



TEAR Australia Submission to the 2017 Treasury Discussion Paper on Tax Deductible Gift Recipient Reform Opportunities

1 TEAR Australia

TEAR Australia (TEAR) is a Christian aid, development and advocacy organisation that has worked for more than 45 years with local partner organisations in Africa, South Asia, South-East Asia and the Pacific. TEAR is currently working in 24 countries, with over 75 partners. TEAR is focused in places of great need, partnering with local Christian agencies to end poverty, challenge inequality and build sustainable communities. TEAR seeks to address both the symptoms and the causes of poverty through projects that produce tangible, lasting changes.

TEAR represents a constituency of more than 60,000 Christians across Australia. Our passion for good development is coupled with a desire to inspire Australian Christians to embrace a biblically shaped response to poverty and injustice. Our constituents are actively engaged in advocating, educating and petitioning for change in a variety of different contexts—churches, schools, MP's offices and amongst their own local communities. TEAR's engagement in Australia can be described as a movement of Christians actively living and advocating for a just and compassionate world.

TEAR is registered with the Australian Charities and Not-for-profits Commission (ACNC), holds agency-wide Deductible Gift Recipient (DGR) status with the Australian Tax Office (ATO) and is approved under the Overseas Aid Gift Deduction Scheme (OAGDS) from the Department of Foreign Affairs and Trade (DFAT). TEAR's work is guided by the following codes of conducts and standards: Australian Council for International Development (ACFID) Code of Conduct, DFAT accreditation, Micah Network¹ member, Integral Alliance² member, and a first foundational partner with the Christian Ministry Advancement Standards Council³.

The Treasury Discussion Paper includes some sensible and non-controversial proposals, but also includes some proposals of concern to TEAR which are outlined below.

2 Concerning focus on Activities Rather than Purpose

In the discussion paper both charitable purpose and charitable activities are raised. Charity law focuses on purposes and not activities, and the DGR framework generally has a focus on purpose rather than activity. As such, and in the absence of strong and compelling reasons to the contrary, the focus of DGR reform should likewise focus on purposes—such strong and compelling reasons do not exist and therefore no shift in focus towards activities such as advocacy is warranted (see below).

¹ Micah Network: www.micahnetwork.org

² Integral Alliance: www.integralalliance.org

³ CMA Standards Council: www.cmasc.net.au

The current legal regime is robust in outlining the purposes for which charities can legitimately be established, as well as, in ensuring charities must demonstrate that they do not have a 'disqualifying purpose.'⁴

Furthermore, the regulatory environment does account for other, relevant laws, which further specifies prohibitory conditions on DGRs in pursuing their purpose.⁵

We therefore strongly oppose the activity-level focus in the review (as suggested in questions 4-6; 12-13 of the discussion paper) as such an approach:

- Casts doubt and uncertainty over what activities a DGR entity can lawfully undertake resulting in an unwarranted negative impact.
- Insufficiently establishes that the current regime of 'charitable purpose' is not robust for regulating the sector.
- Creates additional red tape and compliance burdens

RECOMMENDATION: That the existing DGR regulatory focus on purpose is adequately robust and that a shift towards an activity level focus should be avoided as it will have several unintended negative effects on civil society.

3 Erosion of the Right of Charities to Undertake Advocacy

Charities undertaking advocacy have been recognised as both a legitimate activity and one essential to our system of parliamentary democracy. It is an important approach which charities can use to address the causes of social and environmental problems, rather than just the symptoms—this often requires policy change.

For TEAR, advocacy is at the heart of our mission as a Christian aid, development and advocacy organisation and it is part of the Christian biblical mandate to seek justice, love our neighbour and speak up for those in poverty. Bishop Desmond Tutu once said that, 'There comes a point where we need to stop just pulling people out of the river. We need to go upstream and find out why they're falling in.' Christians adopt a cause and advocate because of the urging in the Bible—for example Isaiah wrote, 'Learn to do right; seek justice. Defend the oppressed. Take up the cause of the fatherless; plead the case of the widow.'⁶

No evidence has been put forward as to the need for new reporting obligations for advocacy activities—therefore they are strongly opposed on the basis that they would impose new and unjustified red tape on charities.

