2 August 2017

Senior Adviser
Individual and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: DGR@Treasury.gov.au

Submission to Tax DGR Reform Opportunities Discussion Paper 15 June 2017

Dear Sir/Madam

Lawyers for Forests, Inc (LFF) is an association of legal professionals working towards the protection and conservation of Australia's remaining native forests. Among other things LFF:

- analyses the effectiveness and enforcement of Australia's environmental laws and prepares submissions advocating for legislative and policy reform
- develops and delivers pro bono community legal education workshops in Melbourne and regional Victoria
- organises referrals for pro bono legal assistance of conservationists charged with protesting breaches of Victoria's environment protection laws
- prepares educational materials on various matters including:
    - helping conservation groups and citizens to better understand and utilise environment protection laws, such as the community legal education Fact Sheet "New Laws Applying to Forest Activists in Victoria";
    - protesters rights; and
    - setting up a "Green Office Program".

LFF is listed on the Register of Environmental Organisations (REO) and has "DGR" status.

Ultimately a healthy democracy and the development of good policy and laws are dependent on a robust debate.

Relevantly, independent and not for profit environment organisations:

1. Effectively contribute to this debate, on behalf of their many members.
2. Provide a different perspective to organisations sponsored by business interests, and often offer a counter-view.
3. Have achieved considerable successes which, with the benefit of hindsight, have enriched Australia's cultural and environmental heritage. For example, without the advocacy of not for profit environment organisations, the Franklin River would have been dammed, the Daintree rainforest logged, and Fraser Island mined. All of these sites

now have World Heritage status, and are Australian environmental icons.

DGR status is critical for not for profit environment organisations. It assists them in obtaining donations, particularly from individual donors, and is essential to their survival, and ability to effectively advocate. Without DGR status, many donors would not donate and organisations may be forced to apply for more government funding just to make ends meet.

As a result, if the main proposals set out in the Discussion Paper are implemented this would have the effect of stifling robust debate on our environmental laws and policies, the quality of our environmental laws and policies and ultimately the health of our democracy.

Each year we have to account for our activities to 3 organisations with significant reporting obligations:

- The Australian Governments' Department of the Environment – REO Statistical Return
- The Australian Governments' Australian Charities and Not-for-Profits Commission (ACNC) – Annual Information Statement to ensure we are still complying with the ACNC's strict governance standards
- Consumer Affairs Victoria – Financial Transactions Report and Financial Statement for the Financial Year (Annual Statement)

As an aside, in terms of reducing "green tape", a good place to start would be the above onerous reporting requirements which take our tiny organisation hours to prepare and file each year.

We address the most concerning proposals contained in the Discussion Paper in the order they appear.

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

This proposal is strongly opposed and should be rejected.

Charities such as LFF are already subject to substantial annual reporting requirements, various registration checks, reporting, transparency and compliance safeguards under charity and tax laws (some of which overlap).

Charities are also directly accountable to the public and donors when raising awareness of their activities and fundraising for their charitable purpose. The proposed changes would divert resources from the organisation's purpose and into additional administration and compliance reporting, and also away from the priorities of donors.

The High Court's found in 2010 that advocacy is critical to a healthy democracy. If Treasury wishes to reform DGR management meaningfully, then it should reaffirm advocacy as a valid and necessary activity of charities and DGRs. Environmental charities provide an important public benefit by facilitating informed democratic engagement to advance environmental protection. Non-government organisations are also recognized as an essential source of independent and trustworthy information. CSIRO research (focusing on perceptions of mining) found that while the Australian public does not trust information from any one sector absolutely, on average, NGOs were more trusted than government or industry sources.

If this proposal is implemented will the ATO require equivalent additional information from all public and private corporations claiming tax concessions on expenditure, about their lobbying activities, including those of the mining industry?

9) What are the stakeholders' views on the introduction of a formal rolling review program and the proposals to require DGRs to make annual certification? Are there other approaches that could considered?

This proposal is strongly opposed and should be rejected.

This proposal seeks to tie up and divert charities' resources into time-consuming administration, which will frustrate members and donors that monies specifically donated to support the organisation's purpose are not being utilised in accordance with the donors' intent and wishes. It poses a new, enormous and unnecessary cost to tax-payers.

As mentioned above, there are current substantial regular reporting and complaints processes already in place. The ACNC compliance and auditing includes a process of de-registering disbanded or dormant charities that fail to comply (DGR status would also be revoked as a result).

11) What are stakeholders' views on the idea of having a general sunset rule of five years for specifically listed DGRs?

This proposal is strongly opposed and should be rejected.

Automatic de-listing every five years of specifically listed DGRs when neither the purpose, nor the criteria may have changed, and without any infringement or breach occurring is ludicrous. Needing to re-apply just to maintain the status quo is a waste of resources and time for both the charities and the taxpayer, via the assessing entities such as the ACNC.

