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# **Chapter #**

## ***Volunteer fire brigades***

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### **Outline of chapter**

- 1.1 Schedule # to this Bill adds three new general deductible gift recipient (DGR) categories into the *Income Tax Assessment Act 1997* (ITAA 1997).
- 1.2 This measure widens the accessibility of tax deductible donations to all entities providing volunteer based emergency services, including volunteer fire brigades (VFBs). The measure also extends DGR status to all state and territory (state) government bodies that coordinate VFBs and State Emergency Service units.

### **Context of amendments**

- 1.3 Volunteer fire brigades aim to prevent, respond to, and help with recovery from a range of fire-related emergencies. Volunteer brigades have a long history in Australia, providing a clearly recognisable and highly regarded public benefit based on a system of volunteering.
- 1.4 There are currently more than 6,200 rural volunteer brigades in Australia. Approximately 1,800 of these are currently endorsed by the Commissioner of Taxation (the Commissioner) as public benevolent institutions (PBIs). PBIs are not-for-profit organisations that provide direct relief to individuals from poverty, sickness, suffering, distress, misfortune, disability, destitution, or helplessness, as arouses compassion in the community. PBIs are eligible for a range of tax concessions, including entitlement to endorsement as DGRs by way of the general DGR category for PBIs.
- 1.5 Recent legal cases have led the Commissioner to the view that volunteer brigades do not meet the PBI criteria because the main purpose of brigades is to protect property, which is not consistent with the purpose of a PBI.
- 1.6 Without legislative amendment, 1,800 affected VFBs stand to lose their ability to collect tax deductible donations.

1.7 Depending on how they are structured, some VFBs can be endorsed as tax concession charities, and will continue to be able to access charitable tax concessions, including income tax exemptions, by way of their charitable status. Those operating as government entities will be eligible for income tax exemptions as state government bodies and public authorities.

1.8 Targeted consultation undertaken by Treasury also revealed a trend toward the creation of ‘hybrid’ volunteer brigades — organisations that undertake multiple volunteer-based emergency services activities (e.g. fire fighting, as well as general emergency services). The growth is attributable in-part to the efficiency gains in combining these services, particularly in smaller communities.

1.9 The way that VFBs are coordinated differs between states. For example, in some states, brigades are coordinated by government departments that oversee several emergency services (such as the Fire and Emergency Services Authority of Western Australia), while in other states volunteer brigades are coordinated by a dedicated fire department. The level of local government oversight of brigades differs between and within states. All states have one or more associations representing volunteer fire fighters in that state.

1.10 The state government agencies coordinating State Emergency Service units in all states except for the Northern Territory are specifically listed as DGRs (see table in section 30-102 of the ITAA 1997). The state government agencies coordinating brigades in Victoria, Queensland, Western Australia, Tasmania and the Australian Capital Territory are also listed (see table in section 30-102 of the ITAA 1997).

1.11 These listings followed an announcement by the then government on 23 December 2003 that it would legislate to ensure that the Country Fire Authority, Victoria State Emergency Service and equivalent coordinating bodies in other states could benefit from being able to receive tax deductible gifts.

## **Summary of new law**

1.12 New DGR categories are created for:

- government entities that have statutory responsibility for coordinating VFBs or state emergency services;
- public funds established and maintained by such entities – solely for the purpose of supporting the volunteer based

emergency service activities of not-for-profit entities or government entities that principally provide volunteer based emergency services that are regulated by a state law; and

- public funds established and maintained by not-for-profit entities or government entities that principally provide volunteer based emergency services that are regulated by a state law – solely for the purpose of supporting the volunteer based emergency service activities of the establishing entity.

