



3 August 2017

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RE: Tax Deductible Gift Recipient Reform Opportunities

Thank you for the opportunity to provide a submission to the *Tax Deductible Gift Recipient Reform Opportunities Discussion Paper 15 June 2017*.

About the Australian Land Conservation Alliance

The Australian Land Conservation Alliance (ALCA) was established in 2011 to promote and support the conservation of private land.

The ALCA brings together The Nature Conservancy (Australia) and Australia's state level Land Trusts, which as a collective represents a large number of private landholders engaged in permanent private land conservation. The state Land Trusts actively pursue and advocate for voluntary and in perpetuity private land conservation through the use of conservation covenanting programs and land acquisition. Covenant program staff provide on-going support and education to landholders with covenants and all ALCA member organisations engage in both community education and research into biodiversity conservation.

The state Land Trusts also operate Revolving Funds which involve the purchase of high conservation lands, the preparation of a covenant for all or part of that land, resale of the land with a covenant, and reinvestment of the proceeds of sale to purchase additional lands.

Members of ALCA have DGR status and raise funds to: protect biodiversity on private land with covenants and property purchases; educate the community about biodiversity and the value in conserving biodiversity; undertake research; and support landholders in the on-going management of biodiversity. These activities have enabled ALCA members to work with private landholders to make significant contribution to the achievement of local, national and international biodiversity conservation goals. ALCA members also actively engage in policy issues concerning private land conservation and biodiversity protection. Some ALCA organisations are also specifically listed under the ITAA.

In 2014, it was estimated that there are ~ 5,000 privately protected properties covering 8.9 million hectares.¹ Critically, these privately protected areas conserve some of the nation's most endangered ecosystems and species². In addition, ALCA members, through their DGR status have also significant new private financial investment into environmental conservation in Australia.

Summary of ALCA's submission:

While ALCA supports consistency, efficiency and independence in the administration and governance of the charities and not-for-profits sector, ALCA is very concerned with the Discussion Paper stakeholder question that seeks feedback on a proposal to require environmental DGRs to commit no less than 25% and possibly 50% of annual expenditure to environmental remediation.

These concerns can be summarised as follows:

- the definition of “remediation works” recommended by the House of Representatives Standing Committee on the Environment’s inquiry on the Register of Environmental Organisations (REO inquiry) – April 2016, to regulate environmental DGR activities rather than purposes, does not adequately recognise the diverse range of community education, advocacy, research and development activities required to actually bring about the overall purpose of environmental protection. For example, ALCA members are able to achieve many of our covenanting and environmental protection outcomes, through education, research and community advocacy, as a result of partnerships with environmental organisations that are not engaged in “remediation” works;
- if the House of Representatives Standing Committee on the Environment proposed exclusions from the definition of “remediation works” were adopted, it is highly likely that unforeseen adverse impacts will result. For example, it may lead to unequal tax treatment of individual and corporate entities who use the environment’s natural resources for production of goods and services and those whose purpose is to protect the environment;
- the administrative and financial cost burden to be imposed upon both government and environmental organisations by shifting public policy settings to regulate the mix of activities undertaken rather than purposes, is notably unquantified in the discussion paper;
- the proposal to regulate expenditures on certain prescribed activities has the potential to inhibit the ability of ALCA members to continue to make significant contribution to government conservation targets and objectives, including international obligations under the Convention of Biological Diversity and national commitments under Australia’s Biodiversity Conservation Strategy;
- as it is so important that ALCA members are able to continue to innovate in response to opportunities to further the principal purpose of protection of the natural environment, education and research, ALCA does not support public

¹ Fitzsimons J, 2015. Private protected areas in Australia: current status and future directions. *Nature Conservation* 10: 1-23.

² Ibid

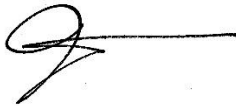
policy changes that have the potential to undermine innovation in how its members go about achieving their purposes; and

- ALCA believes the regulatory framework provided for under the *Charities Act*, the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) and the Australian Charities and Not-for-profit Commission (ACNC) is sufficient to ensure that Deductible Gift Recipient entities are undertaking activities that are in furtherance of their registered principal purpose.

Attachment A further details some of the essential elements of ALCA’s concerns about the proposed activity based regulation and “remediation works” requirement attached to those activities, and potential impacts on its members.

Finally, ALCA would welcome the opportunity to discuss any of the matters raised within this submission. I therefore invite you to make contact with either myself, Jane Hutchinson, on 0427 810 966 / jhutchinson@tasland.org.au (Tasmania) or Victoria Marles on (03) 8631 5888 / victoriam@tfn.org.au (Victoria) to discuss these matters further if that would be of assistance.

