



AUSTRALIAN
COUNCIL
FOR
INTERNATIONAL
DEVELOPMENT

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

July 2017

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Introduction

1. ACFID appreciates the opportunity to contribute to the important discussion regarding opportunities to reform Deductible Gift Recipient (DGR) status. As a principle, we support red-tape reduction.
2. The not-for-profit sector in Australia has been calling for reform of DGR many years and it is pleasing to see consideration of this need. The evolution of the DGR framework set out in Division 30 of the *Income Tax Assessment Act 1997 (Cth)* has been ad hoc, and as such, is complex, cumbersome and a source of red tape for charities.
3. We believe that the reform of DGR should be done in line with a principles approach and should start from a clear position around the value and intention of the DGR scheme, overall. It is also our position that reform opportunities should be seeking to identify and remove unnecessary inefficiencies in the assessment process.
4. To provide more detail on our views and recommendations our Submission follows in 4 parts:
 - a. Recognising the distinctiveness of the Overseas Aid Gift Deductible Scheme (OAGDS);
 - b. Underpinning principles that should inform DGR Reform;
 - c. Associated issue-areas to simultaneously addressed through reform, and;
 - d. Specific responses to the Discussion Questions posed in the Discussion Paper.
5. We would be happy to provide additional clarity on any of the recommendations contained within this submission. Follow up requests should be directed to Marc Purcell, CEO, ACFID: (02) 8123 2216.

About ACFID

6. The Australian Council for International Development (ACFID) is the peak body for Australia's overseas development and humanitarian not-for-profit organisations. ACFID unites Australia's non-government organisations involved in international development and humanitarian action to strengthen their collective impact against poverty.
7. Our vision is of a world where all people are free from extreme poverty, injustice and inequality; where the earth's finite resources are managed sustainably; and Australia is compassionate and acting for a just and sustainable world. We believe that this vision can only be realised through the collective efforts of civil society, governments, business and individuals concerned for our common humanity.
8. Founded in 1965, ACFID currently has 126 Members and 18 Affiliates operating in more than 100 developing countries. The total revenue raised by ACFID's membership from all sources amounts to \$1.658 billion (2014–15), \$921 million of which is raised from 1.64 million Australians (2014–15). 80 per cent of funding for ACFID Members is from non-government sources. ACFID's members range between large Australian multi-sectoral organisations that are linked to international federations of NGOs, to agencies with specialised thematic expertise, and smaller community based groups, with a mix of secular and faith-based organisations. A list of ACFID Member Organisations is at **Annex A**.

9. ACFID's Members adhere to a Code of Conduct which is a voluntary, self-regulatory sector code of good practice that aims to improve international development outcomes and increase stakeholder trust by enhancing the transparency and accountability of signatory organisations.
10. The Code sets standards for practice rather than standards for results. It goes beyond the minimum standards required by government regulation and focuses on good practice. The Code is underpinned by a set of values and quality principles and speaks to the results we seek to achieve, the processes that support organisations to achieve those results, and the organisational systems that enable our Members' work.
11. The Code addresses areas such as fundraising, governance and financial reporting. Compliance includes triennial self-assessment, annual reporting and spot checks. All Members are subject to the independent complaints handling process governed by the Code of Conduct Committee (CCC) which is independent from the Governing Board of ACFID.

Summary of recommendations

Recommendations from Section 1:

- 1a. **We strongly recommend that:** the current standards for assessing eligibility for OAGDS are maintained with DFAT until an alternative model—with sufficient detail as to how it will manage risks and maintain standards—is prepared and consulted on with the relevant sectors.
- 1b. **We recommend that:** process efficiencies in the assessment and sign-off processes of OAGDS are sought to support eligible charities to be better able to access the OAGDS regime, where the eligibility criteria are met, as well as to manage DFAT’s workload.

