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The Treasury  
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Dear Ms Bultitude

### Tax Deductible Gift Recipient Reform Opportunities

Chartered Accountants Australia and New Zealand (**Chartered Accountants ANZ**) welcomes the opportunity to provide a submission regarding the discussion paper entitled “Tax deductible gift recipient reform opportunities”.

### Support for rationalisation

Chartered Accountants ANZ supports the proposal to require deductible gift recipients to be a registered charity.

Chartered Accountants ANZ has consistently advocated for better data sharing and data convergence between entities at all levels of government which should result in both reduced administrative costs for government and reduced compliance costs for citizens.

Such initiatives are particularly important for charities given their limited resources and public benefit goals.

Accordingly, Chartered Accountants ANZ also supports the rationalisation of the deductible gift recipient (**DGR**) application process.

### Advocacy is part of a charity's role

The dividing line between advocacy and education, and between promotion and activism is a fine one. Education, promotion and advocacy are core operations to any charity.

Additionally, Australian governments at all levels rely heavily on the advocacy work undertaken by charities as this work positively and usefully informs policy, program implementation and legislative frameworks. Without such advocacy, government responses to the challenges facing our nation would be adversely impacted.

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Chartered Accountants ANZ does not support the proposed advocacy restrictions for charities, but does see scope for the ACNC to call upon a charity to provide detailed information about its advocacy and strategy.

### **Environmental organisations**

Chartered Accountants ANZ declines to comment on this aspect of the discussion paper.

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Our detailed response to each of the questions raised in the discussion paper is attached in Appendix 1.

Appendix 2 contains background information about our organisation.

I would be happy to discuss any aspects of our submission with you. I can be contacted on (02) 9290 5609 or by email at: [michael.croker@charteredaccountantsanz.com](mailto:michael.croker@charteredaccountantsanz.com)

Yours faithfully,



**Michael Croker**  
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**Chartered Accountants Australia and New Zealand**

## Appendix 1 - 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.**

As a general concept, the proposal that it be a requirement that an organisation (other than a government entity DGR) be registered with the ACNC to obtain DGR status is supported.

The ACNC has proven to be a sound regulator which also provides common sense guidance and a range of helpful products to registered charities.

Obtaining DGR status is a privilege which would benefit from oversight by the ACNC and improve confidence in the community that there is appropriate governance and transparency. It also reduces complexity by having one set of rules for all DGRs.

It is not clear why, once this measure has been enacted, that a Treasury Minister should have a discretion to propose to Cabinet that an organisation receives DGR status when it is not a charity<sup>1</sup>, indeed it seems contrary to the public policy direction that is being undertaken.

Further, the Charities Act 2013 provides relevant definitions and establishes an effective and logical framework for charitable status to be applied. The idea that this should be bypassed by a Minister seems neither necessary nor wise.

Implementation issues which could arise include:

- The proposed 12 month period for existing DGRs to register<sup>2</sup> once the legislation receives Royal Assent seems reasonable. This period may be too short for some however, and leeway should be provided to those that fail to meet the registration deadline having made reasonable efforts to do so.
- Organisations which unsuccessfully apply for registered charity status may pursue avenues for review of the ACNC decision (thus cost, timeliness and resourcing issues may arise).
- We would expect that some “defunct” DGRs will emerge as a result of the proposed registration process. Other DGRs may prove hard to find because contact information has not been kept up to date or relevant office holders have moved on. ACNC and ATO resources will need to be devoted to identifying as many active DGRs as possible.
- The additional work for the ACNC will need to be resourced adequately.

- 2. Are there likely to be DGRs (other than government entity DGRs) that could not meet this requirement [i.e. be a registered charity with the ACNC] and, if so, why?**

At this stage, it is difficult for Chartered Accountants ANZ to provide specific comments on this proposal. This is because detailed analysis regarding the 2,240 (8% of 28,000 organisations endorsed as DGRs) organisations that have DGR status but are not

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<sup>1</sup> Page 8 of the discussion paper.

<sup>2</sup> Page 8 of the discussion paper.

registered as a charity with the ACNC was not provided in the discussion paper<sup>3</sup>.

We envisage that resourcing the proposed registration process will be an issue for some DGRs with limited resources. The ACNC could assist in this regard by further streamlining existing processes and allocating additional staff to education and client assistance roles. Temporary funding for the ACNC would assist.

**3. *Are there particular privacy concerns associated with this proposal [namely that a DGR be registered with the ACNC] for private ancillary funds and DGRs more broadly?***

Transparency is important not just for large multinational taxpayers, but also charities.

The public needs to know that donated funds are being spent wisely, and predominantly for the benefit of the stated cause. There have been unfortunate examples where the management and conduct of some private ancillary funds in particular have fallen short of public expectations and it is important that the sector address perceptions in some quarters that governance standards are not as high as they should be.

