



Climate Council of Australia

Submission to: Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

Addressed to:

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4 August 2017

Submission in relation to Tax Deductible Gift Recipient Reform Opportunities Discussion Paper - 15 June 2017

ABOUT THE CLIMATE COUNCIL

The Climate Council of Australia is an independent non-for-profit organisation that provides and communicates authoritative, expert information and advice to the Australian public on climate change and is funded by donations from the public.

The Climate Council is known for our excellent expert spokespeople, clear communications and authoritative research on the science of climate change, the economics of addressing climate change, technological innovation, and international action. We are well respected in the media, among colleagues in science organisations, NGOs, health, finance, farming, emergency services, government and many other areas.

Climate Council reports build on the current scientific literature by providing an up-to-date state of the science. We ensure that not only are these reports the most up-to-date and comprehensive available, but they are also accessible for the Australian public. We also create other information and educational resources, like info-graphics, fact sheets, videos and summaries of the reports. Overall, our reports synthesise research (i.e. bring the body of knowledge up-to-date and coherent) to help the Australian public understand climate change.

The research not only adds value by helping the Australian public better understand climate change, it is also a very useful resource for academics, journalists, business leaders, emergency services, resource managers, health services, government officials and others. For instance, a number of University lecturers and school teachers use our reports in their courses. Similarly health organisations and emergency services have used our reports to assist in their planning. Our reports are a key resource in Australia to find the most up to date and relevant information on climate change.

Research and reports are complemented and enhanced by the Council's media, social media, public forums and briefings for numerous stakeholders including in health, local government, business, emergency services and government sectors. In tackling climate change it is crucial that a) the community at large is well informed with accurate information; b) the community is prepared, including by a range of public service organisations having a clear view of risk. In the last three years the Climate Council has produced over 80 publications that have been consistently of service to the Australian public and many groups that service and support the Australian public.

Put together, the work of the Climate Council is to advocate for strong action to tackle climate change, based on the best scientific information, at a local, state and Federal government level, as well as in businesses and other groups. Climate change is driven primarily by the burning of fossil fuels (coal, oil and gas) for electricity, transport, industry and other human activities (IPCC 2013). Environmental remediation activities do nothing to reduce growing fossil

fuel emissions. Environmental remediation is usually used as a strategy to enhance a particular place or preserve a particular landscape or species. Climate change affects the Australian environment and people as a whole in a range of negative ways, for instance, increasing heatwaves and extreme hot days (CSIRO and BoM 2015), increasing bushfire weather in southeastern Australia (Clarke et al. 2013; Climate Council 2013) or sea level rise and coastal flooding (Climate Council 2014). Tackling climate change requires system level change and consequently national and state government level action to phase out fossil fuels and replace them with other energy sources is vital. This approach is supported by major scientific institutions world-wide, as well as the vast majority of world governments in the Paris Climate Agreement. Big business around the world is also moving away from fossil fuels.

To find out more about the Climate Council's work, visit www.climatecouncil.org.au

CONSULTATION QUESTIONS RESPONSES

The Climate Council of Australia (CCA) thanks Treasury for the opportunity to provide feedback on the Discussion Paper “Tax Deductible Gift Recipient Reform Opportunities Discussion Paper 15 June 2017”

General overview

The Climate Council has closely reviewed the Tax Deductible Gift Recipient Reform Opportunities Discussion Paper to which this submission responds. This has been read in light of submissions to The House of Representatives Standing Committee on the Environment’s Inquiry on the Register of Environmental Organisations, as well as the Report and Dissenting report of that Committee.

Minimising regulatory burden for charities.

DGR charities already must comply with a range of reporting requirements via the ACNC, different state based fundraising licence regulators, regulators of DGR (in our case the Register of Environmental Organisations) as well as other Commonwealth laws.

Both the department and the ACNC said there were no significant problems with the current management systems for charities and DGR listed entities. The ACNC said that it has the appropriate enforcement powers to regulate charities.

Environment charities should be treated like other charities, and not singled out.

Environmental charities are no different to other charity sectors in terms of :

- Being focused on achieving their purpose and
- Their use of advocacy to effectively meet their charitable purpose

There is no reason to discriminate against environmental organisations in terms of their use of advocacy to achieve their charitable purpose.

Advocacy is vital to our democracy.

For a thriving democracy, advocacy by charitable organisations is critical. Charitable organisations regularly represent community interests on a range of issues for the public’s benefit. The Charities Act 2013 (Cth) recognises that for environmental organisations raising public awareness through advocacy is in itself a charitable purpose.

Environmental not-for-profits should be able to use advocacy to pursue their principle approved purposes and act on behalf of the communities they serve and the causes that their donors support.

