

Name of submitter: Ecological Society of Australia (Prof Don Driscoll, President)

The Ecological Society of Australia Ltd (ESA, www.ecolsoc.org.au) is the peak group of ecologists in Australia, with over 1200 members from all states and territories. Our members work in universities and other research institutions, government departments, NGOs, private industry and consultancies. We are a national not-for-profit organisation formed in 1959.

The ESA is registered with the ACNC and has DGR status.

Response to:

Tax Deductible Gift Recipient Reform Opportunities Discussion Paper, 15 June 2017

Summary

The Ecological Society of Australia (ESA) broadly supports proposals to simplify the process of achieving DGR status and to reduce administrative burden on charitable organisations.

However, of great concern to the ESA is the proposal to require environmental organisations to commit a proportion of annual expenditure on remediation activities. The ESA does not support this proposal. This proposal would require many environmental organisations – including the ESA – to commit resources to activities that are not part of their primary purpose or within their scope. It places unnecessary focus on one particular activity that can contribute to environmental enhancement, and ignores the fact that a broad suite of activities is required to achieve environmental understanding, protection and enhancement. The proposal would restrict the ability and freedom of organisations to undertake their work in an effective manner. It will result in added and unnecessary burdens on environmental organisations, and wastage of resources.

We respond to specific consultation questions on these issues below.

In summary, the ESA recommends that Treasury rejects the proposal to adopt mandatory funding diversions or limits, and associated proposals, that would affect environmental organisations in a discriminatory way. Reasons for this include:

- Environmental activity, including research, education, advocacy and on-ground works are all essential for the Australian environment and society. Proactive attention to issues is far better and more economical than reactive responses. The Taxation rules for environmental organisations were established recognising this principle;
- The proposal to require 25% or greater on-ground works is contrary to the overwhelming views of the submissions (685) to the Inquiry into Registered Environmental Organisations

(2015-16) and would be of significant detriment to many community environmental organisations, and present perverse outcomes;

- Australian charity law was established to recognise and support a wide range of services for the public benefit, and the proscriptions to the types and scope of activities are sufficiently restrained as they stand.

We recommend that Treasury and Australian Government:

- Continue to support the charity sector, including deductible gift recipient status for environmental organisations;
- Continue to recognise and support the scope of environmental organisations' activities and interests as being proactive and beneficial, including but not limited to research, education, on-ground works (where the organisation's objectives include such) and advocacy;
- Utilise the *Australian Charities and Not-for-profits Commission (ACNC)* to regulate and support all charities, including environmental organisations; and
- Make limited changes to the current administrative rules and procedures to improve efficiency.

Response to Consultation Questions

Question 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?

We support this recommendation, but request consideration of the following matters of concern. The *Charities Act 2013* defines charities to include 'the purpose of advancing the natural environment'. This could be open to mischievous interpretation, and we strongly urge that the meaning include the broader understanding of these words. Precedents for this broader understanding include:

1. An environmental organisation's principal purpose must be: '(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.'¹
2. Promotion of ecologically sustainable development principles as defined in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC).

We also assert that the natural environment includes all Australian natural and semi-natural environments, including urban and non-urban. Our members work across all these environments.

¹ *Income Tax Assessment Act*, Section 30-265(1)

An issue which could arise could be a frivolous or vexatious challenge to the meaning of an 'environmental charity' in the *Charities Act 2013* so that 'advancing the natural environment' could be restricted to a narrow definition of 'advancing'.

Registration through the ACNC as a charity establishes an independent determination process, and sound arrangements regarding administration, oversight, structure, reporting and governance.

Question 2. Are there likely to be DGRs (other than government entity DGRs) that could not meet this requirement and, if so, why?

We have no comment on this point.

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

We have no comment on this point.

Question 4: Should the ACNC require additional information from all registered charities about their advocacy activities?

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

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

We have combined our responses to these three questions because we object to the proposal in Question 4, and subsequent questions are dependent on responses to Q4.

The ESA does not support the collection of additional information specific to advocacy activities as this places an additional and unnecessary administrative burden on registered charities. Annual statements and reporting requirements are sufficient to provide information on activities of organisations. The information is public and accountable, and there are other checks and balances in the *ACNC Act* and the *Charities Act* and associated procedures.

The ACNC was established in 2012 to address some issues with the earlier procedures, and has improved and streamlined reporting, registration procedures and requirements, transparency, and compliance. These continue to serve the Australian public well. Registered charities are accountable to the public and their members, and anyone who feels that a registered organisation is exceeding its mandated purpose is entitled to register objections to the ACNC, their elected representatives and others.

