



4 Gaffney Street  
Coburg North VIC 3058  
[kate@outerurbanprojects.org](mailto:kate@outerurbanprojects.org)  
Ph: (03) 9350 6517

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

By Email: [DGR@Treasury.gov.au](mailto:DGR@Treasury.gov.au)

12 July 2017

Dear Sir/Madam,

**Tax Deductible Gift Recipient Reform Opportunities Discussion Paper**

Please find attached Outer Urban Projects response to the Australian Government's Tax Deductible Gift Recipient Reform Opportunities Discussion Paper.

Outer Urban Projects welcomes the opportunity to contribute to this consultation and would be pleased to discuss further the matters raised in our submission.

A handwritten signature in black ink, appearing to read "Kate Gillick".

Kate Gillick  
Executive Producer

A handwritten signature in black ink, appearing to read "Susan Ball".

Susan Ball  
Chair

## Outer Urban Projects Submission - Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

### Introduction

Outer Urban Projects Ltd is a bold performing arts company that creates new forms of contemporary performance imagined from the life experiences of young emerging artists from the outer northern suburbs of Melbourne. We give voice to the unexpressed aspirations and creative potential of ghettoised, culturally diverse emerging artists whose origins span five continents.

Outer Urban Projects is a public company limited by guarantee, registered with the ACNC as a Public Benevolent Institution and has been endorsed as a Deductible Gift Recipient (DGR1) since 31 Jan 2012.

Our work is in the cultural sector and includes a community access tutorial program, the Urban Events social enterprise, linkages to external arts training and employment with other arts companies, a developing Ensemble, major works for main stage presentation and an Associate Artist and Traineeship Program.

### Key Concerns

Outer Urban Projects acknowledges that the Tax-Deductible Gift Recipient Reform Opportunities Discussion Paper is reflective of the Government's commitment to addressing inequities and anomalies within the current DGR framework and we welcome this opportunity to provide our input into the consultation process. While the discussion paper includes several welcome recommendations, it also includes some proposals which are of concern.

We recognise that the Government provides a substantial financial contribution to NFP entities through tax concessions. However, this assertion omits the corollary; that this contribution is offset by the resultant community, social and economic benefits and gains by Government in relief of activities otherwise requiring government funding.

### Distinction between Charitable Purpose and Activities

Outer Urban Projects has concerns that the discussion paper does not clearly differentiate 'charitable purpose' from 'activities of charities'. Charitable purposes are clearly defined in the Charities Act 2013 (Cth) (section 12(1)) and whilst connected to, are not interchangeable with a charity's activities. Charities with different purposes may employ similar activities or charities with the same purpose may employ very different activities. We believe that DGR reform should focus on purposes. To do otherwise creates unnecessary level of scrutiny and consequent red-tape, casts doubt and uncertainty over what activities a DGR entity can lawfully undertake.

Accordingly, Outer Urban Projects strongly opposes the activity-level focus in the review (as suggested in questions 4-6; 12-13 of the discussion paper) as this approach casts doubt and uncertainty over what activities a DGR entity can lawfully undertake resulting in a chilling effect; and insufficiently establishes that the current regime of 'charitable purpose' is not robust for regulating the sector.

## **Charities and Advocacy**

Australian charities may legitimately undertake advocacy to address the root causes of social and environmental problems that relate to their charitable purpose. Any charity engaging in advocacy does so within a prescribed legal framework and has access to guidance from the ACNC to ensure it does so appropriately.

It is our understanding that Australian charities can undertake advocacy to further their charitable purposes, for example through supporting or opposing relevant government policies and decisions. The importance of this was recognised by the High Court in the Aid/Watch decision of 2010, where the Court held that charities undertaking advocacy was essential to Australia's constitutional system of parliamentary democracy and this decision was subsequently legislated in the Charities Act 2013."

Outer Urban Projects does not believe that any evidence has been put forward as to the need for new reporting obligations for advocacy activities – therefore we are strongly opposed on the basis that they would impose new and unjustified red tape on charities.

The discussion paper asserts that 'some charities and DGRs undertake advocacy activity that may be out of step with the expectations of the broader community' – this assertion is made without any supporting evidence. It is the view of Outer Urban Projects that the requirement that all DGRs become registered charities under the purview of the ACNC is sufficient to ensure compliance with governance standards (which are in line with community expectations).

