



Australian Community Philanthropy

4th August 2017

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

By Email: DGR@Treasury.gov.au

Dear Sir/Madam,

Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

Please find attached Australian Community Philanthropy's submission in response to the Australian Government's Tax Deductible Gift Recipient Reform Opportunities Discussion Paper.

Australian Community Philanthropy welcomes the opportunity to contribute to this consultation and would be pleased to discuss the matters raised in our submission. In this regard, please do not hesitate to contact me.

Yours Sincerely,

Kate Buxton
Executive Officer, Australian Community Philanthropy Ltd

**Australian Community Philanthropy Submission:
Tax Deductible Gift Recipient Reform Opportunities Discussion Paper**

Introduction – Australian Community Philanthropy

Australian Community Philanthropy (ACP) is the peak membership organisation for community foundations in Australia. Founded in 2008 by a group of community foundation practitioners to provide support to the voluntary boards and professional staff of new and established community foundations, ACP exists to connect, support and represent the community foundation movement and to strengthen its resources, capacity and impact.

Community foundations are community-owned, not-for-profit, charitable organisations which exist for public benefit in a specific geographic area. Their shared purpose is to attract resources, to support and revitalise local communities and to build social capital. They make philanthropic grants, and often seek to build a perpetual financial asset for their community.

Australian community foundations are part of a thriving global sector of more than 1,800 place based foundations which collectively have:

- US\$6.3billion in financial reserves
- Granted more than US\$5billion (last fiscal year reported)
- 65% have five or less paid staff

Australian community foundations generally operate a ‘public ancillary fund’ (an ‘Item 2’ deductible gift recipient) and, as such, provide grants to ‘Item 1’ deductible gift recipients

Collectively, Australia’s 38 community foundations:

- hold more than \$310 million in funds under management
- grant at least \$21 million annually within their communities
- support hundreds of charitable grass roots projects and initiatives through their granting and community strengthening programs



EXECUTIVE SUMMARY AND KEY CONCERNS

ACP 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.

A cohesive, equitable and transparent framework is vital to supporting the vibrant and growing culture of community philanthropy in Australia. However, the Deductible Gift Recipient (DGR) framework as it now stands is complex, onerous and mired in red tape. This creates unnecessary barriers to giving and, more importantly, limits the ability of community foundations and other philanthropic bodies to effectively distribute or make grants so that they have the greatest impact in Australian communities.

Whilst it includes several welcome recommendations, the Discussion Paper also includes proposals which are of concern. Moreover, the Discussion Paper fails to address significant issues that exist within the current DGR framework which have a negative impact on community foundations.

ACP recognises that the Government provides a substantial financial contribution to NFP entities through tax concessions. However, this assertion, whilst true, 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.

Community foundations are a significant funder of grass roots organisations doing great work, thus ACP believes it has a clear role in ensuring any reforms reduce or remove existing impediments and unnecessary red-tape, address significant gaps in the current framework and abide by the guiding principles identified by the Not-For-Profit Sector Tax Concession Working Group (2013) in particular to:

- Maximise the social good
- Recognise giving in Australia
- Be effective, efficient and fair

With the above in mind, in addition to our responses to the identified issues and specific consultation questions, ACP has the following over-arching comments with respect to the proposals raised in the Discussion Paper:

KEY CONCERNS

The Discussion Paper does not Address Key Issues for Community Foundations

There is growing acceptance that the complex and difficult problems facing communities around Australia can only be addressed with an integrated, multi-faceted place-based response.

As a valuable and unique form of community infrastructure, community foundations empower communities to address local challenges themselves. They seek to build social capital, catalyse development and strengthen community; they engage with their constituents as donors, advisors and volunteers. Community foundations are responsive to the challenges facing their communities and leverage their deep local knowledge to respond to need through their purposeful grant-making.

And yet, community foundations - which harness local resources, strengthen community and build local capacity - are fettered by a regulatory framework that creates significant barriers. The existing tax laws are inhibiting the growth and impact of community foundations.

Community foundations generally operate a 'public ancillary fund' (an 'Item 2' deductible gift recipient) – which imposes significant restrictions on their operations:

- Community foundations cannot accept donations from one of the most common forms of private foundation, 'private ancillary funds', as private ancillary funds are also an 'Item 2' deductible gift recipient – this cuts them off from a significant source of philanthropic funding and precludes Private Ancillary Funds from leveraging the expertise and community knowledge of community foundations.

Case Study e ema e ou da o (ema e, Wes e Aus a a)
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 mo e effec ve y by us g s k ow edge a d u de s a d g of commu y eeds As a p va ea c a y fu d, e ou da o was u abe o
 d s bu e o e ema e ou da o

Australian community foundations are part of a thriving global sector of more than 1,800 place-based foundations. This enables us to compare our *local* context and environment with those of our international counterparts in order to identify *local* barriers.

