HUMANE SOCIETY INTERNATIONAL

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By Email: DGR@treasury.gov.au

31 July 2017

Dear Sir/Madam,

RE: Humane Society International submissions regarding 15 June 2017 Tax Deductible Gift Recipient Reform Opportunities

Humane Society International Australia (**HSI**) welcomes the opportunity to comment on the Treasury's Tax DGR Reform Discussion Paper (June 2017) (**Discussion Paper**). HSI is registered with the Australian Charities and Not-for-profits Commission (**ACNC**) and is a Deductible Gift Recipient (**DGR**) under the *Income Tax Assessment Act 1997* (Cth) (**ITA Act**).

HSI seeks to create an ecologically sustainable and humane world for all animals and their environments. Through education, advocacy and empowerment, we seek to forge a comprehensive change in human behaviour, protecting all wildlife and their habitats. We have more than 24 years' experience in promoting the enhancement and protection of all animals and their habitats. We work actively to assist government bodies and agencies to further the protection of animals and the environment through appropriate regulations and enforcement. Advocacy is a critical component in achieving these objectives.

Our work is undertaken on behalf of the public at large and the environment, guided by our 70,000 Australian supporters. DGR tax concessions recognise the public benefits and services HSI provides and enable us to advance the interests of a specific section of the public who value conservation of the natural environment. For example, our habitat protection program has seen HSI liaise with the Department of Environment and Energy to successfully nominate 27 threatened ecological communities for listing and protection under the EPBC Act. Our private land conservation network, Wildlife Land Trust Australia, represents

services and advocates for 500 members whose sanctuaries protect more than 58,000 wildlife-friendly hectares on private land. We also advocate on the behalf of threatened species, and have secured protection of 73 of these under federal environmental laws, including much loved and iconic Australian species like the green and golden bell frog. Our advocacy for truth in labelling has had positive results for both farm animal welfare and for consumers across Australia, culminating in the development of a national egg labelling Information Standard earlier this year.

HSI makes the following submissions in direct response to the consultation questions outlined in the Discussion Paper:

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 do not have any objection to requiring DGRs to become registered charities; however we do foresee that problems may arise where smaller DGRs find it difficult, from a resources perspective, to meet the reporting and regulatory requirements of the ACNC.

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 at this stage, however we would expect thorough exploration of this issue to be carried out before a final decision is made.

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

We have no concerns at this stage, however we would expect thorough exploration of this issue to be carried out before a final decision is made.

4. **Should the ACNC require additional information from all charities about their advocacy activities?**

HSI does not support the proposed requirement to report advocacy activities for the purpose of retaining DGR status. This would place an unnecessary financial and administrative burden on both charities, in the preparation of this additional information, as well as the ACNC as they do not have the ability or capacity to assess environmental projects.

We note that Australian charity law is focused on purposes and not activities, and that this is reflected generally by the DGR framework. It is important that we retain the discretion to allocate our resources in a way that aligns with the interests of our donors and supporters, and allowing us to tailor our activities in order to better meet supporter expectations while maintaining our core purposes and objectives.

As an environmental organisation with the principle purpose of protecting and enhancing the natural environment, in accordance with subsection 30-265(1) of the *Income Tax Assessment Act 1997*, advocacy is integral to our ability to meet this purpose. This view is further supported by the High Court in the *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42 case, wherein it was stated that advocacy is an indispensable aspect of democracy, and a legitimate charitable purpose.

This proposal seeks to limit environmental charities and would reflect poorly on Australia's international reputation and be out of step with comparable jurisdictions. Indeed, such a view was conveyed by United Nations Special Rapporteur, Michel Forst following his visit to Australia in October 2016. Mr Forst noted in his end of mission statement:

> "*In recent years, state and federal governments attempted to undermine the ability of human rights defenders to protect environment through political advocacy and litigation. The targeting of advocacy by environmental organisations could be seen as part of broader intent by the Government to stifle criticism by community organisations.*

Those detrimental actions culminated in the governmental initiation of an inquiry by the House of Representatives Standing Committee on the Environment to review environmental organization's deductible gift recipient status, which allowed donations to such organizations to be tax deductible. The inquiry quickly became politicized by politicians accusing organizations of "using their [DGR] status for political activism." The Committee issued its recommendations in May 2016, and the Government is considering its response at this stage. I encourage the Government to reject the flawed recommendations of the Committee, proposing new requirements to spend a quarter of donor funds on environmental remediation and introducing unnecessary restrictions on the type of work environmental organizations should conduct."[1]Therefore we see no need for the direct regulation of advocacy activities by the ACNC, as this would place unnecessary administrative burdens on the limited resources of DGRs.

