

Reforms to the Deductible Gift Recipient (DGR) tax arrangements

Sea Shepherd Australia Submission

Dated 2 August 2017

This submission addresses the criteria stated in the *Tax Deductible Gift Recipient Reform Opportunities Discussion Paper* dated 15 June 2017

1. Sea Shepherd Australia (SSA) is a non-government charity with the following Mission Statement:

Sea Shepherd Australia is a non-profit conservation organisation whose mission is to end the destruction of habitat and slaughter of wildlife in the world's oceans in order to conserve and protect ecosystems and species.

Sea Shepherd Australia uses innovative direct-action tactics to investigate, document and take action when necessary to expose and confront illegal activities on the high seas. By safeguarding the biodiversity of our delicately balanced oceanic ecosystems, Sea Shepherd Australia works to ensure their survival for future generations.¹

2. In plain English, this means that we seek to advocate for and protect the Australian marine environment.
3. We do this in local campaigns in Australian and International waters, and participate in campaigns auspiced by other Sea Shepherd entities that share the same mission statement.
4. Typically, these campaigns have included protecting whales in the Southern Ocean; seeking to better inform the public on the needs to better protect endangered sharks; pick up rubbish, or marine debris around local beaches across the country; and other activities including educational talk in Schools, tertiary campuses and other interested organisations.
5. SSA is seeking DGR status, but importantly we seek to collaboratively engage with Government to protect and advance natural marine systems that Australia has a responsibility for.
6. Examples of past and ongoing collaborations include:
 - a. Across the country working with local councils/shires and Department of Parks and Wildlife for beach cleans.
 - b. In our ten Antarctic whale defence campaigns, with Sea Shepherd Global SSG), another Sea Shepherd entity, we have directly saved the lives of over 6,000 whales in the

¹ Sea Shepherd Australia, as at 23 July 2017, <http://www.seashepherd.org.au/who-we-are/about-us/who-we-are.html>.

- Southern Ocean Whale Sanctuary from illegal whalers. The Japanese whalers are in contempt of the Australian Federal Court (with a million dollar price tag on their heads) and their practices were found illegal by the International Court of Justice.
- c. Between 2014-2016, in a collaboration with SS Global, we shut down the remaining six illegal tooth fish poachers that were wanted by Interpol, while retrieving over 72 kilometres of illegal gill net from the pristine waters of the Southern Ocean.
 - d. Since 2000, we have been actively involved in the UNESCO listed Galapagos Islands, working with the parks and navy, facilitating patrols of the marine reserve and stopping the illegal poaching of sharks. This entailed Sea Shepherd funding and building an AIS (Automatic Identification System) monitoring system, education program and K9 anti-smuggling program and legal assistance.
 - e. In January of 2016 we scattered and chased six illegal Chinese drift netters back to China that were operating illegally in the South Indian Ocean. As a result of the evidence we provided, the Chinese government suspended fishing licenses, handed out heavy fines and cancelled master certifications. Drift netting is a destructive, indiscriminate practice outlawed worldwide since 1992.
 - f. Since 2016, in response to an invitation of the Government of Gabon, we have been supplying the vessel and volunteer crew, while the Gabonese Navy providing the enforcement officers to make the arrest of vessels coming from all over the globe to poach the tuna rich waters. This is proving to be a huge deterrent after numerous vessels already seized and detained.
 - g. Since 2016, we have also been working with the Mexican navy, in the Gulf of California in a bid to protect the last of Vaquita porpoise, as well as the broader marine environment from illegal fishing. This campaign has resulted in many arrest by the Mexican Navy in conjunction with Sea Shepherd.
 - h. Since the 2nd of February, 2017 we've been working closely together with the Ministry of National Defense in Liberia to tackle the issue of illegal, unreported and unregulated (IUU) fishing. It's estimated that 15-40% of the global catch of fish is caught by IUU operators and in the region of West Africa that number is closer to 40%. Once again, we have been supplying the vessel and volunteer crew, while Liberia has been providing armed Liberian coast guards, providing the enforcement officers to make the arrest of vessels coming from all over the globe to poach the tuna rich waters. This is proving to be a huge deterrent after numerous vessels already seized and detained.

The discussion paper and our submissions:

7. Sea Shepherd Australia welcomes the opportunity to engage with Government in relation to DGR reform opportunities as outlined in the Discussion Paper.
 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?*

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

 - 1.1. Where there are well meaning volunteers, there are opportunities for human error. However, legitimate "error" of this sort is not illegal activity, rather error that can be remedied through systems that take into account that many NGO's lack resources and rely upon volunteer activities.

2. *Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?*
 - 2.1. Unless there are questions of personal security, then any accountable system needs to be transparent. If privacy concerns arise, then on application information that may identify names, addresses or telephone details can be made confidential and protect a person's privacy.
3. *Should the ACNC require additional information from all charities about their advocacy activities?*
 - 3.1. It is generally accepted that environmental NGO's contribute the common good.²
 - 3.2. Advancing the common good can take on different forms, and 'advocacy' has different interpretations pending how that advocacy is structured or conducted.
 - 3.3. Sea Shepherd Australia supports a more open interpretation or construction that takes into account complex natural systems and the diverse ways natural marine systems can be protected and supported by different agencies, both government and NGO. Adopting a narrow construction may cause more harm than benefit to natural systems.
 - 3.4. For example, and regarding paragraph 15 of the discussion paper, the broader community might not like the fact that surf beaches may be the domain of a great white shark, or other endangered species. But the fact remains that sharks live in the sea, and sharks may look for food where people sometimes swim or surf. Where advocacy is effective, is when advocacy encourages better research on shark behaviour and more effective mitigation strategies that do not cause unnecessary harm to other species, ie migrating whales. And, of course, prevent tragedies at beaches.

