



4 August 2017

## Senior Adviser

Individuals and Indirect Tax Division

The Treasury

Langton Crescent

PARKES ACT 2600

Submitted via email [DGR@treasury.gov.au](mailto:DGR@treasury.gov.au)

Dear Sir/Ms

## SUBMISSION REGARDING TAX DEDUCTIBLE GIFT RECIPIENT DISCUSSION PAPER

Thank you for the opportunity to provide comment on this important area of economic and taxation policy, for the equally important not-for-profit and charitable sector.

Starfish Foundation, is a registered charity and is listed on the Australian Government's Register of Environmental Organisations. Starfish Initiatives is the trustee of the Foundation and is also a registered charity and not-for-profit company limited by guarantee.

Starfish's purpose is to create, lead, facilitate and support the changes that are required to be able to realise genuine rural and remote sustainability, being:

- ✦ Resilient, robust and productive environments for the planet (environmental sustainability)
- ✦ Well, inclusive and diverse people, families and communities (socio-cultural sustainability)
- ✦ Meaningful, fair and responsible livelihoods and economies (economic sustainability).

Starfish's name has been inspired by the sea creatures, which are one of the few creatures on earth which are able to regenerate and replicate. Starfish are able to self-heal and regrow lost parts like a broken off limb. Amazingly, an entire new starfish can also grow from that lost limb. In this way starfish are a metaphor for self-healing, regenerative and self-learning principles which are central to sustainability.

Since forming in 2008, Starfish's reach and impact have grown rapidly. It currently operates in Australia, China, Ethiopia, Indonesia, Kenya, Peru, and Vietnam and is collaborating with nearly 200 other organisations, several dozen highly experienced professionals and hundreds of volunteers.



Starfish has created, led, facilitated or supported more than 200 sustainability initiatives to date, many of which are international or national 'firsts', including:

- ✦ The Global Environment Facility funded Biochar for Sustainable Soils
- ✦ *Farming the Sun*, Australia's largest community solar energy program
- ✦ Work on the internationally significant Myall Creek Centre for Reconciliation
- ✦ Designing collaborative governance systems for collective impact, for example: Coalition for Community Energy (90 groups); Border Rivers-Gwydir Catchment Management Authority (150 stakeholders plus hundreds of farmers and landholders); and Tamworth Youth Strategy (60 youth services)
- ✦ Developing open-source tools and resources which are freely available under Creative Commons licence, for example for the Zero Net Energy Town Blueprint and Community Energy Legal Models (as part of the New England Wind Feasibility Study)
- ✦ Supporting large-scale social learning and planning, for example for the North Coast Energy Forum (which has contributed to the region achieving the third highest uptake of solar energy), the New England Sustainability Strategy (involving 1,100 residents and stakeholders) and the Northern Inland Sustainable Business Network (110 businesses)
- ✦ Researching new knowledge, which in turn is made freely available under Creative Commons licence, for example for the Biochar for Sustainable Soils Initiative.

Starfish has established a strong reputation for delivering high-quality sustainability services and for creating and implementing pioneering sustainability initiatives. Since its formation, Starfish has successfully delivered and satisfied all of its contractual obligations with grant providers, tendering authorities, contracted professionals and partnership agreements.

Copies of Starfish's Strategic Plans and Annual Reports can be downloaded from [here](#).

Despite doing and achieving what we see to be highly important and effective work, Starfish's own journey to attaining DGR status on the Register of Environmental Organisations was arduous and hard won.

It took more than five years from the time Starfish submitted its first request for DGR status to finally being registered with the REO on 27 April 2016. The chronological list of just the correspondences during this time runs to nearly ten pages in length.

This elongated process was characterised by numerous changes of Environmental Ministers, which had the affect of almost resetting our application process, changes of government which basically stalled the process for 6-9 months, and its early stages some confusion between the Australian Taxation Office, Australian Charities and Not-for-profits Commission and Register of Environmental Organisations regarding communication protocols and lines of authority.

Not surprisingly, given our own experiences, Starfish is clear about the need for continued reforms to the regulation of the not-for-profit and charity sector, particularly those which are being integrated into the role of the Australian Charities and Not-for-profits Commission, as a specialist with a deep understanding of the unique characteristics of this large and diverse body of organisations.

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?

Starfish supports this requirement and is not aware of any counter-productive issues arising.

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

Not that we are aware of.

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

No comment.

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

It is unclear what the Australian Government's legal basis is for advocacy to be of concern and to require regulatory oversight.

