



Australian Government  
The Treasury

**TSY/AU**

# Deductible Gift Recipient (DGR) Reforms

Consultation Paper  
August 2018

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# Consultation Process

## Purpose and outline of the paper

The purpose of this paper is to set out and seek public feedback on the Government's proposed implementation of some key elements of reforms to improve the consistency and reduce complexity of regulation for deductible gift recipients (DGRs).

The paper covers four aspects of these reforms:

- the requirement for non-government DGRs to register as a charity or be operated by a registered charity from 1 July 2019;
- the transition arrangements available to assist affected DGRs to register as charities;
- the Commissioner of Taxation's discretionary power to exempt DGRs from the requirement to register as a charity in limited circumstances; and
- the abolition of certain public fund requirements.

Other elements of the DGR reforms, including transferring the administration of the DGR Registers to the Australian Taxation Office (ATO) and Australian Charities and Not-for-profits Commission (ACNC), are not canvassed in this paper.

## Request for feedback

Interested parties are invited to submit their responses to the discussion questions at [Appendix A](#).

Electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

If you would like part of your submission to remain in confidence, you should provide this information marked as such in a separate attachment. A request made under the *Freedom of Information Act 1982* (Cth) for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

Closing date for submissions: 17 September 2018

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# DGR status and reforms

## DGR status

DGR status allows an entity to receive gifts and contributions for which donors are able to claim a tax deduction. The DGR tax arrangements are intended to encourage philanthropy and provide support for the not-for-profit (NFP) sector.

An entity may apply for DGR status under one of the 51 general categories, or request to be specifically listed in the *Income Tax Assessment Act 1997*. Each general category has its own set of eligibility criteria for DGR status. Broadly, the requirements for DGR eligibility are directed at ensuring the activities of DGRs deliver benefits to the Australian community. However, reporting and governance requirements may overlap and multiple regulators may have different requirements, placing unnecessary administrative burden on DGRs. Currently, transparency and accountability regarding the eligibility of DGRs is also lacking.

The general categories can be found in Division 30 of the *Income Tax Assessment Act 1997*.

## The 2017 DGR discussion paper

In 2017, the Government released a DGR discussion paper called *Tax Deductible Gift Recipient Reform Opportunities*, which considered potential reforms to the regulation of DGRs.

The 2017 DGR discussion paper drew on the recommendations of previous reviews. It outlined a number of proposals to strengthen the DGR governance arrangements, reduce administrative complexity and ensure an entity meets its ongoing eligibility requirements for DGR status. The NFP sector broadly supported the majority of the recommendations in the 2017 DGR discussion paper. Treasury received around 2,500 submissions to the discussion paper, which are available on the Treasury website.

## The Government's announcements

On 5 December 2017, the Government announced a package of reforms to the administration and oversight of entities with DGR status. The reforms were also reported as part of the Mid-Year Economic and Fiscal Outlook 2017-18 (MYEFO 2017-18) *DGR reform — strengthening governance and integrity*.

The reforms relevant to this paper include:

- a requirement for non-government DGRs (except specifically listed DGRs) to register as a charity or be operated by a registered charity from 1 July 2019;
- the transition arrangements available to assist affected DGRs to register as charities;
- the Commissioner of Taxation's discretionary power to exempt DGRs from the requirement to register as a charity in limited circumstances;
- the abolition of certain public fund requirements; and,
- transferring the administration of the three DGR Registers and the Overseas Aid Gift Deduction Scheme to the ATO and ACNC (this is included purely for context, this paper does not set out the approach to this element of the reforms).

Making charity registration a prerequisite for DGR status will strengthen governance requirements and provide consistent, clear administrative and regulatory requirements for all DGRs. In limited circumstances, the Commissioner of Taxation may exempt an entity from the requirement to be a registered charity. Transition arrangements will be available to assist affected DGRs to register as

charities. Some of the public fund requirements will also be abolished to reduce red tape and enable greater flexibility for DGRs.

The submissions to this consultation paper will assist in developing the legislation to give effect to the reforms. Once legislated, the ATO and the ACNC will provide online tools and administrative guidance to educate DGRs in relation to the reforms. The ACNC and the ATO will contact affected DGRs on how to register as a charity with the ACNC.

## DGRs to register as charities

From 1 July 2019, non-government DGRs will be required to be a registered charity or operated by a registered charity. Making charity registration a prerequisite for DGR status will strengthen governance arrangements and enable reductions in other regulatory requirements. In limited circumstances, the Commissioner of Taxation may exempt an entity from the requirement to be a registered charity.

