

19th July 2017

Senior Adviser
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
Per email to: DGR@treasury.gov.au

Dear Sir

Re: Tax Deductible Gift Recipient Reform Opportunities Discussion Paper 15 June 2017

Gecko Environment Council Association Incorporated (Gecko) was founded in 1989 and is registered for tax deductibility status. As well as being registered with the Australian Charities and Not-for-profits Commission (ACNC), Gecko is also listed on the Register of Environmental Organisation (REO). Since our incorporation in 1989, our organisation has proudly carried out our Mission statement, which is:

“To actively promote, conserve and restore the natural environment and improve the sustainability of the built environment of the Gold Coast region in partnership with our Member Groups and the wider community”.

Gecko has previously offered two submission on this matter, a submission to the House of Representatives Standing Committee on the Environment’s inquiry on the Register of Environmental Organisations (REO inquiry) on 20th May 2015 and 10th July 2015.

We thank the Treasury for the opportunity to participate in the above discussion paper and offer our comments below.

It is noted that much of the discussion is relevant to a wide range of not for profit organisation with DGR status, but that once again environmental organisations are singled out to explain their activities and worthiness to receive or retain DGR status. This discussion paper purports to “seeks (sic) feedback on how to manage compliance burdens associated with the process of more effectively assessing and monitoring ongoing DGR status”, but it does more than this and includes discussion points about environmental advocacy e.g Paragraph 15, 29 and 78 and Consultation Questions 12 and 13., with the implication that environmental organisations are somehow rorting the system. We are of the opinion that these matters were fully canvassed in the previous inquiries and that the specific questions relating to these matters have already been dealt with. No logical reasons were ever given for limiting the “allowable” range of environmental DGR recipients to on-ground work and that it would appear that raising these matters again are a thinly veiled effort to shut down voices that some on the political spectrum, view as dissenting from theirs. The strength of a democracy, such exists in Australia, is surely based on the right for different opinions and views to be heard. We note in particular submission 662 from the Law Society which includes the following: “High Court of Australia’s decision in Commissioner of Taxation v Aid/Watch.8. 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.” Further (The Hon) David Harper AM QC (sub 59) Judge of the Supreme Court of Victoria 1992-2013 and Judge of the Court of Appeal of that Court 2009-2013 who referred to the above case and who eloquently stated, “ **While some politicians and business lobby groups might not always agree with the views of environment organisations on the Register, their advocacy is lawful, integral to public debate, and leads to practical environmental outcomes - such as protecting our most cherished natural places.**”

The Charities Act defines the charitable purpose of advocacy as:

(l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:

(i) in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or

(ii) in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs. 17

Further the definition of environmental work is defined in “*The explanatory memorandum to the Charities Bill 2013 (Cth) (the Explanatory Memorandum) defines the charitable purpose of ‘advancing the natural environment’ to include, without limitation:*

- preserving native flora and fauna;*
- rescuing and caring for native animals;*
- preserving or rehabilitating habitats;*
- promoting sustainable development and biodiversity; and*
- protecting, preserving, caring for, and educating the community about, the environment. 12”* as long as there is benefit to the public. That there is a variety of views of benefit to the public is apparent in our democracy and no attempt should be made to limit these views as long as the beneficial activities are lawful.

Consultation questions

- 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?*
- 2. Are there likely to be DGRs (other than government entity DGRs) that could not meet this requirement and, if so, why?*
- 3. Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?*

Gecko’s response:

1. While we confine our remarks to our perspective as an environmental organisation seeking respect, protection, remediation and understanding of our natural world, the foundation for a healthy planet, we must also express our views in terms of justice and fairness. Conferring the status of charity upon an organisation implies that entity approaches its work with the highest standards of honesty and compassion, relies upon facts, science-backed information and is free from political bias.

We agree that a DGR should have charitable purposes that meet the above standards and that the loss of tax borne by the ATO, authorising that status, should be balanced by a direct benefit to the

public. If all DGR are registered as charities there would certainly be less confusion about requirements and standards for such bodies. Some smaller charities may need assistance to have its record keeping and other governance processes come up to the required standards and Gecko would suggest that this help be made available if such changes are made.

2. There are undoubtedly DGR's that do not initially meet this requirement, but it is beyond the capacity of our organisation to identify such DGR's.

3. Gecko meets the requirements of both charitable and DGR status and has successfully complied with all reporting requirements over the years. If DGR's are receiving public money in the form of tax deduction they must expect to be accountable for their activities that relate to this status. Private ancillary funds that do not relate to the requirements of DGR status should be allowed to remain private.

Consultation Questions.

- 4 *Should ACNC require additional information from all registered charities about their advocacy activities?*
- 5 *Is the Annual Information Statement the appropriate vehicle for collecting this information?*
- 6 *What is the best way to collect the information without imposing significant additional report burden?.*

Gecko's Response.

