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Submission by the Wilderness Society Ltd in response to the Treasury Tax Deductible Gift Recipient Reform Opportunities

Summary of response

The stated objectives of the discussion paper to a) strengthen the governance of Deductible Gift Recipient (DGR) organisations; b) reduce administrative complexity for recipient organisations and c) provide additional standards of accountability and transparency for recipient organisations in general are important and worthy of support.

As a result, those specific recommendations contained in the discussion paper which enhance these objectives are supported by The Wilderness Society (Ltd).

There are however a number of recommendations that bear no resemblance to the objectives outlined above. These are rejected outright. These recommendations were the product of the partisan, Government dominated House of Representatives Inquiry into operation of the Register of Environmental Organisations (REO).

In particular, the recommendations that all DGR Organisations committed 25% of deductible gifts bears absolutely no relationship to the objectives highlighted in the Treasury paper to strengthen governance, reduce administrative complexity or provide additional standards of accountability.

In fact this recommendation would work against all three of these objectives by creating further administrative and budget complexity and public policy chaos. A stated desire in the discussion paper to ensure community expectations about the activities of DGR organisations are matched by the activities of the recipients if tested would indicate no empirical evidence of a rising community expectation that all environmental DGR recipients should be in the business of tree planting.

In fact the only empirical information available about those who advocate for these outcomes indicates a rather small constituency of representatives of the Australian mining sector, specifically the Australian Mining Council and its state based affiliates in New South Wales and Queensland and a small, but vocal number of Members of the Australian Parliament who appear particularly interested in representing the interests of the mining sector over all others.

For reference, it is noted that the former Minister for Resources and Northern Australia, Senator Matt Canavan, posted a unusual perspective about how he perceived his role as a Minister for Resources when on the 27th of July 2017 he posted via facebook how it 'has been such an honour to represent the Australian mining sector over the past year.' This is a unconventional understanding of the responsibilities of a minister in the Westminster tradition in which it is usual to expect a Minister to understand their commitments to the Parliament as a representative of the Australian community as distinct from being a representative in Parliament of a particular Industry.

It is in this context of perhaps a limited understanding by some members of the Australian Parliament of their roles and responsibilities as Parliamentarians that was responsible for some of the more nonsensical recommendations provided by a slim majority of Government members of the House of Representatives Inquiry into the REO.

About The Wilderness Society (Ltd)

The Wilderness Society (Ltd) is an Australian, community-based, not-for-profit, non-governmental environmental advocacy organisation with charitable status.

We were formed in 1976 by a small group of concerned Australians who came together to protect the wild Franklin River in south west Tasmania from ill conceived proposals in the then Tasmanian Government to dam the wild Franklin River.

This campaign was ultimately successful and the Franklin River is now securely protected within the Tasmanian Wilderness World Heritage Area.

The Wilderness Society Ltd has been listed on the Register of Environment Organisations since 11th June 1993.

The Wilderness Society (Ltd) has a membership of 34,000 Australians. Our members have voting responsibilities and set the direction of the organisation through election to our governing board (the Board of Directors) who oversee the operation of the national organisation (TWS Ltd).

The Wilderness Society is a federation including some separately incorporated organisations working together for the protection of nature and wilderness. These incorporated organisations are also run by volunteer Management Committee's elected by members from that state.

Our shared organisational purpose is to protect, promote and restore wilderness and natural processes across Australia for the survival and ongoing evolution of life on Earth.

We operate campaigns and programs to safeguard our sources of clean water and air, to tackle dangerous climate change, to create a safe future for life on Earth, and to give a better world to our children.

Our organisational vision is an Australian society that protects and respects the natural world to create a vibrant, healthy continent with positive connections between land, water, people and wildlife.

TWS has adopted a series of values that guide our operations which include:

- A passion for our purpose,
- The power of people to make change,
- Organisational independence and integrity,
- Compassion, and
- A commitment to success in protecting the environment.

Funding and Charitable Status

The Wilderness Society Ltd (TWS Ltd) is a public company limited by guarantee.

