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2 August 2017

Senior Advisor
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

Re: Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

We welcome the opportunity to comment on proposals outlined in the Tax Deductible Gift Recipient (DGR) Reform Opportunities Discussion Paper.

UnitingWorld is an agency of the Uniting Church in Australia, undertaking international development and humanitarian aid programs in the Pacific, Asia and Africa. We are a member of the Australian Council for International Development (ACFID) and a signatory of the ACFID code of conduct. UnitingWorld is also accredited by DFAT to disburse Australian Aid funds through its programs.

Concerning changes to the DGR tax arrangements, we make two comments:

Firstly, we are concerned that the removal of the Overseas Aid Gift Deductible Scheme (OAGDS) from DFAT and handling all tax deductibility registration through the ATO may undermine important development standards such as child protection and control and security of funds for international development work.

Secondly, we strongly endorse UnitingWorld's support for the feedback documented in the submission by UnitingCare Australia in their letter dated 12 July 2017 (attached here).

We are very supportive of the government's desire to strengthen governance and simplify the system. We thank you for the opportunity to provide comments, and welcome further discussion.

Yours sincerely

Dr Sureka Goringe
National Director
UnitingWorld

12 July 2017

Senior Advisor
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

Re: Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

UnitingCare Australia appreciates the opportunity to comment on proposals outlined in the *Tax Deductible Gift Recipient (DGR) Reform Opportunities Discussion Paper*.

UnitingCare Australia is the national office representing the community services of the Uniting Church in Australia. Our services operate nationally across more than 1,300 sites in metropolitan, rural and remote Australia, delivering services to people across the life course.

Concerning changes to DGR tax arrangements, it is our view that reform should respect the diversity of our sector whilst simultaneously eliminating unnecessary administrative, reporting, acquittal and compliance processes and associated costs. We welcome many of the proposals outlined in the Discussion Paper aimed at streamlining the governance of DGRs and eliminating complexity of the DGR application process.

We highlight, however, the following issues as particular areas of concern regarding proposals forwarded in the Discussion Paper:

- Reforms focussing on individual *activities* undertaken by charities, as opposed to their overarching *purpose*
- By extension, the possible erosion of the charities' rights to undertake advocacy
- The introduction of additional review and audit processes to investigate continual compliance with DGR requirements over time, and
- Greater focus on the need to address other areas of regulation to create certainty and trust in the regime.

Our views regarding these issues are elucidated further below.

Focus on 'activities' as opposed to 'purpose'

UnitingCare Australia recognises that the common law of charity focusses on the overarching 'purpose' of an organisation for its classification as a charity. As defined by the ACNC, "a charity's purpose is the reason it has been set up, or what [the] charity's activities work towards

achieving”¹. By this definition, the overarching *purpose* remains the point of reference, with charities having relative autonomy to undertake activities that further this stated purpose.

Our subsequent concern in response to Question 4 of the Discussion Paper – “should the ACNC require additional information from all registered charities about their advocacy activities” – is the assumption underpinning this, that individual activities may potentially be seen to override ‘purpose’ in determining appropriate behaviour undertaken by a charity.

We do not support the proposal that the ACNC require additional information from all registered charities about their advocacy activities.

We reiterate that the DGR reform considerations should assume, as the point of reference, the *purpose* of charitable organisations as opposed to the *activities* they undertake. Provision is currently made for this through existing charity law, which clearly articulates the purposes for which charities can legitimately be established, and relevant disqualifying conditions. We therefore see the need for no further changes in this regard.

Erosion of the right of charities to undertake advocacy

We note that the *Charities Act 2013* clearly articulates the limits of activities that charities can legitimately pursue. In this context, we highlight that undertaking advocacy has been recognised as both a legitimate activity and one integral to our system of parliamentary democracy. Such activity offers a means by which to address the causes of social issues through affecting positive reform of policy, thus furthering the purpose of many charitable organisations.