The majority of non-government DGRs are currently required to be a registered charity or be operated by a registered charity. Under the existing law, charity registration is a prerequisite for 40 of the 51 general categories. DGRs already registered as a charity or operated by a registered charity will not be affected by this reform.

The reform will impact a limited number of DGRs endorsed by the ATO under one of the 11 general categories where charity registration is not a prerequisite. It will also affect private ancillary funds and public ancillary funds (also known as Item 2 DGRs) that are not currently registered as charities. The 11 general DGR categories impacted by the reforms are set out in Table 2 on page 5.

Around 80 per cent of DGRs endorsed under one of the 11 general categories are already registered charities. Broadly, the remaining 20 per cent of DGRs are likely to be eligible to register as a charity with the ACNC. Except in limited circumstances, the DGR purposes of each of the 11 general categories are consistent with the charitable purposes outlined in the *Charities Act 2013 (Cth)* (the Charities Act). For further information on what is a registered charity, refer to [Appendix B](#).

Proposed transition arrangements to assist affected DGRs to register as charities are outlined later in the paper under 'Transition arrangements'.

The Commissioner of Taxation will be provided discretionary powers to exempt a non-government entity from the requirement to register as a charity in order to obtain DGR endorsement under one of the 11 general categories or as an ancillary fund. The discretion is outlined later in the paper under 'Exemption from charity registration'.

The ACNC Register will report whether a registered charity has DGR status and its DGR purposes.

Table 1: DGRs affected by the requirement for DGRs to be registered charities

DGRs that will need to take action	DGRs that will not need to take action
<ul style="list-style-type: none"> <li>• Non-government DGRs that:               <ul style="list-style-type: none"> <li>– are not charities; and</li> <li>– are not currently required to be registered as a charity as a condition for DGR status (refer to Table 2 on page 5)</li> </ul> </li> <li>• Ancillary funds that are not registered charities</li> </ul>	<ul style="list-style-type: none"> <li>• Government entities</li> <li>• DGRs specifically listed in the tax law*</li> <li>• DGRs that are already required to be a registered charity or operated by a registered charity</li> <li>• DGRs that are registered as a charity or operated by a registered charity</li> </ul>

\* Currently the Government may require entities seeking specific listing to register as a charity. The Government considers this on a case by case basis. This will not change as part of these reforms.

### Reasons for Change

As charity registration is not currently a prerequisite for DGR status for 11 of the 51 general categories, there can be inconsistent governance and reporting requirements for DGRs in the same general category. Making charity registration a prerequisite for DGR status will improve consistency of regulation and oversight of DGRs.

The DGR categories where charity registration is not a prerequisite are listed in the table below.

Table 2: DGRs able to access transition if endorsed prior to 1 July 2019

DGR Item	DGR category description
1.1.3	A public fund maintained for the purpose of providing money for hospitals with DGR status.
1.1.8	A public fund established and maintained for the purpose of providing money for public ambulance services with DGR status.
2.1.8	A public fund established and maintained solely for the purpose of providing religious instruction in government schools in Australia.
2.1.9	A public fund established and maintained by a Roman Catholic archdiocesan or diocesan authority solely for the purpose of providing religious instruction in government schools in Australia.
2.1.10	A public fund established and maintained solely for providing money for the acquisition, construction or maintenance of a building used, or to be used, as a school or college by a society or association which is carried on otherwise than for the purposes of profit or gain to the individual members of the society or association.
2.1.11	A public fund established and maintained solely for providing money for the acquisition, construction or maintenance of a *rural school hostel building.
3.1.1	A university, college, institute, association or organisation which is an approved research institute for the purpose of the ITAA 1936.
4.1.3	A public fund established and maintained for the purpose of relieving the necessitous circumstances of one or more individuals who are in Australia.
6.1.1	A public fund that, when the gift is made, is on the register of * environmental organisations.
12.1.1	A public fund that, when the gift is made, is on the register of * cultural organisations.
12A.1.3	A public fund which satisfies all of the following requirements: (a) the fund is established and maintained by a non-profit entity; (b) the principal activity of the entity is the provision of volunteer based emergency services that are regulated by a * State law or a * Territory law; (c) the fund is established and maintained solely for the purpose of supporting the volunteer based emergency service activities of the entity.
Item 2	Public ancillary funds
Item 2	Private ancillary funds

Note: \* signifies the term is defined in the *Income Tax Assessment Act 1997*

### Proposed implementation approach

From 1 July 2019, to apply for DGR and charity status, an entity would lodge a single application to be registered as a charity with the ACNC, in which it would indicate its intention to be endorsed as a DGR. Once the ACNC is satisfied the entity can be registered as a charity, the ACNC would pass the necessary information to the ATO to assess the entities' eligibility for DGR status. The ATO may contact the entity for further information. Existing charities that wish to obtain DGR status after 1 July 2019 can apply directly to the ATO.

