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TREASURY LAWS AMENDMENT (MEASURES FOR A LATER SITTING) BILL  
2020: REQUIRING DGRS TO BE REGISTERED CHARITIES

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EXPOSURE DRAFT EXPLANATORY MATERIALS



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# **Glossary**

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ACNC	Australian Charities and Not-for-profits Commission
ACNC Act	<i>Australian Charities and Not-for-profits Commission Act 2012</i>
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
DGR	deductible gift recipient
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
REO	Register of Environmental Organisations
ROCO	Register of Cultural Organisations
TAA 1953	<i>Taxation Administration Act 1953</i>



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# **Chapter 1**

## ***Requiring deductible gift recipients to register as a charity***

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### **Outline of chapter**

1.1 Schedule 1 to the Bill amends the ITAA 1997 to require a fund, authority or institution that is, or is operated by, a non-government entity seeking endorsement as a deductible gift recipient (DGR) (other than an ancillary fund) to be a charity registered with the Australian Charities and Not-for-profits Commission (ACNC) or operated by a registered charity. This requirement already applies to 41 of the 52 general DGR categories. The amendments will extend the requirement to the remaining 11 categories.

1.2 All legislative references in this Chapter are to the ITAA 1997, unless otherwise stated.

### **Context of amendments**

1.3 Subdivision 30-A allows taxpayers to deduct a gift or contribution to certain funds, authorities or institutions. For a gift to be deductible, the fund, authority or institution must be covered by an item in any of the tables in Subdivision 30-B, or be an ancillary fund established and maintained under a will or instrument of trust for an entity listed in Subdivision 30-B.

1.4 Subdivision 30-B sets out various conditions of general application that must be met for the funds to be entitled to be endorsed as a DGR. The Subdivision also includes specifically named entities that are DGRs.

1.5 The majority of table items (41 of the 52 general DGR categories) in Subdivision 30-B that have general application already require that the fund must be a registered charity, operated by a registered charity, or an Australian government entity (which is not capable of being a charity) to be endorsed as a DGR.

1.6 The remaining categories still allow for endorsement as a DGR, even where the entity is not a registered charity, operated by a registered charity, or an Australian government agency. These categories are:

- Health—public fund for hospitals (item 1.1.3 in section 30-20)

- Health—public fund for public ambulance services (item 1.1.8 in section 30-20)
- Education—public fund for religious instruction in government schools (item 2.1.8 in section 30-25)
- Education—Roman Catholic public fund for religious instruction in government schools (item 2.1.9 in section 30-25)
- Education—school building fund (item 2.1.10 in section 30-25)
- Education—public fund for rural school hostel building (item 2.1.11 in section 30-25)
- Approved research institute—approved research institute (item 3.1.1 in section 30-40)
- Welfare and rights—public fund for persons in necessitous circumstances (item 4.1.3 in section 30-45)
- Environment—public fund on the Register of Environmental Organisations (REO) (item 6.1.1 in section 30-55)
- Cultural organisations—public fund on the Register of Cultural Organisations (ROCO) (items 12.1.1 in section 30-100)
- Fire and emergency services—fire and emergency services fund (item 12A.1.3 in section 30-102)

1.7 As charity registration is not a prerequisite for DGR status for these 11 general DGR categories, there can be inconsistent governance and reporting requirements for DGRs in the general DGR categories. Due to inconsistent reporting requirements, a few organisations are required to report both to the registrar (for example, registrar of the REO and ROCO) and the ACNC. Making charity registration a prerequisite for DGR status for these categories will improve the consistency of regulation, governance and oversight of DGRs, whilst also reducing unnecessary compliance costs.

## **Summary of new law**

1.8 Schedule 1 to the Exposure Draft Bill amends the special conditions for 11 general DGR categories in Subdivision 30-B (listed at paragraph 1.6) to require a fund, authority or institution seeking endorsement as a DGR to be:



- an Australian government agency; or
- a registered charity; or
- operated by an Australian government agency or a registered charity.

1.9 Charity registration is not required for Australian government agencies as they are excluded under the *Charities Act 2013* from the definition of charity.

1.10 Schedule 1 to the Exposure Draft Bill also includes transitional provisions for certain DGR entities that are not currently registered as charities.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Any non-Australian government fund, authority or institution that is, or is operated by, a non-government entity seeking endorsement as a DGRs under general DGR categories must be a registered charity with the ACNC or operated by a registered charity.	Certain non-government funds, authorities or institutions seeking endorsement as DGRs under general DGR categories set out in Subdivision 30-B need not be charities registered with the ACNC or operated by registered charities.

## Detailed explanation of new law

1.11 Schedule 1 to the Exposure Draft Bill requires that for a fund, authority or institution to be entitled to be endorsed by the Commissioner of Taxation (Commissioner) as a DGR under the general DGR categories, it must be:

- an Australian government agency; or
- a registered charity; or
- operated by an Australian government agency or a registered charity.

1.12 To give effect to these changes, Schedule 1 to the Exposure Draft Bill amends the special conditions for 11 general DGR categories in Subdivision 30-B (see paragraph 1.6) to require that these funds, authorities or institutions must be an Australian government agency, a registered charity, or be operated by an Australian government agency or registered charity. *[Schedule 1, item 1, table item 1.1.3 of subsection 30-20(1); item 2, table item 1.1.8 of subsection 30-20(1); items 3 to 6, table item 2.1.8, 2.1.9, 2.1.10 and*

*2.1.11 of subsection 30-25(1); item 7, table item 3.1.1 of subsection 30-40(1); item 8, table item 4.1.3 of subsection 30-45(1), and item 9, table item 12A.1.3 of section 30-102]*

1.13 Schedule 1 to the Exposure Draft Bill amends the definition of an ‘environmental organisation’ and a ‘cultural organisation’ in section 30- 260 and subsection 30-300(1) respectively. This amends the criteria requiring the funds listed on the REO or ROCO (covered under table items 6.1.1 and 12.1.1 respectively) to be an Australian government agency, a registered charity, or be operated by an Australian Government agency, or a registered charity. *[Schedule 1, item 10 and 11, section 30-260 and subsection 30-300(1)]*

1.14 The amendment will make charity registration a prerequisite for all funds seeking DGR endorsement under the general DGR categories. When the amendment takes effect, a fund, authority or institution, or another entity for the operation of the fund, authority or institution, seeking DGR endorsement must first register as a charity with the ACNC before applying to the Commissioner for endorsement as a DGR or to operate a DGR.

