



minderoo

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14 July 2017

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

By email: DGR@Treasury.gov.au

Dear Sir / Madame,

Re: Tax Deductible Gift Recipient Reform Opportunities

Please find attached the Minderoo Foundation's submission in response to the Discussion Paper on tax deductible gift recipient reform opportunities.

If you have any questions or would like to contact Minderoo regarding this submission please don't hesitate to get in touch at the details below.

We look forward to the outcomes of the Review.

Yours Sincerely,

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The Minderoo Foundation Submission into Tax Deductible Gift Recipient Reform Opportunities

14 July 2017

The Minderoo Foundation

The Minderoo Foundation was established by Andrew and Nicola Forrest in 2001 and was originally known as the Australian Children's Trust. The Foundation's work was based on the mandate to give a hand up, not a hand out and that ethos remains today. Since establishment the Foundation has supported over 250 initiatives across Australia and internationally in pursuit of a range of causes. These include fighting modern slavery, ending Indigenous disadvantage, ensuring all children in Australia thrive by five, strengthening arts, culture and community through partnerships, and attracting the world's best minds to Western Australia.

The Minderoo Foundation works through a combination of direct implementation as well as grant making and partnerships. It currently operates through a Trust, which was specifically listed in the tax law in 2015 as well, to a smaller degree, through a Private Ancillary Fund. Prior to receiving specific listing, the Minderoo Foundation needed to establish multiple entities, each aligned with a DGR category. In 2014, it had over ten philanthropic entities, all with their own specific, but limited, purpose. This structure was incredibly complex and resulted in a significant reporting and compliance burden for the organisation. Yet, despite the large number of entities we were still extremely limited in the scope of charitable activities we could undertake.

Minderoo was fortunate that it was able to apply for and receive a specific listing in the tax act. However, for most charities this is not always an option. The process can be long and complicated and has only a small likelihood of success as it requires a legislative change.

The Need to Reform the DGR Framework

Minderoo strongly supports amending the DGR Framework to enable charitable activities and encourage greater philanthropy. We believe that reforms need to build upon the recommendations put forward by the Not-for-profit Sector Tax Concessions Working Group in 2013¹.

Minderoo sees the following key issues with the current system:

- The system is complex, cumbersome and difficult to work within;
- It does not take into account charities that have more than one purpose or who conduct charitable activities that do not align with the approved category;
- The range of DGR categories are limiting, outdated and do not meet the needs of the social issues being faced;
- Organisations that fit slightly outside the existing categories are disadvantaged as they are unable to attract funding from most philanthropic entities;

¹ See Not-for-Profit Sector Tax Concession Working Group Report *Fairer, simpler and more effective tax concessions for the not-for-profit sector*". Commonwealth of Australia, May 2013 <https://www.treasury.gov.au/~media/Treasury/Access%20to%20Information/Disclosure%20Log/2014/1447/D/ownloads/PDF/NFP%20Sector%20WG%20Final%20Report.ashx>

- The application process is complex and time consuming;
- The number of departments involved in the registration and ongoing regulation of DGRs needs to be reduced.
- The system is difficult for the general public to understand and therefore limits transparency and confidence in the charity sector.

Minderoo believes that reforming the DGR system will reduce red tape, increase transparency, clarity and certainty for charities, lead to greater philanthropy and strengthen the understanding of the sector by the general public.

Response to Consultation Questions

Minderoo is supportive of the proposed increased role of the Australian Charities and Not-for-profits Commission (ACNC) in DGR and broader charity regulation and supports the move to simplify the application process. Minderoo also supports proposals to remove the public fund requirement and streamline the four DGR registers.

However, we have concerns regarding the restrictions and increased reporting arrangements that are proposed to be put in place regarding advocacy. Minderoo also opposes the proposal for all environmental organisations to commit a significant portion of their expenditure into environmental remediation.

Minderoo is a strong supporter of the ACNC and believes it is the appropriate vehicle to regulate charitable organisations, including all DGRs (other than government entities). It has significantly reduced red tape, increased transparency and increased public trust and confidence in Australia's charities. The ACNC has created significant opportunities to reduce the complexity of the current system and streamline the administration of DGRs and other charities.

1. What are stakeholders' views on a requirement for a DGR (other than government entity DGR) to be a registered charity in order for it to be eligible for DGR status. What issues could arise?

Minderoo agrees with the proposal for all DGRs (other than government entities) to be registered charities. Most DGRs are already required to be registered as a charity with the ACNC and registering the remaining DGRs as charities would bring increased transparency and accountability across the sector.

This would also provide a greater understanding of Australia's charitable sector as much of the recent analysis including the Australian Charities Report² has been taken from data collected through the ACNC and Annual Information Statements.

