



16 October, 2017

Mr Wayne Poels
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Dear Mr Wayne Poels

██████████ DEDUCTIBLE GIFT RECIPIENTS (DGR) REFORMS - REGULATION IMPACT STATEMENT

This letter certifies that the following reports satisfy a similar process to that required for a Regulation Impact Statement (RIS) as set out in the Australian Government Guide to Regulation March 2014 (the Guide):

- Treasury *Tax Deductible Gift Recipient Reform Opportunities* discussion paper (June-August 2017) (**Treasury DGR Reform discussion paper**);
- House of Representatives Standing Committee on the Environment *Inquiry into the Register of Environmental Organisations* (May 2016) (**REO Inquiry**);
- ATO's Not-for-profit Advisory Group *Current operation of the "in Australia" special condition for certain deductible gift recipients and income tax exempt entities* discussion paper (August 2015) (**NFP Advisory Group 'in Australia' discussion paper**);
- Exposure draft legislation and explanatory materials regarding *Restating and centralising the special conditions for tax concession entities* (March-April 2014) (**Draft special condition legislation**);
- Exposure draft ACNC external conduct standards, which were subject to targeted consultation with the Not-for-profit Sector Reform Council and the Australian Council for International Development (ACFID) (June 2013) (**Draft external conduct standards**);
- Not-for-profit Sector Tax Concession Working Group review, *Fairer, simpler and more effective tax concessions for the not-for-profit (NFP) sector* (May 2013) (**NFP Working Group Review**);
- House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into language learning in Indigenous communities (2012) (**Our Land Our Languages Inquiry**); and
- Review of Private Sector Support for the Arts in Australia (2011) (**Private Sector Support for the Arts Review**).

██████████ Treasury DGR Reform discussion paper

On 15 June 2017, Treasury released a discussion paper on potential reforms to the DGR framework to seek feedback from the not-for-profit sector. Submissions to the discussion paper closed on 4 August 2017.

Treasury received around 2,500 submissions to the discussion paper including around 400 substantive submissions and 2,100 campaign emails and non-substantive submissions.

The discussion paper consulted on the following recommendations in the DGR reform [REDACTED]: making registration with the ACNC as a charity one of the conditions for being a DGR (recommendation 1); transferring administration of the four DGR Registers to the ATO (recommendation 2); removing the public fund requirement for DGRs (recommendation 3); reviewing high risk DGRs (recommendation 4); an in-principle requirement that only registered charities will be specifically listed as DGRs (recommendation 5); and specific listings to sunset after a maximum of 5 years (recommendation 6).

REO Inquiry

In March 2015 the then Minister for the Environment requested that the Committee inquire into and report on the administration and transparency of the Register of Environmental Organisations (REO) and its effectiveness in supporting communities to take practical action to improve the environment. The Committee received 685 submissions and 21 supplementary submissions. It also received over 10,000 form letters and other correspondence related to the inquiry. There were a wide range of witnesses at the public hearings held in most states and territories, as well as site inspections in many states. On 4 May 2016, the Committee tabled its report with nine recommendations. [REDACTED]

The inquiry consulted on making registration with the ACNC as a charity one of the conditions for environmental organisations to obtain endorsement as a DGR and transferring administration of the REO to the ATO [REDACTED].

NFP Advisory Group 'in Australia' discussion paper

In August 2015, in collaboration with the 'in Australia' Working Group formed under the direction of the NFP Advisory Group (one of the ATO's eight Stewardship Committees), the ATO released a discussion paper to facilitate consultation on the 'in Australia' provisions and sought feedback from interested external parties. Membership of the Working Group included both ATO and external stakeholders.