Forcing all environmental charities to conduct environmental remediation is draconian and highly burdensome.

The Climate Council, like other charities focused on education, research and communications, does not work in environmental remediation. We work on an environmental issue that can only be effectively tackled through policy change at national and state level, and cannot be addressed through discrete weeding or tree planting projects. It would be highly burdensome for the government to direct our organisation to change our organisational model and would ultimately make us far less effective at tackling climate change.

1. What are stakeholders' views on a requirement for a DGR (other than government entity DGR) to be a registered charity in order for it to be eligible for DGR status. What issues could arise?

The Climate Council is a registered charity so this proposed change would not affect the Climate Council. We believe that those organisations that are DGRs but, for some reason, are not charities are the appropriate groups to consult on this point. The discussion paper did not explore the reasons that this organisations may not be a registered charity, and we are not privy to these reasons.

3. Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?

The Climate Council is not a private ancillary fund and has no privacy concerns regarding the requirements of the ACNC to publish information of its public register.

4. Should the ACNC require additional information from all charities about their advocacy activities?

1. Advocacy is an important activity for charities.

Advocacy by charitable organisations is critical for a thriving democracy. Charitable organisations regularly represent community interests on a range of issues for the public benefit. As the Law Council of Australia stated in its submission to The House of Representatives Standing Committee on the Environment inquiry into the Register of Environmental Organisations:

“The High Court recognised that in a representative democracy, activities that ‘agitate’ for legislative or policy change serve a public benefit. Where those activities seek to

further a charitable purpose, the advocacy activities are a legitimate extension of the activities of a charitable organisation (Law Council of Australia 2015 p.6).”

The Climate Council advocates for increased action by government, as well as businesses and other actors, to tackle climate change and prepare for its impacts. We advocate for credible climate change policies based on the most up-to-date and accurate science from institutions such as BoM, CSIRO, IPCC and NOAA. Climate change is a problem that affects the Australian environment and people as a whole in a range of negative ways, for instance, increasing heatwaves and extreme hot days, increasing bushfire weather in southeastern Australia or sea level rise and coastal flooding. Tackling climate change requires system level change at the Federal and State government level and consequently requires advocacy on appropriate government policies. Charities, like the Climate Council, represent the interests of the community for a healthy environment in the democratic debate.

Activities include: education, research, media and online communications to the public, public fora, briefings for stakeholders and decision makers. By consistently providing accurate information to the public, through our scientists and experts commentators, we have consistently supported a more informed public debate. Health professionals, emergency service organisations, educational institutions, businesses and governments around Australia use our resources to inform and develop policy responses.

For instance, the Climate Council has highlighted that Government climate change policy should include:

- Setting science based emission reduction targets.
- Meeting Australia’s Paris emissions reduction commitment by working to transition from fossil fuels to more renewable energy. Again the scale of action should be based on recent science, which informs us that phasing out fossil fuels rapidly will be vital to keeping global temperature rise below two degrees celsius.
- Use energy efficiency strategies, policies and technologies to reduce energy consumption.
- Plans to prepare for climate change impacts that cannot be prevented, for instance Australia is already experiencing worsening heatwaves. It is critical that health services and emergency services have plans in place to protect the community.

To limit advocacy work by Australian charities would cut against the core objective of DGR status which is to provide public benefit.

2. Advocacy is crucial for environmental organisations to meet their purpose.

The Discussion Paper notes that to be eligible under Subsection 30-265(1) of the Income Tax Assessment Act 1997 for DGR status, environmental organisations must have a principle purpose of:

- (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.

Advocacy activities are integral to both of these purposes. For instance, tackling climate change is crucial to the long term protection of the Great Barrier Reef (GBR). It is clear that as global temperatures rise, so too are ocean temperatures. In 2016 and 2017 the GBR experienced mass bleaching events as a consequence of extreme ocean temperatures driven by climate change (Climate Council 2017). Information, education and research from DGR organisations on these mass bleaching events have been crucial to increasing public awareness, as well as providing impetus for policy makers to both enhance protections of the GBR and policies to tackle climate change. An example of this work has been the Climate Council producing a number of scientific reports on climate change and the GBR, as well as generating a significant amount of media coverage on the issue. Given that tourism on the GBR is worth \$6 billion to the Australian economy and provides employment for 70,000 people, this work has clearly been of public benefit.

Advocacy should be viewed as integral to environmental charities effectively meeting their purpose. There is no reason to discriminate against environmental organisations on this point. Advocacy is just as relevant to an environmental organisation's purpose as any other charity sector.

