

Senior Advisor
Indirect Taxes and Not-for-profits Unit
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: DGR@treasury.gov.au

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Deductible Gift Recipient (DGR) Reforms – feedback on Treasury’s Consultation Paper

Justice Connect thanks Treasury for the opportunity to provide feedback on the questions in Appendix A of the Consultation Paper and to participate in Treasury’s consultations on the proposed reforms.


Our expertise

Not-for-profit Law is a specialist service of Justice Connect which is a registered charity and accredited community legal centre. We provide free and low cost legal advice to not-for-profit organisations across Australia. On an annual basis, we respond to more than 1,750 legal enquiries, train more than 3,000 people and our website (www.nfplaw.org.au), with more than 350 free legal resources, has more than 400,000 visits annually. We advocate for an improved legal and regulatory framework for the not-for-profit sector, and for law reform that takes account of the impacts (and costs) of regulation on not-for-profits.

Preliminary comments

As stated in our submission to Treasury in relation to the *Tax Deductible Gift Recipient Reform Opportunities* consultation paper in August 2017, Justice Connect supports the requirement for DGRs to register as charities, except in the limited situations where exemptions are appropriate.

Justice Connect has previously made recommendations that DGR endorsement should be simplified and extended to all charities registered with the Australian Charities and Not-for-profits Commission (ACNC), where those charities use donated funds for purposes not solely for the advancement of religion, childcare, or primary or secondary education. This recommendation is aligned with the Productivity Commission’s *Contribution of the Not-for-profit Sector* 2010 report and the Not-for-profit Sector Tax



Melbourne Office
PO Box 16013
Melbourne VIC 8007
DX 128 Melbourne
T +61 3 8636 4400

Sydney Office
PO Box 463
Darlinghurst NSW 1300
T +61 2 8599 2100

admin@justiceconnect.org.au
justiceconnect.org.au
nfplaw.org.au
ABN 54 206 789 276
ACN 164 567 917

Concession Working Group's 2013 report.¹ While we understand that Treasury's 2017 Discussion Paper and 2018 Consultation Paper do not propose such extensive changes, we encourage Treasury to consider this proposal as part of any future reform.

In addition to responding to several of the questions in Appendix A of the Consultation Paper below, **Justice Connect endorses the submission to Treasury made by the Law Council of Australia Legal Practice Section's Not-for-profit and Charities Committee (LCA Committee)**, of which Sue Woodward (Head of Not-for-profit Law) is a committee member.

DGRs to register as charities

Question 1: Are the eligibility criteria for transition arrangements clear?

Yes, the eligibility criteria on page 6 of the Consultation Paper are clear, as are the requirements for those charities that are eligible to use the streamlined registration process. **However, the process for registration under the streamlined registration process is lacking in detail and Justice Connect recommends that detailed information is released prior to the transition period.** For example, the Consultation Paper is unclear as to when transitioning DGRs will be required to comply with the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**).

Justice Connect supports the recommendation contained in the LCA Committee's submission (at paragraph 22) that the newly-registered entity should not be required to meet ACNC Act requirements until 1 July 2020, in order to enable them to amend their constitutions and to make any required changes to governance arrangements.

The Consultation Paper does not adequately address the consequences for DGRs that use the streamlined registration process which are ultimately found not to meet the requirements for registration as a charity. To achieve certainty and clarity, both for transferring entities and donors, it is essential that the Australian Taxation Office (**ATO**) states its approach to the possible retrospective revocation of DGR endorsement.

Justice Connect recommends that no DGR should have its DGR endorsement retrospectively revoked during the transition period if the ACNC assesses it as not having met the requirements for registration as a charity.

Justice Connect welcomes the Consultation Paper's recognition of the ACNC's educative approach when undertaking assessments. We encourage the ACNC to take steps to educate and support DGRs to ensure that they are able to access and maintain charity registration, where possible.

Question 2: Is 12 months a sufficient transition period for affected DGRs to provide the required basic information to the ACNC to register as a charity or apply to the Commissioner of Taxation for an exemption? If not, why not?

Provided that affected DGRs are contacted by the ACNC and provided with information and support prior to 1 July 2019, then 12 months should be a sufficient transition period.

¹ Australian Productivity Commission 2010, *Contribution of the Not-for-Profit Sector*, Research Report, Canberra; the Australian Government the Treasury, Not-For-Profit Sector Tax Concession Working Group, *Fairer, simpler and more effective tax concessions for the not-for-profit sector*, May 2013, 5.

In some cases, affected DGRs will require legal advice to determine if they are required to register as a charity or whether they are exempt from registration. Given the potential cost and complexity for some DGRs, and the limited availability of pro bono and low-cost legal assistance (upon which many small DGRs are dependent), it will be important to allow a DGR to apply for an extension of time, either to provide the basic information to the ACNC or to register as a charity.

Justice Connect recommends that the ACNC can, on application, grant affected DGRs an extension of time in which to provide either the basic information to the ACNC or to register as a charity.

