

# TAX DEDUCTIBLE GIFT RECIPIENT REFORM OPPORTUNITIES

DISCUSSION PAPER

**Submission from**

**baptist care  
australia**

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[www.baptistcareaustralia.org.au](http://www.baptistcareaustralia.org.au)  
[info@baptistcareaustralia.org.au](mailto:info@baptistcareaustralia.org.au), 02 6195 3178  
PO Box 468, FYSHWICK ACT 2609

## WHO WE ARE

Baptist Care Australia is a Christian association of Baptist organisations around Australia. Our members bring life-enriching care to their clients, residents, families and communities. We contribute substantially to the economic, physical and spiritual well-being of Australian communities. Our members have an annual turnover of around \$700 million, employ around 9,000 staff, and engage with more than 2,500 volunteers annually. Each year, our services directly touch the lives of more than 190,000 Australians.

The Baptist Care Australia network serves people in aged care, affected by family violence and homelessness, on low incomes, experiencing relationship breakdown, living with disability and affected by multigenerational disadvantage. Services provided include crisis accommodation, social housing, out-of-home care for children, counselling, no-interest loan schemes, and other services that help people rebuild their lives or live independently with the right support.

Members of Baptist Care Australia are:

- [BaptistCare](#) (NSW & ACT)
- [Baptcare](#) (VIC & TAS)
- [Carinity](#) (QLD)
- [Baptist Care](#) (SA)
- [Baptistcare](#) (WA)
- [Baptist Care NT](#)
- [Ashfield Baptist Homes](#)
- [Village Baxter](#)
- [Maroba](#)
- [Bethshan Ministries](#).

All these member organisations are currently endorsed as deductible gift recipients.

## SUMMARY

Baptist Care Australia broadly supports recommendations in the discussion paper that are designed to simplify and streamline the system for applying for deductible gift recipient endorsement.

It makes sense that endorsed organisations should be registered charities and be subject to the modern regulatory regime set out in the *Australian Charities and Not-for-profits Commission Act 2012* and associated instruments. The emphasis of the current regime on both accountability and red tape reduction strikes the right balance to 'support and sustain a robust, vibrant, independent and innovative not-for-profit sector'.<sup>1</sup>

Well-targeted and proportionate regulatory approaches will maintain high levels of transparency and accountability for charities. Ensuring all deductible gift recipients are registered as charities by the Australian Charities and Not-for-profits Commission (ACNC), as the discussion paper proposes, will help to achieve this goal.

Baptist Care Australia strongly opposes any effort to dictate to charities how they can best pursue their charitable purposes, whether that relates to environmental or other types of charities. In many cases, advocating for change is an important component of pursuing a legitimate charitable purpose.

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<sup>1</sup> Australian Charities and Not-for-profits Commission. ACNC's role. Available:

[https://www.acnc.gov.au/ACNC/About/ACNC/ACNC\\_role/ACNC/Edu/ACNC\\_role.aspx?hkey=88635892-3c89-421b-896d-d01add82f4fe](https://www.acnc.gov.au/ACNC/About/ACNC/ACNC_role/ACNC/Edu/ACNC_role.aspx?hkey=88635892-3c89-421b-896d-d01add82f4fe)

Any restrictions on these activities, or additional and unnecessary reporting requirements, should be categorically rejected.

Existing charity law sets appropriate boundaries for which advocacy activities are acceptable for registered charities, and the ACNC guidance for charities is helpful and reflective of the law. No further changes are justified or necessary.

## REGULATION AND RED TAPE

Baptist Care Australia supports the proposal that eligible organisations should be registered charities before they can be granted DGR status ([question 1](#)).

The regulatory regime set out in the *Australian Charities and Not for Profits Commission Act 2012* and associated instruments emphasises both accountability and red tape reduction. It strikes the right balance to ‘support and sustain a robust, vibrant, independent and innovative not-for-profit sector’.<sup>2</sup>

The ACNC and the ATO both have powers to investigate and make a proportionate response when charities are not meeting their obligations for accountability to the Australian public. It is clear that the ACNC is actively exercising these powers from the number of charities that have had their registration lapsed or revoked.

The discussion paper does not provide any evidence of widespread abuse of DGR status ([question 9](#)). Unless evidence is provided, it would not be an efficient use of taxpayers’ money to establish a formal rolling review program which would be an expensive undertaking. The transparency and accountability of DGRs is important. However, reviews and audits should be conducted only at the point where systemic issues have been identified or certain risk thresholds have been surpassed.

