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Re: Response to the Tax Deductible Gift Recipient (DGR) Reform Opportunities

The National Association for the Visual Arts (NAVA) thanks the Government for the opportunity to comment on the potential reforms to the Deductible Gift Recipient (DGR) tax arrangements.

NAVA commends Treasury's Tax Deductible Gift Recipient Reform Opportunities discussion paper for identifying the need for reform in the process to obtain DGR. However, although the discussion paper and recommendations that refer to advocacy appear specific to the environmental sector, the impact is likely to be felt across several non-profit sectors, including the visual arts. This is particularly true as visual artists and designers increasingly make work in response to a number of global environmental issues.

NAVA is the peak body protecting and promoting the professional interests of the Australian visual and media arts, craft and design sector. NAVA undertakes advocacy on behalf of the sector and sets and monitors adherence to best practice standards. Since its establishment in 1983, NAVA has been influential in bringing about policy and legislative change to encourage the growth and development of the visual arts sector and to increase professionalism within the industry. NAVA also provides direct service to its members and the sector generally by offering industry advice, referrals, resources, professional representation and development, grant programs, education training courses and events, and a range of other opportunity brokerage and career development services.

Over its whole history, NAVA has been a strong advocate for the Australian visual arts sector. Central to our work is the professional well-being of Australian artists as visionaries, interpreters and commentators on our national zeitgeist and the creators of the cultural legacy of our time and place for the future. We are concerned that these reforms threaten the important government advisory work that NAVA and other arts organisations do based on our intimate contact with and knowledge of our sector. NAVA's history is a testament to the way this work contributes to effective and informed government policy-making.

NAVA is a tax-deductible fund listed on the Australian Government's Register of Cultural Organisations maintained under Subdivision 30-B of the Income Tax Assessment Act 1997.

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Patrons: Pat Corrigan AM, Mrs Janet Holmes à Court AC, Professor David Threabey AO. ACN 003 229 285 / ABN 16 003 229 285

NAVA's history

Over many years, NAVA has provided expert advice to Government and has worked closely with Ministers, their advisers and departmental staff to achieve mutually desired legislative and policy outcomes. We are pleased to be playing the same role in relation to these proposed reforms alongside other pertinent arts industry bodies including the Arts Law Centre of Australia.

Our previous successes include (but aren't limited to) the introduction of the Moral Rights legislation in 2000 as a result of NAVA's successful lobbying in collaboration with other arts industry bodies.

1998 - 2001, NAVA mobilised various parts of its constituency to form a Visual Arts Industry Guidelines Research Project (VAIGRP) which called for an in-depth study to be undertaken by government. This resulted in the Contemporary Visual Arts and Craft (Myer) Inquiry conducted in 2001/02. The recommendations led to an agreement by federal, state and territory governments to introduce the jointly funded Visual Arts and Craft Strategy (VACS).

The second outcome of the VAIGRP research work was the production of NAVA's Code of Practice 2001 which provides a set of practical and ethical guidelines for the conduct of business between art/craft/design practitioners and galleries, agents, dealers, retailers, buyers, sponsors and partners, commissioners, employers and the managers of residencies, workshops, competitions, prizes and awards. Although not mandatory, it continues to improve practices across our sector. With NAVA's permission, it has been copied in Canada and South Africa.

Also in 2001, we launched Valuing Art Respecting Culture: Protocols for Working with the Australian Indigenous Visual Arts, Craft and Design Sector.

In 2005, after 8 years of negotiation NAVA secured the ATO Taxation Ruling: Income tax: carrying on business as a professional artist (TR 2005/1) which uses art industry standards rather than just profits to assess artists' income tax entitlements.

2008-2010 NAVA did the foundation work for the Indigenous Art Code project, consulting extensively for three years.

We were also one of the leaders of a successful campaign to change Sedition clauses in the Anti-Terrorism Act 2005, to protect artists' freedom of expression. In 2011, it was replaced by 'Urging Violence' in the National Security Legislation Amendment Bill 2010.

In 2010 the Artists' Resale Royalty legislation was introduced after over 20 years of campaigning by NAVA in alliance with some other peak arts and copyright bodies.

In collaboration with two other lead bodies, NAVA secured a Senate Inquiry into the impact of the 2014 and 2015 Commonwealth Budget decisions on the Arts, we advocated for arts policy to be on the 2016 election agenda and partnered in a National Day of Action for the Arts and the Arts Election Debate. We continue to urge the government to adopt an evidence-based cultural policy to guide decisions by successive governments.

NAVA's response to DGR reform opportunities consultation questions:

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?

1.1 Views

NAVA is not opposed to proposed reforms that will require all arts organisations seeking DGR to be registered as a charity with the Australian Charities and Not-for-profits Commission (ACNC). Requiring DGRs (*including* government entity DGR) to report to the ACNC would enhance transparency. It also would present the opportunity to regularly gather and review data on Australia's giving culture.

