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[redacted]

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By email: **DGR@treasury.gov.au**

Dear Sir/Madam

TAX DEDUCTIBLE GIFT RECIPIENT REFORM OPPORTUNITIES

I refer to the Discussion Paper dated 15 June 2017 requesting feedback and comments for the potential reforms to the Deductible Gift Recipient (DGR) tax arrangements.

Please accept my submissions to specific questions within the Discussion Paper, set out below.

Regards

Bruce Rudeforth

ANSWERS TO SPECIFIC DISCUSSION PAPER QUESTIONS

Question 3

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

No. DGR's operate in a privileged position in Australia. While genuine DGR's make a significant contribution to Australian society, they are being subsidised by the Australian tax payer who bear the burden of providing funds for the country to operate, and the tax for the numerous grants that are provided to DGR's and charities. The government is also missing out on tax revenue because donations to a DGR are tax deductible.

If the DGR is directing all their financial resources towards what would generally be considered a classical charitable activity (ie. a cancer charity researching for a cure, or an environmental organisation actually getting their hands dirty remediating the environment) then it could be acceptable for donor information to be withheld from the ACNC register.

However, given that DGR's/charities are increasingly using their status for lobbying and political purposes, it is appropriate that DGR's collect the same information as is required by a charity. DGR's should not be used as a vehicle to push a political agenda while receiving a financial benefit causing other tax paying Australians to shoulder Australia's tax burden.

I do not accept that political advocacy is a genuine charitable activity, so if a DGR/charity engages in any political advocacy, then the DGR should be required to provide information about their donors to the ACNC, who should release this information publicly.

Question 4

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

Summary:

The ACNC should require charities to:

- **declare their expenditure on administration activities.**
- **declare the remuneration and benefits of key management personnel;**
- **declare their top 20 donors and those who collectively donate over $1000 to the environmental charity within a financial year;**
- **itemise all government grants received and summarise the purpose of the grant funding; and**
- **declare if they are providing any in kind or actual financial support to other organisations involved in political advocacy;**

Yes, the ACNC should require more information about a charities' advocacy activity than is currently required, and release this information publicly.

Any organisation that has deductible gift recipient status, does not pay tax, and/or receives government grants must be held to highest level of transparency and scrutiny. The tax payer deserves to see how the organisations and individuals that they are subsidising are operating.

In addition to current obligations, the ACNC should require the following additional information from charities engaging in advocacy:

(a) Declaration of Expenditure on Administration

Taxpayers and donors should have a right to know how much of the charities expenditure is spent on non-charitable activities. It is my expectation that the charity makes an effort to direct as much of its resources towards a genuine charitable purpose, accordingly a declaration of expenditure on administration or non-charitable activity costs should be declared in a medium and large charities' annual statements.

While this is not necessarily an accurate measure of how a charity is performing as there can be some extraordinary costs in the field that the charity operates, nonetheless it does give the public and donors a guide about how much of their donation is not going towards the activity they think they supporting.

(b) Public Transparency

Environmental charities, and any charity that engages in any political advocacy, must be required to:

- declare the remuneration and benefits of key management personnel;
- declare their top 20 donors and those who collectively donate over $1000 to the environmental charity within a financial year;

- itemise all government grants received and summarise the purpose of the grant funding.

Under s.300A of the *Corporations Act 2001 (Cth)* public companies are required to declare in their annual reports the remuneration and benefits of key management personnel. These transparency provisions were introduced so that shareholders can adequately scrutinise the performance of the company, as well as ensuring that management are performing at a level commensurate with their remuneration.

The ASX listing rules require public companies to declare their largest 20 shareholders and their shareholding. These are declared so that other shareholders are able to see the influence that large shareholders may wield over a company.

Similarly, elected members of government are required to declare their assets, and their remuneration is publicly available to members of the public. Again, this is so that the public can adequately scrutinise their performance to ensure that they aren't acting in their own self-interest.

