

4 August 2017



Senior Adviser
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

Re: Tax deductible gift recipient reform opportunities

I write in regard to the Treasury's review of the Donor Gift Recipient (DGR) tax arrangement.

The NSW Council of Social Service (NCOSS) works with its membership on behalf of disadvantaged people and communities to achieve social justice and alleviate poverty in NSW.

As the peak body for the social and community services sector in New South Wales, we are keen to ensure that any reforms to the DGR tax concessions framework continue to support the not-for-profit (NFP) community services sector in recognition of the critical contribution they make to society and the economy through their education, research and development, and community engagement activities.

Our comments are general in nature and intended to complement the more detailed submission made by the Australian Council of Social Service (ACOSS), the peak body for community services in Australia.

NCOSS strongly supports the policy objective of making the administration of DGR tax concessions simpler, fairer and more effective in targeting public funds to maximise the social good and encourage greater levels of giving to the sector. We know that NFP sector organisations often operate with limited funding and resources. As such, the DGR scheme should seek to minimise the regulatory burden on these organisations through low compliance and administration costs.

We also wish to affirm the following key points:

Strengthening governance arrangements

- To ensure transparency and accountability, NCOSS supports the proposal that registration as a charity through the Australian Charities and Not-for-Profit Commission (ACNC) be a prerequisite for obtaining DGR status. The ACNC is also best placed and should be empowered to determine charitable status and make recommendations to the ATO on DGR eligibility.
- In line with the above, NCOSS believes the DGR register should be administered at arms-length to the Government. The ACNC should have the role of assessing applications for DGR and then recommending to the ATO for that status to be confirmed. The role of ministers and departments in this process should be limited to nominating an organisation for DGR status and providing advice on eligibility where appropriate. Current ministerial involvement in the registration process lends itself to concerns about lack of transparency and consistency of decisions.
- NCOSS rejects any notion that additional information from registered charities on advocacy activities should be required and used to determine DGR status. We do not believe there is an identified need to improve the current regime for identifying and regulating advocacy activities related to purposes not considered charitable (i.e. disqualifying purposes). It is also unclear how additional reporting of this type would be in the public interest when it would create more red tape and uncertainty for the charities sector.

- NCOSS also rejects the suggestion that any charity organisation – whether environmental or social – be required to devote a certain proportion of their resources to frontline service provision to obtain or maintain DGR. We believe it is entirely legitimate and lawful for these groups to conduct advocacy activities in pursuit of their charitable purpose, and to the extent they deem appropriate.
- In our view, advocacy undertaken towards a charitable purpose is a social good that is fundamental to the robust functioning of civil society and of our constitutional system of government. Further, advocacy is often undertaken on behalf of vulnerable and disadvantaged groups who may not be able to advocate on their own behalf. The Government should therefore continue to provide (and consider broadening) DGR endorsements which support organisations to perform advocacy work for the vulnerable and under-represented as well as the environment.
- In relation to unlawful activities, we agree with ACOSS’s position that these are best regulated by the Courts rather than the ACNC and ATO. As noted in their submission, current guidelines on disqualifying purposes are clear and the ACNC should continue to deal with breaches of relevant requirements within their existing remit.

Reducing complexity

- In the interests of removing unnecessary duplication and reducing processing times, NCOSS supports the proposal that the administration of four DGR registers (the Register of Environmental Organisations, the Register of Cultural Organisations, the Register for Harm Prevention Charities and the Overseas Aid Gift Deduction Scheme), be transferred from four different government departments to the ACNC and ATO. Removing unnecessary and outdated requirements, such as the requirement for a charitable DGR to maintain a public fund, would also help to reduce red tape for the sector.

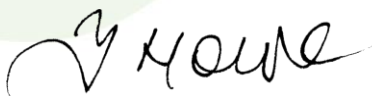
Integrity

- As already noted, we welcome and accept that the transparency and accountability of DGRs is important. However we do not support the proposed annual or ‘rolling’ reviews of existing DGRs to achieve this end. Such reviews and audits are costly and the case has not been made that such a cost is justified given the type and level of risk involved. As noted in the discussion paper, the ACNC and the ATO already have the power to undertake reviews and audits where they believe they are warranted, and it is not apparent that introducing new and costly formal review processes is necessary. We therefore strongly recommend a proportionate and risk-based response to this issue.

The NFP sector is large and complex and plays an increasingly vital role in our economy and society. The organisations comprising the NFP sector rely on sustainable support by government and donors to provide the range of community services required to meet the needs of people experiencing poverty and social inequality. To a large extent, and increasingly, this support is provided through tax concessions and direct investment by government and donors. For these reasons, NCOSS supports a regulatory framework that promotes good governance, transparency and accountability for this sector.

If you require further information in relation to our submission, please contact Ben Folino, Policy Officer on 02 8960 7905.

Yours sincerely



Tracy Howe
CEO NCOSS