

ACFID Submission: *Treasury Laws Amendment Bill 2023: Deductible Gift Recipient Registers Reform*

ACFID appreciates the opportunity to make this submission.

About ACFID

The Australian Council for International Development (ACFID) is the peak body for Australian non-government organisations involved in international development and humanitarian action.

OUR VISION

Our vision is Australia acting with compassion and fairness for a just, sustainable and equitable world.

OUR SHARED PURPOSE

Our purpose is to lead, unite and support international development and humanitarian organisations to realise our vision.

ABOUT ACFID

Founded in 1965, ACFID currently has 128 full members and 21 affiliates operating in more than 65 developing countries. The total revenue raised by ACFID's membership from all sources amounts to \$1.83 billion (2020 - 21), \$721 million of which is raised from over 996,000 thousand Australians. ACFID's members range between large Australian multi-sectoral organisations that are linked to international federations of NGOs, to agencies with specialised thematic expertise, and smaller community-based groups, with a mix of secular and faith-based organisations.

ACFID members must comply with the ACFID Code of Conduct, a voluntary, self-regulatory sector code of good practice that aims to improve international development and humanitarian action outcomes and increase stakeholder trust by enhancing the transparency, accountability and effectiveness of signatory organisations. Covering 9 Quality Principles, 33 Commitments and 92 compliance indicators, the Code sets good standards for program effectiveness, fundraising, governance and financial reporting. Compliance includes

annual reporting and checks. The Code has an independent complaint handling process.

ACFID'S VALUES

INTEGRITY

We act with honesty and are guided by ethical and moral principles in all that we do.

ACCOUNTABILITY

We take responsibility for our actions and are accountable to our stakeholders, and in particular primary stakeholders, for our performance and integrity.

TRANSPARENCY

We openly share information about our organisations and our work with all our stakeholders and the public.

RESPECT

We recognise the value and diversity of all people and are committed to treating others with due regard for their rights, dignity and integrity.

EFFECTIVENESS

We strive to deliver outcomes that bring about positive change in the lives of people living in poverty.

EQUITY

We are committed to overcoming prejudices and disadvantage and promoting fair and just access to resources and opportunities.

COOPERATION

We work with and alongside others in a spirit of mutuality, respecting diversity and difference in the pursuit of common goal

SUMMARY OF RECOMMENDATIONS

1. The transfer of administration of the four deductible recipient categories should be to the Australian Charities and Not-for-profits Commission rather than the Australian Tax Office.
2. The proposed provisions for overseas aid should further be amended to:
 - a. Recognise that in-country partners may be individuals not just organisations;
 - b. Maintain provisions allowing registration with a charitable purpose that is not the principal purpose suggested in the Bill and operating a developing country relief fund to ensure the separation of OAGDS eligible activities from those that are not eligible (such as for religious organisations). This could be achieved by maintaining the public fund wording at item 9.1.1 to the effect that a Public Fund may be a registered charity **or** operated by a registered charity.
 - c. Clarify that a PBI which has the purposes of delivering humanitarian or development activities which has DGR endorsements need not also be endorsed under proposed item 9.1.1.

Executive Summary

The Australian Council for International Development (ACFID) welcomes the release of this exposure draft for reform to the Deductible Gift Recipient (DGR) registers as a critical first step to relieving the administrative burden faced by resource constrained Australian charities in accessing and maintaining the tax-deductible status that many rely on to attract much needed ongoing support from a generous Australian public.

ACFID believes these reforms could be very effective, if accompanied by the simplifications and clarifications set out at **Recommendation 2** of this submission, including definitional clarity regarding partners, clarity on the application of DGR endorsement at both the entity and the fund level, and the maintenance of critical mechanisms that help organisations ensure the separation of eligible development and humanitarian action activities, from those that would otherwise be deemed ineligible under the existing OAGDS criterion.

As set out in **Recommendation 1**, these changes will be most effective in reducing red tape overall for the sector if they are administered by the Australian Charities and Not-For-Profits Commissions (ACNC), building on the Commission's existing capability to administer DGR registers and streamline the process for assessing charitable definitions as is already the case for a number of DGR registers. The case for this change is very clear, and would be welcomed across the sector.

As the Government moves forward on this and other opportunities for further reform to the charitable sector to increase public trust and stimulate charitable giving, ACFID would welcome the chance to host such discussions with ACFID's members. We would further welcome the opportunity to discuss these recommendations in more detail. ACFID's recommendations are summarised above, and detailed on the pages following.