3. The regulatory system as it stands is sufficient.

The Climate Council cautions against increasing the regulatory burden on Australian charities. Charities already have a range of reporting requirements that take up significant resources - which are often scarce. Already we report annually to the ACNC, REO and state based fundraising licence regulators. Many organisations are small and would suffer particularly from an increased regulatory burden. Australians that donate to charities expect those resources to be used efficiently to effect the mission of that charity. Increasing regulatory requirements on charities is likely to be out of step with community expectations.

It is clear that advocacy work by charities provide a valuable public benefit. The Charities Act 2013 (Cth) section 12(1)(l) also makes it clear that advocacy activities which promote or oppose change in law, policy or practice that furthers or aids a charity's purpose is acceptable and are well within the scope of activities of many organisations (not just environmental) who have DGR. This is also referred to in the ACNC Guidance Note "Charities, elections and advocacy" released in April 2016 (ACNC Guidance Note).

The discussion paper did not raise any problematic issues with charities conducting advocacy activities so it is unclear why the action proposed is to ask charities to report on their advocacy activities. Instead the paper noted that some charities lack clarity on the types of activities that are appropriate. The proposed action does not solve this problem and thus there is no

evidence that the greater regulatory obligations are necessary or useful, particularly in light of the Federal Government's commitment to reduce red tape. The Climate Council understands that the ACNC has identified 'political activity' as one of the five key areas it will work on in the next two years to further develop guidelines regarding behaviour which may put an organisations charity status at risk. This is sufficient to address a lack of clarity that some organisations have raised.

The Climate Council understands that the ACNC already has a process in place to allow complaint to be lodged on the activities of individual charities.

Recommendations:

1. The Climate Council is opposed to the ACNC collecting additional information from charities on advocacy activities as it is unnecessary and the additional reporting requirements this would impose an undue additional burden on charities.
2. Advocacy should continue to be viewed as integral to charities effectively meeting their charitable purpose. There is no reason to discriminate against environmental organisations on this point. Advocacy is just as relevant to an environmental organisation's purpose as any other charity sector.

5. Is the Annual Information Statement the appropriate vehicle for collecting this information?

Recommendation:

Following from the answer in question 4, collecting additional information on advocacy activities imposes an unnecessary regulatory burden and provides no benefit to the community or administration of charities.

6. What is the best way to collect the information without imposing significant additional reporting burden?

What has been suggested is a substantive regulatory burden of no benefit to the community. There is no way to impose it without requiring significant new resourcing from charities to ensure they are compliant.

7. What are stakeholders' views on the proposal to transfer the administration of the four DGR Registers to the ATO? Are there any specific issues that need consideration?

Recommendations:

1. The four DGR Registers should be administered together.

This is appropriate and could have the potential to streamline and improve DGR processes. If these registers are merged they should be then administered by the ACNC.

2. The ACNC is purpose built to effectively regulate charities and should continue to do so.

All the Climate Council's dealings with the ACNC have demonstrated that it is an effective, independent body for regulating charities. We have appreciated the ACNC having an expert understanding of the sector. It is important for Australian democracy that charities are regulated by an independent body which is at arms length from government. This can protect and empower the sector to hold government to account and provide frank and fearless advice to government. This is of great public benefit to Australia's public discourse. However, the ACNC can still appropriately regulate those charities that do not comply with regulations. The Climate Council therefore recommends that the ACNC continue to administer charities, rather than the ATO.

8. What are stakeholders' views on the proposal to remove the public fund requirements for charities and allow organisations to be endorsed in multiple DGR categories? Are regulatory compliance savings likely to arise for charities who are also DGRs?

Recommendation: Further investigation required.

The operation of a public fund does create an additional reporting, accounting and governance burden on our organisation as a registered DGR and we assume for other DGRs. However, the impacts of removing the public fund requirement needs further investigation before a recommendation is made so that potential complexities of doing so can be fully understood.

9. What are stakeholders' views on the introduction of a formal rolling review program and the proposals to require DGRs to make annual certifications? Are there other approaches that could be considered?

Reviews and audits place significant regulatory burdens on charities. Many charities are small and have scarce resources and struggle under the existing regulatory burden. In addition, Australians that give to charities have a strong expectation that their donation will be used in the implementation of the organisations mission, rather than in administration and compliance.

The discussion paper notes that “the majority of registered charities are small, and do meet their obligations”, suggesting that there is not a systemic transparency or accountability issue in the sector. Rather than a rolling review, it would be more appropriate and cost effective for the regulatory bodies and charities to perform reviews and audits where clear risks have arisen. The ACNC and the ATO currently have the power to perform audits and reviews where they believe they are necessary.

