

Tax Deductible Gift Recipient Reform Opportunities

Submission by Australian Red Cross

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Foreword

Australian Red Cross welcomes the opportunity to contribute to the discussion on reforms to the Deductible Gift Recipient (DGR) tax arrangements.

The advocacy role of charities and DGRs is questioned in the discussion paper. We firmly believe that we need a regulatory environment that respects and encourages charities' participation in public policy.

Advocacy is a fundamental role and responsibility of civil society organisations and an essential part of vibrant and well-functioning democracies. Civil society advocates for social and environmental benefits: not for individuals, or associations pursuing their financial or special interests.

Our comments on the discussion paper focus on streamlining the DGR tax arrangements and accountability, whilst balancing the free exchange of opinions, information and ideas that are key to an open democratic society. These principles are also reflected in Australia's Open Government Partnership¹.

The DGR arrangements support philanthropy and the not-for-profit (NFP) sector. Whilst the estimated contribution through tax concessions is estimated at \$1.31 billion in 2016-2017, it is a small proportion of the annual turnover of the charity sector, which generates considerable savings to government by harnessing volunteers and providing programs and services at less cost than government.

We support streamlined and transparent administration and the Government's stated commitment to reducing the cost of regulation². We are committed to operating our programs as efficiently and effectively as possible to ensure we can help the largest number of people possible.

Also as a registered charity and signatory to the ACFID Code of Conduct, we are obliged to meet high standards in financial reporting and transparency.

Australian Red Cross' advocacy policy is based on our purpose, and our Fundamental Principles of humanity, impartiality, neutrality, independence, voluntary service, unity and universality. For a full description of these please see Attachment A.

We would be happy to provide any further information or clarity on the points made in this submission.



Judy Slatyer
Chief Executive Officer

¹ <https://opengovernment.org.au/about/>

² <https://www.cuttingredtape.gov.au/>

About Australian Red Cross

Australian Red Cross' vision is human dignity, peace, safety and wellbeing for all.

Our purpose is to support and empower people and communities in times of vulnerability. Our purpose is to reduce suffering across Australia and internationally through mobilising the power of humanity.

Red Cross has been a critical part of Australian life since 1914. Today, one million volunteers, members, staff, financial and blood donors and supporters make a positive difference to the lives of people in need. From supporting someone caught up in an emergency or helping an elderly person stay in their home, to saving a life with first aid or a blood donation, Australian Red Cross is there.

Around 50,000 highly skilled and committed volunteers, members and staff help people every day through our emergency services, social services, international development and aid programs, first aid, international humanitarian law and the Blood Service. While we remain independent and neutral at all times, under our charter we also act as an auxiliary to public authorities in the humanitarian field.

We are one of 190 national societies in the Red Cross Red Crescent Movement, a worldwide community of humanitarians. The Movement has an unparalleled reach with a local, national and global footprint, uniting us to prevent and alleviate human suffering wherever it may be found. We are all bound by a set of Fundamental Principles, obliging us to work without discrimination as to nationality, religious beliefs, class or political opinions.

Australian Red Cross DGR status

Australian Red Cross Society is a DGR under Item 1 of section 30-15 of the Income Tax Assessment Act 1997, as it is a registered public benevolent institution as referred to in section 30-45 of that Act.

Red Cross operates the Australian Red Cross Society Developing Countries Aid Fund – which is a separate fund administered by the Red Cross, which is authorised as a DGR 1 on the basis of satisfying the Overseas Aid Gift Deduction Scheme (OAGDS) requirements.

Summary of recommendations

- Q1 We recommend that an impact assessment be completed and further consultation take place before a final decision is made.**
- We recommend that any new requirement commence one year from the amendment, and that the ACNC be suitably resourced to conduct this process and manage the additional workload from additional charities coming under their jurisdiction.**
- Q4 Any reform to DGR should NOT require new reporting obligations for advocacy activities.**
- Q5 The Annual Information Statement should be retained as the most appropriate vehicle.**
- Q7 We recommend that current standards for assessing eligibility for OAGDS are maintained within DFAT until an alternative model is developed in consultation with the sector.**
- Q9 DGRs which are registered charities should not be subject to a rolling review program**
- Q11 A five-year review is unnecessary as charities are reviewed annually as part of the Annual information statement**
- Q12 We recommend against this requirement to regulate activities of this sector beyond compliance with charity law and ACNC requirements.**
- Q13 We recommend against any sanctions beyond what is required under the ACNC legislation**

Consultation questions

1. *What are the 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?*

We recommend that an impact assessment be completed and further consultation take place before a final decision is made.

We recommend that any new requirement commence one year from the amendment, and that the ACNC be suitably resourced to conduct this process and manage the additional workload from additional charities coming under their jurisdiction.

We understand that over 2,000 DGRs are not registered charities and broadly support the proposal to become a registered charity. However we are concerned about any unintended consequences. We recommend that an impact assessment be done, and following that, consultations with those affected before any final decisions are made. We also believe that time needs to be allowed for this process, as well as for transitional support to be provided by the ACNC.

2. *Are there likely to be DGRs that could not meet this requirement?*

We believe the impact assessment and consultation process will resolve this issue.

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

See response to Question 1 and 2.

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

We recommend that any reform to DGR does NOT require new reporting obligations for advocacy activities.

We believe the current ACNC guidance³ provides clarity on advocacy and political campaigning. The Discussion Paper does not establish a case for a focus on advocacy activities. Reporting on these beyond the limited extent of the general description currently required would be a major compliance burden for charities.

