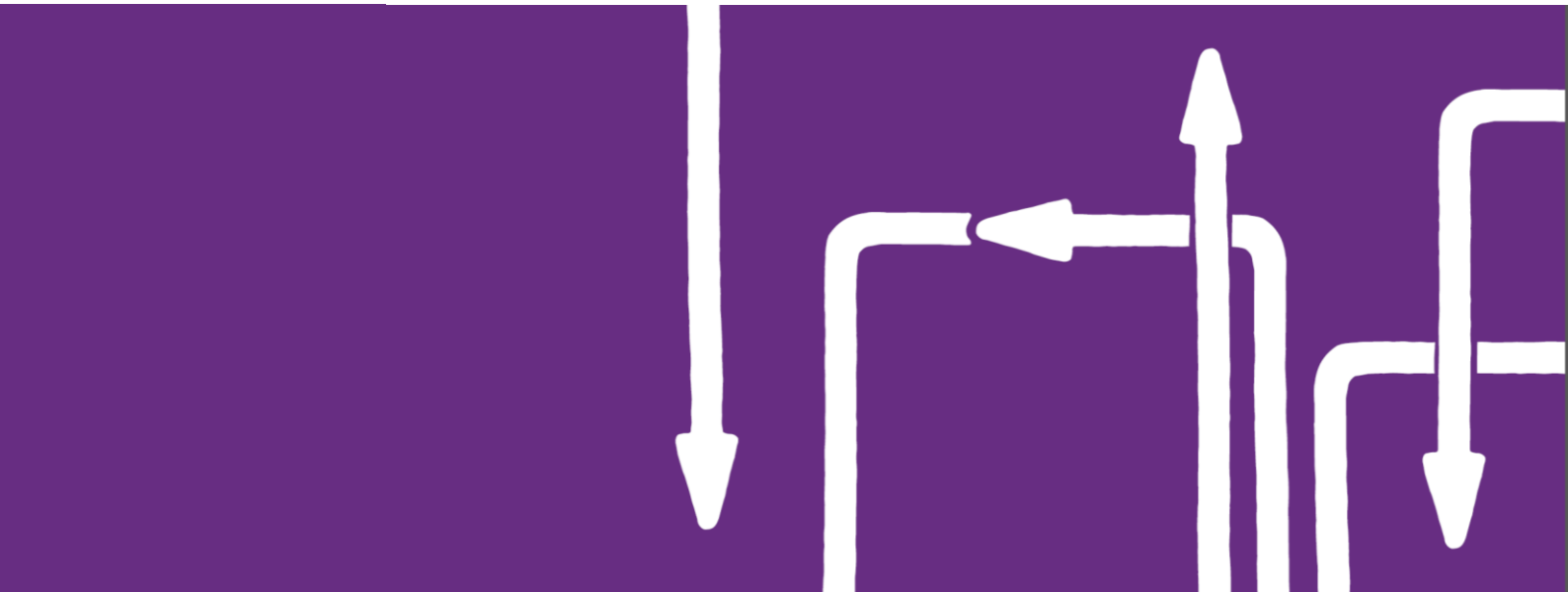




Submission in response to Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

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1. Introduction

Foodbank Australia welcomes the opportunity to provide a submission in response to the consultation paper on potential reforms to the Deductible Gift Recipient (DGR) tax arrangements issued by the Treasury recently. It should be noted that the very short timeframes associated with this review have limited our capacity to undertake a thorough review of the proposed reforms, so our comments should be considered preliminary at this stage. Foodbank Australia supports the requests made by multiple peak bodies across the social services sector for the consultation timeframes to be extended, allowing for a more robust analysis of the potential impacts of the proposals.

What is Foodbank?

Foodbank is Australia's largest food relief organisation, operating on a scale that makes it crucial to the work of the front line charities that are feeding vulnerable Australians. Foodbank provides 63 million meals a year (172,000 meals a day!) to more than 2,600 charities around the country, accounting for more than 70% of the food distributed by food rescue organisations nation-wide.

Foodbank is also the largest supporter of school breakfast programs in Australia, providing food for 1,750 schools nationally (both directly and via programs run by other organisations). Foodbank provides regular breakfasts to more than 100,000 students at schools around the country and on top of this, more than 200,000 children seek food relief from our charities every month.

Foodbank is one of 54 800 charities registered with the Australian Charities and Not for Profits Commission (ACNC) and one of the 28 000 organisations in Australia endorsed as Deductible Gift Recipients (DGRs). Our DGR status allows us to receive tax deductible contributions, which is vitally important given the relatively modest funding we receive from Government to provide our essential services of public benefit right across the country.