2. Are there likely to be DGRs (other than government entity DGRs) that could not meet this requirement and, if so, why?

Minderoo is not aware of any examples of DGRs (other than government entities) who could not meet this requirement.

² http://www.csi.edu.au/media/Australian_Charity_Report_2015_Web_ND8DU2P.pdf

3. Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?

Most Private Ancillary Funds (PAFs) are currently registered as charities with the ACNC. In order to ensure the privacy of donors, there are provisions under section 40-10 of the ACNC Act to withhold or remove information from the public register. This is intended to “protect the privacy of individual donors and philanthropists and prevent an unreasonable administrative burden” being placed on charities by withholding personal identifying information, “while still ensuring appropriate levels of transparency and accountability”³.

PAFs can request that details including legal name and ABN, contact details, governing rules and names of responsible persons may be withheld or removed from the register. All charities can also request information to be withheld from an annual information statement, a financial report, audit or review report, if the information identifies an individual donor or if the information could endanger public safety.

Minderoo believes these provisions are sufficient to address the privacy concerns of PAFs and DGRs more broadly.

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

Minderoo strongly opposes the proposal to require additional information from charities about their advocacy activities. Collecting information on advocacy activities would be cumbersome, difficult to measure and would create additional red tape for charities.

The ACNC has provided guidelines around advocacy and is clear that “a charity can promote or oppose a change to any matter of law, policy or practice, as long as this advocacy furthers or aids another charitable purpose”⁴. There are provisions that if charities are found to be breaking the law, or undertaking advocacy activities that are contrary to public policy or promoting a political party, their registration with the ACNC and DGR status can be revoked.

Minderoo undertakes strategic philanthropy, and much of its work is supported through advocacy. It is a legitimate tool in many circumstances and there is a strong place for advocacy in charitable work.

The discussion paper does not provide any reason or evidence to support the change to reporting on advocacy other than the suggestion in the paper that it may be “out of step with the expectations of the broader community, particularly by environmental DGRs which must have a principal purpose of protecting the environment.” However, advocacy activities and protecting the environment are not mutually exclusive and advocacy can be a valuable tool in preventing environmental damage in the first place.

5. Is the Annual Information Statement the appropriate vehicle for collecting this information?

³ See the Commissioner’s Statement: Withholding or removing information from the ACNC Register here: http://www.acnc.gov.au/ACNC/Publications/Policy_PDFs/CommSt_Withhold.aspx

⁴ See <http://www.acnc.gov.au/ACNC/Reg/Advocacy.aspx>

While Minderoo does not support the proposal to collect information on advocacy activities, incorporating any additional questions within the existing AIS process would be preferred to limit any additional reporting.

6. What is the best way to collect the information without imposing significant additional reporting burden?

As above.

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?

Minderoo agrees there needs to be a change in the administration of the four DGR registers. These registers add an additional layer of complexity to applying for, managing, reporting and winding up certain DGR organisations. The registration process is particularly time consuming, especially when it requires ministerial approval. It is also not clear what, if any, benefit these registers have.

In addition, it is difficult for the general public to understand the complex nature of the system and know where to find necessary information. For example, an individual wanting to donate to an environmental organisation would be unlikely to know to look up the Register of Environmental Organisations when determining the legitimacy and charitable status of an organisation. As the ACNC is becoming more well known as the charity register, it is important that a more consistent approach to registering and regulating charities is applied.

Minderoo supports the shift for environmental, harm prevention, arts and culture and overseas aid organisations to be assessed and approved as a DGR under the ATO then housed and regulated as a charity under the ACNC. As noted in the Discussion Paper, organisations on both the Overseas Aid Gift Deduction Scheme (OAGDS) and Register for Harm Prevention Charities are already required to be registered as a charity with the ACNC. The recommendation that all DGRs become registered charities is aligned with this proposal and would therefore require environmental and arts and cultural organisations to do the same.

Having a centralised register under the ACNC is far simpler and more transparent. This also leads to reduced reporting and complicated compliance obligations.

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?

Removing Public Fund Requirement

Minderoo agrees with the proposal to remove the public fund requirements for charities. A separate public fund should not be necessary if all DGR organisations are registered with the ACNC (as set out in question 1 above) and are therefore covered by the ACNC's Governance Standards.

At a minimum, we recommend standardising the definition of responsible person between the ATO and ACNC as well as removing the requirement for a separate bank account. Accounting software can be used to track funds between accounts making a specific bank account unnecessary.

Allowing Multiple DGR Endorsement

Minderoo strongly agrees with the proposal to allow multiple DGR endorsements. This will allow significant streamlining of organisations and reduce unnecessary red tape for organisations forced to establish multiple entities.