Recommendations from Section 2:

- 2a. We **strongly recommend that:** reforms to DGR avoid taking an activity-level focus (such as what is suggested by Discussion Questions 4-6; 12-13). Such an approach is unwarranted as it:
 - a. Casts doubt and creates uncertainty over the legitimacy of specific, lawful activities—namely advocacy;
 - b. Establishes a significant, additional compliance burden associated with undertaking a set of lawful activities, and;
 - c. Has not sufficiently been established that the current regime of ‘charitable purpose’ is not robust for regulating the sector.
- 2b. We **recommend that:** any reform to DGR does not introduce new reporting obligations for advocacy activities, as no rationale has been provided which establishes a need to treat advocacy as a special category of activities, and because doing so would impose new and unjustified red tape on charities.
- 2c. **We recommend that:** the proposed reform for all DGR (other than government entity DGR) be a registered charity under the ACNC be enacted.
- 2d. We **recommend that:** the burden for establishing 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.

Recommendations from Section 3:

- 3a. **We recommend that:** the opportunities to reform the DGR regime are accompanied by efforts to remove ambiguity on the application of the special conditions introduced in the Tax Laws Amendment 2013 and to clearly state that the income and assets condition is not breached when pursuing purposes or conducting activities incidental or ancillary to the purpose for which an entity is established.

Recommendations from Section 4:

- 4a. **We recommend that:** the new requirement commences 1 year from the commencement of the relevant legislative amendment, and that appropriate transitional support is provided by the ACNC to facilitate the registration process.

- 4b. **We recommend that:** the ACNC is properly resourced to manage the additional workload that will arise from additional charities falling within their jurisdiction if the proposal to move all DGR (except government entity DGR) under the jurisdiction of the ACNC goes ahead.

Section 1: Recognising the distinctiveness of the Overseas Aid Gift Deduction Scheme (OAGDS)

- 1.1. Consultation Question 7 of the Discussion Paper and the explanatory material in points 33-44 of the Discussion Paper addresses the issue of streamlining approvals for the four DGR Registers.
- 1.2. While we welcome the consideration of how to reduce the complexity and inefficiencies in sign-off processes surrounding the various DGR Registers, we have a significant concern that the Discussion Paper has not given due attention to the way in which the OAGDS regime currently provides an important risk management framework for the Government and Australian charities.
- 1.3. It is our view that the OAGDS remains a robust regulatory measure to support strong, up-front assessment of organisations applying tax deductible funding to their work in overseas environments.
- 1.4. While charities who do their work predominantly in Australia benefit from strong regulatory frameworks, laws and statutory bodies that support their effectiveness, the regulatory environment in overseas contexts is often lacking or underdeveloped. **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.**
- 1.5. It is also the overseas environment in which OAGDS entities undertake their work that provides a distinctiveness to the OAGDS register compared to the other registers discussed in the Treasury consultation paper.
- 1.6. The OAGDS was established in 1980, and operates in recognition of the importance of the work performed by the many voluntary bodies involved in the provision of overseas aid.¹ Previous Governments have noted the necessity of these arrangements stating that “integrity requirements are supported by special administrative arrangements because of the difficulties associated with monitoring activities undertaken outside of Australia.”²
- 1.7. Under the OAGDS, there are four criteria that an organisation must demonstrate that they meet to be recommended as an approved organisation. These criteria are assessed when an organisation applies for OAGDS:

¹ DFAT. <http://dfat.gov.au/aid/who-we-work-with/ngos/Pages/review-of-the-overseas-aid-gift-deduction-scheme.aspx>) last accessed 13/7/17.

² John Bradbury, MP. 23 August 2012.

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F128166ac-3803-48a6-ba49-c2e6241fb5ed%2F0031%22>) last accessed 13/7/17/.

- A. *The organisation must deliver overseas aid activities: organisations must demonstrate that they deliver development and/or humanitarian assistance activities. Importantly, these activities must be separate from any other activities that the organisation supports, including partisan political activities, and proselytization activities.***

1.8. Why does it matter?

This criterion ensures that the donating public can confidently give to development assistance and humanitarian work alone, without also unwillingly supporting political or religious activities. This provision helps ensure the two are not conflated in marketing literature or confused in the public mind. Without such a provision, unsuspecting donors might inadvertently support religious activities when they intended to donate to humanitarian work only.