I agree with the above reasons for transparency and think it should be similarly applied to environmental charities and their donors that are enjoying political influence whilst being subsidised by the Australian taxpayer.

I live in the remote Kimberley region of Western Australia where there are many active environmental groups with DGR and charitable status. Despite being registered as environmental charities, they do very little activity improving the environment but are very politically active, often running misleading campaigns to scare the public and also using their financial resources to travel to lobby members of parliament.

I am aware that these environmental charities are mainly being funded by American 'philanthropist' organisations and wealthy individuals living in the southern half of Australia. While these donors enjoy the comfort and convenience of living in large metropolitan areas, because of the politically charged advocacy of environmental charities the Kimberley has missed out on much needed jobs and infrastructure in an area that is naturally expensive and challenging to operate in. Despite the negative effect that their funding of activist charities is having on the Kimberley, the donors are unable to be scrutinised because their donation is secret and not available for the public to hold them to account.

Further, their donation is tax deductable, so the donor benefits financially while detrimentally effecting the lives of people living in a remote region of Australia. It is left to the government to provide welfare to those who are unable to obtain jobs and also to fund the infrastructure of the region. Yet, environmental charities often target the major shareholders of public companies attempting to operate in remote areas, the same companies who are paying Shire rates, investing in infrastructure in the region, employing locals, using local services, and paying taxes.

If donors wish to influence particular outcomes of a region through funding the agenda of a charity that engages in political advocacy, these individuals and their donations should be made public and they should receive the same scrutiny that elected members, management, and major shareholders of public companies receive.

As the Australian taxpayer is subsidising political advocacy of these charities, the taxpayer is analogous to the shareholder of a public company and should be entitled to know if the directors and management of large charities are engaging in political advocacy while

benefitting themselves at the expense of those people living in a region where the charity is deterring investment.

(c) Distribution of Funds to Other Charities/DGR's

It is my expectation that charities/DGR's use their funding only for their own charitable work.

However, I am aware of activist environmental charities operating the Kimberley are collaborating with each other, advocating for other activist charities, and supporting projects of other environmental charities, both directly and indirectly.

To ensure the public has confidence in the charitable sector and to make sure the government is not duplicating funding or tax exemptions for the same project, charities should be required to provide the ACNC with any in-kind or actual financial support provided to another DGR/charitable organisation.

(d) Declaration of government grants and purpose of grants

It is common that charities are the recipients of taxpayer funded government grants. It is the expectation of the public that these grants are used for the purpose of the charity to carry out its stated charitable purpose.

I am aware of a number of environmental activist charities whose activities are almost exclusively comprised of political advocacy or are funding other groups to achieve their political objectives. From their profit and loss statements submitted to the ACNC it is possible to see that these environmental charities have received considerable grants from State and Federal governments, however this is a one line item on the profit and loss statement without explanation of what the grants were for. I would be extremely surprised if the government grantor intended for the grants to these organisations to be contributing to the political advocacy of activist charities.

Given the nature of government, it is difficult for the public to ascertain what grants have been provided to charities. It isn't a requirement by departments to publicise grant request and practically it would be burdensome on government departments to have to publish all the grants they provide. For the government departments that do publish grant information, the information is usually summarised and contains little detail of what the grant was for. This makes it difficult for interested parties to ascertain whether a charity is using grant money in accordance with its purpose.

Although the ACNC and government departments have powers of investigation, it is the public that is better placed to ensure that the charity is using its taxpayer funded grants in the way intended. By empowering the community with easily accessible information on grants the charity receives, governments will benefit from the public keeping charities honest.

Question 5

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

Yes. All information should be included in the one document to ensure transparency and make it simple for the public and donors to scrutinise the performance of charities/DGR's.

Question 6

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

Medium to Large charitable/DGR organisations should be required to report transparency information to the ACNC on a biannual basis. With modern accounting software this obligation is less of a burden that it was a decade ago. These organisations are receiving a significant benefit from the Australian taxpayer and this obligation should not be viewed as being a burden for a charity with over $250,000 revenue. If they do not wish to provide this information they should not use their charitable status for political purposes.

