

3 May 2023

Philanthropy Inquiry  
Productivity Commission  
GPO Box 1428  
Canberra City ACT 2601

Online: [www.pc.gov.au/inquiries/current/philanthropy](http://www.pc.gov.au/inquiries/current/philanthropy)

## **Review of Philanthropy**

We refer to the paper *Review of Philanthropy* issued by the Productivity Commission and now provide our submission in relation to various questions raised in the paper.

## **Background of our firm**

Saward Dawson Chartered Accountants is based in Melbourne and services clients throughout Australia. We have approximately 80 staff comprising divisions in audit and assurance, superannuation, financial planning, business advisor services and taxation. Our audit, advisory and taxation services have a very strong presence in the charitable and broader not-for-profit sectors. Many of our clients are not-for-profit (NFP) entities of all forms, including schools, health and aged care entities, churches and major religious denominations, cultural organisation, aid organisations, sporting organisations, ancillary funds, public benevolent institutions (PBI) and health promotion charities (HPC).

## **General Comments**

We applaud the government's commitment to double philanthropic giving by 2030. The charitable sector plays a vital role in Australian society and is often able to efficiently serve the charitable needs and concerns of the community and to achieve positive outcomes that would be difficult for government to achieve directly.

Peoples' motivations to give resources, including time and money, to charities various significantly. However, tax incentives play a substantial part in which charities they give to and how much they give. The current deductible gift recipient (DGR) categories were largely created many years ago. Considering society's current needs and the varied activities of charities, they appear arbitrary and out of touch. We suggest that the categories of DGRs should be expanded to reflect the needs of society and the areas of interest of donors more accurately.

## **Specific Comments**

We make the following comments with reference to your specific questions. We have only provided comments for questions where we have genuine experience and clear comments.

### ***Information Request 2: Vehicles, trends and motivations for giving***

From our experience, religious faith and practice can be a significant factor for individuals giving to charities. Donations to religious organisations, such as churches, can be considerable with many attendees giving at least 10% of their income. In most instances, this giving is not to a DGR. However, these individuals are often keen to give additional donations to a DGR.

This DGR is more likely to be operated by the religious or an associated entity or by an independent entity which has similar faith motivations. For example, they may give to a PBI operated by the religious institution or one where the founders had similar faith beliefs.

In relation to sources of revenue, smaller charities and newly established charities often obtain a greater percentage of their revenue from donations than larger charities. Larger charities may be more able to access government grants or payments which they seek to maximise wherever possible. For charities, government revenue tends to be more substantial, sustainable and reliable, although these are seen to attach certain restrictions and risks of not continuing where they are not based on a fee for service (e.g. NDIS) and therefore charities seek alternative funding streams including donations to both grow activities and mitigate government funding risk. DGR status may be important but is often linked to the ability to access grants from ancillary funds as much as it is to obtain donations from individual members of the public.

#### ***Information Request 4: The Deductible Gift Recipient (DGR) Framework***

Currently DGR status is available to organisations that fall within very specific categories set out in the Income Tax Assessment Act 1997. Many of these categories were established a number of years ago and the logic for why a particular category exists is not clear. Many of the distinctions appear to be arbitrary, such as:

- In some instances, DGR eligibility is determined from the purpose of the charity or fund, but for other DGR categories, eligibility is dependent on the activities undertaken.
- PBIs, being organisations with a purpose of relieving significant needs of poverty or distress, are eligible for whole of entity DGR status, however organisations that aim to prevent such needs arising are not eligible for DGR endorsement.
- According to the ACNC, PBIs must have main purpose of providing benevolent relief to people in need, but any other purpose must be incidental or ancillary to the main benevolent purpose. This restriction is unnecessary.
- Public universities are entitled to DGR status but schools are not. Schools may be eligible for DGR status for funds, such as a school building fund or library fund, but the majority of their activities cannot be supported by tax deductible giving.
- Animal welfare organisations whose principal activity is providing short term direct care to animals or rehabilitating orphaned, sick or injured animals that have been lost or mistreated or are without owners can obtain DGR status. However, animal welfare organisations that provide assistance to animals that do not fit these narrow categories, such as stranded whales or dolphins, cannot obtain DGR status.

Different DGR categories may also have different levels of reporting and accountability. For example, overseas aid funds are subject to stringent government requirements whereas PBIs do not have the same level of reporting or limitations. As there is often significant overlap between the PBI category and the overseas aid fund category, charities tend to seek endorsement under PBI rather than overseas aid.

The current DGR categories can lead to distortions in the charitable sector as charities try to fit their purpose or activities into a DGR category. This can lead to some activities and purposes receiving more focus than others. For example, the fact that PBI must be focused on relieving needs tends to result in less charities being involved in prevention.