Food insecurity in Australia

The 2016 *Foodbank Hunger Report* found that 1 in 6 people experience food insecurity at some point throughout the year. Food insecurity affects a diverse range of demographic groups, from young families to the elderly to students, under-employed people, those of Aboriginal and Torres Strait Islander descent, refugees and those with disabilities. It is an issue affecting city and country alike, with those living in country areas 11% more likely to be food insecure than their city counterparts.

Approximately 644,000 people receive food relief from Foodbank agencies (charities) each month, a third of whom are children. A further 43,000 people are turned away from charities each month due to a shortage of food and resources, with children representing a third (14,600) of those going without. These are just the people we know about. The reality is that the gap is likely to be substantially larger.

Foodbank estimates that 75 million kilograms of food relief is required each year to ensure that everyone who needs it has access to a meal. Currently, Australian food relief organisations provide approximately 50 million kilograms combined (noting a degree of error owing to double-counting, varying disciplines and regarding data collection), which means there is a gap of at least 25 million kilograms of food and groceries per annum.

How Foodbank sources its food and groceries

Foodbank works with the entire Australian food and grocery industry from farmers, wholesalers, and manufacturers to retailers, or 'paddock to plate', to source food and groceries. Companies also make donations to Foodbank as part of their commitment to corporate social responsibility. Many companies

choose to make regular donations by increasing their production run or drawing straight from inventory in order to ensure that their product is consistently available to charities. They may also make special one-off donations at the time of natural disasters.

Key Staples Program

Foodbank is the only charity in Australia that collaborates with suppliers, manufacturers, and transporters in an innovative program to ensure consistent supplies of essential food items in its warehouses every day. The Collaborative Supply Program sees food manufacturers produce the sought-after products using spare production capacity. Suppliers donate or subsidise the ingredients, packaging and delivery of the products to spread the commitment and enhance the sustainability of the program. Through this program, we are able to provide consistent supplies of breakfast cereals, fresh and long life milk, pasta and pasta sauce, canned fruit, baked beans and sausages.

Primary Produce Programs

Despite being more likely to be food insecure than their metro counterparts, farming communities work closely with Foodbank to donate grain, rice, milk, meat, eggs and fresh produce. Foodbank sources these essential products through relationships right along the supply chain from paddock to plate, partnering with farmers, produce market associations, and peak bodies. These vitally important products are either distributed or used as manufacturing ingredients for the Key Staples Program. For example, donated grain can be milled and used to produce pasta and breakfast cereal, while meat can be used for sausages.

School Breakfast Programs

Foodbanks across the country assist more than 1750 schools across Australia through the direct and indirect delivery of School Breakfast Programs. Many of the nutritious products used in these School Breakfast Programs are sourced via the Key Staples Program. Given the geographic spread and range of socio-economic circumstances, Foodbank prides itself in its ability to be flexibly and dynamic in terms of delivery and distribution models, to ensure the best possible outcomes for children at these schools. Some Foodbanks also deliver nutrition education programs for adults and children alike to encourage improved nutrition literacy in the community.

Foodbank's role in responding to natural disasters and other emergencies

Foodbank also plays a key role in times of community emergencies and natural disasters. It provides essential supplies to support the work of emergency services and first responders as well as ongoing assistance to affected communities during the months and years it takes to recover.

Foodbank's role in addressing food waste

Foodbank's food and grocery rescue operations play a key role in addressing Australia's food waste problem, redirecting and/or repurposing approximately 29 million kilograms of food and groceries that would otherwise end up in landfill, saving 54.7 million kilograms of CO₂ emissions every year. Foodbank is working closely with the Federal Department of the Environment and Energy, our sector peers and our supply chain colleagues on the establishment of Australia's first ever National Food Waste Strategy, noting the critically important role that Foodbanks around the country play in rescuing and redirecting food that would otherwise be sent to landfill.

2. The need for reform

Foodbank Australia notes that the changes under consideration in the discussion paper do not seek to change the existing eligibility criteria for DGR status. We acknowledge, and support, the desired outcome of reduced compliance burdens associated with the process of more effectively assessing and monitoring ongoing DGR eligibility. Given the majority of DGRs are resource and time poor and enormously stretched in terms of day to day activities, ensuring a streamlined, but still robust, process is vitally important. However, the discussion paper also canvasses some proposals that could have negative consequences for DGRs and our ability to continue to provide essential services of public benefit. The remainder of this submission focuses on our concerns regarding these proposals.

