World Vision Australia Response to 15 June 2017 Treasury Discussion Paper entitled:

'Tax Deductible Gift Recipient Reform Opportunities'

3 August 2017

This paper sets out the submission of World Vision Australia (**WVA**) in response to the Discussion Paper entitled '*Tax Deductible Gift Recipient Reform Opportunities'* (**DGR Discussion Paper**). This submission primarily addresses matters that are important and relevant to WVA as well as noting other matters which we consider would be of concern to the not-for-profit sector generally.

We welcome the discussion on DGR reform initiated by the DGR Discussion Paper and support the stated goals of:

- strengthening DGR governance arrangements;
- reducing administrative complexity; and
- ensuring that an organisation's eligibility for DGR status is up to date.

We have set out below:

- Background information in respect of WVA at heading 1.
- Our reform recommendations at heading 2.
- The basis for our reform recommendations, including our responses to the relevant questions raised in the DGR Discussion Paper, at heading 3.
- Other issues at heading 4.

1. Background

World Vision Australia

WVA is a Christian relief, development and advocacy organisation dedicated to working with children, families and communities to overcome poverty and injustice. It is part of the World Vision International Partnership, which operates in more than 90 countries. WVA is Australia's largest overseas aid and development organisation, operating primarily to assist overseas communities living in poverty. It also carries out development work in Australia with Indigenous communities, working collaboratively with both government and non-government organisations in Australia.

What is WVA's charity and tax status?

WVA is a public benevolent institution (**PBI**) and is registered as a charity with the Australian Charities and Not-for-Profits Commission (**ACNC**). As a PBI, WVA is endorsed as a whole as a deductible gift recipient (**DGR**).

In addition to this, WVA is endorsed for the operation of the following DGR funds:

- World Vision of Australia Overseas Aid Fund[1]; and
- World Vision of Australia Necessitous Persons Fund.[2]

We have previously been endorsed as a DGR for the operation of a developed country disaster relief fund for the Japan Earthquake and Tsunami in 2011[3].

[1] Being a developing country relief fund endorsed under item 9.1.1 of the table in section 30-80 of the *Income Tax Assessment Act 1997* (Cth) (**1997 Tax Act**).
[2] Being a necessitous circumstances fund endorsed under item 4.1.3 of the table in section 30-45 of the 1997 Tax Act.

As a PBI and Australia's largest overseas aid charity (with a growing domestic program), our access to DGR status enables us to more effectively perform vital functions both domestically and overseas, to have greater impact and to more effectively achieve our mission. Our ability to provide tax deductible receipts is crucial to encouraging and sustaining public donations to support our work.

2. WVA reform recommendations

We consider that reforms to the DGR regime are both necessary and desirable to simplify the DGR registration and governance framework and to remove administrative burden, cost and complexity.

Our reform recommendations are as follows:

1) Transfer of the four DGR registers from the relevant Departments to the ACNC (rather than to the Australian Taxation Office (**ATO**)). In relation to the OAGDS, we consider that the ACNC, rather than the ATO, is better placed to independently and impartially assess compliance with OAGDS and to regulate all DGR charities operating offshore, whether that be under the OAGDS and/or as PBIs.

2) A simplification and aggregation of DGR categories relating to development and welfare work. This may be achieved by reforming the concept of PBIs, to enable the PBI DGR category to cover both the PBI and OAGDS categories.

3) No additional reporting requirements or restrictions relating to the advocacy activity of charities. Rather, we support the proposal to require all DGRs (where possible) to become registered charities, and the current regulatory approach of the ACNC in assisting charities to understand their obligations in relation to advocacy under the *Charities Act 2013* (Cth) (**Charities Act**), investigating complaints or identified risks, and imposing appropriate sanctions.

4) The following additional administrative and regulatory reforms:

    a) The introduction of appropriately robust external conduct standards (which remains an unfinished piece of regulation under the ACNC Act) as an integrity measure to regulate the overseas activities of DGRs, and clarification of the government's position in relation to reform to the 'in Australia' requirements affecting DGRs.

    b) The repeal of the Division 50 special conditions which were introduced in 2013 for charities registered with the ACNC, to remove the unnecessary duplication between the ATO and ACNC in governing charities.

    c) A minor amendment to the rules governing developed country disaster relief funds, to enable one fund to be utilized for multiple declared disasters in developed countries.

    d) The removal or modification of the public fund requirements, to remove unnecessary and outdated requirements relating to responsible persons and maintaining separate bank accounts for each public fund.

    e) The introduction of an annual DGR certification requirement but no introduction of a formal rolling review program.

