTY
INTERNATIONAL**



**Submission to The Treasury on
TAX DEDUCTIBLE GIFT RECIPIENT REFORM OPPORTUNITIES**

DISCUSSION PAPER 15 JUNE 2017

4 August 2017

Submitted by

Amnesty International Australia

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About Amnesty International

Amnesty International is the world's largest independent human rights organisation, comprising more than seven million supporters in more than 160 countries.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

1. INTRODUCTION

Amnesty International Australia (AIA) is specifically listed in the *Income Tax Assessment Act 1997* in section 30.45 (2) as such satisfying the requirements for Deductible Gift Recipient (DGR) status.

AIA is a company limited by guarantee and a registered charity with the Australian Charities and Not-for-profit Commission (ACNC). AIA's charitable purpose is that of 'the purpose of promoting or protecting human rights' as set out in section 12 (1)(g) of the *Charities Act 2013* (Charities Act).

1.1 AIA's Purposes

AIA's objects - or purposes - are set out in in rule 3 the Memorandum of Association contained in its constitution, and are reproduced below:

3. Objects and Methods

- 3.1 *AIA is part of the global movement of Amnesty International. The worldwide movement of Amnesty International - including AIA - is a non-denominational, non-partisan movement, independent of all governments, political parties and religious institutions.*
- 3.2 *AIA is a democratic organisation comprising members and supporters who work to achieve the objects set out below.*
- 3.3 *AIA's objects are:*
 - (a) *To promote, defend and protect the human rights of all people as set out in the Universal Declaration of Human Rights (UDHR), and subsequent United Nations conventions and declarations based on the UDHR, as well as in regional codes of human rights which incorporate the rights contained in the UDHR, the provisions to which governments have voluntarily acceded.*
 - (b) *To encourage, and raise awareness, that every human being possesses rights based on their humanity and that respect for human rights improves people's lives.*
 - (c) *To end grave abuses of the human rights of individuals, for example prisoners of conscience, and groups of people experiencing: injustice; poverty; discrimination; torture; cruel, inhuman and degrading treatment or punishment; executions; and the indiscriminate killing of civilians.*
 - (d) *To help those fleeing persecution and conflict and to defend people from violence from state and non-state actors.*
- 3.4 *To achieve the objects in clause 3.3 above, AIA may:*
 - (a) *Conduct investigations and publish well-founded, evidence-based research on human rights issues;*
 - (b) *Prepare, publish (in a variety of media) and promote reports and material on human rights issues;*
 - (c) *Monitor and publicise violations and abuses of human rights;*
 - (d) *Provide education on human rights;*

- (e) *Support, directly or indirectly, individuals and their families whose human rights have been breached;*
 - (f) *Protect, directly or indirectly, those who are at risk of human rights violations;*
 - (g) *Work in partnership with other organisations and individuals;*
 - (h) *Promote public support for, and advocacy of human rights;*
 - (i) *Inform public opinion to encourage individuals, non-state actors, and governmental and other entities to protect, promote and defend human rights;*
 - (j) *Hold to account individuals, governments and non-state actors for violations of human rights;*
 - (k) *Provide expertise and technical advice to government and others on human rights issues;*
 - (l) *Promote a culture of respect for all human rights;*
 - (m) *Promote economic, social and cultural rights as a means of alleviating poverty, which is a grave violation of human rights;*
 - (n) *Seek to eliminate infringements of human rights; and*
 - (o) *Support the work of Amnesty International through financial contributions and other means consistent with being part of the global movement of Amnesty International.*
- 3.5 *AIA has the legal capacity and powers of a body corporate and may exercise all powers of a body corporate granted under law in pursuit of the objects and methods set out in the above clauses.*
- 3.6 *If at any time the objects or methods of AIA as set out in these clauses become inconsistent with the objects or methods that are for the time being set out in the Statute of Amnesty International, the last-mentioned objects or methods shall, to the extent of the inconsistency, prevail.*
- 3.7 *Only to enable to AIA to carry out its objects in accordance with clause 3, AIA will:*
- (a) *Raise funds and other resources from the public;*
 - (b) *Invest money not immediately required for its objects in any investments, securities or property;*
 - (c) *Take all necessary steps to remain an effective and sustainable organisation; and*
 - (d) *Adopt any other appropriate methods for securing the objects set out in clause 3.3.*

1.2 Methods to achieve AIA's purposes

AIA employs a range methods to achieve the charitable objects contained in rule 3.3. These are set out in rule 3.4 and include:

- *advocacy (rule 3.4 (h)),*

- encouraging governments to protect, promote and defend human rights (rule 3.4 (i)),
- holding governments to account for violations of human rights (rule 3.4 (j)),
- providing expertise on human rights issues to government and others (rule 3.4 (k)), and
- promoting a culture of respect for all human rights (rule 3.4 (l)).

