From: Kerryn Higgs
To: DGR Inbox
Subject: Tax Deductible Gift Recipient Reform Opportunities Discussion Paper
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Senior Adviser

Individuals and Indirect Tax Division

I wish to make a submission regarding the consultation paper which proposes potential reforms to Deductible Gift Recipient (DGR) tax arrangements.

I am a proud donor to environmental organisations that deliver important services that benefit the environment, through campaigning and advocacy. These organisations are operated for the common god, not for private profit and as such should not be deprived of tax deductibility. They are exactly the kind of groups that should benefit in this way.

My income, for example, is below the average income but I contribute to many such organisations because I am extremely concerned about the common good, the future of our children and resisting the tendency for decisions and policy to be guided by profit rather desirable outcomes which will add to quality of life for people and natural systems alike. The very rich and the big companies are able to pour money into the things they support and get their deductions. Why should a democratic government favour them above us?

I am extremely grateful that we have organisations that can undertake advocacy for the things I value: action on climate to try to avert catastrophe for my descendants; protection of threatened species so that the future world will not be impoverished and young people denied access to the natural wonders I knew in my youth; support for local people who care about their environment or for citizens who care about the future.

On my own, obviously, I would not have a voice. Big business will always have a voice and has access to all the best tax schemes, even to the extent of not paying tax at all. So I am appalled to see several of the proposals canvassed in this paper as deliberately targeting advocacy work and putting civil and democratic freedoms at risk.

We should remember that it was advocacy that saved the Great Barrier Reef from oil drilling in the 1960s. Advocacy is the indispensable tool for concerned citizens when governments ignore our wishes. The right to vote is not much use on its own.

Although the discussion paper contains several proposals that would streamline and simplify reporting and administrative burdens for DGR recipient organisations and governing agencies, I cannot ignore the clear political motivation behind the paper, which carries several recommendations from an inquiry into environmental organisations set up under the Abbott Government in what was a clear attempt to hamper these organisations' work. This must not be allowed to happen. For decades, environmental organisations on the Register of Environmental Organisations (REO) have been eligible for tax-deductible donations – encouraging private funding for the public good. But in 2016, half the members of an Australian parliamentary inquiry on the REO proposed that to remain eligible, all environmental groups must spend at least 25 per cent of their public donations revenue on ‘environmental remediation work’. They said remediation would include tree-planting and similar activities, but exclude environmental research, community education, overseas environmental protection, and the free community legal services provided by Environmental Defenders Offices around Australia.

Australian charity law has long recognised that protecting the natural environment is a public good. It says this in the Charities Act 2013 (C'th). So too did an independent inquiry into charitable definitions in 2001, the Productivity Commission's 2014 inquiry into Access to Justice, and the 2016 REO inquiry itself.

Importantly, many of these sources affirm the need for environmental services beyond remediation that many environmental charities provide. For example, the High Court's Aid/Watch judgement (2010) and the Charities Act recognise that raising public awareness through advocacy is itself a charitable purpose – and an 'indispensable' part of an informed democracy. In the words of an EDO NSW client: "In a democratic society we consider that that the EDO is an essential resource for community groups such as ours …..the work being done by the EDO is vital for the future of this country."

***** I will address several of the key points in turn.

Issue 2: Ensuring that DGRs understand their obligations, for example in respect of advocacy.

This 'issue' is misleading, as it implies that the ACNC Governance Standards and/or the Income Tax Assessment Act (ITAA) somehow limit DGRs' ability to undertake advocacy. Advocating for policy which aims to protect and enhance the natural environment does not offend the ITAA 'principal purpose' requirement of environmental DGRs. Neither are such limits imposed by the ACNC Governance Standards.

Therefore, in response to Consultation Question 4, the ACNC should not require additional information from all registered charities about their advocacy activities. Such information would be irrelevant in considering whether or not those organisations were meeting their obligations under the ACNC Governance Standards, or the ITAA.

Additional reporting would also place unnecessary extra burden on charities and regulators. As the additional information is not required to analyse DGR status, Consultation Questions 5 and 6 need not be discussed.

