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Submission to the Commonwealth Treasury

Response to Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

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Introduction

The charities and not-for-profit (NFP) sector is an integral part of the Australian economy and society. NFP organisations play an important role in combating social exclusion and enhancing the economic, social, cultural and environmental wellbeing of communities. The sector offers a diverse range of programs and services to help people overcome disadvantage and poverty and to build community connections. It is also crucial to a thriving democracy and civil society, fostering civic engagement and advocating for legislative and policy change to address systemic issues.

Given the crucial role of charities and NFP organisations, it is important taxation arrangements and regulatory settings support and sustain their activities, while at the same time promoting transparency and accountability. The Deductible Gift Recipient (DGR) tax arrangements are intended to serve this purpose, encouraging philanthropy and helping organisations to fund the charitable services and public activities that are vital to many communities. However, current laws and regulations around DGR status are inconsistent, complex, and difficult to navigate. Reform is needed to reduce red tape and remove unnecessary and ineffective regulatory requirements.

In this context, the St Vincent de Paul Society National Council (the Society) welcomes this current review of DGR tax arrangements. We believe the Commonwealth Treasury's *Tax Deductible Gift Recipient Reform Opportunities Discussion Paper* (Discussion Paper) provides some sensible and worthwhile recommendations that would simplify and streamline existing arrangements. In particular, we support streamlining the administration of DGR status, with the Australian Charities and Not-for-profits Commission (ACNC) assuming the function of registering eligible DGR entities. We also support the proposal to transfer the administration of the four DGR registers to the ACNC and to remove the public fund requirements for charities.

However, the Society rejects other recommendations, and are deeply concerned by proposals that would constrain the advocacy undertaken by NFP organisations. Taxation law should not be used to suppress advocacy and silence dissent, and we strongly oppose any move to dictate to charities how they can pursue their charitable purposes. The strength and independence of voice of the NFP sector is a critical to a thriving and vibrant democracy. It is also key to tackling the systemic drivers of inequality and injustice. A well-funded charitable sector can represent the marginalised and voice dissent, raising issues that may not always be comfortable to those in power, but which are a fundamental part a democratic and inclusive society.

Accordingly, we categorically reject any move to stifle advocacy by curtailing the capacity of organisations to fundraise, or by imposing additional and unnecessary reporting requirements. For the Society, advocacy has always been a key means of creating a more just and compassionate society: addressing the causes of poverty, and not just the consequences, is a crucial aspect of our mission and values. The Society – like many other charities and NFP organisations – has a proud history of standing up for the people we support by speaking out against government policies that threaten vulnerable Australians and contribute to inequality and injustice.

We believe several proposals in the Discussion Paper set a dangerous precedent, with the Government attempting to weaken and silence critics using financial and regulatory levers. We do not believe it is appropriate for the Government to single out the parts of the NFP sector that challenge their political agenda, and to marginalise and stifle critical voices through regressive legislation and muscular regulation. Existing law already imposes appropriate limits on advocacy

activities and charitable purpose, such as prohibitions on endorsing or supporting candidates or political parties for political office, or promoting unlawful activity. Further changes are unjustified and unnecessary, and represent a disturbing incursion into democratic rights and the independence of the NFP sector.

We are also concerned with the proposal to shift the regulatory focus from organisational purpose to activities. Purpose should determine both charitable and DGR status, not activities. The Society believes that shifting the emphasis from a charity's purpose to its activities is inconsistent with charity law and would be unworkable, increasing red tape and introducing onerous and ambiguous reporting requirements. Critically, a change from a purpose-based test to an activity test will introduce regulatory 'chill', deterring organisations from engaging in activities that could be construed as advocacy and that could thereby imperil their financial viability.

