



Australian Government  
The Treasury

**TSY/AU**

# DGR Category for pastoral care services.

Consultation on implementation design

March 2022



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Manager  
Media and Speeches Unit  
The Treasury  
Langton Crescent  
Parkes ACT 2600  
Email: [media@treasury.gov.au](mailto:media@treasury.gov.au)

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# Consultation Process

## Request for feedback and comments

Interested parties are invited to lodge a written submission addressing the discussion questions which can be found through the paper.

Electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

If you would like part of your submission to remain in confidence, you should provide this information marked as such in a separate attachment. A request made under the *Freedom of Information Act 1982* (Cth) for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

### Closing date for submissions: 29 April 2022

|           |   |
|-----------|---|
| Email     | <a href="mailto:charitiesconsultation@treasury.gov.au">charitiesconsultation@treasury.gov.au</a>  |
| Mail      | Director<br>Not-For-Profit Unit, Not-for-profits and Tax Administration Branch<br>The Treasury<br>Langton Crescent<br>PARKES ACT 2600   |
| Enquiries | Enquiries can be initially directed to <a href="mailto:charitiesconsultation@treasury.gov.au">charitiesconsultation@treasury.gov.au</a> |
| Phone     | 02 6263 3234  |

# DGR category for pastoral care services

## Introduction

The Government announced in the 2021-22 Mid-Year Fiscal and Economic Outlook that it will establish a deductible gift recipient (DGR) category to enable funds to access DGR status where the fund supports pastoral care and analogous wellbeing services delivered to students in Australian primary and secondary schools.

DGR status allows an entity to receive gifts and contributions for which donors can claim a tax deduction. The DGR tax arrangements are intended to encourage philanthropy and provide support for the not-for-profit (NFP) sector.

The proposed new DGR category will be implemented through amendments to the *Income Tax Assessment Act 1997* (ITAA97). Subdivision 30-B of the ITAA97 outlines various DGR categories. Each DGR category has its own set of eligibility criteria for DGR status. Broadly, the requirements for DGR eligibility are directed at ensuring the activities of DGRs deliver broad public benefits to the Australian community.

The Government currently provides significant support to pastoral care services in schools through the National School Chaplaincy Program (NSCP). The proposed new DGR category will complement this support by encouraging greater private philanthropy to meet increasing demands for these services.

The purpose of this consultation paper is to seek stakeholder feedback and views on the implementation design of the new DGR category, which will be used to draft legislative amendments.

## Rationale for the new DGR category

Wellbeing support services are increasingly being integrated into Australian schools to support young people facing challenges relating to stress, relationships, managing emotions, social media bullying, and health and lifestyle issues.

Pastoral care workers are valued members of school communities who support the social and emotional wellbeing of students. Pastoral care services are particularly important in the current environment, as students navigate the challenges of the COVID-19 pandemic and return to school.

The Government is seeking to support the provision of pastoral care services to students in Australian schools by establishing a DGR category. Making donations to support the provision of such activities tax deductible will help eligible entities attract donations.

The creation of a DGR category will provide a clear and equitable mechanism for any provider of eligible services to access deductible donations.

Services delivered by chaplains and pastoral care workers supported under the NSCP are intended to be eligible under the new DGR category.

The proposed approach provides flexibility for individual Australian schools, parents and citizens associations, and other eligible entities to collect deductible donations to support the provision of pastoral care services in schools.

Many schools operate DGR endorsed school building funds to collect deductible donations to support the acquisition or maintenance of school buildings. The proposed DGR category would operate in a similar manner.

## Key criteria for a pastoral care DGR category

Treasury has identified three key design elements that would underpin the legislative criteria establishing eligibility for the proposed new DGR category:

1. A DGR category for **funds** operated by an **Australian Charities and Not-for-profits Commission (ACNC) registered charity** or **Australian government agency**.
2. The fund must be established and maintained **solely to support the activity of delivering pastoral care services to Australian primary and secondary school students**.
3. The provision of pastoral care must be delivered by **an appropriately qualified worker** whose **predominant purpose and function is to provide** pastoral care to students **in a school environment**.