Consultation Question 12

The notion that some proportion of every environmental organisation's expenditure should be required to go towards environmental remediation is absurd. Some environmental organisations do remediation work — in other words, picking up rubbish or planting trees — while others perform different but no less important roles directed at protecting and enhancing the natural environment, such as public education or advocating for environmentally sound policy. Equally, I believe it is essential we have organisations that can engage in community education, campaigns and advocacy to protect the environment.

To require every group to spend a set proportion of their resources on remediation would obviously limit some organisations' abilities to perform their specialised roles in protecting and enhancing the environment. Imposing this effective restraint on activity can only be seen as a politically motivated attempt to limit environmental groups' impact.

Imposing a minimum spend on remediation would single out environmental charities and divert more of their limited resources to administrative reporting. It would also require many well-established environmental charities – including EDOs – to either radically alter the way they operate; inefficiently divert money to other groups at the Government's direction; or lose eligibility for tax-deductible donations altogether. It would do all of this based on an arbitrary and narrow interpretation of protecting the environment.

In the case of the Environmental Defender's Office, for example, the entire activity of the organisation is to give legal support to citizens defending their environment before damage is done, rather than to perform remediation on the ground after it has happened. It would be ridiculous to require the EDO to plant trees. They are lawyers not silviculturalists and the government should allow them to make their appropriate contribution.

The paper seems to neglect the outcome of environmental advocacy work that results in improved policies for land and water management, air pollution, waste disposal and penalties for environmental damage. These improvements in policy and regulation, brought about in part through the work of environmental advocates, may well relieve the "remediation" burden, which itself applies a degree of environmental damage having already taken place.

Further, any such requirement would be impossible to enforce without placing unreasonable reporting and review burdens on environmental groups and administrators. This would come at a great and unnecessary cost to charities and taxpayers.

Consultation Question 13

I disagree with the REO inquiry's Recommendation 6. Environmental DGRs should not face administrative sanctions for supporting communities' rights to protest peacefully against environmentally damaging activities. Such measures would curtail an integral element of our democratic society.

The application of the recommendation, which extends DGRs' liability to 'others without formal connections to the organisation', is impractically wide-ranging. Under the recommendation, an environmental group that promoted an event could face sanctions for the individual actions of every person who attended that event.

Peaceful protest is a cornerstone of sustaining a healthy democracy. Being engaged in peaceful protests does not imply that an NGO is involved in 'illegal' activity.

The ACNC has stated that it already has the powers required to regulate charities. These powers are sufficient to ensure environmental DGRs are operating lawfully.

***** In conclusion, I would like to reiterate my belief that environmental DGRs are already subject to significant regulatory burden. Many of the issues raised in the discussion paper relate to increasing scrutiny, regulation and sanctions for these organisations, which is completely unjustified.

The thrust of the paper is exactly what the Minerals Council of Australia and the resources lobby (including the Queensland Resources Council and the Energy Resources Information Centre — funded by the gas industry) has been calling for, suggesting that the government is following the lead of the fossil fuel and mining sectors and attempting to restrict citizen input. As a non-rich citizen, I resent that the government appears to be making common cause with the Minerals Council against people like me who wish to defend the common good.

I'd be surprised and disappointed if more weight were given to the resources lobby than to the hundreds of environment groups, community members, donors and governance experts who made submissions to the REO inquiry. Many pointed out the pitfalls of artificially distinguishing 'on-ground' rehabilitation from other important things that environmental charities do in pursuing their public purpose. Their evidence led to half the parliamentary committee – one Liberal and five Labor members – rejecting the minimum 25 per cent spending proposal.

Of course, restoring our land and waters is worthy of tax-deductible status. But it's not sufficient if the overall public purpose is to protect the environment. Remediation attempts to fix damage done to the environment. But it's far preferable to prevent damage in the first place, and that's where law reform, public education, research, advocacy and professional legal services all play their vital role.

Organisations working on remediation, education, advocacy and other areas are all vitally important to protecting and enhancing our natural environment. Their activities must not be unnecessarily restricted or unfairly burdened.

Yours Sincerely Kerryn Higgs [redacted]

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