### Comparison of the key features of the new law and the current law

<i>New law</i>	<i>Current law</i>
VFB and State Emergency Service unit coordinating entities in the remaining states can be endorsed as DGRs under a newly established general category.	In support of their activities, certain state government agencies that have responsibility for coordinating brigades, as well as State Emergency Service units, are specifically listed in the tax law as DGRs.  Listings include VFB coordinating bodies in Victoria, Queensland, Western Australia, Tasmania and the Australian Capital Territory, and State Emergency Service coordinating bodies in all states except the Northern Territory.
Public DGR donation funds can be established to support volunteer based emergency services activities that are undertaken by not-for-profit entities or government entities that principally provide volunteer based emergency services that are regulated by a state law.  Donation funds can be established by: <ul style="list-style-type: none"> <li>• government entities that have statutory responsibility for coordinating VFBs or State Emergency Service units; or</li> <li>• not-for-profit or government entities that principally provide volunteer based emergency services that are regulated by a state law.</li> </ul>	VFBs cannot be DGRs or get access to DGR support (except for brigades in Victoria).  'Hybrid' brigades providing volunteer fire as well as other emergency service activities may also not be DGRs.  Although many volunteer based emergency services entities may qualify as PBIs, only some are endorsed as such.

## Detailed explanation of new law

### New general categories

- 1.13 This measure establishes three new general DGR categories.
- 1.14 New DGR categories are created for:
- government entities that have statutory responsibility for coordinating VFBs or state emergency services; *[Schedule #, item 1, item 12A.1.1 in the table in section 30-102 of the ITAA 1997]*
  - public funds established and maintained by such entities – solely for the purpose of supporting the volunteer based emergency service activities of not-for-profit entities or government entities that principally provide volunteer based emergency services that are regulated by a state law; *[Schedule #, item 1, item 12A.1.2 in the table in section 30-102 of the ITAA 1997]* and
  - public funds established and maintained by not-for-profit entities or government entities that principally provide volunteer based emergency services that are regulated by a state law – solely for the purpose of supporting the volunteer based emergency service activities of the establishing entity. *[Schedule #, item 1, item 12A.1.3 in the table in section 30-102 of the ITAA 1997]*
- 1.15 The Commissioner of Taxation requires that all entities or funds endorsed under these new categories must be established in Australia, and their purposes must be in Australia (this is an interpretation of table item 1 in the table in subsection 30-15(2) of the ITAA 1997, which states that any fund, authority or institution covered by any item in the tables in Subdivision 30-B of the ITAA 1997 must be ‘in Australia’).

### ***New general DGR category for government entities that coordinate brigades and State Emergency Service units***

1.16 Government entities with statutory responsibility for coordinating VFBs or state emergency services can seek endorsement to be DGRs. Gifts to these DGRs must be made for the purpose of supporting the agency’s coordination of VFBs or State Emergency Service units. *[Schedule #, item 1, item 12A.1.1 in the table in section 30-102 of the ITAA 1997]*

1.17 This part of the measure creates a general DGR category that predominantly captures state government agencies already listed as DGRs

in the tax law. This new general category makes the DGR concession available to equivalent entities in the remaining states. Organisations currently listed in the ITAA 1997 as DGRs include VFB coordinating bodies in Victoria, Queensland, Western Australia, Tasmania and the Australian Capital Territory, and State Emergency Service coordinating bodies in all states except the Northern Territory.

1.18 VFBs are entities that aim to prevent, respond to, and help with recovery from a range of fire-related emergencies. The State Emergency Service is an emergency and rescue service dedicated to assisting the community.

1.19 VFBs and State Emergency Service units are made up almost entirely of volunteers. Coordination of VFBs and State Emergency Service units is provided by a central coordinating body that is a state government entity.

1.20 A gift condition has been introduced for donors, that the gift must be made for the purpose of supporting the agency's coordination of VFBs or State Emergency Service units. Coordination includes registration and oversight responsibilities. Agencies whose functions include, but extend beyond, the coordination of VFBs or State Emergency Service units (for example, some state departments of justice may be said to include those functions) cannot use the deductible donations they receive in support of those unrelated functions. *[Schedule #, item 12A.1.1 in the table in section 30-102]*

1.21 DGR status is restricted to those entities that are Australian government agencies with statutory responsibility for coordinating VFBs or State Emergency Service units. Where legislation places a burden of obligation upon an agency, that agency has statutory responsibility.

1.22 An Australian government agency is defined as the Commonwealth, a State or a Territory; or an authority of the Commonwealth or of a State or a Territory. This definition covers state government bodies responsible for coordinating VFBs and State Emergency Service units, but not non-government organisations nor local governments.