Finally, while the Discussion Paper contains some commendable recommendations, it fails to articulate the underlying policy principles and goals of the DGR framework. We believe that reform of the framework should be consistent with these underlying principles and goals, and should start from a clear position around the value and intention of the overall DGR scheme. Underlying the ongoing shortcomings in the DGR framework is the ad hoc, piecemeal and unprincipled manner in which it has evolved. This has given rise to complexities, inconsistencies and unnecessary compliance risks for charities. Ultimately, any attempt at reform that does not address the fundamentally ad hoc and disparate nature of the existing system will do little to reduce the overall complexity and workability of the DGR framework.

Who we are

The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 149 countries around the world. Our work in Australia covers every state and territory, and is carried out by more than 64,000 members, volunteers, and employees. Our people are deeply committed to social assistance and social justice, and our mission is to provide help for those who are marginalised by structures of exclusion and injustice. Our programs assist millions of people each year, including people living with mental illness, people who are homeless and insecurely housed, migrants and refugees, women and children fleeing family violence, and people experiencing poverty.

This submission is informed by input from financial officers from the Society's state and territory Councils. In particular, the National Council expresses thanks to Greg Diews, Finance Manager from the St Vincent de Paul Society NSW, who assisted in the coordination and collation of feedback from our state and territory councils.

Response to discussion paper

Overarching policy and reform goals and objectives

The DGR taxation framework in Australia plays an important role in attracting philanthropic support to charities and NFP organisations. Creating an enabling tax framework is vital to the financial stability and sustainability of community organisations, helping them to fulfil their goals and maximise the benefits to communities. The Society believes that a starting point for any process of reform should be a clear understanding of the value of the DGR framework and its purpose.

Despite this, Treasury's Discussion Paper fails to articulate the policy goals of the DGR regime and reform process. What are the underlying objectives of the current reform process? What are the benefits of tax concessions to the NFP sector, and how do the recommendations put forward in the Discussion Paper maximise these benefits? Identifying the underlying policy goals is fundamental to the design and effectiveness of any regulatory regime, and provides a frame of reference for evaluating the merits or otherwise of proposed policy reforms.[1] Such considerations, however, are omitted from the Discussion Paper, and the overall purpose and principles that inform the current reform process remain unclear.

This lack of clarity in the overarching purpose is reflected in some of the policy options canvassed in the Discussion Paper. For example, certain proposals appear to inflate the supposed costs to government of 'foregone revenue', confuse the established definition of charity, and impose unnecessary new red tape in sunset clauses and regular activity audits. While there is merit in some of the recommendations, we reject the framing of the DGR system in terms that fail to acknowledge its benefits and underlying policy purpose.

The Discussion Paper seems to view tax arrangements for the NFP sector through the prism of lost revenue, emphasising 'generous tax concessions' and 'foregone government revenue'. The implication is that DGR tax concessions represent a cost burden to government rather than a benefit. Similarly, the Paper relies on a simplistic extrapolation of the cost of tax concessions to government by assuming every dollar given to a charity or DGR entity would otherwise have been taxable revenue. The Discussion Paper is conspicuously silent on quantifying the costs and benefits to government of the services delivered by charities and DGRs (which are often provided at a lower cost than equivalent government services, and provide spill-over benefits). The flawed analytic of 'revenue forgone' does not take into account the activities undertaken by NFPs that save governments from making outlays for similar activities, nor does it factor in the downstream costs when the services and systemic advocacy of NFPs are withdrawn. There is, in other words, no analysis of the benefits – social, cultural, economic and environmental – of the advocacy and services provided by charities to the community and government, despite these benefits being foregrounded in other Government inquiries and reports.[2,3,4] Nor is there an equivalent analysis of the 'foregone government revenue' from other recipients of tax concessions, such as the business sector, extractive industries, and public and private corporations.[*]

[*] For example, the Discussion Paper states that the "cost to the Commonwealth of deductions from donations to DGR organisations is $1.31 billion in 2016-17 rising to an estimated $1.46 billion in 2019-20". By comparison,

Beyond the flawed analytic of 'foregone revenue', the Discussion Paper fails to acknowledge the unquantifiable – but indispensable – contribution of the charitable and NFP sector to social cohesion, community connectedness, and civil society. Charities and NFPs are at the heart of our communities: building connections, nurturing spiritual and cultural expression, and giving voice to the marginalised. A well-funded and effective charitable sector supports civic engagement and voices the range of viewpoints that are necessary to democratic accountability and the development of inclusive public policy. By identifying and changing the systemic drivers of inequality and injustice, the advocacy of NFP organisations plays an important role in improving social, environmental and economic outcomes.

