

Summary of Treasury consultation questions, 29 June 2017

Consultation questions on DGRs being required to be charities

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?

Support this proposal.

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?

Consultation questions on advocacy reporting requirements

4. Should the ACNC require additional information from all 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 reporting burden?

Oppose this. Would add to time-wasting red tape, difficult to define neatly and focuses on a legitimate activity – why single it out? There are already sufficient limits on what advocacy can support (no party-political causes, nothing unlawful, etc.). Advocacy is essential to a democracy, especially for the environment, which cannot speak for itself.

Consultation questions on the transfer of the DGR registers to the ATO

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?

Neutral on this but note the need for well-trained, knowledgeable staff, and a transparent, non-party-political process. Support transparency in the Register of Environmental Organisations' administration, and the emphasis of the Australian Environmental Grantmakers Network on the need for choice 'to support continued growth in philanthropy. Greater choice can be achieved by increasing the number of organisations on (with DGR), creating more opportunity to improve outcomes for the environment in Australia.'

Consultation questions on the removal of public fund requirements

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?

Support this proposal.

Consultation questions on reviews

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?

Oppose this proposal.

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

Grantmakers are very much concerned with efficient use of their funds, but current ACNC powers and processes are sufficient. Any increase in regulation or reporting requirements is an increase in red tape – they will cost, and are likely to be disproportionate to risks.

Consultation questions on sunset rule for specifically listed DGRs

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?

Oppose; would be very burdensome upon organisations. If all DGRs are charities and registered with the ACNC, existing powers can be used to investigate organisations that may have deviated from their charitable purpose.

Consultation questions on 25%-50% expenditure on environmental remediation

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?

Oppose strongly.

- The proposal is inconsistent with current laws:
 1. The Charities Act 2013 defines a charity in relation to their purposes, not their activities. Charities are required to pursue their purposes, and it is the responsibility of the charity to determine the activities which will most effectively enable them to do this. Implementation of this proposal would require many environmental organisations – including the AEGN – to allocate substantial resources to activities which are inconsistent with their purposes.
 2. Subsection 30-265(1) of the *Income Tax Assessment Act 1997* ('ITAA') defines the principal purpose for an environmental DGR as either (a) protecting the 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. This proposal would require organisations which received DGR because they fit under provision (b) to use the donations they receive for an entirely different process.
- This proposal demonstrates a lack of understanding about how the environment is protected. Environmental remediation is only one of many approaches. Most environmental gains have been the result of policies and legislation, in response to advocacy.

- The Government is at liberty to use its own budget to fund environmental remediation and regulate to ensure better rehabilitation after corporate interests have used resources and/or polluted.
- Undertaking environmental remediation requires specialist skills and knowledge which many environmental organisations don't have. It's not as simple as planting a tree.
- The proposal would make environmental grantmaking far less attractive and could lead to a loss of funding across the whole sector.

Consultation questions on sanctions

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?

Challenge the presumption that environmental DGRs are not operating lawfully.

The ACNC has adequate powers in place to investigate and sanction charities.