1.2 Potential Issues

It is not currently a requirement that DGR endorsed arts organisations on the Register of Cultural Organisations (ROCO) be registered as a charity if they have a principal purpose of promoting literature, music, performing art, visual art, craft, design, film, video, television, radio, community arts, arts of Indigenous persons or movable cultural heritage.

The requirement to register as a charity in order to be eligible for DGR status will directly impact some arts organisations which are currently not registered as charities but do have DGR status. This is particularly true of small organisations and Incorporated Associations who tend to be volunteer run art spaces or programs with limited resources to manage the administration required by excessive reporting structures. While the proposed changes will simplify the application process and streamline reporting, some small arts organisations may be required to amend their constitutions in order to comply with the charity guidelines. Provision to assist those organisations needs to be considered.

It is also noted that clarification is needed to confirm that the above listed principle purposes by DGRs as currently endorsed by ROCO meet the requirements for a charitable purpose of 'advancing culture' under the ACNC.

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

As above, clarification is required to ensure the current principle purposes endorsed by ROCO will meet the requirements for a charitable purpose of 'advancing culture' under the ACNC. Also, as above, some arts organisations will require administrative and legal assistance, as well as more time than the proposed allocated 12 months to register as a charity as proposed in the discussion paper. Particularly if they are required to amend their constitutions and governance to meet the criteria.

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

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

No. Requiring additional reporting will increase the time and resources that charities need to put into reporting and compliance. This poses a significant burden, particularly on small to medium arts organisations who are already compromised by limited resources.

The advocacy activities of charities are already well covered, explained and protected in Australian law as set out by the [Charities Act 2013](#) and supplementary advice published by the ACNC ahead of the 2016 federal election: [Advocacy by charities](#) and [Charities, elections and advocacy](#). There are also mechanisms in place for the public to make a complaint to the ACNC if they believe that a charity is engaging in inappropriate activity.

Advocacy work by not-for-profit organisations have made valuable contributions to effective and informed government policy-making throughout Australia's history. The important advocacy work that NAVA and other arts organisations do is based on our intimate contact with and expert knowledge of our sector. NAVA's history, as briefly summarised earlier in this paper, is a testament to the way this work contributes to effective and informed government policy-making. The Tax Deductible Gift Recipient (DGR) program plays a vital role in supporting this work.

Under compliance with the law, advocacy is a legitimate and effective way for charities to pursue their charitable purpose. Donors and communities expect charities to advocate and campaign on public policy, including the promotion or opposition of a change in the law, and to advance public debate. There is no evidence to suggest that donors are not aware that they are supporting advocacy by the charities they donate to.

In a recent survey conducted by Pro Bono Australia, it was found that 'a staggering 9 out of 10 respondents saw recognition of the role of advocacy as being the most important factor in developing a thriving Australian Not For Profit sector, with two-thirds rating it as extremely important. Survey respondents ranked the performance of advocacy and human rights as number one amongst all sector industry groups.'¹ The value of this continued work should be recognised and encouraged by the government.

It is already a requirement that charities registered with the ACNC must submit an Annual Information Statement. This information is used for the purpose of administering the ACNC Act (including assessing entitlement to registration, and compliance with the ACNC Act – 'recognised assessment activities'). NAVA notes that there is already a question regarding how activities contribute to the organisation's charitable purpose.

Imposing additional reporting on advocacy work is unnecessary, serving only to increase red tape to already under-resourced charitable organisations. The silencing of advocacy work can only be seen as being politically motivated.

¹ [Gauging the state of the not-for-profit sector](#), Pro Bono Sector Survey 2015 p5.

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

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

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?

7.1 Views

NAVA agrees there is currently too much complex disparity among the four DGR Registers and supports the concept of streamlining administration to one consistent body. We recommend that the transfer be made to the ACNC and not the ATO.

7.2 Issues to consider

NAVA is concerned that the ATO does not have the relevant representatives and expertise of the four current specialised government registers to assess the eligibility of some organisations.

The ACNC currently regulates charities under the ACNC Act. They register charities, collect information about charities, maintain the register, monitor compliance and manage non-compliance. As it will be a requirement that all organisations seeking DGR need to be registered as a charity with the ACNC, it makes sense that the transfer of administration from the four DGR Registers be made to the ACNC and not the ATO. The ACNC should be able to seek expert advice from the relevant agency as required, e.g. the Ministry for the Arts. We note that the ATO's role should simply be in reviewing the tax concessions applied to the charity.

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?

NAVA supports the proposal to remove the public fund requirements and allow organisations to be endorsed by multiple DGR categories.