As noted above, the Minderoo Foundation was initially operating through multiple entities, all with their own specific purpose. This included entities registered with each of the OAGDS, Register of Harm Prevention Charities, Register of Environmental Organisations, Register of Cultural Organisations as well as a Public Benevolent Institution (PBI), a Private Ancillary Fund and a number of other DGRs registered with the ACNC.

This structure resulted in significant compliance obligations and numerous forms of reporting to the various bodies. It also remained very limiting in the charitable activities we could undertake where they didn't fit within the narrowly worded definition.

The proposal to allow multiple DGR endorsement would reduce the number of DGRs as organisations would no longer need multiple entities to operate. It would also give DGRs a wider scope to undertake activities that fall into more than one category and should significantly reduce unnecessary red tape. This proposal would also result in reduced operating costs with savings attributed to bank fees, audit costs and legal fees as well as finance and other operational staff time.

Minderoo also believes that this proposal should be taken a step further by replacing the existing, outdated categories with fewer broad charitable categories. There are currently 51 distinct DGR categories, each with unique eligibility criteria. This makes it difficult for many charities with a specific purpose to gain DGR status and access tax deductible donations.

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?

Minderoo does not support the proposal for a formal rolling review program. As the majority of DGRs are already registered with the ACNC an annual review process already exists through the Annual Information Statement. If the remaining DGRs were registered with the ACNC (as per question 1) this would ensure that all DGRs report and are therefore reviewed annually.

There are also a number of provisions for the ACNC and the ATO to undertake specific reviews into DGRs when they believe there are compliance concerns or they have breached the law. The ACNC have already revoked the licence of over 40 charities it has deemed to not be meeting their obligations. Additionally, they have removed over 19,000 organisations from the Charity Register who are thought to no longer be operating.

Minderoo does not have concerns with the requirement for DGR organisations to make an annual certification that they continue to meet the DGR eligibility requirements as part of their Annual Information Statement.

10. What are stakeholders' views on who should be reviewed in the first instance? What should be considered when determining this?

As above. Reviews should only be required if specific concerns are raised to the ACNC and ATO or emerge from organisations responses to questions in the Annual Information Statement.

11. What are stakeholders' views on the idea of having a general sunset rule of five years for specifically listed DGRs? What about existing listings, should they be reviewed at least once every five years to ensure they continue to meet the 'exceptional circumstances' policy requirement for listing?

The consultation paper notes that “with the growing stock of DGR organisations, the system would benefit from regular reviews to ensure an organisation’s DGR status is up to date”. The ACNC has already made significant steps to clean up the register and has removed or revoked over 19,000 organisations from its register, mostly those it has determined are no longer operating due to a lack of reporting.

The vast majority of specifically listed organisations are registered with the ACNC. Through this register they report annually and are required to meet the ACNCs governance standards and other compliance obligations. While there may be some specifically listed entities that are not registered with the ACNC or that are no longer operating as originally approved, the proposed changes in question 1 would ensure these are picked up.

Minderoo does not support the proposal to introduce a general sunset rule of five years for specifically listed DGRs. The Australian Government already has the scope to limit the timeframe of an organisation granted specific listing and this does happen in some instances. The Government also has the opportunity to review the DGR status of specifically listed organisations and if they are found to not be operating within their approved status the legislation can be changed to remove the entity.

Requiring specifically listed organisations to reapply every five years would be a huge burden on charities. It would be costly and highly distracting from the charitable work they are undertaking. It would also create a huge administrative burden both for the organisation and Treasury. The registration process for specific listing is also very time consuming and could mean organisations are left in limbo while waiting for legislation to pass, particularly in an election year. It took several years for Minderoo’s specific listing to get finally approved, passed through both houses and given Royal Assent and it is not a process we would want to repeat every five years.

As both a donor and grant recipient, it would be difficult to enter into multi-year funding agreements without the longer-term certainty that currently exists with DGR status. If an organisation needed to reapply every five years it would lead to significant uncertainty and would make long term planning challenging.

Finally, if the recommendation to expand the scope of DGRs was introduced, there would be less need for specifically listed entities. This would mean entities could become DGRs through the normal process rather than needing specific listing through exceptional circumstances.

12. Stakeholders' views are sought on requiring environmental organisations to commit no less than 25 per cent of their annual expenditure from their public fund to environmental remediation, and whether a higher limit, such as 50 per cent, should be considered? In particular, what are the potential benefits and the potential regulatory burden? How could the proposal be implemented to minimise the regulatory burden?

