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Sustainable Gardening Australia Foundation

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14 July 2017

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Introduction:

This submission is made by the Sustainable Gardening Australia Foundation (**SGA**) in response to the Tax Deductible Gift Recipient Reform Opportunities Discussion Paper dated 15 June 2017 (**Discussion Paper**).

The submission responds to the following consultation questions in the Discussion Paper:

1. What are stakeholders' views on a requirement for a DGR (other than a government entity DGR) to be a registered charity in order for it to be eligible for DGR status?
4. Should the ACNC require additional information from all charities about their advocacy activities?
5. Is the Annual Information Statement the appropriate vehicle for collecting this information?
6. What is the best way to collect the information without imposing significant additional reporting burden?
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?
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?
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?
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?
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 of Responses to Consultation Questions

Charitable status (question 1)

SGA does not object to a requirement that a DGR (other than a government entity DGR) be a registered charity in order for it to be eligible for DGR status.

Environmental remediation (question 12)

Environmental organisations, whether on the Register or as charities registered and regulated by the ACNC, should not be required to engage in on-ground environmental remediation activities, and should continue to include those organisations which have as their purpose:

- the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or
- the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

Environmental organisations should be permitted to conduct research and provide information and education to the broader community about, amongst other things, the causes of environmental degradation and how it can be avoided and remediated. This is vital if Australia is to fulfil its commitments to ecologically sustainable development and to protect the natural environment.

Advocacy (questions 4, 5 and 6)

Given that appropriate advocacy is a lawful activity for all charities, including environmental charities¹, and it is accepted that the majority of registered charities currently meet all of their obligations, and given the Government's commitment to cutting red tape, SGA recommends that no further reporting requirements be imposed on DGRs.

If there is to be a further obligation to report, then SGA agrees that the Annual Information Statement is the appropriate vehicle for collecting this information.

Administration (questions 7 and 8)

SGA has no objection to the proposal to transfer the administration of the four DGR Registers to the ATO.

SGA agrees that the removal of the public fund requirements for charities and allowing organisations to be endorsed in multiple DGR categories has the potential to improve administrative efficiencies, without decreasing protections for individual donors, or Australian taxpayers.

Review (questions 9 and 10)

SGA has no objection to the proposal to the introduction of a formal rolling review program.

If, as proposed, the administration of the four DGR Registers is transferred to the ATO, and DGRs are required to be registered charities in order to be eligible for DGR status, it sees no benefit in annual certification, given charities' existing reporting obligations. If rolling reviews are to be undertaken, SGA suggests that large DGRs should be reviewed first.

Sanctions (question 13)

SGA recommends that all DGRs should be regulated and supervised on the same basis. The proposal to require DGRs to be ACNC registered charities and, therefore, subject to ACNC's governance standards and supervision should be sufficient to ensure that all DGRs operate lawfully.

Detailed Responses

Sustainable Gardening Australia (Charity ABN 47 508 099 142)

SGA is a small charity which has been on the Register of Environmental Organisations (**Register**) since 4 October 2005. It first registered with the ACNC on 3 December 2012, and has Deductible Gift Recipient (**DGR**) status.

SGA's principal purposes¹ are to:

- encourage, educate and enable home and professional gardeners to adopt sustainable gardening practices to protect or enhance the natural environment or a significant aspect of it; and
- provide information or education, or carry on research about, the natural environment or a significant aspect of it.

The activities SGA has been engaged in to achieve those purposes include:

- Developing and promoting a *Garden Product Guide – Safe for You 'n' Nature* which rates gardening products for their impacts on the natural environment and human safety;
- Developing and delivering education and training programs to home gardeners about how they can minimise environmental impacts and enhance biodiversity;
- Developing and delivering training programs for gardening retailers so that they can ensure that the products they sell have minimal impacts on the natural environment. This includes ceasing to sell invasive plants which are environmental weeds;
- Developing and delivering training programs for landscapers and other gardening professionals in knowledge and skills so they can minimize the impacts of their activities on the natural environment;
- Developing a website (<http://www.sgaonline.org.au>) and Facebook page (<https://www.facebook.com/sustainablegardeningaustralia/>) to provide information and education on how to minimize environmental impacts, enhance biodiversity, conserve water, protect waterways and produce food locally, minimising energy consumption due to transport
- Producing booklets in partnership with local government on sustainable gardening practice.
- Facilitating the establishment of neighbourhood gardening groups which use and promote sustainable gardening practice

Environmental remediation – question 12. This consultation question is of most significance to SGA

Stakeholders' views are sought on requiring environmental organisations to commit no less than 25% of their annual expenditure from their public fund to environmental remediation, and whether a higher limit, such as 50%, 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?

At present, in order to be eligible for inclusion on the Register, an organisation must meet the definition of 'environmental organisation' in s 30-265 of the Income Tax Assessment Act 1997 (Cth) (ITAA). That section requires the principal purpose of an organisation to be:

¹ Sustainable Gardening Australia Foundation trust deed, cl 4(b)

- the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or
- the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

The organisation must also agree to ensure that gifts made to the organisation are used only for its principal purpose (s. 30-265 (4)).