***New general DGR category for public funds to support volunteer based emergency services (including volunteer brigades)***

1.23 A public donation fund can be endorsed as a DGR if it is established and maintained to support volunteer based emergency service activities undertaken by not-for-profit entities or government entities that principally provide volunteer based emergency services that are regulated by a state law. The fund must be established either:

- by entities that principally provide volunteer based emergency services (including VFBs); or
- by coordinating agencies (described at paragraph 1.16).

*[Schedule #, item 1, items 12A.1.2 and 12A.1.3 in the table in section 30-102 of the ITAA 1997]*

1.24 This new category gives flexibility, allowing entities providing emergency services (including VFBs) to establish a DGR fund in their own right, or to collaborate with their relevant state VFB coordinating body to collect donations through a central fund, taking advantage of gains in efficiency that may arise through a centralised fund model.

1.25 By being open to entities providing volunteer based emergency services more generally, this new category is available to ‘hybrid’ VFBs — organisations that undertake fire-fighting as well as other kinds of volunteer-based emergency services activities that are regulated by a state law. Such hybrid brigades can use all funds donated to them to support all their volunteer-based emergency activities, not just fire fighting activities.

1.26 Not all VFBs will want or need DGR status. Some will be too small, others will be fully state government supported.

1.27 For VFBs that do want to collect tax deductible donations, those that see efficiency, administrative and other advantages in collecting through a central fund such as that which currently exists in Victoria will still have that option — provided that a centralised public fund has been established by the government coordinating body in that particular state. This option may be particularly attractive to smaller VFBs that may find it too onerous to meet the accountability requirements to establish their own DGR fund. *[Schedule #, item 1, item 12A.1.2 in the table in section 30-102 of the ITAA 1997]*

1.28 VFBs who want DGR status in their own right will need to establish their own public fund. *[Schedule #, item 1, item 12A.1.3 in the table in section 30-102 of the ITAA 1997]*

1.29 This new category does not displace the PBI status of those volunteer based emergency service units (e.g. State Emergency Service and marine rescue units) that are presently endorsed as PBIs in their own right. A PBI is a not-for-profit institution organised for the direct relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness. The endorsement of PBIs is a responsibility of the Commissioner of Taxation.

### *Funds established by brigades*

1.30 A public donation fund can be endorsed as a DGR if it is established and maintained:

- by not-for-profit entity or government entity that principally provides volunteer based emergency services that are regulated by a state law ; and
- solely for the purpose of supporting the volunteer based emergency service activities of the establishing entity.

*[Schedule #, item 1, item 12A.1.3 in the table in section 30-102 of the ITAA 1997]*

1.31 A not-for-profit organisation is one which is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect. Any profit made by the organisation goes back into the operation of the organisation to carry out its purposes and is not distributed to any of its members. The Commissioner of Taxation accepts an organisation as not-for-profit where its constituent or governing documents prevent it from distributing profits or assets for the benefit of particular people — both while it is operating and when it winds up. These documents should contain acceptable clauses showing the organisation's not-for-profit character. The organisation's actions must be consistent with this requirement. The Australian Taxation Office (ATO) provides further guidance on acceptable constitutional clauses at the Non-Profit section of its website.

1.32 Examples of the types of not-for-profit entities or government entities that may provide volunteer based emergency services are VFBs, State Emergency Service units, volunteer marine rescue units, groups of volunteer ambulance officers, and hybrid emergency service units that may cover a combination of these functions.

1.33 The fund can only be used in support of activities that are 'volunteer based emergency service activities' of the establishing entity.

1.34 Volunteer based entities predominantly consist of individuals performing public services for no financial gain. Emergency services are public services that deal with sudden and urgent occasions for action, usually relating to the safety of people or property.

### **Example 1.1 Funds can be used for emergency service activities**

The Redcliffe Volunteer Fire Brigade decides to purchase fire retardant protective clothing for volunteers to use when fighting fires. Donations to the brigade's public fund can be used to purchase the new

clothing because the clothing is a requirement for the brigade in the undertaking of an emergency service activity (fire fighting).

### **Example 1.2 Funds cannot be used for other activities**

The Redcliffe Volunteer Fire Brigade is planning a dinner for brigade members and their extended families. The dinner is an annual event, held with the general aim of encouraging the social links within the brigade. The dinner is not a fundraising event. Donations to the brigade's DGR fund cannot be used to purchase provisions for the dinner, because the dinner is not an emergency service activity.