From 1 July 2019, the ACNC Register will report whether a registered charity has DGR status and the DGR categories for which the charity is endorsed.

All registered charities, including those with DGR status, must meet ongoing reporting obligations and regulatory standards to maintain charity registration, as set out in ACNC legislation.

In cases where the ACNC revokes an entity's charity status, the ATO would revoke the entity's DGR status and consider the entities' eligibility for NFP tax concessions.

Existing and future non-government DGRs that wish to apply to the Commissioner of Taxation for an exemption from charity registration should apply directly to the ATO. Notwithstanding,



non-government entities are encouraged to contact the ACNC in the first instance. The ACNC will provide guidance on charity eligibility and how an organisation may register as a charity.

## Transition arrangements

Transition arrangements will be available to assist affected DGRs that are endorsed as at 30 June 2019 to register as a charity and comply with charity obligations.

Eligible DGRs will have a 12 month period, commencing 1 July 2019 and ending 30 June 2020, to register as a charity with the ACNC through the streamlined or full registration process, or apply for an exemption from charity registration from the Commissioner of Taxation. Failure to do so would mean that the Commissioner of Taxation could revoke the entity's DGR status from 1 July 2020.

Most affected DGRs will be able to access streamlined charity registration processes.

### DGRs eligible for transition arrangements

To be eligible for transition arrangements, the entity must:

- as at 30 June 2019, hold DGR status under one of the 11 general categories where charity registration is not currently a prerequisite (listed in Table 2 on page 5); or
- as at 30 June 2019, be a private or public ancillary fund that is not a registered charity.

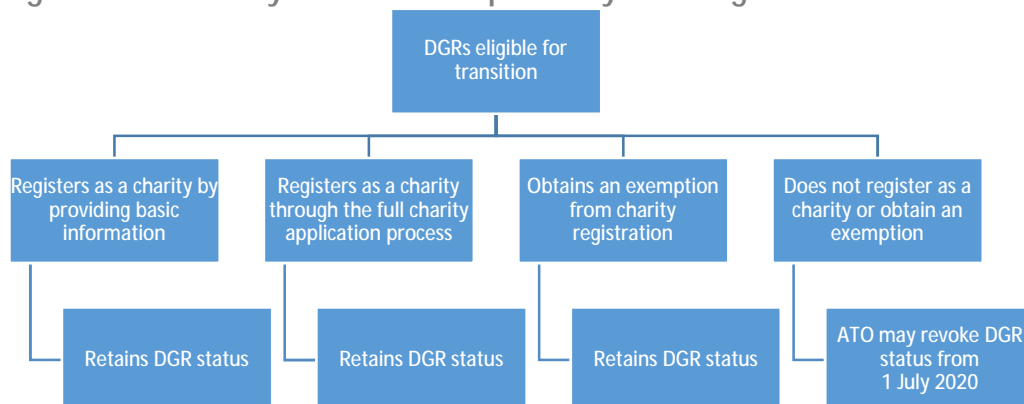
Entities without DGR status as at 30 June 2019 will not be eligible for transition arrangements.

### Proposed implementation approach

Transition arrangements will be available from 1 July 2019 to 30 June 2020. During this 12 month period, non-government DGRs eligible for transition will not need to be a registered charity in order to retain their DGR status. However, they will need to apply for charity registration or apply to the Commissioner of Taxation for an exemption from charity registration by 30 June 2020.

During the 12 month period, from 1 July 2019 to 30 June 2020, reporting requirements for affected DGRs will remain unchanged. Affected DGRs will not be required to report to the ACNC during this period. After the 12 month period, DGRs that have accessed transition arrangements and registered as charities will be required to comply with ACNC regulation. A summary of a registered charity's ongoing obligations to the ACNC is at Appendix B.

Figure 1: Summary of transition pathways for eligible DGRs



### Streamlined charity registration — registering as a charity by providing basic information

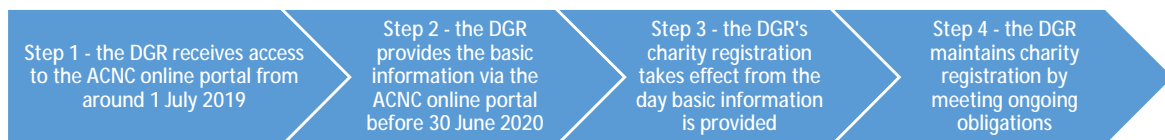
Eligible DGRs will have access to streamlined charity registration process. This will not be available to those that have previously had charity registration refused or involuntarily revoked by the ACNC.