Question 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?

A 5 year sunset clause is an excellent idea and should be implemented. DGR status is a privilege and not a right, and comes at the expense of the Australian taxpayer. Accordingly, reviewing the status of DGR's is essential. Without a sunset clause, to investigate a DGR the ACNC/ATO is either reliant on breaches of DGR regulatory obligations or from a complaint from a member of the public.

I would consider the current regulatory obligations applicable to charities and DGR's to be minimal. In general members of the public are unlikely to make a complaint against any organisation, either due to complacency or wanting to avoid the hassles of being involved in an investigation into a DGR. With the current lack of information available about a DGR/charity's activities and funding, the public are unlikely to have reason to make a complaint that could trigger an investigation into a DGR.

The 5 year sunset clause is therefore appropriate as it would automatically require a DGR to justify its activities to the ACNC without the intervention of the public.

Question 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?

Summary

- **political advocacy should be capped at a strictly enforced $20,000 or 5% of revenue, whichever is the lesser.**

Expenditure on Remediation and Advocacy

In addition to requiring a minimum amount to be spent on environmental remediation, Australia should follow Canada's example and cap political advocacy of environmental organisations with charitable and/or DGR status. However, Australia should go further and cap a charities political advocacy at $20,000 or at 5% of revenue, whichever is the lesser.

Canada's policy is set in the Canada Revenue Agency's (**CRA**) Policy Statement on Political Activities (CPS-022), an interpretation of the Canadian Income Tax Act. Political activities are defined by the CRA as being when a charity:

- *explicitly communicates a call to political action (that is, encourages the public to contact an elected representative or public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country)*

- *explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if the retention of the law, policy or decision is being reconsidered by a government), opposed, or changed*

- *explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organize to put pressure on, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country*

Australia's definition should go further and include any attempt to persuade or influence politicians and the public.

$20,000/5% of a charities revenue is generous and is adequate for the DGR/charity to advocate their position to further their cause. If they wish to use more of their expenditure on political advocacy they can start a political party and be subject to relevant legislation.

The amount spent on advocacy should be capped using both a percentage and monetary amount because some of the worst offending environmental charities are multi-million dollar organisations. If exclusively using a percentage figure the amount spent on political advocacy could be considerably high.

The Australian public should have the right to know that that a charity is focussing its resources on genuine charitable activities. Given that the taxpayer is subsidising the operations of a charity, it is only fair that the taxpayer is able to see that the charity is not abusing the goodwill of the public and is actually carrying out its charitable purpose.

There are various environmentally orientated political representatives in parliaments around Australia, if a DGR/charity wishes to engage in political lobbying then they can approach these environmental politicians to push the charities position in public rather than using tax free money to push their agenda. DGR/charitable money should not be used for political purposes, if it is permitted it should be minimal.

Potential benefits

Australian society will benefit from capping the amount of political advocacy because charities will concentrate on real charitable activities, rather than engaging in the often frivolous activities of activist charities using the legal system to hinder development or running public scare campaigns against projects they do not like without any credible scientific evidence to support their cause.

Minimising the regulatory burden

It is my expectation that environmental groups direct all their money towards the physical improvement of the natural environment. They should not be illegally blockading lawful development, they should not be engaging in misleading scare campaigns, and they should not funding vexatious legal challenges to approved projects and clogging up the court system in the process.

If an environmental organisation wishes to engage in political advocacy, it is their choice. However, they should realise that charitable status is a privilege and not a right, and that the Australian taxpayer have a reasonable expectation that tax free money is being directed towards the genuine charitable activity.

The simplest way for an environmental charity to reduce its regulatory burden for reporting its political advocacy expenditure would be for environmental charities not to engage in any political advocacy.