TWS Ltd. is an Income Tax Exempt Charity and a Deductible Gift Recipient. Donations to its public fund, the Wilderness Fund, are tax deductible.

Ninety six percent of our funding is provided through individual donors who pay annual membership fees and also contribute regular donations to support our work, and supporters who donate to specific appeals. Other funds come from bequests and online and retail sales of merchandise.

House of Representatives Inquiry into Register of Environment Organisations.

Australian charities make this nation a much better place. In particular, advocacy in pursuit of the public interest in counter to the pursuit of a private economic interest, has provided a important check and balance in the excesses of resources exploitation of the Australian environment.

It is an incontestable fact that without public advocacy most, if not all, of the existing Australian World Heritage sites listed for their outstanding natural values would have been exploited and ruined by a range of extractive industries including mining and logging operations in places such as the Tasmanian Wilderness World Heritage Area (WHA), Kakadu WHA, Great Barrier Reef WHA, Shark Bay WHA, Wet Tropics WHA, Fraser Island WHA, Blue Mountains WHA , and the Central Eastern Rainforest Reserves of Australia WHA.

Over many decades, Australia has greatly benefited from the work of environmental charities. Environmental advocacy has delivered better management of our land, our rivers, our coasts and our oceans.

It has improved our air quality, the way we deal with waste, the remediation of industrial sites, public transportation. So much of our heritage has been protected, from the convict-era housing at the Rocks to our extraordinary Indigenous heritage across our country.

Over recent years we have seen a concerted attack on organisations listed on the Register of Environment Organisation's by a small number of members of the Australian Parliament, seemingly working in concert with a limited number of Industry groups from the mining sector to strip DGR status from those organisations and to limit the ability of those organisations to advocate for the protection of the environment if it undermines the commercial interests of those sectors. These politicians and Industry groups argue a position of public interest when in fact the motivations for their activities would appear to be

the opposite.

For example, the House of Representatives Inquiry into the Register of Environmental Organisations (REO) was claimed to have been initiated in response to public concern.

However in the course of the Inquiry it was revealed that the then Environment Minister, the Hon, Greg Hunt, initiated the Inquiry despite no complaints being received by the regulator of the REO. It appeared that the Inquiry was initiated for political purposes with no legitimate trigger. In short it was a witch hunt in which a series of pre-determined outcomes were pursued by Government members of the Inquiry from start to finish despite a wave of submissions and presentations which did not support these pre determined outcomes.

One of the important lessons from this shameful waste of taxpayers' dollars is that any reform needs to shield legitimate sectors from impetuous political attack as much as possible.

Unfortunately this Inquiry has left a long tail. The fact is that the Inquiry precipitated an enormous response in terms of submissions and participants in public hearings, demonstrating the positive role environmental charities have in Australia and opposing the ideological attack that this Inquiry represented.

And yet this Inquiry still resulted in a majority report which contained two recommendations (5 and 6) that were so extreme and out of line with the input during the Inquiry that not only did the ALP members of the Committee provide an alternate report but one of the Government members provided an "additional comments" paper for the final report raising fundamental concerns about these two recommendations.

This Treasury Discussion Paper is mostly a useful and important process but is tainted by reference to these two recommendations and the fact that there may be some prospect that these recommendations may be implemented in the environment sector and this may then have implications in other sectors.

Response to recommendations.

The Wilderness Society supports government reforms to simplify the administration and regulation of Australian charities.

All charities should be accountable to their members. For those charities that have the privilege of being DGR status there should be appropriate accountability to the Australian public.

Under Australian law the focus on whether an entity can be considered a charity is based on that organisation's "purpose".

This is appropriate and should guide Treasury's contemplation of reform in the sector. The overriding test should be is the DGR organisation operating consistent with its not for profit purpose.

At times this Discussion Paper slides into a focus on activities rather than purpose.

It is appropriate that an organisation should be held accountable for how they are using their resources to achieve their purpose, but they should not be threatened for any legitimate activities which their governing Board deems is the best way to achieve their purpose.