Sometimes 'advocacy' must be interpreted widely in a way that can inform public opinion. Particularly where the overall health of marine eco systems is put at risk.

Advocacy can also include 'on ground' activities such as revegetation works and for example simply picking up rubbish.

Sea Shepherd, working with other local partners, successfully conducts a 'marine debris' campaign picking up rubbish at different beaches or waterfronts as a direct way to remediate intertidal zones within marine ecosystems. In partnership with Tangaroa Blue and the Commonwealth funded Australian Marine Debris Initiative, this project goes beyond simply picking up rubbish and includes cataloguing the rubbish and aiming to identify the source, as well as community education.

This sort of remediation seems in accord in with consultation question 12. However, the benefit in this type of remediation lies in a broad and open construction of advocacy. For the supporters of Sea Shepherd Australia, remediation is part of a larger picture. Clearing beaches of rubbish is one part, writing submissions like this is another. Speaking to a group of students in a primary or secondary school about the level of plastic or rubbish in marine ecosystems is another. When interpreted holistically, there is real benefit to marine ecosystems.

² NSW EDO, as at 23 July 2017, http://www.edonsw.org.au/should_all_environmental_charities_have_to_plant_trees.

4. *Is the Annual Information Statement the appropriate vehicle for collecting this information?*
 - 4.1. Use of the Annual Information Statement appears appropriate for this purpose.
5. *What is the best way to collect the information without imposing significant additional reporting burden?*
 - 5.1. Sea Shepherd Australia supports the use of the Annual Information Statement.
6. *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?*
 - 6.1. Sea Shepherd Australia supports the proposed action to transfer the administration of the four DGR Registers to the ATO.
7. *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?*
 - 7.1. Sea Shepherd Australia supports the proposed actions in paragraph 51. Regulatory savings are likely as the need to operate two separate accounts (operating account and public fund account) and accounting systems are removed.
8. *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?*
 - 8.1. Sea Shepherd Australia supports the proposed actions in paragraphs 56- 59.
9. *What are stakeholders' views on who should be reviewed in the first instance? What should be considered when determining this?*
 - 9.1. Sea Shepherd Australia supports the proposed actions in paragraphs 57 & 58.
10. *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?*
 - 10.1. This appears only to refer to those minority of DGRs (190) that do not fall within one of the 47 general categories and that are specifically approved by the Minister for Revenue and Financial Services. The proposal for five-yearly review appears reasonable, however the proposal to require the entity to re-apply appears unnecessarily burdensome. If the review supports continuance, then this should suffice.

11. *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?*

11.1. As discussed in paragraph 4.4 tying remediation to less than 25% represents a very narrow approach to environmental advocacy.

11.2. Further a delegated decision maker has a responsibility to consider all relevant material relative to a matter, it is procedurally unfair when decisions are made to fetter what is already accepted as a good public purpose, eg a wide interpretation of environmental advocacy.

The NSW Environmental Defenders Office (EDO) had the following things to say:

Of course, restoring our land and waters is worthy of tax-deductible status. But it's not sufficient if the overall public purpose is to protect the environment. Remediation attempts to fix damage done to the environment. But it's far preferable to prevent damage in the first place, and that's where reform, public education, research, advocacy law and professional legal services all play their vital role.³

Again, as cited in paragraph 4.4, it's only where there is a wide consideration of advocacy that we can truly remediate damaged ecosystems.

One option that Government may consider is identifying the causes of 'damage in the first place', eg. Those manufacturers whose products end up being washed up on beaches, perhaps Government may wish to raise a 'polluters' levy' against these manufacturers? Or given that manufacturers are merely responding to consumer demand, will Government consider raising a levy borne by all tax payers to remediate damage against the environment.

11.3. The point that Sea Shepherd Australia is seeking to make is that it's only with a wide construction of advocacy that environmental organisations can make effective contributions to what is accepted as a good public purpose.

11.4. The differences between public purpose and political purpose is identified and tested in *Aid/Watch Incorporated v Commissioner of Taxation*.⁴ This was a split, or close decision which indicates where two different purposes can be confused as similar.

11.5. Sea Shepherd Australia is 'apolitical', that is we do not support any political agenda. Rather, we are able to work with any government to further our mission statement. Different governments may have different policy agendas, which at times may appear to contradict the public benefit purposes of environmental NGOs. Sea Shepherd Australia is not a political organisation. Per its mission statement and campaigns it has a different purpose than a political party.

11.6. Whilst tying advocacy to remediation might seem to be a means to differentiate political and environmental purposes, by fettering organisations like Sea Shepherd with

³ NSW EDO, as at 23 July 2017,

http://www.edonsw.org.au/should_all_environmental_charities_have_to_plant_trees.

⁴ *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42 (1 December 2010).

25% of all activities being remediation, the effect is potentially damaging to the overall purpose of our mission statement. By applying such standards, the opportunities to address the causes of environmental problems are being missed. It is only through frank, robust and respectful debate, that the significant environmental challenges faced by this country can be addressed. This includes collaborations between Government agencies and the NGO sector.

12. *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?*

12.1. Sea Shepherd Australia has always sought to expose illegal activity at sea and work with government to make sure, as with other NGOs, that all of our activities are conducted lawfully.

Where an NGO is consistently unable to maintain fiduciary or other standards as a part of DGR status, then any sanction should be limited to the loss of DGR status.

8. Sea Shepherd Australia thanks the Treasury for the opportunity to contribute the reforms identified in the discussion paper. We look forward to a collaborative and ongoing dialogue.

Yours faithfully,



Jeff Hansen
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Sea Shepherd Australia