Each of the activities listed above involves engaging in dialogue with governments, including the Australian Government. As the Federal Government is responsible for giving effect to the provisions of the UDHR and other international human rights instruments, these conversations are central to the realisation of human rights in Australia and elsewhere.

1.3 The importance of communication in a parliamentary democracy

The importance of dialogue in our system of democracy was highlighted by the High Court of Australia in 2010:

*Communication between electors and legislators and the officers of the executive, and between electors themselves, on matters of government and politics is "an indispensable incident" of that constitutional system.*¹

Similarly, charities law recognises the importance of the conversation between civil society and governments. The Charities Act does not disqualify charities engaged in activities that are 'contrary to government policy'². Nor are purposes opposing or promoting 'change to any matter any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country'³ in relation to one of the purposes listed in s12(1) disqualified by the Act.

Conducting advocacy on issues that benefit the public - such as human rights, social or public welfare, the environment or other charitable causes - is often a key way to achieve positive outcomes for these issues. Consequently, any limitation to advocacy necessarily inhibits progress in areas that benefit the public.

The *Tax Deductible Gift Recipient Reform Opportunities Discussion Paper* (the DGR Discussion Paper) frequently highlights advocacy for special treatment in respect to maintaining DGR status.

Charity law in Australia focusses on the purpose of the entity as set out in its foundational documents, such as its constitution, to determine whether it is a charity. DGR status should be similarly focussed. Activities can be incidental to achieving an entity's purpose and can be useful indicators of that purpose but should not be determinative of status.

The Charities Act is clear about which purposes are charitable and which purposes disqualify an entity from being charitable.

Removing an entity's DGR status would have a significant impact on its income stream. Depriving an entity of its DGR status due to the legitimate activity of advocacy undermines a central tenet of our democracy and AIA rejects the proposition entirely.

¹ *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42; 241 CLR 539 (*Aid/Watch*) at [44]

² *Charities Act 2013* s11(a) Note.

³ *Ibid* s12 (1) (l).

2. RESPONSES TO QUESTIONS

AIA will not respond to each question posed in the DGR Discussion Paper. The questions to which an answer is provided are reproduced below.

- 2.1 **Question 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?**
- 2.2 AIA agrees that an entity should be a registered charity in order for it to be eligible for DGR status and that the appropriate level of resources be provided to the Australian Charities and Not-for-profit Commission (ACNC) to deal with the increased workload.
- 2.3 **Question 4: Should the ACNC require additional information from all registered charities about their advocacy activities?**
- 2.4 No. As mentioned in Part 1 above, AIA believes that DGR reform should focus on entities' purposes rather than activities, as is the case in charities law in Australia. Further, providing information on activities beyond what is currently captured by the ACNC in the Annual Information Statement is unduly onerous for an otherwise legitimate - and important - activity.
- 2.5 **Question 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?**
- 2.6 AIA does not believe that a formal rolling review program or annual certifications are necessary or justified. The governing body of the entity is responsible for compliance with the law, and continuing to hold DGR status is included in this responsibility.
- 2.7 **Question 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?**
- 2.8 AIA does not believe these are necessary or desirable. The governing body of a DGR entity is responsible for complying with the law and should seek to revoke that entity's DGR status if it believes that it no longer qualifies. Sunset rules and 5 year reviews are unduly onerous, create uncertainty and are unnecessary.
- 2.9 **Question 12: Stakeholders' views are sought on requiring environmental organisations to commit no less than 25% of their annual expenditure from their public fund to environmental from their public fund to environmental remediation, and whether a higher limit, such as 50%, 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?

- 2.10 AIA strongly rejects any regulatory framework that directs charities' activities - be they environmental charities or any other charity. Advocacy is central to our democracy. Disqualifying activities are clearly set out in the Charities Act and in ACNC guidelines. Curtailing the flexibility of charities to determine the activities to best achieve their charitable purposes is onerous and counter-productive.
- 2.11 **Question 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?**
- 2.12 AIA does not believe another layer of sanctions is necessary. Furthermore it does not believe that environmental organisations should be singled out - no entity should operate outside of the rule of law.

