

Response by Community Resource Network to the: Australian Government

Tax Deductible Gift Recipient Reform Opportunities (15 June 2017)

CRN welcomes the opportunity to comment on this Consultation Paper and would be only too happy to be contacted if there are any enquiries on any comments made.

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Community Resource Network (CRN) Inc.

Community Resource Network (CRN) is the sub-regional peak organisation working mainly in The Hills, Blacktown and surrounding local government areas in Western Sydney, NSW. CRN is funded through the NSW State Government, Family & Community Services Community Builders program. CRN represents over 70 not-for-profit members as well as engaging a wide network of community services who support highly financially and socially disadvantaged communities. We support local community sector organisations in their work through various resources, supports and expertise. CRN works with these organisations and communities under four key areas: Capacity building; Representation; Information & Referral; and, Communications.

CRN is an Incorporated Association registered under NSW Legislation and is a registered charity with the Australian Charities and Not-for-Profits Commission (ACNC).

CRN welcomes this Consultation and is interested in the outcomes from submissions and future policy directions and legislation.

For the purposes of this Consultation response, the term “organisation” refers to not for profits, for purpose, or other terms used in the community sector.

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?**

CRN supports that all entities that receive DGR status (other than government entity DGRs) be a registered charity. This provides an equitable arrangements and common reporting obligations for organisations with DGR status. The issues that this could cause would be:

- (i) In the transition period, as accountability and reporting systems change, e.g. as what occurred when *Companies Limited by Guarantee* moved their reporting obligations from the Australian Securities & Investment Commission (ASIC), with organisations receiving letters from ASIC requesting reporting figures after the one lodgement point through the ACNC, had commenced. Therefore, ensuring that good system management is put in place.
- (ii) It may be presumed that this would add some work to an organisation's compliance obligations requiring greater administrative and legal supports over the transition period, particularly for small organisations. Although, over time this would become part of standard governance requirements.
- (iii) Also, it would likely increase the heavy workload of the managing government agency, which CRN presumes would be the Australian Taxation Office and/or, in conjunction with, the ACNC. Therefore, requiring a cost shift between government departments from the four DGR registries.
- (iv) CRN recommends that all organisations registered as a charity with the ACNC should have DGR status. The fact that some, but not all, organisations in the not for profit sector can obtain DGR status creates inequities in terms of access to funding opportunities. (DGR status is required now for a majority of grant applications.) Also, tax concessions received by employees in PBI/DGR organisations attracts and retains skilled and qualified staff in an already low-paying sector. Thus creating an inequity for many charitable organisations across Australia.

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

CRN cannot see any impediment to an organisation (other than government entity DGRs) that could not meet this requirement.

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

CRN will not comment on the private ancillary funds as it is not within our remit. CRN does not see a privacy issue in relation to DGR organisations more broadly, particularly when these organisations receive an indirect financial contribution through tax concessions. Organisations should be accountable. The publication of appropriate, and non-sensitive information (negotiated by an organisation) should be part of compliance and reporting obligations. While the consultation paper notes that the “the cost to the Commonwealth of deductions from donations to DGR organisations is \$1.31 billion in 2016-17”, it should be noted that the Productivity Commission stated that the sector contributed \$43 billion to Australia's GDP, and 8 per cent of employment in 2006-2007.¹ In addition to this the volunteer contribution (from the calendar year 2010) has been estimated at \$200 billion².

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

It could be said that organisations that work in the community sector, invariably operate doing some form of advocacy for their clients as part of their everyday work. For the purposes of this paper it is a concern that the ACNC would require additional information from all charities about their advocacy activities. The paper does not

¹ 'Contribution of the Not for Profit Sector', 2010, Productivity Commission, Government of Australia.

² 'Key facts and statistics about volunteering in Australia', 2015, Volunteering Australia, accessed 26/7/2017 <https://www.volunteeringaustralia.org/wp-content/uploads/VA-Key-statistics-about-Australian-volunteering-16-April-20151.pdf>

give enough detail around what the requirements of what “additional advocacy activities” would mean. There is a vast amount of experience and ‘on the ground’ knowledge in community services, CRN sees that any attempt to regulate advocacy activities could be at the detriment of robust government policy development processes.

An organisation would have received their DGR status based upon their operational and constituted purpose as outlined in their application. If they are not following their original purpose then there needs to be protocols in place to deal with this. While the ACNC have published informative papers and fact sheets around these matters, it still can be very confusing. Also, there is often a no difference between the operations and purposes of organisations that get PBI and DGR status on their application, to those who are advised that their organisation would not get it; when they are doing similar work.

