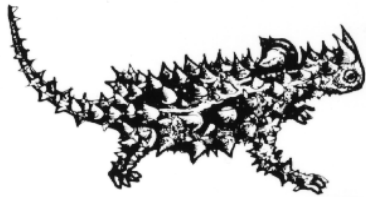


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ALEC submission on the Reform of Deductible Gift Recipient Tax Arrangements

The Arid Lands Environment Centre (ALEC) appreciates the opportunity to contribute to the deductible gift recipient (DGR) tax arrangement reform. ALEC works to protect the health of the natural environment and community of central Australia through sustainability education, strategic policy advocacy and biodiversity conservation. As ALEC is a charitable organisation, the ability to encourage community support and philanthropy is fundamental to the ongoing operation of the Centre.

ALEC was incorporated in the Northern Territory in 1980. The ALEC fund has been registered with the Register of Environment Organisations since 1994. ALEC used to receive operational funding through the Grants to Voluntary and Heritage Organisations program and the NT Department of Environment/NT EPA. However, ALEC is now largely dependent on the generosity of local and national supporters who regularly give (tax deductible donations) to ALEC's Desert Defender program. Donations are an important part of reducing financial risk through providing a diverse income stream. ALEC pursues its objectives through a portfolio of activities that are funded by charitable donations, contracts and grants. Withdrawal of Commonwealth Government support under the Grants to Voluntary and Heritage Organisations program emphasised the importance of charitable donations to ALEC's capacity. Any changes that impact ALEC's ability to receive tax deductible donations would have a negative impact on the local community and the environment that benefits from the work of ALEC.

ALEC delivers numerous programs that work towards the vision of "healthy futures for arid lands and people". The organisation is often the partner of choice for sustainability initiatives. DGR status allows the organisation to pursue our purpose in relation to areas and issues where specific partnership support is not yet developed.

- Biodiversity Matters www.biodiversitymatters.org.au
 - Food for Alice <https://www.facebook.com/groups/108715702520033/>
 - Roadmap to a DesertSMART Town 2013-2018 <http://desertsmartcoolmob.org/current-projects/roadmap-to-a-desertsmarttown/>
 - desertSMART EcoFair www.ecofair.org.au
 - Alice Springs Community Garden www.alicecommunitygarden.org.au
 - Arid Edge Environmental Services www.aridedge.com.au
 - Ten Deserts Initiative www.tendeserts.org
 - Representation on numerous working groups and committees
 - Environmental policy reform
 - Local sustainability education initiatives
-

Many of these projects have resulted in substantial economic opportunities for Alice Springs. ALEC is regularly engaged with its membership through the publication of a fortnightly newspaper called the Devil's Advocate. There are more than 300 members who financially support the work of ALEC and contribute towards the direction of the organisation.

Focus on purpose not activities

A concerning issue in the discussion paper is the shift in language from purpose towards activities. Charity law focuses on the purposes not activities and the DGR framework generally has a focus on purpose rather than activity. In the absence of strong and compelling reasons to the contrary, the focus of DGR reform should be on purposes. There are no policy or legal grounds to justify a shift towards focusing on activities such as advocacy.

The current legal framework regulating charitable institutions is considered adequate to ensuring charities engage in appropriate activities. Charities must demonstrate that they do not have a 'disqualifying purpose' and this is considered sufficient protection against inappropriate behavior by charities.

Questions 4-6 and 12-13 focus on the activity level of charities and as such they are opposed by ALEC as it is believed they will:

- a) Cast doubt and uncertainty over what activities a DGR entity can lawfully undertake which could lead to a chilling effect; and
- b) Insufficiently establishes that the current regime of 'charitable purpose' is not robust for regulation of the sector.

