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Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

The Nature Conservation Society of South Australia (NCSSA) welcomes the opportunity to provide feedback on this Discussion Paper.

NCSSA is a community based, not for profit organisation with a current membership of around 200 drawn from all parts of the State. The Society's primary objective is to "foster the conservation of the State's wildlife and natural habitats through effective scientific research and education".

Since its' inception in 1962, NCSSA has taken an active interest in the protection of South Australia's natural resources with particular attention being paid to nationally and state listed threatened species and ecological communities, and management of protected areas. We continue to run a variety of highly regarded biodiversity conservation projects that target critical gaps in knowledge and action that include:

- Improving the understanding of biodiversity within the community through activities such as our "Walks with Nature" Program;
- On-ground action towards the recovery of threatened flora undertaken through the Threatened Plant Action Group (TPAG);
- Supporting land managers to restore habitat on private and public land through the Bush Condition Monitoring (BCM) program;
- Collecting and communicating high quality scientific and technical information (e.g. Mount Lofty Bird Woodland Bird Survey); and
- Contributing to the formation and review of natural resource management policy and legislation through our advocacy work.

We strongly believe that advocacy is an important part of the work of all environmental groups and do not support any attempt by the Government to curtail the important work done by this sector by calling in to question activities that are not specifically 'on-ground' in their delivery. Environmental groups are permitted by law to conduct both 'on-ground' and advocacy activities in pursuit of their charitable purpose to protect and enhance the natural environment. We advocate that both types of activities are needed to deliver long-lasting and tangible improvements to the environment beyond the short-term cycle of party politics and inevitable changes in Government policy on such matters.

We provide the following responses to the Consultation Questions in the Discussion Paper. If you would like to clarify or discuss any of the points raised please contact our Conservation Ecologist Ms Nicki de Preu on (08) 7127 4633 or via email at nicki.depreu@ncssa.asn.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M Stead', written in a cursive style.

Mr Michael Stead

President

Nature Conservation Society of South Australia

NCSSA provides the following responses to the Consultation Questions in the Treasury Discussion Paper

Issue 1: Transparency in DGR dealing and adherence to governance standards

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?*

NCSSA support the recommendation for increased transparency and improvements in DGR governance through the requirement for DGRs becoming a registered charity regulated by the ACNC. We recommend that the ACNC direct the highest priority to ensuring the existing eight per cent, or thereabouts, of current DGRs that are not registered charities or government entities are assisted to transition to become registered and regulated by the ACNC. This will mean they are subject to more robust reporting and governance standards that apply to others.

2. *Are there likely to be DGRs (other than government entity DGRs) that could not meet this requirement and, if so, why?*

We are not aware of any DGRs that could not meet this requirement however it is possible that such organisations exist and should be provided with support from the ACNC to assist them transition to such an arrangement.

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

We do not consider there are any specific privacy concerns in relation to the proposal at the present time.

Issue 2: Ensuring DGRs understand their obligations, for example in relation to advocacy

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

NCSSA strongly reject the proposal for charitable groups to provide further information about their advocacy activities. NCSSA has serious concerns that environmental DGRs have been singled out from other DGRs in relation to their advocacy work and what is acceptable to undertake without risking their DGR status. The ACNC has developed clear guidelines about the types of advocacy that are acceptable for charities to undertake and those that are not. We consider these to be totally adequate in terms of making charities aware of their responsibilities to maintain their DGR Status.

The ACNC guidelines on these matters are quite clear and apply to all DGRs stating that "Advocacy and campaigning can be a legitimate and effective way of furthering the charitable purposes of a charity" while acknowledging that "it is important that charities do not cross the line into having a disqualifying political purpose and that they maintain independence from party politics".

As with other charities, environmental organisations are legally permitted to undertake both on-ground and advocacy activities in accordance with their purpose - namely, to protect and enhance the natural environment. As in other charitable sectors, both actions contribute to the achievement of tangible outcomes in terms of improved policy and legislation pertaining to their charitable purpose.

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

NCSSA support the proposal for an annual information statement from charities to a single regulator (the ACNC), along with annual financial statements from medium to large charities to provide public information about a charities' activities and purposes. We consider the current reporting system is relatively straightforward and does not involve a great deal of time or resources to complete. Such matters are particularly important for a small to medium sized organisations such as NCSSA that have limited permanent staff resources, many that are employed on a part-time basis. As outlined in our response to Question 4, we reject the need for any additional information on advocacy activities or reporting that would add further unnecessary or onerous burden on environmental organisations that are the focus for this proposed change.

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

From the perspective of a medium sized not-for profit organisation NCSSA believe that the current administration is relatively efficient and does not involve an excessive impost on staff resources. Minor improvements in reporting could possibly be achieved through an on-line processing system.

Issue 3: Complexity for approvals under the four DGR registers

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?*

NCSSA support the need for more efficient administration of the four DGR registers however recommend that responsibility be transferred to the ACNC rather than the ATO. We believe this would provide more consistency in reporting across various NFP sectors than currently exists and support the ACNC in its role of assisting charities to apply for DGR status, either by administering directly, or by liaising with the ATO.