1.9. This measure of transparency and accountability creates confidence and trust with the Australian public.

- B. *The organisation must have the capacity to manage and deliver its aid activities. Organisations must demonstrate they have appropriate processes in place to manage the funds they receive for the projects they were intended. They are assessed against planning and appraisal, budgeting, financial management, implementation and monitoring.***

1.10. Why does it matter?

Historical experience shows that ad hoc and/or unsustainable development and humanitarian interventions can be harmful to poor communities. Further, the body of expertise that has been created in this field over more than half a century shows that well-intentioned effort is generally not enough to create meaningful change and that despite the best of intentions, non-expert interventions can produce a negative outcome for all stakeholders involved. Currently, in Australia, this issue is being discussed as it relates to 'voluntourism' and the ill-effects that well-meaning travellers can either create or perpetuate, inadvertently.³ Communities in developing countries have the right to expect an organisation deliver on its promises, and donors have the right to expect that money donated for assistance is used effectively to this end.

1.11 This criterion requires that an organisation is equipped with the necessary core business functions and processes to manage and deliver the projects it is seeking funds for. In doing so, it also mitigates the risk of unintended negative impacts of voluntary efforts in working with communities in overseas jurisdictions.

- C. *The organisation must deliver its aid activities in partnership with in-country organisations, based on principles of cooperation mutual respect and shared accountability. The organisation must show how it delivers aid projects in partnership with in-country organisations to enhance its development and humanitarian outcomes, and build the capacity of local stakeholders to lead and manage these initiatives.***

1.12 Why does it matter?

This criterion is designed to build sustainability, recognising aid and humanitarian interventions by Australians are most effective when delivered with a local counterpart, creating legitimacy with local populations and ensuring that communities are empowered to create and manage their own initiatives over the longer term.

³ Senator Linda Reynolds. *Voluntourism*. 2 March 2016. <http://www.lindareynolds.com.au/voluntourism-2-march-2016/> last accessed 23/7/17.

1.13 This criterion prompts organisations to demonstrate that they are creating systemic and lasting change, not unhelpful dependency of the local community on the aid provision, or an industry that demands the organisation's unnecessarily protracted intervention. This criterion ensures both sustainable development and effective use of aid funds.

D. The organisation must have appropriate safeguards in place to manage the risks associated with child protection and terrorism. The organisation must show that it understands the risks of working in vulnerable country contexts, and that it has the necessary expertise, policy and processes in place to manage these risks appropriately.

1.14 Why does it matter?

Regarding child protection, the OAGDS Guidelines⁴ observe that children in developing country contexts are especially vulnerable. Aid organisations and aid projects often facilitate increased access to communities and vulnerable children and their families. This necessitates increased vigilance and protective practices to ensure the proper protection and safeguarding of children. Further, as observed by a 2013 Human Rights Watch report⁵ on India, aid organisations may be entering environments where pre-existing issues of child abuse are widespread across homes, schools, and residential care facilities.

1.15 Child safeguarding and child trafficking is a serious and ongoing issue. As highlighted in Senator Linda Reynolds's recent statement regarding volunteer tourism to orphanages⁶, Australian NGOs have a responsibility to not support services that unwittingly increase the pervasiveness of child rights abuses.

1.16 The OAGDS ensures that Australian charities give serious attention to their responsibility to manage the risks to children through their activities, and to equip their staff to promote child protection and child safe practices.

1.17 Regarding Counter terrorism and sanctions, the OAGDS Guidelines⁷ note the constant risk of sending funds of any kind overseas, and that they could be utilised by terrorists, terrorist organisations or to finance terrorist activities, or be diverted to other individual or entities subject to sanctions under Australian law. The Guideline further acknowledge that this risk may increase in countries with less structured regulatory environments. Active risk management in this area is a priority for the Australian Government and for Australian charities. Doing so is imperative to support Australia's Anti-money laundering and counter-terrorist financing measures.

1.18 While the Financial Action Task Force (FATF), and the 2015 FATF Mutual Evaluation Report on the measures in Australia speak of the risks faced by non-profit organisations in being exploited for purposes of terrorism financing,⁸ there has also been the recognition that self-

⁴ DFAT <https://dfat.gov.au/about-us/publications/Documents/oagds-guidelines.pdf> last accessed 13/7/17.

⁵ Human Rights Watch. <https://www.hrw.org/report/2013/02/07/breaking-silence/child-sexual-abuse-india> Last accessed 13/7/17.

⁶ Sen. Linda Reynolds <http://www.lindareynolds.com.au/voluntourism-2-march-2016/> last accessed 19/7/17.