The Society urges the Government to make a clear statement about the benefit of increasing DGR contributions, and to frame any reform of DGR policies in terms that explicitly acknowledge the benefits as well as the costs. Any effective reform process must be grounded in the right premises and, in this instance, should proceed from a clear understanding of the value of the NFP sector, the goal of associated tax concessions, and the purpose of regulating the sector.[5]

We believe that the ultimate aim of tax settings should be supporting the sector to fulfil, in diverse ways, their goals for public or community benefit.[1] Charities and the NFP sector play an important role in combating social exclusion and enhancing the economic, social, cultural and environmental wellbeing of society. Ensuring tax settings support NFPs in fulfilling this role should be a central goal of the current review.

Governance arrangements

Discussion paper 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?

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

We support a clear regulatory framework that promotes good governance and transparency in the NFP sector, while at the same time minimising unnecessary complexity and red tape. To these ends, the Society supports the proposal that an organisation (other than a government entity) be required to register with the ACNC to obtain DGR status. The ACNC has proven to be a sound regulator, and its oversight of entities with charitable status has helped to maintain public confidence in the governance and transparency arrangements in the charitable and NFP sector.

While we support this proposal in principle, we recommend that further consideration be given to the practicalities of this new registration process for entities that operate multiple DGRs, and the possible complexities for DGR entities who may be required to either re-structure or establish new entities (where, for example, a DGR fund is currently operated by a non-charitable entity). Further, it is important that DGR organisations who are not registered with the ACNC are properly consulted and assisted to address any complexities that arise from the new requirement. According to the

research by the Australia Institute shows that in 2015 the Federal Government gave $4 billion in subsidies to the mining industry (including $2.26 billion in fuel subsidies; $460 million in tax write-offs for capital works; $580 million in accelerated depreciation for mining company assets; $320 million in R&D tax concessions).

Discussion Paper, there may be over 2,000 organisations in this position, including registered cultural, environmental, emergency services-related organisations or ancillary funds. We have previously maintained that these organisations can play an important role in fostering inclusion and enabling people on low incomes to participate in cultural, sporting and social activities.[6]

In addition, it is important that any new requirement for registering with the ACNC commences one year from the passage of the relevant legislation, and that organisations who are affected by this change are provided with appropriate transitional support and guidance to facilitate the registration process. The ACNC should also be properly resourced to manage the workload that would arise from additional entities falling within their jurisdiction.

Finally, we strongly oppose any measures that enabling Government Ministers to override independent regulatory processes and grant or revoke charitable status. Such a move represents Executive overreach, undermines public confidence in the independence and integrity of regulatory processes, and provides an avenue for shutting down legitimate advocacy. The existing regulatory framework provides robust checks and balances and excludes organisations that engage in any unlawful activities. It is neither necessary nor appropriate for a Government Minister to exercise discretion in regard to the initial or ongoing registration of a DGR, and we firmly believe that such decisions should be made by an independent statutory body, such as the ACNC, that is at arms-length from Government.

Advocacy

Discussion paper questions:

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

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?

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?

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?

The Society is deeply concerned about proposals to police and restrict advocacy activities. We do not support additional reporting requirements that would oblige DGR entities to detail their advocacy activities. Nor do we support the application of muscular regulations to organisations whose advocacy is at odds with dominant political interests and agendas. We believe that singling out particular sub-sectors or organisations in this way sets a dangerous precedence, allowing governments to use financial levers in order to silence criticism and undermine democratic accountability.