The Discussion Paper states that "there are concerns that charities are unsure of the extent of advocacy they can undertake without risking their DGR status". This statement is concerning because it implies that undertaking advocacy is not a legitimate activity. This is an incorrect interpretation of charity law at common law and in legislation. Furthermore, the paper states that 'Scrutiny of an organisation's continued eligibility is appropriate as the scope of activities undertaken by an organisation can change over time, potentially making them ineligible for DGR status.' Again, this is an incorrect characterisation of the law, the fundamental factor of eligibility is not a question of the activities of the organisations but on the purpose. If the purposes of the organisation have moved out of charitable purposes as set out in legislation then they may become ineligible for DGR status.

There is no evidence to support the assertion that "some charities and DGRs undertake advocacy activity that may be out of step with the expectations of the broader community". Unsubstantiated and speculative statements about the broader community should not inform policy reform. For these reasons the proposed shift in the reform from purpose to activities, as an assessment of DGR eligibility is opposed.

Strategic policy advocacy

Advocacy is a legitimate and valuable activity for a charitable institution to engage in. It is often needed as a way of furthering the purposes of many charitable organisations. The ability to engage in advocacy is a legally guaranteed right under common law through the ruling in *Aid/Watch*.¹ The

¹ *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42

courts are clear that advocacy is integral to achieving a charitable purpose and the Constitution of the Commonwealth of Australia also provides a legal foundation for advocacy through responsible and representative government.

Strategic policy advocacy is a core component of the work that ALEC undertakes to improve environmental outcomes and the sustainability of communities in Central Australia. Advocacy in this context is essential because it allows the organisation to be proactive in preventing environmental harm by addressing policies that need reform. ALEC is in a unique position in the NT as it is one of two community based environmental organisations and our advocacy often informs environmental policy and law reform. Many ALEC members donate in to order support environmental advocacy because they do not have the capacity or capability to do so themselves.

Some examples of advocacy leading to positive environmental and economic outcomes:

- a) Advocated to the Alice Springs Town Council for a Community Garden. This garden has proved highly successful in providing horticulture education, physical activity, nutrition and sustainability.
- b) Advocating for the development of a Solar City in 2001. Leading to the development of the Desert Knowledge movement and successful application for the Alice Solar City project in 2007.
- c) Advocacy to the Northern Territory Government to remove mining and grazing from the West MacDonnell National Park has had flow on benefits to the tourism industry.

ALEC is routinely consulted by the local and Territory face Government on matters relating to environmental policy and sustainability. The submissions provided through consultation are beneficial to both the government and the public by helping to improve environmental governance in the NT. ALEC is in a unique position to be able to utilise strategic policy advocacy in a way that furthers the purposes of the organisation. Prevention of environmental harm is the most effective and efficient method of protection and this is addressed through policy and legal reform that requires advocacy.

Improvements in sustainability policy such as energy and water occur through policy advocacy. It is important that ALEC can engage in activities that are targeted at addressing the concerns of the membership in improving the sustainability of Alice Springs and protecting the natural environment of the region.

Environmental remediation

Charities must be able to pursue their charitable purpose in the most effective and efficient (and lawful) way possible. This process should be controlled by the charity and its membership and should be free from government influence. There are sufficient conditions attached to the endorsement under the *Charities Act* and it would be disruptive and unnecessary to enforce more red tape.

Environmental remediation is but one of many activities that can be used by an environmental organisation to achieve its purpose. While ALEC provides administrative support to groups who are undertaking remedial work, physical remediation is not a priority activity as there is not sufficient capacity or capability. Sustainability education, policy development and community engagement are the primary activities that ALEC engages in to work towards the purpose of

“healthy futures for arid lands and people”. These activities are important to effectively build capacity and capability.

A requirement that 25% or any other set proportion of tax deductible donations be applied to environmental remediation would be an intrusion into the autonomy of environmental organisations. It would amount to government determining what activities a charity should engage in to achieve their purpose. This would subvert the role of the governing committee in developing and implementing its strategic plan. It would also represent a very burdensome requirement that would pose difficult and costly monitoring and compliance obligations. These new restrictions and limitations are strongly opposed on this basis as it would make it more difficult for environmental charities to achieve their charitable purpose.