Currently the public fund must be administered by people who have a degree of responsibility to the community, such as solicitors, members of the clergy, accountants, medical practitioners and directors of large companies. This requirement can be a difficult one to comply with for small arts organisations, particularly those located in regional areas of Australia. Under the ACNC responsible persons are members of the Board of Directors and already have the responsibility of maintaining governance standards for the organisation as a whole. Rather than having a separate committee or sub-committee for the public fund, it would be more efficient for the Board of Directors to ensure the proper administration of public funds. NAVA also agrees that having different definitions for

'responsible person' for the public fund and the ACNC creates confusion. Removal of the public fund requirements would also reduce administration time and associated costs for registered organisations.

Allowing organisations to be endorsed in multiple DGR categories will be particularly helpful for organisations that currently fall across multiple sectors and don't fit neatly or uniquely into one of the current four DGR Registers.

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?

NAVA does not support the proposal for additional reviews and annual certifications. Current reporting via the ACNC's Annual Information Statement should satisfy that a charity is compliant with the Charity Act and DGR regulations.

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

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?

NAVA does not support the proposal for a sunset rule of five years.

Charities will be unnecessarily burdened by having to allocate additional time, resources and potential loss of donations caused by re-applying and waiting for approval. Annual reporting should satisfy requirements that the organisation continues to comply with the Charity Act and the DGR framework.

We encourage the government to note that the discussion paper refers to 54,800 charities currently registered with the ACNC² and approximately 28,000 organisations endorsed as DGRs – while at this stage it is suggested that this rule will apply to selected organisations, it could extend to all organisations engaging in advocacy work. One can only imagine the administrative cost of having to reprocess thousands of applications this often (with taxpayer money) as well as reviewing annual reporting.

There should be no reason to end DGR status at all unless the charity ceases to exist, or their DGR status is revoked for non-compliance.

² [According to the ACNC](#), 38.4% of registered charities have DGR status (Australian Charities Report 2015).

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?

This issue seems to be specific to environmental organisations, and we believe this was addressed as part of Register of Environmental Organisations inquiry in 2015.

However, NAVA is concerned that this proposal has implications for arts organisations engaging in advocacy and other work considered as 'activism'. Equally we are concerned of the impact this proposal may have on arts organisations and galleries supporting the production and presentation of artwork.

Visual artists are increasingly making critical work in response to a number of global social, political, economic and environmental issues. At what point would an arts organisation or gallery be stripped of their DGR status for presenting an environmentally focussed art exhibition program or arts festival that was critical of Australian law or policy.

The proposed annual expenditure requirement of a public fund to remedial work demonstrates a deliberate silencing of advocacy work and again, can only be seen as being politically motivated.

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?

NAVA does not support the introduction of specific sanctions for DGRs.

We refer to Recommendation 6 of the REO Review:

The Committee recommends that administrative sanctions be introduced for environmental deductible gift recipients that encourage, support, promote, or endorse illegal or unlawful activity undertaken by employees, members, or volunteers of the organisation or by others without formal connections to the organisation. (p xvi)

NAVA, like many charitable organisations with DGR status, has *thousands* of members and subscribers from each state and territory. These members represent a very diverse group of Australians, each with their own backgrounds, interests and agendas. We cannot possibly support this proposal that essentially aims to penalise non-profit organisations when their staff, members, subscribers, volunteers, or even people “without formal connections to the organisation” are involved in illegal or unlawful activity.

Australians have the right to engage in public debate and peaceful protest, this is fundamental to sustaining a healthy democracy. Being engaged in, or connected to, peaceful protests does not imply that an organisation is involved in 'illegal' or 'unlawful' activity.

Conclusion

NAVA again commends Treasury's Tax Deductible Gift Recipient Reform Opportunities discussion paper for identifying the need for reform in this area. NAVA supports the proposal to simplify and streamline the process to apply and obtain DGR. With provision for administrative and legal support for current DGR arts organisations without charity status to comply, we also support the requirement for DGRs to become a charity.

We recommend that the administration of the four DGR Registers be transferred to the ACNC and not to the ATO, and that the ACNC seek expert advice from the relevant agency as required, e.g. the Ministry for the Arts. We also support the removal of the public fund requirement.

However, as discussed, NAVA does not support the proposal for additional reviews and annual certifications. We note that advocacy plays a vital role in effective and informed government policy-making and tax deductible donations are imperative to this work. Current reporting via the ACNC's Annual Information Statement should satisfy that a charity is compliant with the Charity Act and DGR regulations.

Lastly, we do not support the proposal for a sunset rule, an annual expenditure requirement or the introduction of specific sanctions for DGRs. These proposals suggest a politically motivated silencing of advocacy work - work that plays an important role in our democracy.

Yours sincerely,



Penelope Benton
Acting Co-Executive Director