The Society opposes these proposals on several grounds. First, we contest the presumption that advocacy and charity are mutually exclusive. For the Society, advocacy has always been a key means

of creating a more just and compassionate society: addressing the causes of poverty and inequality, and not just the consequences, is crucial to our charitable mission and values. As our CEO, Dr John Falzon, explained during Parliamentary Committee hearings into the disclosure regime for charities, advocacy has been an integral feature of the Society since its inception:[7]

> From the perspective of the St Vincent de Paul Society, we would see advocacy as absolutely non-negotiable. It is integral to our charitable purpose. This is not something we have invented in recent years; it goes to the heart of our founding. In Paris in 1833, our founder made very explicit the principle that we were not simply to give assistance to the poor but to seek out and understand the structures that give rise to poverty and inequality, and to actively advocate to change those structures.

From this perspective, the distinction between charitable purpose and advocacy is artificial, confusing the purpose of an organisation with the means it employs to achieve this purpose. Advocacy is an essential, and often the most effective, means of achieving charitable purposes. Thus, for the Society, tackling poverty and inequality entails not only providing services to ameliorate the symptoms of social problems, but also advocating for policy and legislative change to address the root causes. As noted in the Productivity Commission report into *Access to Justice*, advocacy provides an efficient use of resources as it addresses systemic issues rather than just individual cases and has the potential to relieve pressure from other frontline services.[8, 9,†]

Australian charity law has long recognised that advocacy is a legitimate and important means by which organisations fulfil their charitable purpose. This was confirmed in the High Court ruling of *AID/WATCH Incorporated v Commissioner of Taxation [2010] HCA 42*.[10] In this landmark case, the Court accepted that advocacy in furtherance of a charitable purpose is a valid and important function of modern charities, and that it is "indispensable" for charities to have the right to advocate and to ensure "representative and responsible government". These principles are also enshrined in the *Charities Act 2013 (Cth),* which states that "promoting or opposing a change to any matter established by law, policy or practice" is a legitimate activity if it furthers or aids a charitable purpose.

A second key concern is that measures that suppress advocacy erode democratic accountability and undermine the vibrancy and diversity of civil society. In our view, advocacy undertaken towards a charitable purpose is a social good that is fundamental to the robust functioning of civil society and our democratic system of government. The strength and independence of voice of the NFP sector is critical to informed public debate, holding those in positions of power to account, and contributing to more effective policy-making.[11] Charities and NFP organisations often give voice to the needs of the marginalised and excluded, providing valuable insights into the lived experience of the most vulnerable social groups. Drawing on their practical experience and connections to communities, these organisations can provide expertise and otherwise unrepresented points of view in the process of formulating legislation and debating policy options.[12] To suppress such advocacy would, therefore, damage the health of our democracy and civil society, undermining systems of accountability and the development of informed public policy.

[†] The Report of the Charities Definition Inquiry in June 2001 also noted that "advocating on behalf of those the charity seeks to assist, or lobbying for changes in law or policy that have direct effects on the charity's dominant purpose, are consistent with furthering a charity's dominant purpose. We therefore recommend that such purposes should not deny charitable status provided they do not promote a political party or a candidate for political office."[9]

In addition to eroding democratic debate and accountability, we believe the proposals targeting environmental organisations set a dangerous precedent. Singling out a certain issue, and stripping DGR status from organisations that focus on that issue, represents a concerning abuse of government power and financial levers to weaken and silence potential critics. As noted in section 11 of the *Charities Act 2013 (Cth):* "Activities are not contrary to public policy merely because they are contrary to government policy". It is also unacceptable for a government to impose onerous and oppressive compliance requirements on particular DGRs in order to quash unwelcome scrutiny of policies.

