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**THE CHAMBER
OF ARTS AND CULTURE**
WESTERN AUSTRALIA

RESPONSE TO TAX DEDUCTIBLE GIFT
RECIPIENT REFORM OPPORTUNITIES
DISCUSSION PAPER

INTRODUCTION

The Chamber of Art and Culture – Western Australia (the Chamber) welcomes the opportunity to respond to the DGR reform opportunities as set out in the Government discussion paper released 15 June 2017.

ABOUT THE CHAMBER OF ARTS AND CULTURE WA

The Chamber is the state's representative arts body, providing an independent, unified voice for the sector in Western Australia.

The Chamber was formed in October 2010 following the amalgamation of the WA Arts Federation and the Cultural Chairs group with a high-profile Board of Management made up of key WA business leaders, cultural policy-makers, and arts practitioners. The inaugural chairman was Sam Walsh AO. The current chairman is Helen Cook and the deputy chairman is Janet Holmes à Court AC.

The Chamber is a not-for-profit organisation with DGR status that brings the Western Australian arts sector together to debate, discuss and to address the major issues that impact on the promotion and development of arts and culture in Western Australia. Our activities include professional development, research, and the promotion of the value of arts and acts activity for individual and community wellbeing.

It has a membership of 250 arts organisations, individuals, and businesses across the broad spectrum of the arts, individual members, and associates members. The membership includes the not for profit arts and culture sector in Western Australia as well as businesses and individuals with an interest or engagement with arts and culture.

The Chamber believes that a vibrant and diverse arts and cultural scene is essential for economic, social, and personal well-being.

CHAMBER RESPONSE TO DGR REFORM OPPORTUNITIES AS SET OUT IN THE GOVERNMENT DISCUSSION PAPER RELEASED 15 JUNE 2017

The Chamber has prepared this response to the Treasury discussion paper on possible reforms relating to Tax Deductible Gift Recipients (DGR) on behalf of its members (see Appendix 1).

The discussion paper examines governance of DGRs. It proposes:

- harmonising reporting obligations for organisations with DGR status by ensuring all but government organisations with DGR status are charities
- changing reporting requirements and the implementation of agency-led reviews of charities' potential noncompliance regarding allowable advocacy activities
- changing the administrative process for applying for DGR status.

CONSULTATION QUESTIONS 1 – 3

1. What are stakeholders' views on a requirement for a DGR (other than government entity DGR) to be a registered charity 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?
3. Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?

CHAMBER RESPONSE

The proposed changes will have no material effect on most Chamber members and we support proposed changes that all organisations with DGR status, charitable and NFP be required to report to the Australian Charities and Not-for-profits Commission (ACNC), caveating the issues outlined further in this submission. This will strengthen compliance across the sector and help to build confidence and integrity in the charitable sector.

ADVOCACY

CONSULTATION QUESTIONS 4–6

4. Should the ACNC require additional information from all registered 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 a significant additional reporting burden?

CHAMBER RESPONSE

We note that the discussion paper states: *‘There are also concerns that some charities and DGRs undertake advocacy activity that may be out of step with the expectations of the broader community, particularly by environmental DGRs, which must have a principal purpose of protecting the environment.’*¹

*‘The ACNC’s guidance for registered charities (and subsequently for DGRs) help organisations to understand their obligations, particularly for certain types of **advocacy**.*

*‘The ACNC would clearly set out the rules applying to registered charities for the DGRs that become new registered charities, helping to ensure that they understand their obligations, particularly for certain types of advocacy. As with all registered charities, if an organisation does not meet its obligations, the ACNC would be able to take steps to facilitate compliance and **where appropriate** enforce proportionate sanctions, which could include the revocation of registration status leading to the loss of their DGR status.’*

The Chamber is aware that legislation preventing charities from certain types of direct advocacy for political parties and candidates already exists, and to our knowledge those Chamber members that are charities are also aware and compliant with this.

We have concerns that the reforms suggested might impinge on the ability for Chamber members to carry out advocacy activities that support the objects under which they were granted DGR status

¹ Subsection 30–265(1) of the *Income Tax Assessment Act 1997* – Its principal purpose must be: (a) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or (b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

Charitable advocacy on behalf of the arts is an important part of the promotion of the benefits that arts bring to community well-being and cohesion.