Again, this proposal seeks to tie up and divert charities' resources into time-consuming administration, which will frustrate members and donors that monies specifically donated to support the organisation's purpose are not being utilised in accordance with the donors' intent and wishes. Wilfully redirecting donors' money into unnecessary regulatory administration, is counter to community expectations that as much as possible of not-for-profits' and charities' income is spent directly on meeting their purpose, not being sucked up in administrative management.

The proposal for automatic de-registering every five years will create ongoing uncertainty for both the DGRs and their donors.

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?

This proposal is strongly opposed and should be rejected.

We do not support audits of activities, or activity requirements beyond compliance with charity law and ACNC requirements. This proposal undermines the clear recognition in Australian charity law (both at common law and in legislation) that advocacy and other diverse forms of environmental advancement, improvement and support services are of public benefit to the natural environment,

and to an informed democratic society. As mentioned above, The High Court's found in 2010 that advocacy is critical to a healthy democracy.

This risks inconsistency with current requirements for protection of the environment contained in the Income Tax Assessment Act, which recognises that not all environment protection work can be undertaken retrospectively.

Environmental protection for the public benefit goes well beyond environmental remediation, and requires collaboration and expertise in a range of fields, including the NGO sector. For some environmental organisations environmental remediation is their primary purpose, but for others such an arbitrary requirement will have the perverse result of preventing them from working towards their stated public purpose.

For example, LFF does not have in its Purposes the carrying out of environmental remediation, so to force it to undertake such would arguably be a breach of its DGR responsibilities.

In addition, LFF wants to know why only one group within the NFP sector (the environment NGOs) are being singled out for mandated expenditure upon a mandated type of activity? This again smacks of a political agenda. We note with grave concern that this proposal was specifically espoused by lobbyists for the mining and resources sector during the 2015-16 REO Inquiry, such as Minerals Council of Australia, the Queensland Resources Council, the Energy Resources Information Centre, and the Australian Taxpayer's Alliance.

Of further concern is the fact that while the Discussion Paper purports to reflect the recommendations of the REO inquiry (to which LFF made a submission), that report proposed 25 per cent of annual expenditure and made no mention of any other percentage. Despite this, the Discussion Paper fails to clarify why and how the proposed 50 per cent option has been introduced. These concerns are further exacerbated by the fact the NSW Minerals Council has publicly called for "… at least 50 per cent…" to be mandated. The proposed limitation contradicts the weight of evidence to the REO inquiry of 2015-16, which contributed to half the members - 1 Liberal and 5 Labor members - rejecting the proposal at the time.

The inclusion of this divisive proposal raises legitimate concerns regarding the perceived connection between this review and the mining sector's agenda, and that this review's aims are politically motivated, and seek to silence certain voices in the community rather than introduce meaningful reforms for the entire not-for-profit sector.

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?

The proposed specific sanctions for environmental DGRs are strongly opposed and should be rejected.

The Discussion Paper's failure to provide any justification for, or evidence to support, the singling out of environmental DGRs in this context is deeply concerning and smacks of a political agenda to target one sector of the community due to perceived political and social beliefs.

Specific sanctions targeting environmental DGRs is exactly what vested interests such as the Minerals Council of Australia have been calling for. It is not the role of Treasury or the Government to endorse and implement the whim of the fossil fuel and mining sectors, to the detriment of not-for-profits' rights to free speech and advocacy.

Proposed specific sanctions is clearly an attempt to limit the activity, and therefore arguably the effectiveness, of environmental DGRs. Peaceful protest is part of a healthy and robust democracy, and is undertaken when considered necessary by a range of individuals and organisations, including disability advocates over treatment of the vulnerable, groups raising awareness over indigenous access to health and education for example. Again, no justification is provided to warrant treating one group differently to others. Engaging in peaceful protest is not synonymous with 'illegality'.

The current role of the ACNC in overseeing charity regulations and investigating any issues and/or complaints are supported. Any perceived illegal behaviour should be referred to the authorities as per normal. The inconsistency in Treasury's approach is noted with concern: there is no mention of introducing any proposed equivalent limitations or sanctions for public and private corporations that receive the benefit of tax deductibility for expenditure etc, when caught breaching pollution, land clearing, threatened species protection, occupational health and safety, tenants' rights and other laws.

Conclusion

Finally – all we ask is for a semi-level playing field:

1. Business interests and organisations have greater access to funds, and tend not to support not for profit environmental organisations. Indeed they often oppose the laws and policies advocated by environmental organisations.

2. Organisations which are supported by business interests - such as the IPA (who advocate against policies directed at addressing climate change – as is their right in a healthy democracy) have DGR status.

3. It is only fair that organisations on the other side of the fence, such as not for profit environment organisations - also have DGR status, and be free from the onerous requirements suggested in the Discussion Paper.

For these reasons, we urge you to recommend the above proposals DO NOT proceed.

Sincerely,

Lauren Caulfield
President
Lawyers for Forests, Inc