MARKETS FOR CHANGE

SUBMISSION TO THE TREASURY TAX DEDUCTIBLE GIFT RECIPIENT (DGR) REFORM OPPORTUNITIES DISCUSSION PAPER

AUGUST 2017

Executive Summary

- In June this year, the federal government though the Federal Treasury Department released a Discussion Paper reviewing how organisations which have Tax Deductible Gift Recipient status (DGRs, many of which are also charities) are managed. As acknowledged by the Discussion Paper, DGR tax arrangements are intended to encourage philanthropy and provide support for the Not-For-Profit sector (NFP). DGR status, along with other tax concessions to the NFP sector also encourages delivery of goods and services that are in the public interest.

- Unfortunately, many of the proposals contained in the Discussion Paper will have serious and negative repercussions for a large number of DGRs and charities, particularly environmental organisations, and which undermine those groups' capacity to encourage philanthropy, secure support and deliver services in the public interest.

- Significantly, the Treasury DGR Review Discussion Paper **fails to identify any proven transgressions** by the entities targeted (environmental not-for-profits), to justify this latest push to change the rules for environmental DGRs and charities.

- Alarmingly, emphasis is shifted from assessing an organisation's purpose, which the High Court has ruled is crucial for determining charitable status and benefit, to an emphasis on their activities. This is extrapolated into a proposed requirement that 25% or 50% of funds should be spent on environmental remediation activities, a proposition which is not backed by any evidence as to its appropriateness or necessity and which would undermine important preventative actions whilst also causing organisations to fail to act in accordance with the purposes for which they were constituted. This proposition is blatantly at the behest of the mining industry lobby and hence part of a politically motivated attack.

- Markets For Change is a registered charity and DGR recipient listed on the Register of Environmental Organisations. We support a diverse environmental sector working across the range of areas that can contribute to improved environmental outcomes. We reject proposals which single out environmental organisations from amongst the range of non-government charities and DGRs, and we do not accept measures clearly designed to limit the effectiveness of environmental not-for-profit organisations.

Recommendations:

1. Support a strong and efficient charity and deductible gift recipient sector by maintaining existing taxation concessions for charities and donors.
2. Support a strong and diverse environmental sector – including charities and other not-for profits –to ensure that Australia's environment is protected, and that governments and businesses comply with their legal obligations and the rule of law.
3. Support the diverse range of activities that contribute to on-ground environmental outcomes, including advocacy, research, policy development, public education and information about the environment, environmental legal and support services, community engagement and participation, overseas capacity-building and local conservation work.
4. Support a legitimate and non-political review of the administrative and governance arrangements for not-for-profits, that focuses upon streamlining and refining regulation, reducing red tape while enhancing transparency and enabling community involvement.
5. Support the adequate resourcing of the ACNC to assist and regulate all charities (and many DGRs).
6. Reject any move to mandate a DGRs or charities' expenditure, such as the mining lobbyists' push for environmental DGRs and charities be required to spend 25 to 50 per cent of their public fund on 'environmental remediation', reiterated in the Treasury discussion paper.
7. Reject the move to shift assessment of DGRs and charities from 'purpose' to 'activities'.
8. Reject the blatant politically motivated recommendations which target only environmental organisations, and acknowledge that the referenced REO Inquiry recommendations were not unanimous, objective or neutral.
9. Reject any pejorative language such as 'generous tax concessions', or be consistent and include a comparison with the For-Profit and corporate sector's tax concessions.
10. Reject the disenfranchisement of donors to environmental DGRs and charities, whose counterparts to other not-for-profits do not have their priorities for the expenditure of their financial contribution overridden by pre-mandated 25 – 50 per cent strings attached.
11. Reject any current proposed reform not to be applied across all DGRs and charities consistently and equitably on the grounds it reflects an unacceptable and discriminatory political bias.
12. Reject any attempts to single-out and penalise environment DGRs and charities working to achieve their stated public purpose of protecting the environment and advocating the precautionary principle, on the grounds it will be seen to be a politically motivated attempt to silence free public debate, alternative opinions, and community dissent.

Overview

Markets For Change is of the firm view that the Treasury Discussion Paper reflects a disturbing and unnecessary revisiting of previous attempts to marginalise, disenfranchise and silence those voices working to protect the environment.