The ACNC's advice states: *'Charities can campaign on political issues to advance their charitable purposes, including during election periods, as long as they meet the requirements of charity law and other relevant legislation.'*²

The purpose of a charity is the important determinant—where activities that support that purpose may include support for a specific political candidate, party or policy based on the assessment that such support helps advance the primary purpose of the charity.

The Chamber does not support any illegal activities. However, it also recognises that any government assessment on eligible or ineligible advocacy must avoid undermining our civil society and the potential public benefit that will come from organisations with DGR status pursuing active engagement in the issues that affect their charitable purpose.

A specific activity or set of activities of a charity should not determine an organisation's charitable status or compliance. The discussion paper confuses 'charitable purpose' and 'activities of charities', which is inconsistent with the existing approach to charity law and leaves open the possibility of reforms that bring significantly higher levels of scrutiny to lawful activities—such as advocacy—and cast doubt over the legitimacy of those activities.

In the process of creating art works, artists reflect and respond to their surroundings, create insights into the world and the human condition. They may highlight, celebrate, or advocate viewpoints. For example, a dance, circus, music, or theatre work could include content that explores social, institutional, and political issues and forces of the day.

The extent to which artists engage with these themes can affect artistic vibrancy and excellence, social access, and public discourse. Individual works may, on occasion, be considered as political in nature, but this does not make the organisation that facilitates the artists an advocate for a political party or candidate.

The ACNC advice states: *'A charity's policy position on a matter of concern may be similar, or align with that of a particular political party. In such a situation, it is okay for the charity to continue to campaign on that issue, provided that this does not amount to the charity having a purpose of promoting or opposing a particular political party or candidate.'*

² http://www.acnc.gov.au/ACNC/Reg/Charities_elections_and_advocacy.aspx

The ACNC advice is helpful. It also goes on to acknowledge that where the line is drawn is not clear cut. Revocations of DGR status due to advocacy activity should only occur as a final resort and where significant DGR funds have been diverted away from the advancement of the charitable purpose.

The Chamber strongly believes such determinations require restraint and must themselves be devoid of political influence. Government is potentially conflicted and must be at arm's length from any rulings relating to determining what charitable organisation advocacy activity is or is not compliant.

The discussion paper states: *'Some charities and DGRs undertake advocacy activity that may be out of step with the expectations of the broader community'*. The test for compliance in the legislation does not include a public expectations clause—organisations' donation revenue is collected based on public willingness to donate—and this is where public expectations are impactful.

The issue of eligible or ineligible advocacy is not determined by community expectations in regard to activities; rather it is the eligibility of the purpose of the organisation. What activities will be undertaken by the charity or NFP organisation to serve the purpose of the organisation is a matter for its board. Regulators should not seek to replace the board's view with their view about 'furtherance of purpose' unless there is clear abuse and/or significant non-alignment.

The paper also refers to termination of DGR status *'where appropriate'*. This is a very broad term that requires significant interpretation by the ACNC. The ACNC approach to making determinations is materially shaped by the choice of appointments to leadership positions within the ACNC. Therefore, any such determinations to remove DGR status because of inappropriate advocacy must remain eligible for an affordable, transparent, streamlined independent process of review and appeal.

Proposed introduction of new additional advocacy activity reporting requirements

The discussion paper seeks to treat advocacy as different to other activities undertaken by charities by seeking views regarding a proposal for new reporting obligations for advocacy activities. The Chamber is very concerned about the proposal that additional reporting on advocacy and political activity is under consideration for all charities.

The focus of DGR reform should be on purpose not activities. Our understanding of the Canada experience is that the previous government's introduction of additional reporting and auditing on political activities was expensive, created additional red tape and administrative burden, and failed to deliver any real public value. This approach has now been abandoned.

By moving to an activities-based regulatory environment, the question then moves to what other activities-based reporting requirements will follow and to what extent will charitable organisations then be required to argue the proportionate contribution that these activities make to advance an organisation's purpose.

Government should not determine what minimum or maximum levels of particular activities can or cannot occur in the pursuit of a charity's purpose—that is a matter for the organisation's own governing body to determine.