This fundamentally breaks the long-held legal framework under which charities in this country have been formed and have functioned yet this is the explicit intent of some of the recommendations of the House of Representatives REO inquiry which are further canvassed in this discussion paper in which Government seeks to direct the activities of the REO organisation. This has no grounds in law and speaks to an authoritarian streak in some Members of the Australian Parliament and sections of the mining industry more familiar in non liberal societies in which the role of the state and dominant corporate interests are all pervasive.

This is not the Australia the vast majority of Australians support and love.

In particular there appears to be a view carried over from the REO Inquiry that suggests that advocacy for public policy change is not a legitimate activity and must be countered by a commitment to the ill defined idea of 'on ground' conservation work such as tree planting and remediation.

This nonsensical concept was rejected via submissions and public hearings to the REO Inquiry by those expert organisations that are solely committed to loosely defined on ground conservation activities and who presented about the importance of advocacy to support remediation activities and who specifically highlighted the different skills and expert knowledge of advocacy and 'on ground' groups.

Some examples of submissions to REO Inquiry from 'on ground' environmental organisations are provided below for reference.

From **Landcare Tasmania** (submission 433):

"Advocacy by environmental organisations is an essential contribution to free speech and our democracy." (p5) and "I urge you to retain the current criteria for entry into the Register of Environmental Organisations, to allow the broad range of activities necessary to secure a healthier, fairer and more sustainable society and to maintain the tax-deductible status of organisations on the Register." (p6)

Bush Heritage Australia (sub 408)

"Additionally, Bush Heritage values the work of other organisations listed on the Register of Environmental Organisations who specialise in policy development and evaluation and strongly supports their continued inclusion on the Register. For example, work undertaken by the Invasive Species Council to raise issues associated with biosecurity regulation and examine improvements to how these threats are managed has clear positive implications for reducing significant long term threats to our investments. Work on evaluating the adequacy and future requirements of the Australian National Reserve System undertaken by organisations such as WWF ensures that there is robust public debate and consideration of the need for both public and private investment." (p2)

Geelong Field Naturalists Club (sub 182)

"We strongly oppose any changes to the definition of environmental organisation, especially as framed by its 'principal purposes', limiting or constraining the capacity of the organisation to engage in public advocacy or similar activities, as well as 'on-ground' environmental works, and benefit from deductible gift recipient (DGR) status.

The 'principal purposes' provided for in section 30.265 of the ITAA 1997 are:

(a) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or

(b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

It is our understanding that these have been given a broad meaning. They should continue to be given broad meaning, so for instance to include activities encompassing advocacy, active (and as necessary, critical) engagement with decision-makers or other people or organisations impacting on the environment, and public affairs related to environmental protection and enhancement." (p1)

Bass Coast Landcare Network (sub 273)

"We encourage our members and supporters to advocate for the protection of the environmental assets throughout Bass Coast. We believe that environmental advocacy has benefited the protection of many areas in our region." (p1)

Mr **David Williams**, former CEO Greening Australia (sub 168)

"I feel it is very important that environmental groups be able to maintain their tax deductibility status, as I believe they provide an important role in providing for public input and/ or awareness in many issues which are of major concern to many in the community. To me they help provide an essential balance to debate and possible impacts of proposed developments, and how best to plan for issues such as climate change and renewable energy use, just to name a couple." (p1)

A further issue in respect to this matter of advocacy v on ground is a recognition that the law is clear that advocacy is legitimate, as determined by the High Court in the Aid/Watch decision¹. Any attack on public advocacy is an attack on our democracy and Treasury should uphold the democratic principles endorsed in the High Court decision.

For the Wilderness Society all reforms must result in a transparent, reasonable and fair system. The regulation and administration of charities should not be politicised.

In order to achieve beneficial reforms we believe the following principles need to be central to any reforms of the way Australian charities are regulated. The system needs to be:

- fair and equitable across all sectors
- transparent, including for the regulator(s)
- independent, ensuring that the regulator(s) are not influenced by political whims.

Our responses to the relevant consultation questions will focus on these fundamental principles.

Responses to Relevant Consultation Questions

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

No.