The Discussion Paper revisits the recommendations made by the Coalition-controlled 2015-16 House of Representatives Standing Committee on the Environment's REO inquiry on the Register of Environmental Organisations (REO inquiry).

This REO inquiry was widely denounced at the time as being anti-environmental, and seeking to silence voices of dissent over environmental issues such as climate change, illegal land clearing, fossil fuels, mining, fracking, native forest logging and protecting the Great Barrier Reef to mention but a few.

It is disturbing to note that the Discussion Paper fails to mention the fact that the REO Inquiry report recommendations incorporated into this review were not unanimous, and in fact half of the committee members on the REO inquiry issued strong dissenting reports, including from one Liberal MP and five Labor MPs.

Deliberate targeting of environmental DGRs and charities rejected

While the Treasury Discussion Paper canvases some reforms which would be applicable to the DGR charity sector as a whole, by using the Coalition majority report of the REO inquiry as its reference point, minus any mention of the dissenting reports, key recommendations clearly and blatantly target environmental organisations.

This discriminatory approach of singling out environmental DGRs and charities for 'special treatment' has been raised with concern by others in the not-for-profit sector, as it smacks of political motivation.

It risks entrenching a two-tiered DGR and charity sector, and discrimination against a sector of the community, whether volunteers, members or donors, because of their concern for the environment and commitment to prevention of environmental harm and public advocacy.

This review appears for all intents and purposes to be another attempt by the Federal government to shut down environmental voices of dissent.

The key problematic REO inquiry recommendations recycled in the Discussion Paper seek to:

- Reduce the extent of advocacy work undertaken, in order to retain DGR status.
- Mandate that between 25 per cent and 50 per cent of environmental charities' donations be spent on 'environmental remediation' work. (It is noted that even the REO Coalition majority report 'only' flagged 25 per cent of income be mandated to be spent in this manner. While we vigorously oppose any mandated amount, we would be interested in knowing from where and why Treasury is now introducing the increased threshold of 50 per cent in its Discussion Paper.)
- Increase DGR status certification reviews to annual rolling reviews, and introducing a five-year 'sunset clause'.

Proposals risk disenfranchising donors to environmental DGRs and charities

Markets For Change believes the Discussion Paper's proposals will have a negative impact upon donors' ability to participate and engage in public debate, especially regarding the protection of the environment.

These proposals are an attack on both environmental DGR organisations and their donors. They seek to impose an increasingly limited 'tax-deductible or not tax-deductible' choice upon donors seeking to financially support environmental DGRs and charities working on issues that matter to them, while also imposing excessive and draconian rules limiting the nature and scope of those organisations' work.

These proposals ignore the fact that donors currently require, and have access to, accountability mechanisms such as organisations' annual reports and periodic reporting back to Boards or executives.

It is the nature of many environmental not-for-profits' business models to communicate regularly with donors and supporters on their campaigns and activities, to ensure people know how their contributions are being spent and to continue fundraising for that ongoing DGRs or charities' daily work. In fact, recent feedback from some environmental donors recently is that while they may receive annual or quarterly newsletter updates from the non-environmental charities they support, it is the environmental organisations they hear from the most, providing continual updates and progress reports while seeking campaign priority feedback.

The underlying assumptions of the Discussion Paper's recommendations appear to be that either donors do not know or care how their money is spent or whether activities are occurring which they do not agree with, or they need protecting from entities who are abusing their good nature. This is patronising and offensive in the extreme, and for which there is no basis in evidence.

The Discussion Paper fails to explain why financial donors to environmental DGRs and charities should have their contribution to the nation's philanthropic field, support for the not-for-profit sector, and participation in delivery of goods and services in the public good treated any differently to the financial contribution their philanthropic counterparts may make to other charities for which protecting the environment is not their primary public purpose.

There is no meaningful or valid explanation given as to why donors to environmental DGRs should have to accept further regulatory strings being attached to their financial contribution, in such a discriminatory manner.

At a time of increasing public awareness regarding concerns over charities spending a perceived excessive amount of fundraising monies on administration and bureaucracy rather than on the purpose, or cause, for which the money was raised, there is growing disquiet regarding the prospect that it become a mandated requirement for financial resources to be siphoned away from the main focus of DGRs and charities for whom 'environmental remediation' is not the primary public purpose.