Eligible DGRs may choose to register as a charity by providing basic information to the ACNC. The ACNC will review the basic information to ensure it is complete. The ACNC will then automatically register the DGR as a charity with effect from the date the entity provides the required basic information, without undertaking the standard assessment that accompanies a full application.

As registered charities, DGRs will be required to comply with the ongoing charity registration requirements outlined in ACNC legislation. Obligations include ensuring all of the entities' purposes are charitable and for the public benefit and that governing documents contain appropriate conditions.

DGRs are encouraged to engage with the ACNC to identify and discuss any necessary steps to maintain charity registration. For example, some DGRs may need to update governing documents with appropriate winding up clauses. The ACNC takes an educative approach when undertaking assessments to ensure entities maintain their charity registration where possible.

Figure 2: Steps to register as a charity under streamlined registration process

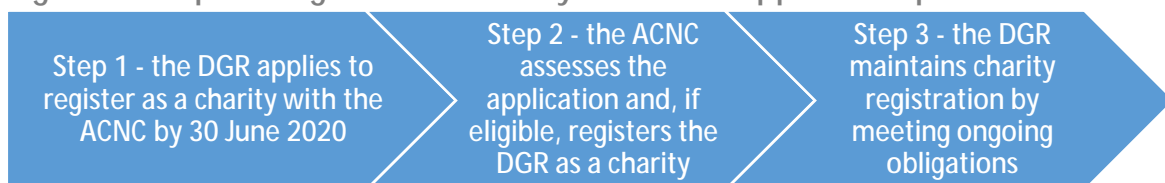


### Full charity registration — registering as a charity under the standard ACNC process

To maintain DGR status, a very small number of DGRs will need to undertake a full charity registration process by 30 June 2020 or seek an exemption from charity registration within the 12 month transition period.

Affected DGRs are those that have previously had their registration involuntarily revoked by the ACNC, or had their application for charity registration refused. DGRs desiring more certainty of their eligibility for charity status may also undertake the full application process.

Figure 3: Steps to register as a charity under full application process



### The required basic information to register as a charity

The required basic information a DGR must provide to the ACNC is the information to be displayed on the ACNC Register, its DGR purposes and governing documents.

The DGR must provide the required basic information via the ACNC's online portal.

The purpose of the ACNC Register is to provide the public with information about the charities' operations. For the ACNC Register to be an effective resource for the public, DGRs eligible for transition must provide the information displayed on the ACNC Register.

Table 3: Proposed basic information

Information Required	Explanation
Legal name and other name(s)	The entity's legal name and any other names the entity uses (e.g. trading name)
Primary contact person	Details of the person who can be contacted after the entity is registered as a charity
Physical address and address for service	The entity's business address
Contact for this application	Details of the person who can be contacted in relation to the basic information. This person may be the same as the primary contact person
Information about the entity (structure)	The legal structure of the organisation (e.g. incorporated association, company limited by guarantee, trust)
ABNs, ASIC ACNs and ORIC registration numbers	Australian Business Number, Australian Company Number and Office of the Registrar of Indigenous Corporations registration numbers
Governing documents	The formal document that sets out the entity's purpose(s) and its operating rules and processes
Fund information	The ACNC may need to collect public fund documents if separate to the main governing document
Charity subtypes	The charity categories (known as subtypes) the organisation wishes to apply for
Beneficiaries	The people or groups the entity assists through its main activities
Activities	Limited information about the organisation's activities
Operating locations	All locations in which the entity operates, or plans to operate, and the entity's ability to apply for fundraising licences (if applicable)
Governance	Limited information about the governance of the entity
Responsible person information	The people responsible for governing the organisation. The ACNC asks for the names, dates of birth, contact details and positions within the entity of responsible persons
Size of entity	The annual revenue of the entity determines whether it is small (under \$250,000), medium (between \$250,000 and \$999,999) or large (\$1 million or more) for reporting purposes
Financial year end date	The end of the entity's financial year
DGR endorsement	The DGR item and category for which the entity is endorsed
Withholding information from the Register	Whether the entity seeks to have certain information withheld from the ACNC Charity Register
Privacy and declaration	Agreement to the ACNC's privacy policy and a declaration that the information is correct

## Examples — Accessing transition arrangements

### Example 1 – Not-for-profit entity with a charitable purpose that operates a DGR-endorsed public fund

Prior to 1 July 2019, a non-government school operates a DGR-endorsed public fund.

The school has a 12 month period, commencing 1 July 2019 to 30 June 2020, to register as a charity or to apply for an exemption. During this 12 month period, the school's public fund retains its DGR status.

