



**The Fred Hollows
Foundation**

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Senior Adviser
Individual and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Re: Tax Deductible Gift Recipient Reform Opportunities Discussion Paper of 15 June 2017

Dear Sir/Madam,

The Fred Hollows Foundation would like to raise some concerns regarding some elements of the Tax Deductible Gift Recipient Reform Opportunities Discussion Paper of 15 June 2017.

The Fred Hollows Foundation is an independent, not-for-profit, non-political and secular international development agency established in Australia in 1992. The purpose of The Foundation is to end avoidable blindness and improve Indigenous Australians' health. The Foundation conducts its work with the generous support of the Australian public, the Australian Government and international donors and supporters, advocating for an end to avoidable blindness and the right to sight, implementing programs to provide sustainable improvements in eye health care systems in some 25 countries, working through partnerships at a global and local level, through 12 country offices, 400 staff and annually spending almost AUD\$100 million.

Whilst the discussion paper proposes a number of sensible and practical proposals there are some issues we would like to be reconsidered.

Issue 1 – Focus on Activities rather than purpose;

The Fred Hollows Foundation is strongly of the view that the existing common law definition of charity that focusses on the "purpose" rather than "activities" of an organisation should be maintained. Other laws and regulations clearly define specific conditions which are prohibited in pursuing a charity's purpose and provide a sufficiently robust framework, clearly understood and practically applied. Additionally we are not convinced the resulting inherent doubt, uncertainty and complexity which would result from this proposed change to the definition of a charity has been sufficiently established. The flexibility of undertaking activities to support the purpose of charity

without them being scrutinised in isolation is fundamental to an efficient and effective development of charitable organisations.

Issue 2 – Erosion of the Right of Charities to undertake Advocacy;

As the expressly recognised in the notes to section 11(b) and section 12(1)(l) of the *Charities Act 2013*, the use of advocacy is one of the fundamental activities available as a core component of Australia's constitutional system of parliamentary democracy to help advance a charity's purpose. Any additional limitations or reporting obligations are seen by The Fred Hollows Foundation as unjustified and adding unnecessary red tape. The existing charity law and ACNC guidance is seen as appropriate and sufficiently helpful in already defining acceptable advocacy activities.

Issue 3 – Introduction of Reviews and Audits to investigate continual compliance with Deductible Gift Recipients requirements over time;

The Fred Hollows Foundation agrees that the transparency and accountability of DGR's is extremely important. We also welcome the proposal that all DGR's (except government entities) need to be registered as charities and therefore come under the existing ACNC regulatory framework including the required annual reporting. However The Fred Hollows Foundation strongly suggests that a risk-based approach to this matter be adopted by allowing the ACNC and ATO to utilise their existing compliance approach by undertaking reviews and audits based upon key identified issues, risk thresholds having being surpassed or key areas deemed to cause concern. The ACNC and ATO's expertise and independence should be respected rather than a one-size fits all approach being taken that will add yet another annual review process across the sector.

Issue 4 – Moving assessment of Overseas Aid Gift Deductible Scheme (OAGDS) from DFAT to the ACNC or ATO;

As an international development organisation, The Fred Hollows Foundation is well aware of the different regulatory frameworks, laws and approaches in the very different countries and environments in which we work. A fundamental underpinning of the compliance approach adopted by The Foundation and strongly supported by donors as a key reason why they continue to support our endeavours, is that we ensure that our policies, procedures, processes and expectations are aligned with the four criteria inherent in the approval against the OAGDS. These criteria and the frameworks in operation are continually updated in alignment with international developments and trends and are well and effectively managed within DFAT. The Fred Hollows Foundation sees any reduction in focus in the interests of efficiency as being misguided and we strongly recommend that assessment of eligibility and the ongoing administration and review under OADGS remain with DFAT.

Issue 5 – Addressing other areas of regulation to create certainty and trust;

The Fred Hollows Foundation strongly supports the notion that integrity and transparency are very important features of the sector and its ongoing sustainability and viability. The Fred Hollows Foundation also holds the view that any reform of the DGR framework should also include changes to section 50-50 of the Income Tax Assessment Act 1997. The changes must include review of the "solely" condition to ensure that the "solely" condition is not breached when an entity pursues

purposes or conducts activities that are incidental or ancillary to the purpose for which the entity is established. The Fred Hollows Foundation also recommends the governing rules condition is repealed to remove the guillotine effect of: (a) being unable to substantively comply with the substantive requirements in the governing rules; and (b) failing the “solely” condition wherever there is a misapplication of income or assets, irrespective of intention or amount. Without these changes, the risk of uncertainty introduced by integrity measures such as rolling reviews is too great for the sector.

The Fred Hollows Foundation welcomes the ambition of improving the integrity, transparency and efficiency of key frameworks in place to safeguard charities, development organisations, donors and the public. The discussion paper certainly includes some very sensible and non-controversial proposals and with some slight changes as we have proposed, will deliver good improvements in the sector.

Regards

A handwritten signature in blue ink, appearing to read 'Brian Doolan', with a long horizontal flourish extending to the right.

Brian Doolan
CEO

