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Individuals and Indirect Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

## **Tax Deductible Gift Recipient Reform Opportunities – Submission**

Dear Sir/Madam,

I wish to submit the following information regarding potential reforms to the Deductible Gift Recipient (DGR) tax arrangements for your consideration. Although the majority of suggestions refer to Environmental Non-Government Organisations (ENGOS), some of the recommendations are relevant to all entities that enjoy the support of the Australian taxpayer through their DGR status.

According to the 2015 Australian Charities Report, ENGOS claiming “charity” status numbered 1351 organisations. Of these, approximately 151 (11.2%) had annual earnings of between \$1-10 million and 27 organisations earning between \$10-100 million per annum.

Whilst some ENGOS do conduct practical environmental work, others have become more like businesses whose sole aims appears to be advocacy, political lobbying and ensuring sufficient funds are raised to cover significant staff and other running costs.

Unfortunately, despite most organisations publishing some type of annual report detailing activities and finances, the reporting requirements for many of these organisations under the Charities Act gives the public little insight into their activities.

If the Australian taxpayer is to continue to provide significant support to ENGOS through their DGR status, the reporting requirements for ENGOS and other DGR recipients should be strengthened to ensure the activities and financial accountability comply with relevant legislation and meet the expectation of the taxpayer.

### **Financial Accountability**

ENGOS income come from a number of different sources including but not limited to;

- Government Grants
- Bequests
- Investment income
- Rental income and
- Donations

Whilst most ENGOS provide an annual income and expenditure summary via simplified financial statements and Annual Information Statements (AIS) to the ACNC, the statements do not provide sufficient detail regarding sources of income or expenditure.

For example, one ENGO, a registered charity with DGR status, received \$2.4M in federal grants over a 2 year period from 2013. Their ACNC financial statements showed the grants as income, but there was not one entry in the financial statements to show how this money was spent on grant purposes. Instead, annual environmental campaign expenditure increased from \$78,296 in the 12/13 FY to

\$789,189 the following year and \$1,161,534 in the 2014/15 financial year. When questions were raised with the ACNC about the lack of transparency, apparently the reports were compliant with requirements so nothing further could be ascertained. After suggesting to the Government Department who issued the grants that it appeared from the ACNC financials that the organisation was not spending the money on the grant purpose, the 2015/16 financials completely re-wrote the 2015 comparatives and wiped all trace of the \$1,161,534 in campaign expenses and allocated that money to other existing and new expense items. This was troubling as the previous statements had been independently audited and accepted by the ACNC.

A registered charity has a requirement to notify the Charities commissioner of mistakes or financial reporting within 30 days. When asked if such a report had been received in this case, the ACNC advised that due to privacy provisions, they could not advise if a report had been received and additionally, even if corrected financial statements were supplied, they was no requirement to correct the financials already on the ACNC website.

An attempt to obtain financial reporting required to acquit grant funds from the grantor met with a veil of secrecy and a \$3500 FOI charge request.

I can provide further details of this episode if required but it highlights the lack of transparency surrounding ACNC financial reporting which needs to be addressed.

### **Transparency of Donations**

There needs to be better transparency surrounding donations to DGR recipients. In some well documented cases, it has been found that some ENGOs have been receiving international funding to conduct advocacy and campaigning in Australia that supports the objectives of the international benefactor which may, or may not be in the broader interest of the Australian public. For example, [The Sunrise Project](#) enjoys charity and DGR status and is a major opponent to coal mining in the Galilee Basin in Queensland. In 2016, WikiLeaks emails revealed that Sunrise was being funded by the US based Sandler Foundation. In the WikiLeaks email, Sunrise head John Hepburn stated;

*"I have no concerns whatsoever about our compliance with our charitable obligations but I do have concerns about the potential PR impact of disclosure of both our funding and grantees – should that eventuate".*

Accordingly, consideration should be given to applying a disclosure threshold to DGR recipient organisations in the interests of public transparency.

### **DGR Status and Marketing Claims**

Increasingly, some ENGOs are running public scare campaigns to encourage members of the public to donate to the relevant organisation. It would seem that almost any "claim" can be made by these organisations without fear of any form of accountability.