⁷ DFAT <https://dfat.gov.au/about-us/publications/Documents/oagds-guidelines.pdf> last accessed 13/7/17.

⁸ FATF. <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Australia-a-2015.pdf> p. 76 last accessed 14/7/17.

regulatory measures (such as the ACFID Code of Conduct) constitute best practice in combatting abuse of non-profit organisations.⁹ Similarly, the Best Practices Paper points to the importance of having strong risk-analysis and a risk-based approach.

- 1.19 It is our view that the OAGDS eligibility assessments provide a fit-for-purpose, risk-based approach to protecting against the potential for non-profit organisations to be exploited or abused for the purposes of terrorism financing.
- 1.20 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 lives or livelihoods of vulnerable communities.
- 1.21 The Discussion Paper's proposal to move all four DGR Register's 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 as what is currently done by DFAT which has a team that works with Australia's Aid partners.
- 1.22 In the absence of this further detail about what it would look like to move responsibility for OAGDS eligibility away from DFAT, we cannot properly present a view on the appropriateness, suitability or possible efficiencies.
- 1.23 We do note that the 2015 review of the OAGDS reflected that the efficiency of the scheme could be improved by removing the requirement for the Foreign Minister to sign off on the approved organisation.¹⁰
- 1.24 We believe that the necessity of the ministerial sign-off should be considered as an issue that is separate to the assessment process for eligibility.
- 1.25 As such we **strongly recommend that** the current standards for assessing eligibility for OAGDS are maintained with DFAT until an alternative model—with sufficient detail as to how it will manage risks and maintain standards—is prepared and consulted on with the relevant sectors.
- 1.26 It is also **our recommendation that** process efficiencies in the assessment and sign-off processes of OAGDS are sought to support eligible charities to be better able to access the OAGDS regime where the eligibility criteria are met as well as to manage DFAT's workload.
- 1.27 We make the above recommendation as we do not believe the Discussion Paper has presented compelling evidence of the diminishing relevance or importance of the standards that OAGDS requires. Further, the paper has not clarified how changes to the process

⁹ FATF. *Best Practices Paper on Combatting the Abuse of Non-Profit Organisations*. <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf> last accessed 14/7/17.

¹⁰ DFAT, Review of the Overseas Aid Gift Deduction Scheme: Summary of Findings p.9 <https://dfat.gov.au/about-us/publications/Documents/oagds-review-summary-of-findings.pdf> last accessed 13/07/17

would impact the maintenance of these standards and the risks currently being well-managed by this process.

Section 2: Underpinning principles that should inform DGR Reform

Principle 1: 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.

- 2.1. In the Discussion Paper both charitable purpose and charitable activities are raised. However, the Charities Act¹¹ focuses on purpose and not activities, and the DGR framework generally has had a focus on purpose rather than activities, as well. As such, and absent any strong and compelling reasons to the contrary, DGR reform should likewise focus on charitable purposes.
- 2.2. The common law of charity focuses on purposes of the organisation as the primary point of enquiry for classifying an entity as a charity. Purposes, as stated in the organisational formal documents, such as a constitution, are the starting point for assessment of an entity as charitable. Activities are a second-tier point of inquiry—used as indicators or signposts as to the purpose of the organisation.
- 2.3. Furthermore, activities, in and of themselves, are not deemed to be reliable classificatory indicators. The ACNC says: “In determining whether a charity has a disqualifying political purpose, the ACNC will consider all the relevant circumstances of the charity, including its governing rules and its activities. Assessment of these matters will be a question of fact and degree.”¹²
- 2.4. The focus on purpose rather than activities has been accepted in the ACNC legislation where the principle charity registration section¹³ is expressed in terms of purpose with one exception being Harm Reduction Charities which have a ‘principle purpose’ test.
- 2.5. A purpose approach allows the governors of charities to devote charitable resources to the most efficient and effective ways of achieving their purposes. This allows flexibility that a pure activities approach may curtail. A purpose approach is consistent with the Government’s interest in reducing red-tape.
- 2.6. In our view, 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

¹¹ The Charities Act 2013 (Cth) (Charities Act)—Part 2 Definition of a Charity.

¹² ACNC. *Charities, elections and advocacy*.

http://www.acnc.gov.au/ACNC/Reg/Charities_elections_and_advocacy.aspx last accessed 14/7/17.