Professor Jason Franklin PhD, the W.K. Kellogg Community Philanthropy Chair, Dorothy A. Johnson Center for Philanthropy, Grand Valley State University notes:

‘In the United States, we’re seeing the rise of funder collaboratives. This is an arrangement where foundations and individuals come together to pool their funds and adopt a coordinated and collaborative approach to addressing a particular issue. They allow for more strategic and impactful giving, which makes a bigger difference than foundations and individuals acting in isolation. Community foundations are playing a key role in supporting this innovative approach to philanthropy, as they often convene such funder collaboratives. They receive the funds from the foundations and individuals, provide advice and support for decision making by the funder collaborative, and then make grants based on these decisions. I have visited Australia on two occasions in the last year to learn about your philanthropic sector and think that Australian philanthropy, and your community foundations, are doing fantastic work. But it is clear that the taxation and regulatory framework makes life very difficult for your community foundations – based on my understanding, the current rules would make it very hard for funder collaboratives to grow in Australia. This will be a missed opportunity, and I would encourage the addressing of the current barriers which make it hard for community foundations to do their important work.

Additionally, in the US community foundations serve as valuable partners for private foundations to provide small grant support, capacity building and training services, and other supports for NGOs working on shared issue priorities. That generally entails a private foundation making one or more grants directly to a community foundation to run programs or manage regranting programs, leveraging the networks and skills of community foundation leaders. This has proven to be an effective partnership structure in the US, but one that is not viable in Australia at present given current DGR regulations. This is a second missed opportunity to advance the social service and change efforts undertaken by private and community foundations in Australia’.

Furthermore, *‘Collective Giving and its role in Australian philanthropy’ (Boyd, Partridge July 2017)*, a report commissioned by the Prime Minister's Community Business Partnership, identifies the inability for Private Ancillary Funds to give to community foundations (Public Ancillary Funds) as a barrier to the growth of Collective Giving groups in Australia. Giving Groups are often hosted or embedded within organisations like community foundations. The report notes:

‘If PAFs could give to community foundations, this would open a whole new source of funding for collective giving groups – there are over 1,400 PAFs in Australia, and they gave over \$300 million in 2013-14. These funds could be used for a variety of purposes, such as:

- *providing funding to support start-ups and potentially accelerate the rate new collective giving groups are forming*
- *providing capacity building grants to build ongoing sustainability, and*
- *increasing the level of donations made to collective giving groups, for example through ‘matching initiatives’ where a PAF agrees to donate a certain amount to a giving circle provided it is ‘matched’ by smaller donors.*

Whilst Giving Groups are relatively new to Australia, this form of philanthropy has seen significant growth in the USA and the UK and Ireland. Giving groups, like community foundations, differ from traditional philanthropy, offering accessible democratised giving which actively engages with donors and frequently acts as an introduction or pathway to philanthropy.

Whilst most giving groups in Australia are located in major cities there is considerable potential for them to be established in regional and remote communities as has been the case in the USA. By failing to address the barriers that exist within the current DGR framework, the government risks missing an opportunity to encourage the development of Collective Giving in Australia, supported by the deep local knowledge of community foundations, most which are in regional and rural areas.

- As an 'Item 2' DGR community foundations are limited to funding DGR 1 charities from their Public Ancillary Funds. This creates an obstacle for locally responsive organisations with relevant experience, particularly in rural and regional areas where there are fewer local DGR1s, undermining community resilience and creating unnecessary dependency on external organisations and government.

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Community foundations play a vital role in directing philanthropic funds to communities, particularly rural, regional and remote communities where there are few local DGRs. The only way in which community foundations can support grassroots non DGR charities is through auspice agreements or through a partnership with the Foundation for Rural and Regional Renewal (FRRR), adding to the already onerous administrative burdens for community foundations and/or their funding recipients. It is worth noting that around 80% of the organisations supported by FRRR have not held any DGR status, serving to demonstrate a vast needs-gap and failure of the current regulatory framework.

Australian Community Philanthropy believes that a new deductible gift recipient category within Division 30 of the *Income Tax Assessment Act 1997* (Cth) specifically for community foundations is needed to remove these barriers, reduce red tape and enable community foundations to focus on generating impact in their communities.

We expect that the revenue forgone from the change would be minimal. This would be an affordable reform, which will grow community philanthropy and strengthen community resilience in Australia.

Distinction between Charitable Purpose and Activities

ACP is concerned 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. Essentially, a charity's purpose is its 'horse', its activities are its 'cart'. It is our view 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 and, effectively, risks putting the cart before the horse.

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.

