



Trustee of SIMS Foundation
SIMS Foundation Limited

Directors

Alec Brennan AM, Chair
John Biffin OAM
Andrew Bloore
John Buttle
Dr. John Keniry AM
Kim McKay AO
Heather Power
Charlie Shuetrim AM
Tracey Steggall
Professor Peter Steinberg
Professor Frank Talbot AM

Auditors

Mazars Australia

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

By email: DGR@treasury.gov.au

Re: Tax Deductible Gift Recipient Reform Opportunities | Discussion Paper

The SIMS Foundation (Foundation) expresses its thanks for the opportunity to respond to the consultation questions in the 15 June 2017 *'Tax Gift Recipient Reform Opportunities: Discussion Paper'*.

Background

Our Foundation was established as an independent not-for-profit trust entity in 2008 to conduct and support scientific research on Australia's marine environment. Our Research Committee consists of senior marine scientists plus myself as Chair of this Foundation at the time when the Foundation was established. The Research Committee has been approved by the CSIRO.

We are registered as a DGR under Item 1 of the table in section 30-15 of the Income Tax Assessment Act as an "approved research institute". Our Foundation does not specifically have one of the charitable purposes required to come within the definition of "Charity" in the Charities Act 2013 (Cth), although on a wide interpretation it could be argued to be "advancing the natural environment". However, for reasons of good governance and transparency to our donors, we *are* registered with the ACNC and we *do* submit Annual Information Statements to the ACNC.

We would lose the ability to sustain our scientific research if we were to lose our DGR Item 1 status.

We strongly support the objective of ensuring good governance in DGR entities. We also strongly support the objective of minimising the compliance burden imposed by any additional regulatory requirements and oversight.

Our response to the 13 consultation questions is set out on the following pages.

1. Requirement to be a registered charity in order to be eligible for DGR status.

If it were clearly and unambiguously possible for our Foundation to be a “registered charity”, we would have no objection to this proposed requirement.

However, as noted above, under current law our purpose as an approved research institute is possibly NOT covered by the existing definition of “Charity” within the ACNC legislation. It would be entirely unacceptable if this proposal resulted in our losing DGR endorsement because we do not have one of the “charitable purposes” listed in the Charities Act.

In every-day language and in the ordinary dictionary sense of the word, “charity” implies help for the poor and those in need. The definition of “charitable purpose” already goes beyond this ordinary sense by including items that are not necessarily confined to the poor and needy. We request that any new law expands the current definition to include scientific research which advances understanding and conservation of Australia’s marine environment.

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

Yes – please see our response to question 1.

3. Are there particular privacy concerns associated with this proposal?

Our Foundation does not have any particular privacy concerns in this context.

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

Our Foundation is entirely devoted to scientific research and does not engage in or fund advocacy. In principle we would consider a requirement for DGRs to provide information about their advocacy to be reasonable from the perspective of transparency, provided it does not impose a disproportionate compliance burden.

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

Yes

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

In the Annual Information Statement.

7. Proposal to transfer the administration of the four DGR Registers to the ATO.

We have no objection to this proposal, so long as the function of the ATO in this context is purely administrative and not directed to the maximisation of Federal tax revenue. It should not be the function of the ATO to set the policy framework for granting DGR status.

8. Proposal to remove the public fund requirements for charities and allow organisations to be endorsed in multiple DGR categories?

We are unable to respond to this question because we do not know the details of this proposal. They are not set out in the 15 June Discussion Paper. The public is invited to contribute to our own Foundation's fund, and does in fact contribute.

9. Proposed formal rolling review program and requirement for DGRs to make annual certifications.

Our Foundation supports rolling reviews by the ACNC and/or ATO to ensure that each DGR organisation is still eligible for DGR status and to provide confidence to donors, provided such reviews are undertaken in a way that minimises the compliance burden on DGR organisations. We also support the proposal for DGRs to certify they meet the DGR eligibility requirements as part of their Annual Information Statements.

10. Who should be reviewed in the first instance?

We have no view on this question.

11. Proposed general sunset rule of five years for specifically listed DGRs.

We understand this proposal refers to DGRs that are listed by name in the tax law, and not to entities that have DGR status by virtue of having been endorsed as such by the ATO. Our Foundation is in the latter category. We have no view as to what may or not be appropriate for the specifically listed DGRs.

12. Proposal that environmental organisations commit no less than 25% of their annual expenditure from their public fund to environmental remediation.

If our Foundation's DGR status was deemed to be an "environmental organisation", it would result in us having 25% less to spend on our important scientific research each year. Much of our research is devoted to gaining an understanding of how to remediate the marine environment but to spend this money on doing the actual remediation would serve no useful policy objective.

13. 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?

Legal entities which have DGR status are already subject to all relevant laws and sanctions, as are their directors and trustees. The additional requirement of compliance with ACNC governance standards and supervision provides further assurance of compliance with legal requirements. There is no need for anything more.

Please contact us if you require any further information.

Yours faithfully



Charlie Shuetrim AM (Director)