



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

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

Submission produced by  
**The Association of Neighbourhood Houses & Learning Centres**

to

**The Productivity Commission’s study on the  
CONTRIBUTION OF THE NOT FOR PROFIT SECTOR**

**June 2009**

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

## **SUMMARY**

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### **Further Information**

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## 1. ENDORSEMENTS

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This submission is endorsed by:

- Six state sector peak bodies representing over 1,000 independently incorporated Neighbourhood Houses and Learning Centres throughout Australia
- Australian Neighbourhood Houses & Centres Association (ANHCA)

In addition, a wide range of government and non government agencies and individuals support ANHLC's initiative in bringing this proposal before the Federal Government for its consideration, including:

- Robert Fitzgerald AM, Chairperson of the Inquiry into the Definition of Charities & Related Organisations (2001) and founding chair of the National Roundtable of Non-profit Organisations
- The Hon. Joan Kirner AM, Ambassador for Victorian Communities
- The Reichstein Foundation
- Melbourne Community Foundation
- Victorian Council of Social Service (VCOSS)
- Public Interest Law Clearing House (PILCH)
- Victorian Local Governance Association

## 2. ABOUT ANHLC

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The Association of Neighbourhood Houses and Learning Centres (ANHLC) is the peak body for Victoria's 380 Neighbourhood Houses and Learning Centres .

The vision of the Association is of just and empowered local communities in which our member organisations provide opportunities for people's social inclusion and learning.

Neighbourhood Houses and Learning Centres provide a range of community support, adult education and learning activities, social support, community development & civic activities along with children's services. Programs and activities are developed in response to the needs and concerns of the residents in the locality in which they are based.

Neighbourhood Houses and Learning Centres are community managed non-profit organisations. Houses & Centres are managed by voluntary committees and operated by part-time staff and volunteers. Although the majority receive some government funding, most Houses/Centres also rely on a mix of funding from community support, fundraising and fee-for-service programs in order to operate.

### **What's in a name?**

Please note that the term 'Neighbourhood Houses' has been used in this submission to apply to the many varied names used within the Neighbourhood House sector. These include neighbourhood centres, community centres, community houses, living and learning centres.

### 3. INTRODUCTION

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This submission is focused on the Productivity Commission's undertaking to:

*“Examine the extent to which tax deductibility influences both decisions to donate and the overall pool of philanthropic funds”  
(Review Terms of Reference)*

In so doing, this submission aims to raise the government's awareness of the extent to which the not-for-profit Neighbourhood House sector is disadvantaged by not being able to obtain Deductible Gift Reciprocity (DGR) tax endorsement. This impacts on the sector in two significant ways;

- Restricted ability to access philanthropic and corporate funding
- Ongoing reliance on government funding and small scale fundraising

This situation comes about as a result of the federal government's outmoded definition of charity and public benevolence, which is based on the British Elizabethan statutes of 1601. These antiquated laws dictate that the work of a Public Benevolent Institution must predominantly involve direct welfare if they wish to be eligible for DGR endorsement. This effectively excludes Neighbourhood Houses who are committed to a social inclusion / community development approach to addressing disadvantage. Many Neighbourhood Houses, in fact, are working at the coalface of some of the most disadvantaged communities across Australia.

This submission does not set out to prove the long term efficacy of social inclusion and community development principles and strategies in relation to social, health, educational and economic disadvantage. Sound evidence already exists to justify this approach and its contribution to building social capital. One such report is the *Neighbourhood House Report 2005*, produced by the Department for Victorian Communities, in which it states in the Executive Summary:

*“Neighbourhood Houses have had a significant impact on the social and human provide people with social support and other forms of personal assistance. They also build human capital through the learning activities they offer. These help participants manage daily life, deal with difficult situations and develop skills and experience to help them in transition into work, study or other activities”.*

Suffice to say that the view that it is better to “*strengthen the fence at the top of the cliff, rather than maintain the ambulance at the bottom*” is one which has been widely held in the third sector for many years and is underpinned by a range of government and non-government reports and publications and is reflected in local, state and federal government policy and planning, in particular the recent establishment of the Federal Government's Social Inclusion agenda.

However, despite this clear endorsement by government that social inclusion and a “whole of community” approach is the appropriate and most effective way forward, this recognition is not reflected in the Australian charity tax laws. This submission presents a simple and easy solution, either short term or long term, to rectify this situation.

It is worth noting that only 7% of Australian Neighbourhood Houses have DGR endorsement, yet estimated donations to the community sectors via philanthropy will exceed \$500 million dollars per annum by 2012\*. (Goldman Sachs [JB Were] *Philanthropy Focus—Promising Trends in Australian Philanthropy*, 2006)

#### 4. CRITICAL ROLES IN CRITICAL TIMES

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Building social capital through social inclusion and community strengthening approaches is a key strength of the Neighbourhood House sector across Australia. As a measure of the extent to which Neighbourhood Houses are valued for their role as community strengthening agents, the Victorian state government recently allocated grants of \$10,000 to 23 Neighbourhood Houses following the tragic bushfires that swept through rural Victoria early this year.

Examples of relief, recovery and social rebuilding that Neighbourhood Houses facilitated in the post-bushfire period include:

- Volunteer co-ordination
- Co-ordination of accommodation for the homeless and their pets
- Clearinghouses for donated goods
- Information forums to deliver/garner information and assess need
- Communication (meeting venues, internet/telephone, notice boards, etc)
- Referral to assisting agencies and services
- Preparation of meals and distribution of food parcels
- Public forums to deliver/garner information and assess need
- Training (including fence repairs, re-planting, toxic substances etc)
- Establishment of self help groups and working parties on specific issues
- Knitting schemes (via elderly urban public housing residents who had limited ability to donate financially to the bushfire appeals)

Despite the enormous volunteerism that took place, the contribution to the affected communities could have been magnified had the Neighbourhood Houses involved had DGR endorsement. This would have enabled them to immediately access the significant amount of philanthropic and private sector funding that was made available as a result of the impact that the bushfires had on whole communities.

#### **Global economic crisis**

Now more than ever, Neighbourhood Houses will have a critical role to play in the growing world-wide economic downturn, as more people face unemployment and hardship. The impact is likely to affect all types of communities, particularly those already struggling with social and economic disadvantage. These communities will require intensive support at a local level to help maintain confidence through skills development, social engagement, crisis management and self help.

Neighbourhood Houses are well placed to provide this support. And yet Neighbourhood Houses operate on a shoestring, with volunteerism playing an important part in providing the necessary support, and paid workers receiving significantly less than their private sector counterparts.

This cannot continue in the face of growing demand. If the sector is to remain viable serious commitment from federal government is required to change the way current DGR taxation laws are structured.

## 5. DETAILS OF THE RECOMMENDED AMENDMENT TO P.B.I.

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The basis to ANHLC's recommendation 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 to only those non-profit organisations established for public benevolence and aimed at working with the disadvantaged.

### **Permanent or interim measure approach**

Though ANHLC agrees with the findings of the Senate Inquiry into Disclosure Regimes of Charities & Nonprofit Organisations (2008) which support an overall tax reform, the reality is that a complete revision of the tax system will involve a protracted timeframe, possibly years. In the meantime, Neighbourhood Houses continue to struggle with increasing demands and ongoing ineligibility for philanthropic and private sector funding and support.

ANHLC's recommendation does not involve extensive and protracted legislative changes. Nor does it interfere with or complicate other areas of the tax laws. If nothing else, it acts as an interim measure, while the current taxation review (Australia's Future Taxation System) takes place and until any of the outcomes are enacted.

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.

## 6. IMMEDIATE AND LONG TERM BENEFITS

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The extent to which the Neighbourhood House sector will be able to access philanthropic and private sector funding is incalculable. However, we know that donations via the private sector alone to not-for-profit organisations with DGR currently exceeds \$500 million. ANHLC is aware of cases where businesses wishing to support the work of Neighbourhood Houses are unable to do so, due to lack of DGR endorsement.

Already, Australia is experiencing unemployment and hardship as a result of the global economic downturn, with predictions that this will worsen before it improves. Now, more than ever, there is a need to ensure that Neighbourhood Houses, who are often working at the extreme end of disadvantage, are supported and strengthened through the philanthropic and private sectors, and not by reliance on limited government funding alone.

#### **Case study....**

An example of the far-reaching benefits that DGR affords Neighbourhood Houses, is Langwarren Community Centre (one of the few Neighbourhood Houses who have DGR endorsement). The centre successfully applied to the Variety Club Victoria for a low-step community bus to allow children with physical disabilities to attend out-of-school care at the centre. This in turn enabled these children to integrate with physically able children in a wide range of programs and activities. The only alternative for these families is costly institutionalised services, not available in the local area.

To quote the co-ordinator: *“the difference this bus makes to these kids’ lives - and their parents - is immense. The parents get to go to work and earn a living and the kids get a chance to be a normal part of the community”*.

The culture of acceptance and “care for others” that integration of this kind fosters is immeasurable and is social inclusion at its best.

## **7. COMPLEXITY AND CONFUSION OF CURRENT DGR CRITERIA**

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The current process for obtaining DGR endorsement (as outlined in the ATO’s ‘*Giftpack for DGR & Donors*’) is complex, unclear 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.

Though the Public Benevolent Institution (PBI) sub category of the ‘Welfare & Rights’ category is the most appropriate category for Neighbourhood Houses, it requires evidence that the organisation is focusing on the disadvantaged. While in reality Neighbourhood Houses do indeed focus on the needs of people who are disadvantaged (either economically, socially, geographically or educationally) their vision/mission statements and brochures etc reflect a more inclusive approach in line with their commitment to community development principles (which espouse non-discrimination and equality). Meeting the criteria, therefore, requires Neighbourhood Houses to skew their applications in favour of a more “exclusive” service in order to improve their chances of gaining DGR.

This in turn has implications for ongoing compliance. Many Neighbourhood Houses would find it impossible to comply in the long term, with the result that some Neighbourhood Houses have voluntarily relinquished their DGR endorsement for fear of heavy penalties for non-compliance.

Also 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.

### **Examples of inconsistency in the DGR endorsement process**

A common reason given for the denial of DGR endorsement is that the vision and mission statements of Neighbourhood Houses are too general and inclusive. Yet, the vision statement of the Salvation Army, for example, (which has DGR endorsement) is both general and non specific. It states: *“The Salvation Army is an evangelical part of the universal Christian Church. Its message is based on the Bible. Its ministry is motivated by love for God. Its mission is to preach the gospel of Jesus Christ and meet human needs in His name without discrimination”*.

While there is no doubt that the Salvation Army is deserving of DGR endorsement, there is room to question the anomalies and inequities that exist and to reconsider the approaches that benevolent institutions should be allowed to adopt when dealing with the disadvantaged.

## **8. WASTED OPPORTUNITIES**

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Current estimates of donations to DGR endorsed organisations via philanthropy alone equal \$500 million. A similar amount is given by the corporate sector – an amount which grows exponentially each year as the notion of corporate social responsibility takes hold with boards of management of large and small businesses across Australia.

Cases where significant funding to Neighbourhood Houses have been denied as a result of lack of DGR endorsement are many. One such case is the Hackham West Community Centre in South Australia, situated in a socially and economically disadvantaged area, whose program “Breakthrough” (involving long term mentoring with children) was denied funding by a key philanthropic foundation on the basis of the centre not having DGR endorsement. As it transpired, the program was seen as so worthwhile that the Smith Family decided to auspice the funding on the centre’s behalf. However, the case demonstrates the extent to which organisations need to waste time and precious resources on finding other means to obtain necessary funding for necessary programs.

## **9. INTERNATIONAL CHARITY TAX LAWS**

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ANHLC’s recommended amendment presents an opportunity to bring the 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.

The following extract from the U.K. government’s resource document titled ‘*Charities Act 2006 – What Trustees Need to Know*’ outlines their approach to modernising outmoded charity laws:-

***The legal position:*** *The range of charities that exists now has clearly evolved considerably since the seventeenth century. By listing these established purposes, the 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’.*



**Charitable purposes:**

- ✓ *the **prevention** or relief of poverty;*
  - ✓ *the advancement of education;*
  - ✓ *the advancement of health or the saving of lives;*
  - ✓ *the advancement of citizenship or community development;*
  - ✓ *the advancement of the arts, culture, heritage or science; the advancement of human rights, conflict resolution or the reconciliation & promotion of religious/racial harmony, equality and diversity;*
  - ✓ *the advancement of environmental protection or improvement;*
  - ✓ *the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;*
  - *the advancement of animal welfare;*
  - *the advancement of religion;*
  - *the advancement of amateur sport;*
  - *the promotion of efficiency of armed forces, police & emergency services; and*
  - *other purposes that are currently recognised as charitable or are in the spirit any purposes currently recognised as charitable.*
- ✓ This denotes the elements of the UK Charitable Purposes that Australian Neighbourhood Houses are actively working towards achieving. It is worth noting that under this definition Neighbourhood Houses would meet 8 out of 13 criteria.

## 10. 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 Neighbourhood House 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 healthier Australian communities

Not only does it make sound economic sense to formally recognise in the DGR tax laws the value of social inclusion and community strengthening approaches when addressing disadvantage, but it makes sound social and moral sense as well. Greater funding and sponsorship to Neighbourhood Houses will create a more resilient, effective and a sustainable capacity to deliver programs and services to those who most need them. The current DGR tax laws cut across this capacity and discriminate against the socially inclusive approach that Neighbourhood Houses embrace.

Here is an opportunity to redefine the definition of a Public Benevolent Institution, in a way which incorporates contemporary approaches to welfare, enables philanthropic and private sector donors to support social inclusion and community development work and – most importantly - enables a more productive, sustainable and efficient Neighbourhood House sector across Australia.

## Useful information relating to DEDUCTIBLE GIFT RECIPIENCY (DGR)

### Relevant Neighbourhood House information

Number of N/Houses in Australia	= 1,000
% of N/Houses with DGR nationally	= 7%
Number of Victorian N/Houses with DGR	= 17
Number of volunteers in H/Houses nationally	= 600,000 (or 13% of total for all NFP's)

### General Not-for-profit (NFP) sector information

Number of NFP's in Australia	= 700,000
% of Australians who belong to a NFP	= 86%
Current turn-over of NFP's in Australia	= \$75 million
% of contribution to GDP by NFP's	= 4.9%
Total cost to treasury of tax concessions to NFP's	= \$800 million (or 4% of total tax expenditure)

### Employment related information (NFP)

Number of NFP's who employ staff	= 38,000
Number of staff employed in NFP's	= 900,000
% of overall Australian employment by NFP's	= 7%
Number of volunteers involved with NFP's	= 4 million

### General DGR Information

Number of DGR's registered with ATO	= 23,700 (or 33% of NFP's)
Number of DGR's registered as Public Benevolent Institutions (PBI's)	= 13,000
Total income tax deductions for donations to DGR's	= \$246 million
Donations to DGR's via philanthropy	= \$500 million
No. of government bodies involved in determining Charitable status (a further 74 can be called upon)	= 19
Number of ways that a NFP can gain DGR	= 47

- Sources: Goldman Sacs (JB Were), M. McGregor Lowndes, M. Lyons, ACOSS, ATO, Philanthropy Australia, Public Interest Law Clearinghouse (PILCH) and Dept. of Planning & Community Development (Vic)
- All figures approximate and rounded to nearest whole number