This concern of siphoning and redirecting donors' financial contribution away from the cause for which they donated that money, is also relevant to the Discussion Paper's proposed requirement for environmental DGRs to audit activities, increased administrative reviews, and the introduction of a five year 'sunset clause'.

In the absence of any evidence as to why these new onerous regulatory controls over just one sector of not-for-profits are needed, it is clear they are politically and ideologically driven just as they were when introduced into the earlier REO inquiry. If implemented they will discriminate against not only environmental organisations, but also those who provide financial support and contributions to those organisations working on issues of public interest important to them.

There are serious concerns that these moves will actively and deliberately discourage donors to environmental organisation from participating in, and having equal access to, democratic free speech and democratic participation in public debates.

This is contradictory to and erodes the rights of environmental not-for-profits sectors', including organisations, members and donors, to public advocacy as recognised by the 2010 High Court determination.

This latest run at DGRs and charities is an attack on free speech

This latest push is clearly an attempt to silence those advocating in the public interest for the environment and whose point of view challenges those benefitting from environmentally damaging activities, including but not limited to, resource use and extraction.

The proposals targeting environmental DGRs will result in silencing those working to prevent environmental harm and enhance environmental protection. A repercussion of this will also be the disenfranchisement of those who believe in, and seek to provide financial support to those organisations undertaking that environmental work.

As the CEO of the Community Council for Australia (CCA), David Crosbie, stated recently,

"Free speech should never be for sale to the highest bidder. The Minerals Council of Australia should not be able to tell environmental groups what activities they need to engage in if they want to be able to retain charitable or DGR status. A medical research institute that receives funding from the Bill Gates Foundation should not have to shut up during election campaigns and not highlight the need for more medical research funding." [1]

Attack on advocacy work should be rejected

Australian charity law has long recognised that advocacy by charities is critical to a robust and healthy democracy, and that protecting the environment is a public good.

A 2010 High Court decision (AidWatch Inc v Commissioner of Taxation) found that engaging in political debate is an essential part of advocacy work and is in the public interest; and that it is "*indispensable*" for charities to have the right to advocate, to ensure "*representative and responsible government*".[2]

The High Court decision was subsequently legislated into the *Charities Act 2013*, recognising advocacy as a legitimate, and often effective, manner for charities to pursue their charitable purpose.

This principle was also stated by an independent inquiry into charitable definitions in 2001, the Productivity Commission's 2014 inquiry into *Access to Justice*, and the 2016 REO inquiry itself.

The current law already imposes accepted limits on charitable purpose, such as charities not being able to endorse or support candidates or political parties for political office, or promote unlawful activity.

The only concerns raised over charities undertaking advocacy work tends to arise from those with vested interests, and their supporters, involved in activities identified by charities as harmful to the environment or the communities they represent. A clear example is the Minerals Council of Australia's public campaign to erode environmental DGRs' freedom to advocate.

Other not-for-profits and charities also have a proud track record of standing up for the people they represent by speaking out against government policies they perceive to threaten vulnerable Australians, including the Salvation Army, Baptist Care Australia, Disability and Health Reform advocates to mention a few. This advocacy work must continue, as it must for environmental advocacy work.

The Productivity Commission's *Access to Justice* report found advocacy was actually an efficient use of resources, as it addresses systemic issues rather than just individual cases and has the potential to relieve pressure from other frontline or government services.

The Discussion Paper raises concerns that some DGRs may be involved in advocacy activities without the knowledge of their donors. As noted elsewhere in this submission, but it cannot be stressed enough, it is patronising in the extreme, and has no basis in evidence, to infer that donors may not be aware they are supporting advocacy undertaken by the charities to which they choose to donate.

The Treasury Discussion paper's proposals raise serious legal and constitutional implications by seeking to penalise (by removing DGR status, or imposing regulatory limitations) charities for undertaking advocacy work.

Shifting assessment from a charity's 'purpose' to 'activities'

There is an alarming and apparently deliberate shift of emphasis from assessing an environmental charity's purpose to its activities for qualification (or disqualification) for DGR status.

The Discussion Paper's reference to 'activities' rather than 'purpose' seeks to shift the focus in order to apply an arbitrary and untested assumption that activities somehow determine purpose.[3]

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[1] *Freedom of Speech for Sale* article, D. Crosbie, CEO Community Council of Australia, July 2017.