The insights and experience of the charities sector and the broader public are vital to ensuring that the criteria are comprehensive and are appropriately targeted. Each substantive aspect of the three key design elements is presented below, with specific questions provided where Treasury would particularly value your insights and feedback.

### Funds

Under the existing framework in the tax law, DGR status can generally be applied to an ‘institution’ or a ‘fund’. An institution is an organisation established for the promotion of particular objects. A fund is where gifts of money or property for certain purposes are credited. A fund can be operated by an institution or can be a separate entity in itself (set up as a trust).

It is proposed to limit eligibility for the new DGR category to funds.

There are a diverse range of service providers that offer a variety of wellbeing services to students. Targeting funds rather than institutions will ensure that DGR support can be directed at the provision of eligible services regardless of the type of provider.

Under a fund approach, any entity can establish an eligible fund which can accept deductible donations for the purpose of providing pastoral care services. This enables the entity to continue to undertake other activities while ensuring deductible donations are used to support pastoral care services.

For example, entities that provide school pastoral care services that also offer religious education or clinical psychology services could establish a pastoral care fund with DGR status, while continuing to provide non-pastoral care services. The use of DGR funds collected through the newly endorsed fund would be limited to the provision of pastoral care to students.

#### Questions

1. Are there drawbacks or concerns with targeting the DGR category to funds?

### Charity registration

Charity registration is already a requirement in the tax law for all non-government entities endorsed under DGR categories. Consistent with this policy, the criteria for any new DGR category will include a requirement that the fund, or the entity operating the fund, must be operated by a registered charity or an Australian government agency.

Requiring entities to register as charities and maintain their registration enables the ACNC to assess ongoing compliance with governance and reporting requirements, and to ensure they maintain their

charitable purpose(s). This is important to help maintain trust and confidence in the sector and is designed to ensure the appropriate oversight of entities endorsed as DGRs.

## Pastoral care

The ordinary meaning of pastoral care services in the context of school students refers to the provisions made to advise students about personal wellbeing and their moral and ethical concerns.

Pastoral care services can be provided in many different guises and may be delivered by both religious and non-religious providers.

Pastoral care services can include a range of activities such as group-orientated programs (for example, breakfast clubs or lunchtime activities) to more individualised support where pastoral care workers engage in one-on-one conversations with students. Services delivered by chaplains and pastoral care workers supported under the National School Chaplaincy Program (NSCP) may be eligible under the new DGR category. However, the proposed DGR category is not limited to these pastoral care services, recognising that there are other similar wellbeing services provided to students in schools.

Importantly, the ordinary meaning of pastoral care services does not extend to providing clinical assessment, diagnosis, or treatment of students, or formal case management of students' health concerns. Most health services would not be considered to meet the ordinary meaning of 'pastoral care services' and consequently, would not be captured by the new DGR category.

The ordinary meaning of pastoral care services will not extend to ordinary religious services. However, if the activities of the clergy meet the key design elements described in this consultation paper, those activities may be appropriate for endorsement under the new DGR category.

### Questions

2. Are there drawbacks or concerns with relying on the ordinary meaning of pastoral care services in this way?
3. How does the proposed definition of pastoral care services apply to existing wellbeing programs and initiatives that are currently in place?

## Activity test

Under the existing framework in the tax law, DGR categories are based on either a purpose test, where eligible entities' activities must be in pursuit of a certain purpose, or an activity test where eligible entities must support particular activities.

For this proposed DGR category, an activity test is proposed because eligibility can be clearly confined to the activity of delivering pastoral care services to school students, consistent with the government's intent.

The alternative approach, using a purpose test, may result in deductible donations being used to support a wider array of activities which provide secondary benefits of supporting students' personal, emotional, or social wellbeing, such as outdoor education or arts programs. This goes beyond the intended target activities of the new DGR category.