1.35 This measure is intended to only capture officially recognised emergency services, such as volunteer fire and state emergency services. State law must regulate the provision of those emergency services (the emergency service must be controlled or directed by a set of requirements set out in state legislation).

1.36 If the state law requires minimum qualifying conditions for an entity to provide regulated emergency services, individual entities seeking endorsement must meet those conditions as evidence that the entity provides state regulated services e.g. if state law requires licensing, then the entity must be licensed before their public fund is endorsed.

### **Example 1.3 Emergency services that are regulated by a state law or territory law**

A volunteer fire brigade in WA wants to seek DGR endorsement for its public fund, but can only do so if its activities are regulated under a state law.

In WA, the establishment (including registration) and regulation of most volunteer bush fire brigades is done under the authority of the *Bush Fires Act 1954* (WA). Establishment and regulation of other kinds of emergency service brigades, including multifunctional (hybrid) volunteer fire service brigades, volunteer marine rescue service units and volunteer state emergency service units, is provided by the *Fire and Emergency Services Authority of Western Australia Act 1998* (WA).

The brigade is registered under the *Bush Fires Act 1954* (WA). The brigade is regulated by a state law.

1.37 Local government by-laws are state laws because they are delegated legislation made under a state enactment.

1.38 The ATO will typically provide guidance as to the kinds of organisations covered by a measure.



*Funds established by coordinating bodies*

1.39 Public DGR donation funds can be established by state government entities that have a statutory responsibility to coordinate VFBs or State Emergency Service units. *[Schedule #, item 1, item 12A.1.2 in the table in section 30-102 of the ITAA 1997]*

1.40 The Victorian Country Fire Authority (CFA) has operated a public fund to support Victorian VFBs since 2005, when the CFA & Brigades Donation Fund (the CFA Fund) was specifically listed in the tax law (see table item 12A.2.4 in section 30-102 of the ITAA 1997). This model was implemented in Victoria to reduce the administrative burden for smaller brigades that still wanted to collect tax deductible donations.

1.41 The model currently operated in Victoria allows the CFA to operate the CFA Fund and act as a centralised accounting body, while giving brigades the freedom to collect tax deductible donations on behalf of the CFA Fund. By agreement between the CFA and individual brigades, the donations collected at a local level by brigades may be used in support of local brigade activities. Under the Victorian arrangement, individual brigades collect donations and bank them into the CFA Fund, also issuing receipts in the name of the CFA Fund. Funds collected by individual brigades are provided back to those brigades by the CFA immediately upon request. Brigades provide relevant information back to the CFA for accounting and auditing purposes. The CFA Fund has seven trustees; two representing the Victorian CFA and five representing Volunteer Fire Brigades Victoria (a representative body for CFA volunteers).

*Hybrids*

1.42 Some states operate hybrid volunteer fire brigades. Such brigades undertake fire-fighting as well as other kinds of volunteer-based emergency services activities.

1.43 Hybrid entities can collect donations through central DGR funds established by a state government agency (coordinating body), or through a DGR fund established by the entity itself. *[Schedule #, item 1, items 12A.1.2 and 12A.1.3 in the table in section 30-102 of the ITAA 1997]*

1.44 The entity must be a not-for-profit entity or government entity that principally provides volunteer based emergency services regulated by a state law.

### **Example 1.4 Hybrid emergency service entities**

The Murrumbidgee volunteer fire and rescue brigade is a hybrid emergency service entity — providing volunteer fire fighting as well as remote rescue services. Both of these services are emergency services.

It is a not-for-profit volunteer brigade. The brigade is registered and regulated under a state emergency service act.

The brigade is planning to undertake a fundraising campaign to purchase GPS navigation equipment for use in both its remote rescue service and fire fighting activities. The brigade chooses to establish a public fund for the purposes of supporting its emergency service activities. The public fund is eligible for endorsement by the ATO as a DGR.

The Murrumbidgee volunteer fire and rescue brigade can use its tax deductible donations to support all their volunteer-based emergency activities, not just those activities relating to volunteer fire fighting.