3. Basis for WVA reform recommendations

[3] Endorsed under item 9.1.2 of section 30-80 of the 1997 Tax Act.

In the below section, we have set out a detailed explanation of our reform recommendations. We also specifically address the consultation questions posed in DGR Discussion Paper, focusing on the questions relevant to our work, as well as the broader reform questions that are important for the not-for-profit sector.

Recommendation 1: Transfer of registers to ACNC

We support the proposal to transfer the administration of the four DGR registers from the relevant Departments. This will assist in simplifying the process for DGR registration.

Our specific recommendations are:

- responsibility for these registers should be transferred to the ACNC, and not the ATO; and
- the ACNC should be provided with necessary resources and support to develop its capacity and capability to undertake this task, including input and collaboration, where appropriate, from the relevant departments with subject matter expertise (such as DFAT for charities undertaking overseas aid work).

In transferring the administration of the four DGR registers from the relevant Departments to the ACNC, we recommend that the process be streamlined to remove the requirements for Treasury and/or Ministerial approval, and for funds to be declared by way of a notice in the Gazette (as required under s30-85 for developing country relief funds under the OAGDS). This will remove the inappropriate political element in the current assessment process and the undue delays experienced by charities required to obtain these additional approvals, particularly as compared to other types of DGR charities, such as PBIs and Health Promotion Charities (**HPCs**), that may apply directly to the ACNC.

In relation to the OAGDS regime, we propose that the ACNC take on this responsibility rather than the ATO for the following reasons:

- the ACNC is better placed to independently and impartially assess compliance with OAGDS, whereas the ATO is not independent and impartial in this respect due to its role as a revenue collecting body;
- it is appropriate for the ACNC to assess whether an entity qualifies under the OAGDS as this aligns with current practice for other DGR categories, with the ACNC currently determining whether an entity qualifies for the charitable subtype of a PBI or HPC, and the ATO endorses these entities as DGRs based on this ACNC determination[4];
- the ACNC already works closely with DFAT in regulating all charities that work overseas, and assisting DFAT in implementing Australia's international obligations in relation to terrorism and money-laundering by administering the ACNC Governance Standards;
- in due course, the ACNC will administer the external conduct standards for all charities operating overseas, and these standards will likely cover matters currently dealt with under the OAGDS (relating to terrorism and money laundering,) - it is therefore appropriate for the ACNC to have responsibility for these matters rather than both the ATO and ACNC regulating the same subject matter; and
- the ATO does not have the same range of regulatory tools available to the ACNC as the charity regulator to regulate charities undertaking this type of work overseas (ranging from education to enforcement activities).

In making this recommendation, we note that DFAT currently has the relevant capacity, capability and expertise in assessing overseas aid and development work under the OAGDS. Given this, in transferring the administration of the OAGDS to the ACNC, it will be vitally important to ensure that the ACNC is provided with sufficient support and resources to take on this responsibility. This may involve moving the relevant OAGDS unit from DFAT to the ACNC, developing mechanisms for close internal collaboration and support between DFAT and the ACNC, or

[4] Following the commencement of the *Australian Charities and Not-for-profits Commission Act 2012* (**ACNC Act**), the ACNC (and not the ATO) determines whether an entity qualifies as a PBI or HPC. (Although, it is still up to the ATO to be satisfied that the entity satisfies the 'in Australia' test in special condition (a) applicable to DGR1s in the table in section 30-15 of the *Income Tax Assessment Act 1997* (**1997 Tax Act**) before it endorses a registered PBI or HPC as a DGR1).

adopting a different funding mechanism. Input from DFAT could be obtained internally by the ACNC when assessing an application for registration under the OAGDS, but this should not slow down the registration process for applicant charities.

Note: This recommendation addresses Question 7 of the DGR Discussion Paper: *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?*

Recommendation 2: DGR categories should be simplified and aggregated for welfare and development work in Australia and overseas

As an overseas aid organisation with a growing domestic program, we currently hold three DGR endorsements (OAGDS, NCF and PBI), and have previously held an additional DGR endorsement in respect of a developed country disaster relief fund to respond to the Japanese earthquake and tsunami. Each of these endorsements has its own requirements and rules that must be complied with. The existing system is complicated, inconsistent and cumbersome.

These different DGR categories mean that fundraising and administration is fragmented. For example, we have to run separate appeals for overseas aid under OAGDS and for domestic benevolent work in Australia as a PBI, and ensure that our receipting and banking is delineated. This adds to the administrative and costs burden.

In light of this, we support a simplification and aggregation of DGR categories relating to welfare and development work so that a single endorsement can cover our work in Australia and in developing countries.