Tax deductibility for donations is usually an important consideration for individuals in deciding to which charity they will donate. The seemingly arbitrary nature of the DGR categories results in some types of charities receiving a disproportion of charitable giving. Note businesses may be less concerned about DGR status where they are able to claim a deduction for their donations on the basis they are general business expenses under section 8-1 of the Income Tax Assessment Act 1997.

We recommend that the DGR system be completely overhauled to provide far more extensive DGR availability to charities and that the DGR categories be clear, logical and understandable. The Productivity Commission 2010, NFP Sector Tax Concession Working Group 2013 looked at whether DGR should be available to all charities excluding activities that are for the advancement of religion, childcare or primary or secondary education. If such a system was implemented, it would require careful thought as to how activities related to these specific excluded areas are determined. In particular, it can be difficult to distinguish between religious activities and other activities such as the relief of needs or cultural activities.

### ***Information Request 5: Other tax concessions for not-for-profit organisations***

#### **FBT exemption**

The availability of the FBT exemption to only a limited range of charities further encourages charitable to have purposes and activities in certain areas rather than others. For example, PBIs and HPCs are entitled to the FBT exemption but harm prevention charities are not. Consequently, charities that might otherwise have fitted the category of harm prevention may restrict their purposes and activities to fit within either the PBI or HPC category.

Entities that undertake a variety of activities only some of which are related to a PBI purpose are often driven to set up separate entities for the sole purpose of obtaining FBT exemption and DGR status for their PBI activities. This results in unnecessary additional costs and administration.

We recommend that the FBT exemption categories be broadened to provide the FBT exemption to entities that operate in similar fields to PBIs and HPCs. The exemption should also be available to PBIs who have a main purpose of benevolent relief regardless of whether any other purpose is incidental or ancillary to the main purpose.

#### **Income tax exemption**

In order for a charity to be income tax exempt, it must be registered with the ACNC. It must also meet one of the four tests set out in section 50-50 of the Income Tax Assessment Act 1997. The second test can be met by entities that are whole of entity DGRs. The third and fourth tests are relevant for prescribed institutions, of which there are only a handful. For all other charities, they must meet the first test often described as the "in Australia" test. This test requires the entity to have a physical presence in Australia and, to that extent, incur its expenditure and pursue its objectives principally in Australia. Section 50-75 does provide some assistance in meeting this test by excluding gifts and government grants.

This test can be difficult to meet for some charities that undertake extensive activities offshore. These charities are often forced to limit most of their revenue raising to gifts even though they do not have DGR status. It may not be possible for these organisations to obtain funding by way of distributions from family trusts or by operating commercial ventures as to do so could result in them losing their income tax exemption. With the increased interest from the community in supporting worldwide charitable endeavours, including conservation, climate change, medical research and safety, consideration should be given to increasing the availability of income tax exemption to charities with substantial overseas activities and expenditure.

***Information request 6: Unnecessary regulatory barriers to philanthropic giving***

In relation to privacy and donor protection we note that many donors seek to remain anonymous or keep donations confidential. This is particularly true where a faith-based motivation exists. We draw your attention to the recently introduced requirement for charities to comply with *AASB 124 Related Party Disclosures* for all ACNC registered charities that are required to lodge financial reports.

This requirement results in material donations from any board members or their related entities to be disclosed. We are aware of that this has caused significant concern for some charities and is likely to result in a reduction of giving from board members and their related entities or will result in committed and skilled board members resigning from boards in order to maintain their giving.

We recommend that the requirement to disclose any related party transactions where the donor does not receive a benefit (i.e. genuine gifts and donations) be removed from the ACNC disclosure requirements. This should be actioned urgently as the requirement commences for years ending 30 June 2023.

***Information request 7: Consumer information on the effectiveness of not-for-profit organisations***

Any further reporting obligations on charities should be carefully evaluated to determine whether the significant cost that is likely to arise to charities provides an appreciable benefit to donors.

Many donors will have difficulty interpreting financial information and often lack understanding around administrative costs and why they might differ between charities. We don't think the inclusion of administrative costs as a requirement would be effective as we see large divergence in what is included as administration across entities. The current requirement to provide general purpose accounts to the ACNC which are then available to the public does not necessarily provide information that is understandable by unsophisticated donors. It would also be difficult to implement effectiveness measures that are reliable and provide clear information. Whether an activity or project is effective is highly subjective.

We note the AASB is considering further reporting under its "service reporting" project. We think that the historical proposal papers issued by the AASB have been onerous and would add significant burden to not-for-profit entities. However, we think the Corporations Act requirement for Companies Limited by Guarantee director reports which specifies a minimum level of disclosures of activities and outcomes in conjunction with a financial report, is well understood by the sector and could be included to the ACNC as either a requirement or as better practice guidance without significant costs or burden to charities. We suggest this would at least provide additional context to financial reports that would be useful for donors.

Yours sincerely

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