The discussion paper consulted on the 'in Australia' requirement for tax concessions [REDACTED]

Draft special condition legislation

Draft legislation to proceed with the 'in Australia' measure and centralising and simplifying the special conditions was publically consulted on in March-April 2014. [REDACTED]

Targeted consultation on draft external conduct standards

Treasury undertook targeted confidential consultation with the Not-for-profit Sector Reform Council and the Australian Council for International Development (ACFID) on draft ACNC external conduct standards between 6 June 2013 and 14 June 2013. [REDACTED]

NFP Working Group Review

The then Assistant Treasurer established the Not-for-profit Sector Tax Concession Working Group (Working Group) in February 2012 to consider whether there were fairer, simpler and more effective ways of delivering the current envelope of support provided through tax concessions to the NFP sector. The Working Group released a Discussion Paper in November 2012. Over 225 submissions were received and the Working Group made a number of recommendations. A final report was handed down in May 2013.

The report identified that reform to the DGR framework is necessary to reduce red tape and recommended requiring DGRs to be registered charities and removing the public fund requirement [REDACTED]

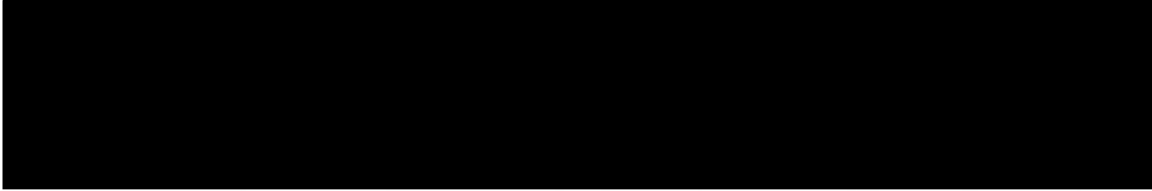
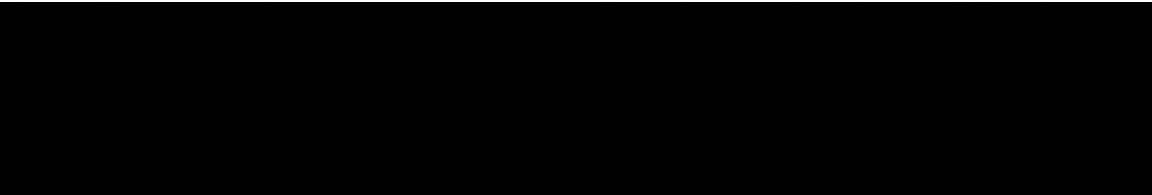

Private Sector Support for the Arts Review and Our Land Our Languages Inquiry

The Private Sector Support for the Arts Review and Our Land Our Languages Inquiry both recommended that ROCO eligibility be extended to enable Indigenous language related organisations to be endorsed as DGRs [REDACTED].

Addressing the RIS questions

Treasury considers that in meeting its statutory obligations relating to the submission, the matters that must be covered in a RIS have been addressed through these discussion papers and reviews. The Treasury DGR reform discussion paper, the REO Inquiry report, the NFP Working Group Report, draft special condition legislation, the Private Sector Support for the Arts Review and Our Land Our Languages Inquiry are public documents that can be found on the internet.