The discussion paper notes that the ACNC register includes core information on all registered charities, including name, contact details, governing documents, names and position of people on their governing bodies, and financial reports (for medium and large charities). The discussion paper also notes that private ancillary funds can ask the ACNC to withhold or remove some information from the ACNC Register, such as information likely to identify individual donors.

In our opinion, the existing provisions seem sufficient.

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

Advocacy is a difficult concept to define and there is scope for legitimate differences of opinion as to whether a particular activity constitutes advocacy.

In some cases, such disagreement relates more to the way in which organisations seek to advance a cause and suspicions sometimes arise about whether there is some “other” agenda. Such problems arise particularly where proper governance is lacking, or a charity is to varying degrees “captured” by a clique of individuals intent on pursuing a particular course of action.

In a big picture sense however, we see advocacy activities as an important and productive part of the relationship between government and charities in a well-functioning democracy. Governments at all levels rely on charities’ advocacy activities to support policy development, program implementation and legislative developments.

Further, these advocacy activities do not necessarily impact government at all. Indeed, many advocacy activities are undertaken within the charitable sector and support and assist the implementation of service delivery and program enablement. For instance, disability advocates spend a considerable proportion of their time advocating on behalf of service users by engaging with charitable service providers and do not involve government at all.

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<sup>3</sup> The only information provided in relation to these entities is that “they are comprised primarily of some registered environmental and cultural organisations, some ancillary funds, public funds for persons in necessitous circumstances, some public ambulance committees, volunteer based emergency services public funds, some museums, and some school building funds”. Refer footnote 16 of the discussion paper.

The discussion paper notes that there are concerns that charities and DGRs are unsure of the extent of advocacy they can undertake without risking their DGR status and proposes that the ACNC would clarify the rules for DGRs that become **new** registered charities.

The ACNC has already developed resources (e.g. the ACNC Commissioner's Interpretation Statements) that assist in this regard. We note too that the ACNC already monitors some advocacy activity in real time, although there is a question whether it has the resources to act quickly where it feels it is appropriate to do so.

It is not clear how having the ACNC require additional information from **all** charities about their advocacy activities will help clarify the extent to which advocacy is allowable. In many cases, such information will not be utilised by the ACNC and all that is achieved is added compliance cost to the charities in providing the information in the requested format etc.

Nor is it clear why reporting is required for **all** charities when it is proposed to clarify this only for **new** charities.

We support the “middle way” here, and that is for the ACNC to be able to seek additional information from those charities which it identifies as at risk of going beyond acceptable bounds, or which attract complain.

##### **5. *Is the Annual Information Statement the appropriate vehicle for collecting this [advocacy] information?***

As noted above, we do not consider that this is necessary.

However, if this proposal proceeds then the Annual Information Statement is considered to be the appropriate vehicle. This is because – in the majority of cases – advocacy is an on-going, almost day-to-day activity and takes many forms.

We would expect that the ACNC would accept a general description of such on-going advocacy efforts in its Annual Information Statement and design the form in collaboration with stakeholders in a way which makes such reporting as easy as possible.

However, there will also be situations where a registered charity’s advocacy efforts are part of a much more deliberate, planned campaign which utilises a substantial amount of the charity’s resources. Examples here include a public campaign to change (or enact) a particular law.

For advocacy of this nature, we see merit in the ACNC developing a collaborative relationship with medium and large charities whereby such campaign planning is shared with the ACNC on a real-time basis. Clear thresholds would need to be set to trigger such disclosure.

An analogy here is with the ATO advance private ruling procedure available to taxpayers or the more detailed tax reporting applicable to large corporate taxpayers. Such disclosures help both the ACNC (in administering the law and its public guidance) and the registered charity (in terms of keeping its registration status and thereby its DGR status). It also helps minimise the potential for disputes to arise after the charity’s campaign has been launched.

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

Refer above comments.

**7. *What are stakeholder's 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 indicates that the application process for a DGR is cumbersome due to the numerous avenues of application<sup>4</sup> and the number of Departments / Ministers involved – particularly for organisations that need to apply through any one of the four DGR registers.

The discussion paper also notes that as of 17 February 2017, around 54,800 charities were registered with the ACNC and that there were 28,000 DGR organisations (of which 8% were not registered charities or government entities).

As noted in the discussion paper, this proposed action is consistent with earlier recommendations by committees which have considered the matter and the benefits of streamlining the registration process are obvious.

The discussion paper proposes that the ATO retain its existing DGR register responsibilities and acquire responsibility for the four additional DGR registers that involve other government departments.

The discussion paper does not consider the possibility of the ACNC taking responsibility for all DGR registers.