Perhaps this is connected with the assertion made in the 'Introduction/Background' at item 7 that 'engaging in or promoting activities that are or contrary to public policy' are grounds for disqualification.

This is an extraordinary assertion and is highly unlikely, in our view, to be upheld in law.

Policy is in a state of constant development, negotiation, review and reform. It is also a highly contested area as is reflective of the growing array of stakeholders, affected parties and interests who are increasingly able to communicate their views. This is further amplified by a background context of dynamic change, disruption and transition in Australia and the world at large more widely.

Starfish can see no reason why our occasional activities to advocate for changes to political and or public policy ~ which as seeking a changes make them by definition and nature 'contrary to current public policy' ~ is problematic in any way, let alone contrary to the intent of the law.

To assert that such activities could place our DGR status in jeopardy is deeply alarming.

Such advocacy activities, albeit occasional and incidental to our primary work, are nonetheless completely aligned with our charitable purpose and objectives, noting that the very nature of working to address the underlying causes of social, environmental and economic problems requires us to constantly be seeking to refine, improve and reform public policy.

It is our view that to do otherwise would amount to a combination of professional negligence and ineptitude on our part.

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

No additional comment to our remarks at 4.

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

It is difficult to know how such qualitative and subjective information could be collected without imposing a significant additional reporting burden.

The literal meaning of advocacy is to speak on behalf of someone (e.g. socially marginalised peoples, victims of crime and discrimination) or something (e.g. endangered species, natural ecosystems, ancient rock art).

It is Starfish's view that creating a clear definition of what advocacy activities are to be reported upon will be challenging. Furthermore, we re-assert our earlier remarks that the legal basis for the Australia Government's concern with such activities is legally questionable.

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?

Starfish is highly supportive of integrating the regulation of the not-for-profit and charitable sector with one authority, preferably the Australian Not-for-profits and Charities Commission (ACNC).

The ACNC has already made considerable in-roads to improving the accountability and effectiveness of regulation of the sector, as well as reducing the rather ridiculous amount of over- and confusion- regulation of the sector as is caused by having so many federal, state and territory authorities involved.

The proposal to transfer the DGR Registers to the ATO would be Starfish's second preference, and an arrangement which, in our view, is still likely to bring significant improvements in the quality and timeliness of administration and regulation.



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?

Starfish is strongly supportive of this proposal. The nature of our work on sustainability is such that individual activities regularly span multiple DGR categories. This creates a significant compliance burden for our work, particularly in complicating our governance processes to ensure that all of our work and activities is demonstrably aligned and compliance with the REO DGR Register, corporations law, ACNC regulations and our own constitution, strategic and operational plans.

Like most modern charities, Starfish has comprehensive financial management systems which ensure financial accountability and compliance, making the need for a rather outdated cash-based public fund mechanism not merely redundant, but also administratively inefficient.

However, so as to satisfy the public fund requirements, we necessarily have to flow all DGR donations through one account, even though they relate to dozens of discreet and different projects which each need to be accounted for independently.

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?

Starfish is strongly supportive of the not-for-profit and charity sector being accountable and well regulated.

Our view is that the areas of compliance and risk regarding DGR eligibility are best addressed in the first instance by being incorporated into the ACNC Governance Standards.

We are supportive of the ACNC (preferably) or (not and) ATO undertaking rolling desktop reviews. We are surprised that it is implied that such reviews are not already taking place.

However, our view is that any escalation of reviews to become investigations needs to be triggered by well-evidenced and legally pertinent concerns that highlight exceptional circumstances which justify such a serious intervention.

To be more clear, Starfish's view is that the burden of regular investigations as an ongoing routine, without such investigations being well-evidenced and constituting exceptional matters of concern, could cause significant administratively burdens for the majority of the sector. This is particularly a risk when taking account of that fact that most charities have very limited remunerated senior administration personnel and capacity.

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

Refer answer to Q.9 above.



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?

Starfish is strongly opposed to this idea.

Rather, our view is that the ongoing integrity and compliance of each DGR needs to be addressed through the reporting and other regulatory mechanisms. For example, if the registers are consolidated with the ACNC, the Annual Information Statement and Governance Standards could ensure that such matters are in fact addressed constantly ~ as they necessarily need to be ~ and reported upon annually.

An additional integrity and regulatory check would be a program of desktop reviews and investigations as are justified (as detailed in our answer at Q.9).