- *What is the problem?* – DGR status conveys valuable benefits to many charities and like organisations but the current framework for administering DGRs is cumbersome, inconsistent and piecemeal. Regulation of DGRs and other charities is dispersed across six agencies, is unnecessarily complex and doesn't effectively manage evolving risks.
- *Why is government action needed?* – DGR status is conferred by legislation and so government action is required to reform it. Stronger governance, less complexity, conducting a rolling review of the DGR stock and tightening DGR specific listing to a defined period will help ensure that DGR endorsement does not remain in force indefinitely with no checks and balances. It also aims to ensure transparency and clearer rules for DGR entities, and to reduce regulatory and compliance costs by streamlining and simplifying the administration of the four DGR registers.
- *What policy options are you considering and what is the likely net benefit of each option?*
 - *Require all DGRs to be registered charities* - Requiring DGRs to be charities will strengthen governance, oversight and integrity. Endorsement as a DGR is a valuable benefit. It is important that DGRs are well-governed and subject to regulatory oversight. Although most DGRs are charities registered with the ACNC and subject to the ACNC's governance standards, around 2,000-2,500 DGRs are not registered charities, despite being eligible, and are subject to varying and often minimal oversight.
 - *Integrate the four DGR registers with the ACNC register* - Integrating DGR registers with the ACNC's charities register will centralise, standardise and streamline administration, reduce application times and remove red tape. The ATO determines eligibility for DGR status under the general categories, which cover most DGRs. However, the ATO shares administration of four DGR Registers (environmental; cultural; harm prevention; and overseas aid) with the relevant Government department, with multiple Ministerial decision makers. Integrating the four DGR Registers with the ACNC Register, with DGR endorsement by the ATO, will streamline application and reporting requirements and align administration of the registers with the general categories.
 - *Removing the public fund requirement* - Removing the requirement for DGRs to establish a separate public fund will reduce red tape and barriers to entry. It will mean that organisations that are endorsed under multiple DGR categories will no longer need to establish a public fund for each category. Nor will they have to find an appropriate responsible person, which can often be difficult for organisations in remote communities.

- *ACNC and ATO to review high risk DGRs* – the proposed reviews will target DGRs at risk of no longer being entitled to charity registration (and therefore DGR status), and conduct ‘desktop reviews’ using information that is already available. The reviews will ensure that DGR tax concessions remain available only to organisations that are eligible for them. Where a review identifies concerns about the charity’s eligibility, the ACNC will investigate, working with the charity, and where appropriate revoke its registration or take other compliance action.
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- *Issue ACNC external conduct standards* – At present there are no additional requirements on entities or their partner organisations operating or sending funds overseas. This is despite the distinct risks of those activities, such as money laundering and terrorist financing. The lack of external conduct standards was highlighted in the *Australia’s non-profit organisation sector: money laundering and terrorism financing risk assessment* published by the ACNC and the Australian Transaction Reports and Analysis Centre (AUSTRAC) on 28 August 2017. External conduct standards would require registered charities operating overseas to have appropriate governance standards to mitigate the risks associated with funds going offshore, and would strengthen the ACNC’s oversight of overseas activities.
- *Not proceed with the ‘in Australia’ requirement* – To access DGR status or income tax exemptions, the tax law requires most NFPs to be operating ‘in Australia’ unless they fall within an exempt category. An announced but unenacted measure would require DGRs to be established, operated and pursue purposes solely in Australia, preventing DGRs having beneficiaries outside Australia. Abandoning this measure is a major priority for the sector. The unenacted ‘in Australia’ measure would prevent many DGRs from conducting activities outside Australia and would not address the need for appropriate oversight of the overseas activities of exempted organisations.
- *Extend eligibility for DGR status to organisations promoting Indigenous languages* - The Register of Cultural Organisations’ (ROCO) eligibility criteria will be amended to enable organisations with the principal purpose of promoting Indigenous languages to be endorsed as DGRs.
- *Specifically list 5 organisations by name in the tax law as DGRs* – these organisations have applied to the Minister for Revenue and Financial services to be granted DGR status by being specifically listed in the *Income Tax Assessment Act 1997*. Specific listings do not alter any of the broader rules around DGR tax concessions as it is a common and established process for granting DGR status to certain organisations . As such, in the past a RIS has not been required for specific listings due to the lack of regulatory impact.

Costing material

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in cost
Total, by sector	\$0	\$197,803	\$0	\$197,803

Using the Regulatory Burden Measurement framework, we have estimated that the package will increase compliance costs by \$197,803. OBPR has agreed that the regulatory burden for the package will remain under \$2 million per annum and as such Treasury can determine the estimated regulatory cost.

A regulatory offset has not been identified. However, Treasury is seeking to pursue net reductions in compliance costs and will work with affected stakeholders and across Government to identify regulatory burden reductions where appropriate.

Yours sincerely



Maryanne Mrakovcic
Deputy Secretary
Revenue Group