### Questions

4. Are there drawbacks or concerns with establishing an activity test for this DGR category?

## Primary and secondary school students

The intent is that the proposed DGR category can only be used to support the provision of pastoral care to primary or secondary school students in Australia. This includes services delivered to students in both government and non-government schools. This includes students in pre-school and approved curriculum-based learning institutions, and excludes formal childcare, after school care, tertiary institutions and Sunday schools.

This definition would focus on the student as the recipient of the services. There are a range of other persons who may be linked to, or involved in, pastoral care for an individual student, including parents, guardians, school staff and personnel. This definition would include services provided to those other persons, where it is directly linked to pastoral care provided to a student. However, it would not extend the DGR category to pastoral care services where those services are provided only to non-students. For example, in the course of providing pastoral care to students, pastoral care workers can provide support to the broader school community (staff and families). Where pastoral care workers have identified students suffering hardship at home, they may in turn, provide some support to the families of these particular students under the proposed DGR category.

### Questions

5. Are there concerns about the scope of the definition of schools for this DGR category?

## Appropriately qualified worker

The range of wellbeing services will vary considerably between schools depending on the needs of the individual school community and over time. Accordingly, the type of personnel required to support the provision of such services will also vary substantially.

Consequently, it is not practicable or desirable for the tax law to specify qualifications or types of workers providing pastoral care.

It is appropriate that schools and education authorities maintain the discretion to determine the appropriate level of qualifications for workers operating in schools at any point in time. This includes any qualifications that relate to religious affiliation.

It is proposed that when assessing whether a fund is supporting the appropriate services under the new DGR category criteria, the ATO is able to consider relevant qualifications required by applicable education authorities for pastoral care services at a given time. For example, the current minimum qualification requirements under the NSCP are either a Certificate IV in Youth Work, a Certificate IV in Pastoral Care, a Certificate IV Chaplaincy and Pastoral Care, or an equivalent qualification.

### Questions

6. Does this approach provide sufficient certainty to wellbeing service providers? Are there examples of guidance that the ATO could have regard to when determining eligibility for the DGR category?

## Predominant purpose and function of the worker is the provision of pastoral care to students

The intent is that the proposed DGR category can only be used to support the provision of pastoral care services delivered by a worker, whose predominant responsibility in a school is pastoral care. The intent is not to extend the DGR category to regular teaching activities.

While acknowledging that academic school staff sometimes undertake pastoral care responsibilities in addition to their teaching role, DGR funds can only be used to fund the costs of academic staff



where their predominant role in the school is to support the delivery of pastoral care services to students.

For non-academic staff, there may be circumstances where an individual staff member has multiple roles within a school. DGR funds can only be used to fund the costs of non-academic members of staff where their predominant role in a school is the provision of pastoral care to students.

#### Questions

7. Are there drawbacks or concerns with establishing a predominant role test for this DGR category?

### Worker who is available in the school environment

The intent is that the DGR category is targeted to support pastoral care services delivered to students in the school environment.

Requiring an arrangement or nexus with the school is intended to exclude entities or individuals that support student wellbeing independently from the school being captured by the DGR category (for example, external counsellors or counselling clinics that students attend separately from their school).

While it is typically expected that pastoral care services are to be provided in person on school grounds during school activities, there may be justifiable exceptions. This includes circumstances where external factors inhibit in-person support, and electronic communication is necessary, such as during a natural disaster emergency or pandemic response. It may also be appropriate in limited circumstances for pastoral care services to be provided to families at home to assist with a student's support needs identified at school.

#### Questions

8. Are there concerns with the proposed reference to 'the school environment'?

## Conclusion

The elements described above are intended to identify the elements that form the basis of the legislative criteria to describe the new DGR category.

Throughout the document we have sought your feedback on each of these elements, in addition to the general questions below.

Your feedback will inform advice to Government on the design of the legislative amendments.

#### Questions

9. Are there additional factors that should be taken into account?
10. Are there further considerations relevant to the implementation of this DGR category?