

# ACFID Submission to the Senate Economics Committee: *Treasury Laws Amendment Bill 2023: Deductible Gift Recipient Registers Reform*

ACFID appreciates the opportunity to make this submission.

## About ACFID

The Australian Council for International Development (ACFID) is the peak body for Australian non-government organisations involved in international development and humanitarian action.

### OUR VISION

Our vision is Australia acting with compassion and fairness for a just, sustainable and equitable world.

### OUR SHARED PURPOSE

Our purpose is to lead, unite and support international development and humanitarian organisations to realise our vision.

### ABOUT ACFID

Founded in 1965, ACFID currently has 128 full members and 21 affiliates operating in more than 65 developing countries. The total revenue raised by ACFID's membership from all sources amounts to \$1.83 billion (2020 - 21), \$721 million of which is raised from over 996,000 thousand Australians. ACFID's members range between large Australian multi-sectoral organisations that are linked to international federations of NGOs, to agencies with specialised thematic expertise, and smaller community-based groups, with a mix of secular and faith-based organisations.

ACFID members must comply with the ACFID Code of Conduct, a voluntary, self-regulatory sector code of good practice that aims to improve international development and humanitarian action outcomes and increase stakeholder trust by enhancing the transparency, accountability and effectiveness of signatory organisations. Covering 9 Quality Principles, 33 Commitments and 92 compliance indicators, the Code sets good standards for program effectiveness, fundraising, governance and financial reporting. Compliance includes

annual reporting and checks. The Code has an independent complaint handling process.

### ACFID'S VALUES

#### INTEGRITY

We act with honesty and are guided by ethical and moral principles in all that we do.

#### ACCOUNTABILITY

We take responsibility for our actions and are accountable to our stakeholders, and in particular primary stakeholders, for our performance and integrity.

#### TRANSPARENCY

We openly share information about our organisations and our work with all our stakeholders and the public.

#### RESPECT

We recognise the value and diversity of all people and are committed to treating others with due regard for their rights, dignity and integrity.

#### EFFECTIVENESS

We strive to deliver outcomes that bring about positive change in the lives of people living in poverty.

#### EQUITY

We are committed to overcoming prejudices and disadvantage and promoting fair and just access to resources and opportunities.

#### COOPERATION

We work with and alongside others in a spirit of mutuality, respecting diversity and difference in the pursuit of common goal

## Introduction

The Australian Council for International Development (ACFID) welcomes the Government's efforts for reform to the Deductible Gift Recipient (DGR) registers as a critical first step to relieving the administrative burden faced by resource constrained Australian charities in accessing and maintaining the tax-deductible status that many rely on to attract much needed ongoing support from a generous Australian public.

ACFID was pleased to see that adjustments have been made to the proposed amendments to the Overseas Aid Gift Deductibility Scheme (OAGDS) at *item 9.1.1* to maintain provisions allowing registration with a charitable purpose that is not the principal purpose and operating a developing country relief fund via the (re) inclusion of the Public funding wording at *item 9.1.1*. We thank the Treasury for these changes.

Nonetheless, ACFID remains concerned that any substantive benefits of these changes will not be realised due to the lack of requisite clarity in the transitional provisions relating to the changes for the OAGDS. The potential confusion of the transitional requirements may have the effect of creating additional administrative and legal burden for many charities including many ACFID members.

ACFID's short submission is focused in the transitional provisions proposed for the OAGDS, setting out some practical implications and unequal outcomes for ACFID's members and other charities in the sector. In line with the Government's commitment to simplifying the burdensome system under which charities operate, ACFID seeks amendments for the purpose of achieving clarity for the sector and to enhance the impact of the reforms.

## Detailed issues

1. ACFID welcomes the simplification of requirements for the provisions relating to overseas aid acknowledging that several of the criteria for this endorsement are already requirements for registration under the ACNC Act, and the accompanying External Conduct Standards.
2. ACFID further welcomes the expansion of *item 9.1.1* to include a public fund as solving part of the issue flagged in our original submission to this reform Bill proposal. ACFID however, remains concerned that this change has not flowed through to the proposed transitional provisions, and due to this, a number of the issues we flagged in our original submission to this reform bill will not be resolved.
3. *Item 9.1.1* has been expanded to state OAGDS should apply to "a **public fund**, institution or Australian Government Agency whose principal purpose is delivering development or humanitarian assistance activities...". This adjustment allows for the fact that there are many organisations, including up to 95 ACFID members, which have a wider purpose and remit to the Australian public than the OAGDS fund that they operate. In the case of these organisations, development and humanitarian relief activities is the primary purpose of the *fund* but not the sole purpose of the charity.
4. However, this change is effectively mitigated for these charities by the requirements of the transitional provisions, specifically *section 20(3)(d)* which requires that "*the organisation is an institution or Australian government agency that would be covered by item 9.1.1 of the table...*". ACFID believes this provision may narrow the eligibility of an organisation such that they will only be able to operate a fund with OAGDS if the organisation has a qualifying 9.1.1. principal purpose, that is, organisations that would have *already qualified* to apply OAGDS at the organisational level under the principal purpose test. This requirement may disqualify organisations that would have otherwise been able to transition an eligible fund.
5. A typical structure for entities involved in humanitarian or development activities overseas is to operate as a Public Benevolent Institution (PBI) registered with the Australian Charities and Not-for-profits Commission (ACNC) and complying with the ACNC external conduct standards. These organisations pursue a charitable purpose in line with their PBI registration and maintain an OAGDS fund for the purpose of delivering development and humanitarian activities. This is the case for some 55 ACFID members. Unsurprisingly, most of these organisations presently do not have their purposes described in such an expansive way as to also capture all the elements of an *item 9.1.1* purpose. This is likely to also be the case for many religious organisations and Harm Prevention Charities.
6. It is ACFID's view that it is unlikely there will be many charities that are able to meet the proposed eligibility test, and that those who are ineligible will be denied the significant benefits set out in the transitional provisions, or obliged to incur significant legal costs and administrative burden in order to comply. ACFID is further concerned that it may be the case that the transitional provision gives the benefit of whole of organisation DGR and having to operate a gift fund instead of a public fund to those very few organisations that can meet the criteria in *section 20(3)* and also those who have different kinds of applications already underway (*sections 20(5), 20(7) and 20(9)*) before the Bill is passed but not to others that may apply to set up an overseas aid fund in future (as they would need to apply for a public fund). This outcome is bizarre and unnecessarily confusing.

7. ACFID submits that the eligibility issues above should be resolved by amending the transitional requirements to reflect the operational realities of the charities that the Government intends to transition via these changes. For example, in the case of PBIs who have an OAGDS fund, section 20(3)(d) could be expanded to clarify that an organisation that already is a deductible gift recipient under other sections of the Act (in this case *section 4.1.1*) can transition an eligible fund with a qualifying purpose. This could also be achieved by a simple clarification to *9.1.1* to the effect that an entity may also be eligible to be a deductible gift recipient under other provisions of the Act.
8. In line with the Government's commitment to streamlining and easing the administrative burden on charities, ACFID urges the committee to consider some amendments to address these issues. We would welcome the opportunity to discuss further.

For questions or further information on this submission please contact ACFID's Chief Operating Officer Jocelyn Condon