To require additional reporting necessitates additional ongoing internal reporting and monitoring to meet annual formal reporting requirements. Many of the Chamber members fall within the small to medium organisation category and any extra reporting requirements will be too burdensome.

Activities are often not completely one thing or another and it will require senior assessment to oversee the process of categorisation and apportionment—even when the organisation expects year on year to be fully compliant.

While the paper suggests there is some concern around political activities carried out by some environmental organisations the proposal here is suggesting a change in reporting for all organisations with DGR status. This potentially creates additional reporting burdens for thousands of organisations outside the particular area of concern, and increases the administration workload of the ACNC.

CHAMBER RECOMMENDATIONS

- The government should not require all charities to provide additional information on their advocacy activities. The introduction of such a requirement has the potential to generate more red tape for the ACNC, the ATO and the charities, and casts doubt and uncertainty over what activities a DGR entity can lawfully undertake.
- There is no evidence that the current legal approach that requires compliance to 'charitable purpose' is a fundamentally inadequate approach to regulating the sector; therefore, the primary approach to regulating compliance should be based on charitable purpose.
- The ACNC has the authority to request information or to instigate a review, and the Chamber strongly recommends that this is only activated where a public complaint of substance has been made to the ACNC, or where standard reporting has identified potential compliance breaches.
- If information is to be collected, it should be as part of the annual reporting requirements and should be designed as a simple single tick box to indicate if the organisation has or has not been actively engaged in political activities that do not relate directly or indirectly to the advancement of the purpose of that charitable organisation.

REDUCING COMPLEXITY – AUTHORISING AGENCY

CONSULTATION QUESTION 7

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?

The discussion paper states: *'It is proposed this would simplify the application process for DGRs, if the administration of the four DGR Registers could be transferred to the ATO'.*

The proposal outlined in the discussion paper is that the ROCO list would no longer be administered by Department of the Arts; instead, applications would be received by the ACNC and administered by the ATO.

CHAMBER RESPONSE

Most Chamber arts organisations members are already on the ROCO registry and are not affected by the current administrative delays that new applicants experience, which the proposed new administrative arrangements is seeking to address.

The long delays are not necessarily because of a specific department's involvement. Treasury's approval is also required and Treasury's priorities can be diametrically opposed to those of specific departments currently managing their specific DGR registries. There is a tension created by Treasury and the ATO granting DGR status—a status that provides a vehicle to generate funds towards a public good by forgoing government revenue—given both Treasury and the ATO have a core focus of collecting government revenue.

The discussion paper suggests the changes proposed would deliver a one-month DGR application process. The Chamber would welcome this if the process supports making the *'right'* decisions. Moving the registries to the ATO in and of itself does not guarantee a better and faster process.

The discussion paper sets out the process as follows:

'Under this proposal, all new applicants would need to apply once to the ACNC for registration status and nominate to be considered for endorsement under one of the general DGR categories, which includes the four DGR Registers.'

Once registration status is approved, the ACNC would pass the information to the ATO to assess an organisation's eligibility against the requirements of the tax law in respect of that general DGR category. It is expected that this process could be completed within a month of the correct information being supplied in the application. A Treasury Minister would continue to have oversight of administration.'

*'When the four DGR Registers were established, it was considered that each agency should administer their specific register as they would have the expertise to assess applications against the requirements of the Income Tax Assessment Act 1997³. Under the proposed transfer, the ATO would assess applications against the requirements of the tax law. The **ATO would be able to call on the expertise in the relevant government agency** on a case- by-case basis, if required.'*

The discussion paper proposes an administrative system that is likely to streamline requirements for all charities to gain DGR status by empowering the ACNC to determine charitable status as well as make recommendations to the ATO on DGR eligibility. However, the Chamber can see a potential conflict of interest given the ATO, as an agency that seeks to effectively raise government revenue, is then the authority that grants DGR status, which potentially reduces the government's tax base.

By moving the process away from the specified portfolios' Ministers and their departments, there is the possibility that specialised knowledge and insight is removed from this process and could lead to decisions that are not in the best interests of the public good that the applying organisation is seeking to support.

The proposed process does allow the ATO to seek input, but does not grant government agencies with specialised knowledge special access or status in the application process.