[2] Aid/Watch Incorporated v Commissioner of Taxation [2010] HCA 42, 1 December 2010.

[3] This point of concern has also been raised by other non-environmental not-for-profits, including the Community Council of Australia and the ACTCOSS.

The High Court of Australia has repeatedly ruled that it is the purpose that is crucial for determining charitable status and public benefit. The shift in focus to making DGR status reliant upon regulating activities, appears to be an attempt to circumvent the High Court's rulings, particularly in the case of environmental organisations.

Enforced 'environmental remediation'

The precautionary principle is now widely recognised and implemented across the spectrum of public debate. This focuses on the prevention of environmental harm. For many environmental not-for-profits, as well as others in the sector, it is a primary principle, underlying a broad range of activities in the public interest, including: the development and delivery of education programs, research, public policy development, community engagement, provision of information, the provision of expertise and skills to both the public and private sectors, providing advice to all levels of government, and the provision of legal and support services.

Some also provide a legitimate and valued remediation service. However the nature of the environment sector is not a one-size-fits-all.

The proposed compulsory percentage of funds being diverted into 'environmental remediation' is an ideologically driven nonsense. It is an arbitrary figure plucked out of thin air,that is deliberately blind to the fact that not all environmental DGRs and charities' stated public purpose has anything to do with this particular form of activity. On what possible rational basis is this thought to be a preferred activity to the range undertaken by environmental organisations?

If the stated purpose of an environmental charity, such as an Environmental Defenders' Office is to provide policy, educative, or legal resources to community groups, local government, the public and private sectors, imposed 'remediation activities' is not its stated purpose, and in fact, by attempting to comply could result in that DGR being diverted from complying with requirements to act in accordance with its stated purpose.

There are many other environmental organisations whose legitimate stated public purpose does not involve environmental remediation as a focus.

Markets For Change is of the firm opinion that the proposal that 25-50 per cent of an environmental charity's income must be spent on 'environmental remediation' activities in order to quality for DGR status, is inconsistent with the current charity qualification criteria, (and which will remain applicable to other not-for-profits), which assesses the organisation's purpose.

As mentioned above, this Treasury Discussion Paper is a re-run in part of the widely discredited Inquiry into the Register of Environmental Organisations (2015-16), and therefore, while very disappointing, it is not surprising to see that inquiry's proponents – such as the Minerals Council of Australia, the Queensland Resources Council and the Energy Resources Information Centre (funded by the gas industry) - pick up its loose ends and attempt to tie them once again.

The federal government has made it clear its primary target of the proposed changes to DGR status is the environment movement, especially those charities working to represent their respective members, supporters and communities against mining and other activities with adverse environmental impacts.

A recent newsletter from the Minerals Council of Australia asks mining companies to make submissions to the Treasury DGR Discussion Paper, and provides the following suggestions for inclusion in those company submissions:

> *"Greenpeace, Lock the Gate and groups like them currently receive deductible Gift Recipient (DGR) status which means that donations to them are tax-deductible. This assists them to raise funds for illegal protests.*
>
> *You can help by making a submission to the government. Your submission doesn't have to be long… You might like to cover the following points:*
>
> - *All environmental charities should be regularly reviewed to make sure they are abiding by the law.*

- *Any environmental protest group that breaks the law should immediately have their DGR status revoked. Taxpayers should not subsidise illegal protests by anti-mining groups.*
- *To be eligible for DGR status, the primary purpose of an environmental charity should be "on-ground" work that improves the local environment."* – Minerals Council of Australia newsletter 2017.

And further from the NSW Minerals Council:

> *"NSW Minerals Council believes that while advocacy activities are fine for environmental charities to be involved in, these activities should be conducted within the bounds of the law and that at least 50 per cent of an organisation's annual expenditure should be dedicated to actual on-ground environmental works."* – the NSW Mineral Council, Pro Bono News 2017.

It is galling beyond belief for environmental not-for-profits, their members and donors who support their stated public purpose in good faith, to now apparently be dictated by those who make profit from utilising our natural resources that environmental groups must clean up the mess made by others, but not attempt to argue the case for its prevention in the first place. This is an unacceptable try-on, and should be rejected as such. Astonishingly the Treasury paper goes further in that it contracts the focus on 'on-ground' work to remediation activities – so that even on-ground work designed to constrain or avoid environmental damage would not qualify.

