



COMMUNITY
BROADCASTING
ASSOCIATION OF
AUSTRALIA

4 August 2017

Senior Adviser
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: DGR@treasury.gov.au

To whom it may concern,

Submission from Community Broadcasting Association of Australia

The Community Broadcasting Association of Australia (CBAA) welcomes the opportunity to comment on the discussion paper: Tax Deductible Gift Recipient Reform Opportunities.

As the peak body and the national representative organisation for community radio and television stations in Australia, many of whom are listed on the Register of Cultural Organisations we are key stakeholders in potential reforms.

The CBAA and community broadcasting in Australia

As an internationally recognised, not-for-profit cultural organisation the CBAA champions community broadcasting by building stations' capability and by creating a healthy environment for the sector to thrive. Since our creation, we have served to give a voice to those otherwise not heard on air and always prided ourselves on maintaining a diverse sector, supported by volunteers and community-minded individuals.

Community broadcasting is a vital and growing part of the Australian media landscape. The 2016 National Listener Survey reported the highest listening levels for community radio on record – 5.4 million Australians tuned in to the over 450 not-for-profit, community-owned and operated radio services operating across the country each week.¹ This is up from approximately 3.8 million in 2004.

Community radio stations operate in towns and cities across Australia with the largest proportion located in regional areas (41%), a further 25% in rural areas and 34% across metropolitan and suburban locations. These stations directly support approximately 1020 full-time equivalent (FTE) jobs across the country – over 250 of which are in regional and rural communities. Further, the sector consistently reports between 19,000-20,000 people volunteering at community radio stations each year. This is an average of 74 volunteers at each community radio station, putting in the hours of 13 FTE shifts per station. This varies strongly across stations and station types.

Our community broadcasters are united by six guiding principles – we work to:

1. Promote harmony and diversity, and contribute to an inclusive, cohesive and culturally diverse Australian community

¹ Community Broadcasting Association of Australia (2017). *Community Radio National Listener Survey- Summary report of findings July 2017* [online] Available at: <https://www.cbaa.org.au/broadcasters/get-data-national-listener-survey-station-census>



COMMUNITY
RADIO
NETWORK



2. Pursue principles of democracy, access and equity, especially for people and issues not adequately represented in other media
3. Enhance the diversity of programming choices available to the public and present programs that expand the variety of viewpoint broadcast in Australia
4. Demonstrate independence in programming as well as in editorial and management decisions
5. Support and develop local arts and music
6. Increase community involvement in broadcasting

Many Community Radio and Television Stations are listed on the Register of Cultural Organisations and can receive tax deductible donations as their principal purpose is to promote cultural activities in Australia in the form of Radio or Television.

The discussion paper includes some sensible and non-controversial proposals. However, it also includes some concerning proposals and this submission focuses on seven relevant areas:

- DGRs (other than government entities) be required to become Charities
- Register of Cultural Organisations (ROCO)
- Public Fund Requirements
- Focus on Activities Rather than Purpose
- Erosion of the Right of Charities to Undertake Advocacy
- Introduction of Reviews and Audits to investigate continual compliance with DGR requirements over-time
- Creating certainty and trust in the regime requires addressing other areas of regulation

DGRs (other than government entities) be required to become Charities

1. We welcome and accept that the transparency and accountability of DGRs is important and therefore support the requirement proposed in the discussion paper (as suggested in proposed actions 21-28 of the discussion paper) that DGRs (other than government entities) be required to become Charities.
2. These new charities will have added red tape burdens compared to being 'public funds.' For example the filing of an AIS in addition to the continued state and territory regulatory requirements for charities registered under state and territory laws etc.
3. The CBAA strongly encourages the Government to continue to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector,' in particular through:
 - a. the streamlining of reporting arrangements for charities with other Commonwealth regulators, including the ACMA for Community Radio Broadcasters and ORIC for indigenous community broadcasters.
 - b. the pursuing of alignment and coordination of state and federal requirements, particularly ACNC and state and territory regulatory requirements for charities registered under state and territory laws.

Register of Cultural Organisations (ROCO)

4. Community Radio and Television Broadcasters can qualify for DGR status by being included on the Register of Cultural Organisations (ROCO) as their principle purpose is to promote cultural activities in Australia in the form of Radio or Television.
5. The experience of Community Broadcasters that have applied for inclusion has not generally been positive. The process is incredibly time consuming and applicants report high levels of frustration, including:
 - a. Lack of clarity and conflicts regarding the multiple government requirements for clauses in governing documents as required for Charity Status as well with the ACNC, ACMA and under state and territory laws.
 - b. Inconsistent advice as to requirements. In one instance an organisation was included on the register only to be advised less than 8 months later that further constitutional

requirements would need to be made. This resulted in significant additional legal costs and red tape.

6. We welcome and support the transfer of the administration of the four DGR Registers, including ROCO, to the ATO.

Public Fund Requirements

7. The public fund requirements of the ROCO create significant and unnecessary red tape and complexity. We agree with the premise in the discussion paper that with the introduction of the ACNC governance standards, the development of more sophisticated accounting systems and electronic banking, the requirement for a charitable DGR entity to maintain a public fund is unnecessary.
8. We support the proposal to remove the public fund requirements for charities and allow DGR entities to be endorsed in multiple categories.