3. Ensuring that DGRs understand their obligations, for example in respect of advocacy

Activity vs Purpose

Foodbank Australia is concerned that the discussion paper confuses and even conflates ‘activities of charities’ and ‘charitable purpose’. As a registered charity with DGR status, our focus, particularly from a governance and reporting perspective, is our public charitable purposes (as per Clause 2 of the Foodbank Australia Constitution, copied below):

The company is established for the following public charitable purposes:

- (a) the relief of poverty, sickness, destitution or helplessness in the community by:
 - (1) providing food and grocery storage areas and logistical support to persons who aid the relief of poverty, sickness, destitution or helplessness in the community; and*
 - (2) facilitating the distribution of food and grocery products;**
- (b) to act as coordinator on behalf of, and co-operate with, the members to enable more efficient storage and distribution of food to the needy and to assist in and facilitate the transportation of food (in particular interstate transport);*
- (c) to make representations for and on behalf of members to food suppliers in order to better achieve the purposes of the members;*
- (d) to make such representations, as may be deemed desirable by the directors, to Government Agencies and to businesses, corporate bodies and the broader community in respect of arrangements for agreements relating to the operation of the members;*
- (e) to improve wherever possible the standard of food provided to the needy who, because of financial circumstances or otherwise, lack access to food with the nutritional contents deemed necessary for good living by food authorities;*
- (f) to research and monitor the food requirements of those with special needs;*
- (g) in furtherance of the purposes described in paragraphs (a) to (f) above, to enter into agreements with manufacturers, suppliers, wholesalers and retailers; and*
- (h) such further purposes as are in the opinion of the Directors, public benevolent purposes but without prejudicing the classification of the Company as an organisation falling within Division 50 of the ITAA 97 and a deductible gift recipient under Division 30 of the ITAA 97.*

Whilst ‘advocacy’ is not explicitly referenced in Foodbank Australia’s purposes above, Clauses 2 (c) and (d) require advocacy activities to be conducted to fulfil our purposes. Advocacy is therefore not only a legitimate activity for Foodbank Australia as a charity and DGR, but arguably also a purpose, and one that enables us to seek policy solutions to the root causes of food insecurity in Australia, not just respond to the symptoms.

Given charity law focuses on purposes and not activities, and the DGR framework generally having a focus on purpose (as opposed to activity), Foodbank Australia argues that the proposed DGR reforms should focus on purpose, not activity.

Advocacy Reporting

Foodbank Australia rejects the suggestion that the ACNC should require additional information from all registered charities (noting that Consultation Question 4 goes beyond DGRs to all 54 800 registered charities) about their advocacy activities. The administrative burden associated with such reporting would be at complete odds to The Treasury's stated desired outcome of *reduced* compliance burdens associated with the process of more effectively assessing and monitoring ongoing DGR eligibility and would draw critical resources away from charities' stated purposes.

Foodbank Australia also questions the assertion in the discussion paper that "some charities and DGRs undertake advocacy activity that may be out of step with the expectations of the broader community" (Paragraph 15, page 4), noting that no references or evidence have been provided to support this. Noting the significant policy and legislative reforms being proposed via this consultation process, it is important that The Treasury provide all relevant information to stakeholders to enable informed analysis of the proposals.

Given existing charity law, supported by ACNC guidance material, sets appropriate boundaries for charities regarding what advocacy activities are acceptable, as well as the administrative burden associated with superfluous reporting requirements, Foodbank Australia does not support the proposal that charities be required to provide additional information to the ACNC regarding their advocacy activities.

4. Integrity

The discussion paper highlights the importance of having appropriate measures in place to ensure an organisation's DGR status is up to date, noting that the majority of DGR entities have been endorsed in perpetuity. Foodbank Australia strongly supports the need for transparency and accountability, but notes that the vast majority (92%) of DGRs are registered with the ACNC, meaning they are already governed by the ACNC regulatory framework, including the requirement for annual reporting.

It is acknowledged that this is simply a discussion paper, and as such any proposed reforms are at a very early stage. However, it is difficult to consider the proposal to introduce a rolling review that would see DGR status reviewed every five years without understanding the cost to Government of implementing this proposed reform. Foodbank Australia is concerned that in an already stretched budgetary environment, there may be moves towards a cost recovery model which would see the costs associated with the proposed audit process pushed back on to the sector that has the least capacity to absorb cost burdens.

Given the ACNC and ATO already have the power to undertake reviews and audits where they believe they are warranted, Foodbank Australia recommends a proportionate and risk-based response to the consideration of rolling reviews to address DGR stock and/or the introduction of a sunset period of no more than five years.