Similarly, unless there is evidence of widespread abuse of DGR status, it is not reasonable to add to the regulatory burden on charities by requiring them to make annual certifications. The policy emphasis for several years has been on red tape reduction for charities. There is currently no compelling argument to reverse that emphasis in relation to DGR status.

If the proposal to transfer the administration of DGR registers to the ATO results in simpler, less complicated processes to approve and monitor DGR status, Baptist Care Australia is fully supportive ([question 7](#)). This transfer process may provide an opportunity to also streamline processes to deliver more robust regulation as well as a reduction in red tape for charities. Once the registers are managed centrally by the ATO, some relatively small changes may be able to deliver risk-based regulation that is more effective and efficient than formal rolling reviews and annual certifications ([question 9](#)).

## CHARITABLE PURPOSE VERSUS ACTIVITIES

The discussion paper mentions both charitable purposes and charitable activities. Charity law focuses on purposes and not activities, and the DGR framework generally has a focus on purpose rather than activity. This is for a good reason. It allows those responsible for charities to devote an organisation’s resources to the most efficient and effective way of achieving its purposes. This allows a flexibility that a pure activities approach might not allow.

Environmental organisations (or any other DGR charities) should **not** be required to spend a nominated proportion of their expenditure on activities specified by the government ([question 12](#)).

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<sup>2</sup> Australian Charities and Not-for-profits Commission. ACNC’s role. Available:

[https://www.acnc.gov.au/ACNC/About ACNC/ACNC\\_role/ACNC/Edu/ACNC\\_role.aspx?hkey=88635892-3c89-421b-896d-d01add82f4fe](https://www.acnc.gov.au/ACNC/About%20ACNC/ACNC_role/ACNC/Edu/ACNC_role.aspx?hkey=88635892-3c89-421b-896d-d01add82f4fe)

Charities and their supporters are in the best position to determine what approaches are most appropriate in order to achieve their charitable purpose. This proposal would directly undermine the ability of charities to undertake activities that most effectively and efficiently achieve their charitable purposes, and increase the regulatory burden of red tape. Baptist Care Australia **strongly opposes** this proposed reform.

The current regulatory regime is clear about which charities can legitimately be established, and ensuring that charities do not have a ‘disqualifying purpose.’ A disqualifying purpose includes:

- a purpose to promote or oppose political parties or candidates
- a purpose to engage in or promote unlawful activity
- a purpose to engage in or promote activities contrary to public policy (which does not include opposing specific policies of the Government).<sup>3</sup>

Any environmental or other charity currently registered by the ACNC will be regulated according to these clear principles. All charities – environmental or otherwise – should be held to the same standards. There is no evidence in the discussion paper or elsewhere that the ACNC is not meeting its statutory obligations to enforce the relevant legislation and regulations, so there is no demonstrated need for additional regulation for environmental (or any other) charities (**question 13**).

## ADVOCACY

Australian charities can undertake advocacy to further their charitable purposes, for example through supporting or opposing relevant government policies and decisions. The importance of this was recognised by the High Court in the *Aid/Watch*<sup>4</sup> decision of 2010, where the Court held that charities undertaking advocacy was essential to Australia’s constitutional system of parliamentary democracy. This decision was subsequently legislated in the *Charities Act 2013*.

Any attempt to silence charities by requiring annual reporting of advocacy activities or any other measures would be to the detriment of civil society (**question 4**). Advocacy is a critical tool to address the causes of social and environmental problems. Addressing the symptoms of a problem is important, but a much greater social benefit can be achieved if the ultimate causes can be addressed. In many cases, policy or regulatory change is needed to solve the root causes of a problem.

There is a suggestion in the discussion paper that some advocacy activities by charities ‘may be out of step with the expectations of the broader community’. No supporting evidence is provided for this claim in the paper. In addition, it is not the expectations of the broader community, but an organisation’s charitable purpose, that must determine a charity’s activities.

The discussion paper provides no evidence that reporting or monitoring of advocacy activities is required to achieve any specific public benefit.

Annual reporting of advocacy would also undoubtedly increase the regulatory burden on charities, contrary to the policy emphasis of recent years (see above).

For these reasons, Baptist Care Australia **strongly opposes** this proposed reform.

END

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<sup>3</sup> Australian Charities and Not-for-profits Commission. 2016. Charities, elections and advocacy. Available: [http://www.acnc.gov.au/ACNC/Reg/Charities\\_elections\\_and\\_advocacy.aspx](http://www.acnc.gov.au/ACNC/Reg/Charities_elections_and_advocacy.aspx)

<sup>4</sup> See *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42, available at <http://www.austlii.edu.au/au/cases/cth/HCA/2010/42.html>