¹³ S 25-5 Australian Charities and Not-for-profits Commission Act 2012

‘disqualifying purpose.’¹⁴

2.7. Furthermore, the regulatory environment does account for other, relevant laws, which further places prohibitions on DGR in pursuing their purposes.¹⁵

2.8. Therefore, we **strongly recommend that:** reforms to DGR avoid taking an activity-level focus (such as what is suggested by Discussion Questions 4-6; 12-13). Such an approach is unwarranted as it:

- a. Casts doubt and creates uncertainty over the legitimacy of specific, lawful activities—namely advocacy;
- b. Establishes a significant, additional compliance burden associated with undertaking a set of lawful activities, and;
- c. Has not sufficiently been established that the current regime of ‘charitable purpose’ is not robust for regulating the sector.

Principle 2: Reform opportunities should not cast doubt nor create uncertainty over the legitimacy of activities already recognised as both lawful and essential within our system of parliamentary democracy.

2.9. Charities undertaking advocacy has been recognised as both a legitimate activity and one essential to our system of parliamentary democracy.¹⁶

2.10. It is an important approach which charities can use to address the causes of social and environmental problems, rather than just the symptoms – an approach that often requires seeking policy change.

2.11. For example – if a factory is polluting a river because of poor regulation, environmental remediation work to treat affected wildlife downstream will have little impact if the factory can keep polluting the river. Addressing the underlying problem requires advocacy to ensure the factory complies with regulations or adequate regulations are introduced.

2.12. 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

¹⁴ 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.

¹⁵ In regard to OAGDS, for example, organisations must demonstrate compliance with the 2006 Anti-Money Laundering/Control of Terrorism Financing Act, and the Criminal Code vis-à-vis extraterritorial powers in relation to child sex tourism.

¹⁶ 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.

purpose.

2.13. It is our **recommendation that** any reform to DGR does not introduce new reporting obligations for advocacy activities, as no rationale has been provided which established a need to treat advocacy as a special category of activities, and because doing so would impose new and unjustified red tape on charities.

2.14. Well targeted and proportional approaches to maintain transparency and accountability for charities are something that ACFID fully supports. We believe this can be achieved by ensuring all DGRs are registered as charities under the purview of the ACNC, as the Discussion Paper Proposes.

2.15. It is, therefore, our **recommendation that** the proposed reform for all DGR (other than government entity DGR) be a registered charity under the ACNC be enacted.

Principle 3: Ensuring continual compliance with DGR eligibility should be the responsibility of the governing entity of a DGR and can be monitored done using existing regulation, requirements and Departmental powers.

2.16. We welcome and accept that the transparency and accountability of DGRs is important. Our commitment to transparency and accountability in the charitable sector is unrivalled in Australia. ACFID's Code of Conduct has been noted as 'best practice around the world.'¹⁷ by the ACNC Commissioner Susan Pascoe.

2.17. Our view is 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—which we recommend it does) is not a proportionate response to the issue at-hand.

2.18. Even before any changes are made to the regulatory regime, the Discussion Paper, itself, notes that 92% of DGR are registered with the ACNC. That means 25,760 of the 28,000 DGR entities are already governed by the annual requirements of ACNC registration.

2.19. 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.

2.20. It is our view 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

¹⁷ Susan Pascoe. *Are Australian Charities at Risk?* http://www.huffingtonpost.com.au/susan-pascoe/are-australian-charities-at-risk_a_21462478/ Huffington Post, August 2016.

as being honest.¹⁸

- 2.21. Presently, the ATO can undertake a review or audit of any entity that they believe is non-compliant and administer a penalty.
- 2.22. 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.
- 2.23. It is, therefore, our **recommendation that** the burden for establishing 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.

