

The Treasury
Tax Deductible Gift Recipient Reform Opportunities



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Thank you for the opportunity to provide input into reforms relating to Deductible Gift Recipient status. CARE Australia's response has particular regard to issues around how DGR organisations achieve their purpose, and the delivery of advocacy.

CARE Australia seeks a world of hope, tolerance and justice, where poverty has been overcome and all people live with dignity and security. Formed in 1987 CARE Australia has a special focus on gender equality to bring lasting development to communities. We are a member of the CARE International confederation of 14 autonomous members working in 94 countries undertaking development assistance and disaster relief. The primary geographic focus of CARE Australia is the Pacific and South-East Asia where we manage all programs and activities of the CARE International confederation in Cambodia, Laos, Myanmar, Papua New Guinea, Timor-Leste, Vanuatu and Vietnam. In addition, CARE Australia undertakes development assistance and disaster response activities in another 16 countries in Asia, the Middle East and Africa. CARE Australia is a DGR organisation, listed under the DFAT Overseas Aid Gift Deduction Scheme (OAGDS) and registered with the Australian Charities and Not-For-Profit Commission (ACNC).

Recommendations

The proposals for the ACNC to require additional information from all charities about their advocacy activities (Consultation Questions 4-6) be rejected.

The proposals for requirement of certain organisations to commit funds to a mandated activity (Consultation Question 12) be rejected.

The proposals for the ACNC to be the main registering body for DGR status charities and current standards to apply for all DGR charities (Consultation Questions 1 & 13) is sound and should be explored further, however the case for rolling review and sunset clauses (Consultation Questions 9-11) is not strong and should be rejected. The proposal to move all DGR schemes to the ATO (Consultation Question 7) requires further consultation and review.

Advocacy

As is increasingly recognised around the world, strong non-government and civil society organisations provide the foundations for good governance, the recognition of human rights, and the provision of essential services. "Robust democratic and equitable social development is more likely to be obtained when civil society functions well in terms of both advocacy and service delivery."¹ As the Productivity Commission has noted

¹ V. Heinrich & L. Fioramonti (eds) *CIVICUS Global Survey of the State of Civil Society: Comparative perspectives* 2008 p 363

Sector-wide, inclusive and participatory processes reflect and contribute to social capital – the relationships, understandings and social conventions that form an important part of the mediating environment that shapes economic and social opportunities. NFP advocacy, education of citizens, enabling of engagement in civic processes, and the creation of opportunities for connections work together to form a healthy civil society.²

The *Charities Act 2013* prescribes the limits to charitable purpose, and reflects High Court decisions on the importance of advocacy within the Australian parliamentary system.³ So, it is of significant concern to see a proposal for greater regulation of advocacy conducted by DGR organisations. CARE endorses the Productivity Commission point that

Where influence or control is exerted by government over funded organisations in order to limit advocacy and other activities of NFPs, it is likely to be wasteful of public funds, and may also distort the best endeavours of community organisations.⁴

The Productivity Commission went onto recommend

Australian governments funding service provision or making grants should respect the independence of funded organisations and not impose conditions associated with the general operations of the funded organisation, beyond those essential to ensure the delivery of agreed funding outcomes⁵

Moving away from these principles would not strengthen NGO participation in public discourse, and would leave our democracy weaker. Also, further proposals to monitor advocacy, or require annual reporting of advocacy practices, may constrain the legitimate work of charities, and would be an unworkable additional burden for charities. The ongoing work of the ACNC, in providing guidance for charities on the current legal framework, is welcome and sufficient.

Recommendation: The proposals for the ACNC to require additional information from all charities about their advocacy activities (Consultation Questions 4-6) be rejected.

Purpose and Activity

It is important any reforms of the charitable sector consider, and maintain, the distinction between charitable purpose and charitable activity. The purpose of charity can be achieved through a myriad of activities – and where those activities are legal, do not undermine the purpose of the charity or the very nature of charities, they should not be unduly constrained. The ACNC itself provides the clear example

A charity holds a cake sale to raise funds for its homeless accommodation. The activity – baking cakes and selling them to the public – is not the same as its overarching purpose – advancing social and public welfare. The cake sale would

² Productivity Commission *The Contribution of the Not-For-Profit Sector* 2010 p 17

³ See *Aid/Watch Inc v Commissioner of Taxation* 2010

⁴ Productivity Commission *The Contribution of the Not-For-Profit Sector* 2010 p 296

⁵ Productivity Commission *The Contribution of the Not-For-Profit Sector* 2010 p 296

simply be an activity the charity undertakes to further its charitable purpose of advancing social and public welfare.⁶

The ACNC's role, and the consideration of other regulators, is to focus on the purpose associated with DGR status. Systems are already in place for specific categories of charities to demonstrate compliance with specific codes or regulations regarding activity as necessary for the pursuit of their aims (for example OAGDS registration requires organisations to have safeguards in place, and manage risks, associated with child protection and terrorism). Proposals to focus on the activities of charities cast doubt and uncertainty over the undertakings of charities, potentially limiting current and future programming. Placing any such regulatory burden on charities would be misplaced, given there is little evidence the Australian charitable sector, in the main, is not delivering effectively to their stated purposes.

Recommendation: The proposals for requirement of certain organisations to commit funds to a mandated activity (Consultation Question 12) be rejected.

DGR certification and registration

Generally the approach proposed by Treasury, to streamline review and registration of charities under the ACNC, is welcome. As outlined in the discussion paper, 92 per cent of DGR endorsed charities are already registered with the ACNC. It would be inefficient to establish additional requirements when a key driver for establishing the ACNC itself was to reduce red-tape for charities. The ACNC already has powers to undertake reviews and audits, and have accessed these powers. As currently provided for, reviews and audits should be conducted only at the point where systemic issues have been identified or risk thresholds have been surpassed. There is not a strong case for establishing new review mechanisms or rolling DGR reviews. The Productivity Commission during the groundbreaking inquiry on the contribution of the not-for-profit sector, considered these issues of regulation and review:

The Australian Council for International Development was... emphatic: No better service to Australians could be provided than for the ATO to be relieved of its conflict between deciding matters of eligibility for tax deductibility and having to administer the collection of and compliance with taxation law. The ATO was, for the want of any other body being responsible, burdened with making policy rather than enforcement of compliance.⁷

CARE Australia is registered under the separate OAGDS through DFAT. The proposal to move the OAGDs and other registers into ATO would need to be carefully considered. While some administrative stream-lining could be achieved, the specific accreditation requirements for overseas agencies is currently managed by the policy leaders within DFAT. A move to a regulatory agency such as the ATO would need to be well thought

⁶ ACNC *Examples of Charitable Purpose (fact sheet)*

http://acnc.gov.au/ACNC/Publications/Templates/Example_CharitablePurpose.aspx

⁷ Productivity Commission *The Contribution of the Not-For-Profit Sector* 2010 p 144

out and planned to ensure these specific arrangements do not become increasingly complex.

Recommendation: The proposals for the ACNC to be the main registering body for DGR status charities and current standards to apply for all DGR charities (Consultation Questions 1 & 13) is sound and should be explored further, however the case for rolling review and sunset clauses (Consultation Questions 9-11) is not strong and should be rejected. The proposal to move all DGR schemes to the ATO (Consultation Question 7) requires further consultation and review.