On 1 July 2019, the school provides basic information to the ACNC to register as a charity.

The ACNC is satisfied the basic information provided is complete. The ACNC registers the school as a charity, effective from the day the school provided the required basic information.

The school's basic information is published on the ACNC Register and the public fund operated by the school retains its DGR status.

The school makes sure it meets all its obligations to maintain charity registration.

### Example 2 – A DGR that has accessed transition arrangements and takes necessary steps to maintain charity registration

An environmental entity has from 1 July 2019 to 30 June 2020 to register as a charity or to apply for an exemption. During this 12 month period, the entity retains its DGR status.

On 30 January 2020, the entity provides basic information to the ACNC.

The ACNC is satisfied the basic information is complete. The ACNC registers the entity as a charity, effective from the day it provided the required basic information. The basic information is published on the ACNC Register. The entity retains its DGR status.

During a future ACNC review, the ACNC informs the entity it must amend its governing documents to remain registered as a charity. The ACNC provides guidance where necessary.

The entity amends its governing documents to retain its charity registration and DGR status.

### Example 3 – A DGR that has accessed transition arrangements but does not take necessary steps to maintain charity registration

A cultural entity has from 1 July 2019 to 30 June 2020 to register as a charity or to apply for an exemption. During this 12 month period, the entity retains its DGR status.

On 1 June 2020, the entity provides the required basic information.

The ACNC is satisfied the basic information is complete. The ACNC registers the entity as a charity with effect from the day it provided the required basic information. The basic information is published on the ACNC Register. The entity retains its DGR status.

During a future ACNC review, the ACNC informs the entity it must amend its governing documents to remain registered as a charity. The ACNC provides guidance where necessary.

The entity demonstrates no intention to take action. Due to ongoing non-compliance by the entity, following due process, the ACNC determines there are grounds to revoke the entity's charity registration under the ACNC legislation.

The ACNC revokes the entity's charity registration and informs the ATO. Consequently, the ATO revokes the entity's DGR endorsement.

## Discussion questions

1. Are the eligibility criteria for transition arrangements clear?
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?
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?

## Exemption from charity registration

The Government will give the Commissioner of Taxation (the Commissioner) discretionary powers to exempt entities seeking DGR endorsement under one of the 11 general categories or as an ancillary fund from the requirement to register as a charity in exceptional circumstances.

## Reasons for providing an exemption

An entity endorsed, or seeking endorsement, under one of the 11 general categories where charity registration is not yet a prerequisite may be unable to register as a charity (refer to Table 2 on page 5). For example, organisations that operate DGR endorsed public funds and pursue principle purposes that are not recognised as charitable will not be eligible to register as a charity. Such organisations may include sporting organisations and community service providers.

Ancillary funds must only distribute tax deductible funds to DGRs. In addition, under existing law, ancillary funds that are registered as charities may only distribute to DGRs that are also registered charities. Currently, an ancillary fund cannot register as a charity if its principal purposes allow the distribution of tax deductible funds to organisations that are not registered as charities.

Ancillary funds that wish to distribute to DGRs that have been granted an exemption from charity registration will need to apply for an exemption.

## Proposed implementation approach

The Commissioner's power to exempt an entity from charity registration will be limited to entities that:

- are seeking endorsement under a general category where, prior to these reforms, charity registration was not a prerequisite for DGR status, or as an ancillary fund. The list of eligible general categories is available in Table 2 on page 5;
- are prevented from registering as a charity because of exceptional circumstances. Examples are in Table 4 on page 11;
- operate on a not-for-profit basis;
- comply with all other requirements for DGR status under the relevant general category;
- have in place sufficient internal controls and governance processes, relative to the size and activities of the entity; and
- comply with any additional matters determined by legislative instrument.

Entities seeking to be specifically listed in the law will not be required to seek an exemption from the Commissioner. Whether an entity seeking specific listing as a DGR is required to register as a charity will remain a matter for Government to consider on a case-by-case basis.

As noted previously, charity registration is currently a prerequisite for DGR status under 40 of the 51 general categories. There is no opportunity to seek an exemption from charity registration under these 40 general categories and this will remain unchanged.

Once granted, an exemption will apply indefinitely. The Commissioner will have the power to review eligibility and, if necessary, revoke an entity's exemption if the entity is considered to no longer be eligible.

Treasury expects exceptional circumstances will fall within one or more of the following circumstances outlined in the table below.