Section 3: Associated issue areas

- 3.1. In considering any reforms to the DGR regime, we believe, that attention should also be paid to addressing the special conditions that were enacted in the Tax Laws Amendment (2013 Measure No 2) Bill 2013.
- 3.2. The special conditions of concern require that an entity:
 - a. Comply with all the substantive requirements in its governing rules (governing rules condition), and;
 - b. Apply its income and assets solely for the purpose for which the entity is established (income and assets condition).
- 3.3. These special conditions place an unnecessary compliance risk onto charities despite the introduction of Tax Ruling 2015/1.¹⁹
- 3.4. Integrity and transparency in the system requires the Government to clearly and unambiguously outline the scope of the regulation and its application so that charities can be clear on their obligations with regards to compliance.
- 3.5. While the Tax Ruling 2015/1 does provide some additional clarity to how the special conditions on governing rules and income and assets would be applied the remaining ambiguity between the language in the Tax Laws Amendment and the Tax Ruling should be addressed.
- 3.6. Reform to section 50-50 of the Income Tax Assessment Act 1997 should have the outcome of:
 - c. Repealing the governing rules condition and;
 - d. Including a common rule that says, for the avoidance of doubt, that the income and assets condition is not breached where an entity pursues purposes or conducts activities that are incidental or ancillary to a purpose for which the entity is

¹⁸ <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.

¹⁹ See section: Ruling. <https://www.ato.gov.au/law/view/document?DocID=TXR/TR20151/NAT/ATO/00001> last accessed 12/7/17.

established.

- 3.7. We, therefore, **recommend that** the opportunities to reform the DGR regime are accompanied by efforts to remove ambiguity on the application of the special conditions introduced in the Tax Laws Amendment 2013 and to clearly state that the income and assets condition is not breached when pursuing purposes or conducting activities incidental or ancillary to the purpose for which an entity is established.

Section 4: Response the Specific Discussion Questions

- 4.1. *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?*
- 4.2. ACFID supports a proposal that all DGR (other than government entity DGR) be a registered charity to be eligible for DGR status.
- 4.3. **We recommend** that the new requirement commences 1 year from the commencement of the relevant legislative amendment, and that appropriate transitional support is provided by the ACNC to facilitate the registration process.
- 4.4. **We recommend that** the ACNC is properly resourced to manage the additional workload that will arise from additional charities falling within their jurisdiction.
- 4.5. *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

- 4.6. *Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?*
- 4.7. ACFID is not aware of any privacy concerns associated with this proposal and believes the current power of the ACNC to withhold or remove information should remain to ensure privacy issues can be managed.
- 4.8. *Should the ACNC require additional information from all charities about their advocacy activities?*
- 4.9. ACFID does not believe it is warranted to collect information about a sub-set of legal activities. See section 2 of this submission.
- 4.10. *Is the Annual Information Statement the appropriate vehicle for collecting this information?*

See section 2 of this submission

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

See section 2 of this submission

- 4.12. *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?*

- 4.13. ACFID does not believe such an approach recognises the distinctiveness of the OAGDS regime.
See section 1 of this submission.
- 4.14. *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?*
- 4.15. ACFID views this as a suitable proposal providing that all DGR do fall under the jurisdiction of the ACNC and its oversight mechanisms.
- 4.16. *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?*
- 4.17. ACFID does not believe a rolling review program is justified.
See section 2 of this submission.
- 4.18. *What are stakeholders' views on who should be reviewed in the first instance? What should be considered when determining this?*

See section 2 of this submission.
- 4.19. *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?*
- 4.20. ACFID does not believe it is necessary to have a general sunset rule or audit of existing entities.
See section 2 of this submission
- 4.21. *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?*
- 4.22. ACFID does not support a 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.
See section 2 of this submission.
- 4.23. *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?*
- 4.24. ACFID 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 operation are unsupported by evidence of wide-spread, inadequacy of current powers. Absent such evidence, any additional initiatives would constitute a wasteful approach to allocating public money.

Annex A



AUSTRALIAN
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List of ACFID Members