Detailed recommendations

RECOMMENDATION 1: *The transfer of administration of the four deductible gift recipient (DGR) categories should be to the Australian Charities and Not-for-profits Commission rather than the Australian Tax Office.*

1. Alongside much of the charitable sector, ACFID supports the ambitions laid out in the proposed amendments, particularly efforts to reduce red tape. ACFID understand from the exposure draft materials that under this proposal the Australian Tax Office (ATO) would gain responsibility for assessing eligibility for the four unique deductible gift recipient DGR categories. This change is intended to ensure administrative consistency and simplify the application process for those seeking DGR status.
2. The Australian Charities and Not-for-profits Commission (ACNC) already has responsibility for assessing organisations and funds under other categories of DGR, including Public Benevolent Institutions (PBI) and Health Promotion Charities. Applications for DGR endorsements for these organisations are made at the same time as the application to the ACNC, significantly reducing time spent administering applications for both these organisations, and the Government.
3. ACFID proposes that a more effective route of achieving genuine red tape reduction is for this approach to be simply extended to the four DGR registers. This would include the definitional element of DGR also being dealt with initially by the ACNC and then provided onwards to the ATO for endorsement.
4. One regulator being tasked with definitional issues avoids conflicting interpretations and streamlines administration. This is particularly important for PBIs that deliver development and humanitarian aid outside of Australia or operate Overseas Aid Gift Deduction Funds which do similar activities and often as the controlled entity of a PBI.
5. The ACNC already has experience in engaging with the organisations working within overseas aid via the development and administration of the Governance Standards and the External Conduct Standards, including their accompanying guidance material. ACFID proposes this capability could be extended to the definitional assessment of these charitable organisations.
6. Resourcing the ACNC to deliver against both these tasks creates much-needed efficiency, and is consistent with the intent of the Commission's establishment to act as a specialist and capable administrator of the charity sector.

RECOMMENDATION 2: *The proposed provisions for overseas aid should further be amended to:*

- a. *Recognise that in-country partners may be individuals not just organisations;*
- b. *Maintain provisions allowing registration with a charitable purpose that is not the principal purpose suggested in the Bill and operating a developing country relief fund to ensure the separation of OAGDS eligible activities from those that are not eligible (such as for religious organisations). This could be achieved by maintaining the public fund wording at item 9.1.1 to the effect that a Public Fund may be a registered charity or operated by a registered charity; and*
- c. *Clarify that a PBI which has the purposes of delivering humanitarian or development activities which has DGR endorsements need not also be endorsed under proposed item 9.1.1.*

7. ACFID welcomes the simplification of requirements for the provisions relating to overseas aid acknowledging that several of the criteria for this endorsement are already requirements for registration under the ACNC Act, and the accompanying External Conduct Standards.
8. Nonetheless, the clarity of the wording at proposed item 9.1.1 should be expanded to explicitly recognise that working in partnership can include **individuals**, not just organisations. This adjustment would ensure the intent of OAGDS criterion 3 is explicitly captured within this definition, thus achieving the analogous aim set out in the exposure draft's explanatory materials.
9. ACFID is, however, concerned with the proposed changes to item 9.1.1. shifting DGR for entities operating funds under OAGDS to be considered DGR endorsed as a whole. Though undoubtedly intended to create an administrative efficiency, this change will be problematic for organisations which have a wider purpose and remit to the Australian public than the OAGDS-approved institution fund that they operate. This could include up to 95 of ACFID's members.
10. Currently such organisations are not required to have a *principal* purpose of delivering development or humanitarian assistance. Rather the sole purpose of the *fund* must be to provide this relief, allowing the organisation to have purposes broader than delivering development or humanitarian assistance. For PBIs with DGR endorsement who operate developing country relief funds (up to 55 ACFID member organisations) this would effectively create two DGR endorsements at the organisational level, which is both impossible and unnecessarily confusing.
11. Similarly, these changes will be problematic for organisations that need to be able to separate their OAGDS activities from those that are not eligible. This is particularly true for religious organisations conducting activities explicitly excluded under OAGDS. Clear mechanisms for charitable organisations to maintain separation between activities that fit within the purpose of development and humanitarian action from those that do not (such as partisan political activities or religious proselytisation) is critical to the transparency and accountability that creates confidence and trust with the Australian public.
12. ACFID proposes that these organisations should be able to maintain their public funds, and that this could be achieved by simply expanding the public fund wording at proposed item 9.1.1. to clarify that a Public Fund may be a registered charity or operated by a registered charity.
13. Finally, we submit that it should be made clear that a Public Benevolent Institution *which has the purposes of delivering relief through humanitarian or development activities which has DGR endorsement need not also be endorsed under proposed item 9.1.1 to be a DGR*. A typical structure for entities involved in humanitarian or development activities overseas is to operate as a Public Benevolent Institution registered with the Australian Charities and Not-for-profits Commission (ACNC) and complying with the ACNC external governance standards. Such entities may also maintain an item 9.1.1 fund for historical reasons or to meet the ACNC interpretation that the