The Treasury Discussion paper's proposals raise serious legal and practical concerns regarding inconsistency with the *Charities Act 2013*, the *Income Tax Assessment Act 1997* (subsection 30-265 (1)), the ACNC Guidelines and the Register of Environmental Organisations.

Charitable contributions in the public interest must be valued

The Treasury Discussion Paper states, "*the cost to the Commonwealth of deductions from donations to DGR organisations is $1.31 billion in 2016-17 rising to an estimated $1.46 billion in 2019-20… Given the generous tax concessions they receive, it is appropriate to require DGRs to be transparent in their dealings and to adhere to appropriate governance standards."* [4]

The Treasury Discussion Paper is conspicuously silent on quantifying the costs and benefits to government of the services delivered by charities and DGRs (often at a less cost than equivalent government services).

The Paper emphasises 'foregone government revenue' from the NFP sector, inferring that tax concessions are foregone revenue, and therefore can only be a cost to government rather than a benefit. It is not the case that we receive monies that would otherwise flow to government, and the implication that this is the case is wrong. Similarly, the Paper relies on a simplistic extrapolation of the cost to government of tax concessions by assuming every dollar given to a charity or DGR would otherwise have been taxable revenue.

There is no analysis of the benefits – social, economic and environmental – of the services provided by DGRs and charities to the community and government, despite this being discussed by other inquiries including the 2014 Productivity Commission's *Access to Justice* Report.

There is no equivalent analysis of the 'foregone government revenue' from other recipients of tax concessions, such as the business sector, public and private corporations, the extractive industries etc.

In contrast, research by the Australia Institute shows:

In 2015 the federal government gave **$4 billion** in subsidies to the mining industry. This included:

- $2.26 billion in fuel subsidies
- $460 million in tax write-offs for capital works
- $580 million in accelerated depreciation for mining company assets
- $320 million in R&D tax concessions.

- Research stemming from a 2014 review by the Australia Institute identified:

[4] Treasury *Discussion Paper on Tax Deductible Gift Recipient Reform Opportunities*, June 2017: pg5.

- On average over six years the state governments spent almost $3 billion a year supporting mining activities.
- Combined with federal subsidies, state and federal governments spent approximately **$7 billion a year** supporting mining.

The Treasury Discussion Paper's use of pejorative language such as 'generous tax concessions' (see Discussion Paper pp 5 & 10) in relation to DGRs and charities, is laden and unnecessary. Worryingly, this plays into the narrative of the Minerals Council, and fosters the misinterpretation that the current tax concession status is somehow disproportionate.

This pejorative language is exacerbated by the Discussion Paper's silence on quantifying, or providing a comparison with, the 'generous concessions' provided to businesses who can write-off employment costs as non-taxable expenses; the revenue foregone by the likes of the Minerals Council of Australia writing-off expenses associated with political lobbying; or the revenue foregone by companies writing-off their contributions to the Minerals Council as expenses, similar to the manner by which individual donors to DGR charities may claim deductions.

It is worth noting that should these proposals proceed, a two tier system will be imposed with environmental DGRs forced to jump through more onerous time consuming, costly hoops, while being restricted from advocating on behalf of their respective communities, members and donors. Limitations which are not proposed to be imposed upon non-environmental charities (and nor should they be).

No evidence provided why changes targeting environmental charities are necessary

The Treasury Discussion Paper fails to provide any evidence for the necessity of the proposed changes targeting environmental charities and organisations, instead resorts to speculative and unsubstantiated assertions.

No evidence provided that proposed changes will improve environmental charities' capacity to serve the community interest or improve public policy

The Treasury Discussion Paper fails to provide any evidence demonstrating how the proposed changes will improve environmental charities' capacity to meet members, supporters, donors, and the broader community's expectations or improve public policy, or deliver upon the specific purposes for which they were established.

DGRs and Charities are currently regulated

Markets For Change shares the position of many other not-for-profits that there currently are effective and sufficient criteria and oversight mechanisms already in place for DGRs and charities.

To qualify for listing on one of the four current Registers, DGRs and charities must have already passed a public benefit test.

Once they've passed the public benefits test, charities then continue to be accountable for their activities through the sector regulator, the Australian Charities and Not-for-profit Commission (ACNC). The current regulatory regime imposes significant restrictions on charities' capacity to engage in political activities, and requires a range of transparency and accountability controls beyond that required by law.