Full Members

- ACC International Relief
- Act for Peace - NCCA
- ActionAid Australia
- Action on Poverty
- Adara Development Australia
- ADRA Australia
- Afghan Australian Development Organisation
- Anglican Aid
- Anglican Board of Mission - Australia Limited
- Anglican Overseas Aid
- Anglican Relief and Development Fund Australia
- Asia Pacific Journalism Centre
- Asian Aid Organisation
- Assisi Aid Projects
- Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine
- Australia for UNHCR
- Australia Hope International Inc.
- Australian Business Volunteers
- Australian Doctors for Africa
- Australian Doctors International
- Australian Himalayan Foundation
- Australian Lutheran World Service
- Australian Marist Solidarity Ltd
- Australian Medical Aid Foundation
- Australian Mercy
- Australian Red Cross
- Australian Respiratory Council
- AVI
- Beyond the Orphanage
- Birthing Kit Foundation (Australia)
- Brien Holden Vision Institute Foundation
- Bright Futures Child Aid and Development Fund (Australia)
- Burnet Institute
- Business for Millennium Development
- CARE Australia
- Caritas Australia
- CBM Australia
- ChildFund Australia
- CLAN (Caring and Living as Neighbours)
- Credit Union Foundation Australia
- Daughters of Our Lady of the Sacred Heart Overseas Aid Fund
- Diaspora Action Australia
- Diplomacy Training Program
- Door of Hope Australia Inc.
- Edmund Rice Foundation (Australia)
- EDO NSW
- Engineers without Borders
- Every Home Global Concern
- Family Planning New South Wales
- Fairtrade Australia New Zealand
- Food Water Shelter
- Foresight (Overseas Aid and Prevention of Blindness)
- Fred Hollows Foundation, The
- Global Development Group
- Global Mission Partners
- Good Shepherd Services
- Grameen Foundation Australia
- Habitat for Humanity Australia
- Hagar Australia
- HealthServe Australia
- Heilala*
- Hope Global
- Hunger Project Australia, The
- International Children's Care (Australia)
- International Christian Aid and Relief Enterprises
- International Needs Australia
- International Nepal Fellowship (Aust) Ltd
- International RiverFoundation
- International Women's Development Agency
- Interplast Australia & New Zealand
- Islamic Relief Australia
- KTF (Kokoda Track Foundation)
- Kyeema Foundation

- Lasallian Foundation
- Leprosy Mission Australia, The
- Live & Learn Environmental Education
- Love Mercy Foundation
- Mahboba's Promise Australia
- Marie Stopes International Australia
- Marist Mission Centre
- Mary MacKillop International
- Mary Ward International Australia
- Mercy Works Ltd.
- Mission World Aid Inc.
- MIT Group Foundation
- Motivation Australia
- MSC Mission Office
- Murdoch Children's Research Institute
- MAA (Muslim Aid Australia)
- Nusa Tenggara Association Inc.
- Oaktree Foundation
- Opportunity International Australia
- Oro Community Development Project Inc.
- Oxfam Australia
- Palmera Projects
- Partner Housing Australasia*
- Partners in Aid
- Partners Relief and Development Australia
- People with Disability Australia
- PLAN International Australia
- Quaker Service Australia
- RedR Australia
- Reledev Australia
- RESULTS International (Australia)
- Royal Australian and New Zealand College of Ophthalmologists
- Royal Australasian College of Surgeons
- Salesian Missions
- Salvation Army (NSW Property Trust)
- Save the Children Australia
- Service Fellowship International Inc.
- School for Life Foundation
- SeeBeyondBorders
- Sight For All
- So They Can
- Sport Matters
- Surf Aid International
- Tamils Rehabilitation Organisation Australia
- TEAR Australia
- Transform Aid International (incorporating Baptist World Aid)

- UNICEF Australia
- Union Aid Abroad-APHEDA
- UnitingWorld
- Volunteers in Community Engagement (VOICE)
- WaterAid Australia
- World Education Australia
- World Vision Australia
- WWF-Australia
- YWAM Medical Ships

Affiliate Members

- Australian Federation of AIDS Organisations
- Australian National University – School of Archaeology and Anthropology, College of Arts and Social Sciences
- Deakin University – Alfred Deakin Research Institute
- La Trobe University – Institute of Human Security and Social Change
- Murdoch University – School of Management and Governance
- Refugee Council of Australia
- RMIT – Global Cities Research Institute
- Swinburne University of Technology Centre for Design Innovation
- Transparency International Australia
- University of Melbourne – School of Social and Political Sciences
- University of New South Wales- International
- University of Queensland – Institute for Social Science Research
- University of Sydney – Office of Global Engagement
- University of the Sunshine Coast – International Projects Group
- University of Technology, Sydney – Institute for Sustainable Futures
- University of Western Australia – School of Social Sciences
- Vision 2020
- Western Sydney University- School of Social Sciences and Psychology

* Denotes Interim Full Members