Alternatively, this reporting requirement should only apply to medium to large environmental charities which would reduce the burden on smaller charities.

Question 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?

Summary:

- **DGR's should be regulated by the ACNC to subject them to the same regulatory standards as charities.**
- **Charities and DGR's must not engage in unlawful or misleading conduct. Strict sanctions must apply and DGR and/or charitable status must immediately be revoked if an organisation encourages, funds, or engages in such activity. These sanctions should be able to be retrospectively applied.**
- **ACNC's powers of enforcement and investigation should be increased.**
- **All sanctions must be able to be applied retrospectively.**

There is a significant need for strict sanctions to apply to DGR's and registered charities. Genuine charities play an important role in Australian society and operate in areas where the private and government sector are ineffective or unable to.

Taxpayers rightly expect that the hard-earned dollars they are paying in tax are for the benefit of society, and not to subsidise charities and their donors to pursue their political views.

The government is missing out on millions of dollars in tax revenue by charities not paying tax. Further tax revenue is lost when donors are able to claim a tax deduction for the donations that have been made. However, the financial burden that is placed on the taxpayer from a charity not paying tax is forgiven because of the perception that charities are engaging in genuine activities that benefit society. Therefore it vitally important that charities are acting in a manner as expected by the Australian public. If the public see that charities are acting inappropriately, it causes resentment amongst taxpayers and diminishes the credibility and support of the entire charity sector.

But our tax dollars are subsidising members of environmental activist groups to unlawfully blockage the lawful activities of workers across the country. If they wish to protest, they can do it on their own without the assistance of the Australian taxpayer and without jeopardising the financial livelihoods of honest, hardworking individuals by hampering various projects around Australia which activists may be opposed.

I often hear activists state that their right to free speech is being taken away if they, under the umbrella of their environmental charity, are not able to engage in political activity. This is not true - they can say whatever they want, however they should not expect me to subsidise them through the activism of an organisation posing as a charity carrying out charitable activities.

It is my experience that environmental charities with DGR status can say and do what they want with little consequence. I have been subjected to physical and verbal abuse by members of environmental charities whose leaders organise and encourage this behaviour. These activists know that the ACNC's powers are weak and there are very few consequences for the charity unless they do not comply with their reporting obligations. I am continually

frustrated by the misleading tactics that they engage in to scare the public about resource projects in the Kimberley. If I, or a public company, were to operate in a similar manner as these charitable activists there would be considerable reputational damage, as well as financial consequences under the *Corporations Act 2001* and ASX rules.

Unfortunately the reality is that a victim (whether an individual or a company) of these environmental activist charities have few avenues to resort to. Companies cannot be defamed under Western Australia's defamation laws, yet the misleading information originating from environmental charities can have significant reputational damage for a company. To pursue a charity in court for losses caused by an activist charity's frivolous legal challenge or from the blockading of a company's legal activities is also unrealistic. It takes a minimum of 6 months to get any kind of result in the courts, which isn't guaranteed and required significant expense and personal time to deal with. This is not something most companies can afford to do.

Similarly an individual who has been abused or defamed by an environmental charity faces the prospect of an expensive and emotionally taxing exercise to get any sort of accountability from a charity engaging in unlawful conduct.

Given the privileged space that charities/DGR's operate, this kind of behaviour should never be permitted to occur. It should not be the responsibility of a company or an individual to hold charities, and the actions of their members, to account. The Federal government has provided the charities with the privilege of charitable status, it should be the Federal government who holds the charities to the highest level of conduct by revoking the DGR/charitable status of an organisation engaging in unlawful or misleading conduct.

Retrospective Consequences

If regulations are introduced that would strip charities of their status, these laws should apply retrospectively. A charity should be required to operate in an honest manner regardless of lack of consequences. If in the past they have abused the standard of behaviour expected of them, their charitable status should be revoked. They have already obtained the protection and benefit of being a charity, so this benefit should not continue to be enjoyed simply because new laws are introduced.