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

CRN supports the continuance of the Annual Information Statement (AIS) as the appropriate vehicle for collecting appropriate information. In relation to collecting “this information”, CRN presumes that this is related to the “advocacy activities”. Again, there is not enough detail contained in the paper for a fuller response. At present the AIS requires the presentation of accounts (audited, where required) which are uploaded and published on the ACNC charities register; and, the completion of a detailed report that is not available publicly. Although, this only would cover those organisations registered as charities. Small registered charities, being those with revenue under \$250,000.00 per annum (ACNC), have the option to present, or not, a financial statement. CRN sees that, no matter what the size of a charity, a financial statement should be presented.

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

Again, this does not clarify whether it is related to the “advocacy issues” or general operations of an organisation. The presumption in this response is that all DGR organisations have now become charities and are registered with the ACNC and appropriate questions can form part of the Annual Information Statement. (This presumption is verified in Point 40 of the Consultation Paper.)

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?

CRN supports the proposed transfer of the administration of the four DGR Registers to the ATO. CRN supports this due to having common compliance reporting obligations across all organisations and, certainly, supports the consultation with all parties and stakeholders before any additional Annual Information Statement questions were introduced. There would need to be a transition period with the introduction as previously mentioned in the paper at Question 4. There is an inequity amongst organisations in the sector, where some organisations receive DGR status and others, doing almost similar work, do not receive it. There needs to be some type of review process for organisations being asked to withdraw their application, particularly where they can show similar organisations that have received DGR status.

There is nothing in the Discussion Paper mentioned about Aboriginal & Torres Strait (ATSI) Corporations and if there are any impacts on them through this Consultation. Question 3 of the Discussion Paper looks at privacy concerns for organisations with DGR status, we believe the same privacy considerations should be extended to Aboriginal Corporations. CRN has received feedback regarding concerns for privacy for Aboriginal Corporations in our area because Board Members and some senior employees must have their private addresses listed in documents that are publically available on the Office of Registrar of Indigenous Corporation website.

CRN asks how whether any ATSI Corporation issues will also be addressed? We would like to see further consultation with Aboriginal Corporations and consideration of whether the Office of Registrar of Indigenous Corporation should also be amalgamated to ensure there is equity and consistency in the requirements of Aboriginal Corporations. At the very least consideration should be given to aligning some of the requirements and privacy that is afforded to organisations listed under the ACNC.

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?

As a New South Wales based incorporated association, it would require a change in the constitution with the removal of the relevant clause at some time under a special resolution but this is not a major issue and would require a fee payment to the state regulator. As mentioned, in the paper, a presumption is made that a computerised system is being used and that there is an element of sophistication that could overcome any issues through simple procedural changes and coding. We know through our member's network that this is not always the case.

Where an accounting system is not being used by an organisation then there could be some complexity and compliance costs for them. CRN suggests that some of this may be covered under the Standard Chart of Accounts for small organisations and the National Standard Chart of Accounts for medium to large organisations.³

³ ACNC recommended Chart of Accounts, accessed 26/7/2017
<http://www.acnc.gov.au/ACNC/Report/Nscoa%20-%20downloads.aspx>

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?**

CRN does not have any issues with an introduced review process. CRN is certainly aware of organisations that have lost their DGR status over the last few years for not maintaining their original purpose. Organisations are meant to self-review on an annual basis and CRN assumes that many organisations are not aware of this. We would recommend that more advice and information is generated by the ACNC/ATO to ensure that processes are in place for correct governance for regular self-review.

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

CRN understands that the ACNC was reviewing organisations that received DGR status prior to the establishment of the ACNC to see if there were remaining compliant with their original purpose.

CRN would see that this should be the first instance of review. If organisations are undertaking self-review and if processes were put in place, as mentioned in Question 9 that would be a first stage review process, followed by further formal Government agency(ies) reviews.

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 five year review could be too soon to introduce this. There is certainly a cost to organisations and to the government managing agency to work on a five year sunset rule. If "in perpetuity" has been the standard up to now, then perhaps 10 years would be a better timeframe. Of course, if rolling reviews are introduced as in Question 10

of this paper and, if the governing agency has concerns, then a review could be put into action at any time.

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?**

CRN is not responding to this Question.

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?**

CRN is not responding to this Question.

End.