This could be achieved by modernising the concept of PBIs so that this category covers both benevolent work by PBIs and the type of aid and development work currently regulated under the OAGDS. This would not require any significant change to, or broadening of, the existing concept of PBIs. We note the concept of a PBI has already evolved under the ACNC Commissioner's Interpretation Statement (**CIS**) on PBIs, which expressly acknowledges that PBIs may undertake overseas work, and that such development assistance may be considered 'relief' for PBI purpose. Paragraph 5.9.6.2 of the CIS states:

> *In an international development and relief context, people in receipt of relief or humanitarian assistance work (work which is provided during and in the aftermath of humanitarian crises), will generally be considered "people in need". Additionally, people who are in receipt of development assistance will also be considered "people in need", where that assistance is provided to necessitous people in developing countries.*
>
> *Development assistance is understood as being activities that improve the long-term well-being of people in developing countries, which build their capacity and provide long-term sustainable solutions to needs stemming from poverty and distress. Development assistance is thus preventative in that it stops such needs recurring. It is equally "relief" in the PBI context because it relieves the needs of the people assisted.*

A modernised PBI category could supersede the OAGDS category, and as a consequence of this, there would be only one set of guidelines to cover welfare, relief and development work in Australia and overseas. This change would ensure that the quality of, and accountability for, domestic and overseas development projects, that are supported by tax deductible donations, is maintained.

In this regard, we are concerned that there is currently no equivalent guidelines or mechanism like the OAGDS guidelines to ensure PBIs abide by sound development principles, either for their projects in Australia or overseas. Importantly, the new (modernised PBI) guidelines could rectify this by drawing on the principles in the OAGDS guidelines and applying these to PBIs undertaking overseas work to address this gap in oversight and accountability.

We note that we made similar submissions in response to the Treasury's "Re:Think – better tax, better Australia' white paper in 2015.

Note: This recommendation addresses the second half of Question 7 of the DGR Discussion Paper: *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?*

Recommendation 3: No additional reporting requirements or restrictions relating to the advocacy activity of charities

We consider that the ACNC should not impose additional reporting requirements on charities in respect of their advocacy activities.

Such a reporting requirement would presumably require charities to explain how the activity furthers their purposes (reflecting the legal position under the Charities Act). This type of additional reporting will result in a significant increase in the administrative burden on charities, as well as giving rise to difficult definitional and practical questions in recording and working out whether a particular activity constitutes 'advocacy'.

In our view, a better way to regulate advocacy by charities, without imposing a significant additional reporting burden on all charities, is to continue with the current regulatory approach of the ACNC. This approach involves providing education and training to charities, releasing guidance and factsheets (particularly in an election period), investigating charities where complaints have been received from the public or issues raised by the media or where risks have been identified, and imposing sanctions, where appropriate, following an investigation (ranging from education, to enforceable undertakings, to removal of responsible persons, to de-registration).

Moreover, as a matter of principle, charities (whether they be environmental charities or otherwise) should be free to engage in law reform and advocacy activities, where such charities consider that advocacy activities further their own charitable purposes.

The important role that charities play in contributing to law reform and public policy debate, and the public good that is served by such advocacy activities, was acknowledged by the High Court in *Aid/Watch Inc v Commissioner of Taxation* [2010] HCA 42. This position was subsequently reflected and entrenched in the Charities Act, which confirmed that a charitable purpose includes a purpose of opposing or promoting a change in law or policy where that is in furtherance of another charitable purpose. The Charities Act also includes an important and significant limitation on such political purposes, as it provides that a purpose of promoting or opposing a political party or candidate for office constitutes a disqualifying purpose, and will thereby prevent an organisation from being charitable.

In our view, the position under the Charities Act strikes an appropriate balance in enabling charities to engage in advocacy in furtherance of their purposes, but prevents such charities from pursuing partisan political purposes. We do not believe that there is any need to introduce additional restrictions to limit the advocacy activities of charities, whether they be environmental charities or otherwise, beyond the limits provided under the Charities Act. Moreover, we are concerned that any new limits which focus on activities, rather than purposes, will depart from the established position under the Charities Act, and introduce requirements that are difficult and burdensome to comply with in practice.

Instead of imposing such a limit on advocacy activities, we support the proposal to require all DGRs (including environmental DGRs), where possible, to be registered as charities with the ACNC, so that such DGRs must conform to the requirements that apply to all charities under the Charities Act. If a DGR is not eligible to be registered as a charity (for example, a not-for-profit sports organisation), then similar requirements to those under the Charities Act could be extended to those DGRs to limit any advocacy activities to being in furtherance of their not-for-profit purposes and not in furtherance of a partisan political purpose.

