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Director
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The Treasury
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(submitted by email: charitiesconsultation@treasury.gov.au)

DGR Category for pastoral care services

Justice Connect welcomes the opportunity to respond to the 'DGR Category for pastoral care services - Consultation on implementation design' (the consultation paper).

About Justice Connect

In the face of huge unmet legal need, Justice Connect designs and delivers high-impact interventions to increase access to legal support and achieve social justice. We help those who would otherwise miss out on assistance, focusing on people disproportionately impacted by the law and the organisations that make our communities thrive.

We have been serving the community for more than 25 years. We are a registered charity, operating nationally.

Our expertise – our Not-for-profit Law program

This submission draws on the experience of our specialist Not-for-profit Law program which provides free and low-cost legal assistance to not-for-profit community organisations and social enterprises, many of whom are registered charities and deductible gift recipients.

The focus of our legal advice service (delivered by in-house lawyers and via pro bono referrals) is on small volunteer-run charities that would not otherwise be able to access this help. Many of these organisations are in regional, rural or remote communities.

We handle about 1,700 enquiries a year from a diverse range of groups.

In 2021 we handled 152 requests related specifically to deductible gift recipient (DGR) endorsement and, in addition to our resources, we provided more than 1,000 hours of free legal assistance to groups on this complex issue.

Our main DGR page, which includes further links to dedicated resources, received over 3,700 unique views last year with our DGR Guide being downloaded more than 1,500 times. **In 2021 we also launched our 'DGR Tool', an online app that helps users to make sense of the complex laws regulating DGR status – it has already helped 3,100 users.** We regularly deliver webinars on understanding DGR status, most recently on 29 March 2022 with 83 participants.

Overarching position – a new category will exacerbate the need for broader reform to DGR laws

From our experience, access to DGR endorsement continues to be the most misunderstood and resource intensive areas of the tax concession system for not-for-profits.

Many small-medium not-for-profits are not equipped to understand and navigate these laws without legal assistance, and as a result, many organisations miss out on the benefits of receiving tax deductible donations and philanthropic funding.

Ongoing attempts to create new DGR categories only serve to deepen the incoherence, complexity and ad hoc nature of the DGR framework. As a matter of priority, systemic problems with the framework must be fixed.

Why DGR laws must be simplified

Since the establishment of our service in 2008, we have advocated for the simplification and transparency of not-for-profit tax concessions, including in relation to deductible gift recipient endorsement. We have previously made recommendations (aligned with the Productivity Commission's Contribution of the Not-for-profit Sector Report and the Not-for-profit Sector Tax Concession Working Group Report) 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.¹

The Productivity Commission found that “the current system of NFP tax concessions is complex, inefficient and inequitable, imposing substantial administrative costs on both NFPs and governments.”² In the same year, the Commonwealth Government's Report into Australia's Future Tax System noted that “the system of concessions is complex and does not appropriately reflect current community values about the merit and social worth of activities.”³

The Not-for-Profit Sector Tax Concession Working Group found “The deductible gift recipient (DGR) framework is intended to encourage philanthropy. However, the current system for granting DGR status is cumbersome, inequitable and anomalous.”⁴

In 2022, there are over 50 different DGR categories (and counting), each with their own eligibility criteria, which is often described in technical, bureaucratic or old-fashioned language. The categories have different set up requirements. Some not-for-profits must demonstrate that their whole organisation fits into an established DGR category, but for other categories, a not-for-profit can apply to have only part of their group endorsed. Groups often face challenges when they have a diversity of purposes and activities that do not fit neatly into one DGR category.

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, page 5.

² Australian Productivity Commission 2010, *Contribution of the Not-for-Profit Sector*, Research Report, Canberra, page 155

³ Australia's Future Tax System – Report to the Treasurer, 2009, Vol 1, page 205

⁴ Not-For-Profit Sector Tax Concession Working Group, *Fairer, simpler and more effective tax concessions for the not-for-profit sector*, May 2013, page 21

The requirements of the most popular DGR category, a Public Benevolent Institution, can only be understood by reference to 90 years' worth of case law.

The process for applying for DGR endorsement can also vary widely. Depending on the category, a decision to endorse a not-for-profit may rest with the ACNC, the ATO, or a separate Commonwealth department. Further still, not-for-profits have the option of applying to be specifically listed by name in the Income Tax Act as a DGR. The process for granting such requests is opaque and once listed, there is no clear reporting mechanism or process for listings to be reviewed.⁵

In our view, current DGR categories are ad hoc and out of step with community expectations. There are many not-for-profits performing activities which are highly valued by the community, but which are not eligible for DGR endorsement. For example, not-for-profits that focus on a variety of interrelated social or environmental issues are often unable to fit into a single DGR category. Additionally, organisations with a focus on preventing harm to individuals and communities (for example, preventing poverty) are often unable to secure DGR endorsement.

Pastoral Care category

We have had the benefit of reading the submission of the Queensland Law Society to the consultation paper. We support the comments made on the particulars of the proposed pastoral care category.

Conclusion

The priority reform should be to **simplify and extend DGR endorsement to all charities registered with the ACNC, where those charities use donated funds for purposes not solely for the advancement of religion, childcare, or primary or secondary education.**⁶

We would be happy to discuss or expand on any of our comments. We agree to this submission being made public.

Yours sincerely,

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⁵ For a more detailed analysis, see Fiona Martin, 'Tax Deductibility of Philanthropic Donations: Reform of the Specific Listing Provisions in Australia', *Australian Tax Forum*, Vol. 33(3), 2018

⁶ Above no 1.