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'. Given that there is no objective measure to determine broad community expectations with respect to advocacy, it is inappropriate to use this as a rationale for the reforms proposed within the Paper. It is ACP's view that the requirement that all DGRs become registered

charities under the purview of the ACNC is sufficient. Any additional requirements, particularly when these single out the specific environmental organisation cohort, are unnecessary and not in keeping with the aforementioned guiding principles.

Compliance

ACP is supportive of the intention to reduce 'red-tape' within the reporting framework and supports further integration of the ACNC into the regulatory framework for DGR. Transparency and accountability of DGRs is vital. However, we do 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.

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?

ACP is supportive of reform enabling organisations to operate as part of an accessible cohesive regulatory and compliance framework. ACP notes that appropriate resources would need to be made available to assist DGRs who are not currently registered. Unforeseen consequences, particularly with respect to DGRs that could not meet this requirement, would need to be thoroughly explored.

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

Community foundations are committed to the principle of transparency and ACP 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 Executive Summary and 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?

ACP is supportive of the removal of the public fund requirements for charities and to 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?

It is ACP's belief that the points raised in the Discussion Paper with respect to Public Funds apply equally to Community foundations operating a Public Ancillary Fund and that:

- *The community and donors would be better served by allowing the Community Foundation to be a charity with DGR 1 tax status. This could be achieved by a simple amendment to create a new deductible gift recipient category within the Income Tax Assessment Act 1997 (Cth) specifically for community foundations.*
- *The majority of community foundations are located in rural and regional Australia and face similar challenges in identifying committee members for public funds because of the tighter definition of 'responsible person' in the tax area.*

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?

It is ACP's view that the transparency and accountability of DGRs is important. However, we believe that ipso facto rolling reviews and audits are not warranted and would create an unnecessary burden for DGRs, the vast majority of which are already registered with the ACNC and thus 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 ACP's view that this is unwarranted and would create an unnecessary burden for these organisations. The need for exceptional circumstances exceptions is symptomatic of an inadequate DGR category framework which has evolved in an adhoc way. For example, community foundations are unable to be DGR endorsed despite their purpose of promoting and encouraging philanthropy. In the absence of more comprehensive reforms, such as those proposed in the Not-for-profit Sector Tax Concession Working Group's report Fairer, simpler and more effective tax concessions for the not-for-profit sector (May 2013), specific listings are necessary. The introduction of a general sunset rule for specifically listed DGRs would have the effect of increasing the red tape with no resulting or apparent benefits given the Australian Government already has the option to direct the Treasury to review specifically listed DGRs.

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 Executive Summary and 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 of 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.

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?

ACP 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.

Closing Remarks

Community foundations make it easy for people to contribute to a pool of funds which is used to support charitable projects through purposeful grantmaking. They work in partnership with donors, local organisations and community leaders to strengthen communities and increase opportunities and they are uniquely placed to understand and respond to the immediate and long term needs of the community.

Australian community foundations, unlike their international counterparts, are hampered by an unnecessarily complex regulatory framework that places significant barriers in their way, has impeded their capacity to collaborate effectively with private philanthropy and has limited the growth and impact of this globally proven model in Australia.

Australian Community Philanthropy asks the government to give urgent consideration to the recommendation contained in this submission and to create a new deductible gift recipient category within Division 30 of the *Income Tax Assessment Act 1997* (Cth) specifically for community foundations.

Australian Community Philanthropy Members: Appendix 1

Albany Community Foundation, WA
Australian Communities Foundation, VIC
Ballarat Foundation, VIC
Bass Coast Community Foundation, VIC
Buderim Community Foundation, QLD
Casey Cardinia Foundation, VIC
Border Trust, VIC/NSW
Community Foundation for Central Victoria, VIC
Denmark Community Foundation, WA
Eyre Peninsula Community Foundation, SA
Fleurieu Community Foundation, SA
Foundation Barossa, SA
Foundation Broken Hill, NSW
Foundation for Rural and Regional Renewal, National
Fremantle Foundation, WA
Geelong Community Foundation, VIC
Give Where You Live, VIC
Hands Across Canberra, ACT
Inner North Community Foundation, VIC
Into Our Hands Community Foundation, VIC
Leongatha District Community Foundation, VIC
Lord Mayor's Charitable Foundation, VIC
Mackay Community Foundation, QLD

Marysville & Triangle Community Foundation, VIC
MCRAAG Community Foundation, VIC
Mirboo North & District Community Foundation, VIC
Northern Rivers Community Foundation, NSW
Red Earth Community Foundation, QLD
South West Community Foundation, VIC
Southern Highlands Foundation, NSW
Stand Like Stone, SA
Sydney Community Foundation, NSW
Tomorrow: Today Foundation, VIC
Upper Murray Innovation Foundation, VIC

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