Charities must also comply with other Commonwealth laws including the *Income Tax Assessment Act 1997*, the *Australian Charities and Not-for-profits Commission Act 2012,* and the *Charities Act 2013*.

The Australian Taxation Office (ATO) and the ACNC currently have the necessary powers to de-register and otherwise regulate charities for non-compliance. Complaints about the behaviour or operations of any charity can be made direct to the ACNC.

In the event of 'illegal' activity, whether it be by not-for-profits, individuals, or businesses, laws currently exist, and the rule of law should apply equally.

Significantly, the Treasury DGR Review Discussion Paper **fails to identify any proven transgressions** by the entities targeted (environmental not-for-profits), to justify this latest push to change the rules for environmental DGRs.

Detailed Response to Specific Discussion Paper Consultation Questions

While the Treasury Discussion Paper contains some non-controversial and administrative proposals, Markets For Change is aware they will be covered adequately by others in the not-for-profit sector. Instead this submission will focus on the specific Discussion Paper Consultation Questions directly applicable to environmental DGRs and charities.

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

- This proposal is strongly opposed and should be rejected.
- Charities 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 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.[5]
- If this proposal is implemented – again, reiterating opposition to it – will the ATO require equivalent additional information from all public and private corporations claiming tax concessions on expenditure, about their lobbying activities?

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.
- There are current substantial regular reporting and complaints processes already in placeand these are adequate. 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?

[5] Citizen Survey: *Australian attitudes toward mining*, CSIRO. 2014.

- 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. Not only that but, having regard to current timeframes for application for DGR status to be processed to conclusion, an automatically de-listed organisation could face years before reinstatement.
- 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.
- 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. Prevention is better than cure in many cases.
- 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.
- Why is one group within the NFP sector being singled out for mandated expenditure upon a mandated type of activity? This again smacks of a political agenda.
- 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. These organisations have a vested interest in injuring the effectiveness of environmental groups as their activities frequently have environmental impacts that become the focus of community concern. A mature and balanced approach would not be to seek to undermine the effectiveness of those working to protect environmental values but rather tp find ways to avoid or resolve environmental impacts.
- Of further concern is the fact that while the Discussion Paper purports to reflect the recommendations of the REO inquiry, 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

On behalf of our members, supporters and donors, Markets For Change reiterates our support for a strong and efficient charity and deductible gift recipient sector by maintaining existing taxation concessions for DGRs, charities and donors.

Further, we urge that a strong and diverse environmental sector – including charities and other not-for profits – is recognized as vital to ensure that Australia's environment is protected, and that governments and businesses comply with their legal obligations and the rule of law.

As such a diverse range of activities that contribute to on-ground environmental outcomes, including advocacy, research, policy development, public education and information dissemination about the environment, environmental legal and support services, community engagement and participation, overseas capacity-building and local conservation work are continued to be supported and enhanced.

While we support a legitimate and non-political review of the administrative and governance arrangements for not-for-profits, that focuses upon streamlining and refining regulation, reducing red tape while enhancing transparency and enabling community involvement, Markets For Change rejects the blatant politically motivated recommendations which target only environmental organisations.

Any recommendation not to be applied across all DGRs and charities consistently and equitably must be rejected on the grounds it reflects an unacceptable and discriminatory political bias, and will be seen to be a politically motivated attempt to prevent the flow of information and education on environmental issues, silence free public debate, alternative opinions, and community dissent.

References:

Treasury Discussion Paper on Tax Deductible Gift Recipient Reform Opportunities

- DGR reform: Resource paper supporting a coordinated response
- Submission to the Treasury, Tax Deductible Gift Recipient Reform Opportunities – Community Council for Australia.
- EDO Submission on the Tax Deductible Gift Recipient (DGR) Reform Opportunities – Discussion Paper. – EDOs of Australia.
- NSW EDO website – background page-should all environmental charities have to plant trees?
- *Freedom of Speech for Sale* article, 20 July 2017. David Crosbie, CEO of the Community Council of Australia.
- *Divide and Conquer* article, 22 June 2017. David Crosbie, CEO of the Community Council of Australia.
- Aid/Watch vs Commissioner of Taxation High Court Decision
- *High Court Win for Charities' Freedom of Speech* article
- the Australia Institute - public supports environmental advocacy site
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