Question 3: Given the streamlined transition arrangements will undergo reduced upfront scrutiny compared to a full application process, would it be desirable for the ACNC to indicate, for a set amount of time, entities on the register that have accessed these provisions? If so, would two years be an appropriate time period before the indicator is removed?

Justice Connect supports the inclusion of this indication on the ACNC register, as information provided by DGRs to the ACNC as part of the streamlined transition process may not be scrutinised by the ACNC before it appears on the register. However, we note that the ACNC register is used by a variety of people, including donors who are unlikely to be aware of, or understand the transitional requirements. It would be an unfortunate, albeit an unintended, consequence if such a notice was to result in users of the ACNC register drawing any adverse inference or being reluctant to make gifts to DGRs, due to any perception of the unreliability of the information provided during the transition period.

Justice Connect recommends that:

- **there is an indication on the ACNC register that the entity is transitioning to charity registration if the statement makes it clear that the DGR's access to the transitional arrangements does not impact its entitlement to DGR endorsement, and**
- **the indicator is removed as soon as the ACNC has assessed the DGR's eligibility for registration as a charity.**

Justice Connect is concerned that a two year period for this notation on the ACNC register is too long.

Justice Connect is also concerned by the statement on page 7 of the Consultation Paper that "DGRs desiring more certainty of their eligibility for charity status may also undertake the full application process." In our view, it is not desirable that any DGR should be "uncertain" as to their eligibility for charity status. This is particularly important if it is decided that transitioning DGRs will be subject to the ACNC Act from the date of their entry on the Register (although we note our recommendation above that charities accessing the streamlined transitional arrangements should not be subject to the ACNC Act until 1 July 2020).

We recommend that the ACNC is resourced to assess the eligibility of each DGR at the point at which it submits its basic information. It would be highly desirable for the ACNC to be resourced to start contacting DGRs prior to 1 July 2019 and to assess the eligibility of each DGR as it provides its basic information. This upfront resourcing and prioritisation would better support the ACNC's role in providing an accurate register and its object of maintaining public trust and confidence through increased accountability and transparency.

Exemption from charity registration

Question 4: Are the eligibility criteria for the exemption from charity registration clear?

The eligibility criteria are likely to be clear to lawyers and other professional advisers. However, they may not be clear to those operating DGR funds and those governing DGR entities.

Justice Connect recommends the use of detailed explanatory materials (including multimedia) to help charities understand these exemption requirements, together with a dedicated single phone number that DGRs affected by the transition arrangements can use to contact the ACNC and/or the ATO for information and assistance.

Other comments in relation to the exemptions from charity registration

Justice Connect considers that it is appropriate that exempted DGRs should have governance and reporting requirements similar to those of charities registered with the ACNC.

Justice Connect recommends that the information submitted to the ATO by exempt DGRs should also be made public to ensure there is consistency in regulation and freely available information for donors.

We welcome the confirmation on page 4 of the Consultation Paper that the ACNC Register will report “whether a registered charity has DGR status and DGR purposes”. To provide further clarity to charities, professional advisors and donors, it would be useful to include the specific category of DGR (for example, by reference to the relevant item number in Division 30 of the *Income Tax Assessment Act 1997* (Cth)) pursuant to which the DGR is endorsed.

Questions 5, 6 and 7

Justice Connect endorses the LCA Committee’s responses to questions 5, 6 and 7.

Abolishing certain public fund requirements

Question 8: Are there any unintended consequences in abolishing the requirement for public funds to be managed by a committee that has a degree of responsibility to the general community?

Justice Connect endorses the LCA Committee’s response to question 8.

Question 9: Are there any other issues relevant to public fund requirements that should be considered?

Yes.

The Government’s press release on 5 December 2017, ‘*Reforming administration of tax deductible gift recipients*’, announced that “Public fund requirements will be abolished.”. This announcement was widely welcomed by the sector, however the Consultation Paper now refers to “the abolition of certain public fund requirements”.

Justice Connect is concerned that the reforms in the Consultation Paper are not as extensive as those outlined in Treasury’s 2017 DGR Discussion Paper, and what was foreshadowed in the 5 December 2017 media release.

We appreciate that the details of reform in relation to the registers which are transferring from Government departments to the ACNC have not yet been announced. However, we suggest that Treasury reconsiders its proposed approach to public fund requirements, in line with paragraphs 34 to 74 of the LCA Committee's submission.

Further consultation

Justice Connect looks forward to the opportunity to be involved in consultation regarding the remainder of the proposals to reform DGR arrangements.

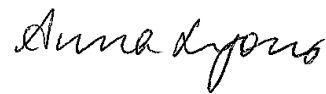
Yours sincerely



Sue Woodward

Head of Not-for-profit Law

sue.woodward@justiceconnect.org.au



Anna Lyons

Principal Lawyer, Not-for-profit Law

anna.lyons@justiceconnect.org.au