



## ***‘Prevention is better than cure...’***

### **Why Australian DGR tax laws should be amended for Not For Profit Organisations**

Prepared by the Association of Neighbourhood Houses & Learning Centres on behalf of the  
AUSTRALIAN NEIGHBOURHOOD HOUSE & COMMUNITY CENTRE SECTOR

This submission is endorsed by six state neighbourhood house peak bodies and is supported by:

- The Hon. Joan Kirner AM, Ambassador for Victorian Communities
- The Reichstein Foundation
- Melbourne Community Foundation
- Australian Council of Social Services (ACOSS)
- Victorian Council of Social Service (VCOSS)
- Public Interest Law Clearing House (PILCH)
- Northern Rivers Social Development Council (NSW)
- Human Rights Law Resource Centre (Vic)

#### **NEIGHBOURHOOD HOUSES = MANY NAMES - ONE SECTOR**

‘Neighbourhood Houses’ is a generic term used in this paper to describe centres which go by a variety of names which vary from state to state (i.e. Neighbourhood Centres, Community Centres, Community Development Centres, Family & Community Centres).

Despite the various names, all of the centres are defined by a common set of objectives, philosophies, processes and practices and all are members of their state Neighbourhood House peak body.

## 1. SUMMARY

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This paper aims to raise the government's awareness of the extent to which the not-for-profit Neighbourhood House sector is disadvantaged through lack of access to Deductible Gift Reciprocity (DGR) tax endorsement due to the current narrow definition of the Public Benevolent Institution (PBI) criteria, as applied by the Australian Tax Office.

Lack of DGR endorsement effectively means that the sector is denied the competitive advantage of being able to source critical funding support from:

- philanthropic trusts and foundations (currently worth approx. \$728 million)
- corporate funding and sponsorship

The impact of not having DGR endorsement means that the sector:

- remains reliant on government funding
- is unable to engage in innovation and research
- is restricted in its ability to maintain and attract a skilled workforce
- is at risk of becoming unsustainable in light of growing demand for services

This paper does not set out to prove the long term efficacy and benefits of adopting a social inclusion / community development approach in order to prevent disadvantage and strengthen communities. Sound evidence already exists to justify this approach and its contribution to building social capital.

## 3. BACKGROUND

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The Australian charity taxation laws, including the definition of charity, is based on the British Elizabethan statutes of 1601. Britain has since abolished these statutes and replaced them with definitions which reflect contemporary approaches to charity, public benevolence and addressing disadvantage in general.

When the current DGR endorsement process was implemented by the ATO in 2000, they were predicated on the outmoded British statutes. This meant that a Public Benevolent Institution must demonstrate that its core work is aimed at providing direct welfare, rather than prevention of disadvantage (poverty etc) or advancement of health or quality of life.

As the Neighbourhood House sector is committed to a social inclusion / community development approach to addressing disadvantage, their ability to access DGR endorsement, and hence access to additional funding and support, is not available to it, placing the sector as a whole in a severe competitive disadvantage.

Only 7% of Australian Neighbourhood Houses have DGR endorsement.
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## 2. WIDENING THE SCOPE OF PBI - AN INTERIM MEASURE

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The Australian Neighbourhood House sector supports the recommendations in the recent Productivity Commission's review of the not-for-profit sector, particularly in relation to widening the scope of DGR endorsement to include all not-for-profit organisations that have charitable status, but recognises that this is a long term strategy.

The proposal being put forward in this paper is an effective, however, is relatively straight forward interim step which will provide access to DGR endorsement in the short term - one

that will not cut across the broader recommendations that are supported in all of the above inquiries.

It involves the inclusion of the word '**prevention**' in the definition of a Public Benevolent Institution (PBI) as it appears in the Australian Tax Office publication '*Giftpack for DGR & Donors*' under the category 'Welfare & Rights'.

An example of a possible amendment is as follows:

*“A Public Benevolent Institution is a non-profit institution organised for the direct relief or prevention of poverty, sickness, suffering, distress, misfortune, disability or helplessness”.*

This will NOT allow a blanket DGR endorsement for all organisations engaged in community development. Applicants will still be required to meet all other aspects of the current PBI criteria in order to be eligible for DGR endorsement.

In other words, the restriction of DGR endorsement to PBI (rather than as a general inclusion in the overall DGR criteria) means that the Federal Government will be able to guarantee that the demand on Treasury for taxation benefits will be limited only to those non-profit organisations established for public benevolence as defined and aimed at working with the disadvantaged.

## 6. ECONOMIC SENSE OF THE PROPOSAL

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The proposal outlined above will not result in a drain on Treasury as a result of additional taxation deductions made via donations to philanthropic trusts and foundations. It will simply mean that the Neighbourhood House sector has the capacity to gain access to a “slice of the pie” that is currently being enjoyed by other public benevolent institutions. This pie equates to in excess of \$700 million per year.

The proposal also means that the Neighbourhood House sector will be able to broaden its funding base beyond its current reliance on government funding. In turn, this will lead to greater innovation and capacity building of the sector.

Any increase in Fringe Benefit Tax (FBT) benefits would be offset by the ability to maintain and attract skilled staff. The cost to taxpayers of the high level of staffing turnover at present is calculated to be excessive, with the average length of stay by key staff in the sector being a mere two years.

Finally, contemporary research shows that prevention is indeed better than cure when it comes to cost effectiveness. Family breakdown, mental health, social isolation, domestic violence and unemployment are just some of the issues which Neighbourhood Houses constantly address and reduce through their programs and activities - all of which cost the government dearly when they manifest themselves in society.

Freehills Law Firm has offered to assist Government in the process of considering and documenting the inclusion of 'prevention' in the definition of PBI, including drafting and reviewing legislation or policy documents. Freehills has previously worked with Treasury and the ATO on legislative and policy changes affecting the charitable sector and has considerable experience with both the government and the neighbourhood house sector.

## 7. COMPLEXITY AND CONFUSION OF CURRENT DGR CRITERIA

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The current process for obtaining DGR endorsement, outlined in the ATO's *'Giftpack for DGR & Donors'*, is complex and confusing. Over recent years, dozens of Neighbourhood Houses have attempted to apply for DGR endorsement only to find the process is beyond even their most experienced finance worker. In many cases, even the engagement of expensive legal expertise has met with failure.

The only category relevant to the Neighbourhood House sector is the Public Benevolent Institution (a sub category of 'Welfare & Rights') as this requires an organisation to be focused on the disadvantaged. **However, it only recognizes direct welfare and not preventative approaches.**

Of serious concern is the ad hoc way in which allocation of DGR endorsement has been granted by the ATO, with some Neighbourhood Houses, for example, receiving DGR endorsement on their first attempt, while others (who provide identical programs and services) have their applications rejected time and time again.

## 8. INTERNATIONAL CHARITY TAX LAWS

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This proposal presents an opportunity to bring Australia's definition of public benevolence into line with international trends, including U.K., Canada and New Zealand, all of whom have revised their charity-related tax laws to reflect changing attitudes to the ways in which poverty and disadvantage are (and should be) addressed.

In an extract from the U.K. government's resource document titled *'Charities Act 2006 - What Trustees Need to Know'* it states "*the range of charities that exists now has clearly evolved considerably since the seventeenth century.....the (U.K.) Act updates the scope of charitable aims for a modern society and gives a much clearer idea of what is considered as being 'for charity'*".

## 9. CONCLUSION

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The potential benefits of including **'prevention'** in the PBI sub category of the DGR tax laws can be summed up by the following long term social and economic impacts that the Australian Federal Government will directly benefit from:

- increased capital investment in the sector from philanthropic and private sectors
- less reliance by the sector on government funding
- an increase in the number of community business partnerships
- significant increase in social inclusion and community strengthening programs and services at the local level; and
- stronger and more resilient Australian communities

In short, widening the scope of DGR will reduce the competitive disadvantage that the Neighbourhood Houses currently face, and strengthen the capacity of the sector to engage in innovation, growth and a strong sustainable future.

In the long run - prevention is most definitely better than cure.