The remediation proposal is clearly discriminating environmental groups from other charities. This administrative bias is not justified and is opposed.

Auditing and compliance with DGR requirements

ALEC submits that it would be an unreasonable burden on the accounting and operational processes of the organisation to ensure compliance with these additional regulations. It is also important to note that there should not be discrepancies in the rules between different NGO sectors. There is a discrepancy in the target of the consultation question compared to the consultation proposals. While the consultation proposals are neutral to the type of DGR organisation, the questions are largely targeted at environmental organisations. It is not clear on what basis this distinction has been made.

It is not possible to identify one charitable purpose as more important than another in terms of this reform. However, well targeted and proportional approaches to maintain transparency and accountability for charities are supported. This can be achieved by ensuring all DGRs are registered as charities under the purview of the ACNC, as the discussion Paper proposes. ALEC does not support the transition from a focus on purposes towards activities.

Consultation Questions

1. No objection to the proposal to require that an organisation must be a registered charity to be eligible for DGR status. It may be appropriate to audit DGR organisations that are not registered charities.
2. See 1.
3. There are no concerns regarding the requirement of the ACNC to publish information to its public register.
4. Opposed. Charity law focuses on purposes not activities. In the absence of any evidence or compelling policy justification for changing this law, the focus of reform should be on purposes not activities. See above section “Focus on purpose not activities”.
5. There is no legal or policy justification for collecting the information from DGR organisations about activities.
6. See response to 4 and 5.
7. The transfer of the administration of the four DGR registers is supported but the ATO is not believed to be the most appropriate body to undertake that task. It is important for the administrative body to operate at arms-length from political decision-making. The move towards the ATO is therefore not supported. If the transfer is to happen the most

appropriate body is the ACNC. Moving responsibility to the ATO would be an additional unnecessary administrative complexity.

8. The potential complexities of this proposal need to be known before a position can be taken.
9. Transparency and accountability of DGRs is important. Audits and reviews should only be conducted when there is evidence to suggest systemic issues. Giving additional regulatory powers will reduce the capacity of certain groups to work on their purpose. It is considered that the ACNC and ATO already have sufficient regulatory power over audits and reviews. Increasing the regulatory responsibilities on this sector has been shown to have a chilling effect on the activities of environmental groups in Canada in 2014. In 2014 special tax audits were applied to environmental groups. These regulations tied up organizational resources and prevented them from pursuing work to protect nature and achieve environmental outcomes.
10. See 9.
11. This requirement is not considered necessary. Introducing a sunset rule would expose DGRs to the possibilities of disruption through changes in the political cycle. The political process may lead to inappropriately revoking DGR status from organisations without cause.
12. Any move to implement a fixed annual expenditure on remediation is opposed. This is discussed in greater detail above. However again it must be acknowledged that charities are free to pursue the activities that further their purpose as recognised in law. It is also opposed on the basis that it unfairly discriminates against environmental charities.
13. It is considered that the current regulatory framework, including sanctions are already adequately provided by the *Charities Act*. Any illegal activity is condemned and should be addressed. The proposed recommendations would again create unnecessary red tape, overlap existing laws and provide barriers to implementation.

Conclusion

The proposed reforms will impose an onerous regulatory burden that is likely to interfere with the ability of ALEC to pursue its purposes. DGR reform should be guided by a balanced, evidence based approach. There is no policy or legal basis to justify the intrusion into the financial autonomy of DGR organisations like ALEC. This is because it is a fundamental principle of responsible and representative government that charities are permitted to pursue their purposes through legal activities of their own choosing. Advocacy is essential to realising the purposes of ALEC as it achieves positive environmental outcomes. Any changes that would inhibit the ability to encourage financial support or increase operational workload could weaken ALEC's capacity represent the concerns of the membership and work towards improved environmental outcomes.