Requiring that a certain proportion of an environmental organisation's activities be directed towards environmental remediation represents an intrusion on the autonomy of environmental organisations – therefore any new restrictions and limitations are strongly opposed on the basis that they would impose new and unjustified red tape on environmental charities which will make it harder for them to achieve their charitable purpose. The introduction of a requirement for environmental organisations to commit 25-50% of their annual expenditure to environmental remediation has no evidentiary justification.

Outer Urban Projects believes that Australian charities may legitimately undertake advocacy to address the root causes of social and environmental problems that relate to their charitable purpose. Any charity engaging in advocacy does so within a prescribed legal framework and has access to guidance from the ACNC to ensure it does so appropriately.

## **Compliance**

Outer Urban Projects strongly recommends a proportionate and risk-based response to the issue of compliance. This would include requiring DGRs to be registered with the ACNC (as the discussion paper proposes), with the ACNC and the ATO using their existing approach to ensure compliance with the law. This can involve undertaking reviews and audits using their existing powers where systemic issues have been identified and/or certain risk thresholds amongst categories of charities and DGRs have been surpassed.

Outer Urban Projects does not believe there is a case for rolling reviews or audits. Both the ACNC and the ATO have sufficient jurisdiction to undertake reviews and audits where they believe this is warranted, and it is not apparent that introducing new and costly formal review processes will result in any perceived or actual benefits.

In relation to sanctions, Outer Urban Projects understands that where the ACNC considers that a registered charity has such a disqualifying purpose, it can call upon enforcement tools which it can use to ensure compliance and this should be sufficient.

#### DETAILED COMMENTS – CONSULTANTS QUESTIONS

**Q1. 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?**

Outer Urban Projects is supportive of reform enabling organisations to operate as part of an accessible cohesive regulatory and compliance framework. We understand that appropriate resources would need to be made available to assist DGRs who are not currently registered.

**Q3. Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?**

Outer Urban Projects is committed to the principle of transparency and is not aware of any privacy concerns with respect to this question. The ACNC regulatory framework includes adequate provisions and processes to enable the appropriate withholding of information.

**Q4/5/6 Should the ACNC require additional information from all registered charities about their advocacy activities? Is the Annual Information Statement the appropriate vehicle for collecting this information? What is the best way to collect the information without imposing significant additional reporting burden?**

*(see above Key Concerns – Distinction between Charitable Purpose and Activities & Charities and Advocacy)*

**Q8. 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?**

Outer Urban Projects supports the removal of the public fund requirements for charities and allowing organisations to be endorsed in multiple DGR categories. These proposals will result in a reduction of red tape for charities and will decrease the complexity of the DGR framework. However, we would seek assurances that the proposal will not adversely impact Public Benevolent Institutions and ask if such charities would be permitted to be endorsed in multiple DGR categories, provided their principal purpose is unchanged.

**Q9. 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?**

Outer Urban Projects believes that the transparency and accountability of DGRs is important. However, we do not believe that rolling reviews and audits are warranted. Rather this would create an unnecessary burden for DGRs, the vast majority of which are already registered with the ACNC and governed by a regulatory framework which requires annual reporting. Both the ACNC and the ATO have sufficient powers to ensure compliance and can respond if systemic issues are identified.

**Q11. 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?**

It is Outer Urban Projects’ view that this is unwarranted and would create an unnecessary burden. The need for exceptional circumstances exceptions is symptomatic of an inadequate DGR category framework. The introduction of a general sunset rule for specifically listed DGRs would increase red tape.

**Q12: 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?**

*(see above Key Concerns – Distinction between Charitable Purpose and Activities & Charities and Advocacy)*

Charities engage in advocacy to address the root causes of social and environmental problems. The introduction a requirement for environmental organisations to commit 25-50% of their annual expenditure to environmental remediation has no evidentiary justification. Charities themselves are best placed to determine what approaches and activities are most appropriate in order for them to achieve their charitable purpose. The proposed restrictions and limitations unfairly single out environmental organisations and will result in unnecessary red-tape.

Outer Urban Projects is also concerned that this provision could be extended to other social service and cultural sectors with no reasonable justification

**Q13. 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?**

Outer Urban Projects believes that the oversight and powers of the ACNC are sufficient if all DGRs are required to be a registered charity, as proposed in paragraph 21 of the Discussion Paper. This will mean that all DGRs, including environmental DGRS, will become subject to the Charities Act 2013 and will not be permitted to have disqualifying purposes such as the purpose of engaging in or promoting activities that are unlawful or contrary to public policy, or the purpose of promoting or opposing a political party or a candidate for political office.

Where the ACNC considers that a registered charity has such a disqualifying purpose, it can call upon enforcement tools which it can use to ensure compliance.