



11 July 2017

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Re: Tax Deductible Gift Recipient Reform Opportunities | Discussion Paper

The Australian Museum Foundation (Foundation) expresses its thanks for the opportunity to comment in relation to the Australian Government's 15 June 2017 *Tax Deductible Gift Recipient Reform Opportunities: Discussion Paper*.

Background

Established in 2005, the Foundation's sole purpose is to raise and hold funds to support the Australian Museum (AM).

The AM, founded in 1827, is an internationally recognised culture and natural science institution focused on Australia and the Pacific. The Indigenous cultures, environment and biodiversity of our region face enormous challenges. The AM is uniquely positioned to provide a greater understanding of these challenges through the AM's exhibitions, education and community engagement programs and scientific research. It is an entity of the New South Wales Government with its own board. The AM has DGR Item 1 status under the current classification system.

Like many other cultural, educational and scientific institutions, the AM has set up the Foundation as an independent body with a separate unpaid volunteer board which satisfies the responsible person requirement. Its structure is a company limited by guarantee which is trustee of trust and holds the fund on that basis.

The Foundation has DGR Item 2 status. It does not carry on any scientific, educational or cultural activities of its own. They are carried out by the AM with funds donated by the Foundation.

Contributions from the Foundation have allowed the AM to remain at the forefront of Australian scientific research, to acquire cultural artefacts and deepen our cultural understanding, and to offer vital education programs for young people.

Overview

As a Not-for-Profit (NFP) organisation, the Foundation supports a Deductible Gift Recipient (DGR) framework that is simple, effective and facilitates the growth of philanthropy and its impact in the community. The Foundation supports changes to the DGR framework which make it contemporary and relevant, and encourages philanthropic giving and community investment for societal benefit.

AUSTRALIAN MUSEUM FOUNDATION

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australianmuseum.net.au/foundation ABN 64 497 967 210 Donations of \$2 or more to The Australian Museum Foundation are tax deductible.

The Foundation supports the consolidation of the DGR registers in one place and supports the proposal that the ATO and the ACNC could work together to streamline charity registrations and DGR registrations.

Although the issue is not expressly covered in this Discussion Paper, the Foundation has a particular concern with the current requirement that DGR Item 2 funds, such as Private Ancillary Funds (PAFs), cannot give to other Item 2 funds, such as the Foundation – a Public Ancillary Fund (PuAF).

PAFs are the main vehicles for philanthropy in modern Australia and increasing in significance. The current regulation stops the Foundation raising funds from PAFs and thus restricts the Foundation's ability to support the AM. There are over 3,000 PAFs which gave \$300 million in 2014¹ and the Foundation is unable to access these funds limiting its ability to fulfil its charitable purpose.

The Foundation strongly supports the philanthropic boost given by the facilitation and encouragement of PAFs. Any new regime should continue that facilitation and encouragement. We understand that as matter of policy they should be restricted from giving to other private funds, so that the funds are expended on relevant charitable purposes, but that can be achieved by donations to bodies like the Foundation.

Whatever classification system is adopted, PAFs should be able to donate to public foundations or PuAFs, at least those whose sole purpose is to support a particular institution – where donating to the PuAF is effectively giving to that institution.

Discussion Questions

The Foundation wishes to make specific comment concerning the following Discussion Questions:

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

The Foundation does not believe the suggested new restrictions and reporting burdens, which seek to limit advocacy by charities, are necessary. Charities and the NFP sector are an important part of civil society, which in turn is necessary for a flourishing democracy. Engaging in advocacy for changes to benefit society can be a charitable purpose and any regulation should focus on ensuring charities are working towards their charitable purpose rather than focusing on their specific activities.

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?*

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 Foundation supports the removal of a separate fund requirement. In particular, we support the removal of the responsible officer requirement. That requirement skews the composition of boards to the professions and some public officials. It is unnecessarily restrictive. It limits the available 'gene pool'. It is a brake on the diversity of boards, which we believe, is an important factor in governance and effectiveness. It limits the inclusion of people with entrepreneurial or business experience. It discourages the infusion of fresh talent as it is easier for those who have served in similar boards to satisfy the relevant criteria.

¹ Philanthropy Australia, 2017, www.philanthropy.org.au/tools-resources/fast-facts-and-stats/

The Foundation believes that the above public fund requirement is unnecessary for DGRs that are charities and already subject to ACNC governance standards and limits the effectiveness of the Foundation by restricting what constitutes a 'responsible person'.

The Foundation would welcome the removal of the public fund requirements for DGRs that are charities. In general, as far as possible, there should be only one set of relevant standards administered by one body.

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 Foundation supports rolling reviews by one of the ACNC or the ATO, but not both, to ensure that each DGR organisation is still eligible for DGR status and to provide confidence to donors. However, the reviews must be undertaken in a way that minimises the burden on DGR organisations. Annual certifications have a role, but again they must not be a burden, nor certify complex or opaque requirements. Boards of such organisations are volunteers. It does not assist their efficiency if they are effectively compelled to hire professional expertise beyond an audit. And the burden should not be such to discourage participation.

The Foundation also supports DGRs certifying that they meet the DGR eligibility requirements as part of completing their Annual Information Statements as a registered charity.

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?*

The Foundation does not support any sunset rule. The rolling reviews should be sufficient to review compliance. The uncertainties inherent in a sunset period could substantially interfere with the ability of an organisation to raise funds or to commit to programmes.