Focus on Activities Rather than Purpose

9. In the discussion paper both charitable purpose and charitable activities are raised. Charity law focuses on purposes and not activities, and the DGR framework generally has a focus on purpose rather than activity. As such, and in the absence of strong and compelling reasons to the contrary, the focus of DGR reform should likewise focus on purposes – such strong and compelling reasons do not exist and therefore no shift in focus towards activities such as advocacy is warranted.
10. The current legal regime is robust in outlining the purposes for which charities can legitimately be established, as well as, in ensuring charities must demonstrate that they do not have a ‘disqualifying purpose.’^[1]
11. Furthermore, the regulatory environment does account for other, relevant laws, which further specifies prohibitory conditions on DGRs in pursuing their purpose.^[2]
12. We therefore strongly oppose the activity-level focus in the review (as suggested in questions 4-6; 12-13 of the discussion paper) as such an approach:
 - a) Casts doubt and uncertainty over what activities a DGR entity can lawfully undertake resulting in a chilling effect;
 - b) Insufficiently establishes that the current regime of ‘charitable purpose’ is not robust for regulating the sector.

Erosion of the Right of Charities to Undertake Advocacy

13. Charities undertaking advocacy has been recognised as both a legitimate activity and one essential to our system of parliamentary democracy.
14. It is an important approach which charities can use to address the causes of social and environmental problems, rather than just the symptoms – this often requires policy change.
15. No evidence has been put forward as to the need for new reporting obligations for advocacy activities – therefore they are strongly opposed on the basis that they would impose new and unjustified red tape on charities.
16. Charities and their supporters are in the best position to determine what approaches are most appropriate in order to achieve their charitable purpose – therefore any new restrictions and

^[1] Disqualifying purpose includes: a purpose to promote/oppose political parties/candidates; a purpose to engage in or promote unlawful activity; a purpose to engage in or promote activities contrary to public policy (which does not include opposing specific policies of the Government). See ACNC Fact Sheet http://www.acnc.gov.au/ACNC/Reg/Charities_elections_and_advocacy.aspx

^[2] In regards to Community Radio Broadcasting Licensees, for example, under section 123 of the Broadcasting Services Act 1992, Community Radio Stations are required to abide by the relevant requirement of the Act as well as Codes of Practice.

limitations are strongly opposed on the basis that they would impose new and unjustified red tape which will make it harder for them to achieve their charitable purpose.

17. Well targeted and proportional approaches to maintain transparency and accountability for charities are supported and this can be achieved by ensuring all DGRs are registered as charities under the purview of the ACNC, as the discussion paper proposes.
18. Existing charity law sets appropriate boundaries for what advocacy activities by charities are acceptable, and the ACNC guidance for charities is helpful and reflective of the law – no further changes are justified or necessary.
19. We note that Community Broadcasters are additionally required to comply with Parts 1 and 2 of Schedule 2 to the Broadcasting Services Act 1992 which contain provisions that deal with access, timing and identification in relation to the broadcast of political and election matter. The rules set out at Parts 1 and 2 of Schedule 2 to the Broadcasting Services Act are licence conditions that apply to commercial television broadcasting licensees, commercial radio broadcasting licensees, community broadcasting licensees, subscription television broadcasting licensees and persons providing broadcasting services under class licences (these include subscription and open narrowcasting services).

Introduction of Reviews and Audits to investigate continual compliance with DGR requirements over-time

20. We welcome and accept that the transparency and accountability of DGRs is important. However, we believe reviews and audits should be conducted only at the point where systemic issues have been identified and/or certain risk thresholds amongst categories of charities and DGRs have been surpassed.
21. The ACMA issues Permanent Community Radio Licenses for a period of 5 years. As such Community Radio Licensees are already subject to onerous license application and renewal processes required by legislation.
22. A rolling review and audit process is costly and the case has not been made that such a cost is justified given the current nature of the risk. The ACNC and the ATO already have the power to undertake reviews and audits where they believe they are warranted, and it is not apparent that introducing new and costly formal review processes is necessary.
23. We therefore strongly recommend a proportionate and risk-based response to this issue. Such a response would include requiring DGRs to be registered with the ACNC (as the discussion paper proposes), with the ACNC and the ATO using their existing compliance approach to ensure compliance with the law. This can involve undertaking reviews and audits using their existing powers where systemic issues have been identified and/or certain risk thresholds amongst categories of charities and DGRs have been surpassed.

Creating certainty and trust in the regime requires addressing other areas of regulation

24. The success of integrity measures such as rolling reviews are predicated on the sector being clear around their obligations with regard to both the Australian Charities and Not for profits Commission Act 2012 and Income Tax Assessments Act 1997.
25. It is important that any reform of the DGR framework also include reform to section 50-50 of the Income Tax Assessment Act 1997. Such reforms should have the outcome of:
 - c) repealing the governing rules condition;
 - d) including a common rule that says, for the avoidance of doubt, that the 'solely' condition is not breached where an entity pursues purposes or conducts activities that are incidental or ancillary to a purpose for which the entity is established

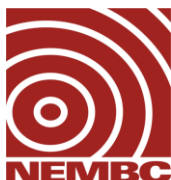
As the peak body and the national representative organisation for not for profit community radio and television stations in Australia we are key stakeholders in this review of DGR status.

Kind regards,



Jon Bisset
Chief Executive Officer
Community Broadcasting Association of Australia

This submission is supported by the following organisations:



*National Ethnic & Multicultural
Broadcasters' Council*



*Community Broadcasting
Foundation*



*Radio for the Print
Handicapped Australia*