

23 February 2023

The Treasury
Langton Crescent
Parkes ACT 2600

By email: charitiesconsultation@treasury.gov.au

Dear Sir/Madam,

Treasury Laws Amendment (Measures for Consultation) Bill 2023: Deductible Gift Recipient Registers Reform

Philanthropy Australia thanks the Treasury for the opportunity to make this submission in response to the consultation on this exposure draft legislation.

As the peak body for philanthropy in Australia, our purpose is to inspire more and better philanthropy. We therefore take a strong interest in the design of the taxation and regulatory framework that applies to philanthropy and charities more broadly, advocating that it be based around principles of simplicity, clarity, certainty and ensuring there are appropriate incentives to encourage philanthropy.

Philanthropy Australia is broadly supportive of the changes proposed in the draft legislation, subject to the matters raised further below.

Transferring the administration of the four Deductible Gift Recipient (DGR) registers from portfolio departments to the Australian Taxation Office will reduce red tape and simplify the process of applying for endorsement as a DGR.

Although the changes are welcome, they are incremental steps that do not address the more fundamental issues with the DGR framework. For this reason, Philanthropy Australia has consistently advocated for comprehensive reform of the DGR framework, to broaden and simplify access to DGR endorsement for more charities¹. However, it is recognised that this is outside of the scope of this specific consultation process.

Regarding the changes proposed in the draft legislation, Philanthropy Australia makes the following comments and suggestions for the Treasury's consideration.

Requirement for DGR Entities to Maintain a Gift Fund

Under the draft legislation, DGR entities will now be endorsed as an *institution* rather than for *the operation* of a fund, authority or institution.

Other categories of DGR entities endorsed as institutions are not generally required to maintain a gift fund. Given this, the draft legislation will introduce an element of inconsistency into the DGR framework.

Philanthropy Australia recognises that certain protections are required in order to ensure that the integrity of the DGR framework is maintained. However, such protections should only be imposed where necessary

¹ See: <https://www.philanthropy.org.au/about-us/publications/a-blueprint-to-grow-structured-giving/>

to manage a specific risk. It is unclear what risk the requirement to maintain a gift fund seeks to manage, and it may therefore add unnecessary complexity to the DGR framework.

For this reason, Philanthropy Australia recommends that the need for this requirement be reconsidered.

Requirement for Environmental Organisations and Harm Prevention Charities to have a Policy of Not Acting as a Mere Conduit

Under the draft legislation, Environmental Organisations and Harm Prevention Charities will continue to be required to have a policy of not acting as a mere conduit.

Although this is currently a requirement for such DGR entities, this reform process provides an opportunity to properly evaluate the appropriateness of such requirements, rather than presume that they remain necessary.

In order to be deductible, gifts must comply with Taxation Ruling TR 2005/13. Paragraph 31 of the ruling effectively states that where a donor provides funds to a DGR entity that merely passes them on to another entity, then the requirement for a deductible gift will not be met². This requirement applies to all DGR entities, and therefore it is not clear why Environmental Organisations and Harm Prevention Charities should also be subject to a separate and duplicative requirement.

Given that the requirement may add unnecessary complexity to the DGR framework, Philanthropy Australia recommends that the need for it be reconsidered.

If inclusion of the requirement is deemed necessary, then in terms of drafting, it would appear that Clause 2 of Schedule 1 of the draft legislation is superfluous. If the special conditions set out in the table in Clause 1 already include the requirement to have a policy of not acting as a mere conduit, then it is unclear why this requirement should also be stated in section 30-60.

Other Matters

Philanthropy Australia also refers the Treasury to submission made by the Law Council of Australia, and requests that the additional matters raised there be given due consideration.

Once again, we thank the Treasury for the opportunity to make this submission. Should the Treasury wish to discuss any of the matters we have raised in further detail, please do not hesitate to contact our Executive Director – Policy, Government Relations and Research, Sam Rosevear (sam@philanthropy.org.au).

Regards,



Jack Heath

Chief Executive Officer

² See:

<https://www.ato.gov.au/law/view/document?DocID=TXR/TR200513/NAT/ATO/00001>