Treasury would be aware that there are differing views on this question. Some see the ATO as the preferred regulator for DGR applications as it has responsibility for administering tax concessions. Others prefer the ACNC as it is the independent national regulator of charities, and has considerable expertise and capacity for making timely and informed decisions regarding eligibility in this complex sector.

Chartered Accountants ANZ believes that further consideration of both options is desirable.

**Issues to consider if administration of the four DGR registers moves to the ATO**

We expect that some of those organisations currently listed on the four DGR Registers will seek greater information about the ATO's processes should the proposed action be adopted.

There will be understandable concerns that the officials currently responsible for the four DGR Registers are somehow more sympathetic to the particular cause of those applicants currently referred to them as well as those already registered.

In different contexts (such as the Research & Development Incentive), there have been concerns expressed in the past about whether the ATO has a natural instinct to give revenue considerations precedence over other factors. It would be useful therefore for Treasury to develop a model which better describes the process mentioned in paragraph

<sup>4</sup> Direct to ATO, notifying the ATO through the ACNC, directly through the Minister for Revenue and Financial Services or through one of the four DGR registers that are administered separately by the Department of Foreign Affairs and Trade, the Department of Social Services, the Department of the Environment and Energy, and the Department of Communications and the Arts.

43 (i.e. how will the ATO work draw upon the expertise of relevant Government agencies).

In terms of exactly how the ATO will “assess applications against the requirements of the tax law” (para 44), there will also be concerns that the ATO will develop new interpretative approaches and might even resort to litigation to clarify the eligibility of a particular applicant.

In this regard, consideration should therefore be given to:

- The establishment of a dedicated business unit within the ATO to handle the DGR stakeholder group. Such a group already exists, but it can be difficult for externals to identify who “owns” this segment in the ATO, and the current ATO structure does not have a specialist Deputy Commissioner leading this function.
- A review of the adequacy and effectiveness of current ATO consultation arrangements with this sector. The ATO’s current external consultation forum for the sector – known as the Not for Profit Stewardship Group – may need to be revamped if the ATO is to take on additional functions.
- The contemporaneous development and publication of ATO guidance in association with the four government agencies which will hand over their registry functions.
- The transfer (or at least secondment) of relevant staff from those four agencies to the ATO, together with relevant intellectual property (e.g. precedents, guidance, databases).
- Clarification of the ATO’s test case funding approach should a dispute arise regarding eligibility to register with the ATO.

In other words, organisations impacted by the move from the four agencies to the ATO should be given confidence that there will be some continuity of both administrative practice and corporate knowledge of their sectors.

#### **Arguments for administration of the four DGR registers to move to the ACNC**

The ACNC has, over the life of the organisation, built up considerable expertise and capacity for making timely and informed decisions regarding eligibility in this complex sector. Making the ACNC the central authority could reduce the regulatory burden on charities and allow those with specialist skills within ACNC to effectively monitor and review charities. To assist in this process staff that undertake these operations within the ATO and the other departments could be transferred to the ACNC which has an ongoing collaboration agreement with the ATO. This may generate savings for both the government, charities and society.

#### **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?**

##### **(a) Public fund requirements**

CA ANZ supports the removal of the public fund requirements for the reasons given in the discussion paper, but note the continued relevance of existing ATO and ACNC “good financial

“housekeeping” rules (e.g. money of a gift fund should not be mixed with other money of the DGR and there should be clear accounting procedures).

There is perhaps a concern here from an ATO perspective however. According to the ATO’s current guidance, amounts that are not gifts or deductible contributions are not to be credited to a gift fund.

These include:

- receipts from sponsorships or commercial activities; and
- proceeds of raffles, charity auctions, dinners and similar events, if the proceeds are not deductible contributions.

We mention this in that the ATO’s compliance or money-tracing functions may be impacted by this particular recommendation. Obviously, the ATO is better placed to comment in its submission to Treasury although we are aware that the ATO is concerned that charitable gift deductions are being over-claimed by some in our community.

Guidance on the accounting for investment returns where *pooled* funds (not just from the public fund) are invested may need to be reviewed should this proposed action be implemented.

Consideration should also be given to how this proposed action impacts the “winding-up” requirements that currently apply. At the moment, a DGR must be required by a law, its constituent documents or governing rules to transfer any surplus assets of the public fund to another gift deductible fund, authority or institution if certain events happen.

Presumably, the focus of this winding-up requirement would shift so that it encompasses not just the public fund but also the DGR’s broader assets.

#### **(b) Endorsement in multiple DGR categories**

Endorsement in multiple DGR categories is also supported, subject to enhancements which would presumably become necessary to the current look-up tools made available by both agencies.