It is stated that it is the ATO that determines if it does or does not choose to be informed by specialised knowledge. In the case of the Arts, the Minister for the Arts and the relevant agency have a specific role in supporting the public good that the Arts create, and are the most suitable authority for input should speciality knowledge be helpful for the applicant **or** for the ATO.

CHAMBER RECOMMENDATIONS

The Chamber supports streamlining the DGR application process with the following amendments in relation to the involvement of specialised knowledge in the assessment process:

- A separation of powers within the ATO to ensure revenue raising priorities do not influence ATO assessment of DGR eligibility against the legislation on its own merits.
- Government resources and reporting mechanisms ensure processing timelines meet one-month targets.
- the Ministers and their departments currently responsible for administration of the four registries are not only able to be called upon to provide expert knowledge or information by the

³ For example, for environmental organisations, see section 30-290 of the ITAA 1997 http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s30.250.html

ATO, but that they may also instigate the call for specialist information to be considered in the assessment process.

The Chamber supports rationalising the DGR legislation to address the issue of single NFP organisations involved in multiple activities—all of which would individually qualify for DGR status—experiencing difficulties in gaining DGR status.

The discussion paper proposes; *'Regular reviews could be undertaken by the ACNC and/or ATO to ensure an organisation's DGR status was up to date and to provide confidence to donors wishing to claim tax deductions for donations. In addition, DGRs could be required to certify annually that they meet the DGR eligibility requirements, with penalties for false statements.'*

The Chamber does not support additional red tape. Bringing all organisations with DGR status under the ACNC will provide opportunities for broader analysis of sector data. The ACNC can regularly review the data supplied—this is appropriate and does not introduce additional red tape.

The Chamber believes that the ACNC and not the ATO is the appropriate body to undertake individual or sub-sector reviews or seek further information.

Henry Boston



**Executive Director
Chamber of Arts and Culture WA**

Date: 2 August 2017

APPENDIX 1: CHAMBER MEMBERS

ARTS ORGANISATION MEMBERS

Aboriginal Art Centre Hub WA
Another Antipodes Inc.
Art Collective WA
ART ON THE MOVE
Artrage Inc
ARTrinsic Inc
Arts Margaret River Inc
ARTS Narrogin Incorporated
Artsource
artsouthWA Inc
Ausdance WA
Australian Cinematographers Society
Australian Society of Archivists, WA Branch
Awesome Arts Australia Ltd
Barking Gecko Theatre Company
Black Swan State Theatre Company
Bunbury Regional Entertainment Centre
Carnamah Historical Society & Museum
Centre for Stories
Charlesworth Ballet Institute
CinefestOZ
CircuitWest Inc
Circus WA
Collegium Symphonic Chorus Inc
Community Arts Network WA (CANWA)
Contemporary Dance Company of Western Australia
Country Arts WA
Culture Counts Australia Pty Ltd
DADAA
Fashion Council WA
Fliptease Pty Ltd also training as Access Circus
FolkWorld Inc.
FORM building a state of creativity Inc.
Fremantle Arts Centre
Fremantle Chamber Orchestra
Fremantle Press
FutureNow
GAWA (Glass Artists of WA)
Heritage Perth
History Council of Western Australia
International Art Space (spaced)
JMGAWA Inc
JumpClimb
Just Improvise
Kimberley Aboriginal Law and Culture Centre
Lawrence Wilson Art Gallery
Lockwood Productions
Lost and Found Opera
Madjitil Moorna Inc
Mandorla Art Award
Mandurah Performing Arts Inc
Media Entertainment Arts Alliance
MILITARY ART PROGRAM AUSTRALIA
Mossenson Galleries
Mundaring Arts Centre Inc
Museums Galleries Australia Western Australia
Musica Viva
North Midlands Project
Ochre Contemporary Dance Company
Parallax Productions Pty Ltd

Performing Arts WA
Performing Lines WA
Perth Centre for Photography
Perth International Arts Festival
Perth International Jazz Festival
Perth Public Art Foundation
Perth Symphony Orchestra
PICA
Professional Film Crew of Western Australia
Professional Historians Association (WA)
Propel Youth Arts WA
Push Management
Regal Theatre Foundation Limited
Revelation Perth Film Festival
RTRFM 92.1
Screenwest
Spare Parts Puppet Theatre Inc
Squire Patton Boggs
Strut Dance
SymbioticA
The Actors Hub
The Actors Workshop
The Blue Room Theatre
The Creative Corner Inc.
The Gelo Company
The Last Great Hunt
The Literature Centre Inc.
The West Australian Music Industry Association
Tura New Music
Turner Gallery
Umbrella Works
UWA Publishing
Victoria Park Centre for the Arts
WA Museum Foundation

