

11 July 2017



To whom it may concern

Re Tax Deductible Gift Recipient Reform Opportunities Discussion Paper June 2017

We welcome the opportunity to consider the points and questions posed in the discussion paper. Our responses are detailed over page.

If you wish to discuss any aspect of our response please contact the Chairperson of the ANHCA Public Fund for DGR the Honorable Michael Beahan AM at michaelbeahan@bigpond.com or mobile +61409152355.

Your sincerely

Jane Chilcott  
President



## ***Response to the Discussion paper***

### ***Tax Deductible Gift Recipient Reform Opportunities***

#### ***Background – Australian Neighbourhood Houses and Centres Association Inc***

The Australian Neighbourhood Houses and Centres Association Inc (ANHCA) is the national peak body for over 1000 Neighbourhood Houses and Centres in the states of NSW, Tasmania, Western Australia, South Australia, Queensland and Victoria. They are all not for profit, volunteer governed organisations.

Neighbourhood Houses are places where people come together to support their local community and make a significant difference in people's lives. They are run by the community, for the community and offer a wide range of programs and activities for local people. Houses are the warm and generous heart of their communities.

As a network, the Houses form the largest community development infrastructure in Australia, with one of the most regionally diverse footprint of any non-government community service network in Australia.

Houses work from a community development framework, which involves processes and ways of working to enable individuals and groups of people to make changes in their community, on issues that affect them. Community development is an inclusive, fair and responsive approach to creating solutions within communities. It encourages active participation, consultation and involvement from the broad community in the design, development, delivery and evaluation of projects.

Each House in the network is an independently incorporated association with a volunteer committee of governance, managed on a day-to-day basis by a team of volunteers and staff.

#### ***General Comments:***

ANHCA supports in principle the aims of reform proposals outlined in the Tax Deductible Gift Recipient Reform Opportunities Discussion paper of 15 June 2017. These aims are:

1. To strengthen the governance arrangements around DGR;
2. To make the application process easier and more accessible for organisations; and
3. To ensure that the currency of DGR eligibility is maintained.

That said, ANHCA is concerned regarding the scope of the reform discussion. The administration of the scheme is of much less concern to our Network than is achieving DGR status. The scope of this reform excludes discussion around eligibility, which is disappointing. Confusion about eligibility is the usual experience of Neighbourhood and Community Houses when they work through the process of applying for DGR status. The Australian Neighbourhood Houses and Centres Association (ANHCA), and the state peaks for Neighbourhood Houses have been advocating for well over a decade for changes to eligibility requirements to include the term "prevention of poverty" in the definitions under PBI Status. As we quoted back in 2008 via the paper prepared by the Victorian Neighbourhood Houses peak body (NH Vic – then ANHLC) "Prevention is better than cure"



*“.....failure to acknowledge **prevention** in the criteria means that worthy organisations, including Neighbourhood Houses, are denied access to this funding and the associated resources, causing them to remain largely reliant on government grants and individual fundraising efforts. These invariably fall well short of the actual funding required to maintain current levels of service provision, let alone meet the ever-increasing demand on those services.*

*Furthermore, failure to acknowledge **prevention** in the criteria is a factor in triggering organisations to make changes to their constitutional documents which may be at odds with their philosophical commitment to “making a difference” through **prevention** (rather than direct welfare) in an attempt to have a more successful DGR outcome with the Australian Tax Office.*

*It is worth noting that this situation, together with the lack of clarity around the PBI definitions generally, results in an ad hoc allocation of DGR endorsement by the Australian Tax Office, with some Neighbourhood Houses, for example, receiving DGR endorsement on their first attempt, while others (who provide identical programs and services) have their applications rejected numerous times. This creates unacceptable distortions and inequities.*

*The potential benefits of recognising **prevention** in the PBI tax laws can be summed up by the following long term social and economic impacts:*

- *increased capital investment from the corporate and philanthropic sectors*
- *less reliance by the sector on government grants and funding*
- *a dramatic increase in the number of community business partnerships*
- *greater understanding of community need and community strengthening strategies*
- *increased number of financial donations to the sector*
- *significant increase in the sector’s capacity to provide community-responsive programs and activities at the local level; and*
- *stronger and healthier Australian communities*

A possible amendment is as follow:

“A Public Benevolent Institution is a non-profit institution organised for the direct relief **or prevention** of poverty, sickness, suffering, distress, misfortune, disability or helplessness”.

Such an amendment will not mean a blanket endorsement for all non-profit organizations as applicants will still be assessed on a case by case basis depending on their ability to demonstrate their compliance with all other PBI criteria. This will afford the Federal Government with a measure of guarantee that the demand on Treasury for taxation benefits will be limited to non-profit organisations established for public benevolence and not for any other purpose.

The previous government were not able to make the above legislative changes, however in acknowledgement of the difficulties faced by the sector, they did enable Neighbourhood Houses to have some access to DGR status through the establishment of a listed public fund under the control of the National Peak Body, *The Australian Neighbourhood Houses and Centres Association* (ANHCA), through which individual Houses who do not have DGR in their own right can apply.



