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The Treasury
Langton Crescent
PARKES ACT 2600

3 August 2017

The Reichstein Foundation is pleased to provide a submission to Treasury's consultation on the *Tax Deductible Gift Recipient Reform Opportunities Discussion Paper*.

It is appropriate that the efficacy of deductible gift recipient arrangements is reviewed from time to time.

The significance of this review

For government, DGR arrangements may represent important forgone revenue. But these arrangements are also central to enabling viable voluntary organisations to contribute to local communities; to fostering interest in research, science, humanities, philosophy, the arts and the environment; and to ensuring powerful government, corporate and social interests are transparent and accountable.

Tax effective arrangements, based on the voluntary contributions of citizens and organised philanthropy, are vital tools in a truly civic society.

The charities sector, in particular, is held in high public regard. It is a key part of the glue that holds a highly diverse society together. Regulatory requirements need to facilitate this regard and reinforce public trust – rather than undermine it.

This trust is built in part on faith that non-partisan, non-profit entities, acting without self-interest in the environmental, arts, science, community, legal and public policy sectors, will hold key actors and public, corporate, religious and social institutions to account for their actions, policies and impact.

The Reichstein Foundation

The Reichstein Foundation was established in 1970 as a charitable philanthropy through a gift by Lance Reichstein, a major Australian industrialist and entrepreneur. His company, Industrial Engineering Limited (IEL), grew from origins in the 1920s to become a significant manufacturer of heavy engineering equipment and technology for industries ranging from stevedoring to mining to automotive. At its peak, IEL employed over 6,000 workers along the eastern seaboard of Australia.

The Reichstein Foundation's mission is to provide grants and support for a more prosperous and inclusive Australia, including a strong focus on much greater environmental

sustainability. Since its establishment, the Foundation has provided over \$16 million in grants to community, human rights and environmental non-profit organisations.

Some of our recent environmental grants include support for:

Climate Media Centre – to provide public information about the science and impacts of climate change. The Centre has been instrumental in encouraging national and international coverage of climate challenges facing regional communities in Australia.

Totally Renewable Yackandandah – to support a partnership between TRY and Ausnet Services, the grid operator in north east Victoria, in order to build a renewable energy mini-grid in this rural Victorian community. A project with national implications.

Farmers for Climate Action – to provide education and information about carbon farming and how to engage more farmers in sustainable agriculture, that will protect soils, water and bio-diversity.

Australian Marine Conservation Society – to develop policy and strategies to protect the Great Barrier Reef.

Environment Victoria – to develop leadership and skills in the area of 'just transitions' for communities economically dependent on fossil fuels.

The Foundation has played significant roles in the establishment of Philanthropy Australia; the Australian Environmental Grantmakers Network (AEGN) and the Australian Women Donors Network. I am currently the chair of the AEGN.

Our Submission and Key Principles

We support the submissions of the AEGN and Philanthropy Australia to this review.

We particularly address issues related to advocacy (Questions 4-6), environmental DGRs (Question 12) and the central importance of the ACNC as the gatekeeper, regulator and point of guidance for the charities sector, in this submission.

We are guided by these principles in reviewing existing DGR arrangements:

- Focus on removing complexity, not increasing red tape

We support proposals to ensure that all DGR organisations are registered as charities and subject to the regulatory oversight of the ACNC. There are also benefits associated with removing the obligation for DGR organisations to establish and manage public funds.

- In accordance with charity law, focus on charitable purpose, not activities

We support the approach taken by the Charities Act 2013: at law, *purposes* define charitable status, not *activities*.

The DGR framework has also generally focused on purposes rather than activities. Charity law is very clear on what constitutes charitable purposes and what is a disqualifying purpose. An activities focus will inevitably lead down a path of complex and unsatisfactory rules for charities.

- Celebrate engagement in advocacy by DGR organisations, don't discourage it

The Charities Act 2013 specifically includes advocacy and public policy reform as a legitimate charitable purpose: 'A charity promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, in furtherance or protection of one or more of the above purposes.'