Most charities operate in the public domain and, particularly on contentious issues, will be scrutinised by the public, their members/supporters and by media. The ACNC Charity Compliance Report 2015 – 2016 states:

“Over the last two years, we received 1,872 concerns about charities. This was a significant increase over the previous two years when we received 1,307 concerns. The additional concerns resulted in the ACNC opening 149% more investigations, and resulted in 28 compliance revocations.”

This is strong evidence that both the public is reporting risks of non-compliance and the ACNC is investigating them.

The Discussion Paper notes proposes that all DGR charities should be registered with the ACNC. If adopted, all DGR charities will then be subject to ACNC review where a risk is identified. This is sufficient to manage non-compliance.

Recommendation:

A rolling review would impose an unnecessary regulatory burden on charities. The current powers of the ACNC and ATO are sufficient and appropriate to ensure DGR organisations are acting in accordance with their purpose and complying with regulations. The current system should continue.

10. What are stakeholders' views on who should be reviewed in the first instance? What should be considered when determining this?

The Discussion Paper did not identify any systemic issues with DGR organisations failing to comply with their purpose. In contrast, the current powers and approach of the ACNC and ATO is sufficient to manage instances where risks arise.

Recommendation:

The current powers of the ACNC and ATO are sufficient and appropriate to ensure DGR organisations are acting in accordance with their purpose and complying with regulations. The current system should continue.

11. What are stakeholders' views on the idea of having a general sunset rule of five years for specifically listed DGRs? What about existing listings, should they be reviewed at least once every five years to ensure they continue to meet the 'exceptional circumstances' policy requirement for listing?

If these organisations are charities registered with and reporting to the ACNC then this requirement should not be necessary. A five year re-application process would create significant uncertainty for charities, their donors, their supporters and the community that they serve. Given there is no evidence of significant actions by charities outside of their DGR status this appears unnecessary and to the detriment of the public.

Recommendation:

The sunset rule is unnecessary and burdensome and should not proceed.

12. Stakeholders' views are sought on requiring environmental organisations to commit no less than 25 per cent of their annual expenditure from their public fund to environmental remediation, and whether a higher limit, such as 50 per cent, should be considered? In particular, what are the potential benefits and the potential regulatory burden? How could the proposal be implemented to minimise the regulatory burden?

There would be no benefit to the environment from this suggested requirement. It would be a disservice to the environment, mandating huge expense of resources on activities that organisations have no expertise or experience in.

1. The requirement would damage progress on systemic environmental issues.

Many environmental issues, like climate change, primarily require policy change to effect the protection of the environment. Climate change is driven primarily by the burning of fossil fuels (coal, oil and gas) for electricity, transport and industry and other human activities (IPCC 2013). Thus tackling climate change can not be enacted by environmental remediation activities which can do nothing to reduce growing fossil fuel emissions. Environmental remediation is usually used as a strategy to enhance a particular place or preserve a particular landscape or species. Climate change is a problem that affects the Australian environment and people as a whole in a range of negative ways, for instance, increasing heatwaves and extreme hot days (CSIRO and BoM 2015), increasing bushfire weather in southeastern Australia (Clarke et al. 2013; Climate Council 2013) or sea level rise and coastal flooding (Climate Council 2014). Tackling climate change requires system level change and consequently national and state government level action to phase out fossil fuels and replace them with other energy sources is vital. This approach is supported by major scientific institutions world-wide, as well as the vast majority of world governments in the Paris Climate Agreement.

For the Climate Council, this rule would substantially damage our capacity to meet our purpose, to which tens of thousands of Australians give. We work to protect the Australian environment and Australians from worsening climate impacts. This requires systemic, policy level change to reduce fossil fuels emissions. There is no environmental remediation work that would go substantially towards protecting the Australian environment from the risks of climate change. As we have reported on extensively, activities such as carbon farming and tree planting are broadly useful in tackling climate change, but they don't address the root cause of the problem (e.g. Climate Council 2016). The Climate Council's work has focused on the root cause, fossil fuel pollution. There would be no advantage to the Australian environment of the Climate Council redirecting its activities.

2. The proposal is highly resource intensive.

There are hundreds of environmental charities in Australia. The activities of these organisations are diverse, including empirical research, synthesis research, monitoring of species, public education and communications, policy development and environmental remediation. This diversity reflects the complexity and broad nature of the environmental issues Australia faces. Addressing localised salinity or species loss requires a very different skill set, for instance, than addressing policy reform in pollution control, or community education around increasing extreme heat risk. This mirrors the diversity of other organisations in other charitable sectors, like health. There is no expectation by government that all health charities should provide treatment to people suffering from an illness, and nor should their be, having organisations that

specialise only in medical research that may indeed find a new cure to that same illness. It would be a disservice to the public to redirect those resources to primary health care.