Table 4: Circumstances in which the Commissioner may provide an exemption

<b>Circumstance 1</b>	The entity was established to pursue a principal purpose that is not recognised as charitable, but is eligible for DGR status. Example: An Approved Research Institute with a principal purpose that is not considered charitable under the Charities Act. This would apply to DGRs with a separate legal identity and DGRs operated by an entity.
<b>Circumstance 2</b>	The DGR with charitable purposes was endorsed prior to 1 July 2019 and is operated by an entity with a principal purpose that is not recognised as charitable. The entity must also have established the DGR to further its not-for-profit purpose and not use the DGR as its principal vehicle to achieve its non-charitable purpose. Example: Necessitous circumstances funds operated by Lions clubs, sporting clubs and Rotary clubs. For these types of cases, the number and total size of the DGR funds operated by the entity may also be relevant.
<b>Circumstance 3</b>	Other unusual and rare circumstances that prevent charity registration. Example: Trusts and bequests established prior to 1 July 2019, which prevent amendments to the trust deed or those responsible from separating a public fund from the sponsoring entity.
<b>Circumstance 4</b>	A private ancillary fund or public ancillary fund that wishes to distribute deductible funds to DGRs that are exempt from charity registration, including DGRs specifically listed in the law.

### Circumstances where an entity is not likely to obtain an exemption

The Commissioner's discretionary powers are targeted towards exceptional circumstances. The Commissioner's discretionary power is not intended to be used in circumstances that are routinely overcome by entities seeking DGR status. Below are examples of common circumstances where an entity would not be eligible for an exemption.

Table 5: Examples of circumstances where an entity is not likely to obtain an exemption

<b>Circumstance 1</b>	An entity that would be eligible for ongoing charity registration if it amended its governing documents. Example: An entity that can only amend its governing documents at its next Annual General Meeting.
<b>Circumstance 2</b>	An entity with a legal structure that prevents it from registering as a charity and that is seeking DGR endorsement after 30 June 2019.
<b>Circumstance 3</b>	An entity that cannot or does not wish to comply with the obligations to maintain charity registration. Example: An entity whose charity registration was revoked for the sole reason of failing to report to the ACNC.
<b>Circumstance 4</b>	A public fund with a charitable principal purpose operated by an entity with a non-charitable principal purpose that is established after 30 June 2019. The public fund must be registered as a charity or be operated by a registered charity to be eligible for DGR status. Example: A community service provider that wishes to establish a new necessitous circumstances fund after 30 June 2019. The community service provider must establish the necessitous circumstances fund as a separate legal entity.

## Guidelines to assist the Commissioner exercise his or her discretionary power

The Commissioner must consider the following matters prior to exercising his or her discretionary power to exempt an entity from charity registration:

- the size and activities of the entity seeking an exemption;
- the entity applying for an exemption has adequate governance procedures in place, relative to the size and activities of the entity; and
- the likelihood and history of compliance with relevant laws and obligations by the entity.

## Ongoing governance and reporting requirements for exempt DGRs

Exempt DGRs should face similar obligations as DGRs registered as charities. To achieve as much consistency in regulation as possible, exempt DGRs and registered charities will be subject to comparable ongoing governance standards and reporting requirements.

To remain eligible for an exemption, a DGR must have internal controls and governance processes considered by the ATO to be sufficient, relative to the size and activities of the entity.

The ongoing eligibility requirements will focus on the operation and governance of the parts of the entity that have DGR status.

### Reporting requirements

Exempt DGRs will report to the ATO on an annual basis, mirroring the requirement for registered charities to report to the ACNC on an annual basis. Of the 11 general categories that may be eligible for an exemption, 10 of the general categories are for the operation of public funds. An entity that operates a public fund that is exempt from charity registration could be required to provide the following information:

- amount of donations made to the fund according to each DGR category;
- value of assets of the fund;
- breakdown of expenditure distributions made by funds according to each DGR category; and
- any other relevant information required by the Commissioner.

The only relevant DGR category not for the operation of public funds is for approved research institutes. These would face reporting requirements similar to those prescribed by the ACNC.

Existing reporting requirements for private ancillary funds and public ancillary funds that are not registered as charities will remain unchanged. Ancillary funds reporting requirements are set out in the *Private Ancillary Fund Guidelines 2009* and the *Public Ancillary Fund Guidelines 2011*.

## Discussion questions

4. Are the eligibility criteria for the exemption from charity registration clear?
5. In what circumstances would a DGR be unable to register as a charity? Are there circumstances that would not be captured under the proposed circumstances?
6. Are the arrangements for the Commissioner of Taxation's discretion appropriate and sufficient?
7. Are there any circumstances where an exemption should be time limited?

# Abolishing certain public fund requirements

On 5 December 2017, as part of the DGR reforms, the Government announced that certain public fund requirements would be abolished.