The specific focus of this proposal, to limit and constrain advocacy activities, undermines the principles of Australian government and democracy, free speech, and the stated broad scope of charities' purposes as defined in the *ACNC Act*, *Charities Act*, Australian Taxation legislation, and over a century of precedent. It is our strong view that these checks and balances are sufficient to ensure that charities, specifically environmental charities, do not exceed their mandated purposes

Within the context of registered environmental organisations, the ESA recognises that a diversity of activities is required to achieve positive environmental outcomes including research, monitoring, education, community engagement, on-ground works, and advocacy. Some organisations may undertake a range of these activities, and some may specialise in only one or a few of these. Thus, while advocacy is not a primary purpose of the ESA, we do recognise that advocacy is a necessary and valid activity of other registered environmental organisations, and we do not support any changes that would seek to inhibit or restrict this as an activity.

We oppose the collecting of additional information from all registered charities about their advocacy activities. The existing reporting requirements are adequate and sufficient.

Question 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?

When applying for its own DGR status, the ESA found dealing simultaneously with the Department of the Environment and Energy, ACNC, and ATO to be a confusing and cumbersome process. Thus, we support the proposal to transfer administration of the registers to the ATO in order to reduce administrative burden on organisations applying for DGR status. We also support the role of the ACNC in this process, and amalgamation of all four DGR registers to fall under the ATO and ACNC, as they are independent and impartial.

The ACNC also provides a service to organisations to assist with their reporting, compliance and so on. We support this continued service.

Question 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?

The ESA does not find management of its public fund to be an administrative burden, and from our experience we believe the requirement to manage a separate public fund promotes accountability in managing funds received for charitable purposes.

Question 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?

We support the amalgamation of all four registers into one under the supervision of the ACNC. At present, environmental organisations such as the ESA have to report to both the Department of Environment and Energy, and through the DGR process, which is duplication, and extra work in that the reporting requirements are different for each.

We appreciate the need to ensure accountability of DGRs, however we do not support the introduction of an additional certification or reviews. The ACNC is charged with registration, reporting, governance, certifications and compliance, and we consider that the existing ACNC processes are sufficient and obviate the need to undertake rolling reviews.

Question 11: What are stakeholders' views on the idea of having a general sunset rule of no more than five years for specifically listed DGRs? What about existing listings, should they be reviewed at least once every, say, five years to ensure they continue to meet the 'exceptional circumstances' policy requirement for listing?

We believe it is appropriate to have a sunset rule for specifically listed DGRs to ensure they continue to meet the requirements of their listing.

Question 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?

The ESA ***strongly disagrees*** with the proposal to require environmental organisations to commit a specific portion of the expenditure to environmental remediation. ***This proposal should not be implemented*** because:

- It restricts the freedom of organisations to undertake their work in accordance with their organisation's objectives.
- A diversity of activities is required to achieve positive environmental outcomes and these include research, monitoring, education, community engagement, advocacy, in addition to on-ground works that can be described as 'remediation'. Indeed, this is why the principal purpose of environmental organisations as defined in the *Income Tax Assessment Act 1997* is broad and encompasses "...*(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.*"

Prescribing a certain level of expenditure on 'remediation' will actually require some environmental organisations to allocate expenditure towards activities that are not within their primary purpose. This is nonsensical and will result in wasted resources.

In the case of the ESA, our key objectives and activities are:

- I. promoting the scientific study of all organisms in relation to their environment;
- II. promoting the application of ecological principles to the development, utilisation and conservation of natural resources;
- III. advising governmental and other agencies in matters where the application of ecological principles may be relevant to their planning and decision making processes;
- IV. fostering, conservation and ecological management of native biota, their diversity, ecological function, and interaction with the environment;
- V. encouraging high professional and ethical standards among the Company's Members and other ecologists;
- VI. facilitating and undertaking scientific research in ecology;

- VII. facilitating the dissemination and exchange of ideas and information about ecology and the information among the Company's Members, ecologists, other professional disciplines and the general public; and
- VIII. educating the Company's Members, ecologists, other professional disciplines and the general public about the environment.

Our work contributes to better understanding of environmental issues, and helps to deliver the evidence base that forms the foundation for effective conservation work and remediation work. Requiring that we commit any expenditure to direct on-ground remediation work would draw our efforts away from our organisation's objectives and strengths in research and education.

- On-ground remediation activities require particular organisational structures to support their implementation, as well as relevant expertise. Not all environmental organisations have the right expertise or structure to implement effective or safe remediation activities. Thus, this proposal would introduce heavy and unnecessary operational burdens on environmental organisations, and likely result in ineffective remediation activities undertaken as 'box-ticking' exercises that do not actually achieve the stated intentions of enhanced environmental protection.
- It places an unnecessary focus on remediation, which is an activity required to *repair* environmental degradation. Focussing on remediation in this way ignores the value of *preventing* environmental degradation, which is a focus of many environmental organisations.

Question 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?

We believe the proposal to require DGRs to be ACNC registered charities provides sufficient governance and supervision to ensure they are operating lawfully.