Outside of the above comments, we believe the current arrangements around DGR are complicated and unwieldy. The experience of individual Neighbourhood Houses is that, even with the same core business and working towards common goals and objectives, some Houses have achieved DGR status and others have had their applications rejected. This has occurred even where guidance and direction has been sought from the Agencies involved in the application process. This anomaly is hard to reconcile.

Significant scarce resources are used in the application process. It is difficult to understand the process and the prerequisites to a successful DGR application; registration with ACNC, and the limitations of the identified DGR categories.

The current funding environment is challenging for community sector organisations. The current fixed term (often 3 year or less) funding agreements with State and Commonwealth Governments are supplemented by one-off grant funding when it can be successfully secured. Increasingly organisations are seeking donations and funding from private, philanthropic and other non-government entities. The establishment of the Australian Charities and Not-for-profits Commission (ACNC) recognised the importance of building trusting relationships so that potential funders feel comfortable about their association with an organisation.

Similarly, DGR status is also a contributor to choosing where donations will be directed. Some donor organisations can only fund DGR's. In principle, DGR status must be well governed, transparent and current. Eligibility for DGR status must be clearly defined and applied consistently, with as little administrative burden to the applicant organisation as possible.

## **Comments regarding the consultation questions:**

### **Strengthening Governance Arrangements**

#### Issue 1: Transparency in DGR dealings and adherence to governance standards.

#### **Summary of 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?

*ANHCA supports the requirement for a DGR to be a registered charity. This will enable all non government entity DGRs to work within the governance and accountability regulation of the ACNC as well as accessing resources and support to ensure operation as quality not for profit organisations.*

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

*No comment*

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

*Not of concern to our network*



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

*No. This would be an unnecessary infringement on the rights of charities to conduct their own affairs and could lead to political interference in organisations. It is important that communities and groups can be represented given that charitable organisations are often representing those that don't have a voice in the mainstream. To preclude advocacy from the activities of a charity would be a draconian step that tramples the principles of free speech in an advanced society.*

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

*N/A if no above*

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

*N/A if no above*

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?

*This would appear to be a much more efficient arrangement than the current one. The proposed process is streamlined and consistent, regardless of the organisation's purpose. The ACNC becomes a main point of contact for more than one function, with information sharing between Agencies resulting in reduced impost on the charitable organisation.*

*Introducing standard reporting requirements may be an adjustment for some DGRs if they are not already registered with the ACNC, and do not have the processes and systems in place to report to the ACNC as required to maintain registration.*

*This Discussion Paper clearly states that the eligibility for DGR status is out of scope. It is hoped that the process of applying and the eligibility criteria are easier to understand and more consistent as a result of these reforms. How the scheme is administered is of lesser concern to our Network than how to navigate the application process, as well as our concerns that the eligibility requirements are too narrow, and that some Neighbourhood Houses with similar roles and activities have gained DGR Status while others have not with very similar applications. In our view the application process is too dependent on the particular perspective of the assessor and this must change through this reform.*

*Again we would state, that the crucial change that needs to be visited, even if outside the scope of this narrow reform paper, is including the concept of prevention of poverty into the criteria for a PBI.*

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?



*Agree. This simplifies governance and makes it less confusing*

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?

We strongly object to a sunset clause proposed in Clause 61 of the Discussion Paper, as this implies that organisations automatically lose DGR status at the end of each period. We certainly would not agree with any system which requires having to re-apply, especially given the significant difficulty the sector has experienced in making such applications.

*In principle it is important that eligibility for DGR be regularly reviewed to maintain integrity and trust through transparency. However any such review should not lead to a cumbersome and over burdensome administrative process that may disadvantage the small organisations such as volunteer governed Neighbourhood Houses, or the ANHCA DGR Fund compared to larger charities with greater capacity to respond. As a registered charity, we are already required to make an annual certification through ACNC.*

*Our current accountability to ACNC provides an annual certification that we continue to operate with the same mission and core business as the previous year.*

Our other concern would be that there may be the opportunity for political interference in the process.

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

*Reviews, if deemed necessary should commence with 'high risk' organisations.*

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?

*As stated above:*

*In principle it is important that eligibility for DGR be regularly reviewed to maintain integrity and trust through transparency. However any such review should not lead to a cumbersome and over burdensome administrative process that may disadvantage the small organisations such as volunteer governed Neighbourhood Houses, or the ANHCA DGR Fund compared to larger charities with greater capacity to respond. As a registered charity, we are already required to make an annual certification through ACNC.*

*Our current accountability to ACNC provides an annual certification that we continue to operate with the same mission and core business as the previous year.*

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?

*The deliberate targeting of Environmental NGOs in this review concerns us especially when coupled with sunset clauses and/or regular reviews. If a government's particular concerns with a section of the "DGR Community" mean that reviews can target them over other NGOs because their interests do not align or directly clash with a government, this is of great concern. The principle of limiting the right for advocacy through this review would concern us. It is not that we have particular reason to support environmental NGO's, but concern that it may cement the principle of "advocacy" being precluded. Again it should not, as it greatly tramples the principle of free speech.*

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?

*Overview by the ACNC should provide adequate scrutiny and the ACNC has its own sanctions for non-compliance.*