

2023

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL
2023: DEDUCTIBLE GIFT RECIPIENT REGISTERS REFORM

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

<i>Abbreviation</i>	<i>Definition</i>
ATO	Australian Taxation Office
DGR	Deductible Gift Recipient
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
OAGDS	Overseas Aid Gift Deductibility Scheme

Chapter 1: Changes to administration of Deductible Gift Recipient status

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Outline of chapter

- 1.1 This measure transfers administration of the four unique DGR categories to the Commissioner of Taxation. These unique DGR categories are currently administered by other government agencies. This change is intended to make all DGR categories consistent in administration, reduce red tape imposed on endorsed organisations, and simplify the application process for organisations seeking DGR status.

Context of amendments

- 1.2 Australia's taxation system provides for donations to some organisations to be deductible from income tax. These organisations are referred to as DGRs. DGR status allows an entity to receive tax deductible gifts and contributions from the public. Donors can claim an income tax deduction for donations of \$2 or more to an organisation that has DGR status.

- 1.3 Each of the general categories has clear, administrable eligibility criteria that organisations must meet to be endorsed as a DGR. The criteria mostly relate to the purposes that organisations must hold and sometimes, the activities that they can engage in. This is to ensure that DGR status is restricted to organisations that provide a broad public benefit.
- 1.4 There are 52 categories of DGR and organisations must meet certain criteria to achieve endorsement as a DGR for the purposes of the Act. The ATO is responsible for the endorsement of all 52 categories of DGRs.
- 1.5 Four DGR categories are currently administered by government entities other than the ATO, all other DGR categories are administered by the ATO. Those departments are responsible for assessing and advising their Minister on the eligibility of organisations. The Minister, and the relevant Treasury Minister, direct the departmental Secretary to add the eligible organisation to the register. The four specific DGR categories administered outside of the ATO are:
- Environmental Organisations — administered by the Department of Climate Change, Energy, the Environment and Water.
 - Harm Prevention Charities — administered by the Department of Social Services.
 - Cultural Organisations — administered by the Office for the Arts in the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.
 - Overseas Aid Organisations — administered by the Department of Foreign Affairs and Trade.
- 1.6 Applications for an organisation to be endorsed as a DGR in the above categories are typically significantly slower than applications in other DGR categories. It currently takes up to two years to approve DGR status for an entity seeking addition to one of the registers. This reform will streamline the application and reporting requirements and reduce DGR approvals from up to two years to around one month.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

New law	Current law
Environmental organisations, harm prevention charities, cultural organisations and overseas aid organisations apply to the ATO to be endorsed as a DGR.	Environmental organisations, harm prevention charities, and cultural organisations seeking DGR status apply to the Government department responsible for that area of policy for admission to a

New law	Current law
	register. The relevant Minister decides whether to direct the Departmental Secretary to add the organisation to the DGR register. Overseas aid organisations apply to the Department of Foreign Affairs and Trade to be declared an ‘approved organisation’ by the Minister.
Overseas aid organisations must satisfy the principal purpose test outlined in the legislation, that substantially replicates aspects of the criterion currently assessed by DFAT.	Overseas aid organisations must be assessed by DFAT as satisfying certain criterion to become an approved organisation.

Detailed explanation of new law

- 1.7 The amendments transfer practical responsibility for assessing DGRs from Ministers (assisted by the relevant department) to the ATO. The amendments repeal the powers of the Minister and departments that facilitate the ministerial approval and registration process to facilitate the transfer of responsibility to the ATO.
- 1.8 In general, the amendments preserve the existing rules as they affect entities seeking endorsement as a DGR – the changes predominantly affect how the Government administers the DGR categories.
- 1.9 Provisions relating to maintenance of departmental registers have been repealed. The current law requires that certain departments maintain registers of deductible gift recipients. These amendments abolish these registers and the obligations of departmental secretaries to maintain registers.

Environmental Organisations

Continuing Obligations

- 1.10 Environmental organisations eligible for endorsement as DGRs remain organisations with a principal purpose of the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

[Schedule 1, item 1, subsection 30-55(1) (table item 6.1.1) of the ITAA 1997]

- 1.11 Eligible environmental organisations must:
- be a registered charity or an Australian Government Agency;

- have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons; and

[Schedule 1, item 2 and 3, section 30-60 of the ITAA 1997]

- not pay any of their profits or financial surplus, or give any of its property, to their members, beneficiaries, controllers or owners under existing law.