The Explanatory Memorandum of the Act goes on to say, 'charities may play a significant role in public affairs, and are free to have the purpose of promoting or opposing laws, policies, and practices, where this aids an existing charitable purpose.'

Many charities, whether engaged with reducing economic or social disadvantage, promoting education, carrying on research, protecting the environment or providing information or education about the natural environment are seeking change to public policy, laws or practices.

Charities undertaking advocacy are essential to our system of parliamentary democracy.

Consultation Questions 4-6

We support Philanthropy Australia's concerns about new reporting requirements for charities undertaking advocacy and limitations being placed on the ability of environmental charities to undertake advocacy.

The Discussion Paper asserts that 'some charities and DGRs undertake advocacy activity that may be out of step with the expectations of the broader community', however this assertion is made without any supporting evidence. Unsubstantiated and speculative statements about the expectations of the broader community should not serve as a basis for making public policy.

No justification has been put forward in the Discussion Paper regarding the need for new reporting obligations for advocacy activities.

The suggested reporting requirements are also problematic in of implementation.

There is inherent complexity involved with delineating which activities should be described as advocacy as opposed to another activity like education, research, promotion or member communication. The regulator would need to allocate public funds to developing guidance and support for charities. Every charity would expend resources accounting for their activities and completing reports. There is no justification offered in the discussion paper to support the need for this resource allocation by charities and government.

Existing charity law sets appropriate boundaries for what advocacy activities by charities are acceptable, for example charities cannot have a purpose of promoting or opposing a political party or a candidate for political office. ACNC guidance for charities in this area is helpful and reflective of the law.

Consultation Questions 9-11

We do not believe rolling reviews for DGR organisations are justified. The charitable sector has very high levels of integrity and is held in high regard by the Australian community. It is rare for the people entrusted to lead charities to behave in ways which break this trust.

There is no evidence provided in the discussion paper of the need for this regulatory change.

The ACNC has powers to deal with charities which appear to be acting outside of their purposes or their legal obligations. We favour continuing the practice which has been established by the ACNC, of working with the sector to develop appropriate compliance measures and striving for proportionate responses to charities in breach.

We do not believe a sunset rule for specifically listed DGRs is justified. Given the proposal that all DGRs be registered charities, any concern that specifically listed charities could be deviating from their charitable purpose could be responded to using existing ACNC powers.

Consultation Questions 12 & 13

This proposal is inconsistent with a number of laws and flows from a misunderstanding of the principal purposes of environmental DGR organisations.

We note that Subsection 30-265 (1) of the Income Tax Assessment Act 1997 defines the principal purpose of an environmental DGR as either (a) protecting the environment OR (b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

This latter purpose is not raised in the Discussion Paper but it is what many environmental DGRs do. The Paper therefore undervalues the contribution that strong advocacy, education and research has made to conserving iconic Australian places of great environmental value, including our national parks, marine reserves, rivers and wetlands.

Environmental remediation is only one of many approaches used by environmental organisations to protect and enhance the environment. Most of the environmental gains which Australians enjoy – such as national parks, pollution laws, better access to solar energy - have been the result of policies and legislation, enacted by governments in response to the advocacy of citizens and environmental groups.

If the concern is to boost support for environmental remediation, a better approach would be to reinstate government funding to programs such as Landcare. In addition, damage to the environment should be subject to stronger regulation, aiming to prevent damage in the first instance and to oblige the responsible entity to remediate where damage has occurred.

We support the proposal that all DGRs are charities and subject to ACNC regulation and guidance. We have confidence in the current approach of the ACNC to deal with any material concerns of the public about individual charities that might arise.

Thank you again for the opportunity to make this submission. We would be pleased to respond to any issues or questions that you may have. Queries should be directed to the Foundation's Executive Officer, Dr John Spierings, who is contactable at johnsp@reichstein.org.au or on (03) 9614 0919.

Sincerely

A handwritten signature in black ink, appearing to read 'Jill Reichstein', with a long horizontal flourish extending to the right.

Jill Reichstein, OAM

CHAIR