5. **Is the Annual Information Statement the appropriate vehicle for collecting this information?**

As above in 4, HSI does not think it is necessary or beneficial to require DGRs or charities to provide specific additional information on their advocacy activities.

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

As above in 4, HSI does not think it is necessary or beneficial to require DGRs or charities to provide specific additional information on their advocacy activities.

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?**

While HSI does not have any immediate objections to the conflation of DGR Register administration to a singular body, we are great supporters of the ACNC's role as an independent regulator to ensure consistency and efficiency in the governance of the charity and not-for-profit sector. Since its inception, the ACNC has built a positive rapport with charities and has shown success in streamlining reporting requirements. We do consider there may be issues regarding the ATO's limited scope in appropriately administering charitable organisations. If the ATO were to be charged with administering the DGR Register, it would need to demonstrate sufficient understanding of the nuances of charitable operations compared to the operations of commercial organisations.

[1] Michel Forst, UN Special Rapporteur on the situation of human rights defenders, 'End of Mission Statement' (18 October 2016), available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20689&LangID=E

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?**

We do not object to the removal of public fund requirements for charities.

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 do not support the introduction of rolling reviews or annual DGR certification requirements. The ATO already holds the power to conduct audits when it deems it necessary to do so, as does the ACNC, and any further review process would therefore place undue strain on the limited resources of DGRs. We consider ACNC governance and public reporting requirements are sufficient to maintain public confidence and regulatory oversight of charities.

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

As above in 9.

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?**

We oppose the idea of a five year sunset rule for specifically listed DGRs on the basis that it invites high levels of uncertainty and politicisation to charitable activities. We argue that DGRs should, as much as possible, be able to carry out their objectives independent of political climate. In terms of practicality, this proposal would negate long-term environmental project planning and make it virtually impossible for charities to plan and operate on a long term basis with financial certainty.

We are concerned with the necessity of such regulation and the substantial cost to taxpayers, given the ATO and ACNC already have powers to investigate whether charities are meeting their obligations, and may act to revoke charity status where necessary.

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?**

We oppose any measures that seek to dictate the lawful activities of environmental charities, particularly when such restrictions are not placed on the expenditure of other categories of DGR. We argue that these restrictions lend themselves to favouritism and the misconception that some types of charitable objectives are more beneficial than others. Further, remediation is not better than prevention, and it is often more expensive.

Furthermore, these restrictions place undue financial and administrative burdens upon environmental DGRs. The ACNC and the *Charities Act* exist to regulate the activities of charities and ensure that they are compliant and meeting a charitable purpose. Any further assurance as to the expenditure of environmental DGRs to be gained from a measure such as this would be negligible when compared with the imposing restrictions and burdens it creates.

We are of the view that regulation to this effect is unnecessarily intrusive, and entirely unsubstantiated given that environmental DGRs employ a variety of methods and tools to achieve their charitable purpose, beyond direct environmental rehabilitation, and are well within their legal rights to do so. It is our view that all charities should retain the discretion to allocate their resources in the most efficient way available, and in a way that aligns with the wishes of their donors and supporters.

Seeking to restrict the activities of environmental organisations in this way demonstrates a lack of understanding of the operation and objectives of environmental laws and protections in Australia. The precautionary principle is at the heart of the EPBC Act and is enshrined in the principles of ecologically sustainable development.[2] In order to advance this principle, it is vital for environmental groups to engage in advocacy to mitigate and avoid environment issues rather than addressing these reactively. In this vein, proactive protection of the environment which takes a preventative and precautionary approach results in the delivery of clear public benefits.

It is for these reasons that HSI strongly rejects the proposal that all environmental DGRs be required to divert a proportion of their expertise and funding to a narrow concept of 'environmental remediation.'

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?**

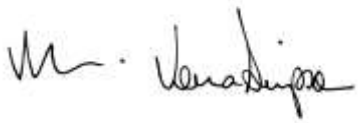
We object to any move to further regulate the activities of environmental charities, given that the *Charities Act* already stipulates that participation in illegal activities would disqualify an organisation from claiming charitable purpose.

If the Government is, as proposed, intending to require all DGRs to become registered charities, and thereby answerable to ACNC, the need for further sanctions on illegal activity is unnecessary.

In light of the fact that the *Charities Act* and various instruments of criminal law already exist to deal with the illegal actions of individuals, we find this unfounded and direct targeting of environmental organisations with such regulations to be unduly prohibitive.

We appreciate the opportunity to make submissions in relation to the DGR reform, and thank you for your consideration of our concerns.

Yours sincerely,



Michael Kennedy and Verna Simpson
Directors - HSI Australia

[2] *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) s 3A(b).