WA Venues & Events Pty Ltd
WA Youth Jazz Orchestra Assoc.inc
WA Youth Orchestra
WASO
West Australian Ballet Company Inc
Western Australian Academy of Performing Arts
Western Australian Opera
Western Australian Youth Theatre Company
WritingWA
Yirra Yaakin Theatre Company

INDIVIDUAL MEMBERS

Aine Whelan
Alan Dodge AM CitWA
Alan Taylor
Alanna Kusin
Alison Gaines
Alison Welburn
Amanda Alderson
Amanda Kailis
Andrew Batt-Rawden
Andrew Lu
Andy Farrant
Anita Sykes-Kelleher
Ashley Cole
Barbara Willinge
Barrie Lepley
Barry Strickland
Bill Leadbetter
Bill Seager
Carmen Lawrence
Carola Akindele-Obe
Ceri Nordling

Connie Petrillo	Lorna Secrett
David Hough OAM	Lyn DiCiero
David Mogridge	Mal DiGiulio
Deborah Pearson	Margaret Moore
Eddy Krajcar	Margaret Seares
Frederick Nagle	Margaret Sommerville
Gary Mack	Margrete Helgeby
Gaye McMath	Mark Barnaba
Gene Tilbrook	Michael Chappell
Graham Hay	Michael Smith
Helen Carroll	Michael Stanford
Helen Cook	Michael Tucak
Helen Curtis	Morgan Solomon
Helen Tuckey	Natalie McKevitt
Helena Sahn	Paola Anselmi
Ian Lilburne	Patrick Quigley
James Boyd	Paul McPhail
Jan Stewart	Peter Kift
Jane King	Pilar Kasat
Janelle Marr	Pina Caffarelli
Janet Holmes a Court AC	Rachael Dease
Jenny Kerr	Rhonda Flottmann
Jo Wilkie	Robert Marshall
Joanna Robertson	Robyn Johnston
John Langoulant	Rosemary Fitzgerald
John Maloney	Russell Gibbs
Jordan Gibbs	Sally Richardson
Jude van der Merwe	Sam Walsh
Judith Fisher	Sandy Anghie
Julian Bowron	Sarah McQuade
Kayla MacGillivray	Sarah Vallentine
Kim Jameson	Shane Colquhoun
Liesbeth Goedhart	Shona Treadgold
Linda Savage	Stephen Bevis

Tabitha McMullan

Terry Grose

Tish Oldham

Vivienne Glance

Warwick Hemsley

Wendy Wise

John Barrington

John Gregg

KPMG

Library Board of Western Australia

Linton and Kay Galleries

Localise Pty Ltd

Mary-Ellen King

Matthew Blampey

Michael Rees

Moira Nigam

Neale Parsons

Perth Theatre Trust

Pride Western Australia

PSZ Partners

Quality Press

Rebecca Ball

Scoop Publishing

Shire of Augusta Margaret River

Shire of East Pilbara

Shire of Yalgoo

Shirley McPherson

Starlight Children's Foundation

Stephen Dawson

Suzie Haslehurst

TEDxPerth

The Event Agency

Tianqi Lithium Australia

Tim Clifford

Town of Bassendean

Town of Victoria Park

Valli Batchelor

Western Australian Museum

ASSOCIATE MEMBERS

Art Gallery of Western Australia

Bev East

City of Bunbury

City of Busselton

City of Canning

City of Fremantle

City of Gosnells

City of Joondalup

City of Mandurah

City of Melville

City of Perth

City of Rockingham

City of South Perth

City of Stirling

City of Subiaco

City of Wanneroo

Elaine Forrestal

EY

Fiona Reid

FJM Property

Georgia Malone Consulting Pty Ltd

Georgiou Developments

Graeme Lush

Great Southern Development Commission

Hassell