The discussion paper asserts that 'some charities and DGRs undertake advocacy activity that may be out of step with the expectations of the broader community'—this assertion is

⁴ Disqualifying purpose includes: a purpose to promote/oppose political parties/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). See ACNC Fact Sheet http://www.acnc.gov.au/ACNC/Reg/Charities_elections_and_advocacy.aspx

⁵ In regards to OAGDS, for example, organisations must demonstrate compliance with the 2006 Anti-Money Laundering/Control of Terrorism Financing Act, and the Criminal Code vis-à-vis extraterritorial powers in relation to child sex tourism.

⁶ Isaiah 1: 17 (NIV translation)

made without any supporting evidence. Unsubstantiated and speculative statements about the expectations of the broader community should not serve as a basis for making public policy.

Requiring that a certain proportion of an environmental organisation's activities be directed towards environmental remediation represents an intrusion on the autonomy of environmental organisations and amounts to government trying to 'pick winners' in terms of what approaches charities should use to achieve their charitable purpose. Charities and their supporters are in the best position to determine what approaches are most appropriate in order to achieve their charitable purpose, therefore, any new restrictions and limitations are strongly opposed on the basis that they would impose new and unjustified red tape on environmental charities which will make it harder for them to achieve their charitable purpose.

Well targeted and proportional approaches to maintain transparency and accountability for charities are supported and this can be achieved by ensuring all DGRs are registered as charities under the purview of the ACNC, as the discussion paper proposes.

RECOMMENDATION: Existing charity law sets appropriate boundaries for what advocacy activities by charities are acceptable, and the ACNC guidance for charities is helpful and reflective of the law—no further changes are justified or necessary.

4 Introduction of Reviews and Audits to investigate continual compliance with DGR requirements over-time

We welcome and accept that the transparency and accountability of DGRs is important. However, we believe reviews and audits should be conducted only at the point where systemic issues have been identified and/or certain risk thresholds amongst categories of charities and DGRs have been surpassed.

At present 92% of DGRs are registered with the ACNC. That means 25,760 of 28,000 DGR entities are already governed by the ACNC regulatory framework, which requires annual reporting. The discussion paper proposes to require all DGRs (except government entities) to be registered as charities, and this will bring in even more DGRs under the ACNC regulatory framework.

A rolling review and audit process is costly and the case has not been made that such a cost is justified given the current nature of the risk. The ACNC and the ATO already have the power to undertake reviews and audits where they believe they are warranted, and it is not apparent that introducing new and costly formal review processes is necessary. It is also noted in section 1 that TEAR is already accredited with a number of accountability and quality codes and compliance.

We therefore strongly recommend a proportionate and risk-based response to this issue. Such a response would include requiring DGRs to be registered with the ACNC (as the discussion paper proposes), with the ACNC and the ATO using their existing compliance approach to ensure compliance with the law. This can involve undertaking reviews and audits using their existing powers where systemic issues have been identified and/or certain risk thresholds amongst categories of charities and DGRs have been surpassed. We note the expertise of the ACNC and ATO should be respected, and they should be allowed to

independently determine what types of reviews and audits are necessary, and in what circumstances, without government involvement.

RECOMMENDATION: A proportionate and risk-based response to transparency and accountability of DGRs is strongly recommended rather than a costly rolling review and audit process.

5 Creating certainty and trust in the regime requires addressing other areas of regulation

The success of integrity measures such as rolling reviews are predicated on the sector being clear around their obligations with regard to both the *Australian Charities and Not for profits Commission Act 2012* and *Income Tax Assessments Act 1997*.

It is important that any reform of the DGR framework also include reform to section 50-50 of the *Income Tax Assessment Act 1997*. Such reforms should have the outcome of:

- repealing the governing rules condition;
- including a common rule that says, for the avoidance of doubt, that the 'solely' condition is not breached where an entity pursues purposes or conducts activities that are incidental or ancillary to a purpose for which the entity is established.

RECOMMENDATION: Clarity of obligations for DGRs should include reform of s.50-50 of the Income Tax Assessment Act 1997.

Summary of Recommendations

- That the existing DGR regulatory focus on purpose is adequately robust and that a shift towards an activity level focus should be avoided as it will have several unintended negative effects on civil society.
- Existing charity law sets appropriate boundaries for what advocacy activities by charities are acceptable, and the ACNC guidance for charities is helpful and reflective of the law—no further changes are justified or necessary.
- A proportionate and risk-based response to transparency and accountability of DGRs is strongly recommended rather than a costly rolling review and audit process.
- Clarity of obligations for DGRs should include reform of s.50-50 of the Income Tax Assessment Act 1997.



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