The current legal regime is adequate in outlining the purposes for which charities can legitimately be established, as well as in ensuring charities must demonstrate that they do not have a disqualifying purpose – that is to promote or oppose political parties, to engage in or promote unlawful activity, or activities contrary to public policy.⁴

Our Annual Information Statement provided to ACNC already outlines key activities we undertake in order to achieve our purpose of empowering and supporting the most vulnerable people.

The Treasury discussion paper does not define 'Advocacy', but we concur with the ACNC's definition⁵ on its fact sheet on 'Political campaigning and advocacy by registered charities ...' which, consistent with the Charities Act, defines advocacy and campaigning *as activities aimed at securing or opposing any change to a law, policy or practice* . These activities can include:

- Involvement in the development of public policy
- Promotion of, or opposition to particular laws, practices or decisions of governments, and

³http://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/What_char_purp/ACNC/Reg/Advocacy.aspx

⁴ Refer sections 5 and 11, *Charities Act 2013*

⁵ http://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/What_char_purp/ACNC/Reg/Advocacy.aspx

- Awareness-raising.

The law recognises that advocacy includes the purpose of promoting a change to any matter established by law, policy or practice if the change is 'in furtherance or in aid of one or more of the charitable purposes' of the organisation as per s. 12 of the Charities Act.

A similar principle applies under the Charities Act when the advocacy is in opposition to a change, where that change would oppose or hinder those charitable purposes of the organisation.

Our donors, members and supporters expect us to be advocates and their continued support is conditional upon this advocacy.

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

We recommend that the Annual Information Statement be retained as the most appropriate vehicle.

In the interests of streamlined administration and reporting, we consider the AIS the most suitable vehicle. The AIS includes a description of activities, including international activities, that are key to achieving our purpose. We therefore do not believe there is any need for further information to be required.

We are already required to report information set out in the AIS as a registered charity, and through our Annual Report we are transparent with the public each year about what we have achieved, where we have failed, and the impact we have delivered. Our progress towards our Strategy 2020 goals is made public through our website and communications with our stakeholders.

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

We consider that there is sufficient information reported, and that there is no case to collect further information.

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?

We recommend that current standards for assessing eligibility for OAGDS are maintained within DFAT until an alternative model is developed in consultation with the sector.

We believe the DGR changes that the current standards for assessing OAGDS should be maintained within DFAT until a satisfactory model is finalised in consultation with the relevant bodies. As a member of ACFID, Australian Red Cross endorses the need for a distinctive regulatory environment for overseas aid charities.

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?

We support this proposal.

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?

The AIS for charities, and the required provision of full financial annual statements to the ACNC, provide information both to the ACNC and to the public at large about the activities of charities.

Under its legislation, the ACNC has substantial regulatory functions and powers in relation to charities⁶ (which are almost all DGRs⁷).

Given this, DGRs which are registered charities should not be subject to a rolling review program.

Automatic rolling programs run the risk of adding an additional bureaucratic layer and resource imposition to both government and the charity. We therefore consider that reviews and audits should only be conducted where systemic issues have been identified or risk thresholds have been surpassed.

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

We believe there should only be a review when a risk is clearly identified – rather than a rolling program.

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?

Charities are reviewed annually as part of the Annual information statement – therefore a five year review appears unnecessary.

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?

We recommend against this requirement to regulate activities of this sector beyond compliance with charity law and ACNC requirements.

It is well proven that environmental degradation, climate change and associated impacts including water, food and energy security, and the increasing prevalence and intensity of disasters, all have a disproportionate impact on the most vulnerable people and communities in Australia, in our region and globally.

We consider that social and environment causes often require proactive policy change rather than wait for damage to occur and focus resources on remediation.

This discussion paper recommendation is contrary to the principles of good public policy as it should not be a requirement for charities' activities to be prescribed by Government. It is for the governance of any charity to determine how to align activities to achieve their stated purpose.

The *Charities Act 2013* permits advocacy activities as charitable when linked to other defined charitable purposes. Advocacy is excluded from 'disqualifying purposes' unless:

- Activities are unlawful
- Activities are contrary to public policy
- Promoting or opposing a political party or candidate.

The combined legislative framework of the *Charities Act* and *Income Tax Assessment Act* provides ample regulation of environmental organisations and their deductible gift recipient status.

⁶ See, for example, the ACNC's Compliance and enforcement statement:
http://acnc.gov.au/ACNC/Publications/Policy_PDFs/CommSt_Compliance.aspx

⁷ Refer paragraph 18 of the Consultation paper.

Further regulation of the activities of this sector would be onerous and prevent organisations from providing benefits to the community in keeping with their *purpose*.

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?

We recommend against any sanctions beyond what is required under the ACNC legislation

We do not consider there is a need for sanctions to ensure lawful operations for any particular group which is required to be registered as a charity, beyond what is already required under the ACNC legislation and the general law applicable to all organisations and individuals.

In particular, the ACNC legislation provides for sanctions against a charity (including one which is a DGR) which does not comply with its legal obligations as a registered charity.

If there is a breach of any law, it should be pursued by the relevant authority.

Appendix: Fundamental Principles

In all activities our volunteers, members and staff are guided by the Fundamental Principles of the Red Cross and Red Crescent Movement.

Humanity

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all people.

Impartiality

It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality

In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence

The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service

It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity

There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality

The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.