The House of Representatives Standing Committee on the Environment's inquiry on the Register of Environmental Organisations (**REO Inquiry**²) – April 2016 (at 4.76 and following):

- acknowledged the significant and ongoing contribution of environmental DGRs to the protection and enhancement of the natural environment in all states and territories across Australia.
- acknowledged that a diverse range of activities contribute to meaningful and lasting environmental outcomes, and that environmental DGRs typically undertake a number of different activities to further their principal purpose.
- acknowledged the benefits of a diverse range of environmental work;
- came to the view that:
 - the purpose of granting DGR status to environmental organisations should be to support practical environmental work in the community, and
 - concessions conferred on environmental DGRs should be directed, at least in some part, at environmental work that achieves clear on-ground environmental outcomes.

The Committee supported the proposition that environmental DGRs should, as a condition of attracting DGR status, be required to undertake a mix of activities, **and that this mix should include practical environmental work such as remediation** [emphasis added].

SGA has significant concerns about the Committee's recommendation, and the proposed requirement that environmental organisations commit no less than 25% (or perhaps an even greater proportion) of their annual expenditure from their public fund to environmental remediation.

The recommendation assumes that remediation must be part of the protection or enhancement of the natural environment, and that all environmental DGRs will be able to efficiently engage in remediation work.

First, remediation is certainly important, to slow, stop or repair environmental degradation. However, education and research are critical to preventing or at least slowing environmental damage in the first place. Preventing or at least slowing environmental damage in the first place benefits the environment and the communities that live in it, and has the potential to save substantial costs.

For example, removing noxious weeds (plants which cause environmental or economic harm or have the potential to cause such harm, or present risks to human health) and replanting with indigenous species is beneficial. However, educating landscape professionals, plant sellers and gardeners so that they can identify and avoid planting or prevent spreading of noxious weeds is no less beneficial, and is potentially even more beneficial, to the natural environment and the communities which depend on it.

² See http://www.aph.gov.au/Parliamentary_Business/Committees/House/Environment/REO/Report

Without research and the provision of information and education about the natural environment about what might be done to redress and prevent degradation and about how to do it, appropriate actions (to remediate past damage, and to prevent or at least limit future damage) cannot be devised.

Restricting DGR status to organisations that must carry out on-ground environmental remediation activities would fail to increase awareness of impacts of human actions on all aspects of the environment and so has the potential to:

- reduce community understanding of environmental issues, and, amongst other things, the need to engage in, and the benefits of remediation
- result in an increased need for remediation in future, and
- limit remediation, by limiting research into remediation best practice, and limiting advocacy explaining the need for and benefits of remediation.

Reaching out to individuals with information is important, because many people will do something in their own backyards/lives for the natural environment but are just too busy to get involved in group on-ground environmental remediation activities. It can also stimulate people to consider and address environmental externalities in their workplaces.

In the context of environmental DGRs, remediation is only one of many categories of all of the activities which can properly be described as work performed in the community with direct benefit to the community.

Second, imposing an obligation on all environmental DGRs that they engage any particular types of activities disrupts the current, compliant activities, and potentially the existence, of smaller environmental DGRs.

The majority of registered charities are small.³

As the REO Inquiry pointed out, much of the work done seeking to improve the natural environment relies on the generous financial contributions of members and supporters. Donors must be assured that their donations are distributed and used in line with their expectations. Efficient use of donations is also essential, so that donations have maximum impact, and organisations can demonstrate the value of their work to donors.

To operate most efficiently, organisations develop expertise in specialist areas. That expertise covers knowhow and delivery skills. The larger the organisation, the greater its ability to develop expertise across multiple areas. Smaller organisations identify a niche which fits with the skill sets of its staff and volunteers, and work efficiently in that space to meet the organisation's purpose.

Requiring all environmental DGRs to divert funds raised from donors to an activity which does not fit an organisation's skill set (even if the activity is beneficial):

- diminishes the organisation's capacity to do the work it has the expertise to do;
- will require organisations to divert their efforts from activities they currently undertake into developing new skill sets, risking a less efficient delivery of, in this case, on-ground remediation activities, than would be the case if that work were carried out by organisations with that focus;
- has the potential to so disrupt the organisation's ability to continue to meet its governance obligations, fulfil its purposes, and attract support, that the organisation may cease to exist.

³ Discussion Paper, paragraph 32

As the Environmental Defenders Office (SA) Inc has noted⁴, this proposition appears to consider remediation to be more worthy than environmental protection. If that approach were applied consistently across the philanthropic sector, it would mean, for example, that a charity that focused on preventing cancer and raising awareness would lose DGR status unless it could also demonstrate substantial expenditure on cancer treatment. Prevention of environmental damage is an important societal goal in its own right, and worthy of tax deductible status.