To be clear, Starfish's view is that the nature of DGR status does not justify a time-bound period of approval.

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?

Starfish is strongly opposed to this suggested requirement.

There are numerous fundamental flaws in the rationale for this suggestion.

First, 'remediation' is only required when the environment has been impaired in some way. This begs the obvious question about the impact of re-directing work away from much needed prevention and conservation.

A parallel example is with the relatively new 'Harm Prevention' category of charity which was specifically created to recognise the fundamental value of, if not necessity for, a focus on solutions and preventative work rather than simply placing ambulances and hospitals at the bottom of the proverbial cliff of ill-health and harm.

Second, there is a question as to what the justification is for charities to be forced to apply their resources to the remediation of damage caused in all likelihood by other parties ~ and most likely such other parties that are for-profit businesses and taxpayer-funded government agencies.

Third, such a requirement would fundamentally change, constrain and misdirect the character of the environmental organisations DGR category.





To quote the submission by the Environmental Defender's Offices of Australia, "... *protection of the environment provides clear public benefits in many forms ~ such as raising environmental awareness, enforcing and strengthening environmental protection laws, and new research on species, ecosystems or environmental innovation. These systemic benefits to the public at large have been recognised by an independent inquiry into charities (2001) and the Productivity Commission's Access to Justice inquiry (2014)*".

Fourth, the discussion preceding this question implies a view that only work that 'achieves clear on-ground environmental outcomes' deserves the status of tax deductibility. However, even very hands-on organisations such as Landcare, conduct significant awareness raising, education, capacity building and coordination works that are of essential importance yet would struggle greatly to be directly linked to on-ground outcomes at any given moment in time or even during the standard reporting period of a calendar or financial year.

As an environment charity, it behoves Starfish to also make clear that it is the natural environment which is so gravely in need of our attention at this time in human history. Just two days ago, on Wednesday 2 August, was Earth Overshoot Day 2017. In total, humanity is now consuming more resources and creating more waste and pollution than the Earth can generate and regenerate.

Globally, humanities' collective environmental footprint requires 1.7 Earths to be sustainable. This of course not an option available to us for the foreseeable future.

The only reason that we are seeming to get away with this in the short-term is because we are degrading the natural capital that we have inherited from 4 billion years of evolution ~ and of course by taking from the future and leaving them with significant less natural capital than we have available to us.

This is further proven by the daunting evidence of life on Earth entering the 6<sup>th</sup> Great Extinction ~ called The Anthropocene Age due to it being caused by humanity.

Even more pertinent for us in Australia is to note that if every person on Earth lived with the same average environmental footprint as we do, 5.2 Earths would be required.

Given this deeply serious and concerning situation, it goes without saying that a far wider range of environmental activities are required than simply remediation. To be frank, there is no known and proven remediation strategy that can address the problems arising from the current trajectory of decline, degradation and destruction. Only in virtual reality has humanity been able to bring back what has been lost for all time ~ species, ecosystems and more.

Furthermore, it also goes without saying that there is likely to be a continuing strength, breadth and depth of environmentally concerned organisations and affected parties who will be speaking out and challenging our public policy and political system to address the situation and avert even more calamitous harm. It is of course entirely rationale to in large part attribute current public policy and politics to be providing the authority and approval mechanisms for this dire direction of decline, degradation and destruction.



The clear implication in 'Recommendation 5', and the Discussion Paper more generally, is that it is somehow illegal or illegitimate for a DGR environmental organisation to question and challenge such recklessness.

In contrast, it is Starfish's understanding of natural justice, common law and case law in this area that the principles of protecting, conserving and standing up for the natural environment are the principles which are right, legitimate and legal.

Given this, there is a valid case to be put that it is the legal duty of Starfish's Director and Executives to take all reasonable actions as required of a professional with their responsibilities to address this alarming state of affairs ~ with activities ranging from solutions to prevention to remediation, be they on-ground and hands-on or strategic, policy or educational in character.

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?

This is a confusing question. Starfish's understanding is that all organisations are prohibited from undertaking 'illegal and unlawful activity', be they environmental DGRs, public listed companies or any other form of organisation.

If it was proven that such activities were being undertaken, our view is that appropriate action could be reasonably taken, based on the severity and seriousness of the matters and so ranging from warnings and penalties through to de-registration and criminal charges.

Please feel free to contact me should you wish to discuss or clarify any of the matters presented.

Yours sincerely

A handwritten signature in black ink, appearing to read "Adam Blakester".

**Adam Blakester**

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