We support the ACNC in continuing its role in assisting such charities to understand the legal requirements relating to advocacy activities under the Charities Act, and in investigating any instances where a complaint has been received or a risk of non-compliance has been identified in relation to such advocacy activities.

Finally, in regard to the use of tax deductible donations for advocacy activities, we note that businesses can claim a tax deduction for business expenses, including sponsorships and political activities, where the business believes such activities are reasonably necessary to produce assessable income. As matter of consistent treatment, the ability of charitable DGRs to use tax deductible donations received from the public for advocacy activities which further their charitable purposes should not be limited.

Note: This recommendation addresses the following questions in the DGR Discussion Paper:

- *Question 4: Should the ACNC require additional information from all charities about their advocacy activities?*
- *Question 5: Is the Annual Information Statement the appropriate vehicle for collecting this information?*

- *Question 6: What is the best way to collect the information without imposing significant additional reporting burden?*
- *Question 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?*

Recommendation 4: Additional administrative and regulatory reforms

One of the goals of the DGR Discussion Paper is to seek to reduce administrative complexity in the DGR regime. We raise the following reform issues that we believe should also be considered in support of that goal:

(A) Introduction of the ACNC external conduct standards and clarification of the government's position on reform of the 'in Australia' special conditions

ACNC external conduct standards

The ACNC's external conduct standards are yet to be enacted in the ACNC regulations (notwithstanding that they were due to commence on 1 July 2013).[5] We understand that the intended purpose of the external conduct standards (as described in the explanatory memorandum) are to be principle-based minimum standards which:

- regulate funds sent by not-for-profits outside Australia and activities engaged in by such entities outside Australia; and

- empower the ACNC Commissioner to take enforcement action in relation to any registered entity's operations offshore where there is a contravention of these standards (and such enforcement action could include giving warnings and directions, seeking enforceable undertakings, seeking injunctions, or suspending or removing responsible persons).

We understand that the external conduct standards will be based on the requirements of the Financial Action Task Force's (FATF) Special Recommendation VIII (SR VIII), and help combat the terrorist and criminal activities covered in the FATF recommendation.[6]

In considering DGR reform, it would be helpful to understand when these standards will be established in the regulations, and how they will interact with the governance and integrity measures discussed in the DGR Discussion Paper.

As stated above, we are concerned there is currently a gap in oversight and accountability for PBIs which operate overseas. The external conduct standards are likely to be a sound integrity mechanism for applying a consistent standard for all charities and DGRs operating overseas, and could replace the requirements currently included under the OAGDS guidelines (which only relate to this type of DGR category) relating to terrorism and money laundering.

Clarification regarding reform of the 'in Australia' special conditions

Furthermore, the DGR Discussion Paper does not address the reforms to the 'in Australia' special conditions in Division 30, which have been proposed for many years (with successive attempts to introduce amendments made between 2008 and 2014) but which remain to be tabled. We understand that reform of the 'in Australia' requirements remains government policy, but progressing these reforms is no longer a priority of the government.[7]

Any change to the 'in Australia' special conditions for DGRs could have a significant impact on the DGR regime for overseas aid organisations and in particular, PBIs. Our view is that the current law in section 50-50 and as recognized by the ATO currently, is clear on this point, that is, that for a PBI, all that is required is that the organization

[5] According to the explanatory memorandum to the ACNC Bill 2011 at paragraph 1.59.
[6] See the explanatory memorandum (at paragraph 5.59).
[7] Based on comments made by the then Assistant Treasurer, the Honourable Josh Frydenberg MP in 2015.

is located in Australia, and this does not require modification. The ongoing uncertainly regarding whether or not such requirements will change is creating unnecessary cost, with organisations such as WVA maintaining multiple DGR categories (including PBI, NCF and OAGDS endorsements) in anticipation of future reforms (and specifically, a concern that PBIs may be restricted from undertaking the current degree of overseas activities). In order to remove this uncertainty and resulting cost to charities, we would welcome confirmation that the proposed amendments will not be pursued.

(B) Repeal of Division 50 Special Conditions for charities that are income tax exempt

While not specifically addressed in the DGR Discussion Paper, we wish to voice our concerns regarding the two new special conditions inserted into Division 50 in July 2013, with which an entity (including charities and DGRs) must comply to be exempt from income tax. The new special conditions are:

- an entity must comply with all the substantive requirements in its governing rules (the 'Governing Rules Condition'), and
- an entity must apply its income and assets solely for the purpose for which the entity is established (the 'Income and Assets Condition').