1.15 In practice, an entity would follow a streamlined process and lodge a single application to be registered as a charity with the ACNC, in which it would indicate its intention to be endorsed as a DGR. Once the ACNC is satisfied the entity can be registered as a charity, the ACNC would pass the necessary information to the ATO to assess the entity’s eligibility for DGR status.

1.16 Transition arrangements will be available to assist existing non-charity DGRs and other funds that have applied for DGR endorsement under section 30-120 of the ITAA 1997 prior to the application date of this amendment, but the Commissioner has not decided the application.

## **Application and transitional provisions**

1.17 The amendments made by this Schedule apply on or after an **application date** which is three months after the day on which this Schedule receives Royal Assent. *[Schedule 1, item 12 and 13]*

### ***Transitional rule for existing non-charity DGR funds***

1.18 Certain non-charity DGRs are not subject to the amendments until 12 months following the application date (***transitional application date***). This applies where gifts to a fund, authority or institution which were deductible under Division 30 before the application date, will not be deductible from the application date because of the amendments made by this Schedule. *[Schedule 1, item 12 and subitem 14(1)]*

1.19 The transition rule will apply from the application date to the earliest of the following:

- when gifts to a fund, authority or institution becomes deductible under Division 30 as amended by this Schedule; or
- the transitional application date.

1.20 If the fund, authority or institution fund, or an entity that operates it applies for an extended application date and the Commissioner determines that date, the transition rule will apply till that extended application date. *[Schedule 1, subitem 14(2)]*

***Transitional rule for new applicants***

1.21 The transitional rule would also apply where a fund, authority or institution, or an entity that operates it, has made an application for endorsement as a DGR under section 426-25 in Schedule 1 to the TAA1953 prior to the application date, and the Commissioner has not made a decision on that application immediately before the application date. The transitional rule would apply from the application date to the earliest of the following:

- where an application for DGR endorsement made by a fund, authority or institution has been refused by the Commissioner after the application date, and there is no other outstanding DGR endorsement application for that fund, authority or institution, or for its operation by another entity, the day on which notice of the refusal under section 426-25 in Schedule 1 to the TAA1953 is given; or
- the transitional application date.

1.22 If the fund, authority or institution fund, or an entity that operates it applies for an extended application date and the Commissioner determines that date, the transition rule will apply till that extended application date. *[Schedule 1, item 15]*

1.23 The transitional rule will not apply to any further application for a DGR endorsement by such an entity after the application date.

***Merits Review***

1.24 If an entity is dissatisfied with the Commissioner's refusal to endorse it as a DGR, it may object in the manner set out in Part IVC of the TAA 1953 in accordance with section 426-35 in Schedule 1 to the TAA 1953. Part IVC applies to taxation objections, reviews and appeal.

***Revocation of DGR endorsement***

1.25 If a non-charity DGR fund were to be disendorsed by the Commissioner after the amended legislation begins to apply (through

either compliance action of the ATO, or as a result of a request for dis-endorsement by the DGR itself) – any subsequent action by the entity seeking re-endorsement would be treated as a new application for DGR status and no transitional relief would apply.

***Application for extended application date***

1.26 Schedule 1 to the Exposure Draft Bill allows a fund, authority or institution, or an entity that operate it, to make an application to the Commissioner for an ***extended application date***, which is, a day occurring three years after the transitional application date. If the Commissioner determines an extended application date, the amendments made by this Schedule will not apply to that fund, authority or institution, until the extended application date has passed. *[Schedule 1, item 12 and subitem 16(1)]*

1.27 For the Commissioner to determine an extended application date for a fund, authority or institution:

- the fund, authority or institution, or an entity that operates it, must apply to the Commissioner to have an extended application date; and
- the application must be made in an approved form; and
- an application must be made before the transitional application date.

*[Schedule 1, subitem 16(3) and (4)]*

1.28 The Commissioner may not determine an extended application date for a fund, authority or institution before the transitional application date. If the application for an extended application date is refused, that fund, authority or institution will have an extended application date which is the day on which the notice of the refusal is given. If the Commissioner approves the application, that fund, authority or institution will have an extended application date that is the day that occurs 3 years after the transitional application date. *[Schedule 1, subitem 16(5)]*

1.29 A determination made by the Commissioner for a fund, authority or institution to have an extended application date under this Schedule is not a legislative instrument as it is an administrative action of the Commissioner. *[Schedule 1, subitem 16(2)]*

1.30 For the Commissioner to exercise the discretion to approve an application for an extended application date, the Commissioner must be satisfied that the prescribed criteria or matters, if any, in relation to the application are met. *[Schedule 1, subitem 16(6)]*

1.31 The Minister may, by legislative instruments prescribe the additional conditions that the Commissioner must consider in assessing an application for extended transitional relief. *[Schedule 1, subitem 16(7)]*

***Objection to Commissioner's decision***

1.32 The entity may object in the manner set out in Part IVC of the TAA 1953 if it is dissatisfied with the Commissioner's refusal to determine an extended application date. *[Schedule 1, subitem 16(8)]*