#### *Reporting requirements*

1.45 While the tax law requires annual reporting<sup>1</sup>, the Commissioner has generally exempted DGRs and charities from this requirement.

1.46 Nevertheless, the tax law requires a DGR public fund to maintain adequate accounting and other records to verify that tax deductible gifts or contributions are used only for the principle purpose of the fund. The Commissioner will consider whether annual reporting of these funds is necessary, and the form any such reporting should take.

1.47 In the case of public funds established by coordinating bodies, it is a decision for those who control the fund to decide:

- whether VFBs can act as agents and issue receipts on behalf of the fund;
- whether VFBs will then be able to retain monies collected by VFBs at the local level; and
- the record keeping and reporting arrangements (including arrangements with VFBs acting as agents of the fund) that will best allow it to meet its gift fund and public fund obligations.

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<sup>1</sup>Section 161 of the *Income Tax Assessment Act 1936* (about annual returns).

### **Example 1.5 How the centralised fund model could work in practice**

The Queensland Fire and Rescue Service and individual brigades in Queensland enter into agreements about the collection, receipting, accounting and reporting of gift deductible donations collected by local brigades. They discuss their agreement with the Australian Taxation Office to ensure all requirements under the law are met.

Throughout the 2010-2011 income year, the Caboolture volunteer fire brigade receives gifts totalling \$1,000 from Peter and \$2,000 from Teresa.

Under an agreement with the Queensland Fire and Rescue Service (the government co-ordinating body), a volunteer issues Peter and Teresa with receipts in the name of the central DGR fund at the time of their respective donations.

Under agreement with the Queensland Fire and Rescue Service, the local volunteer brigade in Caboolture retains custody of the funds collected locally to use for appropriate purposes.

At the end of the financial year, the Caboolture brigade reports the total donations (\$3,000) to the Queensland Fire and Rescue Service (as overseer of the public fund established by the Service), as well as details of how the funds have been used and if any funds have been retained.

The Queensland Fire and Rescue Service assumes responsibility to the ATO for accounting and any reporting in relation to the central DGR fund.

1.48 Coordinating bodies may wish to make use of independent audits, declarations by individual VFBs or explicit annual reporting (e.g. receipt reporting) to meet the accountability, reporting and record keeping requirements.

1.49 Where receipts for gifts are issued, the receipt must specify: that the receipt is for a gift, the name of the DGR fund receiving the gift, and the Australian Business Number (ABN) of the DGR fund. Other useful information may include the amount of money donated and the name of the donor.

1.50 Those responsible for the central fund are free to enter into other reporting arrangements with VFBs to ensure that gifts to the fund have been used to further the principal purpose of the fund, and that it can explain all transactions and other acts that brigades engage in that are relevant to the public fund's status as a DGR.

1.51 In addition to maintaining proper records, if the fund allows the volunteer brigade to retain the donations they should ensure those in control of the fund have the discretion to call back the donation at any time to be applied in accordance with the purposes of the fund. Whilst this clause may not be applied in practice, it ensures that a sub-fund (which will not have endorsement) is not created.

### **The gift fund requirements and public fund requirements**

1.52 The gift fund requirements apply to coordinating bodies endorsed under the new general DGR category for state government entities that coordinate brigades.

1.53 Both the gift fund and public fund requirements will apply to DGR donation funds established by volunteer emergency service entities (including VFBS) and state coordinating bodies under the new general DGR category for public funds to support volunteer based emergency services.

1.54 The public fund and gift fund requirements are explained in the ATO's *GiftPack - Guide for deductible gift recipients and donors* publication.<sup>2</sup>

#### ***Gift fund requirements***

1.55 The gift fund requirements are found in section 30-130 of the ITAA 1997.

1.56 A gift fund is a fund, maintained for the principle purpose of the DGR fund, authority or institution. All gifts, and deductible contributions, of money or property for that purpose are made to it and credited to it.

1.57 A gift fund does not receive any other money or property, and the fund is used only for the principal purpose of the fund, authority or institution.

1.58 The DGR fund, authority or institution must be required (by law, its constituent documents or governing rules) to transfer any surplus assets of the gift fund to another gift deductible fund, authority or institution when the fund, authority or institution is wound up or the DGR endorsement is revoked, whichever occurs first.