A consistent, principled and apolitical approach should be adopted in the regulation of charities. While assessing the 'purpose' of a charity to determine its DGR eligibility is legitimate, government prescription of how an organisation should achieve their purpose is not. Accordingly, the Society opposes the requirement that environmental organisations commit a specific proportion of their funds to environmental remediation. It is not appropriate for a government to dictate how an organisation should meet its charitable purpose, nor should the prevention (rather than simply remediation) of social and environmental problems be prohibited. Such a requirement would set a negative precedent for other charities, opening up the possibility of additional governmental prescription of the types of activities they may adopt to pursue their charitable purpose.

Rather than strengthening public confidence in charities, prescriptive regulations such as those proposed are counterproductive, damaging the integrity of the regulatory framework and undermining public trust. There is a risk that the more control governments exert over access to charitable or DGR status, the more suspicious the public are likely to be of the process and those organisations that successfully navigate it. As Adam Pickering argues:

> I do not think that we should risk our philanthropic and civic freedom by handing the government the responsibility for choosing which causes and donors it favours. The point at which potential donors feel that their philanthropic choices are being skewed towards the government's agenda, however benign, might be the point at which their sense of agency evaporates, along with their willingness to give.[13]

Finally, we note that the Discussion Paper provides no evidence of the need for additional reporting and compliance requirements. Current laws already provide appropriate boundaries around the advocacy activities of charities, such as prohibiting charities from endorsing or supporting political candidates or parties for political office, as well as prohibiting the promotion of unlawful activities. In addition, organisations are subject to various registration checks, reporting, transparency and compliance safeguards under charity and tax law. No evidence has been provided to show that these existing laws and regulations are not working or are insufficient. Nor does the Discussion Paper provide evidence that donors are unaware of the advocacy undertaken by the charities they donate to. Rather than addressing any identified problem, we believe the proposed changes would merely serve to divert an organisation's resources from their core purpose into additional administration and compliance reporting.

Charitable purpose versus activities

Discussion paper questions:

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

The Discussion Paper's focus on activities, rather than purpose, muddles important regulatory distinctions and is at odds with fundamental concepts of charity law. It has long been established that the activity of a charity is not what matters in determining charitable status. Rather, the common law of charity emphasises that it is an organisation's *purpose* (and specifically whether this purpose is of public benefit) that determines its status as a charity. As defined by the ACNC, a "charity's purpose is the reason it has been set up, or what [the] charity's activities work towards achieving".[14] By this definition, it is the overarching purpose that is the point of reference, with charities having relative autonomy to undertake activities that further this stated purpose.

Under the activity-focused proposals in the Discussion Paper, the primacy of purpose is lost. Under these proposals, regulators will need to delve into the minutiae of an organisation's activities to determine eligibility for charity status. This in turn poses serious legal and practical inconsistencies with the *Charities Act 2013*, the *Income Tax Assessment Act 1997 (subsection 30-265 (1))*, and the ACNC Guidelines. It is also at odds with case law. For example, in *Aid/Watch Incorporated v Commissioner of Taxation,* the High Court of Australia ruled that it is purpose that is crucial for determining charitable status and public benefit.[10]

Aside from the legal and public policy concerns, shifting the focus from purpose to activities is untenable on practical and administrative grounds. Integrity and transparency in a regulatory system require clear and unambiguous regulations so that charities have certainty and clarity in relation to their compliance obligations. The focus on 'activities', however, muddles the scope and application of regulations, increasing administrative burdens and introducing uncertainty and definitional ambiguity.

Determining what activities are legitimate and 'charitable' is inherently fraught. It is impossible to be definitive about the permissible scope of activity (including advocacy activity) without reference to a charity's purpose. This lack of clarity will likely have a chilling effect on advocacy. That is, the inherent uncertainty and ambiguity in determining what is a legitimate activity, coupled with the ever-present threat of losing their DGR status, will deter organisations from engaging in advocacy.

Ultimately, it is the *purpose* in furtherance of which an activity is carried out, and not the character of the activity itself, that determines whether or not it is of a charitable nature.[15] Shifting the focus to activities blurs this distinction, posing legal inconsistencies, creating confusion and ambiguity, and ultimately increasing the administrative burden on both charities and regulators.