Changed Requirements

- 1.12 All endorsed environmental organisations must maintain a gift fund, and gifts must be received by the charity's gift fund. Organisations are currently endorsed for the operation of a public fund. Following the transition, the public fund will satisfy the requirement of a gift fund. This is a departure from existing requirements for organisations endorsed with DGR status under section 30-120(a) of the ITAA 97. This may affect a small number of environmental organisations currently endorsed under section 30-120(a) of the ITAA 1997.

[Schedule 1, item 1, subsection 30-55(1) (table item 6.1.1) of the ITAA 1997]

- 1.13 The Environment Secretary no longer needs to keep a register of environmental organisations, and those organisations' eligibility as a DGR no longer depends on being on that register.
- 1.14 Statistical information about gifts made during an income year no longer need to be provided to the Environment Secretary. The ACNC and ATO receive the necessary information via other mechanisms like the entity's charity registration. The Environment Secretary will no longer have need for this information as they will no longer be responsible for maintaining a register of environmental organisations.
- [Schedule 1, item 4, subdivision 30-E of the ITAA 1997]*
- 1.15 New environmental organisations must have winding up provisions providing that when their public fund is wound up, surplus assets are transferred to another DGR. Current requirements provide that funds must be transferred to another organisation on the register. Organisations can choose to have a more limiting provision that allows for surplus assets to be transferred to a specific kind of DGR, but the legislation no longer requires transition to another entity on the register.

Harm Prevention Charities

Continuing Obligations

- 1.16 Harm prevention charities eligible for endorsement as DGRs remain those with a principal activity being the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings in Australia. This

continues to mean that harm prevention charities in Australia must have its purposes and beneficiaries in Australia, and not another country.

1.17 Eligible harm prevention charities must:

- be a registered charity that is exempt from income tax;
- have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons; and

[Schedule 1, item 8, subsection 30-45(1) (table item 4.1.4) of the ITAA 1997]

- must not pay any of their profits or financial surplus, or give any of its property, to their members, beneficiaries, controllers or owners under existing law.

Changing Requirements

1.18 All harm prevention charities must maintain a gift fund, and gifts must be received by the charity's gift fund. Charities are currently endorsed for the operation of a public fund. Following the transition, the public fund will satisfy the requirement of a gift fund. This is a departure from existing requirements for organisations endorsed with DGR status under section 30-120(a) of the ITAA 1997. This may affect a small number of harm prevention charities currently endorsed under section 30-120(a) of the ITAA 1997.

1.19 The Families Secretary no longer needs to keep a register of harm prevention charities, and those charities' eligibility as a DGR no longer depends on being on that register.

1.20 Statistical information about gifts made during an income year no longer need to be provided to the Families Secretary. The ACNC and ATO receive the necessary information via other mechanisms like the entity's charity registration. The Families Secretary will no longer have need for this information as they will no longer be responsible for maintaining a register of harm prevention charities.

[Schedule 1, item 9, subdivision 30-EA of the ITAA 1997]

1.21 New harm prevention charities must have winding up provisions providing that when their public fund is wound up, surplus assets are transferred to another DGR. Current requirements provide that funds must be transferred to another charity on the register. Organisations can choose to have a more limiting provision that allows for surplus assets to be transferred to a specific kind of DGR, but the legislation no longer requires transition to another entity on the register.

Cultural Organisations

Continuing Obligations

1.22 Cultural organisations eligible for endorsement as DGRs remain those with a principal purpose of the promotion of literature, music, a performing art, a visual art, a craft, design, film, video, television, radio, community arts, arts or languages of Indigenous persons or movable cultural heritage.

1.23 Eligible cultural organisations must:

- be a registered charity or an Australian Government Agency; and
- must maintain a gift fund, and gifts must be received by the organisation's gift fund.

[Schedule 1, item 12, subsection 30-100(1) (table item 12.1.1) of the ITAA 1997]

- not pay any of their profits or financial surplus, or give any of its property, to their members, beneficiaries, controllers or owners, as under existing law.

