SYDNEY HARBOUR ASSOCIATION
PO Box 265 ROSE BAY NSW 2029

Senior Adviser
Individual and Indirect Tax Division
The Treasury
Langton Crescent PARKES ACT 2600 email: DGR@Treasury.gov.au

Discussion Paper:
Tax deductible gift recipient reform opportunities, June 2017

On 10 July, I sent you a personal submission relating to the DGR *Discussion Paper*. For convenience, a copy of it is annexed.

I can now let you know that *Sydney Harbour Association* has considered that submission and agreed that I should advise you of its endorsement of its content. Accordingly, I do so.

Sydney Harbour Association was established in 2010, as successor body to Sydney Harbour and Foreshores Committee (est. 1979). The Association is an unincorporated body of individuals interested in Sydney Harbour. Its members conduct its activities on an entirely voluntary basis.

At all times the Association is concerned to support the objective of the NSW Government as stated in Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, Clause 2: *Aims:*

> *(1)(a)….. to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained*
>
> *(i) as an outstanding natural asset, and*
>
> *(ii) as a public asset of national and heritage significance,*

for existing and future generations.

Hylda Rolfe, Secretary
Sydney Harbour Association
[redacted]

12 July 2017

ANNEXURE ***COPY***

Discussion Paper:
Tax deductible gift recipient reform opportunities, June 2017

I offer some observations on the Discussion Paper having particular regard to what I perceive to be aspects of special relevance to environmental organisations and their supporters.

The immediate beneficiaries of the DGR system are the donors themselves, a point made vigorously and often by fundraisers for recipient organisations. The extent to which the system induces donations *that would not otherwise be made* is a matter of interest, but not readily quantifiable. Having regard to the obviously critical and large-scale input of *volunteers* to the general ambit of the operation of the broad range of charities, I think it is fair to assume that some financial support might well emanate from those volunteers, and from like-minded supporters whose commitments do not enable them to help as volunteers, even if there were no tax deductibility available for donations. But yes, DGR status is undoubtedly helpful.

Of course DGRs should be transparent in their dealings and adhere to appropriate governance and accountability standards. That is simply a matter of fundamental financial propriety. Should they fail to comply with accepted general standards, the appropriate remedy would lie in the normal mechanisms for enforcement/penalty applicable for such matters. There is no apparent value in penalising their *donors* via removal of the DGR regime.

Similarly, should the conduct of DGRs or their members or supporters be alleged to be unlawful/illegal, the appropriate course would be the normal procedure of investigation, evidence, consideration and decision, followed by any applicable penalty if found to be warranted. The broad and unspecific penalty implied in removal of DGR status penalises the organisation's donors at large. It does not itself address the conduct issues underlying such an allegation, nor does it relate necessarily to the perpetrator of the conduct at issue.

The paper's *Consultation Question 13* invites comment on issues summarised as relating to *lawful* operation of DGRs, with reference to their own *purposes* and apparently *those of their supporters*. The approach suggested appears to extend to supporters acting independently of the DGR organisation.

The suggestion seems muddled at best. It appears to comprehend a process by which an administrative decision may assume or pre-determine the lawfulness of actual *or projected* conduct by an organisation and/or any or all of its supporters, whoever they may be and however they may be actually or tentatively identified, and regardless of the origin of the disputed activity. Especially in the latter instance, but anyway, that seems totally inimical to any concept of fair hearing and evidentiary decision-making that the community would embrace.

I think it unlikely that a DGR organisation – or any other - would knowingly include unlawful or illegal activities in its formal statement of *purposes.* A perception of unlawfulness may well lie in the mind of an observer, but that does not establish it as fact. And the purposes of *supporters* may be as various as their identities.

Two other major issues relating to the retention of DGR status arise.

One is the notion that environmental DGRs and supporters should be restricted from opposing *public policy*, in this instance by withholding or removal of DGR status. The idea implies that *public*

policy is by definition beyond reproach. However, in the Australian legislative context, Her Majesty's Loyal Opposition has a respected place in the formulation of policy and its on-going adaptation, and there is no sound reason why dissent and opposition should not be expressed and explained outside the legislative arena when deemed to be warranted by individuals or organisations. It is neither sensible nor is it practical to gag dissent in the community. Any argument about the lawfulness or legality of methods by which dissent is expressed by DGR environmental organisations and their supporters (or anyone else, whether or not registered by ACNC) can and should be dealt with in the normal way of handling questions about the legality of such conduct in the community.

Legislators (and others) can and may and do on occasion pursue activities that are clearly inimical to environmentally benign outcomes in pursuit of non-environmental objectives, be they economic and commercial, political, social, or other. For that reason among others, there is no universal criterion by which *public policy* may be assumed always to be compatible with the imperative to *advance the natural environment*. Views on such policies, as well as those of the interests affected by them, will legitimately and legally vary over time and among different interests.

The second issue lies in the suggestion that a stated minimum proportion of expenditure from the public funds of DGR environmental organisations be devoted to *remediation* activity in order to retain DGR status. This implies a corresponding *maximum* proportionate expenditure from their public funds on *protective* activity. But preventative action may well be the most efficient and prudent and practical course that those who wish to protect the natural environment can – and should – follow when they perceive a significant threat to it. That could be said to be the essence of *protection*.

It seems inevitable that the charitable purpose of *advancing the natural environment* - by protecting, maintaining, supporting, researching and improving it - may well on occasion, and perhaps even frequently, require advocacy and argument to be reinforced by – or even concentrated in - active opposition to measures by government or others that are perceived on objective analysis as being likely evidently to damage it. Such opposition activity seems likely to fall outside a workable definition of *remediation.*

Relativities between remedial and advocacy actions will inevitably vary over time and context. So, too, the income of the public funds of environmental organisations from donations is variable, sometimes to a high degree. The specification of remedial/advocacy relativities for DGR purposes in such a mutable scenario cannot be helpful to proper activity (and fund) management and planning. Rather, it would inhibit discretion and flexibility in responses to new and changing circumstances. Loss of DGR status for environmental organisations failing the *remediation* test would be an inappropriate and dysfunctional penalty for organisational vigilance. That would not be a helpful or productive intrusion into efforts to *advance* the natural environment by *protecting, maintaining, supporting, researching and improving* it, whether those efforts are made by the organisation or by its donors and other supporters.

Hylda Rolfe
[redacted]

10 July 2017