¹ Aid/Watch Incorporated vs Commissioner of Taxation [2010] HCA 42, <http://www.austlii.edu.au/au/cases/cth/HCA/2010/42.html>

As stated above, advocacy is a legitimate activity for any charity as determined by the High Court.

There is absolutely no need for the ACNC to intrude on the determination by the governors of a charity that advocacy is an appropriate activity for their organisation to undertake in order to achieve their purpose.

There is a very good system now where the ACNC has provided all charities and interested parties with advice about advocacy² and additional guidance with respect to elections³.

The primary focus of the ACNC as regulator should be on whether a registered charity has a clear purpose and is working toward achieving that purpose. The regulator should also ensure registered charities are run in a transparent and accountable way.

This issue is simply a reflection of a political agenda which wishes to limit our democracy.

Registered charities should be accountable for their activities and this is already achieved through the existing arrangements.

Finally, considering the sheer number of registered charities that include advocacy as one of their legitimate activities, the scale of the red tape burden that would be imposed across the Australian community and on the ACNC would be a monumental waste of resources.

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

See above.

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

It is not possible to do this without adding an unreasonable additional reporting burden on charities. It also adds a significant administrative and regulatory burden on the regulator(s).

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?

The Wilderness Society does not oppose the transfer of the administration of the four DGR Registers to the ATO if it provides a verifiable set of benefits in respect to greater transparency and independence from political influence than presently exists

What are stakeholders' views on the proposal to remove the public fund requirements for

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http://www.acnc.gov.au/ACNC/Register_my_charity/Who_can_register/What_char_purp/ACNC/Reg/Advocacy.aspx

³ http://www.acnc.gov.au/ACNC/Reg/Charities_elections_and_advocacy.aspx

charities and allow organisations to be endorsed in multiple DGR categories? Are regulatory compliance savings likely to arise for charities who are also DGRs?

The Wilderness Society would support removing the public fund requirements and this will create regulatory compliance savings by reducing the requirement for specific internal committees, additional reporting and processes without reducing actual compliance or transparency.

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?

The Wilderness Society is not opposed to being held to an appropriate standard of conduct as a registered charity and an organisation which holds DGR status.

However, the addition of regular assessments by the ATO raises some questions.

Firstly, what is the problem being addressed through this recommendation?

Certainly, the House of Representatives Inquiry into the Register of Environmental Organisations demonstrated several things including the fact the Inquiry was established despite there having not been a single complaint received by the regulator. Based on the submissions to this Inquiry and the presentations at the Hearings across the country it was difficult to see that there was any problem that would indicate the need for rolling reviews of DGRs in the environment sector.

The second issue is how much will this cost and for what outcome?

The Wilderness Society fears this will result in a considerable impost on charities and the ATO. This would be counter to the stated objectives of this discussion paper to reduce administrative complexity.

We believe that before this proposal is considered further the potential benefits of this impost be weighed against the significant burden it will result in.

We fear that the political nature of the House of Representatives Inquiry into the REO has resulted in suggested regulatory changes that add significant red tape based on an Inquiry created without a single complaint and absolutely no evidence of the public benefit of these suggested changes.

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

See above.

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?

This is a piece of nonsense concocted by partisan members of a Parliamentary Committee which The Wilderness Society reject outright. It is not consistent with any of the stated objectives of this discussion paper. It would create a substantial administrative burden, it has no standing in law, it is ill defined to the point of incoherence and will likely result in extensive litigation to establish the workability and legality of the proposal.

In reference to the REO Inquiry, Government members failed to provide any evidence for why this recommendation would improve the behaviour or performance of environmental charities in Australia other than to reference the state corporatist tendencies of some mining companies who prefer to operate in an political environment of zero opposition to their private capital accumulation activities.

Recommendations 5&6 of the REO Inquiry fail to reflect the majority of submissions or presentations to the Committee and resulted in a minority report from the ALP members of the committee.

One of the Government members on the House of Representatives Inquiry into the Register of Environmental Organisations, Mr Jason Wood MP, provided an “additional comments” paper for the final report of the Committee in which he identified his concerns about both Recommendation 5 and 6.

