

13 July 2017

Attention:

Senior Adviser

Individuals and Indirect Tax Division

The Treasury

By Email: DGR@treasury.gov.au

Dear Senior Adviser,

Please find attached a submission from the evident Foundation in response to the Discussion Paper on Tax Deductible Gift Recipient Reform Opportunities.

Please do not hesitate to contact me if you have any queries about this submission (P: 03 8825 4600, E: ask@evident.net.au).

Sincerely,



Meaghan Quinn

Chief Executive Officer

13 July 2017

Attention:
Senior Adviser
Individuals and Indirect Tax Division
The Treasury
By Email: DGR@treasury.gov.au

Australian Government Discussion Paper on Tax Deductible Gift Recipient (DGR) Reform Opportunities – eviDent Foundation response

Introduction

The eviDent Foundation is a DGR1 registered health promotion charity, which aims to improve the oral and dental health of Australians. We are committed to enhancing the clinical outcomes of dental practice, and the improvement of patient care, by providing the means for dental practice-based research and a platform for dissemination of evidence based clinical knowledge.

Based in Victoria, eviDent is generously supported by the Australian Dental Association Victorian Branch Inc and the Oral Health Cooperative Research Centre (located at the Melbourne Dental School), who are committed to the pursuit of better community oral health.

eviDent Foundation agrees with the Government's view, that the current DGR system is very complex, and can create additional administrative burdens for charities and the regulators. EviDent therefore welcomes the opportunity to comment on this Discussion Paper – we will only provide comments on areas that are relevant to our organisation.

Responses to 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 eviDent is already a registered charity, we will not comment on this question.

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

NA

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

NA

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

No, charities should not be required to provide additional information to the ACNC about their advocacy activities.

As the regulator of charities, the ACNC has realised its important role to act in the public interest, and to be a source of information and education to organisations with charitable purposes, who may not otherwise have good access to the information they need to engage in good governance at a reasonable cost. The approach to act as an educator is welcome and necessary in such a diverse sector.

The ACNC Act provides a method of negative regulation, and gives the ACNC the option of disqualifying an organisation, which engages in advocacy activities that are either illegal or seriously divergent from its charitable purpose.

The ACNC would not be expected to have the expertise or the capacity to actively review and monitor the advocacy activities of over 54,000 charities. Nor is it appropriate for it to do so.

What constitutes an advocacy activity is difficult to define. It could include the majority of the operations of a charity, such as conversations, presentations, fundraising, marketing, communications, grant applications, publications, engagement of the public, politicians, and the media, as well as formal submissions.

Often the judgement as to whether an activity is considered to be advocacy, or appropriate advocacy, is subjective, and is best made by that

organisation. Reporting on all aspects of advocacy that an organisation has engaged in would be very time consuming, which would add unnecessary bureaucracy to the compliance processes that registered charities already undertake. Further, all of the compliance processes that charities complete come at a financial and capacity cost, and it would not be appropriate to divert the resources of charitable organisations to meet the proposed advocacy reporting requirement.

Advocacy is a vital activity of charities. It gives a voice to marginalised groups, and important issues. Some advocacy issues are contentious, and advocacy work may challenge the status quo, or even criticise the government. eviDent urges the government to be cautious on the temptation to intensively scrutinise the advocacy activities of charities, as this raises the question of how to judge what is and is not appropriate advocacy, and this may have unintended consequences.

If the government did proceed with this proposal, then a Regulation Impact Statement would be needed to fully understand the additional resource requirements to implement it, both by the affected organisations, and the ACNC itself, and to explore all of the potential consequences.

eviDent understands that it is important to maintain trust and community good will towards charities, and that charities have a responsibility to utilise donations and their tax concession status for their intended charitable purpose, and in the public interest. However, there are existing mechanisms to address problems that can arise when a charity doesn't do this.

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

If additional information is to be collected, then the Annual Information Statement is the appropriate vehicle for this, however, eviDent Foundation does not support the proposal to require the collection of information about the advocacy activities of charity organisations.

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

Instead of requiring charities to report on their advocacy activities, eviDent Foundation urges the government to consider the option of including a tick box in the Annual Information Statement, in the declaration section, which states 'I confirm that this organisation has complied with the ACNC Governance Standards, as listed in the ACNC Regulation 2013'. A hyperlink could be included to the Standards, to allow those completing the declaration to review the Standards if they wish. This would remind organisations of their governance obligations under the ACNC Act and ACNC Regulation 2013, and avoid the addition of any further compliance

requirements or bureaucracy.

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?

evident Foundation is supportive of this proposal, provided that

- the ATO is able to provide to charities (free of charge) any advice and support about their DGR registration status, which would have been provided previously by the entity responsible for each DGR Register, and
- that sufficient funding be provided by the government to support a smooth transition.

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?

No comment

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?

evident Foundation supports the view that there is a need for a rolling review program, to ensure that DGRs, which are not ACNC-regulated, are still eligible for their tax concession status. The proposal to minimise the burden of this review process on DGR organisations is welcome. evident Foundation further suggests that a plan should be developed to communicate with affected organisations throughout this process, including:

- in advance of the commencement of the reviews, reminding organisations about what the compliance requirements are, and advising how the review will be conducted. This would allow organisations to self-review if they wish.
- providing organisations with information about when they can expect to be reviewed, and what their individual review outcomes are, and
- working with organisations, which are identified as high risk of non-compliance, to allow them time to address this issue where possible.

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

No comment

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?**

No comment

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?**

evident Foundation views that the proposal to require environmental organisations to commit a particular amount of their annual expenditure from their public fund to environmental remediation is overly prescriptive. This requirement would likely result in additional administrative burdens, and it may be difficult for these organisations to demonstrate that they have met the requirement, particularly if it does not take into consideration plans for multi-year projects, where the expenditure is not equal in each year.

This proposal may also set a precedent, which could eventually result in prescriptive expenditure requirements also being applied to DGR organisations in other categories.

evident Foundation therefore urges further consultation with the impacted parties to reach a mutually agreed position.

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?**

The Discussion Paper does not state what types of administrative sanctions are under consideration, however it is assumed that these could be in line with the existing powers of the ACNC, such as the issuance of fines or enforceable undertakings, or revoking an organisation's charitable status.

While the ACNC does not have the power to force an organisation to act lawfully, they do have the power to revoke their charitable status if they don't. The revocation of charitable status would send a message to the community that an organisation is not being true to its charitable purpose, or has engaged in illegal activity. The proposal to require DGRs to be ACNC registered charities therefore has merit and should be further debated with affected DGR organisations.