Public funds will no longer need to be managed by a committee that has a degree of responsibility to the general community and entities will be able to operate a single public fund for multiple DGR purposes.

## Reasons for Change

There are 24 general categories that require entities to establish a public fund to receive tax deductible donations.

A public fund with DGR status must comply with Taxation Ruling 95/27, which sets out that, among other things, public funds need to:

- apply the donations they receive towards the purpose for which they have DGR endorsement;
- be managed by a committee that has a degree of responsibility to the general community; and
- keep the donations separate from other funds of the sponsoring entity (if relevant), including by maintaining a separate bank account. Entities that are endorsed under multiple general categories must establish a separate public fund for each general category.

During the formal public consultation for the 2017 DGR discussion paper, the NFP sector widely supported abolishing the following requirements for public funds:

- the requirement for public funds to be managed by a committee that has a degree of responsibility to the general community; and
- the requirement for entities to operate a separate public fund for each general category it has received ATO endorsement for.

The need for these public fund requirements are considered no longer necessary given non-government DGRs will be required to comply with ACNC regulation and governance standards and given the developments in accounting software.

Table 6: DGRs affected by the revised public fund requirements

DGRs that will experience a change	DGRs that will experience no change
<ul style="list-style-type: none"> <li>• Entities with DGR status under a general category that requires a public fund to be established</li> <li>• Entities specifically listed in the law</li> </ul>	<ul style="list-style-type: none"> <li>• Entities with DGR status under a general category that does not require a public fund to be established</li> <li>• Private ancillary funds and public ancillary funds</li> </ul>

## Background – what is a public fund?

Key aspects of a public fund are that:

- it is the intention of the promoters or founders that the public will be invited to contribute to the fund;
- the public, or a significant part of it, does in fact contribute to the fund; and
- the public participates in the administration of the fund.



## Proposed implementation approach

The Government will amend public fund requirements to enable the following:

- managing committees of public funds will no longer need to have a majority of members with a degree of responsibility to the general community; and
- entities will no longer be required to establish a separate public fund for each general category it has endorsement for. Instead, entities that are endorsed for the operation of a public fund under multiple general categories may use a single public fund.

### Public funds with multiple DGR purposes

Under the reform, the process to seek DGR endorsement for the operation of a public fund will remain unchanged. If the entity wishes to solicit tax deductible donations for purposes listed in a general category, the entity must seek DGR endorsement from the ATO under the relevant general category.

Once the ATO has endorsed the entity, the entity can choose to either: use a single public fund to solicit tax deductible donations under all the general DGR categories for which it has been endorsed; or establish a separate public fund for each general category.

If an entity chooses to use a single public fund, the entity would update the governing documents for its public fund to reflect the general categories it is endorsed under (often referred to as the entities' DGR purposes). It could manage deductible funds for the general categories covered in the governing documents in a single bank account.

Funds used to collect deductible donations under multiple general categories must be able to separately account for donations made to each general category. Donors generally prefer to donate to a particular DGR purpose and expect DGRs to use donated funds for that purpose.

A gift made to the fund that does not specify a purpose may be put towards any of the fund's purposes and activities that have DGR status.

Some DGR categories require an entity to pursue a particular principal purpose, for example environmental entities and public benevolent institutions. These types of DGRs are generally unable to establish public funds that are unrelated to furthering their principal purposes. This will remain the same under the reforms.

### Managing committees for public funds

The requirement to appoint a managing committee for public funds will remain. However, the reform will abolish the requirement for the majority of persons on management committees to have a degree of responsibility to the community as a whole because of their tenure of some public office or their position in the community. It can be difficult for entities in regional and rural areas to nominate persons that meet this criterion.

Given all non-government DGRs will be required to register as charities, the requirement creates an additional procedural barrier without necessarily improving governance. Abolishing this requirement will assist DGRs in regional and rural Australia who may face problems finding appropriate committee persons.

The ACNC governance standards are a set of core, minimum standards that deal with how charities are run (excluding basic religious charities). The ACNC governance standards set out the duties of Responsible Persons of a registered charity (for example board or committee members). Duties include the requirement to act with reasonable care and diligence, and to ensure the charity's financial affairs are managed responsibly.