Complexity and red tape

Discussion paper questions:

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?

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?

Current DGR arrangements are complex, cumbersome and convoluted, with various regulators each imposing their own conditions and requirements. The Society supports measures to simplify this regulatory maze and ease the compliance burden. We therefore endorse, in principle, proposals to

streamline the administration of DGR status through registration with the ACNC, to remove the requirement to establish a public fund, and to allow organisations to be endorsed in multiple DGR categories.

We agree that having four separate DGR registers is unwieldy and inefficient given the numerous avenues of application and the multiple Departmental and Ministerial approvals that are required. As far as possible, organisations should only need to register and report to a single regulatory authority to secure and maintain DGR status. However, we recommend that responsibility for administering these various registers be transferred to the ACNC, rather than the ATO. Under this model, the ATO's function would be limited to applying tax concessions to those organisations independently assessed as eligible, and taking action where there is a suspected contravention of taxation law.[‡]

Transferring the responsibility for DGR registration to the ACNC has numerous advantages. The ACNC already has specialist expertise and knowledge of the NFP sector, along with robust processes for charity registration and reporting, and powers of investigation and enforcement. We believe the ACNC is delivering high quality education and support to the charitable sector in relation to compliance requirements, and is well-placed to take on functions currently undertaken by the various registers. Making the ACNC the central authority for DGR registration could reduce administrative duplication and the regulatory burden on charities, improving efficiencies for Government while at the same time reducing administrative costs for NFP organisations.

Whichever body is made the central agency for DGR registration, it will need to liaise initially with the relevant departments to build the necessary capability. Transitional arrangements should be in place, and more resourcing will be required to manage the additional workload.

Importantly, as indicated above, we believe any new arrangements should not allow Government Ministers to override independent regulatory processes. Currently, Ministers are involved in decision-making for some registers (e.g. the Register for Environmental Organisations), and have the power to grant or revoke DGR status at their own discretion. In our view, Ministerial involvement in such decisions undermines public confidence in the independence and integrity of regulatory processes. The existing ACNC regulatory framework provides robust checks and balances and excludes organisations that engage in any unlawful activities. It is neither necessary nor appropriate for a Government Minister to have the final say in the determining the DGR status of an organisation. We firmly believe that such decisions should be made by an independent statutory body that is at arms-length from Government.

We support the removal of public fund requirements for charities and the proposal to allow organisations to be endorsed in multiple DGR categories. Both proposals will decrease red tape. The requirement to have a public fund is no longer necessary as organisations are now subject to robust regulation by the ACNC in relation to governance, ongoing pursuance of charitable purposes, and the use of donated funds.

[‡] The ATO itself appears to have endorsed this model prior to the establishment of the ACNC. In its submission to the 'Report of the Inquiry into the Definition of Charities and Related Organisations' (2008), the ATO conceded that the system was disjointed and recommended that the decision-making process would be more effective if an independent body, similar to the Charity Commission for England and Wales, made determinations that would be the measure for charitable concessions.

Transparency and accountability

Discussion paper questions:

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?

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?

The Society supports a clear regulatory framework that promotes transparency and probity in the use of donated funds. This is vital to ensure donations are used appropriately and that public trust and confidence in the NFP sector is maintained. However, needs to be a balance. Reporting and compliance requirements should be proportionate and commensurate to risk. The community expects that their donations to charities will be used in the implementation of the organisation's mission, rather than in administration and compliance.

In the Society's view, the proposals for rolling reviews, audits and sunsets clauses do not strike the right balance, and are unnecessary and excessive. These compliance measures would place an additional regulatory burden on charities, imposing unnecessary costs on charities and government alike.

We believe the ACNC's governance and reporting requirements are sufficient to maintain public confidence and robust regulatory oversight. ACNC registration, reporting and governance requirements should negate the need for rolling reviews and annual certifications. The current reporting regimen includes an annual information statement from all charities and financial statements for larger charities.