Although not for profit organisations are considered businesses under the Competition and Consumer Act 2010, it is unclear whether those donating to such organisations have rights as consumers.

Businesses in Australia making environmental claims have to comply with Australian Consumer Law. The ACCC's document [Green Marketing and the Australian Consumer Law](#) clearly states that environmental claims must;

- Be accurate
- Be able to be substantiated
- Be specific, not unqualified and/or general statements
- Be only be made for a real benefit
- Must not be overstated

The document also states that

*Pictures can also be representations. Images such as those of forests, the earth or certain endangered animals can also be representations. The use of environmental images may be capable of making a sweeping claim of environmental benefit that may be misleading. Particularly, some images may suggest environmental benefits or advantages to consumers and must be used with care.*

Exaggeration and unbridled hyperbole are the norm for some ENGOs such as Greenpeace and The Wilderness Society. Interestingly, in Canada where Greenpeace is currently involved in litigation with the Resolute Timber Company, Greenpeace has had to admit to the court that its anti-logging based claims against Resolute were untruthful. For example, Greenpeace in trying to defend their damaging public comments against Resolute stated;

*"No reasonable reader would ever interpret a statement such as "forest destroyer" to mean literally the permanent removal of all trees from a forest landscape."; and*

*"Allegations...are without question non-verifiable statements of subjective opinion and at most non-actionable, rhetorical hyperbole."*

This is from Greenpeace's own court filings in its defence. Similar over the top comments are made in Australia regarding native forest harvesting by groups like The Wilderness Society.

Environmentalism is big business in Australia. Using the Wilderness Society again as an example, this group earned \$13,005,721 in 2013/14FY of which approx. \$12.5M came from donations generated through "campaigns" where the group "informs" the public of a "threat" to the environment and then seeks donations to help them fight off the threat. The business model of ENGOs like this relies upon making exaggerated claims to create a perpetual conflict in communities. Without such conflict, the donations dry up and the business model collapses.

I believe that consideration should be given to making DGR recipients making environmental claims subject to the same consumer law as other businesses making such claims.

### **DGR/Charity Status and Purpose**

A large number of ENGOs claim "education" as a purpose of their organisation. This "education" is often not based on fact but ideology and what is really occurring is that the organisation is basically trying to sway the public towards the organisations beliefs. Whilst there is nothing wrong with freedom of expression, to dress it up as "education" to assist in maintaining DGR/Charity status is wrong.

Justice Heydon in AID/Watch Incorporated v's Commissioner of Taxation (2010) stated;

*However, the function of the appellant is not educative, but polemical. The appellant has a particular point of view, or a series of particular points of view. Those points of view are sometimes worked out, for example, in what Dr Goodman called “major, in-depth, on the ground, researched reports”. But the points of view are pressed as part of a “campaign”; the appellant engaged in the “targeting” of various government policies and seeks to “argue for” others. The appellant has attacked various government policies as involving “perversity” or “hypocrisy”. The appellant’s publications take a polemical stand in relation to climate change issues: its stand may be virtuous, it may even be right, but it is not educational. As noted earlier, the Tribunal found that the “whole object of [the appellant] is to influence public opinion by making the results of its research available, with the further goals of influencing public opinion and ultimately government agencies and government itself” (emphasis added). Influencing public opinion is not by itself educational, even if information has been collected for the purpose of attempting to achieve that influence. To adopt the words of Hammond J in another context, the conduct of the appellant represents “an attempt to persuade people into a particular frame of mind. There is no instruction directed; nor is there to be any systematic accumulation of knowledge.*

Claims of educational “purpose” should be examined more closely. Clearly many ENGOs are merely attempting to “persuade people into a particular frame of mind” and as Justice Heydon rightly states, the comments may be virtuous, they may even be right but they are not educational.

I would request that consideration be given to creating a higher bar for claims of “educational” purpose as a reason to be granted or retain DGR/Charity status.

Yours Sincerely

Andrew Denman