4. Gecko does not believe that additional information about advocacy activities is required. The charity has the responsibility of complying with the ACNC's definition of advocacy and unless there is good reason to investigate a failure to comply, then additional information is not necessary. Additional information requirement will only add to the administrative burden and therefore cost of both the charity and the ACNC. It would appear that this question relates to the contents of Paragraph 15 and 29 and relates to environmental DGR's and again we question why these organisations are singled out for extra scrutiny. Other charities who, for example, advocate on behalf of asylum seekers, a controversial matter in Australian society currently, are not being singled out to explain the scope and intent of their advocacy.

5. The Annual Information Statement is fairly comprehensive and would appear to be the appropriate vehicle to collect information about the charity's activities.

6. As stated above Gecko considered that the Annual Information Statement is sufficient. If necessary the charity could provide a copy of the organisations' Annual Report for more detail.

Consultation Question.

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

Gecko response.

The current process of applying to one of the four specific registers appears to be both time consuming and unnecessarily cumbersome. However the proposal to move to the ATO is not explained entirely clearly. It appears that under the proposed reforms the ACNC would assess applications to the four registers and then pass the applicant to the ATO for assessment under tax law. While Gecko supports all charities being registered with the ACNC for uniformity of standards, we do not see that the ACNC would have the expertise to assess applications under the four

specific interest registers or is it intended that the criteria currently used by the specific interest registers is abolished?

Consultation 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?*

Gecko Response.

Gecko would support the removal of the public fund requirements for charities, particularly those endorsed across multiple DGR categories. It would also simplify the terms relating to responsible persons. The time and administrative effort saved in not having to maintain a public fund would be appreciated by charities especially small charities. As long as the charities are accountable for the public donations received through their audited accounts there does not appear to be any reason to maintain the public fund requirements.

Consultation Question.

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

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

Gecko Response.

9. This idea of a rolling review program appears to be an unnecessarily bureaucratic process with no evidence to support that it is necessary. It would be a considerable bureaucratic burden on either the ACNC or ATO as well as the organisation chosen for review. It is Gecko's opinion that if all charities, including DGR's are registered with the ACNC and providing their Annual Information Statement that should be sufficient. If necessary the Annual Information Statement could include a confirmation that the organisations meets the requirements of DGR status. There is no explanation in this discussion paper of what is considered a 'high risk' organisation or what criteria would be used for this review. It has the potential to be a political witch-hunt. If all charities are under the administration of the ATO then that body could decide if something was amiss and needed review without the complexity of a rolling review of organisations that are innocent of any fault. There is also no discussion in this paper about an appeals process should this provision be adopted. What rights of appeal would a charity or DGR have in the event of the rolling review finding in the negative for that organisation?

10. As stated above Gecko does not consider that a rolling review program is necessary and therefore there is no question of working out who is reviewed first or what the criteria would be.

Consultation Question.

11. *What are stakeholders' views on the idea of having a general sunset rule of no more than five years for specifically listed DGR's. 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.*

Gecko response.

There is insufficient information provided to be able to make an informed judgement about this question. However if the specifically listed DGR's are registered with the ACNC and accepted by the ATO, there does not appear to be any need for a sunset rule for this group of DGR's. The processes involved with registration and annual reporting should be sufficient to determine if the purpose of any of the DGR group members has changed. The existing listings if they are to be registered with ACNC would be reviewed at that time.

Consultation Question.

12. *Stakeholders' views are sought on requiring environmental organisations to commit no less than 25% of the annual expenditure from their public fund to environmental remediation and whether a higher limit, such as 50%, 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?*

Gecko Response.

Once again Gecko asks why environmental organisations are being singled out to commit their funds from the public fund in a particular way. Are other DGR's being asked to commit a percentage of their public funds in a particular way? An earlier recommendation has suggested the removal of the public fund and if this is to occur then Question 12 is irrelevant. Gecko would have no difficulty with compliance of a 25% rule, but we object strongly to the implication that unless trees are being planted environmental work is unworthy. We reiterate the comments we made to the Enquiry in July 2017 in regard to on-ground work :-

“It has been suggested that the only legitimate primary focus for an environmental organisation should be on ground works in Landcare, tree planting, beach clean-ups, litter collection and activities of this nature. While Gecko is involved in all of these activities, Gecko believes this is too restrictive and in some instances, such as groups located in urban areas, there may not be sufficient opportunity for such activities or the ability to source volunteers. An important part of the work of environmental NGO's is participation in opportunities for community consultation, compiling submissions that genuinely seek to improve legislation, policy and/or development applications and assisting the community to understand proposals and submit properly made submissions. Community consultation is a requirement in many legislative processes and is particularly valuable when environmental values may be threatened. If groups cannot participate fully and meaningfully in this process, it makes a mockery of the legislation. Given the sometimes fleeting involvement of some volunteers, an NGO must work to its strengths and may focus more effectively on research and education which have been upheld as meeting the “principle purpose test”.

