



10 December 2020

The Treasury
Langton Crescent
Parkes ACT 2600

Submitted by Email to dgr@treasury.gov.au

Dear Sir/Madam,

Deductible Gift Recipient (DGR) Reform — Requiring DGRs to be Registered as Charities

Philanthropy Australia welcomes the opportunity to make this submission in response to the exposure draft legislation which would require DGRs to be registered as charities. Philanthropy Australia appreciated the opportunity to participate in targeted consultation meetings in relation to this proposal, and this submission relates to the feedback we provided as part of that engagement.

About Philanthropy Australia

As the peak body, Philanthropy Australia's purpose is to serve the philanthropic community to achieve more and better philanthropy.

The community we serve consists of funders, grant-makers, social investors and social change agents working to achieve positive social, cultural and environmental change by leveraging their financial assets and influence.

Informed, independent and with reach and credibility, Philanthropy Australia gives its members a collective voice and ability to influence and shape the future of the sector and advance philanthropy.

We also serve the community to achieve more and better philanthropy through advocacy and leadership; networks and collaboration; professional learning and resources; and, information and data-sharing.

Our membership consists of approximately 750 trusts, foundations, organisations, families, individual donors, professional advisers, intermediaries and not-for-profit organisations.

Broader Reform of the DGR Framework is Necessary

The taxation framework for philanthropy is critical to supporting a vibrant and growing culture of giving in Australia. Philanthropy Australia therefore takes a strong interest in the design of this framework, advocating that it be based around principles of simplicity, clarity, certainty and ensuring there are appropriate incentives to encourage philanthropy.

Philanthropy Australia has long advocated for comprehensive reform of the DGR framework set out in Division 30 of the *Income Tax Assessment Act 1997 (Cth)*. Division 30 has evolved in an ad hoc manner, resulting in a DGR framework that is complex, cumbersome and a source of red tape. The lack of comprehensive reform of our DGR framework continues to impede the ability of many charities to access philanthropy.

Philanthropy Australia addresses this issue in more detail in our *Policy Priorities for a Post COVID-19 Australia* document (2020)¹ and also in our submission to The Treasury in response to the Tax Deductible Gift Recipient Reform Opportunities discussion paper (2017)². We continue to believe that in order to address the deficiencies in the framework and ensure it is fit for purpose, reform which both simplifies the framework and broadens access to DGR status for charities is necessary.

Although we believe that comprehensive reform is necessary, Philanthropy Australia welcomed the proposals announced by the former Minister for Revenue and Financial Services on 5 December 2017 and included as a measure in the Mid-Year Economic and Fiscal Outlook (MYEFO) 2017-18³, that:

1. All non-government DGRs will be automatically registered as a charity with the ACNC; and
2. The DGR registers and Overseas Aid Gift Deduction Scheme will be integrated with the ACNC charity register and duplicative reporting requirements will be abolished.

Whilst they are incremental, and do not address the various other issues with the DGR framework, they do represent sensible and worthwhile reforms which will simplify the framework and enhance its integrity.

We note that the draft legislation seeks to implement the first of these commitments, and our specific comments regarding the draft legislation are below.

Specific Comments in Relation to the Exposure Draft Legislation

At a high level, Philanthropy Australia submits that the current draft legislation does not align with the Australian Government's announcement of 5 December 2017 and the description of the measure within MYEFO 2017-18.

The 2017 announcement and MYEFO description, make it clear that all non-Government DGRs will be required to be registered charities.

However, the draft legislation will exclude both 'Item 2' (namely ancillary funds) and 'specifically listed' DGRs. This inconsistency between the details of the proposal as announced and the practical effects of the draft legislation should be addressed.

In terms of simplicity, but also to promote the integrity of the DGR framework, it is appropriate that *all* non-Government DGRs should be required to register as charities, as originally announced by the Government and specified in MYEFO 2017-18. This would include the small number of ancillary funds which are not currently registered charities, as well as specifically listed DGRs.

In some very isolated instances, for example where an ancillary fund wishes to make grants to an eligible entity without charitable purposes (such as a DGR entity that advances sport), the Australian Taxation Office (ATO) can be provided with an administrative power to exempt an ancillary fund from the requirement to register as a charity.

We understand that only a small number of ancillary funds are currently not registered as charities. It would be simpler to require them to register as such but provide an appropriate exemption to be used if necessary. The current proposal risks further complicating the DGR framework by having different requirements for different types of DGRs, and we believe that it is the Government's intention to reduce rather than add complexity to the framework.

¹ See: <https://www.philanthropy.org.au/tools-resources/policy-priorities-for-a-post-covid-19-australia/>

² See: https://www.philanthropy.org.au/images/site/publications/Philanthropy_Australia_Submission_-_DGR_Framework_Reform_Discussion_Paper.pdf

³ See: <https://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/media-releases/reforming-administration-tax-deductible-gift-recipients> and https://archive.budget.gov.au/2017-18/myefo/MYEFO_2017-18.pdf (at p.110)

In the case of specifically listed DGRs, excluding them from the requirement to register as charities not only risks further complicating the DGR framework, but it also means that those DGRs which choose not to register will effectively have no oversight. This is because there are currently no annual reporting requirements to the ATO for DGRs which are not registered charities. This presents an integrity risk to the DGR framework.

We do acknowledge that some specifically listed DGRs may not be eligible to register as charities. As with ancillary funds, we believe that a better approach is to require them to register as charities but provide the ATO with an administrative power to exempt an entity from the requirement to register as a charity subject to, for example, the entity meeting certain reporting requirements to the ATO.

Furthermore, the granting of a specific listing involves both a policy decision of Government and an amendment to Division 30 of the *Income Tax Assessment Act 1997 (Cth)*. Therefore, if there is a desire in the future to exempt certain new specifically listed DGRs from the requirement to register as a charity, this can be done as part of this process and with the oversight of the Parliament.

In terms of other aspects of the draft legislation, Philanthropy Australia believes that the proposed transitional arrangements are appropriate. Given our positive ongoing engagement with both the ATO and the Australian Charities and Not-for-profits Commission, we have confidence in their ability to manage this process.

Concluding Comments

Philanthropy Australia once again thanks the Treasury for the opportunity to make this submission. Should there be a desire to discuss any of the matters raised in this submission further, please do not hesitate to contact Philanthropy Australia's Acting Policy and Research Director, Krystian Seibert

Yours Sincerely



Sarah Davies
Chief Executive Officer