Minderoo does not support the proposal to require environmental organisation to commit 25-50 per cent of the annual expenditure on environmental remediation. This proposal would put

a significant burden on environmental organisation and would remove their autonomy to operate as strategically as possible.

Environmental organisations are a broad and diverse group ranging from organisations preserving a particular park or wetland through to animal welfare organisations. Treating all environmental organisations as extreme activists groups is a mistake. While some focus almost entirely on environmental remediation, other are focused on other needs including undertaking research, supporting endangered animals, encouraging access to our national parks or providing education programs on sustainability. It would be therefore be unrealistic to expect all environmental organisations to carry out a specific percentage of their expenditure on environmental remediation.

The purpose of environmental organisations is to protect the environment. In some cases this is done through remediation and other times education or research. Advocacy is also a key tool that can be used to meet the purpose of protecting the environment. It is far better to advocate to prevent or stop pollution and environmental damage than to have to clean it up afterwards.

13. Stakeholders' views are sought on the need for sanctions. Would the proposal to require DGRs to be ACNC registered charities and therefore subject to ACNC's governance standards and supervision ensure that environmental DGRs are operating lawfully?

Minderoo agrees with the proposal that requiring DGRs to be registered with the ACNC will ensure they operate lawfully. The ACNC framework is a good model and registration requires that organisations don't have a 'disqualifying purpose' such as engaging on or promoting activities that are unlawful or contrary to public policy.⁵

This proposal would also require organisations to meet the ACNC's governance standards which include provisions to allow the ACNC to investigation serious breaches of law.⁶ Minderoo believes these conditions are sufficient to ensure DGRs are operating lawfully and there is no need for additional sanctions.

Other issues

1. In-Australia provisions

Minderoo would like to seek clarity on the proposal to introduce 'in-Australia' provisions for DGRs. This proposal was intended to put in place legislation to ensure DGRs operate and pursue their purposes solely in Australia (with the exception of overseas aid organisations, environmental organisations and touring arts organisations). In April 2015, then Assistant Treasurer Josh Frydenberg spoke at a Community Council for Australia forum and announced

⁵ See

http://acnc.gov.au/ACNC/Register_my_charity/Who_can_register/What_char_purp/ACNC/Reg/Charitable_purpose.aspx

⁶ See for example the ACNC Governance Standard 3: "Compliance with Australian laws: Charities must not commit a serious offence (such as fraud) under any Australian law or breach a law that may result in a penalty of 60 penalty units (currently \$10 200) or more."

http://www.acnc.gov.au/ACNC/Manage/Governance/GovStds_3/ACNC/Edu/GovStandard_3.aspx

that this new legislation was not a priority. However, the legislation still remains Government policy and they are keeping a “watching brief” on the issue.⁷

Minderoo believes the proposed ‘in Australia’ legislation should be permanently withdrawn to provide certainty for charities operating overseas.

2. Extension of DGR status to all charities

Just under half of Australia’s charities are unable to accept tax deductible donations from the public or access philanthropic distributions from public or private ancillary funds.

Recommendation 6 of the Not-for-Profit Sector Tax Concession Working Group Report proposed that DGR status should be extended to all charities that are registered with the ACNC, but use of tax deductible donations should be restricted to purposes and activities that are not solely for the advancement of religion or education (child care, primary or secondary) except where it is related to advancing another charitable purpose.⁸ This proposal is similar to that in countries including the United States, Canada and the United Kingdom.

Minderoo would like to propose that this recommendation is further considered in line with the current review into tax deductible gift recipient reform opportunities.

3. Social Impact Investment

There is a growing interest in impact investment in the philanthropic sector as an innovative approach to creating social changes. In January this year, the Treasury released a discussion paper exploring ways to facilitate social impact investment in Australia. This included a number of proposals from the Government to create an enabling environment, including through changes to the PAF and PuAF guidelines.⁹

As part of this review of tax deductible gift recipient reform opportunities, Minderoo is keen for it to consider how changes can be made to DGRs to better enable social impact investment. Whether this is through an enhanced Program Related Investment framework or through other broader measures, Minderoo would support greater clarity and flexibility in the area.

⁷ See <https://probonoaustralia.com.au/news/2015/04/govt-targets-pafs-fringe-benefits-tax/>

⁸ See Not-for-Profit Sector Tax Concession Working Group Report *Fairer, simpler and more effective tax concessions for the not-for-profit sector*. Commonwealth of Australia, May 2013 https://www.treasury.gov.au/~media/Treasury/Access%20to%20Information/Disclosure%20Log/2014/1447/D_uploads/PDF/NFP%20Sector%20WG%20Final%20Report.ashx

⁹ <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2017/Social-impact-investing/Submissions>