Table 7: Revised public fund requirements

<b>Requirement 1</b>	<p>The public must be invited to contribute to the fund. The fund must operate on a not-for-profit basis.</p> <p>Moneys must not be distributed to members of the managing committee or trustees of the fund, except as reimbursement for out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.</p> <p>This is an existing ATO requirement.</p>
<b>Requirement 2</b>	<p>A fund operated by an entity must have its own governing rules, separate to the entity, which clearly set out and reflect its purpose(s) as a DGR and its not-for-profit character. The governing documents must include an appropriate dissolution clause.</p> <p>This is an existing ATO requirement.</p>
<b>Requirement 3</b>	<p>Funds that collect deductible donations for multiple general categories (referred to as 'DGR purposes') must be able to separately account for donations made to each DGR purpose. A gift made to the fund that does not specify a purpose may be put towards any of the fund's purposes.</p> <p>Deductible gifts to the fund must be kept separate from any other, non-deductible funds of the sponsoring entity (if there is one). The fund must have a separate bank account and clear accounting procedures are required.</p> <p>Receipts must be issued in the name of the fund and in the name of the donor.</p> <p>DGRs endorsed under multiple general categories will no longer need to operate separate public funds for each general category it has ATO endorsement for.</p>
<b>Requirement 4</b>	<p>The managing committee members of public funds registered as a charity or operated by a registered charity must comply with the ACNC governance standards. Members will no longer be required to have a degree of responsibility to the general community.</p> <p>Funds that are not registered as a charity or operated by a registered charity must have in place governance standards considered sufficient by the Commissioner of Taxation.</p> <p>Government entities will remain exempt from this requirement.</p> <p>Managing committees for public funds will no longer be required to have a majority of members that have a degree of responsibility to the general community.</p>

## Examples — Entities that operate public funds

### Example 1 – A registered charity with multiple DGR purposes with a single public fund

A registered charity seeks DGR status to raise funds for the purpose of relieving the necessitous circumstances of one or more individuals who are in Australia and for the maintenance of a hospital with DGR status.

Under existing arrangements, the registered charity would need to establish a public fund for each DGR purpose. Each public fund would require its own governing documents and a separate bank account.

Under the proposed arrangements, the registered charity could establish a single public fund for both DGR purposes. This removes the need to develop multiple governing documents and establish separate bank accounts.

The registered charity must be able to separately account for donations made to each DGR purpose.

The governing board of the public fund can be comprised of individuals that comply with the ACNC governance standards. The individuals are not required to have a degree of responsibility to the general community.

## Discussion questions

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?
  9. Are there any other issues relevant to the public fund requirements that should be considered?
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## Appendix A: List of consultation questions

1. Are the eligibility criteria for transition arrangements clear?
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?
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?
4. Are the eligibility criteria for the exemption from charity registration clear?
5. In what circumstances would a DGR be unable to register as a charity? Are there circumstances that would not be captured under the proposed circumstances?
6. Are the arrangements for the Commissioner of Taxation's discretion appropriate and sufficient?
7. Are there any circumstances where an exemption should be time limited?
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?
9. Are there any other issues relevant to the public fund requirements that should be considered?

## Appendix B: What is a charity?

Charity registration with the ACNC allows an entity to access charity tax concessions, including an exemption from Australian income tax. Similar to the DGR tax arrangements, charity tax arrangements are intended to encourage philanthropy and provide support for the NFP sector.

To register as a charity with the ACNC an entity must:

- meet the definition of a charity under the *Charities Act 2013 (Cth)* (Charities Act); and
- be entitled to register under the *Australian Charities and Not-for-profits Act 2012 (Cth)*, which includes the requirement to:
  - have an Australian Business Number (ABN); and
  - comply with ACNC governance standards and reporting obligations outlined in ACNC legislation.

### Meeting the definition of a charity under the Charities Act

To meet the definition of a charity under the Charities Act, an entity must have charitable purposes that are for the public benefit consistent with the Charities Act. The Charities Act lists 12 charitable purposes that apply for the purposes of all Commonwealth legislation.

In addition to pursuing a recognised charitable purpose for the public benefit, a charity is an entity that must:

- be not-for-profit;
- have only charitable purposes that are for the public benefit;
- not have a disqualifying purpose; and
- not be an individual, a political party or a government entity.

### Complying with ACNC legislation – governance standards and reporting obligations

The ACNC provides information and guidance for registered charities on their obligations under the ACNC legislation, as well as monitoring and managing non-compliance.

To remain eligible to be registered, charities must continue to be not-for-profit and pursue their charitable purpose or purposes. All registered charities must:

- notify ACNC of changes, including change of address for service, legal name, governing documents and Responsible Persons;
- keep financial and operational records;
- submit an Annual Information Statement (and, for medium and large charities, a financial report) every year using the ACNC Charity Portal; and
- meet the ACNC governance standards (noting that basic religious charities are exempt from the ACNC governance standards).

Further information is available on the ACNC website at [acnc.gov.au](http://acnc.gov.au)