Yours sincerely,



Jane Hutchinson
National Convener



Attachment A - Expanded Discussion – ALCA Submission to *Tax Deductible Gift Recipient Reform Opportunities Discussion Paper 15 June 2017*

1. The proposal to restrict activity expenditure of environmental DGRs will impose additional administrative burden and will inhibit achievement of best outcomes

Introduction of a requirement that a certain percent of annual expenditure must be on 'remediation work' creates administrative burdens that are not justified when another framework can be used to ensure DGRs are operating in accordance with their principal purpose, such as the framework for regulating registered charities.

Administrative burdens will arise as a result of the requirement to identify what activities meet the definition of 'remediation work' and what activities do not. The requirement will also impose additional reporting requirements which will divert scarce resources from focusing on outcomes to achieve the principal purpose of the DGR.

It is vitally important that ALCA members, like other environmental DGRs, are able to pursue their principal purpose freely and in response to local or contextual circumstances. This is vital to enable highest impact outcomes that achieve the DGR principal purpose. In the case of Alliance members the principal purpose is enunciated in the *Income Tax Assessment Act 1997 (Cth)* Section 30.265:

- a) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or
- b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

There are numerous and varied activities undertaken by the ALCA members to achieve this principal purpose. These wide ranging activities have resulted in a significant contribution to the National Reserve System in partnership with the Australian Government and has supported new private investment in conservation and towards Australia's international obligations under the Convention for Biological Diversity.

It is critical that ALCA members are able to continue to undertake the wide ranging and emerging activities that are essential for building a system of private conservation lands throughout Australia, that are well managed, are adaptively managed in accordance with best and new scientific knowledge, and are financially sustainable. Donors to ALCA organisations would expect this.

2. Taking steps to regulate DGR activity expenditure will have far reaching and unintended consequences

The proposal to restrict expenditure of environmental DGRs on prescribed activities has the potential to have perverse outcomes for environmental DGRs such as ALCA members, and provides a dangerous precedent for imposing similar restrictions on other DGRs.

Perverse outcomes for Alliance members include limits to research, education and landholder support activities (that do not involve 'remediation work'³). Other foreseeable outcomes include expenditures aimed at financing the purchase and/or sale of legal interests in conservation lands being compromised by a requirement of 25-50% of funds needing to fit into the definition of 'remediation work'. This could thus disable the ability for ALCA members

³ Whilst the Discussion Paper does not provide a definition of 'remediation work', the House of Representatives Standing Committee on the Environment's inquiry on the Register of Environmental Organisations (REO inquiry) – April 2016, outlined the kinds of matters the Committee considered would be 'remediation work', namely: "...revegetation, wildlife rehabilitation, plant and animal pest control, land management, and covenanting" (Refer http://www.aph.gov.au/Parliamentary_Business/Committees/House/Environment/REO/Report at page 47).

and other DGR land trusts working with the Australian Government to it the government meet its national and international targets for reserve system establishment and place an increased burden on the Australian taxpayer to achieve this. A further perverse outcome could include the need to discontinue important work undertaken by ALCA members informing public policy to strengthen the uptake of private land conservation measures and increase Australia's National Reserve System.

Imposition of similar expenditure restrictions on other DGRs could have similar perverse outcomes. For example, a requirement for Public Health and Harm Prevention DGRs to spend 25-50% of funds on medical equipment and individual patient treatment activities rather than a diverse mix of strategies to minimise the use of tobacco or alcohol would likely see a net negative public health outcome. The imposition of such prescriptions about activities undermines the ability of innovative organisations and Australian citizens to creatively respond to emerging public interest issues, for DGRs to provide local responses to local issues, and to effectively respond to resource gaps, economic context and broader policy settings.

3. It is appropriate to focus on the principal purpose of DGRs and not the activities undertaken to achieve the principal purpose

Focusing on the principal purpose of a Deductible Gift Recipient entity and using a framework such as the *Charities Act*, the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (ACNC Act) and the Australian Charities and Not-for-profit Commission (ACNC) is the appropriate framework for ensuring that registered Deductible Gift Recipients are conducting business in accordance with their principal purpose.

It is submitted that such a framework will effectively address the issues of concern re compliance raised within the Senate House of Representatives Standing Committee on the Environment's inquiry on the Register of Environmental Organisations, about environmental DGRs.

It is further submitted that assisting governments in formulating policy and advocacy for policy is a legitimate and important aspect of the work of charities and DGRs. Advancing public debate is recognised in the *Charities Act* (12(1)(l)) and the ACNC provide useful guidelines about advocacy activities that recognise the importance of policy work undertaken by charities and DGR entities to achieve their principal purpose. (Refer: http://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/What_char_purp/ACNC/Reg/Advocacy.aspx)

Australian Land Conservation Alliance
3 August 2017