Rather than undertaking rolling reviews, it would seem more appropriate and cost-effective for regulators to perform audits where clear issues have been identified, or certain risk thresholds have been surpassed. The ACNC and the ATO have statutory powers to investigate and, where appropriate, sanction charities that fail to comply with their obligations. The ACNC's compliance and auditing system also has a process for de-registering defunct or dormant charities that fail to comply with their requirements. The number of charities that have had their registration revoked indicates that the ACNC is actively exercising these powers.

The Discussion Paper offers no compelling justification for the rolling reviews or sunset rules, nor does it provide any evidence of widespread misuse of DGR status. It notes that "the majority of registered charities are small, and do meet their obligations", suggesting that there is not systemic transparency or accountability issues across the sector.

In short, the Society fully supports well-targeted and proportionate approaches to ensure probity and accountability in the use of donated funds. However, we do not believe the additional compliance measures that have been proposed are proportionate or necessary. The creation of a new and additional rolling review and audit, together with the introduction of a five-year sunset

rule, would be costly and burdensome. In our view, there is not sufficient justification for undertaking these measures on top of the other compliance systems already in place.

The need for broader reforms

The Society has consistently supported greater simplification and transparency in the tax concessional arrangements for the not-for-profit and charitable sectors. Over the past two decades, we have provided input into the plethora of reviews and inquiries into the regulation of the sector. As we have argued, we need to move beyond piecemeal change and ensure there is a principled and holistic approach to reform. Accordingly, any attempt to reform the DGR system without addressing the ad hoc, disparate nature of the existing system will do little to reduce the overall complexity and workability of the DGR framework.

As part of this comprehensive reform agenda, the Society agrees that integrity and transparency are imperative and necessary to the ongoing legitimacy and sustainability of the not-for-profit sector. Achieving this, however, requires clarity in the compliance obligations that apply to the sector. Greater clarity has been achieved with the establishment of the ACNC, and this has led to a more coherent, comprehensive and uniform system of regulation. The introduction of the *Charities Act 2013* has also helped to establish uniformity in determinations of charitable status at the federal level. However, inconsistencies remain between this Act and tax law, creating regulatory confusion and uncertainty. If this current review is to genuinely strengthen the integrity of DGR tax arrangements, then we believe it needs to also consider resolving ongoing areas of regulatory duplication and legislative ambiguity.

In particular, we believe that attention should be given to inconsistencies between the *Australian Charities and Not for profits Commission Act 2012* and the *Income Tax Assessments Act 1997.* This includes the governing rules and 'sole purpose conditions' that were introduced in 2013 through the *Tax Laws Amendment (2013 Measures No 2) Bill 2013*. The special conditions introduced through the 2013 amendments have led to uncertainty and confusion about the respective regulatory roles of the Commissioner of Taxation and the ACNC.[16]

We therefore recommend that reform of the DGR regime include efforts to remove the ambiguity regarding the application of the special conditions introduced in the *Tax Laws Amendment 2013*, and to clearly state that the income and assets conditions are not breached when pursuing purposes or conducting activities incidental or ancillary to the purpose for which a charitable entity is established.

Conclusion

Charity regulation is a matter of balance. While there is a benefit in ensuring that only worthy organisations are receiving particular concessions, it is important not to over-regulate and thus stultify the sector. The current review of the DGR framework provides some sensible recommendations that would streamline compliance processes and increase regulatory responsibility for the ACNC. However, it also proposes other measures that would curtail the advocacy of charities and NFP organisations, and create additional compliance burdens and red tape. What appears to be missing from the review process is a clear rationale and vision for reform of the DGR framework. Effective reform should be informed by a clear policy goal: it requires reflection on the bigger picture, and consideration of the question why, as well as how. For the Society, the ultimate aim of tax settings should be supporting charities to fulfil, in diverse ways, their goals for public or community benefit. Any effective reform process must be grounded in the right premises and, in this instance, should proceed from a clear understanding of the value of the NFP sector, the goal of associated tax concessions, and the purpose of regulating the sector.

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