

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Supplementary Budget Estimates

20-21 November 2013

**Question: SBE 74**

**Topic: Eligibility for DGR status**

**Hansard Page: 118**

**Senator Di Natale asked:**

**Senator DI NATALE:** No, this is a general question. How does the ATO verify that an illness is actually an illness as documented in the literature by the various DSM-IV criteria, which is how we define whether an illness exists or not in the medical literature? How does the ATO use that process through this determination of whether a particular organisations should qualify for DGR status?

**Mr Poulakis:** I have to admit to not knowing the answer to that question.

**Senator DI NATALE:** So I could set myself up as an organisation to prevent football withdrawal syndrome and apply for DGR status and you would have no basis on which to determine whether that is an illness or not?

**Mr Poulakis:** You would have to apply through the ACNC, and the ATO—

**Senator DI NATALE:** But previously we could not do that and we applied directly through the ATO.

**Mr Poulakis:** That is right.

**Senator DI NATALE:** So what was the basis on which the ATO made a determination as to whether an illness was actually an illness?

**Mr Poulakis:** I have to admit to not knowing the procedure in which we made those determinations well enough to answer your question.

**Senator SIEWERT:** Can you take that on notice?

**Mr Jordan:** We could take that on notice and give a response as to the sort of evidence that would have been looked at. It does sound a curious situation, but we will certainly take that on notice.

**Senator DI NATALE:** It is curious because what we have here is an organisation that has been granted DGR status on the basis of being a health promotion charity, but the illness that it seeks to prevent does not exist anywhere and has not been documented anywhere. Without going into the specifics of this, do you have any general information that you can present today about the process for determining—

**Mr Jordan:** I am not aware of the actual process that would be applied to go through the DGR status. What I can say—and why I say it is curious—is that DGR status is not easily obtained.

**Senator DI NATALE:** Yes, I would have thought that. That is why this is such a curious—

**Mr Jordan:** That is why I am happy to go back and look at this, because it is a relatively difficult process, for obvious reasons.

**Senator DI NATALE:** As it should be.

**Mr Jordan:** As it should be. So I would be more than happy to go back and review the materials that pertain to this particular situation, but, in response to your general question as to what the process is, there would have been one because the DGR status is not easily granted.

# Senate Standing Committee on Economics

## ANSWERS TO QUESTIONS ON NOTICE

### Treasury Portfolio

#### Supplementary Budget Estimates

20-21 November 2013

#### Answer:

Prior to the establishment of the Australian Charities and Not-for-profit Commission (ACNC), on 3 December 2012, the ATO determined the 'charity' status of an entity as well as the eligibility for Deductible Gift Recipient (DGR) status. Since 3 December 2012 the ACNC decides if an entity can be registered as a charity including the subcategories of health promotion charity and public benevolent institution. The ACNC charity registration is a prerequisite to ATO endorsement to charity tax concessions, including exemption from income tax and DGR status.

Prior to the establishment of the ACNC the ATO made determinations on charitable status through a process based on the specific facts and circumstances of each case, with reference to any existing ATO view and any relevant precedential case law.

The process involved:

1. An application form, together with supporting material is lodged by the client
2. Case officers review material provided by client in support of their application, including constituent documents (containing their objects, purpose, rules and structure).
3. The case officer considers the information provided by the client with reference to the ATO view as to what constitutes a health promotion charity.

Health promotion charity status was determined in accordance with Taxation Ruling TR 2004/8 *Income tax and fringe benefits tax: health promotion charities*. This ruling provides the ATO view on the requirements necessary to meet the criteria, including the definition of disease as detailed below:

*7. The institution's principal activity must promote the prevention or the control of diseases in human beings. It is not necessary that the institution's activities promote both the prevention and the control; either is sufficient. Although an institution may have more than one activity, to qualify, the prevention or the control of diseases in human beings must be its main activity. This activity must outweigh its other activities.*

*8. Disease is a morbid condition of the body, or of some organ or part; illness; sickness; ailment. For the Income Tax Assessment Act (ITAA) 1997 and the Fringe Benefit Tax Assessment Act (FBTAA) it is also defined to include 'any mental or physical ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development and whether of genetic or other origin': subsection 34-20(3) ITAA 1997 and subsection 136(1) FBTAA.*

*20. Examples of diseases are asthma, cancer, acquired immune deficiency syndrome (AIDS), arthritis, heart conditions, brain conditions, paraplegia, and kidney conditions (see paragraph 5.12 of the Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 2) 2001). Other examples are dementia, autism, cerebral palsy, mental illness and multiple sclerosis. Recognition by medical authorities will no doubt assist in concluding whether newly identified conditions fall within the term. An example of something that is not a disease is pregnancy; there may, of course, be diseases associated with pregnancy.*

ATO case officers are not medically trained and therefore place some reliance on the evidence supplied by the applicants. The definition of disease is broad, and as indicated by paragraph 20 of TR 2004/8, recognition by medical authorities may assist but is not necessarily conclusive as to whether a newly identified condition falls within the term.

If an entity that is endorsed as a charity or DGR ceases to be entitled to be endorsed, the entity must advise the Commissioner of that change and entitlement will be revoked. If other circumstances arise which put an entity's charity status or endorsement eligibility in doubt, a specific review can be undertaken. The ATO and ACNC, through information sharing arrangements, regularly review charity and DGR endorsements to ensure they are valid. The ACNC can revoke the charity status of an entity from 3 December 2012. The ATO can revoke the DGR endorsement if the entity no longer satisfies the endorsement eligibility requirements.