As he states, this proposal that 25% of annual expenditure be spent on remediation would result in “increasing the reporting burden on other groups, and in my view this would be counter-productive.”⁴

One of the key roles of environmental organisations in this country is to help ensure decision making by government and industry is informed and undertaken in a way to minimise environmental harm.

Much of the environmental remediation required today is because of poor decision making.

For example, Australia has 50,000 unremediated mine sites⁵. We spend billions of dollars planting trees in landscapes that now suffer from loss of soils, salinity, and eroded creeks. And we have generations of people adversely affected by lead poisoning from places like Booragul, Port Pirie and Mount Isa.

The Wilderness Society also notes that laudable works to plant trees and restore the natural world are undone by the recent weakening of laws at the urging of the Agricultural sector to regulate the clearing of native vegetation.

As a result more than 1 million hectares of forests and woodlands have been cleared in Queensland since 2013, an assault on nature that entirely undermines many years of efforts to revegetate landscapes in that state over the past several decades.

Australia is one of the world’s most environmentally beautiful and safe places because of the combined

⁴ http://www.aph.gov.au/Parliamentary_Business/Committees/House/Environment/REO/Report, page 85.

⁵ <http://www.mining-technology.com/features/featuremanaging-australias-50000-abandoned-mines-4545378/>

work of great environmental advocacy and on-the-ground remediation.

Great advocacy skills and great remediation skills do not need to exist in each and every environmental organisation. There is absolutely no justification for forcing advocacy organisations to now become remediation organisations, nor should there be a rule for remediation organisations to become advocacy organisations.

Before Treasury contemplates this question further the Wilderness Society would like to see any evidence that this would help Australia or Australians. There was certainly no evidence for this generated during the House of Representatives Inquiry. This recommendation came out of the blue, had not been raised by anyone on the Committee during the Inquiry and is clearly a political attack on advocacy organisations.

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 Wilderness Society supports the need for DGRs to be ACNC registered charities and subject to ACNC's governance standards.

All registered charities should act lawfully. However it is unclear how any charity can be entirely responsible for the independent actions of members and volunteers as is proposed in the recommendation of REO Inquiry. Members and volunteers of charities are also independent citizens and their actions and decisions cannot and should not be regulated by the actions of the governors of a charity. This would appear to be practically impossible and legally without grounds. It is absurd.

In conclusion on this topic, it is worthwhile reproducing the full statement by Mr Jason Wood MP in his "additional comments" to the majority report of the House of Representatives Inquiry into the REO:

"I do have concerns about this recommendation. Firstly, drafting laws or regulations would be very complex and could only practically work if a DGR at the board or committee level made a decision to use violence or damage to property. In this case I would support sanctions against the DGR, however I also believe this scenario would be very unlikely and serious offences would more likely be made by individuals on a random basis. Also, for offences which are not sanctioned at the board or committee level, or do not involve violence or damage to property, current state laws would suffice.

Also it should be noted that it was due to environmental activists, through their efforts and through the use of a blockade, that major environmental disasters have been prevented. An example would be the Franklin River in Tasmania, where many activist groups openly supported campaigns to stop the damming of the river. These protests, which were actively supported by environmental groups, would be prohibited under this recommendation and history would now show that, if it was not for these protests and national awareness, the World Heritage Franklin River would have been dammed.

I also see an issue with individuals who financially support DGR groups that protest each year in the Southern Ocean against whale hunting. Australians are horrified to see Japanese whalers kill whales in an area declared "The Australian Whale Sanctuary", and often provide financial support knowing that they are supporting a DGR group now or into the future that focuses on protecting whales. If these recommendations

are approved, these supporters could be sanctioned because of their actions to stop whale hunting.”⁶

Conclusion

The Wilderness Society is pleased to provide this submission and looks forward to working positively with Treasury in the further development of this critical area of public policy.

This submission has been produced by Lyndon Schneiders, Matt Brennan and Glen Klatovsky on behalf of the Board of The Wilderness Society Ltd.

⁶ http://www.aph.gov.au/Parliamentary_Business/Committees/House/Environment/REO/Report, p87-88.