It is UnitingCare Australia’s view that no substantive evidence exists to highlight the need for new reporting obligations for advocacy activities as foreshadowed in the Discussion Paper. Unnecessary intrusions on the autonomy of agencies to undertake their core business (and legitimate ‘purpose’) should therefore be avoided.

We forward that charities and their supporters are in the best position to determine what approaches are most appropriate to achieve their charitable purpose. Further to this, we highlight that existing charity law sets appropriate boundaries for what advocacy activities by charities are acceptable to undertake, and the ACNC guidance for charities is helpful and reflective of the law. It is our view that no further changes in this regard are justified or necessary.

Reviews and audits investigating continual compliance with DGR requirements over time

Concerning consultation questions 9 and 13 particularly, we note that the Discussion Paper indicates concern that without a formal process for periodically reassessing DGR eligibility, organisations may have the ability to access DGR benefits without meeting the eligibility criteria.

UnitingCare Australia acknowledges and strongly agrees with the view that transparency and accountability of DGRs is of utmost importance. We also support the notion that audit and review processes should be conducted by the ACNC and ATO using their existing compliance approaches at a point when systemic issues have been identified, or when certain risk thresholds look likely to, or have been, exceeded. We caution that review and audit processes are costly, particularly when undertaken on a regular basis, and further justification of the need for such

¹ Australian Charities and Not for Profits Commission (ACNC). 2017. Available at: http://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/Typ_char/ACNC/Reg/TypesCharPurp.aspx

processes is required. It is our view that the current nature of the risk would not justify introduction of any additional processes at this point in time.

We highlight that presently, most DGR-endorsed organisations are already registered with the ACNC, and subsequently governed by its regulatory framework and annual reporting requirements. Recognising this, we support the recommendation proposed in the Discussion Paper that all DGRs (excluding government entities) be registered with the ACNC as charities, in order that they all be governed by the ACNC's regulatory framework. This would provide both transparency and consistency of auditing and review processes.

In addition, we recognise the current capacity of both the ACNC and ATO to utilise existing compliance structures to examine risks and systemic issues as identified. Our view is that this capability is sufficient for the purpose at present, and that both the ACNC and ATO should continue to be allowed to independently determine what types of reviews and audits are necessary, and in what circumstances they are appropriate, without interference.

Addressing other areas of regulation to create certainty and trust in the regime

UnitingCare Australia forwards that the success of measures aimed at facilitating greater system-wide integrity and transparency are predicated on the charity sector being clear around obligations, particularly regarding the *Australia Charities and Not for Profits Commission Act 2012* and *Income Tax Assessments Act 1997*. However, the current provisions with relation to Section 50-50 of the *Income Tax Assessment Act 1997* place unnecessary compliance risk on charities, despite the introduction of Tax Ruling 2015/1, through governing rules and sole purpose conditions.

We note the special conditions enacted through the *Tax Laws Amendment (2013 Measures No. 2) Bill 2013* from 1 July 2013, requiring than an entity must:

- a) comply with all the substantive requirements in its governing rules; and
- b) apply its income and assets solely for the purpose for which the entity is established².

We highlight our concern regarding the 'solely' condition in Part B of the special conditions in the event that some form of audit and review process is introduced as discussed in the paper. This is in the context that if a charity's purpose is incidental or ancillary to the original purpose for which it was formed, it has the potential to fail the 'solely' condition.

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:

- a) repealing the governing rules condition;
- b) 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.

Conclusion

² Commonwealth of Australia – Income Tax Assessment Act 1997 – Section 50.50. 1997. Available at: http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s50.50.html

UnitingCare Australia appreciates the opportunity to provide the above comments and welcome the opportunity to provide any further clarity on the information provided. We look forward to working with government towards strengthening DGR governance arrangements and minimising complexity of the system.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CL', with a long horizontal stroke extending to the right.

Claerwen Little
National Director
UnitingCare Australia