Further we remind the reader that the definition of environment work put forward by “ *The explanatory memorandum to the Charities Bill 2013 (Cth) (the Explanatory Memorandum) defines the charitable purpose of ‘advancing the natural environment’ to include, without limitation:*

- *promoting sustainable development and biodiversity; and*
- *protecting, preserving, caring for, and educating the community about, the environment.12”.*

This definition has been accepted for many years and demonstrates an understanding of the breadth and depth of environmental work and we can see no reason for it to be changed. Our previous submission in July 2015 made the following points about the community benefits provided by many

environmental organisations which is apparently ignored by those who seek to limit the work due to their narrow interpretation of environmental work.

“As we have stated previously, the work of an environmental organization is of considerable community benefit that extends beyond on-ground works such as weeding, tree planting and providing education about the environment to the public. Gecko provides training of volunteers (including those registered with Centrelink) who come through our office, equipping them **at no cost** with a variety of skills including office management, Workplace Health and Safety requirements, computer literacy, effective use of social media, an understanding of the operation of local governments, State and federal government, environmental protection and Town Planning, to name but a few. Many of our volunteers move on to take up paid employment, having been prepared for a more formal work environment. Mature age volunteers who find difficulty in rejoining the workforce or who have been made redundant, gain a new sense of purpose as their talents are put to constructive use. As well, Gecko provides opportunities for tertiary students to experience hand-on experience relating to their field of study and engages with Work for the Dole participants.

As an extension of our ethos, Gecko works to develop a strong connection between individuals and the natural environment so that they embrace messages of sustainability and responsible treatment of the environment and all its components. In this way environmental organizations help reduce littering and pollution and promote healthier, more sustainable lifestyles in harmony with nature, complementing the efforts of all levels of government in these areas.

Management of all these many areas of activity is undertaken by volunteers who stand on Management Committees. They enjoy no financial benefit for this work and willingly offer their time and energy because of their strong commitment to ensuring a healthy, biodiverse environment for the benefit of current and future generations. Those only undertaking paid work will perhaps fail to appreciate the many challenges involved in balancing work and family responsibilities with a meaningful participation in the operation of an environmental organization. NGO's are typically poorly resourced and in most instances rely on donations to carry out all these activities. They would undoubtedly suffer financial hardship if their tax deductible status was not maintained.”

Consultation Question.

13. Stakeholders' views are sought on the need for sanctions. Would the proposal to require DGR's to be ACNC registered charities and therefor subject to ACNC's governance standard and supervision ensure that environmental DGR's are operating lawfully?

Gecko Response.

Gecko would like to see some hard evidence presented in this discussion paper that environmental DGR's are engaging in illegal activities such that it warrants the implied assumption of wrong doing found the discussion question 13. If there are a tiny minority of environmental DGR's engaging in some sort of illegal activity they can surely be dealt with under the Australian legal and justice system instead of introducing an additional layer of “sanctions’ (which we note have no definition in this paper). It stands to reason that if a DGR is a charity registered with the ACNC, as we have agreed is desirable, then the charity DGR will not have a disqualifying purpose. There is no need for sanctions.

Recommendation 8

The Committee recommended that the Commonwealth Treasury, in consultation with the ATO, review the provisions in the Income Tax Assessment Act 1997 (Cth) prohibiting conduit behaviour, with a view to providing clear guidance to environmental DGRs, as to the types of activities that would constitute conduit behaviour.

It is difficult to understand why environmental DGR's are again singled out for attention in this recommendation regarding conduit behaviour. Surely this recommendation should apply to all DGR recipients. Again no evidence is supplied in the discussion paper to demonstrate that environmental DGR's are not abiding by the existing Income Tax Act 1997 policy regarding conduit behaviour with donations. Gecko would recommend that if the policy is vague about what constitutes conduit behaviour then the policy needs to be clarified for all DGR recipients.

Recommendation 9

The Committee recommended that the ATO, in conjunction with the Commonwealth Treasury, investigate options for establishing annual reporting requirements for organisations to maintain deductible gift recipient status as an environmental organisation, where such reporting is to be made publicly available.

It is our understanding that the Annual Information Reports required by all charities and DGR's registered with the ACNC are publicly available. If, as is recommended, all DGR's including environmental DGR's are to be registered with the ACNC then this will meet the requirement of Recommendation 9. We again question why environmental DGR's have been singled out for such reporting.

Thank you for the opportunity to respond to this discussion paper.

Yours sincerely

Lois Levy

Acting Secretary.



