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4 August 2017

Senior Adviser
Individual & Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: DGR@Treasury.gov.au

Dear Sir/Madam,

**Submission in response to Discussion Paper on Tax Deductible Gift Recipient (DGR) Reform Opportunities**

This submission has been prepared based on my almost 40 years of active involvement in environmental NGOs national, state and local. During that time I have served on Boards and Management Committees of various organisations, worked as a fulltime adviser to a former Australian Government Environment Minister, for more than 20 years run a successful small business specialising in bringing together diverse perspectives on environment and natural resource management issues, and provided a hands-on contribution to on-ground works, community education and policy input.

It is with profound concern that I respond to the current Discussion Paper.

It is now several decades since the Productivity Commission first demonstrated the substantial contribution made by the voluntary sector to the Australian economy, and environmental volunteers are one important component of that work.

**Strengthening Governance Arrangements**

As time has progressed, accountability and reporting requirements have increased substantially, to a point where some small NGOs currently struggle to meet their obligations to State and Federal governments. While the Discussion Paper makes several references to an intention to "reduce the compliance burden for the NFP sector", many of the proposed changes will clearly require additional data maintenance and reporting. For some organisations (including some of which I am an active member), DGR status applies to a significant component of their current work but does not cover the whole of the organisation's activities. If all environmental organisations are required to become registered charities a much greater volume of data tracking of the organisation's activities will be required to report fully as a DGR (see Question 1) – time spent reporting, rather than DOING what the organisation is there to do i.e. protecting the environment.

As a current Board member of a small Aid & Development NGO required to complete an accreditation process every 5 years, I find it incomprehensible that the proposed "formal rolling review program" and "annual certification" (see Question 9) will not result in a substantial increase in the burden of record-keeping and reporting required for environmental NGOs.

In my view (as the Management Committee member who has prepared numerous ACNC reports) annual information statements to the ACNC, together with annual financial statements already provide sufficient transparency and public information about charities and their purpose and activities. As numerous media reports indicate, there are mechanisms currently available to any person who believes that a charitable organisation is acting outside its purpose or is misusing charitable funds.

In response to Question 6, it is not clear HOW a small NGO could be compliant "without imposing significant additional reporting burden".

**Obligations in respect of advocacy**

It is important that a broad range of activities continues to be encompassed under the Charities Act and the Income Tax Assessment Act, as at present. Key among important dimensions of this are:

- 'Protection, maintenance, support, research, improvement or enhancement' of the environment;
- Environmental protection, information, education and research and "any other purpose beneficial to the general public" as currently specified in the Charities Act, S.12;
- Promotion of ecologically sustainable development principles (including the precautionary principle, ecological integrity, intergenerational equity, and full costing), consistent with current REO guidelines, the EPBC Act 1999 and the Intergovernmental Agreement on the Environment (1992)
- Interpretation of 'natural environment' to include both urban and non-urban environments.

Other than that some sectors of corporate Australia (particularly resource extraction companies) repeatedly object to advocacy by environmental NGOs, there is no apparent reason why advocacy should not be a permitted activity.

The ACNC already provides valuable guidance on advocacy by charities.

The Charities Act (ss. 11 and 12) makes clear that advocacy directed towards a charitable purpose is lawful and acceptable and that advocating for policy and law reform is a legitimate charitable purpose. Examples might include advocacy for changes to improve the efficiency and effectiveness of overseas aid and development in remote communities, to address homelessness, or to achieve environmental protection.

In 2010, the High Court determined, in an AidWatch case, that advocacy is a public benefit and is indispensable to an informed public debate, a view backed up by the Productivity Commission's 'Access to Justice' report in 2014. In that report, the Commission (p.709) stated:

> *… in many cases, strategic advocacy and law reform can reduce demand for legal assistance services and so be an efficient use of limited resources.*

At a more local level, one of the small environmental NGOs on whose management committee I serve has a community partnership arrangement with a government land manager. Dialogue between the parties in this arrangement has, on occasions, changed the ways in which works were being conducted so that threatened species have been protected, impacts on an Endangered

Ecological Community minimised, and research projects initiated that could not have occurred under the proposed arrangements.

To place constraints on the range of activities allowed by DGR recipients or to require additional information from registered charities about their advocacy activities is an additional burden which is not only unnecessary, but often disadvantageous to environmental outcomes. Local knowledge based on the time and commitment of NGOs to environmental outcomes can, and usually does, benefit the environment (see Question 4).

**Reducing complexity**

Proposals to transfer the administration of the four DGR Registers to the ATO are of concern. As someone who has been a volunteer member of Boards and Management Committees of a small aid and development NGO and of large national/state and small local environmental NGOs, it is clear to me that the requirements and expectations of overseas aid and development, harm prevention, environmental and arts and cultural NGOs are vastly different and should not all be reduced to a financial 'bottom line' likely to result for Tax Office administration.

Involvement of departments with specialist technical expertise within the relevant sector has both positive and negative aspects – a better understanding of the on-ground and policy context within which NGOs are operating is clearly beneficial. However, under current arrangements the requirement for Ministerial approvals, leaves acceptance of DGR applications vulnerable to undue politicisation.

The role of the ACNC as an independent regulator should ensure consistency across sectors and at the same time enable ongoing assistance to charities seeking DGR status. Such oversight by ACNC must ensure that guidance, reporting and regulatory processes take full account of the capacity of NGOs and their access to expert support separate from the political process.

**Parliamentary Inquiry into the Register of Environmental Organisations**

Question 12 of the Discussion Paper raises perhaps the greatest of my concerns.

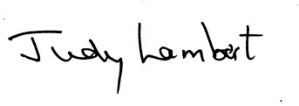
On-ground environmental remediation is but one component of protecting the environment, and has repeatedly been recognised in government, scientific and other documents over the past several decades, as a less cost-effective approach than prevention or minimisation of environmental degradation through proactive environmental policy and regulation. An emphasis on remediation and a requirement that at least 25% of any DGR recipient's activities are directed to this activity is an inefficient use of resources, unlikely to achieve real biodiversity conservation in many contexts.

Australia has, at least since the 1992 Rio Earth Summit, enjoyed a reputation as a leader in environmental protection and sustainable management. To shift to a requirement for at least 25% of the work of all DGR-recipient environmental NGOs is directly in contradiction of the principles that underpin environmental protection globally (see Rio Declaration on Environment and Development, 1992 and related UNEP Guidelines; UN Sustainable Development Goals, 2015), placing at further risk Australia's international reputation in this regard.

I urge the abandonment of the Discussion Paper proposal to require commitment of 25% of their funds to the retrospective activities associated with on-ground remediation.

**In conclusion**, I welcome the opportunity to make input to the Discussion Paper, and urge the Treasury to carefully consider not simply the 'costs' (both monetary and operational) of current Tax DGR arrangements, but also the considerable dis-benefits to ongoing protection of the environment and the contribution made by NGOs to this protection. Any doubt about these benefits should be dispelled by the findings of both the 2001 Inquiry into the Definition of Charities and Related Organisations (particularly pp.186-187) and the Productivity Commission's 'Access to Justice' report (p.711-713). It is my considered view that it is essential to retain the diversity of public benefits that arise from the range of NGOs and their activities that are best able to deliver 'protection of the environment' in all its dimensions. Once lost, many environmental assets cannot be regained.

Yours sincerely



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