The introduction of these special conditions in 2013 followed closely on from the establishment of the ACNC in December 2012, and the introduction of the ACNC Governance Standards, applicable to all registered charities (other than Basic Religious Charities), in 2013.

These special conditions are an unnecessary imposition on registered charities, with ACNC Governance Standard 1 substantially overlapping with the Income and Assets Condition. Furthermore, notwithstanding the guidance in ATO Taxation Ruling TR 2015/1, the broad language of the conditions creates uncertainty as to what an income tax entity needs to do in order to comply with them.

We understand that the Government has recently considered submissions from the sector (including a very detailed one from the Law Council of Australia to Treasury in October 2016) calling for the repeal, or at least modification, of these special conditions. In reviewing the DGR regime, and the role of the ATO vis a vis the ACNC (in relation to the four registers), we would also support reforms to repeal or modify these special conditions for registered charities as there is sufficient ACNC oversight.

(C) Reform for developed country disaster relief DGR funds

Under the current DGR regime, the ATO Commissioner requires a separate DGR developed country disaster relief fund to be established for each new disaster declared under section 30-86 of the 1997 Tax Act, notwithstanding that the provision itself does not require this. As a consequence of this, in 2013, WVA was unable to establish one DGR fund that could cover disaster relief work in Japan and Christchurch following the tsunami and earthquake in those places that year.

This requirement to establish separate DGR funds for each new disaster in a developed country inhibits our ability to use such funds to act quickly in galvanising public support and providing emergency relief. It also increases our administrative burden (and therefore overhead costs) and restricts use of funds as between natural disasters.

For this reason, we welcome reforms to this DGR category to enable one relief fund to be established and utilized as an umbrella fund for all declared disasters in developed countries.

Moreover, the introduction of the external conduct standards could be used to address the inconsistency in the current DGR regime, whereby developed country disaster relief funds do not have any criteria or guidelines similar to the OAGDS to which we must adhere in undertaking relief work in developing countries.

(D) Removal of public fund requirements

We welcome reforms to remove or modify the public fund requirements, including the responsible person requirement and requirement for maintaining separate bank accounts. These requirements are outdated, unnecessary and lead to undue complexity (and therefore overhead costs). Clear reporting mechanisms, combined with the gift fund requirements in Division 30, can be used to ensure accountability and proper expenditure of DGR funds during operations and on winding up.

Note: This recommendation addressees Question 8 in the DGR Discussion Paper: *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?*

(E) Introduction of annual certification requirements for DGRs

We welcome the introduction of an annual DGR certification requirement, and this could be incorporated into the Annual Information Statement submitted to the ACNC. However, if such a requirement was introduced, it would be helpful for the ACNC to develop a self-assessment tool and provide guidance on each DGR category to support charities in undertaking this annual self-assessment.

However, we oppose a formal rolling review program. Instead, we support a regulatory approach whereby the ACNC releases guidance on relevant DGR categories, there is a period of training and consultation in relation to that guidance (which will trigger an internal review by DGR charities), and then spot audits are undertaken in relation to high risk categories identified by the ACNC or in response to complaints received or issues highlighted by the public and media.

Reviews and spot audits should be undertaken based on DGRs that are identified as being high risk by the ACNC or ATO. Such DGRs may include PBIs which operate overseas and which are not subject to the OAGDS. This review would ensure that there is an appropriate level of accountability and oversight of such entities in relation to use of tax deductible funds applied offshore, pending the introduction of the external conduct standards to be administered by the ACNC.

Note: This recommendation addresses Questions 9 and 10 in the DGR Discussion Paper**:** *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? What are stakeholders' views on who should be reviewed in the first instance? What should be considered when determining this?*

4. Other issues - Fundraising and valuation rules

While not specifically addressed in the DGR Discussion Paper, we would like to take this opportunity to voice our concerns in relation to the rules around tax-deductible gifts and contributions for DGR fundraising events such as fetes, balls, gala shows, dinners and charity auctions are complex and difficult to navigate.

Under the current regime, a DGR is responsible for determining the value of a minor (token) benefit given to a person in return for a contribution. The person may then claim a deduction for that part of the contribution that is in excess of the minor benefit received by the contributor (subject to additional requirements being satisfied). The valuation rules used to determine the value of a benefit under Division 30 are complicated and difficult to apply – particularly if the event is unusual, the item is not generally available to the public, or the market value is not easily determined.

We would welcome reforms to simplify these requirements, as these requirements add complexity to how we engage with our supporters and donors. Such reform would clearly align with the stated goal in the DGR Discussion Paper in reducing administrative complexity.