Here again however, we note that the ATO may have some concerns as to how donations are tracked etc for compliance purposes.

#### **(c) “Responsible person”**

Practical alignment of the definition of “responsible person” is also supported.

This has been a long-held frustration within the sector and one raised regularly at the ATO’s Not for Profit Stewardship Group meetings and other forums.

However, the discussion paper does not address the effective sharing of data between the ATO (and ABR) and ACNC about who the authorised contact is, and whether an organisation has ceased to maintain a contact point for the regulators.

Treasury may wish to check whether existing data-sharing is working effectively.

**9. What are stakeholders' views on the introduction of a formal rolling program and the proposals to require DGRs to make annual certifications? Are there other approaches that could be considered?**

**(a) Formal rolling review**

CA ANZ supports this proposed action in principle, for the reasons outlined in the consultation paper.

We would however suggest further design input from stakeholders. For example, consideration should be given to the differing size and longevity of DGRs. A start-up DGR could be subject to more regular reviews to help it succeed (many overlook the fact that, like small businesses, start-up DGRs can fail), whereas an established DGR with good governance, management and accounting procedures in place might be reviewed less regularly.

Again, drawing on a tax analogy, CA ANZ is attracted to the notion that DGRs earn "justified trust" from the regulators.

The scope, design and implementation of rolling reviews is also an important topic to discuss with stakeholders. Here there would be learnings from audit methodologies and CA ANZ would be happy to discuss these at a later date should the proposed action be implemented. The nature of the DGR sector is that a "one size fits all" approach is unlikely to succeed.

An important, beneficial outcome of the formal rolling review process would be the further development of best practices within the DGR community, provided of course that the regulators actively contribute to the socialisation of best practice ideas etc. CA ANZ notes that this knowledge sharing could form part of existing programs which identify and recognise DGRs which operate to a high standard.

**(b) Annual certification**

CA ANZ also supports annual certification. This not only reflects good governance, but provides an important self-assessment opportunity for the board and management of DGRs.

We note however that annual certification may, for some DGRs:

- Raise concerns over the potential liability of directors and management for inadvertent false or misleading statements to the regulator.
- Flowing on from the previous comment, result in a perceived need for higher levels of assurance (or "sign-off") from professional advisers.

**(c) DGRs established by Government announcement**

We have assumed that the proposed actions for rolling reviews and annual certification apply equally to DGRs established by the Government (often following natural disasters or tragedies such as the murders which recently occurred in Burke Street Mall, Melbourne).

To give the public greater confidence that their donations will be well spent, it would be appropriate for such Government announcements in the future to allude to the fact that DGRs (such as the Burke Street Fund) must adhere to the requirements such as those outlined in the proposed actions.

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

Governance failures should trigger reviews of DGR status along with substantial changes of operations or purposes.

**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?***

**(a) A five year general sunset rule**

We support this proposed action, although we can envisage scenarios where a longer initial sunset clause would be warranted (e.g. major natural disasters). Some Ministerial flexibility should be built into this proposed action.

**(b) Existing listings**

We also support a review every five years for existing listings. There have been instances where bad publicity has accompanied the seemingly on-going nature of some government announced specific purpose DGRs, and it is important to counter public concerns over any unexplained delays in getting donated funds to their intended destination.

Again, there will be some DGRs who will mount legitimate arguments that the five year review period is too short, especially for long-running projects (e.g. where the victims' eligibility may take time to emerge or there is difficulty in quantifying the victims' financial loss). Some DGRs might also complain that the five year review period makes it difficult to engage in long-term planning, recruit staff.

Nonetheless, five years is a reasonably lengthy period for a DGR to be expected to attest that it is still on track with its originally stated purpose, and well run DGRs should have little to fear from the process.

***Parliamentary Inquiry into the Register of Environmental Organisations***

The questions under this heading of the consultation paper raise issues which reflect differing political views on the advocacy of environmental organisations which have attained DGR status.

Unlike the previous consultation questions which relate to good governance and community confidence that DGRs actually do the good works they were established to do (i.e. a public interest focus), these particular consultation questions partly reflect (in our view) a political agenda.

As a non-political, bi-partisan organisation, Chartered Accountants ANZ declines to address these consultation questions.

## Appendix 2 - Chartered Accountants Australia and New Zealand

Chartered Accountants ANZ is made up of over 100,000 diverse, talented and financially astute professionals who utilise their skills every day to make a difference for businesses the world over.

Members of Chartered Accountants ANZ are known for professional integrity, principled judgment and financial discipline, and a forward-looking approach to business.

We focus on the education and lifelong learning of members, and engage in advocacy and thought leadership in areas that impact the economy and domestic and international capital markets.

We are represented on the Board of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance, and Chartered Accountants Worldwide, which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries