Review of the Overseas Aid Gift Deduction Scheme

Summary of findings

August 2015

Contents

Abbreviations

ACFID	Australian Council for International Development
ACNC	Australian Charities and Not-for-profits Commission
ANCP	Australian NGO Cooperation Program
ATO	Australian Taxation Office
DFAT	Department of Foreign Affairs and Trade
DGR	Deductible gift recipient
ITAA	Income Tax Assessment Act 1997
NGO	Non-government organisation
OAGDS	Overseas Aid Gift Deduction Scheme
OECD	Organisation for Economic Cooperation and Development

Overseas Aid Gift Deduction Scheme

How it currently operates

The Overseas Aid Gift Deduction Scheme (OAGDS) enables approved Australian organisations to issue tax deductible receipts for donations made to support their overseas aid activities. Established in 1980, the OAGDS operates in recognition of the work performed by the many voluntary bodies involved in the provision of overseas aid.

The OAGDS provides a way for members of the Australian community to donate to these Australian organisations and be able to claim their donation as a tax deduction. The tax deduction is only allowable where the donation is to support aid activities in countries that are declared as 'developing' by the Minister for Foreign Affairs.

OAGDS is one part of the process for obtaining endorsement as a deductible gift recipient (DGR). The DGR process is managed by the Australian Taxation Office (ATO) and The Treasury.

Eligibility for OAGDS

Currently, an organisation must meet the following minimum eligibility requirements for OAGDS approval:

› be an Australian organisation

› be registered with the Australian Charities and Not-for-profits Commission (ACNC)

› be able to provide evidence of its legal status

› be a voluntary, not-for-profit and non-government organisation

› demonstrate it is a community-based organisation accountable to its membership

› demonstrate how it promotes its Australian identity

› have undertaken overseas aid activities that are focused on development and/or relief for a minimum of 12 months

› demonstrate how it supports its overseas aid activities on a partnership basis with in-country partners

› demonstrate that it and its in-country partners are both effective in conducting their activities

› demonstrate compliance with child protection and counter-terrorism requirements.

Further details on these eligibility requirements are available in the Overseas Aid Gift Deduction Scheme—Guidelines for Obtaining Tax Deductibility.

OAGDS review: Terms of reference

About the review

DFAT announced a review of the OAGDS guidelines and processes in May 2015.

The primary purpose of the review is to make the OAGDS guidelines and processes clearer, simpler and more robust, while reflecting current international development practice and standards. The OAGDS review aims to reduce red tape, streamline the process for applicants, and provide greater clarity in the guidelines.

In addition to consulting the not-for-profit sector, DFAT is also consulting the ATO and Treasury as the other government agencies involved in the administration of the OAGDS.

Written submissions to the review

DFAT invited written submissions on the OAGDS, in particular how the guidelines help in meeting the objective of allowing approved organisations to offer tax deductions for gifts to extend assistance to programs and organisations in developing countries. Comments were welcomed on:

› the guidelines and/or individual criteria

› the process of applying to the OAGDS and level of technical expertise required

› how approved organisations continue to operate in accordance with the OAGDS guidelines.

Written submissions closed on 30 June 2015. Submissions were received from 22 organisations and individuals, including NGOs and charities, legal service organisations, and development consultants.

Sector roundtables on the review

DFAT also hosted roundtable discussions in Sydney, Melbourne and Brisbane as part of the review. The roundtables offered an opportunity for the sector to provide feedback on the current guidelines and processes, and have a voice in the review of the OAGDS. Over 100 participants in total attended the roundtables.

The roundtables were held at DFAT offices in:

› Sydney - Tuesday 23 June , 10.00am–12 noon

› Melbourne - Wednesday 24 June, 10.00am–12 noon

› Brisbane - Monday 29 June, 10.00am–12 noon.

OAGDS review: Summary of findings

1. The process of applying to the OAGDS

This section will consider the value organisations place on the process of obtaining OAGDS approval, the time and resourcing it takes along with the level of expertise required. This section will also report on other problems identified in the management of the process. Finally, this section will also consider process reform and possible alternative models for the OAGDS.

1.1 Value of the OAGDS

Four of the submissions commented on the value of the OAGDS. One submission saw the OAGDS **as crucial to an effective and successful community of international development focussed NGOS in Australia;** whereas another considered the bona fides of DGRs were necessary to bring confidence to the donor. A participant at the Sydney roundtable thought **that taxpayers want to be assured that their money is going to support good overseas aid charities.**

Organisational capability development was identified as an area where OAGDS has been useful. Two participants at the Melbourne roundtable saw the OAGDS process as a way of improving their organisations and helping define their work. One submission cautioned against 'lowering the bar' of OAGDS requirements for sound development practice and organisational capability.

A participant at the Brisbane roundtable had another perspective on the value of the OAGDS. While there are reputational issues and standards to be set, the aid budget has been cut with less funding for NGOs, so there should be more opportunities for taxpayers to fund development work. The **OAGDS should allow taxpayers greater choice in the charities they support.**

1.2 Problems with the OAGDS process

The roundtables and submissions highlighted a number of issues with the OAGDS process, including the resourcing and the level of expertise required, perceived inconsistency, lack of a review process and need for greater engagement with DFAT in the process.

1.2.1 Resourcing and level of expertise required

Approximately one-third of the written submissions raised issues relating to **the time it took to apply for OAGDS, the complexity of the application process and the resourcing toll on their organisations.** Resourcing was particularly difficult, especially in volunteer-run organisations. A few submissions observed that the resources spent on pursuing OAGDS approval over many years could have been spent in assisting communities.

Participants at the Sydney and Melbourne roundtables, who had applied for DGR status in other OECD countries, found the process in those countries much simpler than in Australia. Similarly,

others raised issues of proportionality with achieving DGR status for domestic work. While one submission **acknowledged that working overseas has greater risks, they still found the OAGDS process disproportionate to the risk.**

In terms of technical expertise, two submissions considered the OAGDS to be a necessary 'high bar', as a **certain amount of expertise is required to do effective and ethical overseas development work.** One submission found that legal assistance was necessary to navigate the eligibility requirements. At the Sydney roundtable, it was suggested that applying for OAGDS should not require legal advice as it should be geared toward grass-roots NGOs.

Other submissions and roundtable comments considered the process to be **complex and onerous**. One submission highlighted the importance of **providing an accessible pathway for small organisations which can provide a greater level of participation**; this is important to community development.

Both the submissions and the roundtables found **the time needed to apply and assess the OAGDS was too long.** One organisation had been working part-time on their application for three years; another had applied three times over three years. One submission reported a delay of over six months before there was any meaningful response to the application; and another believed that it should not take 9-12 months to attain DGR status.

1.2.2 Inconsistencies

Four submissions and roundtables in Sydney and Melbourne raised issues of inconsistency in the OAGDS. This took the form of **inconsistent assessments of the same organisations creating frustrations for the applicant, and inconsistencies with OAGDS and DFAT's other aid work**. For example, one organisation failed the child protection aspect of OAGDS but had been funded by DFAT to work with children in Cambodia. One submission found that there were **subtle differences between the questions in the online application system and the guidelines**. Another suggested a possible disconnect between the guidelines and the instructions given to assessors. One submission thought that inconsistency resulted in organisations granted OAGDS approval when their operations were doubtful.

1.2.3 Review process

Five of the submissions considered what happens when an organisation does not meet OAGDS requirements. One submission thought a lack of appeals process was the greatest shortcoming of OAGDS. The other submissions thought there was a **need for DFAT to work with the organisation to assist them to satisfy the criteria.** This approach would save time and resources involved in re-starting an application process when only a few of the criteria had not been met.

1.2.4 Engagement between DFAT and OAGDS applicants/approved organisations

Across all of the roundtables and in four submissions, the need for greater engagement by DFAT was highlighted. This engagement largely focussed on the application process, with suggestions that there **should be more interaction between DFAT and the applicant, either through face-to-face meetings or more communication during the application process**. A Melbourne roundtable participant felt that their organisation may have passed the OAGDS requirements if someone had met with them and taken time to understand their work. One submission suggested DFAT appoint a contact person for each new application to guide them through the process. Another submission thought the absence of interaction between assessors and applicants is a shortcoming of the OAGDS.

In terms of other forms of engagement, one submission suggested that **DFAT consider sending an annual or biannual newsletter to OAGDS organisations, informing of any policy direction changes, new resources, and so forth, as an opportunity to encourage compliance and feedback**. A participant at the Brisbane roundtable cited the regular email updates from the ACNC Commissioner as a good example of communication. Two of the submissions and discussion at the Sydney roundtable commented on the success of the roundtables and the importance of conducting an open review. One suggestion was to **hold regular roundtables to discuss OAGDS issues.**

1.3 Reform of the OAGDS process

The submissions and roundtables suggested many possible reform processes and alternative models for the OAGDS.

Most of the suggested reforms focused on red tape reduction in processes. One submission noted that the **OAGDS is under-resourced, inhibiting its effectiveness, and is burdened by red tape, requiring duplication of effort by applicants**. Another thought the review should consider **reducing red tape in the context of the broader regulatory environment faced by charities**. Examples of this included: creating a single guiding document with the ATO, including model clauses; and considering the ACNC framework both in respect of charity registration and its compliance and regulatory powers. Other suggestions included:

› removing the requirement for the Foreign Minister to sign off on the approved organisation;

› not outsourcing the applications to external assessors;

› ensuring the guidelines and application process is comparable to other DGR registers; and

› considering whether DGR status in another country could count in Australia.

A participant at the Melbourne roundtable questioned OAGDS putting so much emphasis on an organisation's risk profile when compared to the commercial world. For example, a business can be established easily but it is then monitored through regulations and legislation.

1.3.1 Alternative models for the OAGDS

A number of alternative models of operation of the OAGDS were put forward.

Some thought **consideration should be given to comparative models – for example looking at similar DGR processes in countries such as the UK, USA and Canada**. A participant at the Sydney roundtable explained the system in the UK where the government undertook a degree of due diligence upfront, awards DGR status, and requires the organisation to show results in twelve months through a compliance regime.

One submission recommended that **DFAT recognise the close relationship between the OAGDS eligibility criteria and the Australian Council for International Development (ACFID) code of conduct** to allowing for 'fast-tracking' of ACFID code signatories. Another submission mapped the strong correlation between the ACFID code of conduct and OAGDS requirements, in particular in relation to criterion 1, 2, 6, 7, 8. While there is duplication between these two systems, there are differences in the requirements for evidence and compliance.

A participant at the Melbourne roundtable thought the **ACFID code of conduct created a good precedent for a participatory approach to development**, and could take the place of the OAGDS

criteria. One submission pointed out the key purpose of ACFID is to equip and encourage members to observe the highest ethical standards in their activities, including strict observance of the code of conduct. The code of conduct sets out three areas of accountability: program principles; public engagement; and organisation.

Other submissions and roundtable comments **highlighted the role of training in bringing overseas aid organisations up to standard.** One submission questioned the use of OAGDS in encouraging best practice in international development, given that it is a point-in-time determination. There are other mechanisms to do this, such as training and working with peak bodies. Other options included:

› considering an initial approval process followed by training and assessment;

› maintaining a register of volunteer mentors to work with OAGDS applicants;

› providing shell policies to charities for use and adaptation to their particular circumstances;

› consider funding small charities to work with lawyers to meet OAGDS requirements; and

› support ACFID and/or not-for-profit law service to offer training for new charities and/or OAGDS workshops as part of ACFID's small member forums.

One submission suggested **working more closely with the ATO and ACNC to streamline the due diligence process.** For example, applicants could incorporate ATO/DFAT/ACNC model clauses into their governing documents, lodge their registration with the ACNC and DFAT contact applicant for further information, such as in relation to their eligible development activities.

Another alternative model was proposed to **facilitate greater international philanthropy by having two pathways for OAGDS applicants – one for the 'typical' OAGDS entity, and another for philanthropic entities wishing to send funds overseas.**

2. The OAGDS guidelines and criteria

This section will reflect on the value of the OAGDS guidelines, issues and suggested reforms. This section will also consider duplicative criteria, accountability, effectiveness and Australian identity. Specific criteria were raised as problematic including: welfare, development and relief; partnership arrangements; and child protection and counter-terrorism.

2.1   The value of the guidelines

Six submissions, and discussion at the Brisbane roundtable, were in favour of the OAGDS guidelines maintaining a high standard. One submission found the guidelines to be understandable and straightforward. Another submission thought that if **the guidelines were adhered to, they would result in very strong organisations.** This would ensure that organisations without adequate capacity are not approved under OAGDS.

Feedback from the Brisbane roundtable focussed on **the benefits of the OAGDS guidelines.** There can be a damaging, paternalistic view of how to help people in a developing country. People remain in poverty and become aid dependent if there is not good development. Similarly, there is perceived cynicism by the Australian public about charities operating overseas and high standards are necessary to protect the sector. One submission pointed out **the educational**

approach of the OAGDS guidelines in introducing new organisations to basic development concepts.

One submission recommended that the OAGDS **guidelines continue to maintain good standards and accountability to help underpin and govern effective international aid and development.** Another pointed out that the current criteria are based on many years of experience and research into efforts to alleviate poverty, so while there is room for innovation, we should not try to 'reinvent the wheel'.

One submission warned **against significant change to the OAGDS which would undermine the direct impact private individuals feel that they can have on organisations that are reliant on them for funding.** In their view, the current scheme reassures private donors that their financial contributions are going directly to support the work of the organisation.

2.2   Problems with the OAGDS guidelines

The submissions and roundtables highlighted issues with the OAGDS guidelines, which mostly revolved around the guidelines taking an overly prescriptive approach to development and not including a clear rationale for the criteria.

2.2.1 Prescriptive approach

Two submissions found the **OAGDS guidelines to be more relevant to an organisation seeking funding rather than DGR status** – a sort of 'watered down' version of DFAT's accreditation criteria. The guidelines reflect influences of identity, work, language and ideas of development that are derived from a small group of funded NGOs rather than reflecting overseas charities more broadly.

One submission found that this prescription in the guidelines imposes a blueprint of the 'correct' type of NGO, which stifles enterprise, goodwill and self-starters. Another submission thought the **OAGDS requirements should allow organisations greater liberty and flexibility to implement development programs**. At the Sydney roundtable, a participant observed that while clear standards are important to meet the criteria, there also needs to be a level of flexibility around the guidelines according to the operating context of the charity.

One submission stressed the importance of OAGDS guidelines ensuring that activities receiving tax deductibility align with international human rights frameworks and international law.

2.2.2 Clarity and rationales

Three submissions highlighted the lack of clear rationales for the current criteria. It was thought that parts of the guidelines lacked strong policy underpinning and could benefit from a clearly articulated rationale. This **rationale could state why organisations are being asked to meet the criteria and include practice-based examples of how NGOs could demonstrate them.**

2.3   Reform of the OAGDS guidelines

Two submissions suggested **maintaining the existing OAGDS guidelines with small structural changes to enhance the scope of the criteria and to ensure there is diversity in development** work. Other suggestions included:

›   developing guidelines which are relevant, meaningful and accessible to small charities

› implementing more comprehensive guidelines which address the gap between OAGDS requirements and the ACFID code

› using existing mechanisms to simplify the guidelines by balancing risk and effectiveness

› placing greater emphasis on an organisation's cost-effectiveness .

Another submission thought that while the guidelines reflect 40 years of learning in international development practice, a high degree of accountability and a rigorous approach to partnership and capacity building, there was a **need to account of the role of the ACNC and ensure the approach is proportionate.** The guidelines are currently disproportionate to applying to be a Public Benevolent Institution (PBI) or domestic DGR registers, and should be aligned.

One submission, as well as discussions at the Sydney and Melbourne roundtables, highlighted the need to be **clearer in the guidelines as to the appropriate legal structure and requirements for OAGDS recipients**. Providing a model constitution or model clauses for governing documents may be useful.

In terms of eligible activities under OAGDS, one submission proposed to **encourage greater philanthropy by expanding the scope of international charitable activities to which Australians may provide financial support**. Another identified the need to clarify the eligible activities and align the definitions in the guidelines and the tax rulings.

Three submissions, and discussions at the Melbourne roundtable, suggested that **better guidance on the OAGDS guidelines would be welcome**. This could be in the form of a checklist or case studies to help organisations understand the standards which need to be met.

2.3.1 Development approach

Three submissions, and discussion at the Sydney and Melbourne roundtables, considered the current development approach of the OAGDS. One submission identified the guidelines as having a 'reform' approach to development. Another warned of aligning too strongly with a philosophical position to the exclusion of others, as **approaches to development change and the approach must be suited to the particular circumstances of a situation**. Locking NGOs into a particular approach does not necessarily reduce risk nor increase effectiveness.

One submission suggested that the **widest definition of development and relief should be taken**. Another thought that OAGDS should facilitate the types of projects Australians are interested in giving to and partners are interested in participating in. Other DGR categories, tax systems in other countries and other areas of Australia's aid program are less prescriptive about approaches to development.

A participant at the Melbourne roundtable thought that the OAGDS should be more sophisticated in its modelling, to **reflect different forms of funding such as philanthro-capitalism and allow for corporate social responsibility models**.

2.4   OAGDS criteria

While some submissions considered the current criteria to be good, there was strong consensus that the criteria should be streamlined. A participant at the Melbourne roundtable suggested that **'when in doubt, cut it out'** referring to duplication and unspecific criteria.

Six submissions and roundtable discussion in Sydney and Brisbane **encouraged the use of other organisations' requirements and mechanisms to remove duplication in the guidelines**. One submission stated that some OAGDS criterion duplicates compliance already regulated by state and federal legislation. A participant at the Brisbane roundtable thought it unnecessary to check fundraising registration.

Most of the submissions **suggested removing criteria 1-3 from the guidelines as it was seen that organisations already comply with these by registering as a charity with the ACNC.** This could be consolidated into a single criterion which requires the applicant to be a registered charity and not have any outstanding reporting obligations to the ACNC. One submission thought that criterion 3 should be retained as it requires organisations to be community-based and accountable.

Many of the submissions thought that **criteria 5-8 should be retained in various forms so as not to compromise good development practice**. One thought that a more proportionate response should be required under these criterion given that the organisations applying for OAGDS are at 'start-up' stage; another thought they should be simpler, less prescriptive and recognise extended relief, shelter and support. One submission recommended reduction of what is required under criteria 5-8 to a narrative response similar to the requirements of PBIs.

The track record requirement under criterion 5 was subject to debate. Two submissions queried its utility, and thought sufficient evidence could be provided upfront to show that the applicant can undertake such activities with integrity. Another submission considered it important that an organisation has been operating for at least twelve months in order to assess there is community support and capability to use tax deductible donations effectively.

The role of beneficiaries and partners was highlighted in the criteria. One submission thought that having criteria requiring complaints handling process for beneficiaries/stakeholders important; another thought **the effectiveness and activities with in-country partners was the integral part of criterion 5**.

2.4.1 Accountability and effectiveness

Accountability was raised in two submissions and at the Melbourne roundtable. One submission queried the appropriate number of members or Board members required. Another submission identified the purpose of the OAGDS as allowing Australian community groups to contribute to poverty alleviation, as distinct from government or corporate contributions. Inclusion of an institution within this category was perceived **as inconsistent with a community-based approach, as individuals on governing bodies of OAGDS organisations should be representative of the community** rather than there as representatives of an institution.

A participant at the Melbourne roundtable considered that, as NGOs receive donations from members and supporters, they are accountable to them as a matter of course.

There were divergent views on the role of effectiveness in the OAGDS assessment process. Participants at the Brisbane roundtable thought it was **necessary to assess an organisation's effectiveness as high standards are needed to maintain the reputation of overseas aid organisations.** This was covered somewhat by the monitoring and evaluation requirements in the current criteria. Melbourne participants discussed the **difficulties in determining effectiveness in the field, and whether it is more appropriate to instead focus on track record.** One submission thought that effectiveness needed to remain aimed at organisations operating

at an entry level, with recognition that not all processes need to be documented but there still needed to be a simple description of the project cycle and project management processes.

2.4.2 Australian identity

The criterion dealing with Australian identity was subject to discussion at all roundtables and in three submissions. One submission thought the criterion should be strengthened to not only reflect the project funding from Australia but also to acknowledge the Australian NGO involved.

The majority of responses considered **the requirement of Australian identity to be an outdated approach, counterproductive to promoting the empowerment of partners**. Others thought it represented a neo-colonial, 'top-down' approach to development which presented challenges to sustainability. One participant at the roundtable in Brisbane stated that aid dependency grows where there are logos. Another participant pointed out that promoting Australian identity can be dangerous in some contexts.

Most inputs on Australian identity called for **this criterion to be abolished, on the basis of a registered charity already having demonstrated sufficient connection with Australia**.

2.5 Welfare, development and relief activities

Although one submission found a clear delineation between welfare and development, there was general consensus that this criterion needs to be reconsidered or re-explained. This is particularly the case in relation to how these concepts have been defined, the examples used to illustrate the distinctions, and the eligible activities which are included under development.

2.5.1 Definitions

Six submissions directly addressed the definitional issues of welfare, development and relief, and it was the subject of discussion in the Sydney and Melbourne roundtables. Two submissions indicated that while the **exclusion of evangelical and political partisan activities was clear, there were inconsistencies in how welfare, development and relief were defined**. One submission understood the rationale for excluding welfare, but thought it tricky and difficult to communicate.

Three submissions suggested introducing clarity to the definitions of welfare and development by going back to the **primary principles of participation, fair distribution and sustainability**. One thought greater attention should be paid to demonstrating how core development principles, such as participation, empowerment, capacity building and resilience, influences results at each stage of the project cycle. Another thought that **development projects need a well-defined project description with measurable outcomes**.

From a legal perspective, one submission thought that definitions of eligible activities should be **aligned with the definition of 'relief'** referred to in the *Income Tax Assessment Act* 1997 (ITAA) and ATO rulings, to ensure that all activities could be funded through the overseas relief fund.

Relief was also not particularly well defined in the current OAGDS guidelines. Although meant to cover short-term relief in humanitarian emergencies, the **current definition of relief does not take into consideration the more complex or long-term humanitarian situations**. A participant in Sydney highlighted the difficulties in providing access to development in these situations. Similarly, it can be challenging to know when to withdraw from such situations. One submission

suggested that it should be clarified **that relief is directed at communities rather than individuals**, and allow assistance to people in 'necessitous circumstances'.

One submission suggested the introduction of some case study examples to clearer illustrate the distinction; another thought the welfare/development argument had been superseded by today's development culture, which saw no organisation wanting to perpetuate dependent poverty.

2.5.2 Welfare and development: working together?

Three submissions and discussion at the Sydney roundtable considered that **welfare and development often, by necessity, co-exist in effective aid work**. One submission observed that all projects contain some welfare elements, but these should be minor and clear within the project description. Another pointed out that it was difficult to do development work in countries such as Afghanistan without providing some welfare.

One submission and a participant at the Sydney roundtable linked the need to deliver welfare to reducing poverty; supporting the 'poorest of the poor' inevitably involves welfare. It was **possible to deliver welfare while retaining the focus on tackling the higher level or root causes of poverty**. The guidelines should recognise initiatives to facilitate long-term change take time and vulnerable communities need support during the long process of change.

2.5.3 Practical examples

Four submissions and discussion at the Brisbane roundtable focussed on what practical examples of illustrating the distinction between welfare and development may look like. One submission suggested a '**do no harm' approach or ensuring that plans are in place for a long-term trajectory of a project**. Examples could include activities which have an exit plan rather than singling out specific activities as unacceptable. This submission suggested that the criteria be reworded **to exclude projects which only focus on immediate needs and do so indefinitely for the long term** – for example, the problem is not provision of food and schoolbooks, but where they are disconnected from any other intervention and without a plan which reduces the need for their ongoing provision.

One submission and a participant at the Brisbane roundtable raised an **issue with linking development work to sustainability**. Proving a project's sustainability is difficult as it depends on the timeframe of a project which, in turn, often depends on funding. This can complicate an exit strategy. Sustainability can be interpreted as either the sustainability of a project or the difference aid makes over time. A project becoming self-funding is not possible in many circumstances.

One submission highlighted the **difficulties in proving that development work will bring positive change for the benefit of all members of the community**. For example, a project may target disabled members of the community but may have broader impacts. Another submission thought that maintenance of places of worship should not be excluded as faith-based charities often run development programs out of these buildings.

2.5.4 Education

Three of the submissions and discussions at the Sydney roundtable put forward the view that support for education should be considered development and not welfare. This was consistent with DFAT programs such as the Australia Awards. One submission pointed out that **education**

can be developmental as it increases a person's participation in economic and social life, as well as building a nation's skill base. However, a principle of fair distribution should apply to educational benefits. Other submissions considered that education was the most effective strategy to bring disadvantaged communities out of poverty. Educational assistance to an individual may only last for a few years but have sustainable impacts in terms of skill, motivation and income.

2.5.5 Child sponsorship / orphanages

Three submissions and discussions at the Sydney roundtable also covered child sponsorship and support for orphanages. There was consensus **that child sponsorship was only acceptable as a fundraising technique – ie, the funds should be used towards a project rather than going directly to individual children or families**.

In terms of support for orphanages, there were divergent views between the submissions received and views expressed at the Sydney roundtable. Two participants at the roundtable thought support of orphanages should not be excluded as welfare. One cited the example of their organisation which fed, clothed and educated orphaned girls. Another considered **the inability to provide welfare to orphans as creating child protection issues**.

In contrast, one submission framed use of orphanages as a child rights issue. The use of long-term residential care was harmful and UN guidelines state that **residential care should only be used in limited cases and always as a last resort or short-term care solution**.

2.5.6 Evangelism

Four submissions and discussions at the Brisbane roundtable considered religion in development work. Two submissions saw **religion as central to good development as it builds on knowledge, belief and existing community networks**. Restricting the sharing of religious beliefs risks creating artificial engagement and does not respect the autonomy of recipients. It also does not acknowledge the right of people undertaking and participating in development projects to freely practice their religious beliefs. One submission suggested that a dominant purpose test, focused on relief and development, would allow religious organisations to focus on sound development practice while still engaging with partners in a holistic, meaningful manner.

Discussion at the Brisbane roundtable thought that neutrality was important to religion and development. One organisation worked with in-country partners to ensure **they did not discriminate by providing assistance on the basis of religion**. One participant suggested that all aid should be non-discriminatory and open to all; otherwise it causes divisions in society.

Three submissions pointed out the inaccurate terminology currently used in the guidelines, and suggested **substituting the term 'proselytism' or 'proselytisation' rather than 'evangelism', which is Christian faith-specific**. Further, the meaning of 'evangelism' does not cover the issues of manipulating or coercing people to change their faith allegiance. Excluding missionary work should also be reconsidered as missionaries do many activities including good development.

2.5.7 Political partisan activities

One submission addressed the exclusion of political partisan activities from the OAGDS. While partisan political activities should be excluded, **activities that educate people about their political rights and how to engage in the political process are useful**, particularly in organisations undertaking development through a rights-based approach.

2.6   Partnership arrangements

Discussions at the roundtables and submissions focussed on two different types of partnerships – in-country partnerships, and partnerships between Australian NGOs for the purpose of offering tax deductibility.

2.6.1 In-country partnerships

The submissions received which directly referenced in-country partnerships stressed the significance and quality of these relationships. Two submissions stressed the **importance of working with in-country partners on definite projects with a time frame and exit strategy to assure sustainability.**

Other submissions, and discussions at the roundtables in Melbourne and Brisbane, considered the content of this criterion out-of-date. The current criterion reflects the desire for mutuality in partnerships yet focuses on obligations. It **reinforces a view that activities need to be 'Australian' projects rather than lead by in-country partners which clashes with the commitment to capacity building.**

2.6.2 Partnering and the track record requirement

On the issue of OAGDS applicants partnering with established DGRs to offer tax deductibility for donations, views were mixed on the acceptability of these projects counting towards the applicant's track record.

In two submissions and views expressed by some participants at the Brisbane roundtable, it was thought that **care must be taken to ensure applicants are not using projects actually carried out by others to falsely claim track record.** Instead, their application should be based on any autonomous work, engaged in a full cycle of the development program. One submission proposed that, in many cases, the applicant had merely been acting as a fundraising arm for the DGR and when they transferred the funds they also transferred all legal responsibility for those funds to the DGR who did the actual development work.

Another participant at the Brisbane roundtable thought that the legal complexity around these partner arrangements was outside the scope of the OAGDS (especially in relation to intellectual property issues, confidentiality and individual contractual arrangements), and the question should be whether **the applicant can prove that they can do development work on their own.**

There was general agreement that **the issues around partnering arrangements needed to be clearer in the guidelines,** perhaps through guidance on how an organisation may be able to partner with another yet still have their own track record. Some participants at the Sydney roundtable stressed the **value of partnering with more experienced NGOs to bring a small charity up to the capacity to meet OAGDS requirements,** to learn about issues such as child protection and governance, and cross-check policies. Partnering can also assist a small charity to build credibility.

One submission suggested that OAGDS applicants should be **eligible to claim track record in a partnering situation where they can demonstrate the funds are going to partners of the applicant's choice and there is agreement between the applicant and in-country partners to undertake, monitor and evaluate a specific program for a period of time.**

Another submission and participant at the Brisbane roundtable thought it important for overseas development organisations to work together more. It was not necessary for all

organisations seeking to work overseas to have their own DGRs. **To reduce costs, administration and reporting, small organisations can partner with existing DGRs, freeing them up to work purely on projects they are passionate about.** If it is easier to get tax deductibility, there will be more micro-NGOs struggling to exist and a proliferation working in the same space.

2.7 Child protection and counter-terrorism

Discussion at all roundtables and seven submissions considered the child protection and counter-terrorism criteria. The main issues raised were around a lack of clarity on expectations of these criteria and the practical difficulties of implementing these policies on the ground.

2.7.1 Child protection

Six submissions considered child protection issues, with one suggesting that the **OAGDS should guard against endorsing organisations and activities that violate children's rights or inadvertently cause rights regressions** - for example, supporting orphanages, except in circumstances of last resort, temporary measure or as part of a structured deinstitutionalisation process. Another submission proposed the creation of **new criteria which focussed on the protection of marginalised and vulnerable segments of society, which could include child protection, disability, gender responsiveness and minorities**.

One of the submissions highlighted the challenges in ensuring child protection by in-country partners. Organisations can work with, make aware and educate, but ensuring is very difficult. At all roundtables, the challenges in knowing what partners were doing on the ground were discussed, with **further guidance on working with partners on child protection welcomed**.

One of the submissions and a participant at the Sydney roundtable **suggested taking more of a risk-based approach to assessing child protection compliance**. Currently the criteria assumes a one size fits all approach, with due diligence at 'gold' standard rather than reasonable. One option could be to **have minimum requirements for organisations in the guidelines for both child protection and counter-terrorism, and higher requirements on a contextual basis** – for example, when Australian volunteers are working directly with children in a residential school situation.

2.7.2 Counter-terrorism

Three submissions considered counter-terrorism measures; as did discussion at the Sydney roundtable. One submission suggested that DFAT should ensure that all funds sent overseas are subject to scrutiny to prevent money laundering and terrorist funding; whereas another thought AUSTRAC did a better job of tracking potential terrorist transfers and questioned whether the OAGDS adds value.

One submission suggested that **the standard being set by OAGDS was higher than the standard required under the law in relation to counter-terrorism**. OAGDS uses the terminology 'best endeavours' which is stronger than the current terminology in the law which includes 'reasonable precautions', 'exercise due diligence' and 'every reasonable effort'.

Participants at the Sydney roundtable raised **issues with the level of knowledge of counter-terrorism in Australia and overseas partners.** One participant asked whether this criterion should apply in circumstances where there was no terrorism. Another highlighted the difficulty in working with in-country partners to show evidence to meet this criterion. One submission suggested that the OAGDS guidelines outline the simplest system for counter-terrorism for the benefit of applicants.

A participant at the Sydney roundtable pointed out that the **landscape of the financial operation of overseas aid charities was likely to change in the near future.** As a result of the Financial Action Task Force report on Australia, counter-terrorism and anti-money legislation will be reviewed by the Attorney-General's Department.

3. Continuing to operate in compliance with the OAGDS guidelines

How and whether organisations continue to operate in compliance with the OAGDS guidelines was discussed at all roundtables and addressed in 11 submissions. Currently the **OAGDS is a point-in-time determination, but there was support for continuing engagement and compliance, provided it was not overly onerous and based on risk, self-assessment or exception.**

Participants in the Brisbane and Melbourne roundtables pointed out that **the OAGDS guidelines are framed within a context of 'obtaining' approved organisation status, when it should also be about 'maintaining' this approval.** Two submissions and one participant at the Brisbane roundtable reported that they did refer back to the guidelines on a regular basis as an internal check on their compliance. However, two participants, also at the Brisbane roundtable, acknowledged that it was not their standard practice to check back on the guidelines.

There were various suggestions from the submissions, including **general support for greater engagement by DFAT after approval such as through actively communicating policy and guidelines changes.** Two submissions thought that **organisations should demonstrate ongoing compliance with criteria 5-8.**

3.1 Compliance models

Through the submission and roundtable discussions, possible different compliance models were proposed. Mostly these involved self-assessment models **where exceptions were made for organisations already reporting against other compliance regimes (such as ACFID or the Australian NGO Cooperation Program (ANCP)).** One submission thought DFAT should consider compliance measures on the basis of past complaints, additional costs to DFAT and NGOs and how this would affect delivery of programs to beneficiaries.

Four submissions considered possible ongoing monitoring of OAGDS approved status by DFAT. Two of these submissions suggested **relying on the existing regulatory frameworks and powers of the ACNC and other Australian legislation.** One suggested working with the ACNC to incorporate OAGDS criteria into the ACNC's reporting so that this information is publicly available. This would make overseas aid charities accountable to the Australian public, and this data would contribute to the ACNC's repository of information.