concept of “relief” for the purposes of s.30-85 of the Income Tax Assessment Act is not identical to the concept of “relief” for PBI purposes (see ACNC Commissioner’s Interpretation Statement: Public Benevolent Institutions at paragraph 5.8.4.) This clarification could be achieved by a note to item 9.1.1 to the effect that an entity may also be eligible to be a deductible gift recipient under other provisions of the Act.

ACFID welcomes the Government's commitment to charity sector reform and welcome these changes that will vastly reduce the administrative burden felt by many ACFID members. We would be pleased to discuss this submission further including the opportunities to avoid unnecessary and unintended confusion to the charitable sector. For questions or further information on this submission please contact ACFID’s Chief Operating Officer Jocelyn Condon (jcondon@acfid.asn.au)

About the ACFID Code of Conduct

ACFID members must comply with the ACFID Code of Conduct and ACFID operates [a continuous regime of compliance monitoring](#).

The ACFID Code of Conduct requires members to have [policies, procedures and guidance documents](#) across all of their practice and includes those that address risk management and control, financial wrongdoing (including terrorism financing and money laundering), vetting organisations and individuals they fund against proscribed terrorist listings and appropriate and effective internal controls. Members are expected to act in accordance with their policies. They are also required to extend the Code's financial wrongdoing requirements to partners. Members are expected to apply the ACFID [guidance on how to develop a financial wrongdoing policy](#).

The Code also requires members to undertake [due diligence](#) and [capacity assessments](#) of partners including partners' capacities to manage funds and vetting of partners against proscribed terrorist listings. The ACFID Code has a number of other associated requirements that complement the financial wrongdoing requirements, such as for [complaints handling mechanisms](#) and for [whistleblowing](#).

Applicants for full ACFID membership must demonstrate that they comply with the ACFID Code before being admitted as members. This includes a desk review of their risk management and financial wrongdoing documents, their internal controls and their partner due diligence processes. Members must have a stated policy on financial wrongdoing, for example zero tolerance, and show that their policies apply to their governing body, management, staff, contractors, volunteers and partners. Applicants must also show that they vet individuals and organisations they fund against the Criminal Code list of terrorist organisations and the DFAT consolidated list of individuals and entities subject to targeted financial sanctions. ACFID also expects that members will have clear and accessible channels where incidents of financial wrongdoing can be safely reported, from within Australia and from overseas. Members operating in high-risk environments are expected to have stronger and more robust policies and procedures that are commensurate with the risk.

Full members must undertake a self-assessment of their compliance with the ACFID Code once every three years. As part of this, members are required to explain to ACFID how they comply with the financial wrongdoing, partner due diligence, complaints handling and whistleblowing requirements of the ACFID Code. ACFID may also ask for members to send in supporting documents, such as policies and procedures. The member responses are reviewed by ACFID who, if not satisfied, can ask for members to undertake remedial actions to strengthen their policies and processes so that they meet the standards set out in the ACFID Code and associated guidelines. On the other two years, members are required to provide ACFID with an undertaking that they comply with the ACFID Code for that particular year, and if not, advise the areas of the Code where they are not compliant, the actions being taken to comply and the timeframes in which compliance will be achieved. ACFID may ask for remedial action where non-compliance is for a high priority area of the Code, such as financial wrongdoing, or where members report continued non-compliance with the same area of the Code. Non-compliance can result in disciplinary action such as suspension or withdrawal of ACFID membership.

ACFID can also receive [complaints](#) from the public, member staff, from overseas and from anyone else who believes a member has breached the ACFID Code of Conduct, including the financial wrongdoing requirements. Complaints are independently considered by the [Code of Conduct Committee](#). ACFID's ongoing assessment of risk also identifies any areas of potential non-compliance that may be detrimental to the interests of ACFID, its Membership or the Code and will undertake compliance spot checks as needed.