Similarly, in the environmental space, the diversity and specialisation of organisations is crucial to achieving outcomes for the public benefit. For the government to redirect spending in environmental organisations to remediation activities would have the effect of:

- a) requiring a fundamental shift in activities for many organisations who have no expertise or experience in environmental remediation and that have no resources or expertise to implement;
- b) a significant new outlay of resources for an unclear environment benefit given the charities changing their activities have no experience in doing these activities;
- c) it may have the effect of reducing donations for organisations focused on research or communications given that they have no expertise in remediation; and
- d) most important, take away from that organisations capacity to meet its purpose.

The Climate Council has no experience or expertise in environmental remediation work of any sort. We would be required to make significant structural changes to our organisation and develop a very large new program area of which we have no expertise to design. It would require us to forgo a large amount of our current work in research, communications and education which is of substantial benefit to the community. We have no evidence that donors would continue to fund us at the same level knowing that 25% or more of their donation would need to go into new and substantially different activities. Further, as mentioned above, this would redirect our activities to have substantially less benefit to the Australian environment.

Further the implementation of such a requirement would pose a very large and unreasonable regulatory burden on charities in proving the amount of funding spent on this work.

3. A dangerous precedent.

It sets a dangerous precedent for the Government of the day to arbitrarily direct the activities of charities based on their personal preferences for the type of work on an issue area. This can result in inherently and substantially limiting an organisation to complete the activities it was created to achieve. Charities themselves are experts in their issue areas and understand intimately what activities best serve their cause. In a democracy citizens expect that charities will pursue their charitable purpose in the most effective and efficient way possible.

It is unfortunate that environment organisations have been singled out for this draconian proposal. Charities have called for sometime for consistency in their treatment. If this requirement was to proceed it could set a precedent for the government to actively target and limit the legitimate activities of other charities, particularly where that group of charities had a position contrary to the government's policy. An effective democracy requires a robust political discourse, and it would be a grave disservice to our democracy for charities to be limited in

their freedom of speech . As the notes to Section 11 of the Charities Act 2013 states: “Activities are not contrary to public policy merely because they are contrary to government policy.”

Recommendation:

The Government should reject this proposition as there are no benefits of it going ahead and it would be an enormous and undue burden on environmental charities.

13.Stakeholders’ views are sought on the need for sanctions. Would the proposal to require DGRs to be ACNC registered charities and therefore subject to ACNC’s governance standards and supervision ensure that environmental DGRs are operating lawfully?

Recommendations:

1. The existing legal framework is sufficient to address unlawful activities.

The Climate Council agrees that the ACNC’s governance standards and supervision, coupled with general criminal and civil law, is sufficient to give the community confidence in the lawful behaviour of charities.

The Charities Act 2013 (Cth) provides that the following purposes would disqualify an organisation from charitable purpose:

- (a) the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or
- (b) the purpose of promoting or opposing a political party or a candidate for political office.

The Act is extremely clear and there does not seem to be any reason to impose an additional system.

2. Charities should be treated similarly regardless of the issue they work on.

The Climate Council does not support the singling out of one group of charities for different treatment to other charities. The law and regulation for administering charities would be more streamlined and fair if all charities, regardless of it’s focus or issue area, were treated consistently.

References

ACNC (2016) ACNC Guidance Note 'Charities, elections and advocacy'

Clarke H, Lucas C and Smith P (2013) Changes in Australian fire weather between 1973 and 2010. *International Journal of Climatology*, 33: 931–944.

Climate Council (2013) Climate Change and the Australian Bushfire Threat. Accessed at <https://www.climatecouncil.org.au/be-prepared>.

Climate Council (2014) Counting the Costs: Climate Change and Coastal Flooding. Accessed at <https://www.climatecouncil.org.au/coastalflooding>.

Climate Council (2016) Land Carbon: No Substitute for Action On Fossil Fuels. Accessed at <https://www.climatecouncil.org.au/land-carbon-report>.

Climate Council (2017) Climate Change: A Deadly Threat To Coral Reefs. Accessed at <https://www.climatecouncil.org.au/climate-change-threat-to-reef>.

CSIRO and BoM (2015) Climate Change in Australia – Technical Report, CSIRO and Bureau of Meteorology, Melbourne, 216pp.

IPCC (2013) Summary for Policymakers. In: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and PMP. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

Law Council of Australia (2015) Submission to The House of Representatives Standing Committee on the Environment inquiry into the Register of Environmental Organisations.