Whether DGR administration of the registers is transferred to the ACNC or the ATO, it is critical that registration, compliance investigations and responses to complaints are separated from political processes and that the integrity of, and public confidence in, independent regulatory processes is maintained.

Issue 4: Complexity and red tape created by the public fund requirements

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?*

NCSSA acknowledge the additional governance requirements required to establish a Public fund and difficulties that this may pose to DGR organisations in regional and rural parts of Australia in terms of nominating a responsible person. NCSSA believe that public trust in DGRs management of donor funds is extremely important to the sector. From this perspective, maintaining a separate public fund for donations can be a useful component of efficient, accountable and transparent financial governance, if organisations have sufficient and appropriately trained staff and resources.

We recommend that where circumstances do not allow DGR organisations to establish or maintain a separate fund, the Government could consider alternative ways to maintain public confidence, good governance and oversight of those charities' funds. We support the EDO's views on this matter that the regulator should be resourced to work with and guide regional, rural and smaller charities – to build their capacity, recognise and attract competent and ethical fund managers.

We also support the proposal for organisations to be endorsed across multiple DGR categories (with a single public fund), where this aligns with legitimate charitable purposes. We believe this would improve DGR access for organisations that work across multiple categories in the current framework.

Issue 5: DGRs endorsed in perpetuity, without regular and systemic review

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?*

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

We do not support the proposal for regular reviews to be undertaken by the ACNC and/or ATO to ensure an organisation's DGR status is up to date or believe that this would provide donors with any greater confidence in terms of the organisations they choose to donate to. We consider existing ACNC governance and public reporting requirements are sufficient to maintain public confidence and regulatory oversight of charities without the need for a more formal rolling review program as proposed. We do, however support the proposal for DGRs to certify annually that they meet the DGR eligibility

requirements, with penalties for false statements. Annual certification could be incorporated in to the existing annual reporting requirements without too much additional work from individual organisations.

Issue 6: Specific listing of DGRs by Government

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?*

NCSSA acknowledge the need for increased consistency in granting DGR status and question the need for a separate process for specifically listing organisations that do not fall within one of the 47 general categories or four registers. The current proposal to transfer the four DGR registers to the ATO provides an opportunity to change this arrangement and add an additional category/categories that would cover such circumstances. Such an arrangement would negate the need for organisations to be considered under a different process and set of standards than apply to other organisations whose purpose align more closely with the existing categories or registers. In terms of the existing organisations that have been granted DGR status under 'exceptional circumstances' we recommend that the ACNC assist them in transitioning to the proposed new arrangements so that they are subject to the same governance standards or the other requirements of the ACNC legislation.

Parliamentary Inquiry into the Register of Environmental Organisations

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?*

NCSSA strongly rejects the proposal for environmental organisations to set a figure on how much of their annual expenditure is directed to environmental remediation. There are currently a wide range of environmental organisations listed on the *REO* that undertake a wide variety of work to protect and conserve Australia's unique natural environment. Some of these organisations undertake only 'on-ground' conservation works, others primarily advocacy activities and many a combination of both. Despite these differences in approach, all are inextricably linked to achieving positive benefits to the environment through either direct or indirect action.

Environmental remediation efforts such as revegetation works, pest plant and animal control or reintroduction of threatened species are a key element of the work undertaken by some environmental organisations yet not the only, or necessarily best, way to address the ongoing declines in biodiversity reported in successive State of the Environment Reports over the past two decades. We strongly believe that, as with other charitable sectors acting in accordance with their purpose, advocacy plays an important function in achieving tangible benefits for the environment. It provides a critical mechanism for community members to engage with often complex legislative, institutional and policy decision making. We strongly believe that this improves the functioning of government and outcomes for the environment, community and public good.

We acknowledge that this proposal did not originate with Treasury, but was initiated by a small number of private interest groups such as the Queensland Resources Council, Energy Resources Information Centre, Minerals Council of Australia and the Australian Taxpayer's Alliance based on information in the *Report of the Inquiry into the Register of Environmental Organisations*. It is also important to acknowledge that six Labor and Liberal members involved in this Inquiry provided dissenting reports and rejected any minimum funding diversion from environmental organisations for remediation works as proposed here.

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?*

NCSSA does not support the need for sanctions given the current proposal for DGRs to be registered charities subject to appropriate oversight and governance from the ACNC. As noted in our response to

Question 8, public trust in a DGRs management of donor funds is vitally important. The Charities Act and advice provided by the ACNC clearly address the issue of lawful operation of all charities (not just environmental DGRs) stating that they cannot have a purpose that is illegal or against public policy. Furthermore, the ACNC has powers to investigate, manage and de-register charities (including relevant DGRs), and action can be taken against individuals including for fraud. We do not believe there is any clear rationale for additional certification or sanctions targeted specifically at environmental organisations.

In closing NCSSA strongly recommend that the Senior Advisor and Departmental representatives involved in evaluation of feedback on this Discussion Paper carefully consider the implications of any actions undertaken to reduce the charitable status of environmental organisations that help to proactively protect the environment (including on-ground work, education, advice, casework, community engagement and advocacy). We trust that you will endeavour to ensure that such organisations retain their deductible gift recipient status due to the great public benefit of their work - in protecting the environment and human health, wellbeing and livelihoods that depend on our environment.