Changing Requirements

1.24 All cultural organisations must maintain a gift fund, and gifts must be received by the organisation's gift fund. Organisations are currently endorsed for the operation of a public fund. Following the transition, the public fund will satisfy the requirement of a gift fund. This is a departure from existing requirements for organisations endorsed with DGR status under section 30-120(a) of the ITAA 97. This may affect a small number of cultural organisations currently endorsed under section 30-120(a) of the ITAA 1997.

1.25 The Arts Secretary no longer needs to keep a register of cultural organisations, and those organisations' eligibility as a DGR no longer depends on being on that register.

1.26 Statistical information about gifts made during an income year no longer need to be provided to the Arts Secretary. The ACNC and ATO receive the necessary information via other mechanisms like the entity's charity registration. The Arts Secretary will no longer have need for this information as they will no longer be responsible for maintaining a register of harm prevention organisations.

[Schedule 1, item 13, subdivision 30-F of the ITAA 1997]

Overseas Aid

1.27 The DGR scheme relating to overseas aid gift funds has the most significant changes from the previous legislative scheme. The previous criteria for overseas aid organisations seeking DGR endorsement were predominantly

contained in guidance material published by the Department of Foreign Affairs and Trade. The criteria from that guidance that have been preserved, based on those that can be assessed by the ATO, are contained in primary law in this Bill.

1.28 Overseas aid organisations eligible for endorsement as DGRs must have a principal purpose of delivering development or humanitarian assistance activities (or both) in developing countries, and must deliver those activities in partnership with organisations in the country, based on principles of cooperation, mutual respect and shared accountability. These requirements are analogous to aspects of the criterion that DFAT currently uses to assess overseas aid organisations, but expressed in the language of principal purpose.

1.29 Eligible overseas aid organisations must be a registered charity or an Australian Government Agency.

[Schedule 1, item 17, subsection 30-80(1) (table item 9.1.1) of the ITAA 1997]

1.30 The meaning of developing country for the principal purpose test will mean inclusion in the list of official development assistance recipients published from time to time by the Organisation for Economic Co-operation and Development's Development Assistance Committee, or as declared by the Foreign Affairs Minister

[Schedule 1, item 18, subsection 30-85 of the ITAA 1997]

1.31 Ministers will no longer, by legislative instrument, declare government entities to be developing country relief funds. However, the Foreign Affairs Minister will, by legislative instrument, continue to have the power to declare a country to be a developing country.

[Schedule 1, item 19, subsection 207-115(5) of the ITAA 1997]

Consequential amendments

1.32 The Schedule also makes a minor consequential amendments to the ITAA 1997. The amendments remove guidance sections that are no longer required. These amendments also repeal definitions that are no longer required.
[Schedule 1, items 5, 6, 10, 14, 15 and 21 of the ITAA 1997]

Commencement, application, and transitional provisions

1.33 The amendments will commence on the first 1 January, 1 April, 1 July or 1 October after the date of Royal Assent (as per general tax measures). The measures will apply six months after registration to facilitate the machinery of government changes necessary to administer the changes.

- 1.34 Transitional provisions will apply to ensure that the ATO can assess applications currently under consideration for entry onto a register for endorsement as a DGR. Current DGRs will continue to be endorsed so long as they meet the existing eligibility criteria.

[Schedule 1, item 7, 11, 16 and 20]

- 1.35 Environmental organisations who are DGRs are required to include provisions in their constitution requiring that, if the organisation or its public fund is wound up, funds will be distributed to another environmental organisation on the register of environmental organisations. These provisions will not be administrable, as the register will cease to exist as a result of this legislation. Transitional provisions provide that, if the public fund is wound up, funds may be transferred to another DGR.

[Schedule 1, item 7]

- 1.36 Harm prevention charities who are DGRs are required to include provisions in their constitution requiring that, if the organisation or its public fund is wound up, funds will be distributed to another harm prevention charity on the register of harm prevention charities. These provisions will not be administrable, as the register will cease to exist as a result of this legislation. Transitional provisions provide that, if the public fund is wound up, funds may be transferred to another DGR.

[Schedule 1, item 11]

- 1.37 Countries currently specified to be a developing country under a declaration by the Foreign Affairs Minister will be treated as developing countries until the Foreign Affairs Minister makes a new legislative instrument declaring countries to be a developing country.

[Schedule 1, item 20]