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07/07/2017

To Whom it May Concern

**RE: Tax Deductible Gift Recipient Reform Opportunities, Discussion Paper 15 June 2017**

**Submission from Asylum Seeker Resource Centre for consultation**

The ASRC would like to thank The Hon Kelly O'Dwyer MP Minister for Revenue and Financial Services for the opportunity to respond to this important discussion paper regarding potential reforms to the Deductible Gift Recipient (DGR) tax arrangements.

The paper outlines a series of proposals that purport to strengthen DGR governance arrangements and reduce administration complexity and ensure an organization's DGR eligibility. The ASRC's response to each consultation question is stated below.

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?

The ASRC supports the recommendation for DGR's to be registered charities with the ACNC and adhere to the ACNC governance and reporting standards. However we are concerned with stated consequence of non-compliance being revocation of registration status. It is our view that de-registration should be the last resort and that charities be given the opportunity to work with the ACNC to remedy any areas of non-compliance.

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

No comment

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

No comment

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

The ASRC opposes the ACNC requiring additional information from all charities about their advocacy activities.

The ASRC is concerned that the discussion paper in many instances confuses "charitable purpose" and "charitable activities".

Australian charities currently have the right under Australian law to undertake advocacy to further their charitable purpose. Confirmation of this right was legislated in the Charities Act 2013 after being recognized by the High Court in the Aid/Watch decision of 2010, where the court held that charities undertaking advocacy was essential to Australia's constitutional system of parliamentary democracy.

Advocacy is an important approach which charities can use in pursuit of their purpose to address the causal nature of a problem, rather than just the symptoms, which may require policy change.

The charities Act prescribes limits to charitable purpose and the current ACNC regulatory environment ensures that charities do not have a "disqualifying purpose" with clear guidelines that also specify prohibitory conditions in relation to relevant laws.

Any DGR reform should limit its focus to purpose and not activity and thus the ASRC is strongly opposed to any recommendations aimed at the activity-level of charities and specifically in this regard to the requirement to provide the ACNC with any activity level reporting.

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

Noting our strong objections above to any proposal that aims DGR reform at "charitable activities" and not "charitable purpose", the subsequent recommendation that such information in regards to advocacy be collected in the Annual Information Statement (AIS) is also opposed.

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

The ASRC opposes the collection of any activity level information relating to advocacy in relation to DGR reform. Any such collection process would be difficult to administer, require very prescriptive definitions for advocacy versus say public education, require interpretation in relation to pursuit of charitable purpose.

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?

Consideration should be given to the additional resources required by the ATO to assume these administration duties.

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?

The ASRC supports the proposal to remove the public fund requirements for charities and allow organisations to be endorsed in multiple DGR categories.

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?

The ASRC does not see any necessity for the introduction of a formal rolling review program and proposals to require DGRs to make annual certifications.

Currently the ATO encourages DGR's to self-review annually or when circumstances change, but has the power to conduct a review or audit of a DGR at its discretion.

While accountability and transparency of the sector is important and welcome, a formal periodical review process would be expensive and onerous for the charity to undertake, very costly for the ATO to administer and disproportionate to any risk stated 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?

The ACNC and ATO should retain powers and be allowed to continue to use their existing compliance tools of review and audit only where systematic issues have been identified or certain risk thresholds amongst categories of charities and DGR's have been passed.

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?

No comment

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?

The ASRC opposes the requirement of environmental organisations to commit no less than 25% of their annual expenditure from their public fund to environmental remediation. We also oppose any higher limit.

This recommendation again makes the mistake of confusing "charitable activity" and "charitable purpose". The ASRC would like to restate that we believe any and all DGR reform recommendations should not be focused at activity level.

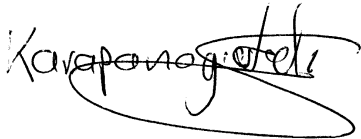
We also oppose any requirement for any charity to allocate a designated percentage of annual expenditure to any particular activity and that the governance of a charity is best placed to understand what approaches and at what proportion are needed in the furtherance of their charitable purposes.

This proposal sets a dangerous precedence for the entire charity sector and erodes the right of charities to undertake advocacy.

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?

No comment

Yours sincerely,



**Kon Karapanagiotidis OAM**  
CEO

