

20 July 2017

Senior Adviser
Individual and Indirect Tax Division
The Treasury
Email: DGR@treasury.gov.au

Dear Treasury,

RE: Tax Deductible Gift Recipient Reform Opportunities – Discussion Paper

I write regarding the Tax Deductible Gift Recipient (DGR) Reform Opportunities Discussion Paper (the Discussion Paper). The comments in this submission are limited to Issue 2, regarding advocacy activities.

CHOICE is a not-for-profit but does not have DGR status. As Australia's largest consumer advocacy organisation, the overwhelming majority of CHOICE's funding comes directly from our members, who pay subscription fees to access our test results and other services. These subscriptions support a wide range of our activities, including our advocacy, advancing our purpose to work for fair, safe and just markets that meet the needs of Australian consumers.

This is a different business model to many other not-for-profit organisations who rely on fundraising, and for whom DGR status is an incentive for public donations. As the Discussion Paper states, the DGR tax arrangements provide support for the not-for-profit sector. This contributes to the continuation of work that benefits the public, including advocacy.

As a consumer advocate, CHOICE supports the work of other consumer organisations, including Community Legal Centres. These types of organisations often have DGR status, and the valuable work that they do includes conducting investigations, gathering complaints, providing advice and engaging in direct dispute resolution for consumers. The public benefit of these activities is substantial, enabling regulators to better direct their resources based on the evidence gathered of systemic poor conduct. Further, these activities directly contribute to achieving the purposes of

these organisations – for example, to redress inequality and injustice¹. We also note that many other types of not-for-profits, including environmental organisations, advance consumer protection by highlighting misleading or deceptive practices and drawing attention to aspects of products and services that some consumers consider to be extremely important when considering what to buy.

CHOICE is concerned that the Discussion Paper places incorrect emphasis on the activities of charities, rather than their purposes. The Discussion Paper initially acknowledges that the *Charities Act 2013* (Cth) requires that charities ‘have a charitable purpose or charitable purposes that are for the public benefit’, but then goes on to state that the ‘scope of activities undertaken by an organisation can change over time’. However, it is whether or not an organisation’s purpose changes over time that will impact its eligibility as a charity. If its activities, including advocacy, are furthering its purpose, then they are legitimate activities.

Not-for-profit organisations are well positioned to contribute to policy reform given their legal status, which means that they are driven by purpose rather than an obligation to create value for shareholders. While our concerns about the Discussion Paper are not limited to its impact on casework organisations, we note that organisations that undertake casework—such as community legal centres—are particularly important to the public policy process due to the expertise of their staff and the types of cases they deal with. Case studies can provide valuable evidence demonstrating a need for policy reform. Restricting organisations from sharing these through a threat to any of their funding is a wasted opportunity for policy makers.

The need for funding advocacy work is one that has been raised consistently over years; the Productivity Commission directed the Commonwealth Government to provide additional public funding to support consumer advocacy in its 2008 Review of Australia’s Consumer Policy Framework². Six years later, the Commission again recommended that the Australian, State and Territory Governments should provide funding to legal assistance services for strategic advocacy and law reform activities in its 2014 inquiry into access to justice³. Despite this, action has not yet been taken to implement these recommendations.

¹ Redfern Legal Centre, ‘Our Vision’, available at <https://rlc.org.au/about-us/our-vision>

² Inquiry report available at <http://www.pc.gov.au/inquiries/completed/consumer-policy>

³ Inquiry report available at <http://www.pc.gov.au/inquiries/completed/access-justice/report>

Due to all of the above, we are concerned that the suggestion that registered charities should provide further reporting on their advocacy activities is not appropriate. Advocacy activities provide a public benefit, and provided they promote a valid organisational purpose, there should be no reason to limit them. Further, it is not clear that there is any evidence to suggest that donors are being misled about the extent of advocacy activities conducted by the not-for-profits that they donate to, and in the absence of such evidence, the case for imposing an increased red-tape regulatory burden is not made out.

For further information please contact CHOICE on eturner@choice.com.au.

Yours sincerely,

Alan Kirkland
CEO