One submission noted how **well-recognised the ACFID code was** as it is a requirement for ANCP accreditation, recognised by the ACNC as a valid alternative to their governance standards, and positively referenced by AUSTRAC. The **ACFID code of conduct also requires annual reporting and self-assessment as part of its compliance regime.** Two submissions proposed that compliance with ACFID's code could be used as proof of compliance with OAGDS. However, one submission noted that over half of OAGDS approved organisations are not members of ACFID.

A participant at the Sydney roundtable considered compliance to be important and there should be continual checks. However, this **compliance should not add to red tape or reporting**

duplication. At the Melbourne roundtable, a participant pointed to the danger of compliance fatigue as damaging aid effectiveness by channelling resources away from delivering programs.

Aside from the self-assessment model, four of the submissions offered additional suggestions on how compliance may be sought:

› checking with the ATO and randomly checking organisations that receive a large amount of tax deductible donations or a more random sampling;

› spot checks of organisations;

› self-assessment through a checklist such as in the ATO's Gift Book;

› compliance concentrates on development activities and projects; and

› ensuring any revocation of OAGDS approval is based on self-compliance and due process.

OAGDS review: Broader reform issues

1. Issues outside of the scope of the review

As an internal administrative review of processes, the OAGDS review was limited to the elements of the process controlled by DFAT, that of the Foreign Minister declaring an organisation as approved and issuing a listing of eligible developing countries. It is acknowledged that the guiding legislation for OAGDS – the *ITAA* – is administered by Treasury and any legislative reform and broader tax issues are outside of the scope of this review.

However, the review must consider the broader context of tax reform in developing new guidelines and processes. While some feedback received was outside of the scope of the review, it is important to communicate this feedback to other relevant departments and to inform DFAT's future policy development, where appropriate.

1.1   Broader reforms

Most of the broader tax reforms focussed on streamlining DGRs; introducing requirements around the operation of PBIs; facilitating freer international philanthropy; and centralising fundraising requirements.

1.1.1 Streamlining DGRs and fundraising requirements

Two submissions identified the **OAGDS as over-regulated, with the legislation requiring involvement of multiple government departments in the application process.** Given that this results in a lengthening of the process of approval, there was a suggestion to have the process administered by only one department. Similarly, another submission thought it would **be ideal for all overseas charities to have one approval body which encompassed the processes of the ACNC, DFAT, ATO and state and territory fundraising licences**. Another proposed that the ACNC take on responsibility for issuing fundraising licences.

Two of the submissions suggested there should be a longer term policy to simplify DGRs by **supporting a model of DGR endorsement based on registered charity status and assessed by the ACNC**. Another submission encouraged DFAT to work with the ATO and Treasury to review and streamline all DGR categories relevant to overseas aid and development rather than just focussing on OAGDS. This includes PBIs which would enable organisations to have one DGR category to cover all work in Australia and overseas and reduce administrative burden and cost in having multiple DGR activities.

One submission raised the issue of PBIs pursuing overseas activities without the same regulation as OAGDS, highlighting that development best practice needs to be preserved. Another submission strongly opposed the sending of unregulated funds overseas, including through PBIs.

1.1.3 International philanthropy

One of the submissions and discussion at the Melbourne roundtable dealt with international philanthropy. A participant at the roundtable pointed out that **current DGR is limited to Australian donors only being able to give to organisations with a presence in Australia.** Considering that Australian organisations are involved in only a small percentage of development work around the world, this is extremely limiting. Funders need increased ability to be able to fund organisations offshore.

One submission **framed the case for international or cross-border philanthropy through Australian's liberty to give.** Tax deductions give choice to ordinary Australians to donate to what they believe in, and this extends the liberal conceptions of autonomy. The submission highlighted that tax legislation in other common law jurisdictions is more permissive in relation to cross border philanthropy. Australia has the potential to position itself as a centre for international philanthropy in the Asia-Pacific with good banking arrangements, political stability and attractiveness to philanthropists from Europe, Asia and the United States.

The same submission also suggested considering **aligning philanthropic incentives with strategic and policy interests** by, for example, offering higher levels of tax deductibility for development work in particular regions.

In contrast, another submission suggested that Public or Private Ancillary Funds controlling overseas projects should be avoided as only OAGDS entities should be able to send project funds overseas.

1.2   Volunteer issues

One submission raised issues with the tax status of volunteer contributions, which was also discussed in the Brisbane roundtable. **Currently volunteers cannot receive a tax deduction for payments for airfares, accommodation and other in-country expenses**, which disadvantages volunteers who give their time for free. Also, allowing tax deductibility for costly volunteer medical clearances and working with children checks would stop volunteers travelling to countries as tourists to engage in volunteer work.

Further, not allowing bulk registration of volunteer details through Smartraveller is disadvantageous. Charities rely on volunteers registering themselves and often they do not.