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<sup>2</sup> Australian Taxation Office, December 2007, *GiftPack - Guide for deductible gift recipients and donors*, [www.ato.gov.au](http://www.ato.gov.au) [document number NAT 3132-12.2007].

### ***Public fund requirements***

1.59 The basic requirements for public funds are laid out in Taxation Ruling TR 95/27.

1.60 Approximately half of the general DGR categories require that a public fund be established. The public fund requirement ensures that there are administrative and legal frameworks in place which will help safeguard property and moneys donated to the fund, authority or institution, and help ensure that tax deductible donations are used for the purpose for which endorsement was given.

1.61 There is some overlap between the gift fund and public fund requirements.

1.62 The existence of a public fund does not necessarily satisfy the gift fund requirement. However, if the public fund only receives gifts or deductible contributions, and the appropriate winding up rules exist, the public fund may itself be the gift fund (in this case there would be no need for a separate gift fund).

1.63 The basic requirements for public funds include that:

- the fund must be managed by members of a Committee, a majority of whom have a degree of responsibility to the general community (this requirement does not apply to funds established and controlled by a governmental or quasi-governmental authority);
- the objects of the fund must be clearly set out and reflect the purpose of the fund;
- gifts to the fund must be kept separate from any other funds of the sponsoring organisation;
- a separate bank account and clear accounting procedures are required to explain all transactions relevant to the DGR status of the fund;
- receipts must be issued in the name of the fund. Receipts must state the name of the fund to which the gift has been made; the fund's ABN and the fact that the receipt is for a gift;
- the public must be invited to contribute to the fund;

- the fund must operate on a not-for-profit basis (i.e. moneys must not be distributed to members of the managing committee or trustees of the fund except as reimbursement for out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services);
- should the fund be wound-up, any surplus money or other assets must be transferred to some other qualifying fund; and
- the ATO is to be notified of any changes to the fund's constitution or other founding documents.

1.64 While a public fund is required to be controlled by an executive committee made up of a majority of responsible persons, the day-to-day running of the organisation need not be carried out by those persons. The fund must, however, be set up in such a way that it is not possible for public control to lapse for any period.

### **Ancillary funds**

1.65 It remains an option under existing arrangements in the tax law for non-government organisations wishing to support VFBs to establish an ancillary fund (a fund established and maintained under will or instrument of trust for the purpose of providing money, property or benefits to DGRs or for their establishment), to collect tax deductible donations in its own right and give to public funds established to directly support brigades.

### **Enforcement**

1.66 The ATO has a wide range of enforcement powers, including powers to obtain information and revoke DGR status. DGR funds are subject to the ATO's regular compliance program.

### **What is a gift?**

1.67 Gifts of \$2 or more of money or property to DGRs are tax deductible to donors, provided that the gift complies with all relevant conditions.

1.68 The donation must be a gift and voluntary. A transaction which is mandatory or where the giver receives a benefit or advantage in return, is not a gift. Accordingly, compulsory levies to pay for fire services are not tax deductible as a gift. Further information on what is a gift can be found in Taxation Ruling 2005/13.

## **Transitional Provisions**

1.69 Certain state government entities that coordinate VFBs and State Emergency Services, and the CFA & Brigades Donation Fund, are already specifically listed as DGRs in the ITAA 1997. These entities will be taken to have been endorsed by the Commissioner under the new categories. *[Schedule #, item 3, section 30-102 of the Income Tax (Transitional Provisions) Act 1997]*

1.70 Entities that were specifically listed as DGRs in the law do not need to seek re-endorsement under the new general DGR category for such organisations.

## **Application provisions**

1.71 The measure commences from Royal Assent, and applies to gifts made after that time. *[Schedule #, item 4]*

## **Consequential amendments**

1.72 Specifically listed entities are removed from the index table (in section 30-315(2) of the ITAA 1997) for Division 30 of the ITAA 1997. These entities are state government bodies, and the CFA & Brigades Donation Fund, which are treated as endorsed under the new general categories by way of the transitional provisions. *[Schedule #, item 2, subsection 30-315(2) of the ITAA 1997]*