

Submission to the Productivity Commission Inquiry into Philanthropy

Helen Corker

I often find that the charities I think are doing the best work do not have DGR status, either because they are unable to meet the narrow criteria, or they would prefer not to be restricted by the ACNC in the activities they are allowed to engage in. This hampers the effectiveness of these organisations, both in terms of attracting donations and retaining quality staff (via the tax incentives available to employees of organisations with DGR status). Addressing this difficulty would increase charitable giving in Australia and (in my opinion) channel donations into more effective and meaningful organisations.

Charity laws no longer reflect what many Australians care most about. Rotary clubs, RSLs and religious groups, while still important, are not as relevant as they once were. Younger Australians tend to be more interested in direct action and advocacy groups, particularly those focusing on animal welfare, the environment, climate change, homelessness, mental health, closing the gap and refugees. To increase donations and community engagement, charity laws should build incentive structures that foster organisations that work on the kinds of issues that younger generations of Australians care the most about.

In my submission, I argue that the government needs to:

1. Expand DGR status to include causes that align with the values and expectations of modern Australians. (Terms of reference 2.ii, 3.ii, 5, 6)
2. Remove arbitrary restrictions on Public Benevolent Institutions so they can better work across causes. (Terms of reference 2.iii, 3.i)
3. Enable charities with DGR status to engage in a-political policy advocacy more easily, which will enhance our democracy. (Terms of reference 3.i, 5, 6.iii)

I think the changes I recommend in this submission would make it easier for Australians, including myself, to donate more and participate in local charities and communities.

Issue 1: Expand DGR status

Eligibility for DGR status needs to be broadened to include things that modern Australians care about. For example, the animal welfare charities I support are ‘charities’ under the *Charities Act* but cannot get DGR status under the *Tax Act*. I understand that this is because DGR status is limited to the short-term direct care and rehabilitation of lost or mistreated animals. It seems obvious that it would be far more effective to give DGR status to charities that seek to prevent harm to animals rather than restricting it to organisations that treat the harm. Prevention is better than cure, so it doesn’t make sense to incentivise treatment over prevention.

Similarly, the International Campaign to Abolish Nuclear Weapons (ICAN) is doing important work that has been recognised by a Nobel Peace Prize and is able to accept tax-deductible donations in many other countries, but cannot get DGR status in Australia. I understand this is due to the very specific eligibility criteria for ‘defence charities’, whereby they can only have DGR status for the repair of war memorials (*Tax Act* 5.1.3) or the recreation of members of the armed forces (*Tax Act* 5.1.2), and not for the prevention of nuclear war. It seems obvious that ICAN should have DGR

status, along with other organisations working to reduce global catastrophic risk from threats like climate change, pandemics and natural disasters.

More work in these areas could have huge benefits for Australia and the world. I care about these issues, as do my peers. We want to organise around them in our community and donate money towards them, but our impact is being limited by old-fashioned DGR eligibility criteria.

Issue 2: Allow PBIs to have more than one purpose

The way Public Benevolent Institutions (PBIs) are regulated is outdated. The Law Council of Australia and the ACNC are regularly debating the meaning of old cases that define how PBIs can operate. This legal conversation has lost track of the policy intent. An obvious example of this is the dispute over the meaning of 'dominant purpose'. The ACNC argues that the PBI-purpose of a charity must be its overriding purpose, and therefore it can't also have other purposes from the *Charities Act*. The Law Council thinks this reading is a misunderstanding of the meaning of 'dominant purpose' and that having a purpose from the *Charities Act* shouldn't disqualify a PBI.

This is just one example, and who is 'right' doesn't matter. What matters is that having critical definitions about how a charity can do its business buried in arcane case law that doesn't have a clear reading and isn't aligned with the Government's policy intent is not efficient or effective.

No public policy purpose is served by requiring separate organisations for separate charitable purposes. Rather, the administrative inefficiencies that this creates are contrary to good public policy. This issue has significant implications for how PBIs can engage in fundraising, do impactful work, and support their communities.

Issue 3: Enable charities to engage in a-political policy advocacy

I believe more charities with DGR status being involved in the public policy conversation would make our democracy better. Big business has easy access to government and regularly exerts influence over policy outcomes, often to the detriment of society. I understand that companies can often tax-deduct spending on lobbying. I think it's wrong that those with a profit-motive have an incentive structure and open door to government, while groups working for a better future through policy change typically aren't eligible for DGR status. This hurts our democracy.

The loudest voice in public policy should be the public. The public are concerned about issues like climate change, animal welfare, pandemics and natural disasters – but currently DGR status is not available to charities that want to build community engagement and engage in policy debate on these topics. More involvement by better-funded charities would increase community engagement and allow a more sophisticated and inclusive public conversation.

While charities can technically engage in advocacy that relates to their charitable purpose, DGR status is not available to organisations that prioritise advocacy. This hamstring advocacy-focused charities and creates an asymmetry in our democracy. This should change, specifically by broadening DGR classes so that advocacy-focused organisations can get DGR status. This issue is illustrated clearly in the animal welfare space where, as previously mentioned, DGR status is limited to certain

kinds of animal rehabilitation, while charities that advocate for protections that would prevent the need for this rehabilitation are excluded from DGR benefits.

Enabling DGR charities to participate more easily in a-political policy debate would make our democracy more fair, encourage donations and help connect communities around the things they care about. I know I'd feel more confident in our democracy if the organisations whose values I align with had active and powerful voices in the policy conversation.

Conclusion

Australian charity regulation has become outdated. Charities with DGR status are the lion's share of the sector, but DGR status is not aligned with my values or the values of my peers. This means that charities aren't focusing on many of the things I care about, and aren't providing the community support and the work or volunteering opportunities that are meaningful to me. The Productivity Commission has a chance to make recommendations that realign the sector with the values of today's Australians, in a way that is also open to the changing values of future generations.