



03 August 2017

Senior Adviser
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Transmitted via email – DGR@treasury.gov.au

Dear Sir / Madam,

Re: Tax Deductible Gift Recipient Reform Opportunities

The purpose of this submission is to provide Community Employers WA's (CEWA) brief comments on the discussion paper released by the Australian Government in June 2017.

CEWA is a registered Employer Organisation with the Industrial Relations Commission of Western Australia, and represents non-government, not-for-profit employers in the community services sector of Western Australia. CEWA has over 130 members comprising many of the largest and smaller Community Services Sector employers in WA, and continues to grow in numbers and influence. Our members employ in excess of 24,000 staff and are supported by over 10,000 volunteers. A list of our members is attached in Appendix 1.

Opening perspective

As an overarching comment, we believe there is an ongoing need to reduce the compliance and reporting burden on all charities. We are increasingly hearing of the additional workload many of our members face in preparing and responding to tenders, measuring outcomes, in risk management, responding to government inquiries and a range of other administrative requirements. This is happening in an environment of increased competition, governments push for partnerships and collaboration, and ongoing pressure to ensure that overheads are minimal and resources are directed solely towards people in need. Reporting requirements should be fit for purpose and proportionate to the risks and benefits assessed for the relevant environment in which charities operate.

There are **three** key areas in our feedback to Treasury and we appreciate the opportunity to do so. There is also a related comment, that is included at the end of this submission.

Purpose and Activities

The discussion paper seems to suggest that the ATO is looking to focus more on the **activities** of a charity rather than the **fundamental or charitable purposes**. We would be concerned if this is the case as we believe the purpose or mission of the charity is of prime importance, and the activities they take to achieve that purpose are somewhat secondary as they will be guided by the purpose.

A simple example is that there are many charities around Australia that run second hand clothing shops with the aim of generating revenue to support other community programs. The fact that some of their operations are involved in retail activities, should be considered as incidental to their fundamental purpose.

The current legal regime clearly sets out purposes for which charities can be established and ensures that charities must demonstrate that they do not have disqualifying purpose. The constitutions of charities detail their purpose and adherence to those governing documents is one of the primary responsibilities of the Board of the organisation.

Recommendation: Treasury continues to focus primarily on the charitable purposes of an organisation when assessing DGR status and doesn't move to an assessment of activities.

Advocacy – Questions 4, 5 and 6

Our members believe that advocacy that is aligned with their charitable purposes, is often an important part of their work – be that for individuals who are marginalised and vulnerable, organisations that are supporting the community in various charitable ways or in other instances. Advocacy continues to be a key process for gathering support against unjust actions or issues, can be a collective response to challenges faced, and is a key right of any democracy.

Advocacy is an important way charities can highlight the causes and implications of social and environmental issues and can be pro-active or reactive in seeking changes to funding, policies and processes.

Charities serve people that often don't have the educational or other skills to be able to communicate their needs to decision makers and community leaders. The obligation that charities feel to highlight the needs of those they serve and advocate for effective responses to them, has often resulted to changes in the policies and practices of government departments and other authorities.

We are concerned that the discussion paper is looking to treat advocacy differently to other activities undertaken by charities. The comment in the paper that, *"There are also concerns that some charities and DGRs undertake advocacy activity that may be out of step with the expectations of the broader community..."*, isn't substantiated and doesn't present a strong case for change.

Important humanitarian and social issues have often been ameliorated through charities raising awareness in the broader community about them. This has resulted in significant changes to cultural and attitudinal barriers to issues such as slavery and, in more recent times, to domestic violence and sexual and physical abuse to name a few. Advocacy by charitable organisations has made a

significant contribution to the development of a socially responsible, better informed and civilised society. Such advocacy should not be seen as being contrary to the interests of the broader community.

Recommendation: The ACNC should not seek further information from charities about their advocacy activities. There is no clear basis for it and to do so will increase the burden of additional compliance and reporting.

DGR eligibility reviews and audits – Question 9

The discussion paper proposes the introduction of a formal rolling review program of DGR status and annual certification. We do not believe this to be necessary and that the costs in setting up a review process for both the government and for charities, will far outweigh any perceived benefits.

The Charity sector remains one of the most highly trusted sectors across the country and no material evidence has been provided to indicate that there is any systemic concern with regard to ongoing eligibility for DGR status. The ACNC and the ATO already have appropriate powers to take action against charities where they see issues arising, and increasingly have the data systems to provide early indicators. If there are particular areas of concern (such as, for example, a specific cohort of charities), the ATO would be better placed in undertaking reviews of those organisations. To do so for the whole sector has the potential to create unnecessary, unproductive and costly compliance and checking for many parties.

Additionally, charities are now required to publish their data on the ACNC website, providing further transparency of an organisation's activities and finances. In addition as mentioned earlier, boards are responsible for oversight of the implementation of an organisation's mission and purpose, providing another and ongoing checking process.

Recommendation: The ATO does not set up a formal rolling review program to audit ongoing eligibility for DGR status and that it doesn't seek annual certification from charities.

Income Tax Assessment Act 1937 Section 50-50

We have been advised that there are concerns in the sector with the unnecessary compliance risk placed on charities as a result of the above section of the Act. The special conditions enacted from July 2013, require that an entity apply its income and assets *solely* for the purpose for which the entity is established (known as the '*solely*' condition). The key concern with this is that if a purpose is incidental or ancillary to the original purpose for which the charity is formed, it is arguable that the charity may fail the '*solely*' condition. The consequences of such an outcome may include the inadvertent loss of DGR status.

Recommendation: In undertaking the overall review of the DGR framework, the ATO also reviews this aspect and seeks to include a common rule that clarifies the intention of the '*solely*' condition, to state that it is not breached where an entity pursues purpose or conducts activities that are incidental or ancillary to a purpose for which the entity is established.

Yours sincerely

John Bouffler
Executive Director



CEWA MEMBERSHIP AS AT 1 JULY 2017

Aboriginal Legal Services of WA Inc
Accordwest
Activ Foundation Inc
Advocacy South West Inc
Advocare
Albany Youth Support Association
Alzheimer's Australia WA
Anglicare WA Inc
Armadale Community Family Centre
Association for Services to Torture & Trauma Survivors (ASeTTS)
Asthma Foundation WA Inc
Australian Red Cross WA
Avivo
Baptistcare
Beehive Industries of WA
Black Swan Health
Bluesky Community Group
Brightwater Care Group
Bunbury Community Legal Centre
Burdekin – Youth in Action
Calvary Youth Services Mandurah Inc
Care Options
Centacare Employment and Training
Centacare Family Services
Centrecare Inc
Child Inclusive Learning and Development Australia Inc (CHILD Australia)
CLAN WA
Coeliac Western Australia
Communicare
Community Legal Centres Association (WA)
Community Vision Inc
ConnectGroups
Consumer Credit Legal Service WA Inc
Consumers of Mental Health WA
Continence Advisory Service of WA
Cyrenian House
Derbarl Yerrigan Health Services Inc
Employment Law Centre of WA
Enable WA
Escare Inc
Ethnic Communities Council of WA
Ethnic Disability Advocacy Centre
Family Support WA Inc
Financial Counsellors Association of WA Inc
Fremantle Multicultural Centre Inc
Fremantle Women's Health Centre
Goldfields Individual and Family Support Association
Good Samaritan Industries
Gosnells Women's Health Service
Headwest
Health Consumers Council (WA) Inc
Helping Minds
Holyoake The Australian Institute For Alcohol & Drug Addiction Resolutions
Hope Community Services
Identity WA
Inigo Junction
Interchange
Ishar Multicultural Women's Health Centre Inc
Key Assets WA Inc
Kids Camps Inc
Koolkuna (The Eastern Region Domestic Violence Services Network Inc)
LAMP Inc
Lifeline WA
Linkwest
Margaret River Community Resource Centre Inc
Meath Care Inc
Melville Cares Inc
MercyCare
Metropolitan Migrant Resource Centre
MIFWA
Mission Australia
Mosaic Community Care Inc
Multicultural Services Centre of Western Australia Inc
National Disability Services WA
Ngala Family Resource Centre
Nulsen
Outcare
Palmerston Association Inc
Parkerville Children Youth Care Inc

Pathways Southwest
Pat Thomas Memorial Community House Inc.
Patricia Giles Centre
Peel and Rockingham Volunteer Resource
Centres
Peel Community Living
People with Disabilities (WA)
Relationships Australia (Western Australia) Inc
Richmond Wellbeing
Rise Network
Rocky Bay Inc
Ruah Community Services
Sexual Health Quarters
Shelter WA
Silver Chain
South Coastal Women's Health Services
South West Refuge Inc
Southcare Inc
Southern Cross Care (WA) Inc
Southside Care
St Bartholomew's House
St John of God Outreach Services
St Patrick's Community Support Centre
St Vincent de Paul Society
Sudbury Community House Association
Swan City Youth Service
Technology Assisting Disability WA
Tenancy WA
360 Health
The Gowrie (WA) Inc
The Salvation Army
The Spiers Centre Inc
The WA Aids Council
Therapy Focus Inc
Uniting Aid
UnitingCare West
Uniting Church in the City
Vincentcare
Visibility
Volunteer Task Force Inc.
WA Blue Sky Inc
WA No Interest Loans Inc.
WANADA
Wanslea Family Services Inc
Westcare Inc
Western Australian Association for Mental
Health
Western Australian Council of Social Service
Inc
Women's Council for DFV Services (WA)
Women's Health Resource Centre

Women's Health and Family Services
Yaandina Family Centre
YACWA
YMCA Perth
Youth Focus
Youth Futures WA