For the Sustainable Gardening Australia Foundation, and other groups whose activities include research, education and information sharing, having DGR status is important, not only to be eligible for grants or attract donations, but also to engage unpaid assistance from volunteers for many of our activities. We currently have over 20 volunteers working with us in capacities ranging from IT support, writing articles for our website, managing the organisation and providing office administration, and previously a further 100 have been of invaluable assistance. Without DGR status it is unlikely that our organisation could draw on the participation of such experts and their contributions would be unaffordable at commercial rates. Over the years, SGA's capacity to attract volunteers has meant that work worth several million dollars has been conducted without recourse to government funding. For example, our organisation has, because of donations and volunteer effort, been able to expand the readership of our website which provides expert advice from 23,137 to 104,688 and the number of unique page views from 7,969 to 154,385.

Recommendation

Environmental organisations, whether on the Register or as charities registered and regulated by the ACNC, should not be required to engage in on-ground environmental remediation activities, and should continue to include those organisations which have as their purpose:

- the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or
- the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

Environmental organisations should be permitted to conduct research and provide information and education to the broader community about, amongst other things, the causes of environmental degradation and how it can be avoided and remediated. This is vital if Australia is to fulfil its commitments to ecologically sustainable development and to protect the natural environment.

Charitable status – question 1

What are stakeholders' views on a requirement for a DGR (other than a government entity DGR) to be a registered charity in order for it to be eligible for DGR status?

SGA does not object to a requirement that a DGR (other than a government entity DGR) be a registered charity in order for it to be eligible for DGR status.

Advocacy Activities – questions 4, 5 and 6

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

⁴ EDO (SA) Inc eBulletin No. 10 of 2017, 6 July 2017

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

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

Advocacy is permitted by s. 12(1)(l) of the Charities Act 2013 which includes, in the definition of charitable purpose, the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:

- (i) in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or
- (ii) in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.

That definition is consistent with the decision of the High Court in *Aid/Watch Incorporated v Commissioner of Taxation*⁵. In a representative democracy, activities that promote legislative or policy change serve a public benefit. Where those activities seek to further a charitable purpose, the advocacy is a legitimate extension of the activities of a charitable organisation.

A very broad range of organisations (environmental and otherwise) with DGR status currently advocate to further their charitable purposes.

These consultation questions appropriately extend to all charities. The ACNC already provides information, guidance and support for registered charities in meeting their obligations under the ACNC legislation, as well as monitoring and managing non-compliance. That assistance extends to advocacy activities engaged in by all DGRs.

Based on the summary of proposed reforms,⁶ SGA understands that no reform of the framework within which advocacy is permitted is proposed. Rather, it seems to be suggested that the ACNC will provide greater guidance about charities' obligations when engaging in advocacy.

Recommendation

Given that appropriate advocacy is a lawful activity for all charities, including environmental charities⁷, and it is accepted that the majority of registered charities currently meet all of their obligations,⁸ and given the Government's commitment to cutting red tape⁹ SGA's preferred position is that no further reporting requirements be imposed.

If there is to be any further obligation to report, then SGA agrees that the Annual Information Statement is the appropriate vehicle for collecting this information.

⁵ *Aid/Watch Incorporated v Commissioner of Taxation* (2010) 241 CLR 539

⁶ Discussion Paper, paragraph 17

⁷ Charities Act s. 12(1)(l)

⁸ Discussion Paper, paragraph 32

⁹ <https://www.cuttingredtape.gov.au>

Administration - questions 7 and 8

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?

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?

SGA has no objection to the proposal to transfer the administration of the four DGR Registers to the ATO.

SGA agrees that the removal of the public fund requirements for charities and allowing organisations to be endorsed in multiple DGR categories has the potential to improve administrative efficiencies, without decreasing protections for individual donors, and Australian taxpayers.

Review - questions 9 and 10

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?

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

SGA has no objection to the proposal to the introduction of a formal rolling review program.

The limitations on the Department's powers identified in the REO Inquiry would be resolved if, as proposed, the administration of the four DGR Registers is transferred to the ATO, and DGRs are required to be registered charities in order to be eligible for DGR status.¹⁰ In those circumstance, it sees no benefit in annual certification, given charities' existing reporting obligations.

If rolling reviews are to be undertaken, SGA suggests that large DGRs should be reviewed first. They collect a greater share of public money, and as a result have the greatest support from the taxpayer, in view of their size. Further, as a practical matter, their structure and resources will mean that they are be in the best position to constructively engage in the review process. That approach will allow the ACNC to develop an efficient (and hopefully simpler) review process for smaller, less resourced organisations.

Sanctions – 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?

The discussion paper seems to suggest that environmental DGRs may be subject to different or additional sanctions to other DGRs.

SGA submits that:

¹⁰ REO Inquiry, paragraph 6.3

- all DGRs should be regulated and supervised on the same basis;
- the proposal to require DGRs to be ACNC registered charities